



NIAGARA ESCARPMENT PLAN AMENDMENT GUIDELINES

1. INTRODUCTION

These guidelines are provided to assist applicants and other parties in understanding the process for Plan amendments and the scope of the information required to support the review, analysis and decisions on applications.

Changes to a land use designation, policy or permitted uses require an amendment to the Niagara Escarpment Plan (NEP). The amendment process is outlined in Sections 6.1, 7, 8, 10 and 11 of the *Niagara Escarpment Planning and Development Act (NEPDA)*.

An amendment to the NEP may be initiated by the Minister of Natural Resources or by the Niagara Escarpment Commission (NEC), and applications may be made to the Commission by any person or public body requesting an amendment to the Plan. (Section 6.1(1) and 6.1(2) of the *NEPDA*)

Section 6.1(2.1) of the *NEPDA* requires that the application for each Plan Amendment must include a statement of justification and supporting material. The meaning of justification as defined in the *NEPDA* and the Plan is discussed further in these guidelines.

A flow diagram outlining the NEP amendment process, which is based on the legal provisions of the *NEPDA*, is attached. However, the flow diagram should not be relied upon as a substitute for the provisions of the *NEPDA*.

Plan Amendment application forms and other reference documents e.g., copies of the *NEPDA* and the Plan are also available from the NEC offices.

NEC staff are available to advise applicants and other stakeholders on current Plan policies, assist with interpretation, make site inspections and explain process considerations.

The purpose statement and objectives contained in the Introduction of the Niagara Escarpment Plan shall not be changed outside of the context of a full review of the Plan.

A. Urban Uses Prohibited

Plan Amendments involving urban expansions, including expansions to Escarpment Recreation Areas and urban uses are prohibited until the Niagara Escarpment Plan is reviewed in 2015 (Section 6.1(2.2) and 6.1(2.3) of the *NEPDA*). The urban uses affected by these sections of the *NEPDA* are outlined in the attached Appendix 1 - Policy Paper "Policies For Urban Uses" dated June 16, 2005.

2. THE MEANING OF JUSTIFICATION

As outlined under Section 6.1 (2.1) of the *NEPDA* and in the Part 1.2.1 of the NEP, all applicants are required to include justification for a proposed amendment to the NEP. The justification for a proposed amendment is required to address the rationale for the amendment, and includes reasons, arguments or evidence in support of the change to the Plan proposed by the amendment. In addition, applicants are to provide detailed analysis in the form of maps, reports, materials etc., as necessary, to support the proposed amendment.

Depending on the degree of complexity of a proposed Plan amendment, the justification required may vary. All Plan amendments shall include an analysis of:

- the consistency of the proposed amendment with the purpose and objectives of *NEPDA* and the Plan,
- the consistency with the objectives, designation criteria and development criteria of the NEP,
- the public interest served by the proposed amendment including the need to locate the proposed use within the Plan area given available opportunities outside the Plan for the use,
- consistency with the PPS and other provincial policies,
- compliance with agency and municipal policies;

and depending upon the type of application, may include:

- a detailed analysis of the impacts or potential impacts on natural heritage features and areas on and within 500 m (1640 ft.) of the subject lands (e.g., threatened, endangered species and species at risk, wetlands, woodlands, wildlife, fisheries, slopes, valley lands and flood prone lands, Provincially and Regionally Significant Areas of Natural and Scientific Interest (ANSI),
- potential impacts to surface and groundwater quality and quantity,
- existing land use (within and surrounding a proposed amendment),
- existing vacant lots (within the market area),
- landscape and viewshed analysis,
- geology/geomorphology,
- Escarpment slopes,
- Hydrology,
- parks and protected areas,
- economic analysis,
- agricultural resources,
- farm viability, and
- cultural heritage features and areas.

This list is not meant to be exhaustive, and applicants are encouraged to consult with the Commission staff to determine any additional supporting information which may be relevant in support of their particular amendment application.

3. TESTS FOR JUSTIFICATION

All amendments to the Niagara Escarpment Plan, including those initiated by the NEC, are subject to the following justification tests. The onus is on the applicant to provide justification in support of the proposed amendment.

When considering its position and recommendation on a proposed amendment, the Commission must be satisfied that the justification submitted demonstrates:

- consistency with the purpose and objectives of the *Niagara Escarpment Planning and Development Act and Plan*;
- consistency with the objectives of the designation and designation criteria of the Plan;
- that the proposed amendment is in the public interest and there is a need to accommodate the proposed use within the Plan area given the availability of alternatives both within and outside the NEP within the market area, where the proposed use may be located;
- compliance with the development criteria of the Plan, e.g., cumulative impact, open landscape character, natural heritage protection, etc.;
- consistency with the provisions of the Provincial Policy Statement (PPS) and other provincial policies or plans;
- has regard to agency and municipal official planning policies.

As part of the Plan amendment review process the NEC will seek comment, advice and opinion from municipalities, ministries, public agencies, advisory committees, interest groups and the public on the merits of the proposed amendment.

All information received is thoroughly examined by the NEC and carefully considered in its review of the proposed amendment.

The following outlines in more detail two of the tests.

A. Consistent with the Purpose and Objectives of the *Niagara Escarpment Planning Development Act*.

All amendments are subject to the very tests that applied to the creation of the Plan, namely the purpose and objectives of the *NEPDA*.

Consistency with the following purpose and objectives of the Niagara Escarpment Planning and Development Act is one of the fundamental tests for all Plan amendments.

Purpose

The purpose of this Plan is to provide for the maintenance of the Niagara Escarpment and land in its vicinity substantially as a continuous natural environment, and to ensure only such development occurs as is compatible with that natural environment.

Objectives

The objectives of the Plan are:

1. to protect unique ecologic and historic areas;
2. to maintain and enhance the quality and character of natural streams and water supplies;
3. to provide adequate opportunities for outdoor recreation;
4. to maintain and enhance the open landscape character of the Niagara Escarpment in so far as possible, by such means as compatible farming or forestry and by preserving the natural scenery;
5. to ensure that all new development is compatible with the purpose of the Plan;
6. to provide for adequate public access to the Niagara Escarpment; and
7. to support municipalities within the Niagara Escarpment Plan Area in their exercise of the planning functions conferred upon them by the *Planning Act*.

The NE Plan requires that: “It must be demonstrated that the proposed amendment and expected impacts resulting from the proposed amendment do not adversely affect the purpose and objectives of the *Niagara Escarpment Planning and Development Act*.” (Part 1.2.1 of the NEP)

B. Public Interest as Part of Justification

All Plan amendment applications are required to provide an analysis of how the proposed amendment is in the public interest as part of justification. In examining public interest, the Commission gives consideration to how the public interest is served including the need or reason to locate the proposed use within the area of the NEP.

For example, the examination of “public interest ” for a Plan amendment means considering the necessity for the proposed use to locate within the Plan Area, in view of alternatives both inside and outside of the Plan within the market area where the use may be accommodated.

The following expands upon how public interest is addressed for applications in general and, more specifically, for proposed mineral resource applications.

a) Plan Amendments (General)

Applicants for Plan amendments are requested to provide information (reasons, arguments and/or evidence) which could assist the Commission in considering the public interest by the amendment as part of determining its view on justification for the proposed amendment.

For example, in the case of a Plan amendment application which proposes a use not permitted by the Plan, the test for public interest addresses the need for these proposed uses or lots to locate inside the Plan area, taking into consideration where these uses may be accommodated elsewhere in the Plan, (e.g., within a designated urban area) or outside the Plan area, within the identified market or demand area served by the application.

Using an application for a new lot as an example, there are many existing vacant lots both inside and outside the Plan which may be developed. In addition, both the NEP and local official plans permit new lot creation or intensification. Justification should provide reasons, evidence or arguments to show there is a public interest to be served by a Plan amendment which proposes lot creation (e.g., more consents) or other uses beyond those permitted by the NEP.

Evidence may include, in the case of an application for lot creation, appropriate information about:

- The number, and location of existing vacant lots within the NEP and in the municipalities that serve the market area;
- Lot creation and development activity permitted within the NEP and municipal plans within the market area, including within Urban and Settlement areas, including intensification alternatives.

Existing information e.g., urban needs studies, resource planning reports, in official plans, etc., may be available from area municipal planning departments, NEC offices, provincial ministries and / or other public agencies, however, this does not negate the need for the applicant to conduct an analysis focussed on their particular application.

b) Plan Amendments (Mineral Resource Extraction)

All proposed aggregate resource amendments are required, as part of justification, to address the public interest served in locating the proposed aggregate use within the area of the Niagara Escarpment Plan.

The public interest test for aggregate applications is the same test that applies to all Plan amendment applications, namely, it must be demonstrated that it is in the public interest to locate the proposed use within the area of the Niagara Escarpment Plan, taking into consideration the existing supply and known alternatives within and outside the Plan area to satisfy forecasted demand for the specific resource within the identified market area to be served by the application.

As the provincial expert for mineral aggregate resources, the MNR will provide advice to the NEC in regard to the provincial need for aggregate resources and comment on the compliance of each site application with the Mineral Aggregate Resources PPS policies, and where applicable, the *Aggregate Resources Act*. When considering an amendment, the NEC must be consistent with the PPS as a whole, including other provincial interests within the PPS (e.g., natural heritage features and areas) within the context of the purpose and objectives of the *NEPDA* and the NEP.

When considering the public interest for an amendment to the Niagara Escarpment Plan, for a new or expanded Mineral Resource Area, the Niagara Escarpment Plan, shall take

precedence over the policies of the Provincial Policy Statement to the extent of any conflict (Section 4.9 of the PPS).

In addition, the provisions of the PPS represent a minimum standard (Section 4.6 of the PPS). In this regard, the NEC may request additional information as part of justification beyond that of the PPS, including potentially available reserves and / or resources outside the NEP as outlined below.

The MNR will provide advice on the provincial need for the resource. The NEC will not require applicants to submit information on the provincial need for aggregate resources as part of justification for NEP amendments.

In examining Plan Amendments for aggregate extraction and considering the question of public interest as part of justification, the Commission will, among other things, consider:

- the market/demand area to which this proposed new or expanded aggregate operation would contribute.
- the resource and product(s) available from other sites from both within and outside the NEP within the market/demand area to meet the current and forecasted aggregate resource demand of the market area.
- the range of products (quality and quantity) from the proposed operation that contribute to the current and forecasted aggregate resource demands of the market/demand area.
- the necessity for locating the proposed aggregate use within the Plan Area in view of available aggregate resources from alternative sites located within and outside the NEP area to satisfy the identified demand for the resource in the market area. This information should also include reasons for the selection of the proposed site.

The above information may be generated by the proponent in support of their application. Municipalities and the MNR may have relevant information on site characteristics, mineral resource inventory, natural heritage features and areas, licensed areas, current supply, forecasted demand, etc., that is readily available (not subject to confidentiality) and may be provided as part of the analysis on justification.

To the extent that this information is or is not readily available from the MNR, the applicant or other sources, the NEC will proceed to consider its view on the public interest served by locating the proposed use within the Niagara Escarpment Plan Area, determine its position on justification, and make recommendations to the Minister on proposed amendments.

Applicants will be required to provide justification in the form of detailed reports that address the above cited tests, including the public interest test. The “Processing Guide for NEP Mineral Resource Extraction Amendments” may serve as a generic check list tool to identify whether the detailed reports have addressed the issues listed within the Guide, but shall not be treated as a substitute for the detailed reports and / or the fulfillment of justification.

4. GENERAL PROVISIONS

All applications are subject to a public consultation process. Other parties e.g., municipalities, public interest groups and adjacent landowners will comment to the NEC on the merits of a Plan amendment application. Applicants are also encouraged to consult with these stakeholders to address issues raised through consultation, as much as possible.

The Commission is guided by the *Niagara Escarpment Planning and Development Act* in its legal requirements for the processing of amendments and has independence in determining its position on a proposed amendment for presentation at any hearings and in making its recommendations to the Minister or Cabinet.

All Plan amendment proposals are subject to public notice, an NEC Position, a potential hearing under the *NEPDA* or the *Consolidated Hearings Act*, a formal NEC recommendation to the Minister and final decision by the Minister or Cabinet, as prescribed by the *NEPDA* or the *Consolidated Hearings Act*. Additional information on the Plan amendments process, including hearings, is available from the Niagara Escarpment Commission.

5. CONSULTATION

The Commission encourages potential applicants to discuss their proposals with the Commission planners since these guidelines are not intended to provide detailed instruction or information requirements for all situations.

If you are thinking of applying for a Niagara Escarpment Plan Amendment, please contact the nearest NEC office (Georgetown or Thornbury) to arrange a meeting and discuss your proposal with a Commission planner.

- Contact:** (1) NEC, Georgetown @ (905) 877-5191
232 Guelph Street, Georgetown, Ontario L7G 4B1
www.escarpment.org
- (2) NEC, Thornbury @ (519) 599-3340
99 King Street East, Thornbury, Ontario N0H 2P0
www.escarpment.org

Appendix 1

June 16, 2005

POLICY FOR URBAN USES MADE TO ADMINISTER SECTION 6.1(2.2) OF THE NIAGARA ESCARPMENT PLANNING AND DEVELOPMENT ACT

This policy applies in the absence of a Regulation made by the Minister of Natural Resources under Section 23(e) of the *Niagara Escarpment Planning and Development Act* defining urban uses.

Section 6.1(2.2) prevents the consideration of any request to amend the Niagara Escarpment for an "urban use" in the Escarpment Natural Area, Escarpment Protection Area, Escarpment Rural Area and Mineral Resource Extraction Area designations, where such an amendment is required to permit the "urban use".

The definition, as set out below, is therefore intended to address those "urban uses" not already identified by the Niagara Escarpment Plan as permitted uses in the Escarpment Natural Area, Escarpment Protection Area, Escarpment Rural Area and Mineral Resource Extraction Area designations. Urban uses already identified in the Niagara Escarpment Plan are not affected by this definition, since they do not require an amendment to the Plan; therefore the policy will have no effect on those urban uses.

URBAN USES

"Urban Uses" includes the following,

- (a) Commercial and industrial land uses, excluding
 - mineral extraction operations and associated accessory uses, including processing, manufacturing and recycling and reprocessing facilities as provided for by amendment from the Escarpment Rural Area designation to the Mineral Resource Extraction Area designation in the Niagara Escarpment Plan, and
 - accessory uses, including processing, manufacturing and recycling and reprocessing facilities associated with mineral extraction operations, which are located in the Mineral Resource Extraction Area designation of the Niagara Escarpment Plan.

Notwithstanding the exclusions above, all accessory uses associated with a mineral aggregate operation will only be considered on the basis that they are proposed as temporary and will remain in place only for the duration of the mineral extraction operation.

- (b) Institutional land uses, and

- (c) multiple residential, or land uses that have a mix of residential units with another type of land use, and
- (d) recreational and tourist destination land uses such as downhill ski centres, lakeshore cottage areas, resort or lodge development, raceways, hotels, casinos, golf courses, golf course driving ranges, including retail operations and service establishments associated with such uses, and
- (e) systems and infrastructure such as sewers, mains, water pipes, and other services associated with public utilities, excluding systems and infrastructure where it has been determined by a medical officer of health (or health authority) that there is a public health concern that must be addressed, and
- (f) waste disposal or landfill sites, incineration sites, waste recycling sites, sewage treatment sites and facilities associated with such sites, excluding the recycling or reprocessing of mineral aggregate resources and aggregate materials within an approved Mineral Resource Extraction Area designation in the Niagara Escarpment Plan, and
- (g) multiple lot creation by way of plan of subdivision, consent to sever or plan of condominium, and
- (h) land uses that would normally be found within the land use designations of Minor Urban Centre, Urban Area or Escarpment Recreation Area in the Niagara Escarpment Plan, and
- (i) land uses that would normally be found within a designation in a municipal official plan for an area of settlement such as an urban area, urban policy area, town, village, hamlet, rural cluster, rural settlement area, urban system, rural service centre, future urban use area or designated growth area.

Notwithstanding (a) to (i) above, those "urban uses" which are currently permitted under the Escarpment Natural Area, Escarpment Protection Area and Escarpment Rural Area designations, not specifically introduced as part of a past Niagara Escarpment Plan Amendment or exception, are excluded for the purposes of amending a Mineral Resource Extraction Area in the Niagara Escarpment Plan to any one of those designations, provided additional "urban uses" are not included in any such amendment.