May 20, 2021

# STAFF REPORT

## DEVELOPMENT PERMIT APPLICATIONS:

### H/S/2010-2011/134

768 Mountain Brow Road West

City of Burlington, Region of Halton

### H/S/2020-2021/238

780 Mountain Brow Road West

City of Burlington, Region of Halton

### H/S/2020-2021/239

720 Mountain Brow Road West

City of Burlington, Region of Halton

## SUMMARY

### PROPOSAL:

To provide municipal water service connections from the City of Hamilton to 3 existing residential lots on Mountain Brow Road West in the City of Burlington.

### DESIGNATIONS:

Escarpment Natural and Protection Areas

**ISSUE:**

Application previously deferred by the Commission; proposed municipal water connection from urban to rural properties.

### RECOMMENDATION:

Approval with conditions

### REASONS:

1. The proposed development is not in conflict with the Niagara Escarpment Plan.
2. The City of Hamilton, City of Burlington and Region of Halton are not opposed to the applications, subject to conditions.
3. The proposal is consistent with the Provincial Policy Statement (PPS).

## RECEIVED:

H/R/2010-2011/134 – application originally received July 26, 2010 but was indefinitely deferred by the Niagara Escarpment Commission (NEC) on January 12, 2011. The application was re-activated on September 21, 2020.

H/S/2020-2021/238 – application submitted August 5, 2020

H/S/2020-2021/239 – application submitted August 3, 2020

## SOURCE:

Applications by the owners of the individual lots.

## PROPOSAL:

To connect three existing residential lots in the City of Burlington currently serviced by private wells to the City of Hamilton municipal water service. The existing wells would be decommissioned, and the City of Hamilton and Region of Halton would enter into an inter-municipal water service agreement to permit the properties in Halton to connect to the Hamilton water system.

In order to connect the Halton residents, a watermain currently under construction on Leavitt Boulevard in the City of Hamilton would need to be extended into the Mountain Brow Road right of way and then individual lateral connections would later be constructed for each lot.

## BACKGROUND:

### History of subject applications

There are three existing lots on Mountain Brow Road West. This is a boundary road shared by the Cities of Hamilton and Burlington which dead ends in front of 768 Mountain Brow Road West. The only current access to the street is via Highway 6 north in Clappison’s Corners (Waterdown/City of Hamilton).

All three applications are being dealt with concurrently in this report as the issues are similar for each. The details of each application follows.

### H/S/2010-2011/134

The property owners of 768 Mountain Brow Road began experiencing problems with their well supply more than a decade ago. The development permit application, seeking a connection to the Hamilton water supply was first submitted in 2010 but there were objections by the City of Hamilton as their by-laws did not permit servicing outside the City limits and the provincial policy framework did not support the provision of municipal services to rural properties at the time. Well water supply issues worsened around the time that urban development began on the north side of Mountain Brow Road across from the subject property. Water is presently being trucked in to supply the cistern that the residents are relying on due to the lack of supply of water from their existing well.

During the Co-ordinated Provincial Land Use Planning Review that began in 2015, the property owner applied for an amendment to the Niagara Escarpment Plan (NEP). The application was approved by the Minister of Natural Resources and Forestry on May 16, 2017. The amendment provides for a specific policy exception in Part 2.12 of the NEP as follows:

Notwithstanding Part 2.12.7, a single detached dwelling located at 768 Mountain Brow Road… in the City of Burlington, Region of Halton, may be permitted to connect to the municipal water service. (Amendment UA 22)

This amendment specifically provides the provincial policy basis to allow this property to connect to a municipal water service.

NEC staff were contacted by the property owners in 2019 to discuss the ongoing issues with their well water supply. NEC staff met at that time with the landowners and the applicant under File Number HS/20-21/239. As will be set out later in this report, this initial meeting lead to an extensive series of meetings over the last two years involving variously:

* Mountain Brow landowners
* Ministry of Environment, Conservation and Parks staff
* Ministry of Natural Resources and Forestry staff
* Region of Halton staff and a Burlington Regional councilor
* City of Burlington staff
* City of Hamilton staff
* First Gulf staff.[[1]](#footnote-1)

### HS/20-21/238

The property owner submitted an application seeking to connect to the City of Hamilton water supply. There is an existing residence on the property that was built in the 1970’s. No development is proposed on this lot other than the water line.

The property owner was advised in 2020, following well water testing undertaken by Terra Probe, that the well water was contaminated with lead at a quantity above Provincial Drinking Water Standards. Although it has been suggested that the source of the lead could be internal plumbing, the resident has advised that water tests were undertaken at the well outside the house and lead is present. The exact source of the lead is unknown. The property owner has also experienced a decline in the quantity of well water since construction began north of Mountain Brow Road. The owner is relying on bottled water for drinking water.

### HS/20-21/239

The property owner submitted an application seeking to connect to the City of Hamilton water supply. There is an existing residence on the property. No development is proposed on this lot other than the water line.

The property owner has experienced a decline in well water quality and quantity and flooding issues at the front of their lot in relation to a blocked culvert on Mountain Brow Road.[[2]](#footnote-2)

### History of Road Infrastructure Works (Hwy 5/6)

In 2012 the Ministry of Transportation commenced an environmental assessment regarding proposed improvements to the intersection of Highway 6 and Highway 5 (Dundas Street) in Waterdown. Included within the project was a proposal to close the access from Highway 6 onto Mountain Brow Road. Instead, access to that road would be obtained from a future road extending southerly from Dundas Street. The road, formerly referred to as Street C and now Leavitt Boulevard, will provide road access to the proposed Waterdown mini storage facility, the Wescam office building, the existing Liburdi Engineering office building and eventually, the residents of Mountain Brow Road.

### Wescam development

Currently under construction and nearing completion is a new office building for the Wescam company on lands designated Urban Area in the NEP. The building is on the north side of Mountain Brow Road. A new road, Leavitt Boulevard, will run between the office building and its parking area and will terminate temporarily at Mountain Brow Road until the road connection to Highway 6 is closed. A watermain is also currently being constructed to serve this building and Liburdi Engineering. It will also terminate at Mountain Brow unless the subject Development Permit applications are approved and an agreement is made between Halton Region and the City of Hamilton to extend the water main through the road right of way and to provide lateral connections to the individual residential lots.

A representative of First Gulf and their consultants participated in a series of meetings to discuss how the well water issue might be addressed and what role the company might play in terms of well water quality testing, the temporary provision of water to the residents and possibly a financial contribution toward the cost of the watermain extension. Water quality testing was undertaken, where permitted by the resident, and trucked-in water is being supplied to at least one of the properties on Mountain Brow Road. NEC staff has been advised by Halton Region that discussions are ongoing with First Gulf as to any cost contribution for the extension of the municipal watermain into the Mountain Brow Road allowance.

During the course of the development review process, it was determined that karst exists in this area. A study was undertaken by a consultant on behalf of First Gulf and it was recommended that a karst feature be created in the southeast corner of the Wescam property. The creation of the feature would ensure that a portion of the storm water runoff from the roof of the office building would infiltrate the ground to support streams that extend down the slope of the Escarpment and into ponds that support aquatic habitat on private lands.

## SITE DESCRIPTION:

The subject properties are on the brow of the Escarpment on the south side of Mountain Brow Road in an area known as North Aldershot. Each property features a single dwelling, accessory structures, lawn and mature trees. Access to the dwellings is via Highway 6 north.[[3]](#footnote-3) The properties at 768 and 780 Mountain Brow share a common driveway. (See Appendix 2)

Lands to the south of the subject lots are shown as Environmentally Sensitive Area (ESA) and Life Science Area of Natural and Scientific Interest (ANSI) in the Halton Official Plan and feature mature trees. The Bruce Trail runs east-west south of the properties.

## PROPOSED DEVELOPMENT:

Proposed development involves the installation of water service infrastructure in the municipal right of way and the installation of a lateral water main to each dwelling. Once the water service is in place, the three existing wells are required to be decommissioned. Halton Region offers a subsidy to private well owners who must de-commission their wells. The installation of the infrastructure within the Mountain Brow right of way is exempt pursuant to O.Reg. 828, S. 5.6.1.

## PLANNING ANALYSIS:

### Provincial Policy Statement (PPS)

Where the Niagara Escarpment Plan is silent on policies contained within the PPS, the policies of the PPS continue to apply where relevant.

Policy 1.1.5.5 of the PPS with respect to Rural Lands in municipalities states that “development shall be appropriate to the infrastructure which is planned or available and avoid the need for unjustified and/or uneconomical expansion of this infrastructure”. The subject properties are considered to be rural lands, even though they are just south of the Waterdown Urban Area. It must be noted that there is no “development” proposed on the three residential lots. The houses are existing and other than connecting the lots to the municipal water supply, the applicants are not seeking approval to develop but rather to address the issues with their private wells.

With respect to the cost of the infrastructure, the exact cost is still under discussion as the municipalities, Halton and Hamilton have not reached agreement on the water service infrastructure design. Neither municipality will bear the cost of the infrastructure but the developer of the office building in the Urban Area, First Gulf, has offered to fund a portion of the infrastructure. The balance would have to be covered by the residential property owners. Determination of how the cost of the watermain connection would be dealt with is beyond the scope of these Development Permits. The proposed service connection from the City of Hamilton, the closest location where such infrastructure is available, addresses the PPS policy in terms of proposing to connect to servicing that is planned or available.

With respect to Infrastructure, the PPS states in Policy 1.6.3 that the use of existing infrastructure should be optimized. A watermain is currently being constructed on lands north of Mountain Brow Road to service an office building under construction as well as an existing office building and other future development in the area. Constructing lateral connections to the watermain for the three residential properties would optimize the use of infrastructure, consistent with this PPS policy. Further the PPS, Policy 1.6.6.1b) states that planning for water services shall ensure that they are provided in a manner that protects human health and safety. The existing wells have insufficient capacity and in one case, contaminated water. The residents are relying on trucked in water, bottled water and cisterns. Having a secure, reliable water supply from the municipal system would support human health and safety.

Properties are permitted on partial services where necessary to address failed individual on-site water services for existing development (Policy 1.6.6.5). The properties on Mountain Brow Road satisfy this policy requirement.

The water lines for the individual lots would likely be installed through lateral drilling resulting in minimal property disturbance. The existing wells would be de-commissioned in accordance with Halton Region practices as a condition of approval further addressing health and safety issues as required by the PPS.

### Niagara Escarpment Planning and Development Act (NEPDA)

Pursuant to S.14. of the NEPDA:

Despite any other general or special Act, where the Niagara Escarpment Plan is in effect and there is a conflict between any provision of the Plan and any provision of a local plan or any provision of a zoning by-law covering any part of the Niagara Escarpment Planning Area, then the provision of the Niagara Escarpment Plan prevails.

To the extent that the policies of the City of Burlington Official Plan, as outlined below, may conflict with the NEP with respect to the ability to connect to municipal services, the policies of the NEP which would allow such services prevail.

### NEP

Part 1.3/1.4 Permitted Uses

The use of the three existing lots for *single dwellings* and *accessory uses* is permitted in the Escarpment Natural and Protection Area designations that apply to the subject lands. The proposed installation of the *infrastructure* (municipal water line) is also permitted to support the existing residential uses, subject to the development criteria in Part 2.12.

Part 2.2 – General Development Criteria

The objective of this policy is “to permit reasonable enjoyment by the owners of all lots that can sustain development”. The owners of the subject lots have expressed concern to NEC staff that the lack of well water and contamination of well water does not allow them to enjoy their properties. Allowing the residential lots to connect to a municipal water supply would be consistent with the objective of the general development criteria.

Part 2.6 – Development Affecting Water Resources

Historical information relating to the well issues experienced on one of the properties indicated that the location of the of the properties on the brow of the Niagara Escarpment in a shale formation meant “the potential to obtain an adequate and reliable well water supply in this environment appears to be low”.[[4]](#footnote-4)

More recent information with respect to an assessment of karst[[5]](#footnote-5) in the area completed by Terra-Dynamics Consulting for First Gulf had determined that karst features exist in the southeastern section of the Wescam property and that water from the subject lands feeds streams below the Escarpment.[[6]](#footnote-6) However, as noted in the comments of Conservation Halton on the subject Development Permit applications, they accepted the conclusions of the technical experts on karst and that “there was no reasonable expectation of karst related hazards within the area in question”[[7]](#footnote-7) and that a permit from the conservation authority was therefore not required for the subject properties. NEC staff is therefore satisfied that the installation of water lines to the individual properties on Mountain Brow Road will not have a negative impact on karst in keeping with the policy objectives for water resources in the NEP to protect the quality and quantity of groundwater.

Part 2.7 – Development Affecting Natural Heritage

The subject properties and the frontage along Mountain Brow Road are characterized by mature trees, some of which may be in the actual road right of way. As stated previously in this report, no development is proposed by the owners of the subject lots, however the installation of the proposed of the watermain and the individual water lines could have the potential to impact vegetation. Proposed conditions of approval of the Development Permit would require the identification of any land to be disturbed and the details of any required restoration to mitigate any site alteration from the installation of the water lines. This is consistent with the policies of the NEP for development in natural heritage features which allow development of facilities accessory to a single dwelling on an existing lot of record provided disturbance is minimal and temporary.

Part 2.12 – Infrastructure

The NEP, Part 2.12.7 contains a policy which clearly indicates that municipal water systems shall not be located in or extended into Escarpment Natural, Protection, Rural or Mineral Resource Extraction areas:

unless such servicing is required to address failed individual on-site sewage or water services, or to ensure the protection of public health where it has been determined by a medical officer of health (or health authority) that there is a public health concern associated with the existing services. The capacity of services provided in these circumstances will be restricted to that required to service the affected area and shall not allow for growth or development beyond what is permitted in this Plan.

This policy was added during the 2015 Plan Review to address situations where a property would otherwise be ineligible to connect to a municipal service, but if private servicing had failed, NEP policy now provides an opportunity to allow that connection.

During the Plan Review, there was an opportunity for property owners to make application to amend the NEP to seek a connection to municipal services. Those applications were considered and some of those amendments were approved and are listed as site specific exceptions in Part 2.12. As it relates to 768 Mountain Brow Road, one of the applications that is the subject of a Development Permit application, a Plan Amendment (UA 22) was approved by the government. (Part 2.12.10).

It is the opinion of NEC staff that the approval of the proposed municipal water connection to the three properties on Mountain Brow Road is not in conflict with the Infrastructure policies of the NEP.

### Region of Halton OP

The subject properties are designated Regional Natural Heritage System. This designation includes the Escarpment Natural and Protection Areas in the NEP. Permitted in this designation are existing uses and single detached dwellings on existing lots. Accessory buildings or structures and essential utility facilities are also permitted uses.

No development is proposed within a key feature identified in the Region’s OP and the Region did not identify the need for an Environmental Impact Assessment in its comments on the applications.

### City of Burlington OP (1997)

Properties are in the West Sector of Burlington’s North Aldershot Planning Area. Objectives of this area are to permit development which is compatible with the scale and character of the existing community, preserve the brow of the Escarpment and its visual and open space character and preserve significant views of the Escarpment. Property is designated Escarpment Protection Area and Greenlands (Escarpment Plan Area).

Permitted uses include single detached dwellings on existing lots, accessory buildings, structures and facilities and site modifications to accommodate them provided impacts on the natural environment are minimal.

Properties in the West Sector are to be developed on private services (wells and septic systems). The Burlington OP can be more restrictive than provincial policies and Regional government planning documents but is not permitted to conflict with these documents.

## AGENCY CONSULTATIONS:

### Ministry of Environment, Conservation and Parks (MECP)

Having reviewed the technical reports provided by the NEC including the geotechnical, hydrogeological and karst information, MECP staff advised that they had no objection to municipal water being provided to the three subject properties.

### Ministry of Transportation (MTO)

MTO issued a permit to connect the watermain along Mountain Brow Road. Any inquiries regarding further construction should come to MTO through the City of Hamilton.

### Conservation Halton

No concerns. Conservation Halton (CH) regulates hazardous lands pursuant to Regulation 162/06 including unstable bedrock (karst topography).CH has reviewed the karst assessment report and watermain construction report and is satisfied that there is no reasonable expectation of karst related hazards in the area in question. A permit from CH is not required.

Mitigation measures from the Terra-Dynamics report[[8]](#footnote-8) recommend mitigation measures that should be incorporated into the design of the waterline extension including:

* The excavated trench in the dolostone bedrock be infilled with clean or washed gravel to promote permeability;
* Clay seals or barriers should be installed at 40 m intervals within the bedrock trench to inhibit groundwater flow within the trench;
* Native clay base soils can be used to infill the trench from the top of bedrock to surface; and,
* Inspections of the trench should be completed by a Professional Engineer or Geoscientist with expertise in karst hydrogeology to ensure the absence of significant karst features in the bedrock during the installation of the individual watermains.

### Bruce Trail Conservancy

The Bruce Trail is on Ontario Heritage Trust land east of Highway 6, before meandering north and east across the road allowance, south of where the construction is to occur, into Clappison Woods (City lands). It is not anticipated that there would be impacts to the Trail from this construction.

### Region of Halton

In response to discussions between staff of the City of Hamilton, City of Burlington, Region of Halton and NEC, in support of the proposal, staff prepared Report No. LPS94-20/PW-31-20 for Regional Council’s consideration in November 2020. The Report, which has been approved by Regional Council, amended the Urban Services Guidelines to permit lands outside of the Urban Area to connect to a water main within a boundary road without a Regional Official Plan Amendment only in the following circumstances:

a) Where an existing or planned municipal water service is located along the frontage of the properties requiring only a service connection;

b) Where the municipal water connection is for an existing approved land use, and can be provided without financial impact to Halton Region;

c) Where the abutting municipality assumes the Halton residents receiving the water connection will become customers for the municipal water service of that municipality to the satisfaction of the Commissioner of Public Works; and,

d) Where there is no plan to comprehensively service the area from the Halton system to the satisfaction of the Chief Planning Official.

Based on our review of the applications, Regional Planning staff offer no objection to the connections on the basis that the criteria contained in the Regional Urban Services Guidelines, as amended, can be achieved.

The City of Hamilton has indicated that any connections for these lands will require an agreement between the City and Region given that the water service crosses the municipal boundary. In this regard, Regional staff will rely on the provisions of an agreement with the City of Hamilton to address any technical requirements associated with the connection.

### City of Burlington

An amendment to the Burlington OP, 1997 would be required to explicitly permit the extension of municipal water and wastewater services into the West Sector of the North Aldershot Planning Area but the Burlington Official Plan is not permitted to conflict with the Niagara Escarpment Plan and the Region of Halton Official Plan.

A new Official Plan came into effect for the City on December 22, 2020, after the submission of the current Development Permit applications and so are not determinative for them. However, the policies of the new Official Plan state that municipal service extensions are not permitted beyond the Urban Area unless otherwise permitted by the policies of the Region of Halton Official Plan and in accordance with the Region of Halton’s Urban Services Guidelines.

Burlington staff recognizes that the West Sector is intended to develop on private services but on a case by case basis the planning authority of the NEC takes precedence within the Area of Development Control and the provision of water and wastewater servicing is the responsibility of Halton Region. Burlington staff do not object to the issuance of a Development Permit in principle, subject to support from Halton Region in accordance with its Official Plan policies and Urban Service Guidelines.

Prior to any work commencing on the municipal right of way, the applicant shall obtain the necessary Municipal Consent permit to the satisfaction of the Director of Capital Works. Clearances must be maintained between the construction and any components of the septic system.

### City of Hamilton

Development Engineering staff noted that currently there is no water, storm or sanitary servicing on Mountain Brow Road and that the extension of the watermain would require an amendment to the inter-municipal water service agreement. They indicated that partial servicing (i.e. water only and not sanitary sewer) is usually not permitted.

Source Protection staff noted that a groundwater interference plan would need to be developed to ensure that there is no impact to the existing private wells during the construction of the watermains and further that the existing wells would have to be de-commissioned.[[9]](#footnote-9)

Natural Heritage staff noted that there are trees along the road right of way that might be impacted by construction and that tree protection measures should be utilized during the installation of the water lines. They noted the presence of karst in the area and requested a karst study.[[10]](#footnote-10)

Cultural Heritage staff noted the potential for archaeological resources in the area but since the subject lands are in the City of Burlington, they deferred to them to determine if an archaeological assessment would be required.[[11]](#footnote-11)

## DISCUSSION:

Through extensive consultation with staff of the Conservation Halton, the Region of Halton, City of Burlington and City of Hamilton over several years, NEC staff now understands that there are no municipal or agency objections to the proposed connection of the three existing dwellings on Mountain Brow Road West to the Hamilton municipal water service, subject to conditions (see Appendix 1). The provincial policy context and the Region of Halton Urban Service Guidelines have changed since the issue of impacts to a private well first began with a Development Permit application by one of the property owners in 2010. Although provincial and municipal policy limits the opportunity for rural properties to connect to municipal services in order to ensure the adequate capacity of those services for existing and planned urban growth, rural properties may connect in limited circumstances as set out in the policy analysis earlier in this report.

Other than the proposed extension of a watermain though the Mountain Brow Road right of way onto the residential properties, no development is being proposed on the applicants’ properties in keeping with NEP policy which clearly states that the basis of the permission to connect to a municipal service is to support existing uses rather than to provide a foundation for “growth or development beyond what is permitted in this Plan”.[[12]](#footnote-12)

The recommended conditions of approval address the remaining issues to be resolved in relation to the construction details for the lateral connections to the watermain on the private properties and the necessary agreement between the City of Hamilton and the Region of Halton to permit the watermain to cross the municipal boundary and for the Burlington properties to be able to connect to the water supply from the City of Hamilton. The residents will be required to de-commission their private wells once the connection to the municipal system has been made.

The approval of the Development Permit applications is consistent with the Purpose and Objectives of the NEP as the proposed development would only allow a below grade water line to support existing development with minimal site and vegetation disturbance. Appropriate site restoration is required by the proposed conditions.

Both the City of Hamilton and Region of Halton have stated that the extension of the watermain shall not be at their cost. Consultation with respect to funding of the watermain extension that may be provided by First Gulf, the developer of the Wescam office building, is ongoing as between the Region of Halton and First Gulf. The conditions of the site plan approval for the office building require that the applicant for the office building lands must provide a potable water supply or drill another well if any impacts to private wells are experienced. If the water supply is not provided, then the City of Hamilton can draw on site plan securities to meet the obligation of the terms of site plan approval.

NEC staff understands that should there not be an agreement regarding cost sharing, the residents may be expected to pay the cost of extending the watermain to their individual properties from the road. Each applicant could proceed or choose not to proceed to have a lateral water line installed on an individual property basis.

## RECOMMENDATION:

That the three development permit applications be approved by the NEC subject to the conditions in Appendix 1.

## Prepared by:

*Original prepared by:*

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Nancy Mott, MCIP, RPP

Senior Strategic Advisor

## Approved by:

*Original approved by:*

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Debbie Ramsay, MCIP, RPP

Director (A)

Appendix 1 – Development Permit conditions

Appendix 2 – location map

## APPENDIX 1

### CONDITIONS OF APPROVAL

### H/R/10-11/134, H/S/20-21/238 and H/S/20-21/239

1. Development shall occur in accordance with the Terms and Conditions of the Development Permit.
2. The Development Permit shall expire three (3) years from the date it has been issued or once the development has been completed in accordance with the Development Permit.
3. No site alteration of the existing contours of the property including the placement or stockpiling of fill (i.e. excess or imported soil) on the property is permitted with the exception of that identified within the development envelope in accordance with the Final Site Plan.
4. No vegetation shall be cut or removed from the development envelope except for that identified within the development envelope in accordance with the Final Site Plan.
5. If development has commenced under this Development Permit, any/all disturbed areas of land or soil shall be re-vegetated and stabilized to the satisfaction of the Niagara Escarpment Commission on or before the date of expiry of the Development Permit.
6. **Prior to the issuance of a Development Permit by the Niagara Escarpment Commission**, an accurate and detailed Final Site Plan shall be submitted for Niagara Escarpment Commission approval. The following information shall be shown directly on the Plan:
7. The Final Site Plan has been prepared by a qualified professional;
8. All drawings submitted have been drawn to scale (bar scale shown), reference the application number and address of the proposal, be dated (revisions as well), and include the name of the relevant individual or consultant who prepared the drawing;
9. Outline of the approved development envelope / extent of all disturbed areas;
10. Location of all existing and proposed structures, dwelling, sewage disposal system, well/cistern, driveway, showing setbacks from the property lines; construction access / haul routes, any watercourses or water features, wooded areas, municipal water line etc.;
11. Grading, drainage, and fill management details including the areas of excavation and temporary or permanent fill placement. The type, quantity, quality and source

location of any imported fill material must be accurately identified.

1. The location and design of erosion and sediment control measures (e.g., fencing, blankets, rip-rap, temporary mulch / seeding), and limit-of-work construction or eco-protection fencing;
2. Identify the areas of existing vegetation to be retained, areas of vegetation to be removed, and the location of any proposed plantings.

Development shall proceed in accordance with the details of the approved Final Site plan.

Any fill material approved for importation under this Permit shall conform to the definition of “inert fill” per Ontario Regulation 347 and Table 1 of the Soil, Groundwater and Sediment Standards for use per Part XV.1 of the *Environmental Protection Act*, dated April 15, 2011, as amended.( [e-Laws | Ontario.ca](https://www.ontario.ca/Laws))

1. **Prior to the issuance of a Development Permit by the Niagara Escarpment Commission,** the applicant or their contractor shall submit for the approval of the Niagara Escarpment Commission, **final construction details** for the proposed lateral water line to the dwelling. These details shall take into consideration the recommended mitigation measures to address the potential presence of karst on the subject lands outlined in the report by Terra Dynamics Consulting Inc. (Construction of Watermain, 405 Mountain Brow Road, August 22, 2020).

Development shall proceed in accordance with the details of the approved Final Construction Details.

1. **Prior to the issuance of a Development Permit by the Niagara Escarpment Commission**, a **Final Landscape Plan** shall be prepared by a qualified person, for Niagara Escarpment Commission approval. The Plan shall address all vegetation retention and planting requirements in accordance with the standard practices of the implementing authority. The following stipulations shall be included directly on the Plan:
2. All new tree and shrub species (including seed mixes) shall be native to Ontario except where otherwise approved by the Niagara Escarpment Commission. Plant material shall be sourced from local plant nurseries.
3. Planting and the rehabilitation of all disturbed areas shall be completed on or before the date of expiry of the Development Permit to the satisfaction of the Niagara Escarpment Commission.
4. All plant material shall be guaranteed for 24 months following installation. All plant material found during this time to be dead or dying must be replaced with a size and species to the satisfaction of the Niagara Escarpment Commission.
5. Once the development has been completed, a letter certifying the landscaping/ planting work has been completed in accordance with the approved Landscape Plan shall be provided to the Niagara Escarpment Commission by a qualified person.
6. **Prior to the commencement of any development**, erosion and sediment control measures (e.g. fencing, blankets, rip-rap), and/or vegetation protection fencing shall be implemented and maintained as shown on the **Final Site Plan** until all disturbed areas are stabilized. It is the responsibility of the landowner to implement, monitor and maintain all erosion and sedimentation control measures and vegetation protection fencing in good condition until vegetative cover has been successfully established and the development is completed.
7. **Prior to the commencement of any development,** the Region of Halton and the City of Hamilton shall notify the Niagara Escarpment Commission that they have entered into an inter-municipal water service agreement to permit the connection of the dwelling to the Hamilton municipal water system.
8. **Prior to the commencement of any development**, the constructor (contractor) shall provide a written record of a mitigation plan to the satisfaction of the Director, Hamilton Water, that protects well owners in case water supply wells on Mountain Brow Road West experience water quality or quantity issues as a direct result of construction of watermain/waterline service line infrastructure. This plan would include identification and monitoring of potential impacts, triggers, timelines for investigation and remediation, City notification and mitigation plans in case impacts arise (e.g. provision of temporary water supply and expediting of final service connections to affected properties).
9. Following the installation of the municipal water line and connection to the dwelling of the water service on the subject lands, the owner shall de-commission the well to the satisfaction of the Niagara Escarpment Commission and the Region of Halton.
10. Within thirty (30) days upon completion of the development, written confirmation from a qualified person or the property owner that the development was completed in accordance with the Development Permit shall be submitted to the Niagara Escarpment Commission.
11. The landowner shall advise Niagara Escarpment Commission staff in writing of the start and the completion date of the development. This notice shall be provided to the NEC staff 48 hours prior to the commencement of development, and within 14 days upon completion.
12. This conditional approval expires 18 months (1.5 years) from the date of confirmation of the decision to approve the Development Permit application. Conditions 6, 7 and 8 of this conditional approval shall be fulfilled before the expiry date.

### Advisory Notes:

1. A Development Permit does not relieve the landowner/permit holder from the requirements of any other required approval, licence or certificate under any statute (e.g., Ontario Building Code, *Planning Act, Municipal Act,* *Conservation Authorities Act, Ontario Water Resources Act*, etc.). The Niagara Escarpment Commission Development Permit is required prior to the issuance of any other applicable approval, licence or certificate.
2. Should deeply buried archaeological remains/resources be found on the property during construction activities, the Heritage Operations Unit of the Ontario Ministry of Heritage, Tourism, Sport, and Cultural Industries shall be notified immediately. In the event that human remains are encountered during construction, the owner shall immediately notify the police or coroner, the Registrar of Cemeteries of the Ministry of Small Business and Consumer Services, and the Ministry of Heritage, Tourism, Sport and Cultural Industries. (416-212-8886 or archaeology@ontario.ca)
3. Halton Region offers a Residential Private Well Decommissioning Grant to landowners who plan to decommission their unused well(s). The grant covers **50% of the total cost** up to a **maximum of $1,000.00 per well**. For more information visit the Region’s website at <https://www.halton.ca/For-Residents/Water-and-Environment/Water-Quality-Protection/Well-Water/Residential-Well-Decommissioning-Grant> and contact Halton Region’s Source Protection Specialist at sourcewater@halton.ca.
1. First Gulf is the developer currently coordinating the construction of a new office building for a company known as Wescam in the urban area of Hamilton north of Mountain Brow Road. [↑](#footnote-ref-1)
2. There is no longer a need for a Niagara Escarpment Plan amendment to allow 720 and 780 Mountain Brow Road to connect to municipal servicing as a result of a change to NEP infrastructure policy in 2017 as noted on page 7 of this report. [↑](#footnote-ref-2)
3. In the future, the Ministry of Transportation plans to close the Highway 6 connection to Mountain Brow Road and the properties would have access to Leavitt Boulevard, which is currently under construction, and ultimately to Dundas Street (Highway 5). [↑](#footnote-ref-3)
4. Ministry of Environment memo, February 25, 2008 [↑](#footnote-ref-4)
5. Karst is a geologic feature formed from the dissolution of soluble rocks such as limestone as a result of water seeping into the rock. It is characterized by underground drainage systems ranging from small fissures in the rock to sinkholes. [↑](#footnote-ref-5)
6. Terra-Dynamics Consulting Inc., Karst Restoration Report, June 30, 2020. [↑](#footnote-ref-6)
7. Ola Panczyk, Conservation Halton, Letter dated November 23, 2020 [↑](#footnote-ref-7)
8. Construction of Watermain, Terra-Dynamics, August 22, 2020 [↑](#footnote-ref-8)
9. The Region of Halton has a program to assist property owners with the decommissioning of private wells and there is some cost subsidy for doing this. [↑](#footnote-ref-9)
10. A karst report has already been completed and accepted by Conservation Halton. [↑](#footnote-ref-10)
11. City of Burlington staff did not request an archaeological assessment in their comments. [↑](#footnote-ref-11)
12. Watermain is currently being constructed in the City of Hamilton to serve existing and proposed development (e.g. Wescam office building, Waterdown Mini Storage facility, Liburdi Engineering). [↑](#footnote-ref-12)