May 19, 2021

# P1: STAFF REPORT

## Policy Guideline Development Background and Context Setting

## Temporary Dwelling Unit(s) Accessory to Agricultural Uses

## Accessory Facilities and Uses to Single Dwellings

### 1. INTRODUCTION

The 2017 Niagara Escarpment Plan (NEP) has a new policy in the Introduction relating to guidance material, (“How to Read This Plan”), as follows:

*The Niagara Escarpment Commission, in consultation with the Ministry of Natural Resources and Forestry, may from time to time issue guidance material and technical criteria to assist the implementing authority with the policies of this Plan.*

*Information, technical criteria and approaches outlined in guidance material are meant to support but not add to or detract from the policies of this Plan.*

Following the release of the 2017 NEP, staff identified policy gaps where greater detail would be beneficial in order to ensure consistent interpretation of NEP policies and to ensure the Purpose and Objectives of the Act and the Plan are upheld.

The purpose of Guidelines is so that the Commission, Applicants and Stakeholders have a clear understanding of the policy objectives and the background information required to support effective NEP policy implementation. Policy Guidelines are used to support the evaluation of all applications against a common set of considerations. They are intended to clarify, inform, and aid in the interpretation of NEP policies, but not modify the current NEP policies (as this would require a NEP Amendment).

The scope of Policy Guidance is restricted to application of the current NEP policies - to inform Plan implementation. Information and approaches contained in guidance material are meant to support but not add to or detract from the policies of the NEP. Guidelines are being developed to assist in the assessment of Development Permit Applications (DPAs) for dwelling unit(s) accessory to agricultural uses; and accessory facilities and uses to single dwellings. An outcome of the process of developing guidance material could be recommendations for future policy, legislative or regulatory change, but for the purpose of this process, such changes are not in scope.

This phase of the Guideline development will undertake to provide:

1. a review and analysis of the NEC Development Permit Application (DPA) history, NEP Amendments and compliance history (where applicable)
2. a Jurisdictional scan
3. a consideration of technical studies and/or supplemental information that may be required to be submitted in support of DPAs.
4. review of known Stakeholder, special interest groups positions/interests & Commission Working Group input to date.

### 2. BACKGROUND

#### Planning Context

1. **Niagara Escarpment Plan (2017)**

The following provides a summary of the relevant Permitted Uses, Objective and Development Criteria of the NEP that are applicable to the consideration of Guidelines for the topics of Dwelling Units related to Agricultural Uses and Accessory Facilities/Uses to single dwellings.

The NEP Part 2.2.1 General Development Criteria indicates that Permitted Uses identified in Part 1 of the Plan may be allowed provided that the long term capacity of the site can support the use without a substantial negative impact on Escarpment environmental features including cultural heritage features (2.2.1 a) and that the cumulative impact of development will not have serious detrimental effects on the Escarpment Environment including the landscape (2.2.1 b).

*Accessory uses* are identified as Permitted Uses in all of the NEP land use designations. Provided prescribed criteria are met (e.g. meeting setbacks, maximum size), some more minor accessory uses may be exempt under Ontario Regulation 828/90, as amended.

*Accessory* is defined in the NEP as *naturally and normally incidental, subordinate and exclusively devoted to the principal use located on the same lot.*

*Accessory Use* is defined as *the use of any land, building, structure or facility that is naturally and normally incidental, subordinate, and exclusively devoted to the principal use located on the same lot.*

*Accessory Facility* is defined as *a detached building, structure or other installation that is not used for human habitation, the use of which is naturally and normally incidental, subordinate, and exclusively devoted to the principal use located on the same lot.*

The Objective of the NEP **Part 2.8 Agriculture** is to encourage agricultural uses in agricultural areas, especially in prime agricultural areas, to permit uses that are compatible with farming and to encourage accessory uses that directly support continued agricultural uses.

Permitted Uses of NEP Part 1.4.3.5 Escarpment Protection Area and Part 1.5.3.6 Escarpment Rural Area identify a mobile or portable *dwelling unit* accessory to agriculture as a Permitted Use, subject to the applicable Development Criteria as follows:

**Part 2.8.5 DwellingUnits Accessory to Agricultural Uses**

A temporary dwelling unit(s) for farm labour may be permitted on the same property as the principal farmhouse, subject to the following criteria:

a) additional farm labour is required on a full-time or seasonal basis;

1. the dwelling unit(s) shall be mobile or portable, without a basement; or the dwelling unit(s) may be permitted within an existing farm building or structure on a temporary basis, where justified (e.g., barn);
2. the dwelling unit(s) should be located within the existing farm building cluster, and the existing farm lane access is to be used where possible; and,
3. the dwelling unit(s) shall be temporary and shall be removed within a period set out in the Development Permit when the dwelling unit is no longer required.

*Agricultural use* is defined in the NEP (2017) as: The growing of crops, including nursery, biomass, and horticultural crops; raising of livestock; raising of other animals for food, fur or fibre, including poultry and fish; aquaculture; apiaries; agro-forestry; maple syrup production; and associated on-farm buildings and structures, including, but not limited to livestock facilities, manure storages, value retaining facilities, and accommodation for full-time farm labour when the size and nature of the operation requires additional employment.

Policies in the NEP respecting dwelling units accessory to agricultural uses were established to recognize the unique demands of certain types of agricultural operations and that a second (temporary) dwelling for farm help (both seasonal and full-time help[[1]](#footnote-1)), is often necessary for the efficient operation of the farm and its viability. Historically, the intent of the NEP policies respecting these uses was to provide on-site accommodations for full-time farm help (more traditionally a member of the farm family), who was engaged full-time on the farm, and where the farmer (traditionally the landowner), also worked full-time on the farm and lived in the primary dwelling on the property – the farm house.

It is recognized that the historical context within which dwelling units to accommodate farm help has been considered in the NEP Area appears to be evolving (i.e. the traditional scenario where the landowner is the full-time farmer, living on the farm is no longer as prevalent).

The requirement for farm labour accommodations in the NEP Area to be temporary assists in preventing the cumulative intensification of development through additional permanent dwellings, and therefore better reflects the Purpose and Objectives of the NEP and the *Niagara Escarpment Planning and Development Act* (NEPDA), which require that the open landscape character of the Niagara Escarpment be maintained insofar as possible, by such means as compatible farming or forestry and by preserving the natural scenery. Requiring such uses to be temporary also removes the potential for severances. In addition, the requirement for temporary structures better adapts to the changing labour needs of the farm operation over time (i.e. when the farm help is no longer needed).

It is relevant to note that the original 1985 NEP contained provisions for permanent farm labour dwellings. However, the policy was revised during the first NEP Review in 1990 when it was realized that the unintended consequences of permitting permanent second dwellings was resulting in the desire for future lot creation which was negatively impacting the Purpose and Objectives of the NEP. While an additional (second) permanent single dwelling on an agricultural parcel may be proposed as a strategy to address long-term labour needs or farm succession planning, the reality is that over the long-term, there are no assurances that subsequent generations will continue to farm, which leads to a surplus dwelling on the lands and desire to sever the surplus dwelling. This division of land fragments the agricultural land base of the NEP Area, which can in turn affect the future viability of agriculture over the long-term.

1. **Provincial Policy Statement (PPS, 2020)**

The Provincial Policy Statement (PPS) provides overall policy direction on matters of provincial interest related to land use and development in Ontario. The PPS was updated in 2020. Where the policies of provincial plans address the same, similar, related, or overlapping matters as the policies of the PPS, applying the more specific policies of the provincial plan satisfies the more general requirements of the PPS.

The PPS provides for appropriate development while protecting resources of provincial interest, public health and safety, and the quality of the natural and built environment. The PPS supports improved land use planning and management, which contributes to a more effective and efficient land use planning system.

The PPS sets out policies for prime agricultural areas which are intended to protect these areas for long-term use for agriculture. The PPS also supports a diversified rural economy and promotes protection of agricultural and other resource-related uses on rural lands. Minimum Distance Separation (MDS) applies in rural areasfor both rural lands and prime agricultural areas, as directed in PPS policies 1.1.5.9 and 2.3.3.3.

In prime agricultural areas, permitted uses and activities include agricultural uses,   
agriculture-related uses and on-farm diversified uses. The PPS definition for agricultural use is consistent with the NEP (2017) definition and includes *accommodation for full-time farm labour when the size and nature of the operation requires additional employment.*

### 3. INFORMATION SUMMARY

#### 3.1 NEP Implementation

DPAs for both temporary dwelling units accessory to agricultural uses and accessory facilities/uses to single dwellings are considered on their own merits and assessed against the ability to meet the applicable NEP Objectives and Development Criteria, including those related to visuals, scenic quality, landform conservation, and natural and cultural heritage. Current NEC practices for ensuring dwellings and accessory uses are compatible with the Escarpment’s natural environment and cultural landscapes include assessing the impact of a proposed building height, mass, design and location on the natural, visual and cultural characteristics of a site or area.

The NEP policies respecting scenic resources and landform conservation work towards ensuring these development proposals preserve the natural scenery, maintain the Escarpment and related landforms and the open landscape character of the Escarpment. Staff notes that the NEC Visual Impact Assessment (VIA) Technical Criteria (November 2020) are applicable, separate and apart from any other Guidelines which may be developed to help inform these uses. Where visual impacts are identified, the VIA Technical Criteria will continue to inform how assessments should be undertaken. Likewise, additional technical studies in the form of a Natural Heritage Evaluation may also be required to assess the potential impacts of these uses on the natural environment.

#### 3.2 Accessory Facilities & Uses to Single Dwellings

Staff has been monitoring the trend of DPAs for accessory facilities and uses (to a single dwelling), including proposals for additional living space within an accessory building (e.g., pool cabanas, garage loft areas, studios, bunkies). The primary issue of concern with respect to some of these more “atypical” accessory uses is that the scale of some of the accessory facilities being proposed can at times, be equated to a second single dwelling or a (detached) secondary dwelling unit, and the threshold question of whether the use proposed is in fact incidental and subordinate to the principal use (a single dwelling), becomes challenging to assess. This is particularly the case in those DPAs that propose a new single dwelling on a lot which already supports an existing dwelling and the applicant proposes to maintain the existing dwelling (rather than demolish it), and re-purpose the existing dwelling to an alternate “accessory use” (e.g. guest house, private studio, storage).

At times, the proposed siting of these accessory structures well separated from the residential cluster on larger lots, requires analysis with respect to whether the use is in fact “accessory” to the principal use on the property or is introducing a new and separate principal use which may not be permitted under the NEP in the respective designation. Although the NEC has used Conditions of Approval, including the requirement for Agreements on-Title, in an attempt to mitigate the risk of these uses becoming unauthorized uses (e.g. shall not contain a kitchen or full washroom facilities), it is very difficult for the NEC to monitor these uses and ensure compliance over the long-term. The reality is that such facilities can typically be retrofitted easily to allow for habitation without the NEC’s knowledge.

Over the past 5-years (from 2016 to present), there have been over 700 DPAs[[2]](#footnote-2) proposing various accessory facilities/uses to single dwellings. Staff observes that the majority of these applications continue to seek the more typical accessory structures such as detached garages, storage implement sheds and workshops, and are of a reasonable size (relative to the size of the dwelling). As noted however, there are still a fair number of applications for more atypical uses, of a scale and proposing siting that is challenging from a NEP policy perspective. Notwithstanding some the challenges staff has presented to assessing DPAs for these more atypical structures, the majority of such applications were found to be approved by Staff (through Director’s Delegation of Authority), and/or the Commission when brought for interpretation. The proposals having been found to ultimately meet the policy tests of the NEP and including the implementation of stringent Conditions of Approval.

The development of Guidance material respecting these uses will benefit from additional consultation with NEC Staff (Development Control Planners), to gain further understanding on the issues that are presented by proposals for these uses, in order to better inform how policy guidelines can in fact provide further support to both applicants and Staff.

#### 3.3 Temporary Dwelling Units Accessory to Agricultural Uses

**a) Assessing Need for Farm Labour Dwelling(s)**

The NEP Part 2.8.5 (a) identifies that a temporary dwelling unit for farm labour may be permitted subject to additional farm labour being required on a full-time or seasonal basis. Assessing the justification in support of applications for temporary dwelling units to accommodate farm labour is subject to interpretation by Staff and the Commission.

There are currently no standard Guidelines that speak to what type of information should be requested of the Applicant for staff to assess the need for farm labour. For some DPAs, the need for additional farm labour to reside on site can be more easily established, as it is directly or solely related to the scale and/or type or intensity of the operation, as may be the case with the more traditional agricultural operations such as a seasonal fruit orchard or large dairy cattle operation. However, Staff have found the assessment of need particularly challenging in more recent years, given an increase in the scope of applications for second dwelling units to support uses other than traditional farm labour (e.g. farm succession planning), or in the case where the primary farmer does not live full-time on the farm, or on a property where an agricultural operation has not yet been established and operational, yet the applicant is seeking accommodation for farm help.

Guidelines could address some considerations for how the justification for need may be established. Factors such as the scale and intensity of the agricultural operation; the level of care and security required for the type and number of livestock that are maintained or boarded (e.g. equestrian facility), the type of services offered, and the upkeep of structural and outdoor elements related to the agricultural use and type of crop production, may be used to sufficiently demonstrate that on-site farm help is required on a full-time or seasonal basis. Further consideration should also be given as to whether farm succession planning should be considered as appropriate justification of need (and under what scenarios/conditions), or if this is out of scope for a Guideline to address.

**Guideline Scope:**

* Factors and information sources to be considered by the NEC in demonstrating the justification of need for farm labour on a full-time or seasonal basis.

**b) Assessing Temporal Nature of Dwelling Units Accessory to Agricultural Uses**

The requirement for farm help accommodation in the NEP Area to be temporary assists in preventing the cumulative intensification of development through additional permanent dwellings, and therefore better reflects the Purpose and Objectives of the NEP and the *Niagara Escarpment Planning and Development Act* (NEPDA), which require that the open landscape character of the Niagara Escarpment be maintained insofar as possible, by such means as compatible farming or forestry and by preserving the natural scenery. Again, requiring such uses to be temporary also removes the potential for future severances.

Once a permanent second dwelling has been constructed, there is potential for planning arguments to be made to allow it to be severed. Although Staff notes that in the case of a dwelling unit accessory to an agricultural use, the farm help house would be viewed as accessory to the agricultural use, and not considered a “farm residence” (i.e. would not be considered a residence surplus to an agricultural operation), for the purposes of lot creation as a result of a farm consolidation under the policies of the NEP and PPS.

Nevertheless, Staff and the Commission have dealt with numerous situations where an additional dwelling exists on a property, which then becomes the subject of inquiries and applications for severance. Agreements on-Title prohibiting further severance are tools that can be used in such circumstances; however, such tools should not replace the application of good planning principles to avoid such opportunities. In addition, as previously described and reinforced by the OMAFRA Guidelines, the requirement for temporary dwellings better adapts to the changing labour needs of the farm operation over time (i.e. when the farm help is no longer needed). This is discussed further under Section d) Permit Expiry below.

While it is true that historical interpretation, and perhaps present-day connotation of the terms “mobile or portable” when applied to farm-help housing often brings to mind a trailer or Recreational Vehicle (RV). However, more modern-day interpretation and advances in the structural design of dwellings has expanded the options for housing types that still meet the NEP requirement for being able to be removed at some time in the future. For example, the NEC has approved modular style homes in recent years, finding this option to meet the requirements for “mobile and portable”. Guidelines may assist in providing further direction/examples for what may be considered “mobile or portable” and therefore temporary.

With respect to NEP Part 2.8.5 (b) which identifies the alternative that the dwelling unit be permitted within an existingfarm building or structure (still on a temporary basis), there has been at least one DPA (N/A/2017-2018/107) requiring further interpretation by the Commission pertaining to the requirement for the farm building or structure in which the accommodations are within to be “existing”. The proposal was to construct an addition to an existing agricultural building for the purposes of being used as a dwelling unit for farm labour. The NEC Planner found that in this case, the temporary dwelling unit for farm labour was appropriate within an expansion to the existing structure and that the intent of Part 1 and Part 2.8 of the NEP could be satisfied subject to applicable conditions of approval. Further, the NEC Planner found that the siting of the temporary dwelling unit in an expansion to the existing agricultural building provided more flexibility to the owner to design a living space that would be appropriate and meet the needs of the workers. Additionally, the new addition would be able to be designed in a manner that would accommodate the dwelling unit being converted back to an agricultural use at some future time, should the farm labour no longer be required.

**Guideline Scope:**

* How the requirement for “mobile and portable” may be achieved.
* How the requirement for locating the dwelling within an “existing” farm building or structure may be assessed.

1. **Siting of the Dwelling Unit (in the farm building cluster)**

The NEP Part 2.8.5 c) requires that that the dwelling unit should be located within the existing farm building cluster and use the existing farm lane access, where possible.

This is in order to avoid and/or minimize negative impacts to the open landscape character as well as to the agricultural land base, and to ensure the dwelling unit is directly linked to the farm operation.

While the NEP does not contain a definition for “farm building cluster”, it is generally and simply understood to mean the grouping of buildings and/or structures that are used to support farming activities, including but not limited to, barns, outbuildings, silos, and the farmhouse. Several municipal Official Plans (OP) contain definitions for farm cluster in a similar manner. For example, the Town of Caledon provides a definition of “Farm Cluster Envelope” to mean the area containing the principle farm residence, second dwelling for farm help or accessory residences, barns and other outbuildings in support of the farm operation on a property actively involved in farming. The Town of Grimsby OP defines farm cluster as a group of farm buildings, which includes the farm dwelling, on a property actively in agricultural use. The location of the farmstead and the relative position of the various agricultural buildings may be influenced by several factors, including soil conditions, climatic conditions, access, and Minimum Distance Separation requirements (MDS).

The majority of DPAs for dwelling units for farm labour propose to site the dwelling unit within the farm cluster, either within an existing agricultural building or structure (which in most cases would be situated within the farm cluster), or within a new detached structure. While generally this policy has not presented implementation challenges, there are applications from time to time which present site-specific scenarios requiring further interpretation. For example, applications proposing that the dwelling unit to be sited outside the farm building cluster, or require a new access, for various operational reasons and such applications require further interpretation by Staff and the Commission.

**Guideline Scope:**

* How siting of the dwelling unit within the farm building cluster is best achieved, including provision of scenarios for when alternatives could be considered.

**d) Development Permit Expiry**

A 3-year limitation on Development Permits for temporary dwelling unit(s) accessory to an agricultural use was a criterion of the previous 2005 NEP. The 3-year limitation was established as a criterion through one of the past Plan Reviews to prevent long-term abuse of the provision allowing farm help accommodation. The 2017 NEP Development Criteria no longer prescribe a specific time limitation for the expiry of NEC Permits for dwelling units accessory to agricultural uses, but instead, the current policy in Part 2.5 (d) provides Staff and the Commission with some discretion in assigning an expiration date for the Permit.

Generally, a 3-year expiry clause continues to be assigned by Staff as a Condition of Approval, beyond which time a new DPA must be filed in order to consider extending the use or alternatively, the dwelling unit is required to be removed/decommissioned. This 3-year window has generally been seen to be effective in ensuring that the farm labour accommodations remain necessary to the farm operation. A review of the Development Permit history reveals 5-years to be the longest Permit expiry provision granted through a Condition of Approval to date**.**

There have been 114 DPAs for a dwelling unit accessory to an agricultural use since 1985. Review of the DPA file history reveals that of the 59 DPAs approved after 1990, (given the 1990 NEP policy was revised to require that dwelling units accessory to agriculture be temporary), only 17 applicants (29 percent) filed a subsequent DPA seeking an extension (through a new Permit), to continue use of the farm labour accommodations. This low percentage of DPAs seeking renewal (which is essentially a new Permit), may support the NEC policy position (and OMAFRA Guidance) respecting the changing labour needs of farms over time. Alternatively, the low re-application rate could also be an indication of compliance issues respecting these uses (if they are continuing to be utilized for farm labour accommodations or other unauthorized uses, after the Permit has expired). Additional research would be required to be undertaken in order to further interpret and attribute the results of the data.

The Commission Working Group provided some recommendations for consideration of process efficiencies related to the requirement to re-apply for a Development Permit in order to continue use of a dwelling unit accessory to an agricultural use (see Appendix 2).

#### 3.4 Development Permit Conditions of Approval:

Appendix 1 provides a sample of some of the standard Conditions of Approval which are included on Permits issued for temporary dwelling units accessory to agricultural uses. The matters addressed through these Permit conditions may be relevant in the consideration of the Guideline development (e.g. what factors apply in determining the Permit expiry, when should Agreements on-title be used).

Agreements-on-title are routinely used to put restrictions on properties to limit the potential for additional incompatible development (e.g., the conversion of an accessory building to use for human habitation other than farm labour), or in the case of multiple dwelling units on one property, to help ensure awareness that no future severance would be granted. The NEC relies on these tools in the issuance of Development Permits for temporary dwelling unit(s) accessory to agricultural uses, and accessory facilities to single dwellings, in an attempt to mitigate the risk of these uses becoming unauthorized uses when they are no longer needed as the use intended under the Permit. Municipalities may also require similar agreements or affidavits (e.g. the Town of Caledon has a policy requiring an affidavit be signed for the development of a dwelling unit accessory to agriculture).

However, regardless of the application of such tools, it is very difficult for the NEC to monitor these uses and ensure compliance (over the long-term). Staff is of the view that Agreements on-title are effective primarily for the purposes of providing notice to future landowners with respect to the restrictions on the uses as specified in the Permit. Another potential Condition of Approval which may be used as a measure to avoid future violations is for the Permit to not be transferable should the property change ownership.

**Guideline Scope**:

* Factors to be considered in determining the appropriate Permit expiration date for a dwelling unit(s) accessory to agriculture. Considerations could include the nature and scale of the agricultural operation, past and proposed future labour requirements, and compliance history.
* Provide applicants with greater transparency respecting the use of Agreements on -Title.

#### 3.5 Jurisdictional Scan and Best Practices

**3.5.1 Ontario Ministry of Agriculture and Rural Affairs (OMAFRA) Guidelines on Permitted Uses in Ontario’s Prime Agricultural Areas (2016)**

The OMAFRA Guidelines on Permitted Uses in Ontario’s Prime Agricultural Areas (2016) are intended to help municipalities, decision makers, farmers and others interpret the policies in the PPS on the uses that are permitted in prime agricultural areas.

PPS policy allows “accommodation for full-time farm labour when additional labour is required” in prime agricultural areas. This applies to farms of a size and nature requiring additional labour on a year-round basis for the day-to-day operation of the farm (e.g., livestock operations) or on a seasonal basis over an extended growing season (e.g., horticultural operations that require labour for several months each year to amend the soil, and to plant, transplant, prune, weed and harvest crops).

To minimize impacts on agriculture, consistent with NEP policies, the OMAFRA Guidelines recommend locating housing for full-time farm labour within the farm building cluster. If this is not possible, the Guidelines suggest placement of housing on lower priority agricultural lands that meet the province’s minimum distance separation (MDS) formulae requirements and take as little land out of agricultural production as possible.

OMAFRA recognizes that while the PPS permits accommodation for farm help, the labour needs of farms may change over time, therefore a best practice is for farmers to consider alternatives to building a new, separate, permanent dwelling for farm help.

Alternatives include:

* a second dwelling unit within an existing building on the farm
* a temporary structure, such as a trailer or other portable dwelling unit
* an existing dwelling on a parcel of land that is part of the extended farm operation or located in a nearby settlement area or on a rural lot.

Also consistent with NEP policy, the Guidelines note that severance of land with housing for farm labour is not permitted, as land division fragments the agricultural land base and fragmentation of the land base can affect the future viability of agriculture over the long-term.

The Guidelines further identify that farms in prime agricultural areas requiring temporary workers for just a few weeks a year (i.e., not requiring day-to-day or extended seasonal labour), must provide an alternative form of housing to a new permanent dwelling structure (e.g., a temporary structure on the farm or off-farm housing). Housing for workers must meet minimum health and living conditions and may be subject to zoning and building permit requirements.

#### 3.5.2 Seasonal Farm Worker Housing Guidelines

Foreign Agricultural Resource Management Services (F.A.R.M.S) provides information on the minimum housing conditions required in the Seasonal Farm Worker Housing Guidelines (revised April 2010). This document is intended to assist local public health and other agencies in assessing the suitability of housing intended for the housing of both domestic and seasonal agricultural workers. The recommendations contained with the document are the result of consultation with several Federal and Provincial ministries including the Ministry of Municipal Affairs and Housing (MMAH) and OMAFRA, as well as numerous local health units. The recommendations are to be interpreted as minimum requirements regarding seasonal housing for seasonal farm workers. Local public health officials and building departments are responsible for ensuring the accommodations comply with all applicable regulations and policies for their circumstances.

The NEC addresses the development of (temporary) accommodations for farm labour from a land use planning perspective. An approval from the NEC does not absolve an applicant/landowner from the requirements of other applicable approval, licence or certificate under any statute (e.g., Ontario Building Code). Buildings used for housing seasonal occupants are also required to comply with the provisions of the OBC and related Regulations, and the Ontario Fire Code. It is the responsibility of the owner/operator to ensure that the facility is compliant in these regards.

The provincial government recognizes that the impacts of COVID-19 have resulted in a challenging situation for many farmers and other agricultural related businesses and have also had significant impacts on the seasonal workers that these operations rely upon. Given that operations in some agriculture sectors often have workers living together in employer provided communal housing (i.e. bunkhouses), the province is implementing plans to reduce the risk of transmission of COVID-19 on farms and throughout the community, which includes new public health guidance. While these matters are relevant to be kept informed of, the NEC will continue to rely on our municipal partners with respect to public health requirements related to DPAs for housing for seasonal workers. However, it is understood that there may be some factors that emerge from these reviews, which have bearing on the review of DPAs (e.g. any regulations respecting the size or servicing requirements for bunkhouse style accommodations).

NEC Staff will track any new developments on this emerging issue as it relates to the assessment of NEC DPAs and in relation to the development of Guidelines.

#### 3.5.3 Municipal Approaches

It is an Objective of the NEP, *“to support municipalities within the Niagara Escarpment Plan Area in their exercise of the planning functions conferred upon them by the Planning Act”.* In practice, this Objective is implemented by NEC staff through the provision of comments on applications under the *Planning Act*, and through the circulation of NEP applications to municipalities for their comments. Pursuant to Part 1.1.1 of the NEP, municipalities can adopt more restrictive Official Plan policies, unless doing so would conflict with the NEP.

With respect to accessory facilities, zoning by-laws will commonly include provisions which regulate specific requirements including setbacks from property lines, height, size and maximum lot coverage (area of a property that can be built on). Notwithstanding the fact that within the NEP Area of Development Control zoning by-laws enacted under the *Planning Act* are not in force, municipal zoning by-laws are often referenced by municipal staff when commenting on NEC DPAs, and can be used as a guide by NEC staff in some instances, to help inform assessment of an application.

Several municipalities (including Escarpment municipalities), have developed and adopted Design Guidelines, which may be applicable to the development of accessory structures.  Design Guidelines are intended to assist with the implementation of OP policies and zoning by-laws and provide design direction for development proposals and projects to ensure design quality and to meet the needs of both the built and natural environment. The information provided in such Guidelines is based on the minimum standards set out in the Ontario Building Code (OBC) and applicable zoning by-laws.

These municipal Design Guidelines generally identify the respective municipalities preferences and expectations for site development, and may also provide information on areas of special character, where they exist, such as heritage conservation districts, historic town centres and the Niagara Escarpment Plan Area which requires special attention to ensure that new development respects the character of these areas.

For example, the City of Burlington has developed “Guidelines for Detached Garages” (2009), which sets out preferred approaches to the construction of new detached garages. The Guidelines are identified as a tool to be used by City staff in evaluating development proposals (e.g. minor variances, minor development applications for residential dwellings where detached garages are included, and NEC applications), as well as by homeowners at the design stage for the construction of a new detached garage. These Guidelines apply to the development of all new detached garages on residential lots in low density zones in the urban area and to lots in the rural settlement areas. The Guidelines are intended to complement the City of Burlington OP, the zoning by-laws, and the NEP.

The Design Guidelines set out a number of planning and urban design principles including, that a garage be subordinate in size, scale and bulk to the principal residence; complement the architectural character of the principal residence; be compatible with the neighbourhood character; maintain the quality and continuity of the streetscape; relate to, and only be appropriate for, a use which is accessory to the principal residence; not compromise the liveability and quality of amenity space provided on the principal residential lot and, not be obtrusive to abutting properties or their amenity spaces. Staff note that a number of these principles addressed in the municipal Guidelines are embedded in NEP Objectives and policy, however review of these municipal Guidelines, where they exist is helpful.

#### 3.6 Commission Working Group

Commission Working Groups have been created to obtain input related to the background and context for the Policy Guidance subject areas. Working Group members were selected from a volunteer list of candidates and appointed by the Chair.

The scope of the Working Groups authority includes the review of information, providing input and advising NEC staff during the development of the Policy Guidance material. The Working Groups authority does not include directing staff to take a position or approach. The authority to approve or modify the policy guidance material rests with the NEC, in consultation with the MNRF.

The Commission Working Group for the topics of Temporary Dwelling Units Accessory to Agriculture and Accessory Facilities/Uses to Single Dwellings met on April 30, 2021. The Working Group reviewed the issues and background information and engaged in a thorough discussion providing key elements for consideration in drafting Guidelines for the respective topic areas. Appendix 2 to this Report contains a summary of the key discussion points from the Working Group meeting held April 30, 2021.

#### 3.7 Stakeholder Perspectives (known)

The Ontario Federation of Agriculture (OFA) is Canada’s largest voluntary general farm organization, representing more than 36,000 farm family businesses across Ontario. The OFA has previously raised issue with respect to the NEP restriction that farm help housing be temporary in nature. Specifically, the OFA has expressed their concerns[[3]](#footnote-3) on record with respect to the NEP policy requirement that the dwelling unit be “mobile or portable” (and therefore temporary).

As Staff has previously provided, the intent of the policy requiring dwelling units accessory to agriculture to be mobile and portable and without a basement, is to ensure the dwelling remains temporary in nature, is secondary to the principal dwelling, and avoids potential for severances and the resulting fragmentation of the agricultural land base. The policy was never intended to be discriminatory or imply that the farm labour should be required to reside in substandard housing. As established in the Terms of Reference for the Guideline development, it is beyond the scope of this exercise to add or detract to the existing NEP policy. However, continued discussion on this matter is helpful in coming up with parameters that can aid in the interpretation of mobile and portable with respect to these uses.

### 4. SUMMARY AND CONCLUSIONS

The development of NEC Policy Guidance material is taking a phased approach. Through this phase of development, a review of DPA file history, related guidance material, municipal approaches and the input of the Commission Working Group, has informed some possible direction and scope for the Guidelines, and also revealed outstanding information gaps that still need to be addressed.

The potential areas of scope identified for the Guidelines for Dwelling Units Accessory to Agriculture includes:

* Justification of need.
* How the requirement for the dwelling unit to be “mobile and portable” may be achieved.
* How use of an “existing” farm building or structure for the dwelling unit may be achieved.
* How siting of the dwelling unit within the farm building cluster is best achieved; including scenarios for when alternatives could be considered.
* Factors to be considered in determining the appropriate Permit expiration date (i.e. the nature and scale of the agricultural operation, past and proposed future labour requirements, and compliance history); parallel exercise to consider process efficiencies in the Permit renewal process (re-application for continued use of approved dwelling unit).
* Transparency respecting the use of Agreements on Title.

Consideration of the potential scope of Guidelines for accessory facilities/uses to single dwellings requires additional research and consultation (including with NEC Staff), which is proposed to be undertaken as described under Section 5 below.

### 5. NEXT STEPS AND TIMING

Staff will proceed to the next phase in the development of draft Policy Guidance material, which will include:

* Consideration of broader Commission discussion following presentation at the May 2021 Commission meeting.
* Further engagement with the Commission Working Group
* Targeted, informal discussions with key stakeholders, further review of municipal approaches, consultation with NEC Staff (Planners), and the MNRF.

Staff anticipate returning to the Commission at the November 2021 policy meeting with draft Policy Guidelines for Commission review and consideration, seeking endorsement for the purposes of undertaking further scoped consultation. Staff anticipate returning to the Commission in 2022 with a final draft of the Guidelines for review and final approval.

### 6. RECOMMENDATIONS

Staff recommends that the Commission endorse this Report and direct staff to proceed, including limited consultation and development of draft Policy Guidance material for further consideration.

**Prepared by: Approved by:**

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**Lisa Grbinicek, RPP, MCIP Debbie Ramsay, RPP, MCIP**

**Senior Strategic Advisor Director (A**)

**ATTACHMENTS:**

APPENDIX 1 – Example Conditions of Approval

APPENDIX 2 – Commission Working Group Discussion Summary

### APPENDIX 1

**Example NEC Conditions of Approval respecting Permit Expiry**

* The Development Permit allowing the accessory building to be used for the purposes of farm labour accommodation shall expire **three (3) years** from date of issuance.
* The temporary dwelling unit for full-time farm labour accommodation shall be permitted on the property **for a period of up to three (3) years** from date of issuance, at which time the temporary dwelling unit must be removed or converted to an identified Permitted Use (through subsequent Development Permit), and the site rehabilitated by the owner to the satisfaction of the Niagara Escarpment Commission, or re-application made by the landowner and approvals received prior to the lapsing date of the Development Permit from the Niagara Escarpment Commission.
* Upon expiry of the Development Permit, the farm labour accommodation use shall cease immediately, and, within sixty (60) daysof the date of expiry of the Development Permit the following living/habitation facilities shall be completely removed from the upper story of the accessory building:

1. all kitchen related facilities including stove, sink, counters and cabinets, refrigerator, dishwasher and any/all wiring and plumbing.
2. all washroom related facilities including sink, shower, toilet and any/all wiring and plumbing.

* Upon fulfillment of the above-noted Condition respecting the expiration and decommissioning of the accommodations, the landowner shall submit interior floor plans confirming decommissioning of the farm labour accommodation use to the Niagara Escarpment Commission.
* The temporary modular farm help home shall be permitted on the property for a period offour (4) years following the Notice of Decision Date of this application. At the expiration date of this four year period, the mobile home trailer must be removed from the property and the site rehabilitated by the owner to the satisfaction of the Niagara Escarpment Commission or re-application made by the owner and approvals received prior to the lapsing date of the Development Permit from the Niagara Escarpment Commission.
* Should the dwelling unit accessory to the agricultural use cease to be required prior to the expiration of the Development Permit identified in Condition X, the landowner shall advise the Niagara Escarpment Commission in writing and the temporary dwelling unit shall be removed from the property within 90 days of notification, and the site rehabilitated by the landowner to the satisfaction of the Niagara Escarpment Commission, or a new Development Permit Application be made in order to consider any alternate use(s) for the structure.
* Should the requirement for farm help cease prior the expiration of this the temporary modular home must immediately be removed and the site rehabilitated to the satisfaction of the Niagara Escarpment Commission.

**Example NEC Conditions of Approval for Agreements on - Title**:

* **Prior to the issuance of a Development Permit by the Niagara Escarpment Commission**, the Landowner shall enter into an Agreement under Section 24(2.1) of the *Niagara Escarpment Planning and Development Act*, in a form acceptable to the Niagara Escarpment Commission. **The agreement [i.e., that the accessory structure may be used for farm labour accommodation provided a Development Permit is in effect, and, shall not be used for secondary dwelling unit, long-term commercial rental unit, short-term commercial rental unit, or for commercial or industrial purposes]** shall be registered on title of the subject property at the Landowner’s expense. The Landowner shall provide proof satisfactory to the Niagara Escarpment Commission that the agreement has been registered against the lands [i.e., copy of the parcel registry extract and a letter from the Landowner’s solicitor that the registration is complete], and, that the Landowner under this Development Permit is the Landowner of the lands at the time of registration.
* Prior to the issuance of a Development Permit, **the owners/applicants shall sign an affidavit with the Town of Caledon identifying that the apartment established within the horse barn will be used for farm help purposes only.**
* This Development Permit is **not transferrable**. Should the property be sold, continuation of the dwelling unit accessory to the agricultural use or an alternate use shall be re-evaluated through a new Development Permit Application.
* Prior to the issuance of a Development Permit, the landowner shall (at the landowner’s expense), enter into an Agreement (to be registered on title) with the Niagara Escarpment Commission pursuant to Section 24(2.1) of the Niagara Escarpment Planning and Development Act, which shall ensure that:

The accessory structure (detached garage/pool cabana with a washroom facility and upper level personal storage) shall not contain a kitchen or cooking facilities and shall not be used for human habitation (i.e., as a second dwelling, apartment unit, accessory dwelling unit) or used for home business, commercial, industrial, institutional or livestock purposes.

* The accessory structure (detached garage/pool cabana with a washroom facility and upper level personal storage) shall not be used for human habitation (i.e., living space), as a dwelling or apartment unit, or for commercial, institutional, home business, industrial or livestock purposes.

### APPENDIX 2:

**Commission Working Group Discussion Summary**

**Dwelling Units Accessory to Agricultural Use:**

* Respecting the time limitation on the Permits and low “renewal” rate – it is unlikely that the farm help is no longer needed, the need to reapply may be onerous for some. Should consider longer permit expiry dates coupled with a more efficient modified and streamlined DP Application process. Perhaps a self-registration process, or “short-form”.
* Enable farmers to stream-line the (Application) process, to reduce barriers to re-applying and allow them to be more proactive.
* There is no active compliance auditing of these uses, the compliance system is generally a complaint-based system. Suggest system of auditing.
* What criteria can be used to ensure that the temporary dwelling units are not continuing to be used on a permanent basis?
* If the reapplication process was more efficient and easier, there may be more voluntary compliance.
  + Consider developing an “automatic renewal form” that is Director approved to help streamline the DP Application process and reduce staff review time on reapplications for uses where situation has not changed.
* With respect to the question of whether the demand for farm labor dwellings been reduced, it was noted that some farmers use rentals within the urban centers to house their farm labour.
* Farm succession planning (next generation) is not incorporated into the policy. The next generation could need a separate dwelling to live on the farm and help with the agricultural use in preparation for taking over the farm at some future time. Guidelines could address how/if farm succession planning is viewed as a justification for need.
* Respecting “mobile and portable” requirement (in order to make the dwelling temporary) – the terminology is problematic. The Guidelines could address this in order to be more encouraging of these uses (acceptable housing, i.e. not just a trailer), while still ensuring it is temporary. The current wording does not encourage their use for farm help if there is a connotation of substandard housing style accommodations.
* Guidelines should address for transparency when agreements on title should be used.
* Servicing of the temporary units was discussed, guidelines should outline the requirements for servicing – e.g. scenarios for common septic, upgrade to septic, new separate septic, holding tanks are not desirable and are a risk.
* Regarding justification of need, guidelines should outline the various reasons for farm help which include succession, seasonal nature of operation, farm manager.
* Guidelines could provide greater clarity with respect to how/if these temporary uses can be transitioned/converted to alternate uses after no longer needed. This would create greater clarity upfront about removal vs. conversion.
* Regarding the accommodations within existing farm buildings – there are “work-arounds” (e.g. build an addition first then come back and request use as accommodations), guidelines could give greater clarity for when uses can be considered in “existing” farm buildings.
* Respecting siting the accommodations in the farm building cluster – there are scenarios where the unit may be more desirable outside the farm building cluster e.g. land use compatibility issues (hauling manure on existing access), type of operation and need for heavy farm equipment traffic could create safety issues. Think of scenarios with health and safety.

**Accessory Facilities/Use to Single Dwellings:**

* Defining “incidental and subordinate” under every scenario is difficult. The definition does include “normally” in the definition.
* Can Guidelines address how to define “incidental and subordinate” with respect to accessory? This would likely be beyond the scope of what is appropriate for a Guideline (and cross into the policy threshold). Additionally, locking into a specific definition could be problematic for some situations where the NEC may wish to apply discretion/interpretation (e.g. smaller homes proposing larger accessory facilities where the scale of the accessory use can be justified).
* Guidelines need to be more transparent regarding the limitations for accessory buildings/uses. Including some potential compliance education in the Guidelines would be useful in order to ensure applicants are educated about what happens if they are in violation of Permit/develop these uses without a Permit.
* Further, it was noted that exemptions do not include statements respecting what the building should not be used for (i.e. secondary dwellingunits).
* Use of Agreements on-tile should continue to ensure that accessory use cannot be severed if it has an accessory structure which could be utlilized/converted to a dwelling unit.
* Guidelines should include factors that are considered in siting the accessory building to the principal residence to ensure minimizing footprint and so that future severance is not possible would be useful.
* Identify and clarify NEC compliance responsibilities and municipal responsibilities (e.g., enforcement of the Building Code) with respect to these uses.
* High demand for accessory dwelling units for ageing parents, and adult children given housing market, and care home concerns. The NEP update may need to consider the change in demand and ageing population.
* How many accessory buildings can be considered? Could Guidelines provide factors that are considered in the assessment of lot coverage for accessory uses?
* Some discussion on how home occupations within accessory buildings are assessed under the Plan.

1. Staff notes that the definition for agricultural use identifies accommodation for “full-time” labour, however the NEP policy in Part 2.8.5 (a) identifies that the help be required on a full-time or seasonal basis. [↑](#footnote-ref-1)
2. Using the development type search terms of accessory building, accessory structure, workshop, detached garage, pool cabana, bunkie, art studio, and guest house.

   Note this does not include DPAs for accessory buildings to be used for the operation of a home occupations or home industry. [↑](#footnote-ref-2)
3. OFA Submission on the 2015 Niagara Escarpment Plan Review (October 7, 2016)

   OFA Submission on the OMAFRA Guidelines for Permitted Uses in Ontario’s Prime Agricultural Areas (May 13, 2015) [↑](#footnote-ref-3)