June 17, 2021

# P5: INFORMATION REPORT

**Re: NEC Conditions of Approval Project**

## RECOMMENDATION:

That the Commission:

* Receive this report for information.

## REPORT PURPOSE:

To provide the Commission an update on the culmination of the work that has been done by staff to update the standard and typical conditions of approval that are applied to Development Permits.

## BACKGROUND

In September 2018 NEC Staff began working on a project to update the standard/typical conditions of approval utilized by NEC Staff when recommending approval on Development Permit Applications (DPAs). This project was undertaken to ensure that the standard/typical conditions better reflect the updated 2017 Niagara Escarpment Plan, and to reflect practical experience in implementing and enforcing the conditions. The project included the establishment of a working group made up of NEC Staff. The working group gathered input from all staff on how to update and modernize the conditions of approval.

Section 24 (2) of the Niagara Escarpment Planning and Development Act (NEPDA) authorizes the Minister to issue development permits that include terms and conditions that he or she considers advisable. Through Section 25 (1) and the Minister’s Delegation of Authority, of the NEPDA the authority to approve and issue Development Permits has been largely delegated to the Director of the NEC. Where certain DPAs are not processed as part of the delegated authority of the Director, the Commission has the ability to apply conditions as it sees appropriate; NEC Staff will continue to provide recommended conditions in these instances.

## DISCUSSION:

Appendix 1 provides the new standard/typical conditions proposed for NEC Staff use. The list has been annotated by NEC Staff to provide insight into when and why the conditions are applied.

The conditions provided in Appendix 1 are not intended to be rigid, but rather can be modified to fit specific application contexts. The revised landscape plan and vegetation protection plan conditions have been altered to ensure conformity with the new technical criteria developed for the preparation of those plans.

Finally, it is intended that the standard/typical conditions of approval document will be updated and revised as necessary to reflect staff’s experience in applying the conditions. However, it is anticipated that further changes will be subject to comprehensive review and internal discussion before alteration, in a similar manner as the current project.

## RECOMMENDATION:

That the Commission receives this report for information.

**Prepared by:**

*Original signed by: Original signed by:*

Brandon Henderson John Stuart, MCIP, RPP

Senior Planner Senior Planner

**Approved by:**

*Original signed by: Original signed by:*

Kim Peters, MCIP, RPP Debbie Ramsay, MCIP, RPP

Manager (A) Director (A)

## APPENDIX 1 - RECOMMENDED CONDITIONS (April 2021)

### STANDARD CONDITIONS

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. *[Note: alternate timeframes, more or fewer years, can be considered based on the proposed development.]*
3. 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 NOT permitted with the exception of that identified within the development envelope in accordance with the Final Site Plan. All required erosion and sediment control fencing shall be maintained in good standing until the development envelope has been re-vegetated.
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.

***Staff Comment****: These conditions are applied to the majority of NEC development permit application approvals that propose physical development. They are applied to ensure conformity with the details provided in review of the application and to ensure any disturbance as a result of the approved development is rehabilitated.*

### TYPICAL CONDITIONS

#### Final Site Plan:

Development shall proceed in accordance with the Final Site Plan *[add prepared by XX and dated XX on the DP].*

**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 stipulation shall be included directly on the Plan:

1. The Final Site Plan shall be prepared by a qualified professional *[Optional]*;
2. All drawings submitted must be 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;
3. Outline of the approved development envelope / extent of all disturbed areas;
4. Location of all existing and proposed structures, sewage disposal system, well/cistern, driveway, construction access / haul routes, exterior lighting, etc. showing setbacks from the property lines, any watercourses or water features, top / bottom of slope, wooded areas, etc.;
5. 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.
6. 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;
7. Identify the areas of existing vegetation to be retained, areas of vegetation to be removed, and the location of proposed plantings.

Development shall proceed in accordance with the details of the approved Final Site Plan *[add prepared by XX and dated XX on the DP].*

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.

***Staff Comment****: Previously, NEC Staff utilized two different final site plan conditions that were applied depending on the level of complexity of a project. It is now suggested that only one be utilized to ensure consistency. The site plan condition can be adjusted to require the final site plan be prepared by a qualified professional and can be adjusted to include varying components and requirements to be shown on a final site plan. NEC Staff can further describe the type of qualified professional that is required to prepare a plan (Ontario Land Surveyor, engineer, architect, etc.). NEC Staff can also alter the type of imported fill that can be acceptable pursuant to 2.13.10 of the NEP (2017).*

**Building Plans:**

**Prior to the issuance of a Development Permit by the Niagara Escarpment Commission,** the landowner shall submit for the approval of the Niagara Escarpment Commission, **final construction details** for the proposed development, including exterior elevations, total floor area, floor plans, height to roof peak from lowest grade, and any exterior lighting. [*Note: A request for exterior materials / lighting could be specified and requested where colour, reflectivity or lighting may be a visual impact concern.]*

Development shall proceed in accordance with the details of the approved Final Construction Details *[add prepared by XX and dated XX on the DP].*

***Staff Comment:*** *This is a standard condition applying to applications where structures are being approved for construction. This condition can be altered to include details such as exterior materials and colours, as well as exterior lighting where visual impact is a concern. Generally, it is expected that the plans approved through this condition will be the plans that are submitted to the local municipality for a Building Permit.*

## Erosion and Sediment Control:

**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 sediment control measures and vegetation protection fencing in good condition until vegetative cover has been successfully established and the development is completed.

***Staff Comment:*** *This condition is commonly applied where abutting properties and/or sensitive natural heritage features need to be protected from the movement of sediment that might result from a rainfall or other weather by containing sediment and/or conveying sediment to a specific area.*

## Landscape/Vegetation Protection Plans:

**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:

1. 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; bush dug plant material is not acceptable.
2. 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.
3. All plant material shall be guaranteed for 24 months following installation *[this is flexible].* 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. *[Note: A longer time frame can be considered depending on the complexity of the development, e.g., road widenings, aggregate buffers, subdivision where there may be multiple stages of planting (e.g., a temporary crop planting followed by final plantings).]*
4. 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. [*Or e) as an alternative:]*
5. At the end of the 24-month plant material guarantee period, a letter certifying the plant material has survived or has been replaced in accordance with the approved Landscape Plan shall be provided to the Niagara Escarpment Commission by a qualified person.

Development shall proceed in accordance with the details of the Final Landscape Plan *[add prepared by XX and dated XX on the DP].*

***Staff Comment****: Previously NEC Staff utilized two different landscape plan conditions that were applied depending on the level of complexity of a project. It is now suggested that only one be utilized for more complex projects. Landscape Plans are requested when vegetation planting is required for visual screening purposes, where significant landscaping is required as part of a development proposal, or where minor restoration is required as a part of a component of a development (i.e., replacement plantings as result of a new driveway entrance). Where landscaping requirements are basic, they can usually be included on the Final Site Plan and do not require a separate Landscape Plan. This condition is to be used in conjunction with the Landscape Plan technical criteria developed by NEC Staff.*

**Prior to the issuance of a Development Permit by the Niagara Escarpment Commission**, a **Final Vegetation Protection Plan** shall be prepared by a qualified person, for the approval of the Niagara Escarpment Commission. The Plan shall address vegetation protection and mitigation measures in accordance with the standard practices of the implementing authority. The Plan shall include the following stipulations:

1. Prior to commencement of any construction, protective fencing shall be installed and inspected by a qualified person and confirmation of this shall be provided to the Niagara Escarpment Commission.
2. Any vegetation noted for protection and damaged from the construction process shall be reported and replaced; trees 150mm and over DBH (diameter at breast height) shall be replaced on a per caliper basis. Replacement shall be to the satisfaction of the Niagara Escarpment Commission.
3. Once the development has been completed, including all required mitigation measures, a letter certifying that the work has been completed in accordance with the approved Plan shall be provided to the Niagara Escarpment Commission by a qualified professional.

Development shall proceed in accordance with the details of the approved Final Vegetation Protection Plan *[add prepared by XX and dated XX on the DP].*

***Staff Comment****: No significant changes have been made to the standard Vegetation Protection Plan (VPP) requirement. New guidelines for the completion of VPPs are being developed and will be brought to the Commission. VPPs are generally required in applications where development is proposed within or in close proximity to natural heritage features and sometimes as a requirement of a natural heritage assessment (NHE). Where vegetation protection measures are not complex, they can usually be illustrated on the Final Site Plan, and may not require a separate document.*

## Start and Completion of Development Notification:

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.

***Staff Comment****: This condition can be applied when it is important for NEC Staff to be notified when development is to commence For example: where specific timing windows (in water works, breeding bird season, etc.) must be respected or where there is a known concern raised by the public to ensure NEC Staff are alerted when physical development commences.*

## Confirmation of Completed Development:

Within 30 days *[timing can be flexible]* upon completion of the development, written confirmation from a qualified person *[OPTIONAL or property owner]* that the development was completed in accordance with the Development Permit shall be submitted to the Niagara Escarpment Commission.

***Staff Comment****: Previously this condition was used as a standard condition applied to the majority of approved Development Permits, but NEC Staff are now utilizing the condition primarily in situations where verification of specific works is needed to confirm the applicant has adhered to the conditions of the permit.*

## Demolition Materials:

All waste materials generated from the demolition shall be completely removed from the property and taken to an authorized receiving site (e.g., municipal landfill site, salvage / reclamation facility, re-used / recycled elsewhere) and not stored or buried on site. All disturbed areas shall be rehabilitated as per the **Final Site Plan**.

***Staff Comment****: Applied exclusively to applications proposing a demolition component, this condition ensures waste materials are removed from site and properly disposed of. The language of this condition closely resembles requirements for the demolition exemption contained in Section 5.20 of O. Reg. 828/90, as amended.*

## Ponds:

No water originating from a surface water feature (e.g., watercourse, wetland) or a well water source shall be used for filling or supplementing water levels of the pond at any time.

***Staff Comment****: This condition is applied to applications proposing a new pond or, potentially, alterations to existing ponds. The condition is required to ensure conformity with the NEP (2017) which does not permit any ponds that are designed to be ‘online’; referring to ponds that are directly connected to a watercourse. It is also intended to protect groundwater resources. It is also common to apply a similar condition when swimming pools require a Development Permit.*

## Species at Risk (SAR) & Fisheries/Critical Fish Habitat:

In-water works shall not occur between *[Date]* and *[Date],* inclusive, of any given year.

Site preparation and vegetation removal shall not occur between *[Date]* and *[Date],* inclusive, of any given year, to ensure protection of habitat within bird and bat breeding season *[can list specific species, e.g., Barn Swallow, little brown bat].*

***Staff Comment****: These two conditions represent the requirement to adhere to the provisions of the Endangered Species Act and Migratory Birds Act where an application proposes tree removal or may damage or destroy the habitat of a SAR, as well as the provisions of the Fisheries Act. The Migratory Birds and Fisheries Acts originate at the federal level of government and are referenced within the provisions of the NEP (2017). The timing windows applied may differ between specific regions of the NEP Area.*

## Converting Existing Dwelling to an Accessory Building Where a New Dwelling is Constructed:

**Prior to the issuance of a Development Permit by the Niagara Escarpment Commission**, the applicant shall submit, for the approval of the Niagara Escarpment Commission, **Final Renovation Plans** for the conversion of the existing dwelling to an accessory building, including the proposed uses and floor plan for the decommissioned rooms. The Plans shall show that the existing dwelling shall be rendered non-habitable by:

1. Removal of all kitchen facilities (appliances, sink, plumbing and hard wiring);
2. Removal of all bathtub/shower facilities, excepting that one two-piece washroom (i.e., sink and toilet) may be retained [note: if such is approved];
3. *(OPTIONAL)* Decommissioning/disconnection of the existing septic system; and,
4. *(OPTIONAL)* Decommissioning/disconnection of the existing well.

Development shall occur in accordance with the Final Renovation Plans *[add prepared by XX and dated XX on the DP].*

The conversion of the existing dwelling to an accessory building as per Condition #X shall be carried out within **sixty (60)** days *[this is flexible]* of the date of issuance of an Occupancy Permit by the municipality for the new dwelling. The landowner shall provide a copy of the Occupancy Permit to the Niagara Escarpment Commission, and written notification of the date of completion of the conversion to an accessory building.

***Staff Comment****: This condition is applied where a new dwelling is being constructed on a property already containing a dwelling, and where the applicant has applied to retain the existing dwelling for a use other than residential. The condition allows NEC Staff to control the timing of a dwelling conversion and any standards that must be met to ensure that only one dwelling on the subject property remains.*

## Fill Importation Records:

The landowner or authorized agent shall maintain an on-site a log book of all loads of fill material imported to the property. This log shall be provided to Niagara Escarpment Commission staff immediately upon request and shall include the following details:

* Name and contact information of Hauler;
* Date of fill importation;
* Time of fill importation;
* Source location of fill;
* Type and amount of fill imported (in cubic metres).

***Staff Comment****: Fill importation is a significant concern within the NEP area. This condition is appropriate for minor quantities of fill being imported, but a more detailed fill management plan may be required for large quantities, as per the Province’s general requirements in the new Excess Soil Regulation 406/19, which came into effect January 1, 2021 under the Environmental Protection Act. This regulation sets out the requirements for a fill management plan.*

## Wildlife Protection:

**Prior to the commencement of any development**, the landowner shall install and maintain non-woven erosion and sediment control fencing (exclusionary fencing) to enclose the development area identified on the **Final Site Plan**, in order to prevent sediment and harmful substances from entering any adjacent woodlands, ponds or wetlands associated with the identified wildlife habitat. The exclusionary fence shall be buried 10 – 20 cm to prevent wildlife from burrowing underneath it, and the fencing height above ground shall be a minimum of 30 cm. The fencing shall be maintained in effective working order until all disturbed soils have been stabilized and site restoration has been completed. It is the responsibility of the landowner to implement, monitor and maintain all fencing until vegetative cover has been successfully established.

The exclusionary fencing prescribed in Condition # X shall be installed between *date XX and date XX*, to prevent any wildlife from becoming trapped within the work area.

***Staff Comment****: Wildlife exclusionary fencing is commonly requested where development is approved in, or in proximity to, the habitat of endangered or threatened species. It is requested to ensure vulnerable species are prevented from entering the development area.*

## Agreement 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 shall be registered on the title of *[insert relevant description of lands to be affected by the agreement]* at the Landowner’s expense. The Agreement is to state that *[describe scope of agreement, e.g., only one dwelling on lot]* and that the Landowner under this Development Permit is the Landowner of the lands at the time of registration. 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]. The agreement shall not preclude the owner, or subsequent landowners, from applying for future development permits in accordance with the NEP as amended from time to time. *[Note: This last sentence can be included in the agreement and does not necessarily need to be in the Condition.]*

***Staff Comment****: Section 24 (2.1) of the NEPDA allows the Minister (or those with delegated authority of the Minister) to require an agreement be entered into with the owner of the lands which entitles the Minister and the NEC to enforce the provisions of the agreement against the owner and subsequent owners of the land. Agreements on title are most commonly utilized in the following development scenarios:*

* *Creation of an agricultural purposes only (APO) lot.*
* *Aggregate extraction.*
* *Conversion of a dwelling to an accessory facility or other permitted use.*
* *Second dwelling permitted under Part 2.2.7 of the NEP (2017).*
* *To limit how an accessory structure can be used to ensure compliance with the NEP.*

*Other situations may require the establishment of an agreement; Section 24 (2.1) of the NEPDA does not limit the use of such a tool to any defined scenario or circumstance.*

## Retaining Existing Dwelling Until New Dwelling Completed:

The existing single dwelling shall be completely removed from the property, and the site rehabilitated as per Condition #XX, within ninety (90) days *[date can be flexible]* of issuance of an Occupancy Permit by the municipality for the new dwelling. The landowner shall notify the Niagara Escarpment Commission in writing immediately upon receipt of an Occupancy Permit and shall provide a copy of the Occupancy Permit to the Niagara Escarpment Commission.

***Staff Comment****: This condition is utilized to ensure the original dwelling is demolished in a timely manner where an application proposes to construct a new single dwelling but retain and inhabit the original dwelling through the construction period.*

## Consent / Lot Creation:

**Prior to development**, including any site disturbance, the landowner shall obtain a Consent to sever under the *Planning Act* for the proposed lot configuration in accordance with this Development Permit, and, provide proof of registration/establishment of the new lot to the Niagara Escarpment Commission.

***Staff Comment****: Sometimes, in situations where additional approvals are required for land division under the Planning Act (consent, subdivision, etc.), there may be precedence issues where a consent approval cannot be issued until an NEC Development Permit has been issued in keeping with Section 24(3) of the NEPDA. This condition ensues that NEC Staff can authorize all components of a development with the requirement that subsequent approvals are granted before physical development occurs.*

## Sunset Condition:

Conditions X, XX & XX must be fulfilled within one (1) yearfrom the date of confirmation of the Commission’s decision or this conditional approval shall lapse and a Development Permit will not be issued.

***Staff Comment****:**This typical condition is applied to development permit applications that are conditionally approved but are required to satisfy conditions prior to the issuance of a development permit. This condition applies deadline for satisfying those conditions, or the approval will lapse. Typically, one (1) year is the standard applied.*

## Advisory Notes:

***Staff Comment****: Advisory notes are intended to make applicants aware of other approvals that may be required or their responsibilities under other legislation where the NEC is not the implementing authority. The NEC’s compliance officers would direct any violations under other legislation to the appropriate authority for enforcement actions.*

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, Aggregate Resources Act, *Conservation Authorities Act, Endangered Species Act*. *[specific examples of permissions as may apply to the development can be referenced]*

The Niagara Escarpment Commission Development Permit is required prior to the issuance of any other applicable approval, licence or certificate.

***Staff Comment****: This advisory note is commonly applied at the end of the Conditions of Approval to remind applicants of their obligations under other legislation. Usually these other approvals can only be issued after a NEC Development Permit has been approved.*

1. The Niagara Escarpment Commission supports the protection of the night sky from excessive lighting and recommends the applicant obtain information on the use and operation of appropriate lighting fixtures in keeping with dark sky approaches.

***Staff Comment****: This note is intended to raise awareness about the visual and environmental impacts of outdoor lighting. However, where lighting is of particular concern, NEC staff may require that a lighting plan be prepared in conjunction with a landscape plan or architectural drawings. The Landscape Plan Technical Criteria make specific reference to lighting plans. The Municipality of Northern Bruce Peninsula is a “Dark Sky Community,” and the Municipality requests that the NEC include specific wording and links to additional information on NEC Development Permits.*

1. Should deeply buried archaeological artefacts 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.

***Staff Comment****: Several municipalities have specific wording that they request the NEC to include on Development Permits, but the intent is similar to this generic note: that archaeological resources must be protected.*

1. The County of Grey Official Plan identifies the property as within a Special Policy Area (karst features).

***Staff Comment****: Karst landforms are common in the County of Grey, and the County requests that this wording is included on NEC Development Permits.*