June 17, 2021

# P6: Staff Report

Technical Criteria Development

Background and Context Setting

Pre-consultation and Complete Applications

## INTRODUCTION

### Basis for development of Technical Criteria

Staff of the Niagara Escarpment Commission (NEC) receive applications for Amendments to the Niagara Escarpment Plan (NEP) and Development Permits in accordance with the *Niagara Escarpment Planning and Development Act* (NEPDA). However, the NEPDA does not provide the NEC with the opportunity to include policy in the NEP setting out in detail what constitutes a “complete” application and what are the consequences of not providing a complete submission.[[1]](#footnote-1)

Consequently, many applications lack even the most basic information such as a site plan drawn to scale. Staff are also often challenged by applicants as to why they need to submit certain drawings and studies in support of their application. Given that we do not have anything to provide to an applicant that sets out our application requirements, other than the application forms themselves, application documents often provide limited information to assist staff in understanding the proposal. Such applications can then languish in the data base as incomplete applications that are awaiting the receipt of requested information or necessitate protracted dialogue between staff and applicants to inform an understanding of the proposed development and whether it complies with NEP policy and development criteria.

In addition, the NEC does not have a formal or established pre-consultation process. Although all applicants are encouraged by staff to contact us prior to applying, many do not.

The lack of technical criteria which sets out a desired pre-consultation process and guides applicants on the types of drawings and technical reports required to support an application in accordance with NEP or other applicable provincial policy does not support a streamlined application process. There can be confusion on the part of applicants, delays in processing applications and a burden for NEC staff. They must follow up with applicants, sometimes more than once, to explain the application process and justify why we need additional information in order to process their submission.

### Previous Staff Reports

NEC staff has written two previous reports on this topic. The first, in October 2018, identified the challenges that incomplete applications presented for both applicants and NEC staff. The NEC endorsed the report and directed staff to develop a process that would bring greater clarity to the application process for Plan Amendment and Development Permit applications.

The second staff report in November 2020 expanded the scope of the proposed Technical Criteria by identifying the need to include a review of the merits of instituting a pre-consultation process whereby applicants would meet with NEC staff prior to submitting a Plan Amendment or complex Development Permit application. Recognizing that pre-consultation would not be mandatory, staff proposed:

* an examination of the types of applications that would benefit from it and,
* consideration of how it could be aligned with municipal planning processes that involve pre-consultation for related *Planning Act* applications.

The above-noted approach was determined to be within the scope of developing Technical Criteria. Pre-consultation would support complete applications as it would be an opportunity for NEC staff to explain our requirements and the process that would be followed based on the type of application. The NEC endorsed the report and directed staff to begin consultation with staff of the Ministry of Natural Resources and Forestry and return to the NEC with additional information regarding draft Technical Criteria for Pre-consultation and Complete Applications.

### Scope of Technical Criteria

Although having the authority under the NEPDA to include policy in the NEP and to establish a complete application process would be helpful to reinforce our needs for plans and technical studies, such authority does not exist and any legislative change is out of scope for the development of technical criteria which are intended only to support existing NEP policy. Section 6.1(2.1) of the NEPDA contains a general description of the requirements for a Plan Amendment application but again, it would be out of scope to propose legislative change to include more comprehensive application requirements.[[2]](#footnote-2)

Similarly, NEC staff cannot recommend any policy changes to the NEP to enhance what exists in Parts 1.2.1 or 1.2.2 which set out, generally, the application requirements for a Plan Amendment. This is also out of scope until the next Co-ordinated Plan Review when this topic or issue could be recommended to be included in the Terms of Reference for the Review.

Finally, it would also be out of scope for the development of technical criteria to recommend changes to the Development Permit application form to include requirements for additional information, as the form was recently updated and simplified as part of a “burden reduction” exercise undertaken by the Provincial government.

## 2.  BACKGROUND

### Niagara Escarpment Plan 2017

The 2017 NEP introduced new language relating to the development of guidance material, stating:

* 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.

With the addition of this new language in the 2017 NEP, there is an opportunity to bring greater clarity to the NEC application processes for both Development Permit and Plan Amendment applications through the preparation of technical criteria.

## 3.  INFORMATION SUMMARY

### NEP Implementation

Under the current review processes for Plan Amendment and Development Permit applications, the approach to pre-consultation and application requirements is not formal. All applicants are encouraged to discuss their applications with staff before they apply. Some limited information is available to the public from the NEC website, but there is no formal pre-consultation process. Determining which applications will be the subject of pre-consultation is left to the discretion of NEC staff, (usually the Senior Planner or Strategic Advisor) or the Director or Manager.

Staff are often asked by prospective applicants to provide some guidance information about the application process and what documents (plans, studies) are required to be submitted with the application form. This can result in a lengthy dialogue or series of email exchanges as staff describe what is needed for a complete application. NEC staff invite other agency or municipal staff to participate in pre-consultation on occasion and similarly, NEC staff may also be invited to attend municipal pre-consultation meetings where applications are required under both the NEPDA and the *Planning Act.*

Having a more prescribed process with specific requirements for technical studies and drawings would be consistent with overall government goals to provide clarity to planning review processes and support efforts to streamline those processes to reduce the burden for applicants to obtain timely decisions on their applications. Pre-consultation may also facilitate identification of necessary supporting reports and plans and potential policy issues earlier in the process.

### Jurisdictional Scan and Best Practices

NEC staff considered planning application requirements for select municipalities[[3]](#footnote-3) and the Ministry of Municipal Affairs and Housing. Common elements to the pre-consultation and application process include the following:

* An application form to request a pre-consultation meeting
* A regular schedule of pre-consultation meetings
* Invitations to relevant municipal staff and staff of other agencies to attend the pre-consultation so the applicant gets feedback on application requirements from all agencies at once
* A checklist of required studies and the format that the information must be submitted in (e.g. drawing sizes, what must be shown on drawings, property location and legal description including roll number, number of copies of reports)
* Time limit on the pre-consultation (i.e. if an application is not submitted within a certain time period after the meeting, another pre-consultation is required)
* Confirmation of specified application requirements sent after the pre-consultation so that the applicants cannot suggest that they were not made aware of the need for certain plans or studies
* General outline of the steps in the planning process for the planning approval being sought
* Explanation that meeting the municipal requirements will assist staff in providing a timely review of their application.

### Commission Input

At the Commission meetings where this topic was presented previously, feedback from the members included the following:

* The new process in the technical criteria should be simple to follow and include graphics such as a flow chart of the application process
* A checklist of application requirements would be helpful
* Standards for drawings and plans and the terms of reference for studies should mirror those of other regulatory bodies
* The application and pre-consultation process should be scaled to the type of application and both should be simpler for certain types of development permit applications
* Enough information should be required of an applicant for staff to determine if it conforms to the NEP
* Application requirements should include a detailed site plan, a Visual Impact Assessment (VIA), an environmental impact assessment, traffic study, where applicable
* Ability of an applicant to prepare the required information should be taken into consideration; should we continue to allow hand drawn, not to scale site plans?

### Staff Input

NEC staff discussed the proposed technical criteria for application review with one of the Integrated staff teams (South team) in March 2021. We discussed the proposed, more formal approach to pre-consultation and the creation of a complete application checklist as a means of improving the quality of application submissions. Their feedback included the following comments:

## Pre-consultation

* Establish a threshold; no pre-consultation for simple applications but need criteria for consistency in deciding which ones should be selected for pre-consultation
* Use of a checklist at the pre-consultation stage with a disclaimer in case something changes in the applicant’s proposal resulting in the need for additional studies or plans
* Need to establish when to have other agencies involved; organizing a pre-consultation meeting takes time
* Having this process could avoid the back and forth with applicants about what they need to submit
* Confirm the meeting discussion by sending a checklist to be kept in the file
* Shifts responsibility to applicant for making a better submission
* One pre-con, whether held by us or other agency, would be enough (no duplication of process)
* We could specify the sequence of submission of studies as the receipt of certain technical reports could inform whether additional studies would be required
* Important to raise the standard for our process so people take it seriously; some applicants assume they don’t have to have formal construction drawings or grading plans until they apply for a building permit.

## Complete Applications

Minimum requirement should include:

* drawing to scale which would be needed for municipal approvals anyway; building dimensions and setbacks, location of existing and proposed development
* Proposal description listing all proposed development
* Construction detail section of the application form is often not filled out; staff must send it back to the applicant which causes delay
* Would be helpful to revise the Development Permit application form to indicate on the application what sections are mandatory; would Commission approval be required in order to revise the application form?
* Restoration plan/landscaping plan should be required
* The checklist should ask about other planning or environmental approvals the applicant is seeking, even if not yet submitted.

### Ministry Input

NEC staff briefly discussed technical criteria for complete applications with MNRF colleagues in April 2021. They indicated that they appreciated the discussion and could provide more detailed comments once the draft technical criteria were made available. They recognized that the application standards for considering Plan Amendment and Development Permit applications is within the purview of NEC staff and the Commission.

## 4.  ANALYSIS AND CONCLUSIONS

Having not had an opportunity to have more fulsome discussion with all NEC planners and strategic advisors or Legal Services about the proposed pre-consultation process and an opportunity to gain consensus about the range of possible approaches to pre-consultation and the format of complete application documents, NEC staff recommends that additional time be taken to develop the draft technical criteria.

Staff has developed a preliminary checklist to provide an example of the proposed approach to identify to applicants the types of reports and plans needed to support a planning application in accordance with NEP policy. Depending on the type of application, certain information requirements would be identified to the applicant. Completion of the form by NEC staff and provision to the applicant after a pre-consultation would set the foundation for the submission of future applications that could be processed in a timelier way. Appendix 1 to this report provides a draft checklist.

## 5.  NEXT STEPS AND TIMING

* Staff will continue to develop the Technical Criteria, based on:
* further engagement with NEC staff; and,
* discussions with staff of the Ministry of Natural Resources and Forestry and Legal Services.
* Anticipate return to Commission at the November Policy Meeting:
* to review draft Technical Criteria for Commission endorsement; and
* to direct NEC staff to post them on the NEC website in the Plan Amendment and Development Permit sections.

## 6.  RECOMMENDATION

* Endorse this report; and,
* Direct staff to continue with the development of the Technical Criteria based on discussions with appropriate NEC and Ministry staff.

Prepared by:

Original signed by:

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Nancy Mott, MCIP, RPP

Senior Strategic Advisor

Approved by:

Original signed by:

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Debbie Ramsay, MCIP, RPP

Director

Appendix 1 – Draft Complete Application checklist (graphics by Kun Xu)

1. Under the Planning Act, a municipality that has Official Plan policy enabling a complete application process, can refuse to process an application that is not complete. [↑](#footnote-ref-1)
2. The NEPDA sets out that a Plan Amendment application should include “research material, reports, plans and the like that were used in the preparation of the amendment”. [↑](#footnote-ref-2)
3. City of Burlington, Town of Caledon, Niagara Region, City of Owen Sound, Township of Clearview [↑](#footnote-ref-3)