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Niagara Escarpment Commission
An agency of the Government of Ontario

October 25, 2018

STAFF REPORT
Initiating Policy Guidance Material
Technical Criteria for Complete Applications

1. INTRODUCTION

Current Situation

Neither the Niagara Escarpment Plan (NEP), nor the *Niagara Escarpment Planning and Development Act* (NEPDA) and its regulations, prescribe what constitutes a “complete” application for either Niagara Escarpment Commission (NEC) Development Permit or Plan amendment applications.

This can present challenges for applicants and NEC staff alike and can lead to extended processing times for both types of applications. On the one hand, applicants do not understand the planning process and/or do not agree with the need for, certain supplemental information requested by NEC staff, such as environmental studies or more detailed plans/drawings. On the other hand, NEC staff often need this supplemental information to properly and thoroughly assess if proposed development conflicts with the policies of the NEP.

However, in the absence of the NEPDA or the NEP prescribing what submissions form a complete application, if applicants are intent on filing an application that lacks critical supporting information, NEC staff have no authority to refuse it and must process it, even if, in their professional planning opinion, the application is deficient and it would be difficult to advise the Commission on whether the application has been justified (in the case of Plan amendments) or is in conflict with NEP policy.

The current procedure is inefficient, both for the applicant and for the NEC.

NEPDA and NEP:

- **Development Permit Applications** – The Niagara Escarpment Planning and Development Act (NEPDA) allows the Minister to bring into force regulations that can prescribe the elements of an application process for Development Permit applications. Specifically, Section 23 of the NEPDA gives the Minister power to make regulations:
 - 23 (b) “providing for the issuance of development permits and prescribing terms and conditions of permits”; and
 - 23 (d) “prescribing the form of application for a development permit”.

Additionally, Regulation 828, Section 4 under the NEPDA states: “An application for a development permit shall be on a form provided by the Commission.” No further definition of the specific requirements for a Development Permit application exists in the NEPDA, and there is no reference at all to the content of a Development Permit application in the NEP.

- **Plan Amendments** – As it relates to Plan amendment applications, the NEPDA states:
 - Section 6.1(2.1) “An application to the Commission by a person or public body requesting an amendment to the Plan shall include a statement of the justification for the amendment and shall be accompanied by research material, reports, plans and the like that were used in the preparation of the amendment.”

Parts 1.2.1 and 1.2.2 of the NEP set out the requirements for a Plan amendment application. In accordance with Part 1.2.1, an application is to provide justification for the Amendment which “means the rationale for the amendment, as well as reasons, arguments or evidence in support of the change to this Plan...”.

For amendments for Mineral Resource Extraction Areas, there is some additional guidance as to the contents of an Amendment application. Considerations for the evaluation of the application and information regarding the location of the site, information to support the requirements of the NEP and the *Aggregate Resources Act* and information on the ultimate use of the site are required.

2017 NEP

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 Development Permit and Plan amendment applications, and to address the challenges for applicants and NEC staff noted above.

Purpose of Staff Report

The purpose of this staff report is to seek the NEC's endorsement to proceed with a process to examine how to bring greater clarity to the process for both Development Permit and Plan amendment applications. The outcome of this process could result in the development of technical criteria, or it could result in an NEC recommendation to the Minister for a change in regulatory authority, or some combination of both.

2. BACKGROUND

Planning Context

Ontario's Land Use Planning Framework

- *Provincial Policy Statement 2014 (PPS)* – The PPS “supports improved land use planning and management, which contributes to a more effective and efficient land use planning system” (Part 1, Preamble). The development of a more defined process for the NEC to evaluate Plan amendment and development permit applications would be consistent with the PPS, in this regard.
- *Planning Act* - In accordance with Regulations under the *Planning Act*, municipalities have the authority to require certain basic information from applicants seeking planning approvals for different types of development applications. Municipalities also have the authority to establish complete application requirements through policies in the municipal official plan, which may include a list of technical studies, drawings and/or reasons for the application. In addition, a process is set out that makes it clear that an incomplete application does not have to be processed by the municipality under the approval

timeframes set out in the Act. If the municipality does not deal with the application in a specified timeframe, the applicant can refer the matter to the Local Planning Appeal Tribunal. The Ministry of Municipal Affairs and Housing has an information sheet regarding complete applications (see Appendix 1).

Many municipalities have established formal pre-consultation processes whereby applicants are required to meet with municipal staff, explain their proposal and receive advice from staff about what studies must be submitted before staff will review the application. NEC staff are often invited to attend these meetings where an application is also in the NEP Area. And while this assists NEC staff in many cases where NEC study requirements are aligned with those of the municipality, where additional or different information is required to determine if NEP policies or development criteria have been addressed (e.g. visual impact assessment), NEC staff may have to negotiate with applicants to encourage them to submit additional studies.

- *Niagara Escarpment Planning and Development Act (NEPDA)* –
 - Development Permit Applications: The Commission has approved the Development Permit application forms that are currently in use, but it does not have the authority to include any mandatory requirements for the content of a complete application. However, the NEPDA allows the Minister to make regulations that prescribe the form of application for a Development Permits (S. 23.d), and this could provide the opportunity to set out new standards for Development Permit applications.
 - Plan Amendment Applications: Section 6.1 (2.1) permits a person or public body to request an amendment to the NEP and the application “shall include a statement of the justification for the amendment and shall be accompanied by research material, reports, plans and the like that were used in the preparation of the amendment”.

- *NEP policy and implementation context* –
 - Development Permit Applications: The current NEC application for a Development Permit includes a series of questions with respect to the proposed development, but as stated above, the Commission does not have the authority to require a certain type of drawing or technical report in support of the application because no such authority is established in the NEPDA. As a result, NEC staff often receive applications that contain limited information or include inaccurate site plans. For example, it is not uncommon for NEC staff to receive hand-drawn site plans, and/or site plans that are not to scale (see Appendix 2, site plan examples). The consequence is that a decision on the application may be delayed while staff explains and justifies the basis for the request for a better drawing or additional technical information from the applicant.

Plan Amendments Applications: NEC staff bring an initial staff report to the NEC when a Plan amendment application is received. At this stage, staff must advise the NEC as to whether the application has been submitted with sufficient supporting information to justify its circulation to other agencies for review and comment. Without a clear definition of what specific information is required to support the justification, it is open to applicants to contest the need to complete certain studies or to supply limited information.

Ultimately, lacking complete information presents challenges for staff in determining whether a Plan amendment or Development Permit application conflicts with the policies of the NEP.

Other Background

- NEC staff has considered in the past different ways to encourage applicants to provide more information or clearer drawings. The Development Permit application form has been revised several times over the years as a means of both simplifying it for applicants, and to obtain more accurate information about the proposed development. Currently, there are three types of Development Permit applications (standard development, mineral aggregate applications and telecommunication towers¹).
- In 2010, a sub-committee of Commission members proposed a process for reviewing Plan amendments. It produced Draft Process Guideline that included a flow chart and timing goals to process amendment applications, which arose from concerns about the length of time involved in reviewing applications for new pits and quarries. The Guideline was not finalized but proposed a flowchart setting out the milestones in the Plan amendment process, and the involvement of peer reviewers for technical studies (see Appendix 3).
- In the past, the NEC had a processing guide for mineral resource extraction applications that set out application requirements. However, it is no longer used and reference to it was removed in the NEP 2017 because the application form was based on NEP 2005 policy and the 1997 Provincial Policy Statement.
- Similarly, the NEC had a Protocol with the Ministry of Natural Resources and Forestry (MNR) that clarified the role of MNR in working with the NEC on Plan amendment applications for mineral resource extraction and providing information regarding aggregate supply. However, the Protocol has now expired.
- The Ontario Stone Sand and Gravel Association (OSSGA) has expressed concern about the length of time it takes to process a Plan amendment for new Mineral Resource Extraction Areas and has suggested that having established criteria regarding the required studies needed in support of the application would be of assistance.

¹ The NEC does not issue permits for telecommunication towers because they are under federal jurisdiction but administratively we use a Development Permit type form to process them.

3. PROPOSED SCOPE AND CONTENT

Key elements for the technical criteria for complete applications and pre-consultation could be:

- An examination of the list of studies that are typically requested to support a Plan amendment or Development Permit applications. This would include the development of standards for drawings that are of most assistance to staff in evaluating applications.
- A review of best practices of other regulatory agencies, both in Ontario and those with similar mandates outside of Ontario.
- Consultation with the MNRF, policy staff, Strategic and Indigenous Policy Branch and Legal Services Branch, as well as provincial regulatory partners and stakeholders.
- Analysis of the NEPDA and NEP to better understand the feasibility of recommending regulatory changes to the Minister.
- A review of historical work done by the NEC with respect to applications and application processes.
- An examination of the merits of instituting a pre-consultation process whereby applicants would meet with NEC staff prior to making an application for a Plan amendment or Development Permit. This would include an analysis of whether to define a complexity threshold, whereby types of applications of a scale and complexity beyond the threshold would be encouraged/required to meet with NEC staff prior to submitting an application, while applications below the threshold would not. These pre-consultation sessions would assist applicants in understanding the relevant NEP policies, the milestones in the process and the basis for requesting complete submissions.

4. PROCESS AND TIMING

Timing

The general process to be followed in consulting on the development of technical criteria is outlined in the covering policy report. After information gathering, research, and preliminary consultation, staff will report back to the Commission with recommendations on draft technical criteria for complete applications prior to circulating them for broad, formal consultation. Staff anticipates bringing draft technical criteria forward at the Spring 2019 policy meeting. Formal consultation will take place once the Commission has endorsed the draft technical criteria, in keeping with the Commission-approved *Process for the Development of NEP Guidance Material*.

5. RECOMMENDATIONS

That the Niagara Escarpment Commission direct staff to:

1. Proceed with a process to examine how to bring greater clarity to the application process for both Development Permit and Plan amendment applications.
2. Return to the NEC with a proposed process for the NEC to review and approve, in or around April 2019.

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Appendices:

Appendix 1 MMAH InfoSheet, Planning Approvals and the Complete Application

Appendix 2a simple site plan

Appendix 2b detailed site plan

Appendix 3 Draft Process Guideline, Niagara Escarpment Plan Amendment Process,
September 2010

• InfoSheet • Planning Approvals and the Complete Application



FOR MORE INFORMATION:

**Ministry of Municipal Affairs
and Housing**
Provincial Planning Policy
Branch
(416) 585-6014
ontario.ca/mah

Municipal Services Office

Central
(416) 585-6226 (Toronto)
Toll Free: 800-668-0230

Eastern
(613) 545-2100 (Kingston)
Toll Free: 800-267-9438

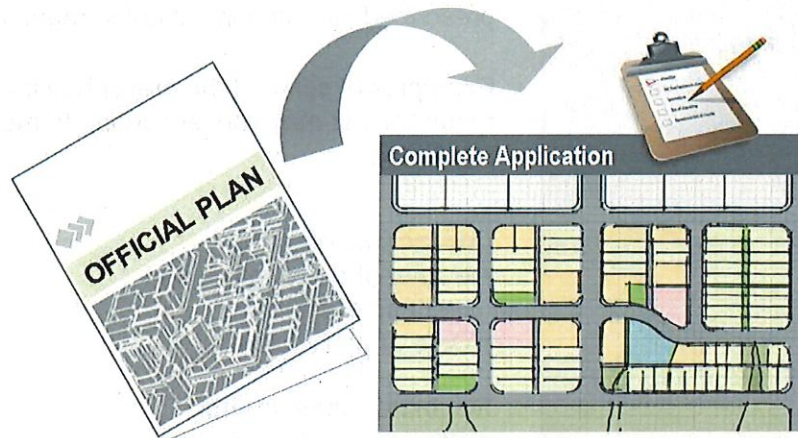
Northeastern
(705) 564-0120 (Sudbury)
Toll Free: 800-461-1193

Northwestern
(807) 475-1651 (Thunder Bay)
Toll Free: 800-465-5027

Western
(519) 873-4020 (London)
Toll Free: 800-265-4736



Complete Application under the Planning Act ss. 22(4) and (5), 34(10.1) and (10.2), 51(17) and (18), 53(2) and (3)



Description of Complete Applications

- Information and material requirements, prescribed in provincial regulations, exist for planning applications that are made to municipalities/planning boards or the Minister. To view these regulations, go to www.e-laws.gov.on.ca and type in the regulation number (e.g., 543/06).
- In addition to the prescribed application requirements, municipalities/planning boards can establish their own list of required information or material needed to assess official plan amendments, zoning by-law amendments and subdivision/condominium and consent applications.
- When a municipality/planning board requires additional information as part of a complete application, this must be identified in the municipality's/planning board's official plan policies.

Implementation

- When requiring additional information or material beyond what is prescribed by the Province for a development proposal, municipalities/planning boards must adopt official plan policies for complete application requirements.
- Additional information or materials could include studies/reports required by provincial plans.

Potential Benefits

- Enables municipalities/planning boards or Minister to make better informed decisions in a timely fashion, as the additional information needed to assess planning applications is provided up-front.
- Permits municipalities/planning boards or Minister to require specific studies that are relevant to the proposed development (e.g., a stormwater management plan to manage the quality and quantity of runoff resulting from the proposed development).

Note to User: This InfoSheet deals in summarized fashion with complex matters and reflects legislation, policies and practices that are subject to change. It should not be relied upon as a substitute for specialized legal or professional advice in connection with any particular matter and should not be construed as legal advice by the Ministry of Municipal Affairs and Housing. The user is solely responsible for any use or the application of this information. As such, this Ministry does not accept any legal responsibility for the contents of this InfoSheet or for any consequences, including direct or indirect liability, arising from its use.

DID YOU KNOW?

Many municipalities have already incorporated complete application requirements into their official plan policies.

LIST OF REGULATIONS OF PROVINCIAL REQUIREMENTS FOR ALL COMPLETE APPLICATIONS, MADE UNDER THE PLANNING ACT:

Official Plans and Plan Amendments Regulation
543/06

Zoning By-laws Regulation
545/06

Plans of Subdivision/
Condominiums Regulation
544/06

Minister's Zoning Orders
Regulation
546/06

Minor Variances Regulation
200/96

Consents Regulation
197/96, as amended

To view these regulations, go to www.e-laws.gov.on.ca and type in the regulation number (e.g., 543/06).

Provincial Requirements for Complete Applications

For the full details of all provincial requirements for complete applications, refer to prescribed information set out in regulations under the *Planning Act*.

Examples of some of the prescribed information are identified below. These requirements may vary according to the specific application and their related regulation.

Contact Information

- Name, phone number and address of applicant
- Date of application

Reports/Assessments

- Servicing Options Report
- Hydrogeological Report
- Archaeological Assessment

Application Details

- Reason for request
- Description of subject land
- Sketch in metric units
- Existing designation and zoning
- Existing uses
- Consistency with policies
- Access
- Water and sewage

Examples of Municipally Required Reports/Studies for Complete Applications

Below are examples of various reports/studies that municipalities have incorporated in their official plan policies for complete application requirements. These are in addition to the provincial requirements for official plan amendments, zoning by-law amendments, subdivision/condominium and consent applications.

Planning

- Land Use Compatibility Study
- Population and Job Density Analysis
- Affordable Housing Report/Rental Conversion Assessment

Transportation

- Traffic Impact Study and/or Transit Impact Study
- Transportation Demand Management Options Report

Cultural / Heritage

- Archaeological Assessment
- Cultural Heritage Impact Assessment

Engineering

- Noise and Vibration Study
- Slope Stability Study and Report

Urban Design

- Height Survey of Adjacent Buildings
- Sun/Shadow Study

Environmental

- Environmental Impact Study and Environmental Review Study
- Air Quality Study

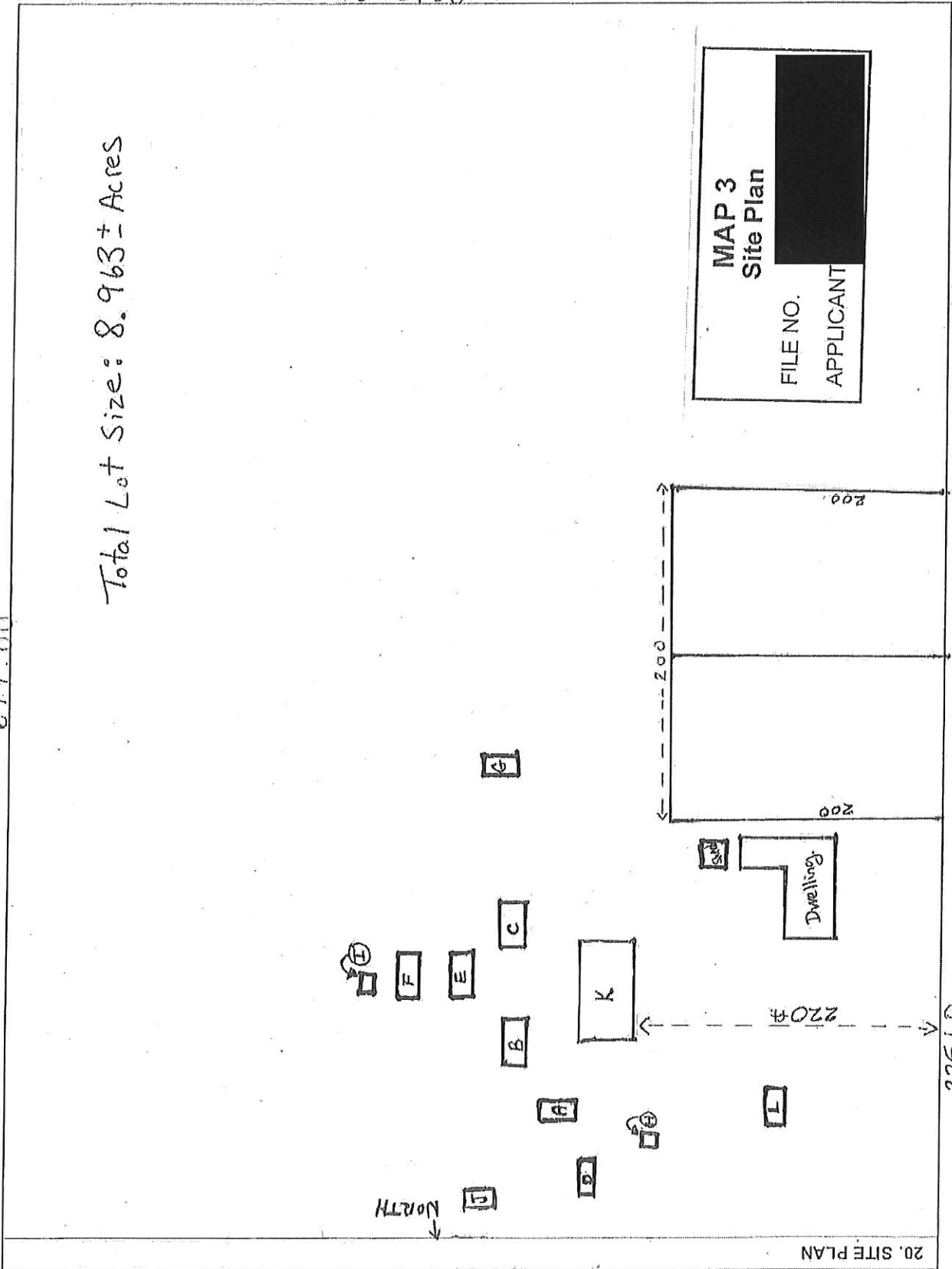
Economic

- Retail Commercial Market Impact Study
- Financial Impact Study

674'00

Total Lot Size: 8.963 ± Acres

633'00



261'14

225'0

633'00

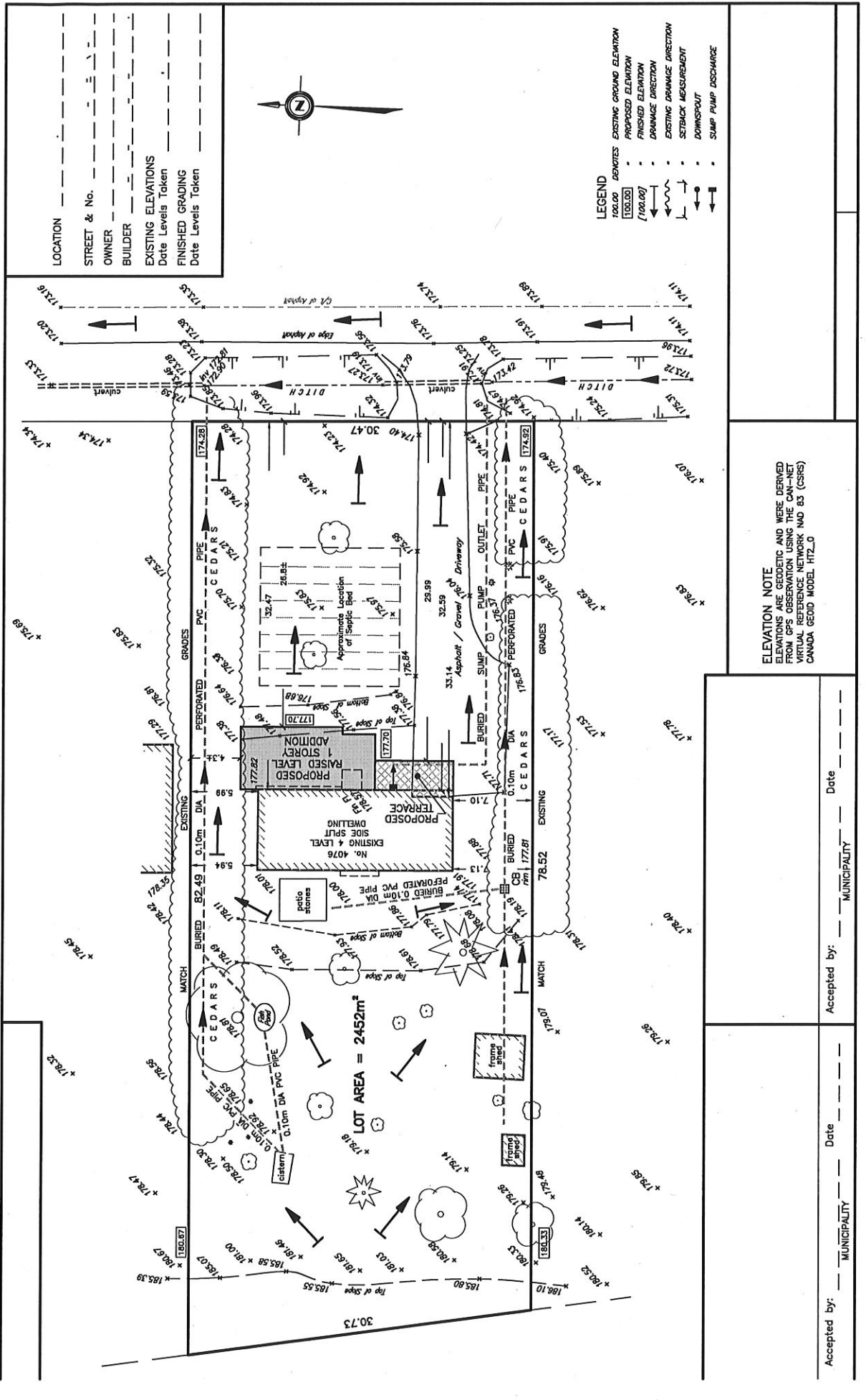
20. SITE PLAN

MAP 3
Site Plan

FILE NO. [REDACTED]

APPLICANT [REDACTED]

APPENDIX 2b



LOCATION _____
 STREET & No. _____
 OWNER _____
 BUILDER _____

EXISTING ELEVATIONS
 Date Levels Taken _____
 FINISHED GRADING
 Date Levels Taken _____



LOT AREA = 2452m²

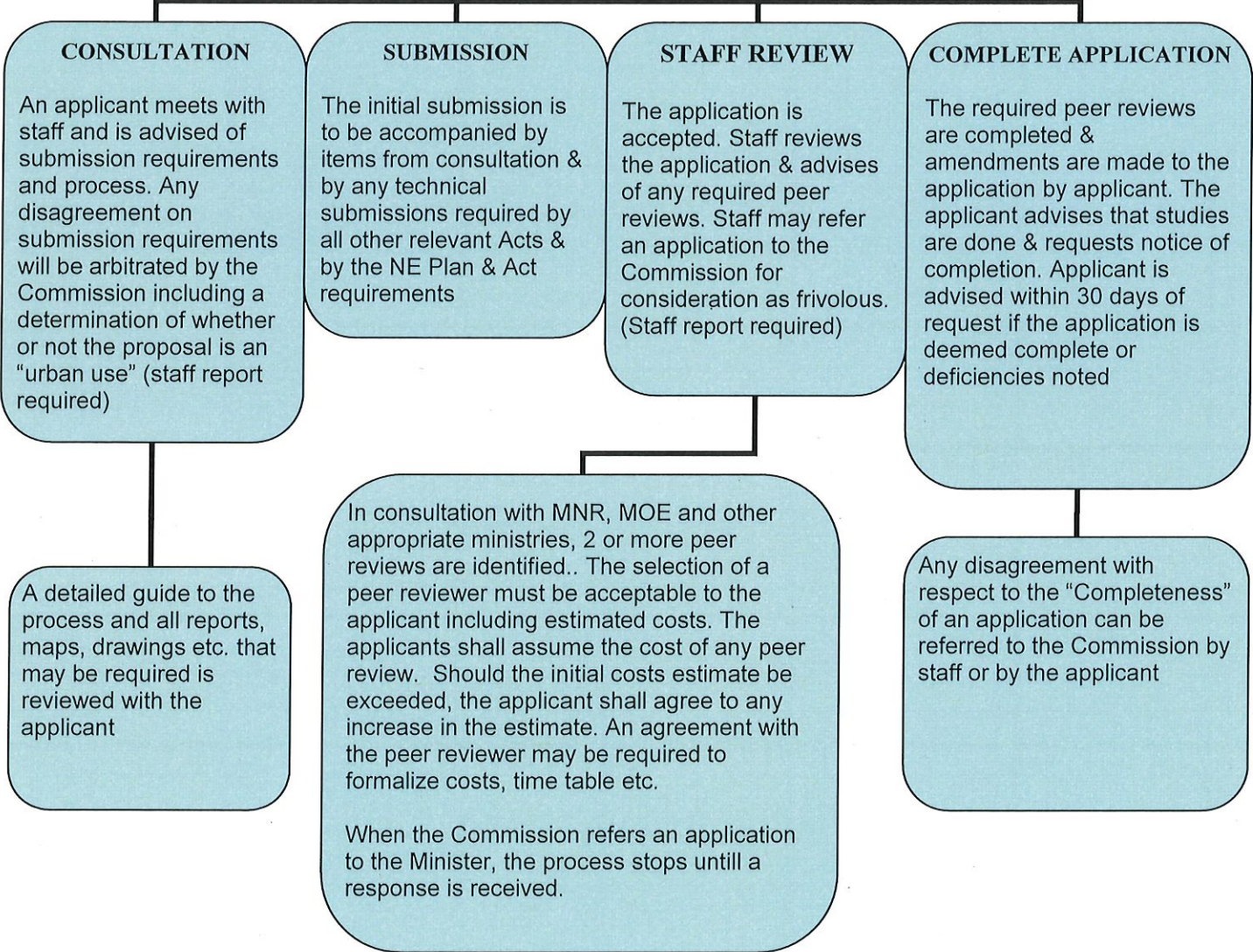
ELEVATION NOTE
 ELEVATIONS ARE GEODETIC AND WERE DERIVED FROM GPS OBSERVATION USING THE CAN-NET VIRTUAL REFERENCE NETWORK NAD 83 (CSRS) CANADA GEOD MODEL HT2.0

ledger

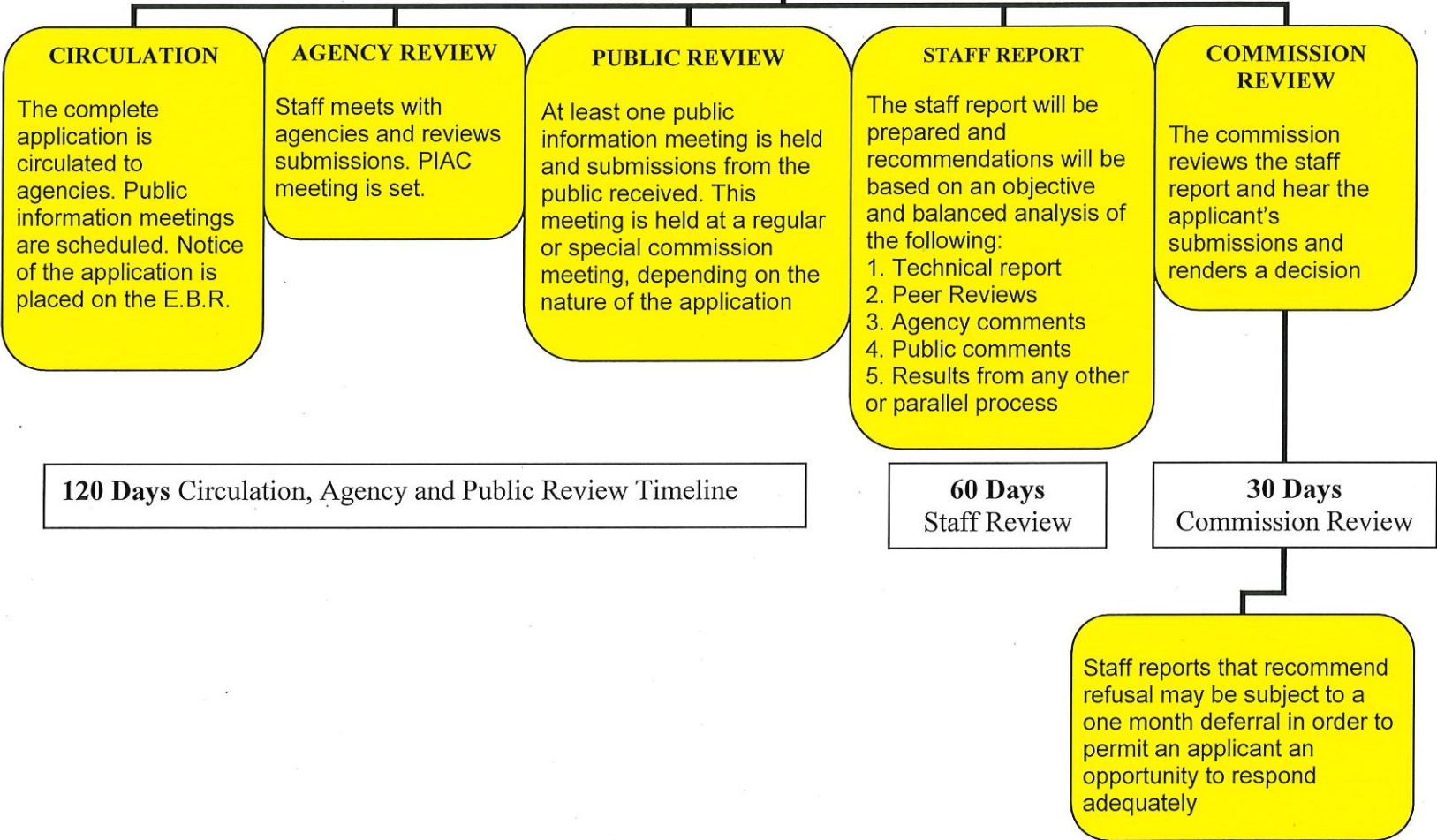
DRAFT PROCESS GUIDELINE

NIAGARA ESCARPMENT PLAN AMENDMENT PROCESS

NIAGARA ESCARPMENT PLAN AMENDMENT PROCESS **PHASE 1**



NIAGARA ESCARPMENT PLAN AMENDMENT PROCESS **PHASE 2**



P5a)

Staff Input to Proposed New NE Amendment Process

1. The one size fits all may not work. We can control the process to a greater extent if only the NEPDA is involved. Certain Amendments trigger parallel processes and varying time lines under other Acts, like the Planning Act, ARA or EA Act, that we have no control over. We sometimes have to wait for answers that flow from other applications and their processes. This can also happen if a Joint Board is struck, which could combine various Acts. Joint Boards normally take place after initial processing. Once joined any timelines are out of our control.
2. We assume that this would be a Guideline since there is no explicit legislative authority for this under NEPDA, especially where we are setting time lines and and requiring peer reviews. There is no "complete application" under the NELDA specified in law like the Planning Act. To enshrine this we may need legislative change or, at minimum, a provision in the NEP that sets this out under the Section which refers to Plan Amendments.
3. To set a policy or guideline like this do we need to consult the public etc. (NEC now has a policy requiring stakeholder consultation on matters affecting the Plan involving guidelines and policy).
4. Before Phase 1 even starts there must be a determination on whether the matter is an urban use. Given the staff workload at any given time this could not be placed before the NEC, assuming we have enough initial information, for about 60 days (also taking into account the NEC has a once a month meeting cycle).
5. Also there may be a referral to the Minister to deem an application frivolous (also needs about 60 days). If it goes this route then nothing will happen until the Minister makes his/her determination (our experience is that this takes 8 months to a year).
6. If an application is accepted as complete the peer review can take place. Our experience is that it takes many months to interview and obtain the services of a peer reviewer or reviewers. NEC has no legislative authority to require peer reviews which are normally funded by the proponent. NEC uses municipalities to direct that peer reviews occur and municipalities normally handle the flow of funds to peer reviewers etc. If the municipality does not see that the matter needs peer reviews it may be very difficult to have the proponent undertake the reviews.

Municipalities will only assist the NEC if they also have an application under the Planning Act. Municipal time lines will be different. As an example, Halton uses JARTS on aggregate proposals which add significant time to the process. Municipalities also charge significant application fees and will not expend energy on an NEC application unless they have a Planning Act Application. Maybe this can be accommodated in Phase 1 of the process, however, some peer reviews are not triggered until after the agencies receive the Amendment application circulation from the NEC. If this is the case then the time lines under Phase 2 are not nearly enough.

7. Staff does not really think that MNR or the MOE would be helpful in selecting Peer Reviewers. They have never fully participated in the past and normally have limited interest in most applications. Even on major applications they provide (in many cases superficial input).
8. The municipal process does not start the peer review process normally until after an application is deemed complete. At the initial stage the merits are not generally looked at, only whether or not the required studies etc. have been file. Once filed, and deemed complete, these are peer reviewed (as required).
9. Even if peer reviews were conducted as part of Phase 1 there is often additional peer review work undertaken in Phase 2 after everyone has the benefit of comments. Proponents tend to rework applications and then this triggers more peer reviews and discussion. The time lines in Phase 2, even with a straight foreword amendment are overly optimistic.
10. Our minimum circulation period under the Act is 60 days, the NEC normally provides more time for major applications (e.g., 120 days). Even then many agencies request more time.
11. We are a bit nervous about having a public review at the NEC meeting. (unless we are misunderstanding the intent). This appears to occur before the Staff Report and staff questions what would be obtained. Normally such meetings are held as separate events conducted by Staff.
12. It is unclear where PIAC fits into the process. PIAC under the NEPDA cannot meet until it has the benefit of the comments received (so they can make an informed judgment on the merits). PIAC because it is a volunteer appointment group can meet only a limited number of times in a year. They are difficult to get together (busy people). The best time line is 60 to 90 days to arrange the meeting and provide them with materials.

Minutes then have to be drafted and approved, adding slightly more time.

13. The process requires staff reports at a number of points (which do not seem to be factored in) but the most significant is the Final Report with the NEC Position. The 45 days for a simple application may be reasonable but can't be met for a complex urban or aggregate proposal or major NEP policy matter impacting the Plan (say something like significant forests). Sometimes the NEC has a room full of materials (1000s of pages in various reports) that the planner has to Review to write the Report. It may involve other specialists like the NEC ecologist or LA.
14. As a final comment the Plan Amendment process in whatever form is dependent on staff resources. Resources are stretched to the limit and the general consensus is that the timelines under Phase 2 are not attainable with the current planning load and it would be a disservice to the Commissioners for staff to indicate that these could be met. If the Amendment guideline is adopted the proponent/public will expect that the timelines are met.
15. As a last comment, the NEC may wish to consider timelines and flow charts for different types of Amendments.