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| Niagara Escarpment Commission232 Guelph St. Georgetown, ON L7G 4B1Tel: 905-877-5191Fax: 905-873-7452www.escarpment.org­ | Commission de l’escarpement du Niagara232, rue GuelphGeorgetown ON L7G 4B1No de tel. 905-877-5191Télécopieur 905-873-7452www.escarpment.org  | wordmark new2 |

# A2: ADDENDUM STAFF REPORT

September 2, 2021

## DEVELOPMENT PERMIT APPLICATION H/R/2021-2022/017

**8649 Appleby Line**

**Part Lot 5, Concession 6, Nassagaweya**

**Town of Milton, Region of Halton**

## BACKGROUND

At the July 15, 2021 Commission meeting staff presented a report recommending refusal of an On-farm Diversified Use (OFDU), particularly agri-tourism, proposing a pick-your-own lavendar operation and its associated parking lot. OFDUs are not a permitted use in Part 1 of the Niagara Escarpment Plan, specifically within the Escarpment Protection Area designation where lands are not designated as prime agricultural area. When a proposal does not meet Part 1 (Permitted Uses) of the NEP, staff would typically not conduct analysis of relevant Part 2 Development Criteria. However, the Commission has directed staff to provide an analysis of relevant Development Criteria in Part 2 of the NEP for further consideration of the application.

The Commission motion at the July 15, 2021 meeting is:

*“That the Commission refer the matter to the next Commission meeting and request staff to come back with analysis and appropriate conditions of approval in regards to on farm diversified uses.”*

The following analysis of Part 2 of the NEP is being undertaken as a technical exercise. The opinion of NEC staff, that the OFDU is not a permitted use in this instance, remains valid.

A copy of the full staff report presented at the July Commission meeting is attached.

## SUMMARY ANALYSIS

On-farm diversified uses, outlined in Part 2.8.7 of the Niagara Escarpment Plan, will be reviewed with respect to the proposal as per the request of the Commission.

### Agriculture 2.8

The objective of Part 2.8 of the NEP 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*.

On-Farm Diversified Uses are uses secondary to the principal agricultural use of the property and are limited in area. On-farm diversified uses include, but are not limited to, home occupations, home industries, agri-tourism uses, and uses that produce value-added agricultural products (Provincial Policy Statement, 2014). OFDUs are intended to enable farm operators to diversify and supplement their farm income, as well as to accommodate value-added and agri-tourism uses. They are only permitted within the Escarpment Protection Area land use designation if the subject property is within a Prime Agricultural Area. The subject property is not within a prime agricultural area, therefore OFDUs are not permitted.

Part 2.8.7 (OFDU) of the NEP states, where permitted, the following Development Criteria applies:

1. the use is located on a farm that is actively in agricultural use;

Application: Kelso Lavender farm has been producing lavender crops for over three years. There are currently greater than 16,000 individual lavender plants on site which are sold through an on-site farm produce stand, previously exempted by NEC staff from needing a Development Permit.

1. the use is secondary to the principal *agricultural uses* of the farm;

Application: The proposed OFDU (agri-tourism) would be secondary to the principal *agricultural use* on site. The OFDU would involve the public touring the agricultural fields, for a pick-your-own lavender experience.

1. the use shall be compatible with and shall not hinder surrounding agriculture operations and other land uses;

Application: The proposed OFDU is located directly adjacent, and east of, the King’s Highway 401, and abuts Kelso Conservation Area to the north and west. The property is on the north side of Appleby line which consists of small rural residential properties.

The proposed OFDU, on Appleby line, could hinder surrounding agricultural operations and rural residential land uses. For example, traffic concerns are presented since the lavender tourism attraction could generate high numbers of visitors given its close proximity to the Town of Milton and the King’s Highway 401. Additionally, there is poor visibility when entering or exiting the subject property. Narrow road shoulders and single lanes on Appleby line also make this area vulnerable to traffic concerns.

The proposed use does not negatively impact the physical, natural heritage, cultural heritage resources or scenic resources and is compatible with the Escarpment environment. Off-road parking is proposed, and demonstration of processing and limited retail sales confined within the dedicated shed. The pick-your-own operation on the crop lands are appointment-based and reservations are required.

1. the use is appropriate to available rural services and infrastructure;

Application: The subject property is not serviced by municipal infrastructure. However, the proposed OFDU DPA does not specify any details pertaining to the need for servicing. An advisory note could be included stipulating that future installation of rural services may require a Development Permit.

1. the use maintains the agricultural/rural character of the area;

Application: The siting of the portion of the farm proposed as OFDU will maintain the agricultural/rural character of the area. The portion of the subject property containing the lavender crops is of higher elevation and is visible from the King’s Highway 401. However, it is partially screened by existing topography and vegetation along Appleby line. The fields containing lavender are on a hill, and of higher elevation than the proposed on-grass parking area, which sits in a depression on the landscape near the road entrance.

1. the impact of multiple uses in prime agricultural areas is limited and does not undermine the agricultural nature of the area;

Application: The portion of the property proposed to be used for the OFDU is within a previously disturbed area and compatible with the multiuse nature of the surrounding rural area. The OFDU supports the continued use of the existing agricultural operation.

1. the use is limited in area to up to two (2) per cent of a farm lot, to a maximum of 10,000 square metres;

Application: The proposed OFDU accounts for greater than 2% of the farm lot (based on size of the parking area). Discussions were not pursued with the Applicant regarding OFDU scale and a need to reduce the size of the parking lot since the proposed OFDU did not meet Part 1 policy of the NEP and thus not permitted and refused. The scale of the OFDU would need to be reduced to meet this policy. This can be included as a condition of approval.

1. the gross floor area of buildings used for on-farm diversified uses is limited to 20 per cent of the maximum area allowed for on-farm diversified use as set out in 2.8.7(g);

Application: No buildings were proposed in the subject DPA.

1. existing buildings, structures or facilities on the property, that are no longer needed to support agricultural uses, should be used where possible;

Application: No buildings were proposed in the subject DPA.

1. all buildings, structures and facilities, including parking areas, associated with the use shall be designed and located to have minimal impact on agricultural uses in the area and the Escarpment’s open landscape character;

Application: The proposed 45-car on-grass parking area is located beneath the hill that supports the lavender crop, in a visually screened area. The proposed parking lot is situated in an open and disturbed area consisting of manicured lawn. Open landscape character of the Escarpment is maintained in this instance.

1. the land supporting the use shall not be severed from the farm lot exclusively for the on-farm diversified use.

Application: The subject DPA does not propose a severance, nor is it permitted.

In other scenarios, assuming Part 1 NEP policies have been met, on-farm diversified uses only qualify when they in accordance with the NEP and PPS. All criteria must be met in order for an OFDU to be approved.

The proposed OFDU is on a farm property that is actively in agricultural use and is secondary to the principle agricultural use, limited in area, and can be supported by existing infrastructure and private services if the need arise.

NEC staff have concerns regarding 2.8.7.c, whether the proposed OFDU can demonstrate that it is compatible with, and does not hinder, surrounding agricultural operations and other land uses within close proximity of the subject property.

**Compatible** is defined in the NEP as: “Where the building, structure, activity or use blends, conforms or is harmonious with the Escarpment environment.” The Escarpment environment is defined as “the physical and natural heritage features, cultural heritage resources, and scenic resources associated with the Escarpment landscape.”

Scale of the OFDU is an important factor in assessing compatibility. The thresholds for farm area and parking lot size devoted to the OFDU, set in the criteria, are designed to control the scale of the proposed operation.

*Guidelines on Permitted Uses in Ontario’s Prime Agricultural Areas*, Publication 851, is written to guide decision-makers who interpret policies in the PPS on the uses that are permitted in prime agricultural areas. The intent of these policies is to protect Ontario’s prime agricultural land recognizing it as a finite resource. There are two, sometimes competing, objectives: to maintain the land base for agriculture and to support a thriving agricultural industry and rural economy.

The guidelines provide a wide variety of examples of uses that meet the criteria for OFDUs such as agri-tourism (corn mazes, hay rides, pumpkin patch tours), wineries, cideries and some that do not, such as full-scale food processing, restaurant and banquet facilities. For example, OFDUs that have high water use demands and generate considerable effluent may be better suited to settlement areas where municipal services are available.

The lavender crop on-site does not require irrigation and the proposed OFDU does not contain details regarding the need for water and wastewater servicing.

Control of the scale and scope of the OFDU is an important factor in reducing the potential for compatibility issues. The size of the parking area devoted to the OFDU can be limited through what is approved in the Development Permit. Additional conditions could be considered to limit the hours of operation, number of employees, number of visitors per day but these types of conditions are often difficult to enforce. The applicant proposed to use a reservation system including set operating hours. The season for optimal viewing of the lavender crop is limited to late June, July, and August.

### COMMENT

On-farm diversified uses (i.e., agri-tourism) are not a permitted use in Escarpment Protection Area unless within a prime agricultural area in accordance with Part 1.4.3.2 of the NEP. However, should the Commission decide to approve the OFDU component of the application, the evaluation of Part 2 of the NEP demonstrates that the policies can be met with appropriate conditions of approval.

Staff have provided options for the Commission’s consideration.

### RECOMMENDATION

The Commission has the following options in terms of decisions to approve, partially approve or refuse the Development Permit application.

**Option 1: Refuse OFDU (Recommended)**

The determination of prime agricultural area is key to determining if an OFDU is a permitted use. Staff has relied on the Growth Plan mapping for the Greater Golden Horseshoe to identify prime agricultural areas. The property is outside of a prime agricultural area, the proposed OFDU is not permitted and the aspect of the application involving an OFDU should be refused.

The applicant could consider re-application for the OFDU (agri-tourism component) in the future if prime agricultural area mapping changes, or if the NEP is amended to permit such uses in the future (either through a site specific or general amendment to the NEP).

Recommendation Wording for Option 1:

That the Niagara Escarpment Commission:

1. Refuse the establishment of an on-farm diversified use since it is not a Permitted Use in the Escarpment Protection Area; and,
2. That the applicant be advised that they may submit a Development Permit Application for an OFDU should the lands be included in the Agricultural Area, or if the NEP is amended to permit the use.

**Option 2: Approve Application as Submitted (Including OFDU)**

The option is not recommended as it would involve making a decision that is contrary to the Permitted Uses of the NEP where on-farm diversified uses in Escarpment Protection Areas are only permitted in Prime Agricultural Areas. Should the Commission decide to approve the application as submitted, inclusive of the OFDU, the appropriate Conditions of Approval are contained in Appendix 1.

Recommendation Wording for Option 2:

1. That the Niagara Escarpment Commission approve the Development Permit application as submitted, subject to conditions contained in Appendix 1.

*Note: The Commission is required to provide reasons for their decision.*

Prepared by: Approved by:

Original signed by: Original signed by:

Cameron Curran Debbie Ramsay RPP MCIP

A/ Senior Planner Director

Appendix 1 – Conditions of Approval

Appendix 2 – July 15, 2021 Staff Report to the Commission

Appendix 3 – Applicant’s Business Plan

# APPENDIX 1

**8649 Appleby Line, Milton**

**CONDITIONS of APPROVAL H/C/2021-2022/017**

1. Development shall occur in accordance with the Terms and Conditions of the Development Permit.
2. The Development Permit shall expire three (3) years from the date it has been issued or once the development has been completed in accordance with the Development Permit.
3. No site alteration of the existing contours of the property including the placement or stockpiling of fill (i.e. excess or imported soil) on the property is permitted with the exception of that identified within the development envelope in accordance with the Final Site Plan.
4. No vegetation shall be cut or removed from the development envelope except for that identified within the development envelope in accordance with the Final Site Plan.
5. If development has commenced under this Development Permit, any/all disturbed areas of land or soil shall be re-vegetated and stabilized to the satisfaction of the Niagara Escarpment Commission on or before the date of expiry of the Development Permit.
6. **Prior to the issuance of a Development Permit by the Niagara Escarpment Commission**, an accurate and detailed **Final Site Plan** shall be submitted for Niagara Escarpment Commission approval. The following stipulation shall be included directly on the Plan:
7. 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;
8. Outline of the approved development envelope / extent of all disturbed areas;
9. OFDU scale (parking areas) must reflect no greater than 2% of the total lot area;
10. Location of all existing and proposed structures, parking lot, driveway, etc. showing setbacks from the property lines, any watercourses or water features, top / bottom of slope, wooded areas, etc.;
11. Development shall proceed in accordance with the details of the approved Final Site Plan.
12. Condition **6** must be fulfilled within 18 monthsfrom the date of confirmation of the Commission’s decision or this conditional approval shall lapse, and a Development Permit will not be issued.

# APPENDIX 1

**8649 Appleby Line, Milton**

**CONDITIONS of APPROVAL H/C/2021-2022/017**

**Advisory Notes:**

1. A Development Permit does not relieve the landowner/permit holder from the requirements of any other required approval, licence or certificate under any statute (e.g., Ontario Building Code, Planning Act, Aggregate Resources Act, *Conservation Authorities Act, Endangered Species Act* [specify which regulation – e.g., S. 23.2 of O. Reg. 242/08], etc.). The Niagara Escarpment Commission Development Permit is required prior to the issuance of any other applicable approval, licence or certificate.
2. This Development Permit does not include approval for implementation of private services (i.e.; washrooms). Should such facilities be necessary, a separate Development Permit may be required.