September 16, 2021

# A4: Addendum Staff Report

## Development Permit Application:

### W/R/2020-2021/689

193 Weir’s Lane

Part Lot 4 Concession 1

City of Hamilton (former Town of Dundas)

## SUMMARY

### Proposal:

To re-create a lot resulting in a ±0.61 hectare (±1.5 acres) severed lot and a ± 14.03 hectares (±34.675 acres) retained lot.

### Designations:

Escarpment Natural Area, Escarpment Protection Area and Escarpment Rural Area

### Issue:

The proposed severance is being requested to re-create two lots that have merged on title. The Niagara Escarpment Plan (NEP) does not permit correcting conveyances for lots that have merged on title in Escarpment Natural Area, Escarpment Protection Area or Escarpment Rural Area.

### Recommendation:

Refusal

### Reasons:

The proposal is not a correcting conveyance as it attempts to re-create merged lots and therefore it is not permitted under 1.3.4, 1.4.4 and 1.5.4 of the Niagara Escarpment Plan (NEP).

## Received:

March 5, 2021; This matter was deferred at the Niagara Escarpment Commission hearing on July 15, 2021.

## Source:

Susan Kenyon (Trustee), Paul Roussel (applicant/agent)

## Background:

This is an addendum to the report (Appendix 1) prepared and presented to the Niagara Escarpment Commission (the “Commission”) on July 15, 2021 for the development permit application W/R/2020-2021/689 (169 and 193 Weir’s Lane), which requests a severance for the recreation of two merged lots.

The intention of this addendum is to provide the Commission with additional information as it relates to municipal planning policy and the effect of the sizing of 169 Weir’s Lane, which will contribute to whether the applicant is able to obtain a consent to sever should the Commission approve the requested severance.

The addendum does not provide a contrary opinion to the opinions found in the report of July 15, 2021. NEC staff remain of the opinion that the severance is not permitted by the Niagara Escarpment Plan.

### Planning Analysis

#### Agency consultation

Despite the fact that the lots were previously severed, the applicant will be required to go before the Committee of Adjustment (the “committee”) at the City of Hamilton (the “city”) and request a consent to sever the lots. Upon requesting this severance, city staff would consider their official plan policies and source water protection guidelines and standards (e.g. lot size) for the committee’s consideration.

NEC staff did not receive city staff comments in time for the writing of the original July 15, 2021 staff report. City staff comments were received days prior to the July 15 Commission hearing. NEC staff are now in receipt of the city staff’s comments, which are provided below for the Commission’s consideration in making their decision along with the July 15, 2021 report. However, NEC staff provided comment on the applicable municipal policy and noted, in the July 15, 2021 staff report that it was NEC staff’s opinion that the applicant would likely require an official plan amendment in order to be obtained the requested consent to sever. Additionally, the comments below, which reflect city staff’s opinion, were provided verbally in NEC staff’s presentation on July 15.

City staff comments are summarized below and they are consistent with NEC staff’s opinion:

* **Planning comment:** As noted in Appendix 1, Rural Hamilton Official Plan (RHOP) policy F.1.14.2.1 states that lot creation is prohibited in agricultural, rural, specialty crop and open space designation for the purpose of residential uses

The policy as written in the RHOP: *“The following policies shall apply to all severances and lot additions, including minor lot line adjustments and boundary adjustments in the Agricultural, Rural, Specialty Crop, and Open Space designations, and designated Rural Settlement Areas, as shown on Schedule D – Rural Land Use Designations:*

*a) Severances that create a new lot for the following purposes shall be prohibited:*

*i) Residential uses except in accordance with:*

*1) Policies F.1.14.2.1 b) iii) and F.1.14.2.8, where a dwelling may be severed as a result of a farm consolidation;*

*2) Policies F.1.14.2.1 b) iv) and F.1.14.2.4, where a dwelling within a designated Rural Settlement Area may be severed;*

*iii) Severance of a lot for a farm labour residence or an existing dwelling that was permitted in a previous official plan and zoning by-law as a farm labour residence, farm help house, or help house;*

*iv) Severance of any existing second dwelling on a lot, irrespective of the origin of the second dwelling, except in accordance with Section F.1.14.2.8, where a dwelling may be severed as a result of a farm consolidation.*”

City staff acknowledged the history of the subject site however, given that the purpose of the severance is for residential use and not within a rural settlement area, staff reiterated that policy F.1.14.21 is still applicable despite this being a request for a severance of a merged lot. City staff indicated they cannot support the severance.

This policy is consistent with the Provincial Policy Statement (PPS) and NEP policy.

* **Hamilton Water (Source Water Protection) comment:** Hamilton water staff indicated that given the make-up of the local soils and using the typical daily sewage flows for a residential use, a 1.0 hectare (“ha”) lot is the minimum sustainable lot size they could support.

The city’s current Guidelines for Hydrogeological Studies and Technical Standards for Private Services have been in use since 2014 hence the fact that there are previously approved lots less than 1.0 ha. This recommendation for a 1.0 ha lot size (or greater) is based on the principles originating from these guidelines.

Hamilton Water staff provided one additional comment that stated a scoped hydrogeological study could be prepared to support a smaller lot size. However, the process would not guarantee their support. There comments are provided verbatim below:

“*The applicant has the option to conduct a Scoped Hydrogeological Study Report, following the City’s Guidelines for Hydrogeological Studies and Technical Standards for Private Services and Ministry of Environment and Climate Change Guideline D-5-4. The Guidelines are available on the City’s website -* [*https://www.hamilton.ca/develop-property/policies-guidelines/guidelines-hydrogeological-studies-and-technical-standards*](https://www.hamilton.ca/develop-property/policies-guidelines/guidelines-hydrogeological-studies-and-technical-standards) *The applicant should be aware that a Hydrogeological Study Report does not necessarily promote a favourable outcome and may simply confirm the City’s desktop review. If the applicant wishes to conduct a Hydrogeological Study, it is recommended that an initial Terms of Reference be drafted so that both the applicant and the City would be satisfied with the contents of the report.*

*Once a satisfactory lot size has been established, we would also require the following to ensure the applicant’s water supply is sustainable and meets Rural Hamilton Official Plan policy:*

1. *A well inspection from a licensed water well contractor, demonstrating the well conforms to O.Reg 903. Any upgrades to meet conformity with O.Reg 903 shall be demonstrably implemented.*
2. *Water quality testing of the raw water supply for the following parameters – general chemistry, major ions, nutrients, metals, e. coli, total coliforms.*
3. *A revised site plan that shows:*
	1. *A demonstration that that the septic system location conforms with Part 8 of the Ontario Building Code as it pertains to maintaining minimum clearance distances from septic system components.*
	2. *A reserve area bed is required on a revised site plan to meet Rural Hamilton Official Plan requirements. A reserve area bed is simply a duplication of the proposed leaching bed area placed elsewhere on the property in case it needs to be relocated in the future*.”
* **Natural Heritage comment**: Natural heritage staff also provided comment and they had no concerns with the severance itself however they noted an Environmental Impact Statement (EIS) would likely be required for any major redevelopment (reconstruction of a home or the construction of any additions) given the limited room for expansion on the site. The EIS could restrict the development potential of the subject site or render it undevelopable due to environmental constraints.

#### Niagara Escarpment Plan

Further to the analysis provided in the July staff report (Appendix 1), NEC staff considered the application under the General Development criteria of the NEP. It is anticipated that the buyers will be redeveloping the site, which will include a new dwelling. Given that an application did not include development plans, as the focus was on the severance, this analysis is limited. However, as noted above, the sizing of 169 Weir’s Lane does not permit future development of the site per Hamilton Water’s technical guidelines and further the site’s hydrogeological and natural heritage features constrain the development potential.

The site is partially designated Escarpment Natural Area and constrained by steep slopes (the Escarpment Brow runs through the middle of 193 Weir’s Lane (the Escarpment Toe is located south of the site). It contains environmentally sensitive area (ESA) and a provincially significant wetland (PSW) and stream.

Part 2.2.2 of the NEP requires that the site shall not be prone to natural hazards (flooding or erosion) or associated with unstable soil or bedrock and given the features described above and that this site is partially regulated by the HCA may require that additional study be prepared to demonstrate that the site can be built outside any natural hazard area. Additionally, per Part 2.5, a geotechnical analysis could be required to demonstrate that development can be built safely near the site’s slopes.

NEC staff is in agreement with the city’s Natural Heritage staff in that a request for an EIS would be justified, per Part 2.7 of the NEP given the fact that a wetland is present, which is considered a key natural heritage feature in the NEP. The mitigation measures in a future report could reduce the developable area of the site (which is already an undersized lot based on city requirements). Additionally, Part 2.2.5 of the NEP requires that development within a lot with multiple NEP designations shall be restricted to the least restrictive designation, unless it can be justified the impact to the Escarpment environment would be reduced by locating it elsewhere on the site. The EIS would generally provide NEC staff will this justification, however a desktop review suggestions that the Escarpment Rural Area, the least restrictive designation, where the existing home is located is only 0.18 ha, which would further challenge an already undersized lot (as noted in the city comments).

It is NEC staff’s opinion that Part 2 of the NEP would likely not be met should a development proposal be brought forward for consideration.

## Conclusion:

NEC staff’s opinion remains the same as presented on July 15, 2021. The proposal does not meet the objectives of the NEP as a new lot is being created within prohibited areas of the NEP area. The NEP specifically provides policies to prohibit severances where properties have merged on title and therefore this is not a scenario where the criteria for a correcting conveyance is met. Further, this proposal is not supported by city staff. If the Commission were to approve the re-creation of the lots, the applicant would still require an official plan amendment, given the proposal is contrary to applicable RHOP policies, and a hydrogeological evaluation to consider the viability of a residential lot at 169 Weir’s Lane, before applying for a consent to sever. In light of these policies and site constraints it would be premature to approve the Development Permit application until the results of an EIS and hydrogeological study were provided.

**Recommendation:**

That the application be **refused** because:

1. The proposal to re-create the merged lots is not permitted under 1.3.4, 1.4.4 and 1.5.4 of the Niagara Escarpment Plan
2. The proposal is not permitted under F.1.14.21 of the Rural Hamilton Official Plan
3. The proposal would result in an undersized lot per the City of Hamilton’s Hydrogeological Studies and Technical Standards for Private Services, which generally requires a minimum lot size of 1.0 hectare
4. City of Hamilton staff do not support the proposal

## Prepared by:

Original signed by:

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Johnpaul Loiacono, Senior Planner

## Approved by

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Debbie Ramsay, MCIP, RPP, Director

Appendix 1 – July 15, 2021 Staff Report provided in separate document.

Appendix 2 – Opinion Letter from Torkin/Manes provided in separate document.

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