September 15, 2021

# C1: STAFF REPORT

## Niagara Escarpment Plan Agricultural Policies

### Information and Discussion Report

### CONTEXT:

The 2015 Coordinated Plan Review resulted in new agricultural policies for the Niagara Escarpment Plan (NEP). The Niagara Escarpment Commission (NEC) has expressed concern that the policies to not provide adequate support for the agriculture sector. Several Commissioners requested an opportunity to discuss these concerns.

This report:

* provides a synopsis of the background and agricultural policies
* highlights areas where the NEC has expressed concerns regarding the policies
* seeks direction on the path forward.

This report is does not provide a comprehensive review of the NEP policies and decisions.

## BACKGROUND:

### Previous Concerns and Activities Regarding Agricultural Policies

Members of the Niagara Escarpment Commission expressed concern that the agricultural policies of the NEP are inadequate in terms of supporting agriculture. Appendix 1 contains a summary of key activities that have taken place regarding agricultural policies. This is provided so that the Commission has a common awareness and context for discussion.

### NEP Agricultural Policies

The 2017 NEP resulted in several changes to policies related to agriculture to better align with the Provincial Policy Statement. Agriculture Related Uses and On-Farm Diversified Uses were added to the NEP. These policies are more permissive in terms of the types and scale of uses related to agriculture than previously existed in the NEP. Notwithstanding this, some municipalities and stakeholders have raised concerns that the NEP policies are too restrictive. As noted in Appendix 1, the Commission (and individual Commissioners) has also expressed concern.

### Permitted Uses (NEP Part 1) and Development Criteria (NEP Part 2)

When the NEC considers a development application, the first consideration is whether the development proposal is a “Permitted Use” under Part 1 of the NEP. If a proposed development is not a Permitted Use, it is grounds for refusal of the application and no further evaluation is undertaken.

If a use is permitted, then evaluation is undertaken under Part 2 – Development Criteria. Many of the concerns identified by the Commission relate to this section of the NEP (e.g., farm help; accessory uses).

The *Niagara Escarpment Planning and Development Act* (S 25) provides that a decision to issue a development permit by the Commission must be made in accordance with the Niagara Escarpment Plan. It flows from this that if a use is not permitted or does not meet the Development Criteria, then the Commission should not approve the application. The pathway to otherwise approve the proposed development would be through an amendment to the NEP.

### Commission Discussions and Decisions

The Commission has dealt with numerous Development Permit applications applying the NEP agricultural polices introduced in 2017. In some cases, there seems to be no issues in terms of meeting NEP policies. For example, applications involving wineries have been able to meet NEP policies and have been approved. Notwithstanding this, stakeholders (e.g., Ontario Craft Wineries Council) believe the policies are overly restrictive and inhibit compatible activities that are aligned with the NEP.

The following are a few areas of concern.

* Policies regarding farm help accommodation, including situations related to farm succession planning.
* Policies involving OFDUs, which are only permitted in Prime Agricultural Areas in the Escarpment Protection Area designation.
* Wineries continue to be viewed through a granular and restrictive lens – more so than other on-farm diversified or agriculture related uses.

### Policy Guidance Material

The 2017 NEP contains a section on Guidance Material which can be prepared to assist in implementation of the NEP policies. The information, technical criteria and approaches outlined in guidance material are meant to support but not add to or detract for the policies of the Plan. Specifically, the Guidance Material can only support implementation of existing policies. It cannot introduce new policies or deviate from the current policies of the NEP.

The NEC has directed staff prepare Policy Guidance for the following areas:

* Events
* Dwelling Units (including farm labour)
* On-Farm Diversified Uses

Guidance material for Events and Dwelling Units is underway, with an intent that draft documents return to the Commission in fall, 2021 and then proceed for consultation before final review and approval by the Commission. Policy Guidance for On-Farm Diversified Uses has been delayed.

## DISCUSSION

A key consideration for the Commission is whether development of Policy Guidance will provide the clarification and implementation approach to address concerns that have been raised. If the Commission is of the view that an evaluation of the adequacy and effectiveness of NEP policies is necessary, then preparation of Policy Guidance related to agriculture should be deferred. Instead, the Commission should:

1. Direct staff to undertake an evaluation of the NEP agricultural policies and
2. Return to the Commission with the results of the evaluation for direction regarding whether the Commission wishes to initiate an amendment to the NEP.

The Commission is reminded of its responsibilities under the *Niagara Escarpment Planning and Development Act* to make decisions in accordance with the NEP. Notwithstanding the Commission’s concerns, applications that do not meet NEP policies should not be approved.

## Prepared by:

Original signed by:

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Director

Appendix 1 – Summary Chronology of Activities Related to Agricultural Policies of the NEP

## APPENDIX 1

### Summary Chronology of Activities Related to Agricultural Policies of the NEP

* 2016: Ministry of Agriculture, Food and Rural Affairs releases “Guidelines on Permitted Uses in Ontario’s Prime Agricultural Areas”. These guidelines are intended to support interpretation of the Provincial Policy Statement agricultural policies. The guidelines clear in stating they are best practices and are not prescribed standards that must be met. Policies of the NEP prevail.
* June 2017: New NEP is released. New agricultural policies related to agriculture (e.g., On-Farm Diversified Uses, Agriculture-Related Uses).
* November 2017: Commission passes a motion directing staff to investigate how the NEP can address agriculture-related uses, including rural density transfer, farm labour housing, secondary dwelling relating to the agricultural industry, farm succession planning, agricultural labour shortages, and other issues applicable to the NEC involvement with agricultural lands.
* November 2017: Chair writes Minister informing of the Commission’s concerns and motions regarding the NEP’s agricultural policies.
* February 2018: Province releases “Implementation Procedures for the Agricultural System in Ontario’s Greater Golden Horseshoe” that includes Agricultural System mapping.
* March 2018: Minister writes Chair advising of extensive consultation and consideration of provincial policies in development and approval of new NEP and expresses concern with re-examining NEP policies so soon after a comprehensive review. Minister requests Commission allow for the updated plan to be implemented over a three-year period and report back with an assessment of the lessons learned through early implementation. The Minister also reminded the Commission of their mandate to uphold the purpose and objectives of the Plan and Act, and to make decisions in accordance with the policies of the Plan.
* April 2018:
  + NEC staff prepare a report to provide information and context related to the Commission’s motion, including background regarding Ontario’s land use planning framework, the recently completed Coordinated Provincial Land Use Planning Review, and the *Niagara Escarpment Planning and Development Act* (NEPDA). The report highlights that guidelines and policies released by the Province need to be considered within the NEP through the lens of the purpose and objectives of the NEPDA and NEP.
  + Commission rescinds motion from November 2017 after considering letter from Minister.
* February 2020: Region of Niagara has planning consultant undertake a review of NEP agricultural policies and implications to wineries. Consultant identifies several challenges with NEP policies.
* October 2020: Chair and Director meet with Ontario Craft Winery Council, who express concerns that NEP agricultural policies do not adequately support the wine sector.
* June 2021: Director and senior staff meet with Ontario Craft Winery Council to share information on development of Policy Guidance. Council requests opportunity to provide further input as Policy Guidance is being developed.
* July 2021: NEC deals with two Development Permit applications proposing On-Farm Diversified Uses (lavender agritourism operations). Staff recommendation is refusal as OFDUs are not permitted withing Escarpment Protection Areas outside of Agricultural Areas (which the properties are not). Commission defers applications to September meeting and request staff evaluate applications based on relevant Development Criteria.
* July 2021: Several Commissioners raise concern regarding agricultural policies and request opportunity to discuss. Chair recommends discussion at a Commission meeting so that all members can be engaged in this important topic.