November 17, 2021

# STAFF REPORT

## Niagara Escarpment Plan Agricultural Policies

## Amendment Scoping Discussion Paper

## SUMMARY

Members of the Niagara Escarpment Commission (NEC), as well as some agricultural stakeholders, have expressed concern that the agricultural policies of the Niagara Escarpment Plan (NEP 2017) are inadequate in terms of supporting agriculture for the long-term. The 2017 NEP has now had the benefit of four years of implementation and staff and the Commission have been monitoring and documenting the outcomes, challenges and lessons learned through early implementation.

This Report has been prepared for the purposes of providing a consolidated summary of the agricultural discussions to date (since the Coordinated Land Use Planning Review), and to provide a summary of the successes and challenges to implementation (of the agricultural policies) that have been observed since the 2017 NEP has been in operation, in order to provide the foundation for further discussion by the Commission on the scoping of a potential NEP amendment. The purpose of an amendment would be to further refine and strengthen the framework for agriculture in the NEP Area, while ensuring that the Purpose and Objectives of the Plan are upheld.

Staff notes that for some of the policy areas discussed herein, there has not been adequate time to allow for a comprehensive review of the policy to inform a final recommendation by staff on whether a plan amendment is necessary or appropriate. In these cases, staff has identified where additional analysis, as well as stakeholder and ministry discussions, would be beneficial and recommends returning to the Commission with supplemental analysis and recommendations prior to the preparation of a proposed amendment for the confirmed policy amendment topics.

## BACKGROUND:

The 2015 Coordinated Land Use Planning Review resulted in the 2017 NEP and included several changes to agricultural policies to better align with the Provincial Policy Statement, as well as the other provincial land use plans. Agriculture Related Uses (ARUs) and On-Farm Diversified Uses (OFDUs) were added to the NEP as Permitted Uses, and new Development Criteria were introduced to guide these uses. The policies respecting dwelling units accessory to agricultural uses were also enhanced and modernized (see Table 2 summary attached). In NEC staff’s view, the 2017 NEP policies are generally more permissive in terms of the types and scale of uses related to agriculture than previously existed in the NEP.

Notwithstanding these enhancements, some municipalities, and stakeholders have raised concerns that the NEP policies remain too restrictive. As noted in Appendix 1, the Commission has also expressed concern over the course of the last four years in implementing the 2017 NEP agriculture policies.

Most recently, the Commission endorsed the following staff recommendations at the September 15, 2021 Commission meeting:

That the Niagara Escarpment Commission:

1. Request staff return to the November (2021) Policy Meeting with a review and analysis of the agricultural policies of the Niagara Escarpment Plan for the Commission’s review and consideration.
2. Following a review and discussion of agricultural policies, that the Chair write to the Minister to report on the Commission’s experience and concerns regarding agricultural policies of the Niagara Escarpment Plan.
3. Request staff defer preparation of policy guidance related to agricultural policies until the Commission has consider the review and analysis as noted in recommendation #1.

**Policy Guidance Material**

Following the release of the 2017 NEP, NEC staff identified policy gaps where greater detail would be beneficial to ensure consistent interpretation of NEP policies and to ensure the Purpose and Objectives of the Niagara Escarpment Planning and Development Act (NEPDA) and the Plan are upheld. Policy guidelines have been identified as a useful tool for the NEC, applicants, and stakeholders, by providing additional clarity around policy objectives and ensuring consistent policy implementation. Policy guidelines are used to support the evaluation of all applications against a common set of considerations. They are intended to clarify, inform, and aid in the interpretation of NEP policies, but would not modify the current NEP policies (as this would require an NEP amendment).

Guidance material related to the NEP agricultural policies previously endorsed by the Commission include: **On-Farm Diversified Uses**, **Special Events**, and **Temporary Dwelling Units Accessory to Agricultural Uses[[1]](#footnote-1)**. As noted above, the Commission recently determined that the development of these policies guidelines should be paused, to allow the Commission to further consider any policy areas that may be more appropriately addressed through a NEP amendment.

**NEP Agricultural Policy Review**

One of the seven Objectives of the NEPDA and the NEP speaks to “*maintaining and enhancing the open landscape character of the Niagara Escarpment in so far as possible, by such means as compatible farming or forestry, and by preserving the natural scenery.”*  This objective is foundational to achieving the Purpose of the Plan and the Act; *to provide for the maintenance of the Escarpment and land in its vicinity substantially as a continuous natural environment, and to ensure only such development occurs as is compatible with that natural environment.* Compatible farming is therefore considered as a mechanism to achieve an Objective of the NEP, but it is not a stand-alone objective, nor is it central to the “environment-first” Purpose of the NEP. “Compatible” farming and forestry may limit the types of farming and forestry operations in order to be consistent with the purpose and objectives of the NEP.

In other words, farming and other forms of compatible development *may* take place within the NEP area if they can demonstrate compatibility and support the Purpose and Objectives of the NEP. This context may assist in understanding the lens that is applied to proposed development in the NEP Area, versus those areas outside the NEP Area, where limitations may not be necessary or appropriate.

Table 1 below summarizes the NEC Development Permit History for proposed agriculture/agricultural related development proposals since the 2017 NEP came into effect. A total of one hundred and sixty (160) Development Permit Applications related to Agricultural Uses have been submitted to the NEC for consideration since June 2017. Of the ninety-eight that completed the process (forty-four applications are still under consideration, and eighteen applications were withdrawn/closed), ninety-seven were approved (both Director’s Approvals and Commission supported). Only one DPA was refused by the Commission (on the basis that the proposal was not truly an OFDU but rather an institutional operation).

**TABLE 1: Development Permit Application History related to Agriculture[[2]](#footnote-2)**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | **Director’s Approval** | **Commission Approval** | **Commission Refusal** | **In process/No decision to date[[3]](#footnote-3)** | **Withdrawn/File Closed** |
| **General Agricultural Uses/Accessory uses to Agriculture** | 69 | 8 | 0 | 31 | 15 |
| **On-farm Diversified Uses** | 5 | 4 | 1[[4]](#footnote-4) | 4 | 2 |
| **Agriculture Related Uses** | 3 | 1 | 0 | 6 | 1 |
| **Temporary Dwelling Unit Accessory to Agriculture** | 4 | 3 | 0 | 3 | 0 |
| **TOTAL** | **81** | **16** | **1** | **44** | **18** |

It is notable that of the sixteen DPAs that were before the Commission for decisions, only four were recommendations of refusal by NEC staff. The rest were recommendations of approval by staff and were before the Commission for matters related to policy interpretation, or due to known objections. The four DPAs where staff recommended refusal, were related to the issue of OFDU proposed in non-prime agricultural areas in the Escarpment Protection Area (two DPAs), a temporary dwelling unit related to agricultural uses (where no agricultural use had been established), and proposal for an agricultural use within an Earth Science ANSI. These files are discussed in more detail in the applicable sections below.

On-Farm Diversified Uses and Agriculture Related Uses

NEP Part 1.4.3.2 Escarpment Protection Area identifies on-farm diversified uses and agriculture related uses as Permitted Uses in the Escarpment Protection Area, *in prime agricultural areas* (emphasis added). Prime agricultural area is defined in the NEP as: *an area where prime agricultural lands predominate. This includes areas of prime agricultural lands and associated Canada Land Inventory Class 4 through 7 lands, and additional areas where there is a local concentration of farms that exhibit characteristics of ongoing agriculture. Prime agricultural areas may be defined by OMAFRA using guidelines developed by the Province as amended from time to time. A prime agricultural area may also be defined through an alternative agricultural evaluation system approved by the Province.*

When the NEC considers a development permit application (DPA), the first consideration is whether the proposed development is a Permitted Use under Part 1 of the NEP. If a proposed development is not identified as a Permitted Use, it is grounds for refusal of the application on that basis, and typically no further evaluation (of Part 2 Development Criteria) is undertaken. Any proposed OFDU or ARU must be consistent with the Purpose and Objectives of the NEP and meet the Development Criteria in Part 2 before it can be considered a permitted use in the NEP Area.

There have been twenty-seven DPAs for OFDUs and ARUs since the polices of the 2017 NEP have been in effect (including six winery related DPAs). Of these DPAs, two applications were recommended for refusal by NEC staff, on the basis that the subject lands were not identified as prime agricultural areas[[5]](#footnote-5) as per NEP policy 1.4.3.2. Prime agricultural areas are not to be identified on an ad hoc basis, and must be done in a manner consistent with OMAFRA’s [Implementation Procedures for the Agricultural System in Ontario’s Greater Golden Horseshoe](http://www.omafra.gov.on.ca/english/landuse/imp2019.pdf)[[6]](#footnote-6). The exercise of refining agricultural land base mapping is typically undertaken by a municipality through the municipal comprehensive review or official plan review process and approved by the Ministry of Municipal Affairs and Housing (MAH). A Land Evaluation and Area Review (LEAR) or an Agricultural Land Evaluation System (ALES) study may be conducted to help identify prime agricultural areas or the [agricultural land base](http://www.omafra.gov.on.ca/english/landuse/agri-landbase.htm) more broadly, for designation in official plans.

Not all municipalities in the NEP Area include prime agricultural area mapping in their Official Plans (e.g., Grey County), which also creates challenges to their identification and to implementation of Part 1.4.3.2, which requires the identification of prime agricultural areas. The NEC does not have the ability to identify or designate lands as prime agricultural area on a site-specific, individual application basis.

Limiting OFDUs and ARUs to only prime agricultural areas in the Escarpment Protection Area designation was not a recommendation advanced by NEC staff or the Commission during the time of the 2015 Coordinated Land Use Planning Review. The underlying policy intent for these uses, as made clear through provincial policy, is to provide the farming community with the services and income-generating opportunities to ensure the on-going viability of agricultural uses, regardless of whether the operation is situated in an identified prime agricultural area.

NEC staff have engaged with Ministry of Northern Development, Mines, Natural Resources and Forestry (MNDMNRF) policy staff to better understand the intent of this policy that emerged through the Coordinated Review, to aid with implementation. MNDMNRF policy staff provided that for the Escarpment Protection Area designation, the focus of OFDUs and ARUs was to direct them to prime agricultural areas only and not to be considered in other more “rural” landscape areas. The underlying intention with this approach was to prevent a proliferation of the more intensive, large-scale ARUs and OFDUs (e.g., large-scale grain elevators, feed mills) on the Escarpment, as such uses could result in a conflict with the Purpose of the NEP respecting the maintenance of open landscape character and the Objectives respecting scenic quality.

Although there have been relatively few applications for OFDUs and ARUs since the 2017 NEP came into force (average of approximately 7 per year), a small number of these applications to date have posed challenges for staff and the Commission in assessing how proposed OFDUs comply with other NEP policies and Development Criteria, and determining land use compatibility with the surrounding land uses, including other agricultural operations.

While the OMAFRA *Guidelines on Permitted Uses in Prime Agricultural Areas* are available to support interpretation of related policies in the PPS, it is important to remember that these Guidelines must still be viewed through the lens of the NEP, and recognizing that provincial plan policies (including the NEP) take precedence over the PPS to the extent of any conflict. NEC staff have consulted with OMAFRA on several occasions to get support for policy and guideline interpretation and implementation. NEC staff will be continuing to consult with our OMAFRA colleagues in the development of either policy guidelines and/or a potential Plan amendment.

The broad scope in the types of OFDUs that may be proposed (i.e., they do not have to be necessarily related to agriculture), is challenging from an NEP perspective. Land use conflicts can arise related to noise and traffic. They may require extensive site alteration and additional rural servicing that have the potential to create negative impacts on the Escarpment environment, which can compromise the objective related to maintaining and enhancing the open landscape character.

NEC staff have also observed that there appears to be a lack of guidance in the 2017 NEP on what types of properties qualify for OFDUs, and what level of commercial type activities the NEP Area can support, from a cumulative impact perspective, before the Purpose and Objectives of the NEP are compromised. This was the basis for staff recommending the development of policy guidance material for OFDUs. Having additional NEP-specific guidance for these uses would assist staff and the Commission in interpreting the OMAFRA Guidelines, specifically in the context of achieving the Purpose and Objectives of the NEP. Achieving consistency in interpretation will allow for transparency and fairness in the assessment of DPAs.

*Known Stakeholder Positions*

NEC senior staff met with members of the Ontario Craft Wineries (OCW) (formerly the Wine Council of Ontario), in August 2021 to discuss opportunities and issues as they relate to the NEP agricultural policies, namely respecting wineries, OFDUs and ARUs.

While the OCW has expressed some degree of satisfaction that the Coordinated Land Use Planning Review resulted in a more objectives-based approach to wineries (e.g., inclusion of OFDUs and value-added uses to more broadly reflect the reality of this agricultural sector), the OCW maintains concern that wineries in the NEP Area in particular, continue to be viewed through a restrictive lens, rather than as part of the Escarpment visitor experience that promotes and supports the UNESCO World Biosphere Reserve and NEP objectives.

While the OCW is pleased with the Commission’s endorsement to proceed with the development of policy guidance materials to support some of the identified interpretation and implementation challenges associated with the agricultural policies, it is unclear at this time if guidelines will be able to address the full scope of issues and concerns.

NEC staff is also aware of similar concerns by the Ontario Federation of Agriculture (OFA). In a letter to the (former) Minister of Natural Resources and Forestry in March 2019, the OFA indicated support for Niagara Region’s proposal to initiate a NEP amendment to remove all winery-specific policies. The OFA has noted that while the other provincial planning documents appear to recognize wineries as an equal use to other ARUs and/or OFDUs, the NEP continues to place wineries under a different policy framework.

The “different policy framework” with respect to wineries, being referred to by the agricultural stakeholders are the three remaining policies in Part 2.8 (Agriculture) “Wineries” policies:

**Wineries:**

8. Wineries may be permitted as agriculture-related uses or on-farm diversified uses.

9. A single, accessory facility to sell wine with limited food service may be permitted at a winery, provided the following criteria are met:

a) the accessory facility is located within the winery building and/ or decks/patios attached to the winery building(s) or utilizes an existing building or structure; and

b) no new or expansions to parking facilities or vehicle access infrastructure will be permitted unless justified to the satisfaction of the implementing authority.

10. Uses that may be permitted as accessory to a winery include:

a) a retail sales and tasting area within the winery building; and

b) the sale of gift and promotional products within the retail sales and tasting area related to the wine and grape industry, or other local agricultural products.

The Coordinated Land Use Planning Review resulted in significant streamlining of the previous winery policies. Given that wineries may be considered as an OFDU or an ARU, the new policies respecting these uses replaced previous winery-specific policies (see Table 2 attached). In staff’s view, the limited winery-specific policies that remain, two of these policies are simply providing additional clarity to what is contained in the NEP definitions for OFDU s and ARU s (Part 2.8.8), and/or are providing greater clarify on uses that may be permitted as accessory to a winery (Part 2.8.10).

It is notable that of the six DPAs for wineries (categorized as OFDUs or ARUs) or accessory uses to a winery (on record since the 2017 NEP), there have been no Commission refusals[[7]](#footnote-7). Notwithstanding this, staff is recommending that a more comprehensive analysis of the NEP winery-specific policies be carried out, including additional stakeholder discussions, in advance of presenting a final position on whether an amendment to the current NEP policies respecting these uses is required. Staff recommends that this be done in concert with any ongoing policy guideline development (i.e., events).

Dwelling Units Accessory to Agricultural Uses

The NEP policies respecting dwelling units accessory to agricultural uses were established to recognize the unique demands of certain types of agricultural operations and that a second (temporary) dwelling for farm help (both seasonal and full-time help), is often necessary for the efficient operation of the farm and its viability.

The 1985 NEP permitted permanent second dwellings for farm help on a farm lot. This policy was changed during the first (1990) NEP review given the observed impact on the Purpose and Objectives of the NEP, namely in the form of pressure for future severance of these dwellings. The NEP requirement for farm labour accommodations to be temporary assists in preventing the cumulative intensification of development through additional permanent dwellings (and potential for seeking future severance), and therefore better reflects the Purpose and Objectives of the NEP and the NEPDA, which require that the open landscape character of the Niagara Escarpment be maintained insofar as possible, by such means as compatible farming or forestry and by preserving the natural scenery. The lot fabric in the NEP Area (e.g., large rural lots that have not been severed multiple times) is critical to maintaining the Escarpment’s open landscape character. In addition, the requirement for temporary structures better adapts to the changing labour needs of the farm operation over time (i.e., when/if the farm help is no longer needed).

SUMMARY RECOMMENDATION

Staff recommends:

1. Part 1.4.3.2 policy respecting agriculture-related uses and on-farm diversified uses being permitted only *in prime agricultural areas* be addressed through a Plan amendment.
2. The development of policy guidance material for On-farm Diversified Uses be postponed until the full scope of the Plan amendment be considered and proposed.
3. Further analysis of the NEP winery- specific policies be undertaken and return to the Commission with an Addendum Report providing recommendation on whether these policies should be addressed in the Plan amendment.

The 2017 NEP policies were improved by removing the prescriptive requirement for a three-year limit on approvals for these uses, after which time an applicant would be required to re-apply for a new Permit to continue the use. Alternatively, the 2017 NEP policy provides greater flexibility for NEC staff to prescribe the appropriate condition respecting when the dwelling unit is required to be removed (‘when the dwelling unit is no longer needed”). The policies were also modernized through the removal of the previous requirement for the farmer to live in the principal farm residence with farming as his/her principal occupation. The historical context under which the previous policies were developed has evolved (i.e., the traditional scenario where the landowner is the full-time farmer, living on the farm is no longer as prevalent). The 2017 polices now recognize that the farm owner may not be the primary farmer living full-time on the farm.

Staff notes that the 2017 NEP did introduce secondary dwelling units as a Permitted Use in the Escarpment Rural Area. Part 2 Development Criteria limit these uses to being situated within a single dwelling, or in an addition to a single dwelling (no detached units). Although not the intended purpose of the introduction of secondary dwelling units as a Permitted Use in the Escarpment Rural Area, staff notes that it would be possible for a secondary dwelling unit to be used to accommodate farm labor on a more permanent basis than the policies for dwelling units accessory to agriculture currently permit. However, staff recognizes that it is unlikely that secondary dwelling units, in the manner permitted (no detached units), are desirable options for farm labour.

As identified in Table 1 above, there have been ten DPAs for dwelling units accessory to agricultural uses since June 2017. Three of these were “re-applications” to renew a previous Permit to allow continued use of the temporary dwelling after a three-year time frame. Of the ten applications, four were Director’s approvals and three were Commission approvals. Of the applications that have completed the DPA process (since June 2017), there has been one DPA that NEC staff has recommended refusal for, on the basis that the application was premature as the existing agricultural use was established as the primary use of the property, and a secondary dwelling unit for farm labour may only be permitted where accessory to agriculture, and, additionally, the dwelling unit was proposed within an existing detached garage. The Commission supported the application with the appropriate Conditions of Approval prepared by staff (including a three-year time limit on the use).

Progress has been made in the development of guidance material for Dwelling Units Accessory to Agriculture. A Commission Working Group was formed as part of the process. The Working Group members were selected from a volunteer list of member candidates and appointed by the Chair. The role of the Working Group includes the review of information presented by staff and providing input and advising NEC staff during the development of the guidance material in relation to their knowledge of or interest in the topic area. In considering the policies for dwelling units accessory to agricultural uses, the Working Group identified a number of areas that might be addressed through guidelines as well as those related to process efficiencies, that would improve the implementation of the existing NEP policies respecting these uses.

Commission Working Group discussion summary points:

* The need to re-apply for a DPA may be onerous. Should consider longer permit expiry dates coupled with a more efficient modified and streamlined DPA process. A self-registration process, or “short-form” application would reduce barriers and allow for a more proactive approach.
* There is no active compliance auditing of these uses, the compliance system is generally a complaint-based system. Suggest system of auditing.
* Farm succession planning (next generation), is not incorporated into the policy. The next generation may require a separate dwelling to live on the farm to assist while maintaining other primary employment. Guidelines could address farm succession planning as a justification of need.
* Respecting the terms “mobile and portable” (temporary) requirement – the terminology can be problematic. The current policy wording does not encourage farm help if there is a connotation of substandard housing style accommodations.

Guidelines could address this to be more encouraging of these uses (identify acceptable housing types i.e., not just a trailer), while still ensuring temporary nature.

* Guidelines could address when agreements on title will be required, for transparency purposes.
* Greater clarity is required with respect to the scenarios when the temporary dwelling may be transitioned/converted to alternate uses after it is no longer required as a farm help dwelling. This would create greater clarity upfront about removal vs. conversion.
* Respecting the requirement for siting the accommodations in the farm building cluster – there are scenarios where the unit may be more desirable outside the farm building cluster, e.g., land use compatibility issues (hauling manure on existing access), the type of operation and need for heavy farm equipment could create safety issues.

A review and analysis of the above noted NEC DPA history, a jurisdictional scan, review of known stakeholder, special interest groups positions/interests, and the input of the Commission Working Group, has revealed that any challenges with the 2017 policies respecting these uses are those related to policy implementation, rather than any identified policy deficiencies or conflicts. Additionally, staff notes that the current NEP policies respecting these uses are consistent with the PPS and the OMAFRA Guidelines. Staff adds that one additional area identified for further consideration is with respect to the impacts of COVID-19. The pandemic has resulted in a challenging situation for many farmers and other agricultural related businesses and have also had significant impacts on the seasonal workers that these operations rely upon. It will be necessary to ensure that the NEP policies and guidance material address any additional provincial guidelines/requirements that have resulted from the pandemic.

It is staff’s position that overall, these matters of implementation can continue to be appropriately addressed through the development of policy guidelines and other administrative process efficiencies, and that the evidence-base does not indicate the need for a Plan amendment at this time.

SUMMARY RECOMMENDATION

Staff recommends that dwelling units accessory to agriculture should not be in scope for a proposed Plan amendment for the reasons identified herein, and that the Commission should direct staff to proceed with the development of Policy Guidelines to address matters of implementation.

*Agriculture System and Natural Heritage Systems and Features*

The 2017 NEP places greater emphasis on the “system-based” planning approach and speaks to the “Landscape Approach” – focusing on an integrated system with series of connected and protected areas and includes both natural and agricultural lands. Agricultural lands are recognized as a valuable components of natural heritage systems, particularly in more fragmented landscapes. Farmland may function as a linkage between natural features, and provide additional benefits including habitat, pollination services, carbon sequestration, to name a few.

The 2017 NEP also introduced the “Agricultural System” approach to the protection and viability of the agricultural land base. The NEP provides that prime agricultural areas in the NEP Area should be identified in accordance with the broader Agricultural System (within the Greater Golden Horseshoe, GGH). The Agricultural System consists of the **agricultural land base**, which includes prime agricultural areas and other lands that support agriculture, and the **agri-food network**, which includes the infrastructure, services, markets, distributors, and primary processing facilities that contribute to the viability of agricultural operations. Linkages to the Agricultural System outside of the NEP Area should also be considered (NEP, Introduction Landscape Approach).

While the 2017 NEP policies are intended to support implementation of the Agricultural System, the Agricultural System and the broader Agricultural Land Base are discussed primarily in the Introduction, Landscape Approach section of the Plan, and the policies of the Plan focus on prime agricultural areas and specialty crop areas. The only additional specific policy reference to the Agricultural Land Base is found in Part 2.12.6 related to infrastructure. The NEP Part 2 also supports implementation of the Agricultural System through the addition of ARUs and OFDUs in most NEP land use designations.

The Agricultural System for the GGH does not extend across the entire Plan Area (Grey and Bruce Counties fall outside the GGH), which creates some challenges to consistent implementation of policies. Outside the GGH, the PPS (2020) Part 2.3.2 encourages planning authorities to take an agricultural system approach to *“maintain and enhance the geographic continuity of the agricultural land base and the functional and economic connections to the agri-food network*. There could be some consideration for the NEC to consider extending the GGH approach to the entire NEP Area. Staff recommend that more analysis of this concept is required, including where definitions would be required to be modified (e.g. Agricultural System currently refers to the system mapped and issued by the province only inside the GGH).

Part 2 of the NEP also contains provisions for Agricultural Impact Assessments (AIAs) when proposed development is anticipated to have an impact on the functioning of the Agricultural System (e.g., NEP requires AIAs for proposed mineral resource extraction and infrastructure development).

Again, the degree to which the Agricultural System concept are included in the NEP in order to align with other provincial plans and the PPS, must be considered in the context of the unique Purpose and Objectives of the NEP, and is the reason that lands within the NEP Area are held to a higher land use planning standard than most other rural lands in the province.

SUMMARY RECOMMENDATION

Staff recommends that further analysis be undertaken with respect to how the implementation of the Agricultural System can be supported within the NEP Area, in consultation with OMAFRA.

*Natural Heritage Features and Systems*

When developing the agricultural land base map, OMAFRA identified large, continuous areas (larger than 250 ha) of provincially significant wetlands and provincially significant Life Science Areas of Natural and Scientific Interest (ANSIs), and the Escarpment Natural Area designation, and these areas were removed from the prime agricultural area because even though (existing) agriculture may continue in these areas, they do not qualify as prime agricultural areas as a result of their inherit natural heritage value.

ANSIs are areas of land and/or water containing natural landscapes or features that have been identified as having life science (LS) and/or earth science (ES), values related to natural heritage protection, scientific study or education. ANSIs are identified as provincially significant by the MNDMNRF, using evaluation procedures established by the Province (and amended from time to time). ANSIs vary in their type and level of significance. Earth Science ANSIs are geological in nature and consist of some of the most significant representative examples of the bedrock, fossil and landforms in Ontario and include examples of ongoing geological processes.

The NEP Part 2.7 identifies Key Natural Heritage Features (KNHFs), which include both Life Science and Earth Science ANSIs. Development is prohibited within an identified KNHFs, with limited exceptions provided for those development types listed in Part 2.7.1, and subject to meeting applicable Development Criteria. While accessory uses/facilities to single dwellings are identified as an exception to the prohibition of development within the KNHF, agriculture/agricultural uses are not included in the list of exceptions to the prohibition. It is notable that neither the Greenbelt Plan or the Oak Ridges Moraine Conservation Plan (ORMCP) include Earth Science ANSIs as a KNHF (although the ORMCP does include additional policies to protect these features).

Notwithstanding the issue identified with Earth Science ANSIs and agriculture, Staff notes that the general policy approach to prohibiting new agricultural development in KNHFs is consistent with both the Greenbelt Plan and the PPS, and is in keeping with the “environment-first” principle of the NEP. New agriculture is also not a Permitted Use in the most sensitive Escarpment Natural Area designation. Farming and other forms of compatible development *may* take place within the NEP Area, only if the use has been demonstrated to support the Purpose and Objectives of the NEP.

Earth Science ANSIs are generally understood to be less sensitive to general forms of development and site alteration than Life Science ANSIs. Depending upon the values for which the ANSI was designated and the sensitivity of the ANSI feature, in principle, agriculture and accessory uses to agriculture *may* be an acceptable form of development not to conflict with the maintenance of the landform, provided best management practices are employed. It is recognized that not unlike when development is proposed within other natural heritage features (e.g., significant woodland), there may be instances where technical studies (e.g., hydrology, karst), would be required to demonstrate compatibility/no negative impacts to feature and functions.

While there are restrictions on the development of agriculture and agricultural related uses within KNHFs, staff notes that Ontario Regulation 828/90 provides that general agricultural development may be exempt from requiring a Development Permit (if identified as a Permitted Use in Part 1 of the NEP), provided certain criteria are met. Additionally, agriculture and development accessory to agriculture is permitted on lands adjacent to KNHFs (subject to demonstrating no negative impacts to the feature and its functions), and exemptions are provided from the standard requirement for vegetation protection zones to be maintained in a condition of self-sustaining vegetation.

The Commission was recently presented with a DPA that staff recommended refusal, on the basis that the agricultural development (a barn) was proposed within an identified Provincially Significant Earth Science ANSI (Fonthill Kame-Delta ANSI). Designated Provincial ANSIs have a “checklist” which documents the values for which the ANSI was identified, as well as information on activities that could impact the feature. In this specific example, the checklist identified that much of the ANSI feature was in agricultural production, and that provided certain mitigation measures are taken (e.g., avoid altering contours), agriculture was identified as an activity that was unlikely to cause negative impact.

Regardless of this understanding, or that the MNDMNRF did not appear to have any concerns, provided that care was taken to ensure that these features were not impacted by the proposed works, the NEP policy prohibiting the development resulted in a staff recommendation of refusal. The Commission did not support the staff recommendation and approved the application on the basis that the agriculture was an existing use and barn had previously been approved on the subject property (prior to the 2017 NEP policies). Staff is aware of one other DPA that proposed to establish a building for agricultural / on-farm diversified uses on a property with an Earth Science ANSI designation. In that instance, the MNRF reviewed and made a minor modification to the boundary of the ANSI, based upon new information that was provided respecting a former barn on the site. ANSIs are considered “open files” and there is a process of considering boundary changes (typically based on science). Notwithstanding this boundary modification, the DPA described did not proceed based on other NEP policy conflicts. Staff would not advise that it would be appropriate, in the majority of cases, to seek a boundary change in order to accommodate proposed development within an ANSI.

NEC staff is aware of some of the challenges faced by farmers in reconciling natural heritage protection with the long-term viability of agricultural operations. For example, woodlots or hedgerows which are functioning components of farms may be classified and mapped as a KNHF (Significant Woodland), because it may be contiguous with a larger woodland and meet size and/or connectivity criteria. Similarly, drainage ditches may from time to time, be classified as wetlands. This in turn may prohibit a farmer’s ability to manage their land and expand their operations due to policies respecting the need for buffers/setbacks and/or the requirement for natural heritage evaluations.

At the same meeting at which the Commission was presented the DPA involving the Earth Science ANSI conflict, NEC staff presented a separate application recommending refusal of an agricultural development proposal, on the basis that the development was proposed within a Significant Woodland, a portion of which was characterized as plantation (the Commission deferred the application to a subsequent meeting in this case, requesting additional information). Again, agricultural uses and accessory uses to agriculture are not identified as exceptions to the prohibition of development in KNHFs, (which include Significant Woodlands). Even if it could be demonstrated that the development would not result in negative impacts to the woodland feature or its functions, the Plan identifies it should not be permitted. The identification of Significant Woodlands is typically undertaken by the municipality, using criteria developed by the Province, and reflected in OP policy. The NEC, as the planning authority, in certain situations, does have the ability to apply the provincial criteria in coming to a determination of a woodland’s status.

Typically, municipal Official Plans adopt the policies (using the identified provincial criteria), to identify and (in some cases) map significant woodlands in their respective natural heritage systems. However there is not often guidance on how to address woodlands that meet the criteria (e.g. size), but on-the-ground evaluation reveals that the woodland is determined to be of a lower quality or degraded in some manner (e.g., composed of non-native species, and/or have been impacted by previous disturbance). Staff notes that even woodlands comprised of invasive species can still provide valuable ecological function (i.e., connectivity/linkage function), and that some disturbance is temporary in nature, and/or can be restored. However, there may also be some limited cases where these specific considerations should be considered in assessing associated development proposals. Some municipalities are looking to address these implementation challenges through additional technical criteria, or through OP review updates to definitions and policies.[[8]](#footnote-8)

While Staff cautions that site-specific, individual development proposals should not be used as the basis to drive Plan-wide policy review and/or change, in the site-specific examples highlighted, the applications described have brought attention to the possibility of a policy conflict / unintended policy implication that has broader Plan-wide implications and could benefit from further review and possible remedy through an amendment, where appropriate.

SUMMARY RECOMMENDATION:

Staff Recommends:

1. That the current NEP prohibition of Agriculture/Agricultural uses within identified Earth Science Areas of Natural and Scientific Interest be addressed through a Plan amendment.
2. That staff undertake additional analysis of the policies respecting the agricultural uses within Key Natural Heritage Features and ensure that policy is consistent with the provincial direction, Greenbelt Plan and other provincial guidance material, as appropriate, and in keeping with the Purpose and Objectives of the NEP.

**Provincial Guidelines**

To assist with the implementation of its policies and plans, the Province has released a number of guidelines and technical supporting documents outlining best practises to be employed in managing agricultural resources. The following guidelines are relevant to the review of NEP agricultural policies and staff recommend that these documents be further considered in scoping and drafting a proposed NEP amendment as well as Guidance material:

* Guidelines of Permitted Uses in Ontario’s Prime Agricultural Areas, 2016, Ontario Ministry of Agriculture Food and Rural Affairs (OMAFRA), Publication 851.
* Minimum Distance Separation (MDS) Document Formulae and Guidelines for Livestock Facility and Anaerobic Digester Odour Setback, 2017, OMAFRA, Publication 853
* Implementation Procedures for the Agricultural System in Ontario’s Greater Golden Horseshoe, Feb 2018”, OMAFRA, Publication 856
* Agricultural System Mapping Method, January 2018, OMAFRA, Technical Document
* Template for Agricultural Land Base Refinements in the Greater Golden Horseshoe, OMAFRA 2018.
* (Draft) Agricultural Impact Assessment (AIA) Guidelines, March 2018, OMAFRA
* Greenbelt or Oak Ridges Moraine Technical Papers (OMNR, 2012).

**Research by Others**

University of Guelph School of Environmental Design and Rural Development has recently undertaken research*: Assessing the effectiveness and identifying best practices for the OMAFRA Guidelines on Permitted Uses in Prime Agricultural Areas, as a tool to achieve farmland protection, farm diversification and provide economic benefit.*[[9]](#footnote-9) The research, led by Professor Dr. Wayne Caldwell and includes contributing support from OMAFRA, was recently presented to the NEC Director, and at the Ontario Provincial Planner’s Institute (OPPI) virtual conference held in October.

Research objectives included an evaluation of the effectiveness of policy that allows for ARUs and OFDUs within the Province, identifying existing policies and strategies used to encourage agriculture-related policies, and an evaluation of the specific policy effects on farmers. Study methodologies included literature review, survey to municipal planning departments and farmers, interviews with provincial and municipal planners and farmers, a jurisdictional scan of municipal policies and strategies, and focus groups with provincial/municipal planners and farmers. All the NEP Area Regions and Counties were included in the scope of the research.

While the results of the research have yet to be formally released, key research findings presented to date include:

* the OMAFRA Guidelines are a valuable and useful took but may be currently underutilized by municipal counterparts.
* updates to the OMAFRA Guidelines are required, including better differentiating between ARUs and OFDUs, and more guidance on event venues and cumulative uses.
* Niagara Escarpment Plan Policy Part 1.4.3.2 should be amended to omit the requirement *“in prime agricultural areas.”*
* Additional research related to on-farm diversification policy, specifically on the impacts of OFDUs to surrounding agricultural operations as well as cumulative effects resulting from OFDUs in the agricultural area.

Recommendations targeted to the agricultural community include that farmers should be encouraged to prepare detailed business plans prior to the creation of OFDUs and evaluate the potential impacts of OFDUs on agricultural operations and identify strategies to mitigate these impacts.

NEC staff is of the opinion that the results of this research would be valuable in consideration of the scoping of potential amendments to the NEP respecting OFDUs and ARUs, as well as in the preparation of guidance material (for those topic areas that are identified to continue through that stream). Of particular interest and relevance is the recommendation identifying the need for updates to the OMAFRA Guidelines, and additional research on land use compatibility matters, including cumulative effects, which is a key consideration in the NEP, for ensuring that the Purpose and Objectives of the NEP are achieved over the long-term, and at a landscape level.

Staff recommends that it would be beneficial for the Commission to receive a presentation on the research.

## FINAL STAFF RECOMMENDATIONS:

**That the Commission direct Staff:**

1. To proceed with initiating a Plan amendment on the following:

* Part 1.4.3.2 Escarpment Protection Area OFDUs and ARUS *in prime agricultural areas.*
* Agricultural Uses within Earth Science Areas of Natural and Scientific Interest.

1. To undertake further analysis of the following agricultural topic areas, for potential consideration in the proposed Plan amendment:

* Part 2.8 Winery Policies
* Agricultural Uses in (other) Key Natural Heritage Features
* Supporting the Agricultural System in the NEP Area

1. To continue with the development of policy guidance material for the topic of Dwelling Units Accessory to Agricultural Uses, and to defer policy guideline development for On-farm Diversified Uses, until the full scope of a Plan amendment on the above-noted topics has been recommended.
2. That the Chair write to the Minister of Northern Development Mines, Natural Resources and Forestry to provide an update on the Commission’s discussions on these matters and to inform of the Commission’s perspective in scoping an NEP amendment respecting agricultural policies.

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| |  | | --- | | Prepared by: ORIGINAL SIGNED BY:  **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**  Lisa Grbinicek, RPP, MCIP Senior Strategic Advisor | | Approved by: ORIGINAL SIGNED BY:  **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**  Debbie Ramsay, RPP, MCIP  Director |

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## APPENDIX 1

### Summary Chronology of Activities and Reports Related to NEP Agricultural Policies 2016 - present

* 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 and updated 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 related 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: NEC 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 presented 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.
* September 2021:
  + Staff Information and Discussion Report on NEP Agricultural Policies presented to Commission

**TABLE 2**

**Comparison of Agriculture-related Policies: 2005 and 2017 Niagara Escarpment Plans**

|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  | **Agricultural**  **Uses**[[10]](#footnote-10) | **Small scale commercial uses accessory to agriculture**[[11]](#footnote-11) | **Small scale commercial and industrial dev. servicing agriculture**[[12]](#footnote-12) | **Wineries and cideries**[[13]](#footnote-13) | **Winery incidental facilities** | **Winery Events** | **On-farm diversified uses** | **Agriculture-related Uses** | **Dwelling Units Accessory to Agriculture** |
| **2005 NEP** | Permitted  No size restrictions | Limited to 465 m2 | Limited to  465 m2 | Limited to a total of 2,323 m2 (above grade)  Minimum 4 ha parcel size | Single facility to sell wine with limited food service (light meals)  Limited to 50 people  Limited to 25% of the above-grade floor area  Can only operate when the winery is open for public tours or events | Indoor and outdoor events, subject to approval of an application | n/a | n/a | 3-yr limitation on Permit  Farmer shall live in principal farm residence |
| **2017 NEP** | Permitted  No size restrictions | n/a [[14]](#footnote-14) | n/a [[15]](#footnote-15) | Any one building limited to 3,200 m2  No minimum parcel size | Retail sales and tasting area within the winery building  The sale of gift and promotional products within the retail sales and tasting area, relating to wine and grape industry, or other local agricultural products | n/a | Limited to 2% of lot area, to a maximum of 10,000 m2  Buildings limited to 20% of the 2% | Any one building limited to 3,200 m2 | Flexibility in time limit of Permit.  No requirement for farmer to live on farm. |

1. Policy Guideline development for the topic of “Accessory uses/facilities to single dwellings” has also been temporarily paused, in order that stakeholder consultation can be undertaken in a comprehensive and coordinated approach, together with the other policy guideline theme areas that are identified to remain in development. [↑](#footnote-ref-1)
2. Does not include exemptions issued under Ontario Regulation 828/90. [↑](#footnote-ref-2)
3. Includes those DPAs that are in abeyance/additional information has been requested. [↑](#footnote-ref-3)
4. DPA N/A/2019-2020/317 was refused by the Commission on the basis that the proposal presented an agricultural use established for the purposes of permitting an institutional operation as an OFDU. Municipality did not support, did not meet PPS or the Ontario Ministry of Agricultural, Food and Rural Affairs (OMAFRA) *Guidelines on Permitted Uses in Prime Agricultural Areas*. [↑](#footnote-ref-4)
5. This number does not account for the inquiries that do not proceed to DPAs after being informed use was not permitted. [↑](#footnote-ref-5)
6. Ontario Ministry of Agricultural, Food and Rural Affairs. 2020. Implementation Procedures for the Agricultural System in Ontario’s Greater Golden Horseshoe. Supplementary Direction to A Place to Grow: Growth Plan for the Greater Golden Horseshoe. Queen’s Printer for Ontario. Toronto, ON. Publication 856. [↑](#footnote-ref-6)
7. Staff notes that this does not account for those DPAs which do not proceed to a decision and are withdrawn, or those DPAs which have undergone modifications to the original proposal (i.e., the full scope of development proposed could not be supported under current NEP policy). [↑](#footnote-ref-7)
8. Halton Region is currently addressing these challenges through their OP Review process and have recently released a Technical memorandum – Woodland Discussion, September 2021. NEC staff have been consulted and are participating in the review. [↑](#footnote-ref-8)
9. Wayne Caldwell, Pam Duesling, & Emily Sousa, School of Environmental Design and Rural Development, University of Waterloo. Presentation to the NEC. October 2021. [↑](#footnote-ref-9)
10. Permitted in all 2005 and 2017 NEP land use designations. Only existing agricultural uses are permitted in Escarpment Natural Area. [↑](#footnote-ref-10)
11. Permitted in Escarpment Protection Area and Escarpment Rural Area (2005). [↑](#footnote-ref-11)
12. Permitted in Escarpment Rural Area, but only outside of prime agricultural areas and specialty crop areas (2005). [↑](#footnote-ref-12)
13. Wineries/cideries are permitted as both agriculture-related uses and on-farm diversified use, but in both cases must be on a farm (2017). [↑](#footnote-ref-13)
14. In the 2017 NEP, these uses would now be considered agriculture-related uses or on-farm diversified uses. [↑](#footnote-ref-14)
15. In the 2017 NEP, commercial and industrial development servicing agriculture would be considered an agriculture-related uses. [↑](#footnote-ref-15)