February 17, 2022

# C1: STAFF INFORMATION REPORT

## RE: Withdrawal of Niagara Escarpment Plan Amendment PP 220 20

**Baghai Development Ltd.**

**2975 Escarpment Sideroad**

**Lot 10, Concession 1 WHS**

**REGION OF PEEL, TOWN OF CALEDON**

## SUMMARY RECOMMENDATION:

That the Niagara Escarpment Commission (NEC) receive this report for information.

### BACKGROUND:

On March 18, 2021, NEC staff presented an Initial Staff Report to the Commission regarding an amendment application made by Baghai Development Ltd. seeking site-specific policy exceptions to allow the severance of the above-noted lot subject of a Heritage Conservation Easement Agreement, and by doing so facilitate the acquisition of approximately 21.8 ha of lands by a public body (the Credit Valley Conservation), for conservation purposes and securement of the permanent route of the Bruce Trail (see Map 1).

The Commission endorsed the staff recommendation to initiate the proposal. Notice of the application was posted on the Environmental Registry, the NEC website, local newspaper, and circulated to ministries, agencies, and landowners within 120m with an invitation to comment (60-day comment period).

In addition to receiving comments from the Town of Caledon, Ministry of Heritage, Sport, Tourism and Culture Industries, comments were received from the public.

**DISCUSSION:**

The amendment proposal sought to sever the original farmhouse, designated under a Heritage Conservation Easement Agreement, and to create a .04 ha (1 ac) new lot, with remnant lot of approximately 1.99 ha (4.9 ac), containing the newer dwelling. The remaining lands approximately 21.8 ha (53.8 ac), would be acquired by the Credit Valley Conservation (CVC) and used in part as a linkage for the Bruce Trail to where it connects with a pedestrian tunnel under Highway 10. The placement of the lands in public ownership was contingent upon the severance of the heritage dwelling in the manner proposed by this application.

A complicating factor in the consideration of the proposed amendment was that in addition to seeking a site-specific policy exception to the new lots policies and Cultural Heritage policies of the NEP, the proposal also sought to “undo” the Conditions of a previous Development Permit approval, which approved the development of the second single dwelling on the basis of a Heritage Conservation Easement Agreement, and included a Condition prohibiting any future severances.

## AGENCY CONSULTATIONS:

### Town of Caledon:

The Town identified that although the public benefit of the application can be appreciated, Heritage staff do not support the application in its current form because of its broader negative policy implications. The proposal to sever the designated heritage dwelling at 2975 Escarpment Sideroad undermines the heritage conservation policies of the NEP, is contrary to the existing Heritage Conservation Easement Agreement for the property which prohibits further severances and would set a concerning precedent. Further, the proposed delineation of a 1-acre lot for the heritage dwelling and accessory structure does not conform with the Town of Caledon minimum residential lot size of 6 hectares for the Rural Lands designation, nor does it adequately protect the contextual value of the heritage dwelling and its open space setting.

While the Town is generally supportive of landowners wishing to convey lands to local Conservation Authorities for the purpose of environmental conservation and protection, given the comments noted above, Town staff is not supportive of the proposal, as presented.

Staff is of the opinion that this proposal does not meet the intent of the Town’s Official Plan policies for severances on Rural lands designation. Furthermore, the Town’s policies support the retention of recognized heritage buildings as second dwellings on rural lands, and staff would implore the applicant to explore this option further.

In addition, the proposal represents further fragmentation of rural lands, particularly on lands that has been previously subject to alteration, notably representing a significant change from the previously approved Development Permit application (P/R/2011-12/248).

### Region of Peel:

No comments received.

### Ministry of Heritage, Sport, Tourism and Culture Industries (MHSTCI):

The Ministry of Heritage Sport, Tourism and Culture Industries (MHSTCI) identified that the proposal to sever the subject property into three parcels is inconsistent with policies 2.2.7 b) and 2.4.17 of the NEP. Additionally, MHSTCI was of the position that there was insufficient information to understand whether the proposed severance and associated amendments meet policies 2.10.1 and 2.10.2 of the NEP and policies 2.6.1, 2.6.2 and 2.6.3 of the Provincial Policy Statement (PPS). In summary, MHSTCI presented that should the NEC consider this application further, additional studies, including archaeological assessment and heritage impact assessment, may be required to understand the impacts of the proposal and address the cultural heritage policies of the NEP and the PPS.

### Ministry of Environment Conservation and Parks (MECP):

The Ministry of Environment Conservation and Parks (MECP) confirmed that there are no requirements under the *Endangered Species Act* (ESA) to undergo a species at risk site assessment for lot severances. Lot severances by themselves, and in the absence of any additional development proposals are administrative; these activities on their own do does not contravene the ESA. MECP provided that if there were activities (development) proposed for the near future which could impact species at risk an assessment as to whether the activity is likely to impact species at risk or their habitat would be required, and potential need for authorization under the ESA triggered.

### Bruce Trail Conservancy (BTC):

The Bruce Trail Conservancy (BTC) indicated support for the proposed amendment, which would facilitate the acquisition of approximately 21.8 ha of lands by a public body, for conservation purposes and securement of a permanent route for the Bruce Trail.

The BTC did confirm that should the amendment be approved, it could set a precedent for other similar proposals (similar scenarios could apply to two of the eleven other heritage dwellings listed in Appendix 3 of the NEP, which are on the Bruce Trail Optimum Route). Together, they would provide an opportunity to secure more than 1.7 kilometers of trail and conservation lands within NEPOSS via donation. Since no new development of these properties would be proposed, these applications would not compromise the intent and integrity of the NEP policies. NEP Lot Creation and Cultural Heritage policies could be revised to restrict approvals to only those that would secure the Bruce Trail.

### Credit Valley Conservation (CVC):

Credit Valley Conservation (CVC) staff identified support for the application for an amendment to the NEP that would facilitate the severances of three separate parcels given the resulting benefits to CVC and the BTC. The CVC identified that the application represents a chance to place significant natural areas into public ownership, secure a section of the Bruce Trail Optimum Route, and add green space and trail access for public use within the Niagara Escarpment that will be managed in line with the objectives of NEPOSS.

**Private Landowners:**

Two written submissions were received from private landowners in opposition to the proposed amendment. In general, concerns included the potential for precedence, concern for increased traffic in the area as a result of the creation of additional public lands and concerns related to impact of increased visitation on the Escarpment environment, and that the proposal compromises the intent and integrity of the NEP and the NEC.

**Public Interest Advisory Committee (PIAC)**

A meeting of the Public Interest Advisory Committee (PIAC) was held on August 19, 2021. NEC staff provided the PIAC members with an overview of the amendment proposal and they were provided with a copy of the Initial Staff Report, maps and comments received.

The PIAC discussed the proposal and moved a motion to defer a final recommendation on the amendment application to allow for further studies and information to be provided by the Applicant, as per the recommendations of the MHSTCI.

**CONCLUSION:**

The comments received from the agency and landowner circulation were shared with the Applicant after the comment closing date. **The Planning Consultant for the Applicant (Baghai Development Ltd.) advised NEC staff in writing on November 11, 2021 that the Applicant wished to withdraw their application for amendment to the NEP.** No reasons for the withdrawal of the application were provided in the correspondence. As a result, no further assessment of the amendment proposal by staff has been undertaken and no decision by the Commission is required.

NEC staff has advised the consulted agencies, Ministries and private individuals who commented on the proposal that the Applicant has closed the application and that the NEC file has been closed. Notice has also been posted on the NEC website and Environmental Registry posting.

While no final staff recommendation for this proposal was reached, given that the proposal was withdrawn, as staff has noted in the Initial Staff Report, the lot density provisions of the NEP are fundamental in achieving the Purpose and Objectives respecting the maintenance and enhancement of the open landscape character of the Niagara Escarpment. While sufficient planning justification and a case for achieving the public interest may be made for these types of proposals on a site-specific basis, the broader landscape scale, cumulative impacts of such site-specific policy exceptions needs to be considered on a Plan-wide scale, given that these scenarios may not be so unique across the Escarpment.

Staff expressed concerns in the Initial Staff Report (March 18, 2021) as to whether the proposal could be found to wholly uphold the Purpose and Objectives of the NEP, both at the site-level and in the context of potential cumulative impacts on a Plan-wide, landscape scale perspective. Particularly given that the approval of the application would be inconsistent with a previous NEC Development Permit issued, which explicitly include a Condition which prohibited any further severances. However, staff recommended circulation and further consideration of the amendment proposal based on the merits of the proposal in meeting the NEP Objectives related to the NEPOSS; namely, the provision of public access and supporting the permanent route of the Bruce Trail.

The comments received objecting/expressing concerns, and subsequent withdrawal of the amendment application, are reflective of the concerns expressed by staff in the Initial Staff Report.

## RECOMMENDATION:

That the Commission receive this Report for information only.

## Prepared by:

Original signed by:

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## Approved by:

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