** Niagara Escarpment Commission**

232 Guelph St.   
Georgetown, ON L7G 4B1  
Tel: 906-877-5191  
[www.escarpment.org](http://www.escarpment.org)­

# MINUTES OF M811/09-2021

**NIAGARA ESCARPMENT COMMISSION**

**VIA WEBEX DUE TO COVID-19 PANDEMIC**

**September 16, 2021**

## MEMBERS PRESENT:

B. Burton, B. Clark, M. Curley, J. Downey, R. Gibson, J. Horner, D. Hutcheon,   
G. Krantz, K. Lucyshyn, B. Mackenzie, D. McKinlay, P. McQueen, R. Nicholson, J. Vida,   
A. Witteveen.

## REGRETS:

G. Driedger, L. Golden.

## STAFF PRESENT:

D. Ramsay, K. Peters, L. Grbinicek, N. Mott, J. Rhodes-Munk, C. Curran, J. Loiacono, C. Tansony, K. Bannister, D. D’Silva, A. Obradovic, L. Wang, D. D’Silva, K. Xu, J. Olah, A. Bochenek.

## ALSO PRESENT:

K. Hare, Counsel, R. Pineo, Ministry of Northern Development, Mines, Natural Resources and Forestry; R. Patrick, C.O.N.E.

## MEETING CALLED TO ORDER 10:00 a.m.

Chair Rob Nicholson presided.

## INTRODUCTIONS:

The Chair thanked Nancy Mott and Kun Xu for their work on including the Pleasant View Lands in the City of Hamilton to the NEP Area. The regulation change was approved by the Minister of Northern Development, Mines, Natural Resources and Forestry on September 9, 2021.

The Chair welcomed new staff members David Marriott, Senior Planner, Joe Muller, Senior Strategic Advisor, Central Team, Jesse Frimpong, Planner, North Team, and Liyan Wang, GIS Support Team. He congratulated Kun Xu on her upcoming maternity leave and advised that Liyan will run the Webex meetings while Kun Xu is on leave starting in October.

The Chair reminded the Commissioners of their duty to uphold the Niagara Escarpment Plan.

## LAND ACKNOWELDGEMENT

The Chair read aloud the Land Acknowledgment.

### BUSINESS ARISING FROM PREVIOUS MEETINGS:

None.

## APPROVAL OF MINUTES – M810/07-2021

**M811R1/09-2021**

*Moved By: Hutcheon*

*Seconded By: Burton*

*“That the Commission minutes of July 15, 2021 be approved as written.”*

***Motion Carried***

**DISCUSSION:**

## None.

## MOTION FOR SPEAKERS

**M811R2/09-2021:**

*Moved By: Hutcheon*

*Seconded By: McQueen*

*“That the persons representing the applications listed on the Agenda be invited to address the Commission.”*

***Motion Carried***

## CONFLICTS OF INTEREST – Declaration of Conflicts of Interest

## Commissioner Krantz advised of a conflict with agenda item A2, H/R/2021-2022/017.

## DISCUSSION AGENDA: A and B PACKAGES

## (*Staff Reports, External submissions)*

## C1

**Information and Discussion Report**

**Niagara Escarpment Plan Agricultural Policies**

## BACKGROUND:

Members of the Niagara Escarpment Commission have expressed concern that the agricultural policies of the NEP are inadequate in terms of supporting agriculture. Although the 2017 NEP allows for the development of guidance material to assist in the implementation of NEP policies, guidance material cannot be used to introduce new policies or to deviate from existing policies in the NEP. Policy guidance material currently under development includes events, dwelling units (including those for farm labour), and on-farm diversified uses. 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 material 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.

**M811R3/09-2021:**

*Moved By: Downey*

*Seconded By: Hutcheon*

*”That the Niagara Escarpment Commission:*

1. *Request staff return to the November 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 that staff defer preparation of policy guidance related to agricultural policies until the Commission has considered the review and analysis as noted in recommendation #1.”*

**Note:**

* Debbie Ramsay, Director, provided a summary of the information and discussion report and answered questions.

**For the Motion: 15 votes**

Burton, Clark, Curley, Downey, Gibson, Hutcheon, Krantz, Lucyshyn, Mackenzie, McKinlay, McQueen, Vida, Witteveen.

**Against the Motion: 0 votes**

None.

***Motion Carried***

Note: Due to technical issues, Commissioner Horner did not participate in the discussion or vote.

**DISCUSSION:**

Commissioners requested that staff include a scan of progressive agricultural policies in other jurisdictions, and that agricultural stakeholders and agencies be engaged in the review. The Director noted that the November policy meeting may be too soon to engage agricultural stakeholders fully, but that a scan would include known stakeholder positions. If the Commission were to proceed with a NEP amendment related to agricultural policies, the NEP amendment process would provide an opportunity for broader engagement.

## A1

**ADDENDUM STAFF REPORT**

**DEVELOPMENT PERMIT APPLICATION S/A/2020-2021/469**

2752 Concession 8 Nottawasaga S

Part Lot 11, Concession 9 S,

Township of Clearview, County of Simcoe

## PROPOSAL:

An on-farm diversified use, “OFDU,” (agri-tourism and sale of value-added products) is proposed on a 40 ha (100 ac) existing lot where the applicant is planting lavender and roses. A new shed to process the crop and host visitors and a 50-car parking area is proposed to facilitate the OFDU.

### BACKGROUND AND ISSUE:

At the July 15, 2021 Commission meeting staff presented a report recommending approval of the agricultural and home industry/occupation component of the proposal but refusal of the On-farm Diversified Uses (OFDU) aspects (agritourism including parking, farm tours). An OFDU is not permitted in the Escarpment Protection Area designation where the lands are not in a prime agricultural area. Where a proposal does not meet Part 1 (Permitted Uses) of the NEP, staff normally would not carry out analysis of relevant Development Criteria in Part 2. 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.

### RECOMMENDATIONS:

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

#### Option 1: Approve Home Industry; Refuse OFDU (Recommended)

Staff recommends this option because OFDUs are not a permitted use in Escarpment Protection Area, unless the subject lands fall within a prime agricultural area, as identified in provincial Growth Plan mapping. However, the processing of the lavender products is similar to a home industry, and could be supported at a smaller scale.

NEC staff recommend that the Commission approve the home industry aspect of the application, subject to conditions contained in Appendix 1.

Recommendation wording for Option 1:

That the Niagara Escarpment Commission:

1. Approve the application as a home industry, subject to conditions contained in Appendix 1;
2. Refuse the aspect of the application that involves establishment of an OFDU since it is not a permitted use in the Escarpment Protection Area; and,
3. That the applicant be advised that they may submit a Development Permit application for an OFDU should the lands be included in a prime agricultural area, or if the NEP is amended in the future 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 OFDUs 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 2.

Recommendation Wording for Option 2:

1. That the Niagara Escarpment Commission approve the Development Permit application as submitted, subject to conditions contained in Appendix 2.

*Note: The Commission is required to provide reasons for their decision based on the purpose, objectives and policies of the Niagara Escarpment Plan.*

**Note:**

* Judy Rhodes-Munk, Senior Planner, provided a summary of the addendum staff report and answered questions.
* Applicant and applicant’s agents presented and answered questions.
* Counsel for 1 neighbour, presented and answered questions.
* Counsel for 1 neighbour, presented and answered questions.

**M811R4/09-2021:**

*Moved By: Burton*

*Seconded By: Downey*

*“That the Commission* *approve the Development Permit application as submitted, subject to conditions of approval.”*

Reasons:

The Applicant proved through an independent agrologist that the land is prime agricultural land,

1. The proposal’s compatibility with other agricultural uses and no negative impacts on Escarpment scenery, and
2. The exemption of the land designation is an option available at the County of Simcoe.

### CONDITIONS OF APPROVAL S/A/2020-2021/469

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. Site preparation and vegetation removal shall not occur between **April 1** and **August 31** inclusive, of any given year, to ensure protection of habitat within the breeding season of the species at risk e.g. Bobolink.
7. **Prior to the commencement of any development**, erosion and sediment control measures (e.g., fencing, blankets, riprap), and/or vegetation protection fencing shall be implemented and maintained as shown on the **Final Site Plan** until all disturbed areas are stabilized. It is the responsibility of the landowner to implement, monitor and maintain all erosion and sedimentation control measures and vegetation protection fencing in good condition until vegetative cover has been successfully established and the development is completed.
8. The On-farm Diversified Use is restricted to the following parameters:
   * 130 sq m building devoted to processing of the crop, sale of value-added products, and to host visitors
   * Parking capacity for 50 cars for staff and visitors
   * Maximum 120 cars per day
   * Records of visitor numbers to be kept and submitted annually to NEC. The records should be available upon request by NEC compliance staff.
   * Visitor hours 9 a.m. to 6 p.m., 5 days per week
   * Implement a reservation system to limit the number of visitors and control traffic flow
   * Sewage disposal system to service OFDU visitors and staff to be designed by a qualified person based on the capacity limitations of 120 cars/day
9. The applicant shall advise the Niagara Escarpment Commission in writing if the On-farm Diversified Use is discontinued.
10. The Development Permit is not transferable to a new owner of the property. Should the property be sold, the On-farm Diversified Use shall only continue upon issuance of a new Development Permit to the subsequent owner, otherwise the use of the floor area used for the business must cease and be converted back to accessory use in the case of the accessory building.
11. **Prior to the issuance of a Development Permit by the Niagara Escarpment Commission**, an accurate and detailed **sewage disposal system design** prepared by a qualified person and **Engineer’s Report** on how the design meets requirements under Part 8 of the *Building Code Act* or alternatively satisfies MECP Compliance of Approval requirements (if the 10,000 L/day design threshold is exceeded) shall be submitted for Niagara Escarpment Commission approval.
12. **Prior to the issuance of a Development Permit by the Niagara Escarpment Commission**, an accurate and detailed **Final Site Plan** prepared by a qualified person shall be submitted for Niagara Escarpment Commission approval. The following stipulation shall be included directly on the Plan:
    1. The Final Site Plan shall be prepared by a qualified professional;
    2. 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;
    3. Outline of the approved development envelope / extent of all disturbed areas;
    4. Location of all existing and proposed structures, sewage disposal system, well/cistern, driveway, construction access / haul routes, exterior lighting, etc. showing setbacks from the property lines, any watercourses or water features, top / bottom of slope, wooded areas, etc.;
    5. Grading, drainage, and fill management details including the areas of excavation and temporary or permanent fill placement. The type, quantity, quality and source location of any imported fill material must be accurately identified.
    6. Sewage disposal system design details (as per Condition #11);
    7. The location and design of erosion and sediment control measures (e.g., fencing, blankets, riprap, temporary mulch / seeding), and limit-of-work construction or eco-protection fencing;
    8. Identify the areas of existing vegetation to be retained, areas of vegetation to be removed, and the location and species of any proposed plantings;
    9. Size and location of any signage.

Development shall proceed in accordance with the details of the approved Final Site Plan.

1. **Prior to the issuance of a Development Permit by the Niagara Escarpment Commission,** the landowner shall submit for the approval of the Niagara Escarpment Commission, **final construction details** for the proposed development, including exterior elevations, total floor area, floor plans, height to roof peak from lowest grade, type and colour of exterior materials, and any exterior lighting as well as details for any signage.

Development shall proceed in accordance with the details of the approved Final Construction Details.

1. Conditions **11, 12 & 13** 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.

#### Advisory Notes:

1. A Development Permit does not relieve the permit holder of any other permission (e.g., Ontario Building Code, *Conservation Authorities Act, Endangered Species Act,* etc.). A Niagara Escarpment Commission Development Permit is required prior to the issuance of any other permission.

1. The Niagara Escarpment Commission supports the protection of the night sky from excessive lighting and recommends the applicant obtain information on the use and operation of appropriate lighting fixtures in keeping with dark sky approaches.
2. Should deeply buried archaeological remains/resources be found on the property during construction activities, the Heritage Operations Unit of the Ontario Ministry of Heritage, Tourism, Sport, and Cultural Industries shall be notified immediately. In the event that human remains are encountered during construction, the owner shall immediately notify the police or coroner, the Registrar of Cemeteries of the Ministry of Small Business and Consumer Services, and the Ministry of Heritage, Tourism, Sport and Cultural Industries.

**For the Motion: 9 votes**

Burton, Clark, Downey, Gibson, Krantz, Lucyshyn, McQueen, Vida, Witteveen.

**Against the Motion: 4 votes**

Curley, Hutcheon, Mackenzie, McKinlay.

***Motion Carried***

Note: Due to technical issues, Commissioner Horner did not participate in the discussion or vote.

**DISCUSSION:**

A Commissioner noted that the Canada Land Inventory (CLI) classifications are out of date and that Simcoe County offers exemptions for farmers where their CLI classifications are outdated.

## A2

## ADDENDUM STAFF REPORT H/R/2021-2022/017

**8649 Appleby Line**

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

**Town of Milton, Region of Halton**

### PROPOSAL:

To establish an on-farm diversified use (OFDU), agri-tourism, consisting of pick-your-own lavender, and viewing opportunities, and to establish a 2,571.14 sq m (27,675.52 sq ft), 45-car parking area, on an existing 8.44 ha (20.85 ac) lot that supports a lavender farm, farm produce stand, and single dwelling.

Note: NEC file H/C/2019-2020/408 is currently in progress, proposing a farm sign.

## BACKGROUND AND ISSUE:

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.

### 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 prime 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.*

**Note:**

* Cameron Curran, Senior Planner, provided a brief review of the addendum staff report and answered questions.
* The applicant was present and answered questions.

**M811R5/09-2021:**

*Moved By: Downey*

*Seconded By: Burton*

*“That the Region of Halton’s formal comments confirm that the subject land exhibits characteristics of ongoing agriculture, and that the Region is contemplating re-designating the subject property to prime agricultural area through the Regional Official Plan Review, and that the Commission approve the Development Permit application as submitted, subject to the following conditions:*

**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.

**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.

**For the Motion: 11 votes**

Burton, Clark, Curley, Downey, Horner, Lucyshyn, Mackenzie, McKinlay, McQueen, Vida, Witteveen.

**Against the Motion: 2 votes**

Gibson, Hutcheon.

***Motion Carried***

Note: Commissioner Krantz declared a conflict and did not vote or participate in the discussion.

**DISCUSSION:**

A Commissioner noted that the land continues to be farmed successfully, that the Region of Halton is supportive of the application due to the Region’s consideration of reclassifying the lands to prime agricultural area.

**Break: 11:45 am to 12:00 p.m.**

## A3

## INTERIM STAFF REPORT PR/2017-2018/450 (Manors of Belfountain)

Part East and West Half Lot 9 , Concession 5 WHS,

Minor Urban Centre of Belfountain

Town of Caledon, Region of Peel

### PROPOSAL:

To develop a 75-lot residential plan of subdivision on private wells and septic systems; 3 stormwater management ponds, a future Town park and new municipal streets with access to Shaws Creek Road, all within the Minor Urban Centre of Belfountain. A portion of the subject lands is proposed to be conveyed to Credit Valley Conservation for a future park to be included in the Niagara Escarpment Parks and Open Space System.

## RECOMMENDATIONS:

1. That the NEC confirm that it is of the opinion that consistency of the development with provincial policy cannot yet be determined as outstanding matters are identified in this report; and,
2. That the NEC direct staff to:
3. continue working with the applicant to attempt to resolve outstanding policy and technical issues including the review of the final VIA;
4. request that the applicant undertake to provide NEC staff the studies and reports requested in order to properly assess the application before returning to the NEC with a final recommendation on the Development Permit application, for the first phase of the subdivision only;
5. Seek party status in the Ontario Land Tribunal hearing regarding the related plan of subdivision as the NEC has an interest in the subdivision application and the Development Permit, and the appropriate timing for their processing (i.e., a decision on the subdivision cannot be made prior to a Development Permit per S. 24(3) of the *Niagara Escarpment Planning and Development Act);* and,
6. That the NEC advise the applicant that it is not prepared to recommend approval of Phase 2 until Phase 1 is completed, and the necessary studies and monitoring determine that Phase 2 can proceed without impacts. Phase 2 will be dealt with through a separate Development Permit application from Phase 1.

**Note:**

* Nancy Mott, Senior Strategic Advisor, provided a summary of the interim staff report and answered questions.
* Agent for applicant presented and answered questions
* Applicant and applicant’s consultant were present available to answer questions.
* Counsel for Belfountain Community Organization presented and answered questions.
* Ken Hare, Legal Services Branch, was present and available to answer questions.

**M811R6/09-2021:**

*Moved By: Witteveen*

*Seconded By: Curley*

*“That the Commission:*

1. Advise the applicant that they are supportive of the principle of development.
2. Direct staff to continue to evaluate the application based on additional information and comments of agencies and municipalities and return to the Commission at a future date with further review and analysis, including potential recommendations on conditions of approval for the Development Permit.
3. Direct staff to seek party status in the Ontario Land Tribunal hearing regarding the related plan of subdivision application.*”*

**For the Motion: 11 votes**

Burton, Curley, Downey, Gibson, Hutcheon, Krantz, Lucyshyn, Mackenzie, McKinlay, McQueen, Witteveen.

**Against the Motion: 1 vote**

Vida.

*Motion Carried*

Note: Due to technical issues, votes were not recorded for Clark and Horner.

**DISCUSSION:**

Staff noted that final comments have not been received from the Town of Caledon and the Region of Peel, and their comments are essential to staff making a recommendation on the proposed development.

Some Commissioners expressed concern that the application process is taking a long time and did not want the applicant to incur more costs without knowing if the application would be approved. It was suggested that any outstanding concerns should be addressed through the conditions of approval.

Some Commissioners were supportive of staff’s phased approach to approving development to allow for the monitoring of water and other environmental concerns during phase 1, prior to the approval of phase 2.

**LUNCH BREAK: 1:00 p.m. to 1:50 p.m.**

## A4

## Development Permit Application W/R/2020-2021/689

193 Weir’s Lane and 169 Weir’s Lane

Part Lot 4 Concession 1

(Former Town of Ancaster), City of Hamilton

### 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.

**BACKGROUND AND ISSUE**

At the July 15, 2021 meeting, staff presented a report recommending refusal for this proposal to re-create two lots that had been merged under the *Planning Act*. This is an addendum to the July report to provide the Commission with additional information on municipal planning policy and the lot size of 169 Weir’s Lane.

**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.

**Note:**

* Johnpaul Loiacono, Senior Planner, provided a summary of the addendum staff report and answer questions.
* Landowner presented and answered questions.

**M811R7/09-2021:**

*Moved By: Curley*

*Seconded By: Hutcheon*

*“That the Commission move the staff recommendation to refuse the application.”*

**For the Motion: 5 votes**

Clark, Curley, Gibson, Hutcheon, Krantz.

**Against the Motion: 9 votes**

Burton, Downey, Horner, Lucyshyn, Mackenzie, McKinlay, McQueen, Vida, Witteveen.

***Motion Defeated***

**M811R8/09-2021:**

*Moved By: McQueen*

*Seconded By:* Lucyshyn

*“That the Commission requests the application return to the Commission with evaluation of the Development Criteria of the NEP, and to address the City of Hamilton Official Plan policies.”*

**For the Motion: 2 votes**

Curley, Hutcheon.

**Against the Motion: 12 votes**

Burton, Clark, Downey, Gibson, Horner, Krantz, Lucyshyn, Mackenzie, McKinlay, McQueen, Vida, Witteveen.

***Motion Defeated***

**M811R9/09-2021:**

*Moved By: McQueen*

*Seconded By: Lucyshyn*

*“That the Commission supports the severance in principle, subject to standard conditions of approval, and subject to the City of Hamilton's position and the decision of the land division committee.”*

**For the Motion: 12 votes**

Burton, Clark, Curley, Downey, Gibson, Horner, Krantz, Lucyshyn, Mackenzie, McQueen, Vida, Witteveen.

**Against the Motion: 2 votes**

Hutcheon, McKinlay.

***Motion Carried***

**DISCUSSION:**

Some Commissioners struggled with upholding the NEP policies that do not allow merged lots to be re-severed when the property in question has two single dwellings on it, and no additional development is being proposed.

A Commissioner noted that both the Niagara Escarpment Plan and the *Planning Act* have clear policies on lot merging, and the Commission’s decision should be consistent with these policies. The Commission also has no say in how *Planning Act* policies under the jurisdiction of the municipality should be applied.

A Commissioner noted that if the Commission approves the application, the City of Hamilton’s Committee of Adjustment can still deny the severance application regardless of Commission approval.

## A5

### DEVELOPMENT PERMIT APPLICATION N/A/2020-2021/748

360 Metler Road

Part Lot 7, Concession 6

Town of Pelham, Region of Niagara

### PROPOSAL:

To construct a 1.5 storey, ± 185.8 sq m (± 2000 sq ft) storage barn, with a height to peak of ± 6.1 m (± 20 ft), on an existing 3.48 ha (8.6 ac) lot to be reconfigured through a proposed boundary adjustment. Parcel A would be reconfigured from a 3.5 ha (8.6 ac) to ± 5.1 ha (± 12.7 ac) lot and would contain the existing dwelling, tree farm operation, and proposed barn. Parcel B would be reconfigured from a 2.1 ha (5.4 ac) to ± 0.6 ha (± 1.4 ac) lot and would remain vacant.

## RECOMMENDATION:

That the application be refused because:

1. Agricultural uses are not permitted within key natural heritage features (i.e., Earth Science ANSI), as per Part 2.7.2 of the NEP.

**Note:**

* Cheryl Tansony, Senior Planner, provided a summary of the application and answered questions.
* Applicant presented and answered questions.

**M811R10/09-2021:**

*Moved By: McKinlay*

*Seconded By: Witteveen*

*“That the Commission supports the approval of the application, subject to conditions.*

Reason for Approval:

The Commission noted that Development Permit #8139/N/A/2003-2004/358 for a barn had been approved previously.

**CONDITIONS OF APPROVAL N/A/2020-2021/748**

1. Development shall occur in accordance with the Site Plan, Development Permit and Conditions as approved.
2. The Development Permit shall expire three years from its date of issuance unless 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 a 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:
   1. 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;
   2. Outline of the approved development envelope / extent of all disturbed areas;
   3. Location of all existing and proposed structures, sewage disposal system, well/cistern, driveway, construction access / haul routes, exterior lighting, etc. showing setbacks from the property lines, any watercourses or water features, top / bottom of slope, wooded areas, etc.;
   4. Grading, drainage, and fill management details including the areas of excavation and temporary or permanent fill placement. The type, quantity, quality and source location of any imported fill material must be accurately identified.
   5. The location and design of erosion and sediment control measures (e.g., fencing, blankets, rip-rap, temporary mulch / seeding), and limit-of-work construction or eco-protection fencing;
   6. Identify the areas of existing vegetation to be retained, areas of vegetation to be removed, and the location of proposed plantings.

Development shall proceed in accordance with the details of the approved Final Site Plan

1. **Prior to the issuance of a Development Permit** **by the Niagara Escarpment Commission,** the landowner shall submit for the approval of the Niagara Escarpment Commission, Final Construction Details for the proposed development, including exterior elevations, total floor area, floor plans, height to roof peak from lowest grade, and any exterior lighting.
2. **Prior to the issuance of a Development Permit by the Niagara Escarpment Commission,** the landowner shall submit a Stage 1-2 Archaeological Assessment (and any required subsequent archaeological assessments) for the proposed development area on the property to the Ministry of Heritage, Sport, Tourism and Culture Industries and receive an acknowledgement letter from this ministry (copied to the NEC) confirming that archaeological reporting has met licensing requirements prior to development on site.
3. **Prior to the issuance of a Development Permit by the Niagara Escarpment Commission,** the landowner shall submit for the approval of the Niagara Escarpment Commission and Region of Niagara, a Hydrogeological Study for Parcel B to support the proposed lot size.
4. Prior to development, including any site disturbance, the landowner shall obtain a Consent to sever under the Planning Act for the proposed lot configuration in accordance with this Development Permit, and, provide proof of registration/establishment of the new lot to the Niagara Escarpment Commission.
5. Prior to the commencement of any development, erosion and sediment control measures (e.g., fencing, blankets, rip-rap), and vegetation protection fencing shall be implemented and maintained as shown on the Final Site Plan until all disturbed areas are stabilized. It is the responsibility of the landowner to implement, monitor and maintain all erosion and sedimentation control measures and vegetation protection fencing in good condition until vegetative cover has been successfully established and the development is completed.
6. Conditions 6, 7, 8, & 9 must be fulfilled within eighteen (18) months (1.5 years) from the date of confirmation of the Commission’s decision or this conditional approval shall lapse and a Development Permit will not be issued.

**Advisory Notes**

* 1. A Development Permit does not relieve the permit holder of any other permission (e.g., Ontario Building Code, Conservation Authorities Act, Endangered Species Act, etc.). A Niagara Escarpment Commission Development Permit is required prior to the issuance of any other permission.
  2. The Niagara Escarpment Commission supports the protection of the night sky from excessive lighting and recommends the applicant obtain information on the use and operation of appropriate lighting fixtures in keeping with dark sky approaches.
  3. The Region of Niagara advises should deeply buried archaeological remains/resources be found on the property during construction activities, all activities impacting archaeological resources must cease immediately, notify the Archaeology Programs Unit of the Ministry of Heritage, Sport, Tourism and Culture Industries (MHSTCI) (416-212-8886) and a licensed archaeologist is required to carry out an archaeological assessment in accordance with the Ontario Heritage Act and the Standards and Guidelines for Consultant Archaeologists. In the event that human remains are encountered during construction, all activities must cease immediately and the local police as well as the Cemeteries Regulation Unit of the Ministry of Government and Consumer Services (416-326-8800) must be contacted. In situations where human remains are associated with archaeological resources, MHSTCI should also be notified to ensure that the site is not subject to unlicensed alterations which would be a contravention of the Ontario Heritage Act.*”*

**For the Motion: 12 votes**

Burton, Clark, Curley, Downey, Gibson, Horner, Hutcheon, Krantz, Lucyshyn, Mackenzie, McKinlay, McQueen, Vida, Witteveen.

**Against the Motion: 0 votes**

None.

***Motion Carried***

Note: Due to technical issues, votes were not recorded for Burton and Gibson.

**DISCUSSION:**

The Commission struggled with the 2017 NEP not including agricultural uses as an exception to the prohibition on development in key natural heritage features, noting that a residential accessory building could be built on the property, but not a barn for a farm. The Director acknowledged the inconsistency and noted that it will be included with the agriculture policy report at the November policy meeting. The Commission also noted that an application for a barn had been approved previously.

## A6

## DEVELOPMENT PERMIT APPLICATION N/R/2018-2019/067

351 Sawmill Road

Part Lot 7, Concession 1

Town of Pelham, Region of Niagara

### PROPOSAL:

To construct a 1-storey ±491.4 m² (±5,289 ft²) single dwelling with a maximum height to peak of ±8.84 m (±29.0 ft.), a 2-storey, ±180.6 m² (±1,944 ft²) agricultural structure (horse barn) with a maximum height to peak of ±6.4 m (±21.0 ft.), septic system, well, driveway, and associated site alteration including the removal of approximately 1.21 ha of trees (tree plantation) to facilitate the creation of pasture land (paddocks, riding ring) on a 4.0 ha (10.0 ac) vacant parcel.

Note: The agricultural structure is intended to house 4 horses.

## RECOMMENDATIONS:

That the Niagara Escarpment Commission:

1. Refuse the component involving the establishment of a barn, riding ring, and paddock since agricultural uses are not permitted in a key natural heritage feature, and
2. Approve the component of the application related to the dwelling (single dwelling, septic system, well, and driveway), subject to conditions contained in Appendix 1.

**Note:**

* Cheryl Tansony, Senior Planner, provided a summary of the application and answered questions.
* Agent for the applicant presented and answered questions.

**M811R11/09-2021:**

*Moved By: Mackenzie*

*Seconded By: Hutcheon*

*“That the Commission refer the application to the November Commission meeting to allow staff time to receive feedback on the tree cutting by law from the Region of Niagara.”*

**For the Motion: 10 votes**

Clark, Curley, Gibson, Horner, Hutcheon, Krantz, Lucyshyn, Mackenzie, McKinlay, Witteveen.

**Against the Motion: 3 votes**

Downey, McQueen, Vida.

Note: Commissioner Burton left the meeting at 4:00 pm

***Motion Carried***

**DISCUSSION:**

A Commissioner expressed concern that that some NEP policies discourage land preservation and stewardship. In this case, the landowners planted trees that could be harvested as a forest resource, but the significant woodland designation prevents use of the land for agriculture in a specialty crop area.

A Commissioner noted that by removing the trees for the development, there could be negative impacts for species that require interior forest habitat; reducing the size of the woodland also reduces the amount of interior habitat, which is located a minimum of100 metres from the forest edge.

## The Commission requested that the Region of Niagara provide comments on their tree cutting by law.

## CONSENT AGENDA/ITEMS MOVED FOR DISCUSSION:

Information only Items

G1 Director Approvals and Dashboard for July and August 2021

G2 Appeals and Hearings Status Chart as of August 31, 2021

G3 Director’s Report: July and August 2021

G4 Plan Amendments Status Update as of August 31, 2021

G5 August and September 2021 Private citizen letters regarding the Municipality of Grey Highlands sale of Talisman Resort

**M811R12/09-2021:**

*Moved by: Hutcheon*

*Seconded by: Mackenzie*

*“That the Commission receive the Consent Agenda information items.”*

***Motion carried***

Note: Commissioner Witteveen left the meeting at 4:03 pm

### DISCUSSION:

Staff advised the Commission that a streamlined application review process has been implemented, resulting in accelerated approvals process for minor development. The streamlined process only applies to applications that fall within the Director’s delegated authority, and do not have impacts on natural heritage features or hazard lands. The NEC’s municipal partners and agencies were notified in advance of rolling out the new process, and staff are engaging with them to address any concerns or questions.

## NEW BUSINESS

A Commissioner requested information on the changes to conservation authorities; staff advised that the new regulations regarding mandatory programs and services have not been released yet and staff will continue to monitor the situation.

## ADJOURNMENT

**M811R13/09-2021**

*Moved By: McKinlay*

*“That this meeting be adjourned.”*

***Motion Carried***

Time of Adjournment: 4:05 p.m.

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Rob Nicholson

Chair