November 17, 2021

# INFORMATION REPORT

## Re: Urban Amendments under the Niagara Escarpment Planning and Development Act

### BACKGROUND

At the March 18, 2021 Commission meeting, Commissioner Burton brought forward a motion that would have “urban amendments” be considered outside of a co-ordinated provincial plan review, and not just at the time of a review of the Niagara Escarpment Plan (NEP). However, Commissioner Burton’s motion was deferred, and the following motion was passed:

“That Commissioner Burton’s motion that the Chair write the Minister of Natural Resources and Forestry to move forward with a change to the Niagara Escarpment Planning and Development Act that would allow Plan Amendments for urban designations (Urban, Minor Urban, Recreation) outside of a Coordinated Review process be deferred to provide staff time to review the Motion and prepare a staff report for an upcoming Commission meeting.”

The purpose of this report to provide the Commission with the context for urban amendments as set out in the Niagara Escarpment Planning and Development Act (NEPDA). Other provincial policy also applies, namely the Provincial Policy Statement and A Place to Grow: the Growth Plan for the Greater Golden Horseshoe also set out policies that are relevant to the timing of urban amendments in the NEP Area. In provincial policy, adding new “greenfield” areas for urban development is referred to “settlement area boundary expansions.” In the context of the NEP, settlement area boundary expansions take the form of increases in the area of Urban Areas, Minor Urban Centres, or Escarpment Recreation Area.

Although the NEPDA sets out a process for seeking urban amendments, the NEPDA cannot be considered in isolation of other provincial policy that directs how communities should grow. In turn, the report will discuss the NEPDA, the NEP, the Provincial Policy Statement, and the Growth Plan as the key pieces of provincial policy that affect growth and development in municipalities in the NEP Area. Given the different processes and policies set out, primarily in the NEPDA and the Growth Plan, this report will set out the current process municipalities and the NEP must pursue in order to consider settlement area boundary expansions in the NEP Area.

### Niagara Escarpment Planning and Development Act (NEPDA)

The restriction on the timing of Niagara Escarpment Plan (NEP) amendments that relate to urban designations and urban land uses is found within section 6.1(2.2) of the NEPDA:

“No person or or public body shall make an application or request to amend the Niagar Escarpment Plan if the application or request relates to land that is within the land use designation of Escarpment Natural Area, Escarpment Protection Area, Mineral Resource Extraction Area or Escarpment Rural Area of the Niagara Escarpment Plan and the application or request seeks to,

1. redesignate the land to the land use designation of Minor Urban Centre, Urban Area or Escarpment Recreation Area of the Niagara Escarpment Plan, or
2. make any other amendment to permit urban uses.”

It is notable that this section addresses two types of urban amendments: those that would change a land use designation to allow for urban development, and those that would not seek a re-designation of land, but would allow for a site-specific policy amendment that would allow for an “urban use.”

The prohibition on urban amendments in subsection 2.2 is not absolute. Subsection 2.3 makes an exception, allowing such amendments to be considered during a review of the NEP:

“Despite subsection (2.2), an application, request or proposal to redesignate land in the Niagara Escarpment Plan to the land use designation of Minor Urban Centre, Urban Area or Escarpment Recreation Area of the Niagara Escarpment Plan or to amend the Niagara Escarpment Plan to permit urban uses may be made during the review set out in subsection 17 (1) and in order for any such application, request or proposal to be considered during the review it must be included in the terms of reference established for the review under subsection 17 (2).”

The year 2015 was the first such review of the NEP that allowed for the consideration of such amendments. Both types of urban amendments—changes to an urban land use designation as well as requests for urban uses—were considered during the 2015 review. Examples of each follow:

##### Land use re-designation to allow for urban development:

The designation on NEP mapping changes to Urban Area, Minor Urban Centre, or Escarpment Recreation Area. An example from the 2015 review of the Niagara Escarpment Plan includes the re-designation of the Albright retirement community in Beamsille to Urban Area (Figure 1).

**Figure 1: Abright Centre, Town of Lincoln**

**Before:** Escarpment Protection Area **After:** Urban Area



##### Special policy amendment to allow for an urban use:

For these amendments, exceptions are made to allow for a more intensive land uses (i.e., “urban uses”) in a designation that would otherwise not permit that use. No change to the land use designation is sought. Examples from the 2015 review of the NEP include allowing water and wastewater servicing to extend beyond the Town of Milton’s settlement area into the Kelso Glen Eden Conservation Area, and allowing the Burlington Memorial Gardens cemetery to expand beyond what would normally be permitted for an institutional use. These site-specific policies are most often incorporated into the NEP as “notwithstanding” clauses.

Although the NEPDA and NEP do not define what is meant by “urban use,” section 23(e) of the NEPDA enables the Minister to establish a regulation defining urban uses. However, no such regulation has ever been brought forward. In the absence of such a regulation, the NEC has considered urban uses to be commercial, industrial, and institutional land uses, intensive recreational uses, as well as urban servicing (water and wastewater) that are not considered to be compatible with the overall Purpose and Objectives of the NEP. In 2005, the Commission endorsed a policy that identified what it considered to be urban uses to ensure a consistent approach in deferring requests for urban uses until the time of a NEP review. The Commission re-confirmed this policy in 2008. The Commission’s urban use policy is included in Appendix A.

In summary, an amendment to permit an urban use or a change in land use designation to one of the urban designations can only occur during a review of the NEP. Note that is not mandatory that urban amendments be considered; the Minister may or may not choose to include them in the terms of reference for the review. In addition, section 17(2) of the NEPDA directs that the review of the NEP is to occur at the same time as a review of the Greenbelt Plan.

### The Niagara Escarpment Plan (NEP)

#### The NEP is silent on urban amendments. The general considerations for any amendment are set out in Part 1.2 of the NEP. While urban amendments are not specifically addressed, the NEP makes reference to Section 6.1 of the NEPDA . It should be noted that this is quite different from the other provincial land use plans (Greenbelt and Oak Ridges) that make direct reference to the Growth Plan and the need for municipalities to undertake a municipal comprehensive review to consider settlement area boundary expansions. This same approach could not be adopted in the NEP unless the NEPDA were amended to either change or omit the current provisions related to urban amendments. During the last NEP review, changes to legislation were not included in the scope of the review.

### Provincial Policy Statement, 2020

The Provincial Policy Statement (PPS) provides policy direction on matters of provincial interest related to land use planning and development, including the growth and expansion of Ontario’s municipalities. Section 1.1.3 addresses the vitality and prosperity of both urban and rural settlements in Onatrio. The following is a summary of the policies in that section, as they relate to settlement area boundary expansions:

* Settlement areas are to be the focus of growth and development;
* Land use patterns and densities should make efficient use of land and resources and avoid the need for unjustified and/or uneconomical expansion;
* Land use patterns should minimize negative impacts to air quality, climate change and promote energy efficiency;
* New development in designated growth areas should occur adjacent to existing built-up areas;
* Specified targets for intensification and redevelopment need to be achieved prior to or concurrent with new development in designated growth areas;
* Planning authorities can allow the expansion of a settlement area only at the time of a municipal comprehensive review;
* Settlement area expansions cannot occur in speciality crop areas, and should avoid prime agricultural areas.

### A Place to Grow: the Growth Plan for the Greater Golden Horseshoe

The purpose of the Growth Plan is to provide for the orderly growth of southern Ontario’s communities in a manner that makes efficient use of land, allows for economic prosperity, promotes health and well-being, and protects natural heritage and agriculture. The Growth Plan sets out policies for how settlements areas are to accommodate population and employment growth for the next 30 years. Essentially, the Growth Plan will only allow settlement area boundary expansions where existing land supplies and intensification of built-up areas are not sufficient to accommodate this growth. To demonstrate the need for more land, municipalities must demonstrate that they have met specific intensification targets. Where it can be justified, a settlement area boundary expansion must also meet any applicable requirements of the Greenbelt, Oak Ridges Moraine Conservation, Niagara Escarpment, and Lake Simcoe Protection Plans.

The process through which a municipality can justify and request a settlement area boundary expansion is known as a municipal comprehensive review. A municipal comprehensive review is defined in the Growth Plan as: “a new official plan, or an official plan amendment, initiated by an upper- or single-tier municipality under section 26 of the Planning Act that comprehensively applies the policies and schedules of this Plan.” The municipality must apply a specific land needs assessment methodology in order to calculate the needed area, including whether they are meeting their intensification targets. Municipal comprehensive reviews (also known as official plan reviews) are required to occur every five years under the Planning Act. The Growth Plan requires that growth forecasts be reviewed at least every five years so that adjusted growth forecasts can be considered during official plan reviews.

### Policy Differences (Settlement Area Boundary Expansions)

To recap, settlement area boundary expansions in the NEP Area can only be considered during a review of the NEP, and this was most recently done during the 2015 review. Given that a NEP review must occur every ten years and that the most recent one was completed in 2017, the next NEP review does not have to occur until 2027, and urban amendments may not be considered until then.

However, in order to justify settlement area boundary expansions, municipalities must do so by carrying out a land needs assessment during a municipal comprehensive review. Although there were some official plan reviews running concurrently with the NEP review, the Growth Plan policies necessary to calculate land needs were also under review, which made it impossible for municipalities to justify requests for additional land for urban growth during the NEP review. There was a fundamental misalignment between when municipalities (or other parties) could ask for additional land for urban development in the NEP Area, and when they could undertake the necessary exercise to justify the need.

As a result of this misalignment, municipalities were unable to respond meaningfully to private landowners’ requests for urban uses and urban re-designations during the last NEP review. Since then, many NEP Area municipalities have now started municipal comprehensive reviews to incorporate the changes in Growth Plan growth forecasts. However, if they do identify NEP Area lands that they believe necessary to accommodate their forecasted urban growth, the lands cannot be re-designated until the next NEP review occurs, in 2027. If such requests are made in 2027, it will be the Minister or Cabinet that decides whether settlement area boundary expansions are necessary in the NEP Area.

**Policy Differences (Site-specific Urban Uses)**

With regard to site specific amendments to allow for “urban uses,” the NEPDA is unique in specifically contemplating these sorts of amendments. The Greenbelt, Oak Ridges and Growth Plans do not address such one-off requests. Since municipalities are the implementing authorities for the Greenbelt and Oak Ridges Plans, it is conceivable that an official plan amendment could be requested to allow for an urban use in a rural area, but it is unlikely that such an amendment would be supported by the provincial approval authority (Minister of Municipal Affairs and Housing), or the upper-tier municipality if the proposed amendment contradicted provincial policy as per the Greenbelt or Oak Ridges Plans.

If the Commission were to consider allowing site-specific urban use amendments to proceed outside of an NEP review, one has to consider if this is in keeping with provincial policy intent. Allowing for the consideration of urban uses outside of existing settlement areas is, in effect, allowing for “leap-frog” development and is a form of sprawl. As per the direction set out in the PPS, new development should occur adjacent to existing built-up areas, and planning authorities are to make efficient use of land and resources and avoid the need for unjustified or uneconomical expansion. It should be considered whether the piecemeal allocation of land for anything other than agriculture-related, small-scale institutional or low impact recreational land uses in the non-urban NEP designations can meet the Purpose and Objectives of the NEP.

### Summary and Conclusion

In response to the Commission’s query about the possibility of allowing NEP urban amendments outside of a co-ordinate provincial land use planning review, staff’s advice is that there should be alignment between the NEPDA urban amendment process and the timing of municipal comprehensive reviews. To allow urban amendments to proceed at any other time (i.e., outside of a coordinated review, or outside of a municipal comprehensive review) would be contrary to provincial policy including the PPS and the Growth Plan, which set out policies and a methodology for justifying settlement area boundary expansions. Consideration of NEP urban amendments during municipal comprehensive reviews would allow municipalities to respond meaningfully to urban amendment requests by conducting the land needs assessment needed to justify urban expansions.

Given that the NEC’s most recent policy defining urban uses has not been reviewed since 2008, and has not been re-evaluated in the context of the 2017 NEP, it may be appropriate for the Commission to determine if the policy should be updated in accordance with the guidance material provisions in the NEP, or alternatively, request that the Minister provide additional direction—based on the recommendations of the Commission—through a regulation under the NEPDA to set out what is meant by “urban uses.” Such a regulation could be crafted without requiring an amendment to the NEPDA.

In summary, the considerations regarding NEP urban amendments are much broader than the policies contained in the NEPDA and NEP. Allowing for urban amendments to proceed at anytime would result in a policy framework for the NEP Area that has less rigor than what is applied elsewhere in southern Ontario. While the NEPDA could be changed to align better with Growth Plan requirements, proceeding with such an amendment would have to align with other government priorities, and take place at an appropriate time.

### RECOMMENDATION:

That the Commission receive this report for information.

## Prepared by: Approved by:

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**Appendix A:**

**NEC Urban Use Policy (2008)**

**POLICY FOR URBAN USES**

**MADE TO ADMINISTER SECTION 6.1(2.2) OF THE**

**NIAGARA ESCARPMENT PLANNING AND DEVELOPMENT ACT**

This policy applies in the absence of a Regulation made by the Minister of Natural Resources under Section 23(e) of the *Niagara Escarpment Planning and Development Act* defining urban uses.

Section 6.1(2.2) prevents the consideration of any request to amend the Niagara Escarpment for an "urban use" in the Escarpment Natural Area, Escarpment Protection Area, Escarpment Rural Area and Mineral Resource Extraction Area designations, where such an amendment is required to permit the "urban use".

The definition, as set out below, is therefore intended to address those "urban uses" not already identified by the Niagara Escarpment Plan as permitted uses in the Escarpment Natural Area, Escarpment Protection Area, Escarpment Rural Area and Mineral Resource Extraction Area designations. Urban uses already identified in the Niagara Escarpment Plan are not affected by this definition, since they do not require an amendment to the Plan; therefore the policy will have no effect on those urban uses.

**URBAN USES**

“Urban Uses” includes the following,

1. commercial and industrial land uses, excluding:
	1. mineral extraction operations and associated accessory uses, including processing, manufacturing and recycling and reprocessing facilities as provided for by amendment from the Escarpment Rural Area designation to the Mineral Resource Extraction Area designation in the Niagara Escarpment Plan, and
	2. accessory uses, including processing, manufacturing and recycling and reprocessing facilities associated with mineral extraction operations, which are located in the Mineral Resource Extraction Area designation of the Niagara Escarpment Plan.

Notwithstanding the exclusions above, all accessory uses associated with a mineral aggregate operation will only be considered on the basis that they are proposed as temporary and will remain in place only for the duration of the mineral extraction operation.

1. institutional land uses, and
2. multiple residential, or land uses that have a mix of residential units with another type of land use, and

(d) recreational and tourist destination land uses such as downhill ski centres, lakeshore cottage areas, resort or lodge development, raceways, hotels, casinos, golf courses, golf course driving ranges, including retail operations and service establishments associated with such uses, and

(e) systems and infrastructure such as sewers, mains, water pipes, and other services associated with public utilities, excluding systems and infrastructure where it has been determined by a medical officer of health (or health authority) that there is a public health concern that must be addressed, and

(f) waste disposal or landfill sites, incineration sites, waste recycling sites, sewage treatment sites and facilities associated with such sites, excluding the recycling or reprocessing of mineral aggregate resources and aggregate materials within an approved Mineral Resource Extraction Area designation in the Niagara Escarpment Plan, and

(g) multiple lot creation by way of plan of subdivision, consent to sever or plan of condominium, and

(h) land uses that would normally be found within the land use designations of Minor Urban Centre, Urban Area or Escarpment Recreation Area in the Niagara Escarpment Plan, and

(i) land uses that would normally be found within a designation in a municipal official plan for an area of settlement such as an urban area, urban policy area, town, village, hamlet, rural cluster, rural settlement area, urban system, rural service centre, future urban use area or designated growth area.

Notwithstanding (a) to (i) above, those "urban uses" which are currently permitted under the Escarpment Natural Area, Escarpment Protection Area and Escarpment Rural Area designations, not specifically introduced as part of a past Niagara Escarpment Plan Amendment or exception, are excluded for the purposes of amending a Mineral Resource Extraction Area in the Niagara Escarpment Plan to any one of those designations, provided additional "urban uses" are not included in any such amendment.