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**NIAGARA ESCARPMENT COMMISSION  
STAFF SUMMARY REPORT**

**Proposed Niagara Escarpment Plan Amendment  
PS 215 18  
Sideroad 26/27  
Township of Clearview, County of Simcoe**

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**October 29, 2020**

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October 29, 2020

## **STAFF SUMMARY POSITION REPORT**

**RE: PROPOSED NIAGARA ESCARPMENT PLAN AMENDMENT PS 215 18**  
**Application by the TOWNSHIP OF CLEARVIEW**  
**Site-specific policy exceptions to allow the re-construction of Sideroad**  
**26/27**  
**Township of Clearview, County of Simcoe**

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### **PURPOSE:**

At the outset it is critical for the Niagara Escarpment Commission (NEC) to understand its role in considering the NEPA and the purpose of this Summary Report.

1. The purpose of this report is not to ask the NEC to re-assess Development Permit application (S/T/2013-2014/9152). That application was refused by the NEC in 2015 and is before the Environmental Review Tribunal (ERT) for a decision.
2. The purpose of this report is not to ask the NEC to challenge the decision of the Minister of Environment, Conservation and Parks with respect to the Schedule of Class EA that was conducted by the Township for proposed re-construction of Sideroad 26/27. The Minister recently took the position that the Schedule A+ Class EA was satisfactory for the works proposed.
3. The purpose of this report is not to ask the NEC to re-visit the decision by the ERT, as confirmed by the Court, to approve NEPA 161 (Walker Duntroon quarry expansion), including providing the opportunity to close County Road 91 and improve Sideroad 26/27. NEC staff understand that there is opposition to the road closure from other municipalities, businesses and the public, but this proposed NEPA cannot change the decision on NEPA 161 nor direct municipal decisions with respect to inter-municipal transportation planning.
4. The purpose of this Summary Report is to provide NEC staff's opinion on an application by the Township of Clearview (NEPA PS 215) which proposes site-specific policy amendments to the NEP to permit the re-construction of Sideroad 26/27. In accordance with the NEPDA, S.10.(3), "if written objections to the proposed amendments are received..., the Commission shall, ...appoint one or more hearing officers for the purpose of conducting one or more hearings... for the purpose of receiving representations respecting the proposed amendments by any person desiring to make representations." The NEC must refer the proposed Amendment to the ERT for consideration. Once the hearing has been held, the NEC will receive the recommendation of the Hearing Officers and then

will take a position on the NEPA to send to the Minister of Natural Resources and Forestry.

In accordance with the process set out in the NEPDA, NEC staff recommends as follows:

### **SUMMARY RECOMMENDATION:**

That the NEC:

- 1) Receive the NEC staff Summary Report on Amendment PS 215 18 but make no recommendations with respect to the proposed Amendment at this time;
- 2) Ask the Environmental Review Tribunal (ERT) to appoint one or more Hearing Officers to hold a public hearing pursuant to Section 10. (3) of the *Niagara Escarpment Planning and Development Act* (NEPDA) as there are written objections to the proposed Amendment;
- 3) Support a combined ERT hearing process for the proposed Plan Amendment and related Development Permit application(S/T/2013-2014/9152); and,
- 4) Instruct NEC staff to attend the hearing to assist the ERT by presenting their staff report regarding the Plan Amendment at the hearing.

**APPLICANT/OWNER:** Township of Clearview

### **APPLICANT SUBMISSIONS:**

Plan Amendment application:

- received February 2018 with Planning Analysis prepared by Skelton Brumwell Associates; Addendum to Planning Justification prepared by Skelton Brumwell Associates, October 2018; Environmental Impact Study December 2018 prepared by R.J. Burnside and Associates Inc.
- amendment revised April 2020; prepared by GSP Group Inc.
- Planning Justification Report August 2020, prepared by GSP Group Inc.
- Response letters to the comments of various agencies and interest groups, April and October 2020, prepared by GSP Group and Burnside and Associates.

### **PROPOSAL SUMMARY:**

Application to amend the Niagara Escarpment Plan (NEP) by adding special policies to apply only to the subject property, being the road allowance of Sideroad 26/27 in the Township of Clearview. The basis for the Amendment proposed by the Township of Clearview is that notwithstanding policies in the NEP 2017 that require the consideration of alternatives when proposing infrastructure within water resources and natural heritage, Sideroad 26/27 should be allowed to be improved to address public safety and mitigate the environmental impact that the unimproved road is having on the natural environment adjacent to the road and because it is in the public interest to do so.

**NEP DESIGNATIONS:** Escarpment Natural Area, Escarpment Protection Area, Escarpment Rural Area (see Appendix 1 – NEP designation map)

**RELATED FILE:**

S/T/2013-2014/9152: Development Permit for improvements to Sideroad 26/27; (application under appeal)

**OTHER RELEVANT FILES:**

NEPA PS 161 05, amendment to the Niagara Escarpment Plan to permit the expansion of the Duntroon quarry

S/E/2013-2104/9061: to establish and operate the Duntroon quarry

S/E/2013-2104/9060: to allow the use of the processing plant in the existing quarry for the quarry expansion and to allow a tunnel under County Road 91 to move aggregate between the existing and new quarry

S/T/2018-2019/9096: Development Permit for local road improvements to Concession 10 (application subject to conditional approval)

**BACKGROUND:**

NEPA PS 161, an application by Walker Aggregates for a quarry in the Township of Clearview was not supported by the NEC but after a lengthy hearing in 2010 the Amendment was approved by the Joint Board. A subsequent judicial review application was denied by the Divisional Court. The final Joint Board Order was issued in July 2014.

A Road Settlement Agreement was arrived at during the course of the hearing process, between Walker, Simcoe County and the Township of Clearview, allowing for part of County Road 91 to be closed and Sideroad 26/27 to become an alternate route for traffic in the area.

On January 31, 2014, the Township of Clearview submitted a Development Permit application for proposed improvements to Sideroad 26/27. The DPA was to permit the re-construction of the existing road allowance (including expansion and vertical re-alignment), pursuant to a Road Improvement Agreement between parties to the Duntroon quarry hearing decision, namely the Township of Clearview, Walker Aggregates Inc., and the County of Simcoe. That DPA is under appeal (S/T/2013-2014/9152).

In 2016 the Township advised the Ministry of Environment and Climate Change that a Schedule A+ Municipal Class Environmental Assessment was appropriate for the proposed road improvements.<sup>1</sup> A Schedule A+ is for projects that do not involve road widenings and are considered as routine maintenance. This Schedule does not require the consideration of alternatives.

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<sup>1</sup> Letter from Doug Dingeldein, October 15, 2020.

NEC staff recommended conditional approval of the application in November 2015, but the Commission did not support the staff recommendation and refused it for the following reasons:

1. *The road project does not meet the test of “essential” as defined in the NEP (Appendix 2, Definitions), which requires consideration of all options in the Escarpment Natural Area. The Development Permit application did not provide adequate evidence that all options had been taken into consideration.*
2. *A tunnel under (former) County Road 91, that will be used to move aggregate from the new Duntroon Quarry to the processing plant on the floor of the existing Duntroon Quarry, was not in place, or taken into consideration, when the Development Permit application was made and is now operational, which further erodes the case for this road project to be deemed “essential.”*
3. *Development would offend the objectives of the NEP’s two most sensitive land use designations: Escarpment Natural Area and Escarpment Protection Area.*
4. *Development would cause environmental harm, in particular to cold water streams and would damage steep Escarpment slopes.*

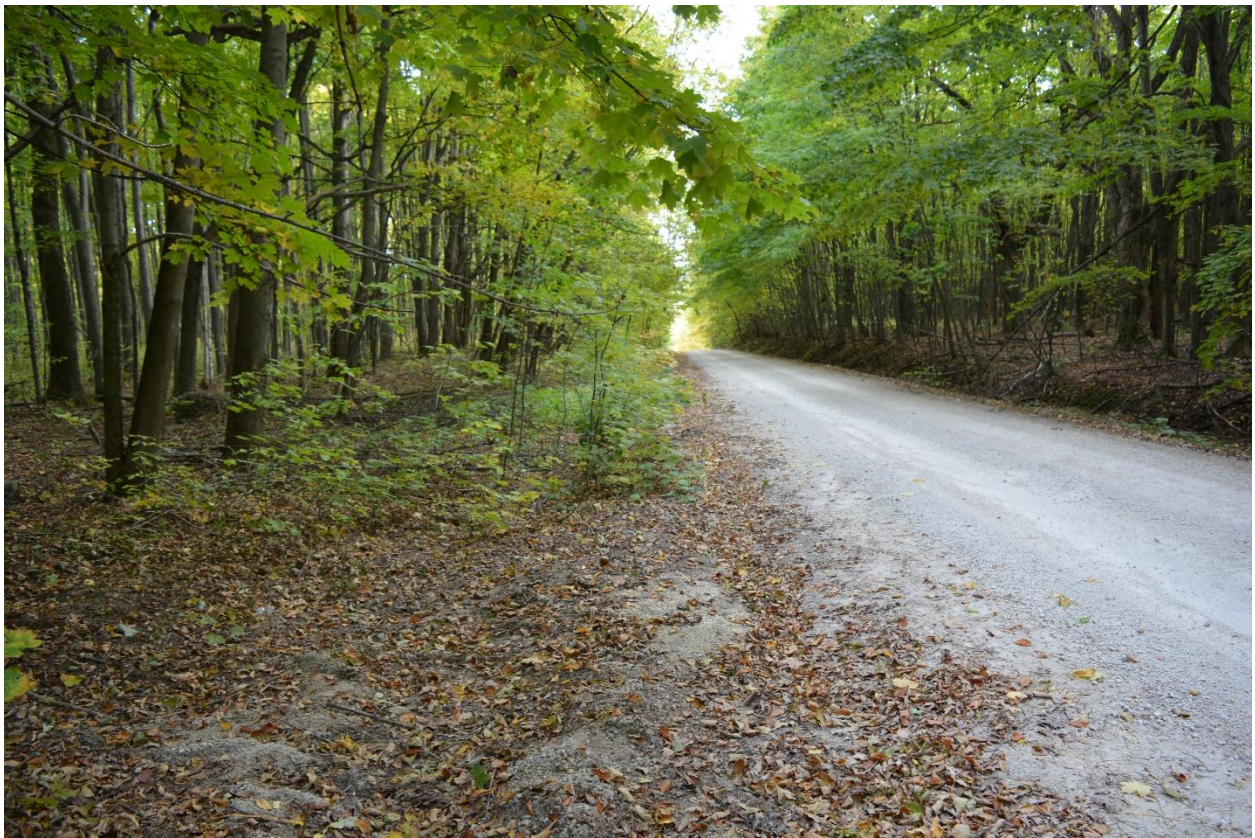
The decision was appealed to the ERT by the Township and other parties. A hearing on the appeals has been in abeyance pending the processing of the proposed NEPA that is the subject of this Summary Report.

Sideroad 26/27 from from the Osprey-Clearview Townline to Concession 10 is a seasonal, largely un-paved road in the Township of Clearview which serves a small number of rural residential and agricultural properties. (see Appendix 2 – orthophoto) The road is currently maintained by the Township of Clearview by placing gravel on the road and clearing brush. The loose gravel washes off the road and enters adjacent streams and wetlands. Within the designated right-of-way, the Township proposes to upgrade the road and pave it. The proposed road upgrades would include:

- Altering the vertical alignment;
- Replacing road-crossing culverts to improve fish passage;
- Improving and widening the road base;
- Channel re-alignment to increase the current separation between the road and a watercourse;
- Tree removal;
- Re-surfacing (paving) the road;
- Ditch improvements;
- Signage installation in relation to wildlife crossings;
- Addressing environmental and road side safety measures such as drainage, erosion and sedimentation issues.

The photos below taken by NEC staff show the slope of the road down the Escarpment and the tree canopy along the road:





## **NEPA PROCESS HISTORY:**

On January 17, 2019, the NEC directed staff to initiate the Amendment. Pursuant to the provisions of the NEPDA, notice was provided to ministries, affected municipalities, First Nations, agencies, stakeholders and the public (including the property owners and adjacent land owners), and comments were requested.

The proposed Amendment was advertised in local newspapers and posted on the Environmental Registry (EBR) and the NEC website. The circulation and notice period have ended, and the NEC now must consider the comments received, including those from the NEC's Public Interest Advisory Committee (PIAC), and address the Amendment application.

In accordance with S. 10. (1.1) of the NEPDA, a public meeting was held in the municipal office of the Township of Clearview on May 8, 2019 (further details below).

The NEPDA, S 10.(1)(c) requires that the Commission provide a copy of the proposed amendment to an advisory committee and invite them to make comments. The Public Interest Advisory Committee (PIAC) considered the proposed NEPA at 3 meetings between June 2019 and May 2020. The outcome of their consideration of the proposed NEPA is outlined below.

The Niagara Escarpment Hearing Office (NEHO) of the ERT convened a pre-hearing conference on March 27, 2020 to request an update on the status of the Development Permit application for the road works on Sideroad 26/27, which was appealed to the NEHO in 2015. NEC counsel advised the NEHO that staff were re-circulating a revised version of the NEPA prepared by the Township's consultants, together with a response to the NEC staff comments and would be preparing a staff recommendation regarding the NEPA in the fall of 2020. The NEHO ordered that the Township provide a document setting out the wording of its proposed NEPA by April 2020 together with responses to questions raised by parties to the hearing and give its position with respect to having a consolidated hearing on both the Development Permit application and the NEPA. Other parties to the hearing, including the NEC, were also given deadlines in May 2020 to respond to the Township's submissions. NEC staff undertook to bring the Summary Report to the Commission in September but the submission of a new Planning Justification Report by the applicant's consultant in late August delayed the report to this October meeting.

Following the exchange of submissions by the parties, the NEHO issued a further order in June 2020 requiring that a further pre-hearing be held in 2020 to set procedural directions after the NEC has considered the staff recommendation report (this report). An Issues List is to be developed at least one week before the pre-hearing. The Development Permit application is proposed to be heard at the same hearing as the NEPA. In accordance with the NEPDA, S.10(3), the NEC must now request that the NEHO appoint a hearing officer to conduct the hearing on the NEPA application (see Recommendation in this report). Following the Commission meeting, the NEHO is to be advised of the NEC position on referring the NEPA to a hearing.



### Public Meeting

A public meeting was held at the offices of the Township on May 8, 2019. The Township's planning consultant at the time gave a presentation outlining the purpose for the amendment. NEC staff then gave a brief introduction regarding the NEP, the role of the NEC and a description of the Plan Amendment and the proposed policy changes.

The majority of people present spoke in opposition to the proposed closure of County Road 91 and the proposed improvements to Sideroad 26/27. Reasons for their opposition included:

- Negative impact to the natural environment on Sideroad 26/27
- Cost of the road improvements to taxpayers
- Need for more traffic studies
- Don't agree that County Road 91 should be closed
- More traffic will mean more litter and trespass if road open all year long
- Concern about delays for emergency services if County Road closed
- Lack of consultation with public and business owners; need to consider how people need to travel around the community
- EA should have been done prior to agreement to close the road.

Those who expressed support for the closure of County Road 91 stated:

- County Road 91 is dangerous, traffic is horrendous so can't wait for it to close
- Focus on best possible result for Sideroad 26/27
- Diverting traffic to Sideroad 26/27 will take some of the traffic off 91
- Time to move on from this debate.

### **CIRCULATION AND COMMENTS:**

The Proposed Amendment was circulated for First Nations, ministry, municipal, agency, stakeholder and public comment on April 1, 2019. The Amendment was posted on Ontario's Environmental Registry (EBR) on March 22, 2019 (Posting 013-4952). The deadline for the 60-day commenting period was May 21, 2019. Notice was also placed in several local newspapers in March 2019.<sup>2</sup>

The following summary of comments and recommendations were received within the consultation period and throughout the intervening period prior to this report:

### **COMMENTS<sup>3</sup>**

#### Comments from Indigenous Communities

##### *Historic Saugeen Metis Community*

The Historic Saugeen Metis Lands, Resources and Consultation Department has reviewed the relevant documents and has no objection or opposition to the proposed

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<sup>2</sup> Circulation dates vary for local newspapers, so the newspaper notice appeared on different dates in March 2019.

<sup>3</sup> Comments may be abbreviated due to their length. Where there are quotes from the comments received, they are identified in quotations. Additional comments can be found in Appendix 4 to this Report.

development, land re-designation, rezoning, land severance, Official Plan and/or Zoning By-law Amendments.

### Comments from Agencies

#### 1. Federal Government

##### *Department of Fisheries and Oceans (DFO)*

In June 2017, DFO wrote to the Township of Clearview with respect to proposed mitigation measures for fish and fish habitat arising from proposed culvert replacement and channel realignment on tributaries of the Pretty River. The DFO reviewed the Township's proposal to determine if it would adversely impact listed aquatic species at risk under the federal *Species at Risk Act (SARA)*. DFO stated that there are no SARA species or their habitats identified in the project area, so no additional approvals would be required for the proposed activities. Further, in terms of loss of fish habitat as defined under the *Fisheries Act*, DFO considered the approximate 5 square metre loss of fish habitat acknowledged in the 2018 EIS to be acceptable, and so advised in its Letter of Advice dated June 19, 2017.

DFO recommended that screened pumps be used for de-watering and that 100% of downstream flows must be maintained during construction. Monitoring reports are to be provided to DFO. Provided that the mitigation measures proposed were implemented, DFO concluded that the project should not result in serious harm to fish or contravene the *Species at Risk Act*.

NEC staff note that changes to the federal *Fisheries Act* took place in 2019. DFO also recommended in its Letter of Advice that the Township consider re-submitting their project for additional review if the proposed project changed and might be impacted by the updated legislation.

#### 2. Provincial Ministries

##### *Ministry of Municipal Affairs and Housing*

No concerns.

##### *Minister of Environment Conservation and Parks (MECP)*

"The Sideroad 26/27 reconstruction was classified by the Township as a pre-approved Schedule A+ undertaking under the Municipal Class Environmental Assessment. Schedule A+ projects are limited in scale, have minimal adverse environmental effects and do not have any study requirements under the Municipal Class Environmental Assessment process." <sup>4</sup>

The Minister further indicated that "Effective June 2019 Schedule A+ undertakings are now exempt from the *Environmental Assessment Act*. Ministry staff are of the opinion that the road project was classified correctly as a Schedule A+. The

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<sup>4</sup> Minister of Environment, Conservation and Parks, letter dated May 21, 2020, p.1.

Township will be required to obtain a permit from the Conservation Authorities to identify potential impacts to natural heritage features and mitigation measures”. The Ministry states that: “Clearview Township must ensure the project is implemented in the manner it was developed and designed, as set in these approval/decision documents, and inclusive of all mitigating measures, commitments and environmental and other provisions therein. I am confident that Clearview Township recognizes the importance and value of continued consultation with the public, stakeholders, and Indigenous communities, and will ensure that the requirements of any other applicable legislation are satisfied.”<sup>5</sup>

The Species at Risk Branch also provided comments on the proposed NEPA. The Management Biologist deferred to the comments of the MNR with respect to bats. With respect to the EIS prepared by the applicant’s consultant, it was noted that apart from the bats, they did not find any Endangered or Threatened Species. MECP staff have records of some Threatened birds in the project area including Bobolink, Barn Swallow and Eastern Meadowlark which did not get picked up by the consultant in field surveys. It was recommended that the consultant comment on whether the project would have any impacts on the habitats of these species if they were present.<sup>6</sup>

#### *Ministry of Natural Resources and Forestry (MNRF)*

Before the transition of responsibilities for Species at Risk to MECP, their office had cleared the evaluation related to potential impacts to bat habitat based on Skelton Brumwell’s draft report. They did not re-evaluate the fish habitat aspects noting that DFO had provided a letter of advice regarding potential fish habitat impacts. They left the stormwater management review to the Conservation Authorities.

With respect to Significant Wildlife Habitat (SWH), the MNRF noted that there was no systematic summary of candidate SWH that may be present. Bat Maternity colonies should have been considered due to the extent of woodland, but they did not require a further evaluation and they accepted that the project will not likely impact non-SAR bat habitats.

Some explanation is required concerning what was done to rule out the study area for potential woodland raptor nesting habitats and whether the proposed works present a potential impact.

More detail and location are required for the propose eco-passage culverts for amphibian species between wetland habitat features.

Timing for tree/vegetation clearing is proposed as a mitigation strategy for the road project but there is inconsistency concerning the timing windows in different parts of the report in relation to birds and bats. The MNRF recommended no tree cutting between April 1 and October 31 in any year. This should be the standard for road

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<sup>5</sup> Ibid, p.2

<sup>6</sup> MECP, email from Michelle Karam, September 26, 2019.

development. Design plan notes should be updated accordingly. Should there be changes related to tree removal that could potentially impact SAR bat species and their habitat, MECP should be consulted.

*Ontario Ministry of Agriculture, Food and Rural Affairs (OMAFRA)*

OMAFRA had no comment on the proposed Amendment.

*Ministry of Tourism, Culture and Sport (MTCS)*

The Planning Report and supporting documentation makes no reference to archaeological assessment, only noting the standard commitments for the eventuality of encountering archaeological material during construction. In accordance with Niagara Escarpment Plan policy 2.10, an archaeological assessment should be carried out in support of a planning application unless the subject lands lack archaeological potential, which can be determined through the [Criteria for Evaluating Archaeological Potential](#) checklist.

Given the spatial overlap between this application and the Duntroon Quarry application under the Aggregate Resources Act, it is possible that the subject lands have already been subject to archaeological assessment under PIF # P013-008-STG3. However, this needs to be clarified and expressed in the planning documentation.

*Ontario Heritage Trust (OHT)*

Based on the fact that the proposal appears to be an improvement to the road and should address the erosion issue, we will not be providing additional comments.

*Ontario Parks*

Ontario Parks offers the following comments on the proposed Niagara Escarpment Plan (NEP) amendment to add site-specific policies to enable the upgrading of Sideroad 26/27 in Clearview Township (ERO notice 013-4952).

Nottawasaga Lookout Provincial Park abuts Sideroad 26/27; it is regulated under the Provincial Parks and Conservation Reserves Act (PPCRA) as a nature reserve class provincial park. The park protects provincially significant earth and life science values and provides low-intensity recreational opportunities, such as hiking, that are compatible with the protection of the park's natural features. Potential impacts to the provincial park must be considered carefully in light of Ontario Parks' mandate under the PPCRA to maintain ecological integrity, as well as the park's classification, values, and existing uses.

Ontario Parks staff has reviewed information associated with the proposal to upgrade Sideroad 26/27 to consider potential impacts to the regulated provincial park. We understand that the road improvements are proposed to be contained within the existing road allowance, are intended to make the road suitable for year-round use, and could resolve some existing deficiencies of the road relating to washouts, erosion, and maintenance. We also understand that the study area contains natural values such as wetlands, streams, and habitat for plants and

wildlife. Many of these values occur within the provincial park and may be impacted by adjacent project activities.

It is difficult to identify specific impacts to provincial park lands and values at this time from the proposed changes to the NEP; however, it is likely that improvements to Sideroad 26/27 would affect Nottawasaga Lookout Provincial Park's natural values, recreational use and access. Temporary disturbance to park values during construction is likely, and permanent disturbance and increased operational pressures are possible due to increased use of the sideroad once construction is complete. As such, if the proposal moves forward, Ontario Parks would like to be engaged in future planning and project design associated with upgrading Sideroad 26/27. Depending on the specific impacts to Nottawasaga Lookout Provincial Park, there may be planning and evaluation requirements under Ontario's Protected Areas Planning Manual and/or a Class Environmental Assessment for Provincial Parks and Conservation Reserves.

### 3. Conservation Authorities

#### *Grey Sauble Conservation Authority (GSCA)*

A portion of the project is within the GSCA's jurisdiction, traversing the provincially significant Rob Roy Swamp within the upper headwaters of the Beaver River Watershed. The subject proposal is not anticipated to have negative hydrologic impacts to the provincially significant wetland, or measurable negative drainage impacts in the Upper Beaver River Watershed within the jurisdiction of the GSCA.

Portions of the project site within the GSCA watershed are directly adjacent to provincially significant wetland features. Development and site alteration are not permitted in significant wetlands unless there will be no negative impact on the natural features or their ecological functions.

Significant wildlife habitat was not determined to be present within the GSCA area of jurisdiction. However, a concern was raised with respect to wildlife corridors. "Increased road traffic and speed have the potential to impact wildlife corridors crossing the road. The proposed reduction in speed and appropriate signage are important measures that can aid in protecting species. These measures in addition to specifically designed crossing structures combined with an appropriate fencing approach, are found to be the most effective mitigation strategy (OMNRF, 2016). We note that the EIS recommended that in addition to road signage and a reduced speed limit, wildlife exclusion fencing, and two culverts was suggested to facilitate safe passage for the observed frog species. However, in our review of the detail design drawings, a specifically designed crossing structure is not readily apparent through the current proposal to connect the two sides of the provincially significant wetland within the GSCA's jurisdiction. As such, we recommend that wildlife corridors be developed to ensure that linkages are maintained and improved upon through the provincially significant Rob Roy Wetland. Within the GSCA's jurisdiction we recommend the consideration of an ecopassage, appropriate to the species found on site through the EIS."



GSCA advised that they generally have no objection to the proposal to amend the NEP to allow for an upgrade to the road within the GSCA's jurisdiction as proposed, provided all of the recommendations within the Environmental Impact Study are complied with and a permit is obtained from their office.

*Nottawasaga Valley Conservation Authority (NVCA)*

"We advise that we have no objection to the approval of this NEC application for site-specific amendments to the NEP to facilitate improvements to Sideroad 26/27 in the Township of Clearview. The NVCA does however require additional information on the project design to evaluate concerns related to our mandate.

We advise the proposed development is located in an area affected by Ontario Regulation 172/06 under the Conservation Authorities Act, therefore a permit is required from our office for the proposed works. Additional details on the proposed works will be requested through the permit review process, to address the following items:

- There appear to be technical inaccuracies with regards to the presence of significant wildlife habitat (SWH) features and functions, specifically for amphibian habitat and presence of provincially-significant species. It is understood that the Ministry of the Environment, Conservation and Parks will be providing comment on SWH concerns pertaining to Species at Risk. We note that these features and functions relate directly to wetland function and are therefore a concern under the NVCA mandate as well.
- Conclusions regarding the degree of potential impacts to wildlife movement functions are not clearly substantiated, e.g. implications for potential increase in wildlife road mortality.
- Clarity is required with regards to wildlife exclusion and crossing infrastructure, e.g. further details regarding the permanence of infrastructure and design specifications.
- Impacts to fish and fish habitat appear to be appropriately mitigated, as evidenced by DFO letter of approval; however, NVCA will have more comments on fish habitat and passage through the design review.
- The extent of wetland 'compensation' measures which have occurred throughout the history of this file should be documented and presented. The applicant must address the question of wetland enhancement and/or compensation directly. Should it be determined that wetland compensation is appropriate, full implementation details will be required prior to permit issuance.
- The proposed land clearing window should be broadened to account for the appropriate local bird nesting season.
- Additional Engineering details on the project design are required."

In response to a letter to the NVCA prepared by the Township's engineering consultant in 2020, NVCA provided additional comments indicating that they were generally satisfied with the response which included further road design considerations at the detail design stage. The NVCA had additional questions as follows:

- Has consideration been given to the potential function of woodlands within the study area as breeding habitat for salamanders, and increased traffic as a risk to potential salamander movement corridors? Is additional study effort warranted to determine if targeted mitigation is required in this regard?
- The EIS concludes that area-sensitive breeding bird habitat functions will not be adversely impacted by road widening and tree removal, because the existing road already represents an 'edge'. However, Section 3.4.1 of the EIS also notes that "the tree canopy extends over all or most of the roadway". Clarity is requested: will the road improvement result in the creation of a new 'edge' in an otherwise functionally-contiguous woodland system and, if so, are additional mitigation measures and/or design considerations warranted to mitigate this impact?
- In addition to other naturalization/edge management considerations associated with this proposal, it is recommended that roadside stabilization/revegetation measures include native species mixes.

The NVCA indicated that there would need to be additional discussion at the stage of applying for a permit from them with respect to "restoration design, wildlife impact mitigation and potential compensatory requirements for encroachments to wetlands with in the NVCA's portion of the project area".

#### 4. Municipalities

##### *Grey County<sup>7</sup>*

In 2010 Grey County entered into an agreement with Clearview Township and Walker Industries regarding the work to be undertaken on Sideroad 26/27. The agreement stated that once the Walker quarry expansion was approved:

- Clearview Township would complete a traffic survey of Sideroad 26/27 annually,
- Two years after the licence issuance, Clearview will surface treat Sideroad 26/27 provided traffic is 400 vehicles per day, and
- Clearview Township will adopt a by-law which would restrict truck traffic and load restrictions on Sideroad 26/27 year-round.

The Grey County Official Plan identifies Provincially Significant Wetlands adjacent to the Grey Road 31/Nottawasaga Sideroad 26/27 intersection. The OP policy states "no development or site alteration may occur within adjacent lands of the Provincially Significant Wetlands designation unless it has been demonstrated through an Environmental Impact Study (EIS)... that there will be no negative impacts on the natural heritage features or their ecological functions". The NEC needs to be satisfied that the proposed upgrades to Sideroad 26/27 will have no negative impacts on the PSW based on the EIS that was completed.

Grey County conducted a public meeting in May 2019. A number of comments were expressed at the meeting relating to Sideroad 26/27 not being an appropriate

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<sup>7</sup> Grey County was consulted on the proposed Amendment as that municipality abuts the westerly terminus of Sideroad 26/27 and because the NEPDA requires consultation with municipalities in the Planning Area.

alternative to County Road 91, impacts to emergency response times, impact to the natural environment from the improvement of the Township road, need for updated traffic studies, lack of consultation, visual impact, increased traffic on other roads if County Road 91 is closed, concern about trucks and commercial vehicles that could not use Sideroad 26/27 during load restriction periods.

The County notes that the Township has done extensive environmental work to support its Plan Amendment application. Council passed a motion requesting that the Township “complete an appropriate level Municipal Class C Environmental Assessment for the proposed construction of Nottawasaga Sideroad 26/27 in light of the new environmental information that has been gathered in the past couple of years in support of the propose Niagara Escarpment Plan Amendment application” and that the Plan Amendment application “be put on hold until the appropriate level Municipal Class C Environmental Assessment process has been completed”. The motion was sent to the Minister of MECP, local MPP’s, the NEC and the County of Simcoe.

#### *Town of The Blue Mountains*

Comments noted in the section of this report relate to the Environmental Registry posting as comments were submitted by the Town through that avenue. (see page 26)

Supplemental comments were received by the NEC from the Town on September 29, 2020 noting that “additional traffic information has become available that highlights the importance of the former Simcoe County Road 91 as an important east-west corridor which serves as an important gateway to our Town and the rest of Grey County”.<sup>8</sup> The letter notes that the Town is extremely concerned that upgrades to Sideroad 26/27 will not be an adequate replacement for Simcoe County Road 91. Updated traffic data was collected by Grey County on Grey County Road 91 in August at locations north and south to the intersection with County Road 91. The study was undertaken to assess pandemic impacts on traffic and to assess any effect of the “congestion and reduced speed limit on Highway 26 on traffic flow” in comparison to data from 2019. The results showed:

- Total average daily traffic in 2020 is up 12.9% from 2019;
- North of CR91 average daily traffic (both directions) is up 22.0%;
- South of CR91 average daily traffic (both directions) is up 9.0%.

The letter concluded that there is an increase in people using County Road 91 as an alternate road to avoid congestion and reduced speed on Highway 26. The letter indicates that the data demonstrates the need for an east-west corridor which can be used safely today by 1,246-3,702 vehicles per day which Sideroad 26/27, as proposed, does not provide. The Township road project was not the subject of a fulsome EA and the related agreements date back 10 years when traffic patterns were quite different in this rapidly growing area of Ontario. “As a result, without

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<sup>8</sup> Letter from Mayor Alar Soever, September 29, 2020, p. 1

current traffic studies, it cannot be determined at this time whether the project is necessary to the public interest and certainly there has been no fulsome examination of other alternatives.”<sup>9</sup>

“Furthermore, by craftily enshrining the words ‘**been deemed necessary to the public interest and all other alternatives have been considered**’ in the amendments, the proponent is attempting to neuter the important protections enshrined in sections 2.6, and 2.7 of the NEP with regard to Water Resources, and Natural Heritage features. No other previous NEP amendments contain these words. Approving these amendments would set a dangerous precedent and remove these important protections during the permitting process.”

The letter concludes by asking that the NEPA be rejected to protect the integrity of the NEP, the natural environment and the “well-being of the all the people within the South Georgian Bay Region.”

#### *Municipality of Grey Highlands (MGH)*

In 2010 Simcoe County Council authorized two by-laws that had implications for MGH. The first by-law was minutes of settlement between the County, the Township and Walker Aggregates regarding County Road 91 and the expansion of the Walker quarry. The second by-law authorized the transfer ownership of the County road to the Township.

The implication for MGH is that the County Road would be replaced with a road that would not be at the same standard on Sideroad 26/27. Other assumptions can be made including:

- increased pressure on Grey County and MGH road systems including Pretty River Road,
- the loss of an east/west corridor that may have an impact on tourism and economic development,
- potential safety issues related to haul routes within Grey Highlands’ boundaries,
- increased timelines for EMS/Fire for contracted services to areas within Grey Highlands from Clearview,
- further negative impacts to the picturesque escarpment, and
- numerous environmental concerns related to the Provincially Significant Wetlands.

Since 2010 the position of MGH has been that the “Council of the Municipality of Grey Highlands strongly opposes the closing of Simcoe County Road 91 and that any proposed upgrades to Sideroad 26/27 be brought up to a County standard including hard surface from Day One should the closure of County Road 91 be approved”.

The application does not meet the test for essential infrastructure as it is not necessary, not in the broader public interest and all alternatives have not been

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<sup>9</sup> Ibid., p.2

considered. The application before the Commission [Development Permit] did not conform with the purpose, objectives and policies of the Niagara Escarpment Plan due to the lack of provision of detailed design drawings to fully consider the impacts to the NEP features, failure to consider impact of road salt on seeps and springs along the watercourse, failure to consider potential impacts to properties on the Sideroad, failure to provide information on how the road would be made passable to EMS and failure to consider the impacts identified in the Visual Impact Assessment and incorporate that into the EIS. The Schedule A+ EA should have been elevated to a Schedule C.”

The Provincial Policy Statement calls for coordination with other orders of government, agencies and boards and Aboriginal communities. There should be coordination on economic development, multimodal transportation systems, Great Lakes related issues, housing needs and emergency management. “This is non-existent in the amendment application presented to the NEC.” There has been a lack of public process and a lack of traffic studies showing the true use of the roads affected by this amendment application. The need to close County Road 91 has not been provided to the municipality since there is now a tunnel beneath the road.

“In short, the Municipality requests that the NEC deny the amendment application request. A failure to do so will result in an irreversible impact on the Escarpment on what is now a relatively pristine area.”

MGH provided updated comments in June 2020 in response to the re-circulation of the Plan Amendment, the Council resolutions of Town of the Blue Mountains and Grey County and the receipt of a response from RJ Burnside on behalf of the Township. The Municipality of Grey Highlands Council remains opposed to the amendments to the Niagara Escarpment Plan and reiterates its position that the project does not proceed until a proper Class C Environmental Assessment is completed.

The reconstruction of Sideroad 26/27 is intimately tied to the closure of former County Road 91 so MGH takes issue with a statement in the Burnside letter (April 2020) which stated that the issues associated with the expansion of the Duntroon quarry and closing of former County Road 91 “are not proper issues in the Commission’s and/or the Niagara Escarpment Hearing Office’s consideration of the Township’s proposed amendment to the NEP”. The closure of County Road 91 should be taken into consideration when reviewing the proposed Plan Amendment.

MGH also disagreed with a statement in the Burnside letter that characterized the reconstruction of the Township road as being in the same location, for the same purpose and for the same capacity.” Given the fact that the reconstruction project is tied to the closure of CR 91 and thus the project is replacing a seasonal gravel road which cannot be maintained in the winter with a road that would be required to handle 1265 to 3411 vehicles per day, no reasonable person would agree that the project is for the same “purpose”, “use” and for the same “capacity”, as is required



for all Class A+ projects as defined in the Municipal Engineers Associations (MEA) Municipal Class Environmental Assessment document.”

The Mayor of MGH states that he did not feel that the project had been proven to be necessary to the public interest or that all alternatives have been considered and that significant risk for negative impact to surrounding lands have yet to be mitigated. The Mayor concluded by recommending that the proposed NEPA be rejected. The Council passed the following motion:

- “Whereas Clearview Township has requested amendments to the Niagara Escarpment Plan to allow for the reconstruction of Clearview SR 26/27; and
- Whereas this reconstruction is tied to the closure of former Simcoe County Road 91 which passes through the Walker Duntroon quarry; and Whereas the closure of Simcoe County Road 91 will have serious regional traffic implications; and
- Whereas the reconstruction of SR 26/27 as currently planned raises serious environmental issues which need to be addressed; and Whereas the proposed amendments are worded in such a manner as to neutralize provisions of the Niagara Escarpment Plan with regard to important protections in the Niagara Escarpment Plan protecting Water Resources, and Natural Heritage features such as: • Wetlands • Habitat of endangered species and threatened species • Fish habitat • Life Science Areas of Natural and Scientific Interest • Earth Science Areas of Natural and Scientific Interest • Significant valleylands • Significant woodlands • Significant wildlife habitat • Habitat of special concern species in Escarpment Natural and Escarpment; and Whereas Clearview Township wishes to proceed with the project with only a Class A Environmental Assessment and not a more fulsome Class C Environmental Assessment process;
- Now Therefore be it resolved that Council endorses the May 28, 2020 Grey County resolution to oppose the amendments to the Niagara Escarpment Plan, and reiterate its position that the project not proceed until a proper Class C Environmental Assessment is completed; and That Council endorse the Grey County resolution that the Mayor of The Blue Mountains and the Deputy Mayor of Grey Highlands, meet with the Mayor of Clearview, and the Wardens of Grey and Simcoe Counties and Walkers to attempt to find a solution to this issue.”

*Simcoe County*  
No comment.

*Township of Clearview*

In a letter dated June 27, 2019, the Township’s Mayor wrote to the other municipalities in Grey County in response to the County’s recommendation that a Class C EA be undertaken before commencing re-construction of Sideroad 26/27 and that the NEC delay processing the NEPA. The Township advised it will not be changing its position as the EA has been properly assessed and there has been an exhaustive environmental impact study which identified all possible impacts and

concluded “that the development is ecologically and environmentally sound”. The Township is satisfied that there “there will be no negative impact to the environment. The upcoming Niagara Escarpment Hearing Office hearing will allow these findings to be tested in a public hearing, and any competing views can be advanced.”

In a letter dated September 16, 2020, the Township’s Mayor wrote to Commission members seeking support for its application to improve road safety, address environmental impacts and implement a Road Agreement initiated by the County of Simcoe and supported by the Township, the County of Grey and Walker Aggregates as part of the Joint Board hearing for the Duntroon quarry. They advised:

- The purpose of the road improvements to the existing road is to build it to minimum standards within the existing right of way. Affected land is previously disturbed and improvements are designed to protect, to the greatest possible extent, the natural features in the right of way. Many agencies are not opposed, and the Township has spent \$1 million on studies, consultants and lawyers. NEC staff who reviewed the Development Permit application said the road improvements were essential, in the public interest and no other alternative is available.
- MECP has refused “bump-up” requests and maintains that a Class A+ EA is appropriate. Reviewing alternatives is not necessary. Township Road 91 is planned to provide a truck route for the Duntroon quarry and residents of the road. Sideroad 26/27 would provide an alternate route for passenger cars and emergency vehicles. Other trucks would be required to use Country Road 124, which only adds an additional 6 kilometres.
- NEC members representing the public interest should not set a precedent by not allowing the improvement of the road and putting the Township in breach of the terms of the agreement and failing to implement the decision of the Joint Board. Support the Township’s NEPA application and withdraw objection to the Development Permit to avoid a hearing.
- The original intent by the County of Simcoe in proposing to close County Road 91 was to satisfy the NEC’s opposition to re-building County Road 91 and diverting traffic to County Road 124. The Road Agreement stipulates that the Township will make improvements to Sideroad 26/27. Regulation 828 was subsequently amended to require a Development Permit for the road improvements. Only other alternatives are to do nothing or build an entirely new road outside the current road allowance.

“Intervening in the local affairs of a nearby municipality vitiates the respect between municipalities necessary to collaborate effectively. We ask that the County of Grey respect Clearview’s jurisdiction.”

## 5. Comments from Businesses

### *Walker Aggregate*

NEC staff received an email in 2019 from MHBC Planning, consultants to Walker Aggregate, in response to public and agency comments on the proposed Amendment. MHBC believed the Class EA had been appropriately classified, that the proposed road improvements to Sideroad 26/27 were in the public interest and that the public had been appropriately consulted citing the extensive hearing on the Duntroon quarry and the Road Settlement Agreements entered into by the municipalities.

The president of Walker Aggregate sent a letter to the Councils of the surrounding municipalities in July 2020 with respect to the municipal responses to the proposed NEPA. The letter took issue with the current positions of the municipalities which he deemed to be contrary to the signed Settlement Agreements and evidence from the Duntroon Joint Board hearing. He stated that “Clearview Township has now agreed to pave Sideroad 26/27 as part of the initial Improvements instead of waiting until the volume of traffic was reached as previously agreed”.<sup>10</sup> He noted that the Minister had confirmed that the Class A+ project was the correct classification and that “any specific environmental issues will be canvassed in the course of the consideration of the development permit and the Niagara Escarpment Amendment applications”. He concluded that “the submissions by the Municipalities to the Niagara Escarpment Commission are entirely inappropriate and should be disregarded by the Niagara Escarpment Commission”.<sup>11</sup>

### *Votorantim Cimentos (division of St. Marys Cement)*

This company owns the Osprey Quarry, immediately west of the Walker Aggregates Duntroon Quarry. They commented as follows:

- The basis for the NEC decision to refuse the related Development Permit application are relevant considerations for this particular “re-application”. The NEC’s reasons for the refusal included that the proposed road does not meet the test of essential, would offend the objectives of the NEP and the road works would cause environmental harm to cold water streams and damage steep escarpment slopes.
- We question whether the road allowance should be treated as an existing lot of record as Policy 1.3.4.4 states that a “*lot created by a public body ...will not be considered a previous lot*”.
- “Although not part of the current application to amend the Niagara Escarpment Plan, the proposed closure of Clearview Rd. 91 (formerly County Rd. 91) is at the heart of the matter.” We suggest that the application is premature as Walker

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<sup>10</sup> Ken Lucyshyn, Walker Industries, Letter dated July 14, 2020, p.2.

<sup>11</sup> Ken Lucyshyn, Walker Industries, Letter dated July 14, 2020, p.3.

has no immediate need from a business standpoint to access the aggregate beneath County Road 91. “In addition to being premature, what the proposed closure of Clearview Rd. 91 would result in a significant economic impact to other existing aggregate operations in the area that use Clearview Rd. 91, including our Osprey Quarry, which, as mentioned above, is located directly to the west of Walker, on County Rd 31, in the Municipality of Grey Highlands. The use of Clearview Rd. 91 is permitted on our site plans for servicing our customers in the Collingwood/Wasaga/Clearview markets. The closure of this road would mean truck traffic would be forced to use Grey/Simcoe Roads 31/95 and 124, adding an additional 14 kilometres (round trip) to the haul of product in order to get to this local market. This extra haul, and the costs associated with it, would be extremely detrimental to our business (and others in the area) and would adversely impact competitive pricing within the local market. We urge the Commission to reject this application on the basis of the environmental, social and economic impacts that have been identified above and the fact that it does not meet the tests of the NEP.” (May 22, 2019 letter)

Further comments received (June 2020) from this company (now CBM Aggregates) in response to the revised wording of the proposed Amendment were as follows:

- CBM Aggregates does not oppose the ultimate plan of decommissioning County Rd. 91 and the replacement of it with a property designed Sideroad 26/27. We do continue to struggle with this being considered ‘essential’ with the need for it to happen in the near future. The plans for Sideroad 26/27 do include design specifications that would allow for trucks to utilize it the way County Rd. 91 is being utilized for local deliveries by other aggregate operators and haulers of other products. If the design of Sideroad 26/27 was upgraded so that trucks could utilize it as a replacement to County Rd. 91, CBM would not oppose the NEPA. “Until that time, CBM continues to maintain that this is premature and would unnecessarily impact the local businesses that would utilize County Rd. 91 in the near future.”

#### *Seeley and Arnill Construction*

In comments dated April 2019 (paraphrased here for brevity) the company indicated that it was opposed to the Development Permit application as the reason for the application was to allow Walker Aggregate to excavate aggregate beneath Clearview 91 (formerly Simcoe County 91). Walker’s initial plan was to tunnel under the road. “Due to numerous planning concerns by NEC and an inability to establish any “reasonable” agreement with Simcoe County, who owned the road at the time, Walker then asked that the road revert to the Township and subsequent to that, made agreement with Clearview to “buy” and close the road.” We wish to object to this DPA as it disregards many of the Provincial Policy Objectives under the Planning Act 2014 and we believe the Planning Justification Report by Skelton Brumwell is fundamentally flawed.<sup>12</sup>

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<sup>12</sup> Skelton Brumwell was the first planning consultant on the file. GSP Group is now the planning consultant to the Township.

Clearview 91 is performing as it has for many years as an acceptable road for vehicular and truck traffic between the Simcoe/Grey Townline and County road 124. To close it makes no sense in any way except to limit competition to aggregate entering the Collingwood, Wasaga Beach, and Clearview markets from the west to the benefit of Walker Industries. The extra haul and costs associated with the closure of the county road would “effectively put sources other than Walker out of the South Georgian Bay market”; would be detrimental to competitive pricing in the market; and would add a 7¢ per tonne disadvantage to aggregate entering the market from anyone other than Walker Industries”.

In a subsequent letter in May 2019 regarding the proposed Plan Amendment, the company president concluded by requesting that the NEC “deny the construction of 26/27 side road as it is simply not needed nor in the public’s best interests”.<sup>13</sup>

## 6. Comments from other Organizations

### *Bruce Trail Conservancy (BTC)*

BTC is a not-for-profit charitable organization that acquires and conserves Niagara Escarpment land along the route of the 900-km Bruce Trail described in Part 3 of the NEP. Our comments are similar to the ones provided with respect to the Development Permit application in 2015.

The Bruce Trail has crossed Sideroad 26/27 for many years, in the centre of the section proposed to be improved, providing an important connection between lands secured for the trail. It would be helpful if a traffic study was available to assist us in understanding the future impacts of rerouting traffic from County Road 91 to Sideroad 26/27. In the absence of such a report, we anticipate that traffic volumes and speeds will increase dramatically, which will make the Bruce Trail crossing hazardous for users and on-road parking unsafe. If the NEPA application is approved, we request that it be conditional on speed limits of 50km/hr being imposed for the entire length of the road, and that signs be posted at appropriate locations along the roadside alerting drivers of the Trail crossing.

We support the placement of new culverts. We understand that the proposed road profile of the improved road will be higher than the existing road and the new culverts will facilitate pedestrian crossing of the road in this location.

The Bruce Trail crossing on Sideroad 26/27 is considered permanent and is used by thousands of hikers throughout the year. We would like assurances that hikers will be still be able to cross the road safely during construction.

Providing adequate parking for Bruce Trail users has been challenging for this area. The current unimproved Sideroad 26/27 currently provides roadside parking. However, we anticipate that the increased traffic volume and speeds along a paved

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<sup>13</sup> Paul Arnill, letter regarding PS 215 18 dated May 16, 2019, p.2.



year-round road will make roadside parking unsafe. We welcome discussions with Clearview Township to accommodate parking in this area, potentially off-road parking on the south side of the road on quarry owned lands.

The BTC has no objection to the proposed development as long as it does not conflict with NEP policies including those pertaining to the securement of NEPOSS and the Bruce Trail. We welcome the opportunity to keep the Bruce Trail open during construction and to mitigate the negative impacts related to anticipated increased traffic on this road should this application be approved.

*Coalition on the Niagara Escarpment (CONE)*

CONE believes that this road is too steep and disturbs too many sensitive wet areas. We believe the original road (County Road 91) to be the best haul road not the proposed changes that still will not be safe when completed.

*Blue Mountain Watershed Trust (BMWT)*

BMWT submitted extensive comments in May 2019<sup>14</sup> including a review of the applicant's EIS by a biologist and ecologist. BMWT also retained an engineering consultant, Hunter & Associates to comment on the proposed road improvements.<sup>15</sup>

The conclusions in Mr. Powell's submission on behalf of BMWT are as follows:

1. A Class C Environmental Assessment should be undertaken on the proposed reconstruction of Sideroad 26/27.
2. Reconstruction of Sideroad 26/27 is flawed because of its unique location on the Niagara Escarpment where there are species at risk, bat habitat, fishery habitat, natural features including steep slopes, woodlands, wetlands, ground water seeps, and springs.
3. There are better alternatives to the proposed closing of County Road 91 which should be evaluated in a process which engages the public.
4. There is no need to make this seasonal road an all-weather road as it adequately services the road residents.
5. There was no adequate public consultation or traffic study supporting the closure and transfer of the County Road.

BMWT concluded that the proposed Plan Amendment had not been justified and should be denied and that the hearing should be postponed until the appropriate Schedule of Environmental Assessment is completed.<sup>16</sup>

In its submission, BMWT cited concerns about the design of the proposed road works and the environmental implications that might arise from the improvement of the road

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<sup>14</sup> George Powell, P. Eng., Vice Chair BMWT Water Action Committee, Review of Township of Clearview Plan Amendment submission, May 2019 (including technical review by North-South Environmental, and Hunter and Associates)

<sup>15</sup> Hunter and Associates, Letter dated July 10, 2019.

<sup>16</sup> George Powell, BMWT, submission to NEC, May 25, 2019, p. 2.

based on that design. At a high level, natural heritage and engineering issues were raised with respect to:

- The steepness of the road slope (11.87%) which results in significant runoff causing erosion and siltation into adjacent tributary streams which can be harmful to aquatic life;
- Paving the road could lead to increased volume and intensity of runoff with potential for additional negative impacts on the adjacent streams, wetlands and fisheries including water temperature increases and spills (road salt, sand and pesticides);
- Lack of a legal survey to confirm the road boundaries within which the road must be constructed;
- Conclusions in the EIS based on the wildlife, bat, bird and amphibian surveys were not correct and the impacts on wildlife could be greater than identified; additional work to confirm habitat is necessary;
- Impact of construction on seepage areas;
- The number and extent of wetlands along the Sideroad is greater than shown in the EIS;
- Greater danger to hikers and wildlife mortality due to increased traffic speed.

The biologist recommended de-commissioning the steep central section of the Sideroad which is located in a major groundwater discharge area in order to prevent further erosion and restore natural stream channels in the area and protect wildlife habitat. There would be reduced maintenance costs to the municipality if this were to take place.

Mr. Hunter examined the proposed road cross sections for the Sideroad. He concluded that the proposed side slopes did not meet Township of Clearview road standards which require 3:1 side slopes, but the slopes proposed are 2:1 or greater which would not be in accordance with Township 2016 road standards. He also stated that “the standard 20 m SR 26/27 Right of Way is inadequate to accommodate these recommended road embankment side slopes and back slopes as well as the enhanced grassland swales contemplated. The road embankment slopes at 2:1 or steeper may be an operational safety hazard and the back slopes designed as steep as 1.4:1 will be unstable.”

Mr. Hunter suggested in his comments that a survey of the road right of way had not been undertaken. If that is the case, he suggests that the design of the road may not be appropriate given that the road surface and adjacent water features may not follow the right of way.<sup>17</sup> Mr. Hunter concluded that Sideroad 26/27 was a substandard alternative to County Road 91.

## Public Comments

Many comments were received from members of the public throughout the review of the Township’s NEPA application right up to the completion of this staff report. These comments are summarized in Appendix 3 to this report. Although some comments were

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<sup>17</sup> Hunter and Associates, letter to BMWt, April 26, 2019, p.4

received in support of the proposed improvements to Sideroad 26/27, the majority were opposed for a variety of reasons including:

- Lack of public consultation relating to the determination to improve Sideroad 26/27 as a replacement for County Road 91;
- Concern that the road improvements would have a negative impact on the natural environment, water and scenic resources on and around Sideroad 26/27;
- A Schedule C Municipal Class EA should have been conducted;
- Concern that overall transportation needs in the area for the public, businesses, visitors and EMS would not be well served by closing County Road 91 and improving Sideroad 26/27 as the roads are not equivalent in their ability to convey traffic.

One resident of Sideroad 26/27 retained a planning consultant, McKibbon Wakefield, to comment on the 2018 Planning Report prepared by the Township's first planning consultant.<sup>18</sup> Mr. McKibbon concluded that the planning justification did not support an amendment to the Niagara Escarpment Plan for the following reasons:

- The works required on the Sideroad are substantially different than what was known during the Walker quarry hearing. Wetland features were discovered subsequent to the hearing during field work.
- The road improvements will sever the continuous natural Escarpment environment creating a hard physical linear edge.
- Policies in the NEP have changed and a setback from the brow of the Escarpment is required for infrastructure.
- Although the road right of way exists, the proponent must evaluate the policies that relate to infrastructure.
- The NEPDA and the NEP also represent policies that protect the public interest. Alternatives must be considered. A range of stakeholders will be prejudiced by the decision to close CR 91.
- The County road is situated between two quarries in an environment that is heavily disturbed and is the proper place for a roadway on the Escarpment. Conversely the Sideroad severs the Escarpment face, is in a Natural Area designation and several key natural and hydrologic features adjacent to a Provincial Nature Reserve and a Bruce Trail crossing. Alternatives such as restoration of this section of the Sideroad to a natural state and transferring it to the Nature Reserve and relocation of County Road 91 to within the quarry as part of its rehabilitation have not been considered.

Mr. McKibbon commented again in June 2020 in response to a letter dated April 27, 2020 from the Township's current planning consultant (GSP).<sup>19</sup> He indicated that his opinion was still that the proposed road improvements will not maintain a continuous natural environment. He disagreed that the Township was the arbiter of the public interest and that public interest was a balancing act that must take into consideration the policies of the NEP. The policies of the NEP represent a superior public interest that

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<sup>18</sup> George McKibbon letter dated June 24, 2019.

<sup>19</sup> George McKibbon letter dated June 8, 2020

needs to be balanced with Clearview's interests and those expressed by other municipalities, businesses and citizens affected by this amendment.

Mr. McKibbon stated that a current and comprehensive traffic analysis is required in order to properly evaluate the proposed development and its impacts taking into consideration the characteristics of the Sideroad compared to the established transportation corridor (the County Road).

Mr. McKibbon disagreed with the planning analysis of the Township's consultants with respect to whether the Sideroad was infrastructure or an existing use and which policies should apply depending on which use was chosen. He did not agree that the proposed works were minor (one of the tests for an existing use) and did not believe that it had been demonstrated that the applications met the infrastructure policies. He believed a consideration of alternatives should include restoring the Sideroad to a natural state and keeping the County Road open. Alternative road designs should also be considered.

#### Environmental Registry

Four comments were received through the Environmental Registry for Posting 013-4952.

1. One individual commented that they did not think an amendment to the benefit of Walker Aggregates should be allowed on Sideroad 26/27. Purpose of the NEP is to stop development to allow the natural area to thrive. If an exception is made now, they will continue to be made. The grade on the road is very steep (14%). Erosion and destruction to the Escarpment would be detrimental to wildlife and plant life.
2. Another individual commented that the upgrade of Sideroad 26/27 is "unnecessary and would be a money pit." They object to the approval of the amendment on the basis that:
  - Sideroad 26/27 is little more than a wet goat path that would cost significant taxpayer funds to upgrade and maintain
  - Upgrading of Sideroad 26/27 would also require upgrading of Concession 10
  - County Road 91 is perfectly good and is used by neighbouring counties, tourists and residents
  - Safety issues cited by the Township pale in comparison to other areas of the township, county and province
  - The safety issues should have been addressed through the licence process relating to the Walker quarry expansion
  - There will be costs associated with new signage, documentation and mapping
  - Upgrading the road will encourage further development in the area
  - Only real reason to upgrade the road is to deliver on a backroom deal between Walker and the Township
  - If the road is upgraded to support 400 cars per day, further road upgrades will be necessary

- Traffic will be diverted to County Road 24, if 91 is closed resulting in more complaints and safety issues and impact on quiet enjoyment of homes in the area
  - Alternatives are available to improve the safety of County Road 91 such as diverting traffic through Singhampton and reducing speeds
  - Upgrading Sideroad 26/27 goes against the purpose of the Niagara Escarpment protected area which we as taxpayers pay to maintain for the future. Do not approve the amendment.
3. The Mayor of the Corporation of the Town of The Blue Mountains expressed concern about the proposed amendment's "anticipated negative impact on the transportation network connectivity in the Southern Georgian Bay region as well as the natural heritage features and functions of the Niagara Escarpment". The activities necessary to reconstruct the road may be understated in the supporting materials. We question whether the proposed initial condition of the road (gravel surface and steep grades) will be sufficient to serve as an inter-regional transportation connection between Simcoe and Grey County. Sideroad 26/27 should be paved at minimum. Other alternatives should have been considered including reconstructing Road 91 through the Walker pit.

Until the parties involved, including the Town, have had an opportunity to collaboratively explore alternatives, a decision on the Plan Amendment and Development Permit are premature and does not conform with the policies and intent of the Niagara Escarpment Plan. Inter-regional transportation connectivity in the South Georgian Bay region is "critical to the continued livability and economic viability of the area". The Niagara Escarpment is "an attractive natural asset that should be protected and maintained, but also represents a constraint to municipal and provincial authorities' ability to optimize existing infrastructure. Other alternatives that would have less impact on the Niagara Escarpment should be considered first." The Town expressed interest in continuing to work with stakeholders to achieve positive outcomes.

4. Ontario Parks comments are included under Ministry comments as they are an agency of the MECP.



## Public Interest Advisory Committee (PIAC)

The PIAC met three times to consider the proposed NEPA. At the first meeting on June 12, 2019 NEC staff provided an overview of the proposed amendment and the agency comments received to date. The PIAC decided that they wanted to defer a decision pending receipt of additional agency comments.

The second PIAC meeting on October 9, 2019 included a site visit to Sideroad 26/27 followed by a meeting at the Township office. The Township's consultants were invited to attend part of the PIAC meeting to answer questions from the members of the Committee. The PIAC decided to defer their decision again, pending receipt of the responses from the Township's consulting team to the comments received from agencies and members of the public.

The final PIAC meeting was held virtually on May 8, 2020. Having visited the site, heard from the Township's consultants and considered the responses of those consultants to the comments submitted on the proposed NEPA, the PIAC passed the following motion:

"That this committee not support the proposed amendment as stated due to our view that the proponent has not demonstrated that this is in the public in the interest and has not considered other evident alternatives."

## **POLICY ANALYSIS:**

### Provincial Policy Statement 2020 (PPS)

Provincial plans such as the NEP are read in conjunction with the PPS but take precedence over the policies of the PPS to the extent of any conflict. Land use planning decisions made by the Province or a commission or agency of the government must be consistent with the PPS.

Development as defined in the PPS 2020 means:

- "The creation of a new lot, a change in land use, or the construction of buildings and structures, requiring approval under the *Planning Act*, but does not include:
- a) activities that create or maintain *infrastructure* authorized under an environmental assessment process;
  - b) works subject to the *Drainage Act*, or,
  - c) for the purposes of policy 2.1.4(a), underground or surface mining of minerals or advanced exploration on mining lands in *significant areas of mineral potential* in Ecoregion 5E, where advanced exploration has the same meaning as under the *Mining Act*. Instead, those matters shall be subject to policy 2.1.5 (a)."

Infrastructure is defined as:

"Means physical structures (facilities and corridors) that form the foundation for development. *Infrastructure* includes: sewage and water systems, septage treatment systems, waste management systems, electricity generation facilities,

electricity transmission and distribution systems, communications / telecommunications, transit and transportation corridors and facilities, oil and gas pipelines and associated facilities.”

While infrastructure is defined similarly in the NEP, development is defined differently in the NEPDA where it:

“...Includes a change in the use of any land, building or structure.”

- There is no “exemption” for works completed under an environmental assessment in the NEPDA. Therefore, the proposed improvement of Sideroad 26/27 is considered development, for the purpose of the analysis of the Plan Amendment under the NEP (which follows later in this Report) and the policies of the NEP prevail over those in the PPS.
- PPS policies which restrict development are not assessed in this Report given the PPS exclusion for development that was subject to an EA.

Policy 1.1.4 (Rural Areas in Municipalities) – The policy states that it is “important to leverage rural assets and amenities and protect the environment as a foundation for a sustainable economy”; use rural infrastructure and public service facilities efficiently.

- The proposed improvement of Sideroad 26/27 would leverage an existing road asset as opposed to building a new road but this must be balanced against the importance of protecting the environment. Significant concerns have expressed in the comments received by the NEC about the impact of the road improvement on the surrounding sensitive natural environment and whether this is the correct road in the area to improve.

Policy 1.2 (Co-ordination) – “A coordinated, integrated and comprehensive approach should be used when dealing with planning matters within municipalities, across lower, single and/or upper tier boundaries...managing and/or promoting growth and development that is integrated with infrastructure planning, managing natural heritage, water, agricultural, mineral and cultural heritage resources; planning authorities should coordinate emergency management and other economic, environmental, and social planning considerations to support efficient and resilient communities.”

- Comments have been received from surrounding municipalities that suggest that an inter-municipal transportation planning exercise should be undertaken to determine if improving the Sideroad is the best alternative to achieve road capacity for all road users in the area.

Policy 1.3 (Employment) - The PPS states that “planning authorities shall promote economic development and competitiveness by, among other things, “ensuring the necessary *infrastructure* is provided to support current and projected needs”.

- The submissions of two aggregate producers outlined earlier in this report expressed concern about a loss of competitiveness arising from being unable to use Sideroad 26/27 or County Road 91 as a haul route and having to travel farther to get to market and at increased cost to their product.

Policy 1.6 (Infrastructure and Public Service Facilities) – “Infrastructure and public service facilities shall be provided in an efficient manner that prepares for the impacts of a changing climate while accommodating projected needs; use of existing infrastructure should be optimized; green infrastructure should be promoted; infrastructure... should support the effective and efficient delivery of emergency management services and protect public health and safety.”

- It was suggested in many of the comments received by the NEC that emergency services would not be enhanced by the improvement of the Sideroad as they would not use it due to its steepness. On the other hand, the road works would take advantage of an existing right of way and the proposed improvements in the road design could address the conveyance of storm water through improved ditches and culverts.

Policy 1.6.7 (Transportation Systems) – “Transportation systems should be provided which are safe, energy efficient, facilitate the movement of people and goods and are appropriate to meet projected needs”.

- Sideroad 26/27 is not suitable for the movement of goods. Improving it would make it available for travel as a year-round road, but no evidence was provided as to how it would meet projected traffic needs on a broader scale.

Policy 2.5 (Mineral Aggregate Resources) – Mineral aggregate resources shall be protected for long-term use; mineral aggregate operations shall be protected from development or activities that would preclude or hinder their expansion or continued use.

- Two aggregate companies have expressed concern that the closure of County Road 91 would negatively impact their operations by increasing their haul routes. Another company supports the improvement of Sideroad 26/27 as it implements an agreement arising out of the Duntroon quarry hearing.
- This policy is not met by the Plan Amendment because Sideroad 26/27 cannot be used by aggregate trucks and impeding the accessibility of the road system could hinder their operations based on the submissions received by the NEC.

Policy 2.6.2 Cultural heritage – Development and site alteration shall not be permitted on lands containing archaeological resources or areas of archaeological potential unless significant archaeological resources have been conserved.

- The MHTSCI noted in its comments that they were not aware that any archaeological assessment of the road had been undertaken unless it was done as part of the Duntroon hearing in relation to the licence application. Although the road is a disturbed landscape due to annual maintenance activities, there is potential for archaeological resources within the right of way.
- In a response to the Ministry in April 2020 the Township’s engineering consultant stated that since the entire roadway was previously disturbed, he was of the opinion that an archaeological assessment was not required. NEC staff was advised by Ministry staff that the Township should submit the requested checklist

to the Ministry to demonstrate that archaeological potential is low and that an archaeological assessment is not required.<sup>20</sup>

#### Growth Plan (May 2019)

A Place to Grow: The Growth Plan for the Greater Golden Horseshoe (Growth Plan) contains policies in Section 3 regarding the need to have well-planned infrastructure.

“The *infrastructure* framework in this Plan requires that municipalities undertake an integrated approach to land use planning, infrastructure investments, and environmental protection to achieve the outcomes of the Plan.<sup>21</sup>

The Growth Plan notes that significant cost savings can be achieved if existing infrastructure is optimized before new infrastructure is built while taking into consideration the impacts of a changing climate. Municipalities are to assess *infrastructure* risks and vulnerabilities. In planning for the expansion of existing corridors, municipalities are to demonstrate, where applicable through an environmental assessment, that any impacts on key natural heritage features and key hydrologic features have been avoided, or if avoidance is not possible, minimized and to the extent feasible, mitigated.<sup>22</sup>

The Township of Clearview retained Burnside to complete an EIS. The conclusion of that report is that the proposed road improvements to Sideroad 26/27 are intended to improve public safety and road conditions and “minimize the damage that the existing stormwater management features are causing to the road surface, ditches and culverts, and to the watercourse, wetlands and forests through significant amounts of sediment deposition”.<sup>23</sup> The report concludes that the potential impacts of the proposed road improvements are acceptable based on the recommended mitigation and compensation measures.

The County of Simcoe is subject to Section 6 of the Growth Plan which provides more specific direction for this area. Making the best use of existing infrastructure and promoting green infrastructure are emphasized.

The Growth Plan recognizes that the Greater Golden Horseshoe contains many of Ontario’s significant ecologic and hydrologic natural environments and scenic landscapes, including the Niagara Escarpment which support biodiversity and recreational activities that benefit public health, overall quality of life and moderate climate change impacts. The Introduction to the Growth Plan states that where there is conflict between the NEP regarding the natural environment or human health, the direction that provides more protection prevails. As the analysis later in this report shows, it is the opinion of NEC staff that the NEP provides more protection to key hydrologic features and key natural heritage features in restricting where infrastructure can be located.

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<sup>20</sup> Don McNalty, Burnside and Associates letter dated April 9, 2020.

<sup>21</sup> Growth Plan, May 2019, Section 3.1

<sup>22</sup> Ibid Section 3.2.5.

<sup>23</sup> Burnside and Associates, EIS, p.87.

The intent of the new Growth Plan policies is an integrated approach which co-ordinates infrastructure and land use planning to achieve the best outcomes for municipalities and their citizens. Having regard to the submissions received by the NEC, it does not appear that an integrated approach that considered alternatives was used in this case to determine that it would be necessary to improve this road. The fact that the PPS does not define development to include infrastructure that was subject to an EA as development, does not exempt the proposed development in the NEP area from NEP policies or those of the Growth Plan. NEC staff is of the opinion that the proposed Amendment would not be consistent with the Growth Plan.

#### Greenbelt Plan (2017)

The requirements of the NEP, established under the *Niagara Escarpment Planning and Development Act*, continue to apply and the Protected Countryside policies do not apply, with the exception of Section 3.3 (Parkland, Open Space and Trails). Section 3.3 of the Greenbelt Plan states that provincial parks are important components in the development of parkland, open space and trail strategies. “Where geographic-specific or public land management plans exist, municipalities, agencies and other levels of government must consider such plans when making decision on land use or infrastructure proposals.”<sup>24</sup>

Comments received from Ontario Parks, while not opposed to the Plan Amendment, express concern about possible impacts to the Nottawasaga Lookout Provincial Park during and after construction of the proposed road works and suggest that an Environmental Assessment under the *Provincial Parks and Conservation Reserves Act* may be required.

NEC staff is not aware that the Township undertook any consultation with Ontario Parks with respect to the proposed road works on Sideroad 26/27, therefore it is not clear how this policy in the Greenbelt Plan has been or could be addressed.

#### Niagara Escarpment Plan

In accordance with Part 1.2.1 of the NEP, changes in policy require an amendment to the text of the Plan. Amendments must be justified, and it must be demonstrated that the proposed amendment and the expected impacts resulting from the proposed amendment do not adversely affect the Purpose and Objectives of the *Niagara Escarpment Planning and Development Act* (NEPDA) and the NEP and shall be consistent with other relevant Provincial policies.

### **Purpose**

“The purpose of this Plan is to provide for the maintenance of the *Niagara 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*.”<sup>25</sup>

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<sup>24</sup> Greenbelt Plan 2017, Section 3.3.3.4

<sup>25</sup> Niagara Escarpment Plan 2017, Ministry of Natural Resources and Forestry, © Queen’s Printer for Ontario.

NEC staff acknowledge that the continuous natural environment in this area was already altered when Sideroad 26/27 was initially built in the 1800's and that the intention of the road re-construction is, in part, to address the negative impact that the road is having on the natural heritage and water resources surrounding the road. The proposed road works are development that would enable the intensification of the use of the road and requires the removal of natural heritage features and alteration of water resources to support the movement of storm water through the road allowance. The Township is of the opinion that the road works are in the public interest and that alternatives have been considered but seek an Amendment to the NEP to confirm that view so that a Development Permit can be approved to permit the works. "Compatible" is defined in the NEP to mean "where the building, structure, activity or use, blends, conforms or is harmonious with the *Escarpment environment*. Intensive re-construction and alteration to the Escarpment feature itself is proposed in order to achieve a road that is usable year-round, to meet municipal road standards and address road safety.

NEC staff are of the opinion that the proposed Plan Amendment would not be in keeping with the Purpose of the NEP as the proposed policy exceptions would enable development which is not consistent with the overall goal of only allowing development compatible with the natural environment, as set out in the policy analysis that follows below.

The **Objectives** of the NEP relevant to the proposed Amendment are:

1. To protect unique ecologic and historic areas.

Sideroad 26/27 is an historic road dating to the mid-1800's. Although not designated in any way as an historic area, the road currently exhibits the scenic characteristics of a historical route which would lose some of its scenic qualities if it were paved and widened. The proposed Plan Amendment is seeking to establish in policy that the road works are in the public interest and that alternatives were considered. The NEC, also acting in the public interest, must evaluate the policies in the NEP that seek to protect unique ecologic areas against the stated need to improve Sideroad 26/27 to meet the obligations of a Road Agreement, reduce maintenance costs and improve public safety and secondarily address existing environmental impacts caused by the condition of existing road. In order to achieve the proposed road works, the Township will have to remove portions of the natural heritage features and impact water resources and proposes compensation and mitigation for those impacts.

It is the opinion of NEC staff that the proposed Plan Amendment would not protect an environmentally sensitive area which includes Provincially Significant Wetlands, an ANSI and the habitat of endangered and threatened species. Therefore, this Objective of the NEP is not met.

2. To maintain and enhance the quality and character of natural streams and water supplies.

The use and maintenance of the unimproved Sideroad 26/27 results in siltation of the adjacent water features negatively impacting water quality and fish habitat. The road project would involve the installation of larger culverts, realignment of a stream, ditch alterations, raising the road base and paving the road. Erosion and sediment control fencing would be utilized during construction to minimize additional impacts and bioretention LID and grass swales are proposed for longer term water filtration of storm water runoff. The EIS notes however, that the road improvement which would be authorized by the proposed Plan Amendment is not purely about improving water quality in the area. In describing the development concept, the EIS states:

Reconstruction of road assets is a typical response to increased use and traffic across all road jurisdictions to mitigate the cost of maintenance and have the road meet the jurisdiction's road standards.

Improving water quality in the NEP Area would be in the public interest and in keeping with this NEP objective, but NEC staff are of the opinion that insufficient consideration was given to finding alternatives to the intensity of proposed road works which could achieve that objective.

4. To maintain and enhance 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.

The proposed road re-construction would not preserve the natural scenery as trees and other vegetation would be removed and water resources re-aligned in order to achieve a full 20 metre road width. Enhancements to the open landscape character, if any, are proposed to be achieved through compensation on other lands through future consultation with the conservation authority.

5. To ensure that all new development is *compatible* with the purpose of the Plan.

As set out in the analysis above relating to the Purpose of the NEP, NEC staff do not agree that the proposed Amendment would enable development compatible with the natural environment.

6. To provide for adequate public access to the *Niagara Escarpment*.

The proposed road works would make Sideroad 26/27 accessible at more times during the year to certain road users, meaning passenger cars. The road will not be suitable for trucks or other large vehicles. The impact to the Bruce Trail access on the road is not yet known. Overall, NEC staff are of the opinion that this objective is only partially met.

## **Part 1 Land Use Policies**

Sideroad 26/27 traverses three NEP designations: Escarpment Natural, Protection and Rural Areas. *Infrastructure* is a permitted use in all three designations, "subject to Part

2, Development Criteria”. In other words, a Permitted Use is not an as of right use, unless it meets the Development Criteria.

### Part 1.3 - Escarpment Natural Area

This designation includes Escarpment features that are in a relatively natural state and associated *valleylands*, *wetlands* and *woodlands* that are relatively undisturbed. The Objectives for the designation include to “recognize, protect and enhance the natural heritage and hydrological systems”, “encourage *compatible* recreation” and “maintain and enhance *scenic resources* and *open landscape character*”.

It is understood by NEC staff that the purpose of the proposed road improvements is, in part, to address existing issues arising from runoff from the road which causes siltation in tributaries of the Pretty River. In order to achieve those improvements however, the road surface is proposed to be widened within the right of way resulting in the removal of 0.86 hectares of Significant Woodland and a total of 2.37 ha of forest and wetland habitat, according to the applicant’s EIS. This does not represent an enhancement of natural heritage systems. While opening the road year-round might increase access to the NEPOSS park, details of how the Bruce Trail is to be protected have not yet been provided and Ontario Parks has suggested in its comments that an environmental assessment might be needed for any impacts to the Nottawasaga Lookout Provincial Nature Reserve. Scenic resources would not be enhanced by the proposed tree removal.

### Part 1.4 – Escarpment Protection Area

This designation includes *Escarpment slopes* and *Escarpment Related Landforms*, areas in close proximity to *Escarpment slopes* that are visually part of the landscape unit and *Areas of Natural and Scientific Interest* (ANSI) or environmentally sensitive areas identified by municipalities or conservation authorities. The objectives for this designation, like the Escarpment Natural Area, are to recognize, protect and where possible enhance the natural heritage system and protect natural areas of regional significance, conserve cultural heritage resources and encourage agriculture.

A designated ANSI, the Nottawasaga Lookout Earth and Life Science ANSI, considered a key natural heritage feature in the NEP, abut the north side of the Township Road. Development is not permitted in such features with a possible exception for infrastructure where the project has been deemed necessary to the public interest and there is no other alternative. The applicant’s EIS states that “no alteration to the terrain or physiography of this feature will be made, thus no impacts are anticipated”.<sup>26</sup> NEC staff find this statement to be less than definitive and the EIS does not offer any proposed mitigation for this feature should impact occur.

In terms of cultural heritage resources, NEC staff understands that a small stone fence is to be conserved as part of the road project but the comments from the MTSCI indicate that archaeological assessment may be required if it was not done as part of the Duntroon hearing process.

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<sup>26</sup> EIS, Burnside and Associates, p. 69.



In terms of support for agriculture, Sideroad 26/27 is not, and even with the proposed improvements would not, be suitable for the movement of large agricultural vehicles through the area due to its slope.

By submitting the Plan Amendment application, the Township has confirmed that development is proposed in the key natural heritage feature but seeks to confirm in policy that the road project qualifies for the exception. The NEC, in considering the proposed policy exception, must determine or accept that the road works are in the public interest and that there is no alternative. Overall, NEC staff are of the opinion that the proposed Amendment is not justified in relation to the objectives of the Escarpment Protection designation.

#### **Part 1.5 – Escarpment Rural Area**

This designation includes minor *Escarpment slopes* and *Escarpment Related Landforms*, lands that contribute to *open landscape character*, lands that are of ecological importance to the *Escarpment environment* and lands that have potential for enhanced ecological values. The objectives for this designation include maintaining scenic resources, providing for compatible rural land uses and providing a buffer for the more ecologically sensitive areas of the *Escarpment*. For the reasons set out above, NEC staff do not agree that re-constructing Sideroad 26/27 supports the objectives of this designation.

#### **Part 2 Development Criteria**

As set out in Part 1.2.1, the Development Criteria of the NEP “will be considered in the assessment of any amendment to the Niagara Escarpment Plan”. That assessment is set out below.

##### **General Development Criteria**

The Objective of the General Development Criteria in Part 2.2 “is to permit reasonable enjoyment by the owners of all lots that can sustain development”. NEC staff often interpret this policy to be both a land use compatibility test and a consideration of the rights of landowners. One comment from a resident on the Township road was received supporting the proposed road improvements due to its current unimproved state. Other comments have been received by the NEC from landowners on Sideroad 26/27 expressing concern about the intensification of the use of the road from increased traffic and the impact of the road works on the trees and water features on and adjacent to the road and to wildlife habitat. NEC staff are of the opinion that altering Sideroad 26/27 would not permit reasonable enjoyment of their properties for the residents of the road both during and after construction.

Part 2.2.1 states that the “*Escarpment environment* shall be protected, restored and where possible, enhanced for the long term having regard to single, multiple or successive development that have occurred or are likely to occur”. The intent of the proposed Plan amendment is to confirm in policy that it is in the public interest to allow the proposed road works to address existing environmental impacts that the

use and maintenance of the existing road is causing. The Township has provided an EIS to document the effect of the proposed road works. The EIS concludes:

- That there will be a direct and indirect impact on the features and functions of the Improvement Area on the road and within 120 metres;
- That the extent of the impacts is significantly reduced based on the minimal footprint of the road improvements although the net effect of the project is the loss of approximately 2.37 ha of natural forest and wetland habitat;
- There will be short and long-term effects from the road works but “mitigation and compensation has been designed to result in an overall improvement to water quality, aquatic habitat features and functions and wetland habitats”.<sup>27</sup>

NEC staff has consistently maintained that development which involves compensation for a negative impact on the natural environment is not consistent with NEP policy. Further, it is noted from the comments of Conservation Authority staff that the proposed compensation has not been agreed to and is proposed to be addressed through the Permit process, subsequent to any decision on the Plan Amendment or Development Permit applications. It could be that the proposed compensation might take place on lands outside the NEP Area. NEC staff is of the opinion that this Development Criterion has not been met.

Part 2.2.2 of the NEP states that a development site “shall not be prone to natural hazards, and the development will not impact the control of these natural hazards including *flooding hazards, erosion hazards or other water-related hazards* and hazard events associated with unstable soil or unstable bedrock”. An erosion hazard is defined in the NEP to include “loss of land, due to human or natural processes, that pose a threat to life and *property*”. The Township’s EIS clearly documents erosion hazards on Sideroad 26/27 arising from storm water runoff which erodes the unpaved road surface. Addressing the hazard is part of the proposed road works, but the intent of the NEP is not to encourage development in hazardous areas by expanding the road surface within the right of way and changing its use from a seasonal gravel road to a year-round paved road. The policy language in the NEP contains clear direction with respect to land involving erosion hazards. NEC staff are of the opinion that this development criterion would not be met by allowing a Plan Amendment to support development on a site prone to an erosion hazard.

Part 2.2.3 only permits development on an *existing lot of record*. This term is defined in the NEP to mean “a lot held under the distinct and separate ownership from all abutting lots as shown by a registered conveyance in the records of the Land Registry Office at the date of approval of the Niagara Escarpment Plan on June 12, 1985”. Sideroad 26/27 was established by By-law 44 of the Township of Clearview on June 4, 1857. The by-law was registered on title on June 27, 1995 and the road right of way was described at that time using a metes and bounds description. NEC staff is satisfied that Sideroad 26/27 meets the definition for an existing lot of record and therefore there is no need for an NEP policy change to Part 2.2.3 as was proposed in the initial version of the proposed Plan Amendment.

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<sup>27</sup> EIS, Burnside and Associates, p. 87.

Part 2.2.5 requires that development shall take place in the least sensitive designation, where it is proposed to take place on a site with more than one land use designation. The Township road is located in the Escarpment Natural, Protection and Rural Areas. Development is proposed along the length of the road including within the Escarpment Natural Area. It is not possible to achieve this policy with the extent of the road works proposed by the Township to Sideroad 26/27.

Part 2.2.6 of the NEP promotes the achievement of energy efficiency, *conservation* and considers the mitigating effects of vegetation. Development should also be designed and located in such a manner as to promote design and orientation that reduces greenhouse gas emissions. The proposed road works recommend using grass swales as a bioretention method of enhancing water quality which is a means of using vegetation to mitigate the effect of pollution from road salt or fuel from road use, according to the EIS. However, the mitigating effects of climate change would be diminished by removing trees along the road to permit its re-construction. The road will not be suitable as a truck route and it is noted from the comments of two aggregate producers that the length of their travel to their markets will be increased with the closure of County Road 91 which is supposed to take place once Sideroad 26/27 is open year-round and paved. Other residents of the community have suggested that emergency vehicles will also have to take longer routes to serve the clients. Longer travel times on municipal roads does not achieve energy efficiency or a reduction in greenhouse gas emissions. This policy is not met by the proposal to re-construct Sideroad 26/27.

Part 2.2.8 states that development should be designed and located in such a manner as to provide for or protect access to the Niagara Escarpment, including the *Bruce Trail corridor*. There is an existing Bruce Trail crossing on Sideroad 26/27. The comments on the proposed Amendment from the Bruce Trail Conservancy (BTC) expressed concern that no provision had been made in the road project for parking for hikers and that the safety of hikers would need to be addressed during the construction period, if the development were approved. NEC staff proposed an advisory note (not a condition) on the Development Permit application that recommended consultation with the BTC with respect to safety during construction and long-term safe access for trail users. NEC staff is of the opinion that this policy has not been met. It is in the public interest to maintain access to the Escarpment and protect users of the Bruce Trail. Insufficient information is available as to how this would be achieved and therefore this policy has not been met to demonstrate that re-constructing Sideroad 26/27 is in the public interest in consideration of the use of the existing Bruce Trail.

#### Part 2.5 Development Affecting Steep Slopes and Ravines

The NEP Objective for development involving steep slopes is to ensure that such development is *compatible* with the *Escarpment environment* and does not result in unsafe conditions.<sup>28</sup> This would normally be achieved by imposing a setback from

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<sup>28</sup> Compatible is defined to mean where the building, structure, activity or use blends, conforms or is harmonious with the *Escarpment environment*.

the Escarpment brow but where a setback cannot be achieved, such as in the case of an existing road, “the setback may be varied or eliminated to the satisfaction of *implementing authority*” meaning, in the case of the consideration of a Plan Amendment application, the NEC, the body responsible for the implementation of the NEP.

Sideroad 26/27 currently has a slope of 14% in its descent down the Escarpment. The proposed slope would be approximately 11.87% after the road re-construction. The Township has proposed a policy amendment that would state that the road “shall not be required to establish a development setback from the brow to minimize visual impacts”.

NEC staff understands that Sideroad 26/27 cannot achieve a setback from the brow as it is an existing road. The NEC must determine, as the implementing authority, whether a policy exception should be made to the NEP which would enable additional development on a steep slope. The Township’s intent for the proposed road works is, in part, to make the road safer for travel but by opening the road to year-round travel, it invites additional traffic. Although traffic and transportation planning are the responsibility of municipalities, the NEC’s role in this application is to determine if the proposed policy amendments are justified, in keeping with the Purpose and Objectives of the NEP and are in the public interest. The road works require a significant alteration to the slope of the Escarpment feature in this location which is contrary to the intent of the NEP policy. The basis for the NEC’s decision in 2015 not to approve the related Development Permit application was, in part, because of concern that the development would “damage steep Escarpment slopes”. NEC staff concludes that this Development Criterion is not met by the proposed Amendment to the NEP as re-constructing the road in the manner proposed is not in the public interest.

## Part 2.6 Water Resources

The GSP’s Planning Justification Report (PJR) makes note of the fact that the NEP does not define “public interest” or “alternatives”. These terms are key to the consideration of the proposed NEPA. Although not defined, these terms have their commonly understood meaning in dictionary definitions. For example, the Business Dictionary defines the term to mean “welfare of the general public (in contrast to the selfish interest of person, group or firm) in which the whole society warrants recognition, promotion and protection by the government and its agencies”.<sup>29</sup> Similarly, the term “alternative” is defined as “presenting a choice between two things”.<sup>30</sup> GSP concluded in the PJR that a consideration of alternatives was not necessary because the PPS excludes works authorized under an EA are not considered “development”. NEC staff is of the opinion that all provincial policies must be satisfied by development and when seeking an Amendment to the NEP, the consideration of alternatives must be demonstrated. The Mayor of the Township of Clearview stated in his June 2019 letter to other municipalities that the only other

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<sup>29</sup> <http://www.businessdictionary.com/definition/public-interest.html>

<sup>30</sup> Webster’s English Dictionary, 2005, p.11.

alternatives to improving Sideroad 26/27 were to do nothing or develop an entirely new road. If the Township had considered these alternatives, then an Amendment to the NEP might not be necessary. The Township's proposed Amendment seeks to confirm through a policy statement specific to Sideroad 26/27 that alternatives were considered, that there is no alternative to the road improvement and that it is in the public interest.

It is the opinion of NEC staff that the public interest must be broadly interpreted and not narrowly defined to be solely the interest of one municipality when considering an Amendment to a Provincial Land Use Plan. It is clear from the submissions of citizens of the Township, the surrounding municipalities and some of their Councils that they believe there are other alternatives to improving Sideroad 26/27 and that the broader public interest would not be well-served by so doing.

The NEP 2017 identifies key hydrologic features. These include wetlands and *permanent* and *intermittent streams*. Such features are to be protected and where possible, enhanced. The NEP, Part 2.6.2 does not allow development in key hydrologic features with an exception for "*infrastructure* where the project has been deemed necessary to the public interest after all other alternatives have been considered" and subject to compliance with all other relevant policies of the Plan. The applicant seeks to address this policy in the proposed Amendment by proposing to add a new, site-specific policy for Sideroad 26/27 improvements as follows:

"infrastructure improvements on 26/27 Sideroad from the Osprey-Clearview Townline to Concession 10 have been deemed necessary to the public interest after all other alternatives have been considered."

The consultant that prepared the Environmental Impact Study<sup>31</sup> states that the existing Sideroad 26/27 bisects the Rob Roy Swamp, a Provincially Significant Wetland. The consultant states that the proposed road improvements would address the existing impact to this feature by installing culverts to direct water that currently flows over the road and by including exclusion fencing for amphibians. It is stated that the water balance to the wetlands will be maintained. As the design of the road is still under review and would require future permits from the Conservation Authorities, NEC staff are not satisfied that this Development Criterion has been met. It is the experience of NEC staff that for most municipal infrastructure projects, a Schedule C Class EA is undertaken. The NEC is fully consulted and can provide input before the process concludes as to whether the proposed road works are in conflict with NEP policy. Once that has been determined, the NEC is again consulted on the detailed design drawings. Only once a project has reached 90% of detailed design is the submission of a Development Permit application usually accepted. The proposed re-construction of Sideroad 26/27 did not follow this process and so details of policy conformity and whether the road design would be satisfactory remain unanswered.

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<sup>31</sup> Environmental Impact Study, R.J. Burnside & Associates, October 2018, p. 68

## Part 2.7 Development Affecting Natural Heritage

Through the 2017 NEP, key natural heritage features are identified, and the policy prohibits development in those features with limited exceptions. For proposed infrastructure, the policy states that the project must be deemed necessary to the public interest and there is no other alternative. The proposed NEP Amendment sought by the Township would confirm in policy that the re-construction of Sideroad 26/27 is in the public interest and there is no other alternative. The Natural Heritage policy in the NEP relating to Infrastructure has a different and higher test than the test in the policies for Water Resources, in the opinion of NEC staff. There must be no other alternative and NEC staff is not satisfied that the application has demonstrated this.

The objective of the natural heritage policies is to protect, and where possible enhance natural heritage features and functions in order to maintain the diversity of the continuous *natural environment*. The area around Sideroad 26/27 contains almost every type of key natural heritage feature identified in the NEP. The Township's EIS confirms that although there has been an attempt to minimize the road footprint, there will be direct and indirect impacts on the features and functions in and adjacent to the road through the removal of forest and wetland habitat. Future compensation is proposed elsewhere to address the negative impacts. NEP policy includes a standard of "maintain and where possible enhance" these features rather than mitigate the impacts and compensate on other lands elsewhere as suggested in the Township's EIS. In this case, the details of any "compensation" are yet to be worked out as it is proposed that it would be addressed in consultation with the NVCA as part of their permit process, after a decision on the NEPA and Development Permit applications.

The proposed Plan Amendment seeks to vary this fundamental approach to environmental protection by simply "deeming" that the proposed improvements to Sideroad 26/27 are in the public interest, even though the EIS itself did not consider alternatives.

With respect to the standards imposed by other levels of government in relation to the habitat of species at risk (MECP), natural hazards (Conservation Authorities) and fisheries (DFO), the NEP policies state that the most restrictive standard applies. As outlined earlier in this report, all agencies have been contacted for their comments. DFO indicated in 2017 that they did not believe that project would cause harm to fish or their habitat, provided that the project was conducted as proposed but indicated that there should be further consultation if the project changes. Changes to the *Fisheries Act* took place in 2019 and NEC staff is not aware of further consultation with DFO as to whether the proposed road project is in accordance with new legislation.

MECP staff commented on the proposed Plan Amendment and indicated that the EIS did not identify any threatened birds and indicated that it was a gap in the analysis which should be addressed by having the consultant comment on whether the project would have any impact on Bobolink, Barn Swallow and Eastern

Meadowlark, if they are present. The MNRF had cleared the applicant's evaluation of the SAR species of bats in the project area but noted in their 2019 comments on the proposed Plan Amendment, that Bat Maternity Colonies should have been considered in the evaluation of Significant Wildlife Habitat in the study area. The MNRF further indicated that Woodland Raptor Nesting Habitat should have been considered in the evaluation of Significant Wildlife Habitat. The MNRF also indicated in their comments that additional detail was needed with respect to the proposed installation of "ecopassage culverts".

Based on the comments from these two Ministries regarding Species at Risk, NEC staff cannot conclude that the proposed Plan Amendment and road works that would be allowed by the proposed policy Amendment, meet the policy test in the NEP, Part 2.7.8 that requires development within the habitat of endangered and threatened species may only be permitted if it is compliance with the *Endangered Species Act*. Both Ministries were seeking additional information in order to confirm whether the requirements of the Act had been met.

Conservation Authority staff from GSCA and NVCA commented on the Township's application under their mandate. NVCA requested more detail regarding the proposed wetland enhancement and/or compensation for the loss of wetlands arising from the road re-construction. They confirmed that a permit would be required from them for the proposed road works, but this would be subsequent to the decisions on the proposed Plan Amendment and Development Permit. Therefore, it is not known at this time whether the design of the proposed road meets the Conservation Authority *Regulation for Development, Interference with Wetlands and Alterations to Shorelines and Watercourses*, which is an important foundation to determine if NEP policy in Part 2.7.5 has been met.

Maintaining connectivity for the movement of plants and animals is a requirement of the NEP policies in Part 2.7.3. The existing road creates an obstacle or barrier to the movement of fish and wildlife. The Township proposes through the design of the road to address this with the installation of larger culverts and wildlife exclusion fencing and a road speed of 60kmh. Both Conservation Authorities requested additional information regarding implications for wildlife mortality and measures to address safe passage for species present in the area to maintain and improve linkages.

Overall with respect to the policies relating to Natural Heritage, NEC staff is of the opinion that the Plan Amendment application has not addressed all of the policies and so has not provided a foundation to support a policy exception to the NEP that would enable the re-construction of Sideroad 26/27.

### Part 2.12 Infrastructure

NEC staff recognize that Sideroad 26/27 is an existing road, partially in an Escarpment Natural Area on the brow of the Escarpment. In considering the proposed NEPA in relation to the Infrastructure policies, NEC staff is not of the opinion that a policy amendment is required for the following policies:

- Part 2.12.2d) – this is an existing road and so there is no means to achieve a setback from the brow. This policy would be applicable to a new road.
- Part 2.12.5 – development of infrastructure should avoid Escarpment Natural Areas but as the road is existing, there is no way to achieve this with Sideroad 26/27.

The proposed NEPA seeks to establish in a site-specific policy that all alternatives have been considered in recommending the proposed upgrades and that doing so is in the public interest. The consideration of alternatives is not explicit in the supporting documentation provided by the applicant. In the EIS there is an evaluation of the “Development Concept” in Section 6.0. It notes that traffic increases over time result in the need to increase road maintenance but that is only sufficient to a point and eventually, a municipality must consider re-construction of a road that has been determined to be sub-standard. The EIS then notes that the Township, by entering into an Agreement with the County of Simcoe and Walker Industries, “agreed that this road would be re-constructed.”<sup>32</sup>

On this basis, NEC staff are of the opinion that the Township has not considered “all other alternatives” and that the public interest is not met by improving Sideroad 26/27 - taking into consideration all the input suggesting otherwise that was received in response to the circulation of the proposed Amendment. NEC staff does not support the proposed wording change to Part 2.12.5. It could result in an incorrect policy interpretation going forward that solely the proponent can determine public interest without considering the views of other municipalities or its citizens, even in an Escarpment Natural Area, the most sensitive designation in the NEP. In its response to the NEC, GSP Planning Consultants indicated that the design of Sideroad 26/27 had been altered from a typical cross section to reduce the impact on wetlands by utilizing steeper backslopes on road swales<sup>33</sup>. If the design of the road improvements can be altered to further to reduce the impact on the natural heritage and water resources adjacent to the roadway, even if that results in a road that does not meet a standard for a typical municipal road, then it is the opinion of NEC staff that there may be additional alternatives to the road design, not considered by the Township, to achieve that objective and so not all other alternatives have been considered as required by the NEP Infrastructure policies.

Part 2.12.1 requires that Infrastructure “shall be planned in an integrated fashion, to obtain the most value out of existing infrastructure and to ensure that the most sustainable infrastructure alternatives have been identified”. NEC staff interprets “integrated fashion” to mean the consideration of new or improved infrastructure in

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<sup>32</sup> EIS, Burnside and Associates, p. 72.

<sup>33</sup> Nancy Frieday, GSP Planning consultants, Letter to NEC dated April 14, 2020, p. 3.



consultation with all concerned or affected interests to achieve overall transportation network effectiveness.

Further, in considering the comments provided by BMWT, which raised the issue of the actual location of the right-of-way, NEC staff note that it was a proposed condition of the Development Permit to require a survey of the road. The By-law that created the road in 1854 contains only a brief right of way description and when the By-law was registered on title in 1995, a metes and bounds (word-based) description was used to describe the road allowance. If the actual location of the road is not known, it calls into question whether the road design is appropriate and whether the design drawings in the EIS are sufficiently finalized in order to base any policy conclusions about the conformity of the proposed Amendment with NEP policy.

#### Part 2.13 Scenic Resources and Landform Conservation

The Landscape Evaluation for this part of the Plan Area rated the lands around Sideroad 26/27 as Average at the westerly limit, Attractive at the centre and Very Attractive at the easterly limit. A Visual Impact Assessment (VIA) was submitted as part of the Development Permit application. It was assessed by NEC staff at the time. Those staff agreed with the recommendations of the VIA and advised that satisfying proposed conditions of Development Permit approval would provide more information regarding grading, drainage, slope stabilization, planting and vegetation protection. NEC staff at the time acknowledged that the proposed road works would “undoubtedly change the character of the road” and that “vegetation removal will be the most dramatic visual change to the corridor” but viewshed mapping confirmed that distant views of the road would only be visible from isolated locations. NEC staff did state that “the depressed road bed and steep embankments will not blend harmoniously into the surrounding landform resulting in a localized negative visual impact.”<sup>34</sup>

Since that analysis, the policies of the NEP have changed, and new policies are in place that address visual impact and landform conservation. A VIA was completed for the applicant and it was evaluated by NEC staff in the past, in accordance with Part 2.13.3 of the NEP. The Township proposes to minimize the footprint of the improved road but there will be a loss of 2.37 hectares of natural forest and wetland habitat according to the EIS and proposes offsite compensation instead. This is not consistent with Part 2.13.4 d) which indicates that visual impact should be mitigated by “minimizing the development footprint and changes to the existing topography and vegetation”. In order to make the road safer, it is proposed that the Escarpment would be lowered to achieve a slope of 11.6% rather than the 14% which exists currently, clearly altering the existing topography.

With respect to policies on Landform Conservation, the NEP seeks to minimize the use of impervious surfaces. The Township has now proposed that Sideroad 26/27 be paved at the outset, which would increase the impervious surface of the current gravel road.

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<sup>34</sup> NEC Staff Report, Development Permit application S/T/2013-2014/9152, November 19, 2015, pp. 21-22.

It is the position of NEC staff that the policies regarding visual impact and landform conservation are not met in the proposed Amendment.

### **Part 3 Niagara Escarpment Parks and Open Space System (NEPOSS)**

NEPOSS Park No. 71 (Nottawasaga Lookout Provincial Nature Reserve) abuts the north side of Sideroad 26/27. The Nature Reserve is managed by Ontario Parks and contains Provincially Significant Earth Science and Life Science ANSIs. It is noted in the NEP that the Nature Reserve contains “an outstanding number of fern species”.<sup>35</sup>

The Objectives of NEPOSS is to protect and enhance the Niagara Escarpment’s natural heritage resources and hydrologic features and functions, provide opportunities for outdoor education and recreation, provide public access to the Escarpment and secure a permanent route for the Bruce Trail.

Further consultation was requested by the BTC to determine if the road re-construction of Sideroad 26/27 could improve access to the Bruce Trail through the design of the road and Park access if the road is paved. However, increased traffic and speed on the road could make it less safe for wildlife and hikers.

Comments were received from Ontario Parks requesting additional information and consultation with respect to the possible impact of the road re-construction on the Nature Reserve as noted earlier in this report. They stated that it was likely that the road works would affect the Park’s natural values, recreational use and access. They also suggested that a Class EA for Provincial Parks and Conservation Reserves might be necessary. It is the opinion of NEC staff that should the EA be required, based on the Ontario Parks’ review of the proposed works, that this should be undertaken prior to a decision on the Plan Amendment and the related Development Permit applications.

#### Simcoe County Official Plan (OP)

In relation to the NEP Area, the County OP states “Within the NEP area, the policies of the NEP apply, as well as the policies of this Plan and the Township of Clearview Official Plan where they do not conflict with the NEP”.<sup>36</sup> The land use schedule in the County OP designates the subject lands as “Niagara Escarpment Plan Area”. Schedule 5.3.1 of the OP contains the land use designations from the NEP and notes that the lands north of the Sideroad are in NEPOSS.

The County OP Transportation policies seek to maintain and improve the County’s transportation system to provide efficient routes for all road users linking settlement areas and activity nodes and separating through traffic from local traffic and providing for the movement of goods in accordance with the County’s Transportation Master Plan. Sideroad 26/27 is a local road but applying the intent of the County policy to the local

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<sup>35</sup> NEP 2017, Part 3, p. 116.

<sup>36</sup> County of Simcoe Official Plan, December 2016, p.46.

road, NEC staff conclude that improving it would not separate local and through traffic nor could it accommodate the movement of goods due to its steepness.

Policy 4.8.34 states that “within the area of the Niagara Escarpment Plan, future widenings of new or expanded arterial road or local roads shall be consistent with the Development Criteria of the Niagara Escarpment Plan.” The applicant’s PJR does not provide an opinion on conformity with this policy. The NEC did not support the approval of the related Development Permit. The Township of Clearview has applied for a Plan Amendment to vary Development Criteria to enable the improvement of a local road. NEC staff conclude that the proposed Amendment is not consistent with the County of Simcoe Official Plan.

#### Township of Clearview Official Plan

The Townships’ Official Plan was approved in 2002. The Introduction to the Official Plan states that “The provisions of the Niagara Escarpment Plan continue to prevail over any local Plan or Zoning By-law where there is a conflict. The Niagara Escarpment Plan policies incorporated into this Official Plan are not to be interpreted in a manner which is determined to be less restrictive than the Niagara Escarpment Plan.”<sup>37</sup> The Official Plan incorporates the text from the NEP but has not been updated since the new NEP was approved in 2017 to reflect updated policy in the NEP.

Sideroad 26/27 is identified in the Official Plan as a local road. The land use designations applicable to the road are the same as those in the Niagara Escarpment Plan, being Escarpment Natural, Protection and Rural Areas. There is an overlay on the land use schedule for Public Land in the Parks System.

Section 6 of the Official Plan states that Local Roads are intended to carry low volumes of traffic and provide access to abutting property. The Official Plan further states that “Local Roads are existing and proposed roads of two traffic lanes which are intended to primarily provide access to abutting properties. Local Roads shall have a minimum right-of-way width of 20 metres and should be designed to discourage the movement of through traffic and generally function as distributor roads.”<sup>38</sup>

In relation to the policies that the Township seeks to amend in the NEP, the local Official Plan, dated 2002, states that:

- Development shall locate outside wetlands;
- The development shall ensure net gain/no net loss of productive capacity of fish habitat;
- Disturbance of treed areas should be minimized, and proposed development in heavily treed areas shall have site plan agreements containing specific management details regarding the protection of existing trees;
- New development will not be permitted in identified habitat of endangered plant or animal species;

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<sup>37</sup> Township of Clearview Official Plan, September 2001 (as amended to January 2019) p.3.

<sup>38</sup> Ibid, p. 177

- All new and reconstructed transportation and utility facilities shall be designed and located to minimize the impact on the Escarpment environment and to be consistent with the objectives and the land use designations in the Niagara Escarpment Plan Area.

The above-noted policies in the Township OP reflect previous NEP policy. Conformity with the above policies is not assessed in the applicant's PJR. It is assumed by NEC staff that if the proposed NEPA PS 215 were approved, that the Township would have to amend its Official Plan to reflect the proposed NEP Amendment as well as policy changes that have occurred since the Township OP was approved in 2002. It is the opinion of NEC staff that the proposed improvements to Sideroad 26/27 conflict with the policies of the Official Plan noted above.

#### Municipal Zoning By-law

The subject lands are identified as "NEC" in the Township of Clearview Zoning by-law. Sideroad 26/27 is in the NEC Area of Development Control and so zoning is not applicable.

### **DISCUSSION:**

Sideroad 26/27 in the Township of Clearview is an existing, partially-improved gravel road which descends the Niagara Escarpment. It was established around the year 1857. It provides limited traffic capacity as it is closed during the winter months. It has an approximately 20-metre right of way, but the travelled portion of the road is much less. The Township is seeking an Amendment to the NEP on a site-specific basis to confirm, in policy, that the road improvements are in the public interest and that alternatives have been considered.

#### Alternatives Evaluation

Key to the evaluation of the proposed NEPA are the NEP policies in Parts 2.6, 2.7 and 2.12 regarding the consideration of alternatives.

1. No alternative - It is implied by the applicant through its submissions that because it entered into an Agreement with the County and Walkers Industries to improve Sideroad 26/27, and that it is in the public interest to provide road capacity in the municipality at Township road standards and thereby improve public safety, that there is no alternative to the level of improvement proposed.
2. Only one alternative – Another basis for the application by the Township is that in order to address the ongoing environmental harm caused by the use and maintenance of Sideroad 26/27, which results in erosion and sedimentation in adjacent streams and wetlands and negative impacts to wildlife habitat, the road must be improved to municipal standards.
3. Another alternative – The Township does not appear to have evaluated the alternative of improving Sideroad 26/27 as a road which may not meet typical municipal road standards, but which still addresses the impact of the road use and maintenance on the surrounding natural environment. This option could

involve the use of green infrastructure and low impact elements and a narrower footprint while still achieving some traffic access to the local community and residents of the road. Opportunities to address the need for additional traffic in the broader area using other existing roads, including keeping County Road 91 open, could be explored with other municipalities, as they suggested in their comments on the proposed NEPA.

### Municipal and Public Input

The Plan Amendment process set out in the NEPDA, Section 10(1), requires consultation with “each municipality within or partly within the Niagara Escarpment Planning Area” to invite their comments. In addition, the NEPDA allows public consultation to be undertaken by way of a public meeting “to promote public discussion”. Finally, the NEPDA requires consultation with the PIAC, as discussed earlier in this report.

Input on a NEPA is also required by the Environmental Bill of Rights (EBR) legislation through posting a notice regarding proposed Plan Amendments, categorized as Instruments, on the Environmental Registry. The Preamble to the EBR states as follows:

- The people of Ontario recognize the inherent value of the natural environment.
- The people of Ontario have a right to a healthful environment.
- The people of Ontario have as a common goal the protection, conservation and restoration of the natural environment for the benefit of present and future generations.
- While the government has the primary responsibility for achieving this goal, the people should have means to ensure that it is achieved in an effective, timely, open and fair manner.<sup>39</sup>

NEC staff has followed all the required steps in ensuring consultation was undertaken throughout the process of consideration of the proposed NEPA. It is clear from the submissions received through direct comments to the NEC, through the public meeting and through the Environmental Registry posting that the majority of the comments were in opposition to the Township’s application to amend the NEP to permit the improvement of Sideroad 26/27. NEC staff note that the submissions received through the application review process did not all focus entirely on the wording of, and rationale for, the proposed NEPA. Issues raised include concern about the process that has led to the Amendment involving a hearing on a prior Plan Amendment and a Development Permit application and a Class A+ Municipal Class EA, that preceded this application. Nevertheless, legislation requires consideration of municipal and public comments on a proposed NEPA, and NEC staff finds that the majority of the comments received are in opposition to the proposed Amendment that would allow unprecedented policy changes to the NEP to allow the re-development and intensification of infrastructure in an

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<sup>39</sup> Environmental Bill of Rights, 1993, S.O. 1993, c. 93.

Escarpment Natural Area, in key natural heritage and hydrologic features, and on the brow of the Escarpment.

NEC staff is of the opinion that the approval of a Plan Amendment to permit infrastructure to proceed in key hydrologic and key natural heritage features and an Escarpment Natural, Protection and Rural Area could set a precedent for future infrastructure projects elsewhere in the NEP Area. Other proponents could view the Plan Amendment process as a means to circumvent the significant policy protections in the NEP for key natural heritage and key hydrologic features and proceed to Development Permit applications without considering alternatives using the NEPA process, and without clearly demonstrating that the NEPA is in the broader public interest.

#### Public Interest and the Proposed Amendment

There are three policy components to the proposed Plan Amendment relating to the Water Resources, Natural Heritage and Infrastructure policies of the NEP. The NEC is being asked to agree that the proposed roadworks on Sideroad 26/27 “have been deemed necessary to the public interest and shall be permitted”. It is reasoned by the Township that they, in their sole discretion, can determine that the roadworks are in the public interest on behalf of the municipality. In considering an Amendment to the NEP, it is the Commission that must determine whether it agrees with the Township’s assertion in order to find whether the Amendment is in conflict with NEP policy. It is the opinion of NEC staff that the comments of other agencies, municipalities, businesses, the public and public interest groups must be taken into consideration in determining if the roadworks are indeed in the public interest. The overwhelming majority of non-agency comments received by the NEC on the Amendment application were in opposition to the road improvements for the reasons set out in Appendix 3.

NEC staff understands that many of the comments received were directed more at matters related to the Development Permit application that is already before the Board. Through the evaluation of the Development Permit application and the proposed road design, it must be determined if the proposed road reconstruction would achieve an environmental benefit. Similarly, many of the comments could be viewed as issues arising from the decision to approve Amendment PS 161 to permit the expansion of the Walker Duntroon quarry which was approved on the basis that a Road Agreement would enable closing a portion of County Road 91. It is clear however that whatever the motivation for the submissions, whether they relate to the quarry, the Development Permit for Sideroad 26/27 or the subject Plan Amendment, the majority of opinions land on the side of opposing the re-construction of the Sideroad. It is also telling that three other municipalities, who it must be assumed also act in the public interest, are not in support of the Plan Amendment and have proposed that they work with the Township of Clearview to discuss other transportation planning alternatives. The Township has rejected that approach and there is no mechanism now in place to require a further environmental assessment given the acceptance by the Minister of Environment, Conservation and Parks of the Schedule A+ Municipal Class EA already conducted.

If Sideroad 26/27 was a new road, the decision on the NEPA might be simpler. To achieve the objectives of the Plan and the Development Criteria, the use and improvement of alternate routes would be a better choice to avoid an Escarpment Natural Area, in accordance with Part 2.12.5 of the NEP, and construction and additional traffic in an environmentally sensitive location. Sideroad 26/27 is a steep road going down the Escarpment. It has key natural heritage and key hydrologic features over and adjacent to it, supports little traffic and hikers using the Bruce Trail heading to the provincial park (Nottawasaga Lookout Provincial Nature Reserve). It is not suitable for truck traffic. It is largely inaccessible in the winter.

Sideroad 26/27 is, however, an existing road with a 20-metre right of way. Therefore, there needs to be a balance between the need to accommodate traffic which might otherwise have used County Road 91, provide adequate access for existing properties on the road and any emergency vehicles and to address the impact of unpaved condition on adjacent natural heritage features (sediment and gravel).

The analysis of the application and the comments received has highlighted the problem of policy and process. The Municipal Class EA manual states that a Schedule A+ activity includes general operation and maintenance of linear paved facilities and related facilities including normal maintenance, gravel replacement and re-shaping on existing roads, re-surfacing, patching and frost heave treatment with no change to horizontal alignment, culvert replacement where there is no change in drainage, reconstruction where the road will be for the same capacity. Had a Schedule C Class EA or transportation master plan been conducted to provide stakeholders and the public the opportunity to comment on road improvements versus road closures, there might have been a better collective understanding of the rationale to improve Sideroad 26/27. The Municipal Class EA manual states that a Schedule A+ Class EA “may, however, have potential major impacts such as requiring property, removing trees, affecting watercourses, affecting fisheries, or having impacts which are considered significant in your community. Accordingly, while it may technically be a Schedule A or Schedule A+, the proponent should carefully consider the appropriateness of that selection, since it would likely be more appropriately carried out as a Schedule B or C.”<sup>40</sup> It is not, however, the purpose of this report or the role of the NEC to challenge the MECP Minister’s decision regarding the Township’s chosen Schedule of the Class EA. The role of the NEC is to determine whether the NEPA proposed by the Township is justified and demonstrates that the expected impacts do not adversely affect the Purpose and Objectives of the NEPDA and whether it is consistent with other relevant provincial policies.

In addition, if the EIS had been conducted as part of a Schedule C Class EA or transportation master plan exercise, it might have identified early the extent of the road improvements and any conflict between the recommended improvements and the applicable policy regime, being the NEP. At that stage, the need for a NEPA and a DP would have been clearer, and those applications could have been processed concurrently. Since the process thus far followed a different path, we arrive at the need

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<sup>40</sup> Municipal Class EA Manual, p. 75.

to make a recommendation only regarding the Plan Amendment application in the face of many conflicting views about the process, overall road network issues within the adjacent municipalities to address the needs of different sectors, the nature of the proposed road improvements and whether the proposed Amendment itself is needed and if so, proposes the necessary policy relief to allow the road to be upgraded.

The Introduction to the EIS states that R.J. Burnside & Associates (Burnside) “was retained by the Township of Clearview (Clearview) to conduct an Environmental Impact Study (EIS) for the required road improvements to 26/27 Sideroad to address public safety issues and existing environmental impacts”.<sup>41</sup> It is notable that the purpose of the report is not stated to be to evaluate alternatives to the road project, as would be expected under an Environmental Assessment, but rather to accept that the improvements were “required” and that the EIS was for the purpose of doing an assessment of potential impacts resulting from the proposed development and recommending mitigating measures to address those impacts.<sup>42</sup>

Based on the findings of the EIS, the planning consultant concludes that there will be a loss of natural heritage, direct and indirect impacts on features and functions both short and long term but that mitigation and compensation should result in an overall improvement to water quality and aquatic and wetland habitat. The policy standards in the NEP do not support the loss of natural heritage, mitigation for the loss of natural heritage features and compensation elsewhere for those impacts. The comments of the consulted agencies indicate that there are gaps in the understanding of the impact of the proposed road works on water resources and natural heritage. A Provincial Land Use Plan should not be amended to enable infrastructure works if the policy tests in that Plan have not been met. Further, the comments of other municipalities and the public indicate a clear lack of agreement with the Township’s position that the proposed Amendment is in the public interest nor that all alternatives have been considered.

## **CONCLUSION:**

NEC staff has attached (as Appendix 3) the proposed Amendment Document, dated August 21, 2020, prepared by GSP Planning on behalf of the Township of Clearview. NEC staff has considered the text of the proposed policy Amendment and takes the following position:

That the proposed NEPA is in conflict with the Purpose and Objectives of the NEP, its policies and Development Criteria and that it should not be approved for the following reasons:

- The Amendment could set a precedent for future applications to allow infrastructure projects absent the full consideration of alternatives;
- The Amendment is not consistent with the position of the NEC on the related Development Permit application;

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<sup>41</sup> EIS, p.1

<sup>42</sup> EIS, p.2



- All alternatives have not been considered to justify the proposed policy changes;
- An EA may be required for potential impacts to the Provincial Park;
- Agency comments indicate that there are significant unresolved issues with respect to the potential impact of the road works;
- It has not been demonstrated that the application is in the public interest;
- The applicant has not justified the Amendment and it does not meet the Purpose and Objectives of the NEPDA or the NEP or other relevant Provincial policies.

## **NEXT STEPS**

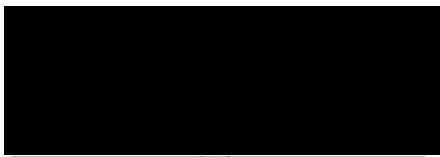
Pursuant to the NEPDA, S. 10.(9), the NEC will have an opportunity, after a hearing at the Environmental Review Tribunal is conducted and the Hearing Officer presents the NEC with a report containing a summary of the representations made at the hearing together with their recommendations and reasons therefor, to consider that report. The NEC can then submit its own recommendations on the proposed Amendment to the Minister of Natural Resources and Forestry, for a final decision.

## **RECOMMENDATION:**

That the NEC:

- 1) Receive the NEC staff Summary Report including proposed Amendment PS 215 18 submitted by the Township of Clearview (attached in Appendix 3), but make no recommendations with respect to the proposed Amendment at this time;
- 2) Ask the Environmental Review Tribunal to appoint one or more Hearing Officers to hold a public hearing pursuant to Section 10. (3) of the *Niagara Escarpment Planning and Development Act* (NEPDA) as there are written objections to the proposed Amendment;
- 3) Support a combined ERT hearing process for the proposed Plan Amendment and related Development Permit application; and,
- 4) Instruct NEC staff to attend the hearing to assist the Tribunal by presenting their staff reports regarding the Plan Amendment at the hearing.

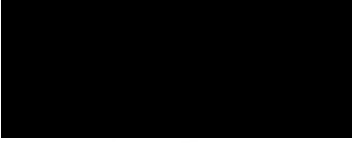
Prepared by:




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Nancy Mott, MCIP, RPP  
Senior Strategic Advisor

Approved by:



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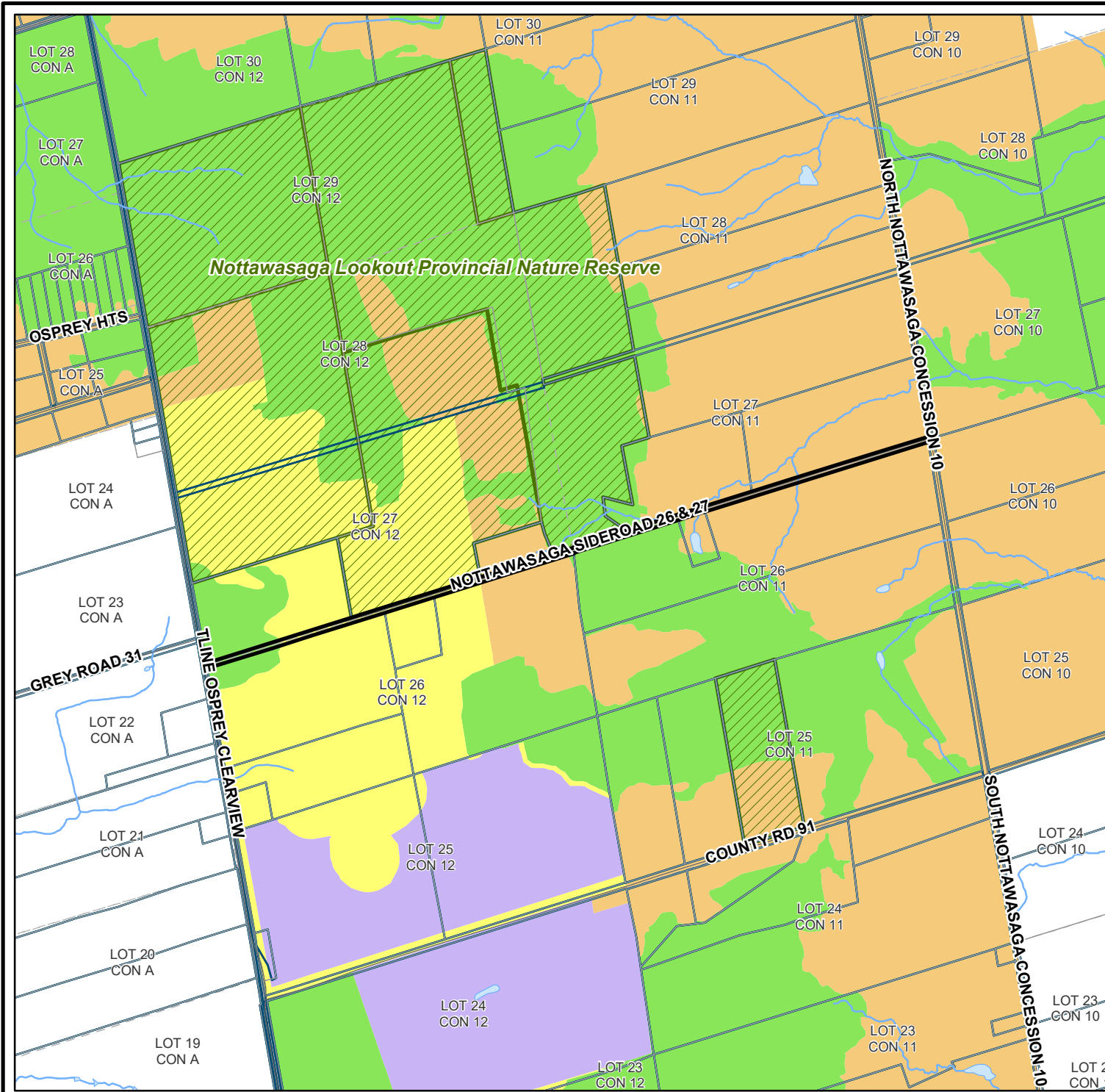
Debbie Ramsay, MCIP, RPP  
Director (A)

**Appendices:**

1. NEP Designation Map
2. Orthophoto
3. Township of Clearview Proposed Niagara Escarpment Plan Amendment PS 215 18 (August 2020, revised); prepared by GSP Group, planning consultants to the Township of Clearview
4. Overview chart of municipal, agency, company and public comments

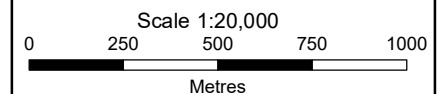
## Map 1 Niagara Escarpment Plan and Amendment Location PS 215

Sideroad 26/27  
Township of Clearview  
County of Simcoe



- Area Subject to Amendment
- Plan Designations**
  - Escarpment Natural Area
  - Escarpment Protection Area
  - Escarpment Rural Area
  - Mineral Resource Extraction Area
  - Niagara Escarpment Parks and Open Space System
  - Roads
  - Waterbodies
  - Watercourse
  - Upper Tier Municipality
  - Lower/Single Tier Municipality
  - Lot and Concession Boundary
  - Parcel Boundary
  - Ownership Boundary

NOTE: The Niagara Escarpment Plan Designation boundaries shown on this map are approximate and subject to confirmation through Site Inspection and the application of the 'Interpretation of Boundaries' section of the Niagara Escarpment Plan



Printed on Oct 06, 2020

THIS IS NOT A PLAN OF SURVEY.  
This map is illustrative only. Do not rely on it as being a precise indicator of routes, location of features, nor as a guide to navigation. Base derived from various sources.  
Map compiled and produced by the Geographic Information Systems (GIS) Department of the Niagara Escarpment Commission, Ministry of Natural Resources





## Map 2C Orthophoto

PS 215  
Sideroad 26/27  
Township of Clearview  
County of Simcoe

- Area Subject to Amendment
- Roads
- Waterbodies
- Watercourse
- Upper Tier Municipality
- Lower/Single Tier Municipality
- Lot and Concession Boundary
- Parcel Boundary
- Ownership Boundary

Scale 1:15,000  
0 125 250 375 500  
Metres

Orthophoto Date: 1995-2015  
Printed on Oct 06, 2020

THIS IS NOT A PLAN OF SURVEY.  
This map is illustrative only. Do not rely on it as being a precise indicator of routes, location of features, nor as a guide to navigation. Base derived from various sources.  
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**PROPOSED NIAGARA ESCARPMENT PLAN AMENDMENT  
PS 215 18**

**TOWNSHIP OF CLEARVIEW SIDEROAD 26/27**

**April 2020**

**(Prepared by GSP Planning)**

## **TABLE OF CONTENTS**

**PART A – The Preamble**

**PART B – The Amendment**

## **PART A – The Preamble**

### **PURPOSE:**

### **LOCATION:**

The property subject of this amendment is Sideroad 26/27, Township of Clearview, County of Simcoe.

### **APPLICANT:**

Township of Clearview

### **BASIS:**

Under Section 6.1(2) of the *Niagara Escarpment Planning and Development Act*, an application may be made to the Commission by any person or public body requesting an amendment to the Plan.

This application by the Township of Clearview is to amend the Niagara Escarpment Plan to address policy conflicts related to Parts 2.6, 2.7 and 2.12 of the NEP respecting the re-development of a municipal road, as identified by the Township's planning consultants and solicitor.

Section 1.2.1 of the NEP sets out provisions for the consideration of an amendment to the NEP. The applicant has provided technical information in support of the proposed amendment and a rational for the proposed policy exceptions.

Section 6.1(2.1) of the *Niagara Escarpment Planning and Development Act* requires that an application to amend the NEP be supported by a "statement of justification" and Section 8 sets out the objectives to be sought in consideration of an amendment to the NEP. The applicant has provided a Planning Report and Environmental Impact Study which meets the threshold justification requirements of the *Niagara Escarpment Planning and Development Act*.

## **PART B – THE AMENDMENT**

The Niagara Escarpment Plan is amended as follows:

- Add a new subsection 2.6.2.f (Water Resources Policies)
  - "infrastructure improvements on 26/27 Sideroad from the Osprey-Clearview Townline to Concession 10 have been deemed necessary to the public interest after all other alternatives have been considered."
- Add a new subsection 2.7.2.f (Natural Heritage policies)
  - "infrastructure improvements on 26/27 Sideroad from the Osprey-Clearview Townline to Concession 10 have been deemed necessary to the public interest and there is no other alternative."

- Add a new subsection 2.12.9 (Infrastructure policies)
  - “Notwithstanding the policies set out in Part 2.12.2 d) and 2.12.5, the re-development of a municipal right of way on the lands described as Sideroad 26/27 , Township of Clearview, County of Simcoe, shall not be required to establish a development setback from the brow to minimize visual impacts and further infrastructure improvements on 26/27 Sideroad from the Osprey-Clearview Townline to Concession 10 have been deemed necessary to the public interest after all other alternatives have been considered.”



## **Appendix 4 - Summary of Comments on Proposed Amendment PS 215**

## Overview Chart of Municipal, Agency, Company and Public Comments

SOURCE	POSITION	COMMENT
MTCS		Archaeological assessment may be required if not completed as part of the Duntroon hearing.
MNRF		Proposed [road] activities are not likely to contravene the ESA provided no tree cutting between April 1 and October 31 as SAR bats may seasonally use woodlands in the area, protecting particularly female bats birthing and rearing their pups; no comments with respect to the NEPOSS park were provided by the MNRF.
GSCA		Project is not anticipated to have negative hydrologic impacts to the provincially significant wetland or measurable negative drainage impacts in the Upper Beaver River Watershed with the jurisdiction of the GSCA; the regulated area associated with the Rob Roy PSW includes a 120-metre area of interference and a permit will be required from the GSCA; not opposed to the Amendment provided that all the recommendations in the EIS are complied with and a permit is obtained.

NVCA

Additional information is required; technical inaccuracies with regards to significant wildlife habitat; conclusions regarding degree of impact to wildlife movement are not clearly substantiated; further information needed regarding wildlife exclusion and crossing infrastructure; a permit will be required and more comments regarding fish habitat and fish passage will be provided at that time; applicant must address wetland enhancement and compensation; land clearing window must be extended to account for local bird nesting season; additional engineering design details are needed.

Ontario Parks

Nottawasaga Lookout Provincial Park, a nature reserve abuts Sideroad 26/27 and is regulated under the *Provincial Parks and Conservation Reserves Act*. Difficult to specify impacts to provincial park lands and values at this time but there could be temporary disturbance to park value during construction and permanent disturbance and increased operational pressures due to increased use of the Sideroad after construction. If the proposal moves forward, Ontario Parks would like to be engaged. There may be requirements under the Ontario Protected Areas Planning Manual and/or a Class Environmental Assessment for Provincial Parks and Conservation Reserves.

MECP

Information with respect to bats has been addressed in the guidance from the MNR; records for other species at risk exist and the consultant should comment on whether the other species (birds) would be impacted by the development; Schedule A, Class EA appropriate and no further EA required. Legislation has changed so no opportunity for a "bump-up".

OMAFRA		No comment
MMAH		No comment
OHT		No comment
Seeley and Arnill Construction	Opposed	Contrary to provincial policy; closing Clearview 91 makes no sense except to limit competition to aggregate entering the local markets from the west to the benefit of Walker Industries; adds 14 km. round trip to haul to market (70 cents per tonne disadvantage); there will be a change to the natural environment on SR 26/27 and change to the open landscape character; optimize existing infrastructure; transportation management strategy should be used; using longer route means more greenhouse gas emissions; vertical grades have improved on 91 and trucks supplying aggregate have been using it with no issues.
Votorantim Cimentos (CBM/St. Mary's Cement)	Opposed	Closing Clearview Rd. 91 is at the heart of the matter; Township's application is premature, not essential, not in the public interest or an immediate need of Walker as they have many years of reserves in the quarry extension before they need the aggregate under the road; closure would have significant economic impact to other existing aggregate operations in the area, including their Osprey quarry; closure of 91 would force them to serve customers using Grey/Simcoe Roads 31/95 and 124, adding 14 km to the haul route which would be extremely detrimental to our business and adversely impact competitive pricing within the local market; NEC should reject the application for environmental, social and economic impacts and because it does not meet the tests in the NEP.

CBM Aggregates in 2020	Opposed	Does not oppose the plan to decommission County Road 91 but does not consider it to be essential or the need for it to happen soon. CBM would not oppose the NEPA if trucks could use Sideroad 26/27.
Walker Aggregate (via MHBC Planning) in 2019	Support	Closure of County Road 91 and improvement to SR 26/27 was considered during the Walker Duntroon hearing; public concerns about traffic, safety and noise on 91 were known to Twp. Council during public meetings and Council meetings; concerns were addressed through Settlement Agreement between Simcoe, Twp. and Walker; the agreement was mentioned in the Joint Board decision noting that the Twp and County will be benefit from the development of the quarry but that the elected councils were acting in the public interest in reaching the agreement and trying to resolve public concerns; Grey County and Grey Highlands did not object; Jt. Bd. concluded that SR 26/27 can provide an appropriate alternative access to the closing of 91 with nominal visual impact to the Niagara Escarpment; open the local road on a year round basis is an operational matters that vests with the Twp.
Walker Aggregate (via K. Lucyshyn) in 2020	Support	In a letter to Grey Highlands, Blue Mountains and Grey County, Walker responds to opposition of these municipalities to the proposed NEPA as being contrary to the Settlement during the Walker hearing which provided for closure of portion of County Road 91 and improvement of Sideroad 26/27 to a paved condition once traffic reaches 400 vehicles per day. Class A+ has been determined to be appropriate type of EA. Any environmental issues will be canvassed as part of the DP and NEPA applications. NEC should disregard municipal submissions.

Grey Highlands Chamber of Commerce      Opposed

Concern about the closure of Simcoe County Road 91 - an excellent trade route between Grey and Simcoe counties. Simcoe County Transportation plan in 2008 did not show any future closure of County Road 91. When on Grey Highland's council, the municipality was upset with Simcoe County's decision to sell a section of County Road 91 to Clearview and replace it with a road not built to County standards. Felt like an insult to a friendly neighbour. NEC must decide if it would approve a road that is environmentally sensitive and not an adequate replacement. The decision of the County was a political one not one of necessity. The suggested road is not needed as a replacement road. There are alternative solutions including leaving the tunnel under the County Road. There is only one Niagara Escarpment; let's save what we have and stop the rebuilding of 26/27.

Grey County      Put application on hold

Twp. Should complete a Class EA for the re-construction of SR 26/27 in light of new environmental information; new County OP identifies PSW adjacent to Grey Rd. 31 and SR 26/27; EIS must demonstrate no negative impact on the PSW; a number of comments from the public including that SR 26/27 was not an adequate substitute for 91, concern about negative impact to wetlands, fish habitat, springs and groundwater, reduced emergency response times, need for updated traffic studies, lack of consultation, no need to close 91 since Walker has a tunnel under it, concern about commercial vehicles using other roads in the winter when they can't use SR 26/27.

Town of The Blue  
Mountains, Mayor Soever

Opposed

Extremely concerned that SR 26/27 will not be an adequate replacement for Simcoe Rd. 91; loss of 91 will force traffic to use other routes including Hwy. 26 which is already at capacity and move up the date for a major bypass across the Escarpment with huge environmental impact and cost of millions of dollars to taxpayers; SR 26/27 would have to be paved right away; recent traffic counts undertaken showing 1265 vehicles per day using 91; need for a proper traffic study to determine if SR 26/27 would be a suitable replacement of 91 to meet function of gateway to our Town, used by commuters and tourists; negative visual impact, increased timelines for EMS/Fire; environmental concerns related to PSW; Class C EA should be done.

Municipality of Grey  
Highlands

Opposed

PPS identifies need to co-ordinate with other orders of government, agencies, boards and Aboriginal communities; in addition there should be a co-ordination of economic development strategies, multimodal transportation systems, Great Lakes related issues, housing needs and emergency management; this is non-existent in the amendment application; complete lack of public process and lack of recent traffic studies that show true use of the roads affected by this amendment application; no true need to close County Road 91 has been provided to this municipality since the tunnel beneath the road has been put into place; request that the NEC deny the amendment application request; failure to do so will result in an irreversible impact on the Escarpment on what is now a relatively pristine area.

Simcoe County

No comment

Resident of Grey Highlands	Opposed	Upgrading SR 26/27 is not compatible with the natural environment; not consistent with intent of UNESCO Biosphere Reserve designation; there are suitable alternatives to upgrading the road; 91 provides safe, direct east/west corridor linking Grey and Simcoe for residents, businesses and visitors; SR 26/27 does not meet current road standards (steep, narrow, washed-out, 14% grade); Walker wants the aggregate that remains under 91 at the expense of the public and the Escarpment; EMS could not use SR 26/27 and would have to take a longer, slower route.
Resident	Opposed	Closing a perfectly good road for profit, destroying an area of streams, flora, fauna and wildlife to upgrade a cow path should be a crime; SR 26/27 should be left alone; damage to the ecosystem from the quarry expansion should be enough.
Resident of Singhampton	Opposed	Closure of 91 and upgrading SR 26/27 poses serious environmental concerns as well as safety and financial considerations; the environment deserves better; the citizens deserve better.
Resident of Singhampton	Opposed	Site specific exemption to the NEP could set a precedent for other applications under pressure from municipalities, industries or other interest groups; this project not in the public interest and alternatives have not been considered; project is not low impact or green infrastructure; proposed development would disrupt continuous natural environment; SR 26/27 would dismantle a major east/west traffic corridor replacing it with one of dubious technical merit due to a myriad of safety concerns; County Road 91 can stay open; deal between Twp. and Walker under legal challenge because of lack of fair market assessment; proper consideration of alternatives should be undertaken.



Resident of Singhampton      Opposed

Process to consider traffic issues would be a Class C EA. Alternatives need to be considered for closing County Rd 91 including do nothing, traffic signals, dedicated truck lanes, and alternative routes. Then prepare a decision matrix and determine which alternative wins out. This evaluation process was not implemented and it was incorrectly decided to close County Rd 91 and open up 26/27. This is wrong and contravenes accepted processes. If after a proper evaluation the decision is to open 26/27 then consideration must be given to the intersections. At 26/27 and Tenth Sideroad there is a serious grade problem that presents a safety issue. The vertical grade on Tenth prevents a clear line of sight and does not conform to MTO standards. This was not addressed in the engineering studies presented at the public meeting. The decision to close County Rd 91 should be re-opened and the correct process should be implemented to address traffic issues.

Resident of Clearview      Opposed

No-one has ever consulted me for my local knowledge of the road; the stream used to hold a large number of brook trout but gravel placed on the road by the Twp. washed into the stream in spring of 2017 caused a catastrophic loss of habitat; basis for road improvement was stated as increased traffic on SR 26/27 but only people who use it are a few locals and the occasional lost tourist (probably only 10 vehicles per day); development of SR 26/27 will result in more accidents and fatalities as people try to turn onto Concession 10 where speed is 90-100 kmh.

Resident of Singhampton	Opposed	SR 26/27 is not a substitute for 91; emergency vehicles, heavy trucks and most passenger vehicles could not climb the hill, especially in winter; impact of closing 91 resulting in drastic road improvements to SR 26/27 was not considered since it is viewed as nothing more than a goat track, ideal for bikers, hikers and ATV's; Simcoe and Clearview met behind closed doors and deal not addressed at the hearing as it was too late to bring in experts; there are remnants of the old mail road on SR 26/27 when it was used in 1832 to carry mail from Toronto to Owen Sound; Escarpment is a central feature to both agriculture and tourism and any threat to both (natural environment and visual impacts) would have a negative impact on these sectors); amendment is a major affront to the integrity of the NEP.
Business owner - Collingwood		Main concerns are convenience of travel route, environmental and public safety; can NEC restrict the type of vehicles that could use SR 26/27? Longer wait times for ambulance services would result from closing 91.
Resident of Clearview	Opposed	traffic is not increasing on SR 26/27; road is in deplorable condition; concern about safety of our family if speeds increased to 80kmh; lack of process to consult on upgrading 26/27; on what basis was a Class A EA chosen? Should be a Class C with a wholesome, complete evaluation in accordance with the Municipal Class EA process.
Homeowner, Osprey Estates	conditional support	If we can be re-assured that re-construction can be done in an environmentally acceptable way and a safe roadway provided to the users, it is time to put this issue to rest as it has dragged on too long.

Resident of Duntroon	support	Support Walker as a valuable industry for jobs they create and product they provide; conscientious neighbour; welcome closure of 91 due to increase in volume and speed of traffic from CBM quarry; closing the road will force CBM to use their designated haul route.
Clearview resident	support	I trust that the operating permits of the local quarries, now and in the future will respect to the intent of the original upgrade agreement to prohibit quarry traffic from use of upgraded SR 26/27.
Clearview resident	support	Want SR 26/27 improved from environmental and safety perspective; Twp documentation was impressive; no solution is perfect but would address incidents that are happening including travellers who have gone off the road or become stranded; only a matter of time before there are serious injuries and questions arise as to liability; make this process as speedy as possible.
Clearview resident	Opposed	Proposed development of Sideroad 26/27 threatens to disrupt the rare, natural features found in the region but also puts residents at risk. Do not understand why 91 needs to be closed. Widen that road to allow gravel pit traffic and higher volume of other vehicle traffic (personal, business, first responder). This road [91] is essential to keep a safe flow of traffic in the event of a major closure of Hwy 24. The narrow unpaved sideroad which is unsafe in the winter, is not an adequate replacement for County Road 91. The steep sideroad would be unsafe for visitors to the area and its grading cannot handle the current traffic volumes on the County Road. Rerouting traffic will increase response times for emergency services, especially ambulances when travelling to Collingwood hospital.

Grey Highlands resident	Opposed	Comments as above
Grey Highlands resident	Opposed	Comments as above
Nottawa resident	Opposed	Comments as above
Eugenia resident	Opposed	Comments as above
Brewster Lake resident	Opposed	Comments as above
Grey Highlands resident	Opposed	Comments as above
Resident of Maxwell	Opposed	Comments as above
Singhampton resident	Opposed	Comments as above
Local resident	Opposed	Comments as above and a comment that the amount of traffic on County Road 91 could never be accommodated on Sideroad 26/27.
Flesherton resident	Opposed	The proposed development of Sideroad 26/27 threatens to disrupt the rare natural features found in the region and puts residents at risk. The Township's inadequate EA process failed to consider numerous environmental concerns including wetlands adjacent to the narrow road. There is significant biodiversity in the area and species at risk (barn swallows, bobolink, Hart's Tongue Fern, myotis and eastern small-footed bats). Seeps, aquifers and old-growth forest canopies would be irreparably disturbed by construction. The sideroad is not an adequate replacement for County Road 91. The re-routing of traffic will increase response times for emergency services.

Friends of the Pretty River  
Valley

Opposed

Road project did not meet the test of essential as alternatives not taken into consideration, a requirement for lands in the Escarpment Natural Area; a tunnel has been constructed under County Rd. 91 so reconstructing SR 26/27 not essential; development of the road would offend the objectives for the Escarpment Natural and Protection Areas; further development will harm cold water streams and steep Escarpment slopes; no evidence that traffic increasing on SR 26/27; runoff erosion will increase if the road is paved and will require extensive use of road salt; hundreds of residents will be inconvenienced by closure of 91; emergency vehicles will not be able to use SR 26/27 due to steep gradient (12%); wildlife mortality will increase for animals that frequent the Provincial Park; Class C EA should be completed.

Blue Mountain Watershed  
Trust

Opposed

Class C EA should be undertaken for the road project to allow consideration of alternatives and consideration of the Amendment should be postponed until that is undertaken; SR 26/27 does not meet MTO or Twp. Road standards (twice as steep as the road proposed to be closed) and would not accommodate heavy commercial vehicles; emergency vehicles will likely not be able to use it; use of the road will impact the woodlands, wetlands, wildlife, aquatic organisms and fisheries; closure of 91 will increase residents time to work and negatively impact emergency service times; cost estimate for road has increased from \$500K to \$4,000K; lack of public consultation during the hearing process for the Duntroon quarry; SR 26/27 should remain a seasonal road; engineering consultant to BMWT states that road back slopes may be steeper than 2:1; back slopes should be 3:1 but the standard 20 m ROW is inadequate to accommodate the recommended back slopes; steeper back slopes may be an operational safety hazard and will be unstable; centre line road fill varies up to 2.8 m in depth.

Donnelly Law on behalf of  
resident

Opposed

Comments provided by George McKibbin, planning consultant retained by resident: Twp. Planning Justification does not support an Amendment to the NEP; the works required on the road bed are substantially different than what was considered at the Walker hearing; the wetland feature was discovered after the hearing; the development will sever the continuous natural environment by widening an edge in the forest canopy, cutting into the Escarpment face and filling in the lower section; impacts to the Escarpment and significant natural heritage will be profound and cannot be ameliorated; new NEP policy requires a setback from the brow and emphasizes a landscape approach and this is not addressed in the applicant's planning justification; a right of way enables a land use and is subject to NEP policy; if a permit is required, the policies of the NEP apply; the NEPDA and NEP protect the public interest and there should be a consideration of alternatives and a setback from the brow of the Escarpment; local residents, the travelling public, EMS, other businesses and aggregate producers and a range of stakeholders will be prejudiced by this decision; Sideroad 26/27 is not a suitable alternative to County Road 91 as the roadbed is not of equivalent in design, traffic safety and performance; an alternative would be to restore the road to a natural state, transfer it to the Nature Reserve and relocate the County Road within the quarry as part of its rehabilitation.

CONE

Opposed

This road is too steep and disturbs many sensitive wet areas; we believe that the original haul road is the best; not the proposed changes that will not be safe when completed.

BTC

Not Opposed

Bruce Trail crosses Sideroad 26/27 in the centre of the section of road to be improved; unofficial on-road parking continues to provide hikers with a place to park in this location; it would be helpful if a traffic study was available to assist in understanding the future impacts of re-routing traffic from County Road 91; we anticipate that traffic volumes and speeds will increase dramatically making the Bruce Trail crossing hazardous for users and parking unsafe; if the NEPA is approved we request that speeds be limited to 50 kmh for the entire road and that signs be posted to alert drivers of the trail crossing; new culverts will facilitate pedestrian crossing of the road; this section of the Bruce Trail is heavily used and we would like assurance that hikers will be able to cross the road safely during construction; we would welcome discussions with Clearview Township to accommodate parking in the area, potentially off road on quarry owned lands; no objection to the Amendment if it respects NEP policies pertaining to securement of NEPOSS and the Bruce Trail.

Historic Saugeen Métis

Project is outside HSM traditional territory so no comments will be provided.



George McKibbin, planning consultant to Franks/Stevenson, parties to the DP hearing      Opposed

The proposed road works must conform to the Township's OP. If the road design has changed since the Road Agreement was made, it should be re-evaluated. This was contemplated in the Minutes of Settlement. Other municipalities want alternatives to be examined and a "time out" between settlement parties should be taken to allow this. A condition of the ARA site plan was that the proposed structural changes to Sideroad 26/27 were to be in place before extraction commenced. This has not happened so has the Township waived the condition and does the settlement agreement now have no force?