**Niagara Escarpment Commission**

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# MINUTES OF M816/05-2022

**NIAGARA ESCARPMENT COMMISSION**

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

**May 19, 2022**

## MEMBERS PRESENT:

B. Burton, B. Clark, M. Curley, J. Downey in at 11 a.m., G. Driedger, R. Gibson,

L. Golden, J. Horner, D. Hutcheon, G. Krantz, B. Mackenzie, D. McKinlay, P. McQueen, R. Nicholson, J. Vida, A. Witteveen.

## REGRETS:

K. Lucyshyn.

## STAFF PRESENT:

J. Dungavell, K. Peters, L. Grbinicek, J. Muller, D. D’Silva, C. Curran, B. Henderson,
A. Obradovic, K. Bannister, E. Vanderwal, L. Wang, W. Baldin, J. Olah, A. Bochenek.

## ALSO PRESENT:

S. Cooper, J. Gaweda, Ministry of Northern Development, Mines, Natural Resources and Forestry.

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

Chair Rob Nicholson presided.

## INTRODUCTIONS:

The chair welcomed the Commissioners, staff and members of the public to the meeting. He advised that the May policy meeting will be rescheduled after the June provincial election. A Commissioner requested information for Commissioners regarding political activity rules for Commissioners during elections.

The Chair advised that the G1 dashboard contains additional information regarding applications and other transactions and numbers of items staff respond to daily.

The Director joining from the boardroom highlighted that the NEC is preparing for a a hybrid meeting in the near future and reviewed the virtual meeting procedures.

## LAND ACKNOWELDGEMENT:

The Chair read aloud the Land Acknowledgment.

## BUSINESS ARISING FROM PREVIOUS MEETINGS:

None.

## APPROVAL OF MINUTES – M815/04-2022

**M816R1/05-2022**

*Moved By: McKinlay*

*Seconded By: Hutcheon*

*“That the Commission minutes of April 21, 2022, be approved as revised on page 12.”*

***Motion Carried***

**DISCUSSION:**

## Commissioner McKinlay requested that his comments regarding inquiries he received from the public be revised to be clear that he advises the NEC staff and Director of the inquiry and does not advocate for any party.

## MOTION FOR SPEAKERS

**M816R2/05-2022:**

*Moved By: Krantz*

*Seconded By: Horner*

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

***Motion Carried***

## CONFLICTS OF INTEREST – Declaration of Conflicts of Interest

## None.

## DISCUSSION AGENDA: A and B PACKAGES

## (*Staff Reports, External submissions)*

## A1

**Urban Hamilton Official Plan Amendment and Zoning By-law Amendment for Proposed Residential Development, 299-307 John Street South and
97 St. Joseph’s Drive, City of Hamilton**

## PROPOSAL:

To amend the City of Hamilton Zoning By-law and the Urban Hamilton Official Plan to construct three mixed-use towers of 25, 24 and 22 storeys in height, connected by a podium varying between three and four storeys at 299-307 John Street South & 97 St. Joseph’s Drive in the City of Hamilton. The proposal includes 773 residential units, 708 parking spaces and 1,587 square metres of commercial area.

## RECOMMENDATION:

That the Niagara Escarpment Commission obtain party status in Ontario Land Tribunal case OLT-21-001723 (official plan amendment) and OLT-21-001724 (zoning bylaw amendment) to oppose and/or seek to reduce the height of three 22 to 25 storey towers at 299-307 John Street South & 97 St. Joseph’s Drive in the City of Hamilton, to uphold the Niagara Escarpment Plan and reduce visual impacts on the Escarpment.

Note:

Andrej Obradovic, Senior Planner, and Karen Bannister, Landscape Architect, presented and answered questions.

**R815R3/05-2022:**

*Moved By: Clark*

*Seconded By: Mackenzie*

*“That Niagara Escarpment Commission obtain party status in Ontario Land Tribunal case OLT-21-001723 (official plan amendment) and OLT-21-001724 (zoning bylaw amendment) to oppose and/or seek to reduce the height of three 22 to 25 storey towers at 299-307 John Street South & 97 St. Joseph’s Drive in the City of Hamilton, to uphold the Niagara Escarpment Plan and reduce visual impacts on the Escarpment.”*

**For the Motion: 14 votes**

Burton, Clark, Curley, Driedger, Gibson, Golden, Horner, Hutcheon, Krantz, Mackenzie, McKinlay, McQueen, Vida, Witteveen.

**Against the Motion: 0 votes**

None.

***Motion Carried***

**DISCUSSION:**

The Commission discussed how the Niagara Escarpment Plan and City of Hamilton’s Official Plan (OP) relate to each other. A Commissioner asked if staff need to have a role in the Ontario Land Tribunal (OLT) hearing if the City’s OP meets the NEP policies. The manager advised that the NEC has expertise and methodologies for assessing visual impacts to address NEP policies in a manner different than the City’s. For this reason, it is essential to have staff present to uphold the NEP policies, in addition to City staff defending OP policies. Several Commissioners noted the need for NEC staff to attend OLT hearings to ensure the NEP is upheld.

Commissioner Clark noted that some developers are appealing their applications if the City does not meet commenting deadlines, in the hope that the OLT will approve the development, and it is imperative for NEC staff to attend hearings and uphold the NEP.

A Commissioner asked how the proposed development works with the province’s housing density plan and noted concern that staff efforts could be overruled.

The Commission requested that staff go to the hearing with a clear position on what would be permitted (e.g., 18 storeys will satisfy the NEP policies and the City’s intensification plan) to ensure efficiency during the hearing.

## A2

## STAFF REPORT

## DEVELOPMENT PERMIT APPLICATIONS P/P/2021-2022/396 and

## P/P/2021-2022/3981763 Quarry RoadPart Lot 15, Concession 3 WHSTown of Caledon, Region of Peel

### PROPOSALS:

**P/P/2021-2022/396:**

To demolish a one storey 820 sq m (8,826.4 sq ft) salt dome with a maximum height to peak of 15 m (49.2 ft) and a one storey 65 sq m (699.7 sq ft) storage shed with a maximum height to peak of 3.5 m (11.5 ft), and to construct a one storey, ± 1,150 sq m (12,378.5 sq ft) salt dome with a maximum height to peak of ± 16 m (52.5 ft) and a one storey ± 65 sq m (699.7 sq ft) storage shed with a maximum height to peak of ± 3.5 m (11.5 ft), and to construct a driveway and parking area, on an existing 19.9 ha (49.17 ac) lot that supports a public works yard, waste management facility, and groundwater treatment facility.

**P/P/2021-2022/398**:

To partially demolish an existing 1,425 sq m (15,388 sq ft) maintenance building (public works yard) with a maximum height to peak of 6 m (19.7 ft), and to construct a 1 storey addition resulting in the structure being increased to ± 1,855 sq m (19,967.05 sq ft) with a maximum height to peak of ± 12.5 m (41 ft) to construct a one storey ± 340 sq m (3,659.7 sq ft) covered parking structure with a maximum height to peak of ± 6 m
(19.7 ft), retaining wall, private sewage treatment system replacement, and parking expansion on an existing 19.9 ha (49.17 ac) lot that supports a public works yard, waste management facility, and groundwater treatment facility.

### RECOMMENDATION:That the applications be approved, subject to the following conditions:

### CONDITIONS OF APPROVAL P/P/2021-2022/396 and P/P/2021-2022/398

1. Development shall occur in accordance with the Terms and Conditions of the Development Permit.

1. The Development Permit shall expire three (3) years from the date it has been issued or once the development has been completed in accordance with the Development Permit.
2. Site alteration of the existing contours of the property including the placement or stockpiling of fill (i.e., excess or imported soil) on the property is NOT permitted with the exception of that identified within the development envelope in accordance with the Final Site Plan. All required erosion and sediment control fencing shall be maintained in good standing until the development envelope has been re-vegetated.
3. No vegetation shall be cut or removed from the development envelope except for that identified within the development envelope in accordance with the Final Site Plan.
4. If development has commenced under this Development Permit, any/all disturbed areas of land or soil shall be re-vegetated and stabilized to the satisfaction of the Niagara Escarpment Commission on or before the date of expiry of the Development Permit.
5. **Prior to the issuance of a Development Permit by the Niagara Escarpment Commission**, an accurate and detailed **Final Site Plan**shall be submitted for Niagara Escarpment Commission approval. The following stipulation shall be included directly on the Plan:
6. The Final Site Plan shall be prepared by a qualified professional;
7. All drawings submitted must be drawn to scale (bar scale shown), reference the application number and address of the proposal, be dated (revisions as well), and include the name of the relevant individual or consultant who prepared the drawing;
8. Outline of the approved development envelope / extent of all disturbed areas;
9. Location of all existing and proposed structures, sewage disposal system, well/cistern, driveway, exterior lighting, etc. showing setbacks from the property lines, any watercourses or water features, top / bottom of slope, wooded areas, etc.;
10. Grading, drainage, and fill management details including the areas of excavation and temporary or permanent fill placement. The type, quantity, quality and source location of any imported fill material must be accurately identified.
11. The location and design of erosion and sediment control measures (e.g., fencing, blankets, rip-rap, temporary mulch / seeding), and limit-of-work construction or eco-protection fencing;
12. Identify the areas of existing vegetation to be retained, areas of vegetation to be removed, and the location of proposed plantings.
13. **Prior to the issuance of a Development Permit by the Niagara Escarpment Commission,** the landowner shall submit for the approval of the Niagara Escarpment Commission, **final construction details** for the proposed development, including exterior elevations, total floor area, floor plans, height to roof peak from lowest grade, and any exterior lighting.
14. **Prior to the issuance of a Development Permit by the Niagara Escarpment Commission**, a **Final Landscape Plan** shall be prepared by a qualified person, for Niagara Escarpment Commission approval. The Plan shall address all vegetation retention and planting requirements in accordance with the standard practices of the implementing authority. The following stipulations shall be included directly on the Plan:
15. All new tree and shrub species (including seed mixes) shall be native to Ontario except where otherwise approved by the Niagara Escarpment Commission. Plant material shall be sourced from local plant nurseries; bush dug plant material is not acceptable.
16. Planting and the rehabilitation of all disturbed areas shall be completed on or before the date of expiry of the Development Permit to the satisfaction of the Niagara Escarpment Commission.
17. All plant material shall be guaranteed for 24 months following installation [this is flexible]. All plant material found during this time to be dead or dying must be replaced with a size and species to the satisfaction of the Niagara Escarpment Commission.
18. Once the development has been completed, a letter certifying the landscaping / planting work has been completed in accordance with the approved Landscape Plan shall be provided to the Niagara Escarpment Commission by a qualified person.
19. Any excess soil approved for importation under this Permit shall conform to Table 1 standards as per the “Rules for Soil Management and Excess Soil Quality Standards” under Ontario Regulation 406/19 (On-Site and Excess Soil Management) made under the Environmental Protection Act, R.S.O. 1990, c. E.19.
20. **Prior to the commencement of any development**, erosion and sediment control measures (e.g., fencing, blankets, rip-rap), and/or vegetation protection fencing shall be implemented and maintained as shown on the **Final Site Plan** until all disturbed areas are stabilized. It is the responsibility of the landowner to implement, monitor and maintain all erosion and sediment control measures and vegetation protection fencing in good condition until vegetative cover has been successfully established and the development is completed.
21. All waste materials generated from the demolition shall be completely removed from the property and taken to an authorized receiving site (e.g., municipal landfill site, salvage / reclamation facility, re-used / recycled elsewhere) and not stored or buried on site. All disturbed areas shall be rehabilitated as per the **Final Site Plan**.
22. Conditions 6, 7 & 8 must be fulfilled within eighteen-months (18)from the date of confirmation of the Commission’s decision or this conditional approval shall lapse and a Development Permit will not be issued.

**Advisory Notes:**

1. A Development Permit does not relieve the landowner/permit holder from the requirements of any other required approval, licence or certificate under any statute (e.g., Ontario Building Code, Planning Act, Aggregate Resources Act, *Conservation Authorities Act, Endangered Species Act*.
2. The Niagara Escarpment Commission supports the protection of the night sky from excessive lighting and recommends the applicant obtain information on the use and operation of appropriate lighting fixtures in keeping with dark sky approaches.
3. Should deeply buried archaeological artefacts be found on the property during construction activities, the Heritage Operations Unit of the Ontario Ministry of Heritage, Tourism, Sport, and Cultural Industries shall be notified immediately. In the event that human remains are encountered during construction, the owner shall immediately notify the police.

Note:

Brandon Henderson, Senior Planner, presented and answered questions.

Tom Darlow, Manager, Corporate Facilities, Town of Caledon, was present and answered questions.

**M816R4/05-2022:**

*Moved By: Burton*

*Seconded By: McKinlay*

*“That the Commission endorse staff recommendation to approve Development permit applications P/P/2021-2022/396 & P/P/2021-2022/398 subject to conditions of approval.”*

**For the Motion: 14 votes**

Burton, Clark, Curley, Driedger, Gibson, Golden, Horner, Hutcheon, Krantz, Mackenzie, McKinlay, McQueen, Vida, Witteveen.

**Against the Motion: 0 votes**

None.

***Motion Carried***

**DISCUSSION:**

The Commission requested confirmation that enough time has been given to fulfill the conditions of approval. Staff confirmed that the town is ready to move forward quickly and will do the work this year.

## C1

**STAFF REPORT**

**Official Plan Amendment, Zoning By-Law Amendment, Draft Plan of Subdivision Proposed Residential Development**

**Flamborough Power Centre, iConnect**

522 Highway 6, 3 & 50 Horseshoe Crescent, and 30 Highway 5 East

City of Hamilton

### PROPOSAL:

To construct a mixed-use community with 2009 new housing units in a variety of residential built forms including townhouses, stacked townhouses, back-to-back townhouses, mid-rise and high-rise buildings ranging from three to 22 storeys in height on lands municipally known as 522 Highway 6, 3 & 50 Horseshoe Crescent and 30 Highway 5 East within the City of Hamilton (Former Town of Flamborough). The proposal also includes approximately 5.44 hectares of parkland and a seniors’ complex.

### RECOMMENDATION:

That the Niagara Escarpment Commission obtain party status in Ontario Land Tribunal case OLT-21-001345 (official plan), OLT-21-001355 (zoning) and OLT-21-001356 (plan of subdivision) to uphold the Niagara Escarpment Plan and reduce potential visual impacts on the Escarpment for the proposed development at 522 Highway 6,
3 & 50 Horseshoe Crescent and 30 Highway 5 East within the City of Hamilton.

## Note:

Andrej Obradovic, Senior Planner, and Karen Bannister, Landscape Architect, presented and answered questions.

**M816R5/05-2022:**

*Moved By: Clark*

*Seconded By: Krantz*

*“That Niagara Escarpment Commission obtain party status in Ontario Land Tribunal case OLT-21-001345 (official plan), OLT-21-001355 (zoning) and OLT-21-001356 (Plan of Subdivision) to uphold the Niagara Escarpment Plan and reduce potential visual impacts on the Escarpment for the proposed development at 522 Highway 6,
3 & 50 Horseshoe Crescent and 30 Highway 5 East within the City of Hamilton.”*

**For the Motion: 14 votes**

Burton, Clark, Curley, Driedger, Gibson, Golden, Horner, Hutcheon, Krantz, Mackenzie, McKinlay, McQueen, Vida, Witteveen.

**Against the Motion: 1 vote**

Downey (abstained)

***Motion Carried***

**DISCUSSION:**

A Commissioner noted frustration with developers who are attempting to circumvent the public consultation process and advised that staff were prudent in recommending party status. It was noted that if the stage 2 visual impact assessment meets the visual requirements, party status can be withdrawn.

## UPDATE:

**Development Permit Application H/C/2020-2021/733**

10708 3rd Line

Part Lot 14, Concession 3, Esquesing

Town of Halton Hills, Region of Halton

**PROPOSAL:**

To recognize the use of ± 63.79 sq m (± 686.63 sq ft) within an existing two-storey 526.84 sq m (5,670.86 sq ft) accessory structure (barn) for a personal training business (home occupation/on-farm diversified use) on an existing 35.56 ha (87.87 ac) lot that supports a single dwelling, on-farm help mobile home, and accessory facilities.

**BACKGROUND:**

The application was brought before the Commission at the March 17, 2022 meeting. The Commission deferred the application to the May 2022 meeting to allow the applicant to submit a revised application that conforms with the NEP.

**UPDATE:**

Staff advised that the application was withdrawn on April 27, 2022. Staff noted that the existing farm operation does not require a NEC permit and compliance staff are now involved.

Note:

Joe Muller, Senior Strategic Advisor, provided a brief update and answer questions.

**DISCUSSION:**

A Commissioner asked what the Town of Halton Hill’s position is on the home business; staff advised that the home occupation does not conform with the Town’s Official Plan.

## CONSENT AGENDA/ITEMS MOVED FOR DISCUSSION:

Information only Items

G1 Director Approvals and Dashboard for April 2022

G2 Appeals and Hearings Status Chart as of April 30, 2022

G3 Director’s Report for April 2022

G4 Plan Amendments Status Update as of April 30, 2022

G5 Objection Letters RE: Application for ARA Licence (Dufferin MQEE)

**M816R6/05-2022:**

*Moved by: McQueen*

*Seconded by: Gibson*

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

***Motion carried***

**DISCUSSION:**

The Commission discussed charging fees for filing appeals and the ability to recover costs for frivolous/vexatious appeals. A Commissioner noted that this has been discussed in the past and requires a legislative change. He also noted that if fees were charged, the money would not go directly the NEC. A Commissioner inquired how many hearing decisions uphold NEC decisions and was advised that the majority of NEC decisions are upheld in the hearing process. The Chair noted that the possibility of charging fees can be discussed at an upcoming policy meeting.

A Commissioner noted that some appeals are related to concerns about public access to the Escarpment (e.g., trail parking lots).

A Commissioner thanked staff for including information on the appeals filed for the Milton quarry expansion.

**NEW BUSINESS**

## None.

## ADJOURNMENT

**M816R7/05-2022**

*Moved By: McKinlay*

*“That this meeting be adjourned.”*

***Motion Carried***

Time of Adjournment: 11:25 a.m.

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 Rob Nicholson

Chair