



## **Planning Report Sideroad 26/27 Reconstruction**

**The Township of Clearview**

P/N 16 - 2936 | J 2018

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# Clearview Township N.E.C. Planning Analysis

## 26/27 Sideroad Reconstruction

### Township of Clearview

P/N 16-2936

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#### Introduction

Skelton Brumwell & Associates Inc. (SBA) was retained by the Township of Clearview (Clearview) to prepare a planning analysis for the Niagara Escarpment Plan Amendment and the Development Permit associated with required road improvements to Sideroad 26/27 to address public safety issues and existing environmental impacts. SBA was also retained to prepare an analysis of bat habitat and to review and provide input to the Environmental Impact Study prepared by R.J. Burnside & Associates Limited (Burnsides).

This Planning Report provides support and justification for the Niagara Escarpment Plan Amendment Application and the Development Permit Application submitted to seek authorization for the works. It should be read in conjunction with the EIS prepared by R.J. Burnside & Associates Limited. This report also replaces the Clearview Township N.E.C. Planning Analysis, 26/27 Sideroad Reconstruction Appeal report dated November 27, 2017.

The proposal is to reconstruct Sideroad 26/27 from the Osprey-Clearview Townline to Concession 10 within the existing right-of-way. The proposed road improvements include improving the vertical alignment, replacing road-crossing culverts, improving and widening the road base and resurfacing the road. Sideroad 26/27, in its current condition, has deficient drainage features which create erosion and sedimentation issues that have had a negative impact on adjacent key natural heritage features and key hydrologic features.

Section 4.3 of Reg. 828: *DEVELOPMENT WITHIN THE DEVELOPMENT CONTROL AREA* establishes that a development permit is not required where:

The maintenance, repair or renewal of highways or municipal roads if the maintenance, repair or renewal does not,

- i. open an unopened road allowance,
- ii. expand the width of the road,
- iii. change the road from a seasonal to a year round road,
- iv. change the surface of the road from gravel to pavement, or

v. require road cuts and contour changes.

As the proposed reconstruction activities involve expanding the width of the road, changing the road from seasonal to a year round road (relative to the municipal classification, but not with respect to Regulation 828), change the surface of the road from gravel to pavement, and require road cuts and contour changes a development permit is required.

The existing Township right-of-way is 20 m wide, and a total of approximately 2730m of road is to be reconstructed.

The Study Area includes:

- The disturbance area to the limits of grading is 5.3 ha in size including the Road Improvement Area (Improvement Area) which is 1.36 ha in size; and
- Adjacent lands which are defined as 120 m beyond the Improvement Area.

As part of the planning and environmental review the following has been completed:

- a review of applicable environmental policies and regulations affecting the Study Area;
- a review of existing secondary source data to identify any known natural features;
- consultation with the various agencies to identify additional features and to confirm field study methodologies;
- field studies and an inventory of natural features in order to confirm the presence, significance and sensitivity of any key hydrologic feature and key natural heritage features;
- a design of the proposed road improvements
- identification of key hydrologic and key natural heritage features on or within 120 m of the Improvement Area;
- assessment of potential impacts resulting from the proposed road improvements; and
- recommendation of mitigating measures to avoid or minimize impacts.

Based on the review of the applicable environmental policies and regulations affecting the Study Area the following key hydrologic and key natural heritage features were assessed to determine if they exist on or within 120 m of the Study Area:

- significant wetlands (present);
- habitat of endangered and threatened species (present);
- fish habitat (present);
- Areas of Natural and Scientific Interest (ANSI) which include Provincial and Regional Life and Earth Science ANSIs (present);
- significant valleylands (not present);
- significant woodlands (present);
- significant wildlife habitat (present);
- habitat of special concern species (present);
- non-evaluated wetlands (present);
- permanent or intermittent streams (present);
- lakes (not present); and



- seepage areas / springs (present).

The improvement of Sideroad 26/27 results in the removal of approximately 2.93 ha of natural heritage and key hydrologic features within the existing right-of-way in order to address the existing public safety issues and environmental deficiencies of the existing road.

As part of the design, efforts have been made to minimize the impacted area by reducing the reconstruction of the road to the Township's minimum design standard for a 60 kmph roadway while still addressing the growing and anticipated traffic demands for the road and mitigating the existing negative impact on the adjacent environment. The design also includes measures that will significantly improve the water quality of the stream and fish habitat. These measures include:

- improved stormwater conveyance that will significantly reduce erosion of the road base and sedimentation in the adjacent watercourses;
- culvert replacements to improve fish passage; and,
- a short distance of channel realignment to increase the current separation distance between the road and the watercourse.

The Department of Fisheries and Oceans has reviewed the proposed work and concluded that, with the mitigation measures proposed, the application should not result in serious harm to fish. Therefore, no further approval under the Fisheries Act is required.

From a regional scale, the surrounding area contains extensive environmental features and includes over 700 ha of contiguous key natural heritage features and key hydrologic features. The direct removal of 2.93 ha is minor and ensures that the Niagara Escarpment and land in its vicinity is maintained as a continuous natural environment and the road will be compatible with the natural environment.

With the mitigation measures proposed, all key natural heritage features and key hydrologic features in the 120 m adjacent lands to the Improvement Area will be protected from impacts. Examples of the mitigation measures include sedimentation and erosion control measures, stormwater management controls, reducing the design speed from 80 km to 60 km, and restricting tree clearing from May 1 to September 30.

The original Development Permit application was based on the policies of the 2005 Niagara Escarpment Plan. Effective June 1, 2017, a new Niagara Escarpment Plan was approved, and the policies of this Plan now apply to the Development Permit application.

The 2017 Niagara Escarpment Plan includes policy changes that provide for approval of the Development Permit. Two significant policy changes include:

- 1) "Infrastructure" is now a permitted use in the Escarpment Natural Area (Policy 1.3.3.6) and no longer subject to the test of "essential"; and
- 2) "Infrastructure" is now permitted in key hydrologic features (2.6.2.e), and key natural heritage features (2.7.2.e).

Although infrastructure is a permitted use within the designations applicable to the Improvement Area, there are elements of the Niagara Escarpment Plan policies which merit clarification through a Plan Amendment. A complete review of the 2017 Niagara Escarpment Plan relative to the Plan Amendment and Development Permit applications is set out in this Planning Report.

## Project Context

Sideroad 26/27 is a relatively short stretch of road running east/west between Grey County Road 31 and Concession Road 10, Nottawasaga in the Township of Clearview. The right-of-way was established at the time of the original land surveys and so substantially predates the Niagara Escarpment Plan.



The Sideroad runs perpendicular to the Escarpment slope and crosses the slope at a gradient of approximately 14%. The existing road surface varies in width from 4m to 5.5m and is maintained year-round above the Escarpment brow (approximately 1 km of road). The road is not currently maintained in winter months below the Escarpment brow (approximately 1.7km), however road use and maintenance occurs over a period greater than 6 months a year and so the road is not considered a seasonal road for the purposes of Ontario Regulation 828/90 as amended.

The portion of the road below the brow is subject to washouts and also exhibits a variety of deficiencies



in road width, drainage and base structure which result in heavy maintenance and safety concerns. These maintenance requirements in turn have undesirable environmental impacts. These conditions, and impacts, are exacerbated by increasing levels of traffic which will only be accelerated by the pending closure of former County Road 91.

The road is located in a watershed divide. The western portion is within the headwaters of the Beaver River and falls under the jurisdiction of the Grey Sauble Conservation Authority. The eastern portion is part of the

Pretty River watershed and falls under the jurisdiction of the Nottawasaga Valley Conservation Authority. The western portion of the road crosses the Rob Roy Provincial Significant Wetland complex. The road also runs adjacent to the Nottawasaga Lookout Escarpment Access Park, Nottawasaga Lookout Provincially Significant Earth Science and Life Science Areas, and the Nottawasaga Lookout Provincial Nature Reserve.

As indicated, the proposed road works are not exempt from requiring a Development Permit under Section 5.4.3 of Ontario Regulation 828/90 as amended, as a number of the road improvement activities are identified as requiring issuance of a development permit. A Development Permit can only be issued in compliance with the applicable requirements of the Niagara Escarpment Plan which includes permitted uses and development criteria.

## **Outline, Analysis and Justification of Proposed Amendments to the Niagara Escarpment Plan**

As indicated the Niagara Escarpment Plan establishes infrastructure as a permitted use in the designations that apply to the Improvement Area. However, the Plan contains certain policy requirements which require clarification and certainty of interpretation through a Plan Amendment.

### **Outline of Plan Amendments Required**

Part 2 of the 2017 Niagara Escarpment Plan includes the following Development Criteria:

*2.6.2. Development is not permitted in key hydrologic features with the exception of the following, which may be permitted subject to compliance with all other relevant policies of this Plan: e) infrastructure, where the project has been deemed necessary to the public interest after all alternatives have been considered.*

*2.7.2. Development is not permitted in key natural heritage features with the exception of the following, which may be permitted subject to compliance with all other relevant policies of this Plan: e) infrastructure, where the project has been deemed necessary to the public interest and there is no other alternative.*

*2.12.5 Infrastructure shall avoid Escarpment Natural Areas, unless the project has been deemed necessary to the public interest after all other alternatives have been considered.*

Since the Niagara Escarpment Commission, contrary to a staff recommendation, previously concluded that the proposed upgrades were not deemed necessary to the public interest after all alternatives have been considered, the Township of Clearview is applying for a site-specific amendment to sections 2.6.2.e, 2.7.2e, and 2.12.5 of the Niagara Escarpment Plan, on a without prejudice basis.

Additionally, as Regulation 828 establishes “the maintenance, repair or renewal of highways or municipal roads” as a class of development, certain inherent policy conflicts arise with the Niagara Escarpment Plan. For instance, Section 2.2.3 of the Plan states that “development is permitted only on an *existing lot of record*”. As the definition of “*existing lot of record*” does not incorporate a right-of way, an amendment is required to permit development. Section 2.5.2 of the Plan sets out that “the implementing authority will establish a minimum development setback from the brow or crest and toe of a slope or ravine, and no disturbance of grades or vegetation below the crest or brow and above the toe shall occur”. Section 2.5.3 establishes some flexibility in this requirement, but only where development is on “an existing lot of record”. Similarly, Section 2.12.2.d stipulates that “a development setback from the Escarpment brow shall be established by the implementing authority to minimize visual impacts”. These policies conflict with any attempt to maintain, repair or renew a municipal road.

The Township of Clearview is therefore also seeking to amend sections 2.2.3, 2.5.2 and 2.12.2.d.

The intent is to consolidate the required Plan Amendment application at the Environmental Review Tribunal hearing with the Development Permit application that was denied by the Niagara Escarpment Commission and is the subject of an appeal (NEC Appeal - Case Nos. 15-179 to 15-184, Township of Clearview (S/T/2013-2014/9152)).

## **Analysis of Proposed Amendments**

### **Qualification to Need for a Portion of the Amendment**

Despite the Township of Clearview applying for this amendment, it is clear that the proposed upgrades have been deemed necessary to the public interest and that there are no other alternatives. However, a Plan Amendment application has been filed by the Township to deal with those matters more explicitly out of an abundance of caution.

Infrastructure is a permitted use in the Escarpment Natural Area, the Escarpment Protection Area and the Escarpment Rural Areas as set out in the relevant sections:

*“1.3 Escarpment Natural Area / 1.3.3 Permitted Uses: Subject to Part 2, Development Criteria, the following uses may be permitted: 7. Infrastructure.”*

*“1.4 Escarpment Protection Area / 1.4.3 Permitted Uses: Subject to Part 2, Development Criteria, the following uses may be permitted: 10. Infrastructure.”*

*“1.5 Escarpment Rural Area / 1.5.3 Permitted Uses: Subject to Part 2, Development Criteria, the following uses may be permitted: 10. Infrastructure.”*

Section 2.6.2. stipulates:

*“Development is not permitted in key hydrologic features with the exception of the following, which may be permitted subject to compliance with all other relevant policies of this Plan: e) infrastructure, where the project has been deemed necessary to the public interest after all other alternatives have been considered.”*

Section 2.7.2 stipulates:

*“Development is not permitted in key natural heritage features with the exception of the following, which may be permitted subject to compliance with all other relevant policies of this Plan: e) infrastructure, where the project has been deemed necessary to the public interest and there is no other alternative.”*

Section 2.12.5 stipulates:

*“Infrastructure shall avoid Escarpment Natural Areas, unless the project has been deemed necessary to the public interest after all other alternatives have been considered.”*

Each of these policies establishes an exception for *infrastructure* which is a defined term. The definition is as follows:

*“The physical structures (facilities and corridors) that form the foundation for development. Infrastructure includes green infrastructure and utilities as defined in this Plan, in addition to transportation corridors and facilities, including rights-of-way for the movement of people and goods.”*

This definition of infrastructure makes no differentiation as to level of use or level of improvement to an existing transportation corridor or right-of-way. Any right-of-way, regardless of level of use or improvement, and similarly any transportation corridor, is considered to have the same status with respect to being considered infrastructure.

Section 2.12.2.d requires that the design and siting of *infrastructure* include the establishment of a setback from the brow of the Escarpment.

As a result of the definition of infrastructure, it is clear that Sideroad 26/27 is an existing permitted use and that any improvements to the right-of-way or increased level of utilization of the right-of-way have no effect on the status as an existing permitted use. Similarly, this does not necessitate establishment of a setback from the brow for existing infrastructure.

There is no policy in the Niagara Escarpment Plan which sets out requirements with respect to improvements to or increased level of utilization of an existing right-of-way. While there may be policy applicable to a realignment or major expansion of a right-of-way, where there is no proposal to alter the alignment or increase the size of an existing right-of-way, there is no applicable test of requiring consideration of alternatives or deeming the improvements to be in the public interest.

It is not reasonable to interpret that the policies of the Plan would require application of the tests or requirements to existing infrastructure as there is no threshold set out in the Plan with respect to when such tests or requirements would apply to existing infrastructure. In the absence of such a threshold,

the tests and requirements would have to apply to all existing infrastructure on a continuous basis regardless of whether or not any degree of improvement or increased utilization were contemplated. This would not be practical or logical.

This does not negate the requirement that such development comply with all other relevant policies of the Niagara Escarpment Plan. Compliance with those policies is established through the requirement for a Development Permit.

The proposal is to reconstruct Sideroad 26/27 from the Osprey-Clearview Townline to Concession 10 by improving the vertical alignment, replacing road-crossing culverts, improving and widening the road base, and addressing environmental and road side safety measures.

The Township of Clearview is the public road authority for Sideroad 26/27, and has deemed the proposed upgrades to be in the public interest and has confirmed there are no other alternatives available. On January 30, 2018 the Township of Clearview unanimously approved the following Council resolution:

*Whereas the Township of Clearview's application to the Niagara Escarpment Commission for a development permit to upgrade Sideroad 26/27 between Osprey Clearview Townline and Concession 10 was refused by the NEC; and*

*Whereas the NEC decision has been appealed to the Environmental Review Tribunal by the Township of Clearview; and*

*Whereas the Township of Clearview's the public authority for this road and represents the interests of the residents, institutions and businesses in the Township; and*

*Whereas the traffic volume and the requirements for up-grades, repair and maintenance continues to grow on this road; and*

*Whereas the road in its current condition has deficient drainage features which creates erosion and sedimentation issues that have a negative impact to the adjacent natural environment; and*

*Whereas the Township of Clearview must improve the condition of the road to address public safety, and reconstruction of the road to current Township minimum design standards is necessary to address the growing demands on*

*the road and to mitigate the negative impact on the adjacent environment.*

*NOW THEREFORE BE IT resolved that the Township of Clearview takes the position that this upgrade is necessary to the public interest and that there is no alternative. Motion Carried.*



An examination of alternatives was considered during the lengthy public planning and approval process associated with the Duntroon Quarry. The Duntroon Quarry submissions and associated hearing incorporated an extensive review of haul road improvements and the proposal to close former County Road 91 and improve Sideroad 26/27. It was determined both appropriate and desirable to alter the road system in this fashion as an alternative to making improvements to the former County Road and the impacts which would result from such improvements. The responsible road authorities (i.e. the County of Simcoe and the Township of Clearview) both considered the closing of the former County Road and improvements to Sideroad 26/27 to be in the public interest. It is appropriate to consider the road authorities to be the appropriate judge of what is in the “public interest” with respect to the transportation corridor since they are the publicly elected bodies with jurisdiction in such matters.

The fact is that the Duntroon Quarry has now received approval and a license under the *Aggregate Resources Act* has been granted for the quarry. The closure of the former County Road 91 is a legal obligation, pursuant to an agreement entered into by the County of Simcoe, Township of Clearview and owner of the Duntroon Quarry. It was determined by the County and the Township (which determination was accepted by the Joint Board after a lengthy hearing) that it was in the public interest to facilitate another traffic route in the same general area for non-quarry traffic to allow for an efficient traffic flow in this area. It is specifically stated in the aforementioned agreement that Sideroad 26/27 is not a quarry haul route. Since Sideroad 26/27 currently exists it is also reasonable to upgrade it, rather than creating an entirely new corridor across the landscape. Since the Niagara Escarpment is oriented north-south, any alternative route would have to cross this feature and it is clear that an entirely new corridor would have a far greater impact than the utilization of the existing Sideroad 26/27.

Although the test of public interest and an examination of alternatives is not applicable to the proposed road improvements as this does not constitute a change in use, and infrastructure is a permitted use, it is abundantly clear that these tests have been met.

The Niagara Escarpment Commission staff report dated November 19, 2015 (Staff Report Development Permit S/T/2013-2014/9152 page 7), included the following summary:

*“Closing the road is not a viable alternative as the existing properties and residences require access. If the road itself is essential and must remain in place, the deficiencies must be addressed through a road reconstruction project.*

*Leaving the road in its current state is not a reasonable alternative as deficiencies on this road need to be addressed and corrected to meet current traffic volumes. With the closure of a portion of CR 91 residents of Grey Highlands would have an additional 8 to 9 km (5 to 5.5. mi) travel distance using Simcoe Road 124 or Pretty River Valley if 26 / 27 SR is not upgraded.*

*The intent of the proposed upgrades is to make 26 / 27 SR a safe road to convey local traffic only. The road will initially remain a gravel surface to discourage regional and provincial traffic. If traffic exceeds 400 vehicles / day the Township plans to pave the road. Commercial traffic is intended to use Grey / Simcoe County Roads 31 / 95 and 124.*

*The Township asserts that 26/27 Sideroad is an “essential transportation facility” within the terms of the NEP.*

*NEC staff accepts that 26 / 27 SR is an “essential transportation facility” and that the proposed improvements are a permitted use, subject to satisfying the Development Criteria in Part 2 of the NEP.”*

In addition to the Township of Clearview deeming the application in the public interest and confirming there are no other alternatives, the Niagara Escarpment Plan amendment is justified on the basis that:

- these road improvements have been previously reviewed in the lengthy public proceedings (with extensive representation and participation by County, Township and local residents in those proceedings) leading to the approval of the Duntroon Quarry;
- County Road 91 is to be closed in accordance with a legal agreement entered into with the County and the Township and as such its closure and provision of an alternative road is, therefore, an urgent matter of public interest; and
- the improvements to Sideroad 26/27 comply with the intent of the Niagara Escarpment Plan to most efficiently utilize existing infrastructure and this represents the only reasonable alternative to providing for local traffic flow and avoiding the creation of an entirely new corridor, or inefficient traffic movements required by a much less direct and much lengthier trip using existing roads at a substantial distance from the project area;
- the Township has identified undesirable environmental impacts associated with the existing road and maintenance practices which would be resolved by the proposed Road Improvements; and,
- the Township has identified safety concerns with the current road which would be resolved by the proposed Road Improvements.

An examination of the Niagara Escarpment Plan (2017) therefore establishes that:

- existing Sideroad 26/27 is a permitted use as a right-of-way and as a transportation corridor;
- improvements within the right-of-way, or changes in the intensity of use of the right-of-way, are not a change in use with respect to the permitted uses of the Plan and do not alter its status as a permitted use nor do they establish a policy requirement to consider alternatives or for such improvements to be deemed to be in the public interest;
- improvements within the existing right-of-way do not necessitate the establishment of setback from the brow of the Escarpment;
- although not a requirement with respect to existing infrastructure, the alternatives to making improvements within the right-of-way were considered prior to the decision to proceed with an application for such improvements and there are no other acceptable alternatives; and
- although not a requirement with respect to existing infrastructure, the proposed improvements within the right-of-way are deemed to be in the public interest by the applicable road authorities having authority to make such determinations.

It is, therefore, clear that the proposed improvements within the 26/27 Sideroad right-of-way do not necessitate an amendment to the Niagara Escarpment Plan with respect to Sections 2.6.2, 2.7.2, 2.12.2 d, and 2.12.5. However, this does not negate the applicability of other relevant policies of the Plan, notably other relevant development criteria.

## **Justification for the Amendment**

Section 1.2.1 of the Niagara Escarpment Plan sets out provisions applicable to Plan Amendments:

*“The following provisions apply to applications to amend the Niagara Escarpment Plan:*

- *Planning policies and land use designations may be changed as long as the Purpose and Objectives of the Niagara Escarpment Planning and Development Act and the Niagara Escarpment Plan are met. The Purpose Statement and Objectives in the Introduction of the Plan shall not be changed outside of the context of a full review of this Plan.*
- *Sections 6.1(2.1) and 10(6) of the Niagara Escarpment Planning and Development Act require that amendments to the Niagara Escarpment Plan be justified. The justification for a proposed amendment to the Niagara Escarpment Plan means the rationale for the amendment, as well as reasons, arguments or evidence in support of the change to this Plan proposed through the amendment.*
- *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. The proposed amendment must be consistent with the purpose and objectives of the Niagara Escarpment Planning and Development Act and the Niagara Escarpment Plan and shall be consistent with other relevant Provincial policies.*
- *Development Criteria set out in Part 2 of the Niagara Escarpment Plan will be considered in the assessment of any amendment to the Niagara Escarpment Plan.”*

The Purpose Statement and Objectives of the Plan are not intended to be amended or changed.

The proposed amendment does not adversely affect the purpose and objectives of the Niagara Escarpment Planning and Development Act and is consistent with those purposes and objectives.

The purpose of this Act/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”. The proposed amendment in no way alters or conflicts with this objective. The amendments recognize existing infrastructure. Infrastructure is a permitted use in the Plan. The amendments do not seek to alter any requirement which involves the protection of the natural environment. These requirements remain and the studies submitted in support of the Development Permit demonstrate the protection and even enhancement of the natural environment in manner which ensures compliance with the Policies of the Plan.

The objectives of the Niagara Escarpment Act/Plan are:

*(a) to protect unique ecological and historic areas;*

*(b) to maintain and enhance the quality and character of natural streams and water supplies;*

*(c) to provide adequate opportunities for outdoor recreation;*

*(d) 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;*

*(e) to ensure that all new development is compatible with the purpose of this Act as expressed in section 2;*

*(f) to provide for adequate public access to the Niagara Escarpment; and*

*(g) to support municipalities within the Niagara Escarpment Planning Area in their exercise of the planning functions conferred upon them by the Planning Act.*

The proposed amendments do not later or conflict with the objectives of the Niagara Escarpment Act or Plan. The protection of unique ecological and historical requirements is maintained.

The proposed amendment does not alter the requirement to:

- protect unique ecological and historic areas;
- maintain and enhance the quality and character of natural streams and water supplies;
- provide adequate opportunities for outdoor recreation;
- maintain and enhance the open landscape character of the Niagara Escarpment in so far as possible;
- ensure that development is compatible with the purpose of the Act and Plan;
- provide for public access to the Niagara Escarpment; or
- support municipalities in the exercise of planning functions.

Not only does the amendment not interfere with or alter these objectives, the amendment actually ensures that many of those objectives are facilitated. For example, the Road Improvements result in improved environmental conditions for the affected riparian areas and will as a result enhance the character of a natural stream as well as improving surface water quality. The amendment also facilitates maintenance and improvement of municipal infrastructure supporting the transportation planning functions of the municipality.

Although the proposed improvements to 26/27 Sideroad constitute a component of a permitted use and do not require an amendment to the Niagara Escarpment Plan with respect to sections 2.6.2, 2.7.2, 2.12.2.d and 2.12.5, there is concern that this interpretation of the Plan will be a matter before the Niagara Escarpment Hearing Officer with respect to the development permit hearing.

The conclusion on Plan conformity is based on the logical premise that existing infrastructure is not intended to repeatedly and continuously demonstrate that it is in the public interest and that alternatives have been considered, but is instead intended to be most efficiently utilized. It is also based on the logical conclusion that improvements to existing infrastructure that does not alter its alignment

does not require the establishment of a setback from the brow of the Escarpment. However, to avoid an alternative interpretation which could unreasonably be proposed, it would be appropriate to add clarity to the matter.

As indicated above, Section 2.2.3.e of the Niagara Escarpment Plan establishes the policy that development is permitted only on an existing lot of record. This technically prohibits any maintenance, repair or renewal of a highway or municipal road. This is undoubtedly is also not the intention of the Plan as this would result in unacceptable consequences to the Province's infrastructure in the Plan area. It is not at all reasonable to conclude that the maintenance, repair and renewal of highways and municipal roads was not to be permitted within the Plan area.

The proposed amendment does not seek an exemption with respect to the Development Criteria other than with respect to the matter of public interest and alternatives and for clarification due to potential conflicts which arise as a result of *infrastructure* being considered as development. The amendment will therefore not impact the Development Criteria in any other manner. The amendment has no impact on the need for a development permit to demonstrate compliance with all other Development Criteria as set out in Part 2. The considerations with respect to compliance with the applicable Sections of the Part 2, are set out in this report with respect to the analysis of the Development Permit application.

The proposed amendment is also consistent with other relevant Provincial policies as set out in the following analysis.

#### **Provincial Policy Statement (2014) Analysis**

The proposed road improvement activities do not constitute development or a new land use for the purposes of the Provincial Policy Statement (PPS). The PPS does have policy with respect to the matter of infrastructure and the following analysis provides an assessment of policy in regard to the matter of infrastructure. However, the proposed improvements do not create new infrastructure. They consist of improvements to existing infrastructure, and these are not considered a new land use for the purposes of planning policy and administration. As such there are no direct requirements or compliance issues with respect to the PPS.

##### ***1.1 Managing and Directing Land Use to Achieve Efficient and Resilient Development and Land Use Patterns***

###### ***1.1.1 Healthy, liveable and safe communities are sustained by:***

***g. ensuring that necessary infrastructure, electricity generation facilities and transmission and distribution systems, and public service facilities are or will be available to meet current and projected needs***

Improvements to Sideroad 26/27 are required to meet current and projected needs. The improvements will lead to a safer road.

##### **1.6 Infrastructure and Public Service Facilities**

1.6.3 Before consideration is given to developing new infrastructure and public service facilities: the use of existing infrastructure and public service facilities should be optimized; and opportunities for adaptive re-use should be considered, wherever feasible.

1.6.4 Infrastructure and public service facilities should be strategically located to support the effective and efficient delivery of emergency management services.

The improvements to Sideroad 26/27 optimize the use of existing infrastructure. The improvements will also assist in maintaining emergency services upon the closure of County Road 91.

#### 1.6.7 Transportation Systems

1.6.7.1 Transportation systems should be provided which are safe, energy efficient, facilitate the movement of people and goods, and are appropriate to address projected needs.

1.6.7.2 Efficient use shall be made of existing and planned infrastructure, including through the use of transportation demand management strategies, where feasible.

Improvements to Sideroad 26/27 result in a safer road. The ability for Sideroad 26/27 to handle increased volumes of traffic will also promote efficient use of existing infrastructure and promote energy efficiency by providing an efficient alternate route upon the closure of County Road 91.

#### 1.6.8 Transportation and Infrastructure Corridors

1.6.8.1 Planning authorities shall plan for and protect corridors and rights-of-way for infrastructure, including transportation, transit and electricity generation facilities and transmission systems to meet current and projected needs.

Improvements to Sideroad 26/27 are required to meet current and projected needs.

#### 2.1 Natural Heritage

2.1.1 Natural features and areas shall be protected for the long term.

2.1.2 The diversity and connectivity of natural features in an area, and the long-term ecological function and biodiversity of natural heritage systems, should be maintained, restored or, where possible, improved, recognizing linkages between and among natural heritage features and areas, surface water features and ground water features.

2.1.3 Natural heritage systems shall be identified in Ecoregions 6E & 7E1, recognizing that natural heritage systems will vary in size and form in settlement areas, rural areas, and prime agricultural areas.

2.1.4 Development and site alteration shall not be permitted in: significant wetlands in



Ecoregions 5E, 6E and 7E1; and significant coastal wetlands.

2.1.5 Development and site alteration shall not be permitted in: significant wetlands in the Canadian Shield north of Ecoregions 5E, 6E and 7E1; significant woodlands in Ecoregions 6E and 7E (excluding islands in Lake Huron and the St. Marys River)<sup>1</sup>; significant valleylands in Ecoregions 6E and 7E (excluding islands in Lake Huron and the St. Marys River)<sup>1</sup>; significant wildlife habitat; significant areas of natural and scientific interest; and coastal wetlands in Ecoregions 5E, 6E and 7E that are not subject to policy 2.1.4(b) unless it has been demonstrated that there will be no negative impacts on the natural features or their ecological functions.

2.1.6 Development and site alteration shall not be permitted in fish habitat except in accordance with provincial and federal requirements.

2.1.7 Development and site alteration shall not be permitted in habitat of endangered species and threatened species, except in accordance with provincial and federal requirements.

2.1.8 Development and site alteration shall not be permitted on adjacent lands to the natural heritage features and areas identified in policies 2.1.4, 2.1.5, and 2.1.6 unless the ecological function of the adjacent lands has been evaluated and it has been demonstrated that there will be no negative impacts on the natural features or on their ecological functions.

## 2.2 Water

2.2.2 Development and site alteration shall be restricted in or near sensitive surface water features and sensitive ground water features such that these features and their related hydrologic functions will be protected, improved or restored.

Mitigative measures and/or alternative development approaches may be required in order to protect, improve or restore sensitive surface water features, sensitive ground water features, and their hydrologic functions.

### Development:

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;

### Infrastructure:

means physical structures (facilities and corridors) that form the foundation for development. Infrastructure includes: sewage and water systems, septage treatment systems, stormwater management 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.

Although the Provincial Policy Statement sets out a number of prohibitions and qualifications on development in relation to natural heritage and water resources, infrastructure authorized under an environmental assessment process is not included as development. This includes the creation or maintenance of infrastructure. The improvements to Sideroad 26/27 have been assessed and designated as Municipal Class Environmental Schedule A+ projects by Burnside, the project engineers. As such they are pre-authorized activities under the applicable environmental assessment process. Accordingly, the prohibitions and qualifications do not apply.

The definition of site alteration does not include the same exemption for infrastructure. This is however implied. Of necessity development includes site alteration and an exemption for infrastructure logically extends to associated site alteration. The exemption for infrastructure would be entirely invalidated if the requirement for associated site alteration did not inherently incorporate such an exemption. This is not necessarily the case for site alteration in the absence of development. That is, site alteration can occur without development and this explains why the exemption would not appear in the definition for site alteration.

Although the prohibitions and qualifications do not apply to infrastructure, the project does not have a negative impact on any natural heritage feature or water resources. Impacts are either avoided or mitigated and appropriate approvals have been obtained (i.e. Department of Fisheries and Oceans) or will be required (i.e. Ministry of Natural Resources, Endangered Species Act) from responsible authorities in regard to applicable provincial and federal requirements. Enhancement will also result with respect to water resources and riparian and fish habitat as a result of reduced erosion and sedimentation.

### **Growth Plan for the Greater Golden Horseshoe (2017)**

The proposed road improvement activities do not constitute development or a new land use for the purposes of the Growth Plan for the Greater Golden Horseshoe. As such there are no direct requirements or compliance issues with respect to the Growth Plan.

The Growth Plan for the Greater Golden Horseshoe has limited applicability to infrastructure as the policies of the Greenbelt Plan and the Niagara Escarpment Plan deal with the same matters and the policies of the Growth Plan do not therefore apply unless provided otherwise. The Growth Plan also has limited policy which the proposed improvements, while not subject to those policies, would support.

#### **3.2.2 Transportation – General**

2. The transportation system within the GGH will be planned and managed to:

f) provide for the safety of the system user.

#### **4.2.2 Natural Heritage System**

The Province will map a Natural Heritage System for the GGH to support a comprehensive, integrated,

and long-term approach to planning for the protection of the region's natural heritage and biodiversity. The Natural Heritage System mapping will exclude lands within settlement area boundaries that were approved and in effect as of July 1, 2017.

Municipalities will incorporate the Natural Heritage System as an overlay in official plans, and will apply appropriate policies to maintain, restore, or enhance the diversity and connectivity of the system and the long-term ecological or hydrologic functions of the features and areas as set out in the policies in this subsection and the policies in subsections 4.2.3 and 4.2.4.

Within the Natural Heritage System:

- new development or site alteration will demonstrate that:
- there are no negative impacts on key natural heritage features or key hydrologic features or their functions;
- connectivity along the system and between key natural heritage features and key hydrologic features located within 240 metres of each other will be maintained or, where possible, enhanced for the movement of native plants and animals across the landscape;
- the removal of other natural features not identified as key natural heritage features and key hydrologic features is avoided, where possible. Such features should be incorporated into the planning and design of the proposed use wherever possible;
- except for uses described in and governed by the policies in subsection 4.2.8, the disturbed area, including any buildings and structures, will not exceed 25 per cent of the total developable area, and the impervious surface will not exceed 10 per cent of the total developable area;
- with respect to golf courses, the disturbed area will not exceed 40 per cent of the total developable area; and
- at least 30 per cent of the total developable area will remain or be returned to natural self-sustaining vegetation, except where specified in accordance with the policies in subsection 4.2.8;

#### 4.2.3 Key Hydrologic Features, Key Hydrologic Areas and Key Natural Heritage Features

Outside of settlement areas, development or site alteration is not permitted in key natural heritage features that are part of the Natural Heritage System or in key hydrologic features, except for:

c) activities that create or maintain infrastructure authorized under an environmental assessment process;

#### 4.2.4 Lands Adjacent to Key Hydrologic Features and Key Natural Heritage Features

3. Development or site alteration is not permitted in the vegetation protection zone, with the exception of that described in policy 4.2.3.1 or shoreline development as permitted in accordance with policy 4.2.4.5.

Development

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;

The Plan provides a similar exception as the Provincial Policy Statement with respect to the definition of development not including infrastructure authorized under an environmental assessment process. This includes the creation or maintenance of infrastructure. Never-the-less, as set out in this report and the Environmental Impact Study prepared by Burnsides, the natural heritage features and functions are appropriately protected through a combination of avoidance, mitigation and compensation. Additionally, certain significant features and functions will be enhanced as a result of the proposed works.

### **Greenbelt Plan**

The proposed road improvement activities do not constitute development or a new land use for the purposes of the Greenbelt Plan. As such there are no direct requirements or compliance issues with respect to the Greenbelt Plan.

With respect to the Growth Plan specifically, the policies of that Plan that address the same, similar, related or overlapping matters as this Plan do not apply within the Greenbelt Area, except where the policies of this Plan provide otherwise. In contrast, where matters addressed in the Growth Plan do not overlap with policies in this Plan, those Growth Plan policies must be independently satisfied.

#### **2.2 Lands within the Niagara Escarpment Plan Area**

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.

#### **3.3 Parkland, Open Space and Trails**

Essentially there are no implications with respect to policies concerning infrastructure as the policies of the Protected Countryside do not apply and only policies regarding Parkland Open Space and Trails apply and these have no implications to the proposed improvements.

### **The Proposed Amendment**

The proposed Plan Amendment, which would provide absolute clarity, consists of insertion of the following clauses in the relevant sections:

*Special Provision (see Amendment xxx)*

- *Notwithstanding Sections 2.2.3, 2.6.2, 2.7.2 and 2.12.5 as set out in the Niagara Escarpment Plan (2017), infrastructure improvements on 26/27 Sideroad from the Osprey-Clearview Townline to Concession 10 shall be permitted.*

*Special Provision (see Amendment xxx)*

- *Notwithstanding Section 2.12.2.d) as set out in the Niagara Escarpment Plan (2017), infrastructure improvements on 26/27 Sideroad from the Osprey-Clearview Townline to Concession 10 shall not require the establishment of a setback from the brow of the Escarpment.*

## **The NEC Development Permit Application**

The Township of Clearview submitted a Niagara Escarpment Development Permit application on January 31, 2014 for the proposed road improvements. Niagara Escarpment Commission staff recommended approval of the proposed Development Permit subject to conditions.

The Development Permit was denied by the Niagara Escarpment Commission in November 2015 and is the subject of an appeal (NEC Appeal - Case Nos. 15-179 to 15-184, Township of Clearview (S/T/2013-2014/9152)).

As part of the decision to deny the Development Permit the Niagara Escarpment Commission determined that the road project does not meet the test of “essential” as defined by the Niagara Escarpment Plan at the time of application submission and, therefore, was not a permitted use within the Escarpment Natural Area. For those portions of the road within the Escarpment Protection Area and Escarpment Rural Area designations, “transportation facility” was a permitted use and the test of “essential” did not need to be satisfied. Essential was defined as “that which is deemed necessary to the public interest after all alternatives have been considered.”

As set out in this report, the matter of public interest and alternatives should not be applicable in the case of improvements to existing infrastructure however both have been adequately addressed. Again, as a precautionary measure, the proposed Plan Amendment would also clarify that considerations of public interest and alternatives are not relevant to this project.

## **Niagara Escarpment Plan Analysis for Development Permit Application**

### **Purpose and Objectives**

Part 1.2.1 of the Niagara Escarpment Plan requires that it 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.

*Purpose and Objectives*

*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.*

*Compatible: Where the building, structure, activity or use blends, conforms or is harmonious with the Escarpment environment.*

*Escarpment environment: The physical and natural heritage features, cultural heritage resources, and scenic resources associated with the Escarpment landscape.*

Sideroad 26/27 is an existing road and the proposed improvements are required to address public safety and environmental issues.

The surrounding area contains extensive environmental features. The removal of tree cover along the existing road edge within the right-of-way and minimal encroachment into small unclassified wetlands within an existing Township right-of-way is minor in this context.

The proposed improvement of the existing road is consistent with the purpose of the Plan. The proposed road improvements are compatible with the natural environment and create a net improvement for certain critical features. Compatibility with the natural environment is further set out in detail in this report as well as the Environmental Impact Study prepared by R.J. Burnside & Associates Limited.

#### *Purpose and Objectives*

##### *Objectives*

*The objectives of the Niagara Escarpment Plan are:*

*To protect unique ecologic and historic areas;*

*To maintain and enhance the quality and character of natural streams and water supplies;*

*To provide adequate opportunities for outdoor recreation;*

*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;*

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

*To provide for adequate public access to the Niagara Escarpment; and*

*To support municipalities within the Niagara Escarpment Plan Area in their exercise of the planning functions conferred upon them by the Planning Act.*



The proposed improvement of the existing road is consistent with the objectives of the Plan. As set out in this report and the Environmental Impact Study prepared by R.J. Burnside & Associates Limited, the road improvements are compatible with the natural environment including unique ecological areas. The development area does not contain historic features. As a standard requirement, should deeply buried archaeological materials be found during road improvement activities, the Ontario Ministry of Tourism, Culture and Sport will be notified immediately and appropriate actions will be taken to protect and preserve such resources.

As set out in the Environmental Impact Study prepared by R.J. Burnside & Associates Limited, the road improvements result in a net improvement to natural streams and water supplies as a result of the significant reduction in sediment loads to the existing cold water stream. A combination of relocation of the stream away from the edge of the road and improvements to the road will result in the elimination of annual erosion and sedimentation impacts associated with current road maintenance requirements.

The road improvements will improve visibility at the intersection of the Bruce Trail as a result of changes to the road profile and appropriate control of road-side parking. This will assist in appropriate maintenance of the trail crossing.

The proposed road improvements to Sideroad 26/27, within the existing right-of-way will not adversely affect the purpose and objectives of the Niagara Escarpment Plan. The road improvements are considered existing infrastructure and are a permitted use in the Escarpment Rural Area, Escarpment Protection Area and Escarpment Natural Area designations. The road improvements are being designed to a 70 km design speed and 60 km posted speed to minimize grading, site alteration and impacts on the natural environment.

One of the objectives of the Niagara Escarpment Plan is to support municipalities within the Niagara Escarpment Plan Area in their exercise of the planning functions conferred upon them by the Planning Act. One of these planning functions is to provide efficient and safe infrastructure within the municipality and the proposed road improvements are required to achieve this. Furthermore, in accordance with Section 44 of the Municipal Act, the Township has a statutory duty to properly repair and maintain Sideroad 26/27. The Road Improvements are necessary in order to allow the Township to fulfil its statutory obligation, and failure to do so, expose the Township to liability.

### **Plan Designations and Permitted Uses**

The proposed road improvements to occur within the Sideroad 26/27 right-of-way are located on lands designated Escarpment Rural Area, Escarpment Protection Area and Escarpment Natural Area.

#### **1.3      *Escarpment Natural Area***

##### **1.3.1 *Objectives***

*To recognize, protect and where possible enhance the natural heritage and hydrological systems associated with the Niagara Escarpment Plan area.*

*To protect the most natural Escarpment features, valleylands, wetlands and related significant natural*

areas.

*To conserve cultural heritage resources, including features and areas of interest to First Nations and Métis communities.*

*To encourage compatible recreation, conservation and educational activities.*

*To maintain and enhance the scenic resources and open landscape character of the Escarpment.*

#### **1.3.3 Permitted Uses**

*Subject to Part 2, Development Criteria, the following uses may be permitted:*

##### **7. Infrastructure.**

*Infrastructure: The physical structures (facilities and corridors) that form the foundation for development. Infrastructure includes green infrastructure and utilities as defined in this Plan, in addition to transportation corridors and facilities, including rights-of-way for the movement of people and goods.*

#### **1.4 Escarpment Protection Area**

##### **1.4.1 Objectives**

*To maintain and enhance the scenic resources and open landscape character of the Escarpment.*

*To provide a buffer to prominent Escarpment features.*

*To recognize, protect and where possible enhance the natural heritage system associated with the Niagara Escarpment Plan area and protect natural areas of regional significance.*

*To conserve cultural heritage resources, including features and areas of interest to First Nation and Métis communities.*

*To encourage forest management, compatible recreation, conservation and educational activities.*

*To encourage agriculture, and protect agricultural lands and prime agricultural areas.*

##### **1.4.3 Permitted Uses**

*Subject to Part 2, Development Criteria, the following uses may be permitted:*

##### **10. Infrastructure.**

## *1.5 Escarpment Rural Area*

### *1.5.1 Objectives*

*To maintain the scenic resources of lands in the vicinity of the Escarpment and the open landscape character of the Escarpment.*

*To conserve cultural heritage resources, including features of interest to First Nation and Métis communities.*

*To encourage forest management and recreation.*

*To provide for compatible rural land uses.*

*To encourage agriculture, and protect agricultural lands and prime agricultural areas.*

*To provide a buffer for ecologically sensitive areas of the Escarpment.*

*To provide for the consideration of new Mineral Resource Extraction Areas which can be accommodated by an amendment to this Plan.*

### *1.5.3 Permitted Uses*

*Subject to Part 2, Development Criteria, the following uses may be permitted:*

*10. Infrastructure.*

The definition of infrastructure does not distinguish between existing or proposed infrastructure. The definition does not distinguish between year-round uses or seasonal uses. The definition does not distinguish infrastructure by level of use or degree of improvement.

The proposed works on Sideroad 26/27 do not alter the nature of the permitted use. That is, the works themselves are a component of a permitted use which is already in existence.

The project involves improvements to an existing road located within an existing right-of-way. The land use, and the associated road improvements, are permitted within the Niagara Escarpment Natural, Protection and Rural Areas since infrastructure which includes transportation corridors and rights-of-way for the movement of people and goods are expressly permitted. The proposed improvements to the road do not constitute a new use with respect to the permitted uses. The improvements do not alter the land use status as a transportation corridor or right-of-way for the movement of people and goods.

Sideroad 26/27 is an existing transportation corridor and an existing right-of-way established for the movement of people and goods. Sideroad 26/27 is, therefore, a permitted use. Any improvements to the existing transportation corridor and right-of-way are likewise permitted uses subject to meeting other relevant policies of the Plan.

## Development Criteria

### *2.0 Development Criteria*

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

*The objective is to ensure that development affecting steep slopes (e.g., Escarpment slopes, rock faces, talus slopes) and ravines is compatible with the Escarpment environment and does not result in unsafe conditions.*

*The crest or brow and toe of the slope or ravine shall be established by means of a site inspection by the implementing authority, and these lines will be plotted on proposed development plans.*

*The implementing authority will establish a minimum development setback from the brow or crest and toe of a slope or ravine, and no disturbance of grades or vegetation below the crest or brow and above the toe shall occur.*

*Where this setback cannot be achieved on an existing lot of record on a steep slope or ravine, the setback may be varied or eliminated to the satisfaction of the implementing authority.*

*Development shall not be permitted on slopes in excess of 25 per cent (1:4 slope) or if the stability of the slope or ravine is in question, unless an engineering report has been prepared by the applicant that demonstrates the future stability of the slope would not be affected.*

*During development, a screen of appropriate fencing material (e.g., snow fencing) should be established approximately three (3) metres from the crest of the slope in order to prevent any dumping.*

*Development (e.g., ski facilities) should be designed in such a way as to minimize the disturbance and ensure the stability of Escarpment and ravine slopes.*

The context of the policies regarding development affecting steep slopes is clearly directed toward lots as opposed to linear infrastructure. None of the requirements pertain to a linear infrastructure project. Sideroad 26/27 is an existing use and crosses the slope of the Escarpment, however no road improvements are proposed on slopes in excess of 25%. The proposed road improvements will include alterations to existing ditches and culverts to eliminate the current problem of surface flows crossing and flowing down the road resulting in significant annual erosion and sedimentation. This will assist in ensuring the long-term stability of the Escarpment and ravine slopes.



Road descending escarpment slope.

## *2.0 Development Criteria*

### *2.6 Development Affecting Water Resources*

*The objective is to ensure that hydrologic features and functions including the quality, quantity and character of groundwater and surface water, at the local and watershed level, are protected and where possible enhanced.*

*1. The following are key hydrologic features within the meaning of this Plan:*

- permanent and intermittent streams;*
- lakes (and their littoral zones);*
- seepage areas and springs; and*
- wetlands.*





As set out in this report and the Environmental Impact Study prepared by R.J. Burnside & Associates Limited, the road improvements ensure that hydrologic features and functions including the quality, quantity and character of groundwater and surface water, at the local and watershed level, are protected and it is also demonstrated that surface water quality will be enhanced. This will be accomplished through making adjustments to the road profile and drainage to control stormwater runoff, provide for stormwater treatment and to eliminate the annual erosion and sedimentation problem associated with the existing road washing out into the cold water stream. Additionally, the road and watercourse crossing design provides for appropriate management of groundwater resources and seepage.

## 2.0 Development Criteria

### 2.6 Development Affecting Water Resources

2. Development is not permitted in key hydrologic features with the exception of the following, which may be permitted subject to compliance with all other relevant policies of this Plan:

e) infrastructure, where the project has been deemed necessary to the public interest after all other alternatives have been considered.

The project involves improvements to an existing road located within an existing right-of-way. The land use, and the associated road improvements, are permitted within key hydrologic features since infrastructure, which includes transportation corridors and rights-of-way for the movement of people and goods, is expressly permitted.

The policies concerning water resources incorporate an exception for infrastructure, but add the qualification that infrastructure is permitted where the project meets two tests: one being that of being deemed necessary to the public interest; and the other being a requirement to consider other alternatives.

This provision is clearly intended to apply to new infrastructure as it would not be anticipated that existing infrastructure would be subject to the tests of being in the public interest or require

consideration of alternatives. If this were the case, every existing right-of-way, transportation corridor or other infrastructure facility affecting water resources or natural heritage would require such assessment every time any level of development is anticipated within such infrastructure.

In reviewing the wording of the Plan, it is clear that “use”, an undefined term, applies to a land use as set out as permitted uses within the various designations of the Plan. It does not refer to an alteration in the scale or intensity of such a use. This is also clear in wording in the Plan with respect to existing uses.

The improvements to Sideroad 26/27 do not amount to a change in use in the meaning of the Niagara Escarpment legislation or policy. There is no change in use. Sideroad 26/27 is infrastructure as an existing use and remains infrastructure following any improvements or alteration in intensity of use.

There is no reference in policy that notwithstanding the definition of infrastructure, the requirements to establish a public interest and consider alternatives would likewise apply to improvements or increased utilization of existing infrastructure.

As previously established in this report, the definition of infrastructure does not distinguish between level of use or level of improvement of transportation corridors or rights-of-way. By virtue of the definition any upgrade to existing infrastructure would not alter the status of that infrastructure as an existing use. That is, an existing right-of-way or transportation corridor, remains just that regardless of any changes in level of use or improvement.

The Niagara Escarpment Plan does not contain any policy with respect to improvement to or increased utilization of transportation corridors or rights-of-way other than indirectly in section 2.12.1 where the Plan requires that infrastructure be planned to “obtain the most value out of existing infrastructure”.

The tests of being deemed to be in the public interest, and having considered alternatives, therefore do not apply to the improvement of existing infrastructure. In fact, the Plan encourages the most efficient use of existing infrastructure to obtain the most value out of it.

As an existing use, the provision of the permitted uses being subject to the test of being deemed necessary to the public interest after all other alternatives have been considered is therefore not relevant. The land use is an existing use. No new land use is being proposed. The proposed improvements to the road do not constitute a new use with respect to the permitted uses. The improvements do not alter the land use status as an existing transportation corridor or right-of-way for the movement of people and goods.

Although improvements and maintenance are therefore not subject to the public interest test, the improvements to the road have been determined to be in the public interest by the responsible road authority. The existing road is not in a safe condition and requires improvement to meet minimum road standards as set out by the municipality as the responsible road authority. The road also has a negative environmental impact with respect to the regular and frequent introduction of sediment to a cold water stream. Road improvements will resolve this issues resulting in an improvement to surface water quality.

The pending closure of former County Road 91 will result in increased traffic on this existing road and will also impact emergency response times. Improvements to the existing Sideroad 26/27 will address those impacts by improving the road design and safety to appropriately accommodate increased levels of traffic and by providing a suitable alternative for emergency response.

Alternatives would be limited to not improving the Sideroad 26/27, closing the Sideroad, or constructing an alternate access. None of these alternatives is acceptable. Not making improvements presents an unacceptable risk to public safety particularly in the face of anticipated increases in traffic. NEC staff in their staff report on the Development Permit recognized that leaving the road in its current condition was not a reasonable alternative as “deficiencies on this road need to be addressed and corrected to meet current traffic volumes”. Closing the road is not acceptable as this eliminates existing property access and does not address traffic or emergency response needs. NEC staff in their staff report on the Development Permit recognized that closing the road was not a viable alternative “as the existing properties and residences require access”. Construction of a new alternate access is not acceptable as it would result in significantly greater impacts to the natural environment of the area and increase the level of disturbance to the escarpment environment. As set out by NEC staff in their staff November 19, 2015, staff report on development permit Application S/T/2013-2014/9152, the continued utilization of former County Road 91 was also an unacceptable alternative. In fact, due to the substantial improvements which would be required with an increase in the right-of-way from 20m to greater than 50m, NEC staff found that the reconstruction of CR91 would be inconsistent with the Development Criteria of the NEP. NEC staff further referenced the fact that the Joint Board found that settlements reached regarding the closure of CR91 and improvements to Sideroad 26/27 represented good planning and were in the public interest. In fact, in its decision the Joint Board found that “Sideroad 26/27 with its improvements (within the existing road allowance) as set out in the Road settlement Agreement can provide an appropriate alternative access...”

In their November 19, 2015, staff report on Development Application S/T/2013-2014/9152 accepted that Sideroad 26/27 is an “essential transportation facility”. Essential was defined in the Plan at that time as “that which is deemed necessary to the public interest after all alternatives have been considered”. Staff therefore accepted that the road improvements were in the public interest and that all alternatives had been considered.

## *2.0 Development Criteria*

### *2.6 Development Affecting Water Resources*

*3. If, in the opinion of the implementing authority, a proposal for development within 120 metres of a key hydrologic feature has the potential to result in a negative impact on the feature and/or its functions, a hydrologic evaluation will be required that:*

*a) demonstrates that the development, including any alteration of the natural grade or drainage, will protect:*

*i. the key hydrologic feature or the hydrologic functions of that feature,*

*ii. the quality and quantity of groundwater and surface water*



*iii. natural streams or drainage patterns; and*

*iv. the overall water budget for the watershed, including existing and planned municipal drinking water systems.*

*b) identifies planning, design and construction practices that will minimize erosion, sedimentation and the introduction of nutrients or pollutants and protect, and where possible, enhance or restore the health, diversity and size of the key hydrologic feature, including:*

*i. natural features should be preserved;*

*ii. temporary vegetation and/or mulching should be used to protect critical areas exposed during development;*

*iii. topsoil should not be removed from the site, but rather, should be stored and redistributed as a suitable base for seeding and planting;*

*iv. sediment control devices should be installed to remove sediment from run-off due to changed soil surface conditions during and after construction; and*

*v. construction in or across a watercourse or wetland should be appropriately timed to minimize impacts on fish and wildlife habitat.*

As set out in this report and the Environmental Impact Study prepared by R.J. Burnside & Associates Limited, the road improvements have the potential to negatively impact water resources and appropriate assessments have been undertaken and techniques to avoid and mitigate impacts have been set out. These techniques ensure that hydrologic features and functions including the quality, quantity and character of groundwater and surface water, at the local and watershed level, are protected and it is also demonstrated that surface water quality will be enhanced. Construction details and plans will ensure that:

- natural features will be preserved to the extent feasible and as required by applicable policies of the Plan and relevant provincial policies and legislation;
- temporary vegetation and/or mulching will be used to protect critical areas exposed during development;
- topsoil will not be removed from the site, but rather, will be stored and redistributed as a suitable base for seeding and planting;
- sediment control devices will be installed to remove sediment from run-off due to changed soil surface conditions during and after construction; and
- construction in and across watercourses and wetlands will be appropriately timed to minimize impacts on fish and wildlife habitat.

Approximately 22m of cold water stream are proposed to be relocated. The realignment facilitates the road widening, but also improves the buffer between the stream and road and addresses current sedimentation problems. The existing road does not have proper drainage and as a result regularly washes out introducing large volumes of sediment and gravel to the stream. The design of the stream

realignment incorporates fish habitat features and the road design incorporates improved drainage features including culverts designed to facilitate continued upwelling from headwater seeps that maintain water temperatures and water quality and quantity.

*2.0 Development Criteria*

*2.6 Development Affecting Water Resources*

*3. c) determines the minimum vegetation protection zone required to protect and where possible enhance the key hydrologic feature and its functions.*

*4. A vegetation protection zone shall:*

*a) be of sufficient width to protect the key hydrologic feature and its functions from the impacts of the proposed change and associated activities that may occur before, during, and after construction, and where possible, restore or enhance the feature and/or its function; and*

*b) be established to achieve, and be maintained as natural self-sustaining vegetation.*

*5. In the case of permanent and intermittent streams and seepage areas and springs, the determination of the vegetation protection zone shall include, without limitation, an analysis of land use, soil type and slope class.*

The minimum vegetation protection zone is a critical consideration in the proposed relocation of the cold water stream. As set out in the Environmental Impact Study prepared by R.J. Burnside & Associates Limited, an appropriate vegetation protection buffer will be established and will actually enhance the conditions of the watercourse. The combination of an increased buffer from the road and a significant reduction in erosion and sedimentation will result in a net improvement to the watercourse.

The existing road base also exhibits seepage zones as well as poor road drainage conditions due to inadequate ditching and culverts. This has been considered in the road design and, as set out in the Environmental Impact Study prepared by R.J. Burnside & Associates Limited, the new road will incorporate measures to appropriately convey surface flows as well as deal with subsurface drainage conditions and the appropriate protection and conveyance of emerging groundwater.

All of these measures have been proposed with appropriate consideration of the proposed road design, soil types, slope classes and surface and groundwater conditions on the site.

*2.0 Development Criteria*

*2.6 Development Affecting Water Resources*

*9. Development shall protect the quality and quantity of groundwater and surface water.*

*10. Changes to the natural drainage should be avoided.*

As set out in this report and the Environmental Impact Study prepared by R.J. Burnside & Associates Limited, the road improvements protect the quality and quantity of groundwater and surface water. Changes to natural drainage are avoided, however a relocation of a section of cold water stream is proposed, not just having the effect of accommodating road upgrades, but also of improving stream conditions. Similarly exiting road-side drainage and culverts are to be improved to properly convey flows, manage groundwater and mitigate existing erosion and sedimentation.

## *2.0 Development Criteria*

### *2.7 Development Affecting Natural Heritage*

*The objective is to protect and where possible enhance natural heritage features and functions, in order to maintain the diversity and connectivity of the continuous natural environment.*

*1. The following are key natural heritage features within the meaning of this Plan:*

- *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 Protection areas*

*2. Development is not permitted in key natural heritage features with the exception of the following, which may be permitted subject to compliance with all other relevant policies of this Plan:*

*e) infrastructure, where the project has been deemed necessary to the public interest and there is no other alternative.*

The development criteria regarding development affecting natural heritage contains a similar exception to that found in the policies governing development affecting water resources. That exceptions is again for infrastructure with the modification that there is a modification to the alternatives test requiring a demonstration that there is no alternative. The policy analysis is also similar. Notwithstanding the fact that the tests of public interest and alternatives are not applicable to the proposed Road Improvements, the test have been satisfied. The works are in the public interest and there are no alternatives.

*2.0 Development Criteria*

*2.7 Development Affecting Natural Heritage*

*3. The diversity and connectivity between key natural heritage features and key hydrologic features shall be maintained, and where possible, enhanced for the movement of native plants and animals across the landscape.*

The proposed road improvements do not impact the diversity of key natural heritage or key hydrologic features. As set out in this report and the Environmental Impact Study prepared by R.J. Burnside & Associates Limited, all key features are maintained and impacts are minimized and effectively mitigated/compensated. The pending closure of former County Road 91 will result in increased traffic necessitating the improvements to the road. The road improvements have been designed to mitigate to the extent possible the implications of increased traffic on movement of animals across the landscape. Culvert replacement will involve placing larger structures designed to facilitate riparian connectivity. This will also involve installation of wildlife exclusion barriers to ensure that wildlife crosses at appropriate locations and to reduce road hazards for small wildlife. The road design will improve visibility and the establishment of a 60kmph speed limit further assists in minimizing the implications of anticipated increased traffic loads.

*2.0 Development Criteria*

*2.7 Development Affecting Natural Heritage*

*4. Development in other natural features not identified as key natural heritage features or key hydrologic features should be avoided. Such features should be incorporated into the planning and design of the proposed use wherever possible, and the impact of the development on the natural feature and its functions shall be minimized.*

Development is restricted to the existing road allowance and the road has been designed to a 60kmph speed limit to minimize the required platform, slope and profile alterations etc. while still providing an appropriately designed safe road. Development impacts have been minimized on all natural features and functions regardless of their significance as the road design standards and environmental compatibility measures are integral to the entire road improvement area.

*2.0 Development Criteria*

*2.7 Development Affecting Natural Heritage*

*5. Where policies or standards of other public bodies or levels of government exceed the policies related to key natural heritage features or key hydrologic features in this Plan, such as may occur with habitat of endangered species and threatened species under the Endangered Species Act, 2007; with natural hazards where section 28 regulations of the Conservation Authorities Act apply; or with fisheries under the Federal Fisheries Act, the most restrictive provision or standard applies.*

As set out in this report and the Environmental Impact Study prepared by R.J. Burnside & Associates Limited, the more restrictive provisions and standards of the Department of Fisheries and Oceans have been complied with and the proposed works have received appropriate authorization.

The Endangered Species Act establishes the applicable provisions and standards for these species. As stipulated in the proposed conditions for approval by NEC staff recommending approval of permit application S/T/2013-2014/9152, issuance of a Development Permit does not limit the need for or the requirements of an Endangered Species Act approval.

Three Butternut trees, endangered species, were identified along the Sideroad 26/27 corridor. A Butternut Health Assessment was completed and the single specimen located within the right-of-way was assessed as non-retainable. Two specimens outside the right-of-way were also assessed and one was found to be healthy while the other was non-retainable. The Butternut Health Assessment will be submitted to the Province and that process will determine whether or not there are any further requirements with respect to the Endangered Species Act.

The proposal does impact potential habitat of at-risk bat species. An initial study of potential bat habitat impacts has been prepared and is included as part of the EIS. This report will be submitted to the Province for review. That process will determine whether or not there are negative impacts to bat habitat, and what, if any, permitting is required under the Endangered Species Act. That process will also determine what, if any, mitigation or offsetting is required. Confirmation of either a lack of impact to species at risk bat habitat or the issuance or authorization of the works under the Endangered Species Act is an appropriate condition of the Development Permit.

Portions of the development area are within the jurisdiction of the Nottawasaga Valley and Grey Sauble Conservation Authorities. As stipulated in the proposed conditions for approval by NEC staff recommending approval of permit application S/T/2013-2014/9152, issuance of a Development permit does not limit the necessity of meeting the requirements of the Conservation Authorities Act. Confirmation authorization of the works under the Conservation Authorities Act is an appropriate condition of the Development Permit.

## *2.0 Development Criteria*

### *2.7 Development Affecting Natural Heritage*

*6. If in the opinion of the implementing authority, a proposal for development within 120 metres of a key natural heritage feature has the potential to result in a negative impact on the feature and/or its functions, or on the connectivity between key natural heritage features and key hydrologic features, a natural heritage evaluation will be required that:*

*a) demonstrates that the development, including any alteration of the natural grade or drainage, will protect the key natural heritage feature or the related functions of that feature;*

*b) identifies planning, design and construction practices that will minimize erosion, sedimentation and the introduction of nutrients or pollutants and protect and, where possible, enhance or restore the health, diversity and size of the key natural heritage feature;*

*c) determines the minimum vegetation protection zone required to protect and where possible enhance the key natural heritage feature and its functions; and*

*d) demonstrates that the connectivity between key natural heritage features and key hydrologic features located within 240 metres of each other will be maintained and where possible enhanced for the movement of native plants and animals across the landscape.*

*except with respect to a key natural heritage feature that is solely the habitat of endangered species or threatened species, which is subject to Part 2.7.8 below.*

*7. For the purposes of 2.7.6, a vegetation protection zone shall:*

*a) be of sufficient width to protect and where possible enhance the key natural heritage feature and its functions from the impacts of the proposed change and associated activities that may occur before, during, and after, construction;*

*b) be established to achieve, and be maintained as, natural self-sustaining vegetation; and*

*c) in the case of Areas of Natural and Scientific Interest (Earth Science and Life Science), include without limitation an analysis of land use, soil type and slope class.*

As set out in this report and the Environmental Impact Study prepared by R.J. Burnside & Associates Limited, the road improvements have the potential to negatively affect natural heritage and appropriate assessments have been undertaken and techniques to avoid and mitigate impacts have been set out. These techniques ensure that natural heritage features and functions are protected and it is also demonstrated that a riparian feature and associated functions will be enhanced.

As set out in this report and the Environmental Impact Study prepared by R.J. Burnside & Associates Limited, connectivity impacts are minimized and effectively mitigated. The pending closure of former County Road 91 will result in increased traffic necessitating the improvements to the road. The road improvements have been designed to mitigate to the extent possible the implications of increased traffic on movement of animals across the landscape. Culvert replacement will involve placing larger structures designed to facilitate connectivity. This will also involve installation of wildlife exclusion barriers to ensure that wildlife crosses at appropriate locations and to reduce road hazards for small wildlife. The road design will improve visibility and the establishment of a posted 60kmph speed limit further assists in minimizing the implications of anticipated increased traffic loads.

The minimum vegetation protection zone is a critical consideration in the proposed relocation of the cold water stream. As set out in the Environmental Impact Study prepared by R.J. Burnside & Associates Limited, an appropriate vegetation protection buffer will be established and will actually enhance the conditions of the watercourse. The combination of an increased buffer from the road and a significant reduction in erosion and sedimentation will result in a net improvement to the watercourse.

## *2.0 Development Criteria*

## *2.7 Development Affecting Natural Heritage*

### *8. Development within the habitat of endangered species and threatened species:*

*a) located within Escarpment Natural Areas and Escarpment Protection Areas, is not permitted, except for development referred to in Parts 2.7.2 a) b) c) d) or e) which may be permitted provided it is in compliance with the Endangered Species Act, 2007; and*

*b) located within Escarpment Rural Areas, Mineral Resource Extraction Areas, Urban Areas, Minor Urban Centres and Escarpment Recreation Areas, is not permitted unless it is in compliance with the Endangered Species Act, 2007.*

The land use, and the associated road improvements, are permitted within key natural features since infrastructure, which includes transportation corridors and rights-of-way for the movement of people and goods, is expressly permitted. Development is therefore permitted where such activities occur in compliance with the Endangered Species Act. As set out in this report, compliance with the Endangered Species Act must be achieved with respect to bat species at risk which have been observed in the right-of-way. In the absence of such an approval the activities are not authorized, regardless of the issuance of a Development Permit.

## *2.0 Development Criteria*

### *2.7 Development Affecting Natural Heritage*

*12. Development where permitted in woodlands should protect and where possible enhance the woodland and associated wildlife habitat. All development involving the cutting of trees requires approval from the implementing authority, subject to the following criteria:*

*a) cutting of trees and removal of vegetation shall be limited to the minimum necessary to accommodate the permitted use;*

*b) using tree-cutting methods designed to minimize negative impacts on the natural environment, including surface drainage and groundwater;*

*c) minimizing disruption to wildlife habitat in the area;*

*d) retaining the diversity of native species;*

*e) aiming over the long term to protect and where possible enhance the quality and biodiversity of the woodland;*

*f) protecting trees and vegetation to be retained by acceptable means during construction; and*

*g) maintaining existing tree cover or other stabilizing vegetation, on steep slopes in excess of 25 per cent (1:4 slope).*



The proposed road improvements require additional tree cutting in the right-of-way. All tree removal is contained within the right-of-way. Essentially, the corridor already apparent and established through adjacent woodlands is being slightly widened to accommodate increases in the width of the road platform and associated drainage and slope features of the road. This does not create a new edge and although the total number of trees removed is significant, this is a result of the length of the existing corridor rather than the width of the required tree removal. Clearing minimal additional width along an existing corridor has far less potential impact than clearing an equivalent block of vegetation. As infrastructure development is permitted in the woodlands the removal of trees is not prohibited. The removal of trees, through road design:

- minimizes negative impacts on the natural environment;
- minimizes disruption to wildlife habitat;
- retains the diversity of native species;
- does not impact the quality and biodiversity of the woodland;
- will require protection of trees and vegetation to be retained; and,
- will maintain or re-introduce stabilizing vegetation on slopes.

Development is not proposed in slopes exceeding 25%.

## *2.0 Development Criteria*

### *2.12 Infrastructure*

*The objective is to design and locate infrastructure so that the least possible impact occurs on the Escarpment environment and to encourage green infrastructure and low impact development, where appropriate.*

The Niagara Escarpment Plan sets out policy specifically with respect to infrastructure in Section 2.12. Again, it is very clear that these policies apply to the design of and planning for new infrastructure projects and do not apply to existing transportation corridors or rights-of-way.

## *2.0 Development Criteria*

### *2.12 Infrastructure*

*1. 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.*

As previously set out, policy 12.2.1 establishes the requirement that planning for infrastructure obtain the most value out of existing infrastructure. This makes sense as it reduces the need to create new infrastructure and the potential impacts to the natural environment associated with the location and development of new infrastructure.

The policies set out in Section 12.2.1 do not set out tests or requirements for improvements to, or increased utilization of, infrastructure. It would never-the-less be desirable for improvements to infrastructure to have consideration for these policies and this is a component of the studies and design approach undertaken to support the development permit.

The project consists of improvements to an existing road in an existing right-of-way. There is therefore no ability to alter the location of the works. They are inherently confined to the existing road and right-of-way. The design of the improvements is intended to minimize impacts on the Escarpment environment and the works will provide an enhancement in regard to surface water quality and fish habitat.

The pending closure of former County Road 1 will result in a re-direction of traffic with an anticipated increased traffic level on Sideroad 26/27. Efficient emergency response also requires the provision of an alternate east/west road link. The current travelled road does not meet required standards. Improvements to this existing road, already required for existing traffic levels, let alone anticipated traffic levels, represents integrated infrastructure planning. The improvement of an existing road is more efficient and sustainable than the creation of new infrastructure and improvements already required for existing use require minimum enhancement to accommodate anticipated traffic. This approach obtains the most value out of existing infrastructure.

## *2.0 Development Criteria*

### *2.12 Infrastructure*

*2. Infrastructure shall be sited and designed to minimize the negative impact on the Escarpment environment. Examples of such siting and design considerations include, but are not limited to the following:*

*a) blasting, grading and tree removal should be minimized where possible through realignment and utilization of devices, such as curbs and gutters, retaining walls and tree wells;*

*b) finished slopes should have grades no steeper than 50 per cent (1:2 slope) and be planted; large cuts should be terraced to minimize surface erosion and slope failure;*

*c) site rehabilitation should use native species of vegetation and protect and enhance the natural environment;*

*d) a development setback from the Escarpment brow shall be established by the implementing authority to minimize visual impacts; and*

*e) visual impacts from infrastructure should be minimized by siting, structural design, colouration and landscape planting and/or vegetation screening.*

The ability to site the works is limited by the fact that the improvements are to an existing road in an existing corridor. The road improvements have been designed to minimize impacts by using a lower speed limit than would otherwise be applied for a rural road. The proposed speed limit is 60kmph

rather than 80kmph. This has a number of benefits including minimizing the required alterations to the right-of-way.

## *2.0 Development Criteria*

### *2.12 Infrastructure*

*4. Infrastructure should be sited and designed to avoid impacts on parks, open spaces and the Bruce Trail. Where Bruce Trail impacts cannot be avoided, alternatives will be developed in consultation with the Bruce Trail Conservancy.*

The ability to site the works is limited by the fact that the improvements are to an existing road in an existing corridor. There will be no direct impacts to adjacent parks, open spaces and the Bruce Trail as all works and direct impacts are contained within the existing right-of-way. No indirect impacts are anticipated. Traffic levels are anticipated to increase due to the pending closure of County Road 91. The proposed road improvements will ensure that traffic is accommodated in a safe manner. The proposed road improvements and traffic control (i.e. “no parking” signage at the immediate trail crossing) should result in improved visibility at the Bruce Trail crossing. The proposed road design involves altering the grade at the trail crossing area which will reduce the height difference between the trail and the road grade. The improved road crossing will therefore have greater visibility, be less steep, and have culverts installed at the ditches. The reduced road design speed also assists in creating a safer road crossing.

## *2.0 Development Criteria*

### *2.12 Infrastructure*

*5. Infrastructure shall avoid Escarpment Natural Areas, unless the project has been deemed necessary to the public interest after all other alternatives have been considered.*

The project involves improvements to an existing road located within an existing right-of-way. The land use, and the associated road improvements, are permitted within the Niagara Escarpment Natural Area since infrastructure which includes transportation corridors and rights-of-way for the movement of people and goods are expressly permitted. As an existing use, the provision of the project being deemed necessary to the public interest after all other alternatives have been considered is not relevant. The road and right-of way are an existing use. No new land use and no new infrastructure is being proposed. The proposed improvements to the road do not constitute a new use or new infrastructure with respect to the permitted uses. The improvements do not alter the land use status as a transportation corridor or right-of-way for the movement of people and goods. Never-the-less, the improvements have been deemed necessary in the public interest by the road authority and the road authority has considered all other alternatives with the proposed improvements being the only acceptable alternative.

## 2.0 Development Criteria

### 2.13 Scenic Resources and Landform Conservation

The objective is to ensure that development preserves the natural scenery, and maintains Escarpment Related Landforms and the open landscape character of the Escarpment.

#### Scenic Resources

1. Development shall ensure the protection of the scenic resources of the Escarpment.

2. Where a visual impact on the scenic resources is identified as a concern by the implementing authority, a visual impact assessment shall be required.

3. A visual impact assessment shall:

- a) establish a baseline for the existing conditions;
- b) identify the proposed physical changes; and
- c) assess the impact of the proposed change on the scenic resources of the Escarpment; and
- d) propose measures to minimize any visual impacts.

4. Appropriate siting and design measures shall be used to

minimize the impact of development on the scenic resources of

the Escarpment, including:

- a) establishing appropriate setbacks and maximum building heights;
- b) changing the orientation and height of built form to reduce visibility and skylining;
- c) clustering buildings where appropriate;
- d) minimizing the development footprint and changes to the existing topography and vegetation;
- e) using natural topography and vegetation as screening for visual mitigation;
- f) where there is minimal existing screening or vegetation that cannot be retained, providing new planting of native species to screen development;
- g) using non-reflective materials on roofs and walls along with measures to reduce reflectivity associated with windows; and

h) minimizing the effect from exterior lighting (e.g., lighting directed downward).

#### Landform Conservation

5. Planning, design and construction practices shall ensure that Escarpment Related Landforms are maintained and enhanced, and that development is visually compatible with the natural scenery and open landscape character of the Niagara Escarpment.

6. Use of impervious surfacing should be minimized and limited to areas of the site where it is necessary to the Permitted Use (e.g., driveways, walkways, patios, parking, recreational surfaces).

7. Except as provided for in Part 2.9 (Mineral Aggregate Resources), the construction of berms will only be permitted in cases where natural vegetation is insufficient to mitigate visually incompatible land uses, or where noise attenuation is required.

8. Excess excavated materials related to new development should be retained on site and integrated into the site plan so as to maintain natural drainage, protect existing vegetation, and minimize contour changes.

The application is not for a new road and all disturbance and road improvements are to occur in the existing right-of-way. The eastern section of road will have the greatest alteration in character as the existing road is a very narrow two lane road in this area (vehicles must slow and pass cautiously). The widening will necessitate removal of trees, but the edge of road will remain a wooded edge along most of the corridor. The canopy over the road will also return as disturbed edges are re-established and as existing trees along the edge mature. Much of the tree cover along the edge is relatively young growth.

A Visual Impact Assessment was completed by Envision Tatham in August 2015. The Visual Impact Assessment demonstrated that a widened roadway would not be visible from County Road 91 and County Road 124. Distant views are screened by topography and existing vegetation and will only be visible from isolated locations. NEC staff concluded that the study satisfied the requirements of the Terms of reference and the NEC Visual Assessment Guidelines. They further concluded that “overall the changes that would result are in keeping with the NEP Objectives, Land Use Designations and Development Criteria”. The visual impact assessment was completed on the basis of a posted speed of 80 kmph. The design speed has been lowered to 60 kmph to further mitigate impacts of the road and this reduces the required extent of grade and slope alterations as well as associated clearing and impacts. The current design therefore would therefore further minimize any impact.

Escarpment related landforms are not impacted by development. Impervious surfaces are limited to those required to safely move traffic and to minimize the potential for erosion and sedimentation. Paving requirements are established by appropriate design standards and the design incorporates appropriate stormwater control measures.

Berms are not proposed and excess excavated materials will be retained and utilized on site to minimize impacts.

## Simcoe County and Clearview Township Official Plan Analysis

The proposed road improvement activities do not constitute development or a new land use for the purposes of upper and lower tier Official Plans. The Official Plans do have policy with respect to the matter of infrastructure and the following analysis provides an assessment of policy in regard to the matter of infrastructure. However, the proposed improvements do not create new infrastructure. They consist of improvements to existing infrastructure, and these are not considered a new land use for the purposes of planning policy and administration. As such there are no direct requirements or compliance issues with respect to the Official Plans.

The Simcoe County Official Plan essentially defers to the NEC plan with the exception that where the County Plan establishes more restrictive requirements these would apply. The County Plan does not establish more restrictive requirements. The Simcoe County Plan also exempts infrastructure from the definition of development:

*DEVELOPMENT 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; or*

As such policies governing development are not applicable to either the creation or maintenance of infrastructure.

The Township of Clearview Official Plan similarly defers to the Niagara Escarpment Plan. However, in this instance the Official Plan repeats, in their entirety the policies of the Niagara Escarpment Plan. The Clearview Township Official plan contains measures which allow for the Official Plan to be effectively updated to reflect the most current Niagara Escarpment Plan, but this has not yet occurred. As a result, the Clearview Official Plan continues to refer to the former Niagara Escarpment Plan. However, by legislative authority the requirements of the current Niagara Escarpment Plan would take precedent and apply. Although the Clearview Official plan does not contain a definition which excludes the creation or maintenance of infrastructure from development, the Official Plan applies to land uses and changes in land use as implemented through zoning by-laws etc. The nature of the activities proposed do not constitute land uses which would be subject to the policies of the Official Plan implementation of the and requirements of the Niagara Escarpment Plan other than through appropriate implementation of the policies which have already been comprehensively addressed in this report.

## Conclusion

We respectfully submit that the Plan Amendment Application does not adversely affect the Purpose and Objectives of the Niagara Escarpment Planning and Development Act, is consistent with the Purpose and Objectives of the Act and the Niagara Escarpment Plan, and is consistent with all other relevant Provincial policies.

We further respectfully submit that issuance of a Development Permit to authorize the proposed improvements to Sideroad 26/27 is consistent with, and complies with, the requirements of the Niagara Escarpment Plan.

The proposed road improvements are in the public interest and there are no other alternatives. The improvements resolve current issues with the road which include environmental and safety matters. The improvements will not have a detrimental impact on the Escarpment environment and will result in enhancement to a sensitive coldwater stream.

Respectfully submitted,

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