November 16, 2022

# P3: Information report

**Re: Niagara Escarpment Plan Amendment PW 218 20**

 **Columbia Northcliffe Campus Inc. (Columbia International College)**

 **574 Northcliffe Avenue, City of Hamilton**

## Purpose:

The purpose of this special meeting of the Niagara Escarpment Commission (NEC) is to provide members of the public an additional opportunity to comment on Niagara Escarpment Plan Amendment application PW 218 20, considering the significant public interest and comment already provided. This report gives an overview of the application, a status update, and next steps.

## Background:

The Columbia Northcliffe Campus Inc. Niagara Escarpment Plan (NEP) Amendment application PW 218 20 proposes to change the Pleasant View Survey policy in Part 2.2.21 (f) of the NEP to allow the former convent to be used as a private secondary school for 1,000 students of Columbia International College with an accessory gymnasium addition to the existing building. The amendment would allow the use of the former convent as a private school, notwithstanding policies in the NEP that currently limit the use of the property to a place of worship, a convent, a residential care facility (35 residents), a dormitory (36 students) and accessory uses for an educational establishment provided it is located in conjunction with the convent use.

The subject property is 19.4 ha in area and contains two institutional buildings (monastery and convent) each with a unique address:

* 154 Northcliffe Avenue includes the northerly building, a monastery for the Sisters of the Precious Blood, which staff understand has a multiyear lease to Columbia Northcliffe Campus Inc. to remain in operation as a monastery. The area around the monastery contains an access road and parking areas.
* 574 Northcliffe Avenue includes the southerly portion of the site, which contains a building that was formerly a convent for the Sisters of Saint Joseph and is now vacant. The immediate area surrounding the building also contains three accessory buildings (maintenance equipment storage), access and parking areas.

Columbia Northcliffe Campus Inc. owns the subject property containing the above described two institutional buildings. The current NEP amendment application and development permit application are for the southerly institutional building. Although the former and current owners had received approvals for a private educational use in conjunction with the convent and on-site boarding (with specific limits) within the subject building in 2011 (Minor Variance Application DN/A11:08) and 2019 (Zoning by-law Amendment Application ZAR-19-013 to establish a Temporary Use By-law), the building is now vacant.

The property is designated as Escarpment Rural Area and Escarpment Natural Area in the NEP. The building and all proposed development associated with the proposed use is confined to the Escarpment Rural Area designation. The entire property is within Development Control and as such, a Development Permit is required prior to any development including the proposed change in use. There is a site specific policy for each of the institutional buildings on the subject property. The south building is subject to Part 2.2.21 (f):

The existing institutional building on lands located at No. 574 Northcliffe Avenue (Sisters of St. Joseph) may be used for the following institutionally related uses provided the uses are contained within the existing building only:

1. A Place of Worship;
2. A Convent;
3. A residential care facility for a maximum of 35 residents; and
4. A dormitory with a maximum of 36 students and accessory uses for an educational establishment provided it is located in conjunction with the convent of the Sisters of St. Joseph.

Further to the site specific permitted uses noted above, the site is subject to the Special Provisions for the Pleasant View Survey Lands (Amendment 179) under Part 2.2.21. Part 2.2.21 (a) i. states that notwithstanding the permitted uses, and the definitions for lot, existing lot of record and existing use in this plan, only uses, except for single dwellings, that existed on or before February 16, 1993 shall be permitted. Further to the above, Part 2.2.21 (b) states that only accessory uses to an existing use or to an existing single dwelling may be permitted.

The proposal is for a new, site specific policy that would allow an educational establishment as a primary institutional use, removing the current requirement of Part 2.2.21(f) i) that an educational establishment be an accessory use in conjunction with the convent of the Sisters of St. Joseph, as well as increasing the maximum permitted number of students to 1,000 and permitting up to 80 staff, and permitting an accessory use (gymnasium building).

## Overview of application:

1. Application submission

An NEP Amendment application and supporting materials were received on February 28, 2020. The first submission and second submission (September 2021) supporting materials to address agency and public comments included the following:

* A Cover Letter prepared by IBI Group Inc., dated February 28, 2020. The cover letter describes the proposed amendment and lists the supporting studies and author. A Comment Matrix, dated September 2021, was provided by the applicant in a second submission to outline how comments regarding the first submission were addressed.
* Planning Justification Report prepared by IBI Group Inc., dated February 25, 2020. The report provides a description of the lands, the existing development and the proposed development as well as a planning context for the amendment application. An updated report, dated September 19, 2021, was submitted to clarify that the current amendment is only for the Sisters of St. Joseph Motherhouse, not for the Sisters of Precious Blood Monastery as well as some additional policy analysis.
* Hydrogeological Investigation, prepared by MTE Consultants Inc., dated September 13, 2019. The Report recommends a comprehensive monitoring program, a contingency plan in case of failure of the septic system, and a supplementary Hydrogeological Investigation to consider the northerly portion of the site. An updated Report, dated June 25, 2021, was provided to address Ministry of Environment Conservation and Parks (MECP) comments to include a revised nitrate dilution assessment.
* Cultural Heritage Impact Assessment, prepared by ASI, dated July 2019, explains that the Motherhouse is listed on the City of Hamilton’s Inventory of Buildings of Architectural and/or Historical Interest but is not currently designated under Parts IV or V of the Ontario Heritage Act. The analysis in this assessment determined that the proposed development will not have any significant impacts on any proposed cultural heritage attribute and provides recommendations for mitigating impacts.
* Stage 1 & 2 Archaeological Assessment, prepared by Parslow Heritage Consultancy Inc., dated August 18, 2020, was was scoped to the immediate area surrounding the proposed gymnasium building and septic tile beds. The findings are that the study areas do not retain any cultural heritage value or interest and a Stage 3 Site Specific Assessment is not required.
* Functional Servicing Report, prepared by IBI Group, dated October 7, 2019, demonstrates how the site will be serviced for roads, septic, water, stormwater management, and utilities. An updated report, dated September 17, 2021, was submitted to provide more complete information as to servicing of the entire site including the northerly building.
* Geotechnical Investigation Report, prepared by MTE Consultants Inc., dated July 29, 2019. This report determines the soil and groundwater conditions in the area and provides geotechnical engineering recommendations for site grading, site servicing, foundations, slab-on-grade construction, below grade construction, pavement design and subdrainage, and stormwater infiltration. This report considers the hydrogeological investigation prepared by the same company of qualified professionals.
* Gym Concept, prepared by Lintack Architects, dated December 2018, and includes a site plan, floor plans, and elevation plans.
* Environmental Impact Assessment, prepared by Natural Resource Solutions Inc., dated October 2019, and concludes that the proposed development does not encroach into the adjacent natural features and impacts relating to the proposal are limited to landscape tree removals, potential for temporary construction intrusion into natural feature buffers, and potential unauthorized use of the adjacent natural area by students and/or faculty. Recommended buffers are 30 metres from the significant woodland dripline and 15 metres from the smaller disconnected woodland. Mitigation measures are recommended. An EIS Addendum, dated September 2021, was provided to include the proposed use and impacts from lights and compost. Recommended mitigation measures have also been updated to reflect the same.
* Preliminary grading plan, prepared by IBI Group, dated October 15, 2019, shows proposed grading associated with the gymnasium and erosion and sediment control measures. An updated plan, dated September 20, 2021, was provided to include a proposed stormwater pond adjacent to the proposed gymnasium.
* Site Plan, prepared by IBI Group, dated October 3, 2019, showing the proposed gymnasium and 10 new parking spaces (no longer proposed).
* Survey, prepared by Cunningham McConnell Ltd., dated October 24, 2017.
* Tertiary Treatment System Design Report, prepared by MTE Consultants Inc., dated September 25, 2019. The report describes the existing and proposed modified septic treatment system as well as provides recommendations for monitoring and setbacks. An updated Report, dated June 11, 2021, was submitted to provide additional information for the site including the northerly building.
* Transportation Demand Management Report, prepared by IBI Group, dated July 5, 2019. This report provides a transportation context for the area and also proposed mitigation measures to lessen single occupancy vehicle trips to the school.
* Transportation Impact Study, prepared by IBI Group, dated January 15, 2020. The report describes that the traffic generated by the proposed development includes 120 two way trips during the weekday morning and afternoon peak hours, including 20 buses to transport 1000 students and 80 vehicles to transport 80 staff members. The report concludes that this traffic can be adequately accommodated by the existing road network. A revised Study, dated February 9, 2021, was provided to reflect proposed changes to the Highway 6 and York Road intersection as well as queuing analysis per Ministry of Transportation and Hamilton Transportation Planning comments.
* Visual Impact Assessment, prepared by IBI Group, dated June 19, 2019. The report concludes that the proposed gymnasium addition will not be visible from any key viewpoints and it will not obscure the copper roof and clock tower associated with the Motherhouse building.
* Preliminary Wastewater Treatment and Disposal System Capacity Review, prepared by IBI Group, dated June 5, 2019, outlines required approvals and describes that the current system is designed to handle 30,000 L/day of flows, whereas the proposed use will require an a system capacity design for 65,000 L/day. The additional demand is proposed to be accommodated by two shallow buried trench disposal beds with a combined total area of 4,000 square metres and alterations to the existing septic tank.
* Slope Stability Assessment, prepared by MTE Consultants Inc., dated August 27, 2021. This report is provided in response to Conservation Halton comments. It provides a geotechnical assessment of the ravine slopes on the east and west sides of the property as they pertain to the proposed development. The report concludes that the proposed development is outside of development setback limit associated with the adjacent slope and provides recommendations for the project.
* Tree Protection Plan, prepared by Natural Resource Solutions Inc., dated August 2021. The plan summarizes that of the 126 trees inventoried, 56 are anticipated to be removed. Very few details on a compensation plan were provided at this stage. The report contains mitigation measures to be employed before, during and after construction.
1. Initial staff report

NEC staff presented an Initial Staff Report to the Commission on May 21, 2020, and this is appended to this Information Report in Appendix 1. At this meeting, Commissioners unanimously approved the recommendation instructing staff to “process the proposed Amendment for circulation and notification having found that the application is not frivolous, vexatious or for the purposes of delay and does not constitute an urban use”.

Regarding “urban uses”, subsection 6.1(2.2) of the Niagara Escarpment Planning and Development Act (NEPDA) prevents the consideration of any request to amend the NEP for an “urban use” in the Escarpment Natural Area, Escarpment Protection Area, Escarpment Rural Area and Mineral Resource Extraction Area designations (all non-urban designations), where such an amendment is to permit an “urban use”. Such considerations for “urban uses” can only take place when the NEP is under review. There are two types of urban amendments; (1) an amendment that may involve a special policy to allow for a site-specific “urban use” or (2) the re-designation of land to allow for urban development, for example changing one of the four non-urban designations to one of the three urban designations (Urban Area, Minor Urban Centre, Escarpment Recreation Area). Regarding the former type of amendment, staff note that under Section 23(e) of the NEPDA the Minister may establish a regulation to define an “urban use” however no such regulation has ever been developed. In the absence of a Minister’s Regulation defining urban uses, the NEC adopted a Commission policy in June 2005 (which was again confirmed in 2008), to address the matter, and assist in defining what uses should be considered an urban use. The policy identifies that ongoing interpretation by staff and the Commission would be required. While the initial staff report (attached in Appendix 1) concluded that the proposed use does not constitute an “urban use”, staff note that many of the public comments received to date have asserted that the proposed use is an “urban use” and is inappropriate for the rural area and special policy area in which the subject property is situated.

NEC staff acknowledge that the Commission in discussion at the meeting to consider the initial staff report advised that receiving public feedback is welcome and as such public comments received to date have been appended to this report in Appendix 2 and public commenters are invited to speak at this special meeting of the NEC.

1. Notification and circulation

The Commission initiated notification to the public and circulation to applicable agencies of the Amendment application in the spring of 2020. A large sized poster containing application information was erected at the site in 2020. Notification was provided in multiple newspapers in both French and English in 2020 and 2021 advising of two different commenting periods. The application was also posted to the Environmental Registry of Ontario for two separate 90-day commenting periods, starting on September 2, 2020 and November 25, 2021. A request for comments was circulated to applicable agencies on July 14, 2020, and a separate request for comments on the revised application was circulated on November 12, 2021.

NEC staff circulated the amendment application and supporting materials to the following agencies: Mississaugas of the Credit First Nation, City of Hamilton, Species at Risk Branch of the Ministry of Environment Conservation and Parks, Environmental Assessment Branch of the Ministry of Environment Conservation and Parks, the Ministry of Municipal Affairs and Housing, the Ministry of Tourism Culture and Sport, the Ministry of Transportation, the Bruce Trail Conservancy, the Royal Botanical Gardens and Cootes to Escarpment, Conservation Halton, Halton Region, Coalition on the Niagara Escarpment (C.O.N.E.), Hydro One, and City of Burlington.

1. Agency comments

The NEC received comments from the following agencies on the two submissions and these represent the most recent comments on file to date. Staff caution that there may have been subsequent direct submissions to the commenting agency to resolve concerns to be confirmed by staff:

* Conservation Halton (CH) provided comments on September 15, 2020, advising they had no concerns regarding the proposed use, however requested a scoped geotechnical assessment to be provided for the western valley, including recommendations to address any slope related risks related to the driveway and to ensure safe access and egress. Upon review of the second submission, CH provided additional comments related to the Geotechnical Slope Assessment, the Environmental Impact Study, Tertiary Treatment System Design Report, Site Plan, and general comments to be addressed prior to approval of the associated Development Permit Application.
* Ministry of Tourism, Culture and Sport provided comments on September 11, 2020, advising that through the approval process appropriate conditions should be applied to ensure the protection of cultural heritage resources.
* City of Hamilton provided comments on December 14, 2020 and February 22, 2022. City of Hamilton staff advise that a Rural Hamilton Official Plan Amendment (OPA) is required and until a decision is made on the Niagara Escarpment Plan Amendment, staff cannot advise if the ROP can be supported. The City provided various departmental technical comments on second submission:
	+ Natural Heritage staff find the Environmental impact Assessment to be adequate. A couple minor comments are outstanding.
	+ Cultural Heritage staff have some minor comments outstanding.
	+ Transportation Planning staff have advised they cannot support the proposed use until the necessary infrastructure improvements are refined in greater detail. More detail is required to ensure the safe movement of school buses and additional staff trips destined to and from the site. Clarifications and additional analysis is required in the Traffic Impact Study. NEC staff note that the applicant has submitted a response directly to the City.
	+ Infrastructure Improvement comments advise that in order for the redevelopment of the subject site to proceed, the creation of a westbound left-turn lane on York Road at Newman Road is required. This is being coordinated with the Ontario Ministry of Transportation (MTO) and tentatively commencing in 2021 as a two-year construction project.
* Ministry of the Environment, Conservation and Parks staff provided comments on January 1, 2022, to be addressed with respect to groundwater impacts and surface water impacts. Staff advise that a satisfactory science based prediction shall be required to finalize the effluent criteria and to protect the Long Pond and the connected Grindstone Marsh. The marsh is a naturally sensitive water feature in Cootes Paradise of Lake Ontario, is a highly productive shallow wetland, provides crucial spawning, nursery and adult habitat for many native fish as well as food and shelter for a variety of birds, mammals, amphibians and insects. The area has been going through restoration from the past pollution and millions of dollars have already been spent for its recovery. Therefore, all efforts will be required not to further degrade the quality of this sensitive receiver.
* Ministry of Transportation staff provided comments dated July 16, 2020 and January 11, 2022 advising that in principle, the ministry has no objection to the proposed Niagara Escarpment Plan Amendment; however the site is within the MTO Permit Control Area for the Highway 6, as a result, an MTO Building and Land Use Permit is required prior to the commencement of any on-site construction.
* Royal Botanical Gardens staff provided comments on December 2, 2021. These comments advise that issues with water and sewer have been ongoing and as a result, the downstream marsh areas are part of the Hamilton Harbour Remedial Action Plan (HHRAP) Area of Concern (AOC) area. For this application, Royal Botanical Gardens separately provided information to the Ministry of Environment, Conservation and Parks highlighting challenges associated with the ecology of the adjacent/downstream 6-hectare marsh area (locally known as Long Pond), as it is stressed by stormwater and septic systems. The comments outlined an existing erosion and water quality issue related to stormwater from the site. Further, the comment letter outlined concerns regarding transportation impacts to access to RBG properties along narrow, constricted roads.
1. Public comments

The NEC has received 85 written submissions directly from interested individuals and interest groups (note some individuals and groups submitted more than one comment) as well as a link to a video prepared by the Pleasant View Protection Association that can be found on their website (pvpa.ca). Of the 85 comments, two were ‘for’ the proposal, and 83 were ‘opposed’. The two comments in favour of the application both spoke to the importance of preserving heritage. Of the 83 comments opposed, 66 spoke to environmental concerns, 55 spoke to traffic concerns, 37 highlighted concerns with the proposal being an urban use or inappropriate in scale in the rural area, 24 spoke to safety, 19 spoke to infrastructure, and 4 comments opposed to the proposal spoke to heritage. NEC staff acknowledge public requests that written comments be provided directly to the Commissioners for their review and consideration. Staff have therefore appended public comments (personal information redacted) received as Appendix 2.

In addition to the public comments submitted directly to us, there were 24 submissions to the Environmental Registry during the two commenting periods. These comments will be reviewed and considered in the Final Staff Report to the Commission at a future meeting and will be presented to the Public Interest Advisory Committee (PIAC), when that meeting is held.

Per Subsection 10(1.1) of the Niagara Escarpment Planning and Development Act (NEPDA), during the time for making comments, the Commission may hold public meetings to promote public discussion of the proposed amendments. Subsection 10(2) states that the Commission may extend the time for making comments, before or after the expiration of the time, if it is of the opinion that the extension is necessary to ensure a reasonable opportunity for comments to be made. The applicant organized an on-site public meeting, which was held on Wednesday, April 27, 2022, in the evening, and was attended by NEC staff. Due to significant public interest and the large number of comments received to date, the NEC has committed to providing an additional opportunity for the public to comment on the application at this special meeting.

## Next steps:

* Public Interest Advisory Committee (PIAC) meeting to provide a recommendation to the NEC. Planned for late 2022.
* Final staff summary report to the Commission prepared by NEC that takes into consideration all comments received, by agencies and public, as well as the recommendation by PIAC. Provided objections cannot be resolved, and the application is to proceed, the Application will be required to be referred to the Ontario Land Tribunal (OLT) per subsection 10(3) of the NEPDA which states that if written objections to the proposed amendment are received by the Commission before the expiration of the time for making comments, the Commission shall appoint one or more hearing officers for the purpose of conducting one or more hearings. Planned for early 2023.
* Should the application proceed to a hearing, the Ontario Land Tribunal holds a hearing on the proposed amendment and prepares a report to the NEC. The NEC considers the report of the Hearing Officers and makes a recommendation to the Minister. The Minister makes the final decision.

## Conclusion:

Due to significant public interest in the NEP Amendment (PW 218 20) to introduce a private school for 1000 students and 80 staff, with an accessory gymnasium facility and expanded septic system at 574 Northcliffe Avenue in Hamilton, the NEC is providing an additional opportunity for the public to comment on the application at this special meeting of the NEC. No decision is recommended by staff at this meeting as it is intended to provide a status update and to hear public deputations. A forthcoming final staff report will be provided at a future Commission meeting.

## Recommendation:

That the Niagara Escarpment Commission receive the Information Report as a status update regarding Niagara Escarpment Plan Amendment Application PW 218 20 to provide context to the public deputations to the Commission.

Attachments:

Appendix 1 – Initial Staff Report

Appendix 2 – Public Comment Response Table

Prepared by: Approved by:

Original signed by: Original signed by:

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