March 9th, 2023

# A6: Staff Report

## Development Permit Application:

**P/A/2020-2021/691**

17529 Shaw’s Creek Road

Lot 11, Concession 5 West Side of Centre Road

Town of Caledon, Region of Peel

### Proposal:

To recognize the establishment of three agricultural fields (fruit orchards and grape vineyards) including tree removal, grading, topsoil augmentation, the installation of three irrigation tanks, and the gravelling of existing agricultural accesses, on a 36.6 ha (90.5 ac) existing lot that supports a single dwelling with accessory facilities.

### Received:

Received: February 17, 2021
Additional Information Received: February 21, 2023

### Source:

REDACTED, agent
REDACTED, applicant/owner

### Designations:

Escarpment Natural Area, Escarpment Protection Area, Escarpment Rural Area

### Issue:

New agricultural uses are not permitted with the Escarpment Natural Area or key natural heritage features. Although the rear fields at one time did support agricultural uses, NEC staff are not satisfied that the agricultural existing use has been in continuous operation, and evidence suggests that the areas had begun to re-naturalized prior to the recent establishment of the vineyards and orchards.

### Recommendation:

Refusal

### Reasons:

New agricultural uses are not permitted within the Escarpment Natural Area or key natural heritage features. NEC staff are not satisfied that the agricultural use continued without interruption and are of the opinion that the use had ceased.

### Related Files:

**6897/P/R/1999-2000/321**: To construct a two-storey residential addition and a second, one-storey greenhouse addition. A Development Permit was issued on March 21, 2022.

### Site Description:

The subject property is a 36.6 ha existing lot on the northeast side of Shaw’s Creek Road located between River Road and Charleston Side Road in the Town of Caledon. The subject property currently supports a single dwelling with associated accessory facilities, and agricultural fields. The property is surrounded by significant woodlands to the west, north, and east. Belfountain Minor Urban Centre abuts the southern corner of the subject property. Topographically, the Escarpment brow traverses the property. The lands above the brow are reasonably flat and support agriculture (field crops) and a single dwelling, but the lands toward the rear of the property, below the Escarpment brow, slope downwards. It is in this area that the new agricultural use has been established.

The majority of the wooded areas on the property are within the Region of Peel’s mapped Core Greenlands Area and are identified as Significant Woodlands. A Provincially Significant Wetland is located within the rear of the property while a southern portion of the property is traversed by the West Credit River and its associated floodplain and valley slope. The property is located within a Significant Groundwater Recharge Area (SGRA), Highly Vulnerable Aquifer Area, contains Significant Wildlife Habitat (deer wintering area), the provincially-significant Dufferin Lake Life Science Area of Natural and Scientific Interest (ANSI) towards the rear of the property, the provincially-significant Caledon Meltwater Deposit Earth ANSI along the western portion of the property, and the Dufferin Lake Environmentally Significant Area (ESA).

## Proposal:

The application was submitted to the Niagara Escarpment Commission as the result of a compliance investigation in early 2021. The applicant is proposing to recognize the establishment of three (3) agricultural fields within the rear portion of the property that are accessed by gravel driveways. The agricultural fields have been graded and planted to support a mixture of grape vineyards and orchards (primarily apple trees). It should be noted that a gravel parking area was also constructed within the agricultural fields but has since been removed by the applicant.

### Background:

NEC staff have been working with the applicant and their agent to better understand the agricultural history of the property and how the three rear fields were established. This is because the aerial imagery of the property showed the fields as being wooded and contiguous with the surrounding Significant Woodlands and key natural heritage system. The history of the agricultural use of the property is integral to the policy review of the application because, as discussed later in this report, only existing agricultural uses are permitted within the Escarpment Natural Area and key natural heritage features, in accordance with Parts 1.3.3 (Permitted Uses) and 2.7.2 (Development Affecting Natural Heritage) of the 2017 Niagara Escarpment Plan (NEP).

The applicant has since informed NEC staff through the submission of an agrologist report (dated July 20, 2022 – Second Submission) and a letter from the landowner regarding the agricultural history and operation of the property (dated February 17, 2023) that the trees to be removed were primarily apple orchard trees and pine plantation trees that were commercially harvested. A Forest Management Plan was submitted in January 2023 for the subject property (dated June 2021). In addition to the above information, the agent has also submitted a planning opinion (dated February 21, 2023) that concludes the work undertaken represents a crop rotation within an established agricultural use.

In the agricultural history letter, the landowner discusses existing agricultural use, the tree removal, site alteration, and terracing of the property. The tree removal consisted of removing dead, diseased, hazard trees, the former orchard, as well as portions of what is identified as a pine plantation. The letter states the work occurred between 2017 and 2023. The landowner provided information regarding the importation of topsoil, woodchips, manure, and gravel to support the agricultural use. Lastly, the landowner described the existing topography, which included terracing that was in existence prior to the activities undertaken between 2017 and 2023.

### Planning Analysis:

**Niagara Escarpment Plan, 2017 (NEP)**

The subject property is designated as Escarpment Natural Area, Escarpment Protection Area, and Escarpment Rural Area by the NEP. The agricultural fields that are the subject of this application are primarily within the Escarpment Natural Area, although a portion of the Chardonnay vineyard (Appendix 1) is located within the Escarpment Protection Area.

Part 1.3.3 (Escarpment Natural Area) of the NEP lists existing uses as permitted uses (for greater certainty, this includes existing agricultural uses, existing agriculture-related uses and existing on-farm diversified uses), subject to satisfying the Development Criteria of Part 2 of the NEP. Notably, new agricultural uses are not permitted within this designation.

Part 1.4.3 (Escarpment Protection Area) of the NEP lists agricultural uses as permitted subject to satisfying the Development Criteria of Part 2 of the NEP.

An agricultural use is defined in the NEP as:

*The growing of crops, including nursery, biomass, and horticultural crops; raising of livestock; raising of other animals for food, fur or fibre, including poultry and fish; aquaculture; apiaries; agro-forestry; maple syrup production; and associated on-farm buildings and structures, including, but not limited to livestock facilities, manure storages, value-retaining facilities, and accommodation for full-time farm labour when the size and nature of the operation requires additional employment (Provincial Policy Statement, 2014).*

An existing use is defined in the NEP as:

*Existing use: The legal use of any land, building or structure for a purpose that is not otherwise listed as a permitted use under the applicable designation in the Niagara Escarpment Plan, and that was:*

*a) existing on the day of approval of the Niagara Escarpment Plan, June 12, 1985; or*

*b) approved in accordance with the provisions of the Niagara Escarpment Plan since June 12, 1985 but prior to the date of any amendment to this Plan under which the use ceased to be a permitted use; or*

*c) existing, in an area added to the Niagara Escarpment Plan at the date of the approval of the amendment to this Plan that added the lands to this Plan; provided that the existing use has continued without interruption after the effective date as set out under a), b), or c).*

Early on in the process, the applicant was asked to provide additional information regarding the agricultural history of the lot in order to confirm that the use met the existing use definition in the NEP. An original agrologist report was submitted in December 2021 but only provided a comparison of the fields in 1985 and 2020 (when the trees and vegetation had already been removed). NEC staff requested additional information on the intervening years between 1985 and 2020 to confirm that the agricultural use has been in continuous operation (which has historically been interpreted as operating without an interruption of more than two years). A second agrologist report was submitted in July 2022 which reviewed the lands in 1951, 1978, 1980, 1985, 2002, 2009, 2016, and 2020. The agrologist report concluded through the review of aerial imagery that “the delineated fields in the subject lands have continuously been used for agricultural purposes over the past 69 years.”

NEC staff would agree that in 1985 the lands clearly look to be in agricultural use; however, from 2002 onwards the Chardonnay vineyard appears to primarily consist of sporadic coniferous trees, while the pinot noir vineyard and C-Curve orchard appear to also contain sporadic vegetation without any clear pattern (rows of trees, vineyards etc.). By 2016, the Chardonnay vineyard appears to be covered primarily with coniferous trees, while the pinot vineyard looks to blend visually into the surrounding significant woodlands except for a pocket of what is assumed to be apple trees. The C-curve orchard has sporadic vegetation and pockets of open space.

It should be noted that Credit Valley Conservation (CVC) and the Region of Peel were circulated the application for comment. Although the Region did not object to the application, they did defer to CVC for the natural heritage review and noted that all of the fields except a portion of the C-curve and pinot noir vineyards are within the mapped Core Woodland Area. CVC reviewed the application and completed a site visit and noted that the field preparation and planting had been undertaken within a key natural heritage feature (Significant Woodlands) and that it would represent a loss to the Natural Heritage System. Ultimately, CVC recommended that the cleared areas should be restored through the replanting of trees. NEC staff acknowledges that conservation authorities no longer have a role in commenting on natural heritage as a result of Bill 23; however, these comments were provided when CVC provided natural heritage commenting services to the Region of Peel and the Town of Caledon.

Although agricultural uses are permitted with the Escarpment Protection Area they are not permitted within key natural heritage features as per Part 2.7.2 of the NEP which states:

*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:*

*a) development of a single dwelling and accessory facilities outside a wetland on an existing lot of record, provided that the disturbance is minimal and where possible temporary;*

*b) forest, fisheries and wildlife management to maintain or enhance the feature;*

*c) conservation and flood or erosion control projects, after all alternatives have been considered;*

*d) the Bruce Trail, and other trails, boardwalks and docks on parks and open space lands that are part of the Parks and Open Space System; and,*

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

Although the Chardonnay vineyard is partially within the Escarpment Protection Area it was identified as contributing and part of the surrounding significant woodlands and therefore the removal of vegetation to establish a new agricultural use is not permitted in accordance with Part 2.7.2, which does not include agriculture as an exception to the prohibition on development in key natural heritage features.

After reviewing both the submissions from the applicant/agent and the comments from partner agencies, NEC staff are not entirely satisfied that the agricultural operation has been continuously operating as an existing use. Instead, staff are of the opinion that although the agricultural use was established prior to the NEP coming into effect, there is evidence to suggest that the agricultural use in the rear three fields ceased between 2002 and 2016, and was then re-established by the landowner in 2017/2018. Given the size and distribution of vegetation that regenerated between 2002 and 2016, the agricultural use ceased for more than two years. Thus, in the opinion of NEC staff the new agricultural uses do not meet the definition of an existing use and are therefore not permitted by the NEP.

**Provincial Policy Statement, 2020 (PPS)**

Staff have reviewed the proposal in the context of the 2020 Provincial Policy Statement (PPS). Section 2.1 of the PPS provides for the protection of natural features for the long term. Specifically, Section 2.1.5(b) states that in Ecoregions 6E and 7E development shall not be permitted in significant woodlands unless it has been demonstrated that there will be no negative impacts on the natural features and their ecological functions. As indicated by CVC comments the re-establishment of the agricultural fields in the rear of the property may have resulted in negative impacts to the Natural Heritage System and its ecological function. Unfortunately, undertaking development without first consulting with the NEC has made it impossible to assess the ecological value of the area where trees and successional vegetation were removed.

Although Section 2.1.9 of the PPS states that the intent of the natural heritage policies is not to limit the ability of agricultural uses to continue, Section 2.1.2 states that the intent of the policies is maintain, restore or, where possible, improve the diversity and connectivity of natural features in an area, recognizing linkages between and among natural heritage features and areas. In staff’s opinion, the evidence suggests that the agricultural use should be considered a new use rather than the continuation of an historical agricultural use. Given that the primary purpose of the NEP is to provide for a continuous natural environment, the PPS policy intent that seeks to maintain, restore or improve the diversity and connectivity natural heritage features should take precedence over the introduction of new agricultural uses.

### Agency Consultations:

Town of Caledon
No further concerns; however, it should be noted that if the owners change the use they will under the Town’s Site Plan By-law be required to go through Site Plan Approval. According to Schedule ‘A’, the subject property is designated a General Agricultural Area and Environmental Policy Area. The area of the site alteration took place in areas designated as General Agricultural Area and Environmental Policy Area.

Permitted uses in the General Agricultural Area include but are not limited to uses allowed in the Prime Agricultural Area which include On-farm Diversified Uses, Agri-tourism Uses, a single-detached dwelling on an existing lot of record subject. Some of the vineyards are located within the General Agricultural Area. Permitted uses within EPA noted in Section 5.7 include legally existing residential and agricultural uses, a building permit on a vacant lot of record, portions of new lots, activities permitted through approved Forest Management and Environmental Management Plans, limited extractive industrial, non-intensive recreation, and essential infrastructure. Some of the vineyards are located within the Environmental Policy Area.

Given the presence of ANSI Earth Science and Peel Regionally Significant Woodlands, the potential effect of the work already done on natural features must be evaluated. The technical environmental requirements must be met for all applicable regulatory agencies including but not limited to the Credit Valley Conservation Authority (CVC) and the Region of Peel. Staff has received comments from the Credit Valley Conservation authority which identify that there are concerns with the application and note a lack of support. Town of Caledon Planning staff will rely on the professional opinion and guidance from the CVC on this matter and the concerns of the CVC will need to be addressed.

#### Credit Valley Conservation Authority

Portions of the property are subject to CVC’s Regulated Area; however, the proposed works are located outside of the Regulated Area and therefore a CVC Permit is not required. Based on the application and site visit observations, there have been development internal to the key natural heritage feature (significant woodlands) which represents a loss to the Natural Heritage System. CVC staff recommend that all development and/or site alteration should remain outside of this feature and be sufficiently setback to afford protection of the feature. The cleared areas should be restored, infrastructure be removed, and trees be replanted at a density of 1200 trees per ha to achieve no net loss to the NHS.[[1]](#footnote-2)

#### Ministry of Environment, Conservation, and Parks

No comments or concerns with this proposal. If any water taking activities exceed 50,000L/day, they may need to apply for a Permit to Take Water or an Environmental Activity Sector Registration.

#### Region of PeelThe Region has no objection to the proposed development to recognize the establishment of three agricultural vineyards. The Region will defer to CVC to the matters related to core woodland natural features on the site. There is an area not designated under the woodlands in the proposed C-curve orchard and pinot noir vineyard that is outside of the Regional Official Plan designation; however, the CVC comments and concerns would need to be addressed for Regional approval.

### Discussion:

New agricultural uses are not permitted within the Escarpment Natural Area and Part 2.7.2 of the NEP prohibits development within key natural heritage features, with few exceptions that do not include agriculture. CVC staff have identified that the areas of tree removal consisted of significant woodlands that contributed to the Region of Peel’s Natural Heritage System. Staff acknowledge that the applicant has submitted an agrologist report reviewing the property at various points between 1951 and 2020 but are not satisfied that the agricultural use has remained uninterrupted.

Staff acknowledge that part of the challenge of reviewing the application is trying to determine whether the agricultural had continued without interruption and therefore met the test of an existing agricultural use. In the opinion of staff, the aerial imagery is not conclusive. Although it certainly shows pockets of apple trees it also appears to show the lands naturalizing over time with successional coniferous and deciduous trees. Staff are of the opinion that the existence of apple trees is not sufficient to confirm an ongoing agricultural use.

Should the application be approved by the Commission, NEC staff would recommend that in the future no additional wooded areas are removed for agricultural uses.

### Recommendation:

The application be refused for the following reasons:

1. The proposal is not a permitted in the Escarpment Natural Area designation of the Niagara Escarpment Plan.
2. The proposal is not supported by Credit Valley Conservation Authority.
3. The proposal is not supported by policies in Section 2.1 for Natural Heritage in the Provincial Policy Statement.

### Prepared by:

*Original signed by:*

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Brandon Henderson

Senior Planner

### Approved by:

*Original signed by:*

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Kim Peters, MCIP, RPP

Manager

### Attachments:

Appendix 1: Map of the Property

Appendix 2: 1985 Aerial Imagery

Appendix 3: 2016 Aerial Imagery

Appendix 4: 2022 Aerial Imagery

Appendix 5: NEP Designations Map

Appendix 6: Natural Heritage Features Mapping

Appendix 7: Town of Caledon 2017 Mapping

Appendix 8: Town of Caledon 2022 Mapping

Appendix 9: Region of Peel Woodlands Mapping

1. CVC’s comments were received prior to Bill 23 coming into effect. [↑](#footnote-ref-2)