# Text Description automatically generatedNiagara Escarpment Commission

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April 27, 2023

# A4 STAFF REPORT

## RE: PROPOSED NIAGARA ESCARPMENT PLAN AMENDMENT PW 218 20

## Columbia Northcliffe Campus

## 574 Northcliffe Avenue, City of Hamilton

**APPLICANT/OWNER:** Columbia Northcliffe Campus Inc.

**AGENT:** IBI Group

**DATE RECEIVED:** February 28, 2020

**PROPOSAL SUMMARY:**

An application to amend the Niagara Escarpment Plan (NEP) was submitted to replace a special policy that applies to the subject property, being part of Lots 28 and 29, Concession 2, Geographic Township of West Flamborough, City of Hamilton, also described as 574 Northcliffe Avenue. The site-specific policy would allow the use of the 8,918 sq m (95,993 sq ft) former convent of the Sisters of St. Joseph as a private secondary school with a maximum of 1,000 students and 85 staff with a 1,716 sq m (18,470 sq ft) accessory gymnasium addition attached to the existing building known as the Motherhouse.

**PURPOSE:**

The purpose of this staff report is to provide the Commission with information related to urban uses relevant to this application, including: a discussion of relevant sections of the *Niagara Escarpment Planning and Development Act* (NEPDA); a summary of the Commission endorsed policy interpretation for urban uses; the planning framework for the subject lands; a summary of significant public comment regarding the proposed use; the applicant’s related justification in their submission and response to urban use-related public comments; and a detailed analysis provided by staff. Per Section 10 of the NEPDA, public comments and discussion are promoted and considered throughout the processing of an amendment application. Staff have considered these comments and carried out a detailed analysis of the proposed use and find it meets the definition of an urban use, as defined by the NEC in their 2005 policy paper (Appendix 2). Staff therefore find that reconsideration by the Commission is required as to whether the proposed use constitutes an urban use.

## RECOMMENDATION:

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That pursuant to the NEPDA subsection 6.1(2.2) the Commission find that the proposed use constitutes an urban use and directs staff to notify the applicant that pursuant to subsection 6.1(2.3) of the NEPDA, this application may only proceed at the time of the next NEP review through the process as described under section 17 of the NEPDA.

### **BACKGROUND AND PLANNING FRAMEWORK**

The Columbia Northcliffe Campus Inc. amendment application proposes to change the site-specific Pleasant View Survey policy in Part 2.2.21 (f) of the NEP that currently limits the use of the building and surrounding lands to a place of worship, a convent, and limited provisions for a residential care facility, a dormitory, and accessory uses for an educational establishment provided it is located in conjunction with the convent use. The amendment proposes to use the former convent as a private secondary school for 1,000 students of Columbia International College with 85 staff, and to establish an accessory gymnasium addition to the existing building. The site is currently serviced by municipal water and a private septic system, which would have to be significantly expanded to support the scale of use proposed.

The subject property (Appendix 2 – Site Plan) owned by Columbia Northcliffe Campus is 19.4 hectares 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. No changes to the use of this building or to the surrounding areas are proposed as part of the subject application.
* 574 Northcliffe Avenue includes the southerly portion of the site that 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. The subject application pertains only to this, the southerly building and surrounding lands.

Throughout the report, when referring to the “subject lands”, staff mean the southerly building and surrounding lands only.

The Pleasant View Survey Lands include the subject lands and the area bounded on the east by Highway 6, on the north by Patterson Road, on the west by York Road, and on the south by the Canadian National Rail Line and Old Guelph Road. The Pleasant View Survey Lands were brought into the NEP Area in 2013 as the result of an amendment (PW 179 09) initiated by the NEC, with distinct and very restrictive policies guiding permitted uses. The lands were subsequently brought under NEC Development Control through an update to Ontario Regulation 826 in 2021.

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 permitted uses for the site are only those stipulated in the Special Provisions for Pleasant View, under Part 2.2.21, as well as the additional use provisions provided by the site-specific policy for the subject lands under Part 2.2.21.f. The permitted uses under Part 1.5 of the NEP do not apply to the Pleasant View Survey lands except for Part 1.5.3.31 of the NEP which references the Special Provisions for the Pleasant View Survey Lands. The proposal is for a new institutional use and institutional uses (other than those permitted by site-specific policy) are not permitted within the Special Provisions for Pleasant View. Therefore, the proposal requires an amendment to the NEP as well as a Development Permit.

The Special Provisions for the Pleasant View Survey Lands under Part 2.2.21 are relatively restrictive, as compared to other parts of the Plan area. Part 2.2.21.a of the NEP provides permitted uses notwithstanding the permitted uses and definitions for lot, existing lot of record and existing use in the NEP. This means that the permitted uses in this section supersede the permitted uses of a given designation in the Pleasant View Survey Lands. To summarize, the permitted uses provided for in Pleasant View are limited to the following:

* Uses other than single dwellings if they existed on or before February 16, 1993;
* Only single dwellings that existed on or before August 14, 1998;
* Accessory uses to an existing use or existing single dwelling and the replacement of an existing single dwelling subject to NEP development criteria; and
* New single dwellings on vacant lots with a minimum size of 10 hectares, subject to the development criteria of the NEP.

The previously referenced site-specific policy under Part 2.2.21 (f) for the south building provides the following permitted uses on the subject lands, in addition to those of the above noted Special Provisions for Pleasant View:

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.

The introduction of limited permissions related to an educational use within the convent building can be traced to applications under the Planning Act in 2011, 2013 and 2019, prior to the area coming under NEC Development Control. 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), in 2013 (DN/A-13:110), and 2019 (Zoning by-law Amendment Application ZAR-19-013 to establish a Temporary Use By-law), the building is now vacant.

In the Initial Staff Report under different authorship (Appendix 4), NEC staff had stated that the institutional use on the property was an “existing use”. However, the proposed institutional use should not be considered an “existing use” on the basis that the site-specific policy under 2.2.21.f of the NEP specifically permits that type of institutional use. Per the site-specific policy, the previous educational use was only permitted in conjunction with the convent, and in very limited form, allowing only a maximum of 36 students. In contrast, an existing use, as per the NEP definition, is a use that is not otherwise listed as a permitted use. Thus, the existing use provisions in the NEP do not apply to the subject lands because Part 2.2.21 specifies the permitted uses on the property.

The relatively restrictive nature of the Special Provisions for Pleasant View is reflective of the 1995 Ontario Municipal Board decision on Pleasant View. The decision provides insight into the planning history of the Pleasant View Survey Lands, how the Special Provisions for Pleasant View were created and their intent, as well as why the area is serviced by municipal water. The decision (delivered by T. Yao, dated June 28, 1995, File Nos. O 939179, R 930122, Z 940065, O 940217, M 950009, S 950016, and S 950017)(“the Yao decision”) settled two referrals of the Town of Dundas Official Plan Amendment 23 (OPA 23) by two parties: the Conserver Society, who felt that the Town’s approved OP allowed too much development, and Bella Court a landowner who sought increased densities. The decision ruled in favour of the Conserver Society, requiring that the only new development permitted in this area be single dwellings on lots that are a minimum of 10 hectares, restricting any further lot creation within the area, and restricting new residential development on vacant lots less than 10 hectares.

The Yao decision was based on a number of findings. Of interest to this staff report is Finding Number 6 of the decision, which acknowledges the existence of piped water as an accident and not the result of any planning process. The report explains that when municipal water services were provided in 1988 it was in response to widespread groundwater contamination due to septic effluent that was making residents sick. Municipal services are considered urban services as they are typically not extended to rural areas for a number of reasons. The relevance of this finding to the topic of this staff report is that municipal water service enables a larger scale of use to be proposed as it is not as limited as uses that must rely on well water. The challenge with urban services in rural areas is that they can create demand for urban and large scale uses in the rural area.

Additional findings in the Yao decision reveal the intent behind the relatively restrictive policies for Pleasant View. Finding 1 acknowledges that the Pleasant View area lacks most basic services, and therefore it is not suitable to support urban style development, while Findings 20 and 21 speak to the significant natural heritage and hydrologic features that are prevalent in this area. These findings (1, 20, and 21) speak to the intent behind keeping development in this area to what is existing as well as very limited additional opportunities. The summary conclusions of the decision are that Pleasant View is outside of the urban settlement area, growth projections could be accommodated within the settlement areas and therefore additional development rights within Pleasant View were not needed. Furthermore, due to considerations unique to this area, including servicing challenges and its status as an environmentally significant area, only very limited opportunities for development should be provided.

Consideration of what provisions apply to the subject lands is necessary in determining whether the use constitutes an urban use, which is discussed in detail in the following section.

#### DISCUSSION ON URBAN USES

The following discussion on urban uses is reflective of significant public comment on the topic as well as deeper analysis into whether the proposed use constitutes an urban use per the information and definition available.

1. **Niagara Escarpment Planning and Development Act**

Subsection 6.1(2.2) of the Niagara Escarpment Planning and Development Act (NEPDA) states that “no person or public body shall make an application or request to amend the Niagara Escarpment Plan if the application or request relates to land that is within the land use designation of Escarpment Natural Area, Escarpment Protection Area, Mineral Resource Extraction Area, or Escarpment Rural Area of the Niagara Escarpment Plan and the application or request seeks to, … b) make any other amendment to permit urban uses”. Further, subsection 6.1(2.3) states that “despite subsection (2.2), an application, request or proposal to … permit urban uses may be made during the review set out in subsection 17(1)”. Subsections 17(1), (2) and (3) outline the only process that urban amendments may be considered under: the provincial plan review that takes place every 10 years, with the next one anticipated in 2027.

1. **NEC endorsed “Urban Uses” Definition Respecting Amendments to the NEP Pursuant to the NEPDA**

Pursuant to Subsection 23(e) of the NEPDA, the Minister may make regulations defining urban uses, however no such regulation has ever been approved by the Minister and in the absence of such a definition the Commission adopted its own policy in June 2005 to assist in defining what uses should be considered urban in nature. The policy identifies that ongoing interpretation by staff and the Commission would be required. The policy was reviewed and reconfirmed by the Commission in 2008.

The urban uses definition includes, as an urban use, institutional uses. While the NEP allows some institutional uses in some designations as permitted uses, subject to development criteria and other restrictions relating to scale and compatibility, there are no provisions allowing for new institutional uses within Pleasant View. As previously noted, the only institutionally related use permitted on the subject lands is what is described under the site-specific policy under Part 2.2.21.f. In other areas of the NEP, an institutional use may be permitted as per Part 1 (and the development criteria in Part 2) of the NEP, but this is not the case with Pleasant View, for the reasons described earlier in this report.

Based on the list of permitted uses in Part 2.2.21.f, an educational use is not permitted as a standalone principal use, as per the proposed amendment. The policy allows for the following, provided here again for reference:

* 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.

As per (iv), the current convent and educational uses are tied together, and any change in the relationship between the two of them is a change in use that requires an amendment to this provision in the NEP.

The policy interpretation on urban uses approved by the Commission in 2005 and again in 2008, provides for a transparent and consistent approach to defining urban uses. Although there may be special circumstances such as cultural heritage value and interest that make repurposing a building such as the convent desirable, holding these applications until the time of a comprehensive NEP review allows for an opportunity to better cumulatively assess the impact of expanding urban boundaries and allowing urban uses outside of settlement areas, especially when there is significant intensification associated with the new proposed use.

1. **Examples of relevant Plan Amendments**

The urban uses restrictions under subsection 6.1(2.2) and (3) were only introduced to the NEPDA in 2005. Between 2005 and 2015, the Commission held back 23 amendment requests because they were determined to be urban in nature. The most relevant of these are discussed below.

One such example is Urban Amendment 49 for Speyside School at 11445 Regional Road 25 in the Town of Halton Hills, which proposed to amend the NEP to enable the re-establishment of an institutional use within an existing 1,826 sq m (19,654 sq ft) building on a 2.6 hectare property that fell out of use for over a decade. The proposed use was considered an urban use as it exceeded the provisions for an institutional use in the NEP, which at that time limited institutional uses to those that are “small scale”, which was interpreted to be 5,000 sq ft or less. The amendment application was processed in accordance with subsection 6.1(2.3) and 17(3) of the NEPDA and was approved after the 2015 provincial plan review, which resulted in the site-specific provision under Part 1.5.37 of the NEP. By comparison, the Speyside School application did not propose any expansion to the existing institutional building, whereas the subject proposal involves a 1,716 sq m (18,470 sq ft) expansion to an existing 8,918 sq m (95,993 sq ft) institutional building, resulting in a 10,634 sq m (114,463 sq ft) institutional building. Nor was the Speyside application seeking an expansion of the septic system, whereas the subject application seeks to enlarge the existing septic beds (north and south) with a combined footprint of 4,600 sq m (49,513 sq ft) to 8,600 sq m (92,570 sq ft), with the system capacity proposed to increase from 30,000 litres per day to 65,000 litres per day. The Speyside school included six classrooms and a gymnasium; whereas the proposed gymnasium addition associated with the subject application is almost as large as the entire school, a difference of 110 sq m.

Another such example is a Development Permit Application (H/P/2011-2012/141) to construct a 333 sq m (3,584 sq ft) addition to a 984 sq m (10,600 sq ft) existing institutional building, the Canadian Reformed Church of Burlington – Waterdown at 1225 Dundas St. W in the City of Burlington. NEC staff prepared a staff report to the Commission on January 19, 2012, recommending refusal as the proposal exceeded the permitted expansion allowed for an existing use in the 2005 NEP. The Commissioners voted to defer the matter to allow the church congregation an opportunity to reconsider a design in keeping with the minor expansion (approximately 25 percent) that the NEP policies could permit. In the report, staff discussed that the expansion should be considered an urban use due to its scale and therefore a related amendment application could only be processed at the time of a comprehensive review of the NEP. Regarding the intensification of the use, the application submitted by the Canadian Reformed Church of Burlington was not proposing to increase the number of parishioners or programming, whereas the subject application is proposing an increase in the number of individuals at the site from 36 boarding students, per the site-specific policy, to 1,000 day students plus staff.

A third example is Urban Amendment 56 – Pine River Institute located at 606060 River Road in the Township of Mulmur, Dufferin County. The amendment sought to enable the construction of a 613 sq m (6,598 sq ft) dormitory associated with a youth treatment centre on a 79.6 hectare lot. The existing treatment facility already exceeded the small-scale provision for institutional uses in the 2005 NEP, and the new dormitory exceeded the 25 percent minor expansion that the NEP could permit. This triggered the application for consideration as an urban use.

There are also examples of institutional uses that did exceed the provisions in the NEP that were exceptions to the urban use restrictions in the NEPDA due to very specific circumstances.

One example of this is the Toronto District School Board Boyne River Natural Science Centre NEP amendment application (PD 214 18) in 2018. The site had a long history of supporting an educational use, however the use ceased in 2003. Institutional uses are not permitted in Escarpment Natural Area designation under the NEP, and the outdoor education use had ceased for a significant period, thereby eroding its status as an existing use. An amendment application was required to re-establish the educational use. The initial staff report considered that the nature of the outdoor education use and as a centre for studying the Escarpment environment necessitated the facility to be situated outside of a settlement area, even though it technically met the definition of urban use per the Commission policy.

Another example is NEP amendment PG 158 05 to expand the Grey Roots Heritage and Visitor Centre facility. This amendment application proposed to expand beyond the provisions granted under a previous amendment, PG 136 01, which was submitted prior to the restriction on urban uses in the NEPDA. The original amendment provided for a main museum building and eight period buildings to replicate a pioneer village. The expansion proposed in 2005 included: reduced setbacks from those established under the previous amendment; a new railway system through the village; and an additional nine period buildings within the same development footprint. The Commission made a recommendation on this amendment just prior to the policy paper on urban uses (2005) being approved by Commission. However, it did include discussion of the urban use issue, and the Commission determined that the subject proposed amendment should not be considered an “urban use” at the May 2005 meeting. The amendment involved an expansion to an institutional use (museum) that was established under a previous amendment to the NEP. As such, the Commission felt that it did not constitute a new “urban use”. This particular application did not involve a change in use or significant intensification of a use.

1. **Public Comments on Urban Use**

During the commenting period, the NEC received 85 written submissions directly from interested individuals and interest groups (note some individuals and groups submitted more than one comment). Of the 85 comments, 37 specifically raised concerns with the proposal being an urban use or inappropriate in scale in the rural area; however, it should also be noted that other comments related to traffic and servicing, tabulated under those specific categories, are relevant to the urban use issue, even if they did not specifically mention the urban use policy. There were also 24 submissions to the Environmental Registry during two separate postings. Of the 24 comments, 10 directly stated that they believed the use to be an urban use. Again, there were additional comments that spoke to traffic and servicing concerns.

Staff have provided the following in an attempt to summarize comments related to urban uses:

* When the school was used for 96 students, there was very little disturbance; 1000 students is too large for this site. While the buses taking students from the urban area to the rural area will only pass four houses, it will disrupt the flow of traffic and safety for everyone (public comment, Aug. 31, 2020)
* Use is not an existing use as it is subject to special policy 2.2.21.f. Per 6.1(2.2) of the NEPDA, urban uses not permitted (public comment, Sept. 4, 2020)
* There have never been schools in Pleasant View, they are not permitted. The only permitted institutional uses are convents or churches and do not accommodate more than 250 people (public comment, Sept. 7, 2020)
* Although the usage of the convent for a high school in my mind represents a fairly benign impact on the site, I am concerned about the nature of the use as it fits with the community. This community is rural by nature and has no experience with this kind of usage. The influx of bus traffic to the area will be genuinely felt by the community. I also feel that it is the wrong place for a school, due to its rural nature. There are no commercial or residential developments in the area and there never will be. Students wanting to leave the school at irregular hours, as high school students are known to do, and do not want to wait for a bus, will be forced to walk a fair distance along roads not designed for pedestrian access. This by its nature creates safety concerns. All public high schools are designed and required to have full and safe pedestrian access. Columbia College will not have to meet this standard. It could be argued that these students are essentially trapped or imprisoned on this site until transportation is provided. The rural nature also raises concerns about access for community services, such as fire, police and ambulance. We will have a large institution with a large population that now has longer wait times for these essential emergency services. I believe the inherent increase in risk factors for this proposed usage makes this site inappropriate for a large institution such as a high school. Parents, even non resident ones, are entrusting us to provide high standard of safety and care [of] the most valuable of resources, their children. (public comment, Sept. 7, 2020)
* The Escarpment Rural Area designation has the objective ‘to provide for compatible rural land uses’. We contend that a large high school to support a student body the majority of which does not live in or near this Escarpment Rural Area address is not an example of a compatible rural land use as intended in the NEP (Environment Hamilton, Nov. 29, 2020)
* The response that institutional uses had existed in the past fails to mention the dramatic increase in occupancy and traffic, including daily bus, automobile, and truck traffic. (public comment, Jan. 9, 2022)
* given this area is outside of the settlement area and the proposed use is an urban use, it is not in the public’s interest (Pleasant Valley Protection Association (PVPA) submission, Jan. 24, 2022)
* there is no evidence that a school of this size (1000 students) needs to be located in the rural area; an appropriate alternative is the urban area (PVPA submission, Jan. 24, 2022)
* the scale is too great for the rural area and should be more in line with the intended planned occupancy when the building was constructed of around 100 people (PVPA submission, Jan. 24, 2022)
* A 1000-student school in this location would introduce new and unnecessary vehicle exhaust pollution to the property, area and environment. This pollution would be significantly reduced by locating in an urban setting where students and staff would have less distance to travel, and have the options of walking, riding bikes and using existing city buses to commute (PVPA submission. Jan. 13, 2022)

NEC response: While public commentors have noted that the NEPDA restricts urban uses, it should be noted that the restriction is only outside of the 10-year plan review. If this application is determined to be an urban use, it will be eligible for consideration at the time of the next provincial plan review, which is anticipated for 2027, 10 years from the approval date of the last plan review.

1. **Applicant Planning Justification Report and Comment on Urban Use**

In support of the NEPA, the applicant prepared a Planning Justification Report (PJR) (prepared by IBI Group, dated February 25, 2020) and an addendum (dated September 19, 2021). The PJR discusses the NEC policy paper on urban uses and states that as institutional uses are permitted within the Escarpment Rural Area designation, this should not be interpreted to be an urban use (pg. 29, 2020). This interpretation of the definition and the provisions of the NEP as they apply to the site does not account for the Special Provisions for Pleasant View, which supersede the usual permitted uses for a given designation; in this case, the provision for institutional uses in Escarpment Rural Area do not apply as the lands are subject to the Special Provisions for Pleasant View, which do not permit institutional uses.

The PJR includes a detailed history of previous approvals of an educational use on the subject lands under the Planning Act, making the case that due to these approvals, the proposed educational use should not be considered an urban use as it is an existing use and therefore may be expanded. As explained earlier in the report, the policies regarding “existing uses” in Part 2.3 of the NEP do not apply; the amendment that brought the Pleasant View Survey Lands into the NEP area clearly sets out the permitted uses on the property, as stated in bullets (i) through (iv) of the site-specific policy (quoted twice above in previous sections).

Despite the limitations on the permitted use as stated in Part 2.2.21, the applicants submitted a zoning by-law amendment application on behalf of the Sister’s of St. Joseph to establish a Temporary Use By-law (ZAR-19-013) to permit a dormitory for 96 students with an additional 42 students subject to servicing upgrades for a total of 138 students for a maximum period of three years. This zoning by-law amendment was proposed before the subject lands came under NEC development control, and the NEC did not object to the application based on conditions that limited the use to three years without the possibility for extension. Furthermore, if the applicant was not able to obtain the required NEP amendment to permit the conversion of the Motherhouse to a private school as intended, the use would cease. The Temporary Use By-law provisions clearly stipulate that the temporary use will not become a legal non-conforming use after its expiry. In addition to the limitations imposed on permitted uses by the provisions in Part 2.2.21, the Temporary Use By-law is clear in that there is no precedent for an as-of-right establishment of a more intensive educational use.

On the topic of what provisions for institutional uses exist for the subject lands, the PJR claims that the institutional uses permitted under the Escarpment Rural Area designation apply. Staff’s understanding is that the relatively restrictive permitted uses in the Special Provisions for Pleasant View supersede the permitted uses for a given designation. A new institutional use is not permitted on lands designated Escarpment Rural Area within Pleasant View because of the very specific provisions in Part 2.2.21.

Although the PJR includes discussion of the Special Provisions for Pleasant View and the NEP existing use policies, the PJR does not clarify how these policies should be read in conjunction with one another, nor does it address the definition of existing use, which includes that an existing use is a legally established use not otherwise listed as a permitted use in the NEP. It is also notable that the existing use definition references that there are special policies that apply to Pleasant View. This is significant as the “existing use” development criteria that provide opportunities for existing uses to change to similar type uses and expand subject to specific criteria, do not apply to the subject lands.

The PJR also addresses the definition for institutional use in the NEP within the context of the proposal. The NEP definition of an institutional use is:

“Use of land, building or structure for some public or social purpose that may include governmental, religious, educational, charitable, philanthropic, hospital or other similar use, including cemeteries, to serve the immediate community.”

Despite including the full NEP definition, the PJR discussion does not consider the element of the definition that institutional uses are to “serve the immediate community”. Based on the definition in the NEP, the proposed development, which is a large scale, specialized high school for grade 12 students only, does not serve the immediate community’s educational needs – at a minimum, a full range of grades should be provided to serve the low-density surrounding population, in line with a typical rural school, and local residents should be afforded the opportunity to attend the school. In addition, students are to be housed in the urban area of Hamilton, not on site. Although the NEC has accepted a generous interpretation of “immediate community” in the past (e.g., religious congregations from the wider Greater Toronto Area), it is difficult to argue that a school targeting international students that have to be bussed to the site serves the “immediate community”.

On January 13, 2023, the applicant submitted to the NEC an untitled submission responding to specific urban use-related public comments that were summarized in the Information Report dated November 16, 2022 and comments made at a Special Commission meeting on that same date where residents were provided the opportunity to comment on the application directly to the Commission. On the question of the school being an urban use, the applicant explained that,

“a school and other similar institutional uses are both rural and urban uses. The only benefit from an urban location is a reduction in school bus travel distance. Columbia students are all privately bused from the residences to whatever campus they may attend. NEC planners have confirmed that this is a simple amendment to existing land use permissions and is not introducing a new urban use which can only be done during the 10-year reviews. The students do not reside here, so access to shopping, transit and other neighbourhood amenities is not needed.”

NEC response*:* the urban uses restriction is an attempt to treat larger scale, intensive uses differently: those uses not intended to be permitted within the nonurban designations of the NEP area are to receive special consideration at a prescribed time. Therefore, unlike municipal official plan and zoning by-law policies and definitions which may treat institutional uses the same, in the NEP there is a distinction between institutional uses that meet the policies of the Plan, and those that exceed it based on scale and incompatibility with the surrounding area. Because an institutional use is permitted by the NEP does not mean that it considers that use a rural land use: the policy paper (2005) defines all institutional uses as urban uses, but the NEP permits some institutional uses in some areas, subject to specific criteria. Additionally, the NEP defines institutional uses as those that provide some public or social purpose to serve the immediate community. The application describes that the intended users of the proposed establishment will be urban residents. These urban residents will be transported by private bus or automobile to the rural area. This demonstrates that the proposed use is not a permitted institutional use per the NEP definition, but rather fits within the policy prescribing urban uses in that it serves an urban-based student body. The applicant’s discussion of an institutional use/educational use being the same whether it is in the rural or urban area is not accurate within the context of the NEPDA and NEP.

In response to the applicant’s comment that this is a simple amendment, staff advise that until they have received all information and had the benefit of a full review and have carried out a full analysis, they cannot advise on the outcome of an application.

In response to public comments that the proposal is too intense, the applicant responds that,

“The school is not visible from Northcliffe Ave or from any nearby residential property. The students are inside the buildings and residents will not know whether there are 600 students, 800 students or 1000 students in attendance. The only real visual indicator to the neighbourhood that a school is operating are the bus trips which as described above are at off peak hours and will be staggered.”

NEC response*:* Visual considerations are not the only considerations the NEPDA and NEP require; related restrictions and policies require NEC staff to consider scale and compatibility. The provisions related to institutional uses intending to serve the “immediate community” speaks directly to scale: the intention of the policy is that institutional uses in rural areas should be scaled to serve rural communities, not urban ones. Additionally, the natural state of the subject lands being surrounded and obscured by treed areas should not be a justification for a large-scale use. Any proposed use should be given proper consideration of the use and its compatibility against a number of factors, including whether it constitutes an urban use, and if so whether it is reasonable to allow that urban use as proposed, which is a significant consideration that is directed by the NEPDA to be made only at the time of a Provincial Plan review.

1. **Additional Considerations**

As we know from the Cultural Heritage Impact Assessment (prepared by ASI, dated July 2019, revised May 2022), the motherhouse building is listed on the City of Hamilton’s Municipal Heritage Register as a non-designated property. While it is not currently designated under the Ontario Heritage Act (OHA), the property meets the criteria for designation under Part IV of the OHA. Staff understand that the City of Hamilton intends to proceed with designation. In light of the status of the Motherhouse building as being of cultural heritage value and interest, staff provide the following additional consideration.

Is an educational use the only use that would be appropriate for this important cultural heritage structure and landscape and ensure that it is appropriately conserved? As we know from various documents, the convent use was in declining numbers over quite a number of years and therefore it is understood that same convent is not possible to re-establish in the building. We also understand from the applicant’s PJR and other documents that the building is already well suited to an educational use as the convent use has a long history of supporting religious education as part of that use. It would seem that outside of a different religious type of use akin to a convent use, a school use would be suitable for the existing structure, however, as proposed it is a different, significantly larger, and more intensive institutional use due to proposed capacity, servicing expansions, the large accessory gymnasium, and traffic impacts. Staff are of the opinion that while conservation of a building of cultural heritage value is important, it does not change the interpretation of the proposed use as an urban use as there is no requirement that it be located there and at the scale as proposed.

1. **Summary of Key Points**
2. the subject property is within the NEP Area and Area of Development Control.
3. the subject lands only apply to the southern portion of the property and are designated as Escarpment Rural Area and Escarpment Natural Area.
4. No changes are proposed to the northern portion of the property that supports a monastery.
5. The subject lands are within the Pleasant View Survey Lands.
6. All lands within the Pleasant View Survey are subject to Special Provisions under Part 2.2.21. These provisions supersede permitted uses and definitions for lot, existing lot of record and existing use in the NEP, and are more restrictive that those general policies of the NEP.
7. The relatively restrictive Special Provisions for Pleasant View are the result of a historic OMB decision in 1995, which determined that the lands within Pleasant View are not appropriate for more intensive development.
8. The general permitted uses under the Escarpment Rural Area designation, where all development is proposed, under Part 1.5.3 of the NEP do not apply as the Special Provisions supersede them, except for 1.5.3.31 which state the uses as set out in the Special Provisions apply.
9. The subject lands have additional provisions, beyond those provided by the Special Provisions, under Part 2.2.21.f of the NEP. This site-specific policy allows the following institutional uses in the existing institutional building: a place of worship; a convent; a residential care facility for a maximum of 35 residents; and 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. These additional uses are very limited and the educational use permitted is not a standalone permitted use as it must be tied to the convent use.
10. The educational use is a permitted use in the Special Provisions for Pleasant View and therefore the provisions for expansions to an existing use under the NEP do not apply.
11. As the proposal is for a new site-specific policy for the subject lands, to enable a change in use, the proposal must be assessed against the applicable provisions.
12. The applicable provisions for the site are the Special Provisions for Pleasant View which do not allow new institutional uses.
13. The site-specific policy does not allow an expansion or change in use as it provides very specific restrictions on the size and nature of the permitted uses on the subject lands.
14. The NEPDA directs that if an application to amend the NEP seeks to allow an urban use, it cannot be processed and may only be considered at the time of a provincial plan review that is planned to occur every 10 years. The decision on such an application shall be made by Cabinet. The next provincial plan review is anticipated in 2027. (See: NEPDA sections 6.1(2.2), 6.1(2.3), 17(1), (2), and (3)).
15. The NEC approved a definition for urban uses in 2005 and again in 2008.
16. The definition of urban uses includes institutional uses.
17. The NEC has consistently interpreted institutional uses as urban uses requiring an urban amendment where they exceed the applicable provisions of the NEP.
18. Any proposed institutional uses that exceed the applicable specific provisions of the NEP and therefore require an amendment, should be treated as an urban amendment and only be considered at the time of the next provincial plan review. (See: key points 10 and 11 above which demonstrate the proposal exceeds the applicable provisions)
19. The NEC received a significant number of comments from the public opposing the application based on their belief that the use constitutes an urban use. While these commentors further stated that the application should not be approved as it is an urban use, staff point out that the urban use sections of the NEPDA do not restrict urban uses outright; rather, the Act restricts their consideration outside of a provincial plan review.
20. The applicant’s planning justification that the use is not an urban use does not take into account the Special Provisions for Pleasant View as the only applicable use provisions for this site.
21. The subject lands are eligible for designation under the Ontario Heritage Act.
22. There is no requirement that the proposed use be located there and at the scale proposed, therefore this application should be held to the same test as any other urban use.

**CONCLUSION**

Based on NEC staff review of the Commission endorsed policy on urban uses, the historical treatment of similar uses by the NEC, as well as public and applicant comments on the application, staff find that the proposed amendment does constitute an urban use and should therefore be deferred to the next provincial plan review.

The Commission endorsed policy definition of urban uses provides that institutional uses are urban uses and while the NEP does allow for small-scale institutional uses within Escarpment Rural Areas, there are no provisions for new institutional uses within Pleasant View due to the Special Provisions that apply. Therefore, as the proposed use exceeds the provisions available to the subject lands and requires an amendment, per the Commission endorsed policy on urban uses, it should be treated as an urban amendment and be deferred until the time of a comprehensive NEP review.

#### RECOMMENDATION

## That pursuant to the NEPDA subsection 6.1(2.2) the Commission finds that the proposed use constitutes an urban use and directs staff to notify the applicant that pursuant to subsection 6.1(2.3) of the NEPDA, this application may only proceed at the time of the next NEP review through the process as described under section 17 of the NEPDA.

## Attachments

Appendix 1: Plan Amendment Document (Schedule A)

Appendix 2: Site Plan

Appendix 3: NEC endorsed urban use policy interpretation

Appendix 4: Initial Staff Report

**Prepared By:**  **Approved by:**

ORIGINAL SIGNED BY: ORIGINAL SIGNED BY:

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Amaraine Laven, MCIP, RPP Kathy Woeller

Senior Strategic Advisor Director

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Kim Peters, MCIP, RPP

Manager