May 5, 2023

# C1: STAFF INFORMATION REPORT

## RE: Withdrawal of Niagara Escarpment Plan Amendment PS 215 18

**Township of Clearview (Sideroad 26/27)**

**TOWNSHIP OF CLEARVIEW, COUNTY OF SIMCOE**

## SUMMARY RECOMMENDATION:

That the Niagara Escarpment Commission (NEC) receive this report for information.

### BACKGROUND:

A 2014 Joint Board decision granted approval to expand the Duntroon quarry (Niagara Escarpment Plan Amendment No. 161). Under that decision, some of the parties to the hearing (Township of Clearview, Walker Aggregates Inc. and the County of Simcoe) were directed to enter into a Road Improvement Agreement to close a portion of County Road 91 in order to expand the quarry, and to make improvements to Sideroad 26/27 to make it an all-season road to replace the County Road.

On January 31, 2014 the municipality submitted a Development Permit Application (DPA) for the upgrades to Sideroad 26/27, which was refused by the NEC in November 2015. The decision was then appealed to the Environmental Review Tribunal (ERT, now the Ontario Land Tribunal) by several parties including the Township of Clearview. During the appeal process, additional environmental work undertaken by consultants on behalf of the Township identified that certain aspects of the road works would result in the removal of 1.2 ha of natural heritage and key hydrologic features within the existing right of way. This was not known when the DPA was originally submitted and the policies of the (then) 2005 NEP would preclude the development.

Based on the new information, the Township decided to seek an adjournment to the hearing, and seek an amendment to the NEP to add site specific policies in the NEP for Sideroad 26/27 which would allow the proposed road improvements, notwithstanding policies in the NEP. By this time the 2017 NEP was in effect which would permit development for infrastructure purposes within wetlands, (Part 2.6.2 e), in key natural heritage features, (Part 2.7.2 e) and in Escarpment Natural Areas, (Part 2.12.5) but only where the project has been deemed necessary to the public interest and after all other alternatives have been considered.

Through the amendment application, the Township of Clearview sought to amend the NEP by adding site-specific policies that would allow improvements to Sideroad 26/27 to make it suitable for year-round use and make other road improvements that are the subject of the outstanding DPA, which was the subject of appeal.

Following submission of the DPA, the Township reviewed the proposed works through the Municipal Class Environmental Assessment (EA) and determined that the proposed road works met the criteria for a Schedule “A+” undertaking. Projects included in a Schedule A+ process includes those that are deemed by the municipality to have minimal adverse environmental effects and include road maintenance and operational activities, and which require only public notice with no consideration of alternatives to the proposed road works.

The Blue Mountain Watershed Trust submitted a Part II Order request under the Environmental Assessment Act to the Minister of the Environment, Conservation and Parks (MECP) to re-consider this EA classification and elevate it to a Schedule C undertaking, which would require additional studies, consultation and consideration of alternatives. MECP denied the Part II Order request, confirming the categorization of a Schedule A+ made by the municipality.

The initial staff report for the proposed amendment was presented to the Commission in January 2019 and the Commission directed staff to process the proposed amendment for circulation and notification pursuant to Section 6.1(2) of the Niagara Escarpment Planning and Development Act. The proposal was circulated for comment and posted to the Environmental Registry of Ontario on March 22, 2019.

A number of written objections were received in response to the proposal and thus, per Section 10(3) of the NEPDA, staff prepared a report for the Commission recommending that the amendment be referred to the Environmental Review Tribunal to conduct a combined hearing process for the proposed Plan Amendment and related DPA. The Commission endorsed the staff recommendation on October 29, 2019.

**DEVELOPMENTS SINCE LAST REPORT**

On October 2, 2021, MECP revised its opinion concerning the designation of the Sideroad 26/27 upgrade as a Schedule A+ EA undertaking based on new information which indicated that the project had not been properly classified. MECP notified the municipality that it would need to submit additional information to assist in MECP’s review of the undertaking and to determine the proper category. The municipality then asked for an adjournment of the hearing while they provided information to MECP and awaited a final decision on the appropriate EA category.

Following submissions by the municipality, MECP made a decision on December 22, 2022 that they were assigning the proposed upgrades to a Schedule C undertaking, and outlined the requirements that would need to be undertaken.

On March 22, 2023, the Township of Clearview formally withdrew their application for the amendment to the NEP, their original DPA and their appeal related to the Commissions decision on the DPA. The Ontario Land Tribunal formally acknowledged the withdrawal and closed the related files.

**DISCUSSION:**

In a press release on March 22, 2023, Clearview Township Mayor Doug Measures indicated that the proposed 26/27 Sideroad improvements are “no longer practical, reasonable, or cost-effective”. He also indicated that “Council and I will work with local stakeholders, including Walker Aggregates, to find a solution that we are confident will protect the environment, the local road network, and the needs of our residents.”

The NEC has no further information related to the future of the 26/27 Sideroad.

**CONCLUSION:**

The Township of Clearview has withdrawn the DPA, its appeal of the refusal by the Commission and the NEP Amendment application. The NEC has closed the files and has initiated a posting on the Environmental Registry of Ontario to provide notification that the application has been withdrawn. No further action is required by the Commission.

## RECOMMENDATION:

That the Commission receive this Report for information only.

## Prepared by:

ORIGINAL SIGNED BY:

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Sandy Dobbyn

Senior Strategic Advisor (A)

## Approved by:

ORIGINAL SIGNED BY:

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Kathy Woeller

Director