**Niagara Escarpment Commission**

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# MINUTES OF M823/04-2023

**NIAGARA ESCARPMENT COMMISSION**

**HYBRID MEETING:**

**Microsoft Teams and In-person (Georgetown, Ontario)**

**April 27, 2023**

## MEMBERS PRESENT:

M. Curley, G. Driedger, R. Gibson, L. Golden, D. Hutcheon, G. Krantz, K. Lucyshyn,
D. McKinlay, R. Nicholson, D. Nielsen, J. Vida, A. Witteveen.

## REGRETS:

M. Francis.

## STAFF PRESENT:

K. Woeller, K. Peters, J. Muller, B. Henderson, C. Tansony, E. Vanderwal, L. Wang,
J. Olah, A. Bochenek.

## ALSO PRESENT:

J. Gaweda, Natural Heritage and Land Use Planning Advisor, Ministry of Natural Resources and Forestry; Robert Patrick, C.O.N.E.

## MEETING CALLED TO ORDER 10:00 a.m.

Chair Rob Nicholson presided.

## INTRODUCTIONS:

The Chair welcomed the Commissioners, staff and attendees to the meeting. He advised that he has accepted a short extension to his appointment to provide the government additional time to appoint a new Chair and the remaining four Commissioners. The Director thanked the Chair for continuing his role with the Commission to the end of June to ensure Commission business can continue until a new Chair is appointed. The Chair introduced Dane Nielsen, the new Grey County

Commissioner, and advised that Matthew Francis has been appointed as the new City of Hamilton Commissioner. Commissioner Francis sent regrets for today’s meeting due to a previous engagement.

## LAND ACKNOWELDGEMENT:

The Chair read aloud the Land Acknowledgment.

## BUSINESS ARISING FROM PREVIOUS MEETINGS:

None.

**APPROVAL OF MINUTES –** March 9, 2023 Commission Minutes M822-03-2023

**M823R1/04-2023**

*Moved By: Witteveen*

*Seconded By: Gibson*

*“That the Commission minutes of March 9, 2023, be approved as written.”*

***Motion Carried***

**DISCUSSION:**

A Commissioner noted that the hybrid meeting information needed to be updated.

## MOTION FOR SPEAKERS

**M823R2/04-2023**

*Moved By: Hutcheon*

*Seconded By: Vida*

*“That the persons representing the applications listed on the agenda be invited to address the Commission.”*

***Motion Carried***

## CONFLICTS OF INTEREST – Declaration of Conflicts of Interest

## None.

## DISCUSSION AGENDA: A and B PACKAGES

## (*Staff Reports, External submissions)*

**A1**

**STAFF REFERRAL REPORT**

**PROPOSED Niagara Escarpment Plan Amendment PH 219 20 and**

**Development Permit Application H/E/2020-2021/108**

Part Lots 1 & 2, Concession 1 NS, Part Lots 2, 3 & 4 RP20R7439,
Part Lots 1 & 2, Concession 2 NS, Part Lots 1 & 2, Concession 3 NS, Part Lots 17 &18, Concession 2, NDS, City of Burlington, Region of Halton

**PROPOSAL:**

1. A Niagara Escarpment Plan Amendment (NEPA) for a site-specific change of land use designation from Escarpment Rural Area to Mineral Resource Extraction Area for approximately 78.3 ha (193.5 ac.), related to a Class A License application under the Aggregate Resources Act, within lands described as Parts 1 & 2, Concession 1 NS, Part Lots 2, 3, & 4 RP20R7439, and Part of Lots 17 & 18, Concession 2 NDS (former geographic Township of Nelson), City of Burlington, Region of Halton; and,
2. Applying special policy under Part 1.9.3 of the NEP (2017) for continued use of:
* An office and a maintenance building;
* Facilities for aggregate washing, processing and stockpiling, and truck washing;
* An asphalt plant;
* Recycling facilities; and,
* An entrance for import of aggregate extracted from the above lands.

This continued use special policy would apply only while the two sites are actively operated under a single license for the subject properties (Part of Lots 1 and 2, Concession 2 NDS, Part Lots 1 & 2, Concession 3 NDS), in the City of Burlington, Regional Municipality of Halton.

1. Development Permit Application (DPA) H/E/2020-2021/108, to allow for development related to the proposed quarry operations. This DPA is contingent on approval of the NEP Amendment Application for the above lands being re-designated from Escarpment Rural Area to Mineral Resource Extraction Area, and for the continued operation of the existing quarry infrastructure.

**STAFF REFERRAL RECOMMENDATION:**

That the Niagara Escarpment Commission:

1. Receive this Staff Referral Report while taking no substantive position at this time on Amendment PP 219 20 and Development Permit Application H/E/2020-2021/108;
2. Ask the Ontario Land Tribunal to appoint one or more Hearing Officers to hold a hearing pursuant to Section 10(3) of the Niagara Escarpment Planning and Development Act as there are written objections to proposed Amendment PP 219 20;
3. Refuse Development Permit Application H/E/2020-2021/108, as requested by the proponent in its letter of March 27, 2023 so that it can be appealed to the Ontario Land Tribunal;
4. Instruct Commission counsel and staff to support the consolidation of proposed Niagara Escarpment Plan Amendment PP 219 20 and Development Permit Application H/E/2020-2021/108 with the related Planning Act and Aggregate Resources Act appeals currently before the Ontario Land Tribunal;
5. Direct Commission counsel and staff to continue to work with the proponent, municipalities, conservation authority, ministry staff and others to obtain outstanding information necessary to determine whether the proposed quarry expansion is consistent with / does not conflict with the Niagara Escarpment Plan;
6. Direct Commission counsel to take steps in the appeal proceeding in support of decisions and instruments that are consistent with / do not conflict with the Niagara Escarpment Plan;
7. Instruct Commission counsel to consult with staff and report back to the Commission before taking any final positions on proposed Niagara Escarpment Plan Amendment PP 219 20, Development Permit Application H/E/2020-2021/108, or the other instruments under appeal to the Ontario Land Tribunal.

Note:

* Joe Muller, Senior Strategic Advisor, presented and answered questions.
* The applicant presented and answered questions.
* Brian Zeman, President, MHBC Planning, Urban Design & Landscape Architecture, presented and answered questions.
* Roger Goulet, PERL Executive Director, presented and was available to answer questions.

**M823R3/04-2023**

*Moved By: Hutcheon*

*Seconded By: McKinlay*

*“That the Commission approve staff recommendations 1 to 7 and refer the applications to the Ontario Land Tribunal.”*

***For the Motion: 10 votes***

*Curley, Driedger, Gibson, Golden, Hutcheon, Krantz, Lucyshyn, McKinlay, Nielsen, Vida.*

***Against the Motion: 1 vote***

*Witteveen.*

***Motion Carried***

**DISCUSSION:**

The Commission requested information on the history of extraction on the property. Staff advised that the quarry activity pre-dates the Niagara Escarpment Plan.

## A2

**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.

### RECOMMENDATION:

That the application be **refused** for the following reason:

1. The proposal is not a permitted use in the Escarpment Natural Area designation of the Niagara Escarpment Plan.
2. The proposal conflicts with Part 2.7.2 of the Niagara Escarpment Plan.
3. The proposal is not supported by Credit Valley Conservation Authority.
4. The proposal is not supported by policies in Section 2.1 for Natural Heritage in the Provincial Policy Statement.

Note:

* Brandon Henderson, Senior Planner, presented and answered questions.
* The applicant and landowner presented and answered questions.

**M823R4/04-2023**

*Moved By: McKinlay*

*Seconded By: Hutcheon*

*“Whereas technical and historical information has been presented by the applicant that the agricultural use has not ceased on the lands within the application, and*

*Whereas detailed mapping by a qualified forester has shown that the significant woodland boundaries do not encroach on the agricultural land, be it resolved that development permit application P/A/2020-2021/691 be approved with the following conditions of approval:*

1. *Development shall occur in accordance with the Terms and Conditions of the Development Permit.*
2. *No site alteration of the existing contours of the property including the placement or stockpiling of fill (i.e., excess or imported soil) is permitted with the exception of that identified within the development envelope in accordance with the Final Site Plan.*
3. *No vegetation shall be cut or removed from the development envelope except for that identified within the development envelope in accordance with the Final Site Plan.*
4. ***Prior to the issuance of a Development Permit by the Niagara Escarpment Commission****, an accurate and detailed* ***Final Site Plan*** *prepared by a qualified person. The following shall be submitted for Niagara Escarpment Commission approval:*
5. *All drawings submitted must be drawn to scale (bar scale shown), reference the application number and address of the proposal, be dated, and include the name of the relevant individual or consultant who prepared the drawing;*
6. *Outline of the approved development envelope / extent of all disturbed areas;*
7. *Location of all existing and proposed structures, sewage disposal system, well/cistern, driveway, access routes, agricultural uses, setbacks from the property lines, any watercourses or water features, top / bottom of slope, and wooded areas;*
8. *Topographic survey of the property to be completed following this conditional approval, and prior to the expiry of the conditional approval.*
9. *Condition 4 must be fulfilled within eighteen months of the date of confirmation of the Commission’s decision or this conditional approval shall lapse and a Development Permit will not be issued.*

***Advisory Notes:***

1. *A Development Permit does not relieve the landowner/permit holder from the requirements of any other required approval, licence or certificate under any statute (e.g., Ontario Building Code, Planning Act, Aggregate Resources Act, Conservation Authorities Act, Endangered Species Act [specify which regulation – e.g., S. 23.2 of O. Reg. 242/08], etc.). The Niagara Escarpment Commission Development Permit is required prior to the issuance of any other applicable approval, licence or certificate.*
2. *No tree cutting on the property shall occur unless in accordance with the policies of the Niagara Escarpment Plan, the Town of Caledon’s tree cutting by-law, or it is exempt from requiring a Niagara Escarpment Commission Development Permit under Ontario Regulation 828/90.*
3. *This permit does not allow for the introduction of an on-farm diversified use (e.g., agri-tourism) or agriculture-related use (e.g., cidery, winery). Such uses require evaluation under a separate development permit application.”*

***For the Motion: 11 votes***

*Curley, Driedger, Gibson, Golden, Hutcheon, Krantz, Lucyshyn, McKinlay, Nielsen, Vida, Witteveen.*

***Against the Motion: 0 votes***

*None.*

***Motion Carried***

**DISCUSSION:**

Some Commissioners were concerned that farmers seem to require a development permit when changing crop types. The manager advised that the cultivation of soil does not require a development permit. In the case of this application, the grading changes and spreading of imported fill did require a development permit. The manager noted that the uncertainty about pre-development conditions and the length of time the process has taken could have been avoided had the applicant consulted with the NEC or other agency staff prior to undertaking the development.

**A3**

**STAFF REPORT**

**DEVELOPMENT PERMIT APPLICATION** **N/R/2022-2023/359**

1724 Pelham St

Part Lot 1, Concession 6

Town of Pelham, Region of Niagara

### PROPOSAL:

To demolish an existing two storey 196 sq m (2,109.7 sq ft) detached building that contains several dwelling units, with a height to peak of 6 m (19.7 ft), to construct a new two storey ± 196 sq m (2,109.7 sq ft) second dwelling, with a maximum height to peak of ± 8 m (26.2 ft), to construct a ± 11.4 sq m (123.6 sq ft) accessory building (pool shed), with a height to peak of ± 2.4 m (8 ft), and to install a new septic system, on an existing 10.1 ha (25 ac) lot that supports a single dwelling, the detached building containing dwelling units, an agricultural use, and private servicing.

**RECOMMENDATION:**

That the application be approved subject to conditions of approval.

Note:

* Cheryl Tansony, Senior Planner, presented and answered questions.
* The agent for the applicant presented and answered questions.

**M823R5/04-2023**

*Moved By: Krantz*

*Seconded By: Witteveen*

*“That application N/R/2022-2023/359 be approved with the following Conditions of approval:*

1. *Development shall occur in accordance with the Terms and Conditions of the Development Permit.*
2. *The Development Permit shall expire three (3) years from the date it has been issued or once the development has been completed in accordance with the Development Permit.*
3. *No site alteration of the existing contours of the property including the placement or stockpiling of fill (i.e., excess or imported soil) on the property is permitted with the exception of that identified within the development envelope in accordance with the Final Site Plan.*
4. *No vegetation shall be cut or removed from the development envelope except for that identified within the development envelope in accordance with the Final Site Plan.*
5. *If development has commenced under this Development Permit, any/all disturbed areas of land or soil shall be re-vegetated and stabilized to the satisfaction of the Niagara Escarpment Commission on or before the date of expiry of the Development Permit.*
6. ***Prior to the issuance******of a Development Permit by the Niagara Escarpment Commission****, an accurate and detailed* ***Final Site Plan*** *shall be submitted for Niagara Escarpment Commission approval. The following stipulations shall be included directly on the Plan:*
7. *Location of all existing and proposed structures, sewage disposal system, well/cistern, driveway, construction access / haul routes, exterior lighting, etc. showing setbacks from the property lines, any watercourses or water features, top / bottom of slope, wooded areas, etc.;*
8. *The location of equipment and material storage on-site.*
9. *The location and design of erosion and sediment control measures (e.g., fencing, blankets, rip-rap, temporary mulch / seeding), and limit-of-work construction or eco-protection fencing;*

*Development shall proceed in accordance with the details of the approved Final Site Plan.*

1. ***Prior to the issuance of a Development Permit by the Niagara Escarpment Commission,*** *the landowner shall submit for the approval of the Niagara Escarpment Commission,* ***Final Construction Details*** *for the proposed development, including exterior elevations, total floor area, floor plans, height to roof peak from lowest grade, and any exterior lighting. Development shall proceed in accordance with the details of the approved Final Construction Details.*

1. ***Prior to the commencement of any development****, erosion and sediment control measures (e.g., fencing, blankets, rip-rap), and/or vegetation protection fencing shall be implemented and maintained as shown on the* ***Final Site Plan*** *until all disturbed areas are stabilized. It is the responsibility of the landowner to implement, monitor and maintain all erosion and sedimentation control measures and vegetation protection fencing in good condition until vegetative cover has been successfully established and the development is completed.*

1. *All waste materials generated from the demolition shall be completely removed from the property and taken to an authorized receiving site (e.g., municipal landfill site, salvage / reclamation facility, re-used / recycled elsewhere) and not stored or buried on-site. All disturbed areas shall be immediately stabilized / rehabilitated as per the* ***Final Site Plan****.*
2. *All exterior lighting shall be designed to be minimal, subdued, of low height and downward facing. Soffit lighting on the second storey is not permitted.*
3. *Both the original single dwelling and newly constructed second dwelling shall contain only one dwelling unit each. Neither dwelling shall be used for short-term rental accommodation, commercial, industrial, institutional or livestock use.*
4. ***Prior to the issuance of a Development Permit by the Niagara Escarpment Commission****, the Landowner shall enter into an Agreement under Section 24(2.1) of the Niagara Escarpment Planning and Development Act, in a form acceptable to the Niagara Escarpment Commission. The Agreement shall be registered on title of 1724 Pelham Street, Part Lot 1, Concession 6, Town of Pelham, Region of Niagara, at the Landowner’s expense. The Agreement is to acknowledge that neither the original single dwelling nor second dwelling shall not be severed from the lot. The Landowner shall provide proof satisfactory to the Niagara Escarpment Commission that the agreement has been registered against the lands (i.e., copy of the parcel registry extract and a letter from the Landowner’s solicitor that the registration is complete), and that the Landowner under this Development Permit is the Landowner of the lands at the time of registration.*
5. *Conditions 6, 7, and 12 must be fulfilled within eighteen (18) months (1.5 years) from the date of confirmation of the Commission’s decision or this conditional approval shall lapse, and a Development Permit will not be issued.*

***Advisory Notes***

1. *A Development Permit does not relieve the permit holder of any other permission (e.g., Ontario Building Code, Conservation Authorities Act, Endangered Species Act, etc.). A Niagara Escarpment Commission Development Permit is required prior to the issuance of any other permission.*
2. *The Niagara Escarpment Commission supports the protection of the night sky from excessive lighting and recommends the applicant* *obtain information on the use and operation of appropriate lighting fixtures in keeping with dark sky approaches.*
3. *If previously undocumented archaeological resources are discovered, this may be an archaeological site, subject to Section 48(1) of the Ontario Heritage Act (OHA). Work altering the site must cease immediately and a licensed consultant archaeologist engaged to carry out an archaeological assessment to comply with Section 48(1) of the OHA. You may contact the Ministry of Citizenship and Multiculturalism (MCM) for guidance (at* *archaeology@ontario.ca**).*

*The Funeral, Burial and Cremation Services Act, 2002, S.O. 2002, c.33 (FBCSA) requires that any person discovering human remains must cease all activities immediately and notify the police, and if the coroner does not suspect foul play, they shall notify the Registrar, Ontario Ministry of Public and Business Service Delivery about the burial site for its administration under the FBSA. If the human remains are associated with archaeological resources, as above the MCM should also be notified (at* *archaeology@ontario.ca**) to ensure compliance with the OHA.”*

***For the Motion: 11 votes***

*Curley, Driedger, Gibson, Golden, Hutcheon, Krantz, Lucyshyn, McKinlay, Nielsen, Vida, Witteveen.*

***Against the Motion: 0 votes***

*None.*

***Motion Carried***

**DISCUSSION:**

The Commission thanked staff for the detailed report, noting that the approval of the application will create a record of the additional dwelling and the agreement on title will ensure any future owner will understand the limitations associated with the approval of the second dwelling.

## CONSENT AGENDA/ITEMS MOVED FOR DISCUSSION:

Information only Items

G1 Director Approvals and Dashboard for March 2023

G2 Appeals and Hearings Status Chart as of March 31, 2023

G3 Director’s Report for March 2023

G4 Plan Amendments Status Update as of March 31, 2023

**M823R6/04-2023**

*Moved By: Hutcheon*

*Seconded By: Nielsen*

*“That the Commission receive the Consent Agenda information items.”*

***Motion carried***

**Broke for lunch**: 12:00 p.m.

**Reconvened**: 1:15 p.m.

**IN CAMERA SESSION**

**M823R7/04-2023**

*Moved By: McKinlay*

*Seconded By: Lucyshyn*

*“That the Commission move in-camera to receive legal advice.”*

***Motion carried***

**M823R8/04-2023**

*Moved By: Hutcheon*

*Seconded By: Driedger*

*“That the Commission move out of camera.”*

***Motion carried***

**A4**

**PROPOSED NIAGARA ESCARPMENT PLAN AMENDMENT PW 218 20**

**Columbia Northcliffe Campus**

574 Northcliffe Avenue

City of Hamilton

**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.

#### 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.

Note:

* Amaraine Laven, Senior Strategic Advisor, reviewed the staff report and answered questions.
* Two interested parties presented and were available to answer questions.
* Nancy McKeil, Pleasant View Protection Association, Vice Chair, presented and was available to answer questions.
* Scott Snider, Turkstra Mazza Associates presented and answered questions, and John Ariens, Planning Practice Lead, IBI Group, was present and answered questions.
* Demetrius Kappos, Counsel, was present and answered questions.

**M823R9/04-2023**

*Moved By: Hutcheon*

*Seconded By: Lucyshyn*

*“That the Commission move in-camera to receive legal advice.”*

***Motion Carried***

**M823R10/04-2023**

*Moved By: McKinlay*

*Seconded By: Vida*

*“That the Commission move out of camera.”*

***Motion Carried***

**M823R11/04-2023**

*Moved By: Witteveen*

*Seconded By: Hutcheon*

*“With regard to item A4, while report A4 of April 27, 2023, makes a recommendation regarding proposed urban use, this Commission decides to rely on the previous Commission determination dated May 21, 2020, that the proposed use does not constitute an urban use, and in light of the existence of several written objections to the proposal, the Commission refers the application to the Ontario Land Tribunal pursuant to section 10 subsection 3 of the NEPDA.”*

***For the Motion: 9 votes***

*Curley, Driedger, Gibson, Golden, Krantz, Lucyshyn, McKinlay, Vida, Witteveen.*

***Against the Motion: 2 votes***

*Hutcheon, Nielsen.*

***Motion Carried***

**DISCUSSION:**

The Commission requested further information on the history of the building use and septic system.

The Commission discussed the differing staff opinions of whether the proposed international school constitutes an urban use and next steps if the current staff report were approved. Staff advised that when written objections are received, a plan amendment application is referred to the Ontario Land Tribunal, normally with an in-depth analysis of the amendment application. The May 2020 initial staff report did not include the detailed analysis of the application, was focused on whether the application met the criteria to be circulated for comment and the final analysis and recommendation would be included with the final staff report process.

Commission Hutcheon read aloud the special provisions for Pleasant View from the Niagara Escarpment Plan, and noted his opinion that the increase to 1,000 students from the 36 approved in the special provision is a significant increase over what is permitted in the Pleasant View special policy; the special policy was not intended to allow non-boarded students and that the application should be analyzed to determine if it meets the definition of urban use, as the 2020 report was not a detailed analysis of the type of use. In addition to the very significant increase in students, the required busing and expansion of services to accommodate such an increase in staff and students should be considered an urban use.

**NEW BUSINESS**

## None.

## ADJOURNMENT

**M823R12/04-2023**

*Moved By: McKinlay*

*“That this meeting be adjourned.”*

***Motion Carried***

Time of Adjournment: 4:05 p.m.

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 Rob Nicholson

Chair