

June 16, 2005

ADDENDUM - POLICY REPORT

RE: Urban Uses Definition Respecting Amendments to the Niagara Escarpment Plan Pursuant to the *Niagara Escarpment Planning and Development Act*

Topic:

The *Niagara Escarpment Planning and Development Act* (NEPDA), as a result of consequential amendments introduced through the *Greenbelt Act, 2005* provides the Minister of Natural Resources with authority to define "urban uses" for the purpose of administering the NEPDA under Section 23 of the Act.

The changes to the NEPDA prohibit any request to amend the Escarpment Natural Area, Escarpment Protection Area, Escarpment Rural Area and Mineral Resource Extraction Area of the Niagara Escarpment Plan (NEP) to allow urban uses. This provision remains until the Plan is open for review in 2015, at which time new urban uses may be considered. Following the Review, the window would once again be closed to urban amendments until the next Review.

As noted in the earlier staff report,

- *In the absence of a Minister's Regulation, the NEC should have in place its own administrative definition for urban uses to ensure consistency in vetting Amendment applications as they come forward. This will provide a level of openness and fairness to applicants who will want to know on what basis an amendment may be rejected.*

Background:

The Niagara Escarpment Commission (NEC) reviewed the attached Policy Paper (P1(b)) at its April 20, 2005 Policy meeting. The Commission directed that staff consider the discussion and comments of the Commissioners and prepare appropriate revisions for the June 2005 meeting. The staff has also had the opportunity to consider the matter in more detail and has had the informal input of several Commissioners.

As well, since that time, the NEC made a specific determination on a pending Plan Amendment at the May 19, 2005 Commission meeting. The Grey Roots application (Amendment 157) involved the expansion of existing museum facilities and related pioneer period village. The use was originally established under a previous Plan Amendment filed by Grey County to display and protect its rural roots and heritage. The decision was that the proposal could proceed in the absence of the approved policy defining "urban uses" since the Commission was satisfied that the Plan change did not involve an "urban use". The NEC was of the view that the use proposed could only be offered in a rural setting and was therefore not an urban use.

The Aggregate Producers Association of Ontario (APAO) has also since provided a written submission on the proposed policy, as has one other landowner (the Albright Centre in The Town of Lincoln). Copies of these submissions are attached.

In the case of the APAO, the Association wished to ensure that:

- new pits and quarries would continue to be considered by amendment in the Escarpment Rural Areas;
- accessory uses such as asphalt plants and concrete batching plants commonly associated with pits and quarries would not be considered urban uses and that these types of existing facilities would remain unaffected; and
- aggregate recycling, reprocessing or blending would continue to be allowed as part of an extraction operation.

The APAO is also concerned that the "urban uses" policy was being defined too broadly and that it would prevent the processing of innovative after-use amendments on the premise that they were urban in nature. Examples included educational facilities related to agriculture, recreation or tourism. The APAO additionally submitted that urban infrastructure and systems (such as some waste treatment facilities or heating and cooling systems) that were environmentally beneficial should not be prohibited by an administrative definition. In the APAO's view the policy required increased flexibility to prevent the dismissal of reasonable applications, appropriate in a rural area.

The Albright Centre retirement community in Lincoln is concerned that the policy will prevent their planned future expansion to the senior's campus. The Centre has expressed the opinion that as an existing use, they require special consideration since the facility predates the NEP as an existing urban/institutional use already outside the Town's urban boundary. The expansion to the community has been planned for a significant period of time and has been endorsed, subject to an NEP amendment, in principle, by the Town in its proposed new Official Plan. The Centre submitted that the use is reasonable and appropriate on a 17 ha (42 acre) rural site and should not be dismissed given the societal needs of a growing elderly population. Therefore, they

submitted, provision should be made to allow the Albright Centre the continuing right to have its amendment processed.

Comments:

Flowing from the original NEC meeting, a key factor to be kept in mind, which has been confused, is that the "urban uses" prohibition only applies if, in the first instance, an amendment is required to the NEP. Urban types of uses already permitted under the Plan will continue to be processed through Development Permits. These may include small-scale industrial and commercial uses, small-scale institutional uses, small-scale commercial uses accessory to agriculture, home businesses, golf courses and various recreational uses in the designations of the Plan where these are currently permitted.

Where amendments are processed, in existing Urban, Minor Urban and Escarpment Recreation Areas or in designations outside of such areas where new urban uses are not being proposed, these are still subject to meeting the tests normally applied to all amendments (e.g., planning justification, satisfying the public interest, meeting the purpose and objectives of the NEPDA). Therefore, deeming an amendment to not be an urban use does not necessarily translate into endorsement or ultimate approval of such an amendment.

Regardless of how the NEC defines "urban uses," some ongoing interpretation will be required. Proponents will continue to request the opportunity to try and convince the Commission that their applications are unique and therefore should be exempted or should not be considered an urban use because of its special characteristics. As well, there will likely be some applications that are difficult to categorize and NEC input will be necessary. There may also be instances where neighbours or interested parties wish an application to be identified as an urban use so that processing would be prevented. In all instances the final decision would be the NEC's, based either on its definition or one which may eventually be put in place by the Minister of Natural Resources through Regulation.

The issues raised by the NEC at its April 20, 2005 meeting included:

1. Ensuring that recycling of aggregate materials was permitted where it was part of a mineral extraction operation.
2. Allowing for amendments to be made for asphalt plants, concrete batching plants or other similar uses related directly to on-site mineral extraction.
3. Allowing flexibility for land use redesignation in worked out pits and quarries.
4. Clarifying whether or not golf courses were an urban use.
5. Clarifying whether or not non-intensive ski hills/trails and other rural oriented recreation and tourist destination uses will be allowed.
6. Clarifying whether or not raceways would prevent tracks being established on horse farms.

7. Ensuring that public utilities could be extended to address environmental problems or allowing connections to existing uses where servicing already exists outside of urban areas.
8. Addressing the issue of "monster homes" as an urban use.
9. Dealing with expansions to existing uses that are already urban in nature or have already been permitted under a previous Plan amendment.

These issues, in part, mirrored those raised in comments to the NEC by the APAO and Albright Manor.

Staff remains of the opinion that the definition should be cast in very broad terms and through specific exclusions tailor the policy to provide guidance in specific instances where there is a question of whether the use is rural or urban in nature. The more scoped or specific the definition, the more numerous the requests for flexibility or exception to the policy.

In terms of the points raised above, most of the issues can be addressed in a revised policy. This would include clarifying that aggregate recycling and uses accessory to aggregate mining are not "urban uses" subject to location and timing requirements. Amendments involving the redesignation of pits and quarries to a compatible after-use should be permitted with limitations on what can be applied for. Such redesignation should not include "urban uses" other than those already prescribed in an Escarpment Natural, Protection or Rural designation.

Golf courses have been defined as an "urban use" which will restrict them to Escarpment Rural Areas and Mineral Resource Extraction Areas, where they are currently permitted.

Staff is satisfied that the proposed definition does not capture non-intensive recreational or rural uses (e.g., ski trails and passive recreational uses) and farm related facilities (e.g. horse tracks). These are dealt with under the current permitted use provisions of the Plan.

The policy, as written, already provides for water and sewer services where it has been determined that an environmental or health issue must be addressed.

Large dwelling (i.e., "Monster homes") have traditionally been considered on a site by site basis (e.g., lot size, location, visual impact, compatibility) since the Plan was approved. The NEC has no formal upset limit on how large a home can be. The Plan is silent on the matter and lists a single dwelling as a permitted use in all designations. Taken to the extreme any home could be considered an urban use. It is recommended that the current practice of individually assessing the home based on the site where it is proposed using the Development Criteria of the Plan be continued. To define a large dwelling as an "urban use" would seem arbitrary without further NEC evaluation and study, including the possible processing of an amendment to the Plan to set a size limit.

Existing uses present a particular difficulty when a pre-existing "urban use" is involved or an "urban use" which has been introduced through a past Plan Amendment. The Plan provides for modest expansion subject to the Development Criteria in the NEP. Larger expansions require a Plan amendment. With no exception built into in the "urban uses" policy, expansions could only be considered at the Plan Review in 2015. The objective, however, is to limit urban intensification in the Plan area regardless of whether it involves a new use or an existing use. Although there is merit to considering some expansions to existing uses (e.g., recent NEC endorsement of Grey Roots Amendment application), on balance it is staff's view, that it would significantly weaken the "urban uses" definition and intent of the changes introduced to the NEPDA through the *Greenbelt Act, 2005*. To specifically provide for expansions to existing urban uses also invites exceptions to the policy, since all existing uses would be eligible to file amendments regardless of their history or situation. This would constitute an ongoing weakness, throughout the Plan to the prohibition on amendments for "urban uses."

However, although it is not recommended, should the NEC wish a policy to cover existing uses, the following wording is recommended as an addition to the revised "urban uses" policy attached to this Addendum Report:

- Notwithstanding (a) to (i) above, those "urban uses" which satisfy the definition of existing uses under the Niagara Escarpment Plan or were introduced as an exception to the Plan's permitted uses through an amendment to the Plan, are excluded for the purpose of considering an amendment to expand the existing use or change the terms of an approved amendment, provided the designation is not changed and the use does not involve expansion or alteration of an existing landfill or waste disposal site as defined in the Niagara Escarpment Plan.

Additionally, it is not recommended that single residential severances or the development of an existing lot of record be identified as an "urban use." A single severance or the development of an existing lot of record in the rural area would not normally be considered an "urban use." The amendment process, set out under the NEPDA, can adequately address these types of proposals. Such applications will only be initiated where there is a planning justification and a public interest has been identified.

RECOMMENDATION:

1. adopt the attached policy interpretation on defining "urban uses" to be used for administration of Section 6.1(2.2) of the *Niagara Escarpment Planning and Development Act* respecting the processing of Amendment application.
2. provide the policy interpretation to the Ministry of Natural Resources and the Minister for consideration as the Regulation provided for under Section 23(e) of the *Niagara Escarpment Planning and Development Act* to define "urban uses".

3. monitor the administration and operation of the policy interpretation on an ongoing basis and consider revisions should the "urban uses" definition not prove effective.

Ken Whitbread
Manager

C/KW/ Urban Uses Regulation Policy Report June 16 05

Appendix 1

June 16, 2005

POLICY INTERPRETATION FOR URBAN USES MADE TO ADMINISTER SECTION 6.1(2.2) OF THE NIAGARA ESCARPMENT PLANNING AND DEVELOPMENT ACT

This policy interpretation applies in the absence of a Regulation made by the Minister of Natural Resources under Section 23(e) of the *Niagara Escarpment Planning and Development Act* defining urban uses.

Section 6.1(2.2) prevents the consideration of any request to amend the Niagara Escarpment for an "urban use" in the Escarpment Natural Area, Escarpment Protection Area, Escarpment Rural Area and Mineral Resource Extraction Area designations, where such an amendment is required to permit the "urban use".

The definition, as set out below, is therefore intended to address those "urban uses" not already identified by the Niagara Escarpment Plan as permitted uses in the Escarpment Natural Area, Escarpment Protection Area, Escarpment Rural Area and Mineral Resource Extraction Area designations. Urban uses already identified in the Niagara Escarpment Plan are not affected by this definition, since they do not require an amendment to the Plan; therefore the policy will have no effect on those urban uses.

URBAN USES

"Urban Uses" includes the following,

- (a) Commercial and industrial land uses, excluding
- mineral extraction operations and associated accessory uses, including processing, manufacturing and recycling and reprocessing facilities as provided for by amendment from the Escarpment Rural Area designation to the Mineral Resource Extraction Area designation in the Niagara Escarpment Plan, and
 - accessory uses, including processing, manufacturing and recycling and reprocessing facilities associated with mineral extraction operations, which are located in the Mineral Resource Extraction Area designation of the Niagara Escarpment Plan.

Notwithstanding the exclusions above, all accessory uses associated with a mineral aggregate operation will only be considered on the basis that they are proposed as temporary and will remain in place only for the duration of the mineral extraction operation.

- (b) Institutional land uses, and

- (c) multiple residential, or land uses that have a mix of residential units with another type of land use, and
- (d) recreational and tourist destination land uses such as downhill ski centres, lakeshore cottage areas, resort or lodge development, raceways, hotels, casinos, golf courses, golf course driving ranges, including retail operations and service establishments associated with such uses, and
- (e) systems and infrastructure such as sewers, mains, water pipes, and other services associated with public utilities, excluding systems and infrastructure where it has been determined by a medical officer of health (or health authority) that there is a public health concern that must be addressed, and
- (f) waste disposal or landfill sites, incineration sites, waste recycling sites, sewage treatment sites and facilities associated with such sites, excluding the recycling or reprocessing of mineral aggregate resources and aggregate materials within an approved Mineral Resource Extraction Area designation in the Niagara Escarpment Plan, and
- (g) multiple lot creation by way of plan of subdivision, consent to sever or plan of condominium, and
- (h) land uses that would normally be found within the land use designations of Minor Urban Centre, Urban Area or Escarpment Recreation Area in the Niagara Escarpment Plan, and
- (i) land uses that would normally be found within a designation in a municipal official plan for an area of settlement such as an urban area, urban policy area, town, village, hamlet, rural cluster, rural settlement area, urban system, rural service centre, future urban use area or designated growth area.

Notwithstanding (a) to (i) above, those "urban uses" which are currently permitted under the Escarpment Natural Area, Escarpment Protection Area and Escarpment Rural Area designations, not specifically introduced as part of a past Niagara Escarpment Plan Amendment or exception, are excluded for the purposes of amending a Mineral Resource Extraction Area in the Niagara Escarpment Plan to any one of those designations, provided additional "urban uses" are not included in any such amendment.

October 15, 2008

POLICY INTERPRETATION REVIEW REPORT

RE: Urban Uses Definition Respecting Amendments to the Niagara Escarpment Plan Pursuant to the *Niagara Escarpment Planning and Development Act*

Topic:

The Niagara Escarpment Commission (NEC), in the absence of a Minister's Regulation defining Urban Uses, adopted a policy interpretation on June 16, 2005 to address the matter. The Urban Uses definition as set out in the policy interpretation was to be used for the administration of Section 6.1(2.2) of the *Niagara Escarpment Planning and Development Act* (NEPDA) respecting the processing of Niagara Escarpment Plan Amendment Applications. The approved policy interpretation is attached as Appendix 1.

On June 19, 2008 the NEC indicated that it would discuss the policy interpretation at its October 15, 2008 policy meeting and make a determination as to whether or not the policy interpretation required change.

Summary Recommendation: Confirm existing Urban Uses Policy Interpretation.

Recent Background:

The latest catalyst for this discussion was related to the NEC initiation of the Plan Amendment for the redesignation of the Queenston Quarry (No. 171) from Mineral Resource Extraction Area to Escarpment Rural Area. In an earlier determination, the NEC had decided that the Amendment could not include an exception to permit a serviced hotel/resort/spa/recreational complex within the proposed Escarpment Rural Area (outside of the Minor Urban Centre as set in 1998 by the OMB) because this component of the proponent's concept plan was an Urban Use as defined by the policy interpretation. Other parts of Amendment No. 171 could proceed since the proposed Escarpment Rural Area designation made allowance for the remaining uses including a vineyard, a winery, a golf course, an equestrian center, outdoor recreational fields and hiking trails. As well, in principle, the lands within the Minor Urban Centre of St. David's, covering

a portion of the Queenston Quarry lands, could be considered for residential or other urban uses typically found within a Minor Urban Centre.

On a related matter, the proponent (because of the NEC decision to not accept the serviced hotel/resort/spa/recreational complex) has proposed for agency consideration a boundary revision to St. David's, significantly redefining the Minor Urban Centre to include the "complex" in the new boundary while excluding areas of the Minor Urban Centre which were not seen as developable. The revised boundary would slightly decrease the 12 hectares (30 acres) of the Queenston Quarry lands now included in the Village limits, but it would significantly alter the shape. The proponent held the view that the provisions of the NEP governing Minor Urban Centers provided scope for this modification. The provision in question reads:

- An Amendment will not be required to reduce the area of a Minor Urban Centre and show the revised boundary on the Maps of the Niagara Escarpment Plan, if the boundary has been redefined to reduce the area of a Minor Urban Centre by a municipality, in an approved official plan and/or secondary plan.

The NEC staff indicated to the proponent in a meeting, with the constituent municipalities present, on July 31, 2008 that the modification proposed required an Amendment to the NEP. As such, the change could not be considered until the Plan Review in 2015. Note: The NEC is aware of this submission on the change to the Minor Urban Boundary but has not formally been asked, as a Commission, to take a position.

Briefly, the change to the NEPDA introduced through the *Greenbelt Act, 2005* prohibits the filing of any NEP amendment to redesignate land to Minor Urban Centre, Urban Area or Escarpment Recreation Area or make any other amendment to permit urban uses in the area of the NEP where the lands are designated Escarpment Natural Area, Escarpment Protection Area, Escarpment Rural Area or Mineral Resource Extraction Area, until the matter can be considered in the 2015 Plan Review.

On a related application, the NEC is advised that the Albright Centre continues to ask the Minister for an exception to the Urban Uses policy interpretation. The Staff understands that the Minister has indicated that it is the NEC that is responsible for processing amendments, and the request is more properly directed to the NEC for further consideration. As the NEC may recall, on October 19, 2006 the NEC refused to initiate an Amendment to either enlarge the urban area of Beamsville or process an exception to the NEP for the expansion of a seniors' complex and the long-term care facility. The lands in question were already serviced but located just outside the existing urban boundary.

Policy Effectiveness:

When the Urban Uses policy interpretation was adopted on June 16, 2005, the NEC indicated that it would:

- Monitor the administration and operation of the policy interpretation on an ongoing basis and consider revisions should the “Urban Uses” definition not prove effective.

The staff assessment of the policy interpretation is that it has been extremely effective in limiting Amendments for Urban Uses. This includes those which have been formally submitted and others where the staff have indicated to prospective applicants that the proposal in question is an Urban Use and therefore cannot be processed. To date, the submissions that have been deferred or denied as Urban Uses (under the approved Policy interpretation) include:

- Amendment 162 (Stewart) - construction of a subdivision road.
- Amendment 163 (Clement) - three bedroom bed and breakfast in an accessory building.
- Amendment 164 (Albright Centre) - expansion of the seniors' complex and the long-term care facility.
- Amendment 171 (Queenston Quarry/QQRC) - serviced hotel/resort/spa/recreational complex component.
- Colpoy's Cove Lands (Litz) – new subdivision road, marina, lagoon, 22 waterfront lots and park donation.
- Silver Birch Camp Ground – redevelopment of trailer park into a 16 lot rural plan of subdivision.
- Burlington City Park – municipal servicing and related major recreational/commercial facilities (deleted from master plan).
- Fisher Farms – provision for the recognition and expansion of a highway commercial nursery outlet, landscaping business and related greenhouse operation.
- Canadian Reform Church Of Burlington – establishment of a school facility and gymnasium.

On April 25, 2008, the NEC was also successful in quashing an Ontario Municipal Board decision at the Ontario Court of Appeal respecting the holding of a hearing on the Highview Estates Subdivision expansion in Burlington using the prohibition on Urban Uses in the NEPDA as part of its argument before the courts.

The NEC staff, in administering the NEP, as part of regular business has dealt with a number of applicants where the proposal (in staffs' view) involves a Urban Use. Not all meetings and conversations are documented, but staff does recall at least two golf courses and one winery interested in providing resort/hotel accommodation. Additionally, there have been a number of inquires about the

conversion of large rural residences to country inns/spas and the establishment of restaurants and commercial banquet facilities.

The policy interpretation itself has generally acted as a deterrent to the filing of requests, applications and amendments involving urban designations and uses. The policy interpretation is posted on the Commission's web site.

The NEPDA (The Act):

Section 6.1(2.2) states that no person or public body shall make an application or request for an urban designation or urban use until 2015, as discussed earlier in this Report.

A public body in the Act means, *"a municipality, local board, ministry, department, board, commission, agency or official of a provincial or federal government or a First Nation"*.

The definition of public body does not apparently bar the Minister or the NEC from processing an amendment which involves an urban designation or urban use, provided the application is made by the Minister or the NEC. The term "commission" in the definition of *public body* apparently does not capture "the Commission", which is separately defined in the Act and is always capitalized.

It is assumed that this power to override Section 6.1(2.2) would only be used in the most unique or rare of circumstances where it was either essential or in the public interest that the NEP be modified. It would be inappropriate that the Minister or the NEC be the sponsor of private amendments that are proponent driven, involving urban uses. The Minister or the NEC would not want to provide the planning rationale to justify and facilitate a private amendment; this is not the role of the Minister or the NEC.

As an added note, the NEC would be acting outside its jurisdiction to modify a private amendment (that was accepted and initiated without an urban use as part of the original application) at the point, following public and agency circulation, that the Commission takes a position for the purposes of sending the application to the Minister or the Hearing Officer. The Hearing Officer is also bound by the nature of the original application and could not deal with an introduced urban use at the hearing stage, if the proponent wished to have it included. Likewise, the Minister or the Cabinet would face the same jurisdictional problem in changing an amendment at the time of decision to include an urban use which was not processed in the original amendment. The problem is that this action would seek to achieve indirectly what the statute prohibits directly. Only the NEC or the Minister can process an amendment with an urban use.

Discussion:

Although the Queenston Quarry Amendment may have been the impetus for the policy interpretation being brought back for discussion, that Amendment should not be the main focus of revisiting the matter. The issue, as staff sees it, is whether or not the NEC wishes to open up “rural” areas of the NEP to resorts, hotels, inns, spas, restaurants, banquet halls, conference centers and similar destination recreational/accommodation/tourism facilities. The position being put forward is that this type of development should be considered a “rural” use rather than an urban use, since it is based on the need for an attractive or unique rural location. For argument’s sake, one could also take the position that residences and time share accommodation could all fall under the “rural” blanket of a resort type of use.

Associated with this issue is the extension of hard urban services to lands outside of urban boundaries (e.g., water and sewer lines).

The Urban Uses policy interpretation, if it is changed, would continue to apply to the entire NEP and not just one site based on its particular circumstances. This is consistent with the practice of fairness and transparency for all landowners who should be treated equally. In staff’s experience, all landowners make the case that their proposal is special and different than any others, and needs extraordinary consideration.

It will therefore be difficult to accommodate a change in the policy interpretation to reflect a development like the one proposed in conjunction with Amendment No. 171 without setting the stage for many more amendments related to resorts and similar fully serviced uses that wish to locate in a “rural” area. In fairness, all of the deferred Amendments and rejections would have to be invited to apply again and be reconsidered against a new policy interpretation regime. If found similar, or less intrusive in terms of scale and operation, these too should be allowed to be considered through the NEP Amendment process (i.e., as possible exceptions to the applicable Designation).

The rehabilitation of a site from a Mineral Resource Extraction Area or former industrial use is also not a justification to allow an urban use. If urban uses were intended to be considered on Mineral Resource Extraction Areas, the explicit prohibition in the Act on redesignation of such Areas to Urban Area, Minor Urban Centre or Escarpment Recreation Area would not have been placed in the Legislation. The expectation under the NEP is that Mineral Resource Extraction Areas are to be rehabilitated and eventually all are to be redesignated in accordance with the Designation Criteria in the NEP. It is this new NEP designation that will be the one that allows or doesn’t allow a use like a destination resort. For example, if the NEC were to change the policy interpretation to allow for the original Queenston Quarry proposal to proceed, it would be on the basis that the Escarpment Rural Area within the NEP could accommodate such uses

(in principle). This would mean that all Escarpment Rural Areas would be eligible for similar uses (subject to the tests of an NEP Amendment) since the policy interpretation would no longer consider a hotel, for example, as an Urban Use.

The Urban Uses policy interpretation, as structured, is intended to prevent NEP Amendments from being submitted as exceptions to the permitted uses in the Plan, where such Amendments should more correctly be processed as Urban Area, Minor Urban Centre or Escarpment Recreation Area designation requests. In the Queenston Quarry case at hand, the proper Amendment would be to propose an Escarpment Recreation Area.

The Escarpment Recreation Area Criterion for Designation states:

- Established, identified or approved recreational areas (e.g., ski centres, lakeshore cottage areas, resort development and the four seasons Craigleith-Camperdown Recreation Area in the Town of the Blue Mountains). [Staff underline]

The Urban Uses policy interpretation captures the uses within this Designation in the following sub-sections:

- (d) large-scale or intensive recreational and tourist destination land uses such as...resort or lodge development...hotels...golf courses...including retail operations and serve establishments associated with such uses.
- (e) systems and infrastructure such as sewers, mains, water pipes and other services associated with public utilities...
- (h) land uses that would normally be found within the land uses designations of Minor Urban Centre, Urban Area or Escarpment Recreation Area in the NEP.

An exception by the NEC for one amendment would set a precedent for all previous applications set aside until 2015 and any future applications, where there are similarities in use and designation.

The **advice of the Staff**, based on the discussion in this Report, is that the Urban Uses policy interpretation **should not be reopened and changed**. The policy interpretation has been very effective in doing what it was intended to do, preventing Amendments for Urban Uses until the matter can be comprehensively considered in 2015.

Should the NEC not agree with the advice, the following options are available for consideration, understanding that the full NEPDA amendment process still applies, if the policy interpretation is modified:

1. Modify the Urban Uses policy interpretation on an application by application basis based on what the NEC sees as the planning merits of the proposal and the characteristics and history of the property in question (e.g., in the public interest, future quarry rehabilitation, lands already serviced, existing use in place).

2. Modify the Urban Uses policy interpretation to exclude a class of urban development (e.g., serviced resorts associated with a permitted recreational or agricultural use or uses [like a golf course or winery]) or a class of development within a certain Plan Designation (e.g., Escarpment Rural Area, Escarpment Protection Area). Note: This could be extended to cover expansions to urban uses where an existing urban use (legal non-conforming or existing use as defined by the NEP) is already in place. A number of applications filed with the NEC, like the Albright Centre, reflect this situation.
3. Modify the Urban Uses policy interpretation to exclude a class of urban development (e.g., serviced resorts associated with a recreational or agricultural use or uses) within a Mineral Resource Extraction Area where the Designation is proposed to be changed (e.g., to Escarpment Rural Area, Escarpment Protection Area, etc.).
4. Modify the Urban Uses policy interpretation to exclude a class of urban development that is dependent on the rural environment and is closely related to the resource base and countryside of the area, including tourism and recreational opportunities (e.g., hotels, destination resorts, conference centres, banquet facilities, visitor and visitor centres).

In all of the above, a decision to include or exclude municipal services would have to form part of the options. This represents an inherent difficulty because these types of services would be very difficult to exclude as urban uses from the Urban Use policy interpretation.

Option 1 would be viewed as the least transparent by the public.

An option which does not involve the changing of the Urban Uses policy interpretation would be for the NEC to:

- initiate and process the Commission's own NEP "generic" Amendment to provide the opportunity for a particular Urban Use to be considered. For example in the case of the Queenston Quarry this could mean an Amendment seeing a part of the property proposed as Escarpment Recreation Area. In the Albright Centre situation it could be a redesignation of a part of the lands to Urban Area. The appropriate designation would be dependent on the nature of the proposal in a particular planning situation.

To do this the NEC would have to be convinced that the Amendment was essential, one of a kind, in the public interest and/or necessary for the proper operation of the NEP, otherwise the use of the NEC power to override Section 6.1(2.2) could be seen as arbitrary or inconsistent and inviting of any number of other applications expecting similar treatment by the Commission on its Urban

Use. The NEC will have to, by resolution, carefully provide reasons/justification for initiating such an Amendment since normally this type of Amendment is, and will be seen to be, of benefit to only the proponent. A further difficulty may be the matter of providing planning justification, especially when the Amendment goes to a hearing. The Staff of the NEC will, with NEC direction to do so, undertake the required Amendment drafting and processing, but there will be difficulty in defending such an Amendment at a hearing, should staff be examined as to their professional planning opinion. The landowner, assuming participation at a hearing, should be expected to support the Amendment in the absence of NEC Staff endorsement.

No matter what option the NEC selects, the four policy interpretation change options are seen as the most problematic since it opens the policy interpretation up to any number of proposals or requests to accommodate a diverse range of what are now considered Urban Uses. It will be difficult to tailor the test for one type of use but exclude another. The criticisms will be that the NEC will be favouring one kind of use (and applicant) over another, all of which appear to be urban. The pressure will be to ever expand the Urban Use exceptions. If the NEC is not seen as being consistent, the likely result is litigation. At least the option of the NEC deciding to process Amendments involving Urban Uses is legally provided for in the NEPDA.

Conclusion:

The policy interpretation on Urban Uses adopted on June 16, 2005 should not be modified, having proven itself as very effective in limiting Niagara Escarpment Plan Amendments involving the introduction of Urban Uses as set out in the NEPDA. There are no compelling reasons identified at this time related to the operation of the Niagara Escarpment Plan that would require changes to the Urban Use policy interpretation. It is not essential nor in the public interest to alter the policy interpretation, before the Plan Review in 2015.

The NEC always has the legal means to process its own Amendment to consider an urban use (or designation) should it decide to do so, subject to the cautions outlined around using this authority under the Act.

Recommendation:

That the Niagara Escarpment Commission **not modify** the policy interpretation currently governing proposed Amendments filed for Urban Uses, adopted on June 16, 2005.

Note: Following discussion, the Commission's Rules of Procedure require a two-thirds majority to reopen an approved policy interpretation for the purpose of considering a change to the policy interpretation. Once reopened a simple majority is required to change the policy interpretation.

Ken Whitbread
Manager