A1: Staff Report

Date: April 17, 2025

File: **N/C/****2023-2024/194**

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# Development Permit Application:

N/C/2023-2024/194

Property Legal Address:

1469 Pelham Road

Part Lots 5 & 6, Concession 8

Part of Part 1 and Part 2, Plan 30R-10905

City of St. Catharines, Region of Niagara

ARN: 26290200381270000000

Property Owner: Henry of Pelham Family Estate Winery

Agent: Matthew Speck

# Executive Summary

**Proposal:** To recognize the asphalt resurfacing of ± 9,290.3 sq m (100,000 sq ft) of the existing gravel driveway and parking area on an existing 20.8 ha (51.4ac) lot that supports a vineyard and winery on private servicing.

**Issues**: Decision required by Commission because the application does not meet the terms of the Delegation of Authority for a Director’s Approval. This is not the first time the applicant has undertaken development on the property without approval under the *Niagara Escarpment Planning and Development Act*.

**Recommendation**: Approval, subject to conditions

**Reason**: The driveway and parking area are accessory to the existing commercial winery use and are permitted under this designation and meets the Development Criteria of Part 2 of the Niagara Escarpment Plan (2017). No agency objections.

# Recommended Motion

That Development Permit Application be approved.

# 1.0 Proposal

To recognize the asphalt paving of ± 9,290.3 sq m (100,000 sq ft) of the existing gravel driveway and parking area on an existing 20.8 ha (51.4ac) lot that supports a vineyard and winery on private servicing.

# 2.0 Niagara Escarpment Plan Designation

Escarpment Protection Area

# 3.0 Site Description

The subject property is located at the northwest corner of Pelham Road and Fifth Street Louth in the City of St. Catharines (see Appendix 2). The surrounding area is largely agricultural operations, mainly vineyards and rural residential lots. The winery buildings, and associated driveways and parking areas, are clustered at the southeast corner of the property, nearest to the roads. The remaining property is an active vineyard.

As identified in the Niagara Escarpment Plan, NEC mapping, via agency comment, the key hydrologic and natural features that exist on the lands include a tributary of Richardson Creek traverses the southeast quadrant of the property in a north/south direction.

# 4.0 Background

This is an application to recognize the asphalt paving of the existing gravel driveways and parking area that service the winery buildings (the development already occurred). Construction of the gravel driveway and parking areas were approved under previous permits.

The existing limits of the driveways and parking areas are not being widened or expanded and the underlying bedding materials and existing culverts are not being altered.

## 4.1 Delegation of Authority

NEC Director does not have delegated authority to approve this application. Under the Delegation of Authority, the Director may issue a permit for development that has already occurred, or has commenced where the Director is satisfied all of the following criteria have been met

1. the development complies with the NEP;
2. there are no questions of interpretation of the NEP;
3. the application and supporting documentation are complete;
4. the Commission staff planning report has been completed and submitted to the Director;
5. it is the first time that the applicant has undertaken development on the property without approval under the NEPDA; and
6. the Crown has not initiated a prosecution with respect to the development which is the subject of the application.

While the application meets most of the criteria listed above, it does not meet e). As identified in Related Files below, the applicant was issued two permits in 2010 to recognize development that had already occurred without a permit, including:

* the change in use of a dwelling unit to winery-related uses, including offices, staff lunchroom, and hospitality/meeting rooms, and
* the construction of a dug pond for fire suppression purposes.

Therefore, this application requires a decision by Commission.

# 5.0 Related Files

**N/C/2017-2018/168** - Permit issued on May 16, 2018, to construct an accessory structure to be used for wine production and bottling, and to construct an additional parking area and retaining wall to the north of the proposed structure.

**N/A/2013-2014/91** - Permit issued September 12, 2014, to permit the change in use of a 1 storey agricultural storage building approved by Development Permit 6272/N/A/97-98/346 to office use for Henry of Pelham Family Estate Vineyards farm employees, and to upgrade the existing sewage disposal system facilities.

**N/A/2011-2012/338** – Permit issued Nov 6, 2013, to permit grading and excavation for vineyard.

**N/C/2006-2007/112** - Permit issued December 7, 2010, to recognize the change in use of a dwelling unit to winery-related uses, including offices, staff lunchroom, and hospitality/meeting rooms.

**N/F/2006-2007/111** - Permit issued December 7, 2010, to recognize the construction of a dug pond for fire suppression purposes.

**N/C/2002-2003/245** Permit issued in 2003 to construct an addition to an existing winery.

**N/C/2002-2003/208** - Application submitted in 2002 to recognize an existing winery café. Application withdrawn; no permit issued.

**N/A/1997-1998/346** Permit issued May 1998 to replace an existing equipment storage building with a new larger agricultural storage building and to construct an addition to the existing winery building.

**N/C/1992-1993/045** Permit issued June 1992 to construct an addition to an existing farm building for a cold storage room for the winery.

**N/I/198801989/219** Permit issued May 1989 to use an existing barn as a cottage winery, and to erect signage.

**N/A/1986-1987/315** Permit issued March 1987 to construct a farm storage building.

# 6.0 Summary of Agency Comments

Note that a complete transcript of agency comments is provided in **Appendix 5**.

## 6.1: Region of Niagara

* The subject property is located within the Prime Agricultural Area, and more specifically within the Specialty Crop Area. The proposed application does not conflict with the Provincial Planning Statement (PPS) and conforms to Provincial and Regional plans.
* The subject property is located within the mapped Area of Archaeological Potential in the Official Plan, however an archaeological assessment not warranted as there is no deep disturbance proposed.
* The subject property is within the Region’s Natural Environment System (“NES”) consisting of Other Wetland. The Region offers no objection to the application from a natural environmental perspective.

## 6.2: City of St. Catharines

* Municipal zoning does not apply, however, NEC staff consider it to be an important tool to guide NEC permit decisions.
* The lands are zoned Agriculture (A1) and Conservation/Natural Area (G1). The A1 zone permits Agricultural Farm Related Commercial or Industrial, an Agricultural Farm, a Detached Dwelling, and other agricultural-related uses. No development is proposed within the G1 zone.
* The subject land is sufficient to manage runoff from the proposed paved parking area and no request has been made to expand the existing parking area. City staff offer no objection to the proposed development.

## 6.3: Niagara Peninsula Conservation Authority (NPCA)

* A portion of the works is adjacent to a watercourse shown on NPCA mapping.
* The driveway and parking area is not being widened or extended and existing bedding materials and existing culverts are not altered.
* The NPCA has no issues with resurfacing the existing gravel parking area with asphalt.
* NPCA note that the works is exempt from NPCA comments under NPCA’s current regulation (Ontario Regulation 41/24).

# 7.0 Planning Analysis

## 7.1 Overview:

## Re-surfacing of the driveway and parking areas is a permitted use under Part 1.4.3 of the NEP and the work meets Parts 2.2, 2.6 and 2.8 of the NEP.

R.R.O. 1990, Regulation 828 does not provide an exemption for re-surfacing or paving of existing driveways on private lands.

## 7.2 NEP Part 1: Part 1.4.3 Permitted Uses in Escarpment Protection Area

## Subject to Part 2, Development Criteria the following uses are permitted use in Escarpment Protection Areas, Part 1.4.3: Agricultural uses, Agriculture-related uses and on-farm diversified uses, in prime agricultural areas and Accessory uses.

### 7.2.1 Analysis:

### The Henry of Pelham Family Estate Winery has operated since the early 1980’s and pre-dates the Niagara Escapement Plan and is an existing use under Part 1.4.3.3. The driveway and parking areas are accessory use to the winery operation and permitted under Part 1.4.3.11.

Part 1.4.3 of the NEP has been met.

## 7.3 NEP Part 2.2 General Development Criteria

## Re-surfacing of the driveway and parking areas meets the objective and intent of Part 2.2.

### 7.3.1 Analysis:

* The works are occurring within and on previously developed areas of the lot which are clustered in one corner of the lot. As per Part 2.2.1 the Escarpment environment shall continue to be protected for the long-term.
* The works are entirely outside any natural hazard areas, as per Part 2.2.2 and area on an existing lot of record per Part 2.2.3.

## 7.4 NEP Part 2.6 Development Affecting Water Resources

Re-surfacing of the driveway and parking areas does not conflict with the objectives and intent of Part 2.6.

### 7.4.1 Analysis:

* NPCA advised that tributaries of Richardson Creek traverse the subject property. One of those tributaries is shown on NPCA mapping is located immediately adjacent to, the driveway from Fifth Street. NEC mapping does not show this as a watercourse.
* Arial imagery shows this to be a drainage ditch that runs under Fifth Street, along a naturalized ditch adjacent to the subject driveway and then goes underground at the winery buildings.
* Notwithstanding NPCA mapping, NEC staff are of the opinion that it is part of the natural drainage system rather than a key hydrologic feature within the meaning of the NEP as per Part 2.6.1.
* Development is not occurring within a key hydrologic feature per Part 2.6.2.
* Based on the review of previous files, the portion of the gravel driveway has been in place and is use form the early 1990’s. The driveway is not being widened or extended and existing bedding materials and existing culverts are not being altered.
* NEC staff are of the opinion that the paving works will not result in a negative impact to the adjacent watercourse per Part 2.6.3.

## 7.5 NEP Part 2.8 Agriculture

Re-surfacing of the driveway and parking areas does not conflict with Part 2.8.

### 7.5.1 Analysis:

* Only existing gravel driveway and parking areas are being re-surfaced or paved. All those areas are clustered into the southeast corner of the lot, in and around existing buildings.
* The area being re-surfaced do not encroach into the agricultural areas (vineyards) on the lands and support the on-going winery operations.
* As such, the paving works continue to protect the agricultural use of the property per Part 2.8.1 and the previously approved winery per Part 2.8.8.

## 7.6 Provincial Planning Statement 2024 (PPS)

Sections 4.1 and 4.3 of the PPS direct the long-term protection of natural heritage features and areas and prime agricultural areas, including specialty crops area, respectively. The application recognizes the re-surfacing of existing driveways and parking areas. The limits of these area will not be widened or extended. NEC staff do not anticipate any negative impact to the surrounding natural heritage features or existing agricultural lands and operations. The proposed development is consistent with Sections 4.1 and 4.3 of the PPS.

# 8.0 Additional Considerations

This application is before the Commission for decision as there have been previous occurrences of development on the property without a permit. As per the delegation of authority related to Development Permits, where an applicant or property has more than one compliance occurrence, decisions related to Development Permits must be made by the Commission.

It is important to note that decisions related to Development Permit applications should be made in relation to the policies of the NEP. Although the file is before the Commission for decision as a result of non-compliance, compliance history is not a consideration under the NEP policies and should not be considered in the Commission’s decision on the current application for the asphalt paving of existing gravel driveways and parking areas. The compliance history was included for consideration of and in relation to the director’s delegation of authority.

NEC staff are of the opinion that the Commission’s level of discretion for this application is low, given the proposal is a permitted use under the NEP (accessory use) and meets relevant Development Criteria in the NEP (i.e., General, Water Resource, and Agriculture) and policies of the PPS.

# 9.0 Recommendation

That Development Permit application be approved.

# Prepared by:

Original signed by

Rosi Zirger

Senior Planner

# Approved by:

Original signed by

Jessica Isaac

Planning Manager

# Attachments:

Appendix 1 – Site Plan

Appendix 2 – Mapping: Niagara Escarpment Plan

Appendix 3 – Mapping: Niagara Peninsula Conservation Authority

Appendix 4 – Google Map Captures

Appendix 5 – Agency Comments

1. Region of Niagara
2. City of St. Catharines
3. Niagara Peninsula Conservation Authority