A1: Staff Report

Date: May 15, 2025

File: N/R/2022-2023/674

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# Development Permit Application:

N/R/2022-2023/674

457 Main Street W, Grimsby

Part Lot: 19 PT RD; ALLOW, Concession: 2 & 3

ARN 26150200202590000000

# Executive Summary

An NEC Permit was issued in 2018 to demolish an existing single dwelling and to construct a new dwelling on the subject property. Although the new single dwelling was constructed, the old dwelling was never demolished as per the Condition of the NEC Development Permit. Thus, the property is not currently in compliance as only one single dwelling is permitted per lot within the Escarpment Protection Area (EPA) and Escarpment Natural Area (ENA) designations which this property is located.

The current application proposes to sever three (3) lots from the existing 6.2 ha subject property and to retain the existing lot for a total of four (4) lots. The applicant is proposing to establish a single dwelling on each of the four lots. They are proposing to sever the older dwelling on one of the new lots, to construct a new single dwelling on the other two additional lots, and to retain the newest dwelling on the retained lot.

The application requires a decision from the Commission because the proposed lot creation conflicts with the lot creation policies of the Niagara Escarpment Plan (NEP). The policies of the NEP would not support any additional lot creation. Applications that conflict with the policies of the NEP require a Commission decision.

# Recommended Motion

That the Development Permit Application be refused.

# Proposal

To sever an existing 6.2 ha lot into three ± 0.12 ha (0.28 ac) additional lots and to retain a ± 5.8 ha lot and to undertake the following:

* To construct a two storey, ± 371.6 sq m (4,000 sq ft) single dwelling with a maximum height to peak of ± 10.7 m (35 ft), driveway, and private sewage treatment system on two (2) of the proposed ± 0.12 ha vacant lots;
* To retain an existing 1.5 storey, 167 sq m (1,800 sq ft) single dwelling with a maximum height to peak of 10.7 m (35 ft), and construct a driveway on one of the proposed ± 0.12 ha lots
* To retain a 585 sq m (6,300 sq ft) single dwelling with a maximum height to peak of 9.3 m (30.5 ft) on a ± 5.8 ha retained lot.

# 2.0 Niagara Escarpment Plan Designation

Escarpment Natural Area and Escarpment Protection Area.

# 3.0 Site Description

The 6.2 ha subject property is located on the south side of Main Street West in the Town of Grimsby. The property is currently accessed via a shared driveway which provides access along Main Street West to both single dwellings on the property. The front of the property supports an older single dwelling (‘original single dwelling’) with private servicing and a detached accessory building. A second and newer single dwelling (‘new single dwelling’) is located in the centre of the property and is supported by its own private servicing. It should be noted that the original single dwelling was supposed to be demolished within 30-days of the new single dwelling being occupied as per NEC Development Permit #11442/N/R/2016-2017/480. The majority of the property, including where the development is proposed, is designated as Escarpment Protection Area. Appendix 2 includes a site plan submitted by the applicant. NEC mapping is included in Appendix 3.

The rear of the property is designated as Escarpment Natural Area and contains significant woodlands and the mapped Escarpment brow. A watercourse bisects the centre of the property and flows to the north-east. The property is designated as a Prime Agricultural Area and is ‘Specialty Crop’ which is the most productive agricultural land in Ontario.

The property is surrounded by rural-residential lots and agricultural uses. The property is located at the northern Plan boundary so that properties on the north side of Main Street Grimsby West are not located within the NEP.

# 4.0 Background

The applicant is proposing to create three additional 0.12 ha building lots and to retain an existing 5.8 ha lot. The proposed configuration will result in a single dwelling being located on both the proposed and retained lots. The newest dwelling which was constructed under NEC Development Permit #11442/N/R/2016-2017/480 will be located on the retained lot. The original single dwelling which was supposed to be demolished through the very same Permit is proposed to be retained on one of the proposed new lots, while the other two proposed lots will each have a new single dwelling constructed upon them. The result would be four separate lots, with a single dwelling on each lot.

NEC staff note that although the original single dwelling is proposed to be retained on one of the new lots, it is not the subject of this application.

# 5.0 Related Files

**Development Permits #11442/N/R/2016-2017/480:** A Development Permit was issued in May 2018 to demolish an existing single dwelling, accessory building and private septic treatment system and to construct a two-storey single dwelling, private sewage treatment system, driveway expansion and associated landscaping. The new single dwelling was constructed; however, the original dwelling has yet to be demolished.

# 6.0 Summary of Agency Comments

## 6.1 Niagara Peninsula Conservation Authority:

## No objection. There are no regulated features within the area of the proposed development.

## 6.2 Region of Niagara:

**Objection.** The subject property is located within a Prime Agricultural Area and is designated as Specialty Crop. The policies of the NEP shall prevail unless the policies of the Niagara Official Plan (NOP) are more restrictive, then the more restrictive policies shall prevail. The 2020 Provincial Policy Statement (PPS) states that the criteria for new residential lots in Prime Agricultural Areas (with the exception of a lot for a surplus farm residence). The proposed development does not meet the criteria for lot creation under the 2020 PPS and is therefore not consistent with the PPS. [NEC staff note that the comments made by the Region were submitted prior to the updated 2024 PPS; however, NEC staff are of the opinion that the comments are still relevant as those policies remain unchanged.]

NOP policy 4.1.5.1 indicates that consents to sever may only be permitted for agricultural use, agricultural related-use, public infrastructure, conveyance to public bodies or non-profit entities for natural heritage conservation. The proposed development does not appear to meet any of the criteria, as such Region staff are unable to support the application.

NOP policy 4.1.4.2 requires the minimum size of proposed and retained lots to be 0.4 ha in order to support private servicing. The retained parcel known as 457 Main Street West currently has a dwelling and a new sewage system which was installed in 2018. The Septic Permit has not been finalized as the existing development has not been demolished as required in the NEC Permit. The existing dwelling which was to be demolished is located on one of the proposed new lots (0.12 ha) and contains a large number of outbuildings. The existing septic tank was located west of the dwelling and it appears the existing septic system would not be wholly contained within the new lot lines; therefore, a new sewage system would need to be installed to ensure the system is wholly contained on one lot.

## 6.3 Town of Grimsby:

**Objection.** Schedule A of the Town of Grimsby Official Plan (GOP) designates the property as Countryside. The intent of this designation is to “preserve and protect prime agricultural areas and specialty crop areas, maintain the viability of farming and preserve the rural farm character within the Countryside area”. Schedule A also designates the southern portion of the lot as Natural Heritage System. The intent of this designation is “to maintain connections among natural features such that their existing functions are maintained or enhanced”. There is no development proposed in the natural heritage system.

The subject lands currently contain two single detached dwellings. The proposed land use of the site is four single detached dwellings (one per lot), which is a permitted use in the Escarpment Protection Area (Official Plan Section 3.1.4.1 a)). However, although not in effect on this property, Zoning By-law 14-45, as amended, does not typically permit the current configuration of two dwellings on a lot (Section 4.7 a)).

Town Planning staff are of the opinion that the proposed works are not compliant with the intent of Zoning By-law 14-45, as amended, as many of the proposed dimensions are not consistent with the required regulations. Particularly, Town Planning staff have concerns with the lot area, lot coverage, and interior side yard setbacks. Again, the information provided is limited, and Planning staff request that setbacks be included on revised plans. Revised plans should be prepared by a licensed Ontario Land Surveyor (OLS).

Section 4.7.1 d) in the Official Plan states “development should be designated and located in such a manner as to preserve the natural, visual, and cultural characteristics of the area.” Planning staff are of the opinion that the characteristics of the proposed development are negatively impacted. The density, small lot sizes, as well as reduced interior side yard setbacks are not visually, or naturally characteristic along this section of Main Street West. The lot size and dwelling locations are inconsistent with nearby lots, and does not maintain the spaciousness and pattern of Main Street West.

Planning Staff are of the opinion that the proposed plans for the subject lands on 547 Main Street West do not meet the intent of the Official Plan, and do not support their approval by the Niagara Escarpment Commission

# 7.0 Planning Analysis

## 7.1 Overview:

The application conflicts with the lot creation policies of EPA designation, NEP, NOP and GOP.

## 7.2 Niagara Escarpment Plan

The subject property is designated as ENA and EPA by the 2017 NEP. When a property has more than one designation Part 2.2.5 of the NEP generally directs development to the least restrictive designation. The proposed new lots are located within the EPA which is the least restrictive designation.

**2.2.5.** Where a *lot* is located in more than one designation, development shall be located on that portion of the *lot* located in the least restrictive designation, except where the impact of development on the *Escarpment environment* would be reduced by locating the development on a portion of the *lot* located in a more restrictive designation.

Part 1 of the NEP provides permitted uses and the applicable lot creation policies. Within this designation single dwellings are a permitted use. Part 2.2.7 of the NEP states that within the EPA only one single dwelling is permitted per lot. As noted earlier in this report the subject property currently supports two single dwellings which is a contravention of the NEP and the previously issued NEC Permit. The original dwelling was to be demolished within 30-days of the occupancy permit being granted for the new single dwelling. NEC staff received notification from the Town that an Occupancy Permit had been issued on December 17, 2019. Although retention of this single dwelling is proposed on one of the new lots, NEC staff advise that the dwelling is not the subject of the application. There are no policies within the NEP that would support retention of the original single dwelling for habitation. In the opinion of NEC staff, the dwelling should be removed to comply with the NEC Development Permit that has been issued.

The lot creation policies of the EPA designation can be found within Part 1.4.4 of the NEP and in the opinion of NEC staff are intentionally restrictive. New lots for residential purposes can only be created under the following scenarios:

**1.4.4.1.** A *lot* may be created by severing one *original township lot* or *original township half lot*, from another *original township lot* or *original township half lot*, provided there have been no previous *lots* severed from one of the affected *original township lots* or *original township half lots*. Such severances shall only occur along the original township lot line.

Part 1.4.4.1 of the NEP permits the creation of a new lot by severing an Original Township Lot (OTL) from another OTL, or by severing an Original Township Half Lot (OTHL) from another (OTHL) where the OTL is 80 ha (200 ac) or more provided there have been no severances from one of the affect OTLs or OTHLs. In Ontario OTLs are generally 40 ha in size; however, there are cases where some OTLs are bigger or smaller depending upon how they were originally surveyed in the 1800s. The NEP establishes OTHLs in scenarios where the OTL was surveyed to be twice as large as the standard OTL in Ontario (80 ha or more). The purpose of allowing an 80 ha OTL to be severed into two 40 ha OTHLs was to allow these larger OTLs to match the commonly established lot density/size found elsewhere in the province.

Within this designation there are no opportunities for residential severances beyond the OLT or OTHL. This means, that generally speaking, the minimum lot size within the EPA designation is 40 ha. In the opinion of NEC staff, the intent of restricting severances within the EPA designation is to ensure the long-term protection of agricultural land, to direct new lots and growth to rural settlement areas and urban areas, to protect key natural heritage features, and to ensure that development can be supported on rural servicing.

The existing lot is 6.2 ha in size and is part of Lot 19 Con 2 within the Town of Grimsby. Main Street West bisects the OTL and is the boundary of the NEP area with lots to the south being within the NEP while lots to the north are outside of the NEP. The OTL was originally surveyed into a 40 ha lot, but has since been severed into seven (7) lots south of the Main Street West, as well as an additional twenty (20) lots north of Main Street West. This means that the OTL has been severed into 27 lots which greatly exceeds what the Plan would allow today. Further Part 2.4.11 of the NEP clarifies that in scenarios where a portion of an OTL is located outside of the NEP those lots shall be considered when reviewing the applicable lot creation policies of the NEP.

**2.4.11.** Where a portion of an *original township lot* or *original township half lot* lies outside the Niagara Escarpment Plan area, the lots created outside the Niagara Escarpment Plan area will be considered previous *existing lots of record* under the Lot Creation policies of the applicable designations.

Thus, the lot density of the entire OTL shall be considered when reviewing the lot creation policies of the NEP regardless of whether the lots are within the NEP or not. The proposed three additional lots are a clear conflict with the NEP as the proposal does not meet the applicable lot creation policies.

Further, the Development Criteria for Part 2.4 (Lot Creation) of the NEP provides additional policies which shall be met. Part 2.4.1 and 2.4.2 of the NEP direct new lots to be within Urban Areas, Minor Urban Centres, and Escarpment Recreational Areas provided the new lots conform to the local OPs and/or Secondary Plans if in effect. Ribbon or strip development is also not supported by Part 2.4.3 of the NEP which is what the application is currently proposing. Additionally, Part 2.4.4 states that the existing character and open landscape character must be maintained. The municipality has confirmed that the proposed density is not in character with the surrounding area.

**2.4.1.** Lot creation, including *lots* created within Urban Areas, Minor Urban Centres and Escarpment Recreation Areas, shall be subject to conformity with *official plans* and/or *secondary plans* and, where applicable, zoning by-laws that are not in conflict with the Niagara Escarpment Plan, and the criteria set out under Part 2, Development Criteria.

**2.4.2.** New *lots* to meet residential needs should be created primarily in designated Urban Areas, Minor Urban Centres and Escarpment Recreation Areas.

**2.4.3.** Ribbon or strip development should be prevented.

**2.4.4.** The size and configuration of new *lots* shall be subject to the requirements of *official plans* and/or *secondary plans*, and where applicable, zoning by-laws and the objectives of the designation

**2.4.5.** New *lots* must:

a) maintain and enhance the existing community character and/or *open landscape character* of the *Escarpment*; and

b) protect and enhance existing natural heritage and hydrologic features and functions.

The property is designated as a prime agricultural area, specifically specialty crop. The NEP discourages lot creation within prime agricultural areas and only permits them in very limited circumstances.

**2.4.20**. Lot creation in *prime agricultural areas* is discouraged and may only be permitted for:

a) *agriculture-related uses*, provided that the *lot* satisfies the New Lots provisions in Part 1 of this Plan and will have minimal impact on the *Escarpment environment*;

b) a *residence surplus to a farm operation*, as a result of a *farm consolidation* as provided for in this Plan; or

c) *infrastructure*, where the facility or corridor cannot be accommodated through the use of *easements* or rights-of-way.

None of the exceptions of Part 2.4.20 of the NEP are applicable to the application. The application proposes three (3) additional lots and to retain one (1) lot for residential purposes. The subject property does not appear to have an established agricultural use or agricultural-related use, is not the subject of a farm consolidation, nor are the lots proposed as a result of new infrastructure development (opening a right-of-way).

The proposed severances would also result in a change of character of the surrounding area. The comments of the Town have confirmed that the proposal is out of character of the area and would result in development that is not visually compatible with the surrounding area. Part 2.12.5 of the NEP protects the open landscape character which would be negatively impacted should the severances be undertaken.

**2.12.5.** Planning, design and construction practices shall ensure that *Escarpment Related Landforms* are maintained and enhanced, and that development is visually *compatible* with the *natural scenery* and *open landscape character* of the *Niagara Escarpment*.

Part 2.2.1 of the NEP states that the Escarpment environment shall be protected for the long-term and that consideration should be given to the consequences of planning decisions so that they have regard to successive development which is likely to occur. Although every application shall be assessed according to its individual merits, should this application be approved NEC staff have concerns it may spur interest from other landowners across the Escarpment.

NEC staff are of the opinion that the proposed development conflicts with Part 1 and Part 2 of the NEP.

## 7.2 Local and Regional Official Plans

The proposed development, if approved, would require Consent Approval under Section 53 of the *Planning Act* which is administered by the Town of Grimsby. The Town’s comments have confirmed that the proposed new lots would not conform to the GOP and they are not in support of the application. The Town has also indicated that the proposed lot configuration is not within the character of the surrounding area due to the proposed density, undersized lots, and visual incompatibilities.

The Region has provided similar comments indicating that the proposal does not conform with RPOP and has indicated that the proposed development would not be consistent with the lot creation policies of the 2020 PPS. It should be noted that the Region’s comments were prepared prior to the PPS being updated on October 21, 2024.

Both the Town and Region have **objected** to the approval of the application.

## 7.3 Provincial Planning Statement (2024)

The 2024 PPS came into effect on October 21, 2024. Section 2.5 provides policies for Rural Area within municipalities which the property is located. Section 2.5.2 of the PPS states that rural settlement areas shall be the focus of growth and development and their vitality should be promoted. The subject property is not located within a rural settlement area. In the NEP rural settlement areas are generally designated as Urban Areas, Minor Urban Centres, or Recreational Areas which is also where the NEP directs growth and lot creation. Section 4.3 of the PPS provides policies for agricultural areas. Section 4.3.3.1 discourages lot creation within prime agricultural areas. The proposed new lots for residential purposes are not consistent with section 4.3.3.1 of the PPS. NEC staff are of the opinion that the proposed development is not consistent with sections 2.5.2 and 4.3.3.1 of the 2024 PPS.

# 8.0 Issues and Summary

The application proposes to sever a 6.2 ha lot in order to create three additional lots (each with a dwelling and private servicing) and to retain an existing lot with a single dwelling and accessory facilities. In order for an application for lot creation to be supported it must demonstrate that it is permitted through Part 1 of the NEP and that it also satisfies the applicable Development Criteria of Part 2 of the NEP.

NEC staff have confirmed that the proposed development does not meet the lot creation policies of Part 1 of the EPA. The lot density within this portion of the Escarpment has already been exceeded as a result of severances that have occurred prior to the NEP coming into effect in 1985. The proposal would further exacerbate this. Even though the lot density has been exceeded it does not mean that additional lot creation should be supported; to the contrary, no further lot creation should be supported in order to maintain the Escarpment and the overall Purpose and Objectives of the NEP.

The application also conflicts with Part 2 of the NEP, specifically Parts 2.2 (General), 2.4 (Lot Creation), and 2.12 (Scenic Resources and Landform Conservation) as discussed earlier in this report. New development and growth should be directed to Urban Areas, Minor Urban Centres, and Recreational Area designations which do have policy support for this type of lot creation and development. The Town and Region have also confirmed that the proposal does not meet their OPs and object to the approval of the application.

Should the Commission concur with NEC staffs’ recommendation than compliance staff will follow-up with the applicant regarding bringing the property into compliance with the NEP.

The proposed development does not have any planning support as it conflicts with the NEP, does not conform to the Town or Region OPs and is not consistent with the PPS. In the opinion of NEC staff the proposal is not grounded within the planning framework of Ontario and does not constitute good land use planning.

# 9.0 Considerations

The lot creation policies of the NEP are purposely restrictive in order to prevent further fragmentation of lands within rural areas. Instead, the policies of the NEP support lot creation within rural settlement areas which have been targeted for growth by municipalities. Rural settlement areas are where municipalities plan for new growth and are generally designated as MUC’s, Urban Areas, and Escarpment Recreational Areas in the NEP. The Town and Region have confirmed that the proposed development does not meet their OPs. The lot creation policies of the EPA designation do not afford discretion and in this case, are not met.

# Should the Commission concur with Staffs’ recommendation of refusal, then the outstanding matter regarding the single dwelling which was supposed to be demolished in NEC Development Permit #11442/N/R/2016-2017/480 will be referred to NEC compliance staff.

# 10.0 Recommendation

That the application be **refused** for the reasons listed within Appendix 1.

# Prepared by:

Original signed by

Brandon Henderson

Senior Planner

# Approved by:

Original signed by

Jessica Isaac

Planning Manager

Original signed by

Shawn Carey

Director

# Attachments:

Appendix 1 – Reasons for Refusal

Appendix 2 – Site Plan

Appendix 3 – Mapping: Niagara Escarpment Plan

Appendix 1 – Reasons for Refusal

1. The proposal conflicts with the lot creation policies of Part 1.4.4 of the NEP.
2. The proposal conflicts with Parts 2.2.1., 2.4.1., 2.4.2, 2.4.3., 2.4.4., 2.4.5., 2.4.20., and 2.12.5. of the NEP.
3. The proposal is not consistent with sections 2.5.2 and 4.3.3.1 of the 2024 PPS.
4. The Town of Grimsby objects to the approval of the application.
5. The application does not conform to the Town of Grimsby’s Official Plan.
6. The Region of Niagara objects to the approval of the application.
7. The application does not conform to the Region of Niagara’s Official Plan.