MINUTES OF M793/01-2019
NIAGARA ESCARPMENT COMMISSION
GEORGETOWN, ONTARIO
January 17, 2019


Regrets: None.


Also Present: R. Pineo, Niagara Escarpment Program Team Leader, (MNRF), S. Cooper, Partnership Liaison and Advisor, Natural Heritage Section (MNRF), D. Kappos, Legal Services Branch, R. Patrick, President, C.O.N.E.

Meeting called to order: 9:30 a.m.

Chair Russ Powers presided.

Land Acknowledgement

The Chair read the Land Acknowledgment.

Introductions:

The Chair welcomed the Commissioners and members of the public to the meeting.

APPROVAL OF MINUTES – M792/11-2018

M793R1/01-2019 Moved By: Haswell
Seconded By: Pim

“That the Commission accept the Commission Minutes of November 29, 2018.”

Motion Carried
APPROVAL OF POLICY MINUTES – P77/10-2018

M793R2/01-2019  Moved By: Horner
                 Seconded By: VanderBeek

“That the Commission accept the Commission Minutes of October 25, 2018 as amended.”

Motion Carried

Commissioner Greig noted that any reference to the April 2019 meeting should be amended to May 2019 per the approved bi-monthly 2019 Commission meeting schedule.

CONFLICTS OF INTEREST – Declaration of Conflicts of Interest

None declared.

MOTION FOR SPEAKERS

M793R3/01-2019  Moved By: Gilhespy
                 Seconded By: Carr

“That the persons representing the Applications listed on the Agenda be invited to address the Commission.”

Motion Carried

Chair’s Items:

The Chair congratulated Commissioner Burton on being elected the Simcoe County Deputy Warden.

The Chair advised the Commission of the new consent agenda format. Manager Debbie Ramsay reviewed the agenda structure and answered questions.

The Chair advised that the Commission will be moving to electronic distribution of meeting materials for the next meeting in March. The new process was discussed, and the Commission was advised that staff will be on hand to provide training and troubleshoot any issues. The Commission noted the need for the Public-at-Large Commissioners to be provided with the needed technology for this rollout. David Ayotte, Director, advised that there is no discretionary spending for this as the Commission continues to look at ways to meet the Government’s goal to reduce costs. The Chair advised that the process would be evaluated after the March pilot is complete.
CONSENT AGENDA: A PACKAGE (Staff Reports)

A1

DEVELOPMENT PERMIT APPLICATION N/R/2016-2017/489
Eugene Roman
Part Lot 21, Concession 3
Town of Lincoln, Region of Niagara

PROPOSAL:

To recognize the construction of a 1 storey, 57.1 m² (615 ft²) detached accessory building (used for storage) with a maximum height to peak of 4.23 m (14 ft), on a 15.37 ha (37.97 ac) existing lot.

RECOMMENDATION:

That the Application be **approved**, subject to the following conditions:

**CONDITIONS OF APPROVAL**

1. Development shall occur in accordance with the Site Plan, Development Permit Application and Conditions as approved.

2. The Development Permit shall expire three years from its date of issuance unless the development has been completed in accordance with the Development Permit.

3. The landowner shall advise the Niagara Escarpment Commission in writing of the start and the completion date of the development. This notice shall be provided to the NEC 48 hours prior to the commencement of development, and within 14 days upon completion.

4. No site alteration of the existing contours of the property including the placement or stockpiling of fill on the property is permitted with the exception of that identified within the development envelope in accordance with the approved Site Plan.

5. No vegetation shall be cut or removed from the development envelope except for that identified within the development envelope in accordance with the approved Site Plan.

6. All disturbed areas shall be re-vegetated and stabilized, in accordance with the approved Site Plan, by the end of the first growing season following the completion of site grading and building construction. All trees, shrubs and nursery stock shall be native to Ontario except those where approved under the Development Permit. Native plant material should be sourced from local plant nurseries when available; bush dug plant material is not acceptable.
7. The accessory building shall be used for the purposes of a detached garage/workshop/agricultural implement and personal storage only and shall not be used for human habitation (i.e., living space), as a dwelling or apartment unit, or for commercial, institutional, home business, industrial or livestock purposes.

Notes/Advisories:

A. This Development Permit does not limit the need for or the requirements of any other applicable approval licence or certificate under any statute (e.g., Planning Act, Conservation Authorities Act, Endangered Species Act, etc). The Niagara Escarpment Commission Development Permit is required prior to the issuance of any other applicable approval, licence or certificate.

CONSENT AGENDA: C PACKAGE

C1: Director’s Approvals for November and December 2018
C3: Director’s Report for November and December 2018
C4: Active Plan Amendment information as at January 7, 2019
C5: November 2018 Municipal World UNESCO biosphere reserves and Canadian municipalities article
C6: Greenbelt Council Report #2, December 11, 2018
C7: Information Report re award of costs relating to hearing D/L/2014-2015/308

“That the Commission approve the Consent Agenda A Package.”

Motion Carried
PRESENTATION

Halton-Hamilton Source Protection Committee

Robert Edmondson, Chair, and Glenn Powell, Member-at-Large, Hamilton-Halton Source Protection Committee, presented the Drinking Water Source Protection Program presented and answered questions.

M793R6/01-2019

Moved By: VanderBeek
Seconded By: Gilhespy

“That the Commission receive the presentation.”

Motion Carried

DISCUSSION:

The Commission requested information on how Bill 66 related to the NEP, how the Bill will impact source water protection and how information/outreach is being communicated to municipalities, partner agencies and the public. The Commission was advised that information will be sent to municipal clerks.

Commissioner Horner inquired what party would be responsible for costs of repairs related to Bill 66, Section 10. It was expected that costs would fall to the local municipality.

DISCUSSION AGENDA: E, F PACKAGES (Staff Reports, External Submissions)

E1

Initial Staff Report
Niagara Escarpment Plan Amendment Application PS 215 18
Township of Clearview (Sideroad 26/27)

PROPOSAL SUMMARY:

To amend the Niagara Escarpment Plan by adding site-specific policies that would allow the following improvements to Clearview Sideroad 26/27 to make it suitable for year-round use and make other road improvements that are the subject of DPA ST/2013-2014/9152, notwithstanding policies in the Niagara Escarpment Plan which require the consideration of alternatives for the development of infrastructure in wetlands, (Part 2.6.2 e), in key natural heritage features, (Part 2.7.2 e) and in Escarpment Natural Areas, (Part 2.12.5):
• Improving the vertical alignment;
• Replacing road-crossing culverts to improve fish passage;
• Improving and widening the road base;
• Channel re-alignment to increase the current separation between the road and a watercourse;
• Tree removal;
• Re-surfacing the road;
• Ditch improvements;
• Addressing environmental and roadside safety measures such as drainage, erosion and sedimentation issues.

RECOMMENDATION:

That the Niagara Escarpment Commission should instruct staff to process the proposed Amendment PS 215 18 Township of Clearview (Sideroad 26/27), for circulation and notification pursuant to Section 6.1(2) of the Niagara Escarpment Planning and Development Act.

BACKGROUND:

The subject lands are owned by the Township of Clearview. Sideroad 26/27 is a municipal road allowance which is, for the majority of its length, maintained only seasonally.

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

The expansion of Sideroad 26/27 is the subject of a Development Permit application (DPA), which was refused by the NEC in November 2015, and has since been appealed. During the appeal process, additional environmental work undertaken by consultants on behalf of the Township identified that certain aspects of the road works would result in the removal of 1.2 ha of natural heritage and key hydrologic features within the existing right of way. This was not known when the DPA was originally submitted. The Township requested an adjournment of the hearing since the policies of the NEP in 2016 prohibited development in wetlands. The Township indicated to the Hearing Officers at a pre-hearing conference in 2016 that the basis for the adjournment was that it would be making an application to amend the NEP.

Following submission of the DPA, the Township determined that the proposed road works met the criteria for a Class “A+” Municipal Class Environmental Assessment (EA). According to the Municipal Class EA document, an “A+” EA includes projects that are deemed by the municipality to have minimal adverse environmental effects and include road maintenance and operational activities, and which require only public notice with no consideration of alternatives to the proposed road works. A request has been made by the Blue Mountain Watershed Trust for a Part II Order to ask the Minister of the
Environment, Conservation and Parks to re-consider this EA classification. A decision on the Part II Order request is being withheld pending the outcome of the decision on the DPA appeal.

ANALYSIS:

Staff have reviewed the Plan Amendment Application and related submissions and determined that adequate information and justification were provided to warrant the circulation and notification pursuant to Section 7 and Section 10 of the Niagara Escarpment Planning and Development Act.

Note:

- Nancy Mott, Senior Strategic Advisor, presented the initial staff report and answered questions.
- Demetrius Kappos, Legal Services Branch, was present and answered questions.
- George Powell, Vice Chair, Watershed Action Group, Blue Mountain Watershed Trust, presented and answered questions.
- Harold Elston, Elston Watt, Barrister and Solicitor for Clearview Township, presented and answered questions.
- Michael Wynia, Skelton Brumwell Associates, Don McNalty, R. J. Burnside and Mayor Measures, Clearview Township were present to answer questions.

M793R7/01-2019

Moved By: McKinlay
Seconded By: Horner

“That the Niagara Escarpment Commission instruct staff to initiate the proposed Plan Amendment PS 215 18 Township of Clearview (Sideroad 26/27), for circulation and notification pursuant to Section 6.1(2) of the Niagara Escarpment Planning and Development Act.”

Motion Carried

DISCUSSION:

Commissioner Mackenzie noted his opposition to the proposal and voted against the staff recommendation.

The Commission requested information on the extent of the consultation, communication and appeal processes. It was recommended that communications be sent to municipal clerks.

Commissioner McKinlay noted that approving circulation of the proposed Plan Amendment does not determine the outcome of the Application, and that the Plan Amendment process is open and transparent.
Commissioner McQueen noted that there was no longer a Markdale newspaper and requested that the Flesherton Advance newspaper be circulated.

Chair Powers asked Commissioner Carr to take the Chair. Mr. Powers suggested that the applicant optimize the opportunity for a detailed discussion on the proposed amendment to ensure that the impact on the environment is minimized and that the process is transparent. He then resumed the Chair.

Commissioner McKinlay recommended using municipal websites to get information out to the public regarding the proposed amendment.

**ITEMS MOVED FOR DISCUSSION:**

**C2**

**Appeals and Hearings Chart November 1, 2018 to January 9, 2019**

The Commission requested information on possibly charging Appellants hearing costs. The Director advised that this item will be explored further in the future.

**C8:**

**2012 Information Report**

*Built Form Size Considerations for Residential Development in the Niagara Escarpment Plan Area*

**M793R8/01-2019**

*Moved By:* McKinlay  
*Seconded By:* Mausberg

“That the Commission direct staff to update the 2012 staff report “Built Form Size Considerations for Residential Development”, and undertake a jurisdictional scan, for the purpose of informing a Commission decision on initiating a Niagara Escarpment Plan Amendment at its May Commission meeting.”

*Motion Carried*

**NOTES:**

Commissioner Mausberg noted his concern with monster homes being built in the NEP. Commissioner Greig suggested including minimum dwelling size in updated staff report. Commissioners Robertson and Pim complimented staff on the very thorough 2012 staff report.

**Broke for lunch:** 12:00 p.m.  
**Reconvened:** 12:50 p.m.
ADDENDUM STAFF REPORT
APPLICATION H/S/2017-2018/471
Richard and Virginia McDole
Part Lot 2, Concession 3
Town of Milton, Region of Halton

PROPOSAL:

To install a 29 m (96 ft) Trylon Titan tower to connect to standard broadband internet (for personal use), on a 2 ha (5 ac lot).

BACKGROUND:

The subject application was deferred at the October 25, 2018 Commission Meeting to allow NEC staff to address the submission by Mr. Brent Arnold of Gowling WLG (Canada) LLP that a Development Permit is required. Mr. Arnold is legal counsel for the adjacent landowners who are opposed to the location of the proposed telecommunication tower.

The application was deferred again at the November 29, 2018 Commission Meeting. The deferral was requested by the Commission to ensure that NEC staff considered all aspects of The Consultation Protocol for Radiocommunication and Broadcasting Antenna Systems in the Niagara Escarpment Plan Area, specifically co-location. The Protocol encourages co-location of facilities, including the use of existing buildings and structures.

Standard Broadband technical staff visited the subject property to determine if co-location would be possible with an existing telecommunication tower located at 8160 Twiss Road. According to a letter provided by the President and CEO of Internet Access Solutions Inc./Standard Broadband, co-location is not an option due to tree coverage on the subject property and the surrounding area. To obtain a signal and clear line of sight from the existing tower at 8160 Twiss Road, a tower would be required on the subject property.

All other requirements of the Protocol have been reviewed and satisfactorily addressed, and the October 25, 2018 staff recommendation is unchanged.

RECOMMENDATION:

That the Commission inform ISED that the NEC concurs with the tower location.
Note:

- Ruth Conard, Senior Planner, reviewed the staff report and answered questions.
- Donna Barclay, Neighbour, presented and answered questions.
- Richard McDole, Applicant, presented and answered questions.

M793R9/01-2019

Moved By: Robertson
Seconded By: Burton

“Whereas the applicants seek permission regarding the siting and design of the proposed telecommunication tower, and whereas the application of the Niagara Escarpment Planning and Development Act to the subject matter would impair the core of federal jurisdiction over telecommunications, be it resolved that the Commission neither approve nor refuse the application based on the doctrine of interjurisdictional immunity;

Be it resolved that the Commission advise the ISED in writing that it concurs with the proposed tower location as set out in the NEC staff report dated October 25, 2018, more specifically as follows:
- 80 metres from the front lot line
- 51 metres from the rear lot line
- 93 metres from the north side lot line
- 63 metres from the south side lot line

Also, as illustrated on Map 3 and 3B, Site Plan.”

Motion Carried

DISCUSSION:

The Commission confirmed with staff that tower sharing had been explored and was not possible for the site and that all policy concerns had been addressed.

The Commission discussed the possibility of getting a scoped Environmental Impact Assessment for the preferred location in the dog run. The Applicants advised that the cost was prohibitive and would delay the application even longer.

Commissioner Burton asked if the Applicants had investigated if it was possible to disguise the tower as a tree; the Applicants advised that the cost exceeded $100,000.
PROPOSAL:

To remove and relocate approximately 2.4 m (8 ft) of rock and dirt, to ditch grade, along the right-of-way in the northeast corner of the property, for the purposes of using the material to construct a new driveway, on an existing 42.5 ha (100 ac) lot.

RECOMMENDATION:

That the application G/F/2017-2018/9262 be refused for the following reasons:

1) That the proposal to quarry an exposed Escarpment rock face is not a permitted use within the Escarpment Protection Area designation of the NEP.
2) That the removal of the Escarpment rock face is not consistent with the PPS and does not meet the NEP Development Criteria concerning Cultural Heritage, Scenic Resources and Landform Conservation.
3) That aggregate extraction is not permitted within 200 meters of the natural edge of the Niagara Escarpment.
4) That the establishment of a recreational driveway and watercourse crossing has not been demonstrated to be consistent with the PPS or to meet the NEP Development Criteria concerning Water Resources and Natural Heritage.
5) That the as-built and proposed site alteration works are not deemed to be adequately justified or warranted in balance with the site alteration required to establish said development.
6) That much of the as-built work has taken place within the MTO road allowance and Permit Control Area without appropriate warrants or permissions.

Note:

- Rick Watt, Senior Planning Coordinator, reviewed the staff report and answered questions.
- Lem Martin, Applicant, presented and answered questions.
- Ken Johnston, Landowner, answered questions.

Moved By: Robertson
Seconded By: Pim

“That Condition 4 be removed and the Commission accept the staff recommendation as amended.”

Motion Carried
DISCUSSION:

The Senior Planning Coordinator advised the Commission that the proposed recreational driveway and watercourse crossing have been withdrawn from the proposal.

The Commission requested information on the timeline leading to the Stop Work order being issued. O.J. Macdonald, Compliance Specialist, advised that the Applicant had voluntarily stopped work in 2017; when the voluntary compliance ceased, the Stop Work Order was issued.

The Commission asked if remediation was possible. The Compliance Specialist advised that clean up and stabilization of the wall are being reviewed; he is seeking input from the Ministry of Transportation.

Commissioner Burton requested clarification on the rocks that were removed; the landowner advised that all rock removed was loose rock left over from earlier blasting by Aecon.

E4, F1, F2, F5

DEVELOPMENT PERMIT APPLICATION G/T/2017-2018/9003
Meaford & District Ridge Runner Snowmobile Club
Un-opened / Un-improved/maintained Road Allowance (3rd Line)
Lot 22 & 23, between Concession 2 & 3
Municipality of Grey Highlands (Euphrasia), County of Grey

PROPOSAL:

To install a 1.5 m diameter x 4.8 m long (5 ft x 16 ft) culvert within a watercourse along an un-open / un-improved/maintained section of the road allowance to allow a dedicated snowmobile trail route as part of the Ontario Federation of Snowmobile Clubs (OSFN) provincial trails network.

BACKGROUND:

The Application was before the Commission and deferred three times before the January 2019 meeting:

At the November 16, 2017 meeting, NEC staff recommended that the application not be approved as a motorized trail and a recreational use for the following reasons:

- uses such as a snowmobile trail are not permitted within the Escarpment Natural Area;
- the Development Criteria was not satisfied
- the Objectives of the Escarpment Natural Area designation were not met.
The Commission deferred a decision in order for staff to meet with the municipality to investigate access options and for further planning analysis.

At the October 25, 2018 meeting, NEC staff presented an Addendum Report follow up on the meeting with the Municipality in September 2018. The staff recommendation to refuse the application, as outlined in the initial November 2017 Staff Report, did not change. The Commission “approved in principle” the application as proposed by the Meaford and District Ridge Runners Snowmobile Club (“the Club”) and directed staff to report back at the November 29, 2018 Commission meeting with appropriate conditions of approval.

At the November 29, 2018 meeting, NEC staff presented a Second Addendum Report and maintained the recommendation that the application not be approved. Prior to the meeting, staff had received additional information and several letters of opposition to, and of support for the application. The Commission “received” the staff report and directed staff to prepare draft Conditions of Approval as per their October decision for the January 2019 meeting. Staff drafted Conditions of Approval per the Commission's direction and seek approval of the Conditions.

RECOMMENDATION:

That the Commission approve the following Conditions of Approval:

CONDITIONS of APPROVAL

1. Development shall occur in accordance with the Final Site / Design / Construction / Rehabilitation Plan, Development Permit Application and Conditions as approved.

2. The Development Permit shall expire three years from its date of issuance unless the development has been completed in accordance with the Development Permit.

3. The applicant shall advise the Niagara Escarpment Commission in writing of the start and the completion date of the development. This notice shall be provided to the NEC 48 hours prior to the commencement of development, and within 14 days upon completion.

4. Prior to the issuance of a Development Permit by the Niagara Escarpment Commission, a survey by an Ontario Land Surveyor shall be provided to the Niagara Escarpment Commission and the Municipality of Grey Highlands confirming that all proposed work as per the Final Site / Design / Construction / Rehabilitation Plan is fully contained within the municipal road allowance.

5. Prior to the issuance of a Development Permit by the Niagara Escarpment Commission, a professionally prepared (i.e., biologist / ecologist) Environmental Impact Study, including a fisheries assessment, shall be submitted for Niagara Escarpment Commission approval. Any recommendations
of the approved Study shall be incorporated into the **Final Site / Design / Construction / Rehabilitation Plan.**

6. **Prior to the issuance of a Development Permit by the Niagara Escarpment Commission**, a professionally prepared (i.e., engineer) **Final Site / Design / Construction / Rehabilitation Plan** shall be submitted for Niagara Escarpment Commission approval. In addition to any recommendations of the approved Environmental Impact Study, the Plan shall include but not be limited to the following:

   a) All drawings submitted must be drawn to scale (bar scale shown), reference the application number, be dated (revisions as well) and denote the relevant consultant;
   b) Confirmed boundaries of the road allowance (i.e., legal survey);
   c) An accurate delineation of the extent of the areas to be disturbed/impacted for installation of the culvert within the road allowance, and any other site alteration / tree removal work along the road allowance;
   d) Size and design of the culvert and width of crossing bed surface (Note: consultation with the Municipality of Grey Highlands and the Grey Sauble Conservation Authority is recommended);
   e) Grading design including cross-sections of the existing site conditions and the proposed altered sites, the extent, amount and location of areas of excavation, and temporary or permanent fill placement.
   f) Confirmation that any fill material approved for importation under this Permit shall conforms to the definition of “inert fill” per Ontario Regulation 347 and Table 1 of the Soil, Groundwater and Sediment Standards for use per Part XV.1 of the *Environmental Protection Act*, dated March 9, 2004;
   g) Construction methodology including timing of work, equipment access route and equipment requirements, details on how water flow will be maintained during construction, temporary erosion and sediment control measures; and,
   h) Permanent erosion protection design, site stabilization/rehabilitation details of all areas disturbed, and completion timing.

7. Development shall proceed in accordance with the details of the approved **Final Site / Design / Construction / Rehabilitation Plan**. Site alterations, grading, fill placement or removal, and tree removal along/within the road allowance other than that approved as per the **Final Site / Design / Construction / Rehabilitation Plan** shall not be permitted.

8. **Prior to the commencement of the dedicated snowmobile trail use**, a winter trail-users (snowmobile / pedestrian) plan addressing **Compatibility and Safety Plan** (e.g., speed limit, speed bumps, caution signage) shall be prepared by the applicant in consultation with the Municipality of Grey Highlands, Bruce Trail Conservancy and interested local residents.

9. **Prior to the commencement of the dedicated snowmobile trail use**, the applicant shall enter into an Agreement with the Municipality of Grey Highlands for an **Access Control Plan** (e.g., gating) to restrict motor vehicle access other than for the dedicated snowmobile trail use along the un-improved / un-maintained road.
allowance. The Niagara Escarpment Commission shall be consulted in the preparation of the Agreement and Plan and a copy of the final Agreement and Plan shall be provided to the Commission.

10. This conditional approval (i.e., Conditions #4, 5 and 6) expires one (1) year from the date of confirmation of the decision to approve the Development Permit application.

Advisory Notes:

a) This Conditional Approval does not limit the need for or the requirements of any other applicable approval, licence or certificate under any statute (e.g., municipal approval, Conservation Authorities Act, Fisheries Act, Endangered Species Act, etc.). The Niagara Escarpment Commission Development Permit is required prior to the issuance of any other applicable approval, licence or certificate.

b) Should the Final Site / Design / Construction / Rehabilitation Plan detail that the scope and type of work is significantly different than that applied for, there may be a need for a new Development Permit application.

Note:

- Rick Watt, Senior Planning Coordinator, reviewed the staff report and answered questions.
- Richard Stark, Concerned Citizen, presented and answered questions.
- Joan Nuffield, Concerned Citizen, presented and answered questions.
- Robert Hann and John Thompson, Concerned Citizens, were available to answer questions.
- Wil Bulsink, Agent, Meaford & District Ridge Runners Snowmobile Club, presented and answered questions

M793R11/01-2019   Moved By: Carr
Seconded By: Mackenzie

“That the Commission move in camera.”

Motion Carried

M793R12/01-2019   Moved By: Burton
Seconded By: Carr

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

Motion Carried
M793R13/01-2019

Moved By: McQueen
Seconded By: Horner

“That the Commission defer a decision pending receiving a legal opinion regarding the sole purpose of legal municipal right-of-way.”

Motion Defeated

M793R14/01-2019

Moved By: McKinlay
Seconded By: Downey

“That the Commission approve the draft Conditions of Approval.”

At the request of the Chair, the vote was recorded:

For the Motion:  
Downey  
Mausberg  
McKinlay  
McQueen

Against the Motion:  
Baty  
Burton  
Carr  
Gilhespy  
Greig  
Haswell  
Horner  
Mackenzie  
Pim  
Robertson  
VanderBeek

Motion Defeated
“That the Application be refused for the following reasons:

a) Motorized trails (e.g., dedicated snowmobile route) is not a permitted use within the Escarpment Natural Area designation (Part 1.3).

b) Recreation uses (e.g., dedicated snowmobile route), other than those associated with the Bruce Trail, and with uses within Parks and Open Space System Master/Management Plans not in conflict with the NEP, are not a permitted use within the Escarpment Natural Area designation (Part 1.3).

c) The application does not satisfy the General Development Criteria (Part 2.2), the Water Resources Development Criteria (Part 2.6), the Natural Heritage Development Criteria, the Recreation Development Criteria (Part 2.11), and, the Infrastructure Development Criteria (Part 2.12).

d) The application does not meet the Objectives of the Escarpment Natural Area designation (Part 1.3.1).

Motion Carried

DISCUSSION:

The Chair asked if the Draft Conditions would be the same if a development permit had initially been applied for; staff advised that if the proposed works were permitted, the required information would have been obtained earlier in the review process.

The Commission discussed gate options, cost of having a legal survey and done and who would pay for it, if the trail had been an existing use.

Commissioners Pim, Burton and Gilhespy noted that the proposed works are not a permitted use in the land designation.

E5

Belfountain Conservation Area Management Plan
Town of Caledon, Region of Peel

INTRODUCTION:

The preparation of a master/management plan for lands within the Niagara Escarpment Parks and Open Space System (NEPOSS) is required under Part 3.1.5 of the Niagara Escarpment Plan (NEP). Final approval of NEPOSS management/master plans rests with the Ministry of Natural Resources and Forestry (MNRF), but the Niagara Escarpment Commission (NEC) must endorse the master/management plan prior to it
being approved by MNRF. Development of a NEPOSS master/management plan is guided by the *NEPOSS Planning Manual* (2012).

**BACKGROUND:**

Credit Valley Conservation (CVC) has prepared a Management Plan for the Belfountain Conservation Area (CA) in the Town of Caledon. In seeking approval of the management plan, CVC has requested that the NEC exempt all proposed development (i.e., Class EA projects, gatehouse, and visitor centre) from requiring a Development Permit because a high level of detail has been provided in the management plan. While NEC staff agrees that there is a high level of detail in the Management Plan, staff has several outstanding concerns and recommends that these be addressed prior to the Commission endorsing the Management Plan. Staff is concerned that the scale of development and proposed uses of the site do not conform to Parts 2 and 3 of the NEP, and that due to competing provincial interests that should be resolved by higher-level decision makers through the NEP Amendment process, NEC staff cannot, at this time, recommend endorsement of the Management Plan.

**SUMMARY OF STAFF ANALYSIS:**

1) **Visitor Centre, Gatehouse, and Septic System**

The majority of Belfountain CA is classified as dispersal/migration, hibernation or foraging habitat for Jefferson Salamander, an Endangered species. As such, these areas meet the definition for a “key natural heritage feature” in the NEP and are regulated habitat under the *Endangered Species Act* (ESA). The vast majority of the CA, including the Development Zone, also falls within the Escarpment Natural Area designation. As both Escarpment Natural Area and regulated habitat, the subject lands receive the highest level of protection under the NEP and the ESA.

- A visitor centre is not listed as one of the NEPOSS-specific exceptions to the prohibition on development in key natural heritage features (i.e., the habitat of an Endangered Species) [Part 2.7.2(d)];

- NEC staff does not know if the proposed septic location can comply with the ESA since it has not yet been determined if an “overall benefit” permit can be issued. In addition, the NEPOSS Planning Manual and NEP do not support development in a Nature Reserve zone if it damages significant natural heritage features.

- Since the visitor centre, septic system and gatehouse are not listed as exceptions in Part 2.7.2, compliance with the ESA is not material since Parts 2.7.2 and 2.7.8 do not permit the proposed uses;

- The proposed expansion of the “existing uses” of the kiosk and workshop facilities far exceeds the 25 percent suggested in Part 2.3.4.
2) Visitor Centre Programming, Intensification of Use, and Community Compatibility

NEC staff finds that the expansion of visitor facilities in the habitat of an endangered species is not consistent with NEP policies, even when the flexibility afforded through the NEPOSS management planning process is considered. Staff also has other concerns related to land use compatibility that should be addressed through a NEP Amendment process. Staff believes that to endorse the Management Plan as submitted and exempt the visitor centre, gatehouse and septic system as requested by CVC would not be consistent with the NEC’s core responsibility to uphold the policies of the NEP.

1. Permitted uses and the recreational experience within a park or open space are closely linked to the area’s values and objectives. Where permitted by the park and open space classification, recreational uses and development will be accessory or secondary to the protection of natural heritage resources and to the conservation of cultural heritage resources.

2. Retail and visitor service facilities appropriately scaled for the site may be permitted if identified in the Development Zone of an approved Master/Management Plan, especially if developed in conjunction with interpretative displays and information related to the Niagara Escarpment.

3. The introduction of recreational and commercial uses, including downhill ski slopes, golf courses, golf driving ranges, banquet halls, full service restaurants, lodges, hotels, conference centres, retreats, schools, spas and buildings with provision for fully serviced overnight accommodation, as distinct from camping, are not permitted.

4. Notwithstanding Part 3.1.6.3, special purpose buildings designed and operated to support environmental, cultural and/or UNESCO World Biosphere Reserve programming that include meals and overnight accommodations for specific park user groups (e.g., school boards, youth organizations, hiking clubs) may be permitted as an accessory use in Nodal parks or Recreation parks if appropriately scaled for the site and identified in the Development Zone of an approved Master/Management Plan.

5. Activities in Recreation parks and open spaces will align with the objectives of the park and open space classification in Part 3.1.4, be situated in an appropriate zone identified in an approved Master/Management Plan and must be conducted in an environmentally sustainable manner. Development of facilities must be designed and undertaken in a way that will minimize the impact on the Escarpment environment.
Prior to determining if a Development Permit is the best means of managing potential land use conflicts resulting from visitor centre uses, NEC staff would prefer to assess whether the larger policy issues can be addressed through a NEP Amendment application. Management Plan endorsement and Development Permit exemptions can be explored subsequent to Amendment approval.

3) Headpond, Dam, and New Heritage Gardens (“Class EA Works”)

It is important to note that the Class EA works are also considered to be within the regulated habitat of Jefferson Salamander. However, in contrast, Parts 2.7.2(b), (c) and (e) do include the following exceptions to the prohibition on development in key natural heritage features: fisheries management, infrastructure, and conservation, flood and erosion control projects. The Class EA works fall within these categories. Approval for these works is also needed under the Lakes and Rivers Improvement Act and the Public Lands Act. Furthermore, MNRF staff has advised that the headpond, although located within regulated habitat, is not functional habitat as it is a barrier to salamander movement and is not suitable for breeding. NEC staff does not take issue with proposed Class EA works given that they are permitted in Part 2.7.2, and given the extensive work that was done as part of the Class EA. When the Class EA was completed in 2016, staff brought a report on the EA to the Commission, recommending that the proposed Class EA works be endorsed, subject to Development Permit approval. However, now that the Class EA works are proposed as part of the Management Plan, staff would be prepared to recommend that the works be exempted from the need for a Development Permit in accordance with Ontario Regulation 828/90 if the Management Plan as a whole could be approved.

7. OTHER CONSIDERATIONS

NEC staff’s concerns regarding commercial uses and the environmental sensitivity of the site are not intended to be dismissive of the significant time and resources that CVC has invested in this Management Plan. However, it is NEC staff’s position that there are policy barriers in the NEP that need to be addressed prior to the Management Plan being endorsed.

The scale of the proposed development in such an ecologically sensitive area is not consistent with NEP policies. However, staff finds that there is significant merit to the concept of a visitor centre to provide a focal point for cultural and natural heritage interpretation and programming. Given the high level of visitation to the CA, there is a significant opportunity to promote UNESCO World Biosphere Reserve values, and it would be a lost opportunity not to provide improved programming. There is also merit in providing additional parking, and to ensuring that water and wastewater servicing are upgraded and can be sustained into the future. A visitor centre could enhance visitor experience and relieve some of the pressures elsewhere within the CA and hamlet.

In recognition of the merits of the proposed Management Plan, staff is recommending that a NEP Amendment application be submitted so that it can be demonstrated that the visitor centre, gatehouse and septic system are consistent with the Purpose and Objectives of the NEPDA and NEP, even if they do not meet specific policies in the NEP.
Staff also recognizes that conservation authorities, including the CVC, are among the NEC’s most important allies in implementing the NEP. NEC staff is aware of the ever-increasing levels of visitation in Belfountain, and is sensitive to conservation authorities’ needs to accommodate park users and generate revenue to sustain operations. The Belfountain area is one of the most challenging areas in the NEP to balance competing interests. However, the NEP does not have policies allowing for the intensification of development in key natural heritage features to accommodate park users. Therefore, the mechanism to evaluate whether a visitor centre and related development in Belfountain CA is consistent with the NEP and the NEPDA is the NEP Amendment application process.

8. NIAGARA ESCARPMENT DEVELOPMENT CONTROL

The NEPOSS master planning process provides the opportunity for NEPOSS agency to obtain approval for development without having to go through the NEC’s development permit application process, provided that sufficient detail is set out in the master plan document. The framework for obtaining an exemption is set out in Section 5.41 of Ontario Regulation 828/90, as amended by Ontario Regulation 423/12:

41. Development in Parks and Open Space System

The construction and installation of buildings, structures, facilities and related undertakings identified in a Park and Open Space Plan as defined in the Niagara Escarpment Plan for a park or open space area listed in Appendix 1 of the Niagara Escarpment Plan if,

i. The plan has been approved by the Niagara Escarpment Commission and Ministry of Natural Resources under Part 3 of the Niagara Escarpment Plan after the coming into force of Ontario Regulation 423/12. (Note: Regulation came into force on January 1, 2013).

ii. The plan has specifically identified and detailed the buildings, structures, facilities and related undertakings that are to be exempted under this section.

iii. The construction and installation of the buildings, structures, facilities and related undertakings occur within 5 years of the approval of the master plan under subparagraph i.

The NEC has never exempted development within NEPOSS at the scale of a 550 m² visitor centre. As staff has explained throughout the report, there are significant policy issues with what is proposed. Given these significant policy issues, contemplation of Development Permit exemptions, as requested by CVC, is premature until the visitor centre, gatehouse and septic system can be evaluated through a NEP Amendment application.

CONCLUSION

As noted above, the works outlined in the Class EA could be considered for exemption. However, given that there are elements in the Management Plan that do not meet NEP policies, it is NEC staff’s position that the Management Plan as a whole should not be
endorsed by the Commission at this time. Until the Management Plan can be endorsed, no development can be exempted under Section 5.41 of Ontario Regulation 828/90.

**RECOMMENDATIONS:**

1. That the Commission not endorse the Belfountain Conservation Area Management Plan as submitted for approval in December 2018;

2. That the Commission advise the applicant that this decision does not prevent the applicant from making an application for a NEP Amendment or from submitting a revised Management Plan for the Commission’s consideration that complies with the NEP.

**Note:**

- Kim Peters, Senior Strategic Advisor, reviewed the staff report and answered questions.
- Deb Martin-Downs, CAO, Credit Valley Conservation, presented and answered questions.
- Jeff Payne, Eric Baldin, and Laura Rundle, Credit Valley Conservation, were present and answered questions.
- Judy Mabee, Belfountain Community Organization, presented and answered questions.

**M793R16/01-2019**  
Moved By: Pim  
Seconded By: Robertson

“That the Application be deferred to the next Commission meeting to allow staff and CVC time to resolve outstanding issues.”

Motion Defeated

**M793R17/01-2019**  
Moved By: McKinlay  
Seconded By: Mausberg

“Whereas CVC staff have completed the planning process as per part 3 of the NEP.

Further: The process included extensive study and public consultation that resulted in majority consensus.

Further: the proposed master plan meets 2.7.2 e of the NEP and achieves Part 3 of the NEP which is supported by MNRF.

Therefore, be it resolved that the NEC endorse the Belfountain master plan as presented.”

Motion Carried
DISCUSSION:

While the Commission praised the work done by CVC staff to date, it was noted that some of the proposed works do not meet NEP policies. The Commission struggled with the divergence of policy requirements and the conservation area needs. Commissioner McKinlay noted that staff cannot be flexible with policy interpretation, but that Commissioners can.

The Commission discussed the Plan Amendment recommendation and noted that it was not an ideal solution.

Event-generated revenue was also discussed; it was noted that Conservation Authorities are becoming more entrepreneurial.

The Commission determined that the proposed works quality as infrastructure in Section 2.7.2.

The Chair requested further information on next steps if the Plan is approved today. Staff advised that there is no appeal process for NEC staff or members of the public after MNRF approves the Plan. Upon being asked by the Commission, MNRF staff confirmed that they are supportive of the Master Plan.

NEW BUSINESS

No new business.

ADJOURNMENT

M793R18/01-2019

Moved By: VanderBeek

“That this meeting be adjourned.”

Motion Carried

Time of Adjournment: 5:05 p.m.