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**Subject:** Proposed Amendments to the Niagara Escarpment Planning and Development Act

**Report To:** Planning and Economic Development Committee

**Report date:** Wednesday, June 12, 2024

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## Recommendations

1. That this report **BE RECEIVED** for information; and
2. That this report **BE CIRCULATED** to the Towns of Pelham, Niagara-on-the-Lake, Lincoln and Grimsby, as well as the Cities of St. Catharines, Niagara Falls and Thorold.

## Key Facts

- The purpose of this report is to share information with Council related to a Provincial proposal to update the Niagara Escarpment Planning and Development Act (NEPDA).
- On May 3, 2024 a proposal was posted to the Environmental Registry of Ontario (ERO) containing a summary of changes the Province is considering to the NEPDA. The proposal is seeking feedback by June 17<sup>th</sup> (45 days). Staff comments outlined in this report will be submitted to the Province in response to the ERO posting.
- According to the ERO proposal, the amendment aims to clarify and expand existing exemptions for developments that do not require a development permit under the NEPDA. It would also add additional exemptions for certain activities that are unlikely to have a significant environmental impact, such as building a shed, or swimming pool.
- Ultimately the ERO posting lacks the detail required to fully understand the scope of this proposal. Staff have reached out to the Ministry of Natural Resources and Forestry to request further information in an effort to better understand the proposed changes.

## Financial Considerations

Although details are vague with respect to this ERO posting, there is nothing that suggests the processing associated with Niagara Escarpment Development Permit

exemptions or approvals are being downloaded or transitioned to regional or local municipalities.

At this time, there does not appear to be any financial considerations for the Corporation. However, staff will continue to monitor this ERO proposal.

## **Analysis**

The Niagara Escarpment Plan (NEP) was most recently updated in 2017 and had an office consolidation in 2021. During the 2017 update, Regional Council submitted detailed comments on policies, mapping and site-specific changes that were proposed for the plan.

Most development, site alteration and special events within the NEP regulated area requires a permit issued by the Niagara Escarpment Commission (NEC). Attaining a NEP development permit can be a required first step, in advance of local municipal approvals. In an effort to expedite processing times, the Province is proposing to streamline the development permit process by clarifying and expanding exemptions for certain types of development:

“The proposed changes would provide greater certainty and clarity for landowners and businesses within the NEP area on circumstances where a development permit may not be required. Some proposed changes would make it easier for conservation organizations to carry out activities that would benefit the escarpment. Most of the proposed changes are expected to have little or no environmental impact.” (ERO 019-8364)<sup>i</sup>

The proposal outlines nine categories where modifications to existing or new exemptions have been suggested, these include:

Accessory structure activities, such as:

- Construction or placement of a temporary or permanent structure accessory to a dwelling.
- Installation of a private sewage disposal system accessory to a dwelling.

Agricultural activities, such as:

- Installation of a farm entrance to an agricultural property from a road.

- No minimum agricultural lot size to convert structures from one type of farming use to another.
- The construction of a structure accessory to agricultural development, other than a dwelling.
- The installation of a single, permanent farm produce structure to sell local products.

Business activities, such as:

- The establishment and operation of certain home occupation or home industry activities.
- Special events that are accessory to a permitted use and which do not constitute a change in land use (e.g., change of residential use to a commercial use).

Construction and decommissioning activities, such as:

- Demolition of all or part of a building or structure.
- Rebuilding or repairing damaged or destroyed land, buildings, or structures.
- Extension of a single dwelling.

Environmental management activities, such as:

- Certain projects carried out by government or non-government conservation organizations (e.g., upgrades to trail systems, construction of boardwalks, stairs).
- Restoration activities carried out by government or non-government conservation organizations.
- Extend timelines from 5 years to 10 years for Niagara Escarpment Parks and Open Spaces System (NEPOSS) agencies to implement exempted development identified in an approved management plan.

Forestry and vegetation management activities, such as:

- Activities related to vegetation management (e.g., pruning, cutting, landscaping) required to facilitate certain work including work under an existing exemption or a development permit application.
- The placement of fill or minor grading required for the construction of exempt structures or landscaping.

Infrastructure activities, such as:

- Activities related to the construction or installation of communications equipment conducted within existing right of way.
- Maintenance and repair road works conducted by public bodies which are approved through other processes such as an environmental assessment.

Private servicing activities, such as:

- Installation, maintenance, or replacement of a culvert to enable vehicular access to an existing lot.
- Installation or decommissioning of a well or cistern supplying potable water.
- Driveway extension to an existing or new exempt structure.
- Activities related to connecting existing services at road to an existing structure.

Other activities, such as:

- A lot addition or lot line adjustment on existing lots outside of prime agricultural areas.
- Construction or extension of structures accessory to an institutional use.
- Revised size and lighting conditions for the construction of an outdoor swimming pool, spa, or hot tub, and a single outdoor sports court.

### **Staff Comments**

Upon review of the proposed exemptions, staff offer the following items for the Province to consider:

1. While the proposal outlines activities that would be exempt, it does introduce some confusion by stating: "Not all exemptions would apply across the entirety of the NEP area. Some exemptions may be limited to only outside of certain environmentally sensitive areas or natural features." (ERO 019-8364)

It is unclear from the detail in the proposal, how a landowner in the NEP would determine if an exemption applies to their situation or not. If the primary objective of this proposal is to expedite processing times, the process to determine applicability of an exemption should be clarified.

2. The proposal does not contain any discussion around residential dwellings. In support of streamlining efforts to build more homes, staff would suggest the Province

review the proposed exemptions with a housing priority lens, especially within the Escarpment Urban Area designation.

The Escarpment Urban Area designation encompasses lands which are also identified in municipal official plans for urban development. Local municipalities remain the final approval authority for construction in these areas.

3. The proposal lists certain agricultural activities (entrances, accessory buildings, building use conversion, and produce stands) as activities that may be exempted. However, there may be further opportunity to exempt additional agricultural activities, where approvals are also required at the local municipal level. Staff would suggest the Province review agricultural activities considered under the Normal Farm Practices Protection Act and determine if opportunities for further exemptions are possible.

Overall, the exemptions listed in the proposal will continue to support the goals and objectives of the NEP. Further details are needed to understand the implementation of these changes and how they can be communicated and understood by the end user.

Staff will continue to monitor this proposal and can report back to council if further details are released on this regulatory change.

### **Alternatives Reviewed**

No alternatives have been reviewed, as this report summarizes and presents staff comments on the proposed changes to the Niagara Escarpment Planning and Development Act.

### **Relationship to Council Strategic Priorities**

This report provides information on proposed changes to provincial policy related to land use planning. This relates to Council's Strategic Priority of Effective Region, Equitable Region, and Prosperous Region through ensuring high quality, efficient, and coordinated core services.

### **Other Pertinent Reports**

None

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<sup>i</sup> [Proposed amendments to development permit exemptions under R.R.O. 1990,  
Regulation 828 for lands in the Niagara Escarpment Planning Area that is under the  
area of development control | Environmental Registry of Ontario](https://ero.ontario.ca/notice/019-8364)  
(<https://ero.ontario.ca/notice/019-8364>)