

September 19, 2019

STAFF REPORT

Re: Proposed Changes to the Provincial Policy Statement 2014

RECOMMENDATION:

That the Niagara Escarpment Commission (NEC) endorse this report and direct staff to submit these comments to the Ministry of Municipal Affairs and Housing (MMAH) for its consideration.

BACKGROUND:

The MMAH has circulated the proposed changes to the Provincial Policy Statement 2014 (PPS) to the NEC for comment with a deadline of October 21, 2019. The draft revised PPS is also posted on the Environmental Registry (ER 019-0279). The MMAH indicates that the proposed changes are intended to work together with recent changes to the *Planning Act* and Places to Grow: The Growth Plan for the Greater Golden Horseshoe.

The draft PPS also invites commenting agencies to respond to several questions relating to whether the proposed policy revisions achieve the objectives set out above (see Appendix 1).

The purpose of this report is to provide comments on the proposed changes to the policies of the PPS, respond to the questions posed by the MMAH, and to seek endorsement from the NEC to submit this report to the MMAH.

DISCUSSION:

NEP Relationship to PPS

As set out in the Niagara Escarpment Plan 2017 (NEP), in the section entitled “How to Read a Provincial Plan”, the NEP builds on the policy foundation provided by the PPS. The NEP is to be read in conjunction with the PPS “but shall take precedence over the policies of the Provincial Policy Statement to the extent of any conflict”. It is therefore important for the NEC to take a position with respect to the proposed policy modifications in the PPS. Also, the NEC considers the PPS in its review of applications (Niagara Escarpment Plan Amendments and Development Permit applications).

PPS Part I - Preamble

Policies with respect to the relationship between the PPS and the Provincial Land Use Plans have been moved from the Implementation section of the PPS to the Preamble. NEC staff note that in re-locating the policies, the following policy has been removed.

4.12 Provincial plans shall be read in conjunction with this Provincial Policy Statement and take precedence over policies in this Provincial Policy Statement to the extent of any conflict, except where legislation establishing provincial plans provides otherwise. Examples of these are plans created under the *Niagara Escarpment Planning and Development Act*, the *Ontario Planning and Development Act, 1994*, the *Oak Ridges Moraine Conservation Act, 2001*, the *Greenbelt Act, 2005* and the *Places to Grow Act, 2005*.

A new policy proposed in the Preamble to the PPS states that “municipal official plans are the most important vehicle for implementation of this Provincial Policy Statement and for achieving comprehensive, integrated and long-term planning. Official plans shall identify provincial interests and set out appropriate land use designations and policies”. Although the Preamble still states that the policies of the PPS “may be complemented by provincial plans”, NEC staff is concerned that the change in policy represents a shift away from land use planning at a provincial scale and could undermine the authority of the NEC and the NEP such that municipalities may decide without consulting the NEC with respect to whether a planning policy or development is in conflict with the NEP. Therefore, staff recommend that former policy 4.12 be retained in the PPS.

PPS Part II – Legislative Authority

NEC staff support a proposed new policy in this section of the PPS as follows:

Comments, submissions or advice that affect a planning matter that are provided by the council of a municipality, a local board, a planning board, a minister or ministry, board, commission or agency of the government “shall be consistent with” this Provincial Policy Statement.

The policy confirms that all the listed implementing authorities are held to the same standard in the consideration of planning proposals under the PPS. NEC staff always evaluate whether a Development Permit Application or Plan Amendment are consistent with the PPS in staff reports to the NEC.

PPS Part III – How to Read the Provincial Policy Statement

A proposed new policy in this section of the PPS clarifies the relationship between the PPS and provincial plans. It states that the PPS provides “overall policy directions on matters of provincial interest related to land use planning and development” and that the more specific policies of a provincial plan apply on related or overlapping matters in the PPS. Part III does not however reference the Niagara Escarpment Plan as an example of a provincial plan. For greater clarity, NEC staff recommend that reference to all provincial plans be included in this Part of the PPS.

PPS Part IV – Vision for Ontario’s Land Use Planning System

NEC staff support proposed new policies with respect to the role of Indigenous communities in land use planning and development and the encouragement to “build constructive, co-operative relationships through meaningful engagement with Indigenous communities to facilitate knowledge-sharing in land use planning processes and inform decision-making. This goal was set out in the NEC Business Plan (2018-2021). The NEC currently consults with First Nations with respect to Plan Amendment and Development Permit applications. NEC staff is currently in consultation with the Ministry of Natural Resources and Forestry to clarify how best to improve consultation with First Nations as this would be a requirement under the proposed policy in Part 1.2.2 of the PPS where planning authorities “shall engage with Indigenous communities and co-ordinate on land use planning matters”.

In addition to existing policy supporting efficient development patterns, a proposed new policy establishes a link between such development and “better adaptation and response to the impacts of a changing climate”. “Impacts of a changing climate” is a new defined term proposed for the PPS as follows:

Impacts of a changing climate: means the potential for present and future consequences and opportunities from changes in weather patterns at local and regional levels including extreme weather events and increased climate variability.

Climate change is recognized as a risk in the NEC Business Plan and not an “opportunity”. Policies in the NEP 2017 respond to the risk by encouraging development which reduces energy consumption through such means as green infrastructure and low impact development to increase resilience to climate change.

NEC staff is concerned that the proposed PPS definition implies that climate change, widely accepted as present and increasing risk on a national and international scale, is

only about something that might happen locally and results from changes in weather. NEC staff recommend that a more widely accepted definition of climate change be used in the PPS, which captures the negative impacts and immediacy of the problem. For example, the Canadian Institute of Planners' Policy on Climate Change Planning defines climate change as "any systematic change in climate elements sustained over several decades or longer".

Finally, new policy is proposed in Part IV of the PPS relating to the importance of resource management in providing recreational opportunities to meet the needs of the public. It has always been an Objective of the NEP to "provide adequate opportunities for outdoor recreation" by supporting a network of parks in the Niagara Escarpment Parks and Open Space System and the Bruce Trail. NEC staff support the proposed change to the PPS with respect to recreation.

PPS Part V - Policies

1.0 Building Strong Healthy Communities – NEC staff support proposed policy changes that promote the integration of land use and infrastructure planning (Part 1.1.1). In a recent report to the NEC about proposed changes to the Environmental Assessment (EA) process, NEC staff promoted the integration of the EA and Development Permit process to enable one approval for new infrastructure.

Settlement Areas – It is proposed in a new policy in Part 1.1.3.9 that municipalities may permit adjustments in settlement area boundaries outside a comprehensive review, under certain circumstances. NEC staff is of the opinion that this policy would conflict with the NEP. In Minor Urban Centres within the NEP Area, any reconfiguration of the boundary requires an Amendment to the NEP if it includes lands outside the existing boundary (NEP Part 1.6.4). In Urban Areas within the NEP Area, annexation of land by a municipality does not require an amendment to the NEP but any change to the designations of the NEP requires a Plan Amendment.

Furthermore, Section 6.1 (2.3) of the NEPDA only permits re-designation of land to Escarpment Recreation, Minor Urban Centre or Urban Area or new amendments for urban uses including servicing, during a review of the NEP. Further discussion between NEC and MMAH staff regarding the possible conflict between the proposed PPS policy and the NEP with respect to changes in settlement area boundaries.

Rural Lands in Municipalities – a proposed new policy would support the promotion and protection of agricultural uses, agriculture-related uses, on-farm diversified uses

and normal farm practices (Part 1.1.5.2). The NEP 2017 does permit and support these uses. General agricultural development (growing crops and raising livestock) is also exempt from the requirement to obtain a Development Permit from the NEC. NEC staff support the proposed policy change to the PPS.

Land Use Compatibility – The 2014 PPS emphasized the importance of separating sensitive land uses (e.g. residential uses) from major facilities (e.g. airports, manufacturing uses, transportation corridors, resource extraction activities). The proposed change to Part 1.2.6.1 would allow sensitive land uses if there were no reasonable alternative locations and potential impacts are mitigated. It is a fundamental principle of land use planning that incompatible uses should be separated for the general health, safety and welfare of the public. The policy of the NEP for Urban Areas supports this by stating that “development and growth should be limited to minimize land use conflicts” (NEP Part 1.6.8.4). While maximizing opportunities for infill and intensification in settlement areas is important, it should not outweigh the importance of having communities that are supportive of public health and safety. NEC staff recommend that the wording of Part 1.2.6.1 in the PPS 2014 remain unchanged.

Sewage, Water and Stormwater – policies relating to the provision of municipal services are proposed to be revised in the PPS to clarify that individual wells and septic systems are the least preferred option to support forecasted growth (Part 1.6.6.4). Within settlement areas, individual services may be used for infilling and minor rounding out of existing development. NEC staff support the revised policy but recommend that a definition of “infilling” be added to the PPS to assist in the interpretation of this policy.

Long Term Economic Prosperity – NEC staff support proposed policy revisions in the PPS that acknowledge the importance of protecting the viability of the agricultural system, including minimizing land use conflicts. NEC staff note however that a proposed revision to the Agriculture policies in Part 2.3.3.s and 2.3.6.2 of the PPS do not appear to support the direction to minimize land use conflicts. Currently, the PPS requires that new land uses, and lot creation comply with the minimum distance separation (MDS) formulae in order to establish appropriate setbacks between farm operations, which may generate odours, and residential land uses. The proposed policy would limit the application of MDS just to prime agricultural areas and suggests mitigation of the impact of non-agricultural uses on agricultural operations, where feasible. NEC staff recommend that the current policy be maintained to avoid future conflicts with agricultural operations.

2.0 Wise Use and Management of Resources – A new policy with respect to wetlands is proposed in Part 2.1.10 as follows:

Municipalities may choose to manage wetlands not subject to policy 2.1.4 and 2.1.5, in accordance with guidelines developed by the Province.

Policy 2.1.4 and 2.1.5 prohibit development and site alteration in certain significant wetlands and woodlands. This could present a conflict with the NEP which classifies all wetlands as key natural heritage features and does not allow development in wetlands, with limited exceptions. The NEP would continue to take precedence in this regard, but NEC staff recommends more discussion with staff of the MMAH regarding this policy before it is finalized to avoid the potential for conflicting policy intent.

Water – The PPS is proposed to be modified to indicate that evaluating the impacts of climate change on water resource systems should be done at the watershed level (Part 2.2.1 c). This is consistent with the Objective in Part 2.6 of the NEP which seeks to protect and enhance water resources at the local and watershed level. NEC staff support the proposed policy change the PPS.

Mineral Aggregate Resources – A new policy is proposed that would allow the extraction of mineral aggregate resources outside the Greenbelt Area (which includes the NEP Area) if there are no negative impacts on the natural features or their ecological functions (Part 2.5.2.2). To the extent that the proposed PPS policy on aggregate extraction would be more permissive outside the Greenbelt and therefore encourage such activities outside the NEP Area, NEC staff support this policy change.

Another policy change in this section of the PPS requires clarification. The revised wording of Part 2.5.2.4 states that where the *Aggregate Resources Act* applies, processes under that Act shall address the depth of extraction of new or existing mineral aggregate operations. NEC staff is not clear on the intent of the policy, but it suggests that planning authorities such as the NEC who review applications for new licences would not have the opportunity to comment on the depth of extraction. This is an important consideration in the review of an aggregate application and necessary to determine the conformity of the application with NEP policy. While an applicant for a new pit or quarry in the NEP Area would still require an amendment to the NEP and a Development Permit, NEC staff does not support the proposed PPS policy in its current form and recommend that it be clarified as to how it might impact the NEC's role and process under the NEPDA on aggregate matters.

3.0 Protecting Public Health and Safety – A new policy proposed in part 3.2.3 of the PPS encourages the local re-use of excess soil to protect human health and the environment. NEC staff support this proposed policy as it is consistent with NEP Policy 2.13.8.

4.0 Implementation and Interpretation – A revised policy in Part 4.4 confirms that the PPS is to be implemented in accordance with the Human Rights Code and the Canadian Charter of Rights and Freedoms. Although this would occur regardless of this policy, NEC staff support its inclusion in the PPS to reinforce the importance of equal treatment to all in the implementation of PPS policies.

6.0 Definitions – Some new definitions and revisions to existing definitions are proposed. Generally speaking, the definitions are the same as, or similar to, definitions in the NEP.

Cultural heritage landscape – NEC staff support the addition of the word “views” as an important element to a cultural heritage landscape in protecting scenic resources, which is an important consideration in the NEP.

Greenbelt Area – this is a new definition in the PPS that refers to the area identified in Regulation 59/05. The Greenbelt Area defined in the Regulation includes the NEP Area. As such, NEC staff supports the addition of this definition.

On-farm diversified uses – A revision to the existing definition proposes that “ground-mounted solar facilities are permitted in prime agricultural areas and specialty crop areas only as on-farm diversified uses”. Ground-mounted solar facilities are considered infrastructure in the NEP and are permitted in all designations. However, new on-farm diversified uses are not permitted in the Escarpment Natural Area. NEC staff recommends that the PPS be clarified as to whether ground-mounted solar facilities are infrastructure or on-farm diversified uses, to avoid confusion about where they may be a permitted use.

NEC staff has reviewed the proposed revisions to the PPS and has identified in this report where the policies are consistent with the NEP and where certain policy changes merit further discussion to ensure a consistent policy approach and to avoid conflict with the policies of the NEP.

Answers to the questions posed by the MMAH in relation to the proposed policy revisions are found in Appendix 1 to this report.

CONCLUSION:

That the Niagara Escarpment Commission (NEC) endorse this report and direct NEC staff to provide the report to the MMAH via the Environmental Registry, before the October 21, 2019 deadline.

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Appendix 1 – NEC Staff Proposed Response to Questions Posed by the MMAH

Appendix 1 – Questions posed by the MMAH

- *Do the proposed policies effectively support goals related to increasing housing supply, creating and maintaining jobs, and red tape reduction while continuing to protect the environment, farmland, and public health and safety?*

The proposed policy changes align with the Purpose of the NEP 2017 to allow only development that is compatible with the natural environment and the Objective to encourage agriculture and uses compatible with farming, and to encourage accessory uses that directly support those activities. The NEC supports the direction to encourage aggregate extraction outside the Greenbelt (Policy 2.5.2.2)

- *Do the proposed policies strike the right balance? Why or why not?*

Although it is important to maximize the amount of land available for development in urban areas, the NEC does not support allowing development of sensitive land uses adjacent to major facilities because it is not always possible to mitigate or minimize impacts such as traffic, noise and odours.

- *How do these policies take into consideration the views of Ontario communities?*

The NEC has no comment on this question having not undertaken any recent survey of stakeholders. Comments received during the Co-ordinated Review, however, did indicate that there was support for improving the land use planning approval process. Since that time the NEC has taken steps to streamline its operations, reducing the backlog of Development Permit applications and proposing new measures such as reducing the Area of Development Control, not requiring a Development Permit for infrastructure projects where an EA was undertaken, and proposing additional exemptions from the requirement to obtain a Development Permit through possible changes to Regulation 828.

- *Are there any other policy changes that are needed to support key priorities for housing, job creation, and streamlining of development approvals?*

A significant number (34%) of the Development Permits issued by the NEC this year (to July 2019) were for residential uses (new houses or renovations to existing houses) and 49% of all applications were approved by the Director without having to go to a Commission meeting. The NEC continues to review its processes, legislation and regulations to optimize efficiency and effectiveness.

- *Are there any other tools that are needed to help implement the proposed policies?*

The policies of the NEP 2017 are consistent with the PPS currently, so it does not appear that the NEC will require any additional tools to support and implement the proposed policies.