

June 17, 2024

ERO - 019 08364  
Niagara Escarpment Commission  
232 Guelph Street  
Georgetown, ON L7G 4B1

**Re: 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**

To Whom it May Concern,

On behalf of the City of Hamilton, I am pleased to provide this letter as Hamilton's submission regarding the 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.

The City is generally supportive of the proposed amendments to development permit exemptions under R.R.O. 1990, Regulation 828 for lands in the Niagara Escarpment Planning Area under the area of development control. The City understands the intention of these amendments as they intend on streamlining the Niagara Escarpment Commission permit process for homeowners, and businesses undertaking minor developments to their properties under the development control of the Niagara Escarpment Commission.

The City has the following concerns and suggestions to be considered with the proposed development permit exemptions to ensure the preservation of the City interests listed below:

- It is recommended that criteria be applied to ensure exempted development is appropriate and meets the intent of the City's policy/regulatory instruments.
- It is recommended that criteria be established to ensure Cultural Heritage resources are retained for exempted development as the proposed changes eliminate the City's capacity to request an archeological assessment and limit the City's capacity to preserve existing building heritage and heritage landscapes.
- It is recommended that criteria be established to address exemption scenarios where the subject lands have archeological potential and cultural heritage value. The proposed changes would eliminate the capacity for the City to request an archeological assessment and limit the City's capacity to ensure cultural heritage assets and landscapes are maintained.

- The proposed changes eliminate the capacity for the City to request specialized studies or plans in accordance with the City's policy/regulatory instruments.
- It is recommended that Natural Heritage features be identified by the Owner/Applicant. It is suggested that development less than 30.0 metres from a Natural Heritage feature require an NEC Development Permit.
- Consideration should be given to the secondary dwelling unit prohibition within the Niagara Escarpment Protected Area in Lower Stoney Creek that is not located within the Development Control Area.
- There is the potential for oversight and unintended liabilities given the applicant led process empowering the homeowner to conduct a "self-review" prior to a permit submission to the City of Hamilton.

Detailed comments are provided in Appendix "A" attached to this letter with responses from various City Divisions.

We look forward to receiving the results of the consultation on the proposed amendments to development permit exemptions under R.R.O. 1990, Regulation 828 for lands in the Niagara Escarpment Planning Area that are under the area of development control. City staff would be pleased to meet with and discuss these comments in greater detail.

Sincerely,



Shannon McKie  
Acting Director, Development Planning  
Planning and Economic Development Department  
City of Hamilton

SM:js  
(Attachments)

**City of Hamilton Comments on  
the 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.**

| Summary of Proposed Change                                                                                                                                                                                                        | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
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| <b>Accessory structure activities</b>                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <ul style="list-style-type: none"> <li>• Construction or placement of a temporary or permanent structure accessory to a dwelling.</li> <li>• Installation of a private sewage disposal system accessory to a dwelling.</li> </ul> | <p>Staff would recommend that criteria be placed on the proposed exemption in terms of size and location of the accessory structures. Although the Zoning By-law is not in effect in areas of the City regulated by Regulation 828, the City still uses the regulations of the Zoning By-law for guidance when providing comments on Niagara Escarpment Commission Development Permit Applications. If all accessory structures are exempt from Niagara Escarpment Commission Development Permits, City staff would not have the opportunity to comment on accessory structures that may not be supported by staff due to their significant size/location.</p> <p>Due to the changes to Section 41 of the <i>Planning Act</i> through Bill 23, Development Planning Staff due not have the ability to regulate large accessory structures that are within/adjacent to significant natural heritage features. Following the removal of Site Plan Control on these types of development, staff have been reliant on the commenting process of Niagara Escarpment Commission Development Permit applications to review and identify concerns from a natural heritage perspective and impose conditions of development.</p> |

| Summary of Proposed Change                                                                                                                                                                                                        | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
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| <ul style="list-style-type: none"> <li>• Construction or placement of a temporary or permanent structure accessory to a dwelling.</li> <li>• Installation of a private sewage disposal system accessory to a dwelling.</li> </ul> | <p>If significant accessory structures and development are exempt from a Niagara Escarpment Commission Development Permit, staff may not have an opportunity to review the appropriateness of development from a natural heritage, cultural heritage, or archeological perspective, as this is not typically reviewed through the Building Permit process, and the Open Space and Park Zones, which identify natural heritage features/areas would not be in force.</p> <p>City of Hamilton staff request that secondary dwelling unit permissions be reviewed for the lands which fall outside of the Development Control Area. Staff have evaluated and recommended the expansion of Additional Dwelling Unit – Detached permissions to the rural area, and now further request that Niagara Escarpment staff review the permissions within this area of Lower Stoney Creek to provide greater clarity and consistency in the implementation of Niagara Escarpment Plan policies.</p> <p>The City would recommend that criteria be applied to potential exemptions to ensure proposed development is appropriate from a size and locations perspective, and that it will not adversely impact significant natural heritage features. Natural Heritage features should be identified with a threshold of a minimum of 30.0 metres for an exemption to determine if an Environmental Impact Statement is required. Development less than 30.0 metres from an identified Natural Heritage feature should not be exempt from a Niagara Escarpment Commission permit as it would require an Environment Impact Statement.</p> |

| Summary of Proposed Change                                                                                                                                                                                                        | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
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| Summary of Proposed Change                                                                                                                                                                                                                                                                                                                                                                                                                         | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
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| <b>Agricultural Activities</b>                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <ul style="list-style-type: none"> <li>• Installation of a farm entrance to an agricultural property from a road.</li> <li>• No minimum agricultural lot size to convert structures from one type of farming use to another.</li> <li>• The construction of a structure accessory to agricultural development, other than a dwelling.</li> <li>• The installation of a single, permanent farm produce structure to sell local products.</li> </ul> | <p>The archaeological policies in the <i>Ontario Heritage Act</i> aren't applicable law for building permits, so the Niagara Escarpment Commission permit process is the only way to ensure that archaeological assessments are conducted, and resources conserved prior to disturbance and development. Most of the list of exempted scopes of work would impact archaeological potential.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |

| Summary of Proposed Change                                                                                                                                                                                                                                                                                                                                                                                                                        | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
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| <b>Agricultural Activities (Continued)</b>                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <ul style="list-style-type: none"> <li>• Installation of a farm entrance to an agricultural property from a road.</li> <li>• No minimum agricultural lot size to convert structures from one type of farming use to another.</li> <li>• The construction of a structure accessory to agricultural development, other than a dwelling</li> <li>• The installation of a single, permanent farm produce structure to sell local products.</li> </ul> | <p>The proposed list of exempted works would also impact the ability to conserve built heritage resources and cultural heritage landscape, as there would be no mechanism to require a Cultural Heritage Impact Assessment and manage change to existing or newly identified cultural heritage resources through the Niagara Escarpment Commission permit process.</p> <p>Natural Heritage features should be identified with a threshold of a minimum of 30.0 metres for an exemption to determine if an Environmental Impact Statement is required. Development less than 30.0 metres from an identified Natural Heritage feature should not be exempt from a Niagara Escarpment Commission permit as it would require an Environment Impact Statement.</p> <p>Staff recommend that criteria be established so that only development that generally complies with the regulations of our Zoning By-law and the policies of our Urban/Rural Hamilton Official Plan is exempt.</p> |
| <b>Business Activities</b>                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <ul style="list-style-type: none"> <li>• The establishment and operation of certain home occupation or home industry activities.</li> <li>• 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).</li> </ul>                                                                                                                               | <p>Staff are supportive of the establishment of home occupations through the City. As identified above, the main instrument for regulating such uses across the City is the Zoning By-law. As the Zoning By-law is not in effect throughout the areas under Niagara Escarpment Commission Development Control, staff would like to ensure that criteria are applied to development to ensure the home occupation remains subordinate to the primary residential use on the property.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |

| Summary of Proposed Change                                                                                                                                                                                                                   | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
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| <b>Business Activities (Continued)</b>                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|                                                                                                                                                                                                                                              | Staff once again recommend that criteria be applied to exemptions to home occupations/industries to ensure they are appropriate.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>Construction and Decommissioning Activities</b>                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <ul style="list-style-type: none"> <li>• Demolition of all or part of a building or structure.</li> <li>• Rebuilding or repairing damaged or destroyed land, buildings, or structures.</li> <li>• Extension of a single dwelling.</li> </ul> | <p>The archaeological policies in the <i>Ontario Heritage Act</i> aren't applicable law for building permits. The Niagara Escarpment Commission permit process is the only way to ensure that archaeological assessments are conducted, and resources conserved prior to disturbance and development. Most of the list of exempted scopes of work would impact archaeological potential.</p> <p>The proposed list of exempted works would also impact the ability to conserve built heritage resources and cultural heritage landscape, as there would be no mechanism to require a Cultural Heritage Impact Assessment and manage change to existing or newly identified cultural heritage resources through the Niagara Escarpment Commission permit process.</p> <p>Natural Heritage features should be identified with a threshold of a minimum of 30.0 metres for an exemption to determine if an Environmental Impact Statement is required. Development less than 30.0 metres from an identified Natural Heritage feature should not be exempt from a Niagara Escarpment Commission permit as it would require an Environment Impact Statement.</p> |

| Summary of Proposed Change                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
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| <b>Environmental Management Activities</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <ul style="list-style-type: none"> <li>• Certain projects carried out by government or non-government conservation organizations (e.g., upgrades to trail systems, construction of boardwalks, stairs).</li> <li>• Restoration activities carried out by government or non-government conservation organizations.</li> <li>• 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.</li> </ul> | <p>The archaeological policies in <i>the Ontario Heritage Act</i> aren't applicable law for building permits, so the Niagara Escarpment Commission permit process is the only way to ensure that archaeological assessments are conducted, and resources conserved prior to disturbance and development. Most of the list of exempted scopes of work would impact archaeological potential.</p> <p>The proposed list of exempted works would also impact the ability to conserve built heritage resources and cultural heritage landscape, as there would be no mechanism to require a Cultural Heritage Impact Assessment and manage change to existing or newly identified cultural heritage resources through the Niagara Escarpment Commission permit process.</p> |
| <b>Forestry and Vegetation Management Activities</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <ul style="list-style-type: none"> <li>• 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.</li> <li>• The placement of fill or minor grading required for the construction of exempt structures or landscaping.</li> </ul>                                                                                                                                                       | <p>Natural Heritage features should be identified with a threshold of a minimum of 30.0 metres for an exemption to determine if an Environmental Impact Statement is required. Development less than 30.0 metres from an identified Natural Heritage feature should not be exempt from a Niagara Escarpment Commission permit as it would require an Environment Impact Statement.</p>                                                                                                                                                                                                                                                                                                                                                                                 |

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| <b>Infrastructure Activities</b>                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <ul style="list-style-type: none"> <li>Activities related to the construction or installation of communications equipment conducted within existing right of way.</li> <li>Maintenance and repair road works conducted by public bodies which are approved through other processes such as an environmental assessment.</li> </ul>                                                                               | <p>The archaeological policies in <i>the Ontario Heritage Act</i> aren't applicable law for building permits, so the Niagara Escarpment Commission permit process is the only way to ensure that archaeological assessments are conducted, and resources conserved prior to disturbance and development. Most of the list of exempted scopes of work would impact archaeological potential.</p> <p>Natural Heritage features should be identified with a threshold of a minimum of 30.0 metres for an exemption to determine if an Environmental Impact Statement is required. Development less than 30.0 metres from an identified Natural Heritage feature should not be exempt from a Niagara Escarpment Commission permit as it would require an Environment Impact Statement.</p> |
| <b>Private Servicing Activities</b>                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <ul style="list-style-type: none"> <li>Installation, maintenance, or replacement of a culvert to enable vehicular access to an existing lot.</li> <li>Installation or decommissioning of a well or cistern supplying potable water.</li> <li>Driveway extension to an existing or new exempt structure.</li> <li>Activities related to connecting existing services at road to an existing structure.</li> </ul> | <p>The archaeological policies in the <i>Ontario Heritage Act</i> aren't applicable law for building permits, so the Niagara Escarpment Commission permit process is the only way to ensure that archaeological assessments are conducted, and resources conserved prior to disturbance and development. Most of the list of exempted scopes of work would impact archaeological potential.</p>                                                                                                                                                                                                                                                                                                                                                                                        |

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| <b>Other Activities</b>                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <ul style="list-style-type: none"> <li>• A lot addition or lot line adjustment on existing lots outside of prime agricultural areas.</li> <li>• accessory to an institutional use.</li> <li>• Revised size and lighting conditions for the construction of an outdoor swimming pool, spa, or hot tub, and a single outdoor sports court.</li> <li>• Construction or extension of structures</li> </ul> | <p>In terms of lot line adjustments for lots outside of prime agricultural areas, staff note that these developments, although exempt from a Niagara Escarpment Commission Development Permit, would still be required to obtain municipal consent through a Consent Application to the Committee of Adjustment. Accordingly, staff are still able to review the proposed lot lint adjustment to ensure it meets the applicable Urban/Rural Hamilton Official Plan policy.</p> <p>Similar to the comments identified above related to structures accessory to a residential use, staff would like to ensure that structures accessory to institutional uses are appropriate and meet to policies of our Official Plan and applicable Zoning regulations (as guidance). Staff may have additional means to review institutional accessory structures as they are not automatically exempt from the Site Plan Control process.</p> <p>Staff have no concerns with the revised size and lighting conditions for an outdoor swimming pool, spa, or hot tub, and a single outdoor sports court provided there are policies/criteria to help mitigate light pollution and light trespass.</p> <p>The archaeological policies in the <i>Ontario Heritage Act</i> aren't applicable law for building permits, so the Niagara Escarpment Commission permit process is the only way to ensure that archaeological assessments are conducted, and resources conserved prior to disturbance and development. Most of the list of exempted scopes of work would impact archaeological potential.</p> |

| Summary of Proposed Change   | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
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| Other Activities (Continued) |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|                              | <p>The proposed list of exempted works would also impact the ability to conserve built heritage resources and cultural heritage landscape, as there would be no mechanism to require a Cultural Heritage Impact Assessment and manage change to existing or newly identified cultural heritage resources through the Niagara Escarpment Commission permit process.</p> <p>Natural Heritage features should be identified with a threshold of a minimum of 30.0 metres for an exemption to determine if an Environmental Impact Statement is required. Development less than 30.0 metres from an identified Natural Heritage feature should not be exempt from a Niagara Escarpment Commission permit as it would require an Environment Impact Statement.</p> |