

Proposed amendments to development permit exemptions under R.R.O. 1990, Regulation 828 for land in the Niagara Escarpment Planning Area that is under the area of development control

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SUBMISSIONS OF THE TOWNSHIP OF CLEARVIEW

I. INTRODUCTION

Clearview welcomes the opportunity to comment on the proposed changes to R.R.O. 1990 Regulation 828 (the “**Regulation**”).

In particular, Clearview wishes to comment on the proposal to modify the existing exemptions for infrastructure activities. As we understand it, the new regulation would provide that:

The following classes of development, if listed as permitted uses under the land use policies established in the Niagara Escarpment Plan and not in conflict with a development permit issued under the Act, are exempt from the requirement of obtaining a development permit:

Infrastructure activities, such as:

- ...
- *Maintenance and repair road works conducted by public bodies which are approved through other processes such as an environmental assessment (the “**Proposal**”).*

In general, our comments address two issues: 1) what we see as an unduly restrictive scope to the work eligible for exemption; and 2) the need for clarification as to who may qualify for an exemption and what, if any, third party approvals should be part of the NEC exemption process.

II. CLEARVIEW'S INTEREST

The Township of Clearview is a large rural municipality located in Simcoe County, with a land area of 557 square kilometres or 215 square miles. It is comprised of some 18 communities, with a population exceeding 15,000 and growing as the municipality helps to meet the province's goals for new housing development and support for regional employment. A large percentage of the south-west corner of Clearview is part of the Niagara Escarpment Plan (the "NEP") Area and many of its roads pass through the NEP Area.

As the responsible road authority over many miles of roads and highways that it is required to maintain, repair and renew in the NEP Area, Clearview has extensive and relevant experience in the application of exemptions for infrastructure activities.

III. THE REGULATION

Under section 5. 4.3 of the Regulation, the following work does not require a development permit:

5. The following classes of development, if listed as permitted uses under the land use policies established in the Niagara Escarpment Plan and not in conflict with a development permit issued under the Act, are exempt from the requirement of obtaining a development permit:

- 4.3 The maintenance, repair or renewal of highways or municipal roads if the maintenance, repair or renewal does not,*
- i. open an unopened road allowance,*
 - ii. expand the width of the road,*
 - iii. change the road from a seasonal to a year round road,*
 - iv. change the surface of the road from gravel to pavement, or*
 - v. require road cuts and contour changes.*

The NEP permits "infrastructure" in all designations, with the condition that it be: "deemed necessary to the public interest after all other alternative have been considered"¹; or "deemed necessary to the public interest and there is no other alternative"².

Clearview agrees that infrastructure, including municipal roads, should be a permitted use in the NEP Area, and takes the position that a municipal road approved under the Municipal Class EA meets the test of being deemed necessary to the public interest, either after all other alternatives have been considered or where there is no other alternative, and is, accordingly, a permitted use.

¹ Section 2.6.2 "Development Affecting Water Resources" and section 2.12.5 "Infrastructure shall avoid Escarpment Natural Areas".

² Section 2.7.2 "Development Affecting Natural Heritage".

It therefore follows that, if the criteria in section 5 4.3 is met, the road is exempt from the requirement of obtaining a development permit.

IV. COMMENTS

Clearview respectfully submits that there is a serious legislative conflict regarding the authority over municipal roads, as between the local municipality and the NEC. The opportunity to amend Ontario Regulation 828 should be used to relieve this conflict.

The conflict arises between the clear statutory pronouncements giving municipalities jurisdiction over, ownership of, and responsibility for the maintenance of all highways, streets and lanes and road allowances located in the municipality in the *Municipal Act, 2001*,³ and the provisions of the *Niagara Escarpment Planning and Development Act*, which prohibit a municipality from undertaking development that is not exempt under the regulations or for which a development permit has been issued.⁴

We believe that this conflict can be resolved by revising the Proposal so that the maintenance, repair and renewal of municipal roads is subject to a clear exemption under Ontario Regulation 828.

To that end, Clearview respectfully submits that, by removing the authority to “renew” a road, the proposed amendments will limit a municipality’s ability to properly maintain a safe and functional local road network. In addition, we believe that the Proposal requires clarification to avoid confusion as to who is entitled to the exemption and should be revised to remove the reference to other approval processes.

The Renewal Of Municipal Roads Should Continue To Be An Exemption

The Regulation, as it now stands, exempts the “maintenance, repair or renewal” (emphasis added) of highways or municipal roads. Clearview believes that the ability to renew its roads is vital to the health and safety of its residents and important to the competitiveness of the local economy.

³ Section 28 of the *Municipal Act, 2001* states that a municipality has jurisdiction over all highways, all road allowances located in the municipality that were made by the Crown surveyors, and all road allowances, highways, streets and lanes shown on a registered plan of subdivision. Section 30 of the *Municipal Act, 2001*, provides that a highway is owned by the municipality that has jurisdiction over it. Under section 44, the municipality that has jurisdiction over a highway or bridge shall keep it in a state of repair that is reasonable in the circumstances, including the character and location of the highway or bridge. O. Reg. 239/02 establishes the maintenance standards required to be maintained by the municipality.

⁴ Section 13 of the *Niagara Escarpment Planning and Development Act* prohibit a municipality from undertaking “any improvement of a structural nature or any other development or undertaking within the [NEP] Area if the improvement, development or undertaking is in conflict with the Niagara Escarpment Plan”. This prohibition may only be overcome if the development is exempt under the regulations or unless the development complies with a development permit issued under the NEPDA (section 24(1) of the NEPDA).

The Proposal would, however, remove the exemption for the “renewal” of municipal roads. Clearview believes the Proposal should be revised to continue this exemption, for the following reasons:

1. The exemption in section 4.3 of the Regulation implicitly acknowledges the fact of existing roads in the NEP Area and provides a test as to how they can be preserved, while remaining a part of the natural environment through repair, maintenance and renewal. In so doing, the Regulation balances the purposes of the *Niagara Escarpment Planning and Development Act* and the transportation needs of local municipalities. (This is in contrast to the development of a new highway or municipal road through an undisturbed natural environment in the NEP Area; development that would not respect the purposes of the *Niagara Escarpment Planning and Development Act*.)
2. Limiting the exemption to only the “repair and maintenance” of highways and municipal roads is unduly restrictive, presumably allowing only minor improvements such as the filling of pot holes or the patching of asphalt and prohibiting any meaningful improvements. Imposing such a drastic restriction on a municipality’s ability to encourage and respond to growth through the renewal of its existing road network will inevitably lead to unsafe and obsolete roads, followed by demands for new roads.

Recommendation #1:

The Proposal be revised to include the renewal of road works.

The Criteria For An Exemption Needs Clarification

In addition to the need to continue to allow road renewal, we are also concerned with some of the terms and language used to identify who qualifies for the exemption and what approval processes are included.

First, we believe some clarification is needed to make it clear that a “public body” includes a municipality. The following references to the related legislative provisions illustrates the potential problem:

1. The *Environmental Assessment Act* defines a “public body” to mean “a body other than a municipality that is defined as a public body by the regulations” and includes a municipality as part of the definition of a “person”.
2. The Regulation itself contains no definition of a “public body” and the Proposal does not include the addition of such a definition.

3. Section 1. (2) of Ontario Regulation 51/24, also made under the *Environmental Assessment Act*, reveals a list of six “public bodies”, which does not include a municipal government. In similar fashion, section 1 of Ontario Regulation 53/24 refers back to the definition in Ontario Regulation 51/24 and, accordingly, does not define a public body as including a municipality.

Recommendation #2:

The Proposal be revised to include a definition of a “public body” to mean an upper or lower tier municipality.

Clearview believes the requirement that the work be approved by “other processes such as an environmental assessment”, is vague and inappropriately delegates an important approval to an unnamed and undefined third party.

First, we note the recent proposal by the Ministry of the Environment, Conservation and Parks (the “MECP”) to revoke the Municipal Class EA (the “MCEA”) in favour of a streamlined EA regulation for municipal infrastructure. In particular, it appears that some projects which are currently subject to the MCEA would no longer have *Environmental Assessment Act* requirements, including “all municipal roads in any location”. While Clearview certainly supports this approach, the reference in the Proposal to an environmental assessment as a requirement for an exemption would appear to be, at best, redundant.

Second, the Proposal’s reference to some other, unspecified approval processes, implies that there are, in fact, other approval processes, when, apart from the MCEA classification, there are no approval processes required for a municipality to repair, maintain or renew a municipal road.

Recommendation #3:

The Proposal be revised to remove any reference to other approval processes as a test for an exemption.

V. REVISED PROPOSAL

Clearview respectfully submits that Regulation 828 be revised as follows:

“public body” means a municipality.

The following classes of development, if listed as permitted uses under the land use policies established in the Niagara Escarpment Plan and not in conflict with a development permit issued under the Act, are exempt from the requirement of obtaining a development permit:

- *Maintenance, repair and renewal road works conducted by public bodies.*

ALL OF WHICH IS RESPECTFULLY SUBMITTED on behalf of the Township of Clearview this 17th day of June, 2024.

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