**CITY OF HAMILTON**

*Planning and Economic Development Department*

*Strategic Services and Special Projects Division*

<table>
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<tr>
<th>TO:</th>
<th>Chair and Members Economic Development and Planning Committee</th>
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<tr>
<td>WARD(S) AFFECTED:</td>
<td>WARD 13</td>
</tr>
<tr>
<td>COMMITTEE DATE:</td>
<td>October 5, 2010</td>
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<tr>
<td>SUBJECT/REPORT NO:</td>
<td>Addition of Lands to the Niagara Escarpment Plan - Cootes Paradise Link (PW 176)(PED10228)</td>
</tr>
<tr>
<td>SUBMITTED BY:</td>
<td>Tim McCabe General Manager Planning &amp; Economic Development Department</td>
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<tr>
<td>PREPARED BY:</td>
<td>Joanne Hickey-Evans 905-546-2424 ext 1282</td>
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</table>

**RECOMMENDATION:**

(a) That the City of Hamilton supports the proposed Niagara Escarpment Plan designations of “Escarpment Protection” and “Escarpment Natural” and the inclusion of the lands within the Niagara Escarpment Parks and Open Space System (NEPOSS), for a portion of the lands, located north of Cootes Drive, west of Olympic Drive, south the railway line and east of Cootes Paradise, identified in Amendment No.176 - Cootes Paradise Link, shown on the attached Appendices “A” and “B” to Report PED10228, provided the following condition is met:

i) the City owned Park (Olympic Park) and the lands occupied by the Hydro buildings and associated storage facilities are removed from the proposed Amendment No. 176;

(b) That City staff be directed to work in conjunction with the Province to undertake the necessary steps at the Provincial level to have these lands removed from the Niagara Escarpment Plan Planning Area.
**EXECUTIVE SUMMARY**

The Niagara Escarpment Commission, through Amendment No. 176-Cootes Paradise-is proposing to designate the lands, located north of Cootes Drive, west of Olympic Drive, south of the railway line and east of Cootes Paradise, as “Escarpment Protection” and “Escarpment Natural”. These lands, as well other City lands (i.e. Pleasantview area) were added to the Niagara Escarpment Plan Planning area through an Order of Cabinet in June 2010. The lands were previously under the Parkway Belt West Plan (PWBW).

The Niagara Escarpment Commission has requested comments on the proposed designations. Staff have reviewed the Amendment and support the designations and the inclusion of the lands within the Niagara Escarpment Parks and Open Space System (NEPOSS) for a majority of the lands with the exception of two sites: 

i) the City owned Park (Olympic Park); and,

ii) the lands occupied by the Hydro buildings and associated storage facilities.

Olympic Park mostly serves City residents who live within the urban area of the City. The hydro buildings and associated facilities are more commonly found in an urban area and have characteristics of an employment area. Therefore, based on the existing land uses and to allow for redevelopment of the sites in the future, it would be appropriate to remove these sites from the Niagara Escarpment Plan. The land use controls (Official Plan (OP) and zoning) for these sites would remain under the sole jurisdiction of the City.

The City did not address these two sites in the development of the new Urban Official Plan because the Province was in the midst of reviewing the appropriate Provincial Plan jurisdiction for the lands. It was through this review process that City staff would evaluate the appropriate designations or even the necessity of keeping these lands within any provincial plan.

*Alternatives for Consideration – See Page 9*

**FINANCIAL / STAFFING / LEGAL IMPLICATIONS** (for Recommendation(s) only)

**Financial:** None

**Staffing:** None

**Legal:** Various steps and actions maybe required to effect the recommendations in this Report.
1.0 Purpose and Process for the Niagara Escarpment Plan Amendment 176 (NEPA 176)

The purpose of this Amendment is to identify the appropriate designations for a portion of the lands that were recently added to the Niagara Escarpment Plan (NEP) through an Order in Council dated June 14, 2010. The lands encompassed by this Amendment are located north of Cootes Drive, west of Olympic Drive, south of the railway line and east of Cootes Paradise. The majority of these lands are proposed to be designated Escarpment Natural in the NEP and the remaining lands would be designated “Escarpment Protection”, as illustrated in Appendix “B” attached to Report PED10228. The remaining lands which are mostly the Pleasantview area (north and south of York Road, between Valley Road and Highway 6) will be the subject of a future NEPA.

In addition, the lands are to be incorporated as part of the Niagara Escarpment Parks and Open Space System (NEPOSS)-Natural Environment Park. This overly identifies public lands which are encompassed as part of a larger open space/parks network “which are to protect distinctive features and significant areas along the escarpment. In addition, this system “Is a framework for the establishment and coordination of a system of publicly owned lands on the Escarpment as well as the Bruce trail (excerpt from Section 3 of the Niagara Escarpment Plan).

The process for adding additional lands is a two step process.

- **Step One**
  Under the Niagara Escarpment Planning and Development Act, Lieutenant Governor in Council issues an Order in Council to add the lands to Planning area. On May 7, 2007, the notice to add these lands to the Planning area was posted on the Environmental Bill of Rights (EBR). The City commented on this posting, only as it relates to Pleasantview. A previous motion, relating to a similar issue, was re-sent to the Province in response to the EBR posting.
Prior to the approval of the Order in Council, staff from the Ministry of Natural Resources (MNR) spoke with City staff, in which the MNR staff person, indicated that by approving this Order in Council, the City still has the right to request these lands to be excluded form the NEP. The order in Council was finalized on June 14, 2010.

One of the major flaws with the process for adding lands to the Niagara Escarpment Plan is the municipality or any other interested party has insufficient information (no designations are identified) to determine whether or not the lands should be added to the Niagara Escarpment Plan under Step 1.

- **Step Two**
  The second step in the process is for the NEC to determine the appropriate designations for the newly added lands. Proposed Amendment No. 176, which is the subject of this Report, identifies the proposed designations in the NEP for a portion of the lands added through the recent Order of Cabinet. A separate amendment will be initiated for the remaining lands sometime in the future.

  Part of this process includes consultations with stakeholders, including the municipality. Comments are due by October 4, 2010. On August 12, 2010, staff requested an extension to this date. This report would be the formal comments to the NEC as part of step 2.
2.0 Existing Land uses and Current OP Designations:

The NEPA encompasses 93 ha of lands, the majority of which is natural open space. The table below highlights the land ownership, land use and parcel sizes for the majority of the lands.

<table>
<thead>
<tr>
<th>Existing Land Uses (see Appendix “A”)</th>
<th>Land Ownership</th>
<th>Parkway Belt West Plan Designation*</th>
<th>Designations in Rural Hamilton Official Plan</th>
<th>Proposed designations in the NEP</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hydro building and Storage yard (5.5 ha)</td>
<td>Hydro One</td>
<td>Electric Power Facility</td>
<td>Rural No natural heritage features</td>
<td>Escarpment Protection</td>
</tr>
<tr>
<td>Hydro corridor (size undetermine)</td>
<td></td>
<td></td>
<td>Rural Existing natural heritage features</td>
<td>Escarpment Protection Escarpment Natural</td>
</tr>
<tr>
<td>Olympic Park (5 ha) - arena - 7 soccer fields</td>
<td>City</td>
<td>Public Open space and buffer area</td>
<td>Open space/City wide park Existing natural heritage features</td>
<td>Escarpment Protection</td>
</tr>
<tr>
<td>Unopened Road Allowance (10 ha)</td>
<td></td>
<td>Public Open space and buffer area</td>
<td>Open space/Rural No natural heritage features</td>
<td>Escarpment Protection Escarpment Natural</td>
</tr>
<tr>
<td>Lands south of the creek, north of Cootes Drive (0.2 ha)</td>
<td>RBG</td>
<td>Public Open space and buffer area</td>
<td>Open space Existing natural heritage features</td>
<td>Escarpment Natural</td>
</tr>
</tbody>
</table>

* All the lands are located within the Greenbelt Plan Protected Countryside designation but this designation defers to the Parkway Belt West Plan.

At the time of adoption of the Urban Hamilton Official Plan, these lands were within the PWBW, identified as “Public Open Space and Buffer area” and Electric Power Facility” and designed Rural in the Rural Hamilton Official Plan. Staff were aware the Province was going to review the PWBW to determine which Provincial Plan (including land use designations) was appropriate for these lands. As a result of the review, no additional work was undertaken by City staff to determine the appropriateness of adding these lands to the urban area or the appropriate land use designations. Further, it was through this review process that City staff would evaluate the appropriate designations or even the necessity of keeping these lands within any provincial plan.

3.0 Previous NEPA which added lands to the Niagara Escarpment Plan

In 1999, the NEC commenced NEPA 71 which proposed to add lands in the former Towns of Dundas, Flamborough and the City of Hamilton to the Niagara Escarpment Plan. NEPA 71 was eventually closed because the lands were added to the NEP through the Greenbelt Legislation in 2005 by an Order of the Cabinet. The Order was
released as part of the new 2005 Niagara Escarpment Plan following the last NEP Review (commenced in 1999).

With respect to the lands in Dundas and Hamilton, lands east and west of Olympic Drive and Cootes Paradise and the adjacent area were added to the Plan and designated Urban, Escarpment Protection or Escarpment Natural. Therefore, the lands that are subject of this current amendment are intended be a link between the existing designations (see Appendix “C” of this staff Report).

**POLICY IMPLICATIONS**

**NEC Development Control Permit vs Zoning**
A development permit from the NEC is required for any lands that are designated Escarpment Protection or Escarpment Natural in the Niagara Escarpment Plan.

In addition, it appears as if the City would be required to prepare a Parks Management Plan for Olympic Park should any of the facilities be changed.

**Official Plans**
Once the NEPA’s are completed, staff would amend the Official Plans to bring them into conformity with Provincial Plans. Depending on the timing of these amendments, the City may undertake any changes to the Plan as part of a five year review.

If the lands were to be added to the urban area, the appropriate designations would be Utility for the Hydro One office and storage/maintenance yard and Open Space/City Wide Park for Olympic Park.

**RELEVANT CONSULTATION**

Staff have consulted with:

- Legal Services Division—see Section on Legal implications
- Recreation Division, Community Services Department

“Recreation has a grave concern with the inclusion of Olympic Arena and the surrounding parkland in this agreement. As you know this amendment would require all buildings/construction on those sites to be approved by the NEC. Olympic Arena has been identified as a possible reconstruction/development site (either for a new arena or other recreation amenity) in the "Use, Renovation and Replacement Study for Hamilton Recreation and Public-Use Facilities” study in the future so we would request that these lands be removed from the proposed amendment.”
1.0 Proposed Niagara Escarpment Plan Designations

As noted in the Historical background Section of this Report, Amendment No. 176 proposes two different designations for the lands – “Escarpment Protection” and “Escarpment Natural”. The NEP contains designation objectives, criteria for designation and designation policies, excerpts are attached as Appendix “D” to Report PED10228. The NEC staff report, attached as Appendix “E” to Report PED10228, describes the rationale for the “Escarpment Protection” and “Escarpment Natural” designations on these newly added lands.

2.0 Restrictions under the Niagara Escarpment Plan

All lands designated Escarpment Protection and Escarpment Natural require a development permit from the NEC for any changes to the land use, buildings or structures.

Under Section 6.1(2.2), the Act states once lands are designated “Escarpment Protection” they are prohibited from being redesignated to “Urban” in the Niagara Escarpment Plan.

3.0 City’s Experience with NEC Development Control Permits

In February 2010, a development permit application to twin the Morgan Firestone Arena (Jerseyville Road-Ancaster) by constructing a 40,000 sq. ft. addition to the existing arena, was submitted by the City to the NEC. The existing Ancaster Community Centre Park contains a single pad arena, a recreation centre, parking areas, baseball diamonds and soccer fields.

The property is designated as Escarpment Rural Area under the NEP and the plan recognizes and permits the existing recreational uses on the property as being existing uses and in turn permitted by the Plan. However, the criteria under the NEP to permit the expansion of an existing use or building is that the expansion be deemed minor in proportion to the size and scale of the legally existing use or building. To determine what is “minor”, Niagara Escarpment Commission staff apply an internal guideline by which deems an expansion as minor if the size of the building expansion is no greater than a 25% of the total size of the existing building. A minor expansion was already permitted by the NEC as part of recreation centre construction in 1999.

While approval of the development permit application for the twinning of the arena was brought forward by the NEC as a Directors Approval, the development permit issued clearly stipulated that the twinning of the area represented the last expansion of the
buildings, facilities and other recreational uses on the Ancaster Community Centre Park property. Further, the development permit stipulated that any future development on the property would require either a notwithstanding amendment to the NEP or that the property be brought into the urban serviced area of the former Town of Ancaster. This suggestion was made by NEC Staff because in their opinion the recreational uses on the property were clearly more urban than rural.

4.0 Comments on Proposed Amendment

The NEC staff report indicates the City had no objections to inclusion of these lands within the NEP; however, the City only commented on this amendment with respect to the Pleasantview lands.

The NEC staff report also indicates the Rural Hamilton Official Plan designation for the hydro building and corridor is Open Space; however, these properties are designated “Rural”. Further the report does not reference that the hydro building site and City park do not contain any environmental features (see Appendix “F” to Report PED10228).

Based on the review of the existing land uses, the City’s Official Plans, other NEPA’s and recent City experiences, staff can support the “Escarpment Natural” and “Escarpment Protection” designations, for the majority of the lands identified in NEPA 176, EXCEPT for the hydro building and the Olympic Park site.

Olympic Park and Hydro Site

The criteria for designating these lands as “Escarpment Protection”, as cited in the NEC staff report, are as follows:

1. Escarpment slopes and related landforms where existing land uses have significantly altered the natural environment (e.g. agricultural lands or residential development).

3. Regionally Significant Areas of Natural and Scientific Interest (Life Science) or areas designated as environmentally sensitive by municipalities or conservation authorities

This staff report does not specifically address the Park or the hydro building site.

City staff do not support the Escarpment Protection designation and recommend these lands be removed from the proposed Amendment for the following reasons:

1. The hydro office building and storage yard uses are more characteristic of employment uses which are more commonly located in the urban area.
2. Olympic Park is identified as a city wide park in the City of Hamilton OP and largely serves the adjacent urban area.
3. Olympic Park is identified for potential redevelopment at sometime in the future and such redevelopment should be governed by the provisions of the City’s zoning by-law and not an NEC development permit.

4. Neither of these two sites is designated as an environmentally significant area in the City’s OP’s.

5. Neither of these sites is near the escarpment slope; however, they are adjacent to natural areas. There is no requirement in the Niagara Escarpment Plan for lands designated as “Escarpment Natural” to be buffered with lands designated “Escarpment Protection”.

6. The land uses on these sites are a logical extension of lands on the north side of Olympic Drive which are under the control of City’s OP and zoning.

7. The fact they are publicly owned lands does not justify including them within the Niagara Escarpment Plan.

In addition, the lands are identified as part to the Niagara Escarpment Parks and Open Space System and they appear to be considered as a Natural Environment Park. The NEP identifies seven (7) park classifications. None of the classifications fits the description of the uses that are part of Olympic Park. Therefore based on the Niagara Escarpment Plan classifications, the City Park should not be included within the Niagara Escarpment Parks and Open Space System. Public ownership should not be a reason to add lands to this system.

**ALTERNATIVES FOR CONSIDERATION:**

(include Financial, Staffing, Legal and Policy Implications and pros and cons for each alternative)

**Option 1- Designate the Hydro Building and Olympic Park as Urban in the Niagara Escarpment Plan**

As noted in historical background above, the land uses on these two sites are more suited to urban areas and they also serve the urban area. Another option would be to include these lands within the NEP but designate them “Urban”, similar to other parks in the City (i.e. Churchill Park-Westdale). The lands should be excluded from the Niagara Escarpment Parks and Open Space System since it does not conform to the intent of the system nor the classifications.

One of the criteria for “Urban” designation in the NEP is the lands have to be identified for urban development in municipal OP’s or secondary plans. Although this situation may apply to most cases, there have been circumstances where the lands have been outside the urban area, as demonstrated by the 2005 Order of the Cabinet (formerly
Vision: To be the best place in Canada to raise a child, promote innovation, engage citizens and provide diverse economic opportunities.

Values: Honest, Accountability, Innovation, Leadership, Respect, Excellence, Teamwork

NEPA 71) which added Hopkins Court. This Order added the lands on Hopkins Court and the Watson’s Lane area, including a small ESA area, and designated them “Urban” and incorporated the ESA in the (Niagara Escarpment Plan in the Parks and Open Space System (NEPOSS). At the time of this Amendment, the Hopkins Court lands were located outside the urban boundary in both the Region of Hamilton-Wentworth and the Town of Dundas OP’s. The urban boundary was adjusted in the new Urban Hamilton Official Plan.

Option 2: Support the Niagara Escarpment Plan Designations for All the Lands

An alternative consideration is that the City supports the Escarpment Protection designation for its lands and the hydro Building. If the lands are to be designated Escarpment Protection, the City and Hydro One will require development permits for all redevelopment/changes to their sites.

CORPORATE STRATEGIC PLAN  (Linkage to Desired End Results)


Financial Sustainability
• Effective and sustainable Growth Management

Environmental Stewardship
• Natural resources are protected and enhanced

Healthy Community
• Plan and manage the built environment

APPENDICES / SCHEDULES

Appendix “A” Location of Amendment and Land ownership
Appendix “B” Proposed Niagara Escarpment Plan designations
Appendix “C” Niagara Escarpment Plan - Existing Designations
Appendix “D” Excerpts of Policies from Niagara Escarpment Plan
Appendix “E” NEC Staff Report
Appendix “F” NEP -Natural Heritage Features
Land Ownership
(NEP Amendment No. 176)

Date: August 18, 2010

Legend

- Hydro One Ownership and Right of Way
- Hydro One Buildings
- Olympic Arena Building
- City of Hamilton
- Royal Botanical Garden
- Niagara Escarpment Plan Area
- Amendment Boundary
- Urban Boundary
To amend the Niagara Escarpment Plan to add and designate 93 hectares (approximately) corridor of land owned by the Royal Botanical Gardens, and the City of Hamilton, which include easements for Hydro One in support of the purpose and objectives of the NEPDA and the NEP.
Niagara Escarpment Plan
Map 1
Location

Amendment PW 176 08
Part Lots 19-25
Concession 1
City of Hamilton

Amendment Boundary
Plan Designations
- Escarpment Natural Area
- Escarpment Protection Area
- Escarpment Rural Area
- Urban Area
- Minor Urban Centre
- Public Land (in Parks and
  Open Space System)

Bruce Trail
- Main Trail
- Side Trail

NOTE: The Niagara Escarpment Plan designations illustrated on this map
are approximate and subject to confirmation through site inspection and the
application of the "Interpretation of Boundaries" section of the
Amendment Boundary Section of the Niagara Escarpment Plan.

Printed on Jul 05, 2010
Map Created by: VENTRESCADA

© 2010 Queen's Printer for Ontario
Excerpts from the Niagara Escarpment Plan (2005)

Escarpment Natural Area
Escarpment features which are in a relatively natural state and associated stream valleys, wetlands and forests which are relatively undisturbed are included within this designation. These contain important plant and animal habitats and geological features and cultural heritage features and are the most significant natural and scenic areas of the Escarpment. The policy aims to maintain these natural areas.

Objectives
1. To maintain the most natural Escarpment features, stream valleys, wetlands and related significant natural areas and associated cultural heritage features.
2. To encourage compatible recreation, conservation and educational activities.
3. To maintain and enhance the landscape quality of Escarpment features.

Criteria for Designation
1. Escarpment slopes and related landforms associated with the underlying bedrock which are in a relatively natural state.
2. Where forest lands abut the Escarpment, the designation includes the forested lands 300 metres (1,000 feet) back from the brow of the Escarpment slope (e.g. Bruce Peninsula).
3. The most significant Areas of Natural and Scientific Interest (Life Science).
4. The most significant stream valleys and wetlands associated with the Escarpment.

Escarpment Protection Area
Escarpment Protection Areas are important because of their visual prominence and their environmental significance. They are often more visually prominent than Escarpment Natural Areas. Included in this designation are Escarpment features that have been significantly modified by land use activities such as agriculture or residential development, land needed to buffer prominent Escarpment Natural Areas, and natural areas of regional significance.

The policy aims to maintain the remaining natural features and the open, rural landscape character of the Escarpment and lands in its vicinity.

Objectives
1. To maintain and enhance the open landscape character of Escarpment features.
2. To provide a buffer to prominent Escarpment features.
3. To maintain natural areas of regional significance and cultural heritage features.
4. To encourage agriculture, forestry and recreation.

Criteria for Designation
1. Escarpment slopes and related landforms where existing land uses have significantly altered the natural environment (e.g. agricultural lands or residential development).
2. Areas in close proximity to Escarpment slopes which visually are part of the landscape unit.

3. Regionally Significant Areas of Natural and Scientific Interest (Life Science) or areas designated as environmentally sensitive by municipalities or conservation authorities

Urban Area
This designation identifies Urban Areas in which the Escarpment and closely related lands are located. In some areas the Escarpment is still largely undeveloped although surrounded by existing development (e.g. Hamilton). In other areas urban growth already has encroached substantially on the Escarpment (e.g. former Town of Wiarton).

Objective
To minimize the impact and further encroachment of urban growth on the Escarpment environment.

Criterion for Designation and List of Urban Areas
Urban development and committed urban areas on or adjacent to the Escarpment as provided for in municipal official plans and/or secondary plans.

The Niagara Escarpment Parks and Open Space System
The Niagara Escarpment Parks and Open Space System policies act as a framework for the establishment and coordination of a system of publicly owned lands on the Escarpment as well as the Bruce Trail.

Objectives
The objectives of the Niagara Escarpment Parks and Open Space System:
1. To protect unique ecological and historical areas;
2. To provide adequate opportunities for outdoor education and recreation;
3. To provide for adequate public access to the Niagara Escarpment;
4. To complete a public system of major parks and open space through additional land acquisition and park and open space planning;
5. To secure a route for the Bruce Trail;
6. To maintain and enhance the natural environment of the Niagara Escarpment......

Parks and Open Space Classification Policy
Parks and open space in the Niagara Escarpment Parks and Open Space System will be assigned a classification, based on the predominant characteristics of the property. The classifications will serve as a guide to management and use of the park or open space area and will be subject to confirmation at the time Park or Open Space Master/Management Plans are prepared or revised.

Classifications will ensure the maintenance of the variety and diversity intended in the System. It is recognized that some existing uses within parks or open space areas may not conform exactly to the policies of their assigned classification. In this regard, a building, structure or facility (e.g. existing ski area) may expand, change in use, be replaced or be upgraded when it can be sufficiently demonstrated that the Objectives of
the applicable Niagara Escarpment Plan designation in Part 1, the requirements of Part 2.3 of the Plan and the objectives of the Niagara Escarpment Parks and Open Space System in Part 3.1.1. can be met. The preparation or revision of any Park Master/Management Plan shall address any proposed expansion of existing uses.

Managing agencies will be encouraged to bring parks or open space areas into conformity over a number of years, especially where monitoring shows that existing uses have exceeded the carrying capacity of the site or area. It is also recognized that some parks or open space areas may be managed in pursuit of objectives such as flood control and resource production, in addition to those presented in Part 3.1.1. Where that is the case, habitat protection and scenic values, as well as the Objectives of Part 3 of this Plan, will be taken into account in the Park Master/Management Plan or management of the area.

There are six park and open space classes:
- Nature Reserve
- Natural Environment
- Recreation
- Historical
- Escarpment Access
- Resource Management Area

**Natural Environment**
These lands are characterized by the variety and combination of outstanding natural features, historical resources and outstanding landscape. Natural Environment areas provide opportunities for the protection of important natural and cultural features. Activities may range from backcountry hiking in the interior of these areas to car-camping and day use activities in the more developed or accessible areas.

**Recreation**
These are some of the best recreational environments along the Escarpment. They either occur naturally or are capable of being developed to provide a wide variety of outdoor recreation opportunities in attractive Escarpment surroundings. In Recreation areas, management and development of resources is appropriate in order to provide the recreational environment and facilities required to support a wide variety of activities. These may be day use only. Facilities for overnight camping may also be provided including campgrounds, temporary yurts and tents, lean-to’s and unserviced camper's cabins.
INITIAL STAFF REPORT

PROPOSED NIAGARA ESCARPMENT PLAN
AMENDMENT PW 176 08

ADDITION OF LANDS TO THE NIAGARA ESCARPMENT PLAN
(THE COOTES PARADISE LINK)

July 15, 2010
INITIAL STAFF REPORT

RE: PROPOSED NIAGARA ESCARPMENT PLAN AMENDMENT PW 176 08
NIAGARA ESCARPMENT COMMISSION
(ADDITION OF LANDS TO THE NIAGARA ESCARPMENT PLAN, Cootes Paradise Link)
Part Lots 19-25, Concession 1
City of Hamilton former Town of Dundas
Former Regional Municipality of Hamilton

PROPOINENT: Niagara Escarpment Commission (NEC)

PROPOSAL: To amend the Niagara Escarpment Plan (NEP) to add and designate approximately 93 hectares (230 acres) of lands owned by the Royal Botanical Gardens and the City of Hamilton which include easements for Hydro One (along two existing hydro lines), joining these lands to the main body of the Niagara Escarpment Plan (NEP).

NOTE: The NEC is responding to an Order-in-Council filed on June 14, 2010 to include the lands in the Niagara Escarpment Planning Area (NEPA) for the purpose of facilitating an Amendment to the Niagara Escarpment Plan (NEP)

SUMMARY RECOMMENDATION

Instruct staff to prepare the proposed Amendment PW 176 08 for circulation and notification in accordance with the provisions of Sections 7 and 10 of the Niagara Escarpment Planning and Development Act (NEPDA) and the recommendations of this Report.

BACKGROUND

A. PLANNING

Niagara Escarpment Plan (NEP)
The subject lands are not currently located within the NEP Area. The subject lands are situated between lands which are within the NEP Area and these lands are designated as Escarpment Natural Area, Escarpment Protection Area and Urban Area. The lands abutting the subject lands are also identified as Public Lands (in the Parks and Open Space System) as described in Part 3 of the NEP.

**Municipal Plans**

**Hamilton Rural Official Plan**

The City of Hamilton has adopted a Rural Official Plan (September 2006), which replaces the rural policies and maps in the Official Plans of the former municipalities for the area it applies to. This Plan was approved by the Province in December 2008, but is currently under appeal to the Ontario Municipal Board. These Plan policies are referred to as they represent the direction in which the City intends to proceed.

The subject lands are identified as “Parkway Belt West Policy Areas” on Schedule A and as Open Space on Schedule D (Rural Land Use Designations). The Plan also identifies the subject lands as within the Greenbelt Protected Countryside (Schedule A). The Greenbelt has set out a Natural Heritage System within the Protected Countryside. Schedule B of the Rural Official Plan identifies the subject lands as a Core Area within the Natural Heritage System. Core Areas include key natural heritage features, key hydrologic features, and local natural areas.

Appendix B-2 (Detailed Natural Heritage Features) of the Rural Official Plan shows the area as containing Key Natural Heritage Features - Significant Woodlands. Appendix B-6 (Detailed Natural Heritage Features) identifies the subject lands as a local Environmentally Significant Area.

The former Dundas Official Plan identifies the lands as Parkway Belt and defers to the policies of the Provincial Plan. The former Regional Official Plan provided the same treatment to the area.

**B. PROVINCIAL PLANS**

**Provincial Policy Statement (PPS 2005)**

The PPS is intended to provide direction on matters of provincial interest related to land use and planning. Section 2.1 of the NEP requires that the NEC in exercising its authority be consistent with policy statements under the Planning Act. The NEC is to be satisfied that the policies of the Provincial Policy Statement (PPS) and the Greenbelt Plan are reflected in the Niagara Escarpment Plan to the extent that the policies do not conflict with the policy framework of the NEP.

The PPS provides direction for protecting the function and diversity of natural heritage areas. PPS Policies applicable to the natural values of the subject lands include:

Section 2.1.2: “the diversity and connectivity of natural features in an area, and the long-term ecological function and biodiversity of natural heritage systems, should be maintained, restored or, where possible, improved, recognizing linkages between and
among natural heritage features and areas, surface water features and ground water features.”

Section 2.1.4: Development and site alteration shall not be permitted in significant wetlands, significant woodlands, significant valley lands, significant wildlife habitat; and, significant areas of natural and scientific interest, unless it has been demonstrated that there will be no negative impacts on the natural features or their ecological functions.

Section 2.1.6 Development and site alteration shall not be permitted on lands adjacent to the natural heritage features and areas identified unless the ecological function of the adjacent lands has been evaluated and it has been demonstrated that there will be no negative impacts on the natural features or their ecological functions.

The inclusion and designation of the lands would be consistent with the direction provided in the PPS.

Greenbelt Plan

The subject lands are identified as part of the Greenbelt Plan’s “Protected Countryside” on Schedule 4 of the Greenbelt Plan’s Natural Heritage System.

The policies of the NEP where it applies are the policies of the Greenbelt Plan for the Niagara Escarpment Plan Area. Inclusion and designation of the subject lands would be consistent with the Greenbelt Plan. Equivalent if not better environmental protection would be afforded to the lands.

Parkway Belt West Plan (PBWP)

The lands are currently regulated and administered as part of the Province’s Parkway Belt West Plan (PBWP). The PBWP was created in 1978 for the purposes of creating a multi-purpose utility corridor, urban separator and linked open space system. The PBWP provides a system of linked natural areas and protected utility corridors. This Plan designates lands as Public Use Areas and Complementary Use Areas.

The subject lands are designated “Public Use Area” (Public Open Space and Buffer, Electric Power Facility and Utility) within the PBWP. The majority of the subject lands are subject to a Minister’s Regulation to govern development in the PBWP.

Part 2.3 of the Greenbelt states that the requirements of the PBWP continue to apply with the exception of the sections of the Greenbelt Plan that set out policy for natural systems and parks and open space.

Niagara Escarpment Planning Area

On June 15, 2010, the Minister of Natural Resources announced that five (5) areas had been added to the NEPA by the Lieutenant Governor in Council, pursuant to the provisions of the NEPDA. This Amendment (Cootes Paradise Link) relates to one of the five (5) areas.
C. DESCRIPTION OF SUBJECT LANDS

The subject lands encompass an area of approximately 93 ha (230 ac) situated generally within a narrow corridor between the Cootes Paradise and Borer’s Falls Conservation Area. The lands are for the most part owned by the Royal Botanical Gardens (RBG) and the City of Hamilton as public open space / parkland. Two hydro lines on easements exist north and south of the subject lands and are managed by Hydro One, as well as a road allowance owned by the City of Hamilton. Additionally, Hydro One holds a transformer/sub-station property along Olympic drive. The NEC, following pre-consultation, had agreement from the RBG and Hydro One to bring the lands into the NEPA. Likewise the City of Hamilton following pre-consultation has no objection to adding the lands to the NEPA.

Approximately 40 ha (99 ac) of the subject lands are forested, with a portion in the north east connected to the larger wooded Escarpment Natural Area within the Cootes Paradise Provincial Area of Natural and Scientific Interest (ANSI). Approximately 10.17 ha of wetland extend from the Cootes Paradise Provincially Significant Wetland (PSW) in the south and traverse the subject lands into the adjacent NEP Escarpment Natural Area to the north. Approximately 7.20 ha of the wetland area are designated as part of the PSW. A warm water tributary and a cold water tributary, both originating in Cootes Paradise flow through the subject lands.

The remainder of the property consists of wooded ravines (approximately 50%), hedge row plantations and successional abandoned agricultural fields (approximately 30-40 years old).

The Borer’s Falls / Rock Chapel area is situated adjacent to the subject lands to the west, within the NEP Area and is identified as an Environmentally Sensitive Area (ESA) by the City of Hamilton. Borer’s Falls has a diverse range of habitats and has one of the largest areas of upland woods and forested Escarpment slopes.

Development and Land Use

With the exception of the hydro corridors, sub-station, and a municipal sports complex, none of the lands proposed for addition to the NEP Area have been developed. Portions of the surrounding lands owned by RBG have been developed as a botanical garden and as parkland. A side trail of the Bruce Trail traverses the property in the north east end.

Hamilton Natural Areas Inventory (2003)

Environmentally Sensitive Area (ESA No. 42): Cootes Paradise

The majority of the subject lands are included within the Regional ESA No. 42, Cootes Paradise identified in the City of Hamilton Official Plan and by the Nature Counts Project, Hamilton Natural Areas Inventory (2003).

The Inventory Study provides final recommendations for the ESA, which include that the area should be protected from development or other impacts and that the existing linkages with other natural areas should be maintained and enhanced.
Cootes Paradise Provincially Significant Wetland (PSW)

The Cootes Paradise Wetland is the largest remaining Great Lakes shoreline marsh at the western end of Lake Ontario. The PSW contains open water, marsh and swamp communities. Cootes Paradise is both a core natural area and a significant link between Hamilton Harbour and Dundas Valley. A number of nationally and provincially significant plant and animal species occur here.

Approximately 7.20 ha (18 ac) of wetland extending from the Cootes Paradise PSW traverse the subject lands. An approximately 3 ha (7.4 ac) portion of this wetland is not currently included within the boundary of the PSW (for reasons unknown). This unevaluated portion of wetland is however a natural extension of the Cootes Paradise PSW and a review of 2005 ortho photos by District MNR staff have confirmed that a portion of this wetland could have the potential to be added to the PSW, subject to further investigation.

Cootes Paradise Area of Natural and Scientific Interest (ANSI)

Life Science Areas of Natural and Scientific Interest (ANSIs) are designated by the Ministry of Natural Resources as representations of the most significant natural heritage features and landscapes in the Province. The Cootes Paradise Drowned Valley ANSI was incorporated into the NEPA through a Cabinet order following passage of the Greenbelt Act in 2005 (The Escarpment Link).

Cootes Paradise supports a high number of rare and threatened species of flora and fauna, the second highest total of rare plant species among sites along the Niagara Escarpment and habitat for a high number of forest-interior bird species. The area supports significant wetlands (the largest wetland complex in the Dundas Valley) which serve as an important staging area for migrating shorebirds and waterfowl. It is connected along Ancaster Creek and Sulphur Creek to other forested lands in the Dundas Valley, part of a regional woodland complex of 1600 ha (3953 ac), sustaining the largest Red Oak forests in the Valley. Cootes Paradise is also connected to a highly significant Escarpment corridor stretching from Spencer Gorge to Mount Nemo (Varga & Jalava, 1995).

Approximately 13 ha (32 ac) of the larger 423 ha (1045 ac) Cootes Paradise Provincial Life Science ANSI extend into the subject lands.

Royal Botanical Gardens (RBG) Legislation and Mandate

The vision of the RBG is governed by the provincial Royal Botanical Gardens Act which was passed in 1941 and has since been through a number of amendments. The Act includes a number of objectives which include the maintenance of natural preserves; the protection of specific environments and flora and fauna that are of special value; and to conduct botanical, horticultural and related biological research. The vision of RBG is to be “a natural asset recognized for its excellence in preserving, conserving and presenting flora and fauna in its unique landscape” (Royal Botanical Gardens, 2005).
D. RELATED NIAGARA ESCARPMENT PLAN AMENDMENTS INVOLVING ADDITIONS TO THE NEP

Amendment 72/G/90 – Extension to the Kolapore Uplands and Resource Management Area (Park)

This application proposed the addition of a portion of the Kolapore Uplands Forest in Grey County to the Niagara Escarpment Plan as part of the Niagara Escarpment Parks and Open Space System. The publicly owned lands also abutted the NEP Area and were environmentally related.

The Cabinet approved the Amendment on February 16, 1994.

Amendment PW/129/99 - Addition of Lands in the Dundas Valley to the Niagara Escarpment Plan

This application proposed the addition 3.52 ha (8.7 ac) of land in the Dundas Valley into the Plan Area, to be managed by the Hamilton Region Conservation Authority as part of its public park holdings.

The Minister approved the Amendment on June 22, 2001.

Amendment PC 139 02 – Addition of lands along Campden Road to the Niagara Escarpment Plan

This application proposed the addition of 9.63 ha (23.8 ac) of lands along Campden Road (Lincoln), north of the proposed Urban Area Boundary for the Community of Campden, to the Niagara Escarpment Plan Area, and to provide the lands with an Escarpment Rural Area designation.

The Minister approved the Amendment on June 15, 2006.

Amendment PH 175 05 – Addition of lands in Burlington and Hamilton to add the “Escarpment Link” to the NEP.

This Amendment replaced Amendment 71 and was undertaken as part of the Greenbelt Act, 2005. Cabinet approved the addition on February 25, 2005 BY Order-in-Council.

Ontario Regulation 235/10 – There are four (4) other NEP Amendments currently being processed that related to the lands added to the NEPA by the Cabinet on June 12, 2010.

Other transfers currently ongoing include the Pleasant View Survey, Gap lands, the Dufferin Quarry Expansion lands and the Weinberg Lands.

E. ANALYSIS

Niagara Escarpment Plan (NEP)

On June 14, 2010 the “Cootes Paradise Link” in the City of Hamilton, were added to the Niagara Escarpment Planning Area (NEPA) by the Lieutenant Governor in Council
pursuant to the provisions of the *Niagara Escarpment Planning and Development Act* (NEPDA), through the filing of Ontario Regulation 235/10. The subject lands are not currently included or designated under the Niagara Escarpment Plan. The addition to the NEPA permits the processing of an NEP Amendment to provide Escarpment land use Designations and Policies to this area.

**INITIATING THE AMENDMENT**

Pursuant to Sections 7 and 10 (1) a of the NEPDA, the NEC is required to furnish affected ministries and each municipality within or partly within the NEP Area with a copy of the proposed Amendment and invite comments within 60 days.

Section 10 (1) b requires public notification in local newspapers.

Section 3(1) of the NEPDA defines the lands within the NE Planning Area. Section 3(2) provides for the Lieutenant Governor in Council to make Regulations to expand the NEPA. Prior to these lands being added to the NEPA, the Province posted its intent to pass a Regulation on the Environmental Bill of Rights (EBR) Registry. On May 17, 2007, The Ministry of Natural Resources (MNR) posted the proposed addition to the NE Planning Area on the EBR for public comment. No comments were received.

**AMENDMENT CONSIDERATIONS**

**The NEPDA**

1. *Does the Proposed Amendment satisfy the purpose and objectives of the Niagara Escarpment Plan and the Niagara Escarpment Planning and Development Act (NEPDA)*?

The purpose of the Act is, “to provide for the maintenance of the Niagara Escarpment and land in its vicinity substantially as a continuous natural environment, and to ensure only such development occurs as is compatible with the natural environment”.

The objectives of the Act and the Plan are:

- To protect unique ecologic and historic areas;
- To maintain and enhance the quality and character of natural streams and water supplies;
- To provide adequate opportunities for outdoor recreation;
- To maintain and enhance the open landscape character of the Niagara Escarpment in so far as possible, by such means as compatible farming or forestry and by preserving the natural scenery;
- To ensure that all new development is compatible with the purpose of the Act;
- To provide for adequate public access to the Niagara Escarpment; and,
- To support municipalities, within the Niagara Escarpment Plan Area, in their exercise of the planning functions conferred upon them by the *Planning Act*.

Excluding the 93 ha (230 ac) corridor of lands from the Plan area creates an “island” of the Cootes Paradise, separating it from the main body of the NEP. This is contrary to the purpose of the NEPDA and the NEP which is to “provide for the maintenance of the
Niagara Escarpment and land in its vicinity substantially as a continuous natural environment, and to ensure only such development occurs as is compatible with the Natural Environment”. No similar breaks occur throughout the remainder of the NEP Area.

Furthermore, studies at both the Provincial and Regional level show the lands to be ecologically significant (i.e., ANSI and ESA). The lands are therefore ecologically unique and the inclusion of the lands into the Plan Area, with the appropriate designations satisfies the above purpose and objectives.

The NEP

2. Does the Amendment satisfy and reflect the Niagara Escarpment Plan?

Purpose and Objectives

The purpose and objectives of the NEP are those of the NEPDA.

3. What are the appropriate designations of the Niagara Escarpment Plan that would apply to the subject property?

The subject lands are being proposed as an addition to the Niagara Escarpment Plan. The NEP has established Designation Criteria for lands within the NEP. The subject lands would meet the objectives and criteria of the following relevant designations:

NEP Designations

Escarpment Natural Area

Escarpment Natural Area designations include the most significant Escarpment features which are in a relatively natural, undisturbed state. The objective is to maintain and enhance these natural features.

The inclusions of lands proposed as Escarpment Natural Area are consistent with the following designation objectives:

1. To maintain the most natural Escarpment Features, stream valleys, wetlands and related significant natural areas and associated cultural heritage features
2. To encourage compatible recreation, conservation and educational activities.
3 To maintain and enhance the landscape quality of Escarpment features.

The inclusion of land within the Niagara Escarpment Plan as Escarpment Natural Area meets the following criteria:

NEP Designation Criteria:

1. The most significant Areas of Natural and Scientific Interest (Life Science).
4. The most significant stream valleys and wetlands associated with the Escarpment.

A desktop evaluation of the subject lands suggests that a portion of the lands qualify as Escarpment Natural Area based on forested lands situated partially within a Provincial
Life Science ANSI, and a wetland area as an extension of the Cootes Paradise PSW. The addition of these lands to the NEP would constitute a logical extension of a natural corridor of sensitive lands, connecting contiguous forest patches to the north and south that are currently within the Plan Area, and for the most part designated as Escarpment Natural Area.

The NEP Natural Designation criteria are applicable to the subject lands as:

- The lands are part of the larger Cootes Paradise natural area that serves important ecological function, high diversity of native plant species, habitat for significant species, interior forest habitat, wildlife corridors and important hydrological functions.
- Studies at both the Provincial and Regional level identify the lands to be significant (i.e. ANSI), and the lands contains wetland that is contiguous with the Cootes Paradise PSW. The lands are therefore unique ecologically.
- Portions of the subject lands that are wooded appear to be in a natural state and are contiguous with a larger forested area within Cootes Paradise ANSI (which is designated Escarpment Natural Area), creating a natural wildlife corridor. While all of these wooded areas proposed for Escarpment Natural Area Designation are not officially included within the ANSI boundaries, they are a natural extension of this significant feature and if a re-evaluation or update were to be undertaken, would have potential to be included within the ANSI boundaries.
- The wooded areas contain interior forest (100 m from forest edge) and are likely to support important ecological functions including habitat and corridor linkages for the significant species that have been identified within the surrounding adjacent lands.
- Portions of wetland originating within the Cootes Paradise PSW traverse the subject lands. Some of this wetland area is a part of the existing PSW and a portion of wetland on the subject lands is not currently included within the boundary of the PSW. Although the portion of the wetland is not part of the PSW, it is a natural extension of the Cootes Paradise PSW, and a review of 2005 ortho photos by District MNR staff has confirmed that a portion of this wetland has potential to be added to the PSW, if an evaluation was undertaken. Regardless of the status, the wetland is a natural extension of the PSW providing an important ecological function.

**Escarpmment Protection Area**

Escarpmment Protection Areas are important for their visual prominence and form a key part of the open landscape character of the Escarpment. Environmentally sensitive lands including municipal and Conservation Authority Environmentally Significant Areas (ESAs), are included in this Designation. Escarpment Protection Areas also provide a buffer to the more sensitive Escarpment lands. The subject lands have been rated as “Very Attractive” in the 1976 NEC Visual Assessment Study.

The inclusions of lands proposed as Escarpment Protection Area are consistent with the following designation objectives:

1. To maintain and enhance the open landscape character of Escarpment features,
2. To provide a buffer to prominent Escarpment features, and
3. To maintain natural areas of regional significance and cultural heritage.
NEP Designation Criteria:

1. Escarpment slopes and related landforms where existing land uses have significantly altered the natural environment (e.g. agricultural lands or residential development).
2. Areas designated as environmentally sensitive by municipalities or conservation authorities.

The following criteria are applicable to the subject lands:

- Regional studies identify the lands to be sensitive (Regional ESA 42 Cootes Paradise, shown on Map 1).
- The lands proposed for Protection Area designation are adjacent to and include a portion of the Cootes Paradise Provincially Significant ANSI and PSW and as such will provide a buffer to these sensitive and significant features.
- Successional agricultural field area and hedgerows are present and will also provide a buffer to the surrounding sensitive features.
- The area contains a combination of natural landscapes that are aesthetically important.

NIAGARA ESCARPMENT PARKS AND OPEN SPACE SYSTEM (NEPOSS)

Part 3 of the Niagara Escarpment Plan sets out policies for the Niagara Escarpment Parks and Open Space System (NEPOSS). The System is “based on public lands acquired to protect distinctive features and significant areas along the Escarpment”.

Parks and Open Spaces in the NEPOSS are assigned one of six park and open space classes based on the predominant characteristics of the property. The classifications are intended to provide guidance for the management and use of the park or open space area.

Royal Botanical Gardens public lands are classified as a Natural Environment within the NEPOSS. Natural Environment lands are characterized by the variety and combination of outstanding natural features, historical resources and outstanding landscape and provide for opportunities for the protection of natural and cultural features. As such, the majority of the subject lands proposed as additions to the Plan are also proposed for inclusion as Public Lands in the NEPOSS, within the Natural Environment Park classification. The exception is approximately 5.56 ha (13.74 ac) parcel that currently has a Hydro One transformer/sub-station sited on the lands.

OTHER ISSUES

Eventually, should the Amendment proceed to approval, the issue of overlapping Provincial Plans and Regulations will have to be addressed. It would not appear to be administratively reasonable to have the NEP in place along with the Protected Countryside of the Greenbelt Plan and PBWP with its associated policies and Regulations. Using the 2005 “Escarpment Link” transfer as a model, the PBWP and its Regulations should be removed and replaced by NEP Designations and NE Development Control. Although the lands would remain in the Greenbelt, the governing land use designations would be those in the NEP and not the Protected Countryside.
These implementation issues, although important, can be dealt with at a later stage in the process.

It should be noted that it is not illegal to have overlapping Provincial Plans and Regulations, but it is confusing to the public and inefficient if one Plan can effectively govern land uses.

The use of part of the lands by Hydro One for tower corridors and a transformer/substation is permitted by the NEP since utilities are allowed in all Plan Designations.

**JUSTIFICATION FOR THE AMENDMENT**

Subsection 6.1 (2.1) of the NEPDA requires that justification be given as part of each Amendment. However, even if the proposed Amendment is justified at this stage, this is not an endorsement of the eventual approval of the Amendment in whole or in part.

The justification for supporting the initial consideration and processing of this Amendment, for the potential inclusion of the subject lands into the NEP is as follows:

1. The Cabinet has endorsed the addition of the lands to the Niagara Escarpment Planning Area through Ontario Regulation 235/10.
2. The Amendment resulting in the addition of lands to the Plan Area supports the purpose and objectives of the NEPDA and the NEP “to provide for the maintenance of the NE and land in its vicinity substantially as a continuous natural environment, and to ensure that only such development occurs as is compatible with that natural environment.” Excluding the subject lands from the Plan Area creates an “island” effect for Cootes Paradise, separating it from the main body of the NEP. Maintaining this separation is contrary to the purpose of the NEPDA, there are no similar breaks in the continuity of the NEP Area.
3. The inclusion of a portion of the land within the Niagara Escarpment Plan as Escarpment Natural Area is appropriate as portions of the wooded subject lands are part of a Provincially Significant Life Science ANSI and an extension of a Provincially Significant Wetland.
4. The inclusion of the land within the Niagara Escarpment Plan as Escarpment Protection Area is appropriate as these lands are part of a Regionally Significant ESA. The lands proposed for Escarpment Protection Area include plantations, hedgerows and successional agricultural fields. These features are important buffers to the adjacent existing and proposed highly sensitive Escarpment Natural Areas (Cootes Paradise, Boer’s Falls) and meet the Criteria for Escarpment Protection Area. The lands are also designated as “Very Attractive” in the NEC Visual Assessment Study (1976). Additionally, the lands are publicly owned and are logical candidates for inclusion in the NEPOSS as part of the Royal Botanical Gardens park and open space holdings.
5. The proposed Amendment is consistent with the policies of the PPS (2005).
6. The proposed Amendment is consistent with the Greenbelt Plan.
7. The proposed Amendment is consistent with the local Official Plan(s).

The Amendment is justified, and on this basis should proceed.
RECOMMENDATION:

The Niagara Escarpment Commission instruct staff, in accordance with this Report, to prepare the proposed Amendment PW 176 08 for circulation and notification pursuant to Subsection 6.1 (2) of the Niagara Escarpment Planning and Development Act.

Map 1 Location Map
Map 2 Natural Heritage Features
Map 3 Air photo
Map 4 Land ownership

Prepared by: _________________________   Approved by: _________________________
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