

**INITIAL STAFF REPORT**

**PROPOSED NIAGARA ESCARPMENT PLAN AMENDMENT PW 138 01**

**HAMILTON GENERAL HOMES (1971) LTD.**

**November 29, 2001**

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**RE: NIAGARA ESCARPMENT PLAN AMENDMENT PW 138 01  
HAMILTON GENERAL HOMES (1971) LTD.  
PT. LOT 4, CONCESSION 2  
CITY OF HAMILTON (former City of Stoney Creek)**

**DATE RECEIVED:** September 18, 2001

**APPLICANT:** Hamilton General Homes (1971) Ltd.

**AGENT:** John Ariens, MCIP, RPP (Vice President/Senior Planner)  
Planning and Engineering Initiatives

**PROPOSAL:** To amend the Niagara Escarpment Plan to extend the boundary of the Minor Urban Centre for the Community of Winona to include the northerly 3.76 ha (9.3 acre) portion of a 9.2 ha (23 acre) property to be developed by a future draft plan of subdivision totalling 17 lots.

**SUMMARY RECOMMENDATION:**

*That the Niagara Escarpment Commission inform the Minister of Natural Resources that the application is not in the public interest pursuant to Section 6.1(3) of the Niagara Escarpment Planning and Development Act (NEPDA), Chapter N.2, R.S.O. 1990.*

**Purpose of this Report**

The purpose of this report is to determine whether the Niagara Escarpment Commission (NEC) should recommend to the Minister that the application be rejected under Section 6.1(3) of the NEPDA or, whether the application should be initiated and circulated under Section 10 of the *Act*.

**Niagara Escarpment Plan**

The property, the subject of the proposed amendment, is designated ***Escarpment Protection Area***. It lies below (to the north of) the Niagara Escarpment and immediately adjacent to (east of) the boundary of the Minor Urban Centre

designation for the Community of Winona. The current designation fulfils the NE Plan criteria of being an area, "in close proximity to Escarpment slopes which are visually a part of the Escarpment landscape unit".

The property lies south and east of the intersection of Winona Road and the former Highway No. 8. The total land area is 9.2 ha (23 acres) and contains a large estate-type home in close proximity to the toe of the Niagara Escarpment. ***It is only the northerly 3.76 ha (9.3 acres) that is the subject of the Niagara Escarpment Plan Amendment application. The remaining 5.54 ha (13.7 acres) is to remain designated Escarpment Protection Area and, will continue to be used as an estate residential lot.***

The Community of Winona is one of 34 such villages and hamlets across the Niagara Escarpment Plan Area identified as a Minor Urban Centre. These villages and hamlets are designated in either a local, regional or county official plan. The Winona Urban Community boundary is identified in the former City of Stoney Creek Official Plan.

An expansion to the Minor Urban Centre boundary requires an Amendment to the NE Plan.

An amendment application is to be considered against the purpose and objectives of the *NEPDA*, the objectives/provisions of the NE Plan, and be consistent with other relevant Provincial policies.

## **A. MUNICIPAL PLANNING/LAND USE DOCUMENTS**

### ***1. Hamilton-Wentworth Official Plan***

The Official Plan for the former Regional Municipality of Hamilton-Wentworth has been brought into conformity with the NE Plan. The lands are designated ***Escarpment Protection Area***.

Map No. 1 to the H-W OP generally designates the Community of Winona focused at the Winona Road/former Highway No. 8 intersection as an *Urban Area*. Adjacent lands to either side of Winona Road and Highway No. 8 are designated as *Rural Area*. The mapping scale is such that the Urban Area boundary is identified in a tear-drop fashion (see Appendix 1). One must refer to the municipal OP and secondary plans to determine the clear extent of that urban boundary.

Map No. 2 to the H-W OP identifies the area south of Highway No. 8 to the toe of the Escarpment as being within the *Niagara Escarpment Plan Area*. The detailed NE Plan designations are shown on Map No. 3 with the lands identified as *Escarpment Protection Area*. The Community of Winona is generally shown on Map No. 3a as a half-circle as it was formerly shown on NE Plan Map No. 2 (i.e. the area south of the Winona Road/former Highway No. 8 intersection within the NE

Plan Area was generally shown by a half-moon symbol depicting the Community's status as a Minor Urban Centre. The exact boundary is now delineated on NE Plan Map No. 2 on the basis of the Ontario Municipal Board (OMB) decision of 1994 that established the boundary).

***The H-W OP refers to the Community as a Minor Urban Area, however, it does designate the southerly portion (i.e. in the NE Plan Area) as a Minor Urban Centre (Section 1.5.4).***

Development is subject to three criteria. Of particular interest, Section 1.5.4 a) states:

“a) *Development shall not extend into the designated Escarpment Natural Area or Escarpment Protection Area”.*

Criteria a) relates to development. This would not apply per sé should the property have already been the subject of an approved Amendment to expand the boundary into, for example, the Escarpment Protection Area.

Part 3.1.2 states that commitments are made in this OP to a compact urban form and the preservation of agricultural land and natural features.

One method of obtaining this desired form is to delineate a firm urban boundary which is not open to ad hoc exceptions. One method is for the former Region to consider the need for additions to the Urban Area only at the time of an OP Review. Any request for expansion of an Urban Area will be evaluated in the context of, among other things, a Region-wide need for additional urban designations based on up-dated population, household and employment projections, and according to the distribution of expected growth between urban and rural areas and among Area municipalities.

Urban Areas are intended to accommodate approximately 96% of future growth in the Region to the year 2020.

***It, therefore, appears that an amendment to the HW-OP may be necessary or, alternatively, an Urban Boundary expansion considered as part of an OP Review exercise.***

## ***2. City of Stoney Creek Official Plan***

The OP for the former City of Stoney Creek was brought into conformity with the NE Plan by Minister's Order on March 25, 1994. Schedule "B" (Environmental Plan) to the OP generally shows the area centred on Winona Road, south of the intersection of former Highway No. 8, as a ***Minor Urban Centre*** (i.e. half-moon symbol as formerly identified in NE Plan). The lands to either side of the symbol are designated ***Escarpment Protection Area*** to the toe of the Niagara Escarpment.

Schedule “A” (General Land Use Plan) in the former City of Stoney Creek OP shows that most of the property is identified as being within the *Niagara Escarpment Plan Area*.

Schedule “A2” (Secondary Plan for the Winona Urban Community) designates an Urban Community boundary for Winona. In the NE Plan area, the Urban designation generally extends to the back of properties fronting along the south side of former Highway No. 8 east of Winona Road, extends south along the back of those lots fronting along the east side of Winona Road, then west in a straight line to a point where the boundary then turns almost due north to former Highway No. 8. (See Appendix 2). ***In staff’s opinion, the agent correctly shows that only a small portion of the applicant’s property lies within the present Urban Community boundary.***

Subsection A.6 (Winona Urban Community) has, as its objectives, the following:

- To permit limited new residential development based on full urban services (6.1.1)
- To maintain the existing low density small community character of the area (6.1.2)

Schedule “A2” and the policies of Subsection A.13.2 (Winona Urban Community - Secondary Plan) in addition to other applicable policies of the OP, constitute the secondary plan for the Winona Urban Community District. It is expected that this Planning District will accommodate an ultimate population of approximately 1,800 based on full municipal services.

The primary use within the Urban Community shall be for single detached dwellings. Storm drainage must be provided in accordance with the relevant policies in Subsection D.1.2 and Subsection A.13.2.4. Subsection 13.2.3 states that new residential development permitted in this Community shall be in keeping with the general character of the surrounding area.

***In that the boundary of the Winona Urban Community is to be extended to include a portion of the applicant’s property, an Amendment to the OP will be required.***

### **3. City of Stoney Creek Zoning By-law No. 3692-92**

Approximately 2/3 of the applicant’s entire land holding lies outside the Niagara Escarpment Development Control Area. *This includes the area the subject of the NE Plan Amendment.* Also lying outside the Development Control Area is the Winona Urban Community with its “R1” – *Single Residential – One Zone*” zoning applied by the City to those lots fronting along the east side of Winona Road. Lots fronting along Winona Road south of the Urban Community boundary to Lorado Drive (approx.) are zoned “RR – *Rural Residential*”.

For those areas of the applicant's property outside Development Control, the City By-law applies a "AS" – *Agricultural Specialty Zone* zoning. The designation permits an agricultural use in addition to one single detached dwelling per lot. ***It will be necessary for the applicant to obtain an Amendment to the Zoning By-law.*** The portion of the applicant's property just south of Lorado Drive to the toe of the Niagara Escarpment is in the Development Control Area.

## **B. PROVINCIAL POLICY STATEMENT**

The Provincial Policy Statement (PPS) is intended to provide direction on matters of Provincial interest with respect to land use and planning. All land use administrative agencies (municipalities, Conservation Authorities, NEC, etc.) must have regard for the provisions of the PPS.

Part IV, ***Implementation/Interpretation***, Item 4, states:

*"Provincial plans, such as those adopted under the Ontario Planning and Development Act, 1994 or the Niagara Escarpment Planning and Development Act, which have been approved by the Lieutenant Governor in Council, will take precedence over policies in this statement"*.

The PPS provisions defer to those of the NE Plan to prevent conflict.

Provincial Policy 1.1 (Developing Strong Communities) promotes cost-effective development patterns. Section 1.1.1 c) indicates that..."*urban areas and rural settlement areas will be expanded only where existing designated areas in the municipality do not have sufficient land supply to accommodate the growth projected for the municipality.*"

The Section goes on to state that policies of Section 2: *Resources* and Section 3: *Public Health and Safety* will be applied to determine the most appropriate direction for expansions. Expansions into *prime agricultural areas* are permitted only where:

- 1. There are no reasonable alternatives which avoid prime agricultural areas; and*
- 2. There are no reasonable alternatives with lower priority agricultural lands in the prime agricultural area.*

The term "prime agricultural area" is defined in the PPS as an area where prime agricultural land predominates. Prime agricultural land is also defined and means:

*"Land that includes specialty crop lands and/or Canada Land Inventory Classes 1,2 and 3 soils, in this order of priority for protection"*.

The agent reviewed Report No. 32 of the Ontario Soils Survey “Soils of Wentworth County” to determine soil type. The property contains a silty clay loam with an agricultural capability rating of Class 4. This soil classification is used almost exclusively for fruit growing, however, it has limitations such that they are suited only to a few crops, or the yield may be low, or the risk of crop failure may be high. The limitations may seriously affect such farm practices as ease of tillage, planting and harvesting, and application of conservation practices.

The H-W OP does not specifically identify the area south of former Highway No. 8 (i.e. in the NE Plan Area) with an agricultural capability rating on Map No. 2. This Map does show Prime Agricultural Lands (as Classes 1, 2, 3 and 4) north of former Highway No. 8 outside the Stoney Creek Urban Area and to the south beyond the NE Plan Area above the Escarpment.

Section 1.1.2 a) states that...*“land use patterns and land requirements will be based on the provision of sufficient land for industrial, commercial, residential, recreational, open space and institutional uses to promote employment opportunities, and for an appropriate range and mix of housing, to accommodate growth projected for a time horizon of up to 20 years.”*

It is the intent of the Provincial Housing Policy Section 1.2.1 to provide for a full range of housing types and densities to meet projected demographic and market requirements.

As a balance to the agricultural and housing provisions, the PPS contains provisions for Natural Heritage features. The Niagara Escarpment can be considered a feature containing natural heritage significance.

Section 2.3.1 states that:

*“Natural heritage features and areas will be protected from incompatible development”.*

Section 2.3.1 b) may permit development and site alterations in significant wetlands, significant woodlands and valleylands south and east of the Canadian Shield, significant wildlife habitat and areas of natural and scientific interest if it is demonstrated that there will be no negative impacts on the natural features or the ecological functions for which the area is identified. Development may be permitted on lands adjacent to those outlined above also if there are no negative impacts on natural features or ecological functions.

The PPS requires environmental protection and wise management of the Province's most significant natural and cultural resources. The Escarpment is such a resource and, therefore, under the guiding principles and provisions of the PPS, it is in the public interest to protect the feature for the people of Ontario over the long-term.

## **RELATED NIAGARA ESCARPMENT PLAN AMENDMENT APPLICATIONS**

### ***PH-73-90 (Helle and James Fisher – formerly Nelson Aggregate Company)***

The purpose of this NE Plan Amendment application was to amend a former sand and gravel operation as a Mineral Resource Extraction Area designation in Part Lot 8, Concession 1, N.S. in the City of Burlington to:

1. Expand the Minor Urban Centre designation for the village of Kilbride to include a portion of the subject 40.81 ha (100.84 acre) property fronting along McNiven Road and extending back from the road approximately 190 m (624 ft), to permit 3 new lots.
2. Re-designate the lands rehabilitated for farm purposes to Escarpment Rural Area.
3. The southerly boundary of the property be re-designated to Escarpment Protection Area with the exception of the west part of the southerly boundary which is designated Escarpment Natural Area.

Together with the NE Plan Amendment were applications to amend the Halton Regional OP, the City of Burlington OP, a plan of subdivision and a Zoning By-law Amendment.

Cabinet approved the NE Plan Amendment in November, 1999. In April, 2000, the Commission requested that the Minister of Natural Resources amend the Halton Regional OP to bring it into conformity with the NE Plan Amendment 73. In May, 2000, the Minister issued the amending Order.

In June, 2000, the Commission advised the City of Burlington that it was not opposed to a local OP Amendment and plan of subdivision for the three lots. The proposal was in compliance with the NE Plan Amendment 73 and the Regional OP.

### ***PH-119-97 (Nicola Marino)***

A proposal to designate a new Minor Urban Centre for the village of Speyside, in the Town of Halton Hills, was submitted in 1997. The application was withdrawn prior to the Commission considering whether to circulate it or consider it frivolous. Staff had prepared an initial report recommending that the Commission consider the application frivolous (i.e., not in the public interest).

## **C. RELATED FILES (The subject property and area)**

### ***a) Development Permit No.6983/W/R/99-00/345 (DeSantis)***

A Development Permit was issued in June, 2000 to the applicant to construct a 2 storey, 474 sq. m. (5,100 sq. ft.) single detached dwelling with driveway and connection to full municipal services on the 9.2 ha (23 acre) property.

The house is built and located south of Lorado Drive with the driveway connection to the Lorado Drive stub.

***b) Ontario Municipal Board Decision on the Issue of the Winona Urban-Minor Urban Centre Boundary***

Through preparation of its OP in the early 1980's, the City of Stoney Creek proposed a south boundary for Winona limiting urban development to the alignment of existing development (i.e. present southerly boundary). The Commission was *not opposed* to the setting of the boundary as proposed.

At least two property owners objected to the proposed limits of the south boundary and requested that it be extended further south to the toe of the Escarpment. The Commission *objected* due to conflict with the objectives and policies of the Escarpment Protection Area and Minor Urban Centre designations. The south boundary was, therefore, deferred by the Minister of Municipal Affairs upon his approval of the municipal OP in 1986.

In 1990, an application was made by the owner of the subject lands to amend the municipal OP to extend the east boundary to the east limit of the property and the south limit to the toe of the Escarpment.

In 1991, at the request of the original landowners, the Minister referred the south boundary location issue to the Board. Also, in 1991, the City of Stoney Creek reached a compromise with these landowners. The south boundary would be extended to an unopened road allowance, roughly mid point between what the City had originally proposed (i.e. along the line of existing development) and what the landowners' had requested. ***This is also the limit of the Niagara Escarpment Development Control Area boundary in this area.*** Beyond that point to the Escarpment toe, the landowners proposed to develop a municipal park. Details as to how the land would become public and how the land would be developed were issues between the City and the landowners. City Council approved the compromise boundary location in October, 1991.

*The Commission continued to oppose the boundary extension.*

The Minor Urban Centre boundary expansion was the subject of a hearing before the Board commencing in the fall of 1992 and off-and-on into the spring of 1993.

***The Board, in a decision of July, 1994, supported the position of the Commission and confirmed the setting of the south boundary for the Winona Urban Community at the existing line of development (as proposed by the City in 1985). Those portions of the former City OP that were referred, and the proposed by-laws and plans of subdivision that would have implemented those developments, were not approved. This included the lands which are the subject of this Amendment.***

The Board accepted that the Escarpment Protection Area designation in the NE Plan had value in maintaining and protecting the open landscape character and providing a buffer to the Escarpment feature and the related Escarpment Natural Area designation.

The Board was of the opinion that the setting of the south boundary as approved by City Council would extend development closer to the Natural Area, thereby, reducing the buffer to the Escarpment Natural Area. The Board did accept visual evidence presented by the Commission at the hearing that further urban development to the boundary approved by City Council would be noticeable from the Escarpment brow. Development would not, however, further significantly impact the views from Highway No. 8 looking south across to the Escarpment brow.

Three of four property owners and the former Regional Municipality of Hamilton-Wentworth presented the OMB with Motions for Orders granting leave to appeal to the Divisional Court from the decision of the Board. (As far as staff can determine, the owner of the subject property did not present a Motion to the Divisional Court).

The Ministry of the Environment and Energy Legal Services Branch (on behalf of the NEC) responded to the Motions.

As staff understands, all Motions were later abandoned without costs, therefore, the Board's decision was allowed to stand.

### ***c) City of Stoney Creek Land Budget and Urban Area Review***

In March, 1999, City Planning Department staff prepared a Study to recommend the extent of land to be identified for urban development purposes for the City of Stoney Creek as part of both the local and Regional OP Five Year Reviews.

This Study came on the heels of a Hamilton-Wentworth Housing Statement approved by Regional Council in 1996. The Statement was prepared by Regional staff in consultation with City of Stoney Creek staff. The Statement, as it applied to the City of Stoney Creek, indicated that future demand for new single detached dwellings on large lots represented between 8 – 10% of the total demand for single detached homes. A target for providing low density housing units was identified that amounted to 25 – 30 large lot units per year.

Based on the Housing Statement and on long-term Regional and Provincial population/household projections, the City of Stoney Creek was in a position to accommodate 32,055 households (dwelling units) in the year 2021 and a population of 87,000.

At the time (1999), there was sufficient capacity within Stoney Creek's current designations to accommodate 28,859 dwelling units. The urban area must then be enlarged to include the potential for another 3,196 dwelling units to the year 2021.

The Statement provided a mix of 60% low density, 30% medium density and 10% high density. Of the 3,196 dwelling units to the year 2021, 1,917 were to be low density.

Based on a net yield of 25 units per hectare for low density<sup>1</sup>, Stoney Creek would require approximately 77 ha (190 acres) of additional urban residential land devoted exclusively for low density housing.

The study indicates that, historically, Stoney Creek has developed from west to east extending from Hamilton. Over the last 5 – 10 years, the Study concluded that the major focus of urban development has been in two areas of Stoney Creek – the area west of Fruitland Road between the Escarpment and Barton Street (called the Western Development Area), and west atop the Niagara Escarpment (Heritage Green)<sup>2</sup>. Lakeshore areas<sup>3</sup> and the Winona Urban Community have experienced more limited development.

Stoney Creek Planning Department staff determined that as the Western Development Area is approaching full development, the demand for low density urban land uses is, therefore, particularly strong below the Escarpment.

Since 1995-1996, the City has been experiencing pressure for additional urban development below the Escarpment and east of Fruitland Road. The pressure has come largely due to the installation of sanitary sewers.

The Fifty Point neighbourhood in the Lakeshore Area was set aside by the City for large lot development. Developer-led amendments to the Stoney Creek OP proved successful in changing the development scheme into a more conventional and compact housing form, including semi-detached and townhousing. The provision of full municipal services and a sanitary pumping station resulted in significant infrastructure costs that could not be fully absorbed through large lot developments.

The agent indicates that with the conversion of the Fifty Point neighbourhood and the full complement of development for the Western Development Area, a review of approved subdivision plans in these locations reveals that there are no areas reserved for low density development consisting of estate-type lots as proposed by this application in the City of Stoney Creek.

Were the City of Stoney Creek to conclude that the urban area should be increased, amendments to planning documents would be required.<sup>4</sup>

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<sup>1</sup> - A hectare is 2.47 acres. 25 units per hectare would be an equivalent density of about 10 units per acre. The applicant proposes a density of 2 units per acre.

<sup>2</sup> - Both areas are distinctive. The Western Development Area predominantly supports low density development whereas Heritage Green supports predominantly medium to low density development.

<sup>3</sup> - The Lakeshore area around Fifty Point was historically identified for large lot development, however, amendments to the local OP have changed the format of development.

<sup>4</sup> - In 1999, several property owners in the former Township of Glanbrook immediately adjacent to the City of Hamilton and City of Stoney Creek boundaries south of the NE Plan Area submitted

The City study eventually concluded that an additional 190 ha (469 acres) of urban land was required to satisfy projected growth demands and the PPS. The study also concluded that there was no justification to convert/re-designate existing (but not used) industrial lands to other uses such as residential. City staff identified a potential for 240 ha north of former Highway No. 8 between Fruitland Road and Fifty Road that could be made available for development but *did not include any of the area under the jurisdiction of the Commission.*

This previous statement is important in that it establishes a City Planning Department view that additional lands required for urban purposes not include the NE Plan Area.

Regional Council deferred the Study at the request of the City of Stoney Creek pending an analysis of any proposed expansion into the prime agricultural areas north of Highway No. 8 as required under the PPS and other issues such as infrastructure/servicing costs.

The former Regional OP is currently the subject of a Five Year Review. The establishment of urban boundaries is a key consideration in the review.

An expansion of the urban boundary into the former Township of Glanbrook (see footnote on this page) was supported by Regional Council resulting in the adoption of Regional OP Amendment No. 9. The area covered by the proposed Amendment totals 162 ha (400 acres). The Council decision was appealed by environmental groups and other development interests desiring consideration of urban boundary expansions elsewhere in the City, and conversion of vacant industrial land to residential.

The proposed Amendment was the subject of an OMB hearing. The Board divided the hearing into distinct phases with the first phase scheduled to examine the need for additional urban residential land for the new City of Hamilton. The first phase of the hearing has concluded with the Board delivering a decision in July, 2001.

As to the issue of need, the Board concluded that of all the planning and economic evidence presented, it was reasonable to expect a need for additional residential lands, not presently designated, in the order of 405 ha (1,000 acres) plus or minus a contingency of 10% before the year 2021. The Board also ruled that it would not consider re-designating vacant industrial lands for residential purposes as it would be inappropriate, not represent good planning and not be in the overall public interest to do so.

The next phase of the hearing will determine whether it is appropriate to expand the urban boundary at this location.

In summary, urban boundary setting/expansion will be considered as part of the Five Year Review of the former H-W OP and former City of Stoney Creek OP. An OMB

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Regional OP Amendment applications to expand the urban boundary.

hearing on Regional Council-approved Amendment No. 9 has determined that there is a need for additional land within the new City of Hamilton to be set aside for urban development purposes. In an internal study, staff of the former City of Stoney Creek determined that any proposed urban expansion would be focused in areas north of former Highway No. 8. Urban expansion in the NE Plan Area (e.g., in areas like Winona) was to be avoided. This study has, however, been deferred.

#### **E. SITE DESCRIPTION AND SURROUNDING LAND USES**

The property is south and east of former Highway No. 8 and its intersection with Winona Road, and totals 9.2 ha (23 acres). Only the northerly 3.76 ha (9.3 acres) is the subject of the NE Plan Amendment application.

The property is fairly level exhibiting a gentle gradual slope from the north to the Escarpment toe to the south. It has two frontages along a stub of Peachtree Road at the north end and along a stub of Lorado Drive at the south end.

There is evidence that the lands were used for an agricultural purpose some years ago. The northerly portion contains an orchard (long abandoned). The applicant has recently constructed a single detached dwelling at the south end in close proximity to the Escarpment toe [see Related File a)].

A drainage course, being a small tributary of the Fifty Creek and known as Municipal Watercourse 12, traverses the northerly portion of the subject lands and flows from west to east. A smaller tributary runs parallel to the easterly property line and drains abutting lands to the south. This tributary connects to Watercourse 12.

The area around the tributaries is somewhat lower in elevation than the surrounding area.

The Winona Urban Community lies immediately to the west with low density housing backing onto the property. Further south (beyond the Urban Community), houses line the east side of Winona Road backing onto virtually the entire length of the remaining property to the Escarpment toe. North and slightly to the west is the Winona Community core consisting of commercial, institutional and residential uses. East of the property are agricultural uses consisting of orchards and croplands.

The tree-covered, steep Escarpment slope lies beyond the applicant's house which is estimated to be about 400 m (1,312 ft) from the area the subject of the Amendment.

#### **F. ANALYSIS**

***Niagara Escarpment Planning and Development Act/Niagara Escarpment Plan***

The application proposes to amend the NE Plan to extend the boundary of the Minor Urban Centre for the Community of Winona to include the northerly 3.76 ha (9.3 acre) portion of a 9.2 ha (23 acre) property, to be developed by a future draft plan of subdivision totalling 17 lots.

Section 6.1(2) of the NEPDA states that an amendment application shall include a statement of the justification and shall be accompanied by research material, reports, plans and the like, that were used in the preparation of the amendment.

The agent provided a Planning Report together with a Visual Assessment Report by a Landscape Architect in support of the amendment. In the opinion of the agent, the Minor Urban Centre extension can be justified and is consistent with the objectives and provisions of the NEPDA and the NE Plan.

The Escarpment Protection Area objective of maintaining and enhancing the open landscape character of Escarpment features will, according to the consultant, be met by limiting the development to the 17 proposed lots. Views of the Escarpment brow are somewhat limited by adjacent developments along Highway No. 8 and Winona Road. The large lots and the space between the residences will, in the agent's opinion, provide and maintain views and maintain the open landscape character.

There are no environmentally sensitive areas, significant environmental features or Provincially Significant Wetlands on the property. The land is idle and has not been actively farmed in many years. Prime agricultural land as defined in the PPS is not being taken out of production as the property contains Class 4 soil.

NE Plan Minor Urban Centre Objective 1 states as follows:

*“To recognize, maintain and enhance existing rural settlements or provide concentration points for development and growth in rural areas.”*

In response, the agent is of the opinion that the Winona Urban Community is not a typical Minor Urban Centre in the sense that it is a fully serviced urban community and is designated as such in both the local and regional official plans. The Community Core is at the Winona Road/former Highway No. 8 intersection. Three quadrants of the intersection are fully developed with urban commercial and residential uses. The southeast quadrant remains undeveloped. Residential development of a portion of the subject lands would contribute to and strengthen the Community Core. In the consultant's opinion, low density development in the area proposed to be extended will be compatible with the predominantly low density character of the Urban Community, and represents a logical “rounding out” of the community at the four corners of the Winona Road/former Highway No. 8 intersection. Winona is also a fully serviced municipality with adequate water and sewer capacity to accommodate the proposed development of a further 17 lots.

NE Plan Minor Urban Centre Objective 5 states as follows:

*“To generally direct growth of villages, hamlets and settlement areas away from Escarpment Natural Areas and Escarpment Protection Areas into Escarpment Rural Areas in a logical manner with the least possible environmental and agricultural disruption.”*

In response, the agent indicates that the objective is prefaced with the word “generally”. The agent suggests that the subject lands are adjacent to the Community Core of Winona; represent a minor easterly extension of the Urban Community boundary, and will not result in any environmental or agricultural disruption.

Although the agent has provided an opinion in the planning report on the application’s consistency with the NE Plan and indicates that the application would not adversely effect the purpose and objectives of the NEPDA, there is no specific analysis undertaken of the consistency with the NEPDA. This should be provided, and is expected, as part of an application for a NE Plan Amendment.

## **G. ISSUES**

### ***Public Need for the application?***

The agent relies on a number of studies, reports and other tribunal decisions upon which to base his opinion that there is a public need for this type of large lot housing in the former City of Stoney Creek. Among those cited are:

- The PPS;
- Regional-approved Municipal Housing Statement for the City of Stoney Creek;
- The Stoney Creek Land Budget and Urban Area Review Study;
- The decision of the OMB on Phase I of the Regional OP Amendment No. 9 in south Hamilton;
- Housing Market Information and Summary Reports 1990 – 2001 prepared by the Canada Mortgage and Housing Corporation (CMHC); and
- The Fifty Point development.

The agent suggests that CMHC data gives an overall indication that demand for housing in Stoney Creek in the 1990’s was in the \$ 150,000 to \$ 250,000 range with frontages of 15 m (50 ft) or less. Large lot homes (i.e. over 15 m frontage as proposed by this Amendment application) accounted for approximately 6% of the demand for new housing stock.

Other developing neighbourhoods in the Western Development Area or the Heritage Green area of Stoney Creek make no provisions for large lot housing. The applicant is, in his view, satisfying a certain (but small) segment of the house- buying population.

The agent is of the opinion that Stoney Creek is unique in the extent and type of housing offered, particularly in the areas below the Escarpment. The proximity to Lake Ontario, the Q.E.W. and the backdrop of the Escarpment make this area attractive to a wide mix of housing varieties, including low density, large lot, higher end housing. It is argued that these intangibles make this area much more attractive to certain large lot home buyers than would other areas of the new City of Hamilton, including the former Towns of Dundas, Ancaster and Flamborough.

This may be true, however, the opinion of former City of Stoney Creek Planning Department staff was that the focus of future urban expansion be in the area north of former Highway No. 8. The NE Plan was to be excluded.

Of greater importance is whether the application is in the public interest in the context of the purpose and objectives of the NEPDA and the NE Plan.

Is it in the public interest to extend the Minor Urban Centre boundary into the Escarpment Protection Area designation, when:

- the OMB decision in 1994 clearly established a limit to the Urban Boundary;
- the OMB accepted that the Escarpment Protection Area had value in maintaining the open landscape character; and
- the OMB considered that the open landscape character was maintained by the Escarpment Protection Area serving as a buffer to the Escarpment Natural Area to the south.

Consideration must be given as to whether it is in the public interest to extend the Winona Minor Urban Centre boundary into the Escarpment Protection Area given the importance of the Escarpment Protection Area serving as a buffer to the more ecologically sensitive Escarpment Natural Area to the south.

The Niagara Escarpment is a Provincially significant resource, deemed worthy of protection by an environmentally-oriented Provincial Plan. Applications which would allow more development in this Provincially significant area cumulatively chip away at the fundamental protection afforded to it by the Commission through the NE Plan. On this point, the NEC could anticipate future applications coming forward around Winona, were this application to proceed. The effect would be a revisiting of the Winona boundary issue. The 1994 OMB decision, in denying the OP Amendments and subdivision proposals, dealt with the issue of public interest and determined the importance of maintaining the lands as a buffer rather than an area which would be a candidate for future urban expansion.

***Do the lands shown on the NE Plan presently satisfy the NE Plan Designation Criteria?***

Escarpment Protection Areas are important because of their visual prominence and their environmental significance.

The objectives of the Escarpment Protection Area and the criteria for designation are as follows:

***Objectives***

- 1. To maintain and enhance the open landscape character of Escarpment features.*
- 2. To provide a buffer for 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 (ANSI).*

The lands satisfy and contribute to meeting Objectives 1, 2 and 4.

The property, the subject of the amendment, complies with Designation Criteria 2 and is, therefore, correctly designated. This was confirmed following submission of extensive evidence leading to the 1994 OMB decision.

The agent has provided justification in support of his opinion that the Amendment application is consistent with the Minor Urban Centre designation objectives, therefore, this designation could be extended into the Escarpment Protection Area.

***Is the Application Frivolous, In the Public Interest, etc?***

The NEC, in consideration of an amendment application, must decide on one of two processes.

Section 6.1(1) of the NEPDA allows an amendment to the NE Plan to be initiated by any person, Ministry, or municipality.

Section 7 directs the NEC to consult with any affected Ministry and with the Council of each municipality within, or partly within, the NE Plan Area in any amendment application.

Section 10 deals with amendment procedure which commences the circulation, the publishing of public notice, consultation with advisory committees, and potentially the holding of a public meeting.

Section 6.1(3) allows the Commission to advise the Minister that, in its opinion, the application for amendment does not disclose sufficient planning justification, is not in the public interest, is without merit, is frivolous or vexatious, or is made only for the purpose of delay.

An application would be considered not in the "public interest" if there was major inherent conflict with the underlying purpose and objectives of the NEPDA and Plan. This determination should be used sparingly, but could be considered, for example, where the justification is insufficient or the application is revisiting what is essentially an issue that was dealt with previously (e.g. OMB decision). (staff underline).

Section 6.1(4) allows the Minister to make a final decision on representations under Section 6.1(3). The Minister could reject an application or direct that it be processed.

The consultant's background planning report contains information provided to justify proceeding with the application. Notwithstanding the Municipal Housing Statement, the Land Budget and Urban Area Review Study and the recent OMB decision on Regional OP Amendment No. 9, there are differences, which have been pointed out, between this application and the proposal to expand the Winona Urban Community denied by the OMB in 1994. They are:

1. The proposal is to add only 3.76 ha (9.3 acres) to the Urban Community as opposed to the 1994 proposal involving four landowners with four different parcels of land covering over 60 ha (150 acres);
2. In the consultant's opinion, 17 large estate-type lots proposed versus the 1994 proposal of upwards of 700 typical urban residential lots on the 60 ha (less than 15 m frontages);
3. A density of 2 housing units per acre as opposed to the 1994 proposal involving more typical urban-sized lots in the order of 10 – 12 units per acre.
4. Applicant has had a visual assessment performed by a qualified Landscape Architect who undertook an analysis to confirm that the extent of area proposed for

expansion of the Urban Community be restricted to 3.76 ha, and that the east boundary be firmly established as proposed and not extending to the east limits of the property as was the case in 1994.

The landscape assessment suggests that the proponent's remaining lands (with the estate home) would provide an adequate buffer to the Escarpment face. This is in contrast to the 1994 proposals that desired development to the unopened road allowance just north of the toe of the Escarpment.

5. The applicant proposes large lots, restrictions being placed on building heights, and maximizing setbacks, to maintain the open landscape character and Escarpment views whereas 1994 proposal looked at only maximizing development.
6. A setback of 400 m (1,312 ft) from the toe of the Escarpment rather than the 1994 proposal to develop up to the unopened road allowance just north of the toe.
7. The 1994 proposals were governed primarily by the municipal planning processes and the *Planning Act* since the Winona Urban Community boundary had not been finalized.

The subject application will be assessed through the process outlined in the *Niagara Escarpment Planning and Development Act* although if Amendments to the municipal Official Plans are required, the matter could be heard before a Consolidated Joint Board.

8. An important element of the 1994 Board hearing (and ultimately in the decision) was where the southerly Urban Community boundary should be set. Evidence was presented by numerous parties on both sides of the issue (including the Commission who was opposed to extending the boundary further south than where it was proposed to have been set in 1985). The Board decision dismissed the applications made by the landowners and the south boundary was effectively fixed at the location originally intended in 1985.

The consultant suggests that the current application will not extend that boundary further south but proposes to recognize and reflect that boundary and instead extend the Urban Community eastward along that fixed southerly boundary. The Minor Urban Centre designation would be no closer to the Escarpment feature to the south than it is at present.

In relation to this point, this is somewhat difficult to accept given that the applicant's property was also the subject of the 1994 OMB hearing. The Board determined that the boundary not be changed for this property either southward or, by default, eastward.

In relation to Point 4 on the previous page, there is a concern that the applicant's remaining property could, in future, be considered for further development. The agent correctly (in staff's opinion) points out that, apart from public ownership, methods of preventing applications for future development are impractical as a landowner has a legal right to make a planning application. The agent would, however, consider the establishment of a conservation easement on the remaining lands on the north side of the Lorado Drive stub (i.e. if approved, in the area between the extension and Lorado

Drive as a limitation to further development). The easement could be held by a public agency such as the *Ontario Heritage Foundation*.

This would have to be explored further (should the Amendment proceed).

What is clear is that the Escarpment Protection Area designation does not permit a further separation of the remaining property without an Amendment. Only one single detached dwelling per lot is permitted. The applicant's house approved in 2000 at the south end would be the extent of housing permitted under the NE Plan's existing provisions.

## **H. CONCLUSION**

It is recommended that the NEC inform the Minister of Natural Resources that the application is not in the public interest in accordance with Section 6.1(3) of the *NEPDA*. The application is not in the public interest because:

1. The Amendment is inconsistent with the Purpose and Objectives of the Niagara Escarpment Planning and Development Act and the Plan. Specifically:

### **Purpose**

The purpose of this Plan 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 that natural environment.

### **Objectives**

- .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 Plan;
- .to support municipalities within the Niagara Escarpment Plan Area in their exercise of the planning functions conferred upon them by the Planning Act.

2. The Amendment is inconsistent with the following Objectives of the Escarpment Protection Area:

- .To maintain and enhance the open landscape character of Escarpment features.
- .To provide a buffer to prominent Escarpment features.
- .To encourage agriculture, forestry and recreation.

2. The lands satisfy the Designation Criteria for the Escarpment Protection Area:

.Areas in close proximity to Escarpment slopes which visually are part of the landscape unit.

2. The extension of the Minor Urban Centre is contrary to the following Objectives of the Designation:

.To generally direct the growth of villages, hamlets, and settlement areas away from Escarpment Natural Areas and Escarpment Protection Areas into Escarpment Rural Areas in a logical manner with the least possible environmental and agricultural disruption.

.To ensure that any growth will be in accordance with a municipal official plan and/or secondary plan which is not in conflict with the Niagara Escarpment Plan.

2. The 1994 decision of the Ontario Municipal Board set the boundary for the Winona Urban Community. The OMB recognized that the Escarpment Protection Area had value in maintaining and protecting the open landscape character and buffering the Escarpment Natural Area.

The Amendment application is a revisiting of essentially the same issues which were argued at the Board Hearing.

The determination was that the Winona boundary would not include the subject lands.

Processing the Amendment could encourage the submission of other applications on similar lands originally involved in the OMB decision, which were also excluded from the Winona boundary.

3. The former City of Stoney Creek recognized the importance of maintaining the character of the Niagara Escarpment by avoiding the NE Plan Area and focusing instead on non-NE Plan Areas for future urban expansion.
4. The 1994 OMB decision, policies of the NE Plan and municipal planning documents reflect the balance between development and protection of competing Provincial resources, which must be considered under the Provincial Policy Statement (PPS).

It should be pointed out that when the proponent was originally considering an Amendment, discussions were held with NEC staff commencing on and off for about 2 years before the Amendment was filed. The then Manager of the Commission, indicated that an Amendment application (from his perspective) would not be viewed as "frivolous" provided sufficient planning justification was filed. The applicant, subsequently, proceeded to prepare his application.

Since that original contact, the Niagara Escarpment Planning and Development Act was revised to include additional tests before an Amendment can proceed. Applications can be rejected where the Amendment:

- does not disclose a planning justification;
- is not in the public interest;
- is without merit;
- is frivolous or vexatious; or,
- is made for the purposes of delay.

Given the history of staff involvement noted above, possibly giving rise to an argument from the applicant that he relied on the former NEC staff view to his detriment, the Commissioners may decide not to accept the recommendation that the application is not in the "public interest". The alternative recommendation would be that the NEC direct the application be initiated and prepared for circulation and notification in accordance with Section 7 and Section 10 of the NEPDA.

Prepared by:

Approved by:

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David Johnston  
Planner

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Ken Whitbread  
Manager

## **RECOMMENDATION 1:**

That the Niagara Escarpment Commission advise the Minister of Natural Resources under Section 6.1(3) of the *Niagara Escarpment Planning and Development Act* that, in its opinion, the application is not in the public interest for the following reasons:

1. The Amendment is inconsistent with the Purpose and Objectives of the Niagara Escarpment Planning and Development Act and the Plan. Specifically:

### **Purpose**

The purpose of this Plan 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 that natural environment.

### **Objectives**

- .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 Plan;
  - .to support municipalities within the Niagara Escarpment Plan Area in their exercise of the planning functions conferred upon them by the Planning Act.
5. The Amendment is inconsistent with the following Objectives of the Escarpment Protection Area:
    - .To maintain and enhance the open landscape character of Escarpment features.
    - .To provide a buffer to prominent Escarpment features.
    - .To encourage agriculture, forestry and recreation.
  9. The lands satisfy the Designation Criteria for the Escarpment Protection Area:
    - .Areas in close proximity to Escarpment slopes which visually are part of the landscape unit.
  11. The extension of the Minor Urban Centre is contrary to the following Objectives of the Designation:
    - .To generally direct the growth of villages, hamlets, and settlement areas away from Escarpment Natural Areas and Escarpment Protection Areas into Escarpment Rural Areas in a logical manner with the least possible environmental and agricultural disruption.

.To ensure that any growth will be in accordance with a municipal official plan and/or secondary plan which is not in conflict with the Niagara Escarpment Plan.

14. The 1994 decision of the Ontario Municipal Board set the boundary for the Winona Urban Community. The OMB recognized that the Escarpment Protection Area had value in maintaining and protecting the open landscape character and buffering the Escarpment Natural Area.

The Amendment application is a revisiting of essentially the same issues which were argued at the Board Hearing.

The determination was that the Winona boundary would not include the subject lands.

Processing the Amendment could encourage the submission of other applications on similar lands originally involved in the OMB decision, which were also excluded from the Winona boundary.

15. The former City of Stoney Creek recognized the importance of maintaining the character of the Niagara Escarpment by avoiding the NE Plan Area and focusing instead on non-NE Plan Areas for future urban expansion.
7. The 1994 OMB decision, policies of the NE Plan and municipal planning documents reflect the balance between development and protection of competing Provincial resources, which must be considered under the Provincial Policy Statement (PPS).

***Should Recommendation 1 not be accepted, the Niagara Escarpment Commission adopt the following recommendation.***

**RECOMMENDATION 2:**

The Niagara Escarpment Commission instruct staff to prepare the proposed Amendment PW-138-01 [Hamilton General Homes (1971) Ltd.] for circulation and notification pursuant to Section 7 and Section 10(1) of the *Niagara Escarpment Planning and Development Act*.

## **LIST OF SCHEDULES AND ACCOMPANYING MAPS**

<b>SCHEDULE A</b>	PROPOSED AMENDMENT PW-138-01 [HAMILTON GENERAL HOMES (1971) LTD.]
<b>MAP 1</b>	LOCATION MAP
<b>MAP 2</b>	DEVELOPMENT PLAN
<b>APPENDIX 1</b>	MAP NO. 1 (PROPOSED DEVELOPMENT PATTERN) OF THE FORMER HAMILTON-WENTWORTH OFFICIAL PLAN
<b>APPENDIX 2</b>	SCHEDULE "A2" (SECONDARY PLAN FOR THE WINONA URBAN COMMUNITY) OF THE CITY OF STONEY CREEK OFFICIAL PLAN

November 29, 2001

**RE: Proposed Niagara Escarpment Plan Amendment PW-138-01  
[HAMILTON GENERAL HOMES (1971) LTD.]  
Pt. Lot 4, Concession 2  
City of Hamilton (former City of Stoney Creek)**

**RECOMMENDATION:**

The Niagara Escarpment Commission initiate and circulate the attached amendment application.

**PROPOSED AMENDMENT PW 138 01  
To The Niagara Escarpment Plan  
Hamilton General Homes (1971) Ltd.**

**November 29, 2001**

## **TABLE OF CONTENTS**

**Part A – The Preamble**

**Part B – The Amendment**

**Part C – Schedule A**

## **PART A – The Preamble**

### **PURPOSE:**

To amend the Niagara Escarpment Plan (NEP) to extend the Minor Urban Centre boundary for the Community of Winona to include the northerly 3.76 ha (9.3 acre) portion of a 9.2 ha (23 acre) property to be developed by a future draft plan of subdivision totalling 17 lots.

### **LOCATION:**

Lot 4, Concession 2  
City of Hamilton (formerly City of Stoney Creek)

### **PROPERTY SIZE:**

9.2 ha (23 acres) overall

### **AGENT/APPLICANT:**

John Ariens, MCIP, RPP, Planning and Engineering Initiatives Ltd. for the owner, Hamilton General Homes (1971) Ltd.

### **BASIS:**

Application has been made to amend the Niagara Escarpment Plan for a minor extension to the Winona Minor Urban Centre boundary involving a 3.76 ha (9.3 acre) portion of a 9.2 ha (23 acre) property.

To expand the boundary of a designated Minor Urban Centre in the Niagara Escarpment Plan requires an Amendment. Note: It will also be necessary for the applicant to apply for (and obtain) an amendment to the former City of Stoney Creek Official Plan and former City of Stoney Creek Zoning By-law No. 3692-92. The applicant may also be required to obtain an Amendment to the former Hamilton-Wentworth Official Plan.

Section 6.1(1) of the *Niagara Escarpment Planning and Development Act* (NEPDA), any person, Ministry or municipality may make a request for an Amendment to the Niagara Escarpment Plan. The Niagara Escarpment Commission (NEC) may initiate such an Amendment.



## **PART B – The Amendment**

The Niagara Escarpment Plan be amended as follows:

- The Minor Urban Centre boundary for the Community of Winona in the City of Hamilton (former City of Stoney Creek) is expanded to include a 3.76 ha (9.3 acre) portion of a 9.2 ha (23 acre) lot in Part Lot 4, Concession 2, as depicted on Map 2 of the Niagara Escarpment Plan shown as Schedule A.

November 29, 2001

**RE: Circulation and Notification of Niagara Escarpment Plan Amendment  
PW-138-01 [HAMILTON GENERAL HOMES (1971) LTD.]**

**Background:**

Section 7 and Subsection 10(1) a) of the *Niagara Escarpment Planning and Development Act (NEPDA)* require that the Niagara Escarpment Commission (NEC) consult with ministries and furnish each affected local municipality and county or regional municipality within or partly within the Niagara Escarpment Planning Area with a copy of the proposed Amendment to the Niagara Escarpment Plan and invite the municipalities to make comments on the Amendment to the Commission within 60 days.

Subsection 10(1) b) of the *Niagara Escarpment Planning and Development Act* requires that notice of the proposed Amendment be published in such newspapers having general circulation in the Niagara Escarpment Planning Area as the Commission considers appropriate, to notify the public and receive comments within 60 days. Note: Section 10(2) of the NEPDA permits the NEC to extend the notice period in instances where 60 days proves to be an insufficient amount of time for comments to be made.

**Purpose:**

The purpose of this report is for the Commission to approve the recommended circulation and notification lists for Niagara Escarpment Plan Amendment PW-138-01 [Hamilton General Homes (1971) Ltd.].

**Recommendation:**

That the Niagara Escarpment Commission instruct staff, pursuant to Section 7 and Subsections 10(1) a) and 10(1) b) of the of *the Niagara Escarpment Planning and Development Act* to circulate the proposed Amendment to ministries, and the following municipalities and provide notice in the listed newspapers with respect to Niagara Escarpment Plan Amendment PW-138-01 [Hamilton General Homes (1971) Ltd.]:



1. Municipality:

- The new City of Hamilton and various Departments within the City including Traffic, Engineering, and former Stoney Creek Section

2. Newspapers:

- Hamilton Spectator
- Stoney Creek News

November 22, 2001

John Ariens, MCIP, RPP  
Vice President and Senior Planner  
Planning and Engineering Initiatives Ltd.  
360 James Street N.  
Suite 200, East Wing  
Hamilton, ON L8L 1H5

Dear Mr. Ariens:

**RE: NIAGARA ESCARPMENT PLAN AMENDMENT APPLICATION  
PW 138 01  
Hamilton General Homes (1971) Ltd.  
Lot 4, Concession 2  
City of Hamilton (former City of Stoney Creek)**

The Niagara Escarpment Commission will be considering an initial staff report on the above-described application at its meeting in Georgetown on **Thursday, November 29, 2001**. The meeting commences at 10:00 a.m.

Should you wish to make a presentation to the members, please contact Norrine Burns at ext. 223 to schedule an appointment before **3:30 p.m. on Tuesday, November 27, 2001**.

A copy of the staff report is enclosed for your information. Staff is recommending that the Commission advise the Minister of Natural Resources under Section 6.1(3) of the *Niagara Escarpment Planning and Development Act* that, in its opinion, the application is not in the public interest.

Should the Commission not adopt that recommendation, staff has provided an alternative recommendation which would see the application initiated for circulation and notification pursuant to Section 7 and Section 10(1) of the *Niagara Escarpment Planning and Development Act*.

Should you have any questions, please contact me at ext. 243.

Yours truly

David Johnston  
Planner