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Resources

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MNR5385MC-2013-1512

July 3, 2013

Ms. Carol Freeman
25 Headwaters Lane
Orangeville ON L9W 5K3

NOTICE OF DECISION

made under the provisions of the
*Niagara Escarpment Planning and
Development Act, R.S.O. 1990*

Niagara Escarpment Hearing Office
Case Nos. 11-136/11-137/11-138/11-139/11-140
NEC File No.: P/R/2011-2012/046

Dear Ms. Freeman:

Re: Leslie and Wendy Mandelbaum, Merle and Richard Harstone and Diana Hillman, appellants against Niagara Escarpment Commission conditional approval of an application for a development permit made by Carol Freeman (P/R2011-2012/046) to construct a 1 storey single dwelling, attached garage, driveway, and septic system on a 1.68 ha (4.16 ac) site at Part Lot 8, Concession 2, EHS, being the East/South Corner of Kennedy Road in the Town of Caledon, Region of Peel, Ontario.

Pursuant to Section 25 of the *Niagara Escarpment Planning and Development Act, R.S.O. 1990, c. N.2*, as amended, a panel of three hearing officers reported a summary of the representations made at the hearing on this proposal, together with their opinion on the merits of the decision made by the Niagara Escarpment Commission.

After considering the hearing officers' report (copy attached), I concur with the hearing officers and direct the Niagara Escarpment Commission to issue a development permit subject to the attached revised and new conditions.

Sincerely,

A handwritten signature in blue ink, appearing to read "David Oraziatti".

David Oraziatti
Minister of Natural Resources

Attachments

C: Ken Whitbread, Manager
Niagara Escarpment Commission
232 Guelph Street
Georgetown ON L7G 4B1

George L. Booth
16419 Kennedy Road
Caledon ON L7C 2H9

Elizabeth Kerr
Ministry of Natural Resources
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Patrick White
Davis Webb LLP
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Peter Gross
Development Approval and Planning Policy
Department
Town of Caledon
6311 Old Church Road
Caledon ON L7C 1J6

Michael Baran
Niagara Escarpment Commission
232 Guelph Street
Georgetown ON L7G 4B1

Leslie Mandelbaum
Wendy Mandelbaum
16679 Kennedy Road
Caledon ON L7C 2H9

Merle and Richard Harstone
166797 Kennedy Road
Caledon ON L7C 2H9

Diana Hillman
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Richard Clark
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Glenn Wellings
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Piccin Bottos
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Woodbridge ON L4L 4Y4

Brad Bricker
176 Fellowes Crescent
Waterdown ON L0R 2H3

Philip van Wassenaer
1253 Crossfield Bend
Mississauga ON L5G 3P5

Karen Chisholme
Credit Valley Conservation Authority
1255 Old Derry Road
Mississauga ON L5N 6R4

CONDITIONS OF APPROVAL

1. Non-fulfillment or breach of any one of the conditions shall render the Development Permit void.
2. A site inspection(s) to the property may be undertaken by the Niagara Escarpment Commission to ensure that the development complies with the conditions of the Development Permit. Persons may accompany the Commission representative on the site inspection(s) who possess expert or special knowledge related to the conditions of the Development Permit.
3. No building permit or other licence, certificate, permit or other similar permission relating to development shall be issued or be considered to be in force unless a Development Permit is in effect.
4. The Development Permit shall expire three years from its date of issuance unless the development has been completed.

Revised 5. Development shall take place only in accordance with the site plan dated January 2012, as revised pursuant to these conditions, and development permit application submitted (except where special conditions are to apply as noted below).

Revised 6. No grading of the existing contours of the lot in the area of the development is permitted, with the exception of that which is required for the construction of the single dwelling (including attached garage with breezeway linkage), septic system, driveway and existing swale modifications (except where conditions are to apply as noted below).

7. No trees other than dead or diseased trees shall be cut or removed from the lot in the area of the development except those absolutely necessary for the construction of the single dwelling (including attached garage with breezeway linkage), septic system, driveway and existing swale modifications.

8. Screening, landscaping and rehabilitation shall commence by the end of the growing season after the development is completed.

Note: Such landscaping allows for the individual taste of the owner. The Commission recommends that for major trees, species native to the area shall be used rather than exotic species.

9. All exposed areas resulting from construction shall be stabilized with suitable ground cover (e.g. mulch, seed) immediately upon completion of the construction.

10. Appropriate erosion and sediment controls and tree protection measures shall be installed prior to commencing any construction activities and maintained until the development is completed and the site has been stabilized.

Revised 11. Any requirements regarding installation of the septic system shall be fulfilled to the satisfaction of the Town of Caledon prior to the issuance of a Building Permit, subject to Conditions 14, 15 and 23.

12. The applicant shall obtain an Entrance Permit to the satisfaction of the Town of Caledon

public Works Department.

- Revised 13. Prior to the commencement of any construction, the stormwater drainage works described by the Town of Caledon in its correspondence dated July 28, 2011, subject to Condition 23, shall be completed to the satisfaction of Credit Valley Conservation.
- Revised 14. The owner/applicant shall take every precaution to ensure that no disturbance or fill placement, especially related to the installation of the septic system, occurs within the dripline of the sugar maples situated along the road allowance, subject to Condition 23.
15. **Prior to the issuance of a Development Permit**, the proposed single dwelling, garage, septic system and driveway shall be staked/demarked on-site for the approval of the Niagara Escarpment Commission.
- Revised 16. **Prior to the issuance of a Development Permit**, final floor plans and elevations of the single dwelling (incl. attached garage with breezeway linkage) shall be submitted to the Niagara Escarpment Commission for approval, subject to Condition 21.
17. The single dwelling (incl. attached garage with breezeway linkage) shall not contain an apartment unit, second residential unit, or an accessory dwelling unit (e.g., an "in-law suite" or "granny flat").
18. The owner/applicant shall obtain a permit from Credit Valley Conservation pursuant to Ontario Regulation 106/06 under the *Conservation Authorities Act*, prior to commencing any construction or issuance of a Building Permit.
19. This conditional approval shall be void if a Development Permit is not issued within one (1) year of the date of confirmation of the decision.
- New 20. **Prior to the issuance of a Development Permit**, the Applicant shall undertake and provide to the Director of Development Approval and planning Policy for the Town of Caledon for its approval, an archaeological assessment prepared by a licenced archaeologist with experience in Euro-Canadian industrial sites relating to the proposed development site.
- New 21. **Prior to the issuance of a Development Permit**, the Applicant shall provide to the satisfaction of the Town of Caledon elevations and a list of materials to be used for exterior cladding and roofing for the proposed structure/dwelling on the subject lands for approval by the Director of Development Approval and Planning Policy or her designate with a view to protecting the cultural heritage value of the surrounding area.
- New 22. **Prior to the issuance of a Development Permit**, the Applicant shall undertake and provide to the satisfaction of the Director of Development Approval and Planning Policy of the Town of Caledon a certified arborist's report addressing the roadside sugar maples and interior trees in the area of the proposed building envelope (including the dwelling, septic bed and driveway) and to provide a compensatory planting plan for any tree removal (the roadside sugar maples in particular and trees in the building envelope identified by the arborist's report).

New

23. **Prior to the issuance of a Development Permit**, the Applicant shall undertake and provide to the satisfaction of the Niagara Escarpment Commission and the Town of Caledon:
- (a) A drainage and grading plan, prepared by a qualified engineer, for approval by the Town of Caledon Engineering Department in conjunction with a review of the Building Permit application by the Town of Caledon Building Department, to include the quantity and location of fill to be placed on the Property for the additional consideration of the Niagara Escarpment Commission;
 - (b) A study and report, by a qualified engineer or hydrogeologist, to confirm that the proposed septic system can be installed and operated at the proposed location on the Property to meet the approval of the Town of Caledon Building Department in conjunction with the review of the Building Permit application, and that it will have minimum individual and cumulative effect on water quality and on the Escarpment environment.
 - (c) A study and report in the nature of an Environmental Impact Study, prepared by an ecologist certified in Ontario wetland evaluation to determine the appropriate building envelope and environmental set-backs; and
 - (d) A revised site plan with all the required information, including the information referred to in this condition, certified by a qualified engineer.

NOTE: The Niagara Escarpment Commission advises the owner/applicant that further consultation with the Ministry of Natural Resources is required as a permit under the *Endangered Species Act* may be required.

Please note that the proposal is in an area identified as habitat for species at risk in Ontario and may be subject to provisions under the *Endangered Species Act* (2007). It is the responsibility of the applicant to contact Melinda Thompson Black, Species at Risk Biologist, Ministry of Natural Resources (Aurora) at 905-713-7425 or Melinda.Thompson-Black@ontario.ca with the draft proposal for screening under the *Endangered Species Act* and provide written correspondence to this office.



Niagara Escarpment Hearing Office

Case Nos.: 11-136/11-137/11-138/11-139/11-140
(NEC File No.: P/R/2011-2012/046)

Harstone v. Niagara Escarpment Commission

In the matter of appeals by Leslie and Wendy Mandelbaum, Merle and Richard Harstone and Diana Hillman filed on August 26, 2011, for a hearing before a Hearing Officer pursuant to section 25(8) of the *Niagara Escarpment Planning and Development Act*, R.S.O. 1990, c. N.2, as amended, with respect to a decision of the Niagara Escarpment Commission dated August 12, 2011, whereby the Commission conditionally approved Development Permit application P/R/2011-2012/046 made by Carol Freeman to construct a 1 storey single dwelling, attached garage, driveway, and septic system on a 1.68 ha (4.16 ac) site at Part Lot 8, Concession 2, EHS, being the East/South Corner of Kennedy Road in the Town of Caledon, Region of Peel, Ontario; and

In the matter of a hearing held on May 14, 16, 17 and 22, and August 1, 2012 at the Council Chambers, Town of Caledon, Town Hall, 6311 Old Church Road, Caledon, Ontario, and on May 15 and June 13, 2012 at the Caledon Community Complex, 6215 Old Church Road, Caledon, Ontario.

Before: Robert V. Wright, Hearing Officer
Helen Jackson, Hearing Officer
Maureen Carter-Whitney, Hearing Officer

Appearances:

Ronald K. Webb and Patrick F. White	-	Counsel for the Appellants, Leslie and Wendy Mandelbaum, Merle and Richard Harstone, and Diana Hillman
Carol Freeman	-	Applicant, on her own behalf
Akeno Tucker	-	Other Party, on his own behalf
Elizabeth Kerr	-	Counsel for the Niagara Escarpment Commission
Peter Gross	-	Counsel for the Added Party, the Town of Caledon

Dated this 13th day of March, 2013.

REPORT TO THE MINISTER OF NATURAL RESOURCES

Background and Overview

[1] The allegations of the Appellants underlying the issues on these appeals are that the conditional approval was, and remains, premature because there had not been sufficient study of the Escarpment natural features of the property and it had not been demonstrated that the proposed development would accord with the Niagara Escarpment Plan (“NEP”) development criteria. In addition, all of the parties to these appeals agree to the substance of three conditions that should be added to the development permit, but differ as to whether they should be satisfied prior to its conditional approval by the Niagara Escarpment Commission (“NEC”).

[2] The proposed development is a single dwelling with a basement walkout, attached garage and breezeway, driveway, and septic system on a property with natural features that limit the potential building envelope (the “Property”). A substantial amount of fill would be required to raise and level the Property for the development. A portion of the Property is designated as Escarpment Rural Area (“ERA”) and the remainder is designated Escarpment Natural Area (“ENA”) under the NEP. It is not disputed that a single dwelling may be a permitted use in both designations, subject to the development criteria set out in Part 2 of the NEP. The proposed dwelling would be in the area of the Property designated as ERA.

[3] The Property is also designated as Environmental Policy Area and Rural Area in The Corporation of the Town of Caledon Official Plan (the “TCOP”). The areas of these designations are approximately equivalent to the similar NEP designations.

[4] The Property has some unusual features. It is bounded on the west by Kennedy Road. Adjacent to the road is a row of mature heritage sugar maple trees, some of which would have to be removed for the development. The Property is lower than Kennedy Road and slopes to the east toward Silver Creek, and includes land on the east side of the creek. Most of the Property is heavily wooded but there is some open area near Kennedy Road. The open area is enveloped by a variety of deciduous trees that, as the slope descends, transition to white cedars, then wetland, and then Silver Creek, a cold water fishery (a trout stream) that is a tributary of the East Credit River.

[5] The area was known as the hamlet of Silver Creek. There are traces of an historic mill race on the Property that runs diagonally from Kennedy Road toward Silver Creek. This cultural heritage landscape feature dates back to the early 19th century

when it was part of the hamlet of Silver Creek. In those days there was a water-powered mill on the Property, and the mill race. Although no historic buildings remain, the Property has been identified by the Town as having a significant potential for archaeological resources. The proposed development would document, but remove, the cultural heritage features in relation to the mill.

[6] An existing ditch located on the west side of Kennedy Road currently drains through a culvert under the road and into a swale on the north end of the Property, which swale also collects surface water from the east side of the road. The swale directs the water across the Property in an easterly direction, toward the flood plain and Silver Creek.

[7] Carol Freeman (the “Applicant”) submitted the development permit application for the project (No. P/R/2011-2012/046) to the NEC on May 9, 2011 under the *Niagara Escarpment Planning and Development Act* (“NEPDA”). The Property is located in The Corporation of the Town of Caledon (the “Town of Caledon” or the “Town”), on the east side of Kennedy Road just north of the Grange Sideroad and to the south of the Escarpment Sideroad, in the Region of Peel.

[8] The NEC staff consulted with the Region of Peel, the Town, and the local conservation authority, Credit Valley Conservation (“CVC”), in the course of preparing the staff report, which recommended approval of the development permit application. The NEC staff report summarized the comments of the consulted agencies as follows:

- the Region of Peel had no objection to the applications, subject to the CVC comments being addressed;
- the Town of Caledon had no objection to the application, subject to an entrance permit being obtained (this was altered after the Decision, as discussed below); and
- CVC had no objection to the application, subject to the addition of conditions that a CVC permit be obtained, and that stormwater drainage improvements be made prior to construction.

[9] The NEC conditionally approved the development permit application on August 12, 2011 (the “Decision”).

[10] On August 26, 2011, Leslie Mandelbaum, Wendy Mandelbaum, Merle Harstone, Richard Harstone, and Diana Hillman (the “Appellants”) filed appeals of the Decision

with the Niagara Escarpment Hearing Office (“NEHO”) pursuant to s. 25(8) of the *NEPDA*. Their grounds for the appeals were as follows:

- failure to fully consider the policies of the NEP;
- failure to fully consider the Provincial Policy Statement (“PPS”);
- failure to consider impacts on the Silver Creek cold water fishery;
- incorrect characterization of the subject lands as relatively flat topography;
- failure to consider the cultural heritage importance of the 19th century industrial sites of a grist mill and saw mill and the location within historic Caldwell Village also known as Silver Creek; and
- conflict between the drip line of mature maples and fill areas of the proposed septic tile field and driveway.

[11] The Appellants requested that the following additional conditions be included in the NEC approval:

- a study demonstrating no negative impacts on the natural features or their ecological functions;
- a study demonstrating no negative impacts on fish habitat of Silver Creek;
- a study demonstrating compliance with the minimum distance separation (“MDS”) formulae; and
- conservation by removal and documentation, or by preservation on site, of the 19th century artifacts.

[12] The pre-hearing conference (“PHC”) in this matter commenced on November 10, 2011 by telephone conference call (“TCC”) and was continued, in person in the Town on December 9 and 20, 2011 and February 13, 2012, and by TCC on April 27, 2012. The PHC events are described in two previous orders of the NEHO dated December 8, 2011 and May 11, 2012. Akeno Tucker, a co-owner of the Property, and the Town were granted party status. Mr. Tucker supported the submissions of the Applicant.

[13] It is of note in this matter that one of the commenting agencies did not receive some of the information that was put before the NEC when it made the Decision that

conditionally approved the development permit application. On October 16, 2011, the Town wrote to the NEC with concerns about the development permit conditionally approved on August 12, 2011. The Town was concerned that the NEC approval was based on a revised site plan drawing not circulated to the Town. In particular, the Town raised concerns about: the large volume of fill needed to construct the driveway and septic system that would be placed within the drip line of the sugar maples; and the condition requiring the Applicant to submit elevations to the NEC for approval would bypass submission to the Town's Heritage Officer to determine whether the proposed development would be sensitive to the historical context of the area. The Property is identified in the TCOP as being located within the Silver Creek Cultural Heritage Landscape.

[14] After the appeals were launched, the Applicant provided a revised site plan, dated January 13, 2012 (the "January 2012 site plan"). On February 1, 2012, after reviewing the January 2012 site plan, the Town wrote again to the NEC and provided further details in respect of its concerns about the proposed development.

[15] On April 25, 2012, the Town wrote to the NEHO proposing three additional conditions to the development permit approved in respect of the Property in order to address the Town's outstanding issues. The parties agree to the substance of these conditions but they disagree as to whether they should be included as conditions to the development permit, or whether the development permit should have been approved at all until the subject matter of the proposed additional conditions (and other matters raised by the Appellants) had been dealt with. The three additional conditions proposed by the Town are:

1. The Applicant shall be required to undertake and provide to the Director of Development Approval and Planning Policy for The Corporation of the Town of Caledon for its approval, an archaeological assessment prepared by a licenced archaeologist with experience in Euro-Canadian industrial sites relating to the proposed development site.
2. The Applicant shall be required to provide to the Town of Caledon with [*sic*] elevations and a list of materials to be used for exterior cladding and roofing for the proposed structure/dwelling on the subject lands for approval by the Director of Development Approval and Planning Policy or her designate with a view to protecting the cultural heritage value of the surrounding area.

3. The Applicant shall be required to undertake and provide to the satisfaction of the Director of Development Approval and Planning Policy of the Town of Caledon a certified arborist's report addressing the roadside sugar maples and to provide a compensatory planting plan for any tree removal of the roadside sugar maples.

[16] The hearing commenced on May 14, 2012 at the Town of Caledon, and continued on May 15, 16, 17 and 22, 2012, June 13, 2012 and August 1, 2012. All of the parties and the Hearing Officers attended on a site visit on June 13, 2012.

[17] The parties submitted an Agreed Issues List with reference to sections of the NEP, the PPS and the TCOP. The Hearing Panel has categorized those issues as set out below.

Relevant Provisions of the NEP

[18] The relevant provisions of the NEP are set out in Appendix A.

Issues

[19] The overall issue in this matter is whether the development permit application is in accordance with the NEP. The following specific issues are raised:

1. Whether the proposed development is a permitted use in the NEP ENA and/or the ERA.
2. Whether the proposed development satisfies NEP General Development Criteria 2.2.1 (a) and (b) and 2.2.4.
3. Whether the proposed development satisfies NEP Development Criteria 2.6.1, 2.6.2 and 2.6.12 (New Development Affecting Water Resources).
4. Whether the proposed development satisfies NEP Development Criteria 2.7 (New Development Within Wooded Areas) and 2.12 (Heritage).
5. Whether the proposed development satisfies NEP Development Criterion 2.10 (Agriculture).
6. Whether the proposed development satisfies NEP Development Criteria 2.12.1, 2.12.2, 2.12.3 and 2.12.5 (Heritage).

Issue 1: Whether the proposed development is a permitted use in the NEP ENA and/or the ERA.

Discussion, Analysis and Finding

[20] As indicated above, it is not disputed that in the ENA (NEP Part 1.3) and the ERA (NEP Part 1.5), a single dwelling may be a permitted use, subject to the NEP Part 2 development criteria. The Appellants emphasize that the language of the NEP states that single dwellings may be permitted. The parties disagree on whether the proposed development complies with the development criteria.

[21] The Hearing Officers find that the proposed development is a permitted use of the Property under the NEP, subject to the Part 2 development criteria.

[22] Issues 2 and 3 will be considered together because they substantially overlap.

Issue 2: Whether the proposed development satisfies NEP General Development Criteria 2.2.1 (a) and (b) and 2.2.4.

Issue 3: Whether the proposed development satisfies NEP Development Criteria 2.6.1, 2.6.2 and 2.6.12 (New Development Affecting Water Resources).

[23] With respect to these criteria, the particular sub-issues are whether:

- a. the proposed development will avoid changes to the natural drainage of the site;
- b. the proposed development will maintain a 30 metre (m) setback of a sewage system from the top of a stream bank or edge of any wetland; and
- c. the proposed development will not result in the loss of wetland functions or contiguous wetland area.

Discussion and Analysis

Evidence

[24] Brad Bricker, a certified senior ecologist with PLAN B Natural Heritage, was qualified as an expert ecologist. He testified that the Appellants retained him in January 2012 to conduct a peer review of the development permit application, including the site plan, agency comments and relevant documents. He stated that he also made visits to

the Property in January and March 2012, observing it from Kennedy Road at the north and south property lines.

[25] Mr. Bricker provided an overview of his comments on the January 2012 site plan. This is the most current site plan, which the Town did not have for its initial review of the proposed development, prompting the Town's proposing the three additional conditions set out above. The following are his comments regarding matters that relate to issues on these appeals:

- the "top-of-bank" is the edge of the road, and the proposed dwelling is approximately 6 m below the "top-of-bank";
- the proposed tile bed for the septic system would be located on a 15% slope up-gradient of the proposed well and re-grading of the slope would be required;
- up to 2 m of fill would be required to accommodate the development, and both fill and a 1.4 m retaining wall would be needed for the driveway access;
- the 6 m development buffer provided from the wetland boundary surveyed by CVC appears to be the maximum setback that can be provided for the site given the proposed building envelope, while typical setbacks from contiguous riparian vegetation and wetlands would be in the 30 m range;
- no study has been done to justify a 6 m buffer given the potential impacts of sewage effluent on the wetland and Silver Creek, which have not been addressed;
- there is no indication where the Silver Creek floodline is on the January 2012 site plan, and it is not clear whether the dripline staked by CVC for the wetland transition reflects an upland/transitional or wetland (floodplain) condition;
- the January 2012 site plan suggests that the wetland boundary on the Property may not coincide with the dripline staked by CVC, and other areas may be wet or transitional in nature;
- it is unclear how the drainage/runoff from the site will be accommodated and treated, and the proposal to redirect the discharge points along the north of the Property may not be appropriate to protect the Silver Creek habitat;

- the potential impacts to vegetation are not known because there is no tree or vegetation information shown on the January 2012 site plan. Also, there is no indication that there is tree cover in the area proposed for development, which is not an open field;
- the Property will require significant grading within the wetland buffer and the dripline of the maple trees;
- there is no indication how the impacts of a reduced wetland buffer will be mitigated; and
- the fishery function or constraints in relation to Silver Creek, which provides habitat for brook trout, are not mentioned.

[26] Mr. Bricker discussed the designations of the land on the Property. He stated that, under the NEP, the cedar bottomland forest/floodplain associated with Silver Creek is designated ENA and that the cultural woodland community located between Silver Creek floodplain and Kennedy Road is designated ERA. He further stated that the Property is designated as part of the Greenlands Core Area under the Peel Official Plan and, under the TCOP, Silver Creek and its associated cedar bottomland are designated Environmental Policy Area (“EPA”), while the remainder of the Property is designated as Rural Area. Mr. Bricker gave evidence that Silver Creek is an important linkage area between the Niagara Escarpment and the Oak Ridges Moraine.

[27] Mr. Bricker stated that CVC regulation mapping under Ontario Regulation (“O. Reg.”) 160/06 shows that the floodplain associated with Silver Creek is a regulated feature. He noted that CVC and he have a difference of opinion concerning whether or not this constitutes a valleyland feature on the Property. He stated that the applicable CVC 2010 *Watershed Planning and Regulation Policies* do not permit development in valleyland features.

[28] He indicated that Silver Creek has been previously studied as part of the East Credit Subwatershed Study (“ECSS”) conducted by CVC from 2002 to 2007. Mr. Bricker testified that the *East Credit Subwatershed Study – Management Plan and Implementation Report*, November 2007, one of the studies prepared as part of the ECSS, recommends a high level of protection (classified as Level 1) for the Silver Creek riparian corridor in which the Property is situated. He said that the Level 1 protection applies to all of the Property. He stated that the Level 1 protection rating indicates that the entire Property performs important ecological processes and protects biological

diversity and life supporting systems that would be lost or degraded if the areas were permanently disturbed.

[29] Mr. Bricker noted that water quality was observed to be good at a culvert a short distance south of the Property. He said that the ECSS found brook trout throughout the East Credit subwatershed except for the main branch west of Kennedy Road, and while only a few critical spawning areas have been located, the study found indications that brook trout reproduction occurs throughout the subwatershed and so they may be spawning in Silver Creek. He also noted that the study stated that cultural meadows on bottomland soils, such as the cultural woodland community on the Property, have the potential for wetland restoration.

[30] Mr. Bricker gave evidence that Policy 6.1.f of the *Watershed Planning and Regulation Policies* states that CVC will provide recommendations consistent with the recommendations of CVC-supported comprehensive environmental study for an area when providing comments on applications. He stated that the ECSS meets the definition of a comprehensive environmental study under that policy and noted that the ECSS recommends Level 1 protection for the Property, which would also preclude development.

[31] Mr. Bricker gave his opinion that the development permit application should not have been approved given the environmental constraints on, and adjacent to, the Property. He stated that his opinion is consistent with the Level 1 protection recommendation in the ECSS, which directs a high level of protection. He also stated that the Level 1 protection takes into account the high protection zones identified in the NEP, the TCOP and the Region of Peel Official Plan.

[32] Mr. Bricker stated that, based on his experience, an Environmental Impact Study ("EIS"), or some form of environmental study, is appropriate for the Property and, in this case, should have been done as part of the application process, and not as a condition of approval. He testified that the purpose of an EIS is to describe and characterize the natural heritage features and functions on a property and, on that basis, to: identify potential impacts to the environment from an application; develop a mitigation strategy, if feasible, to address those impacts; and demonstrate compliance with applicable policies. He stated that the content of an EIS varies from site to site, but usually includes a base level of information from the collection of field data in respect of vegetation and wildlife, supported by information from other technical disciplines, such as hydrogeology. Mr. Bricker provided the opinion that an EIS is a critical piece of information to make an informed decision on the proposed development.

[33] Glenn Wellings was qualified as an expert to give opinion evidence as a land use planner. He stated that he was retained by the Appellants in November 2011 to assess the appropriateness of the NEC's decision to conditionally approve the Applicant's development permit.

[34] Mr. Wellings stated that the policies of the NEP aim to maintain natural areas. It was his opinion that there was insufficient information in the application, and there still is insufficient information, about the development proposal given the unique features of the Property, situated, as it is, below Kennedy Road in a low-lying area containing wetlands and a trout stream. He emphasised that the development would require a significant amount of fill and grading, and trees and natural vegetation would be removed.

[35] Mr. Wellings stated that the Applicant has not shown that the development would meet the NEP Part 2.2 General Development Criteria because the appropriate investigations and studies have not been done to demonstrate that the long term capacity of the Property can support the proposed dwelling without a substantial negative impact on the Escarpment environmental features.

[36] Mr. Wellings also referred to NEP Development Criterion 2.6, which address the effects of new development on water resources, including water quality, wetlands and flood plains. He stated that these development criteria provide that changes to natural drainage should be avoided, and no sewage system should be allowed closer than 30 m from the top of a stream bank or ravine, or the edge of a wetland. He acknowledged that where this setback cannot be achieved, the setback may be varied to the satisfaction of the Ministry of the Environment ("MOE") or its designated agent, which in this case would be the Town through a building permit application under the Ontario Building Code. He testified that the proposed setback of the sewage system from the wetland would be only approximately 14 m, and the Applicant has not conducted an EIS or other environmental study to justify a reduced setback. He stated that, in his experience, the Town would undertake a technical review of the sewage system prior to approving the building permit, but not an environmental review of the implications of the 14 m setback, because it would rely on the advice of CVC.

[37] It was Mr. Welling's opinion that the soils, slopes and vegetation have to be evaluated to establish appropriate development setbacks. He further stated that significant grading and filling is proposed for the Property that would change the natural drainage of the site, and noted that there is no condition included in the development permit in relation to the adequacy of the proposed well.

[38] It was Mr. Wellings' opinion that:

the applicant has not undertaken any environmental, ecological, soil, water, wildlife, or heritage studies/investigations to demonstrate that there will be no negative impacts on the Escarpment environment from the proposed development, that all applicable Development Criteria in Section 2 of the NEP can be met and that the development proposal conforms to the NEP.

[39] It was Mr. Wellings' evidence that the Applicant did not provide sufficient information to address the significance of the natural features on the Property under the PPS, including Silver Creek and its floodplain and meanderbelt, fish habitat, wetlands, and ground and surface water and hydrologic functions, and woodlands. It was his opinion that without such evaluations "it has not been demonstrated that there will be no negative impacts on the natural features and their ecological functions and it cannot be stated that the proposed development is consistent with PPS policies."

[40] Mr. Wellings reviewed the general Ecosystem Planning and Management and detailed Environmental policies in the TCOP. He stated that all lands designated ENA in the NEP are considered Natural Core Area and designated EPA in the TCOP. He referred to sections of the TCOP, including s. 3.1.4.4, 3.1.4.6, 3.1.4.11, 5.2.3.7, 5.7.3.1.3, 5.7.3.3.6, 5.7.3.3.7, 5.7.3.7.1, 5.7.3.7.2, and 5.7.3.7.7, and gave his opinion that the Applicant should have prepared an EIS and Management Plan ("MP") in advance of the development permit application for the Property. For example, he referred to:

- s. 3.1.4.6 – all development proposals within, containing and adjacent to EPA shall be required to conduct appropriate environmental studies/investigations, up to and including an EIS and MP, in accordance with s. 5.7;
- s. 3.1.4.11 – where the Town's environmental policies are more restrictive than those contained in a higher level planning document, the more restrictive policies shall apply as long as they comply with the intent of the upper level document;
- s. 5.7.3.7.1 – proposed new development adjacent to lands designated EPA will be required to complete an EIS and MP to the satisfaction of the Town and other relevant agencies; and
- s. 5.7.3.7.7 – where a subwatershed study, secondary plan or other broader scale environmental study has been completed in advance of a site specific proposal affecting EPA, the Town, in consultation with other agencies, may

reduce or modify the environmental study requirements for an individual application.

[41] Mr. Wellings provided his opinion that, although there is no mandatory requirement for an EIS in the NEP, it is a mandatory requirement in the TCOP for this development permit application because it is adjacent to lands designated EPA. Mr. Wellings gave evidence that without an EIS, among other things, there is no analysis of the impact of the proposed development on the adjacent wetland, and there is not sufficient information to determine whether or not it will result in the loss of wetland function or contiguous wetland area.

[42] In addition to being critical to the lack of an EIS prepared for this development permit application, Mr. Wellings said that there was no flood plain analysis conducted to determine flooding hazards, no grading and drainage plan produced, no evaluation of soils in relation to the septic tile bed, and no evaluation of slopes in relation to the sewage system draining toward Silver Creek and the proposed well. He added that, in his opinion, the Applicant should have provided information that the soil and lot size are appropriate for the proposed private sewage system and well at their proposed locations.

[43] Mr. Wellings stated that, although a detailed subwatershed study exists, the ECSS does not appear to have been considered in the application review process by CVC, the NEC planner or the Town.

[44] Mr. Wellings testified that the Applicant has not provided sufficient information to conclude that the development proposal conforms to all policies in the TCOP. He indicated that the EIS should have been required prior to the Decision because it is required to determine if the applicable environmental policies of the NEP, PPS and TCOP have been adequately addressed. He also stated that an EIS would establish the appropriateness of the proposed building envelope.

[45] Karen Chisholme, an ecologist with CVC, was qualified to give opinion evidence as an expert ecologist. Ms. Chisholme testified, under summons by the Applicant, that she attended at the Property twice during June 2011. She noted that, prior to her first site visit, she looked at air photographs of the area, overlaid applicable regulatory and wetland mapping and natural heritage information, and consulted with colleagues who had visited the Property the previous year.

[46] Ms. Chisholme stated that she delineated the features on the site during her first visit to the Property on June 1, 2011 and staked the boundary of the wetland on her second visit on June 15, 2011. She testified that she used the method for evaluating wetlands in Ontario set out in the Ontario Wetland Evaluation System and staked the wetland boundary at the point where she found 50% wetland vegetation species and 50% terrestrial (community upland) species. Ms. Chisholme testified that the determination of a wetland boundary is generally done during the growing season between late May and late September. It was her evidence that the 6 m wetland buffer was determined based on her field investigations as well as information gathered prior to, and during, her site visits.

[47] Ms. Chisholme gave evidence that subwatershed studies, such as the ECSS, only give a broad overview of how the subwatershed functions. Under cross-examination, she agreed that the ECSS shows the area to have Level 1 protection, but noted that this is represented on a large scale on the subwatershed level, and that for CVC's purposes the site-specific protection level for the Property was refined following site investigation, the identification of important features and the establishment of a buffer.

[48] Ms. Chisholme testified that, for smaller development proposals, CVC looks at the potential impacts of what is being proposed to help scope what is important for mitigation. She provided her opinion that an EIS was not required for the Property based on her investigations, and that she does not anticipate any negative impacts to natural heritage features.

[49] Under cross-examination by counsel for the Appellants, Ms. Chisholme testified that she did not produce a written report because she was not required to do so, although she did conduct a study of the site. She also stated that CVC would support development if there is sufficient space outside of hazard limits, and if there is not, then studies would be required. She provided her opinion that the building envelope proposed on the Property is outside the hazard limit, given the setback, and that the risk of impact on the hazard from the proposed development is low.

[50] When asked under cross-examination about the possible effect of the proposed development on fisheries within the wetland, Ms. Chisholme stated that she concluded there was no potential impact but did not ask for any reports to confirm this. She testified that she requests further studies when she believes that there is a risk of an impact to a feature or fishery. In response to a question on cross-examination concerning drainage, Ms. Chisholme testified to her understanding that a swale has

been proposed to redirect flow down the northern boundary of the Property, and it is not proposed to discharge surface water directly to the wetland.

[51] Ms. Chisholme stated, under cross-examination, that at the 6 m buffer line from the wetland boundary, erosion control fencing would be installed as a barrier to construction activity and to contain run-off from going into the wetland. She provided her opinion that, with this in place, there would be no negative impact on the wetland during construction or when there is run-off.

[52] When referred in cross-examination to guiding policy 5.3.2 a) of the CVC *Watershed Planning and Regulation Policies*, April 2010, which states that CVC encourages all planning and permit applications to achieve an ecological gain, Ms. Chisholme stated that it does apply to this development permit application. She testified that the ecological gain from this application would include the decreasing availability for invasive species to come into the natural feature, due to the construction of the house and maintenance of the grounds.

[53] Ms. Chisholme also stated, under cross-examination, that technical reports were not required to assess potential impacts on the natural heritage system within and adjacent to the subject lands pursuant to policy 6.1 g) of the *Watershed Planning and Regulation Policies*. She testified that policy 7.4, the setback criteria for development, does apply, but the minimum setback of 10 m from the meanderbelt was not required based on environmental study. She stated that, although no technical reports were done, pursuant to policy 7.4 d), she conducted a thorough site investigation and determined that no technical report was required.

[54] Richard Clark, now a Senior Environmental Planner at Halton Region, was a planner with CVC at the time of the development permit application. He testified under summons by the Applicant. He was qualified as an expert land use planner to give opinion evidence on land use planning matters.

[55] Mr. Clark gave evidence that he had been to the Property on three occasions: on September 30, 2010, in relation to an earlier development permit application by a different applicant, and twice in June 2011 in connection with this application. He outlined the initial steps he followed in reviewing the application, including a background file search and screening of the Property using available mapping. He stated that, in this application, the relevant issues for CVC were natural hazards and the protection of natural features, and so he involved Ms. Chisholme and a CVC engineer, Nadeem Paracha, in the review.

[56] Mr. Clark testified that on his site visit on June 1, 2011 he identified that the Property was extremely constrained, there was drainage traversing the Property in the exact location for the proposed development, and there were riparian natural areas around Silver Creek.

[57] Mr. Clark noted that on his site visit on June 15, 2011, he was accompanied by Ms. Chisholme, an Ontario Land Surveyor and the Applicant, during which Ms. Chisholme staked the limits of the wetland area. He stated that during this visit, he informed the Applicant that CVC would be requesting a 6 m setback from the wetland. He also noted drainage concerns in relation to the swales along Kennedy Road conveying storm flow to the location of the proposed development. He stated that the Applicant was asked to provide details on the site plan on redirecting the storm flow while maintaining the appropriate setback to the wetland. He further stated in his evidence that the Property contains both meanderbelt and floodplain features and, because the proposed development would be outside of those hazard areas, no further assessment was required. Under cross-examination by counsel for the Appellants, Mr. Clark stated that CVC went on site at the Property to determine where the EPA boundary under the TCOP lies. He noted that the flood plain boundary does not coincide with the wetland boundary, but is fully contained within it.

[58] Mr. Clark stated that the site was too constrained to allow for a 30 m buffer from the wetland and that CVC staff determined that a 6 m buffer would be sufficient to address the scale of the proposed development and its likely impacts. He testified that the Applicant revised the site plan based on CVC's comments, locating the proposed development closer to Kennedy Road and further from the wetland.

[59] Mr. Clark stated that Mr. Paracha went to the Property on June 24, 2011 to provide the Applicant with advice on the best design for a swale, and CVC recommended that a professional engineer be engaged to design the swale. Under cross-examination by counsel for the Appellants, he stated that Mr. Paracha's recommendation that the swale be designed by a professional engineer was passed on to the NEC, but in Mr. Clark's opinion, this was not required as a condition to the development permit and could still be considered as a condition to the CVC permit.

[60] Mr. Clark gave evidence that conditions in the development permit, specifically that prior to construction storm water drainage be improved and that the Applicant obtain a CVC permit under O. Reg. 160/06, were included at CVC's request.

[61] Mr. Clark addressed the *Watershed Planning and Regulation Policies* relevant to the application. He referred to policy 6.2.1 b), which recommends a minimum setback of 10 m from the limit of wetlands other than provincially significant wetlands (he noted that there are no provincially significant wetlands on site), and to policy 6.3, which states that CVC's review of development and site alteration on lots of records will generally be based on the policies in Chapter 7. He noted that policy 7.4 a), regarding setback criteria for development, also requires that development be set back a minimum of 10 m from other wetlands required to be protected, but that policy 7.4 d) provides flexibility for existing lots, allowing CVC to conduct a technical review and determine whether a different setback distance would be appropriate, as was done in this instance. He stated that the technical review involved: determining the features on site, the vulnerability of those features to the proposed adjacent development, the likely impacts from that development; and providing recommendations concerning any appropriate mitigation measures.

[62] With respect to the grading proposed outside the buffer area in the January 2012 site plan, Mr. Clark testified that CVC does have policies regarding fill quality. He said that the proposed development would need to provide a volume calculation of fill and if it exceeds a specified limit, soil testing would be required under CVC's permitting process. He also noted that, if proposed retaining walls along the driveway are over two feet in height, then CVC would require that they be designed by a professional engineer under a CVC permit.

[63] Under cross-examination by counsel for the NEC, Mr. Clark gave his opinion that, given what is contained in the January 2012 site plan, a stormwater management report would not be required.

[64] Under cross-examination by counsel for the Town, Mr. Clark testified that CVC advises the Town on environmental concerns associated with Niagara Escarpment development permits. He addressed a number of provisions in the TCOP, stating that the language in s. 3.1.4.6, 5.7.3.7.1 and 5.7.3.7.2 allows for some discretion and flexibility in conducting investigations "up to" an EIS. He provided his opinion that an EIS is required in this case, but its scope can be reduced to such an extent that there is no actual need to submit a document called an EIS. He stated that the objectives of the TCOP policies were satisfied in CVC's review of this application, the concerns that were addressed, the requested revisions to the site plan and the Applicant's response.

[65] Under cross-examination by counsel for the Appellants, Mr. Clark testified that he did not bring the ECSS to the attention of the NEC or the Town because it has not yet

been embedded in TCOP policies. In his opinion, it would not be feasible to impose a prohibition on development, particularly small-scale developments, unless steps had been taken to incorporate the subwatershed study into the TCOP. He noted that one of the reports in the ECSS, the *East Credit Subwatershed Study – Management Plan and Implementation Report*, recommends that protection levels be incorporated into official plans (at p. 102 under s. 5.1.6).

[66] Mr. Clark also gave evidence, under cross-examination, that CVC did not ask the Applicant to do an EIS because CVC had a staff ecologist conduct a study and was comfortable that the development could proceed, subject to CVC's recommendations to the Applicant to address potential impacts, given the scale of the development. He also stated that CVC determined the limit of the wetland with field investigations under policy 5.3.3.5 b) of the *Watershed Planning and Regulation Policies*, but did not produce a technical report. He further stated that CVC did not discuss with the Town, under that provision, that it had not done a technical report because it was not common practice to produce a written report.

[67] Alan Young, of Weston Consulting Group Inc., was qualified to give expert evidence as a land use planner. He testified on behalf of the Applicant that all of the proposed development, including the house, driveway, swale, septic and small outdoor areas, would be outside of the Silver Creek wetland and buffer area as staked by CVC. He also said that the development would be located in the ERA and outside the ENA under the NEP designations, and in the Rural Area and outside the EPA under the TCOP designations.

[68] Mr. Young provided construction details of the proposed development, including the following:

- a shallow swale would be constructed on the Property to handle drainage from the east side of Kennedy Road, running along the north boundary line, and would terminate well short of the dripline of the wetland feature – depths of fill in the 2 m range would be needed;
- the Town has agreed to block the culvert under Kennedy Road that brings drainage from the west side of the road to the property, and to keep that drainage on the west side, reducing the quantity of storm surface water flow onto the Property;

- filling would be required to create a level platform for the development, and in one location a retaining wall is necessary to prevent encroachment into the wetland buffer;
- the depth of fill needed for the driveway would vary, up to a height of 2 m but not consistently at that height for the length of the driveway; and
- the house itself would be built into the terrain, with a walk out basement at the existing grade.

[69] Mr. Young testified that CVC would review grading at the time it issues a permit, and any requirements in relation to filling would be imposed at that time to protect Silver Creek through appropriate silt fencing.

[70] Mr. Young provided his opinion that the proposed development is in conformity with the relevant NEP and PPS provisions, and would not have a substantial impact on environmental features. He noted that CVC has staked the wetland and supports the proposed development with the 6 m buffer, that the building envelope would be as close to Kennedy Road as possible, and that no more natural vegetation would be removed than is necessary. He also said that the septic field required for a single detached dwelling is a small scale facility that would be adequately addressed through the Town review procedures and would not require review by the MOE.

[71] Mr. Young gave his opinion that the notion of cumulative impact set out in Development Criterion 2.2.1 (b) does not apply because the subject development will take place on an existing lot of record and its approval will not trigger other development approvals that would need to be considered cumulatively.

[72] Mr. Young also provided his opinion that the TCOP does not require that a formal EIS and MP be prepared. He noted that s. 3.1.4.6 of the TCOP anticipates the scoping of studies and investigations up to and including a full EIS. He stated that even for a lot that is totally within the EPA designation in the TCOP, the proponent may be required to undertake an EIS under s. 5.7.3.3.5, and in this case the proposed development would be outside the EPA. He states that while s. 5.7.3.7.1 does say an EIS and MP will be required for a proposed new development adjacent to the EPA, more specific TCOP policies relating to lots of record (s. 3.1.4 and 5.7.7.3) should be viewed as exceptions to s. 5.7.3.7.1, which is more general.

[73] Mr. Young testified that the appropriate scoping took place in this case, and that CVC undertook the environmental investigations required. He stated that the Town did not object to those investigations and did not request an EIS, and that it would be unreasonable to require one now.

[74] Mr. Young gave evidence that further details concerning grading, drainage and the septic system will be settled through the building permit and the CVC permit processes. He noted that the Applicant has investigated and confirmed that soil conditions are appropriate for the septic system. He also stated that the natural drainage pattern of the Property will be maintained, and with the creation of the swale and closing the existing culvert, the extraneous flow of municipal drainage will be reduced.

[75] Michael Baran, a planner with the NEC, was qualified to give opinion evidence as an expert planner in matters relating to the NEP.

[76] Mr. Baran gave his opinion that the proposed development will not have a substantial negative effect on the Escarpment environmental features, and that the proposal complies with the NEP, including Development Criterion 2.2.1, and sections 2.1.1 to 2.1.6 of the PPS. He confirmed his conclusion that there were no concerns regarding environmental impacts that could not be mitigated through the conditions requested was based on the comments on the application that he received from CVC.

[77] Mr. Baran also provided his opinion, with respect to Development Criterion 2.2.1(b), that the proposed development will not have a cumulative impact on the Escarpment environment because the development is of modest scale, concentrated within and confined to a site in a limited area that has been previously disturbed, and the density of development proposed in the area is very low. He relied upon CVC evidence that there will not be negative impacts on the area.

[78] Mr. Baran gave his opinion that the Applicant should not be required to complete an EIS because CVC does not consider this to be necessary, and the Town did not identify such a requirement. He also stated that the NEP has no provisions requiring an EIS study, and that it would add no value to the process given the work that has been done. He noted his understanding that CVC has not identified “top-of-bank” features within the Property, and again stated that the NEC relies on CVC’s environmental advice.

[79] Mr. Baran stated that CVC has taken the wetland into account in its review and has determined that if the development is located outside of the wetland and buffer, then it would not result in the loss of wetland functions or the loss of contiguous wetland area.

[80] Mr. Baran noted that Development Criterion 2.6.1 of the NEP states that changes to the natural drainage should be avoided (not shall), and stated that there is flexibility for minor grading that does not substantially alter the drainage. He stated that grading is proposed for a small area in proportion to the Property, and is restricted to the components approved (house/septic/driveway/swale modifications). He also stated that the CVC permit will address this issue.

[81] Mr. Baran noted that Development Criterion 2.6.2 of the NEP states that “no sewage system should be allowed closer than 30 metres”, not shall. He stated that there is flexibility on the setback distance to the satisfaction of the MOE or its designated agent, the Town, and the appropriate design should be able to satisfy the Ontario Building Code and comply with Development Criterion 2.6.2.

Submissions

[82] The Appellants allege that important information was missing from the Applicant’s development permit application concerning such matters as environmental features, drainage, sewage, a well, fill, grading, archaeological resources, tree preservation and protection, and elevations (cultural heritage). They submit that the lack of information makes it impossible to determine if the application accords with the NEP. They rely upon the evidence of Mr. Bricker and Mr. Wellings to argue that without additional information regarding the proposed development it is not possible to ensure only such development occurs as is compatible with the natural environment of the Niagara Escarpment and land in its vicinity. They submit that this is not in accord with the stated Purpose of the NEP, which is underscored by NEP general Objective 5, nor with its being an environmental conservation plan.

[83] The Appellants submit that the evidence underscores the need for an EIS. They acknowledge that there is no provision in the NEP that specifically refers to an EIS, but argue that Part 1.1.1 of the NEP, which provides that municipal official plans, secondary plans and by-laws may set standards that are more stringent than the requirements of the NEP, combined with TCOP General Policy 3.1.4.6 and Environmental Policy Area policy 5.7.3.7.1, require an EIS, or at least an environmental study, and that there was no such study done for this proposed development. They submit that under the

development control approach development is not as of right, and, therefore, more specific information can be required than the minimum (See *Beatty v. Niagara Escarpment Commission*, 2010 CarswellOnt 11109 (N.E.H.O.) at para. 67, and *Wilson v. Niagara Escarpment Commission* (2006), 24 C.E.L.R. (3d) 198 (N.E.H.O.) at para. 39).

[84] The Appellants further submit that in this case environmental studies should have been done prior to the NEC Decision because that information goes to the fundamental question whether the Property should be developed at all, and, if so, the suitable location. (See *James Dick Construction Ltd. v. Caledon (Town)* (2010), 66 O.M.B.R. 263 at para. 272.)

[85] The Appellants submit that Mr. Bricker, an ecologist, was particularly critical of CVC's review and comments upon the proposed development, and the subsequent reliance on those comments in the NEC staff report. They argue that the CVC representatives did not even refer to the ECSS in their evidence, except on cross-examination, and that the evidence of the CVC representative, Mr. Clark, was that CVC gave little consideration to the ECSS and its Level 1 protection of the Property, which precludes development.

[86] The Appellants rely upon the evidence of Mr. Bricker that there should have been a study of the possible impacts of the proposed development on the coldwater fish community in Silver Creek and the linkage function of these lands, and a study to support reducing the 30 m setback to just 6 m in this setting. They submit that the Property has not been properly assessed to determine that it is appropriate to reduce the 30 m buffer to 6 m, as Mr. Baran testified.

[87] The Appellants rely upon Mr. Wellings' opinion to submit that there has not been sufficient planning analysis of the natural features and functions on the Property, the building envelope, and the location of the sewage system and the well, to determine if the proposed development would comply with the provisions and policies of the NEP, the PPS, and the TCOP.

[88] The Appellants submit that the proposed development should not have been conditionally approved on insufficient and missing information and that, based on the evidence of Mr. Bricker and Mr. Wellings, a number of studies and reports are necessary to determine if the proposed development accords with the NEP, and complies with the PPS and the TCOP. The studies and reports listed go beyond the

scope of Issues 2 and 3 but are set out here in their entirety for ease of reference and to provide an overall understanding of what the Appellants say is required:

- a) a complete archaeological study;
- b) elevations and coloured renderings of buildings for cultural purposes, with cross-sections;
- c) a tree management report and plan prepared by a certified arborist;
- d) an EIS to determine the appropriate building envelope and environmental setbacks;
- e) MDS calculations and report;
- f) approval of the septic tank system and well;
- g) a development agreement between the Applicants and the Town to be registered on title;
- h) grading and drainage plans, including a stormwater management and drainage report; and
- i) a site plan with all the required information, certified by a qualified engineer.

[89] The Appellants said that they are also agreeable to the substance of the three additional conditions suggested by the Town, but that they should have been dealt with prior to the Decision.

[90] The main concerns of the Town arose out of the additional information contained in the January 2012 site plan. Those concerns are dealt with in the additional conditions that are proposed by the Town, which the other parties agree to in substance.

[91] The Town points out that the development still has to comply with the Building Code and, therefore, a further condition regarding the septic system is not required.

[92] The Town says that it does not take a position regarding the rest of the above items proposed by the Appellants, but, if any of them are required, then the Town gives its assurance that they will receive the same review by the Town as if they had been requested by the Town itself.

[93] The Applicant, Ms. Freeman, submits that there has been more than enough due diligence for this development proposal, and that the proposed dwelling is of a modest size.

[94] The Applicant argues that all of the development will be outside of the 6 m buffer zone, and that it was the evidence of Ms. Chisholme and Mr. Clark that the only natural feature is the wetland. She submits that the existing drainage pattern will not be disrupted, relying upon the evidence of Mr. Young.

[95] Regarding the proposed septic bed being only 7.5 m from the 6 m buffer, and based on the evidence of Mr. Baran and Mr. Clark, the Applicant submits that Part 2.6.2 of the NEP provides flexibility to reduce the 30 m buffer when there is not sufficient space available for development. She also relies on their evidence to argue that there is no “top-of-bank” and, therefore no setback is required.

[96] The Applicant argues that there was sufficient consultation between CVC and the Applicant and relies upon the evidence of Mr. Chisholme and Mr. Clark that the wetland was properly identified and the buffer is sufficient. She emphasises that the NEC and the Town staff relied upon the environmental expertise of CVC, and that they were satisfied that no further investigations were required.

[97] The Applicant argues that the ECSS is only guiding policy for CVC and not mandatory. She submits that CVC has discretion to interpret the ECSS such that a site investigation is equivalent to a scoped EIS, if one was required in this case. She asserts that it was the evidence of Mr. Young and Mr. Baran that an EIS would not have come to a different conclusion regarding the development.

[98] The Applicant argues that there is no need to require new studies and start the development permit application process again because the approval is safeguarded by conditions and no construction can start until they are satisfied.

[99] The Applicant is agreeable to the three additional conditions proposed by the Town but does not agree with any of the other items on the Appellants’ list, above.

[100] The NEC submits that the Hearing Officers should give considerable weight to the evidence of the CVC representatives, Ms. Chisholme and Mr. Clark, and that Mr. Baran was entitled to rely on their comments and recommendations. The NEC argues that they reviewed the relevant information, and visited the site. The NEC submits that the evidence of the CVC representatives is to be preferred to the evidence of Mr. Bricker because he did no on-site investigations (his observations were from the edge

of the Property) and was not called in reply to dispute the evidence of the CVC witnesses.

[101] The NEC argues that the ECSS is only a high level starting point that requires confirmation on the ground. It submits that studies need not be written reports and that site investigations can suffice.

[102] Regarding compliance with the PPS, the NEC relies on Mr. Clark's evidence that there are no "significant" natural heritage features on the site and no "adjacent" lands within the meaning of the PPS. It submits, also relying on Mr. Clark's evidence, that under the Natural Heritage Reference Manual there is no issue regarding the proposed development being 120 m from significant features because there are not any.

[103] Regarding the concerns about the fill required for the proposed development, the NEC submits that they will be addressed by the CVC permit.

[104] Regarding whether any additional studies or other work should have been done before the development permit application was made, the NEC says that conditions will suffice. It bases this on standard development permit Condition 3 (that no building permit, etc., will be issued prior to a development permit), and s. 23 of the *NEPDA* (which gives priority to development control over zoning by-laws), the fact that some processes cannot be completed except on a conditional basis, the site visits and CVC's comments and recommendations. The NEC says that there are no specific NEC guidelines dealing with the question of when it is inappropriate to use conditions as opposed to requiring that information be provided by an applicant up front.

[105] Counsel for the NEC advises that she has not received specific instructions from her client as to whether an EIS should be required either as a condition or up front on a new application. The NEC submits that if an EIS is required, then it should be scoped.

Findings on Issues 2 and 3

[106] The Appellants assert that the Decision is flawed because CVC's comments and the NEC staff report were incomplete and not sufficiently rigorous in ensuring that the proposed development accords with the purpose and objectives of the NEP, and, in particular, studying and protecting the Escarpment natural environment and its features on the Property.

[107] The purpose of the NEP "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.” The relevant NEP general objectives are: “1. To maintain and enhance the quality and character of natural streams and water supplies” and “5. To ensure that all new development is compatible with the purpose of the Plan”. The NEP is often described as an environmental protection, or conservation, plan because it only allows such development as is compatible with the natural environment.

[108] As discussed in Issue 1, the proposed dwelling may be a permitted use of the Property, subject to the NEP development criteria. While the objective of General Development Criterion 2.2 is to permit reasonable enjoyment by the owners of all lots that can sustain development, it is clear from its more specific provisions that this objective is to be interpreted and applied through the lens of the purpose and general objectives of the NEP. The objective of Development Criterion 2.6 (New Development Affecting Water Resources) is to ensure that new development affecting streams, watercourses, lakes, wetlands, and groundwater systems will have minimum individual and cumulative effect on water quality and quantity, and the Escarpment environment. As these development criteria overlap in this case, they are considered together.

[109] It is clear from the evidence of the CVC representatives (Ms. Chisholme and Mr. Clark) that CVC’s comments were greatly influenced by their view that this is a modest development proposal as submitted by the Applicant. Ms. Chisholme described this as a “smaller” development proposal and Mr. Clark emphasised “the scale of the development” and that it would be “small scale”. Ms. Chisholme said that CVC would support development if there is sufficient space outside of hazard limits, and that in this case the building envelope is outside of the hazard limit.

[110] The Hearing Officers agree that the scale of the proposed development, or use, is a significant consideration. In this case, the proposed development would utilise almost all of the small buildable envelope. Mr. Clark described the Property as being “very constrained”. The Hearing Officers find that the proposed development is modest when viewed in proportion to the total size of the Property but is not modest in comparison to the potential building envelope.

[111] The Hearing Officers heard evidence regarding the size of buffers required. Development Criterion 2.6.2 c) of the NEP states that a 30 m buffer between a sewage system and a wetland is required based on the protection of water quality; whereas policy 7.4 a) of the CVC *Watershed Planning and Regulation Policies* requires a 10 m buffer between development and the edge of any wetland, based on the protection of the ecological and hydrological functions of the wetland.

[112] The CVC staff determined that a 6 m buffer from the edge of wetland and the edge of development is sufficient in this case, and testified that this is essentially based on professional judgment and experience.

[113] The Hearing Officers find that there is no compelling evidence to justify the reduction of the buffer from 30 m to 6 m in regards to the protection of water quality from the sewage effluent. There was evidence that this would be left to the Town to determine at the time that a building permit is obtained for the septic system. The Hearing Officers find that this is not a reasonable expectation, given the significant reduction in the buffer as it relates to water quality protection. There was no evidence as to how the water quality would be protected with a septic system in place within 7.5 m of the edge of the 6 m buffer, when a 30 m buffer is recommended. There was no evidence that any study or assessment had been undertaken in regards to water quality protection from the septic system, and no evidence that the CVC staff put their minds to this question during their site visit and wetland evaluation.

[114] The Hearing Officers find that the reduction in the buffer from 10 m to 6 m as prescribed by *CVC Watershed Planning and Regulation Policies*, as it relates to the development and the protection of the ecological function of the wetland is less problematic, since this assessment was undertaken by CVC staff and is within their purview. However it would have been more appropriate had they compiled their findings in a written report in order that the information be more useful to the public and stakeholders.

[115] While there is no question that CVC also gave consideration to the potential impact of the proposed development on the natural features (see Mr. Clark's evidence), the question remains whether that consideration was given sufficient weight in comparison to CVC's perceived scale of the development. The underpinning of the NEP is the maintenance and conservation of the natural environment. In addition, the development criteria specifically direct consideration of features that might be impacted. For example, the features referred to under General Development Criterion 2.2.1 (a) are contours, water quality, water quantity, natural vegetation, soil, wildlife, population, visual attractiveness and cultural heritage features; under 2.2.1 (b) they are the Escarpment environment (e.g., water quality, vegetation, soil, wildlife, and landscape); under 2.2.4 they are the natural, visual and cultural characteristics of the area; and under 2.6 they are streams, watercourses, lakes, wetlands, and groundwater systems.

[116] The Property has some notable natural environment features. They include a trout stream, wetland, regenerated woodland, heritage maple trees and a significant

slope. There was a great deal of evidence as to whether an EIS should have been done for the proposed development.

[117] Mr. Clark, one of the Applicant's CVC witnesses, said that an EIS was required and that requirement was met here because of the information reviewed and the site visits. The Applicant submits, based on the evidence of her witnesses, that an EIS can be scoped and does not have to be in writing. The Hearing Officers note that the NEP itself does not require an EIS, and they are of the view that it is not necessary for the purpose of these appeals to decide whether the TCOP requires an EIS for the proposed development and whether it should have been a written report. The Hearing Officers find that on the facts of this case, particularly due to the natural features of the Property, further study should have been undertaken to answer some of the important "unknowns" of the proposed development, whether or not that study could be called an "EIS", to ensure that the proposed use accords with the purpose, objectives and development criteria of the NEP.

[118] The Hearing Officers agree, in substance, with the evidence of the witnesses for the Appellants (Mr. Bricker and Mr. Wellings) that from the perspective of the NEP, and due to the particular natural features of the Property, the proposed development application lacked important information regarding the matters involving Issues 2 and 3 that could, and should, have been obtained by further study. In particular, the Hearing Officers are struck by the lack of information regarding: the justification for the substantial reduction of the setback from 30 m to 6 m in relation to buffer between the septic system and the wetland; the amount of fill to be placed on the Property (one of the witnesses attempted to make a rough estimate); failing to identify a "top-of-bank" that is relevant to setbacks; drainage details; and Silver Creek fish habitat.

[119] The Hearing Officers find that Mr. Young's evidence did not satisfactorily address cumulative impact and General Development Criterion 2.2.1 (b). He limited his analysis to the Property being an existing lot of record and thus gave his opinion that the proposed development would not trigger other development approvals. He did not address the cumulative impact on the Escarpment environment. The Hearing Officers note that, while certain specific provisions of the NEP apply only to new lots and not to existing lots of record (such as Development Criterion 2.4 concerning Lot Creation), the General Development Criteria in part 2.2 apply to existing lots of record. The Hearing Officers find that cumulative impact of the proposed use is another matter that could benefit from further study.

[120] One of the considerations for CVC is whether there would be an “ecological gain” under guiding policy 5.3.2 a) of the *CVC Watershed Planning and Regulation Policies* because of the development. It was the evidence of Ms. Chisholme that there will be ecological gain because development will remove invasive species which, in turn, will benefit natural features. However, the Hearing Officers heard no convincing evidence that replacing vegetation with a building, driveway and septic bed would accord with the purpose, objectives and development criteria of the NEP.

[121] The Hearing Officers find that the reliance of the NEC staff report on the CVC comments regarding environmental matters, based as they were on insufficient information and with a greater emphasis on the scale of the development than the Escarpment natural features, resulted in insufficient consideration of the NEP development criteria relevant to the issues under discussion. The Hearing Officers observe that CVC’s comments must be filtered through the lens of the NEP for the purposes of a development permit application, as the mandate of CVC is not identical to that of the NEC. The Hearing Officers find that there is insufficient evidence to demonstrate that the development proposal accords with NEP Development Criteria 2.2.1 (a) and (b), 2.2.1.4, 2.6.1, 2.6.2, and 2.6.12 (discussed above and set out in Appendix A).

[122] The Applicant’s witnesses said that in addition to the NEC relying upon CVC for environmental matters in the process of preparing the NEC staff report, it is appropriate to leave some matters to be dealt with by the CVC permitting process, such as the fill that will be required for the proposed development. However, the CVC witnesses did not give any indication or assurances as to how CVC would in fact deal with those matters. It was their evidence that it would not consider the quantity of fill except as a trigger for considering its quality. The Applicant has not provided information as to the quantity of the fill and was not required to do so by the NEC staff. It will be recalled that the Property is on a slope, below the grade of Kennedy Road, with a small building envelope on the edge of a wetland that borders a creek. The proposed dwelling, septic bed and driveway would all require fill that will be 2 m in depth in some places.

[123] Also in respect of the CVC permitting process, its representatives have testified that there is no “top-of-bank” on the Property (which relates to the need for a setback) and that a 6 m buffer from the wetland is adequate. The Hearing Officers have found that the evidence did not demonstrate that there is sufficient information to support such determinations for the purposes of the NEP development criteria. Clearly, as matters

now stand, the CVC permitting process would proceed without that information and, therefore, it would not deal with these concerns.

[124] The Hearing Officers, therefore, find that revised and added conditions of approval to the development permit are needed. The Hearing Officers recommend the following revised conditions (the revisions are shown in italics):

5. Development shall take place only in accordance with the site plan *dated January 2012, as revised pursuant to these conditions*, and development permit application submitted (except where special conditions are to apply as noted below).
6. No grading of the existing contours of the lot in the area of the development is permitted, with the exception of that which is required for construction of the single dwelling (including attached garage with breezeway linkage), septic system, driveway and existing swale modifications (*except where conditions are to apply as noted below*).
11. Any requirements regarding installation of the septic system shall be fulfilled to the satisfaction of the Town of Caledon prior to the issuance of a Building Permit, subject to Conditions *14, 15 and 23*.
13. Prior to the commencement of any construction, the stormwater drainage works described by the Town of Caledon in its correspondence dated July 28, 2011, *subject to Condition 23*, shall be completed to the satisfaction of Credit Valley Conservation.
14. The owner/applicant shall take every precaution to ensure that no disturbance or fill placement, especially related to the installation of the septic system, occurs within the dripline of the sugar maples situated along the road allowance, *subject to Condition 23*.

[125] The Hearing Officers recommend the following new condition:

23. **Prior to the issuance of a Development Permit**, the Applicant shall undertake and provide to the satisfaction of the Niagara Escarpment Commission and the Town of Caledon:
 - a) a drainage and grading plan, prepared by a qualified engineer, for approval by the Town of Caledon Engineering Department in

- conjunction with the review of the Building Permit application by the Town of Caledon Building Department, to include the quantity and location of fill to be placed on the Property for the additional consideration of the Niagara Escarpment Commission;
- b) a study and report, by a qualified engineer or hydrogeologist, to confirm that the proposed septic system can be installed and operated at the proposed location on the Property to meet the approval of the Town of Caledon Building Department in conjunction with the review of the Building Permit application, and that it will have minimum individual and cumulative effect on water quality and on the Escarpment environment;
 - c) a study and report in the nature of an Environmental Impact Study prepared by an ecologist certified in Ontario wetland evaluation to determine the appropriate building envelope and environmental setbacks; and
 - d) a revised site plan with all the required information, including the information referred to in this condition, certified by a qualified engineer.

Issue 4: Whether the proposed development satisfies NEP Development Criteria 2.7 (New Development Within Wooded Areas) and 2.12 (Heritage).

[126] With respect to these criteria, the particular sub-issue is whether the applicant should have been required to undertake a tree inventory and assessment by a certified arborist and provide a compensatory planting plan for tree removal of any significant on-site trees, prior to the approval of the development permit.

Discussion and Analysis

Evidence

[127] Phillip van Wassenaer, of Urban Forest Innovations Inc., was qualified as an expert to give opinion evidence as a consulting arborist. He was retained by the Appellants to assess the potential impacts of the proposed development on trees on the Property and, in particular, on a row of 17 roadside heritage sugar maple trees (the “maple trees”) growing beside the road right-of-way abutting the Property.

[128] In his assessment report dated April 10, 2012, Mr. van Wassenaer said that there was insufficient detail in the January 2012 site plan to make a complete assessment of the impact of the proposed development on all trees on the Property, and that the Applicant had not provided a tree preservation plan, arborist report or recommendations for trees to be retained on the Property. Mr. van Wassenaer observed that the Property has significant tree cover throughout and stated that most trees had not been surveyed or shown on the Applicant's site plan. He stated that a large number of these trees would have to be removed to facilitate development on the site.

[129] Mr. van Wassenaer provided his opinion, based on the limited information available, that two of the healthiest of the 17 maple trees along Kennedy Road would be affected by the construction of the proposed development. He suggested that one of these trees would need to be removed to allow for construction of the driveway, and another would likely need to be removed due to construction impacts, unless it received special attention in relation to drainage and a change in its rooting zone. He referred to the letter from Flanagan Tree Service to the Applicant, dated October 26, 2011, which provided suggestions on minimizing stress to the maple trees, and noted that there was no indication that Mr. Flanagan was a certified arborist.

[130] Mr. van Wassenaer testified that, in his experience as a consulting arborist, he generally is asked for the information necessary to describe the tree resources on a site at the front end of the development process, as part of the package requested before the approving body makes a decision on the approval. He gave his opinion that this is the appropriate time to consider information about trees because it will not be given due consideration once the site plan is already approved in principle.

[131] Mr. Wellings testified that it is important to consider trees at an early stage in the development permit application process, and, in regard to this application, to not pick the location for the driveway and septic system without first having all of the information about the trees. He provided his opinion that Condition 14 of the development permit, which states that the Applicant shall take every precaution to ensure that no disturbance or fill placement occurs within the drip line of the maple trees, is not sufficient because it leaves the site alteration and fill placement to the Applicant's discretion. He stated that the maple trees are an important characteristic of the Silver Creek Cultural Heritage Landscape and should be protected, consistent with Development Criterion 2.12.2. He testified that it is critical that information about them be available up front in the application process so that the driveway or building envelope might be shifted in order to avoid significant maple trees. In his witness statement, Mr. Wellings concluded that a

certified arborist must evaluate the maple trees and provide recommendations for their protection, including appropriate grading and fill placement.

[132] Mr. Young testified that the issue of tree preservation would be partially addressed by the additional development permit condition, proposed by the Town in April 2012 and referred to above, which would require the approval of a certified arborist's report addressing the maple trees and a compensatory planting plan for any removal of maple trees.

[133] Mr. Young confirmed that the Flanagan Tree Service report was made by a certified arborist and noted that the report, and the evidence of Mr. van Wassenaer and Janet Sperling, indicated that there are technical solutions to minimize impacts on the maple trees and address the encroachment of the proposed driveway under their canopy. He testified that it would be appropriate to impose the requirement for a certified arborist's report and compensatory planting plan as a condition of the development permit instead of requiring this up front.

[134] Mr. Young gave evidence that the area of the Property between the maple trees and the wetland has comparatively sparse vegetation. He noted that the Town does not have any by-laws requiring a permit for tree removal within that area and it has not asked for protection of those trees. He provided his opinion that no additional tree protection measures should be required for the area of the proposed development on the Property.

[135] Mr. Baran testified that the proposed additional condition requiring a certified arborist's report addressing the maple trees and a compensatory planting plan for any removal of maple trees would be appropriate. He noted, however, that there would be limited opportunities for compensatory planting although suitable sized trees of the same species could be planted. He stated that it would be suitable to include this as a condition replacing current Condition 14 of the development permit. It was Mr. Baran's evidence that the proposed condition would be consistent with Development Criteria 2.7 and 2.12.2 of the NEP because tree disturbance would be minimized, and the development would be largely confined to existing disturbed or open areas.

[136] Ms. Sperling, a Landscape Architect with the Town of Caledon, was called by the Town to give evidence. She was qualified as an expert to give opinion evidence on landscape architecture. She testified that an arborist's report is important to understand the condition of the trees and the options for measures to protect them. She stated that the Town requires such a report as a condition of a draft plan of subdivision to identify

trees to be protected and the mitigation needed. Ms. Sperling outlined the type of information the Town would consider in an arborist's report, such as: the identification of tree protection zones; detailed information on fill and grading; and engineering techniques to provide protection. She stated that the Town's standard of review in relation to a development permit would be the same as for a plan of subdivision.

[137] Ms. Sperling testified that she made comments concerning the maple trees on the revised site plan and did not make comments regarding the trees in the interior of the Property. She stated that an arborist's report would be required for interior trees in relation to a plan of subdivision because the Town has an interest in public spaces on those lands, but in this case the interior of the site is under the authority of the NEC and CVC.

[138] Ms. Sperling indicated her concern that the proposed grading shown on the Applicant's site plan might affect the row of maple trees. She noted in her witness statement that the maple trees are considered significant from a cultural heritage perspective and form one of the character defining elements of the Silver Creek Cultural Heritage Landscape (discussed in greater detail below under Issue 6). Ms. Sperling provided her opinion that the trees should be protected based on good planning principles and their cultural and historical significance, and that a tree inventory and assessment report should be prepared to ensure that the trees are protected.

[139] Ms. Sperling testified that her review of an arborist's report on behalf of the Town would be no different if it was undertaken at the front end of the approval process or as a condition of approval of a development permit. She stated that if the arborist's report were to show that the trees are in good health but cannot be protected, she would have concerns about the development going ahead.

Submissions

[140] The Appellants submit that the extent of tree removal required on the Property, and the impact of the proposed development on the maple trees in particular, have not been adequately studied and documented. They argue that the Applicant did not provide a witness to address the feasibility of preserving the maple trees and that the only report on the trees was prepared by Mr. van Wassenaer. The Appellants argue that Mr. van Wassenaer highlighted serious concerns about the maple trees that should be considered prior to approval of the development permit.

[141] The Appellants point out that the Town's letter to the NEC, dated February 1, 2012, included recommendations that a tree inventory and assessment be completed for the trees located along Kennedy Road, and that an accurate tree canopy should be shown on the site plan drawing. The Appellants assert that a certified arborist should evaluate the trees on the Property and provide recommendations for their protection prior to the approval of the development permit.

[142] The Applicant, the NEC and the Town all submit that the additional condition to the development permit proposed by the Town, which requires a certified arborist's report addressing the maple trees and a compensatory planting plan for any removal of maple trees, should be included in the development permit.

[143] The Applicant submits that an arborist's report is not required for all of the trees on the Property, noting that the Town only requires a report on the maple trees, and CVC is only concerned with the trees within the wetland, which they submit are protected from development. The Applicant asserts that there are techniques that can be used to address the encroachment of the driveway into the drip lines of the maples.

[144] The NEC argues that it is appropriate to undertake some work required for approval after a development permit is approved, and asserts that it bases its decisions concerning what information is required up front on an application and what can be left to conditions of approval, on experience and on comments from consulted agencies.

[145] The Town submits that the proposed additional condition, requiring a certified arborist's report and a compensatory planting plan, is similar to conditions it routinely applies to subdivision developments. The Town further submits that whether it occurs at the front end of the process or as a condition to the development permit, it will receive the same review and scrutiny from the Town.

Findings on Issue 4

[146] The Appellants have raised concerns about protection of both the maple trees along Kennedy Road and the existing trees in the building envelope where development is proposed.

[147] Development Criterion 2.7.1 of the NEP states that disturbance of treed areas should be minimized, and that proposed developments in heavily treed areas shall have site plan agreements containing specific management details to protect existing trees. Development Criterion 2.12.2, which also applies in respect of the maple trees, states

that existing heritage features should be retained, and that consideration shall be given to both economic and social benefits and costs in determining if this is feasible.

[148] With regard to the maple trees, the NEC included Condition 14 in the development permit, which states that the Applicant shall take every precaution to ensure that no disturbance or fill placement occurs within the drip line of the maple trees along the road allowance. The Town, in its letter of February 1, 2012, recommended that an arborist assessment be required as part of the NEC application. The Town has now proposed an additional condition of approval to the development permit that would require the Applicant to undertake and provide, to the satisfaction of the Town, a certified arborist's report addressing the roadside sugar maples, and to provide a compensatory planting plan for any of those trees.

[149] All parties agree that a certified arborist's report and compensatory planting plan should be prepared in respect of the maple trees. However, the Appellants submit that this should have been done prior to the development permit application. The other parties submit that it is sufficient to require this as a condition of approval. The Appellants have presented opinion evidence concerning the need for information about the maple trees to be available up front in the application process so that the driveway or building envelope might be shifted in order to avoid significant maple trees. They note that the maple trees are an important characteristic of the Silver Creek Cultural Heritage Landscape.

[150] The Hearing Officers heard evidence that there are technical solutions to minimize the impacts of construction on the maple trees. However, Mr. van Wassenaer stated that two of the healthiest maple trees would be affected, one of which would certainly be removed while the other would likely need to be removed unless it received special attention. Ms. Sperling testified that if the arborist's report were to show that the trees are in good health but cannot be protected, she would have concerns about the development going ahead. Mr. Baran stated that there are limited opportunities for compensatory planting to replace the existing maple trees.

[151] The Hearing Officers find that the protection of the maple trees is fundamental to satisfying the objectives of Development Criteria 2.7.1 and 2.12.2. There are concerns about the potential impact from the proposed development on the health and condition of the maple trees, which are important to the character of the Silver Creek Cultural Heritage Landscape. From a cultural perspective it is important that every effort be made to preserve the maple trees along Kennedy Road. The Hearing Officers find that the submission of a certified arborist's report and compensatory planting plan should

ordinarily be required prior to the approval of a development permit. In this case, due to the heightened involvement of the Town as the result of its review of the revised site plan, the Hearing Officers are satisfied that the additional conditions proposed by the Town will ensure that the proposed development is modified as necessary to protect the maple trees.

[152] With regard to the issue of protecting the trees within the building envelope, there was a dispute concerning the nature of the vegetation in the building envelope area. Mr. van Wassenaer gave evidence of significant tree cover throughout the Property, and stated that a large number of trees would need to be removed to facilitate development on the site. Mr. Bricker described the area that would include the proposed building envelope as a cultural woodland community with 35 to 60% tree cover. In contrast, the NEC has described this area as a small open field.

[153] The Appellants assert that the trees in the building envelope should be assessed by a certified arborist and protected. They submit that the extent of tree removal required on the Property has not been adequately studied. The Applicant and Mr. Tucker submit that an arborist's report is not required for all of the trees on the Property. The other parties focused their submissions on the maple trees and not the trees elsewhere on the Property.

[154] Although there is a dispute concerning the nature of the vegetation in the building envelope area, the Hearing Officers were not provided with sufficient evidence to make a finding on the nature of that vegetation. As a result, the Hearing Officers find that the certified arborist's report referred to in the third additional condition proposed by the Town should also address the interior trees in the building envelope, and that the compensatory planting plan should consider including trees within the building envelope that the report finds warrant replacement.

[155] The Hearing Officers, therefore, find that an added condition of approval to the development permit is needed, and recommend the following:

22. **Prior to the issuance of a Development Permit**, the Applicant shall undertake and provide to the satisfaction of the Director of Development Approval and Planning Policy of the Town of Caledon a certified arborist's report addressing the roadside sugar maples and interior trees in the area of the proposed building envelope (including the dwelling, septic bed and driveway) and to provide a compensatory planting plan for any tree removal

(the roadside sugar maples in particular and trees in the building envelope identified by the arborist's report).

Issue 5: Whether the proposed development satisfies NEP Development Criterion 2.10 (Agriculture).

[156] With respect to this criterion, the particular sub-issue is whether the Applicant should have been required to complete a MDS study.

Discussion and Analysis

Evidence

[157] Mr. Wellings gave evidence that the appellant Ms. Hillman's property, which is adjacent to the Applicant's Property to the north/northeast, has a livestock operation. He also stated that there are older barns on the west side of Kennedy Road with livestock capability.

[158] Mr. Wellings referred to Development Criterion 2.10.2 of the NEP, which states that development shall comply with the MDS formulae, and to s. 1.1.4.1 of the PPS, which states that new land uses shall comply with the MDS formulae. He testified that the Applicant had been informed about the livestock operation on Ms. Hillman's property but that, to his knowledge, no MDS calculation had been prepared. He noted that there is no condition in the development permit that requires the MDS calculation, and no consideration of the impact of the proposed development on the potential expansion of the livestock operation on Ms. Hillman's property.

[159] Mr. Young's opinion was that the Property is not located in a prime agricultural area and there appear to be no major livestock operations in the vicinity. He also stated that the Town had determined that an MDS study was not necessary, and noted that such a study was not required for a 2006 development permit in relation to a nearby property to the south.

[160] Mr. Young testified that he was aware of an old barn on the west side of Kennedy Road, across from the Property, but that it has not been used for livestock in many years. He stated that a barn structure to the south of the Property had been converted to another use. He concluded that, in his opinion, there should be no requirement for an MDS study for the proposed development.

[161] Mr. Young acknowledged, under cross-examination, that s. 5.1.1.16.1 of the TCOP states that the Town will use the provincial MDS I and II formulae to ensure that there is an adequate separation distance between agricultural uses and non-agricultural uses. He gave evidence that the Applicant relied on the Town to do the screening as to whether an MDS study should be required for the proposed use of the Property, based on the knowledge of the Town's personnel regarding livestock in this area. As the Town did not impose the requirement, he stated that the Applicant should not be required to do any MDS calculations for the proposed development of the Property.

[162] Mr. Baran testified that the Town screens applications to identify potential MDS I and II issues and requirements. He stated that in this case the Town did not identify any MDS issues or request an MDS I report from the Applicant. He said that this was consistent with his own previous review of MDS matters in relation to a previous development permit application for the Property.

[163] Mr. Baran provided his opinion that the current site plan does not require an MDS evaluation because the Hillman property, with 35 livestock units, is the closest active property, and the old livestock facility across Kennedy Road is in poor repair and not in use. He stated that, under MDS guidelines used by the NEC, it is necessary to consider buildings designed for livestock even if they are not being used for that purpose. However, he noted that if a building is in a certain state of disrepair, as in this case, it is not factored in as a livestock facility for the purpose of MDS setbacks. He noted that, in its February 2012 letter, the Town did not raise any new concerns and has not asked for an additional condition in relation to MDS evaluation.

Submissions

[164] The Appellants submit that the Applicant should have provided information on MDS calculations, citing NEP, PPS and TCOP requirements. They state that this should be required prior to the conditional approval of the development permit. They argue that the MDS study requirement does not distinguish whether or not land is in a prime agricultural area. They submit that, without the MDS study, it is impossible to know what location, if any, should be chosen for the proposed dwelling on the Property.

[165] In the alternative, the Appellants assert that the development permit should be amended to include a requirement that an MDS calculation be prepared.

[166] The Applicant and the NEC submit that the Applicant should not be required to prepare an MDS study because the Town has not requested MDS studies for the

Property or for the new house two lots to the south. The Applicant asserts that the Property is not in a prime agricultural area and there are no major livestock facilities nearby. The NEC states that the Town would have requested this condition if it was concerned about the issue.

[167] The Town takes no position on this issue, but states that, if the Hearing Officers decide to require the preparation of the MDS calculation, the Town will give it the same scrutiny that it would if the Town had requested it.

Findings on Issue 5

[168] Development Criterion 2.10.2 of the NEP states that the development and creation of new lots shall comply with the MDS formulae. Under s. 5.1.1.16.1 of the TCOP, the Town uses the provincial MDS I and II formulae to ensure there is adequate separation between agricultural and non-agricultural uses.

[169] The Hearing Officers note that the Town did not request that the MDS formulae be applied based on its information about livestock in proximity to the Property. The Hearing Officers accept the evidence of Mr. Baran that an MDS evaluation is not necessary because the small livestock operation at the Hillman property is the closest active operation, and the old livestock facility across Kennedy Road is in poor repair and not in use. As a result, the Hearing Officers find the Applicant is not required to undertake an MDS study.

Issue 6: Whether the proposed development satisfies NEP Development Criteria 2.12.1, 2.12.2, 2.12.3 and 2.12.5 (Heritage).

[170] With respect to these criteria, the particular sub-issues are whether:

- a. the Applicant should have been required to undertake a review by a licensed archaeologist of the cultural heritage features relating to the historic grist and saw mills, prior to the approval of the development permit; and
- b. the Applicant should have been required to provide the Town's Heritage Resource Officer with elevations, colour renderings and a list of materials to be used to ensure the preservation of the natural, visual and cultural characteristics of the area, prior to the approval of the development permit.

Discussion and Analysis

Evidence

[171] Mr. Wellings gave evidence that the need for an archaeological assessment was not identified prior to the conditional approval of the development permit, but was subsequently raised as a concern by the Appellants and the Town. He stated that an archaeological assessment should have been undertaken prior to the approval of the development permit to ensure that site planning would take into account the presence of any archaeological resources that might be discovered. He referred to the Town's February 1, 2012 letter to the NEC, submitted after the Town's review of the January 2012 site plan, after the commencement of these appeals. The January 2012 site plan confirmed the high potential for finding archaeological resources on the Property. He acknowledged, under cross-examination, that, if it would not be possible to avoid archaeological resources, then it would be acceptable for the Applicant to take appropriate steps to mitigate and conserve the resources.

[172] Mr. Wellings referred in his witness statement to the TCOP provisions regarding cultural heritage landscapes, and stated that the former settlement area of Silver Creek, including the Property, has been identified as a "cultural heritage landscape" under the TCOP. He provided his opinion that this is an area with cultural heritage character that should be subject to NEP Development Criterion 2.12.3 requiring harmony with the area's character and existing heritage features, and to TCOP criteria intended to ensure, at the proposal stage, that new construction is consistent with the physical locale and streetscape.

[173] Mr. Wellings testified that the Applicant has not produced any elevation drawings or renderings to demonstrate how the proposed dwelling will maintain or enhance the Kennedy Road streetscape. He stated that, in his experience, most municipalities require that elevation drawings be produced up front in the application process, which allows for early public input.

[174] Mr. Wellings stated that, in his opinion, the archaeological assessment and elevation drawings should have been required before the Decision, as opposed to being conditions of approval.

[175] Mr. Young testified that an archaeological assessment was not required at the application stage, but that the development permit should include an additional condition requiring an archaeological assessment, as proposed by the Town. He noted

that the Applicant had already retained a professional archaeologist, Eva MacDonald, who conducted a Stage 1-2 archaeological assessment during the spring of 2012 (although she was not called as a witness, her reply witness statement was made an exhibit at the request of the Applicant). Ms. MacDonald's witness statement confirmed the presence of a portion of a mill race, mill seat and domestic material on the Property, and stated that it is reasonable to mitigate development impacts in this instance through documentation and removal of the archaeological deposits.

[176] Mr. Young gave his opinion that the proposed additional condition would ensure that archaeological remains are removed and documented prior to development occurring. He noted that this is consistent with Development Criterion 2.12.5 of the NEP, which requires actions to salvage information of features being lost in cultural landscapes or heritage features, in contrast with Development Criterion 2.12.1, which emphasizes preservation of native burial sites. He testified that there is no reason that an archaeological assessment should have been required up front because there is a limited building envelope available on the Property and little flexibility to avoid archaeological resources. He added that the retrieval of these artifacts will benefit the public and will have no value if they are left in the ground.

[177] Mr. Young reviewed photographs showing the character of nearby buildings along Kennedy Road and stated that no recent development permit applications on the road had required that elevation drawings be approved by the Town. He testified that the Applicant is prepared to have her plans reviewed to ensure the residence is in harmony with the character of the area. He provided his opinion that this could be addressed by including the additional condition proposed by the Town in the development permit, which would require that elevation drawings be submitted to the Town for approval.

[178] Mr. Young stated that there is no policy reason for the design of the house to be a matter for public debate, and testified to his understanding that the Appellants have no legal entitlement to review and comment on elevations. He suggested that the TCOP criteria requiring an assessment of new construction at the proposal stage applies only to a Heritage Conservation District and not to Silver Creek, which is a cultural heritage landscape. In Mr. Young's opinion, a condition attached to the development permit requiring that elevation drawings be provided to the Town will satisfy the relevant policies in the NEP, PPS and TCOP.

[179] Mr. Baran indicated that, while it is ideal to consider any archaeological issues prior to making a decision on a development permit application to ensure that

Development Criterion 2.12 of the NEP is addressed, the Town did not raise this issue prior to the development permit being approved. He testified that, given the evidence provided by Sarah Drummond on behalf of the Town and the recommendation by Ms. MacDonald, it is acceptable to address the archaeological assessment through a condition of approval and to consider the salvage and recovery of the archaeological resource.

[180] Mr. Baran gave evidence that it is acceptable to provide elevation drawings as a development permit condition of approval under Development Criteria 2.2.4 and 2.12.3 of the NEP. He noted that the NEC assesses the impacts in the context of public views and not those of adjoining properties, and that the proposed development would not pose significant visual impacts because views from the road would be limited and obstructed by the maple trees and the grade differential between Kennedy Road and the proposed development site. He stated that the additional condition proposed by the Town is reasonable and would enhance the visual characteristics of the area.

[181] Ms. Drummond, the Heritage Resource Officer for the Town, was qualified as an expert in heritage and conservation resources. Ms. Drummond referred to s. 2.6.2 of the PPS, which requires that significant archaeological resources be conserved by removal and documentation, or preservation on site. She discussed the four stages of archaeological assessment: Stages 1 and 2 combine background research and field work; Stage 3 determines heritage value and Stage 4 deals with mitigation, when archaeological resources are uncovered and documented.

[182] Ms. Drummond testified that she had reviewed Ms. MacDonald's witness statement, and that the next steps would be to identify the area of the Property that warrants further investigation and to determine whether the artifacts are so significant that they should be avoided or whether mitigation through full excavation and documentation is reasonable. She stated that, in her experience, onsite preservation is undertaken when resources are rare and culturally significant. She gave the example of First Nations burial and sacred sites.

[183] In Ms. Drummond's opinion, documentation and removal of archaeological resources on the Property would be reasonable given the lack of flexibility with respect to the footprint of the development. She stated that this would be consistent with Development Criterion 2.12.5 of the NEP and with the PPS. She testified that it would satisfy the Town's concerns to make the archaeological assessment a condition of the development permit, and that her review of the assessment would be no different than if

it had been required prior to the Decision because mitigation would be the likely outcome in either case.

[184] Ms. Drummond gave evidence that the Property has been inventoried as part of the former settlement of Silver Creek heritage landscape, and it is part of the cultural heritage landscape defined by the PPS and included in the Town's inventory. She noted s. 2.6.1 of the PPS, which states that cultural heritage landscapes shall be conserved.

[185] Ms. Drummond testified that she submitted comments that were included in the Town's letter to the NEC dated February 1, 2012, which: stated that the information on the revised site plan was insufficient; strongly encouraged that the development on the Property be appropriate to the Silver Creek cultural heritage landscape with respect to design, scale and materials; and requested that the Applicant submit elevation renderings. She stated that the Town's interest in ensuring that the design of the proposed development is appropriate to the Silver Creek cultural heritage landscape did not need to be dealt with prior to approval of the development permit, and could be met through the proposed additional condition of approval of the development permit, which would also assist in satisfying Development Criteria 2.2.1 and 2.2.4 of the NEP in respect of cultural heritage features and landscape.

Submissions

[186] The Appellants submit that an archaeological assessment should have been conducted prior to approval of the development permit and not as a condition of approval. They note that Ms. MacDonald did not give evidence concerning her archaeological assessment in person, and her opinions should be given little weight as her evidence was not subject to cross-examination. With respect to Ms. MacDonald's witness statement, the Appellants assert that it does not contain enough information upon which to make a decision whether the artifacts should be preserved on the Property or excavated and documented.

[187] The Appellants further submit that the revised site plan gives insufficient information to determine whether the proposed development will be appropriate in the cultural heritage landscape, and that the Applicant should have been required to submit coloured renderings of elevations to the Town's Heritage Resource Office prior to the Decision, and not as a condition of approval.

[188] The Appellants ask the Hearing Officers to find that the Decision was not correct and was premature. The Appellants submit that, at the very least, the information regarding the archaeological assessment and the elevations should have been before the Hearing Officers. In the alternative, the Appellants assert that the development permit should be amended to include conditions requiring a complete archaeology study and coloured renderings of elevations of the proposed building.

[189] The Applicant, the NEC and the Town all submit that the additional conditions of approval concerning the archaeological assessment and elevations, proposed by the Town, should be included in the development permit.

[190] The Applicant asserts that the outcomes would be no different if these requirements had been satisfied up front in the application process or included as conditions to the development permit, because, in either case, construction could not begin until the conditions are satisfied.

[191] The NEC states that it decides what to require up front in the application process and what to require as conditions of approval of the development permit based on experience, not policy or guidelines.

[192] The Town asserts that the work conducted by Ms. MacDonald confirms the presence of artifacts, and that, if Stage 3 determinations as a result of the added condition demonstrate heritage value, then the relevant NEP and PPS policies indicate that removal and documentation of the artifacts would be appropriate. The Town further asserts that the Applicant should be required to submit its approval elevations with a list of the materials to be used for exterior cladding and roofing. The Town submits that its approval process will be the same regardless of the timing of these requirements.

Findings on Issue 6

[193] General Development Criterion 2.2.4 of the NEP states that any development permitted should be designed and located in such a manner as to preserve the natural, visual and cultural characteristics of the area.

[194] The Heritage development criteria in part 2.12 of the NEP address the requirements relating to archaeological assessment and harmony with cultural heritage. The relevant criteria state that:

- care should be taken to discover unknown and preserve known archaeological sites (especially native burial sites) and areas where these sites might reasonably be expected to exist (2.12.1);
- existing heritage features, areas and properties should be retained and reused (2.12.2);
- new development should be in harmony with the area's character and existing heritage features and buildings in general mass, height and setback and in the treatment of architectural details, especially on building facades (2.12.3); and
- where development will destroy or significantly alter cultural landscapes or heritage features, actions should be taken to salvage information on features being lost, including archaeological salvage and excavation (2.12.5).

[195] None of the parties dispute that an archaeological assessment and elevation drawings are required in this case. However, the Appellants submit that both should have been prepared and provided in advance of the development permit application, while the other parties submit that it is sufficient to require them as a condition of approval.

[196] The Hearing Officers heard Ms. Drummond's opinion that, given the lack of flexibility with respect to the footprint of the development, documentation and removal of archaeological resources on the Property is reasonable in this case, as onsite preservation is only undertaken when resources are rare and culturally significant, as with First Nations burial and sacred sites. Mr. Wellings also stated that it would be acceptable for the Applicant to take appropriate steps to mitigate and conserve archaeological resources if it is not possible to avoid archaeological resources.

[197] For the above reasons given by the Town, the Hearing Officers find that it is appropriate to include the proposed additional condition requiring an archaeological assessment in the conditions of approval.

[198] With respect to the requirement that elevation drawings be produced, Mr. Wellings testified that most municipalities require elevation drawings to be produced up front in the application process, allowing for early public input. However, the Hearing Officers heard from Ms. Drummond that, in this case, the Town does not consider that it was necessary to approve the appropriateness of the design of the residence to the

Silver Creek cultural heritage landscape prior to approval of the development permit application, and would be satisfied with the proposed additional condition of approval requiring elevation drawings. Based on this evidence, the Hearing Officers find that it is appropriate to include the proposed condition requiring elevation drawings in the conditions of approval.

[199] The Hearing Officers therefore find that revised and added conditions of approval to the development permit are needed, and recommend the following revised condition (the revisions are shown in italics):

16. **Prior to the issuance of a Development Permit**, final floor plans and elevations of the single dwelling (incl. attached garage with breezeway linkage) shall be submitted to the Niagara Escarpment Commission for approval, *subject to Condition 21*.

[200] The Hearing Officers recommend the following new conditions:

20. **Prior to the issuance of a Development Permit**, the Applicant shall undertake and provide to the Director of Development Approval and Planning Policy for the Town of Caledon for its approval, an archaeological assessment prepared by a licenced archaeologist with experience in Euro-Canadian industrial sites relating to the proposed development site.
21. **Prior to the issuance of a Development Permit**, the Applicant shall provide to the satisfaction of the Town of Caledon elevations and a list of materials to be used for exterior cladding and roofing for the proposed structure/dwelling on the subject lands for approval by the Director of Development Approval and Planning Policy or her designate with a view to protecting the cultural heritage value of the surrounding area.

SUMMARY OF RECOMMENDATIONS

[201] The opinion of the Hearing Officers is that the conditions requested by the Town, the substance of which is generally agreed to by all of the parties, should be added to the development permit, with some additional changes as highlighted above, including the reference to the interior trees on the Property and a consequential revision to Condition 16. All of these changes are included in the "Proposed Revised Conditions of Approval" attached as Appendix B.

[202] The Hearing Officers are also of the opinion that there should be a further condition to the development permit pursuant to the findings made on Issues 2 and 3. The condition would require additional study to ensure that the proposed development is compatible with the natural environment of the Niagara Escarpment and land in its vicinity, and would require consequential revisions to other conditions, as set out above. These changes are also included in the “Proposed Revised Conditions of Approval” attached as Appendix B.

[203] The Hearing Officers are of the opinion that it is appropriate to recommend that conditions be added to the development permit, rather than require the Applicant to begin the development permit application process again. Circumstances mitigating against recommending that the Applicant start again include the heightened involvement of the Town in the review process after the revised site plan, the Applicant’s demonstrated willingness to fulfill the additional conditions requested by the Town, and the NEC’s reliance upon the CVC comments as satisfying the NEP development criteria.

*NEC Decision Not Confirmed
Revised and Added Conditions of Approval Recommended
Report sent to Minister*

Robert V. Wright, Hearing Officer

Helen Jackson, Hearing Officer

Maureen Carter-Whitney, Hearing Officer

Appendix A – Relevant Portions of the Niagara Escarpment Plan

Appendix B – Proposed Revised Conditions of Approval

Appendix C – Exhibit List

Appendix A

Relevant Portions of the Niagara Escarpment Plan

1.3 Escarpment Natural Area

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.

Permitted Uses

Subject to Part 2, Development Criteria, the following uses may be permitted:

3. Single dwellings.

1.5 Escarpment Rural Area

Objectives

1. To maintain scenic values of lands in the vicinity of the Escarpment.
2. To maintain the open landscape character by encouraging the conservation of the traditional cultural landscape and cultural heritage features.
3. To encourage agriculture and forestry and to provide for compatible rural land uses.
4. To provide a buffer for the more ecologically sensitive areas of the Escarpment.
5. To provide for the designation of new Mineral Resource Extraction Areas which can be accommodated by an amendment to the Niagara Escarpment Plan.

Permitted Uses

Subject to Part 2, Development Criteria, the following uses may be permitted:

3. Single dwellings.

2.2 General Development Criteria

The objective is to permit reasonable enjoyment by the owners of all lots that can sustain development.

1. Permitted uses may be allowed provided that:
 - a) The long term capacity of the site can support the use without a substantial negative impact on Escarpment environmental features such as contours, water quality, water quantity, natural vegetation, soil, wildlife, population, visual attractiveness and cultural heritage features.
 - b) The cumulative impact of development will not have serious detrimental effects on the Escarpment environment (e.g. water quality, vegetation, soil, wildlife, and landscape).
4. Any development permitted should be designed and located in such a manner as to preserve the natural, visual and cultural characteristics of the area.

2.6 New Development Affecting Water Resources

The objective is to ensure that new development affecting streams, watercourses, lakes, wetlands, and groundwater systems will have minimum individual and cumulative effect on water quality and quantity, and on the Escarpment environment.

Water Quality

1. Changes to the natural drainage should be avoided.
2. No sewage system should be allowed closer than 30 metres (approximately 100 feet) from:
 - a) The high water mark of any lake;
 - b) The top of a stream bank or ravine; or
 - c) The edge of any wetland.

Where this setback cannot be achieved on an existing lot of record the distance may be varied to the satisfaction of the Ministry of Environment or its designated agent.

Wetlands

12. In addition to # 1 to 7 (Water Quality), development adjacent to wetlands may be permitted only if it does not result in any of the following:
 - a) Loss of wetland functions;
 - b) Subsequent demand for future development which will negatively affect existing wetland functions;

- c) Conflict with existing site-specific wetland management practices; and
- d) Loss of contiguous wetland area.

2.7 New Development Within Wooded Areas

The objective is to ensure that new development should preserve as much as possible of wooded areas.

1. Disturbance of treed areas should be minimized, and proposed developments in heavily treed areas shall have site plan agreements containing specific management details regarding the protection of existing trees.
2. Trees to be retained should be protected by means of snow fencing, wrapping, or other acceptable means during construction (e.g. tree wells).
3. Existing tree cover or other stabilizing vegetation will be maintained on slopes in excess of 25 per cent (1 in 4 slope).

2.10 Agriculture

The objective is to encourage agricultural uses in agricultural areas, especially in prime agricultural and specialty crop areas, to protect such areas, to permit uses that are compatible with farming and to encourage accessory uses that directly support continued agricultural use.

1. Development and the creation of new lots, including any lot associated with a farm consolidation, should maintain and protect prime agricultural areas and specialty crop areas from uses considered incompatible with sustaining the agricultural use and/or land base.
2. Development and the creation of new lots, including any lot associated with a farm consolidation, and new or expanding livestock facilities, shall comply with the minimum distance separation formulae.

2.12 Heritage

The objective is to inventory, interpret, evaluate, maintain and conserve the cultural heritage features of the Niagara Escarpment Plan Area.

1. Care should be taken to discover unknown and to preserve known archaeological sites (especially native burial sites) and areas where such sites might reasonably be expected to exist.
2. Existing heritage features, areas and properties should be retained and reused. To determine whether such actions are feasible, consideration shall be given to both economic and social benefits and costs.

3. New development including reconstruction, alterations and consideration of a second dwelling under Part 2.2.7.b) should be in harmony with the area's character and the existing heritage features and building(s) in general mass, height and setback and in the treatment of architectural details, especially on building facades.

5. Where development will destroy or significantly alter cultural landscapes or heritage features, actions should be taken to salvage information on the features being lost. Such actions could include archaeological salvage and excavation, and the recording of buildings or structures through measured drawings or photogrammetry or their physical removal to a different location.

Appendix B

Proposed Revised Conditions of Approval

1. Non-fulfilment or breach of any one of the conditions shall render the Development Permit voidable.
2. A site inspection(s) to the property may be undertaken by the Niagara Escarpment Commission to ensure that the development complies with the conditions of the Development Permit. Persons may accompany the Commission representative on the site inspection(s) who possess expert or special knowledge related to the conditions of the Development Permit.
3. No building permit or other licence, certificate, permit or other similar permission relating to development shall be issued or be considered to be in force unless a Development Permit is in effect.
4. The Development Permit shall expire three years from its date of issuance unless a valid Building Permit is issued within the three years and the development has been completed.
- Revised** 5. Development shall take place only in accordance with the site plan dated January 2012, as revised pursuant to these conditions, and development permit application submitted (except where special conditions are to apply as noted below).
- Revised** 6. No grading of the existing contours of the lot in the area of the development is permitted, with the exception of that which is required for construction of the single dwelling (including attached garage with breezeway linkage), septic system, driveway and existing swale modifications (except where conditions are to apply as noted below).
7. No trees other than dead or diseased trees shall be cut or removed from the lot in the area of the development except those absolutely necessary for construction of the single dwelling (including attached garage with breezeway linkage), septic system, driveway and existing swale modifications.
8. Screening, landscaping and rehabilitation shall commence by the end of the growing season after the development is completed.

Note: Such landscaping allows for the individual taste of the owner. The Commission recommends that for major trees, species native to the area shall be used rather than exotic species.

9. All exposed areas resulting from construction shall be stabilized with suitable ground cover (e.g., mulch, seed) immediately upon completion of the construction.
10. Appropriate erosion and sediment controls and tree protection measures shall be installed prior to commencing any construction activities and maintained until the development is completed and the site has been stabilized.
- Revised** 11. Any requirements regarding installation of the septic system shall be fulfilled to the satisfaction of the Town of Caledon prior to the issuance of a Building Permit, subject to Conditions 14, 15 and 23.
12. The applicant shall obtain an Entrance Permit to the satisfaction of the Town of Caledon Public Works Department.
- Revised** 13. Prior to the commencement of any construction, the stormwater drainage works described by the Town of Caledon in its correspondence dated July 28, 2011, subject to Condition 23, shall be completed to the satisfaction of Credit Valley Conservation.
- Revised** 14. The owner/applicant shall take every precaution to ensure that no disturbance or fill placement, especially related to the installation of the septic system, occurs within the dripline of the sugar maples situated along the road allowance, subject to Condition 23.
15. **Prior to the issuance of a Development Permit**, the proposed single dwelling, garage, septic system and driveway shall be staked/demarked on-site for the approval of the Niagara Escarpment Commission.
- Revised** 16. **Prior to the issuance of a Development Permit**, final floor plans and elevations of the single dwelling (incl. attached garage with breezeway linkage) shall be submitted to the Niagara Escarpment Commission for approval, subject to Condition 21.
17. The single dwelling (incl. attached garage with breezeway linkage) shall not contain an apartment unit, second residential unit, or an accessory dwelling unit (e.g., an “in-law suite” or “granny flat”).

18. The owner/applicant shall obtain a permit from Credit Valley Conservation pursuant to Ontario Regulation 106/06 under the *Conservation Authorities Act*, prior to commencing any construction or issuance of a Building Permit.
19. This conditional approval shall be void if a Development Permit is not issued within one (1) year of the date of confirmation of the decision.
- New** 20. **Prior to the issuance of a Development Permit**, the Applicant shall undertake and provide to the Director of Development Approval and Planning Policy for the Town of Caledon for its approval, an archaeological assessment prepared by a licenced archaeologist with experience in Euro-Canadian industrial sites relating to the proposed development site.
- New** 21. **Prior to the issuance of a Development Permit**, the Applicant shall provide to the satisfaction of the Town of Caledon elevations and a list of materials to be used for exterior cladding and roofing for the proposed structure/dwelling on the subject lands for approval by the Director of Development Approval and Planning Policy or her designate with a view to protecting the cultural heritage value of the surrounding area.
- New** 22. **Prior to the issuance of a Development Permit**, the Applicant shall undertake and provide to the satisfaction of the Director of Development Approval and Planning Policy of the Town of Caledon a certified arborist's report addressing the roadside sugar maples and interior trees in the area of the proposed building envelope (including the dwelling, septic bed and driveway) and to provide a compensatory planting plan for any tree removal (the roadside sugar maples in particular and trees in the building envelope identified by the arborist's report).
- New** 23. **Prior to the issuance of a Development Permit**, the Applicant shall undertake and provide to the satisfaction of the Niagara Escarpment Commission and the Town of Caledon:
- a) a drainage and grading plan, prepared by a qualified engineer, for approval by the Town of Caledon Engineering Department in conjunction with the review of the Building Permit application by the Town of Caledon Building Department, to include the quantity and location of fill to be placed on the Property for the additional consideration of the Niagara Escarpment Commission;
 - b) a study and report, by a qualified engineer or hydrogeologist, to confirm that the proposed septic system can be installed and operated at the proposed location

on the Property to meet the approval of the Town of Caledon Building Department in conjunction with the review of the Building Permit application, and that it will have minimum individual and cumulative effect on water quality and on the Escarpment environment;

- c) a study and report in the nature of an Environmental Impact Study, prepared by an ecologist certified in Ontario wetland evaluation to determine the appropriate building envelope and environmental set-backs; and
- d) a revised site plan with all the required information, including the information referred to in this condition, certified by a qualified engineer.

Note: The Niagara Escarpment Commission advises the owner/applicant that further consultation with the Ministry of the Natural Resources is required as a permit under the *Endangered Species Act* may be required.

Please note that the proposal is in an area identified as habitat for species at risk in Ontario and may be subject to provisions under the *Endangered Species Act* (2007). It is the responsibility of the applicant to contact Melinda Thompson Black, Species at Risk Biologist, Ministry of Natural Resources (Aurora) at 905-713-7425 or Melinda.Thompson-Black@ontario.ca with the draft proposal for screening under the *Endangered Species Act* and provide written correspondence to this office.

Appendix C

Exhibit List

Exhibit No.	Submitted By	Name of Exhibit	Date of Document
1	NEC	NEC Book of Documents	
2	NEC	Colour Map of NEP with Plan Designations	May 7, 2012
3	Appellants	c.v. of P. van Wassenaer	
4	Appellants	Witness Statement of P. van Wassenaer	April 10, 2012
5	Applicants	Current Site Plan by Van Harter Surveying Inc.	January 13, 2012
6	Appellants	Witness Statement of P. van Wassenaer, in colour	
7	Applicant	Applicant's Document Book	May 14, 2012
8	Appellants	c.v. of Brad Bricker	
9	Appellants	Witness Statement of Mr. Bricker	
10	Appellants	Appellants' Document Book	April 30, 2012
11	Appellants	Index of Appellants' Images	
12	Appellants	Figure 3.1.1 of East Credit River Subwatershed Study	November 2007
13	Appellants	c.v. of Glenn Wellings	
14	Appellants	Witness Statement of Mr. Wellings	
15	Appellants	PPS	
16	Appellants	Caledon official plan extracts	
17	Appellants	Schedule A of official plan (large scale)	
18	NEC	NEP	January 25, 2012
19	Appellants	SAMPLE – Application Form for NEC Development Permit	
20	Town of Caledon	Witness Statement of Eva Marie MacDonald	April 20, 2012
21	NEC	Letter: Town to NEHO	April 25, 2012
22	Town of Caledon	Witness Statement of Sarah Drummond	April 10, 2012

23	Town of Caledon	Witness Statement of Janet Sperling	April 10, 2012
24	Appellants	Appellants' Document 10	
25	Appellants	East Credit Subwatershed Study #13 – Background Report	December 2002
26	Appellants	Credit Valley Conservation Watershed Planning & Regulation Policies	April 2010
27	Appellants	East Credit Subwatershed Study Management Plan & Implementation Report	November 2007
28	NEC	Site Plan of November 2011 (approx.)	
29	NEC	11 x 17 version of Exhibit 28	
30	Applicant	c.v. of Richard Clark	
31	Applicant	Environmental Resource Mapping from CVC	June 21, 2010
32	Appellants	Extracts from Exhibit 27: East Credit Subwatershed Study – Colour Maps	December 2007
33	Applicant	Witness Statement of Alan Young	April 10, 2012
34	Applicant	Air Photograph	April 2012
35	Applicant	Issues List	March 13, 2012
36	Appellants	Extract from OPA 179 of Town of Caledon (P. 19)	
37	NEC	Witness Statement of Michael Baran & Acknowledgement of Expert Duty	April 5, 2012