



Niagara Escarpment Hearing Office

Case Nos.: 11-002/11-003
(NEC File No.: H/A/2010-2011/247)

Leckebusch v. Niagara Escarpment Commission

In the matter of appeals by Timur Leckebusch and 819743 Ontario Inc. filed on April 1, 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 March 18, 2011, whereby the Commission refused Development Permit application H/A/2010-2011/247 made by Timur Leckebusch and 819743 Ontario Inc. to permit an unlimited number of horse shows, with ancillary facilities such as charity fundraisers and social gatherings, and permitting horse owners, riders and trainers to stay overnight in their own trailers during shows, all on Part Lot 15, Concession 4, 9328 No. 15 Side Road, Town of Halton Hills, Region of Halton; and

In the matter of a hearing held from February 11 to 14, 2013 at the Civic Centre in the Town of Milton, Municipal Offices, 150 Mary Street, Milton Ontario.

Before: Maureen Carter-Whitney, Hearing Officer
Paul Milbourn, Hearing Officer

Appearances:

Herbert Arnold and Thomas Arnold	-	Counsel for the Appellants, Timur Leckebusch and 819743 Ontario Inc.
Jane Thompson	-	Counsel for the Niagara Escarpment Commission
Jeffrey J. Wilker	-	Counsel for the Other Parties, Region of Halton and the Town of Halton Hills
Jack Pemberton	-	Other Party, on his own behalf
Kathleen Coyle	-	Participant, on her own behalf
Tara Montgomery	-	Participant, on her own behalf and Representative for the Participant, Matthew Moser

Dated this 30th day of **July, 2013**.

**REPORT TO THE MINISTER OF NATURAL RESOURCES CONFIRMING
THE DECISION OF THE NIAGARA ESCARPMENT COMMISSION**

Background

[1] On December 13, 2010, Timur Leckebusch and 819743 Ontario Inc. (the "Appellants") applied to the Niagara Escarpment Commission ("NEC") for a development permit for an unlimited number of horse shows, together with charity fundraisers and social gatherings, on a property they own known as Halton Place on Part Lot 15, Concession 4, 9328 No. 15 Side Road in the Town of Halton Hills, Region of Halton ("Halton Place"). Halton Place Horse and Country Limited, a corporation in which Mr. Leckebusch is the sole officer, director and shareholder, operates Halton Place.

[2] The Appellants sought permission for an unlimited number of horse shows at Halton Place beginning in 2011 and annually thereafter. They anticipated that there would be six horse shows in 2011 and eight shows in 2012, with no limitation on when the shows would be held during the daytime hours. Ancillary activities would include, but not be restricted to, charity fundraisers and social gatherings that could continue past sunset. Permission was also requested to allow horse owners, riders and trainers to remain overnight in their own trailers during the show.

[3] Halton Place is located in the Escarpment Rural Area ("ERA") and Escarpment Natural Area ("ENA") of the Niagara Escarpment Plan ("NEP"). The Halton Place site, which the Appellants purchased in 1989, includes various buildings used for equine stabling and training, and the hosting of horse shows and equestrian events. In 1991, a development permit was issued to establish a private horse farming operation at Halton Place and numerous development permits have been issued since that time. The NEC approved development permits for equestrian events that took place in 1996, 1997, 1998, 2004, 2007, 2008, 2009 and 2010. These development permits were approved for limited periods of one to two years at a time.

[4] Neighbouring residents appealed two of the prior development permit applications, which were approved by the NEC, to the Niagara Escarpment Hearing Office ("NEHO"). In both cases, the NEHO dismissed the appeals and confirmed the NEC's decision to approve the development permits: *Pemberton v. Niagara Escarpment Commission*, [2007] O.E.R.T.D. No. 46 ("*Pemberton*") and *Darcie v. Niagara Escarpment Commission*, [2008] O.E.R.T.D. No. 44 ("*Darcie*"). The *Pemberton* decision approved a development permit for two equestrian events and a dog agility trial, which were held at Halton Place in 2007. The *Darcie* decision approved a

development permit for six equestrian events, which were held at Halton Place in 2008, each of which was permitted to have a maximum of 1,500 visitors per event, and, each day on site: 150 cars, 30 horse trailers, and 100 horses.

[5] On March 18, 2011, the NEC refused the Appellants' development permit application for horse shows beginning in 2011, and in the following years, on the basis that: the proposed use was inconsistent with the permitted uses and objectives of the NEP and the general intensity level of the use, permanent nature of the uses and added components had increased to a point that an amendment of the NEP (a "Plan amendment") is necessary.

[6] On April 1, 2011, the Appellants filed appeals with the NEHO for a hearing before a Hearing Officer pursuant to s. 25(8) of the *Niagara Escarpment Planning and Development Act* ("NEPDA") on the grounds that:

- The use of Halton Place for horse shows complies with the ERA objectives found in Part 1.5 of the NEP.
- Horse shows are an agricultural operation, which is a Permitted Use pursuant to Part 1.5 of the NEP.
- Horse shows comply with the general development criteria and the development criteria governing agriculture in Part 2 of the NEP.
- The development permit application complies with the policies of the Provincial Policy Statement ("PPS") and local and regional planning documents.
- The proposal that owners, riders and trainers stay overnight in their own trailers on the property is to ensure the safety and security of the horses, is consistent with industry practices and does not create any adverse impact to neighbouring property owners.

[7] Pre-hearing conferences ("PHCs") were conducted on June 20 and July 18, 2011, at which: party status was granted to the Region of Halton (the "Region"), the Town of Halton Hills (the "Town") and Jack Pemberton, and participant status was granted to Michael Shantz, Ron Morin, Kathleen Coyle and Janet Campbell. Further background concerning the PHCs is set out in the orders of the NEHO dated July 8 and August 3, 2011.

[8] At the commencement of the hearing of the appeals originally scheduled for October 19, 2011, the Hearing Officers, Robert V. Wright and Maureen Carter-Whitney,

were advised that a settlement had been reached among the Appellants, the Region and the Town, and provided with Minutes of Settlement, which included terms imposing some restrictions on the hosting of equestrian events at Halton Place. The NEC and Mr. Pemberton were not parties to this settlement. Although the agreement among the Appellants, the Region and the Town did not settle the matter before the Hearing Officers, the parties made reference to the details of that agreement in their evidence and submissions during the hearing.

[9] No evidence was heard on October 19, 2011, and all of the parties and participants consented to an adjournment of the hearing to consider their positions. Counsel for the NEC undertook to seek instructions with respect to the settlement between the Appellants, the Town and the Region.

[10] On November 17, 2011, the NEC considered the details of the settlement reached among the Appellants, the Town and the Region. The NEC unanimously carried a motion (the “NEC’s motion”) offering its conditional support to the terms of reference of the settlement, subject to the following changes: that the development permit be limited to three years, for a maximum of six events in each year, with no event having more than 600 horses. The NEC also stipulated that, at the end of the three year development permit, the Appellants would be required to have obtained a Plan amendment for a permanent equestrian event centre as an exception to the permitted uses of the NEP.

[11] The following reasons and discussion accompanied the NEC’s motion:

- The event centre has only been permitted as a temporary, time-limited use related to agriculture.
- The event centre was never accepted as a permanent use, and to do so would be to establish a major commercial event centre in the ERA.
- The use proposed may involve certain aspects that are agricultural but it is largely an intensive commercial operation drawing hundreds of participants. The business model is a major public event centre, one of the largest and most specialized in Canada involving equestrian events.
- Animal husbandry in the NEP was never intended to include, as a right, this type of large scale public commercial operation.
- To accept this in the rural area would be to set a precedent for any other intensive commercial use that claims to be agricultural in nature or requires an agricultural/rural area to operate. This is not a minor farm-related

business nor is it a normal farm undertaking. This is a specialized commercial development.

- To prevent this development from setting a wide ranging NEP precedent, the Appellants must apply for and receive a Plan amendment to establish a site specific exception to the NEP.
- This type of operation should be assessed no differently than other similar commercial uses that wish to locate in a rural area of the NEP. The objectives and policies of the NEP must be tested and satisfied. The NEP is intended to be a substantially continuous natural environment. A permanent event centre may or may not be a compatible use. It will be dependent on the planning justification.
- The reasons for refusal on the original permit application under appeal continue to apply in respect to making the event centre a permanent commercial use through a development permit.

[12] On March 5, 2012, Hearing Officers Mr. Wright and Ms. Carter-Whitney heard the following motions in relation to this appeal:

- A motion brought by the Appellants for an order that the equestrian events described in the Minutes of Settlement entered into between Timur Leckebusch, 819743 Ontario Inc., the Region and the Town, constitute an agricultural use/agricultural operation within the meaning of the NEP based on the doctrine of issue estoppel.
- A motion brought by the NEC for an order under Rule 172 of the Rules Of Practice and Practice Directions of the Environmental Review Tribunal directing Timur Leckebusch to respond to written questions sent to the Appellants on December 15, 2011, as well as any follow up questions arising from the answers given.

[13] The parties made additional submissions on the motions in writing, received by the NEHO in the period of June 4 to June 19, 2012.

[14] Hearing Officers Mr. Wright and Ms. Carter-Whitney issued their decision on the motions on November 22, 2012 (the "NEHO motions decision") and made an order dismissing the Appellants' motion, granting the NEC's motion and setting out a timetable for the Appellants to respond to the written questions.

[15] The hearing commenced afresh with a differently constituted panel of two hearing officers on February 11, 2013 at the Council Chambers in the Town of Milton. At the hearing, Tara Montgomery was granted participant status on behalf of herself and her husband, Matthew Moser. They are neighbours of Halton Place and have concerns that the proposed development is not appropriate for the Niagara Escarpment. The Hearing Officers found that Ms. Montgomery and Mr. Moser had an interest in the hearing, and that it was appropriate to grant them participant status. The participants Michael Shantz, Ron Morin and Janet Campbell did not appear at the hearing.

[16] The Appellants and the NEC jointly filed a Statement of Agreed Facts (Appendix A), which included the following information arising from the Appellants' responses to the written questions under Rule 172:

- Halton Place Horse and Country Limited also owns and leases other properties to commercial tenants.
- The operation of the horse farm by Halton Place (keeping horses for recreational riding, training, competition and possible future sale) showed no revenue for 2010. In that year, the operating expenses of the horse farm were in excess of \$125,000.
- One foal was born at Halton Place in 2010, and no foals were born there in 2011 or 2012.
- From 1990 to 2012, Mr. Leckebusch used Halton Place for keeping his own horses, which he rides. He competed as an amateur rider between 1990 and 2000.
- Starting in September 2012, certain buildings at Halton Place have been leased to a tenant who boards horses, leases horses to clients and trains horse riders for revenue to Halton Place Horse and Country Limited of approximately \$4,000 per month. This is currently the only horse-related revenue at Halton Place.
- The horse shows (distinct from the operation of the horse farm) brought in revenue of approximately \$970,000 in 2010 and showed an operating loss of approximately \$20,000. The operating loss of approximately \$20,000 does not include expenses such as property maintenance, repairs, farm staff salaries and vehicles, or amortization of the facilities at Halton Place.
- Event revenues from the horse shows increased from \$816,211 in 2009 to \$967,898 in 2010. Event expenses increased from \$958,479 in 2009 to

\$988,991 in 2010. These event expenses do not include expenses such as property maintenance, repairs, farm staff salaries and vehicles, or amortization of the facilities at Halton Place.

- No horse shows or other events were held in 2011 or 2012 at Halton Place. A development permit for horse shows was applied for in 2011 but the application was denied by the NEC.
- The Halton Place horse shows were known in the industry as “National Gold Competition” horse shows, because of the high calibre of horses and riders they attracted.
- In 2010, almost \$450,000 in prize money was awarded at the Halton Place horse shows.
- The National Gold horse shows, including the Halton Place shows, have classes for both amateur and professional riders. Many classes are open to the same professional riders that compete for Canada at international events such as the Olympics and the Pan American Games. There generally are no breed specific classes or classes specifically for horse breeders.
- The 2010 Halton Place prize list is typical of the divisions available at National Gold horse shows.
- In 2012, there were 24 National Gold horse shows at nine different locations throughout Ontario. There was a horse show scheduled somewhere in Ontario each week from early May to the end of September.
- Competitors at National Gold horse shows typically travel to shows throughout North America and accumulate points toward end of season awards and to qualify to compete at the Royal Agricultural Winter Fair in Toronto in November.

[17] The Statement of Agreed Facts also stated that Halton Place completed a Noise Study as a condition of a previously issued development permit, which recommended that it retain the services of an audio system engineer to provide an opinion on the public address (“PA”) system architecture best suited for the needs of Halton Place. Halton Place retained an audio system engineer and a PA system, custom designed to reduce noise levels beyond the site, is in place. Halton Place also commissioned a Traffic Study and Road Safety Review in June 2008 as a condition of a prior NEC development permit approval.

[18] Although the NEC suggested that there may be a distinction between the terms “horse show” and “equestrian event”, the parties used the terms interchangeably during the hearing to describe the events sought to be held at Halton Place. As a result, the terms are used interchangeably in this decision.

Relevant Legislation, Niagara Escarpment Plan Provisions and Rules

[19] The relevant legislation, regulations, rules and NEP provisions are set out in Appendix B.

Issues

[20] The overall issue in this matter is whether the development permit application is in accordance with the NEP. In this matter, the following sub-issues are raised:

1. whether the proposed development is a Permitted Use in the NEP Escarpment Rural Area; and
2. whether the proposed development satisfies the NEP Development Criteria 2.2, 2.10 and 2.13.

As these two sub-issues are intertwined in this case, they will be considered together.

Discussion and Analysis

Positions of the parties and participants

[21] The Appellants seek approval for the proposed development permit as modified by the terms of the settlement agreement they reached with the Town and the Region, which did not include the NEC or Mr. Pemberton. The terms of that agreement would modify the original development permit application as follows: to permit a maximum of six regular events (limited to a maximum of 600 horses over the entire event) and two minor events (limited to a maximum of 300 horses over the entire event) each year, under a development permit issued for an unlimited period of time; and to allow Halton Place to request permission from the Town and the Region to vary the maximum number of horses for a specific regular event.

[22] The Appellants observe that the NEC's motion agreed with these proposed terms but for a number of additional modifications set out by the NEC, with which the Appellants did not agree.

[23] The Appellants assert that the Hearing Officers have the discretion to approve the application as modified by the terms of the settlement agreement with the Town and the Region, the changes set out in the NEC's motion, or any variation of these two positions that they deem appropriate, including the imposition of a different time frame for the development permit.

[24] The NEC submits that the primary issue in this hearing is whether the use of Halton Place as a centre to host national level sporting events is a Permitted Use under the ERA designation of the NEP. The NEC's position is that the Appellants' proposal, as set out in its application for the development permit before the Hearing Officers in this appeal, is not a Permitted Use. The NEC submits that, if the equestrian events are found to be a Permitted Use, a secondary issue is whether they meet the development criteria found in Part 2 of the NEP.

[25] The NEC states that it considered the details of the settlement between the Appellants, the Town and the Region in November 2011. At that time, the NEC was not prepared to support a development permit with no time limit, but was prepared to approve a development permit for six events, with a maximum of 600 horses at each event, limited to three years. The NEC also stated, at that time, that any permission beyond that would require a Plan amendment. The NEC notes that this position was adopted prior to its knowledge of the additional evidence that has been presented at this hearing, and states that the NEC position has now changed. The NEC now submits that the limitations proposed in the agreement do not fundamentally change the nature of the proposal and, therefore, the proposal as modified by that agreement does not conform to the NEP.

[26] The NEC asserts that, because the Appellants did not agree to the modifications proposed in the NEC's motion, the Hearing Officers should not now recommend approval of a development permit based on those terms. The NEC requests that the Hearing Officers not approve the development permit based on the terms set out in the settlement agreement with the Town and the Region, but instead dismiss the appeals.

[27] The NEC submits that the terms of the settlement agreement among the Appellants, the Town and the Region do not fundamentally alter the nature of the use. The NEC states that the agreement attempts to make the parameters of the use look similar to previous development permits, but that Halton Place has undergone

significant change since the earlier development permits were approved. The NEC says that it now has a greater understanding of the operation at Halton Place than in previous proceedings.

[28] Mr. Pemberton and the participants support the position of the NEC and oppose the Appellants' development permit application.

Evidence

Appellants' Evidence

[29] Pierre Chauvin, a planning consultant with the firm of MacNaughton Hermesen Britton Clarkson Planning Limited, was qualified as an expert to give opinion evidence in land use planning. He was not sought to be qualified as having specific expertise in the NEP.

[30] Mr. Chauvin provided a description of the Halton Place site, noting that most of the property is designated ERA in the NEP and used for agriculture, but part of the property is designated ENA, including one of two tributaries of Sixteen Mile Creek that cross the property. No development is proposed in the ENA designation, and the proposal would not affect these tributaries.

[31] Mr. Chauvin stated that Halton Place is situated on prime agricultural lands, within a prime agricultural area. He testified that the agricultural use of the property includes a hay-growing operation, an active apple orchard, permanent stables, paddocks and riding rings. There are a number of structures on the property and parking areas for equestrian events.

[32] Mr. Chauvin stated that 35 horses are kept at Halton Place. Eight of these horses belong to Mr. Leckebusch, who also owns other horses kept off-site. He said that certain buildings at Halton Place are leased to Hunter Green Equestrian Centre ("Hunter Green"), which boards horses and operates a riding school.

[33] Mr. Chauvin noted that in past development permits, the number of horse shows each year varied, but the nature of the events and uses previously approved were generally the same as in the application under appeal, with the exception of the proposed overnight accommodation for horse owners, riders and training staff. He gave his opinion that the hosting of equestrian events is an important and integral component of the agricultural use on the property, which promotes and encourages animal husbandry and breeding generally, and encourages the development of the quality of the animals.

[34] Mr. Chauvin provided his opinion that the proposed horse shows and ancillary activities are in accordance with the NEP and its overall purpose and objectives, particularly given that it maintains an open landscape because many of the event facilities are temporary in nature and may be removed after events conclude. He stated that the proposal also accords with the objectives of the ERA designation in Part 1.5 of the NEP, which applies to the Halton Place lands used for horse shows, and that the permitted uses in the ERA designation include agricultural operations (defined as the carrying out of an agricultural use) and small scale commercial uses accessory to agricultural operations. He noted that the definition of “agricultural use” includes animal husbandry and stated that the care and breeding of horses occurs at Halton Place, and the horse shows promote different breeds and the equine industry as a whole. He also stated that breeding is one component of animal husbandry and not a necessary requirement.

[35] Under cross-examination, Mr. Chauvin acknowledged that for the horse shows to be a Permitted Use, there must be livestock being raised on the property because the purpose of the horse shows includes enhancing the raising of livestock, as well as showcasing livestock breeds and encouraging breeding in general. He further stated that there is no limit to the size of equestrian events permitted within the agricultural use under the NEP, subject to other restrictions such as zoning requirements. In his opinion, the care, feeding and raising of one animal would be sufficient to constitute a livestock operation that would permit holding horse shows of unlimited size.

[36] Mr. Chauvin addressed the general development criteria in Part 2.2 of the NEP, noting that Part 2.2.4 states any development should be designed and located to preserve the natural, visual and cultural characteristics of the area. He testified that the events would be confined to the centre of the site, which is well screened, and outside the natural features on the property. He also noted that on most days of the year, there are no horse shows and Halton Place simply appears to be a horse farm.

[37] Mr. Chauvin stated that Part 2.10 of the NEP sets out the development criteria in relation to agriculture, noting the objective of encouraging agricultural uses in agricultural areas and protecting those areas. He gave evidence that horse shows are part and parcel of the overall agricultural operation, promoting animal husbandry and horse ownership. He indicated that there would be no loss of agricultural land from the proposed development. He said that the ancillary activities at the horse shows, such as vendor tents and social gatherings, constitute small scale commercial uses accessory to agricultural allowed under Part 2.10.4 of the NEP.

[38] Mr. Chauvin also testified that the proposed horse shows and ancillary activities at Halton Place are consistent with the PPS, and in compliance with the official plans of the Town and the Region. He explained that both official plans accord with the land use designations and policies of the NEP. He also noted that the *NEPDA* and the NEP prevail over any local official plan in the case of a conflict.

[39] Mr. Chauvin stated that the NEP does not contain policies that speak to uses of a temporary nature, and testified that previous development permit applications for activities at Halton Place were not assessed on the basis of whether they were temporary or permanent. He said that a Plan amendment is not required based on his opinion that this is an agricultural operation and a Permitted Use in the ERA designation. He noted that this is not an event centre operating 365 days per year, but an equestrian farm hosting events several times per year. He stated that the horse show facilities in Caledon and the Blue Mountains, referenced in the NEC's evidence, are not appropriate for comparison purposes because they are not on farms. He identified three equestrian facilities in the NEP area that are more appropriate to compare to Halton Place, and noted that they have not been required to obtain development permits to hold horse shows. He acknowledged that many of the equestrian centres, both in and out of the NEP area, host horse shows smaller in scale than National Gold shows, which generally are connected to the equestrian classes offered at these facilities.

[40] Mr. Chauvin testified that, although breeding has occurred at Halton Place in the past, breeding was not considered a precondition to having horse shows in earlier development permit approvals. He noted that some livestock operations are not engaged in breeding. He stated that, prior to submitting the written questions, the NEC had never requested information about breeding. In his opinion, to impose breeding as a pre-condition would force an operator to undertake an activity that may not make economic sense. He acknowledged that breeding currently is not a primary activity at Halton Place but said that Hunter Green trains and houses horses there, including the eight horses owned by Mr. Leckebusch.

[41] Mr. Chauvin gave his opinion that the ownership of the horses at Halton Place is not a valid consideration in determining whether the proposal is an agricultural use. He said it is common practice to lease the spaces out to other horse owners, and he makes no distinction as to whether or not the horses at Halton Place are owned by Mr. Leckebusch. He also testified that whether or not Halton Place makes a profit is not relevant to the question of whether a development permit should be approved.

[42] Mr. Chauvin acknowledged under cross-examination that this is an application under the *NEPDA*, and not the *Planning Act*, and therefore must conform to the NEP. He added that NEC decisions must be consistent with the PPS.

NEC Evidence

[43] David Johnston, a planner at the NEC, was qualified as an expert to give opinion evidence in planning under the NEP.

[44] Mr. Johnston reviewed the development permit application at issue in this appeal in relation to previous applications at Halton Place, and noted a number of differences, including the following:

- The Appellants' use of the term "horse shows" in the application is a change from previous terminology of "equestrian events", and suggests a horse show is a broader event that includes a number of different equestrian events.
- Ancillary events, such as charity fundraisers and social gatherings would continue into the evening past sunset.
- The Appellants seek permission to hold horse shows into the future with no expiry date.

[45] Mr. Johnston recommended that the application be refused based on the increased level and intensity of use proposed at Halton Place as well as the permanent nature of the use, which he concluded to be inconsistent with the permitted uses and objectives of the NEP. As a result, he recommended that an application for a Plan amendment be required in relation to the proposed equestrian events.

[46] Mr. Johnston provided his opinion that the proposed development conflicts with: ERA objectives 1 to 4 in Part 1.5 of the NEP, the permitted uses set out in Part 1.5, and specifically the provisions governing accessory and incidental agricultural uses and recreational uses, the general development criteria in Part 2 of the NEP, and in particular, Parts 2.2, 2.2.1a), 2.2.1b), 2.2.1d) and 2.2.4; the development criteria governing agriculture in Parts 2.10.4a), 2.10.4b) and 2.10.4e); and the development criteria governing recreation in Parts 2.13.1, 2.13.4 and 2.13.5.

[47] Mr. Johnston stated in particular that the criteria regarding agriculture in Part 2.10 are not satisfied, specifically Part 2.10.13, which requires small scale uses accessory to agriculture to: be subordinate and incidental to the agricultural use of the property, not be high intensity or out of character with the area, and have minimal impacts. He summarized the impacts that the neighbours of Halton Place have raised as concerns:

including daytime and night noise due to amplification, higher traffic volumes and general commercialization of the area. He also noted that a recreational use may be permitted under Part 2.13 in non-agricultural areas, provided that any detrimental impact to the Escarpment scenic qualities and natural environment is kept to a minimum.

[48] Mr. Johnston provided his opinion that the proposed development is inconsistent with the agricultural policies in Part 3 of the PPS, stating that the proposed shows and related activities do not constitute “secondary uses” or “agriculture related uses” because they are not directly related and in close proximity to the farm operation. He also reviewed the original concerns of the Region and Town about the proposal, noting that they had now reached a settlement with the Appellants. He stated that, if the proposed development permit is approved, the Appellants eventually may seek additional permissions, such as for overnight camping, in order to host National Gold competitions. He testified that Halton Place accommodated approximately 5000 people at its final event of the 2007 season.

[49] On the basis of the Appellants’ responses to the written questions, Mr. Johnston concluded that the horse shows have evolved into a significant commercial draw and replaced the breeding and selling of horses as the primary source of revenue generation, changing the nature and type of operation on the property from principally agricultural to principally commercial and recreational. He testified to his understanding, at the time of the Appellants’ previous development permit applications, that Halton Place was primarily a breeding and training facility.

[50] Mr. Johnston stated that Halton Place is sanctioned by Equine Canada and an international equestrian federation as a Level 1B facility, which is the second-highest ranking available for a horse show competition facility, and indicates that Halton Place is different from a normal agricultural operation with horses.

[51] Mr. Johnston provided information about two venues that also host National Gold competitions: the Caledon Equestrian Park in the Town of Caledon, and the Cedar Run Horse Park in the Town of Blue Mountains. Both are outside of the jurisdiction of the NEC. He concluded that neither is zoned agricultural in its applicable municipal bylaws. He noted that Cedar Run Horse Park, for example, can accommodate 10,000 spectators. He also stated that there are no National Gold competition facilities in the NEP area.

[52] Mr. Johnston reviewed the addition of buildings and facilities over time on Halton Place site plans and concluded that there has been a creeping intensity given the increasing number of facilities offered as part of the horse shows, so that more of the property area is now devoted to horse shows than to horse farming.

[53] In Mr. Johnston's opinion, Halton Place has become a major event centre for horse shows, and is a commercial use and not an agricultural use as permitted by the NEP. He said that the equestrian events have outgrown the "agricultural use" status and become significant commercial draws, representing the single greatest revenue at Halton Place. He agreed under cross-examination, however, that the equestrian events at Halton Place do not appear to be profitable.

[54] Mr. Johnston testified that the breadth of the use being contemplated is inconsistent with the permitted uses of the NEP's ERA designation. He stated that past approvals were granted on the basis that they would be temporary and related to the breeding, training and sale of horses associated with the Appellants' horse farm operation, and were not approved on the basis that they would become a permanent and separate use of the site as is contemplated by the current application. He gave his opinion that to do so would permit a major commercial horse show centre in the ERA designation when there are currently no such operations present, setting a precedent for equine horse farm operations to apply for similar permissions.

[55] Mr. Johnston drew attention to Part 2.10.4(a) of the NEP, which states that small scale commercial uses accessory to agriculture must be carried out by the owner, as opposed to a tenant, and must not be considered a high intensity use that would be out of character with the agricultural area. He also noted that it is not clear whether the horses boarded by Hunter Green, including Mr. Leckebusch's horses that are kept at Halton Place, would participate in the proposed horse shows.

[56] Under cross-examination, Mr. Johnston did not provide any opinion on the minimum number of horses required to be bred each year for a facility to qualify as an agricultural operation. He stated, however, that a facility must look like it is an active breeding operation. He did not recall communicating to the Appellants any minimum number of horses that were required to be bred on site.

Pemberton Evidence

[57] Mr. Pemberton, a neighbour of Halton Place, stated that he supports the evidence and submissions of the NEC. He testified that the Appellants did buy and sell horses in the past, but have always referred to their business as a commercial and

entertainment centre. He stated that there is no need for overnight camping at the horse shows, and people should not be allowed to stay there overnight.

Coyle Evidence

[58] Ms. Coyle, also a neighbour of Halton Place, indicated that she was speaking for herself but also on behalf of other neighbours who could not attend the hearing. She testified that the Appellants have not always complied with development permits issued in the past.

[59] Ms. Coyle stated her concern that the area will gradually change from agricultural to commercial uses if the horse shows are permitted to continue. She said that the NEC should protect the neighbours from this commercialization of use. She does not object to large equestrian events, but stated that they should not take place on protected lands.

Montgomery Evidence

[60] Dr. Montgomery, another neighbour of Halton Place, stated that she and her husband moved to the area from Toronto for a more peaceful and quiet lifestyle. She said that the proposed horse shows would impair the quality of that lifestyle. She testified that they do not hear the noise of horses coming from Halton Place, but do hear the noise of construction equipment.

[61] Dr. Montgomery stated that, if the facility at Halton Place is to continue to grow, it should be located somewhere else. She also stated that people should not be permitted to stay on the property overnight during the horse shows.

Submissions

Appellants' Submissions

[62] The Appellants assert that it is reasonable that there has been no physical breeding at Halton Place since 2011 due to market conditions in relation to the sale of horses. With respect to the buildings leased to Hunter Green, the Appellants rely on the evidence of Mr. Chauvin that, from a land use planning perspective, only the use of a property needs to be considered and there is no distinction as to whether that use is carried out by an owner, tenant or licensee.

[63] The Appellants submit that the hay-growing operation, active apple orchard, permanent stables, paddocks and riding rings at Halton Place are evidence of its agricultural use. They also submit that the horse shows, in and of themselves, constitute an agricultural operation occurring in conjunction with the other agricultural

uses on the property. They assert that the equestrian events are an important and integral component of the agricultural use on the property, which promote animal husbandry and breeding generally, and encourage the development of the quality of the animals.

[64] The Appellants further submit that the ancillary activities at the equestrian events, such as vendor tents and social gatherings, constitute small-scale commercial uses accessory to agricultural, allowed under Development Criterion 2.10.4 of the NEP. They note that the NEC supported this position in previous development permit approvals for equestrian events at Halton Place.

[65] The Appellants argue that Mr. Chauvin's evidence should be preferred over that of Mr. Johnston, submitting that he has conducted a thorough review of the planning documents, has experience in agricultural and rural planning, and has been involved consistently in this development permit application.

[66] The Appellants submit that Halton Place differs from the Caledon Equestrian Park, with which the NEC compared it, in the following ways: Halton Place has permanent facilities such as stables and paddock(s) and Caledon Equestrian Park does not, Caledon Equestrian Park is municipally owned while Halton Place is owned and operated by the same individual, Mr. Leckebusch resides on the property and Halton Place is and has been a breeding facility, with orchard and hay operations. The Appellants also note that Cedar Run Horse Park can accommodate up to 10,000 spectators, compared with Halton Place, which accommodated approximately 5000 people at its last event of the 2007 season.

[67] The Appellants note the three facilities identified by Mr. Chauvin in the NEP area, which were required to obtain development permits for their facilities but not for their equestrian events. They submit that this supports their position that equestrian events are permitted under the NEP as an agricultural use.

[68] In response to the NEC's position that it understood in the past that there was active horse breeding at Halton Place and the evidence that no foals have been born there since 2010, the Appellants make reference to the earlier NEHO decisions in relation to the property. They state that neither of the *Pemberton* nor *Darcie* decisions required that the physical breeding of horses on the property be a precondition to the equestrian events constituting animal husbandry.

[69] The Appellants note that in *Pemberton*, at para. 40, Megan Krueger, the general manager of Halton Place, provided a description of the facility, and argue that it remains

the description of the facility as it exists currently. The Appellants state that the Hearing Officer in *Pemberton* found, at para. 59, that the equestrian events:

are clearly within the scope of animal husbandry and/or agricultural use as much of the incentive for the events is to encourage improved bloodlines in the animals. Unlike a county or regional fair, equestrian events do not attract large crowds of onlookers. The majority of the spectators are themselves animal owners or persons desirous of being so.

[70] The Appellants also refer to *Darcie*, at para. 41, where Ms. Krueger acknowledged that the equestrian events are not a venue for formal sale of horses or breeding services, but indicated that breeders and owners informally attend competitive horse shows for these purposes and, for these reasons, the horse competitions are an important activity in promoting horse ownership and breeding generally, and in encouraging the development of the quality of the animals.

[71] The Appellants further note that in *Darcie*, at para. 42, both Mr. Johnston and the planner on behalf of Mr. Leckebusch in that hearing provided the opinion that:

promoting horse ownership and breeding generally, and encouraging the development of the quality of the animals, clearly falls within the category of “animal husbandry” which is included within the definition of Agricultural Use.

[72] The Appellants cite the finding of the Hearing Officer in *Darcie*, at para. 48, that “each of the Equestrian Events is, despite its scale, still a horse show, and therefore contributes to animal husbandry.” In particular, the Appellants put forward the Hearing Officer’s reasoning and findings regarding the evidence that:

the high level of competition and participation at these events may influence a horse’s value for sale or breeding purposes, or that a larger number of participants will expand the networking opportunities for informal buying and selling. Consequently, the Hearing Officer finds that a larger scale event, if anything, enhances animal husbandry. Accordingly, the Hearing Officer finds that the scale of these Equestrian Events, in and of itself, does not change their character as an agricultural operation.

[73] The Appellants also note that the Hearing Officer in *Darcie*, at para. 49, rejected the argument that the ancillary activities at the equestrian events mean that they are not an agricultural use, finding that these additional activities are either related to or clearly incidental to the equestrian events and that only the equestrian events can be characterized as a central activity attracting participants and the general public.

[74] The Appellants assert that the NEC has never requested information about the physical breeding of horses at Halton Place in relation to the previous development permit applications, nor identified it as a precondition. The Appellants also assert that

the absence of physical breeding of horses at Halton Place was not included in the reasons attached to the NEC's motion.

[75] The Appellants state that information about the physical breeding of horses at Halton Place was first requested in the written questions sent to the Appellants in December 2011, and that Mr. Johnston did not provide an opinion regarding the baseline amount of physical breeding on a site required for equestrian events to be considered an accessory use. They note that Mr. Johnston confirmed under cross-examination that the NEC had not requested that there be physical breeding at Halton Place, and argue that, had this been made a requirement, Mr. Leckebusch could have moved his horses to Halton Place from where they are kept off-site.

[76] With respect to the NEC's allegation that the equestrian events have become commercial, the Appellants state that Halton Place operates at a financial loss and rely on Mr. Chauvin's opinion evidence that it is only appropriate, from a land use planning perspective, to consider the use of a property and not to assess the revenue or losses of one aspect of an operation with respect to another. The Appellants note that farms, while business operations driven by profit, still constitute an agricultural use.

[77] The Appellants dispute the NEC's concern about the "creeping intensity" of the equestrian events. They argue that there is no need to limit the development permit to a maximum of three years based on Mr. Chauvin's opinion that, if equestrian events are a Permitted Use, the NEP does not distinguish between temporary and permanent uses.

[78] The Appellants note that two previous NEHO decisions, involving the same applicant, issue and policies, have found the equestrian events to be an agricultural use. As the NEHO is a specialized tribunal, the Appellants submit that Hearing Officers' decisions and interpretations of the NEP should be consistent.

[79] In response to the concerns of Mr. Pemberton and the participants about traffic and noise due to events at Halton Place, the Appellants submit that they are willing to address these issues and included terms to do so in their settlement agreement with the Town and the Region

[80] The Appellants cite *Ontario (Ministry of Natural Resources) v. Leckebusch*, [2012] O.J. No. 2289 (Ontario Court of Justice) ("*Leckebusch*"), which dealt with charges laid under the *NEPDA* relating to unauthorized development at Halton Place. They indicate that, in this decision, the Justice of the Peace reviewed the *Pemberton* and *Darcie* decisions and found, at para. 55, that "horse shows and equestrian may be properly categorized as activities of 'animal husbandry'". In particular, he accepted the

reasoning in *Darcie* that, despite the scale of the proposed horse shows, they were still horse shows and therefore contributed to animal husbandry.

[81] The Appellants state that the cases cited by the NEC (see below) are not relevant because they deal with concepts of “agricultural operation” that are either not defined or not defined to include animal husbandry. The Appellants note that one case addresses the definition of “farmworker” in a labour context, which is not applicable to the matter at hand.

NEC Submissions

[82] The NEC submits that the Appellants are in the business of holding equestrian events, and not horse farming, although they lease a portion of the property for horse farming. The NEC asserts that, if the principle of the use as a permanent event centre is established, further approvals will likely be sought and granted for additional facilities, such as parking, to accommodate the nature and intensity of that use.

[83] The NEC points to the definitions of “agricultural operation” and “agricultural use” in the NEP and submits that, in order to be successful in their appeal, the Appellants must satisfy the Hearing Officers that equestrian events constitute “animal husbandry”. The NEC refers to dictionary definitions of “animal husbandry” from several sources, noting that: the Oxford English Dictionary defines it as “the science of breeding and caring for animals” the Merriam-Webster Dictionary defines it as “a branch of agriculture concerned with the production and care of domestic animals”; and the Collins Dictionary defines it as “the science of breeding, rearing, and caring for farm animals.”

[84] The NEC submits that the breeding aspect is important to animal husbandry but acknowledges that different farmers may participate in different stages of a farm animal’s life cycle and recognizes that the essence of animal husbandry is the improvement of the breed. The NEC argues that the breeding of and caring for animals that constitute animal husbandry must be distinguished from the sport in which those animals participate.

[85] The NEC cites the following cases in support of the proposition that an agricultural operation includes the breeding, cultivating, producing and raising of livestock: *Fettes v. Lumsden (Municipality No. 189)*, [1982] S.J. No. 1047 (Sask.C.A.); *Cowichan Valley (Regional District) v. Michaud*, [1985] B.C.J. No. 525 (B.C.S.C.); and *Re Peace County Livestock Auction Ltd.*, [2000] B.C.E.S.T.D. No. 442 (B.C. Employment Standards Tribunal).

[86] The NEC argues that, unless equestrian events are an integral part of animal husbandry at Halton Place, such as the care and management of the horses, the events on their own do not constitute animal husbandry.

[87] The NEC notes that the NEHO motions decision in this matter, *Leckebusch v. Niagara Escarpment Commission*, [2012] O.E.R.T.D. No. 59 found that issue estoppel did not apply with respect to the earlier NEHO decisions on the issue of whether the equestrian events constitute an agricultural use/agricultural operation under the NEP. The NEC submits that the Hearing Officers are not bound by the earlier NEHO decisions and may follow, distinguish or disagree with those decisions.

[88] The NEC states that it is significant that, at para. 40 of the *Pemberton* decision, Ms. Krueger testified that Halton Place is “primarily a horse breeding and training facility with outdoor competition rings” (emphasis added). The NEC also emphasizes that the Hearing Officer accepted, at para. 59, that the equestrian events were “clearly within the scope of animal husbandry and/or agricultural use as much of the incentive for the events is to encourage improved bloodlines in the animals.” The NEC submits that, in the *Pemberton* decision, the Hearing Officer viewed the role of the horse show as an incentive to those in the business to bring horses, improve their value and sell them for a greater price, and that the purpose of the equestrian events was to enhance the breeding and training operation.

[89] The NEC cites the statement in the *Darcie* decision, at para. 15, that the NEC, in that hearing, did not consider that there was a material change at Halton Place between the 2007 and 2008 development permits. The NEC also notes that, at para. 47, the Hearing Officer in *Darcie* accepted that an undertaking may initially satisfy the criteria to qualify as a permitted use under the NEP, but may change in character over time such that it ceases to qualify as a permitted use. The NEC submits that this is what has now happened in the case of Halton Place. The NEC further cites para. 48 of *Darcie*, noting that it states that the equestrian events contribute to animal husbandry, not that they are animal husbandry. With respect to the finding, at para. 48 of *Darcie*, that a larger scale event enhances animal husbandry, the NEC submits that the larger scale equestrian events now proposed for Halton Place would not enhance animal husbandry (the horse farming business), but would be recreational sporting events.

[90] The NEC asserts that Mr. Johnston prepared his 2008 staff report concerning the development permit application under appeal in the *Darcie* hearing on the basis that Halton Place was primarily a breeding and training operation, and notes his

understanding of the relationship of the equestrian events to animal husbandry in the following analysis from that staff report:

An equestrian facility is considered an agricultural use and events/tournaments accessory and related to, and held in conjunction with, the agricultural operation may be permitted provided relevant development criteria in Part 2 of the NEP are met....

[91] The NEC also notes Mr. Chauvin's planning opinion in his witness statement filed for the original hearing commencement date in October 2011, which was confirmed at the hearing, makes a statement that is similar, in principle, to that of Mr. Johnston in his 2008 staff report. Mr. Chauvin's opinion states:

The equestrian operation and events on the subject property are an agricultural use. Horses are stabled, managed and bred on the property. The hosting of equestrian events is an important and integral component of the agricultural use on the property as it promotes/encourages animal husbandry and breeding generally and encourages the development of the quality of the animals.

[92] The NEC submits that Mr. Chauvin, in his evidence, went on to endorse the notion that there could be a minimal or token amount of animal husbandry on the property, stating that as little as one horse could provide the basis for equestrian events of an unlimited size. The NEC further submits that the Hearing Officers should reject Mr. Chauvin's evidence on this point and states that it is not consistent with the findings in *Darcie*.

[93] The NEC notes Mr. Chauvin's testimony that Hunter Green is on the site boarding and caring for horses, and that it does not matter who is caring for the horses on the site. The NEC asserts that the tenant's operation is not integrated with the Appellants' operation at Halton Place, and that there is no nexus between the horses on the property and the proposed equestrian events. The NEC states that Mr. Chauvin acknowledged that he had no knowledge concerning whether the horses on the site would participate in the equestrian events.

[94] The NEC submits participants at equestrian events are from horse farms at other locations throughout Ontario or elsewhere in Canada where animal husbandry takes place, but that they would be coming to Halton Place to engage in a sporting event.

[95] The NEC argues that, based on the evidence, the Appellants are not engaged in the business of horse farming because they do not generate revenue from horse farming and do not offer equestrian services to clients.

[96] The NEC asserts that the financial information provided by the Appellants indicates that the Appellants are operating a business that is not related to the horses

cared for on the property and that is not enhancing animal husbandry. The NEC argues that, despite the operating loss of \$20,000 in 2010, the equestrian events constitute a significant business undertaking that brought in almost \$1 million in revenues, and therefore constitute a commercial use.

[97] The NEC submits that the equestrian events may also be characterized as a commercial use based on the extensive prize list and entry fees listed in the 2010 brochure for Halton Place horse shows that was provided in evidence.

[98] With respect to several of the other equestrian event facilities (Cornerstone Equestrian Centre Inc., Touch 'N' Go Farm and Parish Ridge Stables), referred to by Mr. Chauvin for comparison purposes, the NEC submits that the more detailed information about these facilities available on their websites indicates that their horse shows are an integral part of their programs, which include lessons, selling and leasing horses, and matching horses and riders.

[99] The NEC submits that the equestrian event facilities cited in evidence by Mr. Johnston are more comparable to the equestrian events proposed for Halton Place because Hunter Green runs a parallel operation on the property that has no relationship to the events, and horses stabled at other farms will be coming to compete at Halton Place.

[100] The NEC cites the purpose and objectives of the NEP and, in particular, objective 4, which is to maintain and enhance the open landscape character of the Niagara Escarpment in so far as possible, by such means as compatible farming or forestry and by preserving the natural scenery. The NEC also refers to ERA objectives 1 to 3 in Part 1.5 of the NEP, stating that objective 1.5.3 is to encourage agriculture and forestry and to provide for compatible rural land uses. The NEC notes that permitted uses in the ERA include agricultural operations, small scale commercial uses accessory to agricultural operations and, in non-prime agricultural areas and non-specialty crop areas, small scale commercial and industrial development servicing agriculture and the rural community.

[101] The NEC submits that the NEP intends that the ERA be largely agricultural with some minor small-scale encroachment of other uses such as commercial and industrial. The NEC further submits that the Appellants' proposal would introduce a large scale commercial use that is not consistent with the ERA permitted uses.

[102] The NEC states that the opening words of the General Development Criteria section at Part 2.2 of the NEP set out the objective to permit reasonable enjoyment by the owners of all lots that can sustain development. The NEC submits that the

fundamental issue in these appeals is whether the Appellants' proposal constitutes reasonable enjoyment of prime agricultural land in the ERA designation. The NEC notes the ongoing concerns of the neighbours about the equestrian events at Halton Place with respect to the impacts of noise and traffic, and the suitability of the intensity of this operation within the ERA.

[103] The NEC also notes that Part 2.2.1(a) states that permitted uses may be allowed provided that the long term capacity of the site can support the use without a substantial negative impact on Escarpment environmental features. The NEC asserts that the NEP does not contemplate permitting large scale commercial events in the ERA and that they would be inconsistent with the meaning of "agriculture."

[104] The NEC acknowledges that the Appellants have in the past bred and raised horses at Halton Place and are no longer doing so for economic reasons. The NEC submits, however, that the reasons why horses are no longer being bred at Halton Place do not mitigate the fact that it is no longer a breeding facility, and the equestrian events are no longer integral to animal husbandry on the property. The NEC argues that its rationale for issuing permits to Halton Place on a temporary basis was that the activities on the property could be transitory, and in fact changed from breeding and training horses to keeping personal horses at the property and then to leasing the facilities.

[105] The NEC notes that the Ontario Court of Justice decision in *Leckebusch*, which was cited by the Appellants, concerns charges against the Appellants for developing a spectator berm without a development permit. The NEC submits that the Court adopted the reasons of the Hearing Officers in *Pemberton* and *Darcie*, which applied to Halton Place as it existed at the time those decisions were rendered.

[106] The NEC submits that a Plan amendment is required for the approval of a permanent sporting event centre at Halton Place. The NEC asserts that this would allow it to take a broader planning perspective in considering whether it is appropriate to allow such an event centre to serve the agricultural community. The NEC states that the proposal may constitute an innovative form of activity in a rural area, but it does not fall within the permitted uses under the ERA designation. The NEC states it has urged the Appellants to apply for a Plan amendment since late 2011, and had raised it as an issue prior to that.

[107] The NEC notes the provisions in Part 1.2.1 of the NEP that apply to applications for Plan amendments, which require that: the purpose and objectives of the *NEPDA* and the NEP be met; a proposed amendment be justified with reasons and evidence

supporting it; and a proposed amendment not adversely affect the purpose and objections of the *NEPDA* and the NEP, and be consistent with them and other relevant provincial policies. If a proposal is an appropriate rural land use and meets these criteria, it would be appropriate to amend the NEP for a site-specific exception to the limited permitted uses in the ERA designation.

[108] The NEC asks that the Hearing Officers dismiss the appeals. In the alternative, should the Hearing Officers recommend any form of approval, the NEC requests that it have the authority to approve the site plan. The NEC also asks that the Town not have authority to increase the size of the horse shows beyond 600 horses, but that this require the approval of the NEC.

[109] The NEC also asks that, if the development permit application is approved, the Hearing Officers include a condition or note stating that no further development permits may be sought, and an application must be made for a Plan amendment if the Appellants wish to continue with this changed use under the NEP.

Pemberton Submissions

[110] Mr. Pemberton opposes the Appellants' development permit application. He submits that Halton Place has become a large commercial events centre over the past twelve years, and that the present size and scope of the application is not allowed under the NEP and should be refused.

Coyle Submissions

[111] Ms. Coyle seeks to protect the Escarpment, stating that the area has remained rural and agricultural due to the vigilance of the NEC and residents of the area. She submits that the Niagara Escarpment is not the appropriate location for the Appellants' proposed development and that approval of the development permit application would create an irreversible precedent. She is also concerned that, if approved, there will not be adequate oversight to ensure that the Appellants adhere to the conditions of approval.

Montgomery Submissions

[112] Ms. Montgomery submits that Halton Place has become a large-scale commercial and recreational development and should not be permitted to continue to grow in scope and intensity. She is concerned that, if approved, this development will create a precedent for future land development.

Findings

[113] The Hearing Officers must begin by addressing the development permit application that is before them in these appeals. The NEC asks the Hearing Officers to consider the original development permit application, which was submitted to the NEC and then appealed after its refusal. The Appellants, however, request that the Hearing Officers approve the development permit application, as modified by the terms of the settlement agreement among them, the Town and the Region. The Hearing Officers' decision addresses the original development permit application, which was refused by the NEC and is the subject of the appeals before them.

[114] As noted above, the overall issue in this matter is whether the development permit application is in accordance with the NEP. While the parties also addressed the PPS in their evidence and argument, the Hearing Officers observe that the NEP is the primary provincial policy document that applies in this matter, and takes precedence over the PPS in the event of a conflict.

[115] To address that question, it is important to begin to consider the purpose and objectives of the Plan. The purpose of the Plan:

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

[116] The purpose clearly states the intention to allow only development that is compatible with the unique natural environment of the Niagara Escarpment. The overall objectives of the NEP support this purpose. The most pertinent of the NEP's objectives to this case are the following: to maintain and enhance the open landscape character of the Niagara Escarpment in so far as possible, by such means as compatible farming or forestry and by preserving the natural scenery, and to ensure that all new development is compatible with the purpose of the Plan, stated above. While new development is permitted, compatibility is a fundamental principle to be applied in determining what types of activities and uses, including farming, are appropriate.

[117] The Hearing Officers must first determine whether the proposed development is a Permitted Use within the NEP ERA, where the equestrian events are proposed to take place. Part 1.5 of the NEP sets out objectives for the ERA, which include: maintaining scenic values of lands in the vicinity of the Escarpment; maintaining the open landscape character by encouraging the conservation of traditional cultural landscape and cultural heritage features; and encouraging agriculture and forestry, and providing for compatible rural land uses.

[118] Permitted uses in the ERA include agricultural operations. The NEP defines an "agricultural operation" as the carrying out of an "agricultural use," which is further defined as:

the land, building or structure used for the purpose of animal husbandry, horticulture, beekeeping, dairying, fallow, field crops, fruit farming, fur farming, market gardening, maple syrup production, pasturage, poultry keeping, mushroom farming or any other farming use and may include growing, raising, small scale packing and storing of produce on the premises and other similar uses customarily carried out in the field of general agriculture.

[119] It is necessary to examine the activities proposed at Halton Place to determine whether they are an "agricultural use." In doing so, the definition of "animal husbandry" is a fundamental question to be determined. While there may be other agricultural operations occurring at Halton Place, such as the apple orchard and hay operation, the central issue before the Hearing Officers is whether or not the proposed horse shows constitute animal husbandry on the site. Both of the two previous NEHO decisions concerning Halton Place considered whether the events held at the time constituted animal husbandry.

[120] The various definitions of "animal husbandry" reviewed at the hearing all include elements of breeding, producing, caring for and managing farm animals. The breeding of animals is one aspect of animal husbandry. However, there is nothing explicit in the definitions of animal husbandry presented that would require breeding as an essential element. The Hearing Officers accept that market conditions may determine whether or not it is economically viable to breed horses at any given time. Even where breeding is not actively undertaken, the continued care and management of horses may constitute animal husbandry.

[121] However, the evidence demonstrated that the Appellants are less directly engaged in the animal husbandry taking place on the property than they were in the past. While Mr. Leckebusch operated Halton Place as a breeding and training facility for his horses from 1990 to 2012, it is now leased to Hunter Green to train and board horses, although he continues to keep eight of his horses there. While breeding is not a required element of animal husbandry, the Appellants now have less involvement in the other aspects of animal husbandry at the site, specifically the care and management of horses.

[122] In *Pemberton*, the Hearing Officer noted that Halton Place was a breeding and training facility, and found that the events were within the scope of animal husbandry because the incentive for the events was to encourage improved bloodlines in the

horses. The Hearing Officer said that most of the spectators owned horses themselves, or wished to do so.

[123] Based on the horse shows proposed in the *Darcie* hearing, the Hearing Officer found that a larger scale event would enhance animal husbandry and therefore found that the scale of the proposed events would not, in and of itself, change their character as an agricultural operation. The Hearing Officer in that case did not accept the view that the comparatively smaller scale of the other farm horse shows within the Region should be the standard used to determine whether the proposed shows qualify as an agricultural operation under the NEP.

[124] The Hearing Officer in *Darcie* did accept that an undertaking that initially satisfied the criteria to qualify as a permitted use under the NEP could change in character over time, such that it would cease to qualify as a permitted use. It is the NEC's submission that this change in character has now taken place at Halton Place, and the larger scale events now proposed to take place indefinitely into the future must be characterized as commercial or recreational sporting events, and not as animal husbandry.

[125] The Hearing Officers find that there has been a change in character in the horse shows at Halton Place over the years they have taken place. They evolved from two equestrian events in 2007 to six events in 2008, and the original proposal for the development permit application at issue in this hearing was for an unlimited number of horse shows beginning in 2011 and then every year after that, along with ancillary activities. While an unlimited number was initially requested, the Appellants anticipated that there would be six horse shows in 2011 and eight shows in 2012. Under the development permit application that is before the Hearing Officers, the Appellants sought permission for an unlimited number of horse shows annually into the future. Over the period of time during which the NEC approved the development permits sought by the Appellants and supported their position in NEHO appeals, the NEC issued each permit on a temporary basis because of concerns that the activities on the property might change with time. That change has now occurred.

[126] The Hearing Officers heard evidence of a number of the other equestrian facilities (Cornerstone Equestrian Centre Inc., Touch 'N' Go Farm and Parish Ridge Stables), which indicated that the occasional horse shows at these facilities are a small but integral part of their activities, including riding lessons, the sale and leasing of horses, and services to match riders with horses. The NEC has no concerns about the scale of the horse shows at facilities such as these within its jurisdiction.

[127] The Hearing Officers find that the proposed equestrian events are not integral to animal husbandry at Halton Place, and are therefore not a Permitted Use in the ERA. Only the operators of Hunter Green are engaged in animal husbandry at the property. There was no evidence of any integration of the tenant's operation with the Appellants' horse shows, such as participation in the equestrian events by horses from Hunter Green or even by the Appellants' own horses stabled there. Because they are not an integral part of the animal husbandry taking place at Halton Place, the proposed equestrian events do not in themselves constitute animal husbandry. The Hearing Officers accept the NEC's submission that the breeding of and caring for animals that constitute animal husbandry must be distinguished from the sport in which the horses participate.

[128] The Hearing Officers find that, as a result of the changes in the size and scale of the proposed equestrian events, and the fact that there is no longer a strong connection between those events and the horses cared for on the property, the proposed equestrian events have taken on the character of commercial or recreational sporting events. This is consistent with the impacts that the neighbours of Halton Place have raised as concerns, such as daytime and night noise due to amplification, higher traffic volumes and general commercialization of the area. The Hearing Officers accept Mr. Johnston's evidence that Halton Place has become a major event centre for horse shows, and is therefore a commercial use, and not an agricultural use permitted by the NEP.

[129] It is the NEC's position that a Plan amendment is required for the approval of a permanent equestrian event centre at Halton Place. Part 1.2.1 of the NEP sets out the provisions of the *NEPDA*, which apply to applications for Plan amendments. These provisions require that the purposes and objectives of both the *NEPDA* and the NEP be met. Amendments to the NEP must be justified with a rationale for the amendment, including reasons, arguments or evidence in support of the proposed change.

[130] The Hearing Officers agree with the NEC that an application for a Plan amendment should be made in relation to the proposed use of Halton Place for major equestrian events. The NEP intends the ERA to be a primarily agricultural area, with open landscapes, cultural heritage features and compatible rural land uses. The equestrian events proposed by the Appellants need to be carefully considered in the context of the Plan amendment process.

[131] The Hearing Officers note that, in considering the evidence and reaching their findings, they preferred the evidence of Mr. Johnston, who was qualified as an expert with specific expertise in planning under the NEP, over that of Mr. Chauvin.

[132] Having concluded that the proposed equestrian events are not a permitted use in the ERA, it is not necessary for the Hearing Officers to determine whether or not they would meet the development criteria in Part 2 of the NEP. However, the Hearing Officers do find that, given that the proposed equestrian events do not constitute animal husbandry, the ancillary activities proposed do not constitute small-scale commercial uses accessory to agricultural uses under Part 2.10.4 of the NEP.

DECISION

[133] The NEC's decision to refuse the application is confirmed pursuant to s. 25(12) of the *NEPDA*.

NEC Decision Confirmed

"Maureen Carter-Whitney"

Maureen Carter-Whitney, Hearing Officer

"Paul Milbourn"

Paul Milbourn, Hearing Officer

Appendix A – Statement of Agreed Facts

Appendix B – Relevant Legislation, Niagara Escarpment Plan Provisions and Rules

Appendix A

Statement of Agreed Facts

Case Nos.: 11-002/11-003
(NEC File No.: H/A/2010-2011/247)

NIAGARA ESCARPMENT HEARING OFFICE

**Leckebusch v.
Niagara Escarpment Commission**

In the matter of appeals by Timur Leckebusch and 819743 Ontario Inc. filed on April 1, 2011 for a Hearing before a Hearing Officer pursuant to section 2598) 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 March 18, 2011, whereby the Commission refused Development Permit Application H/A/2010-2011/247 made by Timur Leckebusch and 819743 Ontario Inc. to permit an unlimited number of horse shows, with ancillary facilities such as charity fundraisers and social gatherings, and permitting horse owners, riders and trainers to stay overnight in their own trailers during horse shows, all on Part Lot 15, Concession 4, 9328 No. 15 Side Road, Town of Halton Hills, Region of Halton.

STATEMENT OF AGREED FACTS

(Agreed to by the NEC and the Appellants)

BACKGROUND

1. Timur Leckebusch and 819743 Ontario Inc. ("819743"), a corporation in which Timur Leckebusch is the sole director, officer and shareholder, are the owners of a 194.1 ac (78.5 ha) property located at 9328 15 Side Road in the Town of Halton Hills, which is legally described as Part Lot 15, Concession 4, Town of Halton Hills (the "Site"). Timur Leckebusch owns the part of the property in the west half of Lot 15 and 819743 owns the part of the property in the east half of lot 10.
2. The Site was purchased by Timur Leckebusch and 819743 on March 31, 1989.

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3. The Site includes various buildings used for equine stabling and training and the hosting of horse shows. The Site is operated by Halton Place Horse and Country Limited, a corporation in which Timur Leckebusch is the sole officer, director and shareholder.
4. The Site is known as and is commonly referred to as Halton Place.
5. A Development Permit was issued in 1991 that established a private horse farming operation on this property...Development Permits have been issued intermittently over the subsequent years for other associated buildings/facilities and for staging jumping and hunter events/tournaments. A Permit was issued to the property owner as far back as September 1996 to install temporary tents, washroom facilities, parking areas, and signs, associated with approved events in 1996, 1997 and 1998
6. Halton Place has been sanctioned by both Equine Canada and the FEI (the Geneva, Switzerland, based international equestrian federation) as a Level 1B event facility. This is the second-highest available rating for an equine/horse show competition facility.
7. In 2004 Halton Place again commenced obtaining Development Permits from the Niagara Escarpment Commission for horse shows. Attached as Schedule "A" is a summary of Development Permits issued by the Niagara Escarpment Commission for horse shows/equestrian events/equestrian competitions at Halton Place since 2004.
8. As a condition of a previously issued Development Permit, Halton Place completed a Noise Study which was authored by HGC Engineering. This study was then peer-reviewed by SS Wilson Consulting Engineers on behalf of the Town of Halton Hills. One of the recommendations in the Noise Study was that Halton Place retain the services of an audio system engineer to provide an opinion on the PA system architecture best

suited for the needs of Halton Place. Halton Place retained an audio system engineer and a PA system costume designed to reduce noise levels beyond the Site is in place.

9. Halton Place also commissioned a Traffic Study and Road Safety Review authored by Cole Engineering in June 2008 as a condition of a prior approval of the Niagara Escarpment Commission.
10. On December 1, 2010 Halton Place applied for a Development Permit (DP H/A/2010-2011/247) for an unlimited number of horse shows, with participants (owners, riders and training staff etc.) being permitted to sleep overnight in their own trailers during the horse shows. The Application also specified that the general viewing public shall not be permitted on the property before 7:30 a.m. on the day of the event.
11. By way of Minutes of Settlement between the Applicant, The Regional Municipality of Halton and The Corporation of the Town of Halton Hills, which were filed with the Hearing Office and are attached as Schedule "B" hereto, Halton Place agreed to certain terms and conditions with respect to Development Permit H/A/2010-2011/247.
12. The following is a summary of the terms and conditions set forth in the Minutes of Settlement that specifically relate to the hosting of equestrian events at the Site:
 - Equestrian events may only be held from May 1st to October 31st annually;
 - The number of equestrian events shall be limited to a maximum of six (6) regular events and two (2) minor equestrian events each season.
 - A regular equestrian event is limited to a maximum of 600 horses total over the entirety of the regular equestrian event. A minor equestrian event is limited to a maximum of 300 horses total over the entirety of the minor equestrian event.

- Halton Place may request permission of the Town and Region to vary the 600 maximum for horses for a specific event.
- A single equestrian event shall not exceed a maximum of five (5) consecutive days with a maximum of (1) day to set up and one (1) day to break down the equestrian event.
- An equestrian event is defined as consisting of: (i) equestrian competition and the showing of horses; (ii) ancillary and accessory retailing of food and beverage sales together with sponsor and horse-related vendor tents, which total retailing is limited to 500 m²; (iii) ancillary and accessory social gatherings/charity events which are to be related to the equine industry or which support the causes of equine or local charities.
- Overnight accommodation for users or guests participating in and/or attending the equestrian event(s) is prohibited.
- The equestrian event(s) shall only take place between 8:00 a.m. and 7:00 p.m. Participants and the public shall not be permitted on the property before 7:30 a.m. on the day of any equestrian event(s).

INFORMATION ARISING FROM INTERROGATORIES

13. Halton Place Horse and Country Limited also owns and leases other properties to commercial tenants.

14. The operation of the horse farm by Halton Place (keeping horses for recreational riding, training, competition and possible future sale) showed no revenue for 2010. In 2010 the operating expenses of the horse farm were in excess of \$125,000.

15. One foal was born at Halton Place in 2010. No foals were born at Halton Place in 2011 or 2012.

16. Since 1990 to 2012 Mr. Leckebusch used the Halton Place property for the keeping of his own horses, which he rides. Mr. Leckebusch competed as an amateur rider between 1990 and 2000.

17. Starting in September 2012, certain buildings at Halton Place have been leased to a tenant who boards horses, leases horses to clients and trains horse riders at a revenue to HPHCL of approximately \$4000 per month. This is currently the only horse related revenue at Halton Place.

18. The horse shows (distinct from the operation of the horse farm) brought in revenue of approximately \$970,000 in 2010 and showed an operating loss of approximately \$20,000. The operating loss of approximately \$20,000 does not included expenses such as property maintenance, repairs, farm staff salaries and vehicles or amortization of the facilities at Halton Place.

19. Event revenues from the horse shows increased from \$816,211 in 2009 to \$967,898 in 2010. Event expenses increased from \$958,479 in 2009 to \$988,991 in 2010. These event expenses do not include expenses such as property maintenance, repairs, farm staff salaries and vehicles or amortization of the facilities at Halton Place.

20. No horse shows or other events were held in 2011 or 2012. A development permit for horse shows was applied for in 2011 but the application was denied by the Niagara Escarpment Commission.

21. The Halton Place Horse Shows were known in the industry as "National Gold Competition" horse shows, because of the high calibre of horses and riders they attracted.

22. In 2010 almost \$450,000 in prize money was awarded at the Halton Place horse shows.

23. The National Gold horse shows, including the Halton Place shows, have classes for both amateur and professional riders. Many classes are open to the same professional riders that compete for Canada at international events such as the Olympics and the Pan American Games. There generally are no breed specific classes or classes specifically for horse breeders.

24. The 2010 Halton Place prize list is typical of the divisions available at National Gold horse shows.

25. In 2012 there were 24 National Gold horse shows at 9 different locations throughout Ontario. There was a horse show scheduled somewhere in Ontario each week from early May to the end of September. (See 2012 National Gold Competitions Schedule "B" attached)

26. Competitors at National Gold horse shows typically travel to shows throughout North America and accumulate points toward end of season awards and to qualify to compete at the Royal Agricultural Winter Fair in Toronto in November. (See About OHJA Schedule "C" attached)

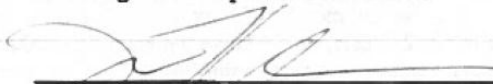
The parties hereto have executed this Statement of Agreed Facts by the hands of their legal counsel in this matter, duly authorized on their behalf

Timur Leckebusch and 819743 Ontario Inc.



By his and its solicitors, Thomas Arnold,
Arnold, Foster LLP

The Niagara Escarpment Commission



By its solicitors, Jane Thompson, Ministry of Natural
Resources

SCHEDULE "A"

Summary of Development Permits Issued by the NEC for Horse Shows at Halton Place

Development Permit H/A/2004-2005/114 "The Royal Halloween Horse Show" was issued on September 23, 2004 to permit the setup of 15 temporary tents to be used as horse stalls for the purpose of a horse show. Tents will be dismantled at the end of the show which runs from October 28 to 31, 2004.

Development Permit H/A/2004-2005/115 "Oktoberfest Country Classic Horse Show" was issued on September 23, 2004 to permit the setup of temporary tents to be used as horse stalls, vendor tents, food tents and sponsor tents to accommodate a horse show which runs from September 30, 2004 to October 3, 2004. Tents will be removed by October 4, 2004.

Development Permit H/A/2007-2008/001 was issued on May 10, 2007 to permit 2 events: The Parelli Natural Horsemanship Clinic, June 2-10, 2007, and the Ontario Pleasure Driving Competition, June 10, 2007.

*Development Permit H/A/2007-2008/071 was issued on August 14, 2007 to permit the event "The AAC National Dog Agility Trials" August 16-19, 2007, with attendance of approximately 200 people and 200-250 cars, and the placement of 6 portable washrooms, an amplification system, and food and beverages for sale.

Development Permit H/A/2007-2008/072 was issued on August 14, 2007 to permit the event "Canadian Country Classic Equestrian Tournament" August 22, 2007 to September 2, 2007, with attendance of approximately 5000 people, 300-400 cars, and 150-200 trailers, and the placement of 10-12 portable washrooms, an amplification system, and food and beverages for sale.

Development Permit H/A/2007-2008/069 was issued on August 14, 2007 to permit the event "The Summer's Here Junior Show" July 4-8, 2007 with an attendance of approximately 1500 people, 150 cars, and 50 trailers, and the placement of 6 portable washrooms, an amplification system, and food and beverages for sale.

Development Permit H/A/2007-2008/226 was issued on June 30, 2008 to permit 6 equestrian tournaments lasting 5 days at a time, to take place from July 1, 2008 until September 8, 2008.

Development Permit H/A/2008-2009/228 was issued on April 16, 2009 to permit 6 yearly equestrian events for the months of May to October 2009 and 2010, with daily averages of +/- 500 attendees, +/- 250 cars, +/- 75 horse trailers, up to 600 horses and the placement of up to 15 portable toilets, hand wash station, amplification equipment and food/beverage facilities.

*Development Permit issued for dog show

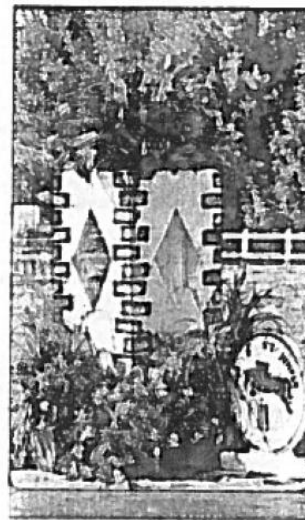
Schedule "B"

Hunter Jumper Show Dates Competition Schedule Ontario Results Rules Ontario Young ... Page 1 of 1

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2012 National Gold Competitions

Classic at Palgrave- Phase 1	May 8-13	www.equiman.com
Caledon National	May 13-20	www.equiman.com
Springfest	May 24-27	www.4seasonshorsheshows.com
Classic at Palgrave- Phase 2	June 5-10	www.equiman.com
Summer Classic	June 11-17	www.equiman.com
Cornerstone Summer Premiere I	June 20-24	www.cornerstonefarms.com
Cornerstone Summer Premiere II	June 27 - July 1	www.cornerstonefarms.com
Cedar Run Hunter Jumper Classic - Phase 1	July 4-8	www.cedarrun.ca
Cedar Run Hunter Jumper Classic - Phase 2	July 11-15	www.cedarrun.ca
Equestrian Festival	July 24-29	www.equiman.com
Summer Festival	July 31 - August 5	www.equiman.com
Canadian National Exhibition Jumper Competition	August 6-8	www.theex.com
Blue Mountain Horse Show- Phase 1	August 8-12	www.cedarrun.ca
National Tournament	August 15-19	www.hayesco.ca
Cornerstone Summer Encore I	August 22-26	www.cornerstonefarms.com
Angelstone National Phase 1	August 22-26	www.angelstone.co
Angelstone National Phase 2	August 29 - Sept. 2	www.angelstone.co
Cornerstone Summer Encore II	August 29 - Sept. 2	www.cornerstonefarms.com
RCRA	August 30 - Sept. 2	www.rcra.ca
Angelstone National Phase 3	September 3-9	www.angelstone.co
Autumn Classic	September 13-16	www.equiman.com
Canadian Show Jumping Tournament	September 19-23	www.equiman.com
Angelstone International Show Jumping Tournament	September 26-30	www.angelstonefarms.co
Royal Agricultural Winter Fair	November 3-11	www.royalfair.org



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<http://www.nhia.ca/naze.asp?naseid=10011>

12/19/2012

Schedule "C"

OHJA Ontario Hunter Jumper Association of Ontario Hunter Jumper Show Dates Compe... Page 1 of 1

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About

OHJA Constitution & Bylaws
download

The Ontario Hunter Jumper Association (OHJA) was formed in 1994 as a result of the growth of the horse industry. Up until that time the Ontario Equestrian Federation offices functioned as the administrative facility for the hunter/jumper community of the province. All other breed and disciplines had a provincial organization in place which dealt with their specific issues. The OEF Board of Directors, by formal motion, required the hunter/jumper community to establish their own association.

One of the essential mandates passed on to the new organization was the responsible and unbiased maintenance of a point system for annual awards. The allocation of provincial show dates, now assumed by Jump Canada, was another service that the OEF office no longer was prepared to continue. Equine Canada continued to be responsible for national programs such as Rules and Officials.

The OHJA is a member association of the Ontario Equestrian Federation. It is funded by memberships and the levy program administered by Jump Canada. Hunter, Equitation, and Jumper programs are developed and maintained by the OHJA and include the Annual Awards program and the maintenance of a point system used by the Royal Winter Fair. The Hunter/Equitation Committee runs the Ultimate Hunter Challenge, Pony Power, and OHJA Medal. The Jumper Committee sponsors Jump Canada Talent Squad Ontario, the Young Horse Development Series, and the Young Riders-Ontario program including a Clinic. Information to the membership is shared through both our website and InGate magazine.



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<http://www.ohja.ca/page.asp?pageid=10002>

12/19/2012

Appendix B

Relevant Legislation, Niagara Escarpment Plan Provisions and Rules

Niagara Escarpment Planning and Development Act

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

25(8) Where the delegate receives one or more notices of appeal under subsection (5.1) the Minister shall appoint an officer for the purpose of conducting a hearing at which representations may be made respecting the decision.

25(8.1) Despite subsections (8) and (10), an officer appointed under subsection (8) may refuse to conduct or to continue a hearing if,

- (a) in the opinion of the officer, the appeal does not disclose a planning justification for the appeal, is not in the public interest, is without merit, is frivolous or vexatious, or is made only for the purpose of delay;
- (b) the notice of appeal did not specify the reasons for the appeal; or
- (c) the person who appealed the decision has not responded to a request by the officer for further information within the time specified by the officer.

25(8.3) If an officer refuses under subsection (8.1) to conduct or to continue a hearing, the decision of the delegate shall be deemed to be confirmed.

25(11) Within 30 days after the conclusion of the hearing or within such longer period as the Minister may permit, the officer appointed shall report to the Minister a summary of the representations made, together with his or her opinion on the merits of the decision.

25(12) The decision of the delegate shall be deemed to be confirmed if,

- (a) the opinion of the officer expressed in his or her report under subsection (11) is that the decision of the delegate was correct and should not be changed; and
- (b) the decision of the delegate was not appealed by a municipality.

25(12.1) The decision of the delegate shall be deemed to be confirmed if,

- (a) the decision of the delegate was a decision to issue a development permit;
- (b) the parties who appeared at the hearing have agreed on all of the terms and conditions that should be included in the development permit and all of these terms and conditions are set out in the report of the officer under subsection (11); and

- (c) the opinion of the officer expressed in his or her report under subsection (11) is that, if the decision of the delegate included the terms and conditions referred to in clause (b), the decision would be correct and should not be changed.

25(12.2) If subsection (12.1) applies, the decision of the delegate shall be deemed to be a decision to issue the development permit with the terms and conditions referred to in clause (12.1) (b).

25(14) If the decision of the delegate has not been deemed to be confirmed under subsection (8.3), (9), (10.2), (12) or (12.1), the Minister, after giving consideration to the report of the officer, may confirm the decision or may vary the decision or make any other decision that in his or her opinion ought to have been made and the decision of the Minister under this section is final.

Niagara Escarpment Plan

Purpose

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

Objectives

The objectives of the Plan are:

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

1.3 Escarpment Natural Area

Permitted Uses

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

1. Existing agricultural operations.

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:

1. Agricultural operations.
5. In non-prime agricultural areas and non-specialty crop areas, recreational uses such as campgrounds, golf courses and associated golf course country clubs and trail uses, provided that any detrimental impact of these uses on the Escarpment scenic qualities and natural environment is kept to a minimum.
10. Small scale commercial uses accessory to agricultural operations.
17. In non-prime agricultural areas and non-specialty crop areas, small scale commercial and industrial development servicing agriculture and the rural community.

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).
 - (d) Development meets applicable federal, provincial and municipal requirements including health and servicing requirements.
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.

2.10 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.

4. Small scale commercial uses accessory to agriculture must satisfy the following criteria:

- (a) A small scale commercial use accessory to agriculture may be permitted provided it is subordinate, incidental and exclusively devoted to the principal agricultural use carried out on the farm property by the owner and is not considered a high intensity use out of character with the agricultural area.
- b) All buildings, structures and facilities, including parking areas, associated with the small scale commercial use accessory to agriculture shall be designed and located to minimize the impact on the principal agricultural use, adjacent land use and the rural open landscape character.
- c) Notwithstanding the policies that apply to wineries in Part 2.10.4 d), the majority of retail sales conducted as part of the small scale commercial use accessory to agriculture shall be limited to the sale of produce grown on the property or produced on the property from the produce grown on the property. This relationship shall be clearly outlined to the satisfaction of the implementing authority in the proposed plans for the development.
- d) Signage for small scale commercial uses accessory to agriculture shall be subject to Part 2.2.11 General Development Criteria.
- e) A further use incidental to a small scale commercial use accessory to agriculture may be integrated within the accessory operation provided that it does not result in a significant overall intensification of the use. For example, restaurants, banquet and conference facilities shall not be permitted as an incidental use.

2.13 Recreation

The objective is to minimize any adverse impact of recreational activities on the Escarpment.

- 1. All recreational activities should be designed and located so as not to conflict with surrounding land uses (e.g. agriculture) and be compatible with the natural and cultural character of the area.
- 4. Intensive recreational activity is intended to occur primarily in the designated Escarpment Recreation Areas and on the public lands of the Niagara Escarpment Parks and Open Space System established for this purpose.
- 5. Recreational uses should not exceed the carrying capacity of a site or area.

Definitions

Agricultural Operation - the carrying out of an agricultural use.

Agricultural Use - the land, building or structure used for the purpose of animal husbandry, horticulture, beekeeping, dairying, fallow, field crops, fruit farming, fur farming, market gardening, maple syrup production, pasturage, poultry keeping, mushroom farming or any other farming use and may include growing, raising, small-scale packing and storing of produce on the premises and other similar uses customarily carried out in the field of general agriculture.

Rules of Practice of the Environmental Review Tribunal

Naming of a Participant

66. The Tribunal may name persons to be Participants in all or part of a proceeding on such conditions as the Tribunal considers appropriate. A Participant to a proceeding is not a Party to the proceeding. In deciding whether to name a person as a Participant, the Tribunal may consider whether the person's connection to the subject matter of the proceeding or issues in dispute is more remote than a Party's would be. A person who may otherwise qualify as a Party may request Participant status.