
REPORT TO: Planning and Development Committee

MEETING DATE: Wednesday, June 22, 2016

SUBJECT: Final Recommendation Report
Regional Official Plan Amendment 11 (ROPA 11)
Removal of Environmental Protection Area Designation
633 South Pelham Road (Regional Road 36)
City of Welland

RECOMMENDATIONS

1. That the application for Regional Official Plan Amendment 11 to remove an Environmental Protection Area designation on lands municipally known as 633 South Pelham Road **BE REFUSED**.
2. That Notice of Council's Decision regarding Regional Official Plan Amendment 11 **BE GIVEN** in accordance with the *Planning Act* and its regulations.
3. That a copy of this report **BE FORWARDED** to the City of Welland, Town of Pelham, the Niagara Peninsula Conservation Authority, Province and the applicant.

KEY FACTS

- An application to amend the Regional Official Plan (ROP) was made by Upper Canada Consultants on behalf of Hert Inc. on February 19, 2016.
- The 4.68 hectare site is located in the City of Welland and designated Urban (Built-Up Area) and Environmental Protection Area (EPA) in the Regional Official Plan.
- The EPA designation reflects a Provincially Significant Wetland (PSW), as identified by The Ontario Ministry of Natural Resources and Forestry (MNRF).
- By definition, all PSW's are identified as EPA's in the ROP.
- The Region's Official Plan does not permit development and site alteration within an EPA designation.
- The application proposes to amend Schedule C of the Region's Official Plan to remove the EPA designation (approximately 1.4 ha) to facilitate the development of a residential subdivision (approximately 63 units).

- The Province has confirmed the provincial significance of the PSW on the subject lands and advises that the application is not consistent with Provincial Policy.
- Local applications for Official Plan and Zoning By-law Amendments and Plan of Subdivision were submitted to the City of Welland in February 2015 and refused by Welland City Council at its Meeting of June 16, 2015.
- The applicant has appealed City Council's refusal of the applications to the Ontario Municipal Board (OMB), to which the Region and City are a Party to this on-going hearing.
- It is recommended that Regional Council refuse the proposed Regional Official Plan Amendment, as it is staff's position that the application does not align with Provincial and Regional policies and, therefore, could not be considered good planning.

CONSIDERATIONS

Financial

There are no direct financial implications arising from this report. However, if there are appeals of the decision by Regional Council, staff will provide a further report on financial considerations.

Should Regional Council decide to approve the application, based on the interest expressed by the Province on this application to date, it is likely the Province would appeal any decision to approve the application to the Ontario Municipal Board. Should this occur, Regional Council would be required to retain outside legal and planning representation to defend its position at the Board, as Regional staff is currently on record at the Ontario Municipal Board in opposition to the related local applications.

Should Regional Council refuse this application, it could be anticipated that an appeal may be lodged by the applicant. In this circumstance, Regional Legal Counsel would likely seek to have the matter consolidated with the OMB hearing currently in progress.

Corporate

Regional Planning staff has considered all input from stakeholders and the public to ensure that decisions made in relation to this application represent good planning.

Governmental Partners

Regional Planning staff has worked collaboratively with the NPCA, the City of Welland and the Province to expedite the review and consideration of the application.

Given the nature of the proposed amendment to remove an EPA designation from the Regional Plan, staff engaged the Province to better understand the Provincial responsibility for identification and classification of PSW's and the process for de-classification necessary prior to the removal of the Regional Plan designation. This

information was provided to staff through teleconference with Provincial staff, as well as correspondence attached in Appendices III and IV. This information was considered in preparation of the staff recommendations on this application.

Public and/or Service Users

A Statutory Public Meeting, in accordance with the requirements of the Planning Act, was held at the Planning and Development Committee May 11, 2016.

ANALYSIS

Background

An application to amend the Regional Official Plan (ROP) was made by Upper Canada Consultants on behalf of Hert Inc. on February 19, 2016. The proposed amendment is site-specific in nature and seeks to remove the Environmental Protection Area Designation on the lands in order to facilitate the development of a residential subdivision (approximately 63 dwelling units). The subject property is approximately 4.68 hectare in size, municipally known as 633 South Pelham Road and located west of South Pelham Road and south of Sumbler Road in the City of Welland.

The Environmental Protection Area designation as shown in cross hatch on Appendix I is approximately 1.4 ha in size. The EPA designation is located on the westerly portion of the subject lands and reflects a Provincially Significant Wetland (PSW), which forms part of the Draper's Creek Wetland Complex, as identified by the Ontario Ministry of Natural Resources and Forestry (MNRF) in 2009. The EPA designation on the property represents a portion of the larger wetland complex.

Provided as justification for the removal of the designation in both the Regional and local Official Plans, the applicant submitted a Planning Justification Report and Environmental Impact Statement (EIS) prepared by Beacon Environmental (February 2015). Throughout the process the applicant has maintained that the PSW does not qualify as provincially significant and, therefore, the removal of the EPA designation would be appropriate from its perspective.

Regional Planning staff previously provided written comment on May 15, 2015 regarding the circulated local applications. Planning staff was unable to offer support for the applications as submitted. Staff did, however, suggest that a revised version of the draft plan may be supported in principle if the development included only the lands outside of the mapped PSW. Staff, therefore, recommended that should development be considered on the lands located outside of the PSW, an updated EIS would be required to demonstrate no negative impacts on the feature in accordance with Provincial and Regional policies.

The City of Welland Council did not support the local applications to amend its Official Plan, Zoning By-law and denied draft approval to the draft plan of subdivision at its June

16, 2015 Meeting (Appendix II). The applicant appealed Welland's refusal of the local applications to the Ontario Municipal Board. The OMB Hearing commenced April 25, 2016. The Region is a Party to this phased hearing, which is still in litigation. The Region's involvement in this hearing is directly related to the proposed declassification of the PSW on the subject land. Regional Planning staff identified during the review of the local applications that a Regional Official Plan amendment is the necessary precursor to any local Official Plan Amendment to remove the Core Natural Heritage System designation from the Schedule mapping. The Core Natural Heritage System (CNHS) designation in the City of Welland Official Plan currently conforms to the EPA designation in the Regional Official Plan. Removal of the CNHS designation from the local Official Plan requires an amendment to the Regional Plan to ensure continued conformity, in accordance with Regional Policy.

Planning Policy Review

The proposed Regional Official Plan Amendment has been reviewed for alignment with the applicable policies set out in the Provincial Growth Plan, the 2014 Provincial Policy Statement, Regional Official Plan and City of Welland Official Plan.

Provincial Growth Plan (2006)

Broadly, the Growth Plan provides policy direction on matters of growth management within the Greater Golden Horseshoe (GGH), and a framework for implementation of Ontario's land use vision over the long-term.

The subject lands are located within the Built-up Area within the Growth Plan as defined by the Province. Built-up Areas are the focus of residential and employment intensification and redevelopment within the Region over the long term. The proposed amendment to remove the EPA designation from the Regional Official Plan from the subject lands does not conflict with the policies and objectives of the Growth Plan for the Greater Golden Horseshoe.

2014 Provincial Policy Statement

The subject land is located within a *settlement area* under the Provincial Policy Statement (PPS). The PPS encourages the development of strong, healthy communities. The PPS generally directs that settlement areas shall be the focus of growth and development, provided that land use patterns demonstrate an appropriate and efficient use of lands and resources. In this regard, the policy framework directs that Planning authorities identify appropriate locations and opportunities for intensification and redevelopment in the urban areas, while balancing protection of the natural environment and resources.

Specifically in reference to a balance between the built and natural environment, the PPS states that intensification and redevelopment shall be directed in accordance with certain policies, including:

- Section 2.1.4 a) of the Provincial Policy Statement (PPS) which prohibits *development*¹ and site alteration within provincially *significant*² *wetlands*³ (PSWs). This policy is strongly directive given the language of prohibits.

Conflict between the Provincial Growth Plan and the PPS

The Growth Plan provides direction on matters of conflict between the Growth Plan and the Provincial Policy Statement, issued under section 3 of the *Planning Act*. As provided for in the Places to Grow Act, where conflict exists generally between the Plan and the PPS, the Growth Plan prevails. However, the only exception is where the conflict is between policies relating to the natural environment and human health. In that case, the policy direction that provides more protection to the natural environment or human health prevails.

Staff has identified such a conflict between the Growth Plan (2006) and the applicable policies in the Provincial Policy Statement (2014) with respect to natural heritage. Development within a wetland identified as provincially significant by the Province is not permitted by the PPS. In this circumstance, the PPS provides greater protection to the natural environment and, accordingly, prevails.

As such, any amendment to remove the Environmental Protection Area designation on Schedule C of the Regional Official Plan to permit development would be in conflict with the PPS and would not be considered good planning.

The Regional Official Plan

The Regional Official Plan designates the subject lands Urban, Built-up Area and Environmental Protection Area (EPA) on Schedule C – Core Natural Heritage (Appendix I). The Urban designation on the lands allows for a variety of residential, employment and other land uses, subject to the detailed policy direction of the local municipal Official Plan and Zoning By-law. Consistent with the PPS, the Regional Official Plan does not permit development and site alteration in a PSW, which is designated as an EPA in the Regional Official Plan. Regional Council's policies provide for the greatest level of protection of PSW's by precluding development or site alteration on lands designated EPA.

1 The PPS defines "*development*" as "the creation of a new lot, a change in land use, or the construction of buildings and structures requiring approval under the *Planning Act*".

2 The PPS defines "*significant*" in regard to wetlands as an area identified as provincially significant by The Ontario Ministry of Natural Resources and Forestry (MNR) using evaluation procedures established by the Province, as amended from time to time (i.e. The Ontario Wetland Evaluation System).

3 The PPS defines "*wetlands*" as "lands that are seasonally or permanently covered by shallow water, as well as lands where the water table is close to or at the surface."

Specifically, Policy 7.B.1.10 of the Regional Plan does not permit development and site alteration in EPAs (except for limited purposes such as forest, fish and wildlife management as supported by an Environmental Impact Study).⁴

Policy 7.B.1.7 states that the boundaries of Core Natural Areas (Including EPA's) are shown on Schedule C. Where significant modifications, such as a change in the classification of a Core Natural Area, or a significant change in the spatial extent or boundaries of a feature are proposed, the Regional Policy requires an amendment to the Plan.

This policy also requires that in considering both refinements and significant modifications to the mapping or classification of features shown on Schedule C the Region shall consult with the Ministry of Natural Resources respecting those Environmental Protection Areas identified as Provincially Significant Wetlands. In this regard Regional staff has engaged the Province on this application to better understand the Provincial responsibility for identification and classification of PSW's. The Province has consistently maintained that they have sole authority in evaluating and delineating the boundaries of PSW's.

Staff notes that in August 2013, the applicant's Environmental consultant initiated a review of the outer wetland boundary of this portion of the Draper's Creek Wetland Complex with MNRF staff. The PSW boundary was revised by the Province following the 2013 site visit. The revised delineation of the wetland was not contested at that time by the applicant, or the applicant's Environmental consultant. Further, it is staff's understanding that there has been no follow-up consultation between the applicant, or applicant's consultant with MNRF staff regarding the outer wetland boundary, as delineated in 2013, and any proposed modifications to the mapping of the feature.

On April 15, 2016, the Province confirmed the provincial significance of the PSW once more in their response letter to the Region on ROPA 11. The Provincial letter also identifies issues with the applicant's Environmental Impact Statement (Appendix III).

Therefore, approval of an amendment to remove the Environmental Protection Area designation would be in conflict with the Provincial position regarding the protection of an identified provincially significant wetland and, therefore, could not be considered good planning.

As an aside, the EPA designation will be amended to reflect the most-up-to-date provincial mapping as part of the scheduled comprehensive update to the Regional Official Plan. Planning and Development Services is undertaking a review and update to the Region's Environmental policies and Core Natural Heritage mapping in the first

⁴ Limited purposes also include conservation and flood erosion control projects where it has been demonstrated that they are necessary in the public interest and other alternatives are not available; and, small scale, passive recreational uses and accessory uses such as trails, boardwalks, footbridges, fences, docks and picnic facilities that will have no negative impact on natural features or ecological functions of the Core Natural Heritage System.

quarter of 2017. As part of this comprehensive review, natural heritage mapping for the subject lands will be updated.

City of Welland Official Plan

The City's Official Plan designates the subject lands as Core Natural Heritage System and low Density Residential. Approximately 25% of the subject land is designated Core Natural Heritage System in the City's Official Plan, which reflects a Provincially Significant Wetland (PSW) as identified by the MNRF. Local applications for Official Plan amendment, Zoning By-law amendment and draft plan of subdivision were submitted to the City of Welland for consideration in February of 2015.

The new Welland Official Plan was adopted by the Council of the City of Welland on May 4, 2010 and approved, in part, with modifications and deferrals by Regional Council on September 15, 2011. Four appeals were lodged with the Region and forwarded to the Ontario Municipal Board. Certain components of the Plan are still under appeal and are not in effect; however, the core natural heritage mapping was not subject to the appeal and, therefore, is in full force and effect as of October 21, 2011.

Through the Official Plan update process, the City's core natural heritage mapping was revised to reflect the most up-to-date data available from the Province at the time, including the Province's wetland mapping. Subsequently, the Region adopted this information into the Regional Official Plan to ensure consistency between the upper-tier and local Official Plans (See Report ICP 67- 2011).

Summary of Public and Agency Comments

The proposed Regional Plan amendment was circulated for public and agency comment for a period of 60 days (March 14 – May 13, 2016). During the circulation period, comments were received from several members of the public, of which a majority of the respondents live in proximity to the subject lands. Written comments were also received from the applicant's Legal Counsel, from the Province of Ontario, City of Welland and Niagara Peninsula Conservation Authority.

Comments were also provided orally at the Statutory Public Meeting held on Wednesday May 11, 2016 at Planning and Development Committee. No members of the public spoke in support of the proposed application, and seven members of the public spoke in opposition to the amendment at the Meeting.

Generally, public comments received through correspondence and as presented at the Statutory Public Meeting consistently raised the following concerns:

- General opposition to the proposed amendment.

- Species (flora and fauna) that may be negatively impacted by the development of the wetland.
- Development occurring within natural heritage features, where alternative unencumbered lands are available within the City.
- Development or site alteration within the wetland may lead to degradation of the larger Draper's Creek Wetland Complex.

Provincial Comments

As part of the One-Window Planning Service review the Ministry of Municipal Affairs and Housing has provided a consolidated response on the application with review and input from the relevant partner Ministries, specifically the Ministry of Natural Resources and Forestry. Provincial comments confirm the provincial significance of the PSW on the subject lands, and state that removal of the protection of the PSW proposed by ROPA 11 would be inconsistent with the PPS.

NPCA Comments

In accordance with the Memorandum of Understanding and the protocol between the Region and the Niagara Peninsula Conservation Authority (NPCA), the NPCA is responsible for the review and comment on all planning applications for impacts on the natural environment, including conformity with Region's environment policies as contained in the Official Plan and consistency with the PPS.

In a letter dated May 13, 2016, NPCA staff commented that the proposed amendment to remove the EPA designation (PSW) from the subject lands is inconsistent with the PPS and does not conform to Regional policy.

City of Welland

City of Welland staff commented on May 9, 2016 that the local applications for Official Plan amendment, Zoning By-law amendment and draft plan of subdivision were denied by Welland City Council on the basis that the applications did not conform to the City's Official Plan, Regional Official Plan or the Provincial Policy Statement (2014) regarding protection of the natural environment. Broadly, City Planning staff has no objection to the application for a Regional Plan amendment; however, should the application be successful, the City of Welland's Official Plan would need to be amended to align with the upper-tier Official Plan.

All comments received from members of the public and commenting agencies have been summarized in Appendix III. Copies of the comments in their entirety are provided in Appendix IV.

Conclusion

The subject lands are located within a *Settlement Area* under the Provincial Policy Statement and the Built-Up Area under the Growth Plan (2006). The property is

designated Urban and Environmental Protection Area (EPA) in the Regional Official Plan.

Where conflict exists between the land use policies of the Growth Plan and the PPS, the policies that provide greater protection to the natural environment prevail. Since the natural heritage policies of the PPS offer greater protection to PSW's within the Built-Up Area under the Growth Plan, the PPS prevails. In this regard, development within a wetland identified as provincially significant by the Province is not permitted by the PPS. As such, any amendment to remove the Environmental Protection Area designation on Schedule C of the Regional Official Plan to permit development within the PSW would be in conflict with the PPS and would not be considered good planning.

The PPS establishes that the Ontario Ministry of Natural Resources and Forestry is the authority on identifying wetland's as provincially significant using evaluation procedures established by the Province (i.e. OWES). The Province has confirmed that a portion of the subject property requested for removal from the Region's Environmental Protection Area designation forms part of the Draper's Creek Wetland Complex and maintains its provincial significance (Appendix IV). The Ministry of Natural Resources and Forestry provided detailed comments appended to the One-window Provincial response letter on ROPA 11 (dated April 15, 2016) detailing the issues with the EIS prepared by Beacon Environmental.

Consistent with the Provincial One-window response, the NPCA has commented that removal of the EPA designation from Schedule C of the Regional Official Plan, which reflects a mapped PSW identified by the Province, would be contrary to the PPS.

Members of the public who provided oral submission at the Statutory Public Meeting, as well as those who provided written correspondence expressed general opposition to the proposed amendment. To date, no members of the public have expressed their support for the application.

Based on the above, it is staff's recommendation that Regional Council refuses the application, as the proposed amendment is not consistent with Provincial and Regional policy and could not be considered good planning.

ALTERNATIVES REVIEWED

Refuse the Application to Amend the Regional Official Plan (as recommended by staff)

If Council refuses the application, the Environmental Protection Area designation would remain in place on Schedule C of the Regional Official Plan. Council's refusal would be consistent with Regional staff's recommendation and Provincial policy. Council refusal of the application would likely result in an appeal by the applicant to the Ontario

Municipal Board. In this circumstance, Regional Legal Counsel would request the matter be consolidated with the OMB hearing currently in progress.

Approve the Application to Amend the Regional Official Plan

If Council approves the application, the Official Plan Amendment and By-law adopting the Amendment would need to be brought forward for Council approval. The designation would be removed from Schedule C of the Regional Official Plan, contrary to the directions of Provincial policy regarding provincially significant wetlands.

In this circumstance, appeals may be lodged by the Province, the City of Welland and by other parties who spoke in opposition to the application at the Public Meeting. Should an appeal be lodged, Council would be required to commission legal and planning expertise to defend Regional Council's decision at the Board, as approval of the amendment would be contrary to staff's recommendation and opinions previously expressed at the Ontario Municipal Board.

Defer Consideration of the Application to Amend the Regional Official Plan

If deferred, a Regional Council decision would have to be rendered before August 31, 2016 or the applicant would be eligible to lodge an appeal of Council's non-decision within the 180-day legislated processing period, pursuant to the *Planning Act*.

The applicant has requested that the application process be expedited in order to consolidate the Regional amendment with the local appeals currently before the Board. Should the item be deferred, there would be no Regional Council position on ROPA 11 to present before the Board.

ORIGIN OF REPORT

This report is being brought forward by staff in order to seek a decision by Regional Council on Regional Official Plan Amendment 11 (ROPA 11).

OTHER PERTINENT REPORTS

- PDS-16-2016, Regional Official Plan Amendment 11 (ROPA 11) – Amendment Initiation Report
- PDS-18-2016, Regional Official Plan Amendment 11 (ROPA 11) – Statutory Public Meeting Report
- ICP 67- 2011, Approval of the New Welland Official Plan
- ICP 107-2013, Statutory Public Meeting and Final Recommendation Report, ROPA 4, 2013, Urban Area Boundary Modifications, City Of Welland

Original document is signed.

Rino Mostacci
Commissioner
Planning and Development Services

Original document is signed.

Maurice (Mo) Lewis
Acting Chief Administrative Officer

This report was prepared by Morgan Casciani, MCIP, RPP, Senior Development Planner and reviewed by Pat Busnello, MCIP, RPP, Manager of Development Planning, Marilyn Radman, MCIP, RPP, Associate Director of Development Planning and Urban Design, and Stephen Chisholm, Legal Counsel.

APPENDICES

Appendix I	Key Map of the Subject Lands with EPA Layer
Appendix II	City of Welland Report P & B-2015-25 (Dated June 16, 2015)
Appendix III	Summarized Public and Agency Comments
Appendix IV	Public and Agency Comments (As submitted to the Region)

Appendix I Key Map of the Subject Lands with EPA Layer

