

June 26, 2020

Mr. Kyle Plas
Coordinator of Development Review
Burlington City Building Department
PO Box 5013
426 Brant Street,
Burlington, ON L7R 3Z6

**Re: Paletta International Corporation (Penta Properties Inc.)
 Official Plan amendment, Re-zoning, Draft Plan of Subdivision
 File No's: 505-12/04, 520-23/04, 24T-04006/B
 City of Burlington, Region of Halton**

Dear Mr. Plas:

Staff of the Niagara Escarpment Commission has received the above-noted *Planning Act* applications and the following related technical studies and plans from the City of Burlington:

- Environmental Impact Assessment, August 2018
- Functional Servicing Report, August 2018
- Planning Justification Report, August 2018
- Slope Stability Assessment, March 2018
- Visual Impact Assessment, August 2018
- Draft plan of subdivision, August 2018.

The portion of the subject lands that is within the Niagara Escarpment Plan (NEP) Area and within the Area of Development Control, is north of the Hydro Easement and includes Horning Road. The latest development concept, as shown on the August 2018 draft plan, as it relates to the NEP Area, includes the following:

- 10 lots with 9 single dwellings
- A proposed water reservoir or water tower on one of the above lots
- Re-alignment and widening of Horning Road
- Extension of municipal servicing (water, stormwater and sewer).

NEC staff has been asked to provide comments to the City with respect to the *Planning Act* applications, but there are related matters that have bearing on these applications and inform our comments.

Applications under the Niagara Escarpment Planning and Development Act (NEPDA)

1. Application to amend the NEP (File No. UA 24): Paletta International applied to amend the NEP during the Co-ordinated Land Use Plan Review in May 2015. The application proposed to change the designation of the subject lands to Escarpment Rural Area and to request urban servicing. The NEC did not support that amendment. A final decision was made by the government on March 5, 2020 to approve the Plan Amendment, in part. The specific wording of the Amendment which was made effective as of February 13, 2020, is as follows:

Notwithstanding Part 2.7.2, Part 2.12.5 and Part 2.12.7 of this Plan, infrastructure and municipal servicing are permitted at Part of Lots 7 and 8, and part of the road allowance between Lots 7 and 8, part of Horning Road (also known as Given Road, also known as Applegarth Road) in Lots 7 and 8, Concession 2, Geographic Township of East Flamborough, City of Burlington, Regional Municipality of Halton, on lands designated Escarpment Protection Area and Escarpment Natural Area, within the North Aldershot Policy Area on Map 3 of the Niagara Escarpment Plan.

2. Application for a Development Permit (HR/18-19/239): Paletta/Penta submitted a Development Permit application on September 6, 2018. The NEC circulated this application on April 3, 2020, following the decision on the Plan Amendment, and is awaiting municipal and agency comments (due July 13, 2020). A decision on the *Planning Act* matters, for the portion of the property within the NEP Area, cannot be made until the decisions on the NEPDA applications has been made in accordance with Section 24(3) of the Act.
3. NEC staff will be evaluating the Development Permit application in relation to the NEP 2017, the Growth Plan 2019 and the Provincial Policy Statement 2020.
4. Application for Development Permit (HT/19-20/181): This application submitted by the City of Burlington is for the widening of Waterdown Road within the NEP Area only and is currently under review by NEC staff. The road abuts the subject lands. Discussions between NEC staff, the planning consultant for Penta Properties and City staff have been held with respect to the intersection of Waterdown and Horning Roads and other traffic and servicing issues.

Parkway Belt West Plan (PBWP)

Although Amendment No. 141 to the PBWP deleted certain lands from the Parkway Belt, and the PBWP ceased to apply to the lands in accordance with S. 22.1 of the *Ontario Planning and Development Act*, the Hydro corridor is still designated Electric Power Facility within the Public Use Area in Section 5.4.1 of the PBWP. Permitted uses in the Public Use Area include linear transportation facilities.

Therefore, NEC staff does not agree with the planning opinion of Metropolitan Consulting that the PBWP does not apply to the lands that are the subject of the Planning Act application. A decision on a Provincial Class EA is still required to permit the crossing of the Hydro Corridor with the proposed extension of Horning Road and the extension of servicing to lands out the NEP Area.

Review of technical studies

1. Environmental Impact Assessment:

- The EIA states on page 51, “The lands north of the hydro corridor within the NEP are not part of the current application but are within the study area for the Subject Lands.” This statement needs to be clarified. It is the understanding of NEC staff that the development listed on page 1 of this letter is proposed within the NEP Area. The applicant has submitted both a Plan Amendment and a Development Permit application for the development.
- Section 1.4.4 of the EIA incorrectly states that the *Niagara Escarpment Planning and Development Act* (NEPDA) was first drafted in 1990. The NEPDA came into effect in 1973. The first NEP came into effect in 1985 and was updated in 2017. The NEP 2017 applies to the proposed development within the NEP Area. The EIA also incorrectly states in the same section and in Section 4.0 that the designation of the subject lands is Escarpment Protection Area. A portion of the subject lands is also Escarpment Natural Area as noted on Figure 1 of the PJR and Figure 2 of the EIA. This is significant as the NEP, Part 2.12 (Infrastructure) requires that “infrastructure shall avoid Escarpment Natural Areas, unless the project has been deemed necessary to the public interest after all other alternatives have been considered”. The EIA, Section 4, does not address this Development Criterion.
- Species at Risk are identified on the subject lands. Since the EIA was completed in 2018, responsibility for Species at Risk has been transferred to the Ministry of Environment, Conservation and Parks (MECP). Although it is stated in the EIA that “MNR did not note any concerns”, it will be necessary for the applicant to consult with the MECP to confirm in writing that the proposed development is in compliance with the *Endangered Species Act*, otherwise, in accordance with NEP Policy 2.7.8, development is not permitted in the habitat of an endangered and threatened species.
- Section 6.1.8 of the EIA identifies that 3.76 ha of significant woodland will be removed within the NEP Area. The policy test is not “no negative impact” as suggested in the EIA. Part 2.7 of the NEP identifies that significant woodlands are key natural heritage features (KNHF). Development is not permitted in KNHF within the NEP Area. Although

there are exceptions to the prohibition (Part 2.7.2), the proposed development does not meet the exceptions. Specifically, development of a single dwelling on an existing lot of record is an exception but the proposed lots are not existing lots of record. A Development Permit for the proposed lots has not been approved. Secondly, infrastructure is a possible exception to the prohibition, but it must be demonstrated that there is no alternative. As it relates to the proposed water reservoir, the Servicing Study suggested an alternate location outside the NEP Area. The determination and evaluation of alternatives is usually undertaken through a Municipal Class Environmental Assessment (EA), but one has not been undertaken for the water reservoir, the road improvements or the proposed servicing. A Provincial Class EA is required for the hydro crossing.

- The objective of the natural heritage policies in the NEP is to “protect and where possible, enhance natural heritage features and functions, in order to maintain the diversity and connectivity of the continuous natural environment”. This is not achieved by the proposed development. Instead, it is proposed that off-site compensation could be a condition of development. The EIA does not justify the removal of the significant woodlands or demonstrate how the policies of the NEP are achieved. This should be addressed before detailed design and not as a condition of approval in order to determine if the impact of the proposed lots, reservoir and road widening can be avoided through the design of the development. A detailed tree removal and tree protection plan should be provided to confirm the extent of the loss of trees and other vegetation within the NEP Area.
- Table 23 (Wildlife List) of the EIA was not included in our copy. Please provide a copy of this Table.
- Given that the EIA concludes that it would benefit from a review of other studies that were not available at the time of writing, will the EIA be updated to confirm whether its conclusions are still valid?
- Lastly, NEC staff has been receiving comments from area residents as a result of the circulation of the Development Permit application for the lands on Horning Road. One resident of Ireson Road provided observations of numerous bird species on their property and photographs of some species of birds including what appears to be a species of Special Concern. Given that the bird surveys described in the EIS within the NEP Area date back to 2012, will updated bird surveys be undertaken? Part 2.7.1 of the NEP prohibits development within the habitat of special concern species in Escarpment Natural and Protection Areas. Has there been any recent consultation with the Ministry of Environment, Conservation and Parks

(MECP) who are now responsible for Species at Risk, in relation to the proposed development?

2. Functional servicing report:

- Figure 1-1 identifies lands within the NEP as “Not to be revised”. This is misleading. Development including lot creation, road re-alignment and construction of services are all proposed as part of the subject *Planning Act* applications and the Development Permit application.
- Connecting the subject lands to servicing, within the NEP Area, required an Amendment to the Niagara Escarpment Plan. Approval of the Amendment does not extend to other properties on Horning Road that are on private services. The impact of the proposed development on those properties would have to be monitored to ensure that any impacts on the private services is addressed either through restoration of the private services by the applicant or to determine if those properties might be eligible for connection to municipal services in accordance with NEP policy in Part 2.12.7.

3. Planning Justification Report (PJR):

- The lands are subject to the Niagara Escarpment Plan 2017.
- The subject lands were added to the NEP Area in 2005 when the Greenbelt Plan came into effect.
- Part 2.2.3 of the PJR, page 14 notes that significant woodland is being removed within the NEP Area “which is not part of the 2018 revisions”. This statement needs to be explained. If the applicant is not seeking planning approvals within the NEP Area, they should not be shown on the draft plan. It is the understanding of the NEC that development is being proposed in the NEP Area by virtue of the Development Permit application. Development is not permitted within a key natural heritage feature (KNHF) which includes a significant woodland except for a single dwelling on an existing lot of record. As the proposed lots are only draft approved, they do not meet the NEP definition of an “existing lot of record”. Infrastructure may be permitted in a KNHF if the project has been deemed necessary to the public interest after all alternatives have been considered. A municipal Class EA evaluating alternatives to the proposed water tower/water reservoir has not been undertaken to demonstrate the assessment of alternatives and the feasibility of that infrastructure. The objective of the NEP policies on Natural Heritage are to “protect and where possible enhance natural heritage features and functions. The policy test in the NEP is not “no negative impact” or “net gain” as implied in the PJR. The approval of the Niagara Escarpment Plan Amendment to allow servicing does not exempt the applications from having to meet the applicable development criteria in the NEP.
- Part 2.3 of the PJR states “the policies of the NEP are not applicable”. This is incorrect. The lands north of the hydro corridor are within the NEP

Area and the Area of Development Control. If the policies of the NEP were not applicable, why did the applicant apply for an Amendment to the Niagara Escarpment Plan and a Development Permit?

- Part 2.3 of the PJR is deficient as it does not assess the proposed development against the Purpose, Objectives, policies and development criteria of the NEP 2017. NEC staff do not agree that the proposed development conforms in all respects with the NEP.
- There is a list of Figures in the Table of Contents. These figures were not included in the copy of the PJR that we received and do not appear to be included in the document posted on the City's website. We would appreciate receiving the missing Figures.
- NEC staff do not agree with the conclusion of the PJR that the "proposed development satisfactorily addresses the applicable policies at the provincial ...level of government", as the PJR has not evaluated the applicable NEP policies and development criteria. The conclusion that the provision of water and wastewater services is feasible has not been confirmed by a Class EA for the proposed reservoir on the slope of the Niagara Escarpment.

4. Slope Stability Assessment:

- This report appears to examine slope stability only on lands that are outside the NEP Area;
- There is no examination of the implications on slope stability for the existing homes or for constructing houses, a reservoir or water tower at the edge of the Escarpment;
- The subject lands are below the brow of the Escarpment;
- The report is deficient in the opinion of NEC staff as it does not evaluate Part 2.5 of the NEP, Development Affecting Steep Slopes, and does not demonstrate how disturbance of the slope and stability of the Escarpment would be minimized.
- NEC staff recently received a more detailed cross section of the portion of the lands within the NEP area to demonstrate how the development might be feasible on the slope of the Escarpment. Additional information regarding the need to import fill to achieve the proposed development and the extension of Horning Road would also be helpful to determine if NEP policy in Part 2.13.9 and 10 has been met.

5. Visual Impact Assessment (VIA):

- The standard process for completing a Visual Impact Assessment for lands within the NEP Area involves establishing a Terms of Reference (TOR) to set out the agreed scope of work in accordance with NEC Guidelines. NEC staff met with Metropolitan Consulting, but a scope or work was not agreed to before the VIA was completed.
- Although there was a draft TOR, not everything required in the TOR are included in the latest VIA.

- Grading information for lands in the NEP is not provided and therefore it is difficult to confirm the evaluation of visual impact. Baseline information including existing elevation in metres above sea level (MASL), is not provided.
- Pictorial information about visual impact has no scale, setbacks, information about building heights, and so it is difficult to evaluate or confirm the study conclusions or replicate the findings.
- Impacts related to the widening of Waterdown Road have not been assessed.
- The visual analysis should draw on the findings of the other technical reports to confirm the impact on views from servicing installation and road widening.
- Visual impact from public lands (e.g. public roads and parks in the Niagara Escarpment Parks and Open Space System), as required by the NEC VIA Guidelines, has not been completed for all potentially impacted roads and public lands.
- Line of sight cross sections do not extend to the brow of the Niagara Escarpment, north of Horning Road.
- Photos lack locational context (GPS co-ordinates or location on a map) to assist in understanding what the photo is intended to demonstrate. The location of a water tower is not shown on the photos.
- The study assesses the visual impact of both the proposed inground reservoir and a water tower (within the NEP Area). Since there has been no Municipal Class Environmental Assessment (EA) and there is no detailed design, it is difficult to accurately assess the visual impact of either facility. Furthermore, as stated above, the extension of servicing into the NEP Area has not been approved.
- The opportunity to improve a view of the Escarpment could be achieved by the extension of Flatt Road but such a view could be impeded, if the water tower is placed at Location 2 on a lot in the NEP Area.
- There was no analysis of the Scenic Resources policies in the NEP in the VIA or the PJR and no reference to the Landscape Evaluation Study or scenic rankings of the subject lands.
- Specific questions regarding the study methodology include the following:
 - Page 3 - What information was imported from the 2015 SWOOP? What was used for elevation values?
 - Page 8 – How does a photo confirm an obstructed field of view? Mitigation recommendations should also include revising the layout of the development and method of servicing, not just the visual aspects of the built form.
 - Figure 2.1 – Was the removal of vegetation associated with the development and widening of Waterdown Road taken into consideration in developing the viewshed mapping on this Figure?
 - Figures 3.3. 3.4 – These are labelled as “Approved Development”. Since a Development Permit has not been approved, the title is not correct. The Figures have no scale making it difficult to verify the

- accuracy of the information. The Figure does not show the potential location for a water reservoir or water tower.
- Table 3 – removal of vegetation in Sub Area 1 and replacement elsewhere does not mitigate visual impact. It is not clear what is meant by “proposed Horning Road extension should be scarified and roughened to promote visual unity”. The change to the road alignment and its extension will result in further vegetation removal and greater visual impact. NEC staff does not agree that the visual impact of the proposed development will be “net-neutral or net-positive”
 - Appendix C – Page 1: What was the 2015 South Western Ontario Orthographic Project used for? What elevation values were taken from the ESRI Topographic base map? There is reference to the Niagara Escarpment Policy Area; do you mean Plan Area? Please provide details of “topographic field survey that was relied on. Page 2: There are 2 alternative sites for the water tower, but the data cited in the report regarding their location is the same for both sites. Please provide the correct data for both locations. Page 3: Incorrect elevations are provided for the elevated water tower location #2. According to the report’s own data, the base is at 191.5 metres and the top is at 203.5 MASL.
 - Overall, we found the information with respect to visual impact difficult to verify. The report includes excerpts from the NEP policies in Part 2.13, Scenic Resources but there is no analysis in the VIA or the PJR as to whether the proposed development is in conformity with those policies.
 - NEC staff were recently advised that revisions to the VIA are underway and that a revised VIA will be submitted.
6. Geomorphic Assessment – this study undertook a geomorphic assessment of three tributaries of Grindstone Creek on lands south of the Hydro corridor, outside the NEP Area. The policies of the NEP in Part 2.6, Development Affecting Water Resources, support ensuring that hydrologic features and functions at the local and watershed level are protected and where possible, enhanced. NEC staff would support measures related to the development that might protect water resources in terms of quality and quantity at the surface and groundwater level that would be satisfactory to the City and Conservation Halton.
7. Hydrological Study and Stormwater Management Report – Although the lands in the NEP Area are shown on Figures 1 and 5 of the report as being within the drainage area, no monitoring was undertaken within the NEP Area according to Figure 2, although boreholes were drilled according Figure 11. NEC staff cannot draw any conclusions about policy conflicts with respect to the development proposed in the NEP Area. Additional work would have to be undertaken to support the related Development Permit application and demonstrate that the

application is not in conflict with NEP policy, particularly Part 2.6, subsections 9 and 10.

Sections 5.1 and 11 of the report indicate that the roads in the development would have a rural cross section with 5 metre ditches on either side. NEC staff is not aware that if such a road configuration is proposed on Horning Road, the road has sufficient right of way to accommodate it without impacting trees, vegetation or existing buildings. Further the report indicates in Table 14 that superpipes are proposed to be constructed under Horning Road. It must be demonstrated that there is enough right of way to accommodate the pipes and what the impact of that construction could be on the Escarpment environment given that the current right of way is quite narrow and surrounded by existing buildings, homes and trees. Further detail is required in this regard in order for NEC staff to comment on the impact and whether the proposed road design is in conflict with NEP policy.

The analysis in Section 5.11 of the report is based on the assumption of 8 single dwellings being constructed on Horning Road, however Section 5.7 of the report says 10 lots. The current plan of subdivision proposes 10 lots, one of which is proposed as the location of a future reservoir. Was the development of the reservoir factored into the calculation for Sub-catchment 512?

The same resident noted above in paragraph 1 also identified a stream on their property, originating from the north, that does not appear to be identified in the EIS or the Hydrological Study. Permanent and intermittent streams are key hydrologic features (KHF) in the NEP. Development, with only limited exceptions noted in Part 2.6.2 of the NEP, is not permitted in a KHF. The development should be further assessed in consideration of the policies of Part 2.6.3 and 4 of the NEP.

8. Archaeological Assessment – NEC staff notes that based on the data provided by the Ministry of Heritage, Sport, Tourism and Culture Industries, the subject lands have archaeological potential. Part 2.10.1 of the NEP states that development shall not be permitted on lands containing archaeological resources or areas of archaeological potential unless significant archaeological resources are conserved. NEC staff has not received an archaeological assessment from the applicant, but one must be undertaken in accordance with NEP policy.
9. Draft Plan of subdivision (August 2018):
 - Lots 214-223 on Horning Road are not listed on the Schedule of Land Use;
 - 10 residential lots are shown but other technical reports show two of the lots are potential locations for a reservoir or water tower. This should be clarified on the draft plan;

- Horning Road is labelled as being “re-aligned” but it is also proposed to be extended and widened, subject to the approval of a Provincial Class EA for the crossing of the Hydro Easement. It would be helpful to have a drawing comparing the proposed road alignment in the draft approved plan to the proposed alignment, width and cross section in the current proposed plan, to clarify the amount of landform alteration and vegetation removal being proposed;
- The draft plan of subdivision should be revised to show the reduction in land area as a result of the land acquisition by the City of Burlington to facilitate the widening of Waterdown Road. A related Development Permit application is currently under consideration by the NEC for the widening within the NEP Area (HT/2019-20/181).
- Please provide lot sizes for Lots 214-223 as they are not listed in the title block.

We trust that these comments are of assistance in evaluating the subject *Planning Act* applications. We look forward to continued consultation with the applicant and the agencies on these matters.

Yours truly,

A handwritten signature in cursive script that reads "Nancy Mott".

Nancy Mott, MCIP, RPP
Senior Strategic Advisor

cc. Sunny Zhai, Counsel, Legal Services Branch, MNRF
Adam Huyke, Region of Halton
Kellie McCormack, Conservation Halton
Katie Novacek, Peterborough, Ministry of Natural Resources and Forestry
Steve Strong, Aurora District, Ministry of Natural Resources and Forestry