

## Staff Report 2021-0440

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Meeting Date: December 6, 2021

Subject: Proposed Zoning By-law Amendment (Temporary Use), File No. 2020-0001, Glen Schnarr and Associates Inc. on behalf of 10795 Highway 9, Ward 4

Submitted By: Nick McDonald, Meridian Planning Consultants, on behalf of the Planning Department, Town of Caledon

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### RECOMMENDATION

That the proposed Zoning By-law Amendment (Temporary Use) attached as Schedule 'D' to Staff Report 2021-0440, be refused.

### REPORT HIGHLIGHTS

- An application for Zoning By-law Amendment – Temporary Use (RZ 2020-0001) was filed by Glen Schnarr and Associates Inc. on behalf of Nucon Property Development Inc., on January 7, 2020. After initially being deemed incomplete, the applications were deemed complete by the Town on February 27, 2020.
- The applicant proposes to rezone the property from Rural - Oak Ridges Moraine (A2-ORM) and Environmental Policy Area 2 Zone - Oak Ridges Moraine (EPA2-ORM) to Rural - Oak Ridges Moraine – Temporary XX (A2-ORM-TXX) and Environmental Policy Area 2 Zone - Oak Ridges Moraine – Temporary XX (EPA2-ORM-TXX) to permit a business office, contractor's facility, outdoor open storage, and other site works for a temporary duration of three (3) years.
- A formal Public Meeting was held on September 8, 2020, in accordance with the requirements of the *Planning Act*.
- Staff has reviewed the proposal in conjunction with public, agency and department comments and the applicable planning policy framework and is of the opinion that the proposal is not consistent with the Provincial Policy Statement, 2020, and does not conform to the A Place to Grow: Growth Plan for the Greater Golden Horseshoe (2020), the Oak Ridges Moraine Conservation Plan (2017) and the Region of Peel Official Plan. The proposal does not conform to the Town of Caledon Official Plan, which sets out the conditions under which a temporary use by-law can be considered. In addition, it is Town staff's opinion that the proposal does not represent good planning and is not in the public interest, and it is therefore recommended that it be refused.

### DISCUSSION

The purpose of this Report is to recommend Council refuse the proposed Zoning By-law Amendment (Temporary Use) application.

#### Subject Property

The Subject Lands are municipally known as 10795 Highway 9 and are located on the south side of Highway 9, west of Tottenham Road. The Subject Lands are legally described as Part of Lot 26, Concession 10 (Albion), designated as Part 1 on Reference



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Plan 43R-17925. The property is irregular in shape and is approximately 3.94 ha (9.76 ac) in size having a lot frontage of approximately 42 m (138 ft) along Highway 9 and a lot depth of approximately 400 m (1,312 ft). See Schedule “A” – Location Map, attached.

The Subject Lands are currently being used as a contractor's facility and have been used as such for over 10 years, as confirmed in the Planning Justification Report prepared by the applicant (Glen Schnarr and Associates Inc.). Lands directly to the west are the site of three rural residences and further to the west is a licensed gravel pit operated by Brock Aggregates. To the east is a property that is zoned to permit a motor vehicle repair facility. Further to the east is a medical spa and other rural residences. Adjacent land uses are shown on Schedule “B” – Aerial Photograph, attached.

### **Background**

The Subject Lands were purchased by Nucon Property Development Inc. in 2006. Prior to this purchase, much of the Subject Lands were cleared and there was evidence of some vehicles and equipment being stored on the rear of the site, according to 2005 air photos.

In 2006, a Site Plan application was submitted to the Town to construct an addition to the existing commercial garage on the Subject Lands. Concurrently with the Site Plan application, a Minor Variance application (File No. ‘A’ 15-07) was submitted to request the expansion of a legal non-conforming use of a commercial garage. The Minor Variance application was approved on May 16, 2007. Town staff supported the request for a Minor Variance at the time based on the historical use of the land.

On August 24, 2007, Site Plan Approval was granted (File No: SPA 2006-0063) and permitted the continued use of the land as a commercial garage (now classified as a motor vehicle repair facility by the current Zoning By-law).

By 2007, a considerable number of vehicles, equipment and disposal bins were located on the Subject Lands and on May 5, 2009, the owner received a letter from Town indicating that the equipment and materials stored on the Subject Lands (such as disposal bins) were not in conformity with the Zoning By-law.

As a result, and on February 23, 2010, the owner contacted the Town indicating that they wished to submit a Minor Variance application to permit the non-conforming open storage uses. In response, Town staff advised that an Official Plan Amendment, Zoning By-law Amendment as well as Site Plan Approval would be required to permit open storage on the Subject Lands. An application for Minor Variance was then not submitted. Notwithstanding the above, it appears as if the use continued unabated since approximately 2007, according to a review of historical aerial photography.

On November 28, 2017, an application for a Legal Non-Conforming Use was submitted to the Town’s Planning Department requesting that the legal non-conforming use permission for a motor vehicle repair facility be revised to permit a contractor’s yard, office and outside storage.

Under the Zoning By-law, in order for a use to obtain Legal Non-Conforming status, the use:

- a) must have been legally established under the applicable zoning at the time; and,

- b) must have been continuous and uninterrupted since the time of legal establishment.

On this basis, the applicant was to demonstrate that both of the above criteria are met, whereby that a contractor's yard with outside storage was legally established prior to and has continued uninterrupted since that time.

On February 13, 2019, the Town advised that upon a review of the submitted affidavits as well as Town records, there was insufficient information to recognize the use of a contractor's yard, office and outside storage as a Legal Non-Conforming Use. The Town then refused the application. It was then in January 2020 that the applicant submitted the Zoning By-law Amendment (Temporary Use) application that is the subject of this report.

### **Proposed Development**

The application proposes to amend Zoning By-law 2006-50 to permit the existing business office, contractor's facility, outdoor open storage, and gasoline pump island for a temporary duration of three (3) years. In effect, the application proposes to temporarily legalize a use that is not permitted by the Town's Zoning By-law and which has been occurring on the Subject Lands since 2007.

As illustrated on Schedule "C" Site Concept Plan, attached, the site contains:

- Two existing accesses to Highway 9 – one on the east side of the property and one on the west side;
- A gravel parking area at the front of the site along Highway 9, but also in various areas throughout the site;
- Two buildings: one near the front of the site used for a business office (2 storey) and a second further south (to the rear of the site) used for the contractor's facility;
- A septic tank and bed between the two buildings;
- A contractor's yard and open storage south of the second building (to the rear of the site), covering more than half of the property; and,
- A treed area along the rear of the property.

All existing setbacks and landscaping are proposed to be maintained through the temporary use application process.

The Subject Lands are currently zoned Rural – Oak Ridges Moraine (A2-ORM) and Environmental Policy Area 2 Zone – Oak Ridges Moraine (EPA2-ORM) in Zoning By-law 2006-50, as amended. The applicant is proposing to rezone the lands for a temporary period of three (3) years as follows:

- A2-ORM Zone:
  - To rezone the portion of the Subject Lands from "A2-ORM" to "A2-ORM-TXX" to permit a proposed business office use;
  - To amend the minimum lot area to 3.9 ha;
  - To amend the minimum lot frontage to 40 m; and,
  - To amend the minimum front yard setback to 16 m.

- EPA2–ORM Zone:
  - To rezone the portion of the Subject Lands from “EPA2-ORM” to “EPA2–ORM-TXXX” to permit the proposed contractor’s yard, accessory open storage area and accessory gasoline pump island; and,
  - To amend the minimum exterior side yard to 8.45 m.

See attached Schedule ‘D’ - Temporary Use By-law

It is important to note that Site Plan Control would be applicable to the proposed use of the land. A Site Plan application has not been received to date.

### **Planning Review**

The Town has completed a planning review of the proposed application, in conjunction with the Provincial Policy Statement, 2020, Oak Ridges Moraine Conservation Plan, 2017, the Region of Peel Official Plan, the Town of Caledon Official Plan and Comprehensive Zoning By-law 2006-50. In addition, supporting technical studies and reports, as well as comments and recommendations provided by internal departments, external review agencies and the public also informed the review of these applications. The focus of the planning review has been on the Town’s Official Plan, which sets out the criteria under which temporary use by-laws can be considered.

#### Town of Caledon Official Plan

The Town’s Official Plan (OP) designates the subject property as Palgrave Estate Residential Community on Schedule “A”, Town of Caledon Land Use Plan, Natural Linkage Area on Schedule “P”, Oak Ridges Moraine Conservation Plan Land Use Designation, High Aquifer Vulnerability on Schedule “P-1”, Oak Ridges Moraine Plan Aquifer Vulnerability Areas and Landform Conservation Area Category 2 on Schedule “P-2, Oak Ridges Moraine Conservation Plan Landform Conservation Areas. The lands are also designated Policy Area 4 on Schedule "G", Palgrave Estate Residential Community and Environmental Zone 1 on Schedule “I”, Palgrave Estate Residential Community Environmental Zoning.

Section 39(1) of the Planning Act authorizes the Councils of local municipalities to authorize the temporary use of land, buildings or structures for any purpose that is otherwise prohibited by the zoning by-law in effect.

Section 6.2.13 of the Town’s Official Plan provides guidance on whether it is good planning and in the overall public interest to consider the passage of a temporary use by-law. In this regard, Section 6.2.13.1 below sets out what the purpose of temporary use by-laws are:

*"Notwithstanding the other policies contained in the Plan, Council may pass a Temporary Use By-law to permit a specific use on a site for renewable periods up to three (3) years in accordance with the provisions of the Planning Act. Temporary Use By-laws are not to be used in a way that will prevent the use of land for its intended purpose. Temporary Use By-laws provide a way to zone lands where it is known that a specific use is appropriate*

*in the short-term. For example a parking lot to be permitted for two (2) years on a future office site; or on an event basis, a fair on a shopping centre parking lot for the month of July for a three (3) year period."*

As per the above, temporary use by-laws provide a way to zone lands where it is known that a specific use is appropriate in the short term. In this regard, the test is that use must be 'appropriate in the short term'. Examples are also provided, which set out what is intended when a temporary use by-law is being considered, with those examples being a parking lot on a future office site or a fair on a shopping centre site.

Section 6.2.1.3 then indicates the following:

*"Prior to the passing of a Temporary Use By-law, Council shall be satisfied that the proposed temporary use meets the following conditions:*

- a) That it is compatible with neighbouring land use activities;*
- b) That adequate parking can be provided;*
- c) That an adverse impact on traffic will not be created;*
- d) That the construction of a permanent building or structure is not encouraged;*
- e) That the use cannot become permanent and difficult to terminate; and,*
- f) That adverse environmental impacts will be avoided, minimized or mitigated."*

It is Town staff's view that all of the above conditions need to be met as a result of the use of the word 'and' in sub-section e), which means that if one condition is not satisfied, this section in the Official Plan would not be satisfied. In addition to the above, each of the conditions must be clearly met, meaning that there has to be no doubt that the condition has been satisfied.

Each of the conditions in this section is discussed below in further detail:

***a) That it is compatible with neighbouring land use activities***

The Subject Lands have been used as a demolition, excavation and environmental disposal business since 2007 and the use of the lands as such for over 10 years has been confirmed in the Planning Justification Report prepared by GSAI (the applicant). This land use is not a permitted use on the Subject Lands by the Town's Zoning By-law. Lands directly to the west are the site of three rural residences and further to the west is a licensed gravel pit operated by Brock Aggregates. To the east is a property that is zoned to permit a motor vehicle repair facility. Further to the east is a medical spa and other rural residences.

As noted above, the Subject Lands are also designated Policy Area 4 on Schedule "G" - Palgrave Estate Residential Community. The Palgrave Estates Residential Community is recognized in the Town's Official Plan as a growing and developing estate residential community within the Oak Ridges Moraine Conservation Plan (ORMCP). However, Section 7.1.5.4 indicates that Policy Area 4 is unsuitable for estate residential development since it corresponds to the ORMCP Natural Core Area and Natural Linkage Area designations on Schedule "P" of the Town's Official Plan (Policy 7.1.5.5).

Also as noted above, the Subject Lands are located within the Natural Linkage designation of the ORMCP. Natural Linkage Areas are a central corridor system that support or have the potential to support movement of plants and animals among the Natural Core Areas, Natural Linkage Areas, river valleys and stream corridors (ORMCP Policy 10.1.2).

Policy 12.1 (d) and (e) of the ORMCP states that the purpose of Natural Linkage areas is to maintain, and where possible improve or restore, the ecological integrity of the Plan Area, by, maintaining the quantity and quality of groundwater and surface water and maintaining groundwater recharge.

ORMCP Policy 12.1.3 indicates that the only permitted uses that are allowed are fish, wildlife and forest management; conservation projects and flood and erosion control projects; agricultural uses; infrastructure uses; home businesses; home industries; bed and breakfast establishments; on-farm diversified uses; low intensity recreational; unserviced parks; plus some aggregate resource operations, wayside pits and agricultural-related uses.

Based on this list of permitted uses, the current uses are not permitted by the Town's Zoning By-law on the Subject Lands and are not permitted by the ORMCP, and this has been confirmed in the Planning Justification Report prepared by the applicant. However, this same report indicates that the existing use will 'operate and function similarly to the permitted motor vehicle repair facility use'. However, no evidence that this will be the case has been provided and it is not clear how a demolition business involving the storage of vehicles and equipment related to that business plus the storage of disposal bins is similar to a motor vehicle repair facility.

As a result, the proposed temporary use by-law would have the effect of temporarily permitting uses on the Subject Lands that are not permitted by the Oak Ridges Moraine Conservation Plan and which are not consistent with the planned function of Natural Linkage Areas. This condition is therefore not satisfied.

***b) That adequate parking can be provided***

It is not clear whether the required parking as shown in the plans submitted with Site Plan Application SPA 2006-0063 was ever implemented on the site. Based on historical air photos, the Existing Conditions Plan submitted by the applicant is not reflective of the actual ground conditions with regards to parking requirements. Zoning staff has identified numerous issues with parking including inadequately sized accessible spaces and illegal parking spaces throughout the site. As a result, a determination on whether this condition has been satisfied cannot be made at this time.

***c) That an adverse impact on traffic will not be created***

There are two existing accesses to Highway 9 from the Subject Lands, one on the east side of the property and one on the west side. The findings of the Traffic Assessment submitted indicate that there are no adverse impacts on traffic.

As Highway 9 is a Provincial Highway under the jurisdiction of the Ministry of Transportation (MTO), MTO was circulated on the application and has indicated that they

have no objection to the temporary use by-law 'for the 3 years if everything is existing on site'.

***d) That the construction of a permanent building or structure is not encouraged***

The Planning Justification Report submitted by the applicant indicates that the proposal does not seek construction of additional buildings, structures or services. As a result, this condition would be satisfied if the temporary use by-law did not permit additional permanent buildings or structures.

***e) That the use cannot become permanent and difficult to terminate***

It has been openly acknowledged by the applicant that the existing use has been operating for the last 10 years and as confirmed through the review of historical air photos, it has been in existence since 2007. Given the length of time that the use has been in existence, notwithstanding the fact that it does not conform to the Town's Zoning By-law, suggests that this use has become permanent and difficult to terminate. No evidence has been provided that indicates that the use will not be difficult to terminate at the expiry of the three year period. As a result, this condition has not been satisfied.

***f) That adverse environmental impacts will be avoided, minimized or mitigated***

The findings of the Phase II Environmental Site Assessment (ESA2) prepared by Safetech Environmental dated June 6, 2019 and the Hydrogeological Impact Assessment Report prepared by Safetech Environmental dated August 12, 2019, conclude that the groundwater at the site exceeds the Ministry of Environment, Conservation and Parks (MECP) limits for petroleum hydrocarbon compounds (PHC) and chloroform. As a result, the existing uses appear to have impacted and potentially will continue to impact the groundwater quality on site, which poses a potential risk to the public.

Town staff is of the opinion that the Hydrogeological Impact Assessment Report prepared by Safetech Environmental dated August 12, 2019 was inadequate and did not address the significance of the environmental land-use policy framework. Furthermore, Caledon staff is of the opinion that the ESA 1 and ESA 2 prepared by Safetech Environmental requires peer review as the findings indicate that the groundwater tested exceeds the MECP criteria for PHC F3, PHC F4 and Chloroform. Town staff understands that the Town of Caledon, Region of Peel, and MECP have been notified. There have been investigations into the groundwater contamination matter and MECP is in contact with the property owner on this matter.

As a result, this condition has not been satisfied.

***Conclusion***

As noted above, any application for a temporary use by-law must satisfy all of the conditions in the Official Plan and if it does not meet one condition, it would not conform to the Official Plan. In this case, it is Town staff's opinion that conditions a), e) and f) have not been satisfied. A determination cannot be made at this time on whether conditions b), and d) can be satisfied; however, given that three other conditions have not been satisfied, this is not as relevant at this time. As a result, the application for a temporary use by-law

for the Subject Lands does not conform to the Official Plan. It is noted that the Region of Peel also does not recommend approval of this application either.

In addition to the above, the establishment of the proposed temporary use would not conform to the Oak Ridges Moraine Conservation Plan (ORMCP) and since the Region Peel Official Plan incorporates and references the ORMCP, the proposal would not conform to the Region of Peel Official Plan either. The Region has provided comments indicating that the Region does not support the proposed use.

With respect to the Provincial Policy Statement (PPS), 2020, it is indicated that while Provincial Plans such as the ORMCP are to be read in conjunction with the PPS, the Provincial Plans take precedence over the policies of the PPS and in this case, the ORMCP contains extensive policies that are designed to protect features and functions on the Oak Ridges Moraine, and the proposed use does not conform to the ORMCP. In addition, Section 2.1.2 of the PPS states the following, which is in keeping with the ORMCP:

*"The diversity and connectivity of natural features in an area, and the long-term ecological function and biodiversity of natural heritage systems, should be maintained, restored or, where possible, improved, recognizing linkages between and among natural heritage features and areas, surface water features and ground water features."*

It is Town staff opinion that the proposed temporary use is not consistent with the above policy.

With respect to the Growth Plan, it too defers to the ORMCP for the making of decisions on matters on the Oak Ridges Moraine, particularly since the ORMCP provides more protection to the natural environment, which includes the Subject Lands in the Natural Linkage Area designation. As a result, the proposal does not conform to the Growth Plan.

It is Town staff's opinion that the proposal does not represent good planning and is not in the public interest, and it is therefore recommended that it be refused.

## **Consultation**

### **Notice of Application**

In accordance with the Planning Act, a Notice of Application was mailed to all landowners within 120 m (393.7 ft). In addition, the Notice was posted on the Town's website and placed in the Caledon Enterprise, Caledon Citizen and Alliston Harold on March 5, 2020.

As required by the Planning Act, a sign was posted on the property on March 5, 2020.

### **Agency/Department Consultation**

The subject applications were circulated to external agencies and internal departments for review and comment. Please refer to the Agency and Department Comment Sheet attached to this report as Schedule "E".



Public Meeting

In accordance with the Planning Act, a Notice of Public Meeting was mailed to all landowners within 120 m (393.7 ft). In addition, the Notice was posted on the Town's website and placed in the Caledon Enterprise, Caledon Citizen and Alliston Harold on August 13, 2020.

At the Public Meeting, 6 members of the public expressed concerns with the proposed development. The comments included concerns regarding hydrogeological and groundwater matters, environmental concerns, land use compatibility, impacts on the Oak Ridges Moraine, contamination and public safety, property standards and holding the Public Meeting virtually. A detailed summary of the public comments made at the September 8, 2020, Public Meeting is attached as Schedule "F" to this report.

A request was made by the public and Council to host another public meeting due to the significant concerns. This second public meeting was not held; however, through the review of the application, staff has determined that the proposed application cannot be supported and is recommending refusal.

**FINANCIAL IMPLICATIONS**

For property tax purposes, 10795 Highway 9 is currently assessed as mostly Residential (\$555,000 CVA). The Town's share of taxes levied, based on current value assessment is approximately \$3,500. As at November 14, 2021, the property tax account is determined to be current.

If the proposed development were to proceed as planned, (includes a contractor's facility and business office), the property's taxable assessment value would change to reflect any changes that would have taken place. The proposed activities are classified as retail until current Development Charges By-law. Redevelopment credits may become available subsequent to the conversion, demolition or removal of any qualifying existing buildings.

The specific Development Charge rates will be those that were in effect on the date when the application was deemed complete, i.e. February 27, 2020. Those rates were:

- Town of Caledon, \$57.10 per square metre of added floor space.
- Region of Peel, \$230.11 per square metre of added floor space.
- School Boards, \$9.69 per square metre of added floor space.

Interest on Development Charges will apply for the period February 28, 2020 through to the date on which those charges are received by the Town.

The Development Charges comments and estimates above are as at November 14, 2021 and are based upon information provided to the Town by the applicant, current By-laws in effect and current rates, which are indexed twice a year. For site plan or rezoning applications dated on or after January 1, 2020, Development Charges are calculated at rates applicable on the date when an application is determined to be complete; and are payable at the time of building permit issuance. Interest charges will apply for affected applications. For site plan or rezoning applications dated prior to January 1, 2020, Development Charges are calculated and payable at building permit issuance date. Development Charge by-laws and rates are subject to change. Further, proposed developments may change from the current proposal to the building permit stage. Any estimates provided will be updated based on changes in actual information related to the construction as provided in the building permit application.

**COUNCIL WORK PLAN**

**Connected Community:** To preserve heritage and natural areas.

**ATTACHMENTS**

- Schedule A: Location Map
- Schedule B: Aerial Photo
- Schedule C: Concept Plan
- Schedule D: Draft Zoning By-law Amendment
- Schedule E: Agency and Department Comment Sheet
- Schedule F: Public Comment and Response