STAFF REPORT: **Planning and Building Services Department**

REPORT TO:	**Planning & Building Services Committee**
MEETING DATE:	**October 5, 2009**
REPORT NO.:	**PL.09.107**
SUBJECT:	**Niagara Escarpment Commission – Land Use Protocol 2009 Radiocommunication and Broadcasting Antenna Systems**
PREPARED BY:	**Cindy Welsh, MCIP, RPP Senior Policy Planner**

A. Recommendations

THAT Council does hereby receive Planning Staff Report PL.09.107, Niagara Escarpment Commission – Land Use Protocol 2009 Radiocommunication and Broadcasting Antenna Systems; and

THAT Council support the Planning and Building Services Staff recommended modifications to the Niagara Escarpment Commission – Land Use Protocol 2009 Radiocommunication and Broadcasting Antenna Systems, as recommended in this report; and

THAT Council direct staff to forward these recommended modifications to the Niagara Escarpment Commission and the County of Grey; and

THAT Council authorize Planning and Building Services Staff to prepare and implement a Town of The Blue Mountains Protocol for Establishing Radiocommunication and Broadcasting Antenna Facilities.

B. Background

On August 20, 2009, the Niagara Escarpment Commission (NEC) adopted a Draft Land Use Protocol 2009 for Radiocommunications and Broadcasting Tower and Antenna Systems in the area of the Niagara Escarpment Plan (Attachment 1). This new protocol is to replace the version approved in 2001. The NEC has requested comments on the new protocol from the Town prior to finalization.

The rational for the NEC developing a Draft Protocol is that Industry Canada (IC), which regulates the installation of telecommunication towers and antenna, released new antenna siting and approval procedures entitled “Client Procedures Circular (CPC-2-0-03) Radiocommunication and Broadcasting Antenna Systems, Issue 4", in June 2007. These new procedures came into effect on January 1, 2008.

Industry Canada's new procedures outline the process that proponents must follow when seeking to install or modify antenna systems. In summary, the procedures require proponents to:

- investigate sharing or using existing infrastructure before proposing new antenna-supporting structures;
- contact the land use authority* (LUA) to determine local requirements regarding antenna systems (*a land use authority is any local authority that governs land use issues such as a local municipality, etc);
- undertake public notification and address relevant concerns by following either a local LUA protocol or Industry Canada's default process; and,
- satisfy Industry Canada's general and technical requirements.

The new procedures aim at ensuring greater community consultation through clearer processes for public notification and consultation, and added community involvement.

In addition to IC's procedures, proponents must comply with the *Canadian Environmental Assessment Act*, and Health Canada's *Safety Code 6 Guidelines for Exposure to Radio Frequency Fields*. Where applicable, the *Canadian Environmental Protection Act*, *Migratory Birds Convention Act* and *Species at Risk Act* must also be complied with.

The installation of telecommunication facilities are federally regulated and are not regulated by the provisions of the *Planning Ac*t. It is noted, however that in many cases, providers apply for site plan approval as a courtesy to the local municipality, even though they need not adhere to the process. As telecommunication towers are federally regulated, the installation of same is not regulated by the *Building Code Act* however, towers or equipment on or attached to buildings as well as associated equipment are.

Industry Canada encourages municipalities to develop their own protocols to manage the process of identifying their concerns, as well as those of the residents they represent, regarding tower and antenna installations. Therefore this report is twofold in that it is recommending modifications to the NEC Draft Protocol and the development of a municipal protocol for establishing radiocommunication and broadcasting antenna facilities within the Town.

Proposed Modifications – Niagara Escarpment Commission Draft Protocol

The following modifications are proposed to the NEC Draft Land Use Protocol 2009 for Radiocommunications and Broadcasting Tower and Antenna:

Part 3 – Application of Protocol

Delete "Pursuant to…radio operators." and replace with the following:

"The application of this protocol will be as follows:

Any proposals located within the Development Control Area of the Niagara Escarpment Plan shall be in accordance with the Niagara Escarpment Commission Radiocommunications and Broadcasting Tower and Antenna Protocol.

Where a land use planning authority has its own Radiocommunications and Broadcasting Tower and Antenna Protocol in place and is located within the Niagara Escarpment Plan area, any proposal that is to be located within the Niagara Escarpment Plan but outside of the Development Control Area shall be in accordance with the land use authority having its own approved Protocol. The land use planning authority will circulate the NEC on any proposals for radiocommunications and broadcasting tower and antenna that are within the NEP but outside of the Development Control.

Where a land use planning authority does not have a Radiocommunications and Broadcasting Tower and Antenna Protocol in place and is located within the Niagara Escarpment Plan area, any proposal that is to be located within the Niagara Escarpment Plan but outside of the Development Control Area shall be in accordance with the NEC Protocol."

Part 5.3 (4)

Delete the entire section.

Part 6 (9)

Delete the entire section.

Planning Context

Provincial Policy Statement, 2005

Within the Provincial Policy Statement (PPS), 2005, telecommunication towers and related facilities are defined as "infrastructure." Such structures are subject to the policies of Section 1.6 "Infrastructure and Public Service Facilities" of the PPS, which provides a supportive framework for the establishment of these uses to accommodate future growth.

County of Grey Official Plan

The County of Grey Official Plan does not address telecommunication towers and their related facilities. The County has, in the five-year review of their Official Plan, identified telecommunications as "infrastructure."

Town of The Blue Mountains Official Plan

The Town of The Blue Mountains Official Plan does not address telecommunication towers and their related facilities.

Zoning By-laws

No provisions specific to telecommunication towers are provided in the two existing Zoning By-laws currently in place within the Town. Zoning by-laws, however, cannot prohibit the establishment of a telecommunication tower or their facilities, as they are federally regulated.

Municipal Protocols

A review of municipalities (City of Hamilton, Town of Ajax, Town of Caledon, Town of Collingwood and Town of Halton Hills) that have approved protocols for the siting of telecommunication facilities was conducted. Findings include the following:

- All municipalities require either a site plan application or telecommunication tower application form application processing fee for new towers.
- Of the three municipalities which have lands located within the NEC (Hamilton, Caledon and Halton Hills), the protocols address procedures for commenting.
- Most municipalities outline preferred areas and provide incentives, such as exemption from the public consultation process, for the siting of new towers.
- Most municipalities encourage telecommunications companies to co-locate antennae on existing towers to minimize the number of towers.
- Most municipalities require the proponent to pre-consult with staff to discuss facility search area and selection.
- Most municipalities provide site design and landscaping preferences.
- Most municipalities require a public open house/meeting for tower installations.

Each municipality has identified different criteria in their protocol for when a public open house/meeting is to be held. Some municipalities host the public open house/meeting, while others require the proponent to host the open house/meeting.

Attachment 2 provides a table that outlines the additional influence the Town can have over the siting and installation of telecommunication towers and antennae through a municipal protocol. The table also identifies the advantages and disadvantages of adopting a municipal protocol. Based on the analysis in the table, staff recommend that a draft Protocol be prepared based on the following:

- The Town can make their role and level of influence over the process clear for the public/residents.
- A more transparent process may improve relations between the proponent, public and the municipality over tower installations.
- Setting up a mechanism for pre-consultation may help to identify and resolve issues

related to site selection before the proponent secures a site. The Town currently has a by-law in effect that requires proponents to pre-consult with the Town prior to the submission of an application. In a number of cases, however, telecommunication providers have secured a site for their tower installation before approaching the Town for a pre-consultation meeting. Having a mechanism in the protocol for pre-consultation will inform the proponent that they should contact the Town prior to making any site selection decisions.

- A protocol can require open houses or information sessions for non-excluded installations and proposals. Industry Canada's public consultation procedures do not require the proponent to hold an open house.
- A protocol would delegate the authority for review of tower and antenna installations to planning staff and provide a greater level of detail and transparency to the consultation process versus the Industry Canada procedures.
- An outline of the procedures and information that could be included in a Town of The Blue Mountains Telecommunications Protocol is found in Attachment 3.

Protocol Phases and Timelines

Planning Staff have developed the following phases and timelines to complete this project.

Phase I – Background (November 2009)

- Consult with Industry Canada representatives and service providers on the establishment of a tower protocol.
- Consider guidelines which encourage towers to be concealed architecturally where possible, and/or through the provision of landscaping materials, as well as how different aesthetics could be balanced, and other related issues such as set back provisions.
- Prepare a draft policy protocol.

Phase II – Public Consultation (December 2009)

- Conduct a public workshop to present the draft protocol and obtain public input.
- Analyze and assess all public submissions.

Phase III – Final Protocol (February 2010)

- Complete a final protocol for Council approval taking into consideration public, Industry Canada and wireless service provider input.

Through a municipal protocol the Town can provide clarity and attain some degree of influence over the process. The Town can also increase the level of public engagement for the location of telecommunication towers and antennae. A protocol will be able to provide guidance to proponents who are planning to modify or install towers and antennae within the Town.

C. The Blue Mountains' Strategic Plan

1. Managing growth to ensure the ongoing health and prosperity of the community.

D. Environmental Impacts

The development of a municipal protocol will limit the impact of visually incompatible and/or environmentally harmful support facilities proposed to be erected or establish in the Town.

E. Budget Impact

Staff time to complete the Protocol.

F. Attachments

1. Draft Land Use Protocol 2009 for Radiocommunications and Broadcasting Tower and Antenna Systems in the area of the Niagara Escarpment Plan.

2. Outline and Analysis of Additional Influence Over the Siting and Installation of Telecommunications Towers and Antenna Through a Municipal Protocol.

3. Proposed Structure for a Town of The Blue Mountains Protocol for Establishing Telecommunication Tower and Antenna Facilities.

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Ontario

Ontario's Niagara Escarpment

Ontario's Niagara Escarpment
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DRAFT - August 20, 2009

NIAGARA ESCAPMENT COMMISSION LAND USE PROTOCOL 2009 FOR RADIO COMMUNICATIONS AND BROADCASTING TOWER AND ANTENNA SYSTEMS IN THE AREA OF THE NIAGARA ESCARPMENT PLAN

Part 1 – Purpose

This Protocol is to address the *June 2007 Directive CPC-2-0-03 Issue 4* from Industry Canada to land use authorities respecting the consultation between proponents and land use approval authorities related to undertakings dealing with communications and broadcasting tower and antenna facilities as governed under the federal *Radiocommunications Act.* The June 2007 Directive, replaces a former Directive from Industry Canada, on communications and broadcasting systems.

Part 2 – Existing Niagara Escarpment Commission Protocol

The Niagara Escarpment Commission has an operating Protocol approved on November 29, 2001 respecting consultation on matters related to the Niagara Escarpment Plan. The adoption of this 2009 Protocol will replace the 2001 Protocol.

Part 3 – Application Of Protocol

Pursuant to the Directive, this Protocol applies to any proponent who plans to install, move or modify an antenna system regardless of the type of installation or service in the area of the Niagara Escarpment Plan. This includes all broadcasting communications services including Personal Communications Services (PCS) and cellular, fixed wireless, land mobile, wireless internet systems, licence exempt and amateur radio operators.

The Protocol also sets out exclusions and exemptions to the full public consultation process for undertakings which are considered minor.

Part 4 - Objectives

The following Objectives are sought under this Protocol:

1. To balance the need to review telecommunications facilities in the area of the Niagara Escarpment Plan and consult the public and other agencies on the land use considerations relevant to such installations while providing a consistent and timely process for the proponents of such facilities.
2. To provide for the protection of the Niagara Escarpment and lands in its vicinity in accordance with the Designations, permitted uses and policies of the Niagara Escarpment Plan.
3. To encourage proponents to minimize to the greatest extent possible, the siting of new communications towers and antenna within the area of the Niagara Escarpment Plan and, where unavoidable, select locations that result in the least visual, environmental, cultural and resident impact.
4. To mitigate the impacts of new telecommunications sites through careful site planning, compatible design, buffering, camouflaging and landscaping.
5. To encourage the use of existing buildings and structures, and established telecommunications sites where the carrying capacity of such buildings, structures and sites can accommodate new towers, the co-location of antenna or height increases.
6. To consider the policies of other land use approval authorities where such authorities have guidelines or their own Protocol policies which are relevant in the Niagara Escarpment Plan area, including the requirements of Transport Canada.
7. To recognize the mandate of Industry Canada under Federal legislation in applying appropriate technical standards and authorizing telecommunications and antenna facilities to serve the national interest, subject to such agency and public arbitration and mediation provided for in the Federal process of determining whether such undertakings are approved.

Part 5 – Niagara Escarpment Plan Site Identification

5.1 - Justification and Need

The area of the Niagara Escarpment Plan should be avoided wherever possible in the selection of new telecommunications sites since these facilities are generally viewed as being incompatible with the purpose and objectives of the

Plan which require that the Escarpment's natural character, attractive features, scenery and open rural landscape be preserved as part of the maintenance of the Escarpment's substantially continuous natural environment. Where the proposal is to locate in the Niagara Escarpment Plan area, the proponent shall:

1. Provide the Niagara Escarpment Commission with a study showing why the area of the Plan is the proposed site for the telecommunications facility, including what alternatives have been considered outside the Plan area, and why these were rejected or found unsuitable.
2. Provide the Niagara Escarpment Commission with a study showing alternatives looked at within the Niagara Escarpment Plan area, and why the proponent selected the site proposed.
3. Provide the Niagara Escarpment Commission with the reasons why an existing building, structure or existing telecommunications site in the area of the Niagara Escarpment Plan is not available or suitable.

5.2 - Niagara Escarpment Lands - General

Where the new telecommunications site is proposed within the Niagara Escarpment Plan area, the following considerations apply to such applications:

1. Escarpment Natural Areas should not be used for new radiocommunications and broadcasting facilities. Such uses are inherently incompatible with this Plan Designation because of the presence of the Escarpment cliff, natural heritage features, and the environmental and visual sensitivity of such lands. The use or reuse of existing facilities may be considered.
2. Escarpment Protection Areas should be avoided when new radio communications and broadcasting facilities are considered. Such uses are generally incompatible with this Plan Designation because these lands are intended to buffer the Escarpment Natural Area, contain sensitive or regionally significant natural heritage features, scenic landscapes and areas which are identified for their visual importance in maintaining the rural landscape. The use or reuse of existing facilities may be considered.
3. Escarpment Rural Areas, where there is no alternative, may be considered for new radiocommunications and broadcasting facilities provided such facilities locate in areas that minimize the impact on natural features, the open rural landscape and any adjacent Escarpment Natural or Protection Area Designations. The use or reuse of existing facilities is preferred.
4. The prominent Escarpment slope and lands along the brow or in the vicinity of the toe should be avoided in Escarpment Recreation Areas especially where the radiocommunications and broadcasting facilities will be highly visible, involve attractive vistas, significant lookouts or are located in proximity to natural heritage features. Where unavoidable, the siting of facilities on the slope is preferred over

those sites along the brow or at the toe that would skyline above the Escarpment or obscure the feature from below. The use or reuse of existing facilities is preferred.

5. Lands designated as Public Lands in the Parks and Open Space System should generally not be used for new radiocommunications and broadcasting facilities. The use or reuse of existing facilities may be considered.
6. Lands in Mineral Resource Extraction Areas may be considered for new radiocommunications and broadcasting facilities provided such facilities do not interfere with aggregate removal or progressive rehabilitation. The impact on adjacent Niagara Escarpment Plan Designations should be considered.
7. New radiocommunication and broadcasting facilities may be considered and are encouraged to locate in the built portions of Escarpment Recreation Areas, Urban Areas and Minor Urban Centres. In such areas new facilities are generally directed to lands already established as or designated for industrial, commercial, institutional, major resort and utility uses. Residential and historic areas should be avoided. The use or reuse of existing facilities is preferred.

5.3 - Niagara Escarpment Lands – Specific Policies, Reports and Studies

Where a new telecommunication site has been selected in the Niagara Escarpment Plan area, the following considerations shall apply to such applications:

1. New lots to accommodate radio communications and broadcasting facilities will not be permitted.
2. The proponent shall show through planning reports and/or special studies how the Development Criteria in Part 2 of the Niagara Escarpment Plan are satisfied. These Criteria deal with a variety of situations, not all of which will apply to all sites, including considerations related to land use compatibility, the avoidance of visual impacts, the protection of steep slopes and ravines, the maintenance of water resources, the preservation of woodlots and forests, the protection of wildlife habitat, the avoidance of good agricultural land, maximizing the protection of heritage buildings and sites, the avoidance of archaeological sites and heritage features and limiting impacts on public parks and open space including the Bruce Trail. Such planning reports and/or special studies may establish setbacks, design requirements or other mitigation measures aimed at satisfying the Development Criteria of the Plan.
3. All applications for new radiocommunication and broadcasting sites shall be accompanied by a visual assessment report setting out the anticipated impacts of the telecommunications facility on the Escarpment landscape and detailing how the facility has been located or designed to minimize the effects on scenic vistas, attractive view sheds and the rural cultural features associated with the open rural landscape of the Escarpment. The Visual Impact Assessment Guidelines of the Niagara Escarpment Commission should be used to develop such report.

4. Proponents of new radiocommunications and broadcasting sites should consult with other approval authorities to determine if such authorities have their own planning policies or telecommunications Protocol which is to be considered in the area of the Niagara Escarpment Plan. In this regard, special attention should be paid to areas of the Niagara Escarpment Plan which are in the Plan but not subject to Niagara Escarpment Development Control (e.g., Urban Areas, some Minor Urban Centres and some Escarpment Recreation Areas).

5.4 - Niagara Escarpment Lands – Siting, Design, Landscaping and Screening

For new telecommunications facilities, the following locational, design, landscaping and screening considerations shall apply as appropriate to the site selected:

1. Every effort shall be made to use or reuse existing telecommunications facilities.
2. The use of existing buildings and structures (e.g., silos, church steeples, water towers, telephone poles, clock towers) is preferred to establishing new structures. Where possible, new facilities using existing buildings or structures should be hidden within them, or designed so that telecommunications equipment is not obvious.
3. Setbacks from environmental features, sensitive ecologic areas, scenic landscapes and cultural features, as may be identified in the planning studies accompanying any proposal for a new facility, shall be incorporated into its siting.
4. The height of any new facility shall be kept at a minimum, and where the use of Escarpment lands is seen to be the only alternative, the Niagara Escarpment Commission is prepared, in particularly attractive or scenic areas, to consider more towers at a lower height rather than a higher tower which may result in the use of fewer Escarpment sites. The objective is to achieve the least visual impact on the Escarpment's landscape while still accommodating the need for radiotelecomunications.
5. The Niagara Escarpment Commission shall encourage the future opportunity to co-locate on a new site provided that this would not conflict with the intent of the policy set out in point 5.4.4, above (i.e., where the height was a key determining factor in ensuring visual compatibility).
6. The design of any new towers and associated equipment (including shelters and lockers at the tower base) shall be as compatible as possible with the surrounding natural and cultural landscape. In built areas the protection or sympathetic blending of facilities with the surrounding architectural character and urban form is encouraged.

7. Specific mitigation measures to reduce impacts and increase compatibility at the site level must be considered in all new telecommunications proposals. Such measures include the type of tower structure, its mass and height (e.g., monopole, lattice, guyed, flagpole type, which will be dependent on area characteristics), painting the tower a neutral colour or a colour that blends best in a particular setting, providing strategic landscaping and native plantings in proximity to the tower or at key points around the base. Towers should be unlit unless such lighting is required for safety reasons (e.g., by Transport Canada and NAV Canada), in which case such lighting should be minimized or be directional in nature, providing fencing (preferably wooden) around the tower base to hide any equipment shelters or lockers. Access to the site (e.g., lane, roadway) should be designed to cause the least environmental disruption, should a new access be required.
8. Any signage shall be limited to operator identification, property warning and contact information, and shall generally be posted on the fencing at the base of the tower, or if the site is gated, on the entrance to the site. Signage will be unlit and be limited to one sign of a size of not more than 0.9 square metres as prescribed in the Niagara Escarpment Plan, unless different safety regulations or Federal requirements must be met. In no circumstances shall advertising or third party signs be permitted on the telecommunications structure or site.

Part 6 – Exclusions and Exemptions From Escarpment Plan Review

Exclusions and exemptions related to Review under the Niagara Escarpment Plan in this Protocol for Radiocommunications and Broadcasting Systems are set out as follows:

1. The maintenance and repair of towers, antenna and associated facilities, including the supporting mast, guy lines, equipment building or lockers, fencing and any other apparatus related to the operation of the broadcasting system. This exception also applies to buildings and structures such as silos, church steeples and apartment buildings currently used to house or mount telecommunications equipment and related apparatus. Maintenance and repair does not include the complete removal or replacement of the structure unless complete removal is related to the decommissioning and rehabilitation of a site, or the replacement results in a new tower of equal or lesser mass and height supporting similar equipment on the same site.
2. The adaptive use of existing buildings and structures either internally or externally (e.g., silos, church steeples, water towers, telephone poles, clock towers) for telecommunications apparatus, provided the adaptive use does not increase the height of the building or structure by more than 15 metres or 25% of the existing height of the building or structure as measured from ground level, whichever is the lesser.

3. The addition to or modification of an antenna system (including improving the structural integrity of its integral mast to facilitate sharing and co-location), the transmission line, antenna supporting structure, or other radio apparatus to an existing radiocommunications facility provided the addition or modification does not result in an overall height increase of more than 25% to the antenna structure as measured from the ground in the case of an existing tower, and not more than 25% of the height of the existing mast or tower where it is located on a building or structure as an adaptive use.
4. The exemptions provided for under points 2 and 3 are only applicable to sites established and approved before the date of the Niagara Escarpment Commission's first Protocol in 2001 and may be used as a one time only exemption for those sites. Additional height increases beyond the one time exemption for a site will require Niagara Escarpment Commission review under the provisions of this Protocol.
5. The maintenance or upgrading of an antenna system's painting or lighting to comply with Transport Canada's requirements.
6. The maintenance, upgrading, repair or replacement pursuant to an Order authorized under legislation or regulations related to public health or safety concerns.
7. The temporary installation of an antenna system authorized by Industry Canada for a duration not exceeding 3 months for a special event deemed to be in the national interest, or one that is used to support local, provincial, territorial or national emergency operations during the emergency and is removed within 3 months after the special event or emergency. Temporary installation does not include providing coverage for a wireless operator where coverage is undependable or absent because a permanent site is lacking or has not been approved (or is in the process of being considered).
8. New antenna systems, including masts, towers or other antenna-supporting structures, with a height of less than 15 metres as measured above ground level. The 25% exception as set out under points 2 and 3 will not apply to any antenna systems approved under this 15 metre exclusion. Additionally, such installations are strongly encouraged to locate outside of Escarpment Natural Areas and avoid other areas of the Niagara Escarpment Plan where antenna systems affect public views, interfere with vistas, require tree removal, impact natural heritage features or are incompatible with adjacent uses or built form.
9. On lands within the Niagara Escarpment Plan area but outside the Niagara Escarpment Development Control Area, the Niagara Escarpment Commission will comment on new antenna systems but generally defer the final decision to the land use authority having zoning jurisdiction and/or its own approved Protocol (e.g. the municipality).

Notwithstanding the exemptions noted in Part 6, the Niagara Escarpment Commission is to be notified and provided information on proposed new or modified telecommunications facilities in order to confirm that the exclusions apply and to be able to inform the public and Commission members about changes to towers and antenna within the area of the Niagara Escarpment Plan or refer such questions to the proponents for clarification.

Part 7 – Pre-consultation, Submission, Consultation and Review

Part 7.1 - Pre-Consultation

Proponents are to consult with the Niagara Escarpment Commission in advance of undertaking any work on radiocommunications facilities, except for normal maintenance and repair, lighting and safety matters as set out in Part 6, sub-sections 1, 5, 6 and 7.

The Objectives of this pre-consultation are:

1. To determine if the radiocommunications works are exempt under Part 6, and if exempted have a record of the project details as information for the public and Commissioners. For exempted projects, the Commission shall provide a written acknowledgement of the exemption within fifteen (15) days of pre-consultation. Such projects will then not require further submissions or public consultation or review under this Protocol.
2. To determine the justification and need for establishing a new facility or using an existing facility in the Niagara Escarpment Plan Area and to explore what alternatives were studied in order to satisfy Part 5.1.
3. To discuss the specific site and the guidelines in the Protocol related to selecting the appropriate Plan Designation to satisfy Part 5.2.
4. To discuss and determine how the Niagara Escarpment Plan's policies and Development Criteria have been addressed or should be addressed in the studies, reports and plans needed to satisfy Part 5.3
5. To discuss and review how the siting, design, landscaping and screening issues and directions in Part 5.4 have been addressed.
6. To determine what other approval authorities have been or may have to be consulted, and determine the applicability of other land use requirements or telecommunications Protocols.
7. To identify any outstanding matters which may have to be addressed before a submission is formally received for consideration. This may include report clarifications, and additional studies or plans that should be submitted to complete an application for review and circulation.

At least one, but possibly more than one pre-consultation meeting will be required to finalize the submission.

Part 7.2 - Submission

Following pre-consultation, for those telecommunication projects that are not found to be exempt under Part 6 and part 7.1, the proponent will submit to the Niagara Escarpment Commission the completed Form *"Proposal for a Radio or Telecommunications Facility or Undertaking in the Area of the Niagara Escarpment Plan"*. Attached to that Form will be the background studies and reports prepared for the project, along with the relevant area plan showing adjacent features and uses, site plans with setbacks, construction drawings, elevations, engineering details, photographs, and landscaping design information, including fencing, lighting and colour schemes (as applicable).

Wherever possible, the proponent shall provide the information in a scale and manner that is efficient for copying and making the materials available to the public and other agencies for information and circulation.

The Application Form, prepared for the convenience of making submissions under this Protocol, is attached as Appendix 1 to this Protocol.

Part 7.3 - Consultation and Review

Once the submission is deemed complete, the Niagara Escarpment Commission will commence the 120 day consultation and Review period. During this period the following matters related to consultation shall occur:

1. A file shall be established at the Commission Office and be available for public and agency viewing. The proponent shall be informed that such a file has been established and be asked to post the development site with a clearly, visible Notice that a submission has been made for a radiocommunications facility.
2. The relevant information in the submission will be circulated by the Commission to the municipality, other relevant land use approval agencies (e.g., Provincial Ministry or conservation authority) and organizations or stakeholders that may have an interest in the submission (e.g., Bruce Trail Conservancy). Industry Canada will also be included on the circulation of materials.
3. Assessed landowners within 120 metres of the subject property (or a greater distance as determined by the Commission where major facilities with a wider impact can be anticipated) will also be circulated by the Commission with the submission and will be invited to comment.
4. All comments will be requested to be received by the Commission within a 35 day period and such comments will be made available to the proponent, and Industry Canada upon request. Requests for additional time shall be discouraged but will be discussed with the proponent (and if necessary Industry Canada) before any extension is granted.

5. The proponent will publish a Notice in at least one local newspaper for any new radiocommunications facility that is proposed to be more than 30 metres in height or involve an increase in height of an existing structure to more than 25% of its original height, and in such Notice will indicate where materials respecting the proposal and its particulars may be reviewed and will invite comments within 35 days to the proponent, Industry Canada and the Niagara Escarpment Commission. Any tower or antenna on an existing building or structure added as an adaptive use will also require newspaper notice if the tower or antenna adds more than 15 metres to the building or structure, or adds more than 25% to an existing tower or antenna on a building or structure.
6. The proponent, on major proposals, may, at its discretion, hold public open houses where the Niagara Escarpment Commission and other applicable land use approval authorities shall be invited to attend and observe.
7. Following the submission of comments, the Commission will, where no objections have been received, or where matters have been resolved to the Commission's satisfaction in terms of the Protocol, prepare a letter from the Commission Manager setting out the terms and conditions of the land use approval and forward that letter to the proponent and to Industry Canada. Copies will also be sent to any agency or person who provided written comments on the submission.
8. Where objections from consulted agencies and/or the public have been received which cannot be resolved, and/or the Commission staff is not satisfied that the project meets the planning requirements and tests of the Protocol, a Planning Report will be prepared for the Niagara Escarpment Commission's consideration at a regular NEC meeting. This Report will be forwarded to the proponent and any municipality, agency or person who provided comment and they will be invited to attend the meeting to observe and/or make submissions on the Report Recommendations.
9. The Commission's Decision on the Recommendation will be forwarded to the proponent and Industry Canada, and any municipality, agency or person who provided comment or attended the meeting to observe and/or make submissions on the Report Recommendations.
10. If dispute resolution, mediation or a hearing is required (as set out in Industry Canada's Directive), the Commission will attend sessions or respond to matters relating to the Commission Recommendation and, if required, make further submissions or comments to Industry Canada or the Federal Minister on the acceptability of the telecommunications facility (see Part 8).

Part 8 – Dispute Resolution

The Industry Canada dispute resolution process does not provide for the general public to have a right of appeal or petition where the project is opposed or challenged. The proponent or a land use approval authority (i.e., the Niagara Escarpment Commission under this Protocol) may in writing ask Industry Canada to approve, reject or modify the radiocommunications undertaking. Industry Canada, on the basis of the submissions by parties, may make a final decision or refer the matter for further negotiation and/or dispute resolution. Should a resolution of issues not be possible between the parties, Industry Canada will make the final decision.

Matters which cannot be part of the dispute include:

- The proponent's service, where unrelated to installations.
- Possible impacts on property value or taxes.
- The reform of existing law or regulations including standards which relate to heath and safety, legally applicable building by-laws and radio frequency exposure limits.

Part 9 – Compliance and Enforcement

Installation or operation of a radiocommunications or broadcasting system is primarily the responsibility of Industry Canada. Applicable land use authorities have limited enforcement capability and jurisdiction, since radiocommunications is a Federal responsibility under the *Radiocommunications Act*. A failure to follow the Protocol or to consult which results in the construction or modification of a facility without approval or in a manner contrary to the decision arrived at under the Protocol will be referred to Industry Canada for action and penalties.

Any public complaints regarding compliance and enforcement will be directed to Industry Canada.

Attachment 2

Outline and Analysis of Additional Influence Over the Siting and Installation of Telecommunications Towers and Antenna Through a Municipal Protocol

Current Industry Canada (IC) Procedure for Installing Telecommunications Antennae and Towers	Additional Influence Over IC Procedure Through a Municipal Protocol	Advantages of a Municipal Protocol	Disadvantages of a Municipal Protocol
Approval Authority			
Only the Federal Minister of Industry has the authority under the *Radiocommunication Act* to approve: • site locations for system installations; and • erection of all masts, towers and other antenna supporting structures.	None.	None	A protocol would not provide the municipality any authority or control to approve site locations for system installation.
Siting of Antennae and Towers			
Proponents must do the following before proposing new antenna-supporting structures: • consider sharing towers, modifying or replacing a structure if necessary; • locate, analyze and attempt to use any feasible existing infrastructure such as rooftops, water towers, etc.; • contact municipality/land use authority* (LUA) to determine local requirements regarding antenna systems; • undertake public consultation; and • satisfy IC's general and technical requirements. *a land use authority is any local authority that governs land use issues	Municipalities can: • promote the placement of antennae in optimal locations taking into consideration environmental and cultural impacts and land-use compatibility; • exclude proposals on certain lands and rooftops (i.e. industrial areas, low visual impact installations), in addition to IC's exclusion criteria, from the public consultation requirements in the protocol; • provide information concerning aesthetic and landscaping preferences; and • request written justification from the proponent as to why: ➢ sharing a structure/co-locating is not viable for	The proponent will have up front information on historic/cultural and environmental land-use sensitivities. The proponent would have guidance and preferences on the various possible areas and sites to be considered. Providing an incentive, such as excluding certain installations from the public consultation process will encourage proponents to site their installations there.	In the event of a dispute with the proponent, the municipality would not have any control over the final approval of where a tower is sited. Radio waves are limited in how far they can travel and as service needs increase near an existing tower, its coverage decreases in radius. Therefore, as demand for wireless service increases, and there is not the ability to install antennae on the roof tops of tall buildings, towers will be sited where they are required for service coverage, including residential areas. This means that, in time, the municipality may have

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such as a local municipality, MTO, etc	situations where a new tower is proposed; and ➢ no other sites are viable in		less influence over encouraging proponents to site towers in preferred locations.
Consultation with the Municipality/Land Use Authority and Public			
Proponents must consult with municipality/ land use authority and public when they select a site for antenna/tower installation, unless their proposal falls within the following exclusion criteria: • maintenance of existing apparatus; • addition or modification of an existing antenna system (including roof-top antennae), for height increases less than 25% of original structure's height or less than 25% of height of building on which antenna is situated; • special event/emergency installations (typically 3 months); and • new antenna systems with a height less than 15m above ground level. Excluded structures must still meet the Procedures' General Requirements. IC Procedure notes that even if the proposal is excluded than it would be prudent for the proponent to consult with the municipality and public.	Municipalities can establish: • a mechanism for preliminary consultation (pre-consultation), which would require the proponent to inform the municipality of its plan prior to making site selection decisions; • submission requirements and processing fees; and • a public consultation procedure that could: ➢ identify situations that require public consultation (including an open house/info session) and those that specifically do not (cannot be more prescriptive than IC) ➢ possibly establish a reasonable notification radius that is wider than IC's three times tower height (i.e. possibly four times tower height)	Pre-consultation and outlining submission requirements allow the municipality to inform the proponent of established and documented local requirements and consultation procedures early on in the process, which assists proponents in addressing local concerns. Even though the Town has a by-law in effect requiring pre-consultation, in many cases a wireless provider may have secured a site for their tower installation before approaching the Town for a pre-consultation meeting. Including a mechanism in the protocol for pre consultation will inform the proponent that they should contact the Town prior to making any site selection decisions. Facilitates co-operation between the municipality and the proponent. Better manage the process of identifying municipal concerns as well as the concerns of residents regarding	Protocols cannot establish a consultation process for proposals that are excluded by Industry Canada's criteria. While this opens the process to include residents that would not have been invited to comment under IC's procedure, there may be a false perception, on the residents' part, that they have the ability to effectively protest and/or fight the siting of a tower. Every open house would have to be just for information and define what the rules and roles of the municipality are under IC's procedures. It is recommended that the open house be hosted by the proponent and that the municipality is just a participant in the process.

Current Industry Canada (IC) Procedure for Installing Telecommunications Antennae and Towers	Additional Influence Over IC Procedure Through a Municipal Protocol	Advantages of a Municipal Protocol	Disadvantages of a Municipal Protocol
Proponents are expected to establish initial formal contact with the municipality / land use authority and the public in writing in order to mark the official commencement of the consultation process. The entire consultation process should be completed within 120 days. Proponents must contact neighbouring municipalities located within a radius of three times the tower height. Proponents must follow the municipality's consultation process for the siting of antenna systems, established in a protocol, where one exists. The municipal protocol would supercede IC's Default Public Consultation Procedure. If a municipality does not have its own protocol proponents will be required to follow IC's Default Public Consultation Process: • proponent provides written notification to the public, municipality/land use authority, within a radius of three times the antenna system's height and IC of the proposed antenna system installation or modification;	➢ specify a reasonable communication protocol between the proponent and municipality (i.e.; proponent to provide municipality with copies of all comments and responses) ➢ look into establishing an agreement for notification with neighbouring municipalities (i.e.require notification of towers in neighbouring municipalities that are within 500m of The Blue Mountains boundary). Proponent must obtain final concurrence for the proposal (conclusion of local consultation process) from the municipality/land use authority prior to commencing installation/modification of an antenna system via one of the following: • a letter/report acknowledging requirements have been satisfied; and • minutes of a council meeting indicating	installations. Makes the process more transparent and information sessions offer an alternate forum for residents to make comments, ask questions, raise concerns and make the proponent aware of local considerations before the antenna/tower is constructed. Possibility of establishing a wider notification area than what is in the IC Procedure opens the process up to a larger group of residents. Educates the public on the roles and responsibilities associated with the installation of telecommunications towers/antennae.	

Current Industry Canada (IC) Procedure for Installing Telecommunications Antennae and Towers	Additional Influence Over IC Procedure Through a Municipal Protocol	Advantages of a Municipal Protocol	Disadvantages of a Municipal Protocol
• proponent engages the public and municipality/land use authority in order to address relevant questions, comments and concerns regarding the proposal; • proponent provides an opportunity to the public and municipality/land use authority to formally respond in writing to the proponent regarding measures taken to address reasonable and relevant concerns; and • proponents of antenna-supporting structures that are proposed to be 30m or more in height must also place a notice in a local community newspaper circulating in the proposed are. Municipalities may: • provide comments on a proposal and possibly influence decisions with respect to antenna siting; • ask the proponent for additional information so as to determine whether there are any local land-use or public concerns; and • suggest reasonable alternatives and/or mitigation measures	approval. Informal staff procedures are not normally sufficient. The issuance of a building permit as evidence of consultation being concluded will only be accepted if the municipality has an established Protocol identifying this as the preferred method of concluding the consultation process.		

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that would address any questions, comments or concerns. IC's Default Public Consultation Process will be considered concluded when the proponent has either: • received no written questions, comments or concerns to the formal notification process; and • address and resolved all reasonable and relevant concerns to IC's satisfaction and no further comments are received within the 21-day reply comment period. If there is public response within the 21-day comment period, the proponent must either make further attempts to address the concern on its own or request IC to become engaged and review the relevant material. The proponent may only commence installation or modification of an antenna system after the consultation process has been completed by the municipality/land use authority, or IC confirms concurrence with the consultation requirements of its Procedure.			
Disputes			
Proponent or	Municipalities can:	Documenting the	Planning Staff do not

Current Industry Canada (IC) Procedure for Installing Telecommunications Antennae and Towers	Additional Influence Over IC Procedure Through a Municipal Protocol	Advantages of a Municipal Protocol	Disadvantages of a Municipal Protocol
municipality can make a written request for IC Departmental intervention concerning a reasonable and relevant concern, if either believes discussions have reached an impasse. Based on information received, the Department will either: • make a final decision on the issue; and • suggest parties enter into an alternate dispute resolution process - if parties still cannot reach a solution, either party may ask the Department to make a final decision. After resolution of dispute, the proponent is to continue with IC's process.	• document the process by which disputes will be resolved - ensuring they are appropriate for the local community; and • incorporate alternate dispute resolution options (they are interest-based rather than regulatory) which may help parties find a mutually beneficial resolution.	dispute process will allow all stakeholders to understand their roles and responsibilities as well as the process under which disputes will be resolved. The proponent, local community and municipality can work toward a solution which takes into consideration each other's interests.	have any internal expertise on alternative dispute resolution and it may be difficult to develop a process in-house that would be meaningful.
Timelines			
Municipalities are expected to conclude the consultation process within 120 days from the receipt of the formal consultation request.	None. According to IC process, municipalities should not exceed the 120 day timeline. As IC's public consultation timelines are not in effect if a municipality adopts a protocol, the protocol should establish time frames for the consultation process, to ensure a timely response to any questions or concerns and to avoid unnecessary delays to the proponent.	The Town has previously processed telecommunication tower proposals through the site plan application process, which is typically completed in 60 days. Therefore there are no concerns with meeting the 120 day timeframe.	The use of site plan application process may indicate to the community that the Town has the ability to refuse a submission. As noted, this is not the case. The Town should have a separate application form for telecommunication tower/antenna proposals

Attachment 3

Proposed Structure for a Town of The Blue Mountains Protocol for Establishing Telecommunication Tower and Antenna Facilities

The following is an outline of the procedures and information that could be included in a Town of The Blue Mountains Protocol:

Telecommunication Application Form

- Create an application form for telecommunication proposals that would include a checklist of submission requirements.
- Request an application fee which is equivalent to the fee for a major site plan approval to cover staff time for processing the application and providing comments.

Introduction

- Provide an introduction outlining roles (i.e. who the approval authority is, including Niagara Escarpment Commission) and what the protocol hopes to achieve (i.e. create a framework to identify and resolving land use conflicts at the early stages of the process, balance proponent needs with public concern, etc).
- Provide definitions for terms used in the protocol (i.e. antenna, telecommunication tower, etc.).
- Outline and provide information on submission requirements for a complete application (i.e. site plan, elevations, photo of site with appropriately scaled tower superimposed, etc.).

Pre-consultation

- Establish a pre-consultation mechanism to address location options before the proponent secures a site.

Location, Siting and Site Design

- Outline areas of cultural, historic and environmental importance and the need to minimize the impact of the proposal on these areas.
- Identify preferred locations for towers/antennae and either exclude these locations from the public consultation requirements or outline a streamlined process as an incentive for proponents to site their installations there.
- Preferred locations can include: co-locating antennae on existing telecommunication or hydro towers and locating antennae on the rooftops of tall buildings.
- Outline preferred landscaping around and camouflaging for antennae and towers, including associated equipment.
- Identify that the Town will encourage new developments to design buildings to accommodate/camouflage future antennae. This would potentially include identifying areas of the Town where this would be encouraged (note: it may not be possible to accurately predict where increased wireless demand may occur).

Public Consultation

- Require an open house/information session for all non-excluded tower installations within a certain distance from residential and/or over a certain height.
- Send notice to all property owners within a radius potentially larger than what is required by IC (i.e. four times vs. three times tower height). A reasonable notification radius larger than what is required by IC would have to be agreed upon between the Town, IC and the telecommunication industry.
- Have the proponent host the open house/information session and outline the roles and responsibilities of IC, the proponent, the Town and the public. The Town will be a participant/commenting body at every open house/information session.
- Establish a reasonable communication protocol between the proponent and Town so that the Town is apprised of all comments and responses received/sent by the proponent.
- Establish time frames for the consultation process, respecting Industry Canada's requirement that the consultation process should be completed in 120 days (a municipality should set out their own public consultation timelines as once a municipal protocol is adopted, Industry Canada's timelines no longer apply).

Concluding Consultation

- Outline how the Town will provide the proponent with confirmation that the public consultation process has concluded (i.e. a letter acknowledging the requirements have been satisfied).