



Subject:	Closure of a Town Road Allowance on Aberdeen Road by Quarry Ridge Inc.
To:	Committee of the Whole – Planning & Economic Development
From:	Planning and Development Department

Report Number:	PD-35-22
Wards Affected:	2
Date to Committee:	June 29, 2022
Date to Council:	July 11, 2022

Recommendation:

Council Receive the Road Closing Application 2022-01 by Quarry Ridge Inc. for information and that a recommendation report be prepared once all comments have been received and issues have been addressed.

Purpose:

The purpose of this report is to provide background information to Committee and Council and the general public for the public meeting being held on June 29, 2022 regarding a road closing application submitted to the Town. The purpose of this application is to formally close an unopened section of Aberdeen Road.

Background:

Location and Background

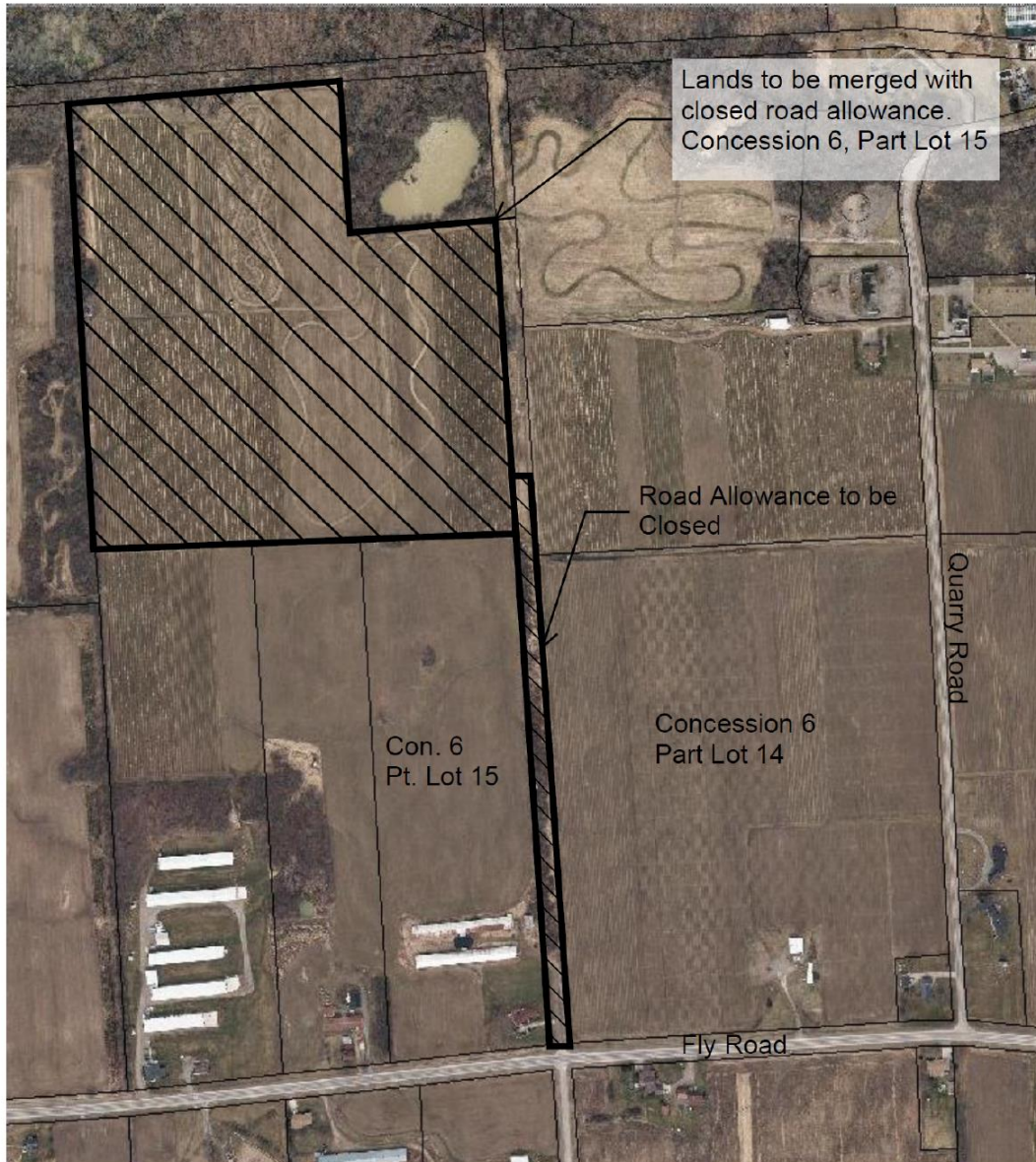
The applicant approached Town staff to discuss the potential to close and convey a portion of the Aberdeen Road allowance. The applicant proposes to purchase the subject road allowance to provide access to the subject lands identified in the location map which are currently vacant. The lands are legally described as Concession 6, Part Lot 15.

The application is proposing to close approximately 1.3 hectares (3.1 acres) of the Aberdeen Road allowance beginning at Fly Road between the properties at 4811 and 4743 Fly Road and extending approximately 556 metres to the north. As shown on the location map (see next page), five properties would potentially be impacted if the road allowance were closed and sold to the applicant. Of these, the property at 4811 Fly Road currently relies on the unopened road allowance for access to Fly Road. The applicant's property, which will be merged with the road allowance if purchased, is the only property that is landlocked and has no legal access to a municipally maintained road.

LOCATION MAP



Metric Scale:
N.T.S.



As the applicant's property is landlocked, they are not allowed to construct a building or structure on it per Section 6.18.2 of the Town's Zoning By-laws. This zoning regulation requires that all new and existing lots have the minimum required lot frontage along an improved (municipally maintained street). If purchased, the road allowance would be

merged in title with the subject lands to provide lot frontage along a municipally maintained road

The lands adjacent to the subject road allowance are characterized primarily by agricultural activities, rural residential dwellings, and natural features. Of note is that the unopened road allowance is also used by Niagara Peninsula Energy Inc. (NPEI) for power transmission activities. Based on site visits and satellite photography, the power line extends the entire length of the unopened road allowance from Fly Road, traverses the escarpment, and continues northward along Aberdeen Road.

At present, the applicant has indicated that there are no proposals for future development on the subject lands. Those lands are approximately 17.9 hectares (44.2 acres) in size. Of note is that the applicant's property is subject to the development regulations provided by the Niagara Escarpment Plan (NEP) which is administered by the Niagara Escarpment Commission (NEC). This means that the Town's planning regulations as provided by the Lincoln Official Plan (2016) and Zoning By-laws (1993) are not applicable. While the NEC has full planning authority over development on this property, they take comments provided by Town Planning staff into consideration when making decisions on development applications.

The applicant previously submitted a road closure application to provide access to the landlocked property in 2005. This application, which was approved by the Town in 2008 (By-law 06-08), sought to purchase the entire length of the unopened road allowance from the south lot line of the applicant's property to the north lot line (see Appendix B). Based on information from the applicant, the previous road closure request was part of other development applications which required amendments to the Niagara Escarpment Plan. When these applications were not successfully completed, the purchase of the unopened road allowance was stopped. Of note is that the Town adopted a new policy pertaining to the closure of unopened road allowances in 2017. More information on those policies and how it pertains to this application is provided in the next section of this report.

To help address this situation, there have been ongoing discussions between the applicant, Town staff and NEC staff. These discussions have included potential options such as leasing of the road allowance as well as closure and conveyance. The NEC has expressed opinion that these solutions will not adequately address the landlocked status of the subject lands and therefore will not necessarily lead to the potential for a Development permit application to be accepted by the NEC in the future. Further, the NEC has indicated that development of the property (for agricultural land uses) could be facilitated through the formal opening of the road allowance. This would require that the applicant construct a new road (at their own cost) to the Town's design and construction standards (DPW-401). The DPW-401 standards outline the various requirements that an improved rural road needs to meet such as grading of the road surface and shoulder, drainage, distance from hydro poles, appropriate materials, and a turn around for municipal vehicles such as snow plows and garbage trucks.

Report:

Lincoln Road Allowance and Sale Policy (2017)

All applications to close and sell road allowances owned by the Town of Lincoln are governed by the Town's Road and Allowance Sale Policy (Policy) which was approved by Council on April 18, 2017. Several key objectives of the Policy is to preserve continuous linear corridors for future roadways or active transportation paths, protect natural features regulated by the Niagara Escarpment Commission, and ensure that all lots of record are not negatively impacted.

According to the Policy there are two types of road closing applications: major and minor. A minor road closing application is one in which unopened road allowances are isolated as a result of previous road allowance closures and the remaining parcel is not connected to any other road allowance or trail system owned by the Town or other public authority. Where a road allowance is not isolated and is connected to publicly owned road allowance or trail system, that application is deemed to be a major road closing.

The Policy notes that the Town will exercise caution and appropriate due diligence for all major road closing applications. When considering this major road closing application the following policies are of particular relevance:

- Exercise caution where road allowances form a continuous linear corridor:
 - Between any other municipal road allowances, open or unopened;
 - Leading to any body of water or natural watercourse;
 - Leading to any existing trail, public land, park or school;
 - Leading to any other municipality;
 - Traversing the Niagara Escarpment;
- Are located within the limits of lands under the jurisdiction of the Niagara Escarpment Commission; and
- Are directly adjacent to, or are located within 500 metres of any existing trail.

As noted, the Town's planning policies and regulations are not applicable on lands that are within the NEC's jurisdiction. Instead, those lands are subject to the land use provisions within the Niagara Escarpment Plan which is administered by the NEC. All decisions on whether to close a road allowance must be made in conjunction and with the support of the NEC to account for this unique situation. Moreover, caution must be exercised when a road closing is near an existing trail to ensure opportunities for future improvements or expansions and to prevent negative impacts to it.

For road closing applications, the applicant is responsible for all costs of processing the application, including all surveying, appraisal and legal costs. If approved by Council, the sale price of the land, being the closed road allowance or any portion thereof, shall not be less than the appraised value of the land. All costs associated with the preparation of an appraisal will be the responsibility of the applicant.

Official Plan and Transportation Master Plan

The Town's Official Plan and Transportation Master Plan provide policies for the creation of an integrated transportation system that is able to accommodate future traffic volumes and supporting the creation of a network of active transportation infrastructure. This portion of the Aberdeen road allowance is not identified in either policy document for future improvements as a vehicular roadway or a future trail. Of note is that the Bruce Trail intersects the unopened Aberdeen road allowance approximately 400 metres north of the road allowance that is the subject of this application.

Niagara Escarpment Plan

As noted, the unopened road allowance and all of the surrounding lands are subject to the land use policies and regulations of the Niagara Escarpment Plan (NEP) which is administered by the Niagara Escarpment Commission (NEC). As a result, the Town's land use regulations as provided through the Official Plan (2016) and Zoning By-laws (1993) are not applicable for these and other lands within the NEP. While the Town has no planning regulatory authority, the comments provided by Town staff are taken into account when the NEC considers a development application within Lincoln. While NEC staff are still in the process of providing comments for this application, previous conversations between Town and NEC staff have indicated that the latter is likely to support activities to bring the unopened road allowance to Lincoln's rural road standards. A Development Permit may need to be obtained from the NEC to improve the road allowance to the Town's rural road standards. If one is required, staff from the Town's Public Works and Planning Departments will work with the applicant and the NEC to obtain it.

Financial, Legal, Staff Considerations:

Financial: There are no financial costs anticipated as a result of the consideration of this report. Applicants for all road closure applications are responsible for paying all costs in connection with the closure and sale process including legal, surveying and appraisal fees. If the application is approved, any sale of the unopened road allowance property is intended to be completed at a price of not less than the appraised value of the lands.

If the applicant were to improve the road allowance to the Town's rural road standard, the Town would be responsible for maintenance and snow clearing activities.

Staffing: N/A

Legal: In the event the subject road allowance is closed and conveyed, the Town will have divested itself of the right to access or utilize the lands in the future.

Public Engagement Matters:

The road closing application has been circulated to relevant government agencies, Town Departments as well as property owners within a 160 metre radius of the road allowance subject to this application. A notice was also placed in the local newspaper. A public meeting has been scheduled for June 29, 2022.

At the time of writing this report, the following comments have been received by the following agencies and Town Departments:

- **Niagara Region:** Staff from the Region do not object to the proposed road closure of the subject road allowance. However, Regional staff require that the unopened road allowance continue to be used as the primary access for 4811 Fly Road as they are not in support of a new entrance being constructed along Fly Road. Shared use of the unopened road allowance will necessitate the registration of an access easement on title. If the road allowance application is approved, Regional staff will also require a portion to be conveyed to the Region for road widening purposes. The exact size of this road widening conveyance is to be finalized at a later date if the application is approved by Council.
- **Niagara Escarpment Commission:** Comments from the NEC are forthcoming, but comments that were previously provided in advance of this application submission are summarized earlier in this report.
- **Lincoln Public Works:** In general, Public Works (PW) is not supportive of the application to close this portion of the road allowance. This reflects that the unopened road allowance presently forms a continuous linear corridor between two improved road allowances (Aberdeen Road and Cosby Road). While there are no plans in the immediate future to construct a vehicular road or trail on this unopened road allowance, the closure of it would prevent the possibility of doing so in the future. As noted, PW does not oppose a proposal where the applicant, at their own cost, improves a portion of the unopened road allowance to the Town's rural design standards and other applicable standards as provided in Lincoln's Municipal Design Standards.

The following comments from the Public regarding the road closure application have been submitted to Town staff from residents:

- **Continued Access:** There is concern that the residents of 4811 Fly Road, who currently use the existing road allowance to access their property, will lose their access to Fly Road if the road allowance is closed and purchased by the applicant. The existing road allowance, which is gravelled but does not necessarily meet the Town's rural road standards, provides access to the existing dwelling and for farm vehicles such as tractors. The residents of 4811 Fly Road note that there are some limitations as to where a new access could be located for the property on account of the location of the septic fields being located in front of the existing dwelling.

Conclusion:

Staff advises that this report has been prepared to provide general information. A further report will be provided once all comments have been received and issued have been addressed.

Respectfully submitted,

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Appendices:

Appendix A – Schedule D2 (Trail and Bikeway Plan) of the Town's Official Plan
Appendix B – Location of Previous Road Allowance Closure Request

Report Approval:

Report has been reviewed and/or approved by Matt Bruder, Director of Planning and Development. Final approval is by the Chief Administrative Officer.