



Town of Newmarket  
395 Mulock Drive P.O. Box 328,  
Newmarket, Ontario, L3Y 4X7

Email: [info@newmarket.ca](mailto:info@newmarket.ca) | Website: [newmarket.ca](http://newmarket.ca) | Phone: 905-895-5193

## Alternative Protection for Environmental Lands Information Report to Council

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Department(s): Planning and Building Services & Legal Services

Author(s): Meghan White, Kaitlin Friesen, Antonietta Mollicone

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In accordance with the Procedure By-law, any member of Council may make a request to the Town Clerk that this Report be placed on an upcoming Committee of the Whole agenda for discussion.

### Purpose

The purpose of this report is to outline options for the permanent preservation of the Environmental Lands to be conveyed to the Town.

### Background

In February 2022, Council adopted Official Plan Amendment Number 32 (the “**Official Plan Amendment**”) for the lands municipally known as 16250, 16365 and 16450 Yonge Street (the “**Shining Hill Lands**”). The purpose of the Official Plan Amendment was to change the land use designation on the Lands from an environmental protection designation to a designation that will allow for urban uses. Approximately 58 hectares (143.3 acres) of the Shining Hill Lands are proposed to be transferred to public ownership which includes a minimum of 32.4 hectares (80 acres) of forests and wetlands (the “**Environmental Lands**”) which the land owner has committed to transfer to the Town or other public authority determined by the Town.

The approved Official Plan Amendment left some of the Environmental Lands in the Environmental Protection Area – Oak Ridges Moraine designation, which limits future land uses with an objective of preserving the Lands for environmental protection. It is anticipated that these lands will also be zoned, in the future, to a protective zoning that implements the protective Official Plan designation. In addition to these measures, Council directed Staff to report back on additional options regarding the continued protection of the proposed conveyed land.

### Discussion

To date, Town staff have reached out to the Oak Ridges Moraine Land Trust (ORMLT) and Nature Conservancy Canada (NCC) for information on how lands may be preserved for public use and ownership

in perpetuity. The Environmental Lands have not yet been conveyed to the Town. The following are options that may be pursued at the time that the Environmental Lands are ready to be transferred by the land owner.

## Options

Based on Town staff discussions with the ORMLT and the Nature Conservancy of Canada, the following options exist for the conservation and protection of the Environmental Lands in perpetuity. Unlike protective measures that may be imposed by the Town alone, such as a protective designation of the lands which may be subject to revision or removal by a future Council, these options engage a third party (to varying degrees) in the protection of the lands.

### Joint Ownership

1. Title to the Environmental Lands may be transferred to the Town and a land conservation trust or other public entity, in joint ownership.

The Environmental Lands may be conveyed to the Town and a land conservation trust, such as the ORMLT or other land trust / public entity, in joint ownership. The terms, obligations and responsibilities regarding the long term conservation and management of the lands would be set out in a joint ownership agreement (the “**Joint Ownership Agreement**”) between the joint owners, including the respective percentage of joint ownership. A Joint Ownership Agreement would set out terms regarding such matters as:

- which party would be responsible to develop a property management plan for the protected lands;
- the permitted and restricted uses of the protected lands;
- and the development of a fund to support the stewardship of the lands.

The Joint Ownership Agreement would also include restrictions on the transfer of the protected lands without the prior consent of the other joint owner(s). The Joint Ownership Agreement or any restrictions contained in the agreement may be registered on title to indicate to the public that there is a long-term commitment from the joint owners to provide permanent protection of the lands.

### Implications

- In the case of a joint ownership with a land trust, such as the ORMLT for example, a property management plan would be developed by the Town in consultation with the land trust to outline the permitted and restricted uses of the protected land, which would be updated every 5 years;
- A joint ownership arrangement would entail a shared control over the protected lands, and would require the joint owners to agree to any changes to the management and maintenance of the lands, including public access (i.e. trails);
- A joint ownership of the protected lands would restrict the transfer of the lands without the consent of the other joint owner.

## Conservation Easement

2. The Town may hold full ownership of the Environmental Lands subject to a conservation easement in favour of a qualified organization under the *Conservation Land Act* of Ontario.

The Town may hold full title ownership of the Environmental Lands and transfer a conservation easement to a qualified organization (usually a land trust or Conservation Authority) under the *Conservation Land Act* of Ontario (the “**Act**”). A conservation easement is an agreement between a landowner and a qualified organization under the Act, such as a conservation organization, land trust, government agency or municipality, to protect the conservation of the property long into the future (the “**Conservation Easement Agreement**”), and is registered on title to the protected lands and this protection transfers with the land and binds any future owners of the land. A Conservation Easement Agreement creates a partnership between a landowner who continues to own and manage the property subject to a set of mutually agreed upon restrictions monitored by a qualified organization of choice. The Conservation Easement Agreement would include restrictions that would protect the natural features of the protected lands and that would restrict the landowner’s planning development of the land without the consent of the conservation easement holder.

As in the Joint Ownership Agreement, the Conservation Easement Agreement would include roles and responsibilities between the parties with respect to maintenance of the lands. Under the Act, any amendment or release of the Conservation Easement Agreement will require consent of the Minister of Natural Resources.

### Implications

- Similar to a joint ownership arrangement, a Conservation Easement Agreement would entail a shared control over the maintenance and management of the protected lands;
- Restrictions under a Conservation Easement Agreement may include that no planning development (i.e. public access and trails) may occur on the protected land without the consent of the conservation easement holder/land trust, and that the land may not be used for any purpose other than environmental protection and passive recreation uses;
- The registered Conservation Easement Agreement and related restrictions will transfer with the land to bind future owners of the land for an indeterminate length of time if made and given pursuant to the Act.

## Restrictive Covenants

3. The Town may hold full ownership of the Environmental Lands subject to restrictive covenants that may be registered on title to the protected lands under the Act to restrict or limit the use of the lands.

Restrictive covenants may be registered on title to the protected land under the Act to restrict or place specific limitations on the landowner’s use of the land (“**Restrictive Covenants**”).

As with the Conservation Easement Agreement, under the Act, any amendment or release of the Restrictive Covenants will require consent of the Minister of Natural Resources.

The registered Restrictive Covenants automatically transfer with the property when the property is transferred and binds the purchasers of the land. Restrictive Covenants made and given under the Act may be in effect for an indeterminate period of time.

While a Conservation Easement would typically cover the entire property, Restrictive Covenants typically, provide for more limited protections; are not as detailed; and are focused on smaller pieces of land (i.e. only the corner of a property).

### Implications

- Restrictive Covenants can be used to ensure that the lands will not be used for any purpose other than environmental protection and passive recreation uses;
- The Restrictive Covenants will transfer with the land to bind future owners of the land for an indeterminate length of time if made and given pursuant to the Act.

### Lands Conveyed Directly

4. The Owner may convey the Environmental Lands directly to eligible environmental charities or government organizations under the Federal Ecological Gifts Program.

Another option for the conservation and protection of the Environmental Lands in perpetuity is through a donation to eligible organizations under the Federal Ecological Gift Program (generally geared toward private property donations). Based on information on the program's website, the program is administered by Environment and Climate Change Canada in cooperation with dozens of partners, including other federal departments, provincial and municipal governments, and environment and non-government organizations. Eligible organizations under the program include eligible environmental charities, which include land trusts and other nature conservation organizations, and government organizations. There would be Federal standards that have to be adhered to, in terms of management and use. The donation eligibility of the Environmental Lands for this program would have to be investigated.

### Implications

- Since the donation of lands would be made directly by the land owner to the eligible organization under the program, the Town would not be involved in any of the arrangement. The Town would not have any responsibility for or maintenance/stewardship obligations of the lands. However, there would also not be any control or ability to offer public access.

### Public Access through Preserved Lands

In regards to public access through the Environmental Land, the Oak Ridges Moraine Land Trust advised that one of the main purposes of protecting properties is a *nature first approach* with conservation as the primary objective. Under this approach, public uses and trails should be located away from the ecologically sensitive features, be low impact (i.e. require dogs to be on leash, stay on trails, etc.), and have signage to remind and educate the trail users about the species that are being protected. A

management plan and stewardship funds would assist with signage, other infrastructure, maintenance etc., and would outline the restrictions and allowed uses on certain portions of the property.

Staff believe that of the four options described above, a Conservation Easement appears to provide the best balance between land protection and public access. Restrictive covenants appear to have the most flexibility in terms of allowing for trails and public access, however, there appears to be less focus on land protection. The Conservation Easement offers flexibility as it can be tailored to trail locations and offers greater protection to the lands outside the trails. Joint ownership would allow the joint parties to agree to the trail system, and any future changes to the trails and/or public access would likely have to be negotiated as a change to the Joint Ownership Agreement.

Different land trusts seem to have slightly different philosophies about public access and trail development. If there is to be a choice between the options above, it may depend on which land trust is interested in taking the lands and/or partnering with the Town at the time the lands are to be transferred.

## Analysis

Land Preservation Method	Benefits	Disadvantages/Risks
Joint Ownership	<p>Shared control over the maintenance and management of the land.</p> <p>Transfer of land requires consent of all joint owners.</p>	<p>Will have to share and negotiate control over trail development and public access. Some land trust organizations do not encourage or support public access.</p>
Conservation Easement	<p>Shared control over the maintenance and management of the protected land.</p> <p>Conditions may be included in the conservation easement registered against the land restricting planning development without the consent of the conservation easement holder.</p>	<p>May require fully developing the trail plan(s) prior to establishing the easement such that the trail lands can be left out of the easement area.</p>
Restrictive Covenants	<p>Registered restrictions will ensure that the lands will not be used by the landowner for any purpose other than environmental protection and passive recreation uses.</p> <p>Registered restrictions will transfer with the land and legally</p>	<p>Generally only covers a small portion of the lands; not used for entire properties. Will not effectively achieve the goal of preservation of large tracts of land.</p>

	<p>bind future owners of the land for an indeterminate period of time.</p> <p>Could be tailored to very specific parts of the lands to be transferred, allowing for more strategic additional protections (i.e. focusing on the wetlands vs the forests).</p>	
<p>Land Owner conveys land directly to eligible organization under the Federal Ecological Gifts Program</p>	<p>The land will be conveyed to an organization whose goals and objectives are to conserve and protect the land's biodiversity and environmental heritage in perpetuity. The Town will have no responsibility or liability for the lands.</p>	<p>The Town will have no control over the land if transferred directly to another entity.</p>

## Conclusion

There are several options for preserving the conservation of the Environmental Lands. The options included in the report remove the opportunity for a future Council alone to change the protective measures imposed on the environmental lands. The options included in the report address this risk by engaging a third party entity under the *Conservation Land Act* in the preservation of the Environmental Lands or through a joint ownership of the lands with a conservation land trust.

Staff will bring a recommendation report forward for consideration and direction regarding the options discussed in this report when the Environmental Lands are ready to be conveyed by the landowner.

## Business Plan and Strategic Plan Linkages

The proposed land preservation supports the Town's strategic priorities of *Living Well* and being *Well-Balanced* by encouraging environmental protection, natural heritage preservation, and providing green and open spaces, parks, and trails. It also supports Council's strategic priorities of *Environmental Stewardship* and creating *Extraordinary Places and Spaces* within the community.

## Consultation

Representatives of the ORM Land Trust and Nature Conservancy Canada were consulted.

## Human Resource Considerations

None.

## **Budget Impact**

None.

## **Attachments**

None.

## **Contact**

Meghan White – [mwhite@newmarket.ca](mailto:mwhite@newmarket.ca)

Antonietta Mollicone – [amollicone@newmarket.ca](mailto:amollicone@newmarket.ca)

## **Approval**

Adrian Cammaert, Manager, Planning Services

Jason Unger, Director, Planning & Building Services

Peter Noehammer, Commissioner, Development & Infrastructure Services

Karen Reynar, Director, Legal Services

Esther Armchuk, Commissioner, Corporate Services