

Niagara Escarpment Commission

232 Guelph St.
Georgetown, ON L7G 4B1
Tel: 905-877-5191
Fax: 905-873-7452
www.escarpment.org

Commission de l'escarpement du Niagara

232, rue Guelph
Georgetown ON L7G 4B1
No de tel. 905-877-5191
Télécopieur 905-873-7452
www.escarpment.org



Niagara Escarpment Commission
An agency of the Government of Ontario

August 20, 2020

INITIAL STAFF REPORT

**RE: PROPOSED Niagara Escarpment Plan Amendment PH 219 20
Nelson Aggregate Co.
Part Lots 1 & 2, Concession 1 NS, Part Lots 2, 3 & 4 RP20R7439, Part
Lots 1 & 2, Concession 2 NS, Part Lots 1 & 2, Concession 3 NS, Part
Lots 17 & 18, Concession 2, NDS
City of Burlington, Region of Halton**

APPLICANT/OWNER: Nelson Aggregate Co.

AGENT: MacNaughton, Hermson, Britton, Clarkson Planning Limited (MHBC)

RECEIVED: Niagara Escarpment Plan Amendment application received May 15, 2020

NEP Designations: Escarpment Rural Area, Mineral Resource Extraction Area

PROPOSAL SUMMARY:

An application to amend the Niagara Escarpment Plan (NEP) has been submitted which proposes to redesignate approximately 78.3 ha (193.5 ac.) of lands described as Parts 1 & 2, Concession 1 NS, Part Lots 2, 3, & 4 RP20R7439, and Part of Lots 17 & 18, Concession 2 NDS (former geographic Township of Nelson), City of Burlington, Region of Halton, from Escarpment Rural Area to Mineral Resource Extraction Area; and

To apply a special policy under Part 1.9.3 of the NEP (2017) that applies to the subject properties, being Part of Lots 1 and 2, Concession 2 NDS, Part Lots 1 & 2, Concession 3 NDS, in the City of Burlington, Regional Municipality of Halton that would allow the continuation of the use of an office building, maintenance building, facilities for washing, processing and stockpiling of aggregate, truck washing facility, asphalt plant, recycling facilities, and the entrance to support the extraction of aggregate on lands proposed to be redesignated. This would apply only while the two sites are actively operated under a single license.

PURPOSE OF THIS REPORT

The purpose of this report is to provide advice to the Niagara Escarpment Commission (NEC) to determine whether the application for amendment to the Niagara Escarpment Plan 2017 (NEP) has met the requirements for a Plan Amendment application as set out in Part 1.2.1 of the NEP, whether the application should be initiated and circulated under

Section 7 and Section 10 of the *Niagara Escarpment Planning and Development Act* (NEPDA), or, whether the NEC should recommend to the Minister that the application should be considered frivolous, vexatious, or not in the public interest, etc., under Section 6.1(3) of the NEPDA.

STAFF SUMMARY RECOMMENDATION:

Instruct staff to process the proposed Amendment PH 219 20 for circulation and notification pursuant to Section 7 and Section 10 of the NEPDA.

A. BACKGROUND/OVERVIEW

The proposed NEPA application seeks to both redesignate lands and apply a special policy for continued use of existing infrastructure used in the current Nelson Aggregate operation. For clarity sake Table 1 provides a brief overview of how the amendment is proposed to apply:

Table 1 – Description of lands and proposed applicability of NEPA

Reference Name	Legal Description & Municipal Address	Ownership	Application of Proposed NEPA
Existing extraction operation	2435 No. 2 Side Road - Part Lot 1 & 2 Concession 2 NS, Part Lot 1 & 2, Concession 3 NS	546958 Ontario Ltd. (Nelson Aggregate Co.)	Special Policy
Western extension	5235 Cedar Springs Road - Part Lots 1&2, Concession 1 NS, Part 2, 3, & 4 RP20R7439	Bestway TV and Appliances (golf course)	Redesignation (ERA to MREA)
Southern extension	2300 No.2 Sideroad – Part Lot 18, Concession 2, NDS	546958 Ontario Ltd.	Redesignation (ERA to MREA)
Southern extension	2316 No.2 Sideroad – Part Lot 18, Concession 2 NDS	546958 Ontario Ltd	Redesignation (ERA to MREA)
Southern extension	2330 No.2 Sideroad – Part Lot 17, Concession 2 NDS	546958 Ontario Ltd	Redesignation (ERA to MREA)
Southern extension	2280 No. 2 Sideroad – Part Lot 18, Concession 2 NDS	546958 Ontario Ltd.	Redesignation (ERA to MREA)
Southern extension	2292 No. 2 Sideroad – Part Lot 18, Concession 2 NDS	546958 Ontario Ltd.	Redesignation (ERA to MREA)

ERA: Escarpment Rural Area

MREA: Mineral Resource Extraction Area

The NEPA application proposes an expansion to the existing Nelson Aggregate Co. operations in both a southern direction and in a contiguous western direction. Currently, Nelson Aggregate Co. has entered into purchase and sale agreements with the owners of the western expansion lands. The southern expansion is proposed on approximately 18.3 ha of lands located on the opposite side of No.2 Sideroad to the current Nelson operation. Approximately 14.5 ha of those southern lands are proposed to be reserved for aggregate extraction. The western expansion is proposed on land contiguous to the existing operation on approximately 60.0 ha; 35.7 ha of which is intended to be reserved for aggregate extraction. The southern expansion lands are comprised of five (5) properties all owned by Nelson Aggregates Co. These lands contain three (3) dwellings and associated residential dwellings. The largest parcel has been historically farmed and contains a single dwelling and an agricultural structure. The western extension lands are currently utilized as a golf course (Burlington Springs Golf and Country Club) and contain a residential dwelling.

The Nelson's current licence at the Burlington Quarry spans 218.3 ha with an extraction area of 210.0 ha. The site also contains offices, maintenance facilities, an asphalt plant, recycling operations, and other facilities utilized in the extraction and production of aggregate materials. Nelson Aggregate Co. intends to continue to utilize these facilities in tandem with the expansion lands and has proposed a site-specific policy be applied to recognize their future use.

In addition to the proposed special policy, Nelson Aggregate is seeking, through this amendment, to designate the identified expansion lands from Escarpment Rural Area to Mineral Resource Extraction Area to facilitate a change in use to aggregate extraction. The proposed expansion lands are estimated to contain ± 30 million tonnes of mineral aggregate resource; Nelson is applying for a maximum tonnage limit of 2 million tonnes per year with the expectation to extract, on average, 1 million tonnes per year¹.

The southern expansion lands formed part of a previous Nelson Aggregate NEPA application that concluded in 2012 (PH 153 04). Similar to the current application, PH 153 04 proposed an expansion to the Nelson Aggregate Burlington Quarry operation but entirely on the south side of No. 2 Sideroad and included a total of 61.0 ha of licensed area. The application was ultimately refused through a Joint Board Decision under the *Consolidated Hearings Act*; the NEC participated in the associated hearing taking the position that the amendment be refused. The current application includes 18.3 ha of the 61.0 ha originally proposed for redesignation under NEPA PH 153 04. (See attachment 7)

Joint Agency Review Team ("JART") Protocol

The Halton Consolidated – Streamlined Mineral Aggregate Review Protocol was originally developed through an extensive, consultative process between Halton Region, Niagara Escarpment Commission (NEC), Local Municipalities, Conservation Authorities, Ministry of Natural Resources and Forestry (MNR) and Ontario Ministry of Agriculture, Food and

¹ MHBC Planning Justification Report & Aggregate Resources Act Summary Statement, April 2020.

Rural Affairs (OMAFRA). The Protocol was first approved by Regional Council on January 31, 2001, and revised in September 2004, and again in March 2007.

Another recent update took place in February of 2020. NEC Staff were involved in the review, which sought to further clarify the Joint Agency Review Team (JART) process as well as address updates to associated policy that had occurred between now and the last update in 2007.

A JART was formed for the purposes of the review and processing of the current Nelson Aggregate Co. applications. The permanent members of this newly formed JART are:

- Halton Region (JART Chair)
- Niagara Escarpment Commission
- City of Burlington
- Conservation Halton

Invites for inclusion in the JART process were also sent to MNRF and MECP staff; however, given current limitations as well as subsequent/tandem application processes, those Ministries opted out of being members of the JART but identified they may participate when necessary.

The JART team will review the applications with the intention of providing consolidated comments on the technical documents of the proposal. In addition, there is a high likelihood of undertaking joint statutory public meetings on the application. JART will produce a final summary report on the application; however, it is imperative that the individual JART agencies provide a report and recommendation unique to their own requirements under their specific policies and legislation. NEC staff will contribute to the JART report, but NEC staff will produce a separate Summary Report at the end of the process.

Aggregate Resources Act (ARA)

The applicant is also required, and has made an application to MNRF for a licence under the ARA for a Class A, Category 2, quarry with below-water extraction. As stated in the ARA application:

Nelson Aggregate Co. is applying for a proposed extension to its Burlington Quarry on lands located to the south and west of the existing Burlington Quarry. The proposed extension is located at Part Lot 1 and 2, Concession 2 and Part Lot 17 and 18, Concession 2, NDS (former geographic Township of Nelson), City of Burlington, Region of Halton.²

In this application the proposed expansion would accommodate a licensed area of 78.3 ha and a proposed extraction area of 50.2 ha.

² MHBC Planning Justification Report & Aggregate Resources Act Summary Statement, April 2020.

MNRF Staff are responsible for reviewing this application and are generally encouraged to collaborate with JART agency members at least for the purpose of the administrative process. The ARA application process, similar to the NEPA process, requires public consultation once the application is deemed complete. At the time this Staff Report was authored, and in consideration of the current pandemic, the ARA application is not anticipated to be deemed complete earlier than September 2020. Pursuant to S.24(3) of the NEPDA, the MNRF will be restricted from providing any decision or approval until such time as a NEC Development Permit has been issued on the file.

B. PLANNING DOCUMENTS

1. *Niagara Escarpment Planning and Development Act (NEPDA)*

Sections 6.1(2.2) of the NEPDA requires that no person or public body shall make an application or request to amend the NEP if the application or request relates to land that is within the land use designation of Escarpment Natural Area, Escarpment Protection Area, Mineral Resource Extraction Area or Escarpment Rural Area of the NEP and the application or request seeks to:

- a) redesignate the land to the land use designation of Minor Urban Centre, Urban Area or Escarpment Recreation Area of the NEP; or,*
- b) make any other amendment to permit urban uses, unless it is during the time of a Plan Review.*

The proposed amendment is for a site-specific policy change and redesignation of lands from Escarpment Rural Area to Mineral Resource Extraction Area to facilitate an aggregate extraction use. The amendment proposal does not trigger consideration of the prohibition regarding “urban uses” and “urban designations” under the NEPDA. The amendment is consistent with the NEPDA respecting urban uses and urban designations and the NEC can consider the application under Section 6.1 of the NEPDA.

Sections 6.1(2.1) and 10(6) of the NEPDA require that amendments to the NEP be justified. As identified in Part 1.2.1 of the NEP, the justification for a proposed amendment to the NEP “means the rationale for the amendment, as well as reasons, arguments or evidence in support of the change to the Plan proposed through the amendment”.³ As described later in this report, the applicant has submitted numerous studies and justification required under Part 1.2.2 and Part 2.9.3 of the NEP (2017) to support the application.

2. *Niagara Escarpment Plan 2017*

The NEP Part 1.2.1 identifies that planning policies and land use designations may be changed by amendment to the Plan, as long as the proposed amendment is consistent with the Purpose and Objectives of the NEPDA and the NEP.

³ NEP 2017, Part 1.2.1, p. 17

Purpose

The Purpose of the NEPDA and the NEP is to provide for the maintenance of the *Niagara Escarpment* and land in its vicinity substantially as a continuous *natural environment*, and to only allow such development as is *compatible* with that *natural environment*. During the evaluation of the proposed Plan Amendment, NEC staff will consider whether the proposed special policy and change of designations of the subject lands would be consistent with the Purpose of the NEP based on the evaluation of the policies of the Plan and the comments received.

Land Use Designations

The proposed expansion lands are designated Escarpment Rural Area while the lands intended to be subject to special policy are designated Mineral Resource Extraction Area.

Part 1.2.2 of the NEP (2017) provides specific policies relative to NEPA applications that seek new Mineral Resource Extraction Areas. This Part identifies that mineral aggregate operations within a new Mineral Resource Extraction Area producing more than 20,000 tonnes annually may be considered on lands within the Escarpment Rural Area land use designation through an amendment to the NEP. Further, Part 1.2.3 sets out additional evaluative measures beyond the relevant policies of the Plans for such applications as follows:

- a) *protection of the Escarpment environment;*
- b) *opportunities for achieving the objectives of the Niagara Escarpment Planning and Development Act through the final rehabilitation of the site;*
- c) *the protection of prime agricultural areas, the capability of the land for agricultural uses, and its potential for rehabilitation for agricultural uses; and*
- d) *opportunities to include rehabilitated lands in the Niagara Escarpment Parks and Open Space System.*

NEC staff will review the submitted technical studies, and comments of circulated agencies and First Nations to determine if the application conforms to the criteria provided through Part 1.2.3 NEP (2017).

Escarpment Rural Areas provide a buffer to the more ecologically sensitive areas of the *Escarpment*. The objectives for this designation include maintaining *scenic resources*, conserving *cultural heritage resources*, and providing for *compatible* rural land uses. Objective 7 specifically provides the following:

To provide for the consideration of new Mineral Resource Extraction Areas which can be accommodated by an amendment to this Plan.

Since much of the land surrounding the proposed expansion are designated Escarpment Rural Area, NEC staff will evaluate whether the proposed amendment will impact the ability of those surrounding lands to achieve the objectives listed under Part 1.5.1.

However, Objective 7 provides the justification required to consider the change in designation of the subject lands.

Special Provisions

The NEPA application proposes to apply special provisions to the lands currently designated Mineral Resource Extraction Area to allow for continued use of existing infrastructure, maintenance facilities, and administrative offices. The purpose of this special policy to address Part 1.9.3.4 & Part 1.9.3.10 of the NEP (2017), which provide the following regarding Permitted Uses:

- 4. Mineral aggregate operations licensed pursuant to the Aggregate Resources Act but not including associated facilities unless they are permitted as an accessory use.*
- 10. Accessory uses normally associated with the mineral aggregate operation, such as temporary offices serving the subject site, signage, crushing and washing facilities, or facilities for recycling and re- processing of mineral aggregate resources. Asphalt plants, concrete plants, brick manufacturing plants and other similar manufacturing uses shall not be permitted.*

As the proposed southern expansion is not contiguous with the existing operation, the special policy is proposed to ensure the material extracted from those lands can be processed at the existing facility. NEC Staff will analyze the technical studies provided to determine if this meets the Purpose and Objectives of the Plan and the Objectives of the respective land use designations.

Development Criteria

All applicable Development Criteria set out in Part 2 of the NEP are to be considered in the assessment of any Amendment to the NEP. The following Development Criteria are applicable to the consideration of Nelson Aggregate Co.'s proposed Plan amendment. These criteria will be assessed through review of submitted technical studies and comments from public agencies, the public, and indigenous communities should the amendment be initiated.

The Objective of **Part 2.2 General Development Criteria** of the NEP is to permit the reasonable enjoyment by the owners of all lots that can sustain development. Part 2.2.1 provides that the *Escarpment* environment shall be protected, restored, and where possible enhanced for the long-term, and having regard to multiple, or successive development that is likely to occur. Development is also to avoid sites prone to hazards and is only to occur on an *existing lot of record*.

The Objective of **Part 2.5 Development Affecting Steep Slopes and Ravines** of the NEP is “to ensure that development affecting steep slopes ... and ravines is *compatible with the Escarpment environment* and does not result in unsafe conditions”. Development is also to be designed in such a way to minimize the disturbance and ensure the stability of the *Escarpment*.

The Objective of the NEP **Part 2.6 Development Affecting Water Resources** policies is to ensure that hydrologic features and functions including the quality, quantity and character of groundwater and surface water, at the local and watershed level, are protected and where possible enhanced. Mineral aggregate extraction is understood to have the potential to result in negative impacts to both ground water and surface water resources. Significant scrutiny will be applied to the review of the Hydrogeological and Hydrological Impact Assessment Report and the Surface Water Assessment Report.

The Objective of the NEP **Part 2.7 Development Affecting Natural Heritage** is to protect and where possible enhance natural heritage features and functions, in order to maintain the diversity and connectivity of the continuous *natural environment*.

Key Natural Heritage Features identified on the subject properties include woodlands. Despite the subject lands not containing many KNHFs, NEC staff note there are KNHFs in close proximity that are known to contain endangered species. NEC staff will evaluate the Natural Environment Technical Report prepared and submitted by the applicant and consult with relevant agencies to determine how this policy may have been addressed. The MECP will be consulted with respect to Species at Risk as Jefferson Salamander are known to inhabit lands in proximity to the proposed southern expansion.

The Objective of the NEP **Part 2.8 Agriculture** is to encourage agricultural uses in agricultural areas, especially in *prime agricultural areas*, to permit uses that are compatible with farming and to encourage *accessory uses* that directly support continued *agricultural uses*. Part 2.8 does not contain policies specific to Aggregate Extraction operations, however the objective of this criterion is valuable in assessing the applicant’s obligations under Part 2.9.3 (f) of the NEP.

The stated objective of **Part 2.9 Mineral Aggregate Resources** is to ensure that mineral aggregate operations and their accessory uses are compatible with the Escarpment environment and to support a variety of approaches to rehabilitation of the natural environment and provide for re-designation to land use designations compatible with the adjacent land uses. Part 2.9.1 of the NEP (2017) provides that, notwithstanding the policies of Part 2.7, mineral aggregate operations and accessory facilities may be permitted in KNHFs except for *wetlands* and *significant woodlands*. The current proposal does not suggest extraction in *wetlands* or *significant woodlands* but does propose extraction in proximity to such features. Part 2.9.2 further permits mineral aggregate operations in a KNHF which is solely the *habitat of an endangered species*, provided it is in compliance with the *Endangered Species Act, 2007*.

Part 2.9.3 sets out the general requirements for what needs to be demonstrated in all proposals for *aggregate operations*. The requirements are as follows:

- a) *demonstrate how key natural heritage features and functions will be protected and where possible enhanced during and after extraction;*
- b) *demonstrate how cultural heritage resources will be conserved;*
- c) *demonstrate how the Escarpment's scenic resources and open landscape character will be maintained and where possible enhanced during and after the extraction;*
- d) *demonstrate how key hydrologic features will be protected and where possible enhanced during and after extraction, including the maintenance of the groundwater and surface water quantity and quality;*
- e) *demonstrate how natural heritage features will be avoided and the connectivity between key natural heritage features and key hydrologic features will be maintained and where possible enhanced during and after the extraction of mineral aggregates;*
- f) *in prime agricultural areas, undertake an Agricultural Impact Assessment to determine how to avoid, minimize and mitigate impacts on agricultural lands and operations;*
- g) *minimize negative impacts of mineral aggregate operations and their accessory uses on surrounding land uses;*
- h) *complete progressive and final rehabilitation of the licensed site to provide equal or greater ecological values, including utilizing native species, in order to accommodate subsequent land use designations compatible with the surrounding land uses;*
- i) *within the licensed area but outside of the area of extraction, protect the Escarpment environment during periods of extraction and rehabilitation; and*
- j) *minimize negative impacts of mineral aggregate operations and their accessory uses on parks, open space and the existing and optimum routes of the Bruce Trail.*

NEC staff's comments on Nelson Aggregate's Pre-consultation Application with the City of Burlington is attached (Attachment 4). These comments identified, to the applicant, the required studies in order for the application to be properly assessed under Part 2.9.3 of the NEP (2017). NEC staff are satisfied that those studies have been prepared and submitted as part of the application. Studies submitted are identified in Section E of this report.

The objective of **Part 2.10 Cultural Heritage** policies is to conserve the *Escarpment's cultural heritage resources*, including *significant built heritage resources, cultural heritage landscapes, and archaeological resources*. The applicant has submitted a Cultural Heritage Impact Assessment and Stage 1/2/3 Archaeological Studies for the subject lands. NEC Staff will review these studies as will municipal agencies and Indigenous communities. The applicant and their consultants are also required to consult with the Ministry of Heritage, Sport, Tourism, and Culture Industries to ensure all *cultural resources* are conserved.

The Objective of **Part 2.13 Scenic Resources and Landform Conservation** is to ensure that development preserves the natural scenery and maintains *escarpment related landforms and the open landscape character* of the Escarpment. Through Parts 2.9.3 (c), 2.9.5 and 2.9.6 proposals for new quarries must demonstrate how scenic resources and open landscape character will be maintained during and after extraction. The application must also demonstrate how the proposed rehabilitation will contribute to the scenic resources and open landscape character. The applicant has submitted a details Visual Impact Assessment, Landscape/Screening Plan, and a Rehabilitation Plan. NEC Staff will review these reports to determine conformity with Part 2.13 should the amendment be initiated.

Niagara Escarpment Parks and Open Space System (NEPOSS)

The subject lands are in the vicinity of Mount Nemo Conservation Area which part of the Niagara Escarpment Parks and Open Space System (NEPOSS). The application will be circulated to Conservation Halton for their input in terms of any potential impact of the proposed land use in a NEPOSS park.

The applicant has submitted a Rehabilitation and After-use Plan for the subject lands that encompasses both the existing operation and the expansion lands. These Plans do provide a proposal to rehabilitate the lands to a state that could be incorporated into the NEPOSS as is required through Part 1.2.2 (d) of the NEP (2017). NEC Staff will review those plans solely on the basis of whether the rehabilitation measures are satisfactory. It is noted that future use of the lands is predicated on the state of the lands at the time the licence is surrendered and will be subject to a subsequent NEPA application in accordance with NEP Part 1.9.5, After Uses.

3. Provincial Policy Statement (2020)

The PPS (2020) is intended to provide direction on matters of provincial interest related to land use and planning. In their decisions on land use planning, all agencies, including the NEC, must be consistent with the policies of the PPS; however, the PPS states that provincial plans take precedence over policies in the PPS to the extent of conflict. The NEP builds upon the policy foundation provided by the PPS and provides additional land use planning policies in support of the Purpose and Objectives of the NEP.

Part III, How to Read the Provincial Policy Statement states that:

Provincial plans are to be read in conjunction with the Provincial Policy Statement. They take precedence over the policies in the Provincial Policy Statement to the extent of any conflict, except where the relevant legislation provides otherwise.

Policy 1.1.1 of the PPS provides the objectives in sustaining healthy, liveable, and safe communities. These include:

- c) *avoiding development and land use patterns which may cause environmental or public health and safety concerns;*
- h) *promoting development and land use patterns that conserve biodiversity; and*
- i) *preparing for the regional and local impacts of a changing climate.*

Policy 1.1.4 of the PPS regarding Rural Areas states that healthy, integrated and viable *rural areas* should be supported:

- a) *by building upon rural character and leveraging rural amenities and assets.*
- f) *promoting diversification of the economic base and employment opportunities through goods and services, including value-added products and the sustainable management or use of resources;*
- h) *conserving biodiversity and considering the ecological benefits provided by nature;*

Policy 1.2.6 of the PPS provides direction that major facilities and sensitive land uses shall be planned to minimize land use incompatibilities. Where avoidance is not possible, uses should be planned and developed to minimize the adverse effects from odour, noise and other contaminants, minimize the risk to public health and safety, and ensure the long-term operational and economic viability of major facilities in accordance with provincial guidelines. The current application will be reviewed to understand if the applicant has properly avoided land use incompatibilities, or that the proposed mitigation measures are appropriate to minimize any adverse impact.

Policy 1.6.7.2 requires that efficient use be made of existing and planned transportation infrastructure. The applicants have submitted a Traffic Impact Study (TIS) that contemplates the impact to Sideroad No.2 and surrounding road network as a result of the proposed expansion

Policy 1.8 encourages planning authorities to consider the impacts of a changing climate and energy conservation and efficiency when addressing land use matters. NEC staff will be looking for information from the applicant as to how the future use of the mineral aggregate operation can achieve goals related to climate change.

Policy 2.0 of the PPS identifies the Province's objectives respecting the long-term protection of natural heritage and water resources for their economic, environmental and social benefits.

Policy 2.1 requires that natural features and areas shall be protected for the long-term and Policy 2.1.2 identifies that 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.

Policy 2.1.8 states that development and site alteration shall not be permitted on adjacent lands to natural heritage features unless the ecological function of the adjacent lands has been evaluated and it has been demonstrated that there will be no negative impacts on the natural features or on their ecological functions. The applicant has prepared a 2 Natural Environment Technical Report that will be reviewed by NEC staff and the circulated agencies. Development has been proposed in proximity to natural heritage features and endangered species habitat. Particular scrutiny will be applied to the application's ability to maintain and improve linkages between natural heritage features as well as the movement of wildlife.

Policy 2.2. of the PPS relates to water resources and requires that planning authorities shall protect, improve or restore the quality and quantity of water. The policies under Policy 2.2.1 requires that the planning authorities should be concerned with the watershed as an appropriate ecological scale to assess potential impacts. This section also speaks to protecting water resources in relation to natural heritage, drinking water, climate change, and stormwater management. The Hydrogeological and Hydrological Impact Assessment and Surface Water Assessment submitted by the applicant will be reviewed against these standards.

Policy 2.3 of the PPS provides direction to planning authorities in agricultural areas. In general, the PPS provides that, in *prime agricultural areas*, permitted uses are to be agricultural uses, agricultural-related uses, and on-farm diversified uses. Additionally, all types, sizes and intensities of agricultural uses and *normal farm practices* shall be promoted and protected in accordance with provincial standards. Expansions to mineral aggregate extraction operations may be permitted on *prime agricultural lands* if the resource is identified in appropriate planning documents and if impacts to surrounding farm uses are minimized. The applicant has submitted an Agricultural Impact Assessment that will be reviewed by NEC staff.

Policy 2.5 of the PPS directs planning authorities on matters relating to mineral aggregate resources. Per Policy 2.5.1 *mineral aggregate resources* shall be protected for long-term use, and require the identification of deposits subject to appropriate data being available. The lands proposed for expansion are identified as having significant aggregate resource deposits.

Policy 2.5.2.1 provides that as much mineral aggregate resources as realistically possible shall be made available as close to market as possible. Policy 2.5.2.2 states that extraction shall be undertaken in a manner that minimizes social, economic, and environmental impacts and encourages *mineral aggregate resources conservation* through accessory recycling facilities where feasible. The current operation at the Nelson Aggregate Co. contains an aggregate recycling operation; this operation is intended to remain in place through the proposed special policies.

Policy 2.5.3 requires that a progressive and final rehabilitation plan shall be required to accommodate subsequent land uses, to promote land use compatibility, to recognize the

interim nature of extraction, and to mitigate negative impacts to the extent possible. Further, *comprehensive rehabilitation* is encouraged where there is a concentration of aggregate resources. Policy 2.5.4.1 speaks to where lands need not be rehabilitated back to agricultural capability within *prime agricultural areas*. As portions of the extension lands are understood to fall in the category of *prime agricultural* land and the current rehabilitation plan does not propose an agricultural future use, the application will be assessed against the criteria set out through Policy 2.5.4.1 (a) through (d).

Policy 2.8 of the PPS relates to cultural heritage and archaeology. *Significant built heritage and significant cultural heritage landscapes are required to be conserved*. As discussed earlier in this Report, staff will review the Archaeological Assessments and the Cultural Heritage Impact Assessment and consult with the appropriate Ministry to assess the impact of the quarry expansion and ensure all cultural heritage resources are appropriately conserved. Indigenous communities will also form part of the consultations.

Section 3.0 of the PPS 2020 provides direction on protecting health and safety. Broadly, this section seeks to direct development away from natural or human-made hazards where there is an unacceptable risk to public health or safety or of property damage, and not create new or aggravate existing hazards. The proposed expansions have been located outside of the hazards defined in Policy 3.1.2 of the PPS.

NEC staff will consider the technical information provided by the applicant to evaluate whether the proposed amendment is consistent with the PPS with respect to all the above-noted policies.

4. Greenbelt Plan (2017)

The *Greenbelt Act, 2005* authorized the preparation of the Greenbelt Plan, which was approved in February 2005 and updated in 2017 through the 2015 Co-ordinated Land Use Plan Review. The Greenbelt Plan Area includes the NEP Area. The policies of the NEP are the policies of the Greenbelt Plan for the NEP Area except for Section 1.1 (Context); Section 1.2.1 (Vision); and the Open Space and Trails Policies set out in Section 3.3 of the Greenbelt Plan. The planning, construction, and maintenance of parkland, open space, and trails in the NEP Area must also comply with the policies in Section 3.3 of the Greenbelt Plan.

NEC staff will evaluate the applicant's studies as well as the submitted rehabilitation and after-use plan to determine whether the proposed Amendment is in conformity with the policies of the Greenbelt Plan, as applicable.

5. A Place to Grow: Growth Plan for the Greater Golden Horseshoe (2019)

The Growth Plan applies to lands within the Greater Golden Horseshoe (GGH), which includes the City of Burlington, and provides direction on how to manage growth (Section 6).

The Growth Plan and Greenbelt Plan are intended to work together. Areas to be protected in the GGH were established first (in the Greenbelt Plan) and then areas where development could be considered were identified second (the Growth Plan). Both the Growth Plan (Section 1.4) and its enabling legislation (*Places to Grow Act, 2005*), indicate that in considering the Growth Plan in relation to other Provincial Plans and Policies (e.g., the NEP), the planning direction to be followed is the one that “provides more protection to the natural environment or human health”. In considering the hierarchy of provincial plans and policies governing this area and the provisions within those documents, the greatest protection to the natural environment and human health (particularly the natural environment), is accomplished most effectively through the policies and appropriate land use designations of the NEP.

A Place to Grow also supports the conservation of *cultural heritage resources* including *cultural heritage landscapes* and *areas of archaeological potential*. The Growth Plan also speaks to the protection of resource-based uses in rural areas, and directs how new aggregate operations shall be planned to ensure conformity with the PPS 2020 and the Growth Plan itself.

NEC staff will evaluate the applicant’s studies and determine whether the proposed Amendment is in conformity with the policies of A Place to Grow.

6. Municipal Official Plans

The NEP Development Criteria are applied to assess NEP conformity of local official plans, secondary plans and, where applicable, zoning by-laws, as well as for evaluating site plan applications. If an official plan, secondary plan, zoning by-law or other planning approval is silent on one or more development criteria included in the NEP, the development criteria of the NEP still apply. Part 1.1.1 of the NEP states that municipal official plans and by-laws can be more restrictive or stringent than the policies of the NEP provided that does not result in a conflict with the NEP.

Region of Halton Official Plan

The Regional Official Plan requires an amendment (Regional Official Plan Amendment [ROPA]) to permit all new extraction uses or expansions to existing extraction uses. The Regional Official Plan considers many of the same public and provincial interests through the implementation of policy that conforms or does not conflict with provincial planning documents.

The western expansion lands are designated a mixture of Agricultural Area and Regional Natural Heritage System. The southern expansion lands are designated Agricultural Area. The Regional Official Plan also recognizes both expansion sites as an Identified Mineral Resource Area. The Region of Halton also has an Aggregate Resources Reference Manual that provides guidelines for aggregate applications.

The proposed amendment will be circulated to the Region of Halton for comment of

conformity with municipal policy documents. As noted earlier in the report, NEC staff have been working collaboratively with municipal and public agencies through the JART.

City of Burlington Official Plan

The City's Official Plan requires an amendment (Local Official Plan Amendment [LOPA]) to permit all new extraction uses or expansions to existing extraction uses. Lands targeted for the proposed expansion are designated Escarpment Rural Area in the City's Official Plan.

The City's Official Plan provides a local vision for land use planning that conforms with Regional planning policies and provincial planning policies and interests. As such, and similar to the Regional Official Plan, many of the objectives relative to aggregate expansions are similar to policies found in the NEP. Official Plan policy is permitted to be more restrictive than the policies of the NEP.

The proposed amendment will be circulated to the City of Burlington for comment of conformity with municipal policy documents.

7. Conservation Authority Regulation

Ontario Regulation 172/06: Regulation of Development, Interference with Wetlands and Alterations to Shorelines and Watercourses

Pursuant to Ontario Regulation 172/06, the Conservation Halton (CH) regulates development and site alterations in or adjacent to river or stream valleys, watercourses, hazardous lands and wetlands. Where lands are under regulation, Conservation Authorities ensure that development proposals take into consideration natural features like floodplains, steep slopes, wetlands, rivers and lakes, through general policies that speak to buffers adjacent to natural features/areas in order to maintain ecological and hydrological functions.

Conservation Halton provides review services for local municipalities as development might relate to natural heritage and water resources. Conservation Halton Staff have been active in the review of the application as well as participating in JART. The NEPA application will be circulated to CH should it be initiated

C. SITE DESCRIPTION AND SURROUNDING LAND USES

The lands subject to this amendment are located in a predominantly rural area of the City of Burlington. The existing operations at 2435 No. 2 Sideroad are in proximity to the Minor Urban Centre (a Minor Urban Centre in the NEP) of Mount Nemo located to the south/southeast. Surrounding the existing quarry and proposed expansion lands are notable rural residential uses including subdivisions associated with the Mount Nemo settlement area and rural lots to the east, south, and west.

There are significant agricultural uses in proximity to the subject lands given their location in the rural area of Burlington. The operations are predominantly field crop and small farm agricultural uses. Other agricultural uses present are livestock and equestrian operations to the south and north of the subject lands respectively.

The Bruce Trail is present and currently follows Colling Road directly north of the existing Nelson Aggregate Co. operation. From the east, the Bruce Trail emerges from the Mount Nemo Conservation Area located approximately ± 100 m northwest and continues southwest along Colling Road until it moves northwest along Blind Line. The Bruce Trail represents a passive recreational use. There are two (2) other golf course uses in the area including Camisle Golf Club located directly adjacent to the southern expansion lands, as well as the Hidden Lake Golf Club.

There are a number of commercial and institutional uses located within the Mount Nemo settlement area including the Mount Nemo Christian Nursing Home. Other commercial uses exist outside the settlement are on rural lands and are predominantly garden supply or landscaping businesses.

Landscape Evaluation Study (1976)

The Landscape Evaluation Study (1976) was prepared as background for the NEP in determining its coverage and associated Land Use Designations. The Landscape Evaluation generally apply a 'low' scenic ranking to this area (because of the presence of the quarry) with a portion of the golf course lands being classified as 'average'. To the north, there are ribbons of 'Very Attractive' and 'Outstanding' lands that are associated with the Mount Nemo Conservation Area and Escarpment cliffs and talus slopes.

The policies of the NEP under Part 2.9.3 require the applicant assess scenic impacts to the Escarpment as a result of the expansion. In tandem with the VIA, the proposed adaptive management plan shall describe effective screening measures for the extraction areas. The provided rehabilitation plan will be utilized to assess whether the proposed remediation of the lands will result in a landscape that will contribute to the *open landscape character* of the Escarpment.

D. RELATED NIAGARA ESCARPMENT DEVELOPMENT PERMIT APPLICATION FILES

Niagara Escarpment Plan Amendment PH 153 04 – Nelson Aggregate Co.

This NEPA application was submitted to expand the Nelson Aggregate Co. operation entirely on the southern side of No 2. Sideroad. A decision on the application was ultimately rendered through a Joint Board decision issued under the *Consolidated Hearings Act*. Attachment 6 provides an overview of the lands that were subject to PH 153 04 compared to the lands subject to NEPA PH 219 20. The Commission endorsed

staff attending and participating in the Hearing on the basis that the Commission objected to the approval of the application. A Joint Board Decision issued October 11, 2012 refused the application finding that the proposed quarry expansion would not be consistent with the policies of the NEP (2005) or the Provincial Policy Statement (2005). Attachment 7 provides a 2012 NEC Staff summary report on the matter.

Table 2 provides a brief overview of the Permits that have been issued to the current Nelson Aggregate Co. operation of the years. NEC Staff note that the quarry use on the subject land pre-dates both the NEPDA (1973) and the NEP (1985).

Table 2 – Development Permits Issued for Existing Licensed Site

Development Permit	Development Authorized
H/C/1977-1977/322/717	New office building
H/I/1978-1978/78/948	Replacement of existing asphalt plan with new plant and control building
H/I/1984-1985/226/2506	Construction of a scale house and trucker building
H/C/1989-1990/185/4119	Construction of an addition to the existing office building
H/P/1990-1991/181/4467	Establishment of a temporary firing range for use by law enforcement
H/E/2018-2019/208/11561	Demolition of existing scale house and installation of temporary trailer for use as a scale house. To Relocate a washing facility and two (2) fuel tanks on the subject property.

City of Burlington/Halton Region Plan of Subdivision 24T-86003 (Bunkowski)

This subdivision application was contemplated in 1986 and proposed a 16-lot residential subdivision largely on the lands located at 5235 Cedar Springs Drive (golf course lands). At the time rural estate subdivisions serviced through private means of water and wastewater were still being considered by the Province of Ontario planning regime. A companion application being Plan of Subdivision 24T-86002 was being contemplated at the same time and proposed a 12 lot Plan of subdivision.

At the time NEC staff provided comments to Halton Region and the City of Burlington on the proposal that were endorsed by the Commission. These comments requested the application be refused with the following recommendation:

That the NEC objects to the application as it proposed residential development in a strip fashion which is not appropriate, and represents a visual, unplanned intrusion in the rural areas.

The Commission provided four reasons for objection, one of which identified the perceived land use incompatibility between rural residential uses and the nearby aggregate operation. It is recognized that the protection of identified mineral aggregate resources through the Regional Official Plan played a role in the objection; the predominant concern of the Commission at the time was preventing ribbon or strip development, and preventing a visual intrusion into the open landscape character of the Escarpment.

E. ANALYSIS

INITIATING THE AMENDMENT

Section 6.1(3) of the *NEPDA* provides that: “Where, in the opinion of the Commission, an application for an amendment does not disclose a planning justification for the amendment, is not in the public interest, is without merit, is frivolous or vexatious or is made only for the purposes of delay, the Commission shall inform the Minister of its opinion and, where the Minister concurs in that opinion, the Minister shall inform the applicant in writing of his or her opinion and notify the applicant that unless the applicant makes written representations thereon to the Ministry within such time as the Minister specifies in the notice, not being less than 15 days from the time the notice is given, the provisions of this Act in respect of the considerations of the amendment shall not apply, and approval of the amendment shall be deemed to be refused.”

AMENDMENT CONSIDERATIONS

Matters raised in this preliminary review of this application are noted in order to provide the commenting agencies and the public with an initial evaluation of the application only to determine if the application is justified and is complete. The issues identified are not a complete review of the final merits of the application either in terms of the NEP or any other relevant legislation or regulation.

In reviewing the amendment there are several key issues that must be addressed. All Plan amendments must be considered against the Purpose and Objectives of the NEPDA/NEP, as well as the policies within the NEP and other relevant provincial policies and plans.

JUSTIFICATION FOR THE AMENDMENT

Section 6.1(2) of the NEPDA requires that applications for amendments to the NEP must include a statement of justification together with supporting material. Part 1.2.1 of the NEP (Plan Amendments) provides that the Plan may be amended if:

- the Purpose and Objectives of the NEPDA and the NEP are met;
- justification for the amendment is provided; and,
- it has been demonstrated that the proposed amendment and the expected impacts resulting from the proposed amendment do not adversely affect the Purpose and

Objectives of the *NEPDA* and the NEP and are consistent with other relevant Provincial policies.

Justification means the rationale for the amendment as well as the reasons, arguments or evidence in support of the change to the NEP proposed through the amendment.

Prior to recommending that an application should be processed, the NEC must determine if the applicant has provided a statement of justification which addresses the above. However, even if the proposed Amendment is found to have set out a justification at this stage, NEC staff caution that this is not an endorsement of the amendment application, in whole or in part.

Nelson Aggregate Co., the applicant, through their Agent MHBC has provided the following reports in support of the amendment application:

- Planning Justification Report, MHBC, April 2020
- Level 1 and 2 Natural Environment Technical Report, Savanta, April 2020
- Adaptive Management Plan, Earth FX Inc., Savanta, Tatham Engineering, April 2020
- Air Quality Study, BCX Environmental Consulting, March 2019
- Stage 1, 2, & 3 Archaeological Assessment, Archaeologix Inc., August 2003
- Stage 4 Archaeological Assessment, Archaeologix Inc., August 2004.
- Stage 1 & 2 Archaeological Assessment, Golder Associates, March 2020
- Blast Impact Analysis, Explotech Engineering Ltd, April 2020
- Financial Impact Study, Nelson Aggregates Co., April 2020
- Level 1 & 2 Hydrogeological and Hydrological Impact Assessment Report, Earth FX Inc., April 2020
 - Karst Assessment included
- Surface Water Assessment, Tatham Engineering, April 2020
 - Hazard land assessment included
- Noise Impact Assessment, HGC Ltd., April 2020
- Visual Impact Assessment, MHBC, April 2020
- Progressive and Final Rehabilitation/Monitoring Study, MHBC, April 2020
- Cultural Heritage Impact Assessment Report, MHBC, April 2020.

The applicant submits that the proposed amendment is justified on the following basis:

The amendment proposal:

- is in accordance with the Purpose and Objectives of the NEPDA;
- satisfies and achieves the Purpose and Objectives of NEP;
- is consistent with the PPS (2020), the Greenbelt Plan, the Growth Plan, the Region of Halton Official Plan and the City of Burlington's Official Plan.
- Is in the public interest.

The NEPDA & the NEP

1. Does the proposed amendment satisfy the Purpose and Objectives of the Niagara Escarpment Plan and the *Niagara Escarpment Planning and Development Act*?

The **Purpose** of the Act and the Plan is: “to provide for the maintenance of the Niagara Escarpment and land in its vicinity as a continuous natural environment, and to ensure only such development occurs as is compatible with that natural environment”.

The **Objectives** of the NEPDA and the NEP are:

1. *To protect unique ecologic and historic areas;*
2. *To maintain and enhance the quality and character of natural streams and water supplies;*
3. *To provide adequate opportunities for outdoor recreation;*
4. *To maintain and enhance the open landscape character of the Niagara Escarpment, in so far as possible, by such means as compatible farming or forestry and by preserving the natural scenery;*
5. *To ensure that all new development is compatible with the purpose of the Plan;*
6. *To provide for adequate public access to the Niagara Escarpment; and,*
7. *To support municipalities within the Niagara Escarpment Plan Area in their exercise of the planning functions conferred upon them by the Planning Act.*

Comment: The amendment proposed by Nelson Aggregate Co. must be evaluated with respect to all relevant Objectives. The applicant has submitted a detailed application accompanied with technical studies. Broadly, these studies suggest that through appropriate operational management and mitigation measures, alongside a robust rehabilitation plan, that the Purpose and Objectives of the NEPDA and the NEP area achieved. Through the review of the technical information provided by the applicant and consultation with other agencies through the circulation of the application and proposed amendment, as well as participation in the Region of Halton’s JART process, NEC staff will evaluate whether the proposed amendment would achieve the Objectives of the NEP.

NEC staff identify that the policies of the NEP applying to new *mineral aggregate extraction* uses are unique and require a thorough review and public consultation process to make a determination on conformity with the Purpose and Objectives of the NEP.

Land Use Designation and Designation Criteria

2. *Is the Amendment consistent with the objectives of the Designation and the Designation Criteria in the NEP?*

The applicant is seeking to change the land use designations of the southern and western expansion lands from Escarpment Rural Area to Mineral Resource Extraction Area (MREA). Per Part 1.2.2.1 of the NEP as it relates to Plan Amendments for MREAs, only

lands designated Escarpment Rural Area can be considered as candidate sites.

Escarpment Rural Area Designation

This designation is an essential component of the Escarpment corridor, including portions of the Escarpment and lands in its vicinity. They provide a buffer to the more ecologically sensitive areas of the Escarpment.

The Objectives of the Escarpment Natural Area include are as follows:

1. *To maintain the scenic resources of lands in the vicinity of the Escarpment and the open landscape character of the Escarpment.*
2. *To conserve cultural heritage resources, including features of interest to First Nation and Métis communities.*
3. *To encourage forest management and recreation.*
4. *To provide for compatible rural land uses.*
5. *To encourage agriculture and protect agricultural lands and prime agricultural areas.*
6. *To provide a buffer for ecologically sensitive areas of the Escarpment.*
7. *To provide for the consideration of new Mineral Resource Extraction Areas which can be accommodated by an amendment to this Plan.*

Comment: Objective 7 supports the initiation of the amendment. Technical studies have been submitted by the application which NEC staff and partner agencies will review in order to make a determination if the proposal does not conflict with the objectives of the Escarpment Rural Area designation.

Mineral Resource Extraction Area

The application proposes to apply the MREA designation to approximately 78.3 ha of additional lands current designated as Escarpment Rural Area. Only 50.2 of these hectares are intended to encompass the extraction area. Through the processing of the application and review of technical studies the extent of the proposed MREA designation may be revised.

The application also proposes to maintain existing operation facilities at the lands currently designated as MREA in order to be continually utilized in the extraction of the expansion lands. The policies of the NEP establish that these facilities must be located on the same site as the extraction; the proposed south expansion lands are not contiguous with the currently licensed lands. NEC staff will assess whether this special policy permitting the continual use of the existing facilities better aligns with the objectives of the MREA designation, the Purpose and Objectives of the Plan, and the relevant Development Criteria. Of particular interest are the following MREA designation objectives:

1. *To designate Mineral Resource Extraction Areas where licensed mineral aggregate operations are permitted.*
2. *To minimize the impact of mineral aggregate operations on the Escarpment environment.*
3. *To encourage progressive rehabilitation of mineral aggregate operations.*
4. *To encourage rehabilitated mineral aggregate operations to be restored to a state that is of equal or greater ecological or agricultural value than the original characteristics of the site.*
5. *To ensure that, after a licence is surrendered, the land is re-designated to a land use designation that is compatible with the rehabilitation of the site, the designation criteria of adjacent lands, the surrounding Escarpment environment and existing land uses in the area.*
6. *To encourage, where possible, the integration of rehabilitated lands into the Niagara Escarpment Parks and Open Space System.*

Comment: Through the review of the technical information provided in support of the Plan Amendment application and consideration of agency and public comments, NEC staff will determine if the proposed Amendment addresses the Objectives of this designation.

3. *Is the proposed amendment in the public interest?*

The Amendment proposed by the Nelson Aggregate Co. would facilitate the re-use of existing accessory uses to an extraction use and facilitate a proposed expansion. The applicant states in its Planning Justification Report that the proposed use is consistent with the Purpose and Objectives of the NEPDA and the NEP, is consistent with the PPS and other provincial land use plans, has regard for the municipal official plans, and represents good planning and is in the public interest. Public interest is not defined in the NEP but is commonly understood to mean the welfare or well-being of society as a whole. A further consideration in the NEPDA is whether the application is “without merit, is frivolous or vexatious or is made only for the purposes of delay”.⁴ These are legal terms but on their commonly understood meaning, NEC staff does not find that the application has been submitted for an improper purpose or to delay the planning process.

Comment: A key consideration in this application is whether there is already an established decision with regards to a proposed expansion of the Nelson Aggregate Co. operation. This consideration is required as the proposed southern expansion lands were part of NEPA PH 153 04 which sought a redesignation from Escarpment Rural Area to MREA. NEC staff are of the opinion that some of the policies applying to NEPA PH 153 04 have been noticeably changed in relation to natural heritage and mineral resource extraction. The extent of the southern expansion has also been considerably refined from the previous proposal. Significant scrutiny will be placed on the technical studies and how they have been prepared in support of an expansion onto these lands given the surrounding sensitive ecological features.

The western expansion on the golf course lands was not contemplated through the

⁴ NEPDA, S. 6.1(3)

previous application.

The applicant and their agent have submitted a detailed application that provides the studies requested by NEC staff in order to review the application under Part 1.2.2.3, 1.2.2.4, 2.9.3 and 2.9.11 of the NEP.

4. *Is the Amendment consistent with the Provincial Policy Statement (PPS 2020), Greenbelt Plan, A Place to Grow, and municipal Official Plan?*

Discussion has been provided earlier in this Report with respect to the relevant policies in the PPS (2020), A Place to Grow, the Greenbelt Plan, and Municipal Official Plans. Circulation of the application to Indigenous communities, the affected ministries, the municipalities and Conservation Halton will allow further evaluation and a staff recommendation as to whether the proposed Amendment is consistent with provincial and municipal policy.

CONCLUSION

In conclusion, staff finds that there is adequate information and justification provided to warrant the circulation of this application and to allow further consideration of the merits of the proposed NEP Amendment.

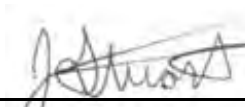
RECOMMENDATION

That the Niagara Escarpment Commission instruct staff to process the proposed Amendment PH 219 20, Nelson Aggregate Co., for circulation and notification pursuant to Section 6.1(2) of the NEPDA, having found that the application is not frivolous, vexatious or for the purposes of delay and does not constitute an urban use.

Attachments


- Attachment 1: Map 1, Amendment Location Map/Existing NEP Designations
- Attachment 2: Amendment Document
- Attachment 3: Circulation and Notification Document
- Attachment 4: NEC Staff Pre-consultation Minutes
- Attachment 5: Nelson Aggregate Co. Proposed Phasing Plan
- Attachment 6: Map 2, Lands Considered Under NEPA PH 153 04 & PH 219 20
- Attachment 7: NEC Summary Report on Joint Board Decision for NEPA PH 153

Prepared By:




John Stuart, MCIP, RPP
Senior Strategic Advisor (A)

Approved by:



Kim Peters, MCIP, RPP
Manager (A)



for

Debbie Ramsay, MCIP, RPP
Director (A)

ATTACHMENT 1

Niagara Escarpment Plan

2435 NO 2 SIDE RD
CITY OF BURLINGTON

- Legend**
- Subject Property
 - Plan Designations**
 - Escarpment Natural Area
 - Escarpment Protection Area
 - Escarpment Rural Area
 - Mineral Resource Extraction Area
 - Minor Urban Centre
 - Niagara Escarpment Parks and Open Space System
 - Roads
 - Waterbodies
 - Watercourse
 - Upper Tier Municipality
 - Lower/Single Tier Municipality
 - Parcel Boundary
 - Ownership Boundary

NOTE: The Niagara Escarpment Plan Designation boundaries shown on this map are approximate and subject to confirmation through Site Inspection and the application of the "Interpretation of Boundaries" section of the Niagara Escarpment Plan

Scale 1:27,825

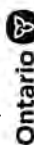
	0	220	440	660	880
Costs incurred					
Direct materials					
Manufacturing overhead					
Selling expenses					
Administrative expenses					
Total costs					
Sales price per unit					
Profit or loss					

Metres

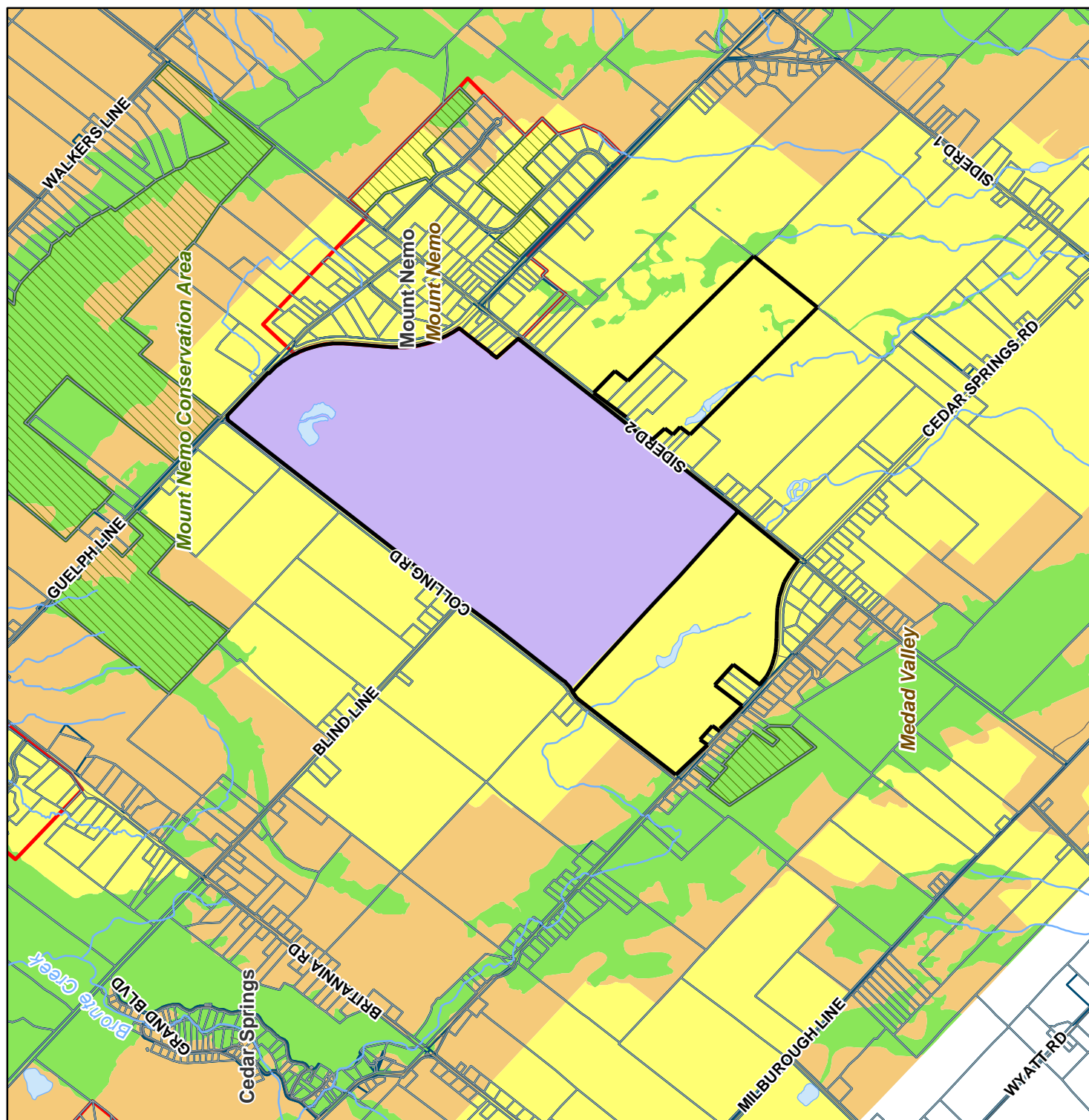
Printed on Aug 10, 2020

THIS IS NOT A PLAN OF SURVEY.
This map is illustrative only. Do not rely on it as being a precise indicator of routes, location of features, nor as a guide to navigation. Base derived from various sources.
Map compiled and produced by the Geographic Information Systems
(GIS) Department of the Niagara Escarpment Commission.

Ministry of Natural Resources



© Queen's Printer for Ontario and its licensors. [2019]
May Not be Reproduced without Permission.



ATTACHMENT 2

Niagara Escarpment Commission

232 Guelph St.
Georgetown, ON L7G 4B1
Tel: 905-877-5191
Fax: 905-873-7452
www.escarpment.org

Commission de l'escarpement du Niagara

232, rue Guelph
Georgetown ON L7G 4B1
No de tel. 905-877-5191
Télécopieur 905-873-7452
www.escarpment.org



Niagara Escarpment Commission
An agency of the Government of Ontario

PROPOSED NIAGARA ESCARPMENT PLAN AMENDMENT PH 219 20

Nelson Aggregates Co.

August 20, 2020

TABLE OF CONTENTS

PART A – The Preamble

PART B – The Amendment

PART C – Schedule A

PART A – The Preamble

PURPOSE:

To amend the Niagara Escarpment Plan (NEP) to: insert a special policy under Part 1.9.3 of the NEP and to redesignate lands from Escarpment Rural Area to Mineral Resource Extraction. The purpose of which is to facilitate an expansion to the current mineral aggregate resource operation and to ensure accessory uses can continue to be utilized through the expansion.

AREA:

The lands subject to the proposed Plan Amendment are as follows:

Special Policy: is proposed to apply to the existing Nelson Aggregate Co. property located at Part of Lots 1 and 2, Concession 2 NDS, Part Lots 1 & 2, Concession 3 NDS

Redesignation: is proposed to change the designation of lands, shown on Schedule 'A' from Escarpment Rural Area to Mineral Resources Extraction Area comprises an approximate are of 78.3 ha.

LOCATION:

Part Lots 1 & 2, Concession 1 NS, Part 2, 3 & 4 RP20R7439, Part Lots 1 & 2, Concession 2 NS, Part Lots 1 & 2, Concession 3 NS, Part Lots 17 & 18, Concession 2, NDS (former geographic Township of Nelson)

City of Burlington, Region of Halton

OWNERSHIP:

546958 Ontario Ltd. (Nelson Aggregate Co.); and
Bestway TV and Appliances

BASIS:

Under Section 6.1(2) of the *Niagara Escarpment Planning and Development Act*, an amendment to the Niagara Escarpment Plan “may be initiated by the Minister or the Commission, and application may be made to the Commission by any person or public body requesting an amendment to the Plan.”

This amendment to the Niagara Escarpment Plan addresses the policies in Part 1.2.2 of the Niagara Escarpment Plan respecting the re-designation of lands within the NEP Area for the purpose of mineral aggregate resource extraction. It also addresses the policies set out in Part 1.2.1 relating to any amendment to the Niagara Escarpment Plan.

Section 6.1 (2.1) of the *Niagara Escarpment Planning and Development Act* requires that an application to amend the NEP be supported by a “statement of justification” and Section 8 sets out the objectives to be sought in consideration of an amendment to the NEP. The applicant has provided a Planning Justification Report which satisfies the threshold justification requirements of the *Niagara Escarpment Planning and Development Act*.

PART B – The Amendment

1. That the Niagara Escarpment Plan Map 3 –Region of Halton, is hereby amended by redesignating 78.3 hectares of land legally described as Part of Lots 1 and 2, Concession 1 NS, Parts 2, 3, & 4 RP20R7439, and Part of Lots 17 and 18, Concession 2 NDS (former geographic Township of Nelson), City of Burlington, Region of Halton from Escarpment Rural Area to Mineral Resource Extraction Area as shown on, as shown on Schedule A attached hereto and forming part of this Amendment; and
2. That Section 1.9.3.25 be added to the NEP (2017) as follows:

Notwithstanding the policies of the NEP including the permitted uses under Part 1.9 Mineral Resource Extraction Area and the definition of accessory use in Appendix 2 of this Plan, for the quarry operating on property described as Part of Lots 1 and 2, Concessions 2 and 3 in the City of Burlington, Regional Municipality of Halton, the office, maintenance buildings, facilities for washing, processing and stockpiling of aggregate, truck washing facility, asphalt plant, recycling facilities and the entrance may be used for the purpose of supporting the extraction of aggregate from the area approved under Amendment PH 219 20 to the NEP and licences under the Aggregate Resources Act located on Part of Lots 1 and 2, Concession 2 NS and Part of Lots 17 and 18, Concession 2 NDS (former geographic Township of Nelson), City of Burlington, Region of Halton provided that and only while the two sites are actively operated by a single licensee, as an integrated operation.

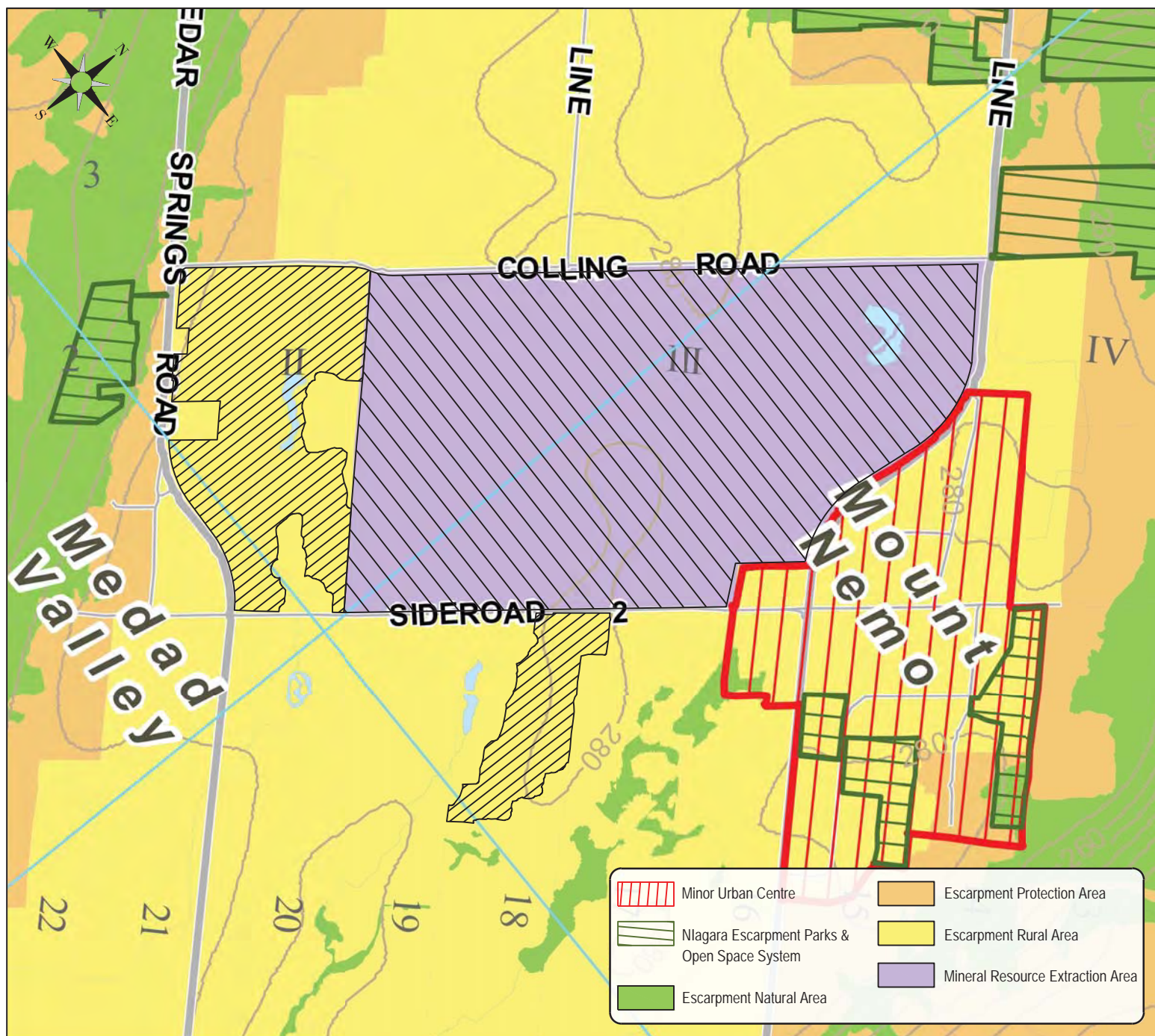
PART C – “Schedule A”

The Niagara Escarpment Plan is amended as follows:

Map 3 of the Niagara Escarpment Plan is amended as shown on Schedule A.

Schedule 'A'

Part Lots 1 & 2, Concession 2 and Part Lots 17 & 18, Concession 2 NDS
(former geographic Township of Nelson)
City of Burlington
Region of Halton



Land to be re-designated from Escarpment Rural Area to Mineral Resource Extraction Area



Land subject to site specific policy 1.9.3 xx

ATTACHMENT 3

Niagara Escarpment Commission

232 Guelph St.
Georgetown, ON L7G 4B1
Tel: 905-877-5191
Fax: 905-873-7452
www.escarpment.org

Commission de l'escarpement du Niagara

232, rue Guelph
Georgetown ON L7G 4B1
No de tel. 905-877-5191
Télécopieur 905-873-7452
www.escarpment.org



Niagara Escarpment Commission
An agency of the Government of Ontario

August 20, 2020

CIRCULATION AND NOTICE

RE: PROPOSED NIAGARA ESCARPMENT PLAN AMENDMENT PH 219 20
Applicant: Nelson Aggregate Co.
Proposed site-specific policy change relating to continual use of accessory facilities to a mineral resource extraction use.
Proposed redesignation of lands from Escarpment Rural Area to Mineral Resource Extraction Area
2435, 2300, 2316, 2330, 2280 & 2292 No.2 Sideroad, 5235 Cedar Springs Road, City of Burlington, Halton Region

BACKGROUND:

1. Section 7 and 10(1) of the *Niagara Escarpment Planning and Development Act (NEPDA)* require that the Niagara Escarpment Commission (NEC) furnish each affected ministry and municipality, within or partially within the Niagara Escarpment Planning Area, with a copy of the proposed Amendment to the Niagara Escarpment Plan (NEP) and invite ministries and municipalities to make comments on the amendment to the NEC.
2. Section 10(1)(b) of the *NEPDA* requires that notice of the proposed amendment be published in such newspapers having general circulation in the Niagara Escarpment Planning Area as the NEC considers appropriate.
3. The NEC is also required to post the amendment on the Environmental Bill of Rights Registry (EBR) for public notice and comment.
4. The NEC also circulates First Nations, other public agencies and stakeholders where the NEC believes there may be an interest (e.g. conservation authority) and provides details of the proposed amendment on the NEC website.

The notice period under the *NEPDA* is 60 days but the NEC may extend the time if, in the NEC's opinion, additional time for commenting becomes necessary.

PURPOSE:

The purpose of this Report is for the NEC to approve the recommended circulation and notification list for the Niagara Escarpment Plan Amendment PH 219 20, for the proposed land use redesignation of 2300, 2316, 2330, 2280 & 2292 No.2 Sideroad, 5235 Cedar Springs Road, City of Burlington, Region of Halton and site-specific policy in Part 2.9.3 of the NEP relating to 2435 No.2 Sideroad, City of Burlington, Halton Region.

RECOMMENDATION:

That the NEC instruct staff, pursuant to the *NEPDA*, to circulate the proposed amendment to municipalities provide notice to the public in the newspaper (at the applicant's expense as the normal administrative practice) and on the NEC website and request that the amendment be posted on the Environmental Registry.

Staff will also circulate to Indigenous communities, ministries, agencies and stakeholders who may have an interest or have indicated an interest in the Plan Amendment, including the property owners or their agents.

The recommended comment period is 60 days.

Require circulation and notice as follows (in accordance with S. 10(1) of the NEPDA):

1. Municipalities, Ministries and Agencies

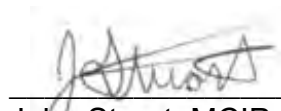
Circulate to the Region of Halton, City of Burlington, Conservation Halton, Ministry of Natural Resources and Forestry, Ministry of Environment, Conservation, and Parks, and the Ministry of Heritage, Sport, Tourism and Culture Industries.

2. Newspaper

The Burlington Post, The Halton Herald

3. Public Interest Advisory Committee

Prepared by:



John Stuart, MCIP, RPP
Senior Strategic Advisor (a)

Approved by:

Kim Peters, MCIP, RPP
Manager (a)

Debbie Ramsay, MCIP, RPP
Director (a)

ATTACHMENT 4

Niagara Escarpment Commission

Commission de l'escarpement du Niagara

232 Guelph St.
Georgetown, ON L7G 4B1
Tel: 905-877-5191
Fax: 905-873-7452
www.escarpment.org

232, rue Guelph
Georgetown ON L7G 4B1
No de tel. 905-877-5191
Télécopieur 905-873-7452
www.escarpment.org



Niagara Escarpment Commission
An agency of the Government of Ontario

November 4, 2019

Rosalind Minaji, MCIP, RPP
Coordinator of Development Review
Community Planning Department
City of Burlington
426 Brant Street Burlington, ON L7R 3Z6

Dear Ms. Minaji:

**RE: Pre-consultation Nelson Aggregate Co.
Part of Lots 1 & 2, Concession 1 NS; Part of Lots 17 & 18, Concession 2 NDS
City of Burlington, Halton Region**

This is in response to the Pre-consultation notice of a proposed aggregate quarry expansion at the above-captioned lands.

The lands subject to the proposed aggregate quarry expansion are wholly located within the Niagara Escarpment Plan (NEP) area and subject to Development Control as established by *O.Reg. 826/90 – 'Designation of Area of Development Control'*. The lands targeted for the proposed expansion are designated *Escarpment Rural Area* under the Niagara Escarpment Plan (NEP).

Per Part 1.2.2.1 of the NEP (2017) provides the following with regards to expansion of Mineral Extraction Area proposals:

Mineral aggregate operations within a new Mineral Extraction Area producing more than 20,000 tonnes annually may be considered on lands within the Escarpment Rural Area land use designation through an amendment to the Niagara Escarpment Plan. Such an amendment will be to effect the change from Escarpment Rural Area to Mineral Resource Extraction Area.

Pursuant to the above policy the applicant will be required to submit a Niagara Escarpment Plan Amendment (NEPA) application for consideration by the Commission. As the lands are wholly within the area of Development Control subsequent Development Permit Application(s) (DPA) will be required to facilitate any development on the subject lands. In addition, an NEC Development Permit must be issued prior to any decisions being rendered on related *Planning Act* application pursuant to Sec. 24(3) of the *Niagara Escarpment Planning and Development Act* (NEPDA).

Niagara Escarpment Plan (2017)

The lands targets for the expansion of the quarry are designated as Escarpment Rural Area. Part 1.5 of the NEP (2017) provides the objectives, criteria for designation and permitted for lands within that designation. Given the context of the pre-consultation application it is anticipated that a NEPA will be submitted that will propose a change in designation from Escarpment Rural Area to Mineral Resources Extraction Area (MREA). Part 1.9 of the NEP (2017) provides the objectives and permitted uses for lands within that designation. The applicant shall have regard for the objectives contained under Parts 1.5.1 and 1.9.1 when preparing supporting documentation and ancillary studies.

NEPA and Development Permit applications are further subject to demonstrating compliance with Part 2 (Development Criteria) of the NEP (2017). Based on available information NEC Staff identify the following characteristics of the lands subject to the proposed aggregate expansion:

- The lands are shown as being predominantly Class 1 & 2 through the Canadian Land Inventory (CLI) mapping; these classifications identify that the lands are considered *prime agricultural lands*;
- The lands contain wooded areas and linear hedgerows;
- The lands south of the existing Nelson Quarry property contain heritage resources of potential value;
- There are known archaeological sites within 300 m of the southern properties;
- The lands are in close proximity to the Escarpment feature. Additionally, there are sensitive residential land uses in proximity and abutting the subject lands;
- The lands contain regulated watercourses and unevaluated wetlands;
- The surrounding residential land uses are predominantly serviced by individual private wells and wastewater systems; and
- The entirety of the subject lands are shown to have potential karst formations with portions of the western, golf course lands, having known karst formations.

Based on the above preliminary analysis of the subject lands the follow sections of Part 2 of the NEP (2017) shall be considered and rationalized through the submission of ancillary and justification studies

- Part 2.2 (General Development Criteria)
- Part 2.5 (Development Affecting Steep Slopes and Ravines)
- Part 2.6 (Development Affecting Water Resources)
- Part 2.7 (Development Affecting Natural Heritage)
- Part 2.8 (Agriculture)
- Part 2.9 (Mineral Aggregate Resources)
- Part 2.10 (Cultural Heritage)
- Part 2.12 (Infrastructure)
- Part 2.13 (Scenic Resources and Landform Conservation)

Additionally, attention should be given to Part 2.11 (Recreation) when adaptive management plans and rehabilitation plans are being developed. Any after uses that are suggested for the properties will require a future NEPA.

Requested Studies

The follow studies are being requested by NEC Staff in order to properly assess the proposal against the relevant policies of the NEP (2017):

- Planning Justification Report
- Natural Heritage Evaluation
- Heritage Impact Assessment
- Archaeological Assessment
- Visual Impact Assessment
- Hydrogeological and Water Resources Assessment
- Karst Assessment
- Agricultural Impact Assessment
- Blasting Impact Assessment
- Noise Impact Study
- Air Quality Assessment
- Traffic Impact Study
- Rehabilitation and After-use Plan

Conclusion

NEC Staff acknowledge receipt of the pre-consultation request and direct the applicant to submit a Niagara Escarpment Plan Amendment application and relevant Development Permit Applications to NEC Staff to facilitate the continuation of the planning process. Additionally, NEC Staff acknowledge Halton Region's Joint Agency Review Team (JART) procedure and support its use through this planning process.

I trust the above review will be of assistance; should you have any questions or concerns please do not hesitate to contact the undersigned at your earliest convenience.

Regards,



John Stuart, MCIP, RPP
(a) Senior Strategic Advisor
Niagara Escarpment Commission

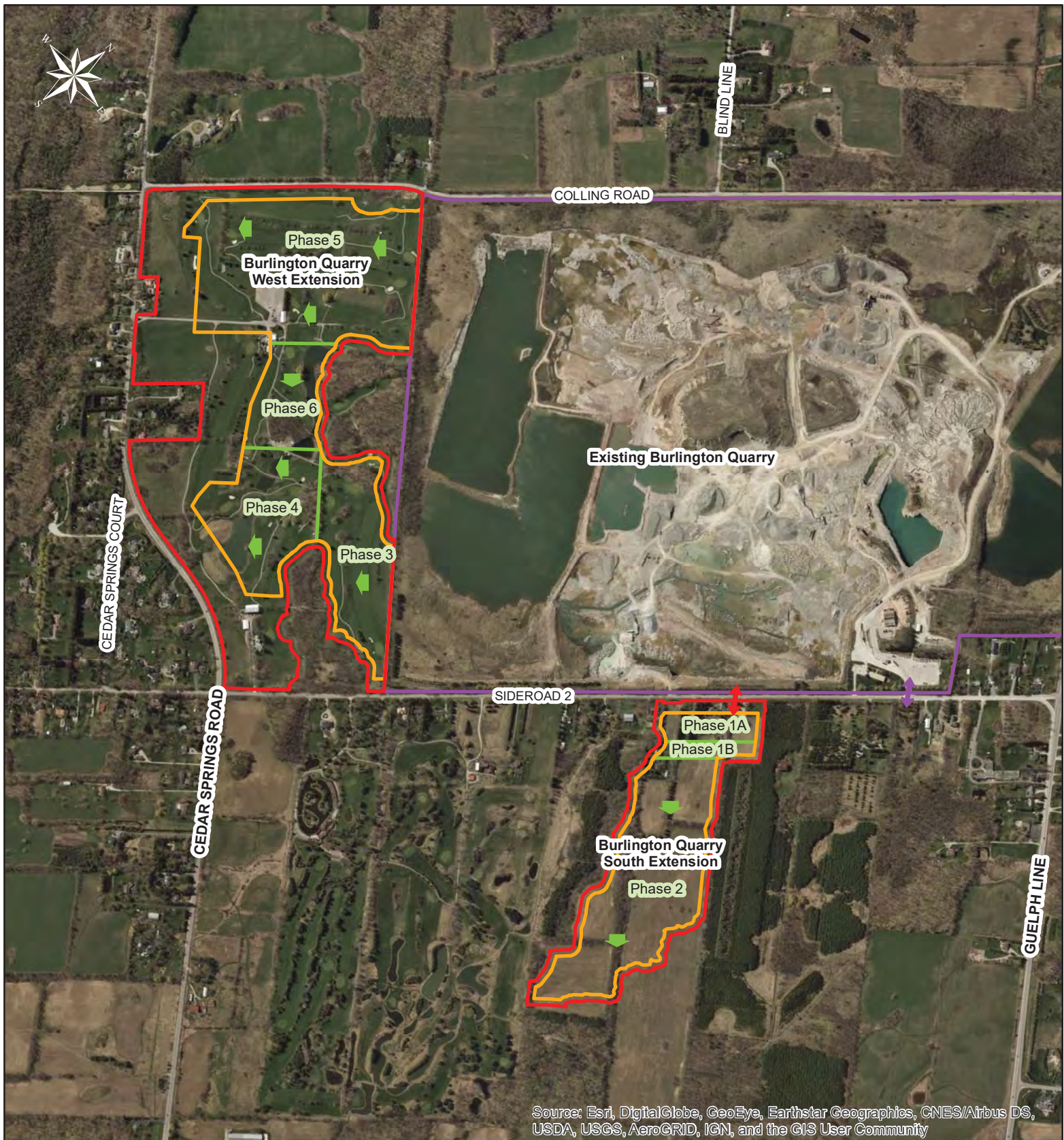


Figure # 3
Operations Sequence

Burlington Quarry Extension
Part Lots 1 & 2, Concession 2 and
Part Lot 17 & 18, Concession 2 NDS
City of Burlington
Region of Halton

Legend

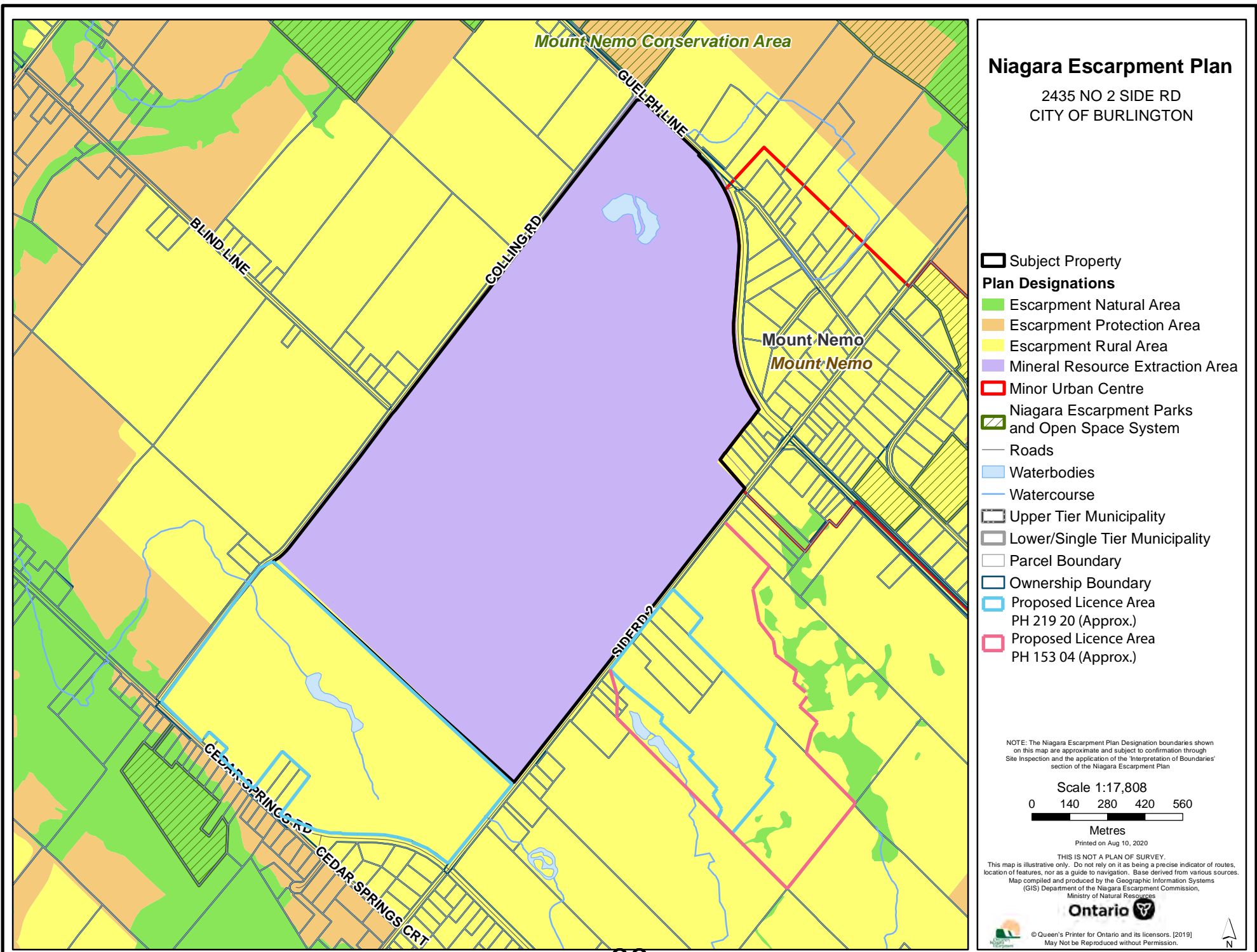
- Proposed Licence Boundaries
- Proposed Limit of Extraction
- Existing Burlington Quarry
- Extraction Sequence Boundary
- ↔ Main Entrance/Exit
- ↔ Roadway Crossing

DATE April 2020

SOURCES Land Information Ontario
Contains information licensed under the
Open Government Licence - Ontario

0 62.5 125 250 375 500
Meters (1:12,500)

N:\Brian\9135D- Nelson - Project Sideways\Drawings\Figures\Planning Report Figures\GIS



Niagara Escarpment Commission

232 Guelph St.
Georgetown, ON L7G 4B1
Tel: 905-877-5191
Fax: 905-873-7452
www.escarpment.org

Commission de l'escarpement du Niagara

232, rue Guelph
Georgetown ON L7G 4B1
No de tel. 905-877-5191
Télécopieur 905-873-7452
www.escarpment.org



November 7, 2012

STAFF REPORT

**RE: Joint Board Decision
Proposed Quarry Expansion
Nelson Aggregate Co.
City of Burlington**

RECOMMENDATION:

That the Niagara Escarpment Commission (NEC) receive this report.

BACKGROUND:

In 2004, Nelson filed applications for Niagara Escarpment Plan amendment and Development Permit to permit the expansion of their existing quarry on No. 2 Sideroad. Nelson also submitted an application for license under the *Aggregate Resources Act* and amendments to the Region of Halton and City of Burlington Official Plans under the *Planning Act*.

After a lengthy technical review involving a Joint Agency Review Team (JART), the Public Interest Advisory Committee of the NEC, input from various agencies and members of the public, all of whom opposed the Nelson quarry, the NEC voted to refuse the applications in 2009. The Ministry of Natural Resources (MNR), the City, the Region and Conservation Halton also opposed the Nelson applications, although the Ministry withdrew at the commencement of the hearing having settled its issues with the applicant. Protecting Escarpment Rural Land (PERL), a citizen's group was also a party to the hearing.

A hearing under the *Consolidated Hearings Act* commenced in November 2010 and concluded in February 2012. Counsel for the NEC was Ms. Jane Thompson and Mr. Robert Ratcliffe. NEC staff involved in the hearing was Nancy Mott-Allen, Ken Whitbread and Lisa Grbinicek. Nearly 300 exhibits were filed at the hearing and 60 witnesses gave evidence including Ms. Mott-Allen and Mr. Whitbread. The purpose of this report is to inform the NEC regarding the findings of the Joint Board with respect to the Nelson applications.

DISCUSSION:

Basis for the Decision

On October 11, 2012, the Joint Board decision was issued. The decision was to refuse the NEPA based on the negative impact that the proposed quarry would have on the habitat of the endangered Jefferson Salamander which the Board determined to be “a unique ecologic area” that must be protected under the Objectives of the Niagara Escarpment Plan (NEP).

In finding that the proposed quarry would not be consistent with the policies of the NEP and the Provincial Policy Statement (PPS), the Joint Board stated that “The NEP amendment is the keystone instrument” (Joint Board decision, p. 7). Therefore, none of the other planning instruments or the license could be approved.

Key findings

The Board found that:

- the NEP neither encourages nor discourages aggregate extraction but allows such development subject to the requirements and policies of the NEP; (p. 10)
- the PPS must be read as a whole in conjunction with the NEP such that the policies supporting making aggregate available do not have primacy over the natural heritage policies; (p. 10-11)
- all relevant Development Criteria in the NEP must be considered with respect to an aggregate application; (p. 14)
- the habitat of an endangered species; the Jefferson Salamander, is a unique ecologic area that must be protected; (p. 9)
- the significant habitat of the endangered Jefferson Salamander under the PPS should be understood as being consistent with the prescribed habitat under the ESA; (p. 17)
- the definition of wildlife habitat in the PPS includes habitat of endangered species and is not confined to the habitat that is approved by the MNR; (p. 18)
- the NEP protects the identified habitat of endangered species; (p. 18)
- the identification of endangered species habitat under NEP Part 2.8(1) of the NEP is not assigned to the MNR but is based on the best evidence available; (p. 18-20)
- the prescribed habitat under the ESA is not necessarily the same as the identified habitat under the NEP; in this case the Board found that the identified habitat would be larger than the prescribed habitat and that the NEP protects it; (p. 19)
- the ESA and the PPS apply across the province but there is an additional aspect of environmental protection under the NEPDA and the NEP; (p. 19)
- applying the NEP’s broader definition of protected Jefferson Salamander habitat is consistent with the PPS; it included deciduous woodlands adjacent to a potential breeding pond on the Nelson site; (p. 20)
- “the NEP does not include the concept of net gain as a replacement for wooded areas or wildlife habitat” (p. 22);
- the PPS has no provision for net gain to offset the requirement of no negative impacts; (p. 34)
- under the proposed Adaptive Management Plan, monitoring and mitigation of on site potential breeding ponds was proposed but monitoring and mitigation of off

site breeding ponds was not provided for and could only take place with adjacent landowner permission for access which had not been granted; consequently sufficient provision had not been made for the protection of the unique ecologic and environmentally sensitive Jefferson Salamander habitat. (p. 29)

The Joint Board concluded that the Nelson application for a NEPA adversely impacts and is not consistent (conflicts) with the Purpose and Objectives of the NEPDA and is not consistent with the PPS. Accordingly the NEPA application and other consequential approvals were dismissed.

ROPA 25

Nelson had appealed a policy with respect to significant woodlands in the Region of Halton Official Plan (ROPA 25). The Joint Board concluded that 3 of the 4 criteria for establishing a significant woodland applied to the Nelson lands and therefore the eastern woodlands on the proposed expansion site met the definition of significant woodland. The Joint Board approved ROPA 25 insofar as it applies to the subject lands with a modification to deny application of criterion (4) "a major creek or certain headwater creek" on the basis that the term was not sufficiently clear in its meaning.

Other Applications

PERL had requested that the Joint Board approve its separate amendment to re-designate the Nelson lands in accordance with the Region's natural heritage system in ROPA 38. The Board found that the PERL application was not before the Joint Board and left the decision on that amendment to the NEC. Staff is waiting for direction from PERL as to how they wish to proceed with their application as it is currently deferred at the request of PERL.

The Region had requested the Joint Board to designate certain lands on the subject property as Greenlands B in the Region and City Official Plans. The Joint Board concluded that ROPA 38 was not before the Board and would be determined through a separate hearing. Staff notes that the ROPA 38 pre-hearings have commenced and the NEC has party status in that matter.

Costs

Expenses related to the Nelson hearing, apart from the time of NEC staff and legal counsel included a share of the hearing room and court reporter costs, photocopying and incidental expenses.

CONCLUSION:

The outcome of the hearing is very positive for the Commission and its planning program. It involved a significant effort on the part of NEC staff and counsel.

There is no provision in the *Consolidated Hearings Act* for an appeal of the decision. However, the legislation allows judicial review of the decision on a question of law or jurisdiction. No such proceeding has been commenced at this time.

However, the issues associated with aggregate extraction on the Escarpment will continue as other applications are in process. NEC staff has recommended, and the Commission has agreed, that one of the topics of the Plan Review should be the aggregate policies of the NEP.

Prepared by:



Nancy Mott-Allen, MCIP, RPP
Senior Strategic Advisor

Approved by:



Ken Whitbread
Manager