# Text  Description automatically generatedNiagara Escarpment Commission

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April 21, 2022

#  INITIAL STAFF REPORT

**RE: PROPOSED NIAGARA ESCARPMENT PLAN AMENDMENT PH 224 21**

 **Dufferin Aggregates, a division of CRH Canada Group Inc.**

## Part Lots 8-14, Concession 1 (former geographic Township of Esquesing), Town of Hilton Hills, Region of Halton, and;

**Part of Lots 8-14, Concession 7 (former geographic Township of Nassagaweya), Town of Milton, Region of Halton.**

APPLICANT: Dufferin Aggregates, a division of CRH Canada Group Inc.

OWNERS:CRH Canada Group Inc., 747752 Ontario Inc., Peninsula Ready-Mix Inc., and 1336811 Ontario Inc.

AGENT:MacNaughton, Hermson, Britton, Clarkson Planning Ltd.

RECEIVED: December 17, 2021

NEP DESIGNATION:Escarpment Rural Area / Mineral Resource Extraction Area

## PROPOSAL:

To amend the Niagara Escarpment Plan (NEP) to redesignate approximately 30.6 ha (75.6 ac) of lands described as Part Lots 11, 12 & 13 Concession 1 (former geographic Township of Esquesing), Town of Halton Hills, Region of Halton from Escarpment Rural Area to Mineral Resource Extraction Area, and;

To apply a special policy under NEP Part 1.9.3 (Permitted Uses) that applies to the subject properties described as Part Lots 8-10, 13 and 14, Concession 1 (former geographic Township of Esquesing), Town of Hilton Hills, Region of Halton and Part of Lots 8-14, Concession 7 (former geographic Township of Nassagaweya), Town of Milton Region of Halton, that would permit the continued use of an office and maintenance buildings, facilities for washing, processing and stockpiling of aggregate, truck washing facility, recycling facilities and the entrance, for the purpose of supporting the extraction of aggregate on the lands proposed to be re-designated to Mineral Resource Extraction Area, and only while the two sites are actively operated by a single licencee, as an integrated operation.

## PURPOSE OF THIS REPORT

The purpose of this report is for the Niagara Escarpment Commission (NEC) to determine 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 of Northern Development, Mines, Natural Resources and Forestry (NDMNRF), that the application be considered frivolous, vexatious, and not in the public interest under Section 6.1(3) of the *NEPDA*.

## STAFF SUMMARY RECOMMENDATION:

That proposed amendment PH 224 21 should be initiated for circulation and notification pursuant to Sections 7 and 10 of the *NEPDA*.

### **BACKGROUND / PROPOSED AMENDMENT OVERVIEW**

The Milton Quarry began operations in 1962 and consists of approximately 467.67 ha of land with an extraction area of approximately 70.6 ha. In 2007, the Milton Quarry was further extended by 84.5 ha with an extraction area of approximately 70.6 ha, through NEP Amendment PH 135 01 and related Development Permit #8784 H/E/2000-2001/314.

The Milton Quarry has small amounts of reserve remaining under the existing processing plant and is anticipated to be depleted by 2024. Dufferin acquired 66.5 ha of land contiguous with the existing operation in 2019. The proposed extension of the Milton Quarry, referred to as the “Milton Quarry East Extension” (MQEE), represents a proposed licence area of approximately 30.6 ha and a proposed extraction area of approximately 15.9 ha**.** The proposed MQEE is contiguous with the existing Milton Quarry East Cell and separated from the existing North Quarry by the Nassagaweya-Esquesing Townline. The MQEE is proposed to be extracted as an extension to the existing East Cell. The maximum potential dolostone reserve (including both the Amabel and underlying Reynales formations) in the proposed MQEE is reported to be approximately 15 million tonnes. The proposed MQEE extraction plan involves removing the common setback and expanding the East Cell into the MQEE extraction area (located at Part Lot 13, Concession 1). Dewatering of the combined extraction cell would continue in order for quarry operations to occur under typical dry quarry floor conditions.

The existing Milton Quarry recycles concrete and asphalt, and this use is proposed to continue in conjunction with the proposed MQEE. As part of the application, Dufferin proposes to utilize accessory and associated uses currently located in the Milton Quarry and Milton Quarry Extension, in conjunction with the proposed MQEE. In addition to the use of the water management system, processing areas, aggregate recycling area, internal haul routes and the entrance/exits, other uses such as the office, maintenance buildings, facilities for washing are also proposed to be utilized to support the proposed expansion.

Overall, the proposal would require the removal of approximately 4.5 ha of a key natural heritage feature. The proposed MQEE application includes an Ecological Enhancement Plan that proposes enhancements to lands adjacent to the proposed licence area. As reported by the applicant, in the medium to long-term, the rehabilitation plan is anticipated to result in the creation of a cold-water deep lake, wetlands, islands, shoals and wooded areas, in place of the current landscape that includes meadow, thicket and woodland. If approved, the MQEE would be integrated into the water management system and Adaptive Management Plan (AMP) that is currently in place and has been operating at the Milton Quarry and Milton Quarry Extension since 2007.

The proposed expansion will require approvals under the *Aggregate Resources Act* (*ARA*), and the *Planning Act*. A Halton Regional Official Plan Amendment and a Town of Halton Hills Official Plan Amendment are also required. Section 24(3) of the *NEPDA* requires that a decision on the NEP amendment application and Development Permit application (issuance of the related NEC Development Permit which is required to implement the amendment), prior to the issuance of any approvals under the other identified planning regimes. The NEC Development Permit would address the operational aspects of the proposal and the details associated with preparation, extraction and post extraction activities (through Conditions), pursuant to the *ARA* licence.

A number of agreements are currently in place between Dufferin, Conservation Halton and Halton Region addressing the current operation (i.e., for the long-term operation of the water management system and implementation of the Adaptive Management Program). These agreements are proposed to be amended to include the MQEE lands, should the applications be successful.

Joint Aggregate Review Team (JART)

Halton Region has a Joint Agency Review Team (JART) Protocol for reviewing and commenting on technical documents prepared in support of new aggregate applications or applications to expand existing aggregate operations. This JART protocol has been in place since 2001 (with updates), and is comprised of a Chair, agency-appointed staff and experts from the Region, applicable local municipalities, conservation authority and the NEC. Other relevant ministries including the MNDMNRF, Ministry of Environment, Conservation and Parks (MECP), and Ministry of Agriculture, Food and Rural Affairs, (OMAFRA) are invited to participate. The JART Protocol covers review requirements under three Provincial Acts:

1. *Planning Act, R.S.O. 1990, c. P.13*
2. *Aggregate Resources Act, R.S.O. 1990, c. A.8*
3. *Niagara Escarpment Planning and Development Act, R.S.O. 1990, c. N.2*

The JART provides streamlined comments to both the applicant and the MNDMNRF (for the *ARA* application). The JART identifies technical issues and concerns the submission and discuss approaches appropriate for consideration. Third party peer reviewers will be retained (by the Region) to support the review of the technical submissions.

The JART for the Milton East Expansion proposal will review the applications with the intention of providing consolidated comments on the technical documents of the proposal. In addition, there is the opportunity for undertaking joint statutory public meetings on the application. The JART will produce a final report on the application that may be used by the agencies to inform their respective recommendations and decisions. NEC staff is a member of the JART and will contribute to the JART report, but NEC staff will produce a separate NEP amendment Summary Report with final recommendations on the proposal to the NEC.

### **B. PLANNING DOCUMENTS**

#### *Niagara Escarpment Planning and Development Act (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”*. As described later in this report, the applicant has submitted numerous studies and justification required under NEP Part 1.2.2 and Part 2.9.3 in support of the application.

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.*

Further discussion and analysis on the requirements of the Act with respect to amendment proposals is found in Section E of this Report below.

#### 2. Niagara Escarpment Plan (NEP, 2017)

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

The lands subject to this application are within the Niagara Escarpment Development Control Area. A Development Permit Application has been filed by Dufferin, concurrently with the amendment application. The application to amend the NEP and the application for a Development Permit will be evaluated against the overall Purpose and Objectives of the NEP, as well as the policies in Section 1.5 (Development Policies for Mineral Extraction), 1.9 Mineral Resource Extraction Area and Section 2.11(Mineral Resources) and all other relevant Part 2 Development Criteria of the NEP.

NEP Part 2 Development Criteria

All applicable Development Criteria set out in Part 2 of the NEP are to be considered in the assessment of an amendment to the NEP. The following Development Criteria are applicable to the consideration of the Dufferin MQEE proposal. These Criteria will be assessed through review of submitted technical studies and comments from public agencies, the public, and Indigenous communities (should the Commission endorse support initiation and circulation of the proposed amendment):

The Objective of NEP **Part 2.2 General Development Criteria** 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. As Staff identified during pre-consultation, cumulative impact analysis should be provided by the applicant as part of the natural heritage evaluation and should consider the cumulative impacts of the existing and proposed developments on the Escarpment environment. 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 proposed MQEE subject lands are approximately 1km from the Escarpment brow and so exceeds the 200 metre setback required by the Plan.

A natural hazards assessment will be required.

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. The lands adjacent to the proposed extraction area are confirmed to include the following Key Hydrologic Features: wetlands, permanent and intermittent streams, and seepage areas and springs. Mineral aggregate extraction is understood to have the potential to result in negative impacts to both ground water and surface water features. The applicant will be required to demonstrate that development within 120m of an identified key hydrologic feature ensures the protection of the feature and its functions, the quality and quantity of groundwater and surface water, maintenance of natural drainage patterns and protection of the overall water budget for the watershed. Additionally, sufficient vegetation protection zones will be required to be identified for the protection of these features and their functions.

It is understood that the long-term rehabilitation of the lands assumes a perpetual active water management scenario. NEP Part 2.9.11 j) identifies that in areas with below-water table extraction, mineral aggregate operations requiring perpetual water management after rehabilitation is complete should be avoided but may be considered where it can be demonstrated that such actions would support other public water management needs. It is proposed that the MQEE lands are to be integrated into the Water Management System and Adaptive Management Plan that are already in place and have been operating at the Milton Quarry and Milton Quarry Extension since 2007.

The area of the existing Milton Quarry and proposed expansion area is recognized as an area of Significant groundwater Recharge and is designated as a Highly Vulnerable Aquifer. Development will require to demonstrate that the quality and quantity of groundwater is protected, and that groundwater recharge is maintained during and post extraction.

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.

Natural heritage features and key natural heritage features identified on/or adjacent to the subject lands includewoodlands, wetlands, habitat of endangered, threatened and special concern species, Significant Wildlife Habitat, Areas of Natural and Scientific Interest (ANSI) and fish habitat. NEC staff will evaluate the Natural Environment Technical Reports and Environmental Impact Study submitted by the applicant and consult with relevant agencies to determine if applicable policies are met. Proposed buffers to key natural heritage features will be required to demonstrate how the feature and its functions will be maintained and where possible, enhanced.

**NEP Part 2.7.8** identifies that development within the habitat of endangered and threatened species located with Escarpment Rural Areas, Mineral Resource Extraction Areas…is not permitted unless it is in compliance with the *Endangered Species Act.* The MECP will be consulted with respect to Species at Risk requirements and compliance with the ESA, as the habitat of Endangered and Threatened species has been identified. It is anticipated that a Permit under the ESA will be required to address removal of the habitat of an endangered species.

The NEP includes several relevant Objectives and Policies supporting a landscape systems approach. Considering the lands adjacent to the proposed aggregate operation include the sensitive Escarpment Natural Area, including Significant Woodlands and ANSIs, consideration with respect to the assessment of the proposed expansion on landscape connectivity and wildlife corridors and the identification of any potential impacts to existing corridors as well as opportunities for enhancements through the Rehabilitation/Ecological Enhancement Plan, will be required.

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. The subject lands have not been identified as being within a prime agricultural area. At the request of the NEC and Halton Region, the applicant has submitted an Agricultural Impact Assessment (AIA), that will be reviewed by NEC staff. The AIA will be required to identify any potential impacts on surrounding agricultural operations (including cumulative impacts). NEC Staff requested that consideration of the broader agricultural system should be given, extending beyond the 1km threshold and be regional in scope. Additionally, any potential impacts to agriculture associated with the haul route will be required to be identified and addressed.

The stated objective of NEP **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**. NEP Part 2.9.1** provides that, notwithstanding the policies of Part 2.7, mineral aggregate operations and accessory facilities *may* be permitted in key natural heritage features, except for wetlands and significant woodlands (that are not young plantations or early successional habitat). The proposal does not suggest extraction in wetlands or significant woodlands but does propose the operation in proximity to such features. **NEP** **Part 2.9.2** further permits the consideration of mineral aggregate operations in key natural heritage features which is solely the habitat of an endangered species (and not any other key natural heritage feature), provided it is in compliance with the *Endangered Species Act* (2007).

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

1. *demonstrate how key natural heritage features and functions will be protected and where possible enhanced during and after extraction;*
2. *demonstrate how cultural heritage resources will be conserved;*
3. *demonstrate how the Escarpment’s scenic resources and open landscape character will be maintained and where possible enhanced during and after the extraction;*
4. *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;*
5. *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;*
6. *in prime agricultural areas, undertake an Agricultural Impact Assessment to determine how to avoid, minimize and mitigate impacts on agricultural lands and operations;*
7. *minimize negative impacts of mineral aggregate operations and their accessory uses on surrounding land uses;*
8. *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;*
9. *within the licensed area but outside of the area of extraction, protect the Escarpment environment during periods of extraction and rehabilitation; and*
10. *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.*

The Objective of NEP **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 Stage 1 through 3 Archaeological Assessment and Cultural Heritage Impact Assessment Report for the subject lands. NEC Staff will review these studies and consult with the Ministry of Heritage, Sport, Tourism, and Culture Industries (MHSTCI) to ensure all cultural heritage 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. The NEC Landscape Evaluation Study (1976) was prepared as background for the NEP in determining its coverage and associated Land Use Designations. The Landscape Evaluation assigns the lands as being included in the “Average” ranking.

NEP Parts 2.9.3 (c), 2.9.5 and 2.9.6 requires the proposal to 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 rehabilitation plan will require the importation of soil to create the proposed landform. The NEP requires that the use of off-site material must meet the applicable provisions of Part 2.13, and the relevant standards of Province and municipality, where they exist. The use of off-site material is not permitted unless it is demonstrated the through the appropriate studies that doing so will achieve greater long-term ecological and land use compatibility (e.g., the importation of topsoil to improve site capability for habitat diversity).

The applicant has submitted a Visual Impact Assessment and Rehabilitation Plan to address these matters. NEC Staff will review these submissions to determine conformity with Part 2.13.

Part 3: Niagara Escarpment Parks and Open Space System (NEPOSS)

The subject lands are adjacent to the Tirion Tract Resource Management Area and Halton Regional Forest Natural Environment Park, which are both within the Niagara Escarpment Parks and Open Space System (NEPOSS). The park agencies (Conservation Halton and the Region) as members of the JART, will provide input with respect to any potential impacts of the proposed development on the adjacent NEPOSS lands.

The applicant has submitted a Rehabilitation Plan for the subject lands that considers both the existing operation and the proposed expansion lands. The proposed MQEE is contiguous with the lands that are currently to be conveyed to Conservation Halton, and Dufferin is proposing to include the MQEE lands as part of this future conveyance. The applicant provides that following extraction and the completion of rehabilitation, the conveyed lands are intended to ultimately form part of the NEPOSS and be managed in a manner complementary to the Objectives for Part 3 of the NEP.

The future NEP Land Use Designation applied to the lands (and subsequent land uses) are predicated on the state of the lands at the time the licence is surrendered and will be subject to a subsequent NEP amendment application, in accordance with NEP Part 1.9.5 After Uses. Any proposed after uses cannot occur until the *ARA* Licence is surrendered and required approvals are obtained for after uses. Within the NEP each of the Land Use Designations identify as a Permitted Use: “uses permitted in the Parks and Open Space Master / Management Plans that are not in conflict with the Niagara Escarpment Plan”. If the NEPOSS Master / Management Plan is ultimately endorsed by the NEC and approved by the MNDMNRF, there may be some opportunity under Ontario Regulation 828/90, for activities described in approved Master / Management Plans to be exempt from requiring a Development Permit, subject to meeting certain criteria.

#### Provincial Policy Statement (2020)

The Provincial Policy Statement (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. NEC staff will consider the technical submissions of the applicant to evaluate whether the proposed amendment is consistent with the PPS.

The proposed MQEE is required to be consistent with the requirements of the PPS, including the following policies:

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

1. *by building upon rural character and leveraging rural amenities and assets.*
2. *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;*
3. *conserving biodiversity and considering the ecological benefits provided by nature;*

Part 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 odor, 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 impacts.

Part 1.6.7.2 requires that efficient use be made of existing and planned transportation infrastructure. The applicants have submitted a Traffic Impact Study and Haul Route Assessment which will be required to evaluate traffic operations under existing and future conditions.

Part 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 lands post-extraction may address the objectives related to climate change.

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

Part 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. Development has been proposed within and in proximity to key natural heritage features including habitat of an Endangered Species. The applicant has prepared a Level 1 & 2 Natural Environment Technical Report and Environmental Impact Study (EIS), that will be reviewed by NEC staff and the circulated agencies in consideration of the applicable policies respecting avoidance and/or no negative impacts to natural heritage features or their functions. The application will be expected to demonstrate the ability to maintain and improve linkages between natural heritage features as well as the movement of wildlife, as applicable.

Part 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 Part 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 Geology and Water Resources Assessment Report submitted by the applicant will be reviewed against these standards.

PPS Part 2.3 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. Notwithstanding that the subject lands are not identified as being within a prime agricultural area, at the request of the NEC and Halton Region, the applicant has submitted an Agricultural Impact Assessment (AIA), that will be reviewed to ensure consistency with PPS policies.

Part 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 by the applicant as having significant aggregate resource deposits.

Part 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 Dufferin Milton Quarry contains an aggregate recycling operation; this operation is proposed to remain in place to support the expansion, through the proposed special sit-specific policy exception.

Part 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 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. The application will be assessed against the criteria set out through Part 2.5.4.1.

Part 2.8 of the PPS relates to cultural heritage and archaeology. *Significant built heritage and significant cultural heritage landscapes are required to be conserved.* Staff will review the Stages 1-3 Archaeological Assessments and Cultural Heritage Impact Assessment Report and consult with the appropriate Ministry staff 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.

Part 3.0 of the PPS 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. A natural hazards assessment has been submitted (Geology and Water Resources Assessment Report). The proposed expansion lands will require to be evaluated to determine if they contain and/or are adjacent to potential hazard lands in the form of karst topography, sensitive groundwater features, sensitive surface water features, designated vulnerable areas.

The regulatory limits for floodplain, headwater, meander belt, stable top of bank, and wetland hazards in the MQEE vicinity have been provided to the applicant by Conservation Halton.

***Aggregate Resources Act (ARA)***

The applicant has made application to the MNDMNRF for a Class A (more than 20,000 tonnes removed annually), Category 2 licence (quarry with below-water extraction) under the *ARA*. As stated in the *ARA* application:

The *ARA* application process requires public consultation once the application is deemed complete. The *ARA* application was deemed complete on January 28, 2022. The initial public notification period under the *ARA* commenced on March 10, 2022, and Dufferin Aggregates held a Public Information Session (virtual) on April 7, 2022. NEC Staff attended the meeting as an observer.

The 60-day “notice” period for individuals and agencies to file letters of objection with the proponent and Ministry has been initiated (the 60-day process is scheduled to conclude on May 9, 2022). Notice of the application has been posted on the Environmental Registry.

Pursuant to S.24(3) of the *NEPDA*, no decision or approval under the *ARA* may be made until such time as a decision on the NEP amendment has been made and a NEC Development Permit has been issued.

Subject to decisions on the NEC applications, *ARA* site plan amendments will also be required for the existing Milton Quarry and Milton Quarry Extension, in order to integrate the proposed Milton Quarry East Expansion operation.

#### 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 submissions as well as the rehabilitation and enhancement plans for after-use of the lands to determine whether the proposed amendment is in conformity with the policies of the Greenbelt Plan, as applicable.

#### 5. Growth Plan for the Greater Golden Horseshoe

The Growth Plan applies to lands within the Greater Golden Horseshoe (GGH), which includes the Region of Halton, and provides direction on how to manage growth. Emphasis is placed on intensification and redevelopment in existing settlements and built-up areas rather than sprawl or expansion that requires new municipal services (e.g., sewers and water). The Growth Plan on its Map Schedules also identifies Urban Growth Centres within existing built-up areas.

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.

#### 6. Regional and Local Planning Context

The NEP Development Criteria are used as minimum standards for assessing the conformity of local Official Plans, secondary plansand, where applicable, zoning by-laws and for administering site-plan control approvals. 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.

##### Region of Halton Official Plan

#### An amendment to the Region of Halton Official Plan (OP) is required to permit the expansion of the mineral aggregate operation. On January 18, 2022, the Region deemed the application to amend the Regional OP complete (under the requirements of the *Planning Act*).

Map 1 Regional Structure of the Region of Halton OP identifies the subject lands (proposed for re-designation) as Agricultural Area and within the Regional Natural Heritage System (a small portion in the northwest corner of the proposed extraction area). Map 1E Agricultural System and Settlement Areas identifies the subject lands as being in the Agricultural System, outside of Prime Agricultural Areas. The goal of the Agricultural System as stated, is to maintain a permanently secure, economically viable agricultural industry and to preserve the open space character and landscape of Halton’s non-urbanized areas.

Section 99 (17) of the OP identifies that the objectives of the Agricultural System include providing for the designation of new Mineral Resource Extraction Areas, which can be accommodated in accordance with goals, objectives and policies of, and by amendment to, the Official Plan, and where applicable, the NEP and Greenbelt Plan.

**Town of Halton Hills**

An amendment to the Town of the Halton Hills Official Plan is required to permit new or expanded mineral aggregate operations. Concurrent with the Region, the Town deemed the application to amend the local OP as complete on January 18, 2022.

In regard to mineral aggregate extraction, the Halton Hills OP states that:

The Town recognizes that mineral aggregate extraction is a rural-based activity and an important component of the local economy. Mineral aggregate extraction must be undertaken in a manner that minimizes social and environmental impacts. In keeping with the “environment-first” philosophy, this Plan requires that where mineral aggregate extraction impacts the Greenlands System, the application will result in a net environmental gain for the features or functions of the Greenlands System through a combination of compensation and enhancements that are initiated prior to and/or during extraction, and the proposed progressive and final rehabilitation of the site to uses that benefit the community.

S. A2.10 Mineral Aggregate Resources identifies the goal to protect mineral aggregate resource areas for long term use while ensuring that extraction occurs in a manner that minimizes environmental and social impacts.

S. A.10.2 Strategic Objectives identifies a number of objectives respecting mineral aggregate resources including; i) to ensure that as much of the mineral aggregate resources in the Town and is realistically possible shall be made available to supply mineral aggregate needs as close to markets as possible provided the extraction can occur in a manner that minimizes environmental and social impacts, and; j) to ensure the proper management of mineral aggregate operations to minimize potential negative environmental and social impacts.

Section E6.4.4 of the OP identifies Criteria for Approval of an Official Plan Amendment and/or Zoning By-Law for new or expanded mineral aggregate operation. The applicant is required to demonstrate: the protection of quality of sensitive groundwater and surface water features, taking into account any mitigative measures initiated by the proponent prior to and/or during extraction and the proposed rehabilitation plan; the quality of water available for other uses in the area and as base flow for sensitive surface water features is to be protected, improved or restored; no negative impacts on significant natural heritage features or related ecological functions (in accordance with the principles of net gain, and taking into account any compensation and enhancements recommended); as much of the site as possible to be rehabilitated by establishing or restoring natural self-sustaining vegetation; and, consideration of other environmental impacts and social impacts (such as noise, dust, odour and visual impacts are minimized).

#### 7. Conservation Authority Regulation

The existing Milton Quarry and proposed expansion area are entirely located within the Sixteen Mile Creek Watershed. The expansion lands contain and/or are adjacent to features regulated by Conservation Halton, including wetlands that are part of the Halton Escarpment Wetland Complex, and tributaries of Sixteen Mile Creek, and the flooding and erosion hazards associated with these watercourses. The subject lands also contain and/or are adjacent to potential hazard lands in the form of karst topography, sensitive groundwater features, sensitive surface water features, designated vulnerable areas.

Conservation Halton will review the applications based on its delegated responsibility to represent the Province on the natural hazard policies of the PPS (Parts 3.1.1- 3.1.7), and as a technical advisor, providing advice on natural heritage and groundwater matters through the JART technical review process. CH staff will also review the applications to ensure that the proposed works meet the intent of CH’s regulatory policies and requirements.

**8. *Endangered Species Act (ESA)***

The habitat of a number of Endangered and Threatened species were confirmed as being present within the Dufferin MQEE study area, including the habitat of Jefferson Salamander and Unisexual Ambystoma (Jefferson Salamander dependent population). It is anticipated that an Overall Benefit Permit under the *ESA* will be required by the MECP (to address a portion of the proposed extraction area within the habitat of Jefferson Salamander and Unisexual Ambystoma). The Ecological Enhancement Plan (EEP) submitted by the applicant includes a proposal to improve both terrestrial and breeding habitat for Jefferson Salamander. The potential impacts of the proposed Dufferin MQEE to Species at Risk and their habitats will be required to be assessed in consultation with MECP staff.

In addition to the above, an amendment to the Environmental Compliance Approval and Permit to Take Water from the MECP will also be necessary.

### **C. SITE DESCRIPTION AND SURROUNDING LAND USES**

The proposed Dufferin MQEE lands are characterized by open fields that were formerly in agricultural use. The subject lands also contain or are adjacent to potentially hazardous lands in the form of karst topography, sensitive groundwater features, sensitive surface water features (including Provincially Significant and unevaluated wetlands), a Provincially Significant Life Science Area of Natural and Scientific Interest (ANSI), habitat of Endangered and Threatened species, fish habitat, Significant Woodlands, and Significant Wildlife Habitat. Portions of the study area are mapped as part of the Provincial, Regional and Local Greenlands Systems.

The proposed MQEE is located within the Sixteen Mile Creek watershed. The

watershed is situated primarily within the Region of Halton, with a small portion in the

Region of Peel. The proposed MQEE is situated within the headwaters of the West Sixteen Mile Creek branch of the system. There is potential indirect fish habitat within the study area, but it is located outside of the proposed extraction area.

The lands surrounding (the proposed licenced area) include forested areas that form part of the Halton Forest, which includes the Halton Forest South, Halton Forest North and Speyside Life Science Areas of Natural and Scientific Interest (ANSI). The main forest block within the Dufferin MQEE study area is part of the Halton Forest North Provincially Significant Life Science ANSI. The Halton Forest North ANSI is part of the largest continuous tract of forest and wetlands along the Niagara Escarpment south of Grey County and is the largest natural area in Halton Region. It is part of a 14 km naturally vegetated corridor. The ANSIs are highly diverse, including nationally and provincially threatened and regionally and locally rare species. The forest is Sugar Maple (*Acer saccharum)* dominated, with White Ash (*Fraxinus americana*) as the former codominant species with Sugar Maple, but the remaining ash trees are in severe decline due to the Emerald Ash Borer resulting in dead standing trees. The ANSI is largely coincident with the Hilton Falls Environmentally Significant Area (ESA). There are also several wetlands situated within the forest that form part of the Provincially Significant Halton Escarpment Wetland Complex (PSW), and a small unevaluated wetland within the open field area (within the subject lands, but all wetlands are situated outside the proposed extraction area).

### **D. RELATED NIAGARA ESCARPMENT PLAN AMENDMENT / DEVELOPMENT PERMIT APPLICATIONS**

There have been a number of NEP amendment applications for new and expanded MREA designations over the years. A list of these applications is provided in Appendix 1 attached.

The following NEC applications are directly related to the subject application:

**NEP Amendment PH 135 01:** On December 1, 2006, the Provincial Cabinet decided to confirm a Joint Board Decision on the expansion of the existing Dufferin Milton Quarry.The undertaking before the Provincial Cabinet involved an expansion of Dufferin Aggregate’s existing Milton Quarry, an operation that existed prior to the approval of the NEP in 1985. The matters before the Cabinet included an application to amend the NEP, and the issuance of a Development Permit. The application was to amend the NEP designation from Escarpment Rural Area to Mineral Resource Extraction Area to permit the establishment of a licensed quarry on Part Lots 12 & 13, Concession 7, Town of Milton, and Part Lots 13 & 14, Concession 1, Town of Halton Hills, Halton Region.

**Development Permit #8784 H/E/2000-2001/314** was issued in December 2006 to expand the existing quarry operation (known as the “East Expansion”), subject of NEP Amendment 135 01 to re-designate the lands to MREA.

**NEP Amendment PH 169 07** (Dufferin Quarry Addition to the NEP): As part of the above noted Cabinet approval of the expansion to the Milton Quarry, the Cabinet Order contained a condition for the inclusion and designation of approximately 70 ha of lands adjacent to the expansion area to be added to the Niagara Escarpment Planning Area (by amendment to Ontario Regulation 827), in order to maximize the natural landscape corridor in the vicinity of the expanded MREA and *to* provide linkages between ecologically sensitive areas**.** The Minister of Natural Resources and Forestry approved the NEP amendment in December 2011.

**E. AMENDMENT CONSIDERATIONS**

Matters raised in this preliminary review of the application are noted to assist in coming to a determination if the application should be initiated under S. 6.1(2) of the *NEPDA*, and if so, to also provide the commenting agencies and the public with an initial understanding of the application. The planning considerations and technical information as presented are not a complete review or analysis 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 considered and addressed by the applicant, including consideration of the proposal against the Purpose and Objectives of the *NEPDA* and the NEP.

***Niagara Escarpment Planning and Development Act* & Niagara Escarpment Plan**

Urban Uses Assessment

Section 6.1(2.2) & (2.3) of the *NEPDA* identifies 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) re-designate the land to the land use designation of Minor Urban Centre, Urban Area or Escarpment Recreation Area of the Niagara Escarpment Plan; or b) make any other amendment to permit urban uses, unless it is during the time of a Plan Review.

The proposal to re-designate lands from Escarpment Rural Area to Mineral Resource Extraction Area does not meet the prohibition of urban uses and urban designations under the NEPDA, since the lands are not being proposed for designation as Escarpment Urban Area, Escarpment Recreation Area or Minor Urban Centre (the NEPDA specifies these designations to be “urban designations”), nor is the proposal seeking an urban use.

Additionally, the NEC Policy for Urban Uses (2005) identifies that mineral extraction operations and associated accessory uses, including processing, manufacturing and recycling and reprocessing facilities as provided for by amendment from the Escarpment Rural Area designation to the Mineral Resource Extraction Area designation in the NEP are not considered urban uses. Notwithstanding the exclusions above, all accessory uses associated with a mineral aggregate operation will only be considered on the basis that they are proposed as temporary and will remain in place only for the duration of the mineral extraction operation.

Therefore, the Commission may consider and initiate proposed amendment PH 224 21 to the NEP outside the time of a Plan Review.

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

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.*

***NEC Staff Comment:*** The Dufferin MQEE proposal 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 comprehensive rehabilitation and enhancement plan, that the Purpose and Objectives of the *NEPDA* and the NEP will be supported. Through consultation with other agencies through the circulation of the application, as well as participation on the JART, NEC staff will undertake a comprehensive assessment with respect to whether the proposed amendment can achieve conformity with the Purpose and Objectives of the *NEPDA* and the NEP.

#### *Land Use Designation and Designation Criteria*

***Is the proposed amendment consistent with the Objectives of the Designation and the Designation Criteria in the NEP?***

**Part 1.2.2.1** of the NEP as it relates to Plan amendments for MREAs, identifies that only lands designated Escarpment Rural Area can be considered as candidate sites.

Escarpment Rural Area

Escarpment Rural Areas are 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 Rural Area 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.

***NEC Staff comment:*** Objective 7 above supports the initiation of the proposed amendment. Technical studies have been submitted in support of the application, which NEC staff and partner agencies will review in making a determination as to whether the proposal upholds the Objectives of the Escarpment Rural Area designation.

Mineral Resource Extraction Area

**NEP Part 1.9** outlines the Criterion and Objectives for designation of Mineral

Resource Extraction Areas (MREAs). The MREA designation includes pits and quarries licensed pursuant to the *ARA* and areas where mineral resource extraction may be permitted subject to the policies of the NEP.

The Criterion for Designation of a Mineral Resource Extraction Area is:

* *Licensed pits and quarries producing more than 20,000 tonnes annually.*

Areas designated Mineral Resource Extraction are intended to be interim in nature and

once the aggregate resource has been exhausted, the lands are to be re-evaluated for

more appropriate land use designation.

The **Objectives o**f **NEP Part 1.9** Mineral Resource Extraction Area designation are:

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*.

*NEC Staff comment:* Dufferin has submitted an Ecological Restoration and Enhancement Plan for the extraction lands and beyond, which proposes that the lands be rehabilitated to include a deep-water lake, forested areas, shoreline wetlands and shoal and cliff face features (in place of the current landscape that includes meadow, thicket and woodland), and proposes enhancements to adjacent natural key natural heritage and hydrologic features. The rehabilitation plan will require the importation of soil to create the proposed landform. The NEP requires that progressive rehabilitation may include the use of off-site material (where on-site is not available), however off-site material shall be minimal in nature, and only be used where required to stabilize and revegetate disturbed areas. Staff notes that the existing approved rehabilitated landform for the Dufferin Milton Quarry and Milton Quarry Expansion permits the importation of off-site materials for rehabilitation of the site.

The Permitted Uses within MREAs are limited and include those uses directly related to aggregate extraction and subsequent rehabilitation, and generally reflect the interim nature of pits and quarries.

**NEP Part 1.9.3.10** identifies 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 as Permitted Uses. However, asphalt plants, concrete plants, brick manufacturing plants and other similar manufacturing uses are *not* permitted.

There is no processing of aggregate material proposed within the proposed Dufferin MQEE. The expansion, if approved, proposes to utilize existing accessory uses, including the main processing plant within the main Milton quarry for processing of material from the MQEE. This extraction scenario assumes approximately 5.5 million tonnes of aggregate shipped/year.

If the primary processing plant in the main Milton Quarry is decommissioned when extraction commences at the proposed MQEE (under an approval scenario), Dufferin is proposing that aggregate material would then be transported to the Milton Quarry Extension East Cell for processing and shipping using existing internal haul routes. This extraction scenario assumes 2 million tonnes of aggregate shipped/year (due to a smaller plant size in the East Cell, resulting in reduced capacity).

Dufferin currently uses a portable processing plant to recycle concrete and asphalt at the existing Milton Quarry and blends this material with aggregate resources to conserve mineral aggregate resources. This use is proposed to continue at the existing quarry in conjunction with the proposed MQEE under both scenarios described above.In addition to the processing and recycling areas, Dufferin proposes to utilize additional accessory and associated uses situated in the Milton Quarry and Milton Quarry Extension in conjunction with the proposed MQEE, including internal haul routes, entrance/exits, office, maintenance buildings and facilities for washing and truck wash facility. The extraction life of the MQEE is anticipated to be anywhere between 3 and 8 years, depending upon the scenarios for processing.

*NEC Staff comment:*  The Permitted Uses of the MREA designation limit the accessory processing activities normally associated with a mineral resource extraction operation, to the site on which the aggregate is extracted in order to be accepted as an accessory use.

Accessory Use is defined in the NEP as *the use of any land, building or structure which is subordinate to and exclusively devoted to the principal use located on the same lot*.

The use of off-site materials does not meet the accessory policies and definitions of the NEP. This issue was the subject of a motion at the Nelson Aggregates Inc. Consolidated Joint Board hearing (Case No: 08-030, April 2010). The finding of the Joint Board on this matter was that accessory uses, including processing facilities are confined to the site on which the aggregate materials being processed are extracted, therefore necessitating the requirement for an amendment to the NEP to consider the processing of aggregate from another licenced site.

Staff observes that NEP amendment applications seeking expansions to existing licenced operations are consistently seeking as part of the proposal, site-specific policy exceptions to allow the processing the materials from the (proposed) expansion area on the site of the existing licenced operation, as a matter of operational efficiency. The Commission will need to consider this aspect of the Dufferin MQEE proposal with respect to any consequences on the final progressive rehabilitation of the existing quarry site, as well as more broadly to the NEP Area when considering the cumulative impacts of such proposals.

**NEP Part 1.9.5** **After Uses** identifies that following the surrender of the licence, an amendment is required to change the land use designation of the lot from MREA to a land use designation that has designation criteria consistent with the rehabilitation completed on the property and be processed in accordance with NEP Part 1.2.1. Dufferin has suggested that following the rehabilitation of the proposed MQEE, that some areas of the operation may qualify for redesignation to Escarpment Natural Area and Escarpment Protection Area, based on the ecological attributes of the rehabilitated lands. A subsequent amendment application would need to be filed to consider the future designations post-extraction.

#### 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.”

***Is the proposed Plan amendment application “frivolous or vexatious” pursuant to Subsection 6.1(3) of the NEPDA?***

The Commission considers frivolous to mean “without merit”. “Without merit” means that the application constitutes a major conflict with the intent of the Act as expressed through the Purpose (Section 2) or the Objectives (Section 8). The Commission has considered applications to be frivolous if they were certain to fail, or where there was no reasonable expectation that the application would succeed. The term “frivolous” may include applications made in bad faith or for the purposes of delay. Vexatious may be interpreted to mean that the application is being made for the purposes of delay.

There is only one previous NEP amendment application (Duff 5/H/85) seeking a MREA designation that was referred to the Minister as frivolous by the Commission. This determination was on the basis that the application included the re-designation of a portion of Escarpment Natural Area to MREA (Escarpment Rural Areas are the only identified NEP land use designation for which application for amendment to MREA may be made). Regardless of the Commission’s recommendation on the amendment proposal in that instance, the Minister recommended circulation of the application. The amendment proposal was eventually modified to exclude the Escarpment Natural Area. There is one additional amendment application (PH 185 10, Protecting Escarpment Rural Land), where NEC Staff recommended to the Commission that the Minister be notified that the Commission does not support initiating the amendment, finding the proposal to be vexatious and not in the public interest. However, the Commission elected not to accept the staff recommendation and directed that a report be brought to a future Commission meeting recommending initiation of the amendment process.

The NEP provides for the opportunity to apply for amendments to the NEP for new MREAs. Provided that the application is not deemed to be frivolous or vexatious, in order to properly consider the merits of such an application, the application should be processed under Section 10 (1) of the *NEPDA*.

#### JUSTIFICATION FOR THE AMENDMENT

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 that there is a sound and defensible rationale for the amendment, as well as reasons, arguments, or evidence in support of the change to the Plan proposed through the amendment.

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

The **Objectives** of the Act and the Plan are:

* To protect unique ecologic and historic areas;
* To maintain and enhance the quality and character of natural streams and water supplies;
* To provide adequate opportunities for outdoor recreation;
* 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;
* To ensure that all new development is compatible with the purpose of the Act;
* To provide for adequate public access to the Niagara Escarpment; and,
* To support municipalities, within the Niagara Escarpment Plan Area, in their exercise of the planning functions conferred upon them by the *Planning Act*.

*NEC Staff Comment:*Satisfactory justification of a proposed amendment must be balanced against the potential or identified environmental impacts of the proposal in the manner directed by the requirements of the NEP and the PPS. Although it is argued that MREAs are interim land uses, when below the water table operations, these uses continue for protracted periods of time. The acceptability of the application can only be decided once the circulation and comments on the application have been made and considered and the full review of the technical submissions has been undertaken.

In reviewing the proposed amendment there are several key issues that must be addressed. All amendments must be considered against the Purpose and Objectives of the *NEPDA,* and the Objectives and provisions of the NEP, and be consistent with other provincial policies.

The NEP Part 1.2.1 (Plan Amendments) of the NEP set outs the following provisions that apply to all applications to amend the NEP:

* NEP policies and land use designations may be changed as long as the Purpose and Objectives of the *Niagara Escarpment Planning and Development Act* and the Niagara Escarpment Plan are met;
* justification for the proposed amendment is provided, including the rationale for the amendment, as well as reasons, arguments or evidence in support of the amendment;
* it must be 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 NEP, and shall be consistent with other provincial policies; and
* Development Criteria set out in Part 2 of the NEP will be considered in the assessment of a proposed amendment.

The applicant has provided the following reports as justification in support of the amendment application. NEC staff were involved in the review of the Terms of References for the following studies through the JART:

* Planning Justification Report and *Aggregate Resources Act* Summary Statement, December 2021 (MHBC Planning)
* Noise Impact Study, December 7, 2021 (Aerocoustics Engineering Ltd.)
* Air Quality Assessment, November 16, 2021 (RWDI)
* Stage 1 and 2 Archaeological Assessment Milton Quarry East Extension, April 20, 2021(Golder Associates Ltd.)
* Stage 3 Archaeological Stage 3 Archaeological Assessment Location 2 (AjGx-306), April 30, 2021 (Milton Quarry East Extension, Golder Associates Ltd.)
* Blast Impact Analysis Milton Quarry East Extension, November 25, 2021 (Explotech)
* Cultural Heritage Impact Assessment Report December 2021 (MHBC Planning)
* Fiscal Impact Study, November 15, 2021 (Altus Group)
* Geology and Water Resources Assessment Report, December 2021 (GHD)
* Addendum to the Updated Adaptive Environmental Management and Protection Plan (AMP), December 2021 (GHD & Goodban Ecological Consulting Inc.)
* Level 1 & 2 Natural Environment Technical Report and Environmental Impact Assessment, December 2021 (Goodban Ecological Consulting Inc.)
* Ecological Enhancement Plan & Rehabilitation Plan Report, December 2021 (Goodban Ecological Consulting)
* Traffic Impact Study/Haul Route Assessment, October 2021 (The Municipal Infrastructure Group Ltd.)
* Visual Impact Assessment, November 2021 (MHBC)
* Agricultural Impact Study, November 2021 (DBH Soil Services Inc).
* Progressive and Final Rehabilitation and Monitoring Study, December 2021 (MHBC)
* Aggregate Resources Act Site Plan, January 2022 (MHBC)

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

* Conforms to the NEP
* Is consistent with the PPS
* Conforms to the Growth Plan
* Conforms to the Greenbelt Plan
* Conforms to the Halton Official Plan
* Conforms to the Town of Halton Hills Official Plan
* Addresses the requirements of the ARA Provincial Standards

As Staff has previously identified, the technical studies submitted by the applicant will be evaluated by NEC staff, including through the JART process, and consideration of comments received through the circulation, and come to a determination as to whether the applicable policies of the NEP and other relevant planning documents have been met.

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

Section 6.1(3) of the *NEPDA* requires consideration as to whether the application has been justified 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. An application could be considered not in the public interest if there was major inherent conflict with the underlying Purpose and Objectives of the *NEPDA* and NEP. An additional consideration in assessing public interest is with respect to public confidence in the planning process. If the facts of a proposed amendment are such that to recommend initiation or identify support for the proposal (in advance of the proper process) would undermine confidence in the planning approvals process, it could be said that the proposal is not in the public interest.

The applicant submits that when all the applicable policies are considered, that the proposed MQEE is in the public interest by making available 15 million tonnes of high-quality aggregate resource from a site that is close to market. The applicant provides that aggregate extraction is an existing and long-standing use in the area and there is existing infrastructure in place to support the continuation of the operation.

As this Report has identified (Appendix 1), there have been several NEP amendment applications made seeking new or expanded mineral aggregate resource extraction areas within the NEP Area. It would therefore be unreasonable to argue that this site-specific application is not in the public interest. Circulation of the proposal would allow partner agency input and further opportunity for broader public engagement and input, and to obtain a recommendation from the NEC Public Interest Advisory Committee (PIAC).

Even if the proposed amendment is found worthy of consideration at this stage, Staff reminds that this is not reflect an endorsement for approval of the application in whole or in part at this stage.

### **F. 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. There is no indication that the application, as filed, is not in the public interest, is without merit, is frivolous or vexatious, or made for the purpose of delay.

Staff notes that the attached Appendix 1 “Schedule A” proposed amendment map and text is the submission made by the applicant and is subject to revisions recommended by NEC staff pending further review and consideration of the comments received through the circulation.

## RECOMMENDATION

That the Niagara Escarpment Commission instruct staff to prepare proposed amendment PH 224 21 Dufferin Milton East Expansion for circulation and notification pursuant to Sections 7 and 10 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

Appendix 1 File History - NEP MREA amendment applications

Map 1 Amendment Location Map/Existing NEP Designations

Map 2 Orthophoto

Map 3 Natural Heritage Features

Map 4 Landscape Evaluation Study

Map 5 Soils

Map 6 Slope / Escarpment Brow

Appendix 2 Proposed Amendment Document & Schedule A

**Prepared By:**  **Approved by:**

ORIGINAL SIGNED BY: ORIGINAL SIGNED BY:

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Lisa Grbinicek, RPP, MCIP John Dungavell

Senior Strategic Advisor A/Director

 ORIGINAL SIGNED BY:

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Kim Peters, RPP, MCIP

 Manager

# Appendix 1: List of NEP MREA (and related) amendment applications

|  |  |  |
| --- | --- | --- |
| **File number** | **Type of Amendment (after use/licence surrendered)** | **Status** |
| 28/H/87 J.C. Duff Ltd | Re-designation from MREA to Escarpment Natural and Protection Area after licence surrender | approved |
| 29/H/87 Duff | Re-designation from MREA to Escarpment Rural Area after licence surrender | File closed |
| 42/H/88 Taro | Re-designation from MREA to Urban | approved |
| 60/H/89 Gori | Re-designation from MREA to Escarpment Natural and Protection Area. | File closed |
| 73/H/90 Fisher | Re-designation from MREA to MUC, Escarpment Protection and Rural Area. | approved |
| PH 186 10 – Milton and Hanson Brick Quarries | Re-designation from MREA to Escarpment Natural and Protection Area after licence surrender, land added to NEPOSS. | approved |
| PH 191 11 Former Lafarge Pit Lands | Re-designation from MREA to Escarpment Natural, Protection and Rural Area after licence surrender. | approved |
| PH 192 11 JC Duff Pit Lands | Re-designation from MREA to Escarpment Natural, Protection and Rural Area after licence surrender. | approved |
| PW 195 12 Coverdale | Re-designation from MREA to Escarpment Natural and Rural Area after licence surrender | approved |
| PC 197 13 Pinchin pit | Re-designation from MREA to Escarpment Natural and Rural Area after licence surrender; add lands to NEPOSS. | File Closed (See file PP 223 21) |
| PS 198 13 MacDonald | Re-designation from MREA to Escarpment Protection Area after licence surrender | approved |
| PD 204 14 Doug’s Haulage | Re-designation from MREA to Escarpment Protection Area after licence surrender. | approved |
| PB 208 15 Rabicki/Municipality of Northern Bruce Peninsula | Re-designation from MREA to Escarpment Natural and Protection Areas after licence surrender with site specific use provisions. | Approved |
| **File number** | **Type of Amendment (after use/licence surrendered)** | **Status** |
| PW 209 15 Posavad | Re-designation from MREA to Escarpment Natural and Protection Areas after licence surrender | approved |
| PH 217 Halton Crushed Stone | Re-designation from MREA after licence surrender | not yet initiated |
| PH 221 4000 Campbellville Road | Proposed Re-designation from MREA after licence surrender | In process |
| PH 222 3475 Campbellville Road | Proposed Re-designation from MREA after licence surrender | In process |
| PP 223 21 Pinchin pit | Proposed re-designation from MREA to Escarpment Natural and Rural Area, add lands to NEPOSS | In process |
| UA 03 Walker  | Re-designation from MREA to Urban Area following licence surrender | approved (See PN 210 – balance of property owned by federal government to be re-designated following acquisition by Walker) |
| UA 05 Queenston quarry | Re-designation from MREA to Escarpment Recreation Area to permit commercial and recreational uses | approved |
| **File number** | **Type of Amendment – new pit or quarry** | **Status** |
| 1/P/85 Regan Graham | New aggregate operation | approved |
| 2/S/85 McKean | New aggregate operation | File closed |
| 3/G/85 Sutherland | New aggregate operation | approved |
| 5/H/85 | New aggregate operation | approved |
| 14/H/86 Boss | Wayside pit in Escarpment Protection Area | approved |
| 16 & 17/S/86 McKean | Quarry expansion into Escarpment Protection Area | approved |
| 41/P/88 Caledon Sand & Gravel | Re-designation from Escarpment Rural Area to MREA to permit sand and gravel pit | approved |
| 45/H/88 LAC | Re-designation from Escarpment Rural Area to MREA  | File closed |
| 51/H/89 Cohoon | Re-designation from Escarpment Protection Area to MREA to allow wayside pit | refused |
| 64/P/89 Armbro | Re-designation from Escarpment Rural Area to MREA  | approved |
| 64/P/89 | Re-designation from Escarpment Rural Area to MREA to permit sand and gravel pit | approved |
| 80/H/91 Duff | Re-designation from Escarpment Rural Area to MREA | File closed |
| 91/B/92 Forbes | Proposed re-designation from Escarpment Rural Area to Mineral Resource Extraction Area  | refused |
| PP 126 98 Graham Brothers | Proposed re-designation from Escarpment Rural Area to Mineral Resource Extraction Area  | approved |
| PG 130 99 Grey County | Proposed re-designation from Escarpment Rural Area to Mineral Resource Extraction Area  | approved |
| PN 134 00 Vineland | Proposed re-designation from Escarpment Rural Area to Mineral Resource Extraction Area  | approved |
| PH 135 01 Dufferin Milton quarry expansion | Proposed re-designation from Escarpment Rural Area to Mineral Resource Extraction Area to permit a quarry | approved |
| PH 153 04 Nelson quarry expansion | Proposed re-designation from Escarpment Rural Area to Mineral Resource Extraction Area to permit a quarry | refused |
| PG 159 05 Sutherland quarry | Proposed re-designation from Escarpment Rural Area to Mineral Resource Extraction Area to permit a quarry, asphalt and redi-mix plant | File closed (see PG 167) |
| PS 161 05 Walker Aggregates Duntroon quarry expansion | Proposed re-designation from Escarpment Rural Area to Mineral Resource Extraction Area to permit a quarry | approved |
| PG 167 05 Sutherland | Proposed re-designation from Escarpment Rural Area to Mineral Resource Extraction Area to permit a quarry, asphalt and redi-mix plant | approved |
| PH 180 09 Dufferin Acton quarry expansion | Proposed re-designation from Escarpment Rural Area to Mineral Resource Extraction Area, add lands to NEPOSS to permit a quarry, re-designate a portion of the property to Escarpment Natural Area | approved  |
| PC 213 18 McCormick | Proposed re-designation from Escarpment Rural Area to Mineral Resource Extraction Area to permit a quarry | Under Review |
| PH 219 Nelson quarry expansion | Proposed re-designation from Escarpment Rural Area to Mineral Resource Extraction Area to permit a quarry | Under review |
| Dufferin Milton quarry expansion | Proposed re-designation from Escarpment Rural Area to Mineral Resource Extraction Area to permit a quarry | Application pending |
| **File Number**  | **Type of amendment – Other aggregate related activity** | **Status** |
| PG/101/93 Sutherland | Allow portable asphalt plant in MREA | approved |
| PG/105/94 Miller Paving | Allow portable asphalt plant in MREA | File closed |
| PH/118/97 Joyce | Change permitted uses in MREA to allow a single dwelling | File closed |
| PC/12/197 NEC | Change permitted uses in MREA to allow a single dwelling | approved |
| 134 Vineland | Allow continued use of an asphalt plant after licence surrender | approved |
| PN 171 07 Queenston Quarry | Allow residential, commercial and recreation uses within MUC of St. David’s on land designated MREA | approved |
| PP 190 10 Graham Brothers | Allow processing of aggregate on a licensed site on another lot | approved |

APPENDIX 2

April 21, 2022

**AMENDMENT DOCUMENT**

**RE: Proposed Niagara Escarpment Plan Amendment PH 224 21**

 **Dufferin Milton Quarry East Expansion**

## Part Lots 8-14, Concession 1 (former geographic Township of Esquesing), Town of Hilton Hills, Region of Halton, and;

## Part of Lots 8-14, Concession 7 (former geographic Township of Nassagaweya), Town of Milton, Region of Halton.

**Recommendation:**

That the Niagara Escarpment Commission circulate the attached Amendment as the proposed amendment for the Dufferin Milton Quarry East Extension Amendment PH 224 21.

**Prepared by: Approved by:**

ORIGINAL SIGNED BY: ORIGINAL SIGNED BY:

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Lisa Grbinicek, RPP, MCIP John Dungavell**

**Senior Strategic Advisor A/Director**

 ORIGINAL SIGNED BY:

 **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**  **Kim Peters, RPP, MCIP Manager**

**PROPOSED NIAGARA ESCARPMENT PLAN**

**AMENDMENT PH 224 21**

**(Dufferin Milton Quarry East Extension)**

**April 21, 2022**

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**PART A –** The Preamble

**PART B –** The Amendment

**PART C –** Schedule “A”

## Part A – The Preamble

## PURPOSE:

The purpose of the proposed amendment affecting the lands identified on Schedule A, attached hereto, is to amend the Niagara Escarpment Plan (NEP) to re-designate the subject lands from Escarpment Rural Area to Mineral Resource Extraction Area, and to add a special policy under NEP Part 1.9.3 that would permit the continued use of existing accessory uses on an alternate licensed extraction area, for the purpose of supporting the expansion operation on the lands proposed to be redesignated.

## AREA:

The lands subject to the proposed Plan amendment consist of an area of approximately 30.6 ha (75.6 ac) of licensed area, with a proposed extraction area of approximately 15.9 ha (39.2 ac).

## LOCATION:

Part Lots 11, 12 & 13 Concession 1 (former geographic Township of Esquesing), Town of Halton Hills, Region of Halton,

## Part Lots 8-10, 13 and 14, Concession 1 (former geographic Township of Esquesing), Town of Hilton Hills, Region of Halton, and;

## Part of Lots 8-14, Concession 7 (former geographic Township of Nassagaweya), Town of Milton, Region of Halton.

**APPLICANT/ OWNERSHIP:**

**Applicant:** Dufferin Aggregates, a division of CRH Canada Group Inc. (c/o Kevin Mitchell)

**Owner(s):** CRH Canada Group Inc., 747752 Ontario Inc., Peninsula Ready-Mix Inc., and 1336811 Ontario Inc.

**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.”*

Part 1.2.1 of the NEP sets out provisions for an amendment to the NEP and this application satisfies Section 1.2.1.

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 addressed in consideration of an amendment to the NEP. The applicant has provided a Planning Justification Report (MHBC, December 2021), which satisfies the threshold justification requirements of the Act*.*

The amendment proposes to change the existing Land Use Designation of Escarpment Rural Area to Mineral Resource Extraction Area on the subject properties described as Part Lots 11, 12 & 13, Concession 1 (former geographic Township of Esquesing), Town of Halton Hills, Region of Halton and, to apply a special policy under Part 1.9.3 of the NEP that applies to the subject properties described as Part Lots 8-10, 13 and 14, Concession 1 (former geographic Township of Esquesing), Town of Hilton Hills, Region of Halton and Part of Lots 8-14, Concession 7 (former geographic Township of Nassagaweya), Town of Milton Region of Halton, that would permit the continuation of the use of an office and maintenance buildings, facilities for washing, processing and stockpiling of aggregate, truck washing facility, recycling facilities and entrance/exits to be used for the purpose of supporting the extraction of aggregate on the lands proposed to be redesignated.

An application has also been made to the Ministry of Northern Development Mines, Natural Resources and Forestry for a Class “A” licence to operate a below water table quarry on the lands subject to this amendment.

A Niagara Escarpment Development Permit Application has also been filed concurrently with the NEC.

**PART B – The Amendment**

The Niagara Escarpment Plan is modified as follows:

1. Map 3 of the Niagara Escarpment Plan is amended as shown on Schedule A.
2. That NEP Part 1.9.3.X be added 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 the subject property described as Part Lots 8-10, 13 & 14, Concession 1 (former geographic Township of Esquesing), Town of Halton Hills, Regional Municipality of Halton, and Lots 8-14, Concession 7 (former geographic Township of Nassagaweya), Town of Milton, Region of Halton, that the office, maintenance buildings, facilities for washing, processing and stockpiling of aggregate, truck washing facility, recycling facilities and the entrance may be used for the purpose of supporting the extraction of aggregate from the area approved under NEP Amendment PH 224 21 to the NEP and licences under the *Aggregate Resources Act* located at Part of Lots 11, 12, Concession 1 (former geographic Township of Esquesing), Town of Halton Hills, Regional Municipality of Halton, provided and only while the two sites are actively operated by a single licencee, as an integrated operation.