



SUBJECT: Response to Staff Direction – Nelson Quarry

TO: Community Planning, Regulation & Mobility Cttee.

FROM: Community Planning Department

Report Number: PL-52-20

Wards Affected: 3

File Numbers: 505-04/20

Date to Committee: October 6, 2020

Date to Council: October 19, 2020

Recommendation:

Receive and file community planning department report PL-52-20 providing a response to staff direction SD-29-20 regarding the Nelson Quarry expansion.

PURPOSE:

Vision to Focus Alignment:

- Building more citizen engagement, community health and culture

Background and Discussion:

1.0 Staff Direction

On February 24, 2020, Council approved the following staff direction (SD-29-20):

Direct the Director of City Building to report back to the Planning and Development Committee on the land use development application and review process related to the proposed Nelson Quarry expansion, including but not limited to the following by April 2020:

- summary of the process including decision points;
- anticipated timeline for process steps;
- roles and responsibilities of review agencies;

- a summary of process and outcomes of the previous proposal for expansion; and
- a summary of any new provincial legislation related to aggregate resources.

2.0 Application

On May 14, 2020, the City of Burlington received an application to amend the Official Plan designation of the subject lands to expand the existing quarry operation. Receipt of an application requires staff to assess it for completeness by ensuring all required technical studies and associated Terms of Reference, as identified during pre-consultation, have been submitted for review. The *Planning Act* requires a determination of completeness within 30 days of the receipt of an application. However, in accordance with Bill 189, *Planning Act* timelines were suspended as of March 17, 2020, due to Covid-19. This suspension of timelines ended on June 22, 2020, commencing the 30-day requirement. It is noted that that the need for additional studies or reports may arise as the application review progresses.

On July 20, 2020, the application to amend the City of Burlington Official Plan was deemed complete. The application is now formally accepted for review and processing. The application has been circulated to all applicable departments and agencies for review and comment. Public notice has also been issued indicating that the application has been received and deemed complete for processing.

The following studies have been submitted as part of the complete application:

- Agricultural Impact Assessment (prepared by MHBC, dated April 2020);
- Archaeological Assessment (Stages 1, 2 &3) for Lot 17 & 18, Concession 2 NDS, Former Township of Nelson (prepared by Archaeologix Inc., dated August 2003);
- Archaeological Assessment (Stage 4) (prepared by Archaeologix Inc., dated August 2004);
- Stage 2-1 Archaeological Assessment (prepared by Golder, dated March 23, 2020);
- Cultural Heritage Impact Assessment Report (prepared by MHBC, dated April 2020);
- Level 1 and Level 2 Natural Environment Technical Report (prepared by Savanta, dated April 2020);
- Financial Impact Study (prepared by Nelson Aggregates, dated April 2020);
- Air Quality Study (prepared by BCX Environmental Consulting, dated March 2020);
- Planning Justification Report (prepared by MHBC, dated April 2020);
- Progressive and Final Rehabilitation Monitoring Study (prepared by MHBC, dated April 2020);
- Traffic Report (prepared by Paradigm, dated February 2020);

- Level 1 and Level 2 Hydrogeological and Hydrological Impact Assessment Report (prepared by Earthfx, dated April 2020);
- Surface Water Assessment (prepared by Tatham Engineering, dated April 2020);
- Adaptive Management Plan (prepared by Earthfx, Savanta and Tatham Engineering, dated April 23, 2020);
- Noise Impact Assessment (prepared by HGC Engineering, dated April 22, 2020);
- Blasting Impact Analysis (prepared by Explotech, dated March 24, 2020);
- Visual Impact Assessment Report (prepared by MHBC, dated April 2020);
- Site Plan package (Drawing Nos. 1-4, including Existing Features, Operational Plan, Rehabilitation Plan and Cross Sections, prepared by MHBC, dated April 2020);
- Public Consultation Strategy (prepared by Project Advocacy, dated April 22, 2020); and,
- Karst investigations and conceptual model of the bedrock aquifer (prepared by Worthington Groundwater, dated April 25, 2020).

The lands subject to the proposed quarry expansion are located to the west of the existing licensed quarry, which currently contain the Burlington Springs Golf Club, and to the south, on lands which currently contain agricultural and residential uses. See Appendix A for a location sketch of the proposed quarry expansion.

3.0 Review Process and Decision Points

Decisions on the proposed expansion to the quarry are regulated by the *Niagara Escarpment Planning and Development Act*, the *Aggregate Resources Act*, and the *Planning Act*. The following approvals are required to permit the quarry expansion:

1. Niagara Escarpment Plan Amendment and Development Permit;
2. Regional Official Plan Amendment to re-designate the proposed expansion land to permit mineral aggregate extraction;
3. City of Burlington Official Plan Amendment to re-designate the proposed expansion land to permit mineral aggregate extraction; and
4. Ministry of Natural Resources and Forestry issuance of an Aggregate License for the expansion area.

The applications to the Niagara Escarpment Commission, Region of Halton, City of Burlington, and Ministry of Natural Resources and Forestry (MNRF) have been received at the same time. Given the overlap in technical review, it is common for such applications to be filed concurrently to ensure a coordinated review among all agencies. To ensure conformity with the most senior level of government, a sequencing of decisions is required.

The Niagara Escarpment Planning and Development Act stipulates that no approval or permission that relates to development (including aggregate extraction) shall be made within an area of development control unless a Niagara Escarpment Development Permit has been issued. A decision from the Niagara Escarpment Plan comes first in the process of reviewing and permitting mineral aggregate extraction proposals within the Niagara Escarpment Plan Area.

A decision on the proposed amendments to the Regional Official Plan and Burlington Official Plan cannot occur prior to approval of the Niagara Escarpment Plan Amendment and issuance of a Development Permit. Further to that, a decision to amend the Burlington Official Plan cannot occur prior to approval of the proposed amendment to the Region of Halton Official Plan.

It is noted that the MNRF cannot issue an aggregate license without an approval from the Niagara Escarpment Commission.

Public input related to the proposal is welcomed and encouraged. Prior to any decisions being made, public consultation will occur, including a statutory public meeting. The timing of the statutory public meeting has not yet been determined and will be scheduled once the technical review of the proposal has progressed further. Best efforts will be made to align public consultation with the Niagara Escarpment Commission, Region of Halton, and City of Burlington.

A conceptual diagram (Provided by the Region of Halton) showing the parallel review processes is included in Appendix B to illustrate the sequencing of the various decision points and their relationship to one another.

4.0 Anticipated Timeline

The proposed application is exceptionally complex, and the technical review has just begun. At this point it is difficult to outline anticipated timelines this early in the review process. The sequencing of decisions from senior levels of government (i.e. Niagara Escarpment Commission and Region of Halton) will dictate the timing for a decision on the proposed Burlington Official Plan Amendment.

Both the NEC and the MNRF will be releasing requests for comment on the Environmental Registry of Ontario. This is anticipated to occur within Q3 of 2020, and the ability for the public, the City and other agencies to comment will be open for a limited period of time, as determined by the NEC and MNRF.

It is noted that the legislated timelines from the *Planning Act* with respect to the Region of Halton and City of Burlington Official Plan Amendments are applicable. Given the technical aspects of the application and sequencing of decisions to ensure conformity

with senior levels of government, it is not possible to follow the procedures and timing of a typical development review process.

Regular reporting to council with progress updates will assist in providing clarity on timing as the review process unfolds.

5.0 Roles and Responsibilities

An inter-agency Joint Agency Review Team (JART) framework will be used to review the application for the proposed quarry expansion. The JART consists of technical staff from the municipalities and agencies (Niagara Escarpment Commission, Region of Halton, Conservation Halton, City of Burlington) reviewing the requested quarry expansion. The team is also supported by consultants with specialist skills. Halton Region is providing the coordinating role and administering JART for these applications.

It is noted that JART itself does not make a recommendation on whether or not the application should be approved. The function of JART is to review the completeness of the application and analyze the proposal on its technical merits. The JART framework ensures a coordinated review by all agencies. The consolidation of effort through JART minimizes duplication among reviewing agencies while ensuring a consistent and thorough agency response across technical disciplines. The JART framework is also intended to support effective communication with the public by providing information, receiving input, and coordinating a response to questions.

At the conclusion of the JART process, a report outlining the results of the joint technical review will be provided to the City to inform a recommendation report to Council.

The City of Burlington reviews the merits of the Official Plan Amendment application on an independent basis, taking into account the JART's comments along with agency-specific considerations and public comments prior to making a recommendation.

Similarly, the Niagara Escarpment Commission, MNR and Region of Halton are responsible for their own decisions on their respective applications.

6.0 Previous application to expand Nelson Quarry

A previous proposal for expansion to the Nelson Quarry was submitted in 2004. The Niagara Escarpment Commission, Halton Region, Conservation Halton, and the City of Burlington participated in the review of the 2004 proposal.

The applications for the 2004 proposal were referred to the Joint Board (consisting of the Ontario Municipal Board and Environmental Review Tribunal, formed under the authority of the Consolidated Hearings Act). The main issue with the proposal was the protection of Jefferson salamander habitat. In the decision, the Joint Board found that

the proposal was not consistent with the purpose and objectives of the Niagara Escarpment Planning and Development Act and the Niagara Escarpment Plan and not consistent with the Provincial Policy Statement and refused the expansion.

It is noted that the current proposal encompasses a reduced portion of the lands from the 2004 proposal on the south side of No. 2 Sideroad and also adds a new/expanded phase of extraction to the west on the site of the Burlington Springs golf course.

7.0 New Legislation Related to Aggregate Resources

There have been recent proposals by the Province for new legislation related to aggregate resources through amendments to the Growth Plan and Aggregate Resources Act. They are summarized as follows:

1. Amendment 1 to the Growth Plan recommended, among other things, the removal of “habitat of endangered species and threatened species” as a consideration when permitting a new aggregate operation. Staff report PL-42-20 provided an overview to Council of this and all other proposed amendments to the Growth Plan. It is noted that at the conclusion of the public consultation process for Amendment 1 to the Growth Plan, the Province did not include this specific revision. “Habitat of endangered species and threatened species” remains as a consideration in the Growth Plan for a new aggregate operation.
2. Building on Bill 132, the Better for People, Smarter for Business Act, Ontario Regulation 244/97 made changes to the Aggregate Resources Act. The changes were based on the following themes: Ensure environmental protection, particularly related to water; Increase opportunities for community engagement on applications; Improve access to aggregates; and Reducing duplication and inefficiencies in the review/approval process. The proposed regulatory changes would apply to new pits and quarries, as well as existing pits and quarries. A staff memo in the May 21, 2020 Council Information Package provides a summary of the changes proposed by Ontario Regulation 244/97.

8.0 Communications Plan

On September 23, 2019, Council approved the following staff direction (SD-29-19): Direct the City Manager to develop a detailed communications strategy to ensure the public is well briefed on the quarry process by May 2020.

As identified in this report, the Region of Halton will be taking a coordinating role on behalf of JART. Based on this approach, the Region has agreed to also take the lead on developing a communications plan for the Nelson Quarry application process. Discussions are well under way with City staff and Region staff on developing a plan.

The aim of the communications plan will be to ensure that affected residents and beyond are receiving up to date information on the application's progress. Communications will also go out to residents informing them about the opportunities to engage with the approving bodies to provide their feedback on any requests for comments.

Once the communications plan is developed by the Region of Halton, steps will be taken by the City's Communications Department to amplify the information. These messages will ensure all residents living in Ward 3 are informed of the application's progress. Residents from across the City will also be able to keep updated on the application by visiting the Nelson Quarry webpage, Burlington.ca/nelsonquarry

Following Council approval of this report, there will be initial communications from the City about the high-level processes that has been identified in Appendix B.

Financial Matters:

The application fees to the City for an Official Plan Amendment is \$82,220.00. All fees to date have been paid by the applicant. The applicant has been made aware, through the pre-consultation process, that peer review costs for technical reports are also required to be paid by the applicant, in accordance with the JART Protocol.

Total Financial Impact

Not applicable.

Source of Funding

Not Applicable.

Other Resource Impacts

Not Applicable.

Climate Implications

Not Applicable.

Engagement Matters:

Public notice of a complete application was circulated to the public, with 300 m of the subject lands, in the last week of July. That notice indicated a comment period ending

August 21st for the purpose of including comments in a staff report pursuant to the *Planning Act* timelines. Given the multi-jurisdictional nature of the applications it has been determined that the City will not conform to the *Planning Act* timelines, and will continue to receive and process all public comments up to the point that a staff Recommendation Report has been finalized, after which all comments will be forwarded directly to City Council.

As identified above, a communications plan is being developed in partnership with the Region of Halton.

Conclusion:

Staff will continue to assess the application through the Joint Agency Review Team process and update Council through periodic status reports.

Respectfully submitted,

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Appendices:

- A. Location Sketch
- B. Nelson Quarry Application Processes

Notifications:

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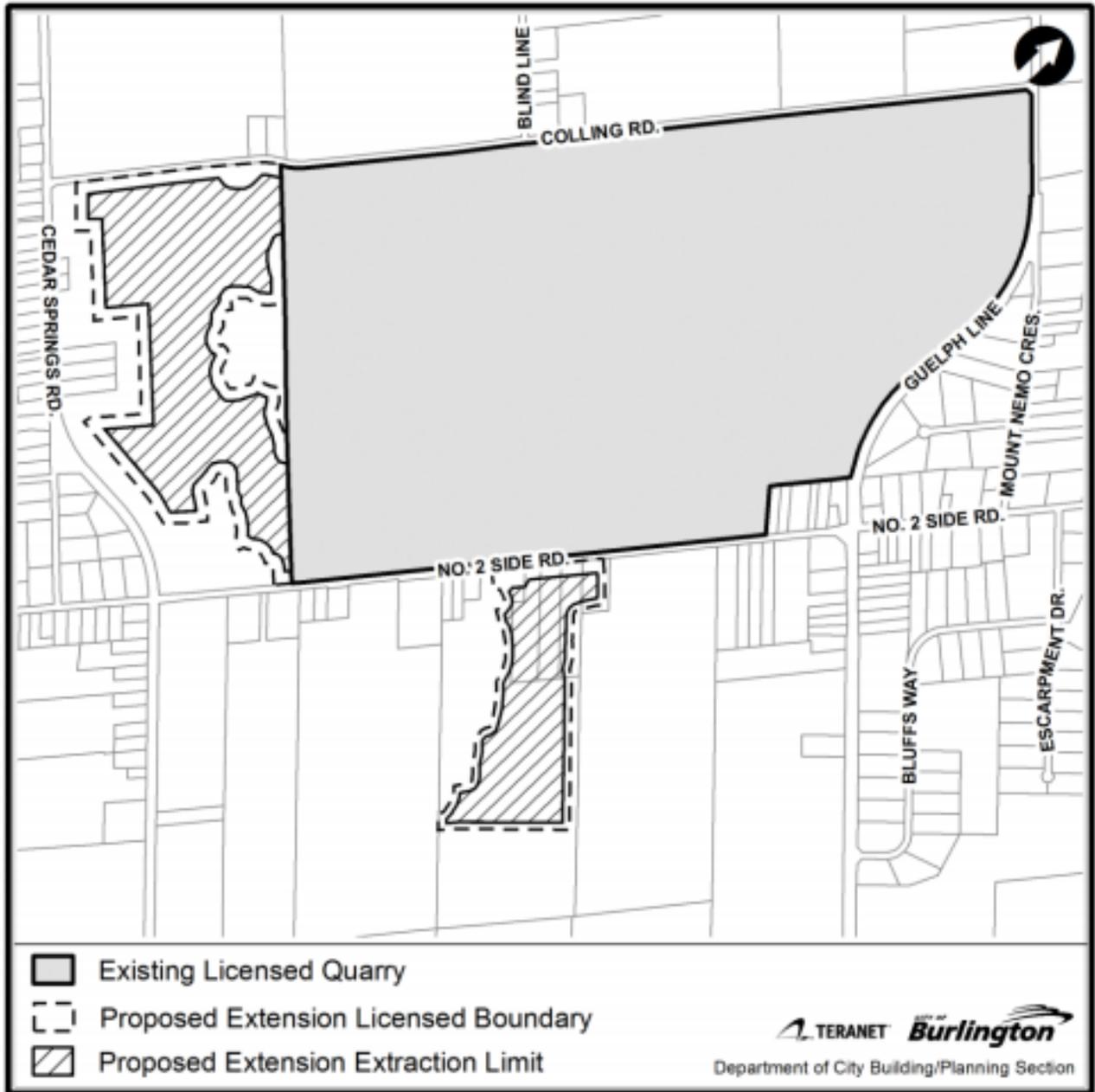
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Report Approval:

All reports are reviewed and/or approved by Department Director, the Chief Financial Officer and the Executive Director of Legal Services & Corporation Council.

Appendix A – Location Sketch



Appendix B – Nelson Quarry Application Processes

