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BY COURIER AND EMAIL

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RE: Response Letter to Ministry of Northern Development, Mines, Natural Resources and Forestry & Nelson Aggregate Co. (c/o MHBC) for proposed Aggregate Resources Act Site Plan Amendments to existing Burlington Nelson Quarry

The following is in response to an *Aggregate Resources Act* Site Plan Amendment Application ('SPAA'), as circulated to the City of Burlington on November 4, 2021, and as filed with the Ministry of Northern Development, Mines, Natural Resources and Forestry (NDMNRF). Correspondence received from the Proponent has indicated that the intent of the application and resultant proposed amendments is to integrate the existing Burlington Nelson Quarry with the proposed Burlington Nelson Quarry Extension. The existing site is currently under license pursuant to the *Aggregate Resources Act*, being License Nos. 5499 and 5657.

The SPAA proposes several amendments to the existing Burlington Nelson Quarry, including:

- 1) A revised extraction limit in the existing quarry adjacent to the proposed west extension to allow for an integrated operation and rehabilitation design (e.g. removal of 15 metre setback);

- 2) Adding permissions for material extracted within the extension to be transported to the existing quarry for processing and shipping;
- 3) A new entrance/exit access ramp adjacent to No. 2 Sideroad to transport material from the south extension into the existing quarry;
- 4) Requests for provincial overrides to facilitate an integrated operations and rehabilitation between the extension and existing quarry;
- 5) A revised rehabilitation plan to change the final end use from a deep lake system to a shallow lake with surrounding lands including an agricultural area (14.5 ha);
- 6) Revised noise attenuation conditions related to existing quarry operations;
- 7) Updated site plan notes throughout drawings to address all changes, including proposed variations to the Control and Operation of Pit or Quarry (O. Reg. 244/97 Section 0.13); and,
- 8) Minor housekeeping items.

The City of Burlington has several concerns with the SPAA regarding its substance and its timing. These are summarized below.

1. The SPAA is premature for failure to deal with the *Niagara Escarpment Planning and Development Act*¹ (“NEPDA”).

The SPAA fails to address the applicability of the (NEPDA). This omission is a major problem as both the Proponent’s existing Burlington Quarry and the proposed Burlington Quarry Extension are both in an area of development control. As such, proposed development must conform to the Niagara Escarpment Plan (NEP) and receive approval through a development permit issued by the Niagara Escarpment Commission (NEC).

The SPAA fails to address any NEPDA requirements.

a) Quarry integration may not be permitted until and unless a Development Permit is issued under the NEPDA.

Under the NEPDA, a development permit is required for non-exempt “development” in a development control area.² “Development” in this context includes “a change in the use of any land, building or structure”.³ Furthermore, if required, a development permit must be issued by the NEC prior to any further approvals affecting that same development.⁴

¹ RSO 1990, c N-2. [NEPDA]

² NEPDA, ss. 24(1).

³ NEPDA, s.1.

The SPAA seeks significant amendments to Nelson's site plan at its existing quarry in order to integrate its existing site with the proposed Burlington Quarry Extension. These changes affect the quarry boundaries, the use of its aggregate processing facilities, the operation of its site, and the transportation of aggregate, among others. Nelson has not addressed whether and how these changes in use are exempt from requirements applicable to "development" that requires a development permit.

Although Nelson has previously submitted a Development Permit Application for the proposed Burlington Quarry Extension, it is not clear that all matters raised in this SPAA are captured in that application. In any event, the requested Development Permit has not yet been issued. The SPAA is therefore legally premature with respect to these required planning approvals.

b) Significant changes to the quarry rehabilitation plan and after-use vision may not be permitted until and unless a Development Permit is issued under the NEPDA.

A Nelson letter introducing the SPAA includes a summary advising that the SPAA includes a "revised rehabilitation plan to facilitate cohesive rehabilitation with the proposed quarry extension, changes to the final end use from a deep lake system to a shallow lake with surrounding lands including an agricultural area (14.5 ha)". Elements of these changes are reflected in its proposed amendment to Rehabilitation Note 1(a) in Map 3. The proposed text reads as follows, with the underlined text indicating the proposed change:

Final rehabilitation of the site is for a lake, ponds and wetlands with vegetated slopes and quarry floor. The final rehabilitated landform may also include an access road from the entrance/exit to the rehabilitated quarry floor and access roads on the quarry floor to provide access to the sump locations.

These are significant changes to the rehabilitation plan for the existing quarry. Nelson seeks to change its approved plan for a single deep lake to a new plan for a shallow lake surrounded by ponds, wetlands and an agricultural area. Unlike the current plan, the new plan raises the question of whether it will require that Nelson import large quantities of fill material throughout the remaining life of the quarry and potentially after its closure in order to raise the bed of what would otherwise have been a deep lake.

As concerns the NEPDA, this aspect of the SPAA also fails to address requirements for a development permit or permits. Specifically, a development permit may be required to allow the site's use of clean fill, particularly if the Proponent will seek compensation for receiving shipments of clean fill; something that the SPAA does not make clear. Fill that is imported for

⁴ NEPDA, s. 24(3).

“progressive” rehabilitation would need to be authorized by that development permit’s conditions, which must reflect the NEP’s Development Criteria for “Mineral Aggregate Resources”.⁵ This would include requirements that the use of off-site material for progressive rehabilitation should be “minimal” and not used for “any major regrading towards a planned after-use”.⁶ Further, the NEP prohibits off-site material being used at an aggregate quarry unless it enhances ecological and land use compatibility and it does not constitute a commercial fill operation.⁷ In other words, the Proponent’s proposal to import fill during the life of the quarry for progressive rehabilitation may not even be permissible even with a development permit.

Furthermore, given the likelihood that the Proponent will need to continue importing clean fill after the quarry’s closure to accomplish their rehabilitation plans, the site’s transition from a quarry operation to a fill operation may constitute a “change in use” that would need authorization from a further development permit.

The proposed changes to the Proponent’s rehabilitation plan and after-use vision therefore indicate that development permits are likely required. Again, despite the Proponent having submitted a Development Permit Application for the proposed Burlington Quarry Extension, it is not clear that all matters raised in this SPAA with respect to rehabilitation are captured in that application, and the Development Permit is still outstanding. The failure to properly address the issue of development permits required under the NEPDA again prohibits the SPAA from proceeding to approval.

c) No Development Permit may be issued where proposed changes first require amendments to the NEP.

The SPAA also puts in issue whether what is proposed conforms to the NEP approach to quarry expansions.

Part 1 of the NEP governs aggregate operations and site restrictions. New uses must conform to its provisions. An amendment is required when a new use is proposed that is not permitted, in order to bring that new use into conformity.⁸ If an NEP amendment is required with respect to changes to a quarry site, it legally must be granted *prior to* any NEPDA Development Permit or further planning or *Aggregate Resources Act*⁹ (“ARA”) approvals.¹⁰

The City is concerned that the SPAA includes changes that are not permitted for “Mineral Aggregate Resource Areas” under the NEP. For example, amendments may be needed

⁵ NEP, Policy 2.9.

⁶ NEP, Policy 2.9, para 7.

⁷ NEP, Development Criterion 2.9, para 9.

⁸ NEPDA, s. 6.1(2); NEP, policy 1.9.3.

⁹ RSO 1990, c A-8. [ARA]

¹⁰ ARA, s. 12.1(1), together with the ARA definition of “zoning by-law” in s. 1(1).

specifically with respect to the matter of integrating quarry operations that span a municipal roadway and also with respect to rehabilitation of a quarry site to permit the importation of fill. The SPAA does not ever address conformity with the NEP.

Moreover, Nelson is requesting this SPAA without first receiving approval from the NEC with respect to the NEP Amendment Application submitted for the proposed Burlington Quarry Extension, and without canvassing whether that amendment application is sufficient to cover the changes at hand. The SPAA is therefore legally premature with respect to this required planning approval.

Overall, before the SPAA process goes any further, the City seeks compliance with the NEPDA.

2. The SPAA is premature for failure to consider additional rehabilitation obligations.

The City also has concerns with the SPAA regarding the application of the ARA regime to the quarry rehabilitation plans. While the Ministry has the authority to address a licensee's rehabilitation requirements under the ARA, its Regulations, and in site plans and license conditions, a licensee has additional obligations with respect to quarry rehabilitation.

The NEP's development criteria for Mineral Resource Extraction Areas impose various rehabilitation obligations on Proponents. Further rehabilitation requirements specific to mineral aggregate operations are also found in the *Growth Plan for the Greater Golden Horseshoe*, the *Provincial Policy Statement, 2020*, the Halton Regional Official Plan, and the City's Official Plan. The SPAA process alone does not allow for due consideration of these additional quarry rehabilitation requirements.

As a result, the City seeks assurance that the dramatic changes proposed in the SPAA with respect to the rehabilitation of its existing Burlington Quarry meet all legal requirements. The SPAA does not provide that assurance.

3. The SPAA is also premature under the *Aggregate Resources Act* regime.

The Proponent submitted materials for an ARA Class A Below the Water Table, Category 2 license application for the Burlington Quarry Extension to the Ministry on May 14, 2020 (revised ARA Site Plan, dated, September 2020 (Rev. No. 1)). This application is subject to a Joint Agency Review Team (JART) process, comprised of the Niagara Escarpment Commission, the Region of Halton, the City, Conservation Halton, and the Ministry. That process is ongoing; a license has not yet been issued under the ARA for the proposed Burlington Quarry Extension.

With the current SPAA, the Proponent is attempting to expand and integrate its existing quarry with the proposed Burlington Quarry Extension through what appears to be an amalgamation. Under the ARA, where an aggregate licensee seeks to expand a quarry, they must first apply for a new license for the proposed expansion area.¹¹ Only once a new license is issued for the expansion area can the two sites be amalgamated to form one expanded and integrated quarry.¹² Until then, there is no legal process that allows for the integration of two quarry sites through amalgamation.

The Proponent does not currently have a licence for its proposed Burlington Quarry Extension. Nor does it have approved site plans for the extension. It is therefore legally premature for the Proponent to be granted this SPAA at this time.

Given the issues raised in these comments, the SPAA should not be approved.

Sincerely,

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Director of Community Planning
Community Planning Department
City of Burlington

¹¹ S. 13.2(1).

¹² Aggregate Policy AR 2.02.04 (Amalgamation of Licenced Areas).