

Report To:	Regional Chair and Members of Regional Council
From:	Bob Gray, Commissioner, Legislative and Planning Services and Corporate Counsel
Date:	January 15, 2020
Report No. - Re:	LPS08-20 - Proposed Expansion to the Burlington Quarry (Nelson), Pre-consultation Meeting

RECOMMENDATION

1. THAT Report No. LPS08-20 Re: “Proposed Expansion to the Burlington Quarry (Nelson), Pre-consultation Meeting”, be received for information.
2. THAT the Regional Clerk forward a copy of Report No. LPS08-20 Re: “Proposed Expansion to the Burlington Quarry (Nelson), Pre-consultation Meeting” to the City of Burlington, the Town of Halton Hills, the Town of Milton, the Town of Oakville, Conservation Halton, the Niagara Escarpment Commission, and the Ministry of Natural Resources and Forestry for their information.

REPORT

Executive Summary

- Regional staff have been advised of Nelson Aggregate Co.’s (Nelson) intent to apply for an aggregate license from the Ministry of Natural Resources and Forestry to expand its Burlington Quarry. No applications have been submitted to Halton Region, the City of Burlington, the Niagara Escarpment Commission, or MNRF at the time of writing this report.
- On November 6, 2019, a pre-consultation meeting with staff from the Region, the City of Burlington, Conservation Halton, and NEC, as well as representatives and technical experts from Nelson was held to discuss application requirements and the basic framework for a Joint Agency Review Team approach and work plan for reviewing the anticipated proposal.
- The proposed expansion to the Burlington Quarry will require approvals under the *Aggregate Resources Act*, the *Niagara Escarpment Planning and Development Act*, and the *Planning Act*. A Regional Official Plan Amendment and a City of Burlington Official Plan Amendment are required to permit the quarry expansion.
- It is anticipated that the various applications will be filed in the first half of 2020.

- An inter-agency Joint Agency Review Team approach will be used for reviewing the project.
- This report is to update Council on the pre-consultation meeting, the complete application requirements, and the steps that follow upon receipt of a complete application for a Regional Official Plan Amendment.

Background

The existing Burlington Quarry (ARA Licence #5499), operated by Nelson, abuts the Hamlet of Mount Nemo and extends approximately 1.5 kilometres west to border the Burlington Springs Golf Club. Rural and estate residential development exists to the south and west of the golf course, while agricultural lands and lands within the Natural Heritage System generally surround the entire quarry lands.

In June 2019, Regional staff were advised of Nelson's intent to apply for an aggregate license from the Ministry of Natural Resources and Forestry to expand its existing Burlington Quarry. Nelson is proposing to expand its existing Burlington Quarry operation to the west (approximately 48.5 hectares would be licensed, and 37.2 hectares of that would see extraction occurring) and south (approximately 23.8 would be hectares licensed, and 17.0 hectares of that would see extraction occurring) of its existing quarry site.

There was a previous proposal for expansion to the mineral aggregate extraction area for the Burlington Quarry, covering a larger area on the south side of No. 2 Sideroad. The extent of that application is shown as the "2004 application boundary" on Attachment #1 to this report. Halton Region, the City of Burlington, Conservation Halton and the Niagara Escarpment Commission all 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.

The current proposal, as Regional staff understand it, 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. The proposal will require an Amendment to the Niagara Escarpment Plan, a Niagara Escarpment Development Permit, approval under the *Aggregate Resources Act*, and *Planning Act* approvals—specifically, a Regional Official Plan Amendment and City of Burlington Official Plan Amendment.

A map showing the current Burlington Quarry license boundary, the boundaries of the 2004 application, and the anticipated boundaries of the 2020 application are shown in Attachment #1 to this report.

As noted, at the time of writing this report no applications have been submitted to the Ministry of Natural Resources and Forestry, Niagara Escarpment Commission, Halton Region, or the City of Burlington. Nelson has indicated that applications for expansion will be filed early in 2020 with each agency including the Ministry of Natural Resources and Forestry, Niagara Escarpment Commission, Halton Region, and the City of Burlington.

Discussion

The anticipated Regional Official Plan Amendment application required to permit the quarry expansion is expected to request that the lands shown as the proposed 2020 Burlington Quarry Extension on Attachment #1 be re-designated to permit the phased expansion of the existing Nelson Quarry.

Pre-consultation Meeting

On November 6, 2019, a pre-consultation meeting was held with representatives of Nelson and staff from the Region, the City of Burlington, Conservation Halton, and the Niagara Escarpment Commission. A pre-consultation meeting is required in advance of the filing of Regional and City of Burlington Official Plan Amendment applications by Section 187(3) the Region's Official Plan and City of Burlington Pre-consultation By-law 40-2007.

At pre-consultation meetings, staff indicate to potential applicants what application(s) are required, and the information and materials required in order for those applications to be deemed complete. Based on the discussion at the meeting, it was determined the following approvals from agencies with jurisdiction in Halton will be required:

1. Given its location within the Niagara Escarpment Plan Area, Nelson will require a Niagara Escarpment Plan Amendment and Development Permit.
2. A Regional Official Plan Amendment will be required to re-designate the proposed expansion land to permit mineral aggregate extraction.
3. A similar City of Burlington Official Plan Amendment will be required to re-designate the proposed expansion land to permit mineral aggregate extraction.

Meeting participants discussed application requirements, including required technical studies and associated Terms of Reference, and the main parameters for a Joint Agency Review Team approach and work plan for reviewing the proposal.

Many of the same studies can be used to make both the *Niagara Escarpment Planning and Development Act* and *Planning Act* approvals. It is common for applications to be filed concurrently for the *Niagara Escarpment Planning and Development Act* and *Planning Act* approvals, and for review to occur at the same time with both bodies. With respect to a licence application to the Ministry of Natural Resources and Forestry, no licence will be issued without applicable planning approvals in place. It is anticipated that

the Ministry of Natural Resources and Forestry, Niagara Escarpment Commission, Halton Region, and City of Burlington will receive applications related to the Burlington Quarry expansion at the same time.

Complete Application Requirements

The *Planning Act* and Section 187(10) of the Regional Official Plan enable the Region to require information and materials to be submitted as part of determining completeness of an application to amend the Regional Official Plan. Regional Council also has an approved Aggregate Resources Reference Manual that provides guidance on the information required to evaluate an application for a mineral resource extraction use and the decision-making process.

For the proposed expansion of the Burlington Quarry, Regional staff identified fifteen studies or areas of further research required as part of a complete application. The list is consistent with the studies and research required in the context of the previous 2004 application and the Regional Official Plan and the Aggregate Resources Reference Manual. Reports requested from the proponent at the pre-consultation meeting include:

- A planning justification report
- Archaeological study
- Environmental impact study
- Financial impact study
- Air quality assessment
- Agricultural impact assessment
- Rehabilitation and monitoring study
- Adaptive environmental management plan
- Transportation/haul route study
- Water resource study (including hazard assessment and hydrogeological assessment)
- Karst assessment
- Noise and vibration study
- Blasting impact assessment
- Copies of the site plan and associated notes
- Environmental site assessment studies, related to the proposed after-use of the lands as a park

These may be required as individual studies, and some may potentially be addressed as components of other studies, which will be determined as the application review continues. The City of Burlington and the Niagara Escarpment Commission have identified additional report requirements, while Conservation Halton staff requirements are incorporated in the above list. Draft Terms of Reference for some technical studies were provided by Nelson for agency review and comment. The need for additional studies or reports may also arise as the application review progresses.

A Joint Agency Review Team approach will be used for reviewing any applications for quarry expansion. The function of a Joint Agency Review Team is to review, analyze and comment on the completeness of the submissions supporting a proposal for new or expanded mineral aggregate extraction operations, and to comment and analyze the proposal on its technical merits. Joint Agency Review Team review informs the agencies with decision-making authority, including Regional Council, on technical considerations associated with aggregate-related proposals. At this time, Halton Region is taking on the primary coordinating role for a Joint Agency Review Team associated with potential Burlington Quarry applications. Regional, local municipal, conservation authority, and Niagara Escarpment Commission staff are working on revisions to modernize the Halton Consolidated Streamlined Mineral Aggregate Review Protocol (Joint Agency Review Team Protocol) since the last update in 2007. A staff report on these changes is scheduled to be provided to Council in February for approval.

Relationship with the Niagara Escarpment Planning and Development Act

Aggregate proponents are generally required to submit applications under both the *Aggregate Resources Act* and the *Planning Act*. On lands within the Niagara Escarpment Plan Area, the application is also considered pursuant to the *Niagara Escarpment Planning and Development Act*. Per Section 24(3) of the *Niagara Escarpment Planning and Development Act*, no approval or permission required by an Act that relates to development (such as the *Aggregate Resources Act* or *Planning Act*) shall be made, in respect of any land, building or structure within an area of development control, unless a Niagara Escarpment Development Permit has been issued. Any amendment to the Regional Official Plan and a local Official Plan that deals with lands subject to the Niagara Escarpment Plan must be in conformity with the Niagara Escarpment Plan. In other words, conformity with the Niagara Escarpment Plan comes first in the process of reviewing and permitting mineral aggregate extraction proposals within the Niagara Escarpment Plan Area.

Halton Region Next Steps

With the conclusion of the pre-consultation meeting and on-going input into Terms of Reference for technical studies, the timing for next steps for Regional staff are dependent upon the filing of development applications. Next steps are:

- An application for Amendment to the Regional Official Plan will need to be submitted inclusive of the comprehensive set of technical studies identified at the pre-consultation meeting. The Chief Planning Official reviews the application to determine whether the application can be deemed complete. The Region has 30 days from the date of submission of the application and payment of applicable application fees to provide notice to the applicant that all required information and materials have been provided (or have not been provided, as the case may be), per Section 22(6.1) of the *Planning Act*.

- Should the application be deemed complete by the Chief Planning Official, review of the application will begin and it will be circulated to appropriate agencies for comment.
- If the application is deemed not to be complete, the Region will outline the deficiencies to be addressed.

Public consultation will include a statutory public meeting as required by the *Planning Act*. The meeting will be hosted by the Public Hearing Committee of Regional Council in accordance with the Procedural By-Law. This will be scheduled once technical review of the proposal has progressed, with all best efforts made to align the Region's timeframe for public consultation with those of the Niagara Escarpment Commission and City of Burlington.

Conclusion

Should an application for Regional Official Plan Amendment be received, information will be posted on the Region's website and a staff report will be provided to Council once the application is deemed complete.

Staff from Halton Region, Niagara Escarpment Commission, Conservation Halton, and the City of Burlington continue to work together in a Joint Agency Review Team framework to ensure coordinated review and comment on the technical studies, fees requirements, and anticipated project timelines. Staff will continue to monitor the anticipated *Aggregate Resources Act* licensing process, facilitate the Joint Agency Review Team review and advise Regional Council through periodic updates on the progress of any future application. There will be a report at the conclusion of the Joint Agency Review Team process outlining the results of the joint technical review provided Regional Council.

FINANCIAL/PROGRAM IMPLICATIONS

The application fee for a Regional Official Plan Amendment for aggregate extraction operations is \$126,076.34, plus HST as adjusted through the 2020 budget.

The applicant has been made aware, through the pre-consultation meeting, that peer review costs for technical reports are also required to be paid by the applicant, in accordance with Section 187(10) of the Regional Official Plan, and the Joint Agency Review Team Protocol.

Respectfully submitted,



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Director, Planning Services and Chief
Planning Official



Bob Gray
Commissioner, Legislative and Planning
Services and Corporate Counsel

Approved by



Jane MacCaskill
Chief Administrative Officer

If you have any questions on the content of this report,
please contact:

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Attachments: Attachment #1 – Locational map