

Ontario Land Tribunal

Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: August 18, 2026

CASE NO(S): OLT-22-004372

PROCEEDING COMMENCED UNDER subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Applicant/Appellant:	Nelson Aggregate Co.
Property Owner:	546958 Ontario Limited
Property Owner:	Bestway TV and Appliances Limited
Subject:	Failure of Approval Authority to announce a decision respecting a Proposed Official Plan Amendment
Description:	to permit the expansion of the Nelson quarry
Reference Number:	505-04-20
Property Address:	2226, 2232, 2244, 2280, 2292, 2300, 2316, 2330 No. 2 Side Road and 5235 Cedar Springs Road
Municipality/UT:	Burlington/Halton
OLT Case No:	OLT-22-004372
OLT Lead Case No:	OLT-22-004372
OLT Case Name:	Nelson Aggregates Co. v. Burlington (City)

PROCEEDING COMMENCED UNDER subsection 11(5) of the *Aggregate Resources Act*, R.S.O. 1990, c. A.10

Applicant:	Nelson Aggregate Co.
Objector:	Alejandra Calle
Objector:	Alex Brock
Objector:	Anna Denvir et al.
Description:	Proposed extension to its Burlington Quarry on lands located to the south and west of the existing Burlington Quarry.
Reference Number:	License No. 626477
Property Address:	2226, 2232, 2244, 2280, 2292, 2300, 2316, 2330 No. 2 Side Road and 5235 Cedar Springs Road
Municipality/UT:	Burlington/Halton

OLT Case No:	OLT-22-004888
OLT Lead Case No:	OLT-22-004372
OLT Case Name:	Nelson Aggregate Co. v. Natural Resources and Forestry (Ministry)

PROCEEDING COMMENCED UNDER section 22(7) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Applicant/Appellant:	Nelson Aggregate Co.
Subject:	Failure of Approval Authority to announce a decision respecting a Proposed Official Plan Amendment
Description:	The purpose of the application is to amend the Maps of the Halton Region Official Plan to permit the expansion of the existing quarry.
Property Address:	2226, 2232, 2244, 2280, 2292, 2300, 2316, 2330 No. 2 Side Road and 5235 Cedar Springs Road
Municipality/UT:	Burlington/Halton
OLT Case No:	OLT-22-004886
OLT Lead Case No:	OLT-22-004372
OLT Case Name:	Nelson Aggregates Co. v. Halton (The Regional Municipality)

PROCEEDING COMMENCED UNDER section 25(5.1) of the *Niagara Escarpment Planning and Development Act*, R.S.O. 1990, c. N.2, as amended

Applicant/Appellant:	Nelson Aggregate Co.
Respondent:	Niagara Escarpment Commission
Subject of appeal:	Refusal of a Development Permit Application to allow for development related to the proposed quarry operations.
Reference No.:	H/E/2020-2021/108
Property Address:	2226, 2232, 2244, 2280, 2292, 2300, 2316, 2330 No. 2 Side Road and 5235 Cedar Springs Road
Municipality/ UT:	Burlington/Halton
OLT Case No.:	OLT-23-000541
OLT Lead Case No.:	OLT-22-004372
OLT Case Name:	Nelson Aggregate Co. v. Ontario (Niagara Escarpment Commission)

PROCEEDING COMMENCED UNDER section 10(3) of the *Niagara Escarpment Planning and Development Act*, R.S.O. 1990, c. N.2, as amended

Applicant/Appellant:	Nelson Aggregate Co.
Respondent:	Niagara Escarpment Commission
Subject of appeal:	Referral of the application to amend the Niagara Escarpment Plan to redesignate the lands from Escarpment Rural Area to Mineral Resource Extraction Area to expand the existing aggregate resource extraction operation
Reference No.:	PH 219 20
Property Address:	2226, 2232, 2244, 2280, 2292, 2300, 2316, 2330 No. 2 Side Road and 5235 Cedar Springs Road
Municipality/ UT:	Burlington/Halton
OLT Case No.:	OLT-23-000631
OLT Lead Case No.:	OLT-22-004372
OLT Case Name:	Nelson Aggregate Co. v. Ontario (Niagara Escarpment Commission)

Heard: March 4, 2025 to June 25, 2025 and
September 3 to 5, 2025, by Video Hearing

APPEARANCES:

Parties

Nelson Aggregate Co.
("Nelson" / "Applicant")

City of Burlington ("City")

Regional Municipality of Halton ("Region")

Counsel/Representative*

David White
Kim Mullin
Sean Ovas

Rodney Northey
Jennifer Danahy
Jessica Boily
Michael Finley
Chris Hummel
Graham Reeder
Larissa Parker
Stacy Porter

David Germain
Chris Barnett
Jaikaran Goraya

Conserving Our Rural Ecosystems of
Burlington Inc. (“CORE”)

David Donnelly
Gord Pinard*

Protecting Escarpment Rural Land (“PERL”)

David Donnelly

Niagara Escarpment Commission (“NEC”) –
Withdrawn

Demetrius Kappos

Conservation Halton (“CH”)
– Withdrawn

Konstantine Stavrakos

DECISION DELIVERED BY DAVID BROWN AND GEORGE POLITIS AND INTERIM ORDER OF THE TRIBUNAL

[Link to Order](#)

INTRODUCTION

[1] Nelson is proposing to expand an existing mineral aggregate quarry operation located on the north side of No. 2 Side Road between Guelph Line and Cedar Springs (“Burlington Quarry”). The expansion is comprised of two parcels; one located on the abutting lands to the west currently occupied by a golf course (“West Quarry Extension”), and the second located on the south side of No. 2 Side Road opposite the quarry with a history of agricultural use (“South Quarry Extension”) (together the “Quarry Expansion Lands”).

[2] In support of their proposal, Nelson filed five separate applications being:

1. an application to amend the City Official Plan designation of the Quarry Expansion Lands to Mineral Resource Extraction Area (“COPA”);
2. an application to amend the Region Official Plan designation of the Quarry Expansion Lands to Mineral Resource Extraction Area (“ROPA”);

3. an application to amend the Niagara Escarpment Plan designation of the Quarry Expansion Lands to Mineral Resource Extraction Area and permit additional uses associated with the proposed quarry operation (“NEPA”);
4. an application for Niagara Escarpment Development Permit allowing the establishment, operation, and rehabilitation of a quarry (“Development Permit”); and
5. an application for a Class A Aggregates Licence from the Ministry of Natural Resources (“Proposed Licence”).

[3] The COPA, ROPA, NEPA, Development Permit, and the Proposed Licence (together the “Expansion Applications”) were circulated to commenting agencies and interested persons, and a public community meeting was held. In response to the comments, objections, and requests for additional information, Nelson made revisions to the Expansion Applications that were resubmitted to the City, the Region, the NEC, the Ministry of Natural Resources (“MNR”), and the other commenting agencies.

[4] Nelson appealed the COPA and the ROPA to the Tribunal against the failure of the City to make a decision within the timeframes prescribed in the *Planning Act* R.S.O.1990, c.P.13, as amended (“PA”). The Minister of Natural Resources (“Minister”) referred the Licence Application to the Tribunal for the Tribunal’s consideration, and the NEC referred the NEPA to the Tribunal to conduct a Hearing. The NEC refused the Development Permit and Nelson appealed the refusal to the Tribunal.

[5] CH and the NEC each negotiated agreements with Nelson resolving their respective issues. The NEC and CH did not participate in the Hearing. The MNR and the Ministry of Environment Conservation and Parks (“MECP”) did not participate in the Hearing having provided correspondence advising that they have no outstanding requirements with the Expansion Applications.

[6] CORE and PERL (together “CORE/PERL”), the Region, and the City participated in the Hearing opposing the Expansion Applications. The Tribunal, having considered the evidence, testimony, and submissions, summarizes their objections to the Expansion Applications as being the adverse impacts resulting from the proposed expansion of the existing quarry operation. The Tribunal has grouped the evidence as follows: water resources, natural heritage features including endangered species and species at risk, air quality, and blasting.

[7] The Tribunal, having considered the evidence and testimony from multiple witnesses, finds that Nelson, through the submission of Site Plan Drawings (“Expansion Site Plans”) and the Adaptive Management Plan (“AMP”), has satisfactorily responded to the concerns raised by the City, the Region, and CORE/PERL, including the monitoring of ground water and surface water, the protection of natural heritage features, the mitigation of fugitive dust, and the safety concerns around blasting and fly-rock. The Tribunal finds that the expansion of the Burlington Quarry represents a wise use of mineral aggregate resources and represents a balancing of public interest.

[8] The Tribunal allows the appeals of the COPA and the ROPA, recommends that the Minister approve the NEPA and issue the Development Permit, and directs the Minister to issue the Proposed Licence for the reasons and subject to the conditions set out as follows.

BACKGROUND AND CONTEXT

[9] The Burlington Quarry is comprised of a licensed area of 232.2 hectares (“ha”) generally bounded by No. 2 Side Road on the south side, Guelph Line on the east side, Colling Road on the north side, and the Burlington Springs Golf Course on the west side. The Burlington Quarry was established in 1953, and extraction has been occurring since that time. Nelson purchased the Burlington Quarry in 1983.

[10] The Burlington Quarry currently operates by way of two licences: Licence No. 5449 and Licence No. 5657 (“Existing Licences”), issued by the MNR. The Existing Licences permit the extraction of 213.7 ha of the Burlington Quarry below the water table to a depth of 252.5

metres (“m”) above sea level (“masl”) as set out on the site plan drawings approved by the MNR and forming part of the approval of the Existing Licences (“Burlington Quarry Site Plans”). The existing water table is identified as having an elevation of 269 masl. The Burlington Quarry Site Plans include conditions and requirements that regulate the operation of the Burlington Quarry including the rehabilitation of the Burlington Quarry required at the conclusion of the extraction. The Burlington Quarry operation includes a processing plant for the extracted aggregate and an asphalt plant, both of which are currently located on the quarry floor, approximately 20 m below the existing grades of No. 2 Side Road. Access to the Burlington Quarry is provided from No. 2 Side Road and the approved Haul Route takes trucks east on No. 2 Side Road from the Burlington Quarry access to Guelph Line, at which point trucks may proceed north towards Highway 401 or south towards Highway 403 / Queen Elizabeth Way.

[11] The Burlington Quarry Site Plans approved with the Existing Licenses set out the required rehabilitation of the Burlington Quarry which includes the creation of a 185-ha lake with an island, exposed cliff faces, vegetated shorelines, and shoreline wetlands. The operational plan contained in the Burlington Quarry Site Plans provide for dewatering of the Burlington Quarry with water removed from the quarry floor and discharged at two locations: one being at the northwest corner of the quarry, and the second being the southwest corner of the quarry. The dewatering of the quarry floor is authorized by way of a Permit to Take Water (“PTTW”) issued by the MECP. The required rehabilitation does not currently include the continued dewatering of the quarry floor.

[12] The Existing Licences include no restrictions on the amount of aggregate that may be extracted from the Burlington Quarry. Historically, the Burlington Quarry has extracted between 1.5 and 2 million tonnes of aggregate annually. Nelson has reduced the amount of aggregate extracted in recent years as a result of the depletion of the existing resource remaining within the quarry. Nelson expects the existing aggregate reserves will support the operation of the Burlington Quarry for a further 50 years at the reduced extraction levels.

[13] The South Quarry Extension comprises a total area of 81.1 ha of which it is proposed to license 18 ha with a proposed extraction area of 14.2 ha. The West Quarry Extension is comprised of a total of 70.1 ha and it is proposed to license 58.8 ha with a proposed extraction area of 33.1 ha. The total licensed area of the Quarry Expansion Lands is 76.8 ha with a proposed total extraction area of 47.3 ha. The Quarry Expansion Lands contain an estimated 29 million tonnes of mineral aggregate available for extraction and Nelson estimates that the extraction of the Quarry Expansion Lands will take approximately 30 years to complete.

[14] The Proposed Licence will include a maximum annual extraction tonnage limit of 2 million tonnes. Based on these volumes of aggregate, it is estimated that the South Quarry Extension will require a minimum of 9 years to complete extraction and the West Quarry Extension will require a minimum of 20 years to complete extraction. The extraction of the Quarry Expansion Lands will be phased with the South Quarry Extension extraction, being Phases 1 and 2, and the extraction of the West Quarry Extension, being Phases 3 through 6. The phasing supports the progressive rehabilitation of the Quarry Expansion Lands and mitigating impacts on natural heritage features and the water resources that support those features.

[15] The Expansion Site Plans accompanying the Proposed Licence include a rehabilitation plan that details the proposed rehabilitation for the Quarry Expansion Lands. The Expansion Site Plans have been prepared incorporating the technical recommendations, the mitigation measures, and the monitoring programs including the requirement to implement an AMP. The Expansion Site Plans and AMP include the technical notes and requirements that address, among other matters: water resources, ecology, agriculture, noise, blasting, air quality, visual impacts, traffic, and cultural heritage.

[16] The Expansion Site Plans set out the rehabilitation requirements for the Quarry Expansion Lands detailing landforms for ecological conservation, water management, and recreational uses, including key natural heritage features and key hydrologic features such as lakes, wetlands, and significant woodlands. The Expansion Site Plans require the Quarry

Expansion Lands rehabilitation to include grasslands, forestation, lakes and ponds, forested side slopes, wetlands, cliff faces, and trails.

[17] Nelson proposes revisions to the Burlington Quarry Site Plans to add technical notes and requirements relating to noise, blasting, and air quality. These revisions also include integrating the rehabilitation plans of the Burlington Quarry Site Plans with the rehabilitation requirements for the Quarry Expansion Lands. The revised rehabilitation plan proposes to maintain the dewatering of the Burlington Quarry and the Quarry Expansion Lands (“Perpetual Pumping”). The revised rehabilitation plan for the Burlington Quarry proposes shallow lakes, exposed cliff faces, an agricultural area, internal roads, trails, and a parking area.

[18] In September of 2019, Nelson hosted a community meeting to introduce the proposal, and in November of 2019, a pre-consultation meeting was held with Nelson, the NEC, the Region, the City, and CH.

[19] As per the Region’s Aggregate Resources Reference Manual¹, a Joint Agency Review Team (“JART”) was established. The function of JART is to review, analyze, and comment on the completeness of the submissions and for JART members to share their expertise to undertake a technical evaluation of the Applicant’s application². The JART conducted a site visit at the Burlington Quarry on November 20, 2019.

[20] On May 14, 2020, Nelson submitted the Expansion Applications. The City and the Region deemed the COPA and ROPA complete on July 20, 2020. The NEC commenced their process on August 20, 2020, and the MNR deemed the Proposed Licence complete on October 5, 2020.

¹ Region of Halton Aggregate Resources Reference Manual, Regional Official Plan Guidelines, Exhibit 3, Tab 47

² Region of Halton Aggregate Resources Reference Manual, Regional Official Plan Guidelines, Exhibit 3, Tab 47, pg. 18, par. 5

[21] The Expansion Applications were circulated to commenting agencies and the required Notices of the Applications were provided. In response to comments and objections received, Nelson revised the proposal and resubmitted the revisions to the commenting agencies. The revised proposal was presented at a public information session hosted by Nelson on November 21, 2021.

[22] On August 3, 2022, pursuant to s. 22(7) of the PA, Nelson appealed the ROPA and the COPA for the failure of the Region and the City, respectively, to make a Decision on the Applications within the timeframes prescribed in the PA. The Minister referred the Proposed Licence to the Tribunal on December 8, 2022, pursuant to s. 11(5) of the *Aggregates Resources Act*, R.S.O. 1990, c. A.8 (“ARA”). On April 27, 2023, the NEC referred the NEPA to the Tribunal to conduct a Hearing pursuant to s. 10(3) of the *Niagara Escarpment Planning and Development Act*, R.S.O. 1990, c. N.2 (“NEPDA”). The NEC issued a Notice of Decision on May 25, 2023, pursuant to s. 25(5.1) of the NEPDA refusing the Development Permit. On May 31, 2023, Nelson appealed the refusal of the Development Permit to the Tribunal.

[23] Nelson and CH continued discussions subsequent to the appeals being filed and the Tribunal was advised that CH and Nelson have entered into a Land Conveyance Agreement (“LCA”) (Exhibit 110) that provides for the conveyance of the ownership of the Burlington Quarry lands and the Quarry Expansion Lands to CH. The transfer of the property titles will occur upon the completion of extraction and upon Nelson surrendering the Proposed Licence and Existing Licences to the MNR. The surrender of the Proposed Licence and Existing Licences can only occur upon the completion of the rehabilitation as required by the Burlington Quarry Site Plans and the Expansion Site Plans. The transfer of the property titles will be completed in two phases; the first phase being the South Quarry Extension lands and the second phase being the Burlington Quarry and West Quarry Extension lands. The LCA includes conditions and financial provisions for the ongoing operation of the dewatering infrastructure.

[24] CH withdrew as a Party from the proceedings advising that their concerns have been resolved.

[25] The NEC and Nelson also continued discussions after the NEPA was referred to the Tribunal and the Development Permit was appealed. Nelson advised that the NEC and Nelson have entered into Minutes of Settlement (“MOS”) (Exhibit 9). The MOS confirmed that the revisions to the Expansion Site Plans and the Burlington Quarry Site Plans attached to the MOS satisfactorily address and resolve the concerns of the NEC. The MOS also confirm that the NEC does not object to the Applications under the NEPDA, the PA, and the ARA.

[26] The City opposes the expansion of the Burlington Quarry explaining that the use will impact the City and its residents far into the future. The Burlington Quarry has been operating for over 70 years, and Nelson proposes to continue the operation for at least another 50 years. The City argues the Burlington Quarry is not an interim use as contemplated in the planning policy framework. The operation of the Burlington Quarry negatively impacts on the health of those living within close proximity to the quarry and Nelson has failed to identify the possible hydrogeological impacts resulting from the proposed expansion. The proposed expansion of the quarry on the South Quarry Expansion lands was previously considered and denied by a predecessor tribunal to the Ontario Land Tribunal, the Joint Board, convened pursuant to s. 3 of the *Consolidated Hearings Act*, R.S.O. 1990, c. C.29 (“Joint Board”).

[27] The Region opposes the Expansion Applications as the Mount Nemo Plateau is ecologically unique. The proposed expansion will impact natural heritage features including Areas of Natural Significance and Interest (“ANSI”), Provincially Significant Wetlands and Woodlands, and habitat of the endangered Jefferson Salamander (“JESA”). The Region contends that the modelling of groundwater impacts that have been undertaken by Nelson do not provide sufficient certainty, the AMP does not sufficiently address the matters surrounding groundwater impacts, and that post approval mitigation is not acceptable.

[28] CORE/PERL set out their opposition to the expansion of the Burlington Quarry focussed on the impacts on Natural Heritage Features, impacts on air quality, hydrogeology, and the impacts of the blasting required to extract the aggregate. It was noted that the Mount

Nemo Plateau is part of the Niagara Escarpment which is recognized as a UNESCO Biosphere. CORE/PERL takes the position that it is time to close the quarry operation.

LEGISLATIVE FRAMEWORK

[29] When considering an appeal of an amendment to an official plan, the Tribunal must have regard for matters of provincial interest as set out in s. 2 of the PA. Further, s. 3 of the *Planning Act* requires that decisions of the Tribunal affecting planning matters be consistent with the Provincial Planning Statement, 2024 (“PPS”) and shall conform, or shall not conflict with, the provincial plans in effect. In this matter, the Niagara Escarpment Plan, 2017 (“NEP”) and the Greenbelt Plan, 2017 are the provincial plans that apply to the Quarry Expansion lands. The PA also requires at s. 2.1 (2), that the Tribunal shall have regard to any information and material that the municipal council or approval authority received in relation to the matter.

[30] When considering a NEPA, the Tribunal shall consider the objectives set out in s. 8 of the NEPDA. When the NEC refers the consideration of an application for a NEPA for a hearing to be conducted by one or more hearing officers pursuant to s. 10(3) of the NEPDA, the Members of the Ontario Land Tribunal have been appointed Hearing Officers pursuant to s. 25(8) of the NEPDA.

[31] When an appeal of a Decision of the NEC is received pursuant to s. 25(5.1) of the NEPDA, the matter is referred to a hearing to be conducted by a Hearing Officer where representations may be made respecting the Decision. The Tribunal must be satisfied that the Development Permit conforms to the NEP.

[32] Finally, when the Minister refers a licence to the Tribunal, the Tribunal is to have regard for the matters set out in s. 12(1) of the ARA when making its recommendation to the Minister to either issue or not issue a licence.

[33] In consideration of the above, the Tribunal shall be satisfied that the proposal represents good planning and is in the public interest.

EVIDENCE AND ANALYSIS

[34] The Tribunal heard lengthy and detailed testimony from multiple expert witnesses, all of whom were qualified to provide opinion evidence in their respective fields of expertise. The chart below summarizes the witnesses, their area of expertise, and on whose behalf they appeared. A list of the witnesses and their specific qualifications is set out on **Attachment 5** attached to this Order. A blank or empty cell in the chart below means no witness was called by the Party listed at the top of the column in respect of the specific area of expertise identified in the left column of the respective row.

<u>Area of Expertise</u>	<u>Nelson</u>	<u>City</u>	<u>Region</u>	<u>CORE/PERL</u>
Hydrogeology and Hydrology	Stephen Worthington Dirk Kassenaar E. J. Wexler	Walter Illman	Norbert Woerns Christopher Neville Daryl Cowell	
Water Resource Engineering	Daniel Twigger	Andrea Bradford	Ronald Scheckenberger	
Ecology	Beverley Wicks Noel Boucher James Leslie	Corey Stinson Mark Heaton Karl Konze Dr. Stephen Hill Dr. Gary Lamberti	Sarah Mainguy J. Arnell Fausto	John Pisapio
Cultural Heritage	Dan Currie	Rebecca Sciarra		
Rehabilitation		Robert Ford		
Blasting	Robert Cyr	Domenic Hooton		Daniel Roy
Air Quality	Brian Sulley	Scott Manser George Thurston		D. H. Lyons
Land Use Planning	Brian Zeman	John Stuart	Nick Macdonald	Nancy Mott

[35] The Tribunal also considered the testimony of two lay witnesses, Sue Godfrey and Peter Del Gatto, who provided factual evidence based on their personal experience residing near the Burlington Quarry. Each witness provided a witness statement which were also reviewed and considered by the Tribunal.

Water Resources

[36] The Parties generally agreed that the Mount Nemo Plateau is a Karst landform consisting of dolostone/limestone bedrock forming part of the Niagara Escarpment. The Mount Nemo Plateau functions as an aquifer absorbing surface water through numerous interconnected fractures and channels in the dolostone that then generally flows from northeast to southwest across the Mount Nemo Plateau. The ground water discharges along the westerly edge of the Mount Nemo Plateau at the base of the Medad Valley through multiple seeps and springs which form the headwaters of the Willoughby Creek. The Willoughby Creek flows in a northerly direction and outlets in the Bronte Creek. Surface water generally flows in a southwesterly direction across the Plateau and is collected by the Grindstone Creek and its tributaries draining across the southerly extent of the Mount Nemo Plateau.

[37] Messrs. Kassenaar and Wexler of the firm Earthfx Inc. collaborated on the preparation of a Level 1 and Level 2 Hydrogeological and Hydrological Assessments (“HHA”) in support of the Expansion Applications. The HHA included the creation of a model (computer program) that characterizes the existing site conditions as an equivalent porous medium and using data collected from field investigations, core samples (drilling), installation of monitoring wells, surface water monitoring, and previously collected data together with meteorological data available from Environment Canada (“Earthfx Model”). The Earthfx Model modelled the behaviour of the ground water and surface water in the area surrounding the Burlington Quarry and Quarry Expansion Lands.

[38] The Earthfx Model was used to predict the impacts of extraction on ground water and surface water on the Mount Nemo Plateau. The predicted impacts identified by the Earthfx Model were then used to determine what mitigation measures may be required to maintain benchmark levels established and to ensure the continued function of the natural heritage features impacted and the impact on ground water levels within the surrounding private wells.

[39] The extraction of the West Quarry Extension is anticipated to impact the ground water levels between the extraction area and the Medad Valley. Nelson proposes the creation of an “Infiltration Pond” east of Cedar Springs Road to address the anticipated impacts in ground water. The Infiltration Pond is intended to support ground water levels required to maintain the private wells along Cedar Springs Road and ground water discharge levels in the Medad Valley. Water will be supplied to the Infiltration Pond from the Perpetual Pumping of the rehabilitated quarry lands as described on the Expansion Site Plans.

[40] Daniel Twigger advised that a Feature Based Water Balance was prepared for the Quarry Expansion that focussed on the wetland features supporting the Earthfx Model results. The Earthfx Model was used to predict water input and run-off levels and the hydroperiods of the wetlands located on the Quarry Expansion Lands. This prediction was used to assess potential impacts resulting from the proposed extraction and to determine the mitigation measures required. These mitigation measures are incorporated into the AMP.

[41] Mr. Twigger further advised that Surface Water Management, which includes Perpetual Pumping, is required to support the Infiltration Pond proposed for the West Quarry Extension lands. These requirements are detailed in the AMP and the Expansion Site Plans, specifically the rehabilitation plan, to maintain water levels within the proposed lake for the Burlington Quarry and West Quarry Extension.

[42] Similar to the West Quarry Extension, the South Quarry Extension lands contain woodlands and wetlands, and the proposed extraction area has been configured to exclude these woodlands or wetlands and provide the required buffers to any identified natural heritage features.

[43] Perpetual Pumping is also proposed to support Wetland 13203 to the west of the extraction area proposed on the South Quarry Extension. Wetland 13203 ultimately outlets into a tributary of the Grindstone Creek.

Hilltop Pond (Wetland 13032)

[44] Wetland 13032 (“Hilltop Pond”) is located on the lands abutting the South Quarry Extension (“Harmer Lands”). The Hilltop Pond was described by Messrs. Kassenaar and Wexler as ‘perched’, wherein they proffered that the Hilltop Pond is not connected to the water table. While the City, the Region, and CORE/PERL did not agree with this characterization, no definitive evidence contradicting the claim, apart from the opinions proffered at the previous Hearing of the Joint Board, were presented to the Tribunal.

[45] Further, it was purported that the Hilltop Pond contains a vernal pool with a hydroperiod extending into late summer, notwithstanding its relatively small catchment area and being located on top of a small rise or hill with no water source other than precipitation. Again, no evidence contradicting or supporting the claim, apart from the opinions proffered at the previous Hearing of the Joint Board, was tendered before the Tribunal.

[46] Messrs. Kassenaar and Wexler opined that the setback of the Hilltop Pond from the proposed extraction area is sufficient to mitigate impacts on ground water levels in the area of the Hilltop Pond and they proffered that the extraction of the South Quarry Extension will not impact the Hilltop Pond. Notwithstanding, Nelson proposed monitoring of the Hilltop Pond hydroperiods; however, the Tribunal finds that this suggestion is impractical in that the Hilltop Pond is located on private property to which Nelson does not have access and there is no indication that it will be available.

Cascading Wetlands

[47] East of the extraction area on the South Quarry Extension is a wetland complex comprised of Wetlands 13014, 13015, 13016, 13022, 13024, and 13027, referred to as the Cascading Wetlands. The Cascading Wetlands continue south across the Harmer Lands, including Wetlands 13033, 13034, and 13035. The Cascading Wetlands ultimately outlets into a tributary of the Grindstone Creek sub-watershed.

[48] Mr. Twigger advised that ongoing monitoring of the hydroperiods within the Cascading Wetlands, located on the South Quarry Extension, is detailed in the AMP, and mitigation measures have been identified including introducing additional water through pumping at the north end or “top” of the wetlands.

[49] The Tribunal finds that the monitoring of the Cascading Wetlands on the South Quarry Extension and the implementation of mitigation measures should effectively support Wetlands 13033, 13034, and 13035 located downstream from the Cascading Wetlands.

[50] Wetland 13037 is identified in the AMP and will be included in the monitoring program and mitigation measures, if required.

Burlington Quarry Dewatering Discharge

[51] Wetland 13202, located along the northerly side of the West Quarry Extension, contains a weir pond that is currently supported by the quarry discharge from Sump 0100 located at the northwest corner of the Burlington Quarry. The water discharge from Wetland 13202 is currently used to support irrigation ponds on the existing golf course located on the West Quarry Extension and the excess water is discharged across Colling Road to the north where it “disappears” at a sink hole. The watercourse re-appears at springs west of the sink hole where the watercourse continues until it drains into the Willoughby Creek, north of the Medad Valley.

[52] Wetland 13203 is located along the west side of the South Quarry Extension and is supported by the quarry discharge from Sump 0200 located at the southwest corner of the Burlington Quarry. Wetland 13203 drains into a tributary of the Grindstone Creek.

Adaptive Management Plan

[53] Mr. Twigger reviewed the AMP explaining that the AMP addresses groundwater, surface water, and ecological impacts identified resulting from extraction, and provides for the

mitigation of identified impacts. He explained that the AMP is a dynamic document that is intended to evolve over the life of the quarry. The implementation of the AMP is a requirement of the Expansion Site Plans and includes the requirement of the establishment of a Community Liaison Committee (“CLC”), issuance of an Annual Report, and an update of the AMP every 5 years. The CLC is proposed to consist of community representatives, representatives from Nelson, and representatives from the regulatory agencies including the MNR, the MECP, CH, the NEC, the City, and the Region.

[54] The AMP requires a minimum of three years of monitoring data be collected prior to the commencement of any works on the West Quarry Extension lands. This data will be used to establish a baseline threshold for the determination of groundwater impacts in the Medad Valley and the Willoughby Creek sub-watershed.

[55] The Earthfx Model was also used to predict impacts on water levels in private wells on the properties surrounding the Quarry Expansion Lands, and the AMP provides for mitigation measures to address impacts on private well drawdown levels.

[56] The City, Region, and CORE/PERL do not agree that the Earthfx Model sufficiently predicts the impacts of the quarrying activity on the ground water around the quarry. The City’s and the Region’s experts agreed that an on-site weather monitoring station together with additional groundwater and surface water monitors creating a more extensive data sample are required to better calibrate the Earthfx Model and validate the results.

[57] The City’s experts opined that the extraction and dewatering of the Quarry Expansion will negatively impact the groundwater and the surface water features of the Mount Nemo Plateau, which in turn will impact the wetlands surrounding the Quarry Expansion Lands. A better understanding of the variable nature of the Halton Till, the soil overburden across the Mount Nemo Plateau, is required. Concerns with the reactive approach of the AMP, as opposed to a proactive approach, were raised.

[58] The Region's experts shared the concerns raised by the City and raised further a concern with the effectiveness of the Infiltration Pond and the impacts on the water quality and quantity for the private wells in the area surrounding the West Quarry Extension. The variable permeability of the Halton Till was raised as a concern and the connection between the Hilltop Pond and the water table was raised as an example of the incomplete understanding of the precise nature of the Halton Till. The Region's experts contend that this is not properly considered by the Earthfx Model.

[59] With regards to the AMP, the Region's experts proffered that the thresholds and triggers identified require further review. They contend that insufficient monitoring has resulted in an incomplete understanding of the interrelationship between the ground water and the surface water required to calibrate the Earthfx Model. Without a proper calibration of the Earthfx Model, the predictions of the model cannot be relied upon.

Medad Valley – Infiltration Pond

[60] The West Quarry Extension proposes the extraction of the bedrock in relatively close proximity to the Medad Valley. This bedrock is part of the aquifer that releases ground water into the Medad Valley through a series of seeps and springs. Nelson proposes to construct an Infiltration Pond on the West Quarry Extension lands between the extraction area and Cedar Springs Road. The intended function of the Infiltration Pond is to replace ground water that is interrupted as a result of the extraction of the bedrock on the West Quarry Extension. The water source for the Infiltration Pond will be water pumped from the quarry floor through the Perpetual Pumping infrastructure.

[61] The re-introduced ground water is predicted to then support the existing private wells located west of the West Quarry Extension lands and ultimately discharge into the Medad Valley through the existing seeps and springs located in the valley wall.

[62] The AMP requires monitoring of the water levels, water temperature, and water quality in the Willoughby Creek for three years prior to the commencement of works on the West Quarry Extension lands to establish baseline values.

[63] The Tribunal finds that the requirement of the construction of a test pond prior to the excavation of the West Extension creates a conundrum in the process. The Tribunal questions how constructing a “test pond” prior to the extraction of the bedrock will demonstrate the effectiveness of the Infiltration Pond as the aquifer (bedrock) remains intact and will continue to convey ground water to the Willoughby Creek and the private wells in the area.

[64] The Tribunal reasons that the Earthfx Model together with an appropriately diligent monitoring regime is an effective means of identifying and gauging the impacts of the removal of the bedrock during the extraction of the West Quarry Extension. Only once the impacts have been identified, can the necessary mitigation be implemented. The AMP provides for such a monitoring regime and any required mitigation.

[65] Should mitigation measures not be successful and the impact of the extraction results in an adverse impact, the extraction must cease. If no further mitigation measures are available, then all the mineral aggregate that can realistically be extracted has occurred and operations would conclude.

[66] The Tribunal finds that the AMP forms an integral part of the Proposed Licence and is specifically intended to address potential impacts and the appropriate mitigation required. The Tribunal similarly finds that should mitigation measures be available to address the impacts, the AMP is the vehicle through which these measures are to be introduced, documented, and implemented. The Tribunal expects that the monitoring, testing, and mitigation measures are to be communicated to the community through the CLC.

[67] The Tribunal reasons that upon issuance of the Proposed Licence, the excavation of the West Quarry Extension will not commence for at least 9 years. During this time Nelson will

be required to establish monitoring locations within the Medad Valley, on lands which it has consent to access, as required by the AMP prior to any excavation commencing on the West Quarry Extension. The Tribunal understands that the more monitoring data available results in greater accuracy of the predicted impacts. By extension, the Tribunal reasons that the better predictions from the Earthfx Model will translate into more effective mitigation measures being implemented.

[68] The Tribunal reasons that it is not practically possible to demonstrate that the Infiltration Pond functions as intended without the substantial extraction of the bedrock within the West Quarry Extension. The AMP relies on Nelson's ability to model the impact of the West Quarry Extension extraction and the mitigative impact of the Infiltration Pond. The AMP will establish thresholds at the various monitors to assess the impact of mitigation measures.

[69] The Tribunal finds that the approval of the Proposed Licence conditional upon the construction, testing, and the demonstrated successful mitigation of the Infiltration Pond is appropriate as it enable Nelson to introduce mitigation during extraction and assess the impacts; however the ongoing monitoring of the Medad Valley and the private wells is essential to determine impacts.

[70] The Tribunal finds that the requirements of the AMP and the Proposed Licence are reasonable and should the Infiltration Pond not function as modelled and mitigation measures are not successful, the result is that excavation of the West Quarry Extension shall cease. This is a risk assumed by Nelson. The AMP contains the process to mitigate and eliminate risk to the members of CORE/PERL, the City, and the Region.

[71] The Tribunal finds that the theoretical hypotheses offered by the City's expert, Dr. Walter Illman, was not helpful in that no definitive opinions were offered, merely speculation and apprehension of what might happen. Dr. Illman ultimately conceded under cross-examination that the Earthfx Model appears to work.

[72] The Tribunal notes that the AMP does not specifically spell out a scenario wherein a result is that extraction shall cease; however, the Tribunal reasons that if proposed mitigation measures prove unsuccessful, then the only reasonable conclusion is that extraction shall cease.

Natural Heritage Features

[73] The Medad Valley is located within 120 m to the west of the West Quarry Extension and is identified as an ANSI and is a Provincially Significant Wetland. The Willoughby Creek headwaters are located in the Medad Valley supported by the discharge of groundwater through multiple seeps and springs located at the base of the valley and along the valley walls. The groundwater supports the aquatic and terrestrial ecology of the Medad Valley.

[74] The Quarry Expansion Lands contain wetlands and woodlands which have been evaluated and classified in accordance with MNR and MECP policies and guidelines. The proposed extraction areas have been configured such that they do not include any identified wetlands or woodlands features.

[75] A Level 1 and 2 Natural Environmental Technical Report ("NETR") was submitted in support of the Quarry Expansion prepared by Nelson's Environmental Consultants. The NETR identified natural heritage features on the Quarry Expansion and lands within 120 m of the Quarry Expansion.

[76] Dr. Beverly Wicks advised that she has reviewed the NETR and concurs with the conclusions and recommendations contained in the NETR. Dr. Wicks further advised that she provided input into the most recent iteration of the AMP and the Expansion Site Plans currently before the Tribunal addressing mitigation and protection of ecological resources.

[77] Having considered the Ecological Land Classifications ("ELC") which Dr. Wicks described as the standardized process in the industry to classify lands, Dr. Wicks opined that hedgerows are typically narrow and not considered as natural heritage features. There are

hedgerows present within the extraction area on the South Quarry Extension generally delineating the existing agricultural fields.

[78] Dr. Wicks reviewed the vegetation and wildlife habitat criterion and habitats identified on or around the Quarry Expansion lands and the results of the different wildlife surveys completed. She opined that where impacts were identified, the mitigation measures proposed in the AMP and on the Expansion Site Plans will protect the species identified in the NETR as species at risk.

[79] Sarah Mainguy contends that the monitoring proposed is not sufficient to provide certainty to mitigate ecological risk. She acknowledged that there is never ultimate certainty; however, she proffered that the proposed monitoring needs to be better as the natural heritage features present on the Mount Nemo Plateau are heavily dependent on the ground and surface water.

[80] Ms. Mainguy directed the Tribunal to the Natural Heritage Reference Manual (“NHRM”) referencing the Precautionary Approach which is defined as “an approach that is designed to prevent environmental degradation where there are threats of serious or irreversible damage or lack of full scientific certainty” (adapted from Principle 15 - 1992 UNEP Rio Declaration on Environment and Development)³. Ms. Mainguy acknowledged that the NHRM is not policy but a guideline to assist in the interpretation and application of the PPS.

[81] Section 110 of the Region Official Plan (“ROP”) sets out policies which address mineral aggregate operations and sections 114 and 114.1 of the ROP includes the goals and objectives of the natural heritage systems in the Region. Section 114 states “The *goal* of the Natural Heritage System is to increase the certainty that the biological diversity and *ecological functions* within *Halton* will be preserved and enhanced for future generations.”

³ Natural Heritage Reference Manual for Natural Heritage Policies of the Provincial Policy Statement, 2005, Ministry of Natural Resources, Second Edition, page 217

[82] Ms. Mainguy reviewed the policies contained in ss. 114.1(1), (5), (8), and (12) of the ROP, which state:

114.1 The objectives of the Natural Heritage System are:

- (1) To maintain the most natural Escarpment features, stream valleys, *wetlands* and related *significant* natural areas and associated *Cultural Heritage Resources*.
- (5) To protect or enhance the diversity of fauna and flora, ecosystems, plant communities, and significant *landforms* of *Halton*.
- (8) To preserve and enhance the quality and quantity of ground and surface water.
- (12) To preserve native species and communities that are rare, threatened or endangered based on regional, provincial or national scales of assessment.

[83] Ms. Mainguy opined that the proposal will not maintain, protect, or preserve the natural features on the Mount Nemo Plateau and does not conform to the ROP.

[84] The definition of Adjacent lands in the PPS in part b) means, for the purposes of policy 4.1.8, those lands contiguous to a specific *natural heritage feature or area* where it is likely that *development* or *site alteration* would have a negative impact on the feature. The extent of the adjacent lands may be recommended by the Province or based on municipal approaches which achieve the same objectives.”⁴

[85] Ms. Mainguy explained that the ARA sets out that lands within 120 m of the proposed quarry are considered adjacent lands; however, the definition contained in the PPS provides the flexibility for a greater consideration and she proffered that the groundwater impact resulting from the proposed quarry on natural features could extend up to 500 m or more. Consideration of adjacent lands should be expanded to include a much wider review. She proffered that Nelson should be required to demonstrate that the expansion will have a high

⁴ Provincial Planning Statement, 2024, Section 8: Definitions

degree of certainty as it relates to the impacts on groundwater, the wetlands, and their connectivity.

[86] Ms. Mainguy explained that policy 4.1.8 of the PPS requires that it be demonstrated no *negative impacts* on natural features or their *ecological functions*. She proffered that the proposed mitigation measures to pump water to support wetlands and the Infiltration Pond have not been demonstrated that no negative impacts will result.

[87] Further, Ms. Mainguy opined that the impact on the Significant Wildlife Habitat has been underestimated because of the reliance on the ground water and surface water.

[88] Karl Konze advised that a portion of the Medad Valley is designated a Provincially Significant Life Science ANSI and part of the Lake Medad Meltwater Channel Earth Science ANSI. He explained that an ANSI identifies an area which best illustrates unique and representative biological and physical features in Ontario. The Medad Valley is also identified as a Provincially Significant Wetland complex.

[89] Mr. Konze asserted that there was no evidence that the proposed extraction will avoid causing negative impacts; however, he acknowledged under cross-examination that negative impacts are proposed to be mitigated. Further he acknowledged that while no wildlife surveys were conducted in the Medad Valley as part of the NETR, additional work was completed by Nelson satisfying the MNR and the MECP.

[90] Stephen Hill proffered that the wetland boundaries identified in the NETR are not accurate and he contends that the NETR does not support the position that there will be no impact resulting from the proposed quarry expansion. Mr. Hill expressed concern that the monitoring work has been moved to the AMP, and he recommended that the monitoring be done prior to commencement of work to determine and identify the mitigation measures to be implemented in the AMP.

[91] Corey Stinson critiqued the NETR and the additional reports prepared in support of the proposed quarry expansion and suggested that the reports do not comply with the MECP and MNR guidelines. It was confirmed, under cross-examination, that Mr. Stinson's evidence with respect to the ELCs was compiled from off-site observations and aerial photography, and he did not agree that the best evidence would be collected from observations made on-site.

[92] In consideration of the classification of the hedgerows located on the South Quarry Extension, Mr. Stinson referred to the Southern Ontario Land Resource Information System ("SOLRIS") issued by the MNR in 2019, which provides a description and interpretation of a hedgerow in section 2.3.6. Mr. Stinson explained that he used the NETR, CH mapping, and SOLRIS definition to conclude that there are hedgerows on the South Quarry Extension which were improperly identified. He acknowledged that the ROP removed the hedgerows on the South Quarry Extension from the Natural Heritage System, and he agreed that the definition of a Woodland does not include hedgerows.

[93] Mr. Stinson explained that he prepared an alternative mapping of the wetland features using the Ontario Wetland Evaluation System ("OWES") and came to a different conclusion than the Nelson experts and the MNR reviewer. He concluded that the wetlands on the West Quarry Extension are larger than identified in the NETR and he concluded that the Colling Road Swamp located on the north side of Colling Road opposite the Burlington Quarry is a Provincially Significant Wetland.

[94] The Tribunal notes that the Colling Road swamp is well removed from the Quarry Expansion lands and has existed during the extraction of the Burlington Quarry. Based on the evidence of Mr. Stinson, the Colling Road swamp has evolved into a Provincially Significant Wetland during the Burlington Quarry operation. The Tribunal also notes that neither the MNR nor the MECP have raised any issues with the Colling Road Swamp, and finds that Mr. Stinson has not demonstrated that there will be a negative impact on the Colling Road Swamp, and thus questions the relevance of the submissions.

[95] The Tribunal prefers the evidence of the Nelson experts and is satisfied that the proposal will protect the natural heritage features both on and surrounding the Quarry Expansion Lands. The AMP provides for monitoring to identify impacts and establishes mitigation measures to respond to and resolve the impacts thus preserving the natural heritage features for the long term.

Jefferson Salamander

[96] The JESA is listed as an endangered species protected under the *Endangered Species Act, 2007* and Ontario Regulation 242/08. The JESA habitat is also protected under Ontario Regulation 832/21.

[97] The MECP has identified Hilltop Pond and Wetland 13033, located on the Harmer Lands, as confirmed Jefferson Salamander breeding ponds. The MECP has also identified Wetlands 13014 and 13022 within the Cascading Wetlands and Wetland 13037, south of the extraction area on the South Quarry Extension as containing potential JESA breeding ponds.

[98] The extraction area proposed in the South Quarry Extension has reduced in size from the extraction area previously proposed in the application that was the subject of the Joint Board decision. The reduced extraction area has created an increased buffer between the Hilltop Pond and Wetland 13033 of greater than 500 m.

[99] Dr. Wicks opined, in consideration of the conclusions of Nelson's water experts, that the Hilltop Pond and Wetland 13033 will not be impacted by the extraction of the South Quarry Extension and therefore the JESA breeding ponds will not be impacted.

[100] The Nelson water experts proffered that the catchment area of the Cascading Wetlands and Wetland 13037 will not be impacted by the extraction. Dr. Wicks noted that the Cascading Wetlands and Wetland 13037 will be monitored as set out in the AMP and provisions for water augmentation mitigation has been included in the AMP to respond to any identified impacts. Maintaining the water levels in the Cascading Wetlands will maintain the

water volumes exiting the Cascading Wetlands and supporting Wetland 13033 located downstream on the Harmer Lands.

[101] Dr. Wicks reviewed the components that make up JESA breeding ponds, explaining that they consist of vernal ponds which are temporary bodies of water that dry out in the mid-to late summer. The vernal pond must have a sufficient depth of standing water and contain vegetation that is conducive to egg attachment, and the pond can not contain fish or other predators that will interfere with the JESA and their eggs.

[102] Ms. Mainguy proffered that development is the biggest threat to the JESA. She explained that amphibians need to travel, and travel is an indicator of a healthy amphibian population. Further, she explained that JESAs are capable of crossing farm fields as part of their migration and have benefitted from the ability to travel around the Burlington Quarry.

[103] Amphibians rely on good years for breeding for the growth of their population, and Ms. Mainguy asserted that monitoring the JESA is critical to their protection and preservation. She opined that the three years of monitoring proposed is not sufficient to assess the base line for the JESA population surrounding the Quarry Expansion Lands. The current monitoring data does not provide sufficient data to assess the impacts resulting from the proposed quarry expansion.

[104] Mark Heaton concurred and proffered that impacting the ground water and surface water will impact the JESA breeding habitats. He asserted that relying on the AMP to maintain the vernal pond thresholds is not appropriate and a better understanding of the JESA habitat characteristics is needed, supporting the need for more reliable data and monitoring.

[105] Mr. Heaton explained that the JESA will lay eggs in a suitable vernal pond; however, they may not be successful if the vernal pond dries out early. Ms. Mainguy recommended that the hydroperiod thresholds in the AMP be established at August 15 for amphibian breeding.

[106] Mr. Heaton proffered that a portion of the South Quarry Extension is JESA habitat being located within 300 m of a breeding pond. He argued that a significant portion of the South Quarry Extension is JESA regulated area containing JESA habitat and migration routes. He reviewed the linkages between habitat and breeding ponds and proffered that impacting the linkages will impact the health of the JESA population. Mr. Heaton asserted that Nelson has not demonstrated that there will not be a negative impact on the JESA and its habitat.

[107] Ms. Mainguy acknowledged that the MECP ultimately determines the location and extent of JESA habitat and breeding ponds.

[108] John Pisapio advised that he was engaged in 2005 to undertake a review of the JESA population located on the Harmer Lands. He reviewed the life cycle and behaviour of the JESA and protections provided in the *Endangered Species Act, 2007*, including the relevant regulations. Mr. Pisapio advised that he has reviewed the revisions to the habitat mapping proposed by the City and supports the increased habitat recommended.

[109] Mr. Pisapio shared the concerns raised by the City and the Region's experts with respect to the monitoring and mitigation proposed in the AMP, suggesting that Perpetual Pumping is an experimental approach to maintain water levels and volumes as well as regulating water temperature. He proffered that this approach is not consistent with the broader species at risk approach and should the mitigation not be successful, the species at risk will not survive and the species are lost.

[110] The Tribunal, having considered the substantial volume of evidence submitted regarding the JESA, both written and oral, agrees with the assessment provided by Mr. Pisapio when he proffered that the MNR is a science-based ministry that applies science-based methods to inform decision making.

[111] Nelson has, through its experts, provided reports prepared in compliance with the provincial guidelines and policies which have satisfied the MNR and the MECP. The Tribunal

was also advised that the MECP is reviewing the differing submissions as it relates to the JESA habitat and the final decision ultimately rests with the MECP. Nelson has acknowledged that they will be required to comply the MECP decision should the decision impact the proposed extraction of the South Quarry Extension. As of the date of the Hearing, the MECP has not identified JESA habitat on the lands located to the west of the South Quarry Extension (the former Camisle golf course lands) or the Colling Road Swamp.

[112] The Tribunal finds that the evidence of Region's and the City's experts would have the applications before the Tribunal utilized for the purposes of expanding the JESA habitat such that it would effectively prevent the proposed expansion of the quarry. It was acknowledged that the determination of the JESA habitat is the domain of the MECP and that the Tribunal notes that the MECP has reviewed the Expansion Applications, the NETR, and the supporting documentation, and advised that they have no further requirements of the Applicant.

[113] The Tribunal finds that much of the evidence proffered was rooted in apprehension or speculation including the assertion that the JESA travels "around" the Burlington Quarry to access the Colling Road Swamp. While the Tribunal has no evidence to suggest that it is not possible, no evidence was proffered to support the assertion.

[114] The Tribunal is being asked to decide between two different JESA habitat mapping scenarios which support the two opposing positions. The suggestion that the Nelson mapping is somehow flawed when the regulatory authority, being the MECP, has not identified concerns with the Nelson mapping does not assist the Tribunal. The Tribunal expects that should there be a concern with the habitat mapping provided, this evidence would come from the MECP, and it has not.

[115] The Tribunal prefers the evidence of the Nelson experts and finds that the proposed extraction area on the South Quarry Extension does not negatively impact the MECP identified breeding ponds or habitat.

Medad Valley (Wetland 13204)

[116] The Willoughby Creek runs through the Medad Valley generally from south to north where the creek outlets into the Bronte Creek. Brook Trout are a cold-water species of fish that are sensitive to water temperature as it impacts their spawning patterns. A section of the Willoughby Creek is located within the Medad Valley where it crosses lands owned by Conservation Halton.

[117] Dr. Wicks advised that potential impacts on the Grindstone Creek Wetland complex, the Mount Nemo Wetland complex, and the Medad Valley have been thoroughly considered, and the AMP has provided a detailed and precautionary approach to monitoring and mitigation to protect all wetland features.

[118] Neil Boucher advised that his firm conducted a fish community survey in Willoughby Creek in June 2023 on the Conservation Halton lands. During the survey, a Brook Trout was observed representing the furthest upstream capture of this species. Mr. Boucher proffered that the dewatering of the Burlington Quarry has been occurring for many years with the discharge supplying the unnamed tributary to Willoughby Creek just north of the Conservation Halton Lands and south of the identified and confirmed Brook Trout habitat. He contends that the existing long-term dewatering from the quarry has demonstrated that the fish community has adapted to the conditions associated with the dewatering discharge from the Burlington Quarry. Mr. Boucher opined that the Perpetual Pumping proposed for the West Quarry Extension is the preferred scenario to maintain fish and fish habitat conditions in Willoughby Creek.

[119] Arnell Fausto contends that the AMP does not demonstrate how the discharged water from the West Quarry Extension and Burlington Quarry, including the water discharged into the Infiltration Pond, will be regulated to maintain the water quality and temperatures required to support the Brook Trout. Mr. Fausto proffered that the thermal thresholds proposed are well above the tolerances for Brook Trout and it is unclear how thermal limits for the species will be maintained. Mr. Fausto opined that with no biological monitoring program in place to

monitor the effect of the Perpetual Pumping on the Willoughby Creek and the Medad Valley, the risk to the survival of the Brook Trout is unacceptable.

[120] Mr. Heaton proffered that Nelson has not fully evaluated the impacts of Perpetual Pumping into the water courses and wetlands surrounding the Quarry Expansion Lands, particularly in relation to the thermal tolerance of Brook Trout in Willoughby Creek sub-watershed. Mr. Heaton acknowledged that Brook Trout populations in southern Ontario have declined by 80% over the last 50 years.

[121] The Tribunal prefers the evidence of Mr. Boucher and observes that the Burlington Quarry currently pumps water from the quarry floor into the Willoughby Creek watercourse, and all the experts agree that the Brook Trout community is currently stable, notwithstanding the water temperature values identified through the existing monitoring.

[122] Dr. Gary Lamberti proffered that the Willoughby Creek was functioning well from an ecological perspective, he noted that he does not have a comparison to evaluate the creek against or a baseline pre-quarrying. He acknowledged that Willoughby Creek is affected by quarry discharge and proffered that the fish population persists in the creek and has not adapted as suggested by the Nelson experts.

[123] The Tribunal finds that the monitoring of water volumes, temperatures, and quality set out in the AMP together with the mitigation protocols responds to the concerns raised by the City and Region experts. The AMP requires three years of monitoring data be collected and that the Infiltration Pond be constructed and tested prior to the commencement of extraction in the West Quarry Extension to establish a baseline to be used once extraction commences.

Cultural Heritage

[124] Dan Currie, co-author of the Cultural Heritage Impact Assessment ("CHIA") prepared in support of the Expansion Applications, proffered that there are no protected heritage properties on or adjacent to the Quarry Expansion Lands. Mr. Currie advised that the CHIA

identified a Significant Built Heritage Resource consisting of a stone house and barn, located on the South Quarry Extension lands adjacent to the extraction area. The City is proposing a heritage designation of the structures; however, consideration of the designation has been deferred until the conclusion of these proceedings. The Expansion Site Plans include cultural heritage recommendations and requirements related to blasting to ensure the conservation and protection of this Significant Built Heritage Resource.

[125] The CHIA included the review of the farmhouse structure located on the West Quarry Extension that is currently used as the clubhouse for the golf course operation. The CHIA concluded that the clubhouse structure architecture is not rare or unique in the area and has been heavily modified due to the conversion to the non-residential use. The CHIA concluded that the structure does not have cultural heritage value.

[126] Mr. Currie reviewed the City's consideration of the Mount Nemo Plateau as a Cultural Heritage Landscape and confirmed that the City did not proceed with the designation. There are currently no identified or protected landscapes on the Mount Nemo Plateau.

[127] Mr. Currie advised that the Ministry of Heritage, Sport, Tourism, and Culture Industries ("MHSTCI") have received the CHIA and have no further requirements with respect to cultural heritage.

[128] Rebecca Sciarra proffered that the CHIA does not sufficiently identify and evaluate potentially impacted cultural heritage resources. Ms. Sciarra opined that several features within the proposed extraction area contribute to the area's open landscape character referencing the study completed by Andre Scheinman in 2013 (Exhibit 8, Tab 129), and the Mount Nemo Plateau should be protected as a cultural heritage resource.

[129] Ms. Sciarra asserted that the CHIA was too narrow in its review of the policy context and did not fully address the City Official Plan ("COP"), the NEP, the PPS, or other studies conducted by the City and the NEC respecting the Mount Nemo Plateau.

[130] Ms. Sciarra opined that the clubhouse on the West Quarry Expansion lands represents a good example of Ontario Gothic Revival architectural style that should be preserved. The lands surrounding the farmhouse structure, including the driveway from the road to the farmhouse, form part of the cultural landscape that should also be preserved as supported by the City Official Plan. Similarly, Ms. Sciarra opines that the fields and wooded areas surrounding the house and barn on the South Quarry Expansion Lands should be included in the designation of the structures.

[131] Under cross-examination, Ms. Sciarra acknowledged that the NEC has entered into MOS with Nelson and has withdrawn from the proceedings. Ms. Sciarra also acknowledged that an aggregate quarry could form part of a cultural heritage landscape.

[132] The Tribunal did not find the testimony and evidence of Ms. Sciarra compelling. Ms. Sciarra focussed her testimony on discrediting the CHIA and did not offer a contrary opinion supported by current study or assessment. The Tribunal finds that Ms. Sciarra relied on studies and reports prepared by others to support her position of opposing the Expansion Applications.

[133] The City previously reviewed the feasibility of a cultural heritage landscape designation for the Mount Nemo Plateau and ultimately decided not to pursue the designation. The Tribunal finds that the suggestion that such a designation should now be pursued as a means to thwart any favourable consideration of the Expansion Applications is, at the very least, insincere.

[134] The Tribunal prefers the evidence offered by Mr. Currie and notes that the CHIA has been reviewed by the MHSTCI and has been found to be complete as the MHSTCI has advised there are no further requirements. The protection of the cultural heritage resources located on the South Quarry Extension lands is provided for through the Expansion Site Plans, and the Tribunal is satisfied that there are no further cultural heritage resources impacted by the Expansion Applications.

[135] The Tribunal finds that preservation of the house and barn identified as cultural heritage features on the South Quarry Expansion lands is consistent with section 4.6.1 of the PPS, which requires the conservation of protected heritage properties. Further, the Tribunal finds that the Expansion Applications conform to the NEP and the ROP as Nelson has demonstrated how they propose to conserve cultural heritage resources identified on the Quarry Expansion Lands.

Air Quality

[136] Nelson submitted an Air Quality Study prepared by BCX Environmental Consulting in support of the Proposed Expansion. The Air Quality Study modelled emissions from the Proposed Expansion using an air dispersion model and meteorological data from the past 5 years. Brian Sulley reviewed the Air Quality Study and proffered that the methodology used is consistent with the MECP guidelines and noted that the dispersion model is a common approach used for modelling air quality for aggregate operations. Mr. Sulley acknowledged that the JART initially raised concerns with the Air Quality Study; however, ultimately JART concluded that the total particulate matter concentrations would comply with the Ontario Ambient Air Quality Criteria ("AAQC").

[137] Mr. Sulley reviewed the AAQC and the Canadian Ambient Air Quality Standards ("CAAQS") advising that these are the criteria used by the MECP in assessing general ambient air quality resulting from all sources of a contaminant to air. Mr. Sulley responded to the suggestion from the City and CORE/PERL experts that the World Health Organization air quality guidelines should be considered or applied in this instance, proffering that neither the Federal Ministry of Environment and Climate Change ("MECC") nor the MECP have adopted the World Health Organization benchmarks, and neither the MECC nor the MECP have indicated that they plan to do so.

[138] The Tribunal finds that the appropriate benchmarks to utilize in the evaluation of the Applications are the AAQC and the CAAQS, which Nelson Air Quality Study has done.

[139] The Air Quality Study recommended that a Best Management Practices Plan (“Dust Mitigation Plan”) be implemented for the Proposed Expansion to mitigate the generation of dust by quarry operations. Mr. Sulley reviewed the revised Dust Mitigation Plan dated February 2025 (Exhibit 52, Page 155) identifying dust sources, mitigation measures, and monitoring requirements including air quality monitoring. He noted that, currently, the ARA does not require the implementation of a Dust Mitigation Plan; however, he recommends that it be implemented for the Quarry Expansion and the existing Burlington Quarry operations. Mr. Sulley agreed that sharing the monitoring results with the CLC is appropriate and should be considered by Nelson.

[140] A series of videos were presented to the Tribunal showing different blasting events that occurred at the Burlington Quarry. The videos showed a large cloud of dust generated by a blast that blew over the residential properties on the south side of No. 2 Side Road. Mr. Sulley observed that where dust mitigation measures were being applied, they were not satisfactorily controlling the dust generated.

[141] Peter Del Gatto, a resident on No. 2 Side Road located directly across from the entrance to the Burlington Quarry, advised that the videos confirmed his experience living across from the quarry. He explained that the dust accumulates in his eavestroughs and blocks the downspouts. He has complained to Nelson with no response. Mr. Del Gatto advised the Tribunal that a former site manager at the Burlington Quarry used to arrange to clean his eavestroughs twice a year but that has stopped after the cleaners damaged his house, and he raised the issue with Nelson. Mr. Del Gatto told the Tribunal that Nelson doesn't care about the neighbours, and he has listed his house for sale.

[142] Sue Godfrey, a former resident on Guelph Line near No. 2 Side Road, advised that she experienced vibrations from the blasting resulting in cracked walls, foundation, and windows. She claimed that her complaints went unanswered and, when cross-examined, she confirmed that she made the complaint to the MNR and did not make Nelson aware of the complaints.

[143] Dr. George Thurston opined that the residents downwind of the Burlington Quarry are currently experiencing health effects from the quarry operation and the proposed expansion will increase this impact. He questioned why the zoning rules would allow these uses in such close proximity to each other. Dr. Thurston proffered that the World Health Organization guidelines for air quality address fine particulate matter and conclude that there is no safe level of PM_{2.5} (particulate measuring less than 2.5 micrograms) or silica for human health. The Federal Government should consider reducing the thresholds for fine particulate in the air quality standards.

[144] Dr. Thurston acknowledged that the MECP has not adopted the World Health Organization's guidelines, and they do not apply in this matter. He further acknowledged that ambient air quality guidelines apply to specific facilities and operations. Dr. Thurston proffered that he understands the role of the Tribunal is to make changes, and he is providing his opinions for the Tribunal's consideration and not providing a recommendation to the Tribunal.

[145] The Tribunal was directed to the Land Use Compatibility policies in section 3.5 of the PPS. Policy 3.5.1 states:

Major facilities and sensitive land uses shall be planned and developed to avoid, or if avoidance is not possible, minimize and mitigate any potential *adverse effects* from odour, noise and other contaminants, minimize rise to public health and safety, and to ensure the long term operational and economic viability of *major facilities* in accordance with provincial guidelines, standards and procedures.

[146] The Tribunal reasons policy 3.5.1 is focussed on the protection of major facilities which includes a mineral aggregate quarry. The Burlington Quarry has been in operation for over 70 years and, during this time, there has been the introduction of sensitive land uses in the form of residential development surrounding the quarry. The development of the sensitive land uses has not avoided the quarry operation and therefore the policy directs that minimizing and mitigating any potential adverse effects and minimizing risk to public health and safety are to be applied for the purpose of ensuring the long term operational and economic viability of the major facility.

[147] Policy 3.5.2 reinforces this direction where avoidance is not possible. Policy 3.5.2 states:

Where avoidance is not possible in accordance with policy 3.5.1, planning authorities shall protect the long-term viability of existing or planned industrial, manufacturing or other *major facilities* that are vulnerable to encroachment by ensuring that the planning and *development* of proposed adjacent *sensitive land uses* is only permitted if potential *adverse affects* to the proposed *sensitive land use* are minimized and mitigated, and potential impacts to industrial, manufacturing or other *major facilities* are minimized and mitigated in accordance with provincial guidelines, standards and procedures.

[148] The Tribunal reasons that policy 3.5.2 directs the planning authority, being the Tribunal in this instance, to protect the long-term viability of the existing or planned quarry operation, being a major facility, by ensuring the potential impacts to the major facility are minimized and mitigated in accordance with provincial guidelines, standards, and procedures. Policy 3.5.2 does address the planning and development of adjacent sensitive land uses only if potential adverse effects to the proposed sensitive land uses are minimized and mitigated. The Tribunal further reasons that this policy addresses introducing sensitive land uses adjacent to major facilities and not the other way around.

[149] The Tribunal finds that that mitigation measures established in the Dust Mitigation Plan and the additional requirements to be added to the Expansion Site Plans will address air quality impacts resulting from quarry operations. The monitoring of air quality in accordance with provincial guidelines, standards, and procedures and the reporting requirements contained in the AMP, the Dust Mitigation Plan, and the Expansion Site Plans will create an accountability that does not currently exist at the Burlington Quarry operation. The Tribunal finds that this is an appropriate requirement for the proposed expansion of the quarry.

Blasting – Flyrock

[150] The Blasting Experts were in agreement that the Blast Impact Analysis (“BIA”) completed in support of the Quarry Expansion sufficiently addressed ground vibrations and air

overpressure as it relates to compliance with the MECP guideline NPC 119 limits at adjacent sensitive receptors.

[151] Robert Cyr reviewed the BIA prepared in support of the Expansion Applications. He reviewed the recommended blasting operation processes to be carried out in a safe manner to suitably manage and mitigate impacts contained in the BIA and included on the Expansion Site Plans (Page 2, Note N.2).

[152] Mr. Cyr addressed 'flyrock', which is a term used to describe rocks propelled from the blast area by the force from the explosion. He stressed that each blast is unique and factors considered when designing a blast include geology, the exclusion area, the proximity of receptors, and the required safety zone. An exclusion zone is created for each blast which can range from 1.5 to 4 times the minimum expected flyrock distance. He explained that flyrock can be controlled by altering the bore hole diameter, the weight of explosives used, and the collar length, being the depth of the charge at the top of the bore hole. The design of the blasts required around the outer limits of the extraction area in close proximity to sensitive receptors will require a design to ensure that flyrock does not leave the quarry lands and the blast does not impact the receptors.

[153] Mr. Cyr confirmed that flyrock is governed by the *Environmental Protection Act* and is not permitted to leave the licensed boundary.

[154] Under cross examination, Mr. Cyr advised that, while all required steps can be taken to reduce the risk of flyrock, accidents can happen and there is no guarantee of safety when working with explosives. The responsibility of the blast design rests with the individual conducting the blast ("Blaster") and they are responsible to set limits of the exclusion zone. Mr. Cyr does not support restricting the blast design parameters through the Proposed Licence as this would restrict the Blaster's ability to modify the many unique factors that effect the design parameters and exclusion zones to each specific blast. Mr. Cyr confirmed that Blasters are not licensed in the Province of Ontario.

[155] Daniel Roy proffered that the BIA misinterpreted the modelling used (Terrock Model) and did not properly determine the safety zone, thereby endangering the residents surrounding the Quarry Expansion Lands. Mr. Roy determined that there are approximately 90 residences (sensitive receptors) within 500 m of the Quarry Expansion Lands, with the closest residence approximately 77 m from the closest proposed extraction limit.

[156] Dominic Hooton identified that Mr. Cyr made an incorrect assumption about the “k” value used in the Terrock formula requiring a reconsideration of the assumptions made in the BIA about the safety zones for flyrock. He recommended that the BIA should be using data from more recent blast events as opposed to that contained in the Golder Reports from 20 years ago.

[157] Mr. Hooton acknowledged during cross-examination that the Terrock Model can be used ‘backwards’ in that inserting desired safety zone value can determine the other factors such as collar length, bore hole diameter, or explosive weight. He agreed that this would allow blast designs to be modified or adjusted to specific circumstances, such as when a blast occurs in close proximity to a sensitive receptor.

[158] The Tribunal notes that Ontario Regulation 244/97 (“O. Reg. 244/97”) includes a rule affecting flyrock in s. 0.13(1) 28, which states: “A licensee or permittee shall take all reasonable measures to prevent fly rock from leaving the site during blasting if a sensitive receptor is located within 500 metres of the boundary of the site.”

[159] The Tribunal expressed concern that the Province of Ontario does not currently regulate or licence Blasters. The Tribunal is left to rely on the MECP’s enforcement of the *Environmental Protection Act* should a blast result in flyrock leaving the site together with the NPC 119 guidelines and the MNR’s enforcement of the ARA Licence provisions and rules as set out in O. Reg. 244/97.

[160] The witnesses were in agreement that Blasters should be licensed; however, that is for the Province of Ontario to implement and there does not appear to be any indication that it is currently being considered.

[161] The Tribunal reviewed the recommendations incorporated on the Expansion Site Plans as requirements and finds that, together with the legislative framework governing the use of explosives for the extraction of aggregates, it is satisfied that Nelson has taken all required and necessary measures to ensure that blasting occurs in a safe manner. The recommended revisions to the Expansion Site Plans notes addressing dust mitigation together with the required monitoring as it will address the air quality impacts associated with blasting and general quarry operations.

[162] The Tribunal notes that expert's have confirmed that the impacts resulting from vibration and over-pressure have been satisfactorily addressed and no evidence was tendered to the contrary.

Land Use Planning

[163] The land use planning experts agreed that the following documents are determinative to the applications:

- Provincial Policy Statement, 2024;
- Niagara Escarpment Plan, 2017;
- Greenbelt Plan, 2017;
- Region of Halton Official Plan, 2006; and
- City of Burlington Official Plan 1997.

[164] The land use planning experts further agreed that the Expansion Applications and the Proposed Licence conform to the Greenbelt Plan, 2017, to the extent to which it applies.

Provincial Planning Statement, 2024

[165] The PPS provides policy direction on matters of provincial interest related to land use planning and development. As a key part of Ontario's policy-led planning system, the PPS sets the policy foundation for regulating the development and use of land province-wide, helping achieve the provincial goal of meeting the needs of a fast-growing province while enhancing the quality of life for all Ontarians⁵.

Section 4.5 Mineral Aggregate Resources

[166] Policy 4.5.1.1 of the PPS states, "*Mineral aggregate resources* shall be protected for the long-term use and where provincial information is available, *deposits of mineral aggregate resources* shall be identified."

[167] Section 4.5.2 of the PPS includes policies for the Protection of Long-Term Resource Supply. Policies 4.5.2.1 and 4.5.2.2 state:

4.5.2.

1. As much of the mineral aggregate resources as is realistically possible shall be made available as close to markets as possible.

Demonstration of need for mineral aggregate resources, including any type of supply/demand analysis, shall not be required, notwithstanding the availability, designation or licensing for extraction of mineral aggregate resources locally or elsewhere.
2. Extraction shall be undertaken in a manner which minimizes social, economic and environmental impacts.

[168] Section 4.5.3.1 requires rehabilitation to accommodate subsequent land uses, to promote land use compatibility, to recognize the interim nature of extraction, and to mitigate negative impacts to the extent possible. Policy 4.5.3.2 encourages comprehensive

⁵ Provincial Policy Statement, 2024, page 2, para. 1

rehabilitation planning. Policy 4.5.4.1 permits mineral aggregate operations in prime agricultural areas on prime agricultural lands, provided that impacts to adjacent agricultural uses are minimized and mitigated and the site is rehabilitated back to an agricultural condition. Policy 4.5.4.2 outlines conditions when rehabilitation back to an agricultural condition is not required, namely where the depth of extraction makes restoration of pre-extraction agricultural capability unfeasible and agricultural rehabilitation in remaining areas is maximized.

[169] Mr. Zeman opined that the Expansion Applications are consistent with these policies. The Quarry Expansion Lands are located within an identified mineral aggregate resource area and makes available as much aggregate as is realistically possible from a close to market location. Extraction has been planned in a manner that minimizes social, economic, and environmental impacts. The Expansion Site Plans rehabilitation plan includes a comprehensive rehabilitation plan incorporating the existing Burlington Quarry and creates a landform that is suitable for natural conservation, water management, agricultural, and recreation uses. He proffered that the resultant landform is compatible with land uses in the area.

[170] Mr. Zeman advised that the Quarry Expansion Lands are located within a prime agricultural area and the South Quarry Extension includes prime agricultural land. Extraction depths on the South Quarry Extension make agricultural rehabilitation unfeasible; however, it is proposed to create an equivalent agricultural area as part of the rehabilitation of the Burlington Quarry. To maximize agricultural rehabilitation, it is proposed to utilize the soils removed from the South Quarry Extension for the Burlington Quarry rehabilitation with the net result being no loss of prime agricultural land.

[171] Nick McDonald proffered that the use of the term “shall” in policy 4.5.2.2 of the PPS suggests minimizing impacts is a mandatory requirement. The policy recognizes that impacts will occur, and he acknowledged that total certainty in mitigating impacts may not be possible. Mr. McDonald proffered that Nelson must use best efforts and take all reasonable steps to achieve substantial certainty that the mitigation efforts will minimize impacts.

[172] Mr. McDonald opined that Nelson must demonstrate that impacts are understood and the proposed mitigation will be effective, specifically with respect to air quality and the function of the Infiltration Pond. He further opined that the JESA habitat boundaries should be confirmed prior to the Tribunal making its Decision.

[173] Mr. McDonald indicated that he supports the use of the AMP; however, relying on future approvals of other agencies does not demonstrate that the impacts are known or understood and he opined that the Tribunal should be aware of such impacts and understand the mitigation proposed when making their Decision.

Section 3.5 Land Use Compatibility

[174] Mr. Zeman opined the Expansion Applications are consistent with policy 3.5.1 of the PPS as the Quarry Expansion lands are a protected mineral aggregate resource area and extraction is an established use in the area. The operation associated with the Quarry Expansion has been designed to minimize impacts and to mitigate any potential effects from odour, noise, or other contaminants. The operation will minimize risk to public health and safety in accordance with provincial guidelines, standards, and procedures and protects the economic viability of the existing Burlington Quarry operation.

Section 4.1 Natural Heritage

[175] Mr. Zeman proffered that the Expansion Applications are consistent with the Natural Heritage Policies contained in section 4.1 of the PPS. In his review of the policies, he proffered that the proposal protects natural features and areas for the long-term and maintains and enhances the natural heritage system. The proposal does not include development or site alteration within significant wetlands. Mr. Zeman advised that the proposal includes the removal of 0.8 ha of significant wildlife habitat; however, the proposed mitigation measures result in no negative impact. The proposal does not propose to remove fish habitat. The removal of a Butternut tree will be undertaken in accordance with provincial

and federal requirements. Adjacent key natural heritage features will be protected from negative impacts through setbacks and mitigation measures set out in the AMP.

[176] Mr. McDonald proffered that the PPS provides an over-arching direction to the Tribunal when making decisions and the Tribunal should incorporate the “precautionary approach” referenced in the NHRM applicable when the potential impacts are unknown.

Section 4.2 Water

[177] Mr. Zeman proffered that Nelson’s proposal is consistent with the policies under section 4.2 of the PPS as the proposal does not result in the removal of any key hydrologic features. The proposal includes an AMP and the comprehensive water management system to protect water resources was considered on a watershed scale. He further contends that the proposed revisions to the Burlington Quarry rehabilitation plan improve water resources at a watershed scale. The proposal is not located within an area identified as municipal drinking water supply area.

[178] Mr. Zeman proffered that he has reviewed the PPS and considered all relevant policies. The Expansion Applications included early engagement of agencies, Indigenous communities, the public, and stakeholders, and he opined that the Expansion Applications are consistent with the PPS.

[179] The PPS includes direction for the Tribunal when considering the implementation and interpretation of the PPS, where it states:

The provincial policy-led planning system recognizes and addresses the complex inter-relationships among environmental, economic, health and social factors in land use planning. The Provincial Planning Statement supports a comprehensive, integrated and long-term approach to planning, and recognizes linkages among policy areas.

The Provincial Planning Statement is more than a set of individual policies. It is to be read in its entirety and the relevant policies are to be applied to each situation. When more than one policy is relevant, a decision-maker should consider all of the relevant policies to understand how they work together. The

language of each policy, including the Implementation and Interpretation policies, will assist decision-makers in understanding how the policies are to be implemented.

There is no implied priority in the order in which the policies appear. While specific policies sometimes refer to other policies for ease of use, these cross-references do not take away from the need to read the Provincial Planning Statement as a whole.⁶

[180] Section 4.5.2.1 of the PPS recognizes the importance of mineral aggregate resources to the economy of the Province with the use of the word “shall”, effectively directing proponents and approval authorities to make the resources available. The Tribunal notes that the policy does contain the caveat being “as is realistically possible.”

[181] The Tribunal reasons that this caveat is applied such that the policy directs a proponent to maximize the amount of aggregate that can be extracted having taken into consideration any restrictions that might limit extraction such as the implementation of appropriate buffers and separations required to mitigate impacts when considered in the context of the other applicable policies.

[182] The Tribunal finds that the closer the resource is to market, the greater the impact of the increased and applicable restrictions on the extraction, and thus the caveat of “as much as is realistically possible” becomes more relevant. Should a proponent be unable to mitigate an impact, the result may include that the extraction of the resource is not realistically possible.

[183] It is clear from the testimony of the experts that it is not possible to identify every impact, nor is it possible to be absolutely certain that the mitigation measures proposed will be effective.

[184] Nelson engaged experts in the field of mineral aggregate resource extraction to anticipate the impacts resulting from the Expansion Applications and has the benefit of having

⁶ Provincial Policy Statement, 2024, page 3, paragraphs 1, 2, and 3.

operated the Burlington Quarry for the past 40 years to draw upon when proposing mitigation measures. The AMP and the Dust Mitigation Plan have included provisions to identify impacts not originally contemplated and propose a process to introduce mitigation measures to respond to such impacts.

[185] Mr. McDonald's overall concern can be summarized as uncertainty. The JESA habitat boundary has not been confirmed by the MECP, and the Infiltration Pond viability or function has not been confirmed.

[186] The Tribunal was directed to the NHRM which provides recommended technical criteria and approaches for determining consistency with the PPS in the protection of natural heritage features and areas⁷. The NHRM is a reference tool for approval authorities⁸ and the Tribunal, when making its Decision, relies on the opinions of the experts. These experts include the MNR and the MECP, and their review of the Expansion Applications has not identified any outstanding issues relating to Natural Heritage matters as of the date of the Hearing. The NHRM references the "precautionary principle" and provides the direction that the Tribunal should "keep in mind the precautionary principle"⁹. The Tribunal has considered the evidence of the Ecologists with respect to the Natural Heritage considerations in this matter and reasons that the considerations of a precautionary approach have been fully presented and considered.

[187] The Tribunal prefers the evidence of Mr. Zeman and finds that the Expansion Applications are consistent with the PPS.

⁷ Natural Heritage Reference Manual for Natural Heritage Policies of the Provincial Policy Statement, 2005, Second Edition (2010), Page 1, Section 1.1

⁸ Natural Heritage Reference Manual for Natural Heritage Policies of the Provincial Policy Statement, 2005, Second Edition (2010), page 1, Section 1.1.1

⁹ Natural Heritage Reference Manual for Natural Heritage Policies of the Provincial Policy Statement, 2005, Second Edition (2010), page 164, Section A.4.2.2, Step 5

Niagara Escarpment Plan

[188] The Burlington Quarry is designated Mineral Resource Extraction Area, and the Quarry Expansion is designated Escarpment Rural Area within the NEP. The NEPA is requested that the Quarry Expansion Lands designation is amended to Mineral Resource Extraction Area.

[189] The introduction section of the NEP states that:

Human impact on the *Escarpment environment* is reflected in a variety of ways. The *Escarpment* area is the site of a large mineral aggregate extraction industry. Demand for permanent and seasonal residences in many areas is intense. Farming ranges from the cultivation of tender fruit and other specialty crops in the Niagara Peninsula to the raising of beef cattle in Bruce County and provision of local food to Ontario's largest population centres nearby. The proximity of that large population also makes the Escarpment a popular tourist destination.¹⁰

The Niagara Escarpment Planning and Development Act established a planning process to ensure that the area would be protected. From this emerged the *Niagara Escarpment Plan* (this Plan), which serves as a framework of objectives and policies to strike a balance between development, protection and the enjoyment of this important landform feature and the resources it supports.¹¹

[190] The Tribunal notes that the NEP recognizes a range of uses that exist on the Niagara Escarpment and the challenge of striking “a balance between the development, protection and enjoyment of the important landform and the resources it supports.”

[191] The purpose of the NEP is to provide for the maintenance of the *Niagara Escarpment* and the land in its vicinity substantially as a continuous *natural environment*, and to ensure only such development occurs as is *compatible* with the *natural environment*¹². The NEP defines compatible as “Where the building, structure, activity or use blends, conforms or is harmonious with the *Escarpment environment*.”¹³

¹⁰ Niagara Escarpment Plan (2017), page 1, para. 4

¹¹ Niagara Escarpment Plan, 2017, page 1, para.5

¹² Niagara Escarpment Plan, 2017, page 7, para. 1

¹³ Niagara Escarpment Plan, 2017, page 129, para,

[192] Mr. Zeman proffered that mineral aggregate operations are a permitted use within the NEP, and section 1.2.2.1 provides for the consideration of new operations within the Escarpment Rural Area land use designation.

[193] Mr. Zeman explained that there are large areas of land surrounding the Burlington Quarry and the Quarry Expansion Lands which maintain a continuous natural environment, noting that the lands to be extracted comprise a golf course and cleared agricultural fields.

[194] Mr. Zeman opined that the Applications meet the objectives of the NEP. He advised that detailed technical studies have been completed which confirm: the Quarry Expansion does not contain any unique ecologic and historic areas; the quality and character of natural streams and water supplies will be maintained during operations and enhanced with the proposed revisions to the rehabilitation plans; the transfer of ownership of the lands to CH provides the opportunity for outdoor recreation and public access to enhance the Niagara Escarpment Parks and Open System; the Quarry Expansion will maintain the open landscape character during operations through visual screening and retention of tree screens; and the rehabilitation plans propose an open landscape character enhanced by the creation of open landform with lakes, ponds, exposed cliff faces, wetlands, and forested areas.

[195] Mr. McDonald acknowledged that mineral aggregate extraction can occur on the Niagara Escarpment; however, the Region's experts have indicated that there is an impact resulting from the proposal and therefore the NEPA is not in compliance with NEPDA.

[196] Ms. Mott proffered that the NEP objective set out at section 1.5.1.7 is not to be interpreted as an endorsement of Mineral Resource Extraction use; it merely sets out the acknowledgement of the process. Any proposal to establish an aggregate use must conform with the other policies contained in the NEP. Ms. Mott contends that the NEP is an environment first plan and takes a broad approach, and she asserts that the objective of the NEP is not to damage and replace; the objective is to protect, maintain and enhance. The policies of the NEP are precautionary and do not contemplate unknowns.

[197] Section 2.2.1 of the NEP states “The *Escarpment environment* shall be protected, restored and where possible enhanced for the long term having regard to single, multiple or successive development that have occurred or are likely to occur.” Mr. McDonald proffered that Nelson is relying on enhancement measures contained in the proposed rehabilitation plans; whereas he opined that Nelson must first focus on ensuring that the proposal protects the escarpment environment and does not create a negative impact. Mr. McDonald proffered that this section is particularly applicable with respect to the Infiltration Pond and Nelson has not determined whether a negative impact will result from the creation of the Infiltration Pond.

[198] The AMP requires the demonstration that the Infiltration Pond functions as proposed; however, the requirement is to be addressed after the approval of the Tribunal. Mr. McDonald acknowledged that absolute certainty can not be achieved; however, he proffered that a test pond could be constructed prior to the approval of the Applications and if it is determined that the Infiltration Pond does not achieve its intended function, there is no need to pursue the applications any further.

[199] Ms. Mott opined that the thresholds referenced in the AMP should be established prior to the approval of the application. Ms. Mott expressed her lack of confidence in the agencies that are to provide oversight of the requirements contained in the AMP, thereby resulting in the AMP not being effective.

[200] Section 2.6.3 a) of the NEP states:

If, in the opinion of the *implementing authority*, a proposal for development within 120 metres of a key hydrologic feature has the potential to result in a *negative impact* on the feature and/or its functions, a hydrologic evaluation will be required that:

- a) demonstrates that the development, including any alteration of the natural grade or drainage, will protect:
 - i. the key hydrologic feature or the *hydrologic functions* of that feature;
 - ii. the quality and quantity of groundwater and surface water;

- iii. natural *streams* or drainage patterns; and
- iv. the overall water budget for the watershed, including existing and planned municipal drinking water systems

[201] Mr. McDonald summarized section 2.6.3 a) as requiring that it has been demonstrated that the development will protect: hydrologic features, quality and quantity of ground water and surface water, and the overall water budget for the watershed. The Region's experts have raised the potential for negative effects and, as a result, Mr. McDonald concludes that the proposal does not conform with the NEP.

[202] In consideration of section 2.6.3 a), the Tribunal also considered section 6.1 (2.1) and 10(6) of the NEPDA, which requires that amendments to the NEP include justification in the form of research materials, reports, and plans, and that this information is available to the public for review. The Tribunal reasons that the NEC has entered into MOS with Nelson which the Tribunal accepts as confirmation that the NEC is satisfied that sufficient justification for the NEPA has been received.

[203] Ms. Mott submits that aggregate extraction is an interim use, and she proffers the Burlington Quarry has completed extraction, and it is time to conclude operations. She opined that the quarry use is not compatible with sensitive land uses and the buffers proposed are not appropriate.

[204] Ms. Mott raised questions concerning the appropriateness of the location for a park use proposed for post-rehabilitation, adequacy of protection of private water wells, the transfer of the lands to the CH post-rehabilitation, the suggestions of impact on significant features, and lack of evidence on how impact will be minimized.

[205] Ms. Mott opined that the NEPA and Development Permit should not be approved as they will conflict with the policies of the NEP, the proposal breaks up the natural environment of the escarpment and does not represent good planning.

[206] Mineral aggregate extraction is a use contemplated by the NEP and the Tribunal finds that the rehabilitation of the Burlington Quarry and the Quarry Expansion Lands after the interim use of the extraction of the mineral aggregate resource strikes a balance between development and protection, ultimately resulting in the enjoyment of this important landform that is compatible with the Niagara Escarpment environment.

[207] The NEP provides direction to read the NEP in its entirety and where more than one policy is relevant, the Tribunal will consider all of the relevant policies¹⁴. The Tribunal finds that the purpose and objectives of the NEP and the NEPDA have been achieved; Nelson has responded to the requirements of the NEPDA and demonstrated that, on balance, the Expansion Applications conform with the NEP.

[208] The Tribunal finds that the Expansion Applications conform with the NEP when the NEP is read in its entirety and the purposes and objectives are considered when applying the policies contained in the NEP. The opposition to the NEPA and Development Permit appear to be based on speculation and apprehension. The City and the Region have been clear in their position that they do not support the Expansion Applications. Simply advancing a contrary opinion that the works undertaken by Nelson are insufficient or incorrect when the MNR, MECP, and the NEC have indicated that they are satisfied with the reports and studies leaves the Tribunal to consider the implementing authority's position as determinative position when assessing the evidence.

Region of Halton Official Plan

[209] Sections 110, 111, and 112 of the ROP provide a set of policies specific to mineral aggregate resources and aggregate extraction operations.

¹⁴ Niagara Escarpment Plan, 2017, page 6, para. 1

[210] Policy 110(1) states “It is the policy of the Region to require the Local Municipalities to ... protect [mineral aggregate operations] from new land uses incompatible with such operations for reasons of public health, public safety, or environmental impacts or which would preclude or hinder the expansion or continued such operations.”

[211] The ROP acknowledges that aggregate operations create impacts and sets as a policy that the aggregate operation is to be protected from the introduction of new incompatible land uses. Based on the opposition to the Expansion Applications being primarily from residential properties, the Tribunal reasons that the Region has determined that the residential uses surrounding the Burlington Quarry do not hinder the aggregate operation or preclude the expansion of the operation. Had the Region determined otherwise, the Tribunal expects that it would have opposed the introduction of new residential uses in proximity to the Burlington Quarry as the use would be deemed incompatible. The Tribunal notes that this policy is consistent with the policies set out in section 3.5 of the PPS.

[212] Policy 110(2) states “It is the policy of the Region to require that all extraction and accessory operations be conducted in a manner which minimizes environmental impact in accordance with Provincial standards and requirements and Regional and Local Official Plan *policies*.”

[213] The Tribunal finds that policy 110(2) contemplates environmental impacts arising from mineral aggregate extraction operations, and this interpretation was generally accepted by the experts during the Hearing. The Tribunal understands that mineral aggregate extraction operations result in impacts and finds that minimizing impacts and avoiding adverse impacts is a focus of the ROP.

[214] ROP policy 110(3) sets out that it is the policy of the Region to:

Establish as a priority the protection of surface and groundwater from the adverse impacts of extraction. Accordingly, the proponent of new or expanded *mineral aggregate operations* is required to carry out comprehensive studies and undertake recommended mitigation and/or remedial measures and on-

going monitoring in accordance with Provincial requirements and *policies* of this Plan and in consultation with *Conservation Authorities*.

[215] Nelson has completed comprehensive studies including the creation of the EarthFX Model to predict the impacts of the extraction on ground water and surface water resources. Mitigation measures and monitoring procedures have been established within the AMP in consultation with the MNR, MECP, NEC, CH, the Region, and the City. A rehabilitation plan has been prepared in anticipation of the transfer of the Nelson lands to CH at the conclusion of extraction and the surrender of the Existing Licences and the Proposed Licence to the MNR.

[216] Mr. McDonald proffered that the effectiveness of the mitigation measures is to be demonstrated at the time of a decision by the Tribunal. He contends that this has not been done and as a result, Mr. McDonald opined that conformity with the ROP has not been achieved.

[217] The EarthFX Model provides the ability to simulate the proposed extraction and anticipate impacts that result. Mitigation measures can be identified and introduced, and the EarthFX Model can then be used to assess their effectiveness. The Tribunal finds that Nelson has undertaken the necessary works to demonstrate conformity with the ROP.

[218] Policy 110(8)(e) of the ROP speaks to public financial liability of continuous active on-site infrastructure management. Concerns were raised that the transfer of the title of the Nelson lands to CH at the completion of the rehabilitation including the Perpetual Pumping infrastructure may create a risk for the taxpayer. Policy 110(8)(e) states:

That it is the policy of the Region to evaluate each proposal to designate new or expanded Mineral Resource Extraction Areas based on its individual merits and consideration of all the following factors:

...e) risk of public financial liability during and after extraction where continuous active on-site management is required.

[219] Further, Policy 110(8.2) states “It is the policy of the Region to discourage the use of *adaptive management plans* or similar measures that will require continuous or perpetual active on-site management post rehabilitation.”

[220] Mr. Zeman advised that the LCA includes provisions for monies to be provided to CH for the ongoing operation and maintenance of the infrastructure related to the Perpetual Pumping as described on the rehabilitation plans. He confirmed that the ROPA for proposed expansion addresses the risk of public financial liability.

[221] In consideration of ROP policy 110(8)(e) and 110(8.2), the Tribunal acknowledges that CH has entered into an LCA with Nelson for the transfer of the title of the Burlington Quarry, the South Quarry Extension, and the West Quarry Extension at the conclusion of extraction and upon the completion of the required rehabilitation works.

[222] Having considered the evidence proffered in respect to the ROP, the Tribunal finds that the Expansion Applications conform with the policy direction set out in the ROP. Impacts have been identified and mitigation measures have been proposed to address the impacts. The AMP is the mechanism through which impacts are identified, and mitigation measures are implemented.

City of Burlington Official Plan

[223] The status of the COP as it applies to the Burlington Quarry, the Quarry Expansion Lands, and the applicable policies surrounding mineral aggregate extraction was described as complicated. The City adopted a new official plan in 2020, replacing the 1997 official plan. Nelson appealed several of the policies related to mineral aggregate extraction.

[224] The land use planning experts agreed that the COP 2020 is informative but not determinative to the Planning Applications. The result is that the 1997 version of the COP in force at the time the COPA was submitted applies to the Quarry Expansion lands.

[225] Mr. Zeman opined that the COPA will address consistency with the PPS, conformity with the NEP, and conformity with the ROP.

[226] Mr. Stuart acknowledged that the applicable COP policies designate the Quarry Expansion lands as Escarpment Rural Area which provides for mineral aggregate extraction.

Matters of Provincial Interest (Section 2 of the Planning Act)

[227] Mr. Zeman proffered that the Expansion Applications have regard for matters of provincial interest as set out in section 2 of the PA. He opined the Expansion Applications protect and enhance ecological systems, protect agricultural resources, and will make available a high-quality mineral aggregate resource.

[228] Mr. McDonald proffered that the experts engaged by the Region have indicated that there are a number of significant natural heritage features that may be potentially affected by the approval of the Expansion Applications and he contends that not enough is known about the potential impacts to these features. As a result, Mr. McDonald opined that the Expansion Applications do not have appropriate regard for the provincial interest of protecting of ecological systems including natural areas features and functions, as set out in section 2(a) of the PA.

[229] It was acknowledged that section 2(c) of the PA identifies that the conservation and management of natural resources and the mineral resource base is a provincial interest.

[230] When considering the provincial interests described in section 2 of the PA, the Tribunal can not prioritize one interest over another. The Tribunal must have regard for each of the interests set out and in so doing fulfils its obligation under the PA. The Tribunal must consider the evidence presented and determine whether, in its opinion, the Applicant has had what has been referred to as appropriate regard for the interest.

[231] The Applicant has engaged experts that have studied the ecological systems including the water resources and the natural heritage features that will be impacted by the Expansion Applications. The experts have submitted reports to the MNR and the MECP describing their findings and making recommendations for mitigation of the identified impacts. The Tribunal has considered the *viva voce* testimony from experts that have reviewed the reports and the recommendations. The Tribunal notes that many of the recommendations have been incorporated into the Expansion Site Plans and the AMP to form part of the Proposed Licence upon issuance.

[232] The Tribunal, having reviewed the matters of provincial interest set out in section 2 of the PA is satisfied that the Expansion Applications have regard for those matters.

Aggregate Resources Act (Section 12(1))

[233] Mr. Zeman opined that the Proposed Licence and the Expansion Site Plans have regard for matters to be considered under section 12 of the ARA.

[234] Section 12(1) of the ARA states:

12 (1) In considering whether a licence should be issued or refused, the Minister or the Tribunal, as the case may be, shall have regard to,

- (a) the effect of the operation of the pit or quarry on the environment;
- (b) the effect of the operation of the pit or quarry on nearby communities;
- (c) any comments provided by a municipality in which the site is located;
- (d) the suitability of the progressive rehabilitation and final rehabilitation plans for the site;
- (e) any possible effects on ground and surface water resources including on drinking water sources;
- (f) any possible effects of the operation of the pit or quarry on agricultural resources;
- (g) any planning and land use considerations;
- (h) the main haulage routes and proposed truck traffic to and from the site;

- (i) the quality and quantity of the aggregate on the site;
- (j) the applicant's history of compliance with this Act and the regulations, if a licence or permit has previously been issued to the applicant under this Act or a predecessor of this Act; and
- (k) such other matters as are considered appropriate.

[235] The Tribunal considered the evidence in the context of the matters identified in section 12(1) of the ARA and is satisfied that the Proposed Licence has regard for such matters. The effect on the environment, nearby communities, ground and surface water, and agricultural resources have been evaluated and impacts have been identified. Mitigation measures are proposed where land use considerations have been evaluated through the COPA, ROPA and the NEPA. Nelson has responded to the comments of the City and the Region. The main haulage routes and traffic impacts have been evaluated and were not raised as issues in these proceedings. The MNR raised no issues relating to compliance with the ARA in respect to the Burlington Quarry operation or other licensed issued to the Applicant.

PROCEDURAL MATTERS

[236] Over the course of the Hearing, there were matters of a procedural nature which required the Tribunal's direction and warrant documenting. A summary of those matters and the Tribunal's disposition is set out below.

Evidence Submitted in Respect to Consequences Should the Appeals Not Be Allowed

[237] Early in the proceedings, the Tribunal heard submissions relating to impacts that would result if the Tribunal did not allow the appeals and the Expansion Applications were not approved. The submissions inferred that should the proposed expansion not be allowed, then upon the conclusion of the extraction of the Burlington Quarry, the dewatering of the quarry would cease and in turn result in a negative impact on the ground water and surface water in

the area surrounding the Burlington Quarry, and negatively impact the existing natural heritage features.

[238] The Tribunal confirmed that the Existing Licences authorizing the Burlington Quarry operation, including the approved rehabilitation requirements, are not matters before the Tribunal in these proceedings.

[239] The Tribunal directed that any evidence proffered should be related to the proposed expansion as set out in the Expansion Applications and the impacts related to the matters contained therein.

[240] Specifically, the Tribunal directed that evidence suggesting that the alternative to an approval of the Expansion Applications will result in a negative impact on the Natural Heritage Features is not appropriate or relevant to the determination of the merits of the appeals before the Tribunal.

[241] Nelson objected to the exclusion of evidence related to ceasing Perpetual Pumping as it is Nelson's position that the alternative to Perpetual Pumping is a relevant consideration in these proceedings. The Issues List, namely Issues 24, 39, 66, and 71, address the issue of Perpetual Pumping.

[242] The Tribunal considered Nelson's submissions and held that the matter before the Tribunal is a proposal to expand the Burlington Quarry, specifically the proposed West Quarry Extension and the South Quarry Extension. Further, the Tribunal notes that the proposal includes the Perpetual Pumping of the extracted lands.

[243] The Tribunal acknowledges the conditions of the Existing Licence, as it relates to the operation and rehabilitation of the existing quarry operation, do not include Perpetual Pumping. Further, the Tribunal acknowledges that Burlington Quarry operation is relevant as it is contextual to the matters before the Tribunal. However, the Tribunal finds that the rehabilitation of the Burlington Quarry as required by the Existing Licence and any potential

impacts that may result from the required rehabilitation are not matters before this Panel and therefore shall have no bearing on the Tribunal's determination of the merits of the appeals before the Tribunal.

[244] Nelson may provide evidence with respect to Perpetual Pumping in support of the Expansion Applications and in response to issues raised.

[245] The Tribunal directed that evidence or submissions related to the impacts of the cessation of Perpetual Pumping of the Burlington Quarry, as required by the Existing Licence, will not be permitted.

Request for an Exclusion Order (May 6, 2025)

[246] Mr. White, Counsel for Nelson, requested that the Tribunal issue an Exclusion Order for the water-related witnesses for the City, the Region, and CORE/PERL ("Parties Opposite"). He submits that Nelson presented four witnesses; two of which testified as a panel, in three distinct disciplines with minimal overlap of their testimonies. Mr. White advised that the Parties Opposite are proposing to tender eight water-related witnesses, and he contends, having reviewed their witness statements, that there is considerable overlap.

[247] Mr. White requested that the Tribunal issue an Order to exclude the witnesses from the proceedings during the cross-examination of the other water-related witnesses of the Parties Opposite. The reason for the request arises as a result of the considerable overlap in the evidence and the time between the cross-examination of the first witness and each of the next water-related witnesses. This time, which could be as long as a week, Mr. White contends will provide the witnesses with the opportunity and time to consider the questions and prepare their answers for their cross-examination.

[248] Mr. White submitted that this forewarning of the cross-examination questions will impact Nelson's ability to get a fair hearing, and he asked the Tribunal to consider the

prejudice against Nelson's submissions that having the witnesses in attendance for the cross-examination of like witnesses for the Parties Opposite.

[249] Ms. Danahy responded that this matter should have been addressed by Nelson when the witness statements were circulated many months prior to the commencement of this Hearing. Ms. Danahy noted that the Nelson water experts were present for the cross-examination of each of the Nelson witnesses. To request the exclusion of the witnesses of the Parties Opposite and not apply the same rule to the Nelson witness creates an error in law and potentially a legally reviewable error and grounds for appeal.

[250] Ms. Danahy contends that should Nelson have wanted to raise this issue with the Tribunal, a proper Motion should have been requested. To raise this matter at the end of the day is not proper nor appropriate. Ms. Danahy referenced the Trespass Motion considered by the Tribunal earlier in the proceedings as the process through which such a request should be addressed, if it is deemed appropriate by the Panel.

[251] Mr. Germain, Counsel for the Region, referenced Tribunal's *Rules of Practice and Procedure* (the "Rules") and submitted that rule 10.10 outlines the proper procedure for bringing a motion before the Tribunal during a hearing. The process was not followed.

[252] The witness statements were to be filed by October 1, 2024, six months prior to the commencement of the Hearing. The Parties worked collaboratively to create a Hearing Plan and grouped the like witnesses together. Mr. Germain submits that this was the time that Nelson could have raised the concern and sought direction from the Tribunal. Instead, Nelson waited until the Hearing commenced and their water-related witnesses had completed their testimony. Mr. Germain contended that this is unfair.

[253] Mr. Germain directed the Tribunal to the case law submitted by Nelson in support of their request. In *555816 Ontario Inc., Re*¹⁵, the Ontario Municipal Board (“Board”) was considering a Motion requested prior to the commencement of evidence. This request is being made after the commencement of the Hearing and after the evidence of Nelson has been considered.

[254] In *Eliopoulos v. King (Township)*¹⁶ (“*Eliopoulos*”), the Board states at paragraph 12:

No evidence was presented to show that Mr. Lehman, a highly respected planner with more than 40 years of experience, would change or tailor his evidence based on the answers given by Mr. Kitchen under cross-examination. In fact, Mr. Melling, when introducing his motion, made that exact point. As an expert, Mr. Lehman’s opinion would be based on facts. He would not be creating facts to support the opinion. The Board agreed with the observations of Mr. Halinski in response to the motion when he noted that the best evidence would be heard if Mr. Lehman remained in the room during Mr. Kitchen’s cross-examination, and Mr. Melling’s motion was denied.

[255] Mr. Germain submitted that Nelson has not put any evidence in front of the Tribunal to suggest that the witnesses for the Parties Opposite would tailor their evidence as suggested by Mr. White.

[256] In *Kimvar Enterprises Inc. v. Simcoe (County)*¹⁷ (“*Kimvar*”), the Board states at paragraph 3(2):

The fact that we are dealing with evidence of experts possessing technical expertise, further suggests that the exclusion order not be made. As Quinn, J. stated in *Auto Workers’ Village (St. Catharines) Ltd. v. Blaney, McMurtry, Stapells, Friedman*, 35 O.R. (3d) 29, [1997] O.J. No. 2660 (General Division):

The obvious rationale behind Rule 52.06 (1) is the fear that a witness will tailor his or her testimony based on the evidence heard in court. This fear is not nearly as prominent with experts (who do not speak to facts) as it is with laypersons. Experts give opinions based upon facts; they do not create the facts upon which their opinions are founded. However, an expert might be more aware that counsel regarding the importance, or lack thereof, of a given fact. An

¹⁵ *555816 Ontario Inc., Re*, 2005 CarswellOnt 3759, 20 C.E.L.R. (3d) 184, 50 O.M.B.R. 416, at para. 7

¹⁶ *Eliopoulos v. King (Township)*, 2014 CarswellOnt 1326, [2014] O.M.B.D. No. 40, 83 O.M.B.R. 503

¹⁷ *Kimvar Enterprises Inc. v. Simcoe (County)*, 2006 CarswellOnt 10218, at para. 3 (2)

expert, therefore, could be of great assistance in suggesting to counsel questions to be put to witnesses both in-chief and in cross-examination. An expert could grasp a subtle factual distinction that arises in the evidence which otherwise might elude counsel.

[257] Mr. Germain contended that the same consideration applies as in this matter, the evidence at issue is being tendered by technical experts and their presence could be of assistance to the Counsel. Further, the Board denied the Motion in this matter.

[258] Mr. Germain requested that the relief being sought by Nelson be denied. Nelson has provided no evidence in support of their request and granting the request would unfairly prejudice the Parties Opposite by imposing one set of rules on Nelson and a different set on the Parties Opposite.

[259] Mr. Donnelly, Counsel for CORE/PERL, submits that the request, if it is a motion, is not properly before the Tribunal as set out by Mr. Germain.

[260] Mr. Donnelly contends that the Board set the bar high in *Eliopoulos* for good reason, and Nelson has not placed any evidence before the Tribunal to support their request.

[261] The Tribunal has considered the submissions of the Parties, with respect to the request from Nelson, to exclude certain witnesses during the cross-examination of the like experts.

[262] The Tribunal holds, as the Board found in *Eliopoulos*, that no evidence has been advanced to suggest that the experts of the Parties Opposite will tailor their responses to support an opinion offered during the cross-examination of another witness.

[263] In *Kimvar*, the Board found that the fact that the evidence being offered was by experts supported not granting the request. The Panel similarly finds that the witnesses are experts in their respective fields and further, each of the witnesses has signed an Acknowledgement of Experts Duty form setting out the professional obligations and responsibilities to this Tribunal.

[264] The inference that an expert being present for the cross-examination of a witness in the same or similar discipline does not support the contention that the expert's opinions will change based on the cross-examination of the witness.

[265] If Nelson had concerns with the duplication of evidence or the issue of overlapping of evidence, Nelson should have addressed this issue with a motion brought prior to the Hearing and in accordance with the Tribunal's Rules.

[266] The Tribunal finds that the request to exclude the witnesses during cross-examination is not warranted in this instance and the request is denied.

Land Conveyance Agreement

[267] Nelson and CH negotiated a conveyance of the Burlington Quarry and Quarry Expansion Lands from Nelson to CH at the conclusion of the extraction and after the completion of the rehabilitation as required by the Proposed Licences and Existing Licences. Nelson provided a copy of the LCA to the Tribunal with the consent of the CH, which included numerous redactions as directed by CH.

[268] The Parties Opposite requested that Nelson provide an unredacted copy of the LCA to the Tribunal for review should Nelson wish to rely on this agreement.

[269] The Parties Opposite submitted that if CH, a public body, is to accept the financial liability associated with taking ownership of the quarry lands and the infrastructure associated with the continuous active on-site management of the dewatering infrastructure, the Parties Opposite should be afforded the opportunity to review the LCA, in its entirety, to ascertain whether the conformity with the ROP is achieved as it relates to the assumption of risk of public financial liability associated with the LCA.

[270] Mr. Stavrakos, Counsel for CH, attended at the invitation of the Tribunal. Mr. Stavrakos advised the Tribunal that the Board of Directors of the CH has not authorized the release of

an unredacted version of the LCA. Should the Tribunal wish to obtain a copy of the unredacted LCA, it would require him to make such a request of the CH at its next Board meeting so that he could receive direction from his client.

[271] Mr. Barnett, Counsel for the Region, submitted that the LCA, on its face, is not a confidential agreement, and the Tribunal has not been provided with a reason to not disclose the contents of the LCA.

[272] Ms. Boily, Counsel for the City, submitted that the redactions appear significant and should be made available so that the Parties Opposite can make their own assessment of the risk to public financial liability.

[273] Mr. Donnelly contends that the approach to this issue is backwards. The Tribunal should be determining whether, pursuant to rule 22.2 of the Rules, the matters contained in the agreement are of a confidential nature and should not be disclosed to the public. CH has predetermined the confidentiality of the contents of the LCA to which the Tribunal is entitled to view.

[274] Mr. Donnelly referred the Tribunal to a Decision of the Local Planning Appeal Tribunal (“LPAT”) referenced as Case No. PL190106 and PL161306¹⁸ in which the LPAT considered a Motion on the question of confidentiality Orders and the considerations as provided for in rule 22 of the Rules. The LPAT reasoned that the Tribunal must weigh the stated potential harm of disclosure and ensure that there is transparency in its proceedings to the extent possible¹⁹. Further, the Tribunal ruled that the agreement should be available to the public.

[275] Mr. Donnelly questioned what is contained in the agreement that CH and Nelson do not want disclosed? He submitted that if the Tribunal is being asked to rely on the LCA, then it

¹⁸ *Dig-Con International Limited v. Caledon (Town)*, 2020 CanLII 103047 (ON LPAT)

¹⁹ *Dig-Con International Limited v. Caledon (Town)*, 2020 CanLII 103047 (ON LPAT), par. 30

needs to be presented to the Tribunal, and if there are issues with respect to confidentiality, they must be raised before the Tribunal.

[276] Ms. Mullin, Counsel for Nelson, advised that Nelson has consented to the release of the unredacted LCA; however, as Mr. Stavrakos has advised, CH has not provided the same direction. Ms. Mullin submitted that the Tribunal has broad powers authorized under section 9 of the *Ontario Land Tribunal Act* ("OLTA") and could order that the unredacted LCA be provided.

[277] In consideration of the submissions from the Parties and the issues pertaining to providing an unredacted version of the LCA, the Tribunal ruled that, pursuant to the authority set out in section 9 of the OLTA, should Nelson intend to rely on the LCA and its contents, Nelson shall provide a copy of the LCA without redaction.

[278] The Tribunal reasoned that, during the course of the proceedings, it has become apparent that the financial considerations contained within the LCA have been identified as being relevant considerations in the matter at issue before the Tribunal. The Tribunal notes that a request for a Confidentiality Order pursuant to the Rules has not been filed with the Tribunal.

[279] The Tribunal finds that any evidence to be relied upon must be presented before the Tribunal in an open and transparent (unredacted) manner for adjudication. Should such evidence be purported to be of a confidential nature, such evidence should be accompanied with a request for consideration under rule 22 of the Rules prior to it being tendered for the consideration of the Tribunal.

[280] Nelson provided a copy of the unredacted LCA and the Tribunal marked the document as Exhibit 110.

Trespass Motion

[281] CORE/PERL (“Moving Parties”) brought a Motion seeking an Order from the Tribunal declaring that Nelson has knowingly filed and sought to rely on evidence obtained by trespass and an Order requiring Nelson to identify each reference to the evidence that was obtained during said trespass.

[282] A Response to the Motion was received from the City and the Region in support of the Motion.

[283] Nelson submitted a Response to the Motion requesting that the Motion be dismissed and requesting an Order preserving their rights to seek costs for this Motion.

[284] Having considered the submissions filed by the Parties, the Tribunal finds that the issue of determining trespass is not within the jurisdiction of the Tribunal. Property owners have rights and remedies available to them separate and apart from the Tribunal’s process.

[285] The Tribunal does not condone trespass and expects that experts in the fields of geology, hydrology, hydrogeology, and ecology, all of which require terrestrial observations as a significant component of their discipline, would be aware of the rules of trespass in the Province of Ontario.

[286] The Moving Parties assert that the Nelson agents did commit trespass when obtaining evidence with respect to the observations of the geological characteristics of the Medad Valley and did commit trespass during the placement and monitoring of the water monitoring gauge, referenced as SW14, within the Willoughby Creek in proximity to the road allowance of No. 2 Side Road where it intersects with the Willoughby Creek.

[287] In considering the submissions with respect to the identification of the geological characteristics of the Medad Valley, the Tribunal accepts that locations identified south of the unopened road allowance of No. 2 Side Road are located on privately owned lands.

[288] The Tribunal accepts the Affidavit evidence of Dr. Worthington wherein he submits that he was acting on the understanding that permission was granted to access the affected property containing Willoughby Creek located between Lake Medad and the unopened road allowance of No. 2 Side Road. No evidence has been provided by the affected property owner to contradict this assertion.

[289] In considering the submissions with respect to the placement and the monitoring of the water monitoring gauge SW14, the Tribunal finds that the precise location of water monitoring gauge SW14 has not been confirmed.

[290] The Tribunal has been provided with mapping generated using publicly available mapping program provided on the MNR website. The mapping proffered to the Tribunal contained in the Affidavit of James Gordon Pinard includes property boundaries layered on an aerial photograph base map which then has a series of markings that have been added over top of this base information. This mapping is not a substitute for a Plan of Survey prepared by a qualified Ontario Land Surveyor. The Tribunal does not accept the mapping of Mr. Pinard as confirmation of the location of the water monitoring gauge SW14.

[291] Mr. Twigger, in his Affidavit, advised that he was intending to place the water monitoring gauge SW14 within the limits of the unopened road allowance of No. 2 Side Road and, subject to a margin of error in his GPS device, he understood that the device was located within the limits of the unopened road allowance.

[292] The City has confirmed that there is a process that allows alterations to City owned lands which would permit the installation of a water monitoring gauge. The City, in its Response, submitted that such approval has not been sought by Nelson.

[293] Nelson contends that the approval referenced by the City is not applicable in this instance.

[294] The Tribunal directs Nelson and its agents to address this requirement with the City and should it be confirmed that a permit for the placement of the water monitoring gauge is required, Nelson, or its agent, shall apply for and secure such approval as soon as is reasonably possible.

[295] The precise location of the water monitoring gauge must be confirmed with the required permission to be secured from the City for the alteration of City lands. Should it be determined that the water monitor gauge SW14 is not located within the No.2 Side Road road allowance, the water monitoring gauge SW14 should be relocated within the limits of the unopened road allowance in accordance with a permission issued by the City.

[296] As cited earlier, the determination of trespass does not rest with this Tribunal and, as such, it is not within the Tribunal's purview to determine whether the actions of the Nelson agents constitute trespass.

[297] The Tribunal has not been advised if the affected property owners have pursued remedies available to them to address the matter of trespass, and these same property owners have not raised the issue before this Tribunal.

[298] Therefore, as the question of trespass has not been determined and it falls outside of the Tribunal's jurisdiction, the Tribunal will not be ordering the declaration sought by the Moving Parties as the underlying assumption of the request that the evidence provided by the Nelson agents was obtained by "unauthorized trespass".

[299] The request for an Order to identify references to the evidence that was obtained by trespass similarly fails as the determination of trespass is outside the jurisdiction of the Tribunal.

[300] Accordingly, the Motion is dismissed.

[301] With respect to the request by Nelson to preserve its right to make a request for costs, the Tribunal directs the Parties to rule 23 of the Rules, which set out the processes available to Nelson should it wish to pursue a request for an award of costs.

Light Detection and Ranging (“LiDAR”) Monitoring Evidence Exclusion

[302] Ms. Danahy raised an objection to Mr. Twigger’s *viva voce* testimony proposing monitoring of the wetlands on the Harmer Lands. Monitoring of the off-site wetlands has been an issue dating back to the Hearing of the Joint Board and Ms. Danahy submits that Mr. Twigger was aware of the concerns with off-site monitoring prior to the Hearing; however, Mr. Twigger did not address the issue in his Witness Statement. Ms. Danahy further submitted that the AMP is also silent on the issue of off-site monitoring of the Harmer Lands.

[303] Ms. Danahy contended that the Parties are required by the Tribunal’s rule 7.4 of the Rules to file a witness statement containing the issues the expert will address. Further, the Rules of Civil Procedure²⁰ at section 53.03(3) states that an expert witness may not testify with respect to an issue unless the substance of their testimony is set out in a report.

[304] Ms. Danahy submitted that the introduction of this “new information” during the testimony of Mr. Twigger prevents the City and other Parties from properly responding to the evidence, and results in a prejudice against the other Parties. The evidence that Nelson now intends to rely on a drone to monitor the Hilltop Pond and Wetland 13033 using Light Detection and Ranging (“LiDAR”) technology ought to have been included in Mr. Twigger’s Witness Statement to provide the opportunity to prepare a response. Further, there are questions to legal rights to undertake such monitoring and the qualifications of Mr. Twigger to speak to the proposed monitoring. Ms. Danahy requested that the Tribunal to disregard the evidence of Mr. Twigger as it relates to the proposed off-site monitoring of the wetlands located on the Harmer Lands.

²⁰ *Courts of Justice Act*, R.R.O. 1990, Regulation 194, Rule 53

[305] The Region shared the objections raised by the City.

[306] Mr. Donnelly advised that the permission to access the Harmer Lands has not been granted. Further, LiDAR is an emerging technology and the limitations are unknown. Mr. Donnelly advised that an adjournment would be necessary to allow his clients the opportunity to engage an expert to respond to the Nelson submissions.

[307] Ms. Mullin responded that there have been other references to LiDAR technology in the evidence before the Tribunal. Technology is continually evolving, and LiDAR is a technology extensively used by Geoscientists. The AMP addresses the monitoring of the wetlands; however, it does not include the specific method by which the monitoring is to occur.

[308] Having considered the submissions of the Parties, the Tribunal rules that the evidence proffered by Mr. Twigger, with respect to the off-site monitoring of wetland features and the identified JESA habitat with the use of LiDAR technology, be excluded.

[309] The Tribunal finds that the introduction of off-site monitoring using a drone and LiDAR technology was not previously raised by Mr. Twigger in his Witness Statement, nor his Reply Witness Statement. Further, the AMP does not identify the off-site monitoring of the wetland features or the JESA Habitat using drones or LiDAR technology.

[310] The Procedural Order for these proceedings included an Issues List that clearly identified the issue of off-site monitoring of the wetlands and JESA habitat. The Procedural Order required that witness statements be filed by the Parties' experts in advance of the Hearing. The Witness Statement of Mr. Twigger did not include reference to off-site monitoring using drones and LiDAR technology.

[311] The Tribunal finds that introducing this evidence at the Hearing without having previously raised this prospect does not provide the Parties Opposite the opportunity to respond to the evidence proposition, and this results in prejudice to the Parties Opposite.

[312] As such, the Tribunal directs that the evidence of Mr. Twigger, as it relates to the premise of monitoring the off-site wetlands and JESA habitat using LiDAR technology, be excluded.

Witness Admonishment

[313] During the cross-examination of Dr. Wicks, Mr. Barnett raised an issue as it relates to the actions of Mr. Kassenaar during the cross-examination of Mr. Twigger.

[314] The Tribunal was provided documents by Dr. Wicks in response to undertakings given by Dr. Wicks during her cross-examination. The document in question, Exhibit 162, contained a string of emails including an email dated March 27, 2025, at 1:12 a.m., from Mr. Kassenaar to the Nelson "Team", including Mr. Twigger.

[315] Mr. Barnett directed the Tribunal to the transcripts of the proceedings for the date of March 26, 2025, where on page 158 at lines 1-3, the Tribunal advises that the cross-examination of Mr. Twigger will commence on the morning of March 27, 2025, at 10:00 a.m.

[316] Counsel for the City and CORE/PERL shared the concern raised by Mr. Barnett.

[317] The Tribunal noted that the direct examination of Mr. Twigger had concluded at the end of the day on March 26, 2025, and as of the adjournment of the proceedings at 4:48 p.m., Mr. Twigger was under cross-examination. It is a well-accepted practice and expectation of the Tribunal that a witness under cross-examination does not communicate with Counsel or others involved in the proceeding until such time as the cross-examination has concluded.

[318] Mr. Kassenaar's action is in direct contravention of this practice, and the Tribunal found that this is unacceptable.

[319] The Tribunal has previously expressed concerns with the actions of Mr. Kassenaar during these proceedings and noted that Mr. Kassennar has appeared before this Tribunal, or its predecessor, on more than one occasion and ought to have been aware of the practices and expectations of the Tribunal.

[320] Ms. Mullin advised the Tribunal that upon receipt of the email from Mr. Kassenaar, she responded advising that it is inappropriate for Mr. Kassenaar to be corresponding with a witness while they are under cross-examination. Ms. Mullin filed a copy of the email correspondence with the Tribunal for its records.

[321] The Tribunal thanked Counsel for bringing this matter to the attention of the Tribunal and commended Ms. Mullin for her response to Mr. Kassenaar advising of the inappropriate nature of his action.

[322] The Tribunal recommended that in the future if such a circumstance should occur, bringing the matter to the attention of the Tribunal as soon as is reasonably possible is advised so that the Tribunal may determine if any action is warranted. This breach of the Tribunal's practice happened some two weeks prior to it being raised with the Tribunal, and it is difficult to determine what, if any, impact this action has had on the witnesses in the proceedings at this time.

[323] The Tribunal reminded the Parties and their witnesses that the Tribunal requires experts and witnesses appearing before the Tribunal to sign an Acknowledgement of Expert's Duty. The Acknowledgement of Expert's Duty sets out the Tribunal's expectations for witnesses, and the Tribunal specifically referred to paragraph 3 d., which states:

I acknowledge that it is my duty to provide evidence in relation to this proceeding as follows:

- d. not to seek or received assistance or communication, except technical support, while under cross-examination, through any means including any electronic means, from any third party, including but not limited to legal counsel or client.

[324] A purpose of the Acknowledgement of Expert's Duty is to ensure that witnesses testifying before the Tribunal acknowledge that they are to provide evidence that is fair, objective, and non-partisan, and to provide assistance to the Tribunal to determine a matter in issue. As an expert and a professional appearing before the Tribunal, the expectation is that these obligations prevail over one's obligation to their client.

Exhibit 226 – Document proffered in cross-examination – not in evidence

[325] During the cross-examination of Dr. Illman, Nelson filed Exhibit 226, which contained numerous excerpts of reports and other Exhibits filed with the Tribunal.

[326] Ms. Danahy objected to the inclusion of page 19 in Exhibit 226 on the grounds that the document was not in evidence and the document was being introduced by Nelson during the cross-examination. Ms. Danahy contends that the document is not authenticated and, if Nelson intended to rely on the document, it ought to have been included in Nelson's evidence-in-chief.

[327] Ms. Danahy submitted that the document provides no probative value and Counsel for Nelson should be reprimanded.

[328] Mr. Donnelly concurred with submissions of the City and contends that the inference drawn by the aerial photographic image included on page 19 of the exhibit is not proper. Mr. Donnelly submitted that Counsel should not be tendering evidence, nor making assertions as to its meaning. Evidence is to be provided through experts or by way of an affidavit.

[329] Mr. White challenged the assertions of Mr. Donnelly and suggested that he has also been providing evidence during the proceedings.

[330] The Panel reminded Counsel of their responsibilities to the Tribunal and to the hearing process. Counsel has a role, Experts have a role, and in the same vein, the Tribunal has a role.

[331] The Tribunal is, in part, responsible to ensure a hearing that is just, fair, and efficient. The Panel suggested that it has been more than fair to the Parties and to Counsel to ensure that the best evidence is placed before the Tribunal and has provided Counsel ample opportunity to test that same evidence. The Panel observes that this effort to ensure fairness has been at the expense of efficiency and this is not an acceptable scenario.

[332] Mr. White was unable to confirm that the document at page 19 of Exhibit 226 was included in the document book or in any of the witness statements.

[333] The introduction of a document that is not in response to evidence proffered by a witness during their evidence-in-chief is contrary to the goal of ensuring that each party has a fair opportunity to prepare its case and its response to the other side's evidence. The Tribunal finds that the document at page 19 of Exhibit 226 represents unfair surprise for the witness, and the Parties Opposite and the inference of the document relates to a matter that is not before the Tribunal and does not assist the Tribunal in arriving at its decision.

[334] The Tribunal rules that the document at page 19 of Exhibit 226 is to be struck from the Tribunal's record.

[335] The Tribunal directed Counsel to be mindful of their responsibilities to this Tribunal, particularly during cross-examination. The Tribunal expects a level of decorum that has been in short supply during these proceedings.

Filing of Exhibits 323, 324, 325

[336] Nelson submitted four documents that they intended to rely on in their reply evidence. Three documents were provided by their Surface Water Resource Engineer and referenced

as Memo 005, Memo 006, and Memo 007, and the fourth document was submitted by their Land Use Planner, referred to as the Zeman Memo.

[337] The documents were circulated to all Counsel prior to any Reply evidence being called, as was an established practice during this lengthy proceeding.

[338] Counsel for CORE/PERL, supported by the Region and the City, raised an objection to the content of the documents circulated and requested that the Tribunal consider their objections prior to filing the documents as exhibits in these proceedings.

[339] Counsel advised that there have been discussion concerning the content of the documents and discussions were ongoing to narrow the scope of the issues of concern.

[340] Mr. Barnett addressed the Tribunal and explained that the Parties have narrowed the issues relating to the objection to be specifically Memo 005 and sections 6.11, 10.1.3 together with the Site Plans attached at Tab A, 11.1, 11.2 of Memo 006.

[341] The Region, the City, and CORE/PERL did not object to the balance of the information contained in Memo 006, the contents of Memo 007, or the contents of the Zeman Memo acknowledging the contents contained therein representing Nelson's position.

[342] Mr. Barnett submitted that the evidence referenced in the sections of the documents identified does not constitute appropriate reply evidence. He explained that it is a question of procedural fairness in that a Party needs to know the case that they are to call before the commencement of the proceedings. An Appellant Party should not be permitted to take in all the evidence and then submit additional or further evidence to "bolster" those key matters in their case. The rules of law and practice governing the procedures followed in criminal and civil trials are such that new evidence may only be called in reply in response to issues that arise that were not reasonably anticipated. Mr. Barnett restated this rule in the context of the Tribunal contending that a Party cannot address an issue that was not addressed in cross-examination during reply or re-examination.

[343] Mr. Barnett referred the Tribunal to the Supreme Court of Canada (“Supreme Court”) decision *R. v Krause*²¹, in support of his submissions, wherein the Supreme Court states:

The general rule is that the Crown, or in the civil matters the plaintiff, will not be allowed to split its case. The Crown of the plaintiff must produce and enter its own case all the clearly relevant evidence it has, or that it intends to reply upon, to establish its case with respect to all the issues raised in the pleadings; ... This rule prevents unfair surprise, prejudice and confusion which could result if the Crown or the plaintiff were allowed to split its case, that is, to put in part of its evidence – as much as it deemed necessary at the outset – then to close the case and after the defence is completed to add further evidence to bolster the position originally advanced.

[344] Mr. Barnett contends that the issues could have reasonably been known and should have been addressed in the Appellant’s evidence in chief.

[345] The Environmental Review Tribunal (“ERT”) in its Decision *Corporation of the City of Guelph v. Director, Ministry of Environment*²² at paragraph 14 summarizes the principles that apply to determining proper reply, including stating that an applicant may not introduce new evidence that it was aware of or could have reasonably anticipated and addressed in its application.

[346] The Divisional Court in *Lockridge v. Director, Ministry of the Environment*²³ addresses case splitting, set out in paragraph 14, when the Court states:

It is well settled that where there is a single issue only to be tried, the party beginning must exhaust his evidence in the first instance and may not split his case by first relying on *prima fascia* proof, and when this has been shaken by his adversary, adducing confirmatory evidence”: *Allcock Laight & Westwood Ltd. v. Patten, Bernard and Dynamic Displays Ltd.*, [1967] 1 O.R. 18(C.A.), at p. 21.

²¹ *R. v. Krause* [1986] 2 S.C.R.466 (1986 CanLII 39 (SCC))

²² *Corporation of the City of Guelph v. Director, Ministry of Environment*, 2014 CarswellOnt 2546, [2014] O.E.R.T.D. No. 14

²³ *Lockridge v. Director, Ministry of the Environment*, 2013 ONSC 6935 (CanLII)

[347] Mr. Barnett submits that Nelson is attempting to split its case by submitting new evidence in reply and this results in prejudice and unfair surprise as identified in paragraph 15 of *Lockridge v. Director, Ministry of the Environment*²⁴.

[348] Mr. Germain addressed section 10.1.3 of Memo 006, including the Site Plans attached at Tab A to Memo 006, noting that the Section 10.1.3 is titled “More Specific Protocol” and relates to the proposed Infiltration Pond on the West Quarry Extension lands. The evidence of the Nelson Surface Water expert, Mr. Twigger, included a brief explanation of the protocol for addressing the Infiltration Pond, and the reply evidence in Memo 006 provides a much more detailed description of the protocol. These details were requested prior to the Hearing and again during the Hearing, and to now provide the details at this late stage results in a prejudice to the Parties Opposite as it provides no opportunity to respond to the details and is effectively case splitting. The information ought to have been provided by Nelson in response to the JART comments and certainly in response to the Witness Statement of the Region’s expert, Mr. Scheckenberger.

[349] Ms. Boily addressed sections 6.11, 11.1, and 11.2 of Memo 006. She submitted that there is a threshold matter to address in that the Tribunal has previously ruled in these proceedings that the introduction of evidence surrounding the use of LiDAR technology is not permissible. Nelson is now proffering further evidence that relies on the use of LiDAR technology and Ms. Boily contends that the evidence is inadmissible based on the prior ruling.

[350] Further, Ms. Boily contends that the introduction of this evidence during re-examination, which was not addressed in the Witness Statements, nor the Reply Witness Statements of the Nelson experts does not provide an opportunity for the Parties Opposite to respond to this evidence and this results in a prejudice to the Parties Opposite. It is acknowledged that the technology is available and was discussed during the *viva voce*

²⁴ *Lockridge v. Director, Ministry of the Environment*, 2013 ONSC 6935 (CanLII)

testimony of different witnesses during the proceedings; however, this does not condone the use of the technology for monitoring adjacent lands.

[351] The proposal to provide additional bathymetric survey information in section 6.1.1 of Memo 006 is in response to issues raised about the accuracy of the existing topographic survey data for the wetlands identified, and Ms. Boily noted that what Mr. Twigger conceded under cross-examination was not accurate. Ms. Boily contends that to propose additional survey data at the time of re-examination is effectively case splitting. The issue was raised in 2021 during the JART process, and she contends that Nelson ought to have known that the data was lacking and reasonably anticipated the issue and therefore addressed the issue as part of the direct evidence of Mr. Twigger.

[352] Mr. Donnelly addressed the contents of Memo 005 which apply primarily to the Hilltop Pond. The memo contains a water balance calculation and references evidence that identifies a water course appearing to originate within the wetland. Mr. Donnelly submitted that the issues pertaining to the Hilltop Pond date back to the previous quarry expansion proposal considered and denied by the Joint Board. He questioned why Nelson is submitting a water balance calculation for the Hilltop Pond at this time when they could have reasonably anticipated this issue and should have provided the evidence in the direct examination of their water expert witness? The submission of the water balance after CORE/PERL made the determination to withdraw their water experts is prejudicial as they have no opportunity to respond to this new evidence.

[353] Mr. Donnelly submitted that the submission of this evidence in re-examination is disingenuous. The evidence included a 2007 email authored by Ray Blackport, the citizens group's water expert, that was provided at the previous Hearing before the Joint Board. He submitted that the email does not provide the complete picture as is evident from the transcripts provided from the Hearing of the testimony of Mr. Blackport, wherein Mr. Donnelly contends it is clear that Mr. Blackport's opinions surrounding the Hilltop Pond have changed from those detailed in the 2007 email.

[354] Nelson should have reasonably anticipated this issue and should have addressed the matter in its evidence, and Mr. Donnelly concluded that admitting this evidence will result in prejudice to his client and would require sur-reply from the Parties Opposite, resulting in additional costs and time to coordinate the availability of the witnesses to test the new evidence. He submitted that Memo 005 should not be allowed.

[355] Ms. Mullin responded that the Tribunal has different considerations from that in *lis inter partes*, being that the Tribunal does not solely focus on the resolution of disputes between Parties but also must consider whether it is a matter good planning and whether the proposal is in the public interest. The Tribunal can accept what is determined to be the best evidence as recognized in the *Statutory Powers Procedure Act* at section 15.

[356] Ms. Mullin submits that when issues arise during a Hearing, it is common practice for revisions to a proposal to be considered. Section 12(2) of the OLT Act provides the Tribunal with the authority to adopt practices and procedures in a Hearing that would offer the best opportunity for a fair, just, and expeditious resolution of the merits of the proceedings²⁵.

[357] Ms. Mullin addressed Memo 005 explaining that the mystery surrounding the Hilltop Pond came up repeatedly during the Hearing and the information is provided in response to the testimony and questions which arose during the Hearing.

[358] Memo 006 addresses monitoring concerns raised during the Hearing, including the use of LiDAR technology restricted to the Nelson owned lands. The issue of the testing of a pilot infiltration pond on the West Quarry Extension lands was raised by the City and Memo 006 proposes establishing a test pond prior to extraction. Finally, it is proposed to establish off-site monitoring of the Hilltop Pond and Wetland 13033 on the Harmer Lands, notwithstanding that it is Nelson's position that the proposal will not impact these natural heritage features.

²⁵ Tribunal's *Rules of Practice and Procedure*, Rule 1.3

[359] Ms. Mullin concluded that the proposed exhibits are responsive to issues that arose during the Hearing, and she submits meets the civil procedure test.

[360] The Tribunal carefully considered the submissions from Counsel and rules as follows.

[361] With respect to Memo 005, the Tribunal finds that the evidence contained in the memo ought to have been reasonably anticipated as the function of the Hilltop Pond was the subject of considerable focus in the review of the Expansion Applications as it is identified by the Province as a confirmed JESA breeding pond. The function of the Hilltop Pond was also a significant issue during the previous Hearing of the Joint Board.

[362] Nelson should have reasonably anticipated the significance of this wetland and, as such, the water balance exercise could have been prepared to support their case and provided to the Tribunal by the Nelson experts during their evidence-in-chief, permitting the testing of the evidence under cross-examination.

[363] The Tribunal finds that submitting the evidence in re-examination is tantamount to case splitting which the Tribunal reasons is not fair in that the Parties Opposite do not have an opportunity to respond to the new evidence resulting in prejudice to the Parties Opposite.

[364] Accordingly, the Tribunal does not allow the submission of Memo 005 or the contents of the memo to be tendered as reply evidence.

[365] With respect to Memo 006, section 10.1.3 and the Site Plans attached at Tab A, the Tribunal finds that the evidence contained therein is relevant and of assistance to the Tribunal in its consideration and determination of the matters at issue in this proceeding.

[366] Throughout the proceedings, issues relating to the Infiltration Pond and its efficacy have been interwoven throughout the testimony of the water experts, the ecology experts, and those experts addressing the impacts on the surrounding residential properties. Arising from this evidence, the Tribunal acknowledged the proposed timing of the extraction of the

West Quarry Extension, if approved, would be some 10 years hence. This timing has been left some questions surrounding the method through which the verification of the conceptual modelling might be achieved.

[367] In the same manner in which the Appellant has proposed revisions to the Site Plans, the AMP, and the various supporting reports contained within the materials to be filed as reply evidence, the Tribunal views the contents of Memo 006 contained in section 10.1.13 as appropriate reply to these issues.

[368] The Tribunal noted that the MNR has reviewed an earlier version of the AMP and in their assessment had indicated that the MNR had no further comments at that time. The proposed revisions will, in the view of the Tribunal, provide further clarity to the AMP and support the ever-evolving nature of the AMP and its application.

[369] The AMP makes provisions for the further submission of the details requested and these further details are subject to review and approval by the MNR in accordance with the timelines set out in the AMP. The Tribunal heard the evidence of the Parties Opposite setting out their concerns with the Infiltration Pond, the concerns with its efficacy, the potential for negative impacts on the neighbouring properties ground water, and the potential for impacts on the seeps and springs in the Medad Valley. The specifics set out in the 'protocols' described in section 10.1.3 do not change the Tribunal's consideration of the concerns raised and, further, the Tribunal finds that there is no suggestion that the issues raised by the Parties Opposite have been addressed with the exception of a framework within which Nelson proposes to identify impacts and respond to such impacts.

[370] The Tribunal allowed the evidence contained with Memo 006, section 10.1.3 and the Site Plans attached at Tab A, to be filed as evidence in reply.

[371] The Tribunal turned next to the evidence of Memo 006, sections 11.1 and 11.2, and will address these sections together as they are substantially the same in terms of their consideration by the Tribunal.

[372] The Tribunal started with the review of the Motion on which it ruled earlier in these proceedings with respect to the proposition of Mr. Twigger, that off-site monitoring could be effectively carried out using LiDAR technology. The Tribunal ruled that the evidence relating to the premise that monitoring off-site wetlands, which would include the Hilltop Pond and Wetland 13033, be excluded.

[373] The evidence contained in sections 11.1 11.2 reintroduces the prospect of off-site monitoring of the Hilltop Pond and Wetland 13033.

[374] The Tribunal found that this evidence is contrary to the Tribunal's previous ruling and finds this unacceptable. The issue of LiDAR as a technology is not the Tribunal's primary concern; the unauthorized access to utilize the technology to monitor an adjacent property without the consent of the property owner causes the Tribunal concern. Off-site monitoring has been an issue throughout these proceedings. It is the Panel's position that it does not have the authority to impose a condition affecting lands that are not the subject of an application before the Tribunal.

[375] Accordingly, the Tribunal does not allow the submission of sections 11.1 and 11.2 of Memo 006 or the contents of the sections to be tendered as reply evidence as it relates to the off-site monitoring without permission of the landowner, noting that the use of LiDAR technology has been previously addressed by the Tribunal in this matter.

[376] The final consideration is with respect to section 6.1.1 of Memo 006.

[377] The Tribunal finds that the introduction of the proposal to undertake further bathymetric surveys of the identified wetlands to support the monitoring data and modelling was requested during the course of the Hearing and the Appellant is proposing to complete such surveys.

[378] The Tribunal understands that the issue of the use of “LiDAR and verified using traditional survey methods” was included to demonstrate the manner in which the survey work would be completed. The Wetlands identified in section 6.1.1 of Memo 006 are all located within the limits of lands controlled by Nelson.

[379] As identified earlier, the Tribunal notes that the MNR has reviewed an earlier version of the AMP and in their assessment had indicated that the MNR had no further requirements at that time. The proposed revisions will, in the view of the Tribunal, provide further clarity to the AMP and the monitoring required by the AMP.

[380] As to whether Nelson could have reasonably anticipated this issue, the Tribunal finds that the challenge to the evidence of a Party during cross-examination may unfold in such a manner that the Party under cross-examination did not understand or appreciate the concern raised by the Parties Opposite and therefore may not have responded in the manner expected by the Parties Opposite. The Tribunal must consider if the matter was to have been reasonably anticipated and in this specific instance, the Tribunal finds that Nelson could not have reasonably anticipated the issue.

[381] Accordingly, the Tribunal allows section 6.1.1 of Memo 006 to be submitted as reply evidence, save and except the words “using LiDAR and verified using traditional survey methods” at the end of the first sentence of the first paragraph.

[382] As confirmed by the Parties at the outset of the consideration of the objections, the balance of the evidence proffered as reply evidence is allowed and the Tribunal understands that it represents Nelson’s position on the matters addressed therein.

FINDINGS

[383] The Tribunal has considered the significant volume of evidence presented, the testimony of the many witnesses, and the submissions of the Parties. The Tribunal reasons

that the objections to the Expansion Applications are rooted in the impact the Burlington Quarry operation has had on the residents who reside around the Burlington Quarry.

[384] Nelson and its neighbours, represented by CORE/PERL in these proceedings, have a strained relationship as neighbours. Nelson has been operating the Burlington Quarry since acquiring the lands in 1983. The Existing Licences, dating back to the first permissions granted in 1953, contain few restrictions relating to the operation of the Burlington Quarry. While Nelson may have benefitted from the less restrictive licensing regime, the Tribunal observes that it has given rise to much of the opposition to the proposed expansion.

[385] The Tribunal reasons that when the Burlington Quarry was established, the Mount Nemo Plateau was predominantly agricultural land uses, and recognizes that the scale of the operation has grown significantly during the time Nelson has been operating the quarry. The increase in the scale of the operation could reasonably have been anticipated as the demand for aggregate has increased with the significant growth experienced in the Greater Golden Horseshoe Area over the past 40 years. During this time, that same growth has increased demand for residential properties which has contributed to the residential development on the lands along Cedar Springs Road, Cedar Springs Court, No. 2 Side Road, and in the hamlet of Mount Nemo effectively encircling the Burlington Quarry and the Quarry Expansion Lands.

[386] The Tribunal finds it significant that the MNR is not opposing the Expansion Applications and has not identified any issues with the current Nelson operation considering the 40 plus years that Nelson has operated the Burlington Quarry.

[387] The Tribunal has reviewed the relevant policies of the COP, the ROP, the NEP, the Greenbelt Plan, and the numerous Provincial Guidelines and Reference Manuals referred to over the course of the Hearing. The Tribunal also considered the authority set out in the ARA, the NEPDA, and the PA.

[388] In considering the Plans and the Legislation, the Tribunal found that they ultimately pointed toward the PPS policy framework for the consideration of mineral aggregate resource management.

[389] Section 3.5 of the PPS specifically addresses land use compatibility between major facilities and sensitive land uses. A mineral aggregate quarry is a major facility, and a residential use is a sensitive land use as defined in the PPS. The PPS directs that major facilities and sensitive land uses shall be planned and developed to avoid any potential adverse effects and ensure the long-term operational and economic viability of major facilities²⁶. The PPS continues that where avoidance is not possible, the planning authority (the Tribunal in this instance), shall protect the long-term viability of existing or planned major facilities²⁷.

[390] The Tribunal reasons that this policy applies when considering the introduction of sensitive land uses in proximity to a major facility. The matter before the Tribunal is the inverse of that scenario with the proposed expansion of a major facility where residential uses exist within close proximity and where potential adverse effects may impact the residential uses. The PPS does direct that the long-term viability of the existing or planned major facility is to be protected. The Tribunal finds that a planned major facility could include the proposed quarry expansion in this instance.

[391] The PPS provides some direction for the Tribunal in that the policy sets out where avoidance is not possible, consideration is to be given to minimizing and mitigating potential adverse affects from noise, odour, and other contaminants (i.e. dust containing fine particulate matter), and minimizing risk to public health and safety in accordance with provincial guidelines, standards, and procedures²⁸. The Tribunal finds that the policy makes

²⁶ Provincial Planning Statement, 2024, Section 3.5.1

²⁷ Provincial Planning Statement, 2024, Section 3.5.2

²⁸ Provincial Planning Statement, 2024, Section 3.5

provisions for addressing land use compatibility through mitigation measures that minimize the impact of the major facility on the sensitive land uses.

[392] The Tribunal reasons that, through the implementation of the AMP and the Dust Mitigation Plan, impacts arising from the proximity of the residential uses and the Quarry Expansion can be minimized through mitigation in accordance with the provincial guidelines, standards, and procedures.

[393] Section 4.5.1 of the PPS sets out the General Policies for Mineral Aggregate Resources stating “Mineral aggregate resources shall be protected for long-term use and, where provincial information is available, *deposits of mineral aggregate resources* shall be identified.” The Tribunal notes that the policy uses the word “use” when stating that the resource shall be protected for long-term use. The Tribunal reasons that this requires the extraction of the resource.

[394] The Tribunal reviewed policy 4.5.2.4 of the PPS, which states:

4. *Mineral aggregate operations* shall be protected from *development* and activities that would preclude or hinder their expansion or continued use or which would be incompatible for reasons of public health, public safety or environmental impact.

[395] This policy provides insight into the importance that the Province places on mineral aggregate operations, emphasizing the need to protect the use from “activities that would preclude or hinder their expansion or continued use”.

[396] The Tribunal finds that the impacts on public health, public safety, and the environment have been considered and identified, and mitigation measures where required have been proposed to minimize or eliminate such impacts and address compatibility issues.

Auditor General's Report

[397] The Tribunal acknowledges that the Auditor General has raised concerns with the Province's aggregate industry and the administration of the ARA. The Auditor General has identified issues which the MNR is to address. Notwithstanding, the Tribunal reasons that Nelson, the City, the Region, and the neighbouring residents also have a role in the implementation of the ARA.

[398] The Tribunal observes the City, the Region, and the NEC have continued to permit the continued development of sensitive land uses through planning permissions on lands in close proximity to the Burlington Quarry (a major facility). The City and the Region, as planning authorities identified in the PPS, would have or should have considered the potential impacts of the Burlington Quarry and any planned quarry use, which the Tribunal considers as being the proposed expansion of the Burlington Quarry and, as such, shares in the responsibility of addressing impacts arising from the proximity of the residential uses to the quarry operation.

[399] Further, residents who purchased properties in close proximity to the Burlington Quarry also would have or should have considered the potential impacts of the existing operation and contemplated a possible expansion of the quarry use. The Tribunal heard uncontested evidence that the Burlington Quarry has been in operation dating back to 1953 and have been contemplating an expansion for at least the last 20 years.

[400] The Tribunal acknowledges that the MNR is responsible to ensure Nelson operates in compliance with the conditions of their licence and those requirements provided for on the approved site plan forming part of the licence. The Tribunal reasons that the MNR cannot be present at the quarry at all times and cannot reasonably be expected to be aware of the operational conditions on any specific day. Should issues arise that cause concern for the neighbours, the City, or the Region, these matters must be brought to the attention of Nelson and the MNR and, where appropriate, the Region or the City.

[401] Communication is essential to effectiveness of the AMP and the Dust Mitigation Plan, which provide a process through which Nelson can respond and ensure appropriate measures are taken to address issues as they arise.

[402] The Tribunal finds that this is a reasonable expectation for the residents and the quarry operators when existing in close proximity as is the situation in this circumstance.

[403] Further, the Tribunal finds that the CLC is a vehicle through which ongoing monitoring concerns can be identified and improvements implemented to mitigation measures for air quality and water resources and ensuring that Nelson has the information necessary to fully and effectively implement the AMP and Dust Mitigation Plan to minimize impacts that may arise from the quarry operation.

Community Liaison Committee / Social Responsibility

[404] The Tribunal was presented with evidence suggesting Nelson's operation is impacting the surrounding community and further that Nelson has been unresponsive to the concerns of the residents surrounding the Burlington Quarry.

[405] Impacts to air quality and dust, vibration from blasting, and impact on drinking water in private wells have resulted in the residents, the City, and the Region taking an adversarial posture when requesting Nelson to deal with their social responsibilities.

[406] Regulations have become increasingly more restrictive over time and the Tribunal reasons that aggregate operators must adapt to the evolving context of the communities in which they operate. Environmental and social responsibility is an essential component for an aggregate operator for locations that are close to market, which inevitably are also close to residential land uses. The Tribunal finds that Nelson has long overlooked their social responsibility in many respects and has not demonstrated concern with improving public relations within the community.

[407] Should Nelson wish to continue the extraction of this valuable mineral aggregate on the Mount Nemo Plateau, they must engage with all concerned residents to address negative impacts resulting from their operation, and the Tribunal finds that Nelson must develop a proactive approach to engaging in constructive dialogue with its neighbours.

[408] In practice, this means Nelson must implement strategies that are in line with their community and promote participation in the CLC. The Tribunal recommends that Nelson execute this important initiative using their best efforts as soon as possible.

Joint Agency Review Team

[409] During the course of the Hearing, the Tribunal observed concerns with respect to the effectiveness of the JART process.

[410] The concept of a JART was first established with the adoption of the “Halton Consolidated – Streamlined Mineral Aggregate Review Protocol” in 2001 (“Protocol”), by the Region. The Protocol was updated in 2004 and again in 2007. The Protocol includes the establishment of a JART to ensure coordination among the many agencies that are involved in reviewing aggregate applications. The JART may be chaired by the Region or another agency. The function of JART is to review, analyze, and comment on the completeness of the submissions, and JART members share their expertise to undertake a technical evaluation of the applicant’s applications. JART does not make a recommendation on whether or not the applications should be approved, but rather informs the agencies with decision-making authority on technical considerations. Once the collective work is complete, each JART member agency reviews the merits of the application on an independent basis, and in turn will consider JART’s comments along with agency-specific considerations and public comments prior to making their decisions or taking a position. Each agency in turn makes a

recommendation according to the specific mandates, regulations, or applicable legislation²⁹ (emphasis added by the Tribunal).

[411] Nelson approached the City in June 2019 in consideration of filing the Expansion Applications. A pre-consultation meeting was held in November 2019 with preliminary comments provided for the terms of reference for the reports to accompany the Expansion Applications. Consultants were engaged in February 2020 to participate on the JART and further submissions, with respect to the terms of reference, were provided. The Tribunal was advised that the terms of reference were never finalized and Nelson withdrew from the JART process. Nelson filed the Expansion Applications in May 2020 with the Expansion Applications deemed complete by the City, the Region, the NEC, and the MNR in July 2020 and August 2020.

[412] Witnesses involved in the proceedings appeared to have taken adversarial postures in this matter which the Tribunal observed stemmed back to the JART process. This adversarial stance was evident in the testimony of the water experts, the City's ecology experts, CORE/PERL's ecology experts, and the City's planner. The Tribunal finds that much of the evidence provided in response to the Expansion Applications, and that of Nelson's experts, was argumentative at times or speculative. The result was that much of the testimony was of little assistance to the Tribunal in making its determination on the merits and left the Tribunal to question the objectivity of those witnesses. The Tribunal reasons that this was not the intent that the Region had contemplated when it created the policy direction in the Aggregate Resource Reference Manual.

[413] Nelson negotiated the resolution of issues with the provincial ministries, CH, the NEC, and other commenting agencies reviewing the Expansion Applications. The City and the Region issues generally remained unresolved and were the substance of the matters considered by the Tribunal during these proceedings.

²⁹ Aggregate Resources Reference Manual, Exhibit #3, page 4968, para. 5

[414] The Tribunal raises this issue as the objectivity of experts in the Tribunal Hearing process is fundamental to the Tribunal's evaluation of issues before it. Throughout this Hearing, the biased evidence and lack of objectivity of the experts bordering on advocacy impacted the Tribunal's ability to ensure that the real questions in issue are determined in a fair, just, expeditious, and cost-effective manner.

Air Quality Evidence

[415] If the Panel is to accept the testimony of the City's and CORE/PERL's air quality experts, which identified an imminent and lethal risk to human health in the form of particulate matter generated by the operation of the Nelson Quarry, the Tribunal questions how the City has permitted residential use on the Mount Nemo Plateau within the area of impact by the Burlington Quarry and why the City has not issued a warning to the residents or, in keeping with the position advanced during the Hearing, an evacuation order?

[416] Further, if this evidence is to be accepted, the Tribunal questions why the regulatory authorities, the MNR, and the MECP, have not taken the necessary steps to close down the quarry operation? The evidence received by the Tribunal is the opposite of that proffered by the City and CORE/PERL, as the MNR and the MECP have provided comments indicating that they have no outstanding requirements in consideration of the Expansion Applications.

[417] The Tribunal finds that the air quality evidence of the City and CORE/PERL experts advocate different and more stringent standards from that of the AAQC and the CAAQS. The air quality experts did not challenge that the AAQC or the CAAQS are the applicable standards for the quarry operation.

[418] The City and CORE/PERL experts suggested that the higher standards be applied to the Expansion Applications which would effectively prohibit the emission of any fine particulate matter. The Tribunal finds that this standard would be virtually impossible to achieve and, if applied across the Province, would have a significant economic impact.

Should the City wish to pursue such restrictions, the appropriate forum is to raise the matter with the MECP.

[419] The Tribunal prefers and accepts the evidence proffered by the Nelson air quality experts. The Tribunal finds that with a proper monitoring regime and the implementation of a robust Dust Management Plan to mitigate and manage dust and the conditions to be included on the Expansion Site Plans that also addresses blasting protocols and procedures, the air quality concerns can be satisfactorily addressed.

Public Interest Mandate

[420] During the course of the Hearing, the Tribunal was presented with testimony from witnesses on behalf of the City, the Region, and CORE/PERL, which raised questions of the Tribunal's broader public interest mandate.

[421] Former Vice-Chair Lanthier in *Adelaide Metcalfe (Twp.) v Strathroy-Caradoc (Mun.)*, 2022 CanLII 60856 (ON LT) considered this question, and at paragraphs 79 and 80 of his Decision, he states:

A fundamental aspect of the Tribunal's adjudicative role, as it has been addressed by the Courts at various times, is the Tribunal's public interest mandate. This public interest mandate has more often been highlighted in the context of appeals under the *Planning Act*. However, the expressed reasons for the existence of the mandate, which requires the Tribunal to safeguard that public interest in the exercise of other powers conferred by statute, applies in equal measure to certain of those matters, which are directed to the Tribunal, under the *Municipal Act*.

The Court has, on multiple occasions confirmed the administrative character of the function of the Tribunal and that its decisions often extend beyond the interests of the immediate parties. This has been expressed as a recognition that the Tribunal is not deciding a dispute or quarrel between parties in the sense that the issues are confined to those for or against a proposal and that the Tribunal must consider the safety, welfare, conveniences and interests of the public in the municipalities affected. The Court has observed that the adjudication of a planning matter by the Tribunal thus requires the Tribunal to exercise its public interest mandate and ensure that its decisions transcend the interests of the immediate parties, charged as it is with the responsibility to determine whether a land planning proposal is in the public interest. In doing so, the Tribunal is noted to bring its own expertise to bear as a specialty tribunal.

[422] The matter before the Tribunal in these proceedings deals with matters under the NEPDA and the ARA in addition to those matters under the PA. The Panel finds that, as Vice-Chair Lanthier did, that the interest in the matters before the Tribunal transcend the interests of the immediate Parties and, in this instance, the interests of the City and the Region.

[423] The Tribunal referred to Chapter 1 of the PPS under the heading “Role of the Provincial Planning Statement”, which reads:

The Provincial Planning Statement provides policy direction on matters of provincial interest related to land use planning and development. As a key part of Ontario's policy-led planning system, the Provincial Planning Statement sets the policy foundation for regulating the development and use of land province-wide, helping achieve the provincial goal of meeting the needs of a fast-growing province while enhancing the quality of life for all Ontarians.

[424] The PPS is the overarching policy document that applies in the Tribunal's exercise of its authority under the PA, the NEPDA, and the ARA.

[425] The Tribunal finds that the Expansion Applications are consistent with the PPS. The Quarry Expansion Lands are located within an identified mineral aggregate resource area and the Tribunal finds that the Expansion Applications will make available as much aggregate as is realistically possible at a location that is close to the market that it will be serving, being the western Greater Toronto and Hamilton areas. The proposed extraction of the Quarry Expansion has been designed in a manner that minimizes social, economic, and environmental impacts. The proposed rehabilitation plans will incorporate the revised rehabilitation plans for the Burlington Quarry creating landforms that are suitable for natural conservation, water management, agricultural uses, and recreational uses. The Tribunal finds that the rehabilitated lands will be compatible with the existing land uses surrounding the Quarry Expansion Lands and across the Mount Nemo Plateau. The creation of an agricultural area on the rehabilitated Burlington Quarry lands replacing the agricultural lands removed on the South Quarry Extension results in no loss of any prime agricultural land as a result of the extraction.

[426] In consideration of the public interest, the Tribunal finds that there is a balance to be struck between the very specific interests of the neighbours, the commercial interests of Nelson, and the interests of the greater community.

[427] Mitigation of impacts is a means by which such interests can be addressed. The protection of ground water and surface water resources both during extraction and post rehabilitation is an essential tenet of any mitigation measure in this instance as it supports the natural heritage features present and private water wells on the Mount Nemo Plateau surrounding the quarry lands. The AMP is the vehicle through which mitigation and the impacts on the water resources within and surrounding the quarry are monitored and adjusted.

[428] Air quality monitoring is similarly addressed in the Dust Mitigation Plan as identified on the Expansion Site Plans in respect to monitoring and mitigation.

[429] The AMP and Dust Mitigation Plan are requirements of the Expansion Site Plans and, by extension, the Proposed Licence and the creation of the CLC is a requirement of the AMP. The CLC provides a forum through which the ongoing monitoring of mitigation measures can be evaluated by the immediate neighbours, Nelson, the City, the Region, and the greater community represented by the NEC, the MNR, and the MECP.

CONCLUSIONS

[430] The proposal has been reviewed by the MNR and the MECP and the Tribunal is in receipt of correspondence from both Ministries indicating they have no further requirements.

[431] CH has reviewed the proposal and has entered into an LCA which, among other matters, confirmed that CH has no outstanding issues. CH withdrew from the proceedings.

[432] The NEC and Nelson have entered into MOS setting out the terms by which NEC supports the approval of the NEPA and the issuance of the Development Permit.

[433] Subsequent to filing the appeals and prior to the Hearing, Nelson made revisions to the AMP. Further, in response to concerns raised by the City, the Region, and CORE/PERL during the course of the Hearing, Nelson proposed further revisions to the AMP. The Tribunal acknowledges that the revisions have not been reviewed by the MNR, MECP, CH, or the NEC, as part of the continual review of the AMP.

[434] The Tribunal finds that the revisions are refinements to the AMP. The Tribunal reasons that the AMP is intended to be a continually evolving document adapting as more information becomes available arising from the required monitoring and feedback received. The AMP is intended to evolve over the lifespan of the extraction of the Quarry Expansion Lands, and the Tribunal recognizes that the AMP approved at the time of the issuance of the Proposed Licence is not a final version.

[435] The Tribunal also notes that the Expansion Site Plans form a part of the Proposed Licence approval and, together with the AMP, effectively regulate the proposed extraction, processing, and rehabilitation of the Quarry Expansion Lands.

[436] The Dust Mitigation Plan, similar to the AMP, must also be reviewed and refined over the lifespan of the Quarry Expansion extraction as the operation evolves and the extraction moves throughout the quarry. The base tenet of the Dust Mitigation Plan is the mitigation of fugitive dust from the quarry operation.

Hydrogeology (Water)

[437] The EarthFX Model modelled the impact on the groundwater and surface water resulting from the proposed below water table extraction. Mitigation measures are proposed which include the use of Perpetual Pumping to maintain water levels in the wetlands south of

the Burlington Quarry and to supply the Infiltration Pond to support the Medad Valley and private well water levels.

[438] It was generally agreed that more monitoring data uploaded into the EarthFX Model will yield better results. Monitoring of groundwater and surface water will continue for the lifespan of the Quarry Expansion Lands extraction to confirm that mitigation measures are achieving the desired results. Additional monitoring locations in the Medad Valley are proposed with a minimum of three years of data required prior to the commencement of extraction in the West Quarry Extension. Further, a weather monitoring station on-site is required to capture accurate temperature, wind speeds, and precipitation volumes.

[439] The limits of extraction on the South Quarry Extension have been configured providing a separation of over 500 m between the Hilltop Pond and the extraction area. Concerns were raised in respect to the impact of extraction on the Hilltop Pond; however, no hydrogeologic evidence, other than an opinion proffered at the previous Hearing of the Joint Board, was provided to the Tribunal to substantiate the concerns. The Hilltop Pond is located on private lands and there is no access available to monitor whether the proposed extraction will impact the Hilltop Pond.

[440] The Nelson experts proffered that the Hilltop Pond is “perched” and has no connection to the water table, and the proposed extraction will therefore not impact the pond.

[441] The Tribunal reasons that without monitoring of the Hilltop Pond, it is not possible to determine impacts and not possible to implement any mitigation if required.

[442] The Tribunal finds that the separation between the extraction and the Hilltop Pond is appropriate to support the conclusions of the Nelson experts.

Natural Heritage (Environment)

[443] The EarthFX Model has identified impacts on surface water resources, and the AMP includes mitigation measures to ensure the preservation of the wetlands and the wildlife supported by the wetlands. Mitigation measures include maintaining the hydroperiods required to support the JESA.

[444] As a condition of this Decision, Nelson is required to confirm the limit of the regulated habitat boundary for the JESA currently being reviewed by the MECP prior to the commencement of extraction on the South Quarry Extension.

[445] Monitoring of the water levels in the Medad Valley will occur for a period of at least three years prior to any extraction occurring in the West Quarry Extension, creating a baseline for evaluating impacts and effects of the extraction and ensuring that the Infiltration Pond functions as intended. The Tribunal finds that the AMP provides the blueprint for the protection of the flora, fauna, and fish population located in the Medad Valley and will address any private well water issues that may arise.

[446] The proposed extraction areas have been organized to ensure that there are woodlands or wetlands located within the limits of the proposed extraction.

[447] The ROP and NEP identify the protection of ground water and surface water resources, and the Tribunal finds that the Expansion Applications conform with this policy direction.

Air Quality

[448] The Tribunal requires that Nelson implements the Dust Management Plan and, as a condition of the Decision, the Expansion Site Plans shall be revised to include conditions to address on-site dust suppression and off-site dust control measures.

[449] Further, in respect to blasting activities, the Expansion Site Plans are to be revised to include dust suppression requirements specific to blasting and include blasting prohibitions related to wind speed.

[450] The Dust Management Plan includes on-site air quality monitoring to confirm that mitigation measures are effective and compliant with the AAQC and CAAQS.

Blasting

[451] The Expansion Site Plans will be revised in accordance with the conditions set out in this Decision, which includes defining the blast exclusion zones with an appropriate factor of safety established in accordance with industry standards.

[452] Although not the subject of the matter before the Tribunal, Nelson is also proposing to amend the Quarry Site Plans to include revisions addressing blasting, air quality, JESA habitat, spill prevention and response, revised rehabilitation works, and licence surrender to the MNR.

[453] Section 1.2.2.3 of the NEP sets out the considerations for evaluating applications for amendments to the Niagara Escarpment Plan to redesignate Escarpment Rural Area to Mineral Resource Extraction Area. The Tribunal finds that the NEPA protects the Escarpment environment as the proposed extraction avoids the natural heritage features of the Mount Nemo Plateau and the NEPA achieves the objectives of the NEPDA through the final rehabilitation of the site, replacing the prime agricultural lands and the rehabilitated lands provide public open space to be incorporated in the Niagara Escarpment Parks and Open Space System.

[454] The Tribunal is satisfied that it has been demonstrated that the NEPA and the expected impacts resulting from the NEPA do not adversely affect the purpose and objectives of the NEPDA. The Tribunal finds that the NEPA is consistent with the purpose and objectives of the NEPDA and the NEP.

[455] Upon the completion of the rehabilitation of the Quarry Expansion, the lands are planned to be conveyed to CH in accordance with the LCA, resulting in publicly accessible parkland and open space creating recreational opportunities in conformity with the policies of the Greenbelt Plan, 2017.

[456] The Tribunal finds that the approval of the Expansion Applications is in the public interest and on balance represents good land use planning.

DECISION

[457] The Tribunal allows the appeals of the ROPA and the COPA and approves the ROPA as set out in Attachment 1 to this Order and approves the COPA as set out in Attachment 2 to this Order.

[458] The Tribunal recommends that the Minister approve the NEPDA in the form set out in Attachment 3 to this Order and recommends that the Minister issue the Development Permit as set out in Attachment 4 to this Order and subject to the conditions contained therein.

[459] Finally, the Tribunal withholds the issuance of its Final Order with respect to the issuance of the Proposed Licence contingent of the receipt of confirmation from the MNR that Nelson has updated the Expansion Site Plans and the AMP as set out in Exhibits 323 and 325. Upon receipt of the confirmation of the above prerequisites, the Tribunal will issue its Final Order directing the Minister to issue the Proposed Licence subject to the prescribed conditions and the additional conditions set out below.

ORDER

[460] **THE TRIBUNAL ORDERS THAT** the appeals filed pursuant to section 22(7) of the *Planning Act* are allowed and the Official Plan for the Region of Halton is amended as set out in **Attachment 1** to this Order and the Official Plan for the City of Burlington is amended as set out in **Attachment 2** to this Order.

[461] **THE TRIBUNAL RECOMMENDS THE MINISTER OF NATURAL RESOURCES** approve the proposed amendments to the Niagara Escarpment Plan in the form set out in **Attachment 3** to this Order.

[462] **THE TRIBUNAL RECOMMENDS THE MINISTER OF NATURAL RESOURCES** approve the Niagara Escarpment Development Permit attached as **Attachment 4** to the Order, subject to the Niagara Escarpment Commission being satisfied that the Final Plans, referred to in Development Permit Condition #6 of Attachment 4, have been revised to reflect the correct licence area be issued.

[463] The Tribunal withholds issuance of its Final Order in respect of the referral of the licence application by the Minister of Natural Resources pursuant to section 11(5) of the *Aggregate Resources Act*, contingent upon confirmation from the Solicitor for the Ministry of Natural Resources of the following pre-requisite matters:

1. The Site Plans at Appendix K of Exhibit 35 (Site Plan revision date February 25, 2025), have been modified in accordance with recommendation contained in the Memorandum authored by Brian Zeman dated June 17, 2025, found at Exhibit 325.
2. The Adaptive Management Plan has been modified in accordance with the recommendations contained in the Memo authored by Dan Hurley dated June 23, 2025, found at Exhibit 323.

[464] Upon receipt of confirmation of the pre-requisite matters set out above, the Tribunal will issue a Final Order directing the Minister of Natural Resources to issue the Licence subject to the prescribed conditions and the additional following conditions:

1. Prior to any extraction in the South Quarry Extension, the licensee shall provide the following information to the Ministry of Natural Resources:
 - i. The updated the groundwater and surface water modelling incorporating all monitoring data that has been collected.
 - ii. The threshold target levels for all monitoring programs in accordance with the requirements of the updated Adaptive Management Plan shall be updated to reflect the current monitoring data results. (Note: the target levels are not finalized as they are subject to ongoing evaluation through the operation of the quarry)
 - iii. The above noted information (i.e. items i and ii) shall be provided to the Ministry of Environment, Conservation and Parks, the Niagara Escarpment Commission, the Region of Halton, the City of Burlington, and Conservation Halton for their review.
 - iv. The Ministry of Environment, Conservation and Parks, the Niagara Escarpment Commission, the Region of Halton, the City of Burlington, and Conservation Halton will have 60-days to review the information provided in condition 1. iii above, and if any of the agencies identify any technical concerns the Ministry of Natural Resources shall meet with the licensee and the applicable agency to resolve the technical concern prior to the Ministry of Natural Resources' approval.
 - v. Confirmation of the final Jefferson Salamander Habitat Boundary with the Ministry of Environment, Conservation and Parks, and obtain a permit

under the *Endangered Species Act*, if deemed necessary by Ministry of Environment, Conservation and Parks.

- vi. Confirmation that a Permit to Take Water and Environmental Compliance Approval has been obtained from the Ministry of Environment, Conservation and Parks for the water management system of the South Quarry Extension to ensure the protection of adjacent wetlands and watercourses.
 - vii. Confirmation that a weather monitoring station has been installed on the South Quarry Extension.
2. Prior to any extraction in the West Quarry Extension, the licensee shall provide the following information to the Ministry of Natural Resources:
- i. Confirmation that the Updated Adaptive Management Plan has been successful in monitoring and mitigating any potential impacts associated with the South Quarry Extension and there are no outstanding impacts to wetlands, watercourses, wells, and Jefferson Salamander breeding ponds.
 - ii. Updated groundwater and surface water modelling incorporating all monitoring data that has been collected to date.
 - iii. Confirmation that the construction, testing and verification that the replacement pond protects the key natural heritage features and key hydrologic features within Medad Valley and surrounding water wells (e.g. residential and agricultural) in accordance with the protocol in the updated Adaptive Management Plan.

- iv. Provided landowner permission is provided, confirmation that the residential wells referred to in section 5.4.5 of the updated Adaptive Management Plan have been proactively deepened at the licensee's expense.
- v. The threshold target levels for all monitoring programs in accordance with the requirements of the updated Adaptive Management Plan shall be updated to reflect the current monitoring data results. (Note: the target levels are not finalized as they are subject to ongoing evaluation through the operation of the quarry)
- vi. Provide the above noted information (i.e. items i. to v.) for approval by the Ministry of Natural Resources in consultation with the Ministry of Environment, Conservation and Parks, the Niagara Escarpment Commission, the Region of Halton, the City of Burlington, and Conservation Halton.
- vii. The Ministry of Environment, Conservation and Parks, the Niagara Escarpment Commission, the Region of Halton, the City of Burlington, and Conservation Halton will be provided 60 days to review the information provided in condition 2. vi above, and if any of the agencies identify any concerns, the Ministry of Natural Resources shall meet with the licensee and the applicable agency to resolve the technical concern prior to the Ministry of Natural Resources' approval.
- viii. Confirmation that the Permit to Take Water and Environmental Compliance Approval has been obtained from the Ministry of Environment, Conservation and Parks for the water management system

of the West Quarry Extension to ensure the protection of surrounding water wells, Medad Valley, adjacent wetlands, and watercourses.

"David Brown"

DAVID BROWN
MEMBER/HEARING OFFICER

"George Politis"

GEORGE POLITIS
MEMBER/HEARING OFFICER

Ontario Land Tribunal

Website: www.olt.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal ("Tribunal"). Any reference to the preceding tribunals or the former Ontario Municipal Board is deemed to be a reference to the Tribunal.

ATTACHMENT 1**146****Recommended Region of Halton Official Plan Amendment No. XX****Introductory Statement**

All of this part of the document constitutes Amendment No. XX to the Halton Region Official Plan (1995).

DETAILS OF THE AMENDMENT

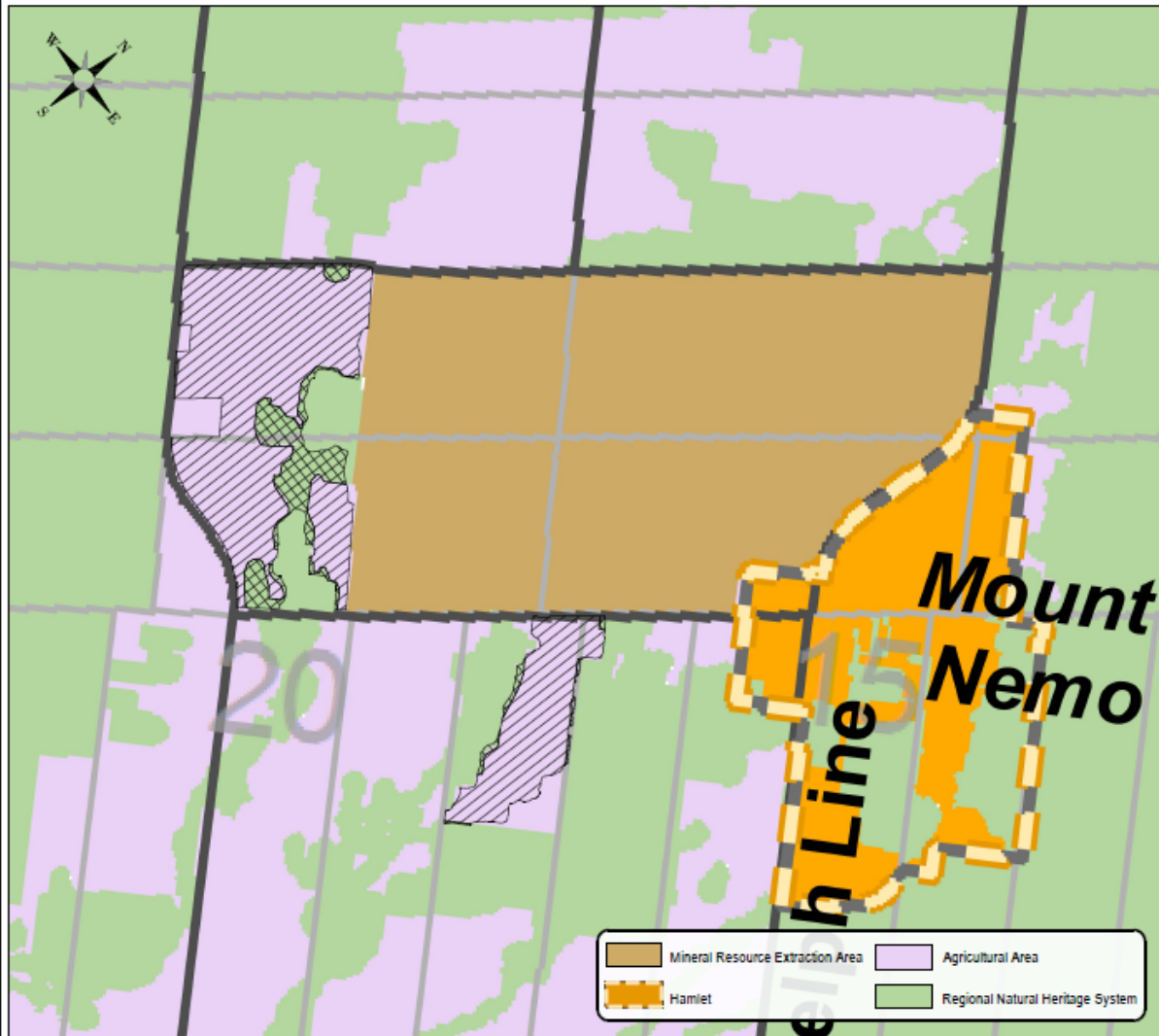
This Amendment consists of seven (7) items:

- Item 1. That Region of Halton Official Plan Map 1 – Regional Structure, is hereby amended by redesignating 76.9 hectares of land legally described as Part of Lots 1 and 2, Concession 2 and Part of Lots 17 and 18, Concession 2 NDS (former geographic Township of Nelson), City of Burlington, Region of Halton from “Agricultural Area” and “Regional Natural Heritage System” to “Mineral Resource Extraction Area” as shown in Schedule “A” attached hereto and forming Part of this Amendment.
- Item 2. That Region of Halton Official Plan Map 1A – Provincial Plan Areas & Land Use Designations, is hereby amended by redesignating 76.9 hectares of land legally described as Part of Lots 1 and 2, Concession 2 and Part of Lots 17 and 18, Concession 2 NDS (former geographic Township of Nelson), City of Burlington, Region of Halton from “Escarpment Rural Area” to “Escarpment Mineral Resource Extraction Area” as shown in Schedule “B” attached hereto and forming Part of this Amendment.
- Item 3. That Region of Halton Official Plan Map 1D – Municipal Wellhead Protection Zones, is hereby amended by designating 76.9 hectares of land legally described as Part of Lots 1 and 2, Concession 2 and Part of Lots 17 and 18, Concession 2 NDS (former geographic Township of Nelson), City of Burlington, Region of Halton as “Mineral Resource Extraction Area” as shown in Schedule “C” attached hereto and forming Part of this Amendment.
- Item 4. That Region of Halton Official Plan Map 1E – Agricultural System and Settlement Areas, is hereby amended by adding a 76.9 hectare “Mineral Resource Extraction Area” overlay of land legally described as Part of Lots 1 and 2, Concession 2 and Part of Lots 17 and 18, Concession 2 NDS (former geographic Township of Nelson), City of Burlington, Region of Halton as shown in Schedule “D” attached hereto and forming Part of this Amendment.

- Item 5. That Region of Halton Official Plan Map 1F – Identified Mineral Resource Areas, is hereby amended by redesignating 76.9 hectares of land legally described as Part of Lots 1 and 2, Concession 2 and Part of Lots 17 and 18, Concession 2 NDS (former geographic Township of Nelson), City of Burlington, Region of Halton to “Mineral Resource Extraction Area” as shown in Schedule “E” attached hereto and forming Part of this Amendment.
- Item 6. That Region of Halton Official Plan Map 1G – Key Features within the Greenbelt and Regional Natural Heritage Systems, is hereby amended by 76.9 hectares of land legally described as Part of Lots 1 and 2, Concession 2 and Part of Lots 17 and 18, Concession 2 NDS (former geographic Township of Nelson), City of Burlington, Region of Halton be redesignated from “Key Features” to “Mineral Resource Extraction Area” and by adding an overlay of “Mineral Resource Extraction Area” on areas designated “Prime Agricultural Areas in NHS Enhancements / Linkages / Buffers” as shown in Schedule “F” attached hereto and forming Part of this Amendment.
- Item 7. The following permitted use is added to Section 117.1, Regional Natural Heritage System, Permitted Uses:
- The lands adjacent to the Mineral Resource Extraction Area on Part of Lots 1 and 2, Concession 2 and Part of Lots 17 and 18, Concession 2, NDS, City of Burlington, Regional Municipality of Halton, may be used for the installation of, access to, and servicing of the water management system associated with the quarry. Extraction shall not be permitted on these lands.

Schedule 'A'**148**

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



Land to be re-designated from Agricultural Area to Mineral Resource Extraction Area



Land to be re-designated from Regional Natural Heritage System to Mineral Resource Extraction Area

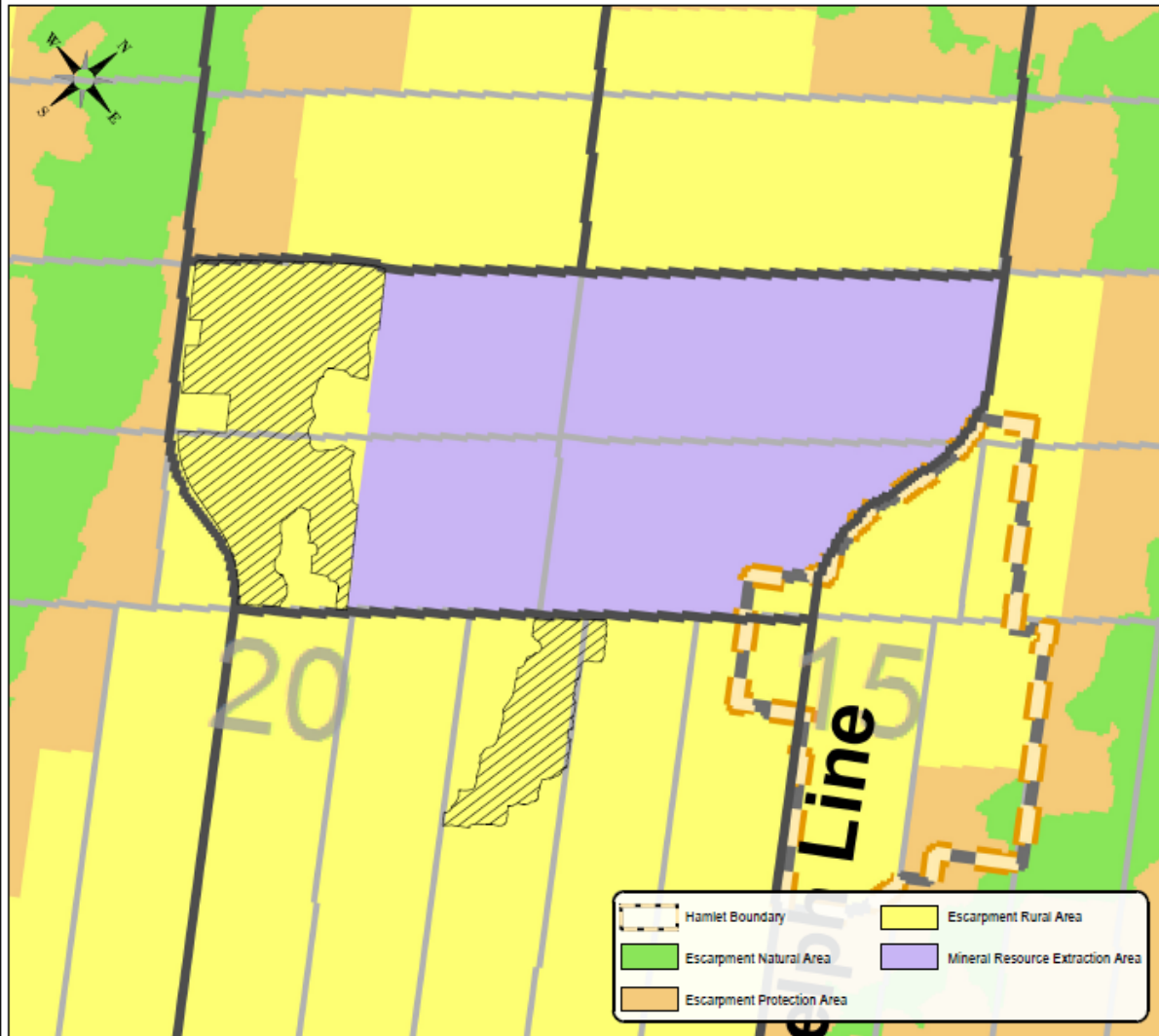
This is Schedule 'A' to
 Regional Official Plan Amendment _____
 Passed this ____ day of _____, 2024

 Regional Chair

 Regional Clerk

Schedule 'B'**149**

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

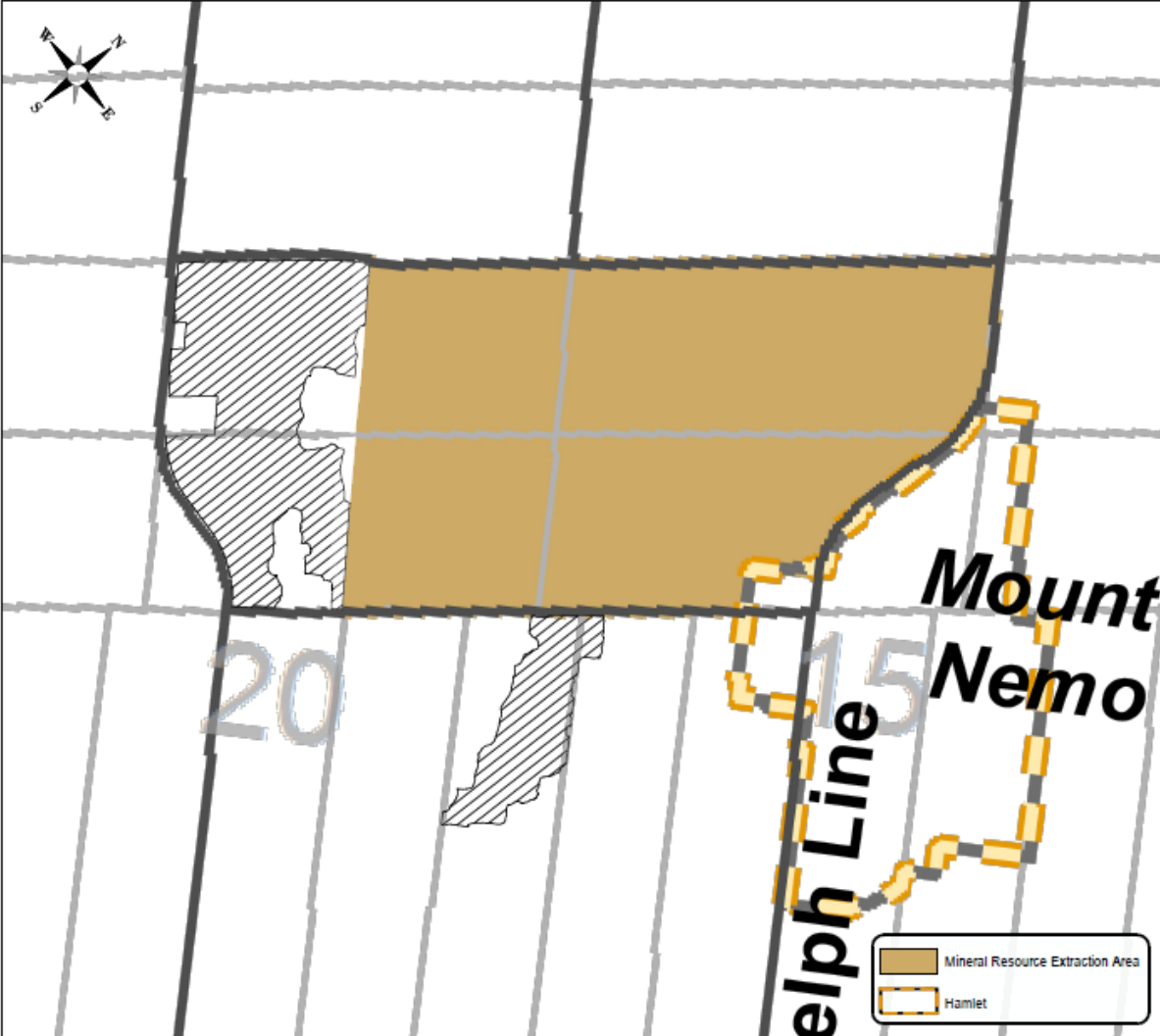


Land to be re-designated from Escarpment Rural Area to
 Mineral Resource Extraction Area

This is Schedule 'B' to
 Regional Official Plan Amendment _____
 Passed this ____ day of _____, 2024

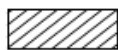
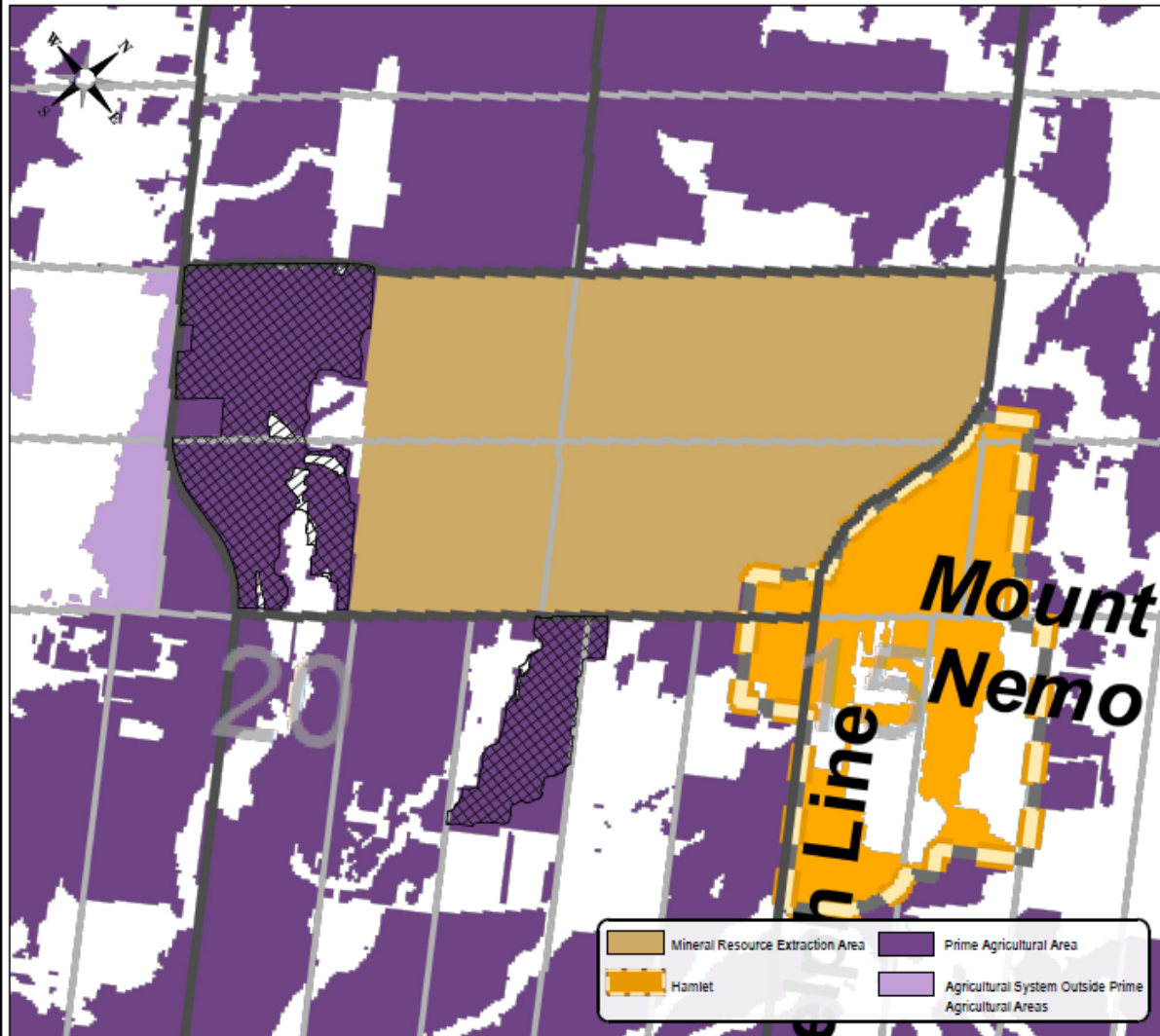
Regional Chair

Regional Clerk

Schedule 'C'		150
Part Lots 1 & 2, Concession 2 and Part Lots 17 & 18, Concession 2 NDS (former geographic Township of Nelson) City of Burlington Region of Halton		
 		
	Land to be designated Mineral Resource Extraction Area	This is Schedule 'C' to Regional Official Plan Amendment _____ Passed this ____ day of _____, 2024 _____ Regional Chair _____ Regional Clerk

Schedule 'D'**151**

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



Land to be designated Mineral Resource Extraction Area



Mineral Resource Extraction Area overlay on land designated Prime Agricultural Area

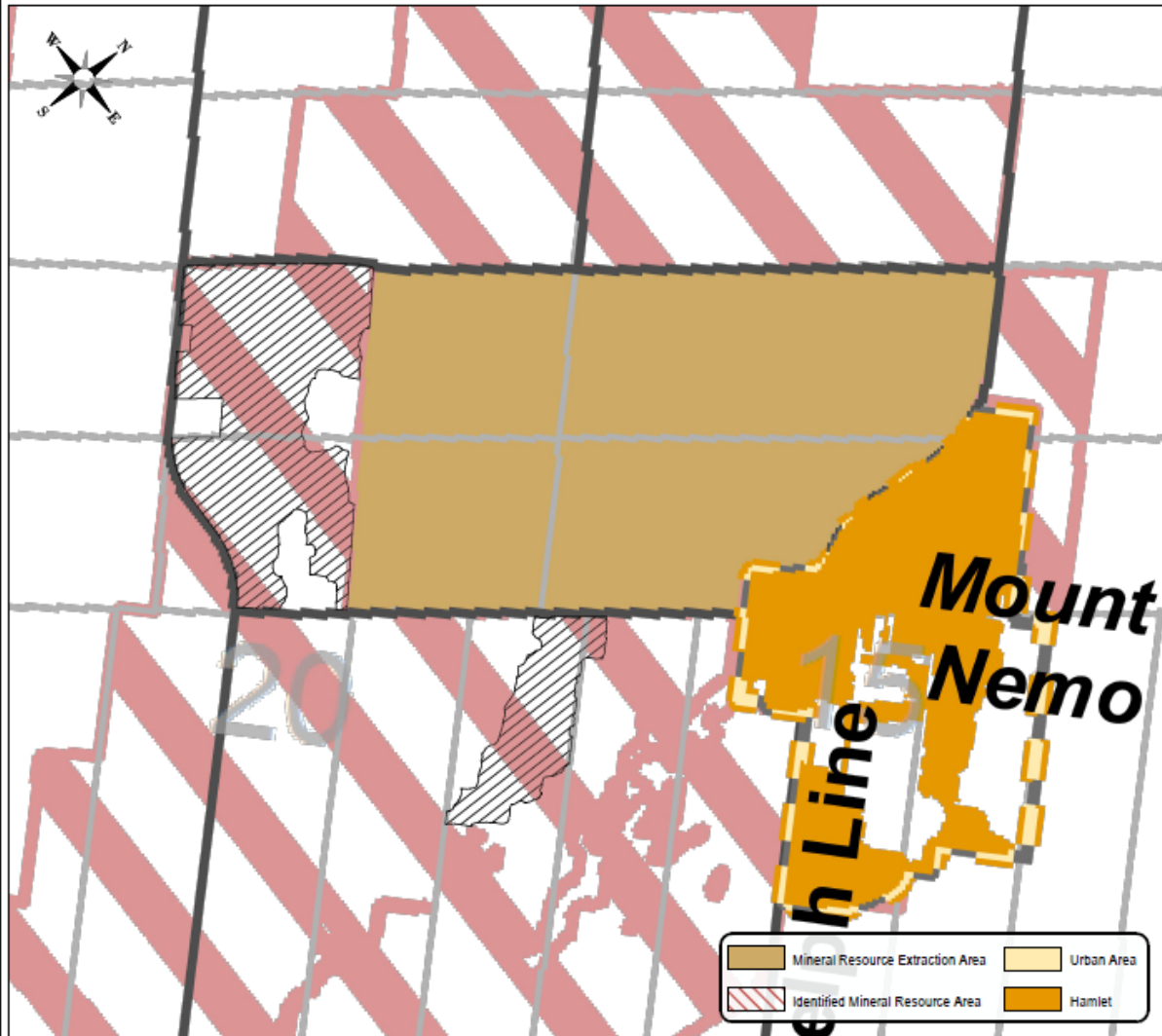
This is Schedule 'D' to
 Regional Official Plan Amendment _____
 Passed this ____ day of _____, 2024

 Regional Chair

 Regional Clerk

Schedule 'E'**152**

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



Land to be designated Mineral Resource Extraction Area

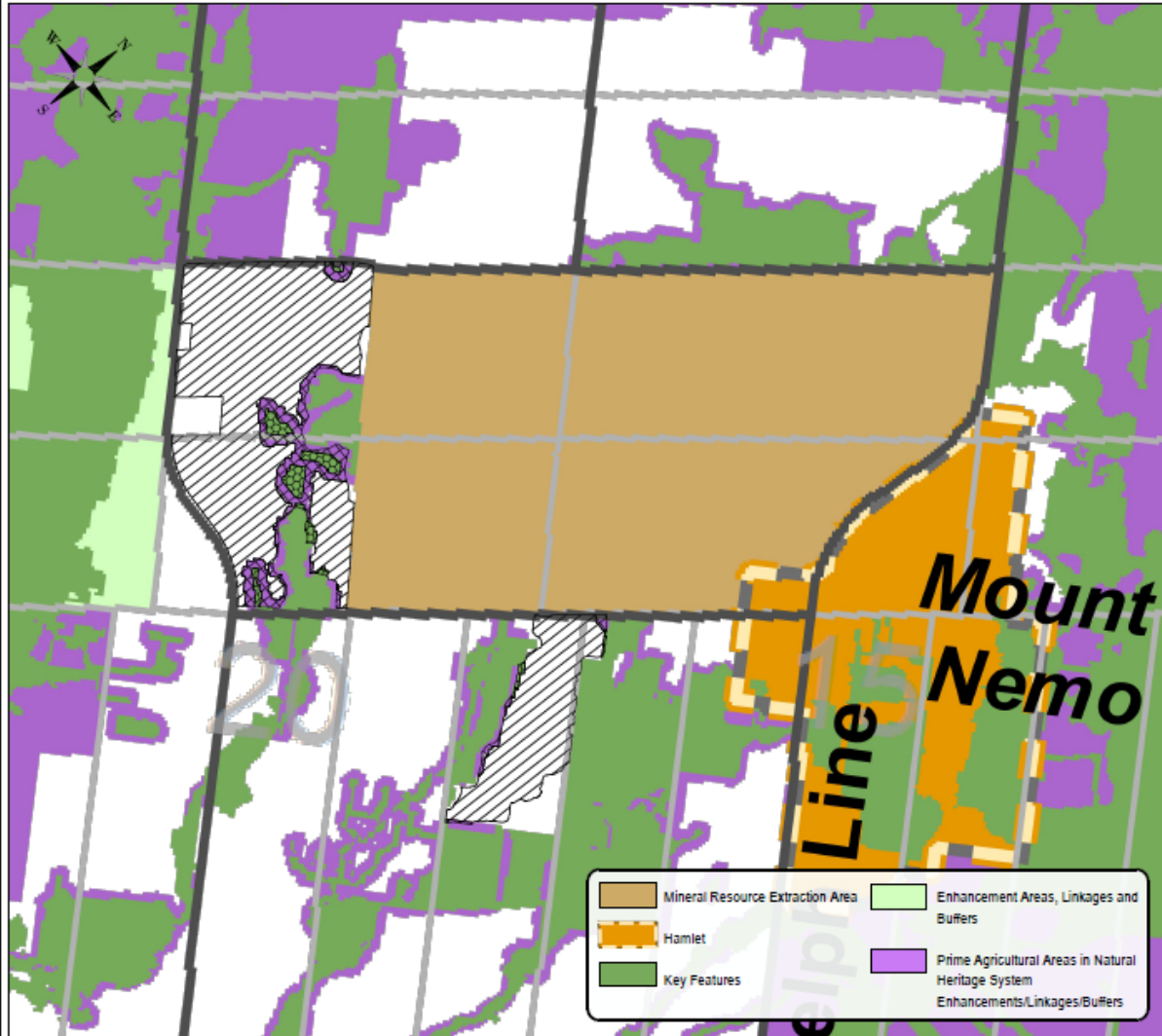
This is Schedule 'E' to
 Regional Official Plan Amendment _____
 Passed this ____ day of _____, 2024

 Regional Chair

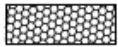
 Regional Clerk

Schedule 'F'**153**

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



Land to be designated Mineral Resource Extraction Area



Land to be re-designated from Key Features to Mineral Resource Extraction Area



Mineral Resource Extraction Area overlay on land designated Prime Agricultural Areas in Natural Heritage System Enhancements/Linkages/Buffers

This is Schedule 'F' to
 Regional Official Plan Amendment _____
 Passed this ____ day of _____, 2024

 Regional Chair

 Regional Clerk

ATTACHMENT 2**155****Recommended Amendment to the City of Burlington Official Plan No. XX****Introductory Statement**

All of this part constitutes Amendment No. XX to the City of Burlington Official Plan (1997) and this Amendment be brought forward into the New Burlington Official Plan (2020).

DETAILS OF THE AMENDMENT

This Amendment consists of two (2) items:

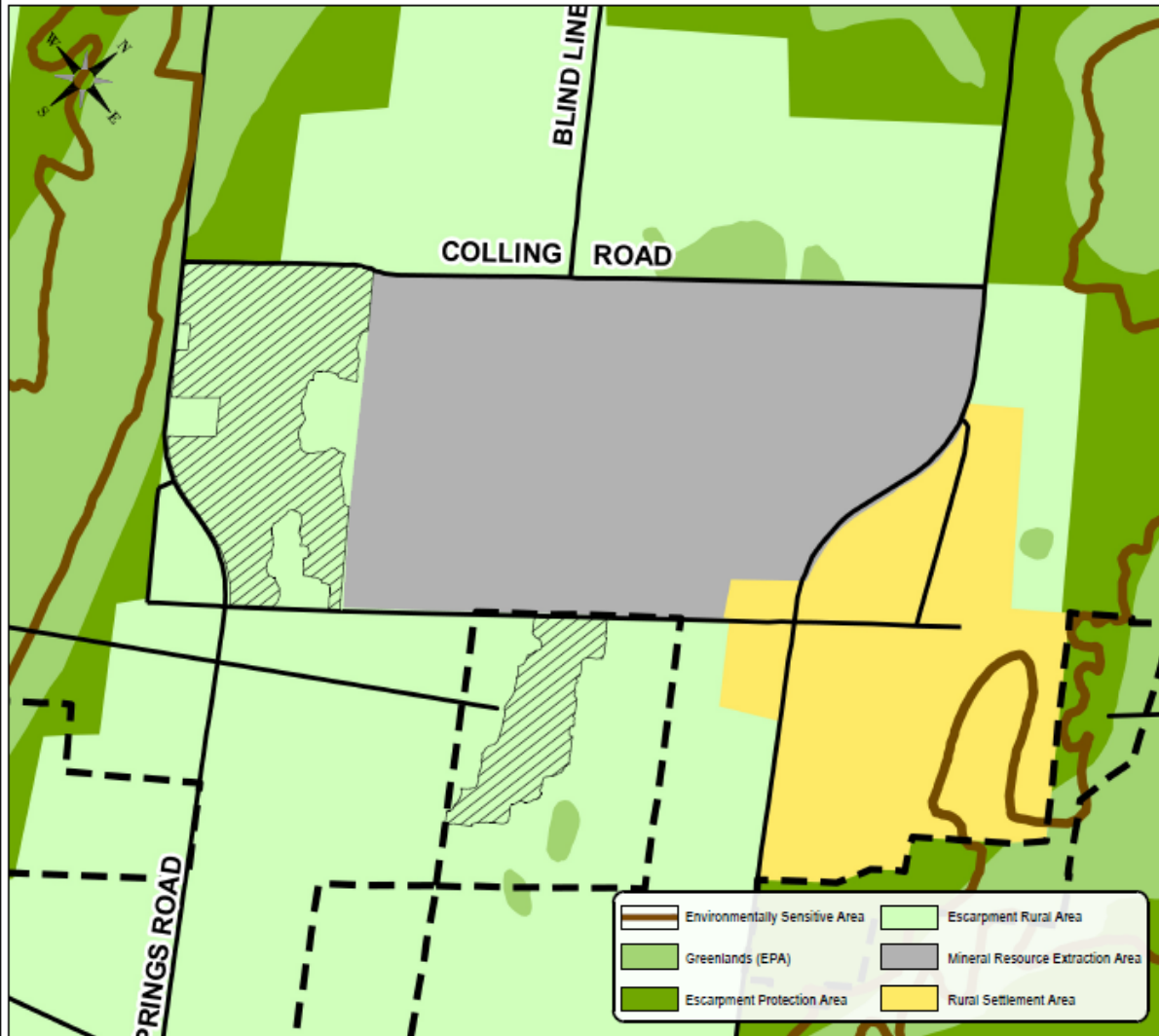
Item 1. That the City of Burlington Official Plan Schedule C – Comprehensive Land Use Plan – Rural Planning Area, is hereby amended by re-designating 76.9 hectares of land legally described as Part of Lots 1 and 2, Concession 2 and Part of Lots 17 and 18, Concession 2 NDS (former geographic Township of Nelson), City of Burlington, Region of Halton from “Escarpment Rural Area” to “Mineral Resource Extraction Area” as shown on, as shown in Schedule “A” attached hereto and forming Part of this Amendment.

Item 2. The following permitted use is added to Section 2.3.2 c), Escarpment Rural Area, Permitted Uses:

The lands adjacent to the Mineral Resource Extraction Area on Part of Lots 1 and 2, Concession 2 and Part of Lots 17 and 18, Concession 2, NDS, City of Burlington, Regional Municipality of Halton, may be used for the installation of, access to, and servicing of the water management system associated with the quarry. Extraction shall not be permitted on these lands.

Schedule 'A'**156**

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



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

This is Schedule 'A' to
 Official Plan Amendment _____
 Passed this ____ day of _____, 2024

 Mayor

 Clerk

ATTACHMENT 3

Nelson Burlington Quarry Extension – Niagara Escarpment Plan Amendment

November 26, 2024

Proposed Niagara Escarpment Plan Amendment No. XX

Introductory Statement

All of this part constitutes Amendment No. XX to the Niagara Escarpment Plan (2017).

DETAILS OF THE AMENDMENT

This Amendment consists of four (4) items:

- 1) Map 3 of the Niagara Escarpment Plan be amended as shown on Schedule A.
- 2) That NEP Part 1.5.3.xx be added to the Escarpment Rural Area, Permitted Uses as follows:

Notwithstanding the permitted uses in this section, lands known as the west extension, located at Part of Lots 1 and 2, Concession 2 and lands known as the south extension located at Part of Lots 17 and 18, Concession 2, NDS, (former geographic Township of Nelson), City of Burlington, Regional Municipality of Halton, may be used for the installation of, access to, and servicing of the water management system associated with the quarry within significant woodlands and wetlands located adjacent to the Mineral Resource Extraction Area approved under Amendment XX to the Niagara Escarpment Plan. Extraction shall not be permitted on these lands.

- 3) That NEP Part 1.9.3.xx be added as follows:

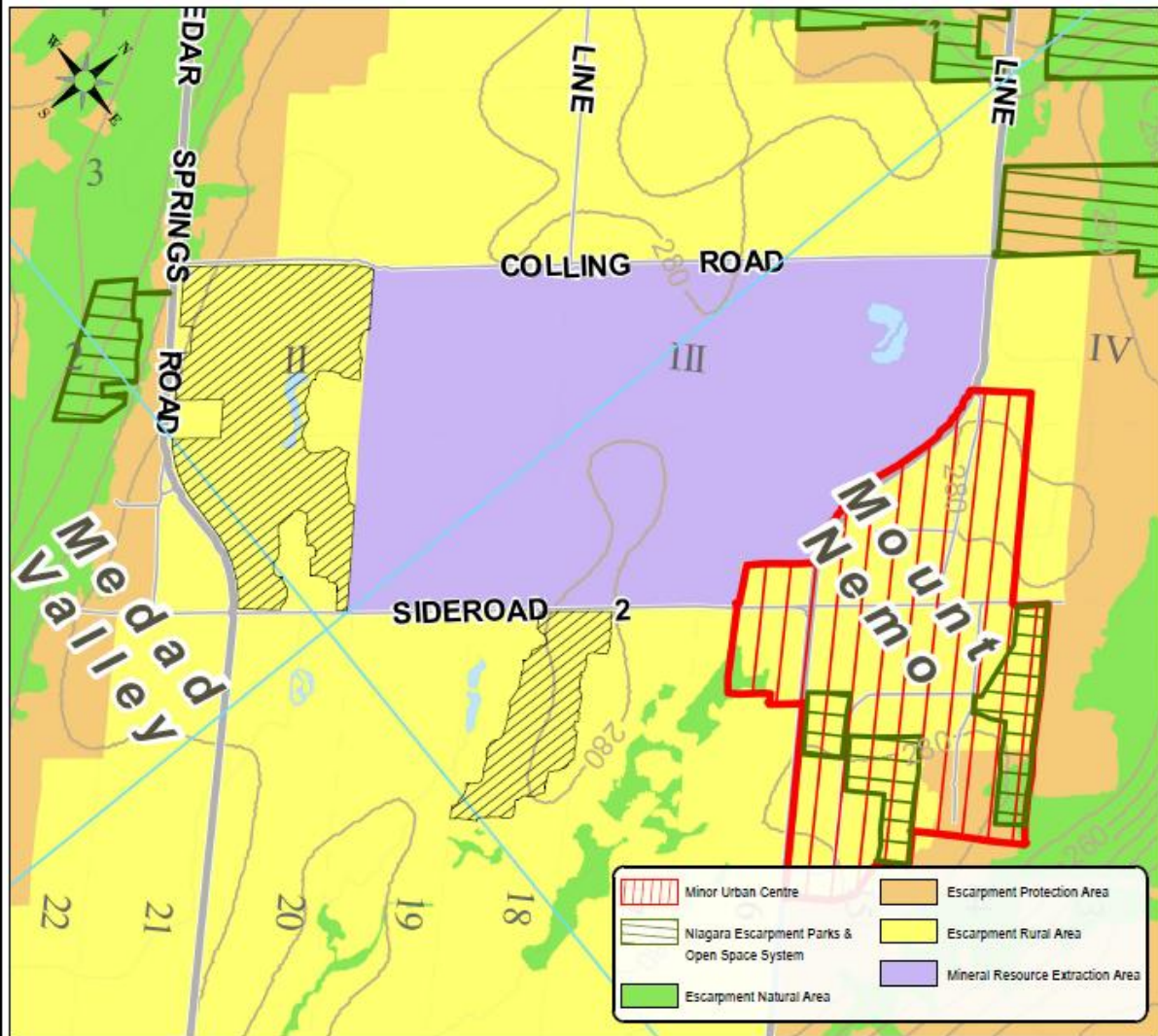
Notwithstanding the policies of Part 1.9.3, and the definition of *Accessory Use* in Appendix 2 of this Plan, for the quarry operating on the subject property described as Part Lots 1 and 2, Concession 2 and 3, (former geographic Township of Nelson), City of Burlington, Regional Municipality of Halton and known as the Nelson Burlington Quarry, that the aggregate processing facility composed of an office, maintenance buildings, facilities for washing, processing and stockpiling of aggregate, truck washing facility, asphalt plant, recycling facilities and the entrance may be used for the purpose of supporting the extraction of aggregate from the area approved under Amendment XX, provided and only while the two sites known as the west extension, located at Part of Lots 1 and 2, Concession 2 and lands known as the south extension located at Part of Lots 17 and 18, Concession 2, NDS, (former geographic Township of Nelson), City of Burlington, Regional Municipality of Halton are actively operated with the Nelson Burlington Quarry, all as a single Aggregate Resources Act (ARA) licensee, as an integrated operation. All *Accessory Uses*

including aggregate processing facilities, recycling, asphalt plant, stockpiles and buildings shall not continue after extraction is complete and will be removed.

- 4) The Mineral Resource Extraction Area on Part of Lots 1 and 2, Concession 2 and 3 and Part of Lots 17 and 18, Concession 2, NDS, (former geographic Township of Nelson), in the City of Burlington, Regional Municipality of Halton as shown on Schedule B to Amendment xx shall be added to the Niagara Escarpment Parks and Open Space System once the *Aggregate Resources Act* Licences are surrendered in whole and upon conveyance of the lands to Conservation Halton.

Schedule 'A'

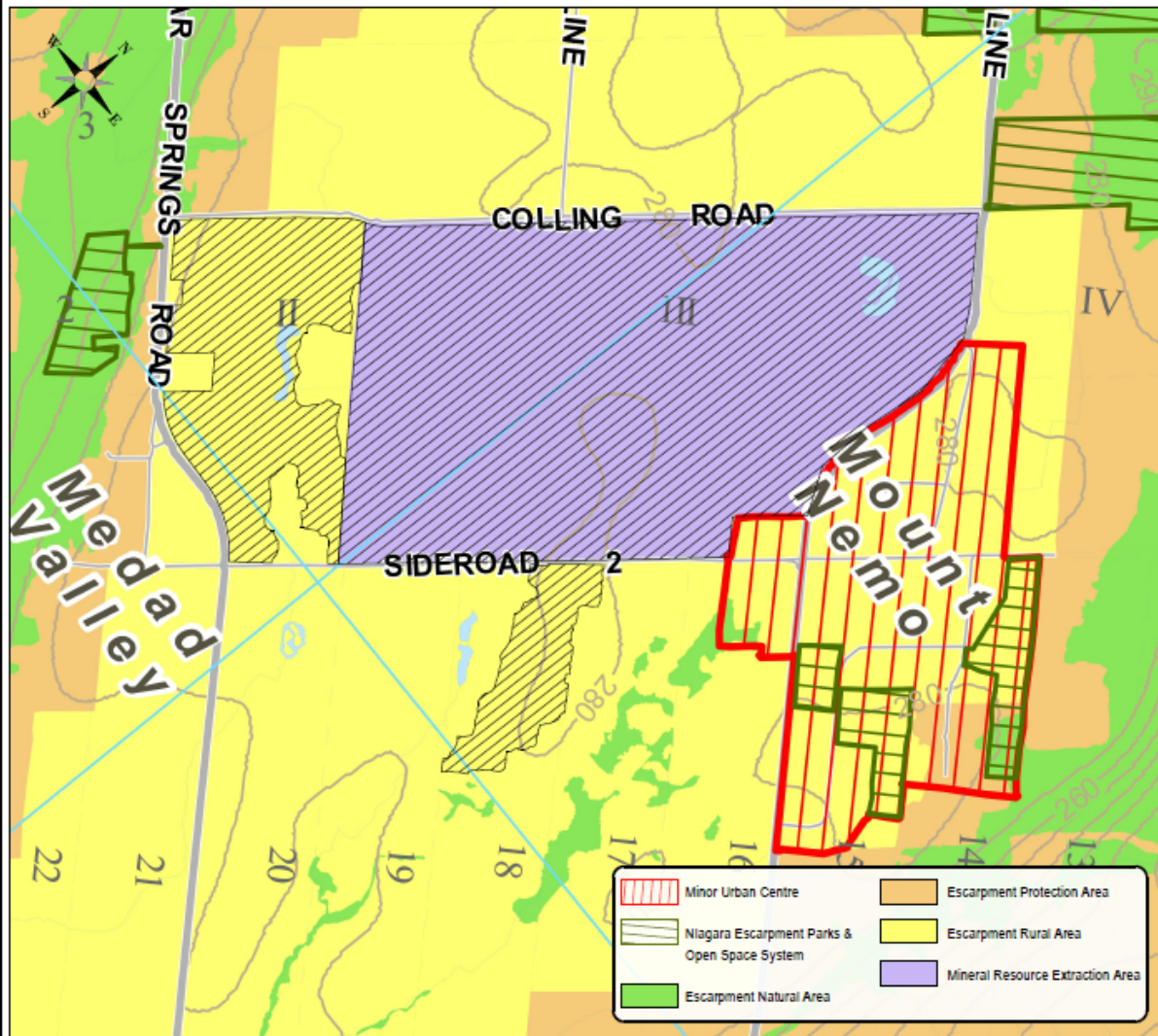
Part Lots 1 & 2, Concession 2 and Part Lots 17 & 18, Concession 2 NDS
(former geographic Township of Nelson)
City of Burlington
Region of Halton



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

Schedule 'B'

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



Mineral Resource Extraction Area to be added to the Niagara Parks Open Space System once the Aggregate Resources Act licences are surrendered in whole and upon conveyance of the lands to Conservation Halton

ATTACHMENT 4**Niagara Escarpment Commission**

99 King Street East
P.O. Box 308
Thornbury, ON N0H 2P0
Tel. No. (519) 599-3340
Fax No. (519) 599-8328
www.escarpment.org

Commission de l'escarpement du Niagara

99, rue King est
p.o.b. 308
Thornbury ON N0H 2P0
No de tel. (519) 599-3340
Télécopieur (519) 599-8328
www.escarpment.org

**NIAGARA ESCARPMENT
DEVELOPMENT PERMIT**

xxxx/

FILE NUMBER: H/E/2020-2021/108

APPLICANT: Nelson Aggregate Co.
AGENT: MacNaughton, Hermesen, Britton, Clarkson Planning (MHBC), LTD.
OWNER: 546958 Ontario Ltd.

LOCATION: Part Lots 1 & 2, Concession 2 and 3, Part Lots 17 & 18, Concession 2, NDS (former geographic Township of Nelson), City of Burlington, Region of Halton. See attached Schedule A.

DESCRIPTION OF THE PROPOSED DEVELOPMENT:

To establish, operate and rehabilitate a quarry (existing and expansion) in accordance with the decision of the xxxx.

Pursuant to the authority to issue Development Permits under Section 24 of the *Niagara Escarpment Planning and Development Act, R.S.O. 1990, Chapter N.2*, delegated by the Minister of Natural Resources under Section 25 of the *Act*, the Niagara Escarpment Commission hereby issues this **DEVELOPMENT PERMIT** for the proposed development described above, **subject to the attached Conditions**.

This Development Permit is transferable, unless prohibited by a Condition of this Development Permit, provided the new Permit holder develops strictly in accordance with the Conditions of this Development Permit.

Date: XXXX

DEVELOPMENT PERMIT CONDITIONS

1. Development shall occur in accordance with the Terms and Conditions of the Development Permit.
2. Non-fulfillment or breach of any one of the conditions shall render the Development Permit void.
3. A site inspection(s) to the property may be undertaken by the Niagara Escarpment Commission to ensure that the development complies with the conditions of the Development Permit. Persons may accompany the Commission representative on the site inspection(s) who possess professionally recognized expert or special knowledge related to the conditions of the Development Permit.
4. No building permit or other licence, certificate, permit, or other permission relating to development shall be issued or be considered to be in force unless a Development Permit is in effect.
5. The Development Permit shall expire three (3) years from its date of issuance unless a valid licence under the Aggregate Resources Act and other related approvals, as necessary, have been issued.
6. Development shall take place in accordance with the Site Plan, Operational Plan and the Rehabilitation Plan (the "Final Plans") for the Burlington Quarry and Burlington Quarry Extension prepared by MHBC dated November 2024 and submitted for the purpose and request for a Class 'A' licence through the Ministry of Natural Resources or in accordance with any revision or other change to the Final Plans as may be recommended and approved by the Ministry of Natural Resources.
7. No site alteration of the existing contours of the Existing Quarry lands, West and South Quarry Extension lands including the placement or stockpiling of fill (i.e. excess or imported soil) on the property is permitted with the exception of that identified in accordance with the Final Plans.
8. No vegetation shall be cut or removed from the Existing Quarry lands, West and South Quarry Extension lands except for that identified within the Final Plans.
9. This Development Permit allows site alteration and installation of monitoring wells, ponds, ditches, discharge piping, associated servicing and facilities all related to the implementation and maintenance of surface water and ground water management systems and, if needed, water mitigation measure systems within the quarry licensed boundary and the "Escarpment Rural Area" designation, in accordance with the Final Plans and approved Adaptive Management Plan. The quarry operator shall implement all requirements imposed by the Ministry of Natural Resources and the Ministry of the

Environment, Conservation and Parks with respect to on and off-site long-term operational, management and monitoring systems.

10. Screening and landscaping of the quarry operation shall occur pursuant to the Final Plans. Planting and revegetation shall occur as part of the progressive rehabilitation.
11. This Development Permit shall not be issued until the Niagara Escarpment Commission has been notified by the Ministry of Natural Resources that a Class A Licence to permit a quarry below water pursuant to the *Aggregate Resources Act* is ready to be issued as finally approved by the Minister of Natural Resources. Once the Development Permit is issued in accordance with the Ontario Land Tribunal direction, a copy of the approved licence and "Final Plans" shall be filed with the Niagara Escarpment Commission, and these shall be the "Final Plans" and licence referred to under Condition 6.
12. All waste materials generated from the demolition of buildings shall be completely removed from the property and taken to an authorized receiving site (e.g. municipal landfill site, salvage / reclamation facility, re-used / recycled elsewhere) and not stored or buried on-site. All disturbed areas shall be immediately stabilized and rehabilitated after extraction is complete as per the Final Plans.
13. Prior to issuance of a Development Permit by the Niagara Escarpment Commission, a Final Erosion and Sediment Control Plan shall be prepared and submitted to the satisfaction of the Niagara Escarpment Commission. Development shall proceed in accordance with the details of the approved Erosion and Sediment Control Plan.
14. Prior to issuance of a Development Permit by the Niagara Escarpment Commission, a Burlington Quarry Spills and Prevention Response Plan shall be prepared and submitted to the satisfaction of the Niagara Escarpment Commission. Development shall proceed in accordance with the details of the approved Burlington Quarry Spills and Prevention Response Plan.
15. Prior to issuance of a Development Permit a planting plan for the Ecological Enhancement Area located south of the South Extension shall be prepared and submitted to the satisfaction of the Niagara Escarpment Commission. Development shall proceed in accordance with the approved Ecological Enhancement Area Planting Plan.
16. Prior to the issuance of a Development Permit, the Niagara Escarpment Plan Amendment XX for the expansion and integration of the Burlington Quarry shall be approved.
17. Prior to extraction, the quarry operator shall obtain a Permit-To-Take-Water (PTTW) from the Ministry of the Environment, Conservation and Parks, as required, for the proposed quarry dewatering and an Environmental Compliance

Approval ("ECA") for the discharge of excess water for use in the mitigation system.

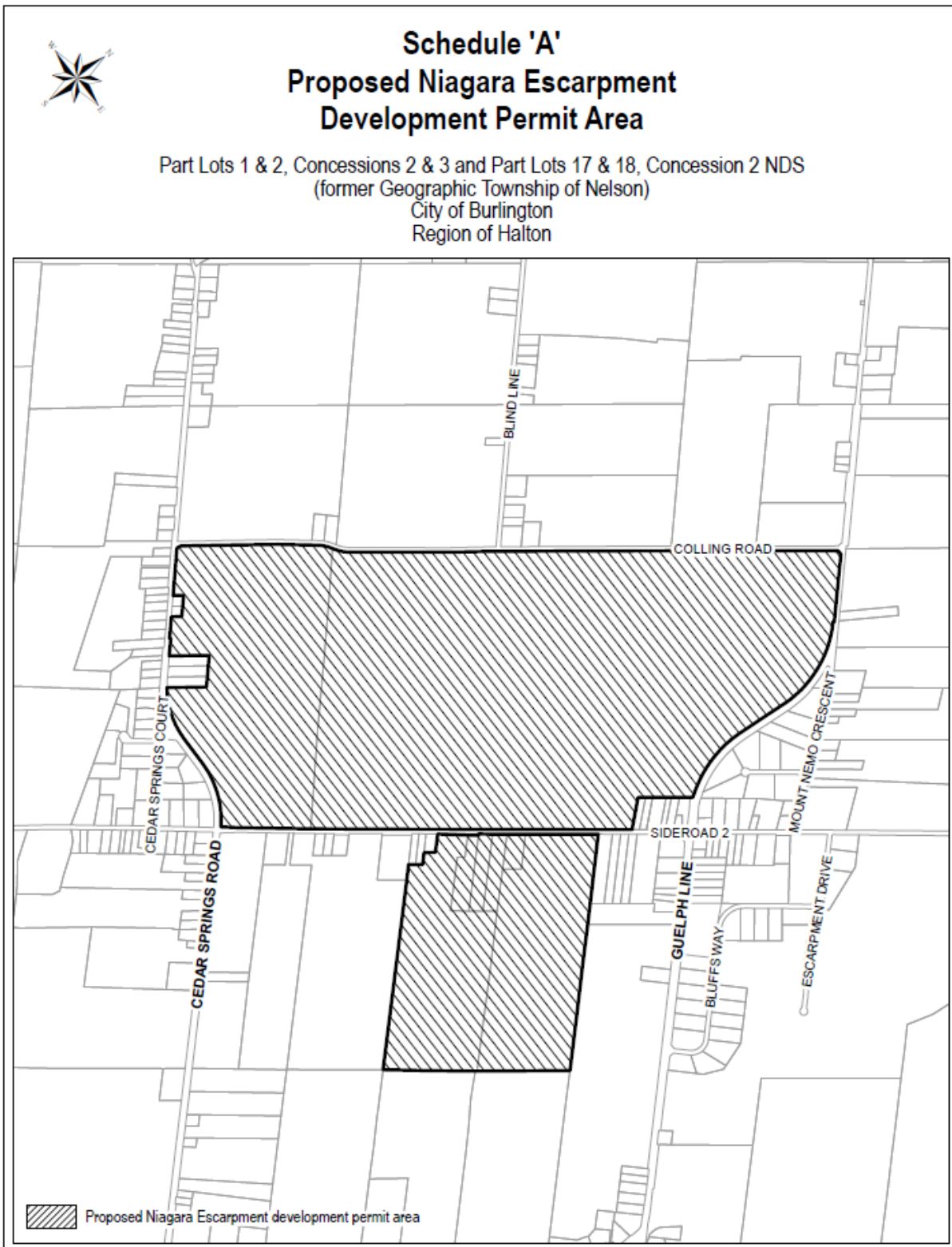
18. All material excavated from the West Extension and South Extension under License No. 626477, and subject to this Permit are to be processed within the existing Nelson Burlington Quarry site, Licence No. 5499. No processing facilities, recycling materials or processing plants are to be established within the West and South Extensions.
19. Any excess soil imported to the West Extension, South Extension and Burlington Quarry shall take place in accordance with the requirements of the "Final Plans."
20. All accessory uses to the Mineral Resource Extraction Area operations shall be removed from the lands prior to the Aggregate Resources Act Licence being surrendered, including any on-site processed aggregate material.
21. Conditions 13, 14, and 15 must be fulfilled within eighteen months from the date of the final decision on the application for Development Permit or this conditional approval shall lapse and a Development Permit will not be issued.

Advisory Notes

- a. A Development Permit does not relieve the permit holder of the requirement to obtain any other applicable permission (e.g., Ontario Building Code, Ontario Planning Act, Conservation Authorities Act, Endangered Species Act, Environmental Protection Act, Fisheries Act, etc.).
- b. Should previously undocumented archaeological resources be discovered, they may be a new archaeological site and therefore subject to Section 48(1) of the Ontario Heritage Act. The proponent or person discovering the archaeological resources must cease alteration of the site immediately and engage a licensed consultant archaeologist to carry out an archaeological assessment, in compliance with Section 48(1) of the Ontario Heritage Act. The Ministry of Citizenship and Multiculturalism may be contacted for guidance (at archaeology@ontario.ca). The *Funeral, Burial and Cremation Services Act*, 2002, S.O. 2002, c.33 requires that any person discovering human remains must cease all activities immediately and notify the police.
- c. Development has the potential to impact wildlife at any time of the year, however, site preparation and/or vegetation removal has a much higher likelihood of harm when work is conducted between April 1 and August 31 of any given year. Any harm to birds, mammals, reptiles or amphibians as a result of development could result in violation with various federal and provincial legislation including (but not limited to) the Migratory Birds Convention Act, the Fish and Wildlife Conservation Act, 1997 and the Endangered Species Act. It is the responsibility of the permit holder to ensure that harm will not come to wildlife. This risk to wildlife can be reduced by ensuring that the best available information is obtained related to the

presence of sensitive species, by seeking advice from a qualified person or agency and by conducting site preparation surveys.

- d. Should Sideroad 2 require maintenance and repair to meet minimum maintenance standards, those activities can be completed with landowner consent and without a development permit where they meet applicable criteria in R.R.O. 1990, Regulation 828.
- e. Proposed changes to the "Final Plans" which form part of the licence(s) issued under the Aggregate Resources Act shall be submitted to the Niagara Escarpment Commission for review. Any change that constitutes development will require a permit unless exempt under R.R.O. 1990, Reg. 828, in keeping with S.24 of the Niagara Escarpment Planning and Development Act (NEPDA), as may be revised from time to time. Where a proposed change to the 'Final Plans' is not considered to be development under the NEPDA, it can be made to the Final Plans without the requirement for making a development permit application. The revised plans shall be filed with the Niagara Escarpment Commission.



ATTACHMENT 5**Witness Schedule**

The Tribunal considered evidence proffered by the following witnesses:

Nelson Aggregates Company

1. Brian Zeman, a Registered Professional Planner and Partner at MacNaughton Hemson Britton Clarkson Planning Limited, was qualified by the Tribunal to provide expert opinion evidence in the area of Land-Use Planning.
2. Dr. Stephen Worthington, a Hydrogeologist and principal of Worthington Groundwater, was qualified by the Tribunal to provide expert opinion evidence in the area of hydrogeology with a specialization in Karst and Carbonate Bedrock Aquifers.
3. Dirk Kassenaar, a Hydrogeologist and President of Earthfx Incorporated, was qualified by the Tribunal to provide expert opinion evidence in the area of integrated groundwater and surface water modelling.
4. E. J. Wexler, a Hydrogeologist and Director of Modelling Services at Earthfx Incorporated, was qualified by the Tribunal to provide expert opinion evidence in the area of integrated groundwater and surface water modelling.
5. Daniel Twigger, a Professional Engineer and Manager of Water Resources Engineering at Tatham Engineering Limited, was qualified by the Tribunal to provide expert opinion evidence in the area of surface water resource engineering.
6. Dr. Beverley Wicks, an Ecologist and principal at Riverstone Environmental Solutions Inc., was qualified by the Tribunal to provide expert opinion evidence in the area ecology.
7. Noel Boucher, a Biologist and Senior Fisheries Biologist at GEI Consultants Canada Ltd., was qualified by the Tribunal to provide expert opinion evidence in the area of aquatic biology.

8. James Leslie, an Ecologist and Senior Vegetation Ecologist with GEI Consultants Canada Ltd., was qualified by the Tribunal to provide expert opinion evidence in the area of vegetation ecology.
9. Dan Currie, a Registered Professional Planner and a partner at MacNaughton Hemson Britton Clarkson Planning Limited, was qualified by the Tribunal to provide expert opinion evidence in the area of cultural heritage planning.
10. Robert Cyr, a Professional Engineer and a Principal with Explotech Engineering Ltd., was qualified by the Tribunal to provide expert opinion evidence in the area of explosives, blasting, and vibration.
11. Brian Sulley, a Professional Engineer and a principal at RWDI Consulting Engineers, was qualified by the Tribunal to provide expert opinion evidence in the area of air quality.

City of Burlington

12. Dr. Walter Illman, a Hydrologist and Professor at the University of Waterloo, was qualified by the Tribunal to provide expert opinion evidence in the area of hydrology.
13. Dr. Andrea Bradford, a Professional Engineer with a Doctorate in Civil Engineering and a Professor at the University of Guelph, was qualified by the Tribunal to provide expert opinion evidence in the area of Water Resource Engineering, specifically the interface between ground water, surface water, and ecology.
14. Corey Stinson, an Ecologist and President at Stinson Environmental Inc., was qualified by the Tribunal to provide expert opinion evidence in the area of ecology and wetlands evaluation.
15. Mark Heaton, an Ecologist and retired Fish and Wildlife Biologist with the Ministry of Natural Resources and Forestry, was qualified by the Tribunal to provide expert opinion evidence in the area of ecology.
16. Karl Konze, an Ecologist and Senior Wildlife Ecologist at Dougan & Associates, was qualified by the Tribunal to provide expert opinion evidence in the area ecology.

17. Dr. Steven Hill, an Ecologist and principal and Senior Ecologist at Dougan & Associates, was qualified by the Tribunal to provide expert opinion evidence in the area of ecology.
18. Robert Ford, a Landscape Architect and Lead Landscape Architect at Spaulding Dedecker Associates, was qualified by the Tribunal to provide expert opinion evidence in the area of quarry rehabilitation and estimation of related costs.
19. Scott Manser, a Professional Engineer and Project Director at Alliance Technical Group, was qualified by the Tribunal to provide expert opinion evidence in the area of air quality engineering and assessment.
20. Dr. George Thurston, Director of Academic Program in Human Exposure and Health Effects at the Department of Environmental Medicine of the New York University of Medicine, was qualified by the Tribunal to provide expert opinion evidence in the area of health effects of air pollution.
21. Domenic Hooton, a Civil Engineer licensed in Victoria, Australia and Operations Manager at Terrock Consulting Engineers, was qualified by the Tribunal to provide expert opinion evidence in the area of explosives, blasting, and vibration.
22. Dr. Gary Lamberti, a Biologist and a Professor at the University of Notre Dame, was qualified by the Tribunal to provide expert opinion evidence in the area of aquatic ecology and stream ecology.
23. Rebecca Sciarra, a Cultural Heritage Planner and Partner at Archeological Services Inc., was qualified by the Tribunal to provide expert opinion evidence in the area of cultural heritage planning.
24. John Stuart, a Registered Professional Planner and Senior Planner with the City of Burlington, was qualified by the Tribunal to provide expert opinion evidence in the area of land use planning.

Region of Halton

25. Norbert Woerns, a Professional Geoscientist registered in the Province of Ontario, was qualified by the Tribunal to provide expert opinion evidence in the area of hydrogeology.

26. Daryl Cowell, a Professional Geoscientist registered in the Province of Ontario, was qualified by the Tribunal to provide expert opinion evidence in the area of Karst hydrogeology and geomorphology.

27. Christopher J. Neville, a Hydrogeologist and an Associate at S. S. Papadopoulos & Associates, was qualified by the Tribunal to provide expert opinion evidence in the area of groundwater modelling.

28. Ronald Scheckenberger, a Professional Engineer and President of Scheckenberger & Associates Ltd., was qualified by the Tribunal to provide expert opinion evidence in the area of surface water resource engineering.

29. Sarah Mainguy, an Ecologist and Senior Ecologist at North-South Environmental, was qualified by the Tribunal to provide expert opinion evidence in the area of ecology.

30. J. Arnel Fausto, an Ecologist and Senior Ecologist at Matrix Solutions, was qualified by the Tribunal to provide expert opinion evidence in the area of aquatic ecology.

31. Nick McDonald, a Registered Professional Planner and President of Meridian Planning Consultants, was qualified by the Tribunal to provide expert opinion evidence in the area of land use planning.

CORE/PERL

32. John Pisapio, a former Biologist with the Ministry of Natural Resources and Forestry, appeared under summons before the Tribunal and was qualified to provide expert opinion evidence in the area of ecology. An Acknowledgment of Expert's Duty Form was not submitted by Mr. Pisapio. The Tribunal administered the Acknowledgement orally at the hearing.

33. D.H. Lyons, a Professional Engineer, was qualified by the Tribunal to provide expert opinion evidence in the area of industrial air pollution assessment and control.

34. Sue Godfrey, a former resident of 4495 Guelph Line, appeared before the Tribunal and provided testimony of her observations and experience of the impact of the quarry operations during the 35 years that she and her family resided on the Mount Nemo plateau prior to moving in 2022.

35. Peter Del Gatto, the resident and owner of 2462 No. 2 Side Road, appeared before the Tribunal and provided testimony of his observations and experience of the impact of the quarry operations during the 15 years that he has resided directly across from the main entrance to the Nelson Quarry since building his home.

36. Daniel Roy, a Professional Engineer and Senior Consulting Expert at DNA-Blast Canada Inc., was qualified by the Tribunal to provide expert opinion evidence in the area of explosives, blasting, and vibration.

37. Nancy Mott, a Registered Professional Planner and Principal at Mott Planning Services, appeared before the Tribunal under summons, was qualified by the Tribunal to provide expert opinion evidence in the area of land use planning.