

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: July 23, 2021

CASE NO(S): PL160384

The Ontario Municipal Board (the “OMB”) and the Local Planning Appeal Tribunal (the “LPAT”) is continued under the name Ontario Land Tribunal (the “Tribunal”), and any reference to the Ontario Municipal Board or Local Planning Appeal Tribunal in any publication of the Tribunal is deemed to be a reference to the Tribunal.

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

Applicant and Appellant: Jim Brown and Sons Trucking Ltd.
Subject: Request to amend the Official Plan - Failure of the Township of Amaranth to adopt the requested amendment
Existing Designation: Agricultural, Extractive Industrial, Environmental Protection
Proposed Designated: Extractive Industrial
Purpose: To permit a 27-hectare gravel pit
Property Address/Description: East Part of Lot 1 and 2, Concession 8
Municipality: Township of Amaranth
Approval Authority File No.: OPA1-09
OMB Case No.: PL160384
OMB File No.: PL160384
OMB Case Name: Jim Brown and Sons Trucking Ltd. v. Amaranth (Township)

PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: Jim Brown and Sons Trucking Ltd.
Subject: Application to amend Zoning By-law No. 2-2009 - Refusal or neglect of the Township of Amaranth to make a decision
Existing Zoning: Agricultural “A”, Environmental Protection “EP”
Proposed Zoning: Extractive Industrial “MX”
Purpose: To permit a 27-hectare gravel pit
Property Address/Description: East Part of Lot 1 and 2, Concession 8

Municipality: Township of Amaranth
 Municipality File No.: Z4-09
 OMB Case No.: PL160384
 OMB File No.: PL160385

PROCEEDING COMMENCED UNDER subsection 11(5) of the *Aggregate Resources Act*, R.S.O. 1990, c. A.8, as amended

Referred by: Ministry of Natural Resources and Forestry
 Objector: James & Joanne Alexander
 Objector: Brent & Alison Hollenbeck
 Objector: David Moritz
 Objector: Ward Naudts; and others
 Applicant: Jim Brown & Sons Trucking Ltd. (662117 Ont. Inc.)
 Subject: Application for a Class A licence for the removal of aggregate

Property Address/Description : Part Lot 2, East 1/2 Lot 1, Concession 8
 Municipality: Township of Amaranth
 OMB Case No.: PL160384
 OMB File No.: MM160063

Heard: July 5-7, 2021 by Video Hearing

APPEARANCES:

Parties

Counsel*/Representative

Jim Brown & Sons Trucking Ltd. John Ewart*

Township of Amaranth and David Germain*
 County of Dufferin

Objectors

James and Joanne Alexander Self-represented

David Moritz Self-represented

Brent and Allison Hollenbeck Self-represented

DECISION DELIVERED BY BRYAN W. TUCKEY AND INTERIM ORDER OF THE TRIBUNAL

[1] The Tribunal convened a hearing of the merits in this matter. Jim Brown & Sons Trucking Ltd. (662117 Ontario Inc.) (“Appellant”) has appealed and Official Plan Amendment (“OPA”) pursuant to s. 22(7) and a Zoning By-law Amendment (“ZBA”) pursuant to s. 34(11) of the *Planning Act* because the Township of Amaranth (“Township”) failed to make a decision on these applications. The proposed instruments would facilitate an aggregate extraction pit on the property located at the East 1/2 Lot 1, and Part Lot 2, Concession 8, in the Township (“subject lands”).

[2] The Appellant has also applied for a Category 1 – Class A Pit Below Water Table Licence for the removal of aggregate under the *Aggregate Resources Act* (“ARA”). Several individuals objected to the licence application and it was referred to the Tribunal by the Ministry of Natural Resources and Forestry (“MNR”).

[3] There are two parties of record in this matter and both are represented in these proceedings. There remain three objectors under the ARA James and Joanne Alexander, David Moritz, and Brent and Allison Hollenbeck, all of whom were in attendance at the hearing. John Hunter is the only participant identified in the Procedural Order (“PO”). The Tribunal did not receive a participant statement, nor did Mr. Hunter attend the hearing.

ISSUES

[4] The PO approved in the decision from the Case Management Conference (“CMC”) on March 3, 2021, had a defined Issues List agreed upon by the Parties and Objectors. The issues are as follows:

1. Is the hydrogeology assessment of the Property and the water table impact, if any, appropriate?
2. Is the rehabilitation of the property to an Agricultural Condition as designed satisfactory?

3. Is the traffic analysis appropriate and are the proposed roadworks for the haul route satisfactory?
4. The importation of concrete and/or asphalt onto the Property is prohibited and the usage of the Property for the purposes of asphalt plant or concreted batching plant, whether permanent or temporary (portable), is prohibited under the settlement documentation. Do the prohibitions require additional wording(s) to satisfy the participants/objectors and if so, are the additional wording(s) acceptable and required?

[5] Although there are only four PO defined issues, the Tribunal and Counsel ensured that the evidence from the expert witnesses is comprehensive enough to ensure proper regard for all criteria as set out in s. 12(1) of the ARA are considered.

THE WITNESSES

[6] The following witness gave expert evidence during this proceeding. For the Appellant:

1. Kent Randall with respect to Land Use Planning.
2. Peter Gray and Jay Flanagan (as a panel) with respect to Hydrogeology.
3. Michael Cullip with respect to Traffic Engineering.

[7] For the Township and County of Dufferin ("County"):

1. Robert Stovel with respect to Land Use Planning, Agrolgy and Site Plan preparation under the ARA.

[8] The Tribunal finds that all professional witnesses are qualified to give opinion evidence in their respective disciplines.

[9] The Objectors did not call expert evidence but did provide complete and competent testimony to assist the Tribunal. The objectors who provided testimony are:

1. David Moritz
2. James and Joanne Alexander
3. Brent Hollenbeck

SITE AREA AND CONTEXT

[10] The subject lands are located at East ½ Lot 1, Part Lot 2, Concession 8 in the Township and the County, and is bounded by the Township's 8th Line ("8th Line") to the east and Dufferin County Road 109 ("CR 109") to the south. The subject lands have a total area of approximately 59 hectares ("ha"). The topography is generally flat but falls steeply to the south towards a small creek and wetland area. The subject lands are for the most part under agricultural cultivation with some hedge and tree growth along old agricultural fences. A small wooded area is located in the south facing slope adjacent to the existing wetland area.

[11] The surrounding area is generally agricultural and rural in nature. The nearest community is the hamlet of Waldemar located approximately 8 kilometers ("km") west of the subject lands and does not present issues related to land use compatibility. Lands to the east and west of the subject lands is designated 'Extractive Industrial' and the lands to the east have existing aggregate operations. Lands to the north and north-west are designated 'Agricultural' and 'Rural' with an existing dwelling and barn at the western property boundary having access from the 9th Line. The southern portion of the subject lands associated with the wetland and water course along with lands extending to the west is designated Environmental Protection.

[12] The proposed area to be licenced for extraction under the ARA is approximately 21 ha. The extraction of gravel will be completed in phases beginning at the southwest

corner of the licenced area and progress in a northern and eastern direction until material is exhausted. Extraction from the subject lands are not to exceed 300,000 tonnes per year. Material in the extraction area is primarily comprised of Granular A and B gravel. An infiltration pond will be constructed below the water table to allow for washing of material and settling prior to and drainage from the site. Extraction will occur to a maximum depth of 474 metres (“m”) above sea level in the southwest corner of the licenced area.

[13] During the extraction, both top and subsoil will be progressively stripped and stockpiled separately along the boundaries of the licenced area. This material will be subsequently used to rehabilitate the pit floor after the extracted material is exhausted. Rehabilitation plans include the creation of a 1 m dry root zone and will be tile drained to allow for agricultural use after all extraction is completed. The infiltration pond will remain in the southwest corner of the site to allow for vegetation succession.

[14] Extracted material will be removed from the subject property along a defined haulage route south on the 8th Line to CR 108. Trucks are prohibited from turning north on 8th Line (except for local deliveries).

PLANNING INSTRUMENTS

[15] The planning instruments before the Tribunal in these proceedings are:

1. an OPA to amend the Official Plan for the Township of Amaranth (“ATOP”) to re-designate the subject lands from ‘Agricultural’ to an ‘Extractive Industrial Special Policy’ designation as described in Exhibit 2 a) Tab 15; and
2. a ZBA to amend the Township’s Zoning By-law No. 2 – 2009 to rezone the subject lands from ‘Agricultural’ to ‘Extractive Industrial Exception Holding’ (MX – H) as described in Exhibit 2 a) Tab 16. The ZBA contains yard

requirements; a list of uses permitted or specifically prohibited; and a Holding (H) Provision. The H provision describe a series of conditions that must be met by the Appellant in order for the H to be lifted including: the execution of a development agreement with the Township and the County; conditions related to issuing of a Category 1 – Class A Pit Below Water Table from MNRF licence; haul route improvements have been designed, approved and secured; and the proponents account is in good standing.

[16] Early in the hearing, Issue No. 4 was addressed with the objectors. Issue No. 4 is “The importation of concrete and/or asphalt onto the Property is prohibited and the usage of the Property for the purposes of asphalt plant or concreted batching plant, whether permanent or temporary (portable), is prohibited under the settlement documentation... “. The OPA has two policy statements specifically intended to mitigate this issue being:

1. “Importation of concrete and/or asphalt shall not be permitted.
2. Uses such as a permanent or portable concrete batch plant or permanent or portable asphalt batch plant or any other extractive industrial use not specifically permitted or enumerated above shall not be permitted”.

The ZBA implements the OPA prohibitions with the following zone provisions:

1. “The accessory use for the importation of concrete and asphalt is prohibited; and
2. Uses such as permanent or portable concrete batching plants or asphalt plants or any other extractive industrial use not specifically enumerated shall not be permitted”.

[17] In the Agreed Statement of Facts (“ASOF”), Messrs. Randal and Stovel agreed

that the prohibitions, including the provisions in the Development Agreement, the proposed Official Plan Amendment, and proposed Zoning By-law Amendment, do not require additional wording and appropriately prohibit an asphalt plan (sic) or concrete batching plant (permanent or portable) on the site.

[18] The Tribunal finds that the prohibitions in both the OPA and ZBA are of enough clarity to ensure there will be no importation of concrete or asphalt nor will concrete batching plants or asphalt plants will be permitted on the subject lands. No additional or revised wording is required. Should these uses be contemplated on the subject lands, an OPA, ZBA and a full public process would be required.

BACKGROUND

[19] Suffice to say this matter has an extensive history. A brief review is as follows:

1. in July 2009, the Appellant submitted applications for an OPA and ZBA to the Township, which was deemed complete in May 2010.
2. a licence application under the ARA was submitted in April 2013 and deemed complete by the MNR in the same month.
3. Technical reports that were submitted in support of the application including: a Planning Justification Report; Environmental Impact Statement and Natural Environment Report, Stage 1-2 Archaeological/Cultural Heritage Assessment; a Level 1 and Level 2 Hydrological Investigation; a Traffic Impact Assessment; and Agricultural Impact Assessment.
4. the Township retained a series of peer review agencies to assist in the review and analysis of all applications. There was extensive commenting and responses to comments during 2013 – 2015.

5. a statutory public meeting was held in June 2013.
6. in response to peer review and public comments, an Air Quality Assessment and Noise Impact Study was completed by the Appellant.
7. the Appellant obtained agency 'sign off' for either the *Planning Act* or ARA licensing applications from MNRF (June 2013), Ministry of the Environment and Climate Change (June 2013) and the Grand River Conservation Authority (April 2015).
8. The Township remained an objector and failed to make a decision on the *Planning Act* applications. In January 2016, an appeal was submitted to the Tribunal.
9. Several individuals remained objectors to the licence application and the matter was referred to the Tribunal by the MNRF for a hearing.
10. Extensive discussions continued with the Township, County and Appellant, which has resulted in a revised Site Plan, and an OPA and a ZBA that are acceptable to all parties.
11. The Appellant, Township and County have a duly executed Development Agreement (Exhibit 2 a), Tab 3) which included clauses related to specific requirements and prohibitions; necessary road widenings; haul routes and their use or prohibition; necessary road works and their performance standards; necessary securities; monitoring and reporting; and a mitigation and complaint resolution process.
12. There remain three objectors, which lead to a hearing of the merits.

[20] Mr. Stovel's evidence related to the robust, careful, complete and comprehensive review process followed by the Township and County is very useful in determining the extent of effort put forward by the Appellant and the approval authority in this matter. He opined that the outcome of these efforts results in some of the highest standards for any aggregate pit applications he has been part of during his career. The Tribunal gives weight to this evidence.

OBJECTORS' TESTIMONY

[21] As well as reinforcing the issues on the Issues List, the Tribunal provided each objector an opportunity to articulate their issues. Written statements are found in Exhibit 2 d), Tab 46 - for David and Susan Moritz, Tab 47 - for Brent and Alison Hollenbeck and Tab 48 - for Jim and Joanne Alexander. Each objector is very clear, concise and articulate in the expression of their issues, which are as follows:

1. the rehabilitation to an agricultural condition is misleading and the subject lands will not be 100% restored and with the infiltration pond remaining, the agricultural potential will be reduced.
2. it is not clear that the importation of asphalt and concrete is prohibited as would be an asphalt or concrete batching plant on the subject lands. It is not appropriate to have these uses on the site as they may pollute the headwaters of the Grand River.
3. concerns related to the road safety, in general and specifically, at the intersection of 8th Line and CR 109. This is an issue for both Messrs. Moritz and Hollenbeck. Both made note of the increasingly poor and aggressive driving behaviours of the travelling public in this area. The projected population growth in the Grand Valley area and uses at the intersection of 8th Line and CR 109 will inevitably place increasing stress on the transportation system and its safety.

4. the proposed turning lane tapers and the acceleration lane, on the south side of CR 109, is not sufficient and will therefore encourage vehicles to pass trucks entering and exiting the site. A temporary traffic signal is suggested as a solution.

5. Mr. and Mrs. Alexander's issues are more local. They own property that borders the northwest section of the proposed location of aggregate extraction. They want assurance that natural water runoff will not be impeded resulting in a drought condition that would impact the production of their important cash crop being a quality horse hay mixture. They have a shallow well in the barn, which is the daily operational water source for their horses and assurance is required that the quantity and quality of this well is not adversely affected.

LAND USE PLANNING POLICY

[22] Mr. Randall provided the Tribunal a complete and comprehensive description of how the proposed aggregate extraction operation has regard to, is consistent with or conforms to all relevant planning policy. He made note that he read and analyzed all documents in their entirety, which then allowed him to outline, for the benefit of the Tribunal, relevant policies that are specifically applicable to the OPA, ZBA and ARA licence application.

[23] Mr. Stovel was retained to assist the Township with land use planning (as well as Site Plan preparation) and is of considerable assistance to the Tribunal with respect to the relationship with and the regard the Township had to the Dufferin County Official Plan ("DCOP").

[24] It is important to note that the proposed instruments are evaluated under the planning policy at the time of the application, save and except, evaluation against the 2020 Provincial Policy Statement ("PPS 2020").

PROVINCIAL POLICY

[25] Mr. Randall described how the PPS 2020 provides overarching policy on land use planning in Ontario, with the general goal to enhance the quality of life of those living in the Province. The Township must uphold the policies of the PPS. He opined that the proposed OPA and ZBA are consistent to the PPS 2020. Specific reference is made to:

1. s. 1.1.5 - speaks specifically to rural areas in municipalities.
2. s. 1.1.5.2 - described the uses that are permitted in rural areas, which includes: the management or use of resources.
3. s. 2.1 - identifies the importance of making 'Wise Use and Management of Resources – Natural Heritage'. A comprehensive Environmental Impact Study ("EIS") was completed to ensure the extent of the environmental features and determine mitigation techniques to ensure no adverse impact on these features.
4. the EIS determined that the wetland is not evaluated but may be part of a larger Provincially Significant Wetland making the considerations of s. 2.1.5 and 2.2.8 relevant. A 30-m vegetative buffer will be implemented for most of the southern boundary of the licenced area thereby keeping it a minimum of 50-60 m from the wetland. The buffer will ensure the long-term protection of the wetland and ensure connectivity as noted in s. 2.1.2.
5. as the aggregate extraction is below the water table, applicants must 'demonstrate that surface water features, groundwater features, hydrologic functions and natural heritage features will not be adversely impacted (s. 2.2.2). The buffer will be maintained between the extraction area and the wetland to mitigate surface water impacts. Significant hydrological study

was completed by MTE Consultants, which concluded that there will be no negative impacts on the water quality or quantity of the groundwater.

6. s. 2.3.6 - permits aggregate extraction in agricultural area. The planner noted that the northern portion of the subject property remains in an Agricultural designation and the licensed area will be restored to an agricultural condition.
7. s. 2.5.2 - states that mineral aggregate resources that are close to markets should be protected and made available. Rehabilitation of aggregate use areas are to be rehabilitated to accommodate subsequent land uses, in this case, an agricultural use (s. 2.5.4 and 2.5.4.1).
8. the Appellant undertook a Stage 1-2 Archaeological Assessment and determined there are no archaeological resources present on the subject property (s. 2.6).

[26] Mr. Kendall gave testimony on how the OPA and ZBA conform to A Place to Grow: Growth Plan for the Greater Golden Horseshoe (“Growth Plan”). The applications were deemed complete prior to 2017, therefore, he evaluated the proposal against the 2006 Growth Plan. He noted that the Growth Plan builds on the policy foundation of the PPS and provides more specific land use policy. Mr. Kendall is of the opinion that the proposed settlement conforms to the Growth Plan. He made specific reference to the following ‘guiding principles’ found in the Growth Plan policy:

1. The policy in the Growth Plan defines how and where growth should occur (s. 2.2.2) and subsection (i) directs growth to settlement areas “except where necessary for development related to the management or use of resources...”. An aggregate extraction operation is considered development related to the management of resources.

2. Section 4.2.3 - speaks directly to this application requiring local municipalities to determine a strategy for the wise use, conservation and management of aggregate resources within the Greater Golden Horseshoe. The ATOP has identified the subject lands under Schedule B as “High Potential Aggregate Resources”.

MUNICIPAL POLICY

[27] Mr. Randall, in his evidence, noted that the applications were deemed complete before the County had introduced its Dufferin County Official Plan (“DCOP”) so the proposal is not subject to its policies. Mr. Stovel, in his evidence, took great care to describe chronologically how the DCOP and ATOP are structured and thereby, written in what one would consider a complementary and compatible manner. As a result, the policy framework in both documents are very consistent, comprehensive and thorough regarding the development and extraction of aggregate resources. Both planners opined that the OPA and ZBA have appropriate regard for the DCOP.

[28] Mr. Randall gave evidence regarding policies found in the ATOP that provides specific land use policy for the Township. The subject lands are designated ‘Agricultural’ and ‘Extractive Industrial’ on Schedule A. He is of the opinion that the proposed aggregate pit conforms to the ATOP. He made special reference to the following portions of the ATOP in support of his opinion:

1. the Agricultural designation encourages all forms of agriculture, the maintenance of scenic values and heritage, and protects the long-term viability of farming operations. The proposed aggregate extraction will not affect the long-term availability of agricultural lands or farming activities. The rehabilitation plan “will ensure those lands are returned to agricultural production”. Aggregate extraction is not a permitted use, hence, the need for an OPA.

2. an Agricultural Impact Assessment was undertaken by VDV Consulting and the proposed pit complies with the Minimum Distance Separation requirements of the ATOP.
3. the policies specific to the Extractive Industrial Designation (s. 3.6.4) provides for the establishment of new extractive operations, subject to a comprehensive series of criteria to “minimize the impact of the extractive operation on the natural landscape and existing residents”. (Exhibit 3)
4. the policy direction of s. 3.6.4 – Development Policy (Exhibit 3) is clear in its intent. In the redesignation of lands to ‘Extractive Industrial’ preference is given to those areas that are identified as ‘High Potential Aggregate Resource Areas as identified on Schedule B in the ATOP. The entire proposed licenced area is identified as a “High Potential Aggregate Resources Area”. Mr. Randall, in his evidence (and as part of the original application), provided an assessment of how the proposal met development criteria as follows. The proposed licenced area:
 - i. will be obstructed from view from the road and sensitive land uses through berms and tree plantings.
 - ii. is not within 120 m of a property designated as residential so there is no adverse impact to existing or approved residential development.
 - iii. is setback a minimum of 15 m from the nearest property line and 30 m from the nearest road right-of-way.
 - iv. meets all the requirements of the Ministry of Environment and Climate Change (“MOECC”) (the Ministry of the Environment at the time of review) as it relates to noise, dust and the surface and groundwater

resources are protected. Technical reports were submitted in support of the MOECC requirements.

- v. a large portion will be rehabilitated to an agricultural condition. Rehabilitation is not possible in areas where extraction is below the water table. The agricultural rehabilitation is maximized in the remaining area as substantially the same acreage, and the average soil capability for agriculture is restored.
 - vi. within the extractive operation and haul routes, there are no sensitive geological, historic or archaeological sites on the subject lands.
 - vii. the existing road network can accommodate the additional generated traffic and the Appellant will be responsible for necessary road improvements; and,
 - viii. progressive rehabilitation will take place as described in the Site Plans.
5. for the portion of the subject lands located within the 'Environmental Protection' designation (s. 3.8.4), the existing designation continues to apply to these sensitive lands and there is no adverse impact on the adjacent wetland.

[29] The ATOP defines criteria that an application must have 'due regard' for when considering an OPA. Those considered relevant to this matter are: the lands are physically suitable for an extractive operation; the roadway can support the proposed use subject to upgrades; is compatible to adjacent uses; and will not have a direct effect on the Township's financial position but will increase tax assessment.

[30] Mr. Randall testified that a ZBA, to the Township Zoning By-law No. 2-2009, from an existing Agricultural (A) to an Extractive Industrial Exception (MX**) zone is required.

The proposed ZBA (Exhibit 2, Tab 16) properly establishes permitted (or specifically prohibited) uses and zone provisions that are appropriate for the proposed aggregate extraction operation.

[31] In reference to s. 12(1) of the ARA, in Mr. Randall's evidence, the proposed aggregate extraction operation has had regard to subsections (a), (b), (c), (g) (j) and (k). He specifically referenced that the Appellant has no history of non-compliance issues (j) and all matters have been considered (k).

[32] In summary, Mr. Randall opined that the proposed OPA and ZBA is consistent with the PPS, conforms to the Growth Plan and ATOP, and meets the intent of the Township Zoning By-law No. 2-2009. It constitutes good planning and is in the public interest. Mr. Stovel confirmed the instruments, as having proper regard for the DCOP, meet all the requisite policy requirements of provincial and municipal jurisdictions.

HYDROLOGICAL AND AGRICULTURAL MATTERS

[33] The Tribunal heard evidence from John Flanagan and Peter Gray of MTE Consultants Inc. ("MTE") with respect to the Hydrogeological investigations that were completed in support of the Appellant's application both under the ARA and the requirements of the Township and County. They gave evidence as a panel with the consent of the Tribunal. Mr. Stovel confirmed much of their testimony in his overview of the Township's considerable efforts to comprehensively review and analyse the information prepared on behalf of the Appellant.

[34] Mr. Flanagan introduced the Site Plans dated July 19, 2019 (Exhibit 2 c), Tab 43) for the proposed aggregate extraction operation prepared by MTE. The Site Plans are very comprehensive and made up of four components each with very detailed notes. The four Site Plans are:

1. Existing Conditions

2. Operational Plan
3. Rehabilitation Plan
4. Cross-Sections and Technical Requirements

Hydrogeological Analysis

[35] MTE completed a Hydrogeological Investigation Level 1/Level 2 dated April 6, 2009 (Exhibit 2c, Tab 25).

The purpose of the investigation was to characterize surface and groundwater resources and their uses; to assess the impact on these resources of extracting aggregate below the water table, and; to determine the significance of any potential impacts and feasibility of mitigation.

This report provided the basis for a comprehensive review by various Provincial Ministries, the Grand River Conservation Authority and the Township Peer Reviewers (R.J. Burnside & Associated Ltd). The process to finalize the Site Plans for the proposal was lengthy and iterative with many suggestions, requirements and comments from the various agencies that are addressed by the Appellant. A complete listing of relevant documents is found in the panel witness statement found in Exhibit 2 d), Tab 55.

[36] Mr. Flanagan outlined the efforts the Appellant took to respond to and clarified issues and MTE Completed an Addendum Hydrological Investigation Report on November 22, 2018 (in Exhibit 2 c), Tab 38). This Addendum served as a response to the witness statement from R. J. Burnside & Associates, several comments received by the Appellant and a mediation session held in May 2018. A work plan was developed, and considerable additional work was completed by the Appellant to satisfy the issues of the Township and County.

[37] The Tribunal is advised that the efforts to complete further analysis brought the Appellant and the County/Township to a point of consensus on matters in dispute and an ASOF as it relates to Issue No. 1 – is the hydrogeological assessment of the Property and the water table impact, if any, appropriate? The ASOF states: “Both Mr.

Gray and Mr. Smikle agree that the hydrogeological assessment of the property and the water table impact is appropriate”.

[38] The panel provided considerable evidence regarding the content of various studies, the additional information that was gathered to give comfort to the various approval authorities in a manner to assist the objectors to understand the conclusions in relationship to their issues.

[39] Mr. Flanagan described their response to the MOECC comments. MTE conducted an additional study and with this information, MOECC agreed upon the design and signed off February 2012. Additional review and changes included:

1. a Well Interference Plan to ensure there are no adverse impacts on the water quality or quantity of private wells in the area.
2. the impacts on the wetland located south of the extraction area, which merited additional review to determine the impact of extraction below the water table. The Site Plan was amended to remove Phase 3 of pit extraction and a 30 m setback is added to ensure no encroachment or impact on the existing wetland.
3. a zone of influence below the water table extraction was identified, defined and evaluated. The findings demonstrated that extraction “will not exert an influence on the water table and will thus not create a zone of influence with the small exception of the infiltration pond”.
4. following the zone of influence assessment, MTE generated a conservative impact assessment. It was determined that the zone of influence extends to the north and east into agricultural lands owned by the Appellant. A minor amount of the zone of influence is noted to extend through the woodlot to

the north. The analysis spoke to the issues of Mr. and Mrs. Alexander and “estimates that there will be no drawdown to the lands west of the Site”.

5. maintained the vegetative buffer to ensure the extraction line matches the tree line and,
6. the Site Plans were redesigned to ensure the area of extraction is not below the wetland so water will naturally flow into the infiltration pond or the wetlands themselves to preserve the wetlands over time.

[40] The panel advised the Tribunal that the issues of the Grand River Conservation Authority were like those of MOECC. A Wetland Impact Drainage Assessment and Thermal Impact Study was completed. The Appellant received Conservation Authority signed off in April 2015.

[41] R.J. Burnside & Associates acted as peer reviewers for the Township and took a very active role in the evaluation of all hydrogeological matters that related to Township approvals and on going responsibilities. Specific interest related to existing conditions, accurate elevations and boundaries to determine any impacts the infiltration pond may have. Representatives of R. J. Burnside & Associates Ltd. signed off on the Site Plans on behalf of the Township on May 21, 2021. The Appellant made provisions in the Site Plans for the following:

1. the site was surveyed to determine surface water flow. The analysis illustrated the best place to locate the infiltration pond, which is moved to be strategically located in keeping with study results.
2. an extensive network of monitoring wells were installed at all four corners of the subject property. Monitoring from these wells assisted in determining the zone of influence, water table and to validate the groundwater flow in a

northeast to southwest direction. Cross sections were revised to illustrate the additional information.

3. monitoring of ground water flow demonstrated that it flows into the wetland and aggregate extraction, will not impact this flow, which will help to ensure the preservation of the existing wetland.
4. a requirement for additional monitoring to confirm that existing wells in the area are not impacted by aggregate extraction. A private well survey was completed, and Mr. and Mrs. Alexander's well may be included to ensure there are no impacts to their private water supply. Frequency of monitoring is defined on the Site Plan as well as a Complaint Resolution Protocol (a similar protocol is also found in the Development Agreement).
5. the impact of any chemicals that may be used or stored on the subject lands and their potential impacts were defined and evaluated.

[42] The panel offered several conclusions related to the Hydrogeological conditions on the subject lands which included:

1. there is no redirection of how the groundwater moves through the subject lands and no impact on the groundwater system is anticipated.
2. there was a review of all private wells in the immediate area and studies determined that there is no expected impact on area private wells. MTE recommends that all private wells should be included in the private well monitoring program.
3. that the depth of the extraction remains above the elevation of the wetland to maintain positive infiltration. The infiltration pond is best located at the southwest corner of the subject lands allowing infiltration back into the

groundwater. No direct discharged will be allowed from the extraction area into the wetland.

4. the bottom level of the infiltration pond will not be excavated lower than 474 m above sea level and an appropriate (approximately 2 m) of sand and gravel material will remain below the infiltration pond.
5. there will be no dewatering using active pumping while extracting below the water table.
6. a robust groundwater monitoring program will be implemented while extraction is proceeding. The monitoring program will include vertical groundwater gradients under the wetland; monthly monitoring of on-site monitoring wells for a minimum of five years; seasonal monitoring of certain private wells for a five year period; and a reporting of the groundwater monitoring program on an annual basis to ensure there are no negative effects on the water levels in the wetland.

[43] In reference to s. 12(1) of the ARA, Messrs. Flanagan and Gray's evidence state that the proposed aggregate extraction operation has had regard to subsections (a), (c), (d), (e), and (i).

Rehabilitation to Agricultural Use

[44] The Tribunal heard considerable evidence from Messrs. Flanagan, Gray and Stovel about the plan to rehabilitate the area of aggregate extraction back to a viable agricultural area. The Rehabilitation Plan provides the detail of the results of the efforts by commenting agencies, the Township and the Appellant.

[45] Mr. Flanagan took the Tribunal to the Rehabilitation Plan whose notes speak to a progressive rehabilitation sequence to bring the lands back to Agricultural after use; a

detail showing the eventual soil profile; an Agricultural Mitigation Plan; a complaint resolution protocol, a natural environment impact prevention and mitigation measures.

[46] The Tribunal is advised that the efforts to further refine the details of the Rehabilitation Plan allowed the Appellant and the County/Township to come to a consensus on matters in dispute and an ASOF as it relates to Issue No. 2 – is the rehabilitation of the Property to an Agricultural Condition as designed satisfactory? The ASOF states: “Both Mr. Randall and Mr. Stovel agree that the rehabilitation of the property to an Agricultural Condition as designed is satisfactory”.

[47] The panel advised the Tribunal on the important details of the Rehabilitation Plan. Mr. Stovel in his testimony confirmed these details. Considerations include:

1. all top and subsoil will be stored on-site in different locations as berms on the boundaries of the extraction area. There is enough soil being stored on site to ensure no importation of soil needed for restoration. The ZBA ensured this to be the case as s. 3 vi) states: “The importation of soil, topsoil and fill is not permitted”.
2. a slope drainage assessment was completed, and the restored lands will be designed to drain to the existing wetland.
3. a soil profile is included on the Rehabilitation Plan to clearly demonstrate final restoration and the maintenance of a dry root zone.
4. the rehabilitated lands will be tile drained.
5. an existing conditions plan was prepared for the site and all lands within 120 m. The lands were surveyed to ensure there would be no increased or decreased overland flow of surface water on adjacent lands. This is of interest to Mr. and Mrs. Alexander as they feared portions of their property

may experience drought conditions as a result of aggregate extraction. A berm will be placed on the west boundary of the subject lands to further protect the Alexander property from adverse impacts.

6. an Agricultural Mitigation Plan was prepared by MTE, which will be used to ensure crop yields are not impacted by the proposed aggregate extraction. Groundwater monitoring data will be used to trigger contingency plans and an Agrologist will be required to verify the impact to crops on the Alexander property should they occur.
7. the subject lands will be progressively rehabilitated in keeping with the phases defined on the Operational Plan. The westerly portion of the area of extraction is Phase 1 and hence, will be extracted and rehabilitated first.
8. a Complaints Resolution Protocol is included on the Rehabilitation Plan to review and compensate as required, for any adverse impacts on adjacent agricultural lands.

[48] Mr. Stovel, in his evidence, stated that the Rehabilitation Plan to an agricultural use is of the highest standard and the most robust he has seen in any application that he has been part of.

[49] In reference to s. 12 (1) of the ARA, Messrs. Flannagan, Gray, Randall and Stovel's evidence states that the proposed aggregate extraction operation's Rehabilitation Plan has had regard to subsections (a), (d), (f), and (g).

TRANSPORTATION AND TRAFFIC ENGINEERING

[50] Mr. Cullip provided expert transportation related evidence to the Tribunal. He is qualified as an expert in transportation and traffic engineering.

[51] The County and the Township required a comprehensive Traffic Impact Study ("TIS") be prepared by the Appellant in support of the application. The County and the

Township were extensively involved in determining the study requirements and the TIS was subject to extensive in-house and peer review, revised in keeping with comments received and ultimately, was found acceptable to both. The TIS was originally completed in 2010 and is updated June 16, 2021 by Tatham Engineering. The firm completed several specific investigations and tasks appropriate to determine potential requirements and evaluate the impacts of an aggregate extraction operation.

[52] The TIS serves to address Issue No. 3 – is the traffic analysis appropriate and the proposed roadworks for the haul route satisfactory?

[53] Mr. Cullip provided the Tribunal with a detailed summary of the TIS conclusions. Firstly, the TIS used the proposed extraction limit (300,000 tonnes per year), truck sizes, operating days per year and hours of operation to determine truck traffic volumes. Mr. Cullip's conservative estimates are that there will be six loaded trucks leaving the site and six empty returning per hour during the peak operation season. Off peak operations he estimates a total of four trucks leaving and entering the subject lands.

[54] The designated haul route is south on the 8th Line to CR 109. The engineer noted most trucks leaving the subject property would head east of CR 109. Traffic counts and operations were reviewed for the existing conditions for 2010, 2015 and projected conditions to 2021. In all cases, an increased annual growth rate and summer volume conditions were estimated. The study concluded the following:

1. acceptable traffic operations will be provided given the existing intersection configuration and control.
2. traffic can be readily accommodated without adverse impacts on the road system traffic operations.

3. an analysis of Ministry of Transportation guidelines respective of exclusive right and left turn lanes illustrated that neither an eastbound left turn lane nor a westbound right turn lane on CR 109 is required.
4. the site lines for both access to the subject lands and the intersection of 8th Line and CR 109 were reviewed and it was found that in all cases, are found to be appropriate; and
5. CR 109 (a former Provincial Highway) is intended to serve higher traffic volumes, all types of vehicles (including heavy trucks) at higher speeds. The Township noted no issues with respect of the road conditions on 8th Line and its cross section (a 7.0 m gravel surface) is considered appropriate for the volumes and type of traffic. Therefore, the use of both roads as a haul route is appropriate.

[55] Mr. Cullip testified that the County required a series of road improvements and all are found in the Development Agreement (Exhibit 2 a), Tab 3). The required improvements are summarized as follows:

1. the northeast radius of 8th Line is to be increased and an existing culvert will be extended or replaced.
2. the 8th Line asphalt approach to CR 109 is to be widened.
3. a 20 m right turn lane with a 60 m taper is to be constructed on CR 109; and,
4. the south shoulder of CR 109 will be paved in keeping with County requirements to allow an acceleration lane for trucks exiting 8th Line with an easterly destination on CR 109.

[56] The Tribunal notes that the ASOF of Transportation Experts found: “Both Mr. Cullip and Mr. Feniak agree that the traffic analysis is appropriate for the purpose of granting municipal planning approvals and that satisfactory arrangements have been made for the detailed design of the proposed roadworks”.

[57] Mr. Cullip spoke to the assertion of the objectors that the analysis is not an accurate reflection of what they experience every day. He explained that driver behaviour is something that a TIS cannot readily account for. He noted the TIS is very conservative in its analysis to ensure safe operations for traffic volumes, generated by the aggregate extraction operation and conclusions found that, when combined with the required improvements, all traffic matters have been thoroughly analyzed and considered appropriate.

[58] Mr. Cullip’s evidence assured that the proposed aggregate extraction operation has had appropriate regard to s. 12 (1)(h) of the ARA.

[59] In conclusion, Mr. Cullip’s opined that the proposed extraction operation from a traffic engineering perspective: traffic volumes can be accommodated on the external road system; access location and configuration is considered appropriate; site lines both access to the subject lands and the intersection of 8th Line and CR 109 are considered appropriate; the road system improvements requested by the County will be implemented; and the traffic analysis is considered appropriate.

[60] The witnesses’ traffic engineering evidence is uncontested and thoroughly tested with questions from the objectors.

[61] In Mr. Cullip’s opinion, “the proposed road works have been resolved with the Township and County and are considered appropriate. Arrangements have been made for the detailed design of the road works”.

EVIDENCE OF THE TOWNSHIP WITNESS

[62] The Tribunal requested to hear evidence from the County and Township's witness, Mr. Stovel. It is apparent from the material that the Township is extremely diligent in the processing of this proposal. The Tribunal appreciates Mr. Stovel's evidence and gives weight to the testimony of a Township representative especially with the qualifications and breadth of experience Mr. Stovel possesses. He was retained in 2013 to assist on Site Plan matters and rehabilitation plans but found his role expanded over time as the extensive peer review's and ARA licence application progressed.

[63] Mr. Stovel stated that the Township was originally opposed to the application and had several issues that needed to be explored and the detail provided before Council could feel comfortable. After all technical matters were sufficiently evaluated and public comments considered, the Council was able to find common ground with respect of the OPA, ZBA, Site Plan and Development Agreement.

[64] He advised the Tribunal that important considerations and additions to the planning instruments are the prohibitions on the import of material (except a small amount for mixing) and a concrete or asphalt batching plant and the inclusion of an H zone to ensure the necessary implementation mechanisms are in place. He was then comfortable to recommend these instruments to Council for approval. Mr. Stovel also went into considerable detail to illustrate how the proposal has appropriate regard to the DCOP. He opined the OPA and ZBA "are consistent to the PPS, conform to the Official Plans and Growth Plan, represent good planning and can be recommended to the Tribunal for approval".

[65] Mr. Stovel then advised the Tribunal on the major additional studies requested by the Township to inform and to subsequently improve the Site Plan being:

1. a dust study on sensitive receptors and a best management plan.

2. water table monitoring wells to determine the high water mark and modelling to determine impacts on the existing wetland.
3. an Agricultural Mitigation Program and the establishment of a complaint protocol. A Dry Root Zone Soil Profile – Detail 2 is now found on the Rehabilitation Plan that incorporate technical recommendations to ensure future agricultural production will be successful. These changes will ensure the interim aggregate extraction use will be successfully rehabilitated.
4. refinements to the location and construct of the infiltration pond.
5. enhancements to the Natural Heritage elements with an expanded buffer and a reforestation of the buffer. The area of disturbance was reduced. Mr. Stovel opined that the natural environmental area will be enhanced with these changes.
6. ensuring the traffic impact, improvements and maintenance of the haul routes were appropriate and all necessary matters are incorporated into the Development Agreement.
7. a survey of the subject property was completed.
8. the Township initiated a substantial monitoring program to ensure no adverse impacts on sensitive receptors.

[66] His evidence illustrated significant improvements to the Site Plan that is before the Tribunal. He is of the opinion that the licence application is “a good application” and is comfortable recommending it as an approval to the Tribunal and the MNRF.

AGGREGATE RESOURCES ACT (“ARA”)

[67] Section 12(1) of the *ARA* sets out the criteria that the Tribunal shall have regard to, in considering whether a licence should be issued or refused. It reads as follows:

12 (1) In considering whether a licence should be issued or refused, the Minister or the Local Planning Appeal 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.

[68] At the end of each section, in this Decision, the Tribunal noted the subsections of s. 12 (1) of the *ARA* that were considered during evidence and determined that appropriate regard has been made to their policy objectives. All criteria were found to have been given appropriate regard to by the Township and Appellant in their review of the proposed aggregate extraction operation.

[69] The Tribunal will now review the most salient in relationship to the issues found in the issues list and concerns of the objectors.

1. s. 12 (1)(a) – the evidence demonstrated that the natural environmental features in the surrounding of the subject lands were studied by qualified experts. The results of this review saw changes to the site plan to ensure

the preservation of the wetland and the aggregate extraction will have no adverse effects on it.

2. s. 12 (1)(c) – Mr. Randall, in his evidence, noted that policy related to development of aggregate extraction operations is clear in its intent. The redesignation of lands to ‘Extractive Industrial’ preference is to those areas that are identified as ‘High Potential Aggregate Resource Areas as identified on Schedule B in the ATOP. The entire proposed licenced area is identified as a “High Potential Aggregate Resources Area”. The Township took great care to ensure the OPA and ZBA were constructed in a way to ensure impacts on its residents are kept to a minimum. Expert peer reviewers were used in the evaluation and their recommendations were taken by the Township and incorporated by the Appellant into the Site Plans.
3. s. 12 (1)(d) – the uncontested evidence from the Applicant, supported by the Township witness, is that the rehabilitation plans are detailed and appropriate for the subject lands.
4. s. 12 (1)(e) – the Tribunal heard evidence from two qualified hydrogeologists who confirmed with extensive study that there will be no adverse effects on the ground or surface water. Private wells in the area will not be affected by the aggregate extraction. To ensure this is the outcome, a comprehensive Groundwater Monitoring Program is established in the Site Plan, and Mitigation and Complaint Resolution is found in the Development Agreement to inform and protect the private well users.
5. s. 12 (1)(f) – the hydrological evidence demonstrated that the possible drought conditions identified by Mr. Alexander should not become reality. To provide comfort and remedies to the Alexanders, an Agricultural Mitigation Plan and Complaints Resolution Protocol is included in the Site Plan.

6. s. 12 (1)(g) – all planning and land use considerations are incorporated into the OPA, ZBA, Development Agreement and Site Plans. Objectors' Issue No. 4 is dealt with in both the OPA and ZBA by prohibiting “permanent or portable concrete batching plants or asphalt plant or any other extractive use not specifically enumerated shall not be permitted’ and prohibiting the “importation of soil, topsoil and fill”.
7. s. 12 (1)(h) – haul routes are designated to utilize roads that are best able to handle the traffic volumes and necessary road improvements required by the Township and County are appropriately included in the Development Agreement.

[70] The Tribunal finds that the uncontested evidence before it supports the application for the licence being sought.

TRIBUNAL ANALYSIS OF THE PROPOSED AGGREGATE EXTRACTION OPERATION

[71] The Tribunal heard evidence from qualified planners, hydrogeologists, an agronomist, and an expert in transportation engineering and has the benefit of material provided in four detailed exhibits. It also has the benefit of written statements and testimony from the four objectors to the proposal. All are considered in the findings made in this matter.

[72] The evidence is clear. The Township followed a careful, complete and comprehensive planning and technical review of the proposed aggregate extraction operation. Their decision to finally support this application did not come lightly and is supported by significant input (and eventual sign off) from various government agencies including the MOECC, MNRF, Grand River Conservation Authority and the County who were careful and considered in their advice to the Township. Mr. Stovel, in his testimony, described in some detail a complete and rigorous evaluation that made

excellent use of expert peer reviewers, which has created an outcome he considers to be of the highest standards for an aggregate extraction operation he has experienced in his career. He described the resulting OPA, ZBA, Development Agreement and Site Plans to be akin to having “belts and suspenders”. The Tribunal is impressed with the Township’s efforts and gives weight to the evidence of the Township representative.

[73] The Tribunal accepts the uncontested evidence of Mr. Randall and Mr. Stovel in its entirety and finds the proposed OPA and ZBA as described in this proceeding meet all the relevant Provincial policy tests of the *Planning Act*, the PPS 2020, and the Growth Plan. The instruments conform to the ATOP and have appropriate regard for the DCOP. The proposed aggregate extraction operation represents good planning and is in the public interest.

[74] The Tribunal agrees with Messrs. Randall and Stovel that the OPA and ZBA are informed by considerable planning and technical studies to ensure good planning. The Tribunal considered the important evidence presented, including:

1. uses that are permitted in rural areas includes the management or use of resources such as an aggregate extraction operation.
2. the Natural Heritage of the subject and surrounding lands has been comprehensively analysed in the Environmental Impact Study (“EIS”) to understand the extent of the environmental features and determine mitigation techniques to ensure no adverse impact on these features. A 30 m vegetative buffer will be implemented for most to the southern boundary of the licenced area, thereby ensuring the long-term protection of the wetland.
3. the Appellants have demonstrated that the aggregate extraction below the water table that the surface water features, groundwater features, hydrologic functions and natural heritage features will not be adversely

impacted. Significant hydrological study was completed by MTE Consultants, which concluded that there will be no negative impacts on the water quality or quantity of the groundwater.

4. aggregate extraction operations are permitted in an agricultural area. The northern portion of the subject property remains in an Agricultural designation and the licensed area will be restored to an agricultural condition. The ATOP is clear in its intent that a redesignation of lands to 'Extractive Industrial' preference is given to those areas that are identified as 'High Potential Aggregate Resource Areas' as identified on Schedule B in the ATOP. The entire proposed licenced area is identified as a "High Potential Aggregate Resources Area". Aggregate extraction is not a permitted use, hence, the need for an OPA.
5. the policies specific to the Extractive Industrial Designation permits the establishment of new extractive operations, subject to a comprehensive series of criteria to "minimize the impact of the extractive operation on the natural landscape and existing residents".
6. the comprehensive development criterion, found in the ATOP, defines the responsibility of a proponent as an application must have 'due regard' for these criteria when considering an OPA. All relevant matters were considered in the review of the application and the results are found to be appropriate.
7. an Agricultural Impact Assessment was undertaken in support of the aggregate extraction. In this study, it was determined that the proposed pit complies with the Minimum Distance Separation requirements of the ATOP.
8. Provincial policy states that mineral aggregate resources that are close to markets should be protected and made available, and aggregate use areas

are to be rehabilitated to accommodate subsequent land uses, in this case, agricultural use.

9. a Stage 1-2 Archaeological Assessment determined there are no archaeological resources present on the subject property.

[75] The Tribunal finds that the prohibitions in both the OPA and ZBA are of enough clarity to ensure there will be no importation of concrete or asphalt nor will a concrete batching plant or asphalt plant will be permitted on the subject lands. No additional or revised wording is required. This is an important issue for the objectors and the Township, which went to great lengths with the planning tools available to ensure to prohibit such uses on the subject property. Objectors were advised that should these uses be contemplated on the subject lands, an OPA, ZBA and a full public process would be required.

[76] The Tribunal accepts the uncontested evidence of Messrs. Gray and Flanagan and supported by Mr. Stovel, in its entirety and finds that the hydrogeology assessment of the subject lands to be appropriate and agrees with their conclusions that:

1. that there is no redirection of how the groundwater moves through the subject lands and no impact on the groundwater system is anticipated.
2. there was a detail review of all private wells in the immediate area and studies determined that there is no expected impact on area private wells and that all private wells should be included in the private well monitoring program.
3. it is important that the depth of the extraction remains above the elevation of the wetland to maintain positive infiltration and the infiltration pond is best located at the southwest corner of the subject lands.

4. the bottom level of the infiltration pond will not be excavated lower than 474 m above sea level and appropriate (approximately 2 m) of sand and gravel material will remain below the infiltration pond.
5. there will be no dewatering using active pumping while extracting below the water table.
6. a robust groundwater monitoring program will be implemented while extraction is proceeding to ensure there are no negative impacts on private wells or on the water levels in the wetland.

[77] The Tribunal accepts the uncontested evidence of Messrs. Randall, Gray and Flannagan and supported by Mr. Stovel, in its entirety and finds that the rehabilitation of the subject lands 'to an agricultural condition as designed is satisfactory'. Important findings include:

1. all top and subsoil will be stored on-site in different locations as berms on the boundaries of the extraction area and there is enough soil being stored on site to ensure no importation of soil is needed for restoration.
2. a slope drainage assessment was completed, and the restored lands will be designed to drain to the existing wetland.
3. a soil profile is included on the Rehabilitation Plan to clearly demonstrate final restoration and the maintenance of a dry root zone.
4. the rehabilitated lands will be tile drained.
5. the subject lands were surveyed to ensure there would be no increased or decreased overland flow of surface water on adjacent lands ensuring no adverse impacts. To make sure this is the case, an Agricultural Mitigation

Plan was prepared and will be used to ensure crop yields are not impacted by the proposed aggregate extraction.

6. the subject lands will be progressively rehabilitated in keeping with the phases defined on the Operational Plan.
7. a Complaints Resolution Protocol is included on the Rehabilitation Plan to review and compensate, as required, for any adverse impacts on adjacent agricultural lands.

[78] The Tribunal accepts the uncontested evidence of Mr. Cullip in its entirety and finds that the traffic analysis is appropriate and the proposed roadworks for the haul route satisfactory.

[79] The Tribunal agrees that traffic generated from the proposed extraction operation can be accommodated on the external road system; the location of access to the subject lands and its configuration is considered appropriate; the site lines both to the subject lands access and the intersection of 8th Line and CR 109 are considered appropriate; and the road system improvements requested by the County will be implemented. It is important to note that the traffic experts in their ASOF agree that the traffic analysis is considered appropriate and that satisfactory arrangements have been made for the detailed design of the proposed roadworks.

[80] The Tribunal finds that all the criteria found in s. 12(1) of the ARA have been given appropriate regard and the uncontested evidence before it supports the application for the licence being sought.

[81] The Tribunal finds that the OPA and ZBA represents good land use planning, is consistent with or in conformity with and meets the objectives of all requisite public policy and is in the public interest. The outcome of the considerable efforts of the

Township, when implemented, will result in an aggregate extraction operation that is in keeping with the highest of industry standards.

ORDER

[82] Accordingly, the Tribunal Orders:

[83] **THAT** the Appeal is allowed in part, and the Official Plan for the Township of Amaranth is amended as set out in Attachment 1 to this Order.

[84] **THAT** the Appeal against By-law No. 2-2009 of the Township of Amaranth is allowed in part and By-law No. 2-2002 is amended as set out in Attachment 2 to this Order. In all other respects, the Tribunal Orders that the Appeal is dismissed.

[85] **THAT** the Tribunal direct the Minister of Natural Resources and Forestry to issue a licence under the *Aggregate Resources Act* for a Class "A", Category 1 (pit to extract below the groundwater table) in accordance with the Site Plan filed with the Tribunal and found in Exhibit 2 c), Tab 43.

[86] **THAT** the Final Order be withheld until the Tribunal has been advised by the Township and County Solicitor that the Holding (H) conditions have been met and the H has been lifted as found in the Zoning By-law Amendment approved in Clause 84 of this Decision.

[87] **THAT** upon receipt of such written confirmation, the Final Order will issue.

[88] **THAT** Counsel for Jim Brown and Sons Trucking Ltd. (662117 Ontario Ltd.) will advise the Tribunal no later than **Monday, December 6, 2021** regarding the status of the Holding conditions if they have not yet been finalized.

[89] **THAT** the Tribunal may be spoken to if any issues arise regarding the preparation or finalizing matters in the Tribunal Order.

“Bryan W. Tuckey”

BRYAN W. TUCKEY
MEMBER

Ontario Land Tribunal

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

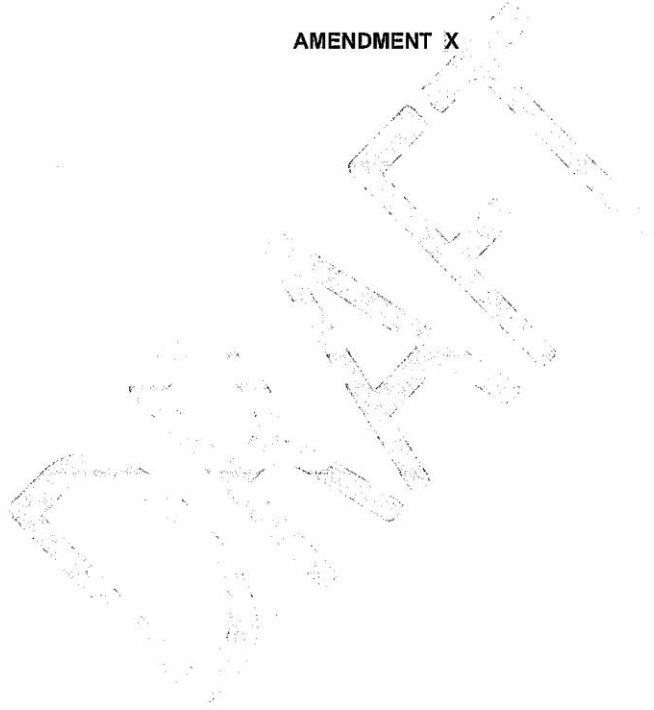
The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal.

ATTACHMENT 1

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**THE CORPORATION OF THE
TOWNSHIP OF AMARANTH**

**OFFICIAL PLAN
AMENDMENT X**



AMENDMENT NUMBER _____
TO THE OFFICIAL PLAN
FOR THE
TOWNSHIP OF AMARANTH

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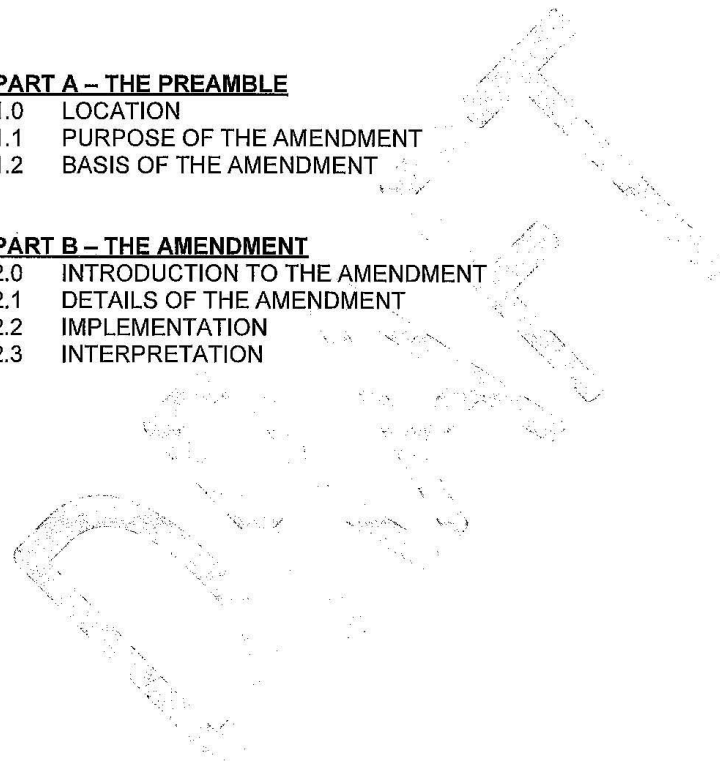
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THE CONSTITUTIONAL STATEMENT

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PART A – THE PREAMBLE does not constitute part of the Amendment.

PART B – THE AMENDMENT consisting of the text and Schedule "A", constitutes Amendment Number ___ (X) to the Official Plan of the Township of Amaranth.



**AMENDMENT NUMBER X
TO THE OFFICIAL PLAN
FOR THE
TOWNSHIP OF AMARANTH**

PART A – THE PREAMBLE

1.0 LOCATION

This Amendment applies to East Half of Lot 1 and Part of Lot 2, Concession 8 in the Township of Amaranth.

1.1 PURPOSE OF THE AMENDMENT

The purpose of this amendment to the Official Plan is to re-designate lands described as East Half of Lot 1 and Part of Lot 2, Concession 8 from Agricultural to Extractive Industrial Special Policy to permit the establishment of a mineral aggregate operations licenced under the Aggregate Resources Act as Category 1 - Class A Pits Below Water.

1.2 BASIS OF THE AMENDMENT

The amendment pertains to the land located on the East Half of Lot 1 and Part of Lot 2, Concession 8.

The subject property is currently designated Agricultural, Extractive Industrial, and Environmental Protection in the Township of Amaranth Official Plan.

As per Section 3.1.3, the proposed Category 1 – Class A Pit Below Water mineral aggregate operation is not a permitted use within the Agricultural designation., Official Plan Amendment No. X will redesignate these lands to the Extractive Industrial Special Policy designation. The amendment will also redesignate the portion designated Extractive Industrial to the Extractive Industrial Special Policy in order to provide a consistent designation across the entire Licensed Area. The Extractive Industrial Special Policy designation will permit the operation of a mineral aggregate operation whereby extraction will occur both above and below water. Extraction is permitted on an interim basis only and the site will be rehabilitated progressively. The licence will be surrender upon the rehabilitation being final and accepted by the Ministry of Natural Resources and Forestry.

The Subject Lands will be licensed under the Aggregate Resources Act as a Category 1 – Class A Pit Below Water. The Site Plan(s) under the Aggregate Resources Act are legally enforceable document to ensure that Progressive Rehabilitation and Final Rehabilitation is achieved.

The Township of Amaranth and the County of Dufferin have required the owners of the subject property to enter into a Development Agreement. The Development

Agreement sets out requirements to improve the 8th Line up to and including the intersection with County Road 109 to ensure that this municipal road and the intersection is maintained as a haul road for the proposed pit. Additional matters included within the Development Agreement relate to (but are not limited to) the following: mitigation and monitoring requirements, hours of operation, complaint protocol and rehabilitation standards.

The lands to be designated Environmental Protection have been refined and delineated more specifically to more accurately reflect the existing wetland area located to the south of the Licensed Area. As part of the agency review of the application, the Grand River Conservation Authority recommended a development buffer from the refined wetland boundary. The Environmental Protection designation and associated mapping will achieve this.

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STANDARD

**AMENDMENT NUMBER

TO THE
OFFICIAL PLAN
FOR THE
TOWNSHIP OF AMARANTH**

100

PART B – THE AMENDMENT

2.0 INTRODUCTION TO THE AMENDMENT

2.1 DETAILS OF THE AMENDMENT

The Official Plan of the Township of Amaranth is amended as follows:

1. Schedule "A" to the Official Plan of the Township of Amaranth is amended by changing the following:
 - a) The land use designation of the subject lands being the East Half of Lot 1 and Part of Lot 2, Concession 8 in the Township of Amaranth as shown on Schedule "A" attached hereto is re-designated from Agricultural to Extractive Industrial.
2. Extractive Industrial Special Policy X
 - a) **Section 3.6.8 Special Policy 3 for East Half of Lot 1 and Part of Lot 2, Concession 8** is added to the Official Plan for the Township of Amaranth as **Extractive Industrial Special Policy X**. The following polices are applicable to Extractive Industrial Special Policy X:
 - i. Extraction of sand and gravel shall be permitted as an interim land use together with primary crushing, processing, screening as set on the Site Plan(s);
 - ii. Importation of concrete and/or asphalt shall not be permitted;
 - iii. Importation of sand and gravel, for the purposes of blending materials, shall be permitted to the limits set out in the zoning by-law and Development Agreement;
 - iv. The area disturbed on the site shall be limited as much as possible through the use of staged stripping, extraction and progressive rehabilitation operations, with a maximum disturbed area to be 15 ha;
 - v. Development Agreement(s) shall be entered into with the Township and the County of Dufferin to the satisfaction of

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each respective municipality;

- vi. The importation of topsoil, soil and fill is not permitted;
- vii. The hours of operation shall be: 07:00 to 19:00 Monday to Friday, with no operations on Saturday, Sunday or Statutory Holidays;
- viii. Uses such as a permanent or portable concrete batch plant or permanent or portable asphalt batch plant or any other extractive industrial use not specifically permitted or enumerated above shall not be permitted;
- ix. Agricultural use is permitted as set out in the implementing zoning by-law;
- x. Rehabilitation shall be to an agricultural condition as set out in the approved Site Plan(s).

3. Environmental Protection

The existing policies of the Environmental Protection designation, including existing agricultural operations being permitted shall be applicable in this Amendment to the lands being designated in Environmental Protection in this Amendment.

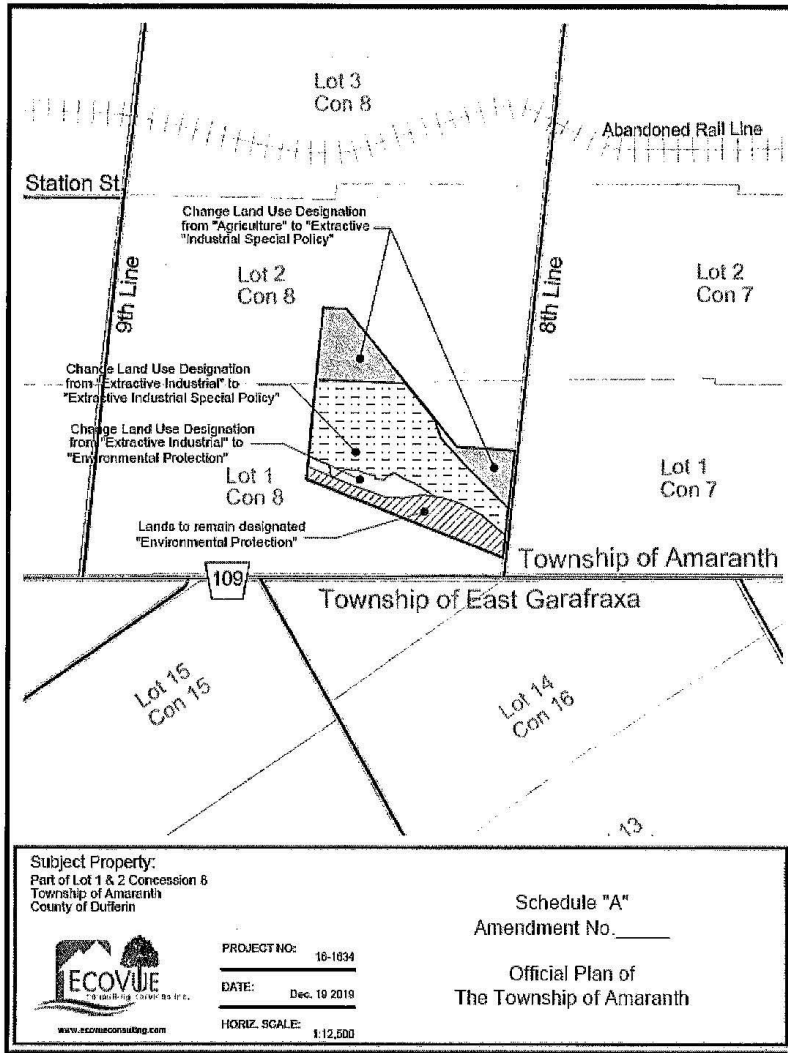
2.2 IMPLEMENTATION

Section 5 "Implementation" of the Official Plan shall apply to the implementation of this Amendment.

2.3 INTERPRETATION

The provisions of the Official Plan, as amended from time to time, regarding the interpretation of the Plan shall apply with respect to this Amendment

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ATTACHMENT 2

THE CORPORATION OF THE
TOWNSHIP OF AMARANTH
BY-LAW NUMBER _____

103

BEING A BY-LAW TO AMEND ZONING BY-LAW NUMBER 2-2009,
AS AMENDED

WHEREAS the Council of the Corporation of the Township of Amaranth is empowered to pass By-laws to regulate the use of land pursuant to Sections 34 and 36 of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended;

AND WHEREAS the owner of the East Half of Lot 1 and Part of Lot 2, Concession 8 Township of Amaranth, County of Dufferin has filed an application to amend the Zoning By-law 2-2009, as amended;

AND WHEREAS it is deemed appropriate to amend By-law 2-2009 as amended to rezone the subject lands to permit an extractive industrial use (i.e. pit below the water table).

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWNSHIP OF AMARANTH ENACTS AS FOLLOWS:

1. That Schedule 'A' to By-law 2-2009, as amended, is further amended by rezoning the lands described as the East Half of Lot 1 and Part of Lot 2, Concession 8, identified on Schedule 'A' to this By-law as follows:

From Agricultural to the following zone:

Extractive Industrial Exception Holding (MX-*(H)) Zone.

2. Section 4.11.2.ii) b) of Zoning By-law 2-2009 (Extractive Industrial) is hereby amended by adding the following new sub-section:

4.11.2.iii) Minimum Yard Requirements (from limit of extraction) or buildings or structures:

b) Interior Side Yard: 0.0 m.

3. Section 4.11 of Zoning By-law 2-2009 (Extractive Industrial) is hereby amended by adding the following new sub-section as 4.11.3.1:

a) Extractive Industrial Exception Holding (MX-*(H))

Notwithstanding the provisions of the Extractive Industrial (MX) Zone to the contrary, on lands zoned Extractive Industrial Exception Holding (MX-*(H)) the following shall apply:

Only the following uses shall be permitted:

- i) Extraction of sand and gravel is permitted to occur above and below the established groundwater table;
- ii) Notwithstanding section 4.11.1 of the Extractive Industrial (MX) Zone, a pit is defined for the purposes of this By-law as the extraction of aggregate above and below the established groundwater table, together with primary crushing/processing and stockpiling of extracted aggregate along with staged stripping and progressive rehabilitation;
- iii) The accessory use of the importation of concrete and asphalt is prohibited;

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- iv) Uses such as permanent or portable concrete batching plants or asphalt plants or any other extractive industrial use not specifically enumerated shall not be permitted;
- v) The accessory use of the importation of sand and gravel, for blending purposes is permitted up to the limit of 50,000 tonnes/year, subject to the requirements of the Development Agreement;
- vi) The importation of soil, topsoil and fill is not permitted;
- vii) The hours of operation are 07:00-19:00 Monday to Friday, and no operations on Saturday, Sunday or Statutory Holidays;
- viii) Notwithstanding section 5.7 definition of agricultural use, the only permitted agricultural use shall be field crops for the time period that the subject lands remain licenced under the Aggregate Resources Act; and subsequently, when the subject lands are no longer licenced, all agricultural uses shall be permitted.

4. Notwithstanding anything else to the contrary in Zoning By-law No. 2-2009 as amended, the following Holding Provision applies to the Extractive Industrial Exception (H) (MX -* (H)) Zone in this By-law:

HOLDING PROVISION

- i) A Holding (H) Provision is hereby established and identified on Schedule 'A' attached hereto, by the letter "H" in parentheses following a zoning symbol established in this By-law.
- ii) Where a zoning symbol is followed by the letter "H" in parentheses, the provisions of the By-law applicable to the zone symbol shall only apply upon the removal of the letter "H" by an Amendment By-law as approved by Council in accordance with the provisions of Section 36 of the Planning Act.
- iii) Until the removal of the letter "H":
 - a) No land, building or structure shall be used for any purpose other than that for which it was lawfully used prior to the passing of this By-law with the exception of a use by a public authority or existing agricultural uses;
- iv) The (H) Holding Provision shall only be lifted when the Township of Amaranth is satisfied that the following items have been addressed:
 - a) A development agreement(s) between the Owner, the Township of Amaranth and the County of Dufferin has been executed and registered on title in accordance with the terms of the development agreement(s);
 - b) The Ministry of Natural Resources and Forestry has confirmed that the Category 1 – Class A Pit Below Water Licence to be issued for the subject lands shall include the agreed upon Site Plan containing the agreed upon notes and conditions in the form attached to the development agreement referenced above; and,

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- c) That the haul route improvements have been designed, approved and secured, all to the satisfaction of the Township of Amaranth and the County of Dufferin in accordance with the terms of a development agreement(s).
- d) That the proponent's account is in good standing and all fees, taxes and other payments owing by the proponent to the Township and or County have been paid.

5. For the lands zoned Environmental Protection (EP), the provisions of section 4.14 shall apply.

6. Notwithstanding any other provisions of this by-law, to the contrary, public uses in accordance with section 3.18 of Zoning By-law No. 2-2009 shall be permitted in all zones under this By-law.

7. In all other respects, the provisions of Zoning By-law 2-2009, as amended shall apply.

8. Upon approval of Official Plan Amendment No. X by the County of Dufferin, this by-law shall take effect from date of passing thereof, providing no appeal has been filed. Where objections to the by-law are received in accordance with provisions of the Planning Act, the by-law shall come into effect upon approval of the Local Planning Appeal Tribunal.

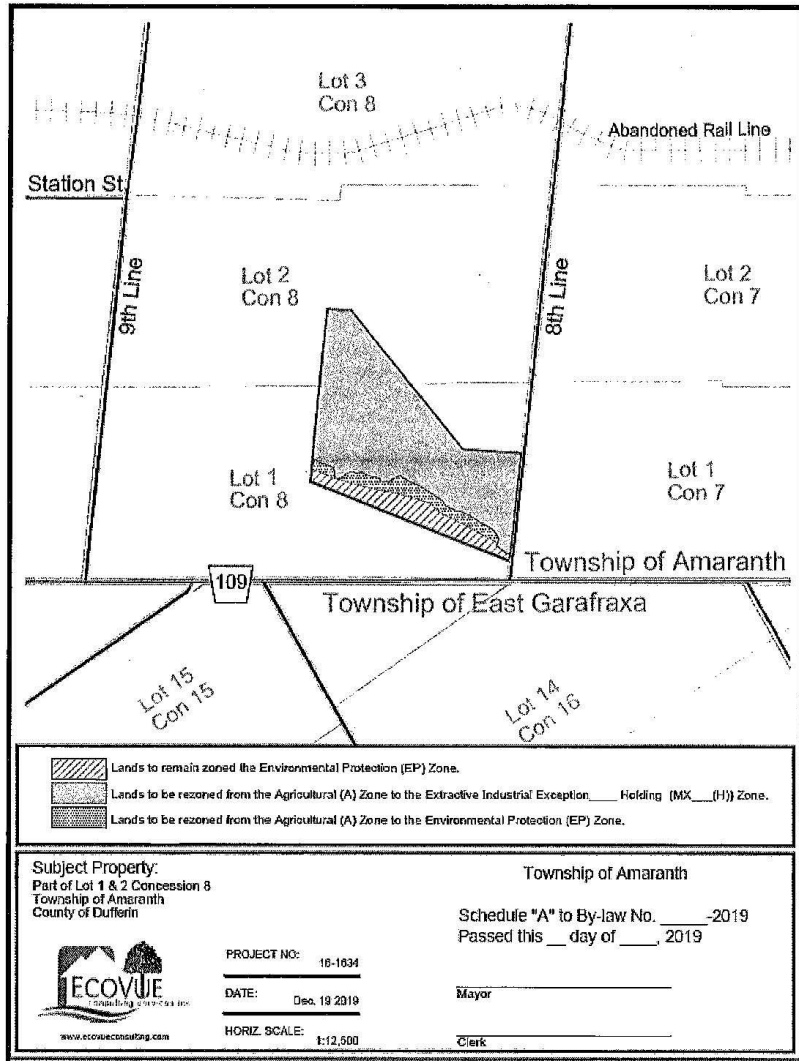
BY-LAW READ A FIRST AND SECOND TIME THIS OF , 2020




BY-LAW READ A THIRD TIME AND PASSED THIS OF , 2020

 CAO/Clerk-Treasurer

 Bob Currie, Mayor

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-  Lands to remain zoned the Environmental Protection (EP) Zone.
-  Lands to be rezoned from the Agricultural (A) Zone to the Extractive Industrial Exception Fielding (MX_(H)) Zone.
-  Lands to be rezoned from the Agricultural (A) Zone to the Environmental Protection (EP) Zone.

Subject Property:
 Part of Lot 1 & 2 Concession 8
 Township of Amaranth
 County of Dufferin

Township of Amaranth

Schedule "A" to By-law No. ____-2019
 Passed this __ day of __, 2019



PROJECT NO: 16-1634
 DATE: Dec. 19 2019
 HORIZ. SCALE: 1:12,500

Mayor _____
 Clerk _____