

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: January 26, 2018

CASE NO(S): PL151150

PROCEEDING COMMENCED UNDER subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: Concerned Citizens In Adjala/Tosorontio Inc.
Subject: By-law No. 15-37
Municipality: Township of Adjala-Tosorontio
OMB Case No.: PL151150
OMB File No.: PL151150
OMB Case Name: Concerned Citizens In Adjala/Tosorontio Inc. v. Adjala-Tosorontio (Township)

PROCEEDING COMMENCED UNDER subsection 17(36) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: Concerned Citizens In Adjala/Tosorontio Inc.
Subject: Proposed Official Plan Amendment No. 17
Municipality: Township of Adjala-Tosorontio
OMB Case No.: PL151150
OMB File No.: PL160370

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: Steve Abraham
Objector: Katherine Alexander
Objector: Inge Anderssen
Objector: David Aspenlieder; and others
Applicant: Nelson Aggregate Co.
Subject: Application for a (Class A or B) licence for the removal of aggregate
Property Address/Description: 5556 & 5670 County Road 13
Municipality: Township of Adjala-Tosorontio
OMB Case No.: PL151150
OMB File No.: MM160040

Heard: November 7 - 22, 2017 at Township of Adjala-Tosorontio, Ontario

APPEARANCES:

Parties

Counsel/Representative*

Nelson Aggregate Co. ("Nelson")

D. White
M. Kemerer
K. Coulter (student-at-law)

Township of Adjala-Tosorontio
("Township")

J. Feehely
P. McKenna

County of Simcoe ("County")

M. Green
S. Hahn

Concerned Citizens in Adjala-Tosorontio Inc. ("CCAT")

E. Gillespie
A. Chachula

Alliston & District Humane Society
("Humane Society")

E. Gillespie
A. Chachula

Fred Somerville

Self-represented

Breedon's Maple Syrup

K. Breedon*

Beausoleil First Nation

V. Monague*

DECISION DELIVERED BY BLAIR S. TAYLOR AND INTERIM ORDER OF THE BOARD

INTRODUCTION

[1] Nelson owns the property known municipally as 5556 and 5670 County Road No. 13 in the Township of Adjala-Tosorontio in the County of Simcoe ("Subject Lands").

[2] The Subject Lands are about 72.8 hectares (“ha”) in area and located about 5 kilometre (“km”) north and west of the Town of Alliston, and 1-2 km south of the settlement area of Everett.

[3] The Subject Lands are currently designated in the Township Official Plan (“TOP”) as Protected Aggregate Resources and zoned M3 Protected Extractive Resources.

[4] Nelson made an Official Plan Amendment (“OPA”) and Zoning By-law Amendment (“ZBA”) application to the Township to redesignate the Subject Lands to Licensed Pit, and rezone the Subject Lands to M2 Industrial to permit the development of an aggregate operation. The application was deemed complete by the Township on February 3, 2015.

[5] In addition to the OPA and the ZBA, Nelson made an application to the Ministry of Natural Resources and Forestry (“MNRF”) to establish a Class A Category 1 Aggregate License (Pit Below Ground Water Table) with 1 million tonnes per annum.

[6] The OPA and ZBA were adopted by the Township, the OPA was approved by the County and both matters were appealed to the Board.

[7] The application for the Class A Aggregate License resulted in numerous objections filed with MNRF, and the application was referred by the Minister to the Board.

[8] In the lead up to the hearing, objections by MNRF and Nottawasaga Valley Conservation Authority (“NVCA”) were withdrawn.

[9] In order to ensure the most efficient and effective hearing, the Board heard these matters concurrently.

[10] During the course of the hearing, the Humane Society withdrew its appeal and withdrew from the hearing. Nelson, in turn, filed an amended Operations Plan (Exhibit

68 A) and an amended Details and Notes schedule (Exhibit 68B) which moved the internal haul road easterly through the middle of the Subject Lands (and away from the mutual property line with the Humane Society) and the location of the processing plant was fixed.

[11] At the request of the parties and with the parties and their counsel in attendance, the Board conducted a site visit on November 16, 2017.

[12] In order to accommodate all the participants, the Board set aside a hearing day solely for participants, at which time over 20 participants were heard.

DECISION

[13] For reasons set out below, the Board dismisses the appeals against the OPA and the ZBA but will withhold its Final Order. The Board recommends to the Minister that the requested license be issued in accordance with Exhibit 14, as amended by Exhibits 68 A and B, and subject to the revised condition of approval that is set out below.

CONTEXT

[14] The Subject Lands are located at the northwest corner of Side Road No. 5 and County Road No. 13.

[15] The Subject Lands are located within the physiographic region of the Simcoe Low Lands. The Ontario Geological Survey Aggregates Resources Inventory Paper 113 (Aggregate Resources Inventory of Essa and Tosorontio Township Simcoe County Southern Ontario 1988) acknowledges the Subject Lands as being within a glaciofluvial deposit situated in the Boyne River Valley. The County Official Plan ("County Plan") currently designates the Subject Lands as Agricultural/Rural and Greenlands and Schedule 5.2.1 identifies the Subject Lands as being within an area of "High Potential Mineral Aggregates Resources".

[16] The Canada Land Inventory classifies the Subject Lands as Class 4W in the northwestern half of the property and 2F in the southeastern. The sub class 'W' indicates moisture and the sub class 'F' indicates low natural fertility.

[17] The northern boundary of the Subject Lands approximates the location of the Boyne River as the river meanders both on and off the Subject Lands. North of the Subject Lands and north of the Boyne River is a woodland area and beyond that to the north and west are lands owned by Somerville Nurseries Inc. To the north and east of the Subject Lands there are a number rural residential homes, to the immediate east is largely agricultural in nature, to the south is a rehabilitated gravel pit recently rezoned to enable a rural residential dwelling to be constructed on it, to the west at the southwest corner of the Subject Lands is an agricultural area with a woodland, due west is a rehabilitated pit about 50 acres in size owned by the Humane Society, north of the Humane Society lands is another rehabilitated pit with two pit ponds, and north of that is an active pit owned and operated by the Township.

[18] Further west on Concession Road No. 4 are three other rehabilitated pits.

[19] The Subject Lands have one existing dwelling and farm outbuildings. There is one other dwelling on the west side of County Road No. 13 abutting the Subject Lands that is under agreement of purchase and sale with Nelson.

[20] The Subject Lands are bisected by the Tosorontio Creek and north of the creek there is a municipal drain.

[21] The Subject Lands themselves are generally flat with a ridge in the northern section of the property.

[22] There is an Ontario Hydro Easement with three Hydro towers running on a southwest to northeast diagonal through the Subject Lands.

[23] The Subject Lands are currently used as a farmstead with a mixture of hayfields and pasture lands for grazing.

DEVELOPMENT PROPOSAL

[24] The development proposal is to license the 72.8 ha of which 51.49 ha will be slated for extraction. Nelson proposes that the Subject Lands will be a Class A Category 1 Pit with a proposed annual tonnage of 1 million tonnes, with extraction to occur below the ground water table.

[25] The pit is proposed to be developed in three phases with phase 1 being the portion south of the Tosorontio Creek. The haul road access will be onto Side Road No. 5, thence east to County Road No. 13, thence south along County Road No. 13 to Provincial Highway No. 89 then either east to Provincial Highway No. 400, or west.

[26] A processing plant will be located in phase 1 with either an acoustic barrier or enclosure for noise control. Under the amended Operations Plan (Exhibit 68A), while phase 2 extraction will move north of the Tosorontio Creek for phases 2 and 3, the processing plant will remain in phase 1.

[27] The amended Operations Plan and the Details and Notes found at Exhibit 68 A and B provide that in addition to the 8 metre (“m”) high acoustic barrier on the south side of Side Road No. 5 that there will be a 4 m high berm planted with conifers on the west side of the Subject Lands immediately south of the Tosorontio Creek and immediately north of the Tosorontio Creek in the vicinity of the Humane Society lands.

[28] Exhibit 68A also shows the relocated internal main haul road proceeding northerly at about the mid-point of the Subject Lands and crossing both the Hydro easement and the Tosorontio Creek.

[29] As a result of the amendments and modifications to the original application, at the hearing there were no municipal governments, public agencies, or commenting authorities in opposition to the development proposal.

THE LAND USE PLANNING POLICY CONTEXT

[30] Land use planning in Ontario is: policy based, hierarchal in nature, and “top down” from the provincial to the municipal level.

[31] The policy regime includes provisions of the *Planning Act* (“PA”), policy directives from the Provincial Policy Statement, the Growth Plan for the Greater Golden Horseshoe, the County Plan, and the TOP.

THE PLANNING ACT

[32] Section 2 of the PA provides that municipalities (and the Board) in carrying out their responsibilities under the PA shall have regard to matters of provincial interest including:

- (a) The production of ecological systems including natural areas, features and functions;
- (b) The conservation and management of natural resources and the mineral resource base; and
- (m) The coordination of planning activities of public bodies.

[33] Section 2.1 provides that when the Board makes a decision under the PA, it shall have regard to any decision that is made under the PA by a municipal council relating to the same planning matter.

[34] Section 3 provides that the Minister of Municipal Affairs and Housing may issue policy statements on matters relating to municipal planning.

[35] Section 3(5) provides that a decision of the council of the municipality (and the Board), in respect of the exercise of any authority that affects a planning matter:

(a) shall be consistent with the policy statements issued; and

(b) shall conform with the provincial plans that are in effect on that date.

2014 PROVINCIAL POLICY STATEMENT (“PPS”)

[36] Section 2.5 of the 2014 PPS deals with mineral aggregate resources. Policy 2.5.1 provides that mineral aggregate resources shall be protected for the long term and where provincial information is available, deposits of mineral aggregate resources shall be identified.

[37] Policy 2.5.2.1 provides that as much of the mineral aggregate resources as is realistically possible shall be made available as close to markets as possible.

[38] Policy 2.5.2.2 states that:

Extraction shall be undertaken in a manner which minimizes social, economic and environmental impacts.

[39] Finally, the PPS provides that this definition for mineral aggregate resources means:

Gravel, sand, clay, earth, shale, stone, limestone, dolostone, sandstone, marble, granite, rock, or other material prescribed under the *Aggregate Resources Act* suitable for construction, industrial, manufacturing and maintenance purposes but does not include metallic ores, asbestos, graphite, kyanite, mica, nepheline syenite, salt, talc, wollastonite, mine tailings or other material prescribed under the *Mining Act*.

GROWTH PLAN FOR THE GREATER GOLDEN HORSESHOE 2017 (“Growth Plan”)

[40] Section 4.2.8 of the Growth Plan deals with mineral aggregate resources and uses the same definition as found in the PPS.

[41] The operative section is 4.2.8.7 which provides that:

Where an application under the *Aggregate Resources Act* has been received and deemed complete by the province as of July 1, 2017, any applications under the *Planning Act* to permit the making, establishment, or operation of the pit or quarry to which the *Aggregate Resources Act* application relates, if approved, will not be subject to the policies of this plan.

[42] Thus, the Board refers back to the Growth Plan as of 2006, which under s. 4, (Protecting What is Valuable) has this direction for mineral aggregate resources in s. 4.2.3:

Through sub-area assessment, the Ministers of Public Infrastructure Renewal and Natural Resources will work with municipalities, producers of mineral aggregate resources, and other stake holders to identify significant mineral aggregate resources for the GGH, and to develop a long term strategy for ensuring the wise use, conservation, availability and management of mineral aggregate resources in the GGH, as well as identifying opportunities for resource recovery and for co-ordinated approaches to rehabilitation where feasible.

[43] The definition of mineral aggregate resources is the same for the Growth Plan 2006 as the PPS.

COUNTY PLAN

[44] The County Plan was adopted in 2008, subject to proposed modifications in 2013, granted partial approval by the Board in 2013, and the subject of a number of Board hearings dealing with certain policies and site specific matters.

[45] The County Plan designates the Subject Lands as Rural /Agricultural, and Greenlands, and they are also shown as being within an area of High Potential Mineral

Aggregate Resources. The County Plan identifies mineral aggregate resources development as a permitted use in both agricultural and rural lands.

[46] There is no dispute that the proposed development conforms to the County Plan.

[47] Section 4.4.12 of the County Plan provides that:

The County may enter into agreements with owners and operators of Mineral Aggregate Extractive Developments to determine the appropriate use and maintenance of county roads as haul routes...

[48] As County Road No. 13 has been identified as a primary haul route for the proposed Pit, the County seeks a road widening of approximately 4.25 m and a daylight (site) triangle measuring 15 m east/west by 15 m north/south at the southeast corner of the property adjacent to County Road No. 13 and No. 5 Side Road Tosorontio.

TOWNSHIP OFFICIAL PLAN (“TOP”)

[49] The TOP was adopted on November 2, 1998, and approved with modifications by the County on October 28, 1999. The materials before the Board were consolidated to November 2000.

[50] The Subject Lands are designated on Schedule A as being within a Protected Aggregate Resource Area as well as on Schedule C5 of the Official Plan as an aggregate resource to be protected for future extraction.

[51] Below are the TOP policies of note with regard to this hearing.

[52] Policy 4.8.1.3 provides that prior to any request for a new or amended aggregate extraction license under the *Aggregate Resources Act* that an OPA and a ZBA are required.

[53] Section 4.8.1.4 is at issue in this hearing and it provides the following:

Any such applications for amendment to the plan and the zoning by-law shall be considered, provided that the information submitted by the applicant **satisfies the Township and the neighbourhood property owners** about all matters pertaining to the proposed operation, including the extent of the resource, the haul routes to be used, the impact on adjacent and nearby property owners, the proposed operating hours, and the details of the proposed rehabilitation of the site when excavation has been completed. (Emphasis added)

[54] Section 4.8.2.1 provides that:

The primary use of land in the Protected Aggregate Resources designation shall be the quarry and extraction of gravel, sand, and other aggregate material. ...

[55] Section 4.8.4.2 provides that:

Prior to amending this plan, the Township shall have regard to the following:

- (a) That the proposed use can be made compatible with the adjoining agricultural operations and existing residential uses and that the applicant has demonstrated the necessary measures required to mitigate any adverse effects;
- (b) That consideration is given to existing development along the proposed haul routes, including the standard of construction of these roads and preventing excessive traffic;
- (c) That consideration shall be given to the impact on the natural environment including the quality and quantity of ground and surface water courses, and
- (d) That the proposed designated area can meet all of the requirements of the Township, Ministry of Natural Resources, Conservation Authorities, Ministry of Energy and Environment, and any other government agency.

[56] Finally, s. 4.8.7.1 provides that an applicant who intends to operate an extractive operation is required to enter into a development agreement with the Township. This agreement shall be entered into **prior to council passing the zoning by-law**. Among other matters such agreement shall include:

- The route used for haulage purposes and provisions for the adequate protection and continual maintenance of municipal and/or

county roads to ensure that roads are maintained or reconstructed to an acceptable municipal and/or county standard at all times;

- The provision to guarantee ground water reserves, water quality and the level of the water table shall not be adversely affected by the extractive operation;
- The provision to be made that any landscaping used to screen the operation from adjoining residential uses or the passing public shall be maintained to the satisfaction of the Township;
- The protection of the natural environment and other land uses from dust, noise and vibrations both within the site and along the haul routes;
- The hours of operation and the controls and timing of blasting operations if applicable;
- The protection of watercourses, ditches, rivers and streams including the control of drainage from the site;
- The intended post extractive use of the site;
- A performance guarantee in the form and amount satisfactory to the Township to ensure the operation and subsequent operators' compliance with the above provisions. (Emphasis added)

TOWNSHIP ZONING

[57] The zoning on the Subject Lands is an M3 zoning which is Protected Aggregate Resources zone. An Open Space Conservation zone borders the on-site water courses.

[58] The ZBA is required to amend the zoning from an M3 zone to an M2 Extractive Industrial zone in order to permit the proposed gravel pit use.

AGGREGATES ACT

[59] Finally, as part of the public policy regime, the Board would reference the *Aggregates Act*.

[60] Section 11(5) provides that the Minister of Natural Resources and Forestry may refer an application for a license to the Board.

[61] The powers of the Board are set out in s. 11(8) which provides that the Board may hold a hearing and direct the Minister to issue the license subject to the prescribed conditions and any additional conditions specified by the Board and the Board may hold a hearing and direct the Minister to refuse to issue the license.

[62] Section 12(1) is entitled 'Matters to be Considered by the Minister'. It provides the following:

In considering whether a license should be issued or refused, the Minister or the Board 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;
- (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 license or permit has previously been issued to the applicant under this Act or a predecessor to this Act; and
- (k) Such other matters as are considered appropriate.

THE PARTIES

[63] Attending at the hearing were Nelson, CCAT, the County, the Township, the Humane Society, Fred Somerville on behalf of Somerville Nurseries Inc., Breedon's Maple Syrup, Beausoleil First Nation.

[64] Although originally there were objections by the MNRF and by the NVCA, those objections were withdrawn and neither appeared as a party at the hearing.

THE WITNESSES

[65] The Board heard the following experts:

1. Jacquie Tschekalin, Land Use Planner and Director of Planning for the Township of Adjala – Tosorontio,
2. Dan Hurley, PEng. Surface Water,
3. Tecia White, Hydro Geologist,
4. Karina Kenigsberg, PEng. Air Quality (Dust),
5. Robin Craig, Natural Heritage (Terrestrial),
6. Michael Cullip, PEng. Traffic and Transportation,
7. Robert Rimrott, PEng. Noise,
8. Christopher Wren, Natural Heritage (Aquatic),
9. Don Scott, Land Use Planner,
10. David Parks, Land Use Planner and Director of Planning for the County,
11. Paul Murphy, County of Simcoe Transportation and Engineering Section,
12. George McGibbon, Land Use Planner,

13. Chris Hibberd, Land Use Planner and Director Watershed Management Services NVCA,
14. R. Clint MacDonald, Civil Engineer,
15. Greg Neil, Ecologist, (whom the Board, with the consent of counsel for Nelson, allowed to appear via Skype),
16. Fred Somerville on behalf of Somerville Nurseries Inc.; and
17. Kent Breedon, on behalf of Breedon's Maple Syrup.

[66] Finally, on November 20, 2017, the Board set aside the entire day to hear participants. Over 20 participants were heard including the following:

1. Dr. Harvey Kolodny
2. Patricia Wray
3. Myrtle Brighty
4. Rev. Robert Graham
5. Ellen Cottrell
6. Bob Meadows
7. Robert MacDonald
8. Janet Budgell
9. Candice Mitchelmore
10. David Aspenleider
11. Lloyd Exton
12. Floyd Pinto
13. Dr. David Sadler

14. Phil Jennings
15. Vaughn Thurman
16. Dave Zanella
17. Cynthia Lindsay
18. Brad Hutchison
19. Natalie Kotyck
20. Cherie Mason
21. Ralph Braden
22. Rob Dermott
23. Christian Censoni

ISSUES

[67] The Board will now deal with a number of Issues from the Issues List. All references to the application will include the amended Operations Plan (Exhibit 68A) and the amended Details and Notes (Exhibit 68B) to the original application (as found in Exhibit 14 A, B, C, D, E).

WATER

[68] The Board heard expert opinion surface water and ground water evidence from Mr. Hurley and Ms. White.

[69] There are two water courses: the Boyne River which meanders at the north end of the Subject Lands (both off and onto the Subject Lands), and the Tosorontio Creek which bisects the Subject Lands in the southerly third of the property.

[70] As Exhibit 14 and Exhibit 68 demonstrate, the proposed pit will be developed in three phases. It would commence at the southern end of the property (south of the Tosorontio Creek), proceed to phase 2 which would be about mid-block of the Subject Lands (north of Tosorontio Creek) and phase 3 would be located towards the northern end of the Subject Lands.

[71] The ingress and egress for the pit operation would be off Tosorontio Side Road No. 5; the (amended) internal haul route would proceed about mid-block on the Subject Lands, cross the Tosorontio Creek about mid-block and proceed mid-block north to phases 2 and 3.

[72] The processing area was amended to remain fixed in its location in phase 1.

[73] Proposed pit extraction activities are to be completed below the water table so that there would be no de-watering or discharge to surface water expected during regular operation.

SURFACE WATER IMPACT

[74] The evidence provided to the Board was that the surface water and ground water flow was from west to east with a minor gradient towards the Boyne River. Due to the fact that excavation is proposed to be carried out below the water table with no de-watering, the evidence to the Board was that there was very little change expected in the ground water towards the Boyne River.

[75] With regard to Tosorontio Creek, the evidence was that there was little change expected in the flows to the Tosorontio Creek, and there would be no adverse effect on the base flow or temperature throughout the site and downstream. The evidence was that the agricultural operations have encroached virtually to the Tosorontio Creek banks, eliminating any natural buffering and any shading and the proposed rehabilitation of the Tosorontio Creek corridor will actually improve the creek and its fishery.

[76] With regard to the existing off site pit lakes, the evidence before the Board was that the water level on the pit lake west of the Subject Lands (the Humane Society) is expected to stabilize 0.8 m below the current water level. The evidence also was that the overflow culvert for the pit pond west of the site is currently plugged and the water level in the pond is approximately 0.5 m higher than intended.

[77] As part of the ground water evidence, a domestic well water survey was completed. Only three residents provided permission to monitor their water wells. Based on the ground water flow regime, the surface water regime, the evidence before the Board was that there were no anticipated impacts associated with the proposed pit on those features or their functions since no off site impacts to the ground water or surface water regimes were anticipated. Impacts to domestic water wells were deemed very unlikely.

[78] The reports on surface water and ground water were peer reviewed by R.J. Burnside and Associates Limited ("Township Consultant") on behalf of the Township, reviewed by the NVCA, and the MNRF, and all agencies have signed off and/or withdrew their appeals.

AIR QUALITY ASSESSMENT

[79] The air quality assessment for Nelson was prepared on the basis of the original application as found in Exhibit 14A, B, C, D and E, (and prior to Exhibit 68A which fixes the processing plant in phase 1).

[80] The evidence provided to the Board was that all modelling predicted point of impingement (POI) concentrations would be below current Ministry of Environment and Climate Change ("MOECC") applicable standards and/or criteria.

[81] This is the only air quality assessment expert evidence that came before the Board.

TRAFFIC AND TRANSPORTATION

[82] The estimated traffic volumes are based on a peak season (May to November) and an off-peak season (December to April). During the peak season 80% of the total traffic volume is anticipated and 20% in the off-peak.

[83] The Board heard evidence that given the traffic volume generated by the site, that the capacity on Side Road No. 5 and County Road No. 13 are well able to handle increased traffic. The Board was advised that County Road No. 13, south of Side Road No. 5 is currently designated as a haul route and as such is intended to accommodate the truck traffic.

[84] The evidence is that the proposed haul route on Side Road No. 5 will only be approximately 150 metres from the proposed pit point of ingress and egress to County Road No. 13.

[85] The evidence of Mr. Murphy from the County was that a road authority/aggregate agreement has been entered into between the County and Nelson. The agreement provides that the haul route for pit truck traffic is on County Road No. 13 which is under the County's jurisdiction. The executed agreement calls for Nelson to pay ongoing road maintenance costs to the County for the repair, maintenance and upkeep of the County Road. Mr. Murphy opined that should the Board approve the development application, the haul route agreement is appropriate, provides the best route available and the arrangements for upgrading and ongoing maintenance are suitable and conform to the provisions of the County Plan.

[86] The County proposed as a condition of approval that Nelson transfer to the County at no cost, a fee simple unencumbered interest in a road widening along the entire frontage of the Subject Lands adjacent to County Road No. 13 to provide a 15.25 m right-of-way from the centre line of County Road No. 13 and a daylight (site) triangle measuring 15 m east/west by 15 m north/south at the southeast corner of the Subject Lands adjacent to County Road No. 13 and Side Road No. 5.

[87] Side Road No. 5 is a Township road with a rural cross section. The evidence is that there is a draft road agreement between the Township and Nelson.

NATURAL ENVIRONMENT

[88] Mr. Craig and Dr. Wren prepared a joint natural environment Level 1 and Level 2 technical report with regard to the Subject Lands (Exhibit 27) and it contains photographs of the surface water features both of the Boyne River and the Tosorontio Creek.

[89] The photographs illustrate the close proximity of the current agricultural operation to the Boyne River and the lack of bank vegetation. With regard to the Tosorontio Creek, again the photographs depict the proximity of the agricultural operation to the Tosorontio Creek banks, including an area used for farm vehicle crossing of the creek.

[90] The evidence of Mr. Craig and Dr. Wren is uncontested save and except for three concerns referenced by Mr. Neil: firstly with regard to species at risk Bobolink; secondly with regard to the crossing of the Tosorontio Creek during the excavation phasing, and third with regard to wetlands on the Subject Property.

[91] With regard to the species at risk Bobolink, Mr. Craig carried out Bobolink surveys in 2014. The evidence of Mr. Craig was that although Eastern Meadowlarks were not confirmed on the Subject Lands they may appear in the future so that he considered both the Bobolink and the Eastern Meadowlark together due to their preference for similar habitats.

[92] Mr. Craig observed the Bobolink in the northern area of the proposed extraction (approximately 24 ha) and he testified that Bobolink and the Eastern Meadowlark are threatened avian species. To ensure compliance with the *Provincial Endangered Species Act*, he recommended that certain activities be carried out including prior to any clearing or stripping for extraction of the potential Bobolink and Eastern Meadowlark habitats, surveys will be completed by qualified professionals using relevant protocols, a

copy of the report be kept on file at the site and provided to the MNRF if an endangered or threatened species is found. If Bobolinks and/or Eastern Meadowlarks are found and if the amount of the habitat in which they are found is more than 30 ha, a benefit permit or equivalent will be sought from the MNRF and that potentially new or enhanced habitat be provided outside the area of the land clearing and within the same eco region, be larger than the habitat being cleared, and consist of parcels that are greater than 4 ha with a minimum of 200 m in width, be covered 60 to 80% with at least three grass species of which one grows higher than 50 centimetres, be covered with forbes such as legumes and areas not covered by grass, be completed within 12 months from the date the land clearing begins, that the new and enhanced species will be managed for 20 years from their creation.

[93] Mr. Neil's witness statement is found at Exhibit 66 and in section 2.1 the text reads that:

... Unfortunately, the planned CCAT site visit for July 2017 was cancelled resulting in a missed opportunity to provide additional information that would support the premise that the **north** section of the proposed pit area does offer significant Bobolink habitat. (Emphasis added)

[94] It was only during his oral evidence that this statement was corrected to reference the southern section of the Subject Lands and not the north section of the Subject Lands.

[95] The second area of concern to Mr. Neil with regard to the natural environment concerned the crossing of the creek to accommodate truck traffic moving in and out of the operating pit and that there were no specifications stated or proposed measures that will be applied during the construction or maintenance of the structure.

[96] Mr. Neil was not present for any of the evidence-in-chief of Nelson's experts, and in fact Mr. Neil's oral evidence was only accommodated by a Board ruling to appear via skype. Had Mr. Neil been present during the course of the hearing or in communication with his client and counsel, he would have been aware that a draft concept for the creek

crossing had been provided by the Applicant and that Exhibit 68B provides with regard to fish habitat Condition No. 12:

Approvals from applicable authorities will be obtained prior to the construction of the water course crossing over Tosorontio Creek.

[97] His third area of concern was with regard to wetlands. His witness statement states:

The Natural Environment Level 2 report indicates there are no wetlands on the Subject Property. I believe this statement is incorrect. During the August CCAT site visit, evidence of a linear wetland extending west to east across the Subject Site, immediately north to the Tosorontio Creek was identified. (Photos 3 and 4)

[98] The recommendation by Mr. Neil was that a representative of MNRF be contacted with regard to this aquatic feature.

[99] The evidence before the Board is that there is a municipal drain which traverses the Subject Lands. The municipal drain was put into evidence by Mr. Craig as found in Exhibit 29, page 2. This is an undated document that is entitled on page 1 "Adjala Municipal Drains" and on page 2 "Tosorontio Municipal Drains".

[100] The municipal drain document appears to have been prepared a number of years ago, as there is little or no reference to a number of the pit ponds to the south and west of the Subject Lands that have been previously developed and now shown as rehabilitated pit ponds.

[101] It is apparent that the existence of the municipal drain was known by the NVCA as noted in their correspondence dated March 31, 2015 found in Exhibit 9, Tab 2.

[102] The letter of CC Tatham and Associates Ltd. dated May 14, 2015 indicates that the comments related to fisheries/aquatic habitat, including the municipal drain, were addressed under separate cover. In that regard the Board has reference to Exhibit 27 being the Natural Environment Level 1 and 2 Technical Report which had amendments

as of February 2015 and July 2015 references made to the municipal drain as being an amendment (page 21 of Exhibit 27):

A municipal drain is located between the Boyne River and the Tosorontio Creek and exit the property along the east boundary. The NVCA identify this drain as “permanent/cold/cool system with no sensitive fish habitat present (Class A).

[103] Additionally Exhibit 27 at page 47 provides this comment:

The area of the municipal drain along the east boundary of the site will be the location of the emergency overflow of the proposed pit lake.

Temperature triggers will be established at this location so that the temperature regime in the drain will not be altered. The pit water level will be maintained so that water leaving the site mimics existing conditions.

[104] The amended version of Exhibit 27 appears to have satisfied the NVCA as their next set of comments dated September 8, 2015 no longer address the municipal drain and in fact the NVCA letter of September 12, 2016 indicates that the latest submissions address the NVCA’s previously identified concerns and comments. And on that basis the NVCA had no objection to the approval of the project and withdrew their objection to the application.

NOISE

[105] With the withdrawal of the Humane Society, the only expert evidence left before the Board with regard to noise is from Mr. Rimrott. Exhibit 68A provides the amended Operations Plan which *inter alia* provides the following noise mitigation measures:

- A 4 meter acoustic barrier at the southwest corner of the Subject Lands proceeding westerly beyond the entrance, to an 8 meter high acoustic berm up to Hydro corridor on the western extremity of the Subject Lands;
- Both south and north of the Tosorontio Creek a 4 meter berm and the northern section is planted with eight conifers to screen the Subject Lands from the Humane Society’s pit pond;

- To the north the existing wire fence along the southern extremity of the Boyne River will be maintained. There is a 30 meter setback from the fence to the centre line of a 5 meter high acoustic barrier located on the eastern half of the Subject Lands;
- Turning south along County Road No. 13 there is an irregularly shaped 3 meter high acoustic barrier proceeding southerly along County Road No. 13 around the existing Hydro tower to the north end of the Tosorontio Creek where it turns west and proceeds in a westerly fashion to the Hydro tower #76;
- There is a 7 meter acoustic barrier on the south side of the Tosorontio Creek that is also south of the existing residence at 5596 County Road No. 13 (under an agreement of purchase and sale with Nelson);
- Internally to the site the processing area as shown on Exhibit 68A being located in Phase 1 will remain there through Phases 2 and 3. The processing area is virtually surrounded by a 10.5 meter high acoustic barrier the shape of which has been altered by hand to extend further north and a little less on the eastern side;
- Finally with regard to the internal haul route whereas on Exhibit 14B it was shown to proceed up the westerly side of the Subject Lands Exhibit 68A and now shows the haul route proceeding to the centre of the Subject Lands east of the processing area.

[106] The evidence of Mr. Rimrott was that the noise levels would meet all MOECC guidelines.

LAND USE PLANNING

[107] With regard to land use planning, the principal expert witnesses were Mr. Scott on behalf of Nelson, and Mr. McGibbon on behalf of CCAT. In addition, the Board heard from Ms. Tschekalin and Mr. Parks appearing by way of summons.

[108] The evidence before the Board is that the County Plan Schedule 5.1 Land Use Designations shows the Subject Lands as being largely Agricultural/Rural with Greenlands designations, but County Plan Schedule 5.2.1 entitled "High Potential Mineral Aggregate Resources" shows almost the entire Subject Lands as being a Primary Sand and Gravel Deposits Area.

[109] The TOP in Schedule A-5 identifies the Subject Lands as being designated as Protected Aggregate Resource and Schedule C-5 Natural Features and Areas of Aggregate Potential shows the Subject Lands as having primary and secondary sand and gravel.

[110] The Township Zoning By-law No. 03-57 in Schedule 5 zones most of the property as Protected Aggregate Resources (M3 Zone) with Open Space zones for the Tosorontio Creek and the Boyne River.

[111] Finally Exhibit 40 at page 5 identifies eight pit licenses in the immediate vicinity of the Subject Lands including three that abut on the westerly portion of the Subject Lands including to the south west the Humane Society lands (now rehabilitated), and at the north west the Township pit, currently open.

[112] South of the Subject Lands were two further pit licenses and there were three others that were west of County Road No. 4.

[113] Mr. McGibbon testified that Somerville Nurseries Inc. occupies hundreds of acres north of the Boyne River, that it produces Christmas trees and should be considered a specialty crop and that prime agricultural land should be protected for the long term use of agriculture and Nelson's ground water evidence provided insufficient assurance that the specialty crop would be protected for long term use. Additionally, he was concerned that the effects of site alteration associated with the draw down on water levels in the adjacent sites have not been evaluated.

[114] He was of the view that there will be hydrological and ground water impacts on and off site. He opined that the ZBA does not represent good planning:

... because the planning applications have not been made to support the proposed extraction. (Exhibit 54, Tab 1, page 12)

[115] He opined that the OPA does not conform with the Township plan, that it does not conform to the PPS, and the appeals should not be dismissed.

CIVIL ENGINEERING EVIDENCE

[116] Finally, the Board heard from Mr. R. C. MacDonald, the son of one of the participants and a nearby resident.

[117] With the consent of counsel for Nelson, Mr. R. C. MacDonald was allowed to be qualified as a civil engineer and he testified as to his opinion with regard to impacts to the water table for the Boyne River, the flood plain, the ground water, the road infrastructure, and noise pollution.

OTHER PARTIES

[118] Mr. Somerville is an Appellant before the Board. Mr. Somerville is the President of Somerville Nurseries Inc. Somerville Nurseries Inc. is apparently the largest Christmas tree producer in Canada. They have some 2,000 acres under production. In 1985 they purchased the property at 5884 County Road No. 13. The initial purchase was for 197 acres with another 50 acres that was added to it in 2010. This location is for their seedlings, which now produces about 4 million seedlings per year.

[119] The concerns expressed by Mr. Somerville included:

1. Loss of water quality and quantity.
2. Water loss from the wetlands.
3. Loss of quality water from the Tosorontio Creek.
4. The gravel and sand provide a natural filtration for a highly vulnerable aquifer on the site.
5. Habitat for birds.
6. Idling trucks and exhaust emissions and leaking fluids that can cause illnesses leading to premature death.

[120] Mr. Somerville gave evidence on behalf of Somerville Nurseries Inc., although some land use planning evidence was provided by Mr. McGibbon. However, no expert evidence was called on behalf of Somerville Nurseries Inc. with regard to surface water, ground water, dust, noise, traffic, notwithstanding the fact that Somerville Nurseries Inc. has an irrigation pump in the Boyne River and a permit to take water that is restricted to no more than 10% of the stream flow during dry periods.

[121] In cross-examination, Mr. Somerville was asked when the company purchased the second property in 1997, which pits were open. He indicated that he did not know but he believed there were two pits on County Road No. 13. When asked specifically if he was aware of the Township operating a pit nearby, he indicated he did not know. When shown the exhibit depicting the other pits west and south of the Subject Lands he was unaware of their nature and acknowledged that those pits had no impact with regard to his operation.

BREEDON'S MAPLE SYRUP

[122] Mr. Breedon appeared on behalf of Breedon's Maple Syrup. Their operation is located at 3662 Concession 3 Alliston being about 10 to 15 km from the site. At their location there are approximately 65 acres of land. They have 200 head of cattle. They have concerns with regard to the natural environment, effect on the water, number of trucks on the road, and the loss of quiet enjoyment.

[123] He also filed some letters expressing concern about the loss of farm land in the area.

BEAUSOLEIL FIRST NATION

[124] While Beausoleil First Nation was listed as a Party and Vicki Montague appeared on the first day, she did not attend the hearing after the first day.

PARTICIPANTS CONCERNS

[125] As noted above, the Board heard a full day of evidence from the over 20 participants. The participants raised a list of common concerns which the Board has summarized below:

1. Noise and Traffic,
2. Vibration,
3. Traffic (Not Following the Haul Routes, Speeding, Safety, Pre-Opening Truck Queuing (on No. 5 Side Road),
4. Excavation Below the Water Table and the Impacts on Wells and Drinking Water,
5. Dust,
6. The Structural Adequacy of the Berms to the Tosorontio Creek,
7. Pollution from Extraction Operation and Machinery to the Boyne River and the Tosorontio Creek,
8. The Loss of Agricultural Land,
9. Impacts to Endangered Species,
10. The Existing Municipal Drain,
11. Road Infrastructure ,
12. Impacts on New Residential Uses in the Area.

[126] The Board will provide a summary commentary on the key concerns outlined above.

[127] With regard to noise, it is important to note that the proposed aggregate operation is not a quarry but rather a pit. The proposed excavation will be carried out

below the water table. With the withdrawal of the Humane Society and the amendment to the Operations Plan, the only expert noise evidence was from Nelson's acoustical engineer. Using the original Operations Plan, his Noise Impact Study had found that with the recommended noise controls, the worst case pit noise levels would satisfy the MOECC Sound Noise Limits.

[128] With the amendment to the Operations Plan (Exhibit 68A), the relocation of the internal haul road to mid-block of the Subject Lands would lessen truck traffic for the existing residents at 8235 No. 5 Side Road. This would result in more traffic central to the site rather than on its periphery.

[129] With regard to vibration, the Board observes that this is not a quarry where blasting would occur, but rather the extraction of aggregate by excavation.

[130] Turning to traffic, the Board was advised by the County that County Road No. 13 is already a haul road, that it is in a state of good repair and that a haul route agreement requiring additional compensation for the maintenance and repair of the County Road has been executed. The County had no concerns with regard to the existing infrastructure: as the truck traffic would be on Side Road No. 5 for about 150 m, and then proceed south on County Road No. 13 to the provincial Highway No. 89 all of which have appropriate capacity for the trucks.

[131] The concern with regard to speeding is essentially an enforcement matter.

[132] The concern with regard to safety especially during the winter months is somewhat alleviated by the expectation that from December to April will be an off-peak period of time for the operation.

[133] The Board also heard concerns with regard to truck queuing on Side Road No. 5 before the pit opens due to the short distance between the entrance and County Road No. 13, the rural nature of Side Road No. 5 and the hours of operation. This issue is more fully dealt with below.

[134] With regard to the concern of the excavation process being below the water table and the effect on wells and drinking water, the Board heard from Mr. Hurley with regard to surface water, and Ms. White with regard to the ground water. The evidence of Ms. White was that the aggregate operation proposed would not be pumping water for any purposes including de-watering or aggregate washing, that a survey had been done of private domestic water use within a 500 m radius of the Subject Lands using the MOECC data base as well as attempts to collect information from homeowners for a well water survey. Her report concluded that there were no off site impacts to the ground water or surface water regimes anticipated and therefore impacts to the domestic water supplies were very unlikely.

[135] With regard to dust, Ms. Kenigsberg, a specialist in air quality and environmental auditing provided her report which shows that based on the operations plan in Exhibit 14B and the maximum operating scenarios that all of the points of impingement concentration would be below MOECC acceptable standards or criteria, based on the mitigation measures which are standard Ministry mitigation measures.

[136] With regard to the structural adequacy of the berms proposed on either side of Tosorontio Creek, the evidence is that there would be a 30 m buffer on either side of the Tosorontio Creek. Both MNRF and NVCA reviewed the site plan and had no issues with the appropriateness of the berms.

[137] With regard to pollution to the Tosorontio Creek and Boyne River from the excavation, and the use of machinery and vehicles on the Subject Lands with the crossing over the Tosorontio Creek and the impacts that the pollution would have on fish habitat, the Board has the evidence of Dr. Wren with regard to the aquatic natural environment, the comments of the MNRF, and the comments of the NVCA, all supportive of the development proposal.

[138] With regard to the protection of agricultural land, the evidence of the land use planners is that the Subject Lands have been since the early 1990's designated in the County Plan and the TOP as Protected Aggregate Resource.

[139] With regard to the concerns for endangered species (and in specific the Bobolink), Exhibit 27 contains the Natural Environment Level 1 and Level 2 report by Mr. Craig and Dr. Wren. The Bobolink is specifically addressed in the report with proposed mitigation measures to include newer enhanced habitat off site for which a benefit application will be required. Exhibit 28 is a copy of confirmation of registration received by the MNRF for activities eligible for species protection and recovery activities for Bobolink and Eastern Meadowlark. As noted above MNRF has no objection and has withdrawn from its appeal, as has the NVCA.

[140] The evidence of Mr. Neil in Exhibit 66, his witness statement references the concern with regard to the **north** section of the Subject Lands offering significant Bobolink habitat. While his witness statement is dated as of September 2, 2017, it was only in his evidence-in-chief that he corrected the misstatement in his witness statement, that it should have been the **south** section of the Subject Lands. Mr. Neil did not seem to be aware that Nelson had already made an application as found in Exhibit 28.

[141] Concerns were raised with regard to the existing municipal drain that traverses the Subject Lands located north of the Tosorontio Creek.

[142] The municipal drain was identified by Mr. Craig on behalf of Nelson, who filed Exhibit 29 showing its location. Correspondence between consultants for Nelson, MNRF and NVCA clearly references the municipal drain, and Exhibit 27 at page 47 identifies that the area of the municipal drain along the east boundary of the site will be the location of the emergency outlet for the proposed pit lake. No government department or any commenting agency had any concern with the loss of the municipal drain.

[143] With regard to concerns on road infrastructure, the Board had the evidence of Mr. Murphy who advised that Country Road No. 13 had recently been upgraded and the County had no concerns with regard to its capacity or structure. With regard to the concerns that new residential uses had come into the immediate area, the evidence was that where matters of noise, dust, traffic, surface and ground water, these residences had all been taken into account for the preparation of Exhibit 14 being the site plan. The evidence was that the amended Operations Plan (Exhibit 68A) with the amended Details and Notes (Exhibit 68B) provided a better internal haul route for existing neighbours, that Exhibit 68A provided new 4 m berms on the western portion of the Subject Lands to screen the operation with tree plantings, and that the processing area would be fixed in phase 1 and that the Noise Study had confirmed all MOECC criteria had been met.

FINDINGS

[144] The Board, after a careful review of the exhibits, the oral evidence received from all the witnesses, and taking into account the submissions of the parties makes the following findings.

[145] Firstly the Board prefers the evidence of the Nelson experts as corroborated by the sign offs by all the commenting agencies, including MNRF, NVCA, the County and the Township.

[146] The Board finds that the OPA and ZBA have due regard for the matters of provincial interest in s. 2 of the PA, are consistent with the PPS, conform to the Growth Plan, conform to the County Plan, represent good planning and are in the greater public interest.

[147] The Board finds that the Subject Lands have long been identified provincially, in the Country Plan and TOP as a potential aggregate resource. The Subject Lands are found within a context of approximately eight other pits and appears to be the last large extractive area as shown on the various plans.

[148] The Board finds that the OPA and ZBA have been duly processed with comments from various agencies including MNRF and NVCA, including a peer review by Township Consultant. The land use planning evidence from the Director of Planning for the Township and the Director of Planning for the County was supportive of the OPA and ZBA, which was adopted by Township Council and subsequently approved by the County, being the approval authority for the Township.

[149] Turning to the Aggregate License, it was reviewed by MNRF staff and NVCA staff, who objected to it in its original form and content. With subsequent amendments and modifications to the application by Nelson, both MNRF and NVCA were satisfied and withdrew their objections. Appearing under subpoena were the Director of Planning for the County and the Director of Watershed Management Service for the NVCA. Neither was shaken under cross-examination and both supported the positions that their respective agencies had communicated with regard to the application.

[150] With regard to the issue of the conformity with the Local Plan, the Board notes that the TOP was adopted on November 4, 1998, approved with modifications by the County on October 28, 1999, and the version before the Board was consolidated to November 2000. . From this the Board would observe that the TOP obviously predates the 2014 PPS (and the 2005 PPS), and the 2017 Growth Plan, (and the 2006 Growth Plan).

[151] Section 3(5) of the PA mandates that a decision of the Board (and a municipal council) **shall be consistent** with the PPS and conform to the Growth Plan.

[152] As the TOP clearly predates both, the policy directives of the TOP must be interpreted with both the PPS and the Growth Plan in mind.

[153] With this statutory requirement in mind, the Board turns to Policy 4.8.1.4 of the TOP quoted above.

[154] Lay witnesses on behalf of CCAT adopted a literal interpretation of s. 4.8.1.4 and stressed the fact that s. 4.8.1.4 states that such applications must satisfy the Township and neighbourhood property owners about all matters pertaining to the proposed aggregate application and operation, for which they clearly were not satisfied.

[155] Neither Mr. Scott nor Mr. McGibbon interpreted that section literally.

[156] Mr. Scott testified that he “read down” s. 4.8.1.4 in light of the PPS provision in s. 2.5 Mineral Aggregate Resources that calls for as much of the mineral aggregate resource as is realistically possible to be made available as close to markets as possible and that extraction shall be undertaken in a manner which minimizes social, economic and environmental impact.

[157] The interpretation by Mr. McGibbon of s. 4.8.1.4 was not whether the residents “liked” the proposed aggregate development, but rather whether the application was consistent with compatibility in the neighbourhood such that the residents would be able to continue to use their lands to do what they wished on it. In his view it was not a question of likeability but rather a question of workability and in his opinion based on that interpretation the application failed.

[158] The Board disagrees.

[159] The Board is of the view that the TOP is seriously out of date with regard to matters of provincial interest, the PPS and the Growth Plan.

[160] Section 2 of the PA highlights the provincial interest in (c) the conservation and management of natural resources and the mineral resource base. The PPS directs that as much of the mineral aggregate resource as possible shall be made available as close to markets as possible. The 2006 Growth Plan addresses provincial ministry involvement with local municipalities in identifying and developing a strategy for the wise use of mineral aggregate resources.

[161] These policy directives are implemented in the County Plan for which no amendment is sought or required.

[162] In the TOP, the Subject Lands have been identified for many years as a mineral aggregate resource.

[163] The Board cannot in the face of such clear and current provincial directives accede to the suggestion that s. 4.8.1.4 (likely drafted in the early 1990s), be read literally. The Board agrees with Mr. Scott that the policy must be read down in light of the PPS, the Growth Plan and the County Plan.

[164] The Board finds that OPA and ZBA as adopted by Township Council, which will be implemented through the amended Operations Plan (Exhibit 68A) and the Details and Notes (Exhibit 68B) conform to the intent and purpose of the TOP as the development will enable the mineral resource to be made available in a manner that the Board finds to be compatible with the surrounding area.

[165] Section 4.8.4.2 of the TOP is also at issue and it indicates that prior to amending the official plan, the Township shall have regard to:

- (a) the compatibility with adjoining agricultural operations and existing residential land use;
- (b) consideration of proposed haul routes;
- (c) quality and quantity of ground and surface water courses; and
- (d) that the proposed designated area can meet all the requirements of the Township, Ministry of Natural Resources, Conservation Authority, Ministry of Environment and Energy and any other government agency.

[166] The Board finds that the proposed development application (with the mitigation measures that are put in place through Exhibit 14 as amended by Exhibit 68A and B), is compatible with adjoining agricultural operations and the existing residential land uses in the area. The Board finds that the amendment to the Operations Plan (Exhibit 68A) is an improvement over the Operations Plan as found in Exhibit 14 inasmuch as the internal haul route is moved to the centre of the property and away from the existing residents, the processing area has been fixed to phase 1, and Nelson has an agreement to acquire the lands at 5596 County Road No. 13.

[167] With regard to the haul route, the Board has considered the evidence from the County, has reviewed the haul route agreement and finds that County Road No. 13 is already used as a haul route, has been recently upgraded, and the haul route agreement provides for a financial basis for the County to continue to maintain that road.

[168] That portion of the designated haul route that is on Side Road No. 5 is approximately 150 m. Exhibit 3 Tab 8 is a draft development agreement between the Township and Nelson which provides *inter alia* that the haul route may require ongoing repair and maintenance as a result of its use by the operator for its products and s. 2.2a provides that the Township shall establish a trust account for the purpose of repairing and maintaining the haul route. Section 3.1 requires Nelson to contribute a minimum of \$100,000.00 towards the construction of works of the Township's choice.

[169] The Board heard evidence that the development agreement had not been executed and it was the submission of the counsel for the Township that in the event the Board were to approve the OPA and ZBA, that the Board's Final Order be withheld pending notice from the Township that the development agreement had been entered into.

[170] With regard to the impact on the natural environment including the quality and quantity of ground and surface water courses, the Board is satisfied with the evidence of

Mr. Hurley and Ms. White as corroborated by MNRF and the NVCA. Finally with regard to the proposal meeting all the requirements of the Township and governmental agencies, there is no governmental agency in opposition to this application.

[171] Referring to s. 4.8.7.1.of the Local Plan, CCAT places emphasis on the following:

An applicant who intends to operate an extractive operation is required to enter into a development agreement with the Township. **This agreement shall be entered into prior to council passing the zoning by-law...** (Emphasis added)

[172] The evidence before the Board is that the Township has approved both the OPA and ZBA but the development agreement (Exhibit 3, Tab 8) has not yet been entered into.

[173] Ms. Tschekalin was asked in cross-examination why the Township had not passed the development agreement as required by the TOP. She testified that the TOP is a policy document, it is dated, and it was in her opinion premature to pass the development agreement prior to passing the zoning by-law.

[174] The Board agrees.

[175] The TOP is out of date. The Board finds the Township staff and the Township Council acted appropriately as it had prepared a draft development agreement setting out the terms and conditions. While that agreement is not as of yet “entered into”, it is clear that the Township Council has addressed what it believes necessary to be in the development agreement, and has asked the Board in the event that the Board were to approve the OPA and ZBA, to withhold such approval in its Final Order until the Township can have the development agreement executed.

[176] The Board finds this approach to meet the intent and purpose of the TOP.

[177] Mr. McGibbon testified that the proposed aggregate operation would result in a lowering of the water level by 0.8 m on the adjoining Humane Society’s lands, and this

constitutes a site alteration and that it impacts on the natural features and areas that result from these site alterations have not been addressed.

[178] The Board disagrees.

[179] The Board would firstly note that the Humane Society withdrew its appeal mid-way through the hearing and Nelson amended its Operations Plan and Details and Notes to move the internal haul route and create additional berms along the Humane Society property line.

[180] Secondly, the Board notes the evidence of Ms. White (Exhibit 4, page 38) that the existing pit ponds to the west are currently operating at a water level that is about 0.5 m higher than the desired water level due to a blockage to the overflow pipe to the Boyne River.

[181] Exhibit 27 being the Natural Environment Level 1 and Level 2 technical report indicates that lowering the water levels in these ponds would not have any significant impact on the ponds.

[182] In fact, based on the air photo evidence as found in Exhibit 45, it would appear that the lowering in the pond levels to the west might mitigate against what appear to be overflows from the pit lakes onto the Subject Lands.

[183] Therefore, with regard to the OPA and ZBA, the Board has had regard for the decision of the Township Council and the Board finds based on the preponderance of evidence, that the OPA and ZBA have had regard for the matters of provincial interest as set out in s. 2 of the PA, are consistent with the PPS, conform to the Growth Plan, conform to the County Plan, represent good planning and are in the greater public interest.

AGGREGATES ACT

[184] Turning to the criteria under s. 12 of the *Aggregates Act*, the Board has had regard to: (a) the effect of the operation of the pit on the environment. Based on the evidence of Mr. Hurley, Ms. White, Mr. Craig, Dr. Wren, and the comments from MNRF, and NVCA, the Board finds that Nelson has appropriately mitigated and minimized the potential for impact on the environment.

[185] With regard to (b) the operation of the pit on nearby communities, the concerns of the residents relate to Everett which is located north on County Road No. 13 whereas the haul route is south on County Road No. 13 to Highway No. 89. The Board acknowledges there may be truck traffic of a local delivery nature, but the majority of all such truck traffic will be south on the haul route.

[186] With regard to (c) comments provided by the municipality in which the site is located, the Board has comments from both the County and the Township. The Township has adopted the OPA and ZBA and has a draft development agreement awaiting the decision of the Board. The County has approved the OPA and has an executed haul route agreement with Nelson.

[187] With regard to (d) the suitability of progressive rehabilitation and final rehabilitation for the site, the proposal is for pit ponds similar to the other pit ponds in the immediate vicinity, as well as the retention of the existing dwelling on the northern portion of the Subject Lands. The MNRF and NVCA have all signed off with regard to the rehabilitation plans.

[188] Moreover, Nelson through Exhibit 67 is in the process of finalizing the acquisition of the remaining residence at 5596 County Road No. 13, which, upon closing, will provide for the opportunity for two (post rehabilitation) residential dwellings within and abutting the Subject Lands.

[189] With regard to (e) any possible effects on ground and surface water resources, the Board relies on the evidence of Mr. Hurley and Ms. White and the approvals of the MNRF and NVCA.

[190] With regard to (f) the possible effects of the operation of the pit on agricultural resources, the Board finds that there will be no significant impact. Somerville Nurseries Inc. owns lands north of the Boyne River and north and west of the Subject Lands and as noted previously there have been eight other pit operations licensed in the immediate vicinity of the Subject Lands which have had no apparent impact on Somerville Nurseries Inc. (Exhibit 55).

[191] With regard to (g) any planning and land use considerations the Board finds on the basis of the evidence of Mr. Scott, Ms. Tschekalin and Mr. Parks, that all planning and land use considerations have been taken into account. The development application has appropriate regard for the matters of provincial interest, will be consistent with the PPS and conform to the Growth Plan and the County Plan.

[192] With regard to (h) the main haulage routes and proposed truck traffic to and from the site, the County has an executed haul route agreement which sets out the haul route. The Township has a draft development agreement which would provide funding for the maintenance of Side Road No. 5. The Board is cognizant of the fact that County Road No. 13 is already a designated haul route. However the concerns of the Participants are that Side Road No. 5 is built to a rural cross section, that there will be early morning queuing of dump trucks on Side Road No. 5 so close to the County Road No. 13 intersection, which could pose a public safety concern.

[193] Exhibit 68B, Details and Notes, provides under the heading "Haul Route" that there will be no queuing allowed prior to the pit/quarry opening.

[194] The issue of truck queuing arose during the application processing. In the Township Consultant's letter of March 11, 2015 (Exhibit 31, Tab 2, page 3 under Traffic

Impacts) they identified that a comment should also be made on the site operations to ensure that “off-site queuing does not occur”.

[195] The response by CC Tatham and Associates Ltd. dated April 15, 2015 (Exhibit 31, Tab 3 at page 3) was:

With respect to site operations and potential for queuing on 5 Side Road as a result of trucks arriving prior to site opening, consideration could be given to accommodating such queues internal to the site (i.e. in advance of the site access gate).

[196] In this regard the Board has examined Exhibit 68A which appears to show the gate being located right at the property line of the Subject Lands and the Side Road No. 5.

[197] The Board finds that as the amended hours of operation provide for a 6 a.m. start times Monday to Friday, that Side Road No. 5 has a rural cross section, that Exhibit 68A depicts the gate at the property line, that the gate is only about 100-150 m to the intersection, that it appears there is an area on the Subject Lands that could be used for truck queuing such that from the driveway into the Subject Lands, the internal haul route could then proceed westerly about 50 to 75 m before coming to the scale house and parking area which would allow for truck queuing internal to the site and off Side Road No. 5 thereby eliminating a possible public safety issue.

[198] Thus, the Board would recommend amending Haul Route Condition No. 2 so that it will read: “There will be no **external** queuing allowed prior to the pit opening”. The intent of the amendment is to enable early morning **on site** truck queuing, but not in any way to effect or change the hours of operation.

[199] With regard to (i) the quality of aggregate on the site, the Aggregate Resources Inventory of Essa and Tosorontio Townships (ARIP113), the Subject Property is identified as being suitable for pit run materials as well as granular base course A and as such the Subject Lands fall within the Selected Sand and Gravel Area 1 in ARIP113.

[200] With regard to quantity, the proposed below water operation will extract sand and gravel from 53.5 hectares of the 72.8 hectare property. The Board would note that the Aggregate License Application for a Class A Category 1 Aggregate License (Pit below water table) with an annual extraction of 1 million tonnes. The evidence before the Board is that the identified resource is approximately 4.1 to 4.3 million tonnes.

[201] With regard to subsection (j) no issue has been raised with regard to Nelson's history of compliance with the *Aggregates Act*.

[202] Finally, the Board would acknowledge the withdrawal of the Humane Society and the amendment to the Operations Plan (Exhibit 68A) and the amendment to the Details and Notes (Exhibit 68B) which provide *inter alia* for the relocation of the internal haul route, the relocation of the proposed creek crossing, additional berming on the westerly portion of the Subject Lands, the amendment of the hours of operation, which are shown in hand written detail on Exhibit 68A.

[203] In view of these circumstances, the Board pursuant to s. 11(8) of the *Aggregates Act* would respectfully direct the Minister to issue the license subject to the prescribed conditions as set out above with the amended condition to allow for early morning truck queuing internal to the site to alleviate a potential public safety issue.

CONCLUSION

[204] In conclusion, the Board dismisses all appeals against the OPA and the ZBA.

[205] The Board will withhold its Final Order with regard to the OPA and the ZBA pending written confirmation from counsel for the Township that the development agreement has been entered into to the satisfaction of the Township.

[206] Upon receiving confirmation of same, the Board will issue its Final Order dismissing the appeals and directing the Minister to issue the license based on the

amended Operations Plan, the amended Details and Notes, and with the amended condition recommended by the Board.

[207] This is the Interim Order of the Board.

“Blair S. Taylor”

BLAIR S. TAYLOR
MEMBER

If there is an attachment referred to in this document,
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Ontario Municipal Board

A constituent tribunal of Environment and Land Tribunals Ontario
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