

Local Planning Appeal Tribunal
Tribunal d'appel de l'aménagement
local



ISSUE DATE: October 07, 2021

CASE NO.:

PL180265

The Ontario Municipal Board (the “OMB”) is continued under the name Local Planning Appeal Tribunal (the “Tribunal”), and any reference to the Ontario Municipal Board or Board 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:	Greenwood Aggregates Limited
Subject:	Request to amend the Official Plan - Refusal of request by Town of Mono
Existing Designation:	Rural
Proposed Designated:	Extractive
Purpose:	To permit a Class “A” Category 3 Aggregate and Extraction Pit
Property Address/Description:	Part Lots 30, 31 and 32, Concession 4 E.H.S.
Municipality:	Town of Mono
Approval Authority File No.:	OPA 2016-01
OMB Case No.:	PL180265
OMB File No.:	PL180265
OMB Case Name:	Greenwood Aggregates Limited vs Mono (Town)

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

Applicant and Appellant:	Greenwood Aggregates Limited
Subject:	Application to amend Zoning By-law No. (ZB 2016-02) - Refusal of Application by Town of Mono
Existing Zoning:	A
Proposed Zoning:	MX Special
Purpose:	To permit a Class “A” Category 3 Aggregate and Extraction Pit
Property Address/Description:	Part Lots 30, 31 and 32, Concession 4 E.H.S.
Municipality:	Town of Mono

Municipality File No.: 2016-12
 OMB Case No.: PL180265
 OMB File No.: PL180266

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

Referred by: Sharon Rew
 Objector: Philip Albin
 Objector: Bryan Armstrong
 Objector: Jane Armstrong
 Objector: Neil Armstrong; and others
 Applicant: Greenwood Aggregates Limited
 Subject: Application for a Class A licence for the removal of aggregate
 Property Address/Description: Part Lots 30, 31 and 32, Concession 4 E.H.S.
 Municipality: Town of Mono
 OMB Case No.: PL180265
 OMB File No.: MM180053

Heard: August 24, 2020 to September 17, 2020 at the Town of Mono Municipal Offices

APPEARANCES:

Parties

Counsel

Greenwood Aggregates Limited	David White
Township of Mono	David Germain
Protect Mono Inc.	Chris Barnett

DECISION DELIVERED BY JATINDER BHULLAR AND ORDER OF THE TRIBUNAL

INTRODUCTION

[1] This Decision allows Greenwood Aggregates Limited (“Applicant/Appellant” or “Greenwood”) to carry out an aggregate extraction operation on the south side of Highway 8 and generally east of Concession 3 in the Township of Mono (“Township”) and the County of Dufferin (“County”).

[2] The specific elements for planning appeals are an Official Plan Amendment (“OPA”) and a Zoning By-law Amendment (“ZBA”) application. The OPA request is OPA No. 2016-01 to redesignate the Greenwood lands from Rural to Extractive. The ZBA request is for Zoning By-Law Amendment No. 2016-02 to change the zoning from “A” to “MX Special”. The OPA and ZBA are required by Greenwood to develop an aggregate and extraction pit subject to MNRF license approval. The Town refused both the OPA and ZBA applications made by Greenwood.

[3] Greenwood made licence application to the MNRF for “Class A” Category 3 aggregates extraction with up to 1,000,000 tonnes of aggregates removal per year for a period of up to 30 years. In response to Greenwood’s application before the MNRF, there were a large number of objectors. Greenwood and the objectors were not able to resolve all of the objections. As a result, MNRF in 2016 did not issue the requested licence and referred the Greenwood licence application under the *Aggregate Resources Act* (“ARA”) to LPAT for review.

DECISION FRAMEWORK AND HEARING CONDUCT

[4] The Decision is based on an assessment against the legislative tests under the *Planning Act*, R.S.O. 1990, c. P.13, as amended (“Act”) and the *Aggregate Resources Act*, R.S.O. 1990, c. A.8, as amended (“ARA”).

[5] The parties agreed to an issues list. The issues list, and the hearing framework were included in a Procedural Order (“PO”) issued by the Tribunal. The nearly four week hearing was governed and conducted in accordance with the PO and held at the Town’s council chambers while simultaneously being broadcast over YouTube. The Covid-19 restrictions in place did not allow gatherings in person.

[6] All expert witnesses with their counsel attended in person and provided their testimony.

[7] The appeals for Official Plan Amendment (“OPA”), Zoning By-law Amendment

("ZBA") and the ARA referral were heard together.

SITE

[8] In keeping with the approach of all witnesses, for compass directions in this Decision, Hwy 7 is considered to run east-west and its intersecting sideroads are considered to run north-south. The 30 sideroad runs generally in east-west direction.

[9] There are four properties which are joined together and represent a total area of about 146.5 ha (the "Site"). The proposed extractive area is targeted to be in the order of 83.7 ha.

[10] Together, the four properties have an east-west width in the order of 1,400 metres north of the 30 Sideroad and in the order of 700 metres south of the 30 Sideroad. The depth north of the 30 Sideroad is in the order of 1040 metres and south of the 30 Sideroad the depth is in the order of 590 metres. Part of the property fronts 4 line on the east side and there is a residential dwelling which is planned to be retained.

[11] The properties were historically used for agricultural cropping. There were dwellings and other structures located on the Site. Other than the other original dwellings on 4 line all other structures or remnants of the same are planned to be abandoned or demolished.

WITNESSES AND EVIDENCE

[12] Greenwood, the Township and Protect Mono ("PM") presented a variety of experts. All experts were qualified in their respective areas of specialization to provide expert opinion evidence. The experts and their key evidentiary information marked as exhibits are noted against their names. This was part of the evidence which includes common exhibits, *curriculum vitae*, cross examination materials entered at the hearing, the municipal record and MNR referral information.

[13] Greenwood presented eleven expert witnesses. These were;

1. Ron Davidson - land use planning; (Exhibit 33)
2. William Fitzgerald – Geology; (Exhibit 7)
3. Daniel Twigger – Surface Water; (Exhibit 11)
4. Tecia White - Hydro-Geology; (Exhibit 13)
5. Robin Craig - Natural Heritage; (Exhibit 22)
6. Michael Cullip – Traffic; (Exhibit 24)
7. John Emeljanow – Noise; (Exhibit 18)
8. Karina Kenigsberg – Dust; (Exhibit 28)
9. David B. Hodgson – Agriculture; (Exhibit 29)
10. Daryl Keleher – Financial; (Exhibit 30) and
11. James Parkin – Visual. (Exhibit 31)

[14] The Township originally planned to present seven witnesses inclusive of their witness statements presented per the Procedural Order (“PO”). However, the Town declared at the start of the oral hearing that they will not be calling Tony Elias (Surface Water) and Al Sandilands (Natural Environment). The Town presented the following expert witnesses and their witness statements were included in Exhibit 12;

1. Dwight Smikle – Hydrogeology; (Exhibit 12, Tab 1)
2. David Argue – Transportation Engineering; (Exhibit 12, Tab 6)
3. Gord Feniak – Civil Engineering; (Exhibit 12, Tab 7)
4. Paul Ferris – Visual Impact; Exhibit 12, Tab 8) and

5. Rob Stovel – Policy and Environmental planning, Site Plans and Agrology (Exhibit 12, Tab 9)

[15] PM presented two witnesses, and these were;

1. Russell Brownlee – Traffic Safety (Exhibit 47); and
2. Mark Dorfman – Planning (Exhibit 48)

[16] PM also facilitated presentations (Exhibit 16) by the following objecting parties (the “objectors”) as lay witnesses;

1. Heidi Baufeldt;
2. Jeff Collins; and
3. Steve Mountford.

[17] There were a large number of participants identified in the PO and many participant statements were received by the Tribunal. The parties at the hearing were directed to have regard for the participant concerns and appropriately provide consideration through their expert witnesses.

EVIDENCE AND ANALYSIS

[18] The Tribunal notes that greatest levels of evidentiary contest between experts occurred regarding the following aspects;

1. Consistency and conformity aspects in the area of land use planning;
2. Transportation Engineering and traffic safety;
3. Hydrogeology; and
4. Visual impacts.

[19] In the following sections, the evidence and analysis are organized in the order that the evidence was presented by the Applicant/Appellant and considered along with experts from opposing sides. Finally, the Tribunal finding made in the individual sections are then appropriately applied to the Applicant/Appellant requested OPA, ZBA and the request for grant of an appropriate licence under the ARA.

[20] The Tribunal notes that it finds in favour of the Applicant/Appellant for all three appeals for approval in part of an OPA and ZBA as well as the positive referral to the MNRF for the issuance of the requested licence under the ARA subject to the fulfillment by the Applicant/Appellant of appropriate conditions.

Geology

[21] Mr. Fitzgerald was the sole expert to provide evidence in this area. His witness statement in support of the application is on file marked as Exhibit 7. Mr. Fitzgerald reviewed the site's geology and geological formations. Mr. Fitzgerald stated that 13 observation wells were constructed, and 52 power equipment tests were carried out in 52 tests pits. Mr. Fitzgerald also provided assumptions made to estimate possible tonnage of aggregates available which could be extracted at a maximum depth of 1.5 metres above the water table while also maintaining required and suitable setbacks from the roads, residential uses or other zoning restrictions surrounding the site.

[22] Mr. Fitzgerald referred to available MNRF and other resources which identify the site as possible tertiary aggregates availability site.

[23] Is the quality of the resource, mapped as tertiary, sufficient to justify the granting of approvals?

[24] Mr. Fitzgerald in review of such references opined that these maps and identifications are usually at a very coarse level of 1:50,000 scale and generally have little to no field verification to establish the classification.

[25] Mr. Fitzgerald provided details of his evaluation with reference to the four parcels which constitute the site. He identified these as Pendelton Property, Wake Property, D'Orofrio Property and the Harrison Property. Mr. Fitzgerald stated that based on his fieldwork assessments, he estimates that the site has about 45,118,798 tonnes of aggregate resources. Mr. Fitzgerald opined that processing and blending of materials will be needed to produce quality aggregates at this site. Mr. Fitzgerald further affirmed that he has taken into account all of the ARA requirements in making this determination.

[26] Mr. Fitzgerald added that in creating an aggregate operation other factors are also evaluated. He stated these can include that areas be constrained due to wildlife habitat; provision of greater setbacks from nearby residential uses to mitigate possible impacts of noise. He also opined that whereas 1.5 m above the water table is allowed, the Applicant/Appellant plans to operate 5 m above the water table.

[27] In due consideration of site specific limitations, as well as the Applicant/Appellant plans to excavate only to 5 m above the water table, Mr. Fitzgerald opined that approximately 24 million tonnes of aggregates could be extracted and with a maximum extraction of approximately 1,000,000 tonnes a year the site could operate for about 30 years.

[28] Mr. Fitzgerald reviewed the draft of the proposed site plans and notes (Exhibit 7, Tab13) dated June 06, 2020. In review of this draft Mr. Fitzgerald provided detailed descriptions for the Existing Feature, Operations, Progressive and Final Rehabilitation, Sections and Berm Phasing and Details. As the hearings progressed, Exhibit 7, Tab 13 details were reviewed and examined in detail by the various experts and counsel to clarify and comment for expansion, removal or addition of conditions. Mr. Fitzgerald opined that the site plan meets the requirements set by ARA and has been reviewed by all of the Applicant/Appellant's experts.

[29] Counsel Barnett examined Mr. Fitzgerald on behalf of PM and raised the spectre that the specimen testing was carried out in Greenwood associated laboratories. Mr. Fitzgerald responded that the laboratories are duly accredited. Mr. Barnett directed Mr.

Fitzgerald regarding annotations and test result comments which cast doubt on the quality of aggregates available for excavations and brought Mr. Fitzgerald's attention to Exhibit 8 that could have been used for aggregate grading. Mr. Fitzgerald stated that he was satisfied with the quality assessment and grading stated in the laboratory reports and maintains his assessment of the availability of excavatable aggregates to the amount of about 24 million tonnes.

[30] Mr. Fitzgerald was also examined as to the bringing in of materials for recycling from other Greenwood operated sites. Mr. Fitzgerald stated that the plans call for only concrete recycling and any asphalt brought in will be for on-site uses only. Mr. White in re-examination brought Mr. Fitzgerald to Exhibit 2, Tab 3 where the Provincial Policy Statement 2020 encourages recycling under policy 2.5.2.3, and states as follows;

2.5.2.3 *Mineral aggregate resource conservation* shall be undertaken, including through the use of accessory aggregate recycling facilities within operations, wherever feasible.

Mr. Fitzgerald opined that the Applicant/Appellant plans directly support this policy direction.

[31] Counsel Germain asked if chemical analysis was done to determine the suitability of available aggregates for concrete uses. Mr. Fitzgerald stated that there was substantial content of appropriate size and shape for such uses.

[32] Counsel Germain further asked if the calculations of disturbed area were appropriate in setting operational conditions when the MNRF considers interim and non-final rehabilitation as disturbed area. Mr. Fitzgerald stated that interim rehabilitation could be permanent if such areas were not further excavated and as such the delineation operationally has due regard and consideration of the MNRF description. Mr. Germain further asked why the road was added into the requested licence area and that the same should not be provided in a possible development agreement.

[33] In conclusion Mr. Fitzgerald opined that the following issues are positively

addressed in his evidence through analysis, the geological testing of the site, and incorporation of peer reviewed comments into the site plans;

Are the proposed Site Plan Notes comprehensive and do they represent longer term commitments by the licensee to operate and manage the Pit according to standards and do they provide certainty that monitoring, and mitigation measures will address foreseen and unforeseen impacts in the community?

Are the proposed site plans, including the licence boundary, appropriate and do they reflect all technical recommendations and mitigation measures?

Are the proposed hours of operation, including Saturday operations appropriate?

[34] In consideration of the evidence presented by sole expert witness Mr. Fitzgerald; whose evidence stayed unshaken through cross-examinations, the Tribunal finds that the Applicant/Appellant has established the suitability of the site for appropriate quantifiable availability of aggregates for removal and pit operations.

[35] The Tribunal further finds that Mr. Fitzgerald's evidence contributes positively towards approval by the Tribunal of OPA and ZBA applications and the application made by the Applicant/Appellant under the ARA.

Hydrogeology and Water Resources

[36] Mr. Twigger presented expert opinion evidence based on his witness statement (Exhibit 11) regarding the impact of proposed aggregate removal and pit operations on surface water distribution. Mr. Twigger provided evidence regarding erosion hazards, surface water flows and management and flood management.

[37] Mr. Twigger stated that the Applicant/Appellant proposes drainage ditches on all sides where the site fronts a roadway. Along Highway 89, the water will flow east to west and enter the Shelburne Creek. Along the entrance on 3rd Line, the water will flow into existing ditched sides off of 3rd Line. Mr. Twigger opined that as part of a possible road improvement in support of the pit operation, the existing culvert situated north of the proposed site entrance may be appropriate to be relocated. Mr. Twigger added that

his analysis shows that the existing culvert flow capacity of 1 m³ per second will continue to be appropriate.

[38] Mr. Twigger presented that the pit can be suitably located with due consideration of the erosion hazard limit. He added that all sloped areas have been duly defined within this context and that the proposed production envelope is outside of the erosion hazard limits.

[39] Mr. Twigger also reviewed the roadway access design which will enter the site from 3rd Line. Mr. Twigger opined that suitable measures including suitable slope designs are available for the construction of the roadway which will lead to the stationary crushing and screening area.

[40] Mr. Twigger addressed the following issues from the PO;

Is there sufficient evidence that the applicant has demonstrated that the intrusion into the Violet Hill Meltwater Channel will be mitigated in order to protect the existing Regulated Erosion Hazard from the impact of the establishment of a truck driveway through the existing hill on the subject property?

Is the proposed entrance onto the 3rd Line appropriate?

Is the application premature without detailed design that takes into account such matters as drainage, side slopes, geotechnical work including vibration, the existing Right-of-Way limits, and the potential need to reconstruct a portion of the 3rd Line?

Is the application premature and are the granting of approvals permissible and/or appropriate without detailed design that confirms that the offsite works, including the roadworks can be designed so that there is no encroachment into the Niagara Escarpment Plan Area?

If the detailed design demonstrates that there is an encroachment into the Niagara Escarpment Plan Area, then what are the jurisdictional impacts on the hearing and the requested approvals?

Has it been demonstrated that the application will not result in adverse impacts as a result of erosion and/or flooding?

Have the stormwater management requirements been satisfactorily addressed including the requirements of the Ministry of Transportation with respect to Highway 89, including those set out in its letter of August 14, 2017 to the Town?

[41] Mr. Twigger referred to his analysis for the erosion hazard and concluded that sufficient consideration and design principles have been employed to mitigate any erosion hazard issues. Mr. Twigger opined that the entrance from the 3rd Line can be appropriately and adequately constructed. Mr. Twigger emphasized that the time for detailed road improvements and entrance parameters takes place at the time of receiving appropriate licences and development permits and his due diligence and professional opinion suggests that the entrances and any road improvements will be feasibly appropriate. Mr. Twigger suggested that the site itself does not create any new encroachments into the Niagara Escarpment Plan area. Mr. Twigger added that there is also no impact on drainage as the 3rd Line road elevation defined by road centreline stays unchanged and no changes to any surface water flows are expected. Mr. Twigger opined that along Highway 89, no changes to stormwater management are proposed and any Highway improvements emanating around the Highway 89 and 3rd Line intersection will be appropriately reviewed and the Ministry of Transportation (“MTO”) approvals will be sought thereafter. Mr. Twigger stated that the MTO suggested that the proposal use the 3rd Line entrance and has provided preliminary due consideration as is appropriate at this stage of the project.

[42] The Tribunal found the evidence presented by Mr. Twigger to be unshaken through any cross examination by the Township and PM. The opposing parties brought forth no expert contrary evidence in this aspect of Mr. Twigger’s testimony. The Tribunal finds Mr. Twigger has adequately addressed the appropriate issues in the issues list and has established clear design framework for the development of the site for pit operations and aggregates removals as proposed by the Applicant/Appellant.

HYDROGEOLOGY

[43] For hydrogeological considerations, Ms. White provided evidence where a substantial part of her analysis and evidence was based on field work at the site.

[44] Mr. Smikle provided opposing evidence on behalf of the Township. Mr. Smikle did not carry out any independent field work and opined with respect to inadequacies or

inappropriateness of modelling used by Ms. White and the conclusions thus reached by Ms. White.

[45] The parties addressed the issue from the PO regarding a survey of existing wells surrounding the site, namely;

Should the applicant undertake a comprehensive background well survey of existing private wells located within 500 metres of the proposed licence area, prior to consideration of the proposed aggregate licence?

Ms. White opined that the preliminary assessment of the wells was carried out. She stated that the Applicant/Appellant canvassed other well owners but there was little cooperation. She opined that such can be completed post the granting of an aggregate license. She added that the interest in the domestic well surveys and monitoring improves post the granting of an aggregate license. Ms. White added that for owners wishing to have their wells monitored, this can be accommodated through a domestic well monitoring program as proposed by the Applicant/Appellant.

[46] Possible issues with respect to varying water levels and the quality of groundwater due to aggregates extraction were identified by the parties as enunciated below;

Although the depth of the extraction of aggregate is intended to be limited to five metres above the established groundwater elevation, has the applicant prepared an appropriate monitoring protocol to confirm that the predicted water level and water quality variances during the Pit operation are accurate and can be maintained?

What assurances are provided by the applicant to demonstrate that there will not be adverse impacts on the quality and quantity of private wells within the community?

Has it been demonstrated that the application will not result in adverse impacts on surface water or groundwater resources, including significant wetlands adjacent to the subject lands?

[47] Ms. White opined that the proposed Groundwater Monitoring Program will allow for the ongoing characterization as impacted by seasonality. She added that the

monitoring would allow for mitigation against both quantity and quality issues to be addressed as and if necessary. Ms. White opined that the on-site sentry wells will allow for proactive mitigation if needed.

[48] Ms. White provided details on planned protection of on-site hydrocarbon and other possible hazardous materials usage and possibilities for accidental leakage. She stated that the location of storage, delivery and usage are specifically sited to ensure containment as well as mitigation against ground seepage. Ms. White re-iterated that the sentry wells will also provide a second layer of guard against any eventualities when coupled with on-site emergency spillage and like handling protocols. Ms. White added that suitable spill prevention and management aspects have been established in the site operations plans. She added that any possible asphalt processing will be limited to meet the on-site needs only and not for commercial production and sale.

[49] Ms. White addressed the issue of possible need for trigger levels. The issue was identified by the parties as follows;

Has the applicant demonstrated that the trigger levels and contingency measures for water quantity and quality in private wells are appropriate?

Ms. White opined that no reduction in groundwater recharge is anticipated and the experts have agreed that there will be an actual increase in groundwater recharge. Ms. White stated that the possible vulnerability of the aquifer to excavation activities is addressed through the proposed ground water monitoring plan.

[50] Mr. Smikle expressed his concerns strongly regarding the analysis carried out by Ms. White with respect to the following:

Has it been demonstrated that the application will not result in adverse impacts as a result of erosion and/or flooding?

Have the stormwater management requirements been satisfactorily addressed including the requirements of the Ministry of Transportation with respect to Highway 89, including those set out in its letter of August 14, 2017 to the Town?

Mr. Smikle inferred using the well data developed by Ms. White that the groundwater flow divided demarcation was not accurate and it will impact east-west groundwater flows and hence impact the analysis and projections of groundwater flows made by Ms. White. Mr. Smikle opined that the test wells established in Ms. White's work were not adequate in number or properly located. Ms. White opined that while more wells are always preferred, as a matter of practicality the total number as well as the location of these wells is adequate and appropriate. Ms. White opined that there will be no impacts on surface water or groundwater resources due to the proposed above ground water level operation of the proposed aggregates extraction. Ms. White further opined that there will be no impact on adjacent wetlands.

[51] Mr. Collins raised concerns about groundwater availability and impacts including the effects of seasons. He requested required additional investigations, on-going well monitoring, an action plan to mitigate if any negative impacts occur and the establishment of a "Technical Advisory Committee" to be funded by the Applicant/Appellant.

[52] Ms. White stated that due consideration has been given (Exhibit 3, Tab 1) based on agreed facts between the experts to aspects of; surveying vicinity domestic wells, an on-going program to monitor quality and quantity of available water at the wells within 500 m of the licenced operation boundary and that these actionable activities are duly noted in site operation plans.

[53] The Tribunal having considered all the evidence in this area prefers the evidence of Ms. White as opposed to Mr. Smikle and Mr. Collins. The Tribunal finds that Ms. White has through substantial field work and demonstrated abilities in continued compliance monitoring of such operations through their lifecycle, adequately and satisfactorily addressed all the issues of Hydrogeological considerations. The Tribunal finds that the site as it exists and as it will change through proposed aggregates extraction will support successful aggregate removal and pit operations. The Tribunal further finds that Ms. White provided for suitable and appropriate comprehensive operations and monitoring plans to ensure that the adequacy and quality of groundwater

is maintained to all users adjacent to the site.

NATURAL HERITAGE

[54] The Tribunal heard from Mr. Craig and Mr. Collins. Mr. Craig was the only expert witness who provided expert opinion evidence at the hearing in this area. The PO identifies the following three issues to be addressed;

Have all natural heritage features on and adjacent to the subject lands been appropriately identified and evaluated and has the potential for impacts to all such features and their functions been adequately assessed?

Have appropriate measures been put in place to address the presence of threatened and endangered species and species at risk on/or adjacent to the subject lands?

Is the proposed entrance onto the 3rd Line appropriate from a natural heritage perspective, including impacts to the natural environment, including significant wildlife habitat, traversed by the proposed entrance?

[55] Mr. Craig referred to the agreed statement of facts (Exhibit 3, Tab 4) and stated that the Town's expert, Mr. Sandilands was satisfied with replanting of certain species and he stated that the site plans reflect the associated notes reflecting the same. Mr. Craig opined that the excavations are planned to be carried out in the area currently used for cash crops. He added that there were no wetlands north or south of the site. Referring to the endangered species of plants (Exhibit 22, Tab A, page 13) Mr. Craig opined that there were none on the site except for the Butternut on the North Woodlot. He added that this area will not be disturbed and appropriately mapped out.

[56] Mr. Craig opined that while he did not come across endangered Barn Swallow during his site assessment and field work, there are possible mitigation measures available in terms of relocating these. He admitted that such relocation measures are not always successful.

[57] Mr. Craig opined that there were no Areas of Natural and Scientific Interest ("ANSI") within 120 m of the site. There are two woodlands parcels that are not planned to be disturbed for aggregates removal.

[58] Mr. Craig stated that there is significant woodland along haulage access and west of existing Third Line municipal road. Mr. Craig opined that there are no incremental impacts because of site operations on these woodlands and the Sheldon Creek that these extend to. He added that within the site, the one ha taken for the haul access will be compensated through 5.4 ha of shrubbery. He stated that these are duly reflected in the notes to the site plans dated August 18, 2020 (Exhibit 4B and Exhibit 4E).

[59] In conclusion, Mr. Craig emphasized that the proposal was reviewed by Nottawasaga Valley Conservation Authority who signed off regarding no negative impacts to natural habitats due to proposed above water table excavation operations for aggregates removal.

[60] Mr. Craig was cross-examined by the Town regarding impacts of the haul route and rehabilitation plans. Mr. Craig responded that the possible improvements to the haul route including the access arrangement will follow Town of Mono practices and agreements between the parties. Mr. Craig also responded to questions regarding possible spillage of pollutants like gasoline, oil, etc., and opined that these are appropriately addressed in the spill contingency plans. This was further emphasized by Mr. Craig when re-examined by the Applicant/Appellant.

[61] Mr. Craig answered in response to further examination by the Town regarding the presence of Butternut trees. He opined that some previous documents have erroneously referred to mature red Oak trees as Butternut.

[62] In its cross examination of Mr. Craig, PM asked if ANSI north of Highway 89 were considered in an area within 120 m of the excavation site. Mr. Craig responded that these were not within the 120 m of planned aggregates removal areas.

[63] Overall Mr. Craig opined that three issues identified for Natural Heritage consideration are not sustained for any negative impacts and that the appropriate mitigation measure as noted in the site plan notes are adequately addressing mitigation

where necessary.

[64] The Tribunal finds the expert opinion evidence of Mr. Craig compelling. There were no alternate experts called by the opposing parties. Having considered all the available evidence, the Tribunal is satisfied that the issues agreed to by the parties have been suitably and positively addressed by the Applicant/Appellant and that appropriate mitigation measures where necessary have been duly established in site plan notes (Exhibit 4) and as noted and agreed to by the Applicant/Appellant for amendment during the hearing thereof.

NOISE

[65] Mr. Emeljanow was the only expert who provided expert opinion evidence at the hearing. He reviewed the operations regarding aggregates removal and haulage in terms of noise and vibration impacts, he referred the Tribunal to Exhibit 3, Tab 5 which is a record of “like experts” in the area of noise.

[66] In reference to the following issue;

Have the potential noise impacts been properly modelled? Does the Noise Impact Assessment accurately predict potential noise impacts? Have all potential noise receptors been properly accounted for?

Mr. Emeljanow stated that experts agreed that noise modelling was properly carried out. He referred to Exhibit 4 and opined that the noise control measures in the updated site plan adequately address any needed mitigation measures. He stated that the Applicant/Appellant would need to do follow-ups with appropriate authorities like Ministry of Environment, Conservation and Parks as such are required on a statutory basis prior to the start of pit operations.

[67] In reference to the following issue of adverse effects;

Will the proposed pit result in adverse effects from noise?

Mr. Emeljanow stated that the experts have concurred and based on the joint expert opinion, there are no adverse impacts as a result of operations at the pit.

[68] Mr. Mountford raised concern for residents along the haul route portion on 3rd line. Mr. Emeljanow opined that there is no restriction on the use of such roads for haulage traffic. He agreed that there will be impacts on residents but insisted that it is part of the allowed usage for 3rd line and similar roads. The Applicant/Appellant submitted that they are voluntarily willing to work with affected property owners to help create mitigation measures as they have done already with one such resident in the neighbourhood (Exhibit 20).

[69] In summary the issues addressed were;

Has the applicant demonstrated that adequate measures will be implemented on site and off site to mitigate the generation of noise and vibration by the Pit operation including but not limited to the truck traffic associated with the Pit operation?

Have all potential noise sources and receptors been adequately studied and have appropriate mitigation measures been identified?

Are appropriate safeguards and enforcement measures in place to ensure that Jake brakes are not used on the subject lands, including the entrance to 3rd Line and crossing of 30th Sideroad?

Mr. Emeljanow opined that the necessary measure for on-site and off-site operational impacts of the pit operation have been duly considered, and possible mitigations have been specified in site plans. Mr. Emeljanow concluded that the proposal as developed fully and satisfactorily addresses all impacts of noise and vibration.

[70] The Tribunal, having considered the totality of evidence on file as well as the expert opinion evidence of Mr. Emeljanow and evidence of Mr. Mountford at the hearing, finds that the proposal provides for appropriate mitigation measures and all matters of noise and vibration have been suitably addressed by the Applicant/Appellant.

TRAFFIC AND TRANSPORTATION

[71] Traffic considerations and concerns were an area of extensive evidence

presentation by all. This included the objectors Ms. Baufeldt and Mr. Mountford (Exhibits 16 and 17). The three experts who provided expert opinion evidence included Mr. Cullip (Exhibit 24) for the Applicant/Appellant, Mr. Argue (Exhibit 37) for the Town and Mr. Brownlee for PM (Exhibit 47) regarding the safety and operations with a focus on traffic ingressing and egressing the 3rd Line and Highway 89 intersection.

[72] Mr. Cullip described that originally the Applicant/Appellant sought direct access to Highway 89 for the haul route. Alternate 4th line was also considered. Mr. Cullip stated that in their letter of August 14, 2017, the Ministry of Transport (the "MTO") generally agreed with the revised request for 3rd Line existing intersection with Hwy 89 as the appropriate route.

[73] Mr. Cullip opined that the 3rd Line access provided for the necessary sight lines both looking east and looking west. Mr. Cullip added that the intersection approach from the west and the east on Highway 89 also allowed for the suitable assessment of possible improvement like a westbound left turn lane and an eastbound right turn on Highway 89 at the intersection with 3rd Line.

[74] Mr. Argue opined that the finalization and review of possible design improvements by MTO needs to happen prior to any possible approval by the Tribunal. Mr. Argue opined that it was possible that suitable designs may not be possible that fully satisfy the requirements and reviews by the MTO. Mr. Argue stated that there are significant discrepancies between Applicant/Appellant initial designs where an eastbound right turn taper may be needed as much as 165 m in length while the proposal is for 60 m. He noted similar discrepancies for right turn lane design versus the MTO request in a 2018 letter to the Applicant/Appellant.

[75] Mr. Argue also opined that the acceleration of loaded trucks as these climb a rising grade further accentuating the need for extra accelerating lengths to merge with other eastbound traffic. Mr. Mountford showed video of such a possible activity as it persists today for eastbound gravel loaded trucks on Highway 89. Mr. Brownlee provided information regarding him personally driving a haulage truck to understand acceleration challenges and spans of acceleration and deceleration needed to move

and merge with the traffic flows on Highway 89. Mr. Brownlee did inform the Tribunal that in his opinion it was not infeasible and suitable designs may be created for safe operations at the intersection of 3rd Line and Highway 89 as well as east and west flows along Highway 89. Mr. Brownlee disagreed with Mr. Mountford's characterization of around 10-degree uphill slopes in the area and opined that Highway 89 sloping in the area was typical of general highways in this part of Ontario and not a hindrance to development of aggregate extraction operations or aggregates hauling if suitable improvements are carried out.

[76] The agreed to issues in this area are;

Has the applicant demonstrated that appropriate mitigation measures will be implemented to address impacts along the external haul routes, including: (i) risks with regard to the use of Highway 89 by heavy trucks; (ii) conflict and safety with respect to private access to public roads; (iii) the use of public roads by school buses; (iv) the safety of people using public roads for a variety of active transportation uses; and (v) safety and congestion resulting from queuing of Pit trucks on public roads.

Is it confirmed that the proposed truck access, the scales and the scale house will be included within the proposed Licence Area?

Has it been demonstrated that the proposal will not result in unacceptable traffic operations or safety impacts?

Are appropriate sight distances available at the proposed entrance to the 3rd Line, the proposed crossing of 30th Sideroad and the intersection of 3rd Line and Highway 89?

Have appropriate intersection and other roadway improvements been identified and secured?

Have the requirements of the haul route with respect to Highway 89 been satisfactorily addressed, including those requirements of the Ministry of Transportation?

[77] In the category of municipal roads (3rd Line and 30 Sideroad) issues were dealt with by Mr. Cullip, Mr. Argue, Mr. Feniak and Mr. Brownlee. Ms. Baufeldt and Mr. Mountford provided evidence regarding local roads usage and accesses in terms of possible impacts on local residents and businesses. The key issues in this respect per the PO are;

Is there sufficient evidence to require that the 3rd Line E.H.S. needs to be widened on the west side of the right-of-way and therefore intrude into the Niagara Escarpment Development Control Area?

Has the applicant addressed the mitigation of impacts on the 30 Sideroad as a result of truck movements and Pit operations?

Is the proposed crossing of 30th Sideroad appropriate?

[78] Whereas Ms. Baufeldt flagged concerns regarding tourists and others having greater difficulties reaching her business located north of the 3rd Line and Highway 89 intersection on 3rd Line, Mr. Mountford was concerned about safety for activities of daily life and recreation for people using 3rd Line. Mr. Cullip added that a widening of 3rd Line will be needed to provide a 7 m overall haulage road width. There will be extra areas needed to provide the necessary paved surface and shoulders for the haul route. Mr. Cullip added that the widening and other planned improvements should mitigate some of the negative impacts identified by the objectors. Mr. Cullip opined that in all respects the use of 3rd Line and 30 Sideroad is subject to rules of the road, as applicable to all road uses in the Town.

[79] Mr. Cullip reviewed the widening of 3rd Line and opined that there is no established need to broaden the west side towards existing wetlands. He further opined that the 3rd line right of way is sufficient to allow for the necessary minor widening envisaged for back haul route.

[80] Mr. Cullip opined that the 30 Sideroad accesses for hauling material from the south excavation to bring back to the north processing area has been duly considered. He opined that appropriate site lines exist. Mr. Cullip added that suitable approach profiles to ensure adequate safety and signage for safe operations for all traffic are proposed. Mr. Cullip stated that adequate and degree of resurfacing of the crossing area will be reviewed and agreed to with the Town.

[81] Mr. Feniak opined that he does not have major concerns regarding the engineering of 30 Sideroad engineering. He added that the Town and the Applicant/Appellant will need to work together for proper upgrading of 3rd Line. Mr.

Feniak further added that in his professional experience in civil engineering, he has yet to come across a scenario where such improvements could not be suitably engineered to the satisfaction of all parties for similar aggregate operations.

[82] Where the experts disagreed; namely Mr. Cullip, Mr. Argue, Mr. Feniak and Mr. Brownlee; is the extent to which the detailed designs for all Highway 89, 3rd Line and 30 Sideroad need to be secured and MTO approvals received? The Town submitted that MTO only needs to issue permits after statutory approvals while other design work needs to be vetted and completed at this stage of the project.

[83] Mr. Cullip opined that he has worked with MTO extensively over the years as documented (Exhibit 24). He added that MTO is supportive of the Applicant/Appellant approach and satisfied with the initial designs submitted with some comments. Mr. Cullip stated that the Applicant/Appellant has not been instructed by MTO to carry out additional studies and none are pending. Mr. Cullip opined that it is normal practice that prior to receiving licence or OLT approvals, designs in principle to establish feasibility and the best choice for ingress and egress are vetted. He added that ARA licences have a requirement to get appropriate MTO permits to the satisfaction of the MTO for any improvements and other roadworks in their area of jurisdiction. Mr. Cullip in reviewing 3rd Line and 30 Sideroad opined that for such Town controlled roads, the Applicant/Appellant will need to enter into suitable development agreements as well before any permits are issued. Mr. Cullip concluded that such an approach is typical for the development and exploitation of strategic aggregate resources.

[84] Mr. Cullip in response to cross-examination by PM stated that any improvements to Highway 89 will inherently require an environmental assessment to be carried out with respect to such finalized plans for improvement including any melt channel or other surface water issues in areas south of Highway 89.

[85] The Tribunal having considered all the evidence presented and available on file, prefers the evidence of Mr. Cullip and finds that the Applicant/Appellant has suitably and adequately addressed all issues regarding traffic safety and operations inclusive of all

aspects of Highway 89 and 3rd Line intersection ingress and egress to be secured through due final approvals from the MTO. The Tribunal further finds and accepts the Applicant/Appellant's submission that working with the Town; 3rd Line and 30th Sideroad improvements will be secured through appropriate development agreement negotiated with the Town.

DUST AND AIR QUALITY

[86] Ms. Kenigsberg (Exhibit 28) provided expert opinion evidence regarding dust and air quality and was the sole such expert at the hearing. Ms. Baufeldt flagged that at her business operations her employees wearing Covid-19 Face shields already notice accumulating dust and it impacts her possible opportunity to conduct events or provide food services outside.

[87] Ms. Kenigsberg addressed issues related to this subject as per PO as follows;

Have the potential air quality impacts been properly modelled? Does the air quality report accurately predict potential impacts, including cumulative impacts?

Has the applicant established a sufficient Air Quality protocol that implements a best management practices plan?

Has the applicant demonstrated that adequate measures will be implemented on site and off site to mitigate the generation of dust by the Pit operation including but not limited to the truck traffic associated with the Pit operation?

Has the applicant demonstrated that there will be no unacceptable air quality impacts to nearby receptors, including natural heritage features and functions?

Has a combined effects analysis of Air quality impacts been carried out?

[88] Ms. Kenigsberg opined that she has used proper modelling in accordance with the Ontario Ministry of the Environment and Parks ("MECP") Guideline A-11. She added that her modelling provides for accurately predicting potential impacts including cumulative impacts at the property line. She added that this covers outside property line considerations if property line quality meets standards.

[89] Ms. Kenigsberg opined that the Applicant/Appellant's operations plan (Exhibit 4)

establishes sufficient Air Quality protocols with best management practices plan to mitigate dust. She added that measure will be implemented on site and off site to mitigate dust due to proposed aggregates removal, processing and haulage operations.

[90] Ms. Kenigsberg opined that there will be no unacceptable air quality impacts to nearby receptors inclusive of nearby natural heritage feature and functions. She added that she has carried out combined effects analysis for Air Quality as well.

[91] Ms. Kenigsberg in response to questions by the Town regarding non-visible dust opined that her modeling covers 24 hour averaging methodology. She stated that PM₁₀ and PM_{2.5} are not part of the requirements in O. Reg. 419/05: AIR POLLUTION - LOCAL AIR QUALITY.

[92] Having reviewed all the evidence on file and the testimony of Ms. Kenigsberg and Ms. Baufeldt, the Tribunal finds that the Applicant/Appellant has duly and satisfactorily addressed all issues regarding dust and air quality and that the recommended plans for mitigation as well as carrying out of any required site environmental assessment(s) prior to start of site operations will provide the necessary safeguards from dust and air quality degradation.

AGRICULTURE

[93] Mr. Hodgson (Exhibit 29) was called by the Applicant/Appellant to provide evidence as a pedologist (soil scientist).

[94] Mr. Hodgson stated that his study area was bounded by the site and an area around the site extending 1,000 m. He opined that about 74.9 percent of the land uses in the study area are for agricultural purposes. He added lands are defined as Rural Policy Area within the County and Town Official Plans and the Town's Zoning By-law No. 78-1. The agricultural land uses are for the production of common field crops. Mr. Hodgson stated that he did not observe any specialty crop areas within the study area. The study area has Hamlet of Violet Hill with concentrated residential uses and other

areas are mostly wooded or covered in shrubbery. In reviewing the following issue from the PO,

Does the proposal give rise to an undue impact on the surrounding area and its character?

Mr. Hodgson emphasized that the primary character of the area is one of transition. Mr. Hodgson reviewed proposed progressive and final rehabilitation aspects. He reviewed plans for rehabilitation and opined that a gravel pit is an interim use and added that the rehabilitation would promote even better ability for crop and the like production with more uniform slopes. He opined that the aggregate operational area will undergo many transitions. He further added that, aggregate removals with progressive and opportunistic temporary transitive rehabilitation will continue to maintain the character of the surrounding area.

[95] Mr. Hodgson opined that there was very little agricultural investment in the area. There were some active barn locations and based on the associated Minimum Distance Separation (“MDS”) calculations, Mr. Hodgson opined that eastern and southeastern portions of the site are impacted by MDS arcs.

[96] In the context of agriculture related business traffic, Mr. Hodgson opined that other transportation predominate with respect to possible agriculture uses in the Town roads around the site as well as Highway 89.

[97] In assessing the lands directed to be preserved for agriculture, Mr. Hodgson opined that the site comprises of 96 percent Class 4 - Class 6 lands with the remainder in the category of “Not Rated Lands”. Mr. Hodgson added that in the Canada Land Inventory (“CLI”) Soil Capability classification, CLI Classification 1-3 are considered for the preservation of agriculture. Mr. Hodgson opined that based on other commonly referred and referenced reports, the lands at the site are not considered to be belonging to Prime Agricultural Areas.

[98] The Town asked about soil management plans and the preserving of and keeping good soils separate for reuse. Mr. Hodgson discussed how the soils will find temporary uses in berms and other temporary relocation uses and as such would be managed adequately as various areas and faces of the total site gets developed and rehabilitated on an interim basis till final rehabilitation at the end of life for the operation. PM inquired if Mr. Hodgson has talked with surrounding property owners and Mr. Hodgson stated that he did not so consult, but that his assessment and assumptions were carried out in a conservative mode to provide a more critical review.

[99] The Tribunal finds that Mr. Hodgson's testimony was successfully sustained and was unfettered by cross-examination by the Town and PM. The Tribunal, based on all the evidence before it and the expert opinion evidence of Mr. Hodgson, finds that the proposed aggregates removal proposal will not change the character of the community as it exists; namely a community in transition and not in stagnation with or without the proposed aggregates removal and pit operation.

FISCAL ANALYSIS

[100] Mr. Keleher (Exhibit 30) was the only expert who provided analysis to determine the proposed operation's impact on the Town. Mr. Keleher addressed the following issue from the PO;

Has the fiscal impact of the proposal on the Town been satisfactorily addressed?

[101] Mr. Keleher in consideration of existing property tax revenue, the estimated annual future property tax revenue; annual aggregate levy fees contribution; the extra expenses in services and maintenance expenditures by the Town; and the possible reduction in assessment values and associated tax revenues opined that there will be a net positive financial impact on the Town. Mr. Keleher estimated that the net positive value of impact will be in the order of \$90,000 or more annually.

[102] Mr. Keleher was questioned by PM regarding the neighbouring Township of

Mulmur, its businesses and residents in the hamlet of Violet Hill. Mr. Keleher stated that he has not conducted such assessment but based on his professional knowledge there could be some negative impact. Mr. Keleher added that appropriate applications will need to be made to Municipal Property Assessment Corporation (“MPAC”) for appropriate determination. PM also inquired of Mr. Keleher regarding market value drop in residential properties and business valuations. Mr. Keleher stated that this was beyond the scope of his investigation or the issue to be addressed in the PO.

[103] Mr. Keleher’s expert opinions were sustained and unfettered and based on this evidence; the Tribunal finds that the proposed pit operation will have a positive financial impact on the Town, albeit small. The Tribunal further finds that submissions by PM on possible negative property value impacts in the area including in the Town of Mulmur have no determinative value in consideration of the adjudicative issues before the Tribunal.

VISUAL ASSESSMENT

[104] Two experts provided evidence regarding visual impacts of the proposed operation. Mr. Parkin referred to the agreed statement of facts between himself and the Town’s expert Mr. Ferris (Exhibit 3, Tab 9). Mr. Parkin stated that per the PO there was only one issue identified by the parties. Namely,

Have visual impacts resulting from the proposal been appropriately identified and mitigated, including addressing the visual impacts on the Niagara Escarpment Plan Area?

[105] Mr. Parkin based on Exhibit 3, Tab 9 stated that the following items or sub-issues have been resolved either through updating site plan notes or otherwise based on the joint meeting of experts on August 25, 2020;

1. Timing for mitigation and installation of visual screening before excavation activity;

2. NVCA reference to be added to site plans;
3. 3rd Line tree buffer and NEC sign-off;
4. Tree screen landscape in site plans;
5. Retained plantings and toe of berm to protect the planted retained tree roots;
6. Berm setbacks and protection of existing trees around 30 Sideroad;
7. Tree planting maintenance to be included in site plan notes;
8. Planting strips north side of Areas A and B and the west side of Area C has no or limited off site visual impact;
9. Operation Area A to have a 10m setback;
10. R10 setbacks to be increased;
11. South pit tree screen to be extended with retention of existing hardwood trees;
12. Adequacy of landscape plans for receptors R10/R11, R3-5 and R1 per site plan notes revisions;
13. Berm setback for south pit will not encroach on dripline of existing trees along south side of 30 Sideroad; and
14. Property line along R12 to be maintained and berm will not encroach.

[106] The sub-issues that remained in contest based on Exhibit 3, Tab 9 included determination of setback on west side of operation area A; detailed entrance designs; length of berm east side of south pit; new tree planting north side of 30 Sideroad; haul route plantings 3rd Line East; and planting approaches consultation with residents.

[107] Mr. Ferris presented visuals (Exhibit 12, Tab 8, Sub-tab D visuals 1-21) and

opined that there was visibility of pit Area A for traffic moving east on Highway 89, west of 3rd Line and Highway 89 intersections. Mr. Ferris did not quantify the duration of or the extent of such visibility. Mr. Ferris could not account for Applicant/Appellant assertion under cross examination that most extractive activities will take place below existing site visual profiles.

[108] Mr. Ferris emphasized the need for detailed haul route designs from visual aspects inclusive of any impacts on any receptors along the haul route. Mr. Parkin in his testimony and in answers to cross-examination by the Town opined that the activities like tree planting along the haul route, etc., needs to be part of 3rd Line rehabilitations, a work that follows pursuant to needed and appropriate development agreement(s) between the Applicant/Appellant and the Town as usual in such projects.

[109] PM in cross examination asked if possible negative visual impacts from viewpoints along the Bruce Trail have been mitigated? Mr. Parkin stated that mitigation along the roads surrounding the site area edges and boundaries are sufficient in this regard.

[110] Mr. Parkin in his concluding opinion summarized that visual impacts have been appropriately identified and mitigated and the mitigation plans are incorporated in the updated ARA required site plans having regard for Town's feedback.

[111] Considering all the evidence regarding visual impacts before it, the Tribunal finds that the necessary visual impacts have been duly identified and sufficiently mitigated by the Applicant/Appellant. The Tribunal also finds that haul route designs, the entrances along 3rd Line and 30 Sideroad will require due development agreement(s) as these activities take place for developing the site for licenced operations.

LAND USE PLANNING: OPA and ZBA

[112] Expert opinion evidence in the area of land use planning was provided by Mr. Davidson called by the Applicant /Appellant; Mr. Stovel called by the Town; and by Mr.

Dorfman called by PM. These experts met and agreed as follows (Exhibit 3, Tab 7);

“A Places to Grow Growth Plan for the Greater Golden Horseshoe” is not to be considered with regard to the two planning applications. Section 4.2.8 provides that where an application under the Aggregate Resources Act has been received and deemed complete by the Province as of July 1, 2017, the planning applications will not be subject to the policies in this Plan. The ARA application was posted by MNRF on the EBR on November 29, 2016.

It was agreed that Mono Official Plan Amendment No. 41 is not determinative. This amendment came into effect on July 24, 2018. It was agreed that the Natural Heritage System designated in the Mono Official Plan, as amended, reflects the Natural Heritage System and policies contained in Provincial Policy Statement 2020 (PPS2020). It was understood that PPS2020 prevails with regard to the Natural Heritage System within and adjacent to the subject properties. Mono Official Plan Amendment No. 41 should be considered in the context of PPS2020. PPS2020 is to be considered by the Tribunal.

[113] There are three approvals sought by the Applicant/Appellant driven by an OPA, a ZBA and a licence under ARA for aggregates removal.

OPA

[114] The parties agreed that issues of debate for the key determinations and disputes were the following;

Is the proposal, including the proposed Official Plan Amendment (OPA 2016-01) and Zoning Bylaw Amendment (ZBA 2016-02) of the Town of Mono, consistent with Provincial Policy Statement 2014?:

Policies 1.1.1, 1.1.4, 1.1.5, 1.2.6.1, 1.6.8, 1.7, 2.1, 2.2, 2.5, 2.6, 3.1, 4.0.

Does the proposal conform with the policies of the County of Dufferin Official Plan?

Does the proposal, including the proposed Official Plan Amendment and Zoning Bylaw Amendment, conform with the Town of Mono Official Plan?

Section 2(1) Purpose of the Plan; Section 2(2) Scope of the Plan; Section 3(1) Land Use Boundaries and Roads; Sections 4(3) to 4(7) Basis of the Plan; Section 5(1) to 5(3) General Goals and Policies; Section 12 Extractive Areas; Section 14A Natural Heritage; Section 14B Environmental Hazard; Section 15 Rural Areas;

Section 21 Groundwater Resources; Section 24 (2) Roads Policies; Section 24(3) Servicing Cost Policies; Section 24(8) Environmental Policies; Section 24(9) Site Development Policies; Section 24(11) Niagara Escarpment Plan Policies; Section 24(15) Cultural Heritage; Section 24(16) Active Transportation; Section 24(18) Sustainability; Section 24 (19) Ministry of Transportation; Section 25 Implementation; Schedules A, B, D, H1 to H7 inclusive; Figures 1A, 1B, 2, 3, 4, OPA 41.

Has the Niagara Escarpment Commission adequately addressed the impact of the proposed Pit that is located within the Niagara Escarpment Planning Area and adjacent to the Area of Development Control?

Are the features and functions of the Violet Hill Meltwater Channel located within the proposed licenced area appropriately protected and conserved?

Does the proposal represent good planning, and is it in the public interest?

Does the proposal have regard to the matters set out in s. 2 of the Planning Act?

[115] Mr. Davidson opined that the applications having been deemed complete before July 1, 2017 were not subject to the policies of the Growth Plan 2017. Further, Mr. Davidson opined that as the applications were considered complete by the Town before the adoption of OPA-41, the OPA-41 is not determinative for evaluating the requested OPA and the ZBA. The experts for the Town and PM did not dispute Mr. Davidson's opinions but asserted that regard should be had for OPA-41.

[116] In his analysis, Mr. Davidson detailed regard for s.2 of the Act as well as s.3 of the Act which directs for consistency with Provincial Policy Statement. All parties agreed that Provincial Policy Statement 2020 ("PPS 2020") is the applicable policy framework.

[117] Mr. Davidson opined that PPS 2020; the Dufferin County Official Plan and the Town Official Plan cohesively recognize the importance of resources development and in particular the development of strategic resources like the aggregates extraction proposed by Greenwood. In consideration of the Dufferin County Official Plan Mr. Davidson opined that possible impacts have been minimized and the Applicant/Appellant experts have established the transition nature of the area which will remain substantially unchanged.

[118] In assessing the following issue regarding community impact;

Since the subject properties are not identified as primary or secondary sand and gravel resource areas, is the public interest to protect the tertiary aggregate resource of lesser importance than the protection of the existing community characterized as countryside and the Violet Hill settlement area?

Do these applications for the proposed Pit comprehensively address the potential adverse impacts on the local community within the Town of Mono and the Township of Mulmur?

Have the impacts on specific land uses within the community, including local businesses been adequately identified and has the applicant proposed sufficient mitigation measures?

Mr. Davidson opined that whereas there is tertiary identification for existence of aggregates in planning instruments, the fieldwork analysis confirms strategic and substantially available reserves that Greenwood plans to develop. Mr. Davidson emphasized that in such situations the strategic reserve is not part of a trade-off equation versus residential development whether existing or planned. Mr. Davidson opined that the policy directions in PPS 2020 and the ARA require that possible impacts on surrounding communities be mitigated and minimized as much as possible. Referring back to and depending upon the expert opinion evidence provided by all other experts called by Greenwood, Mr. Davidson concluded that the impacts have been addressed and plans for mitigation are well established in the proposed operation plan developed by Greenwood (Exhibit 4).

[119] Mr. Davidson further assessed the issue listed as;

Does the proposal give rise to an undue impact on the surrounding area and its character?

Mr. Davidson concurred and repeated with the support of the expert opinion of Mr. Hodgson that the area character is one of transition where a multitude of uses exist from rural to small business, farming and a residential dwellings aggregation north of Highway 89 in the Town of Mulmur. Mr. Davidson opined that the general area just west of 3rd Line along Highway 89 already maintains such co-existing uses.

[120] Mr. Stovel contested that there are significant gaps and areas of concern for the Town. He stated that Greenwood did not submit a Haul Road Agreement or a Development Agreement. Depending upon the opinions of Town's experts, Mr. Stovel opined that there has been insufficient consideration for residents along the 3rd Line and particularly two of the residents. Mr. Stovel also opined that based on opinions of Town's expert witness Mr. Argue, the safe transportation aspects for 3rd Line and 30 Sideroad are not set up as to payment mechanisms, in addition to other details.

[121] Mr. Dorfman opined that Greenwood has failed to show consistency with the PPS 2020 and also failed to demonstrate conformity with the Dufferin County Official Plan and the Town of Mono Official Plan. Mr. Dorfman specifically in reference to policy 1.2.6.6.1 of PPS 2020 opines that extraction and surrounding existing sensitive land uses are inherently incompatible. However, Mr. Dorfman notes that PPS 2020 directs if avoidance is not possible then minimization of impacts and mitigation should be appropriately carried out.

[122] The Town submitted that in the context of policy 1.1.5.5 of the PPS 2020 that existing infrastructure is not sufficient to support the proposed operations and it is potentially uneconomical to develop such infrastructure. The Applicant/Appellant and its experts submitted that the detailed development agreements, monetary arrangements as well as finalization of the MTO approval follow due approvals in principles of the OPA, ZBA and the ARA licence. This view was generally supported by some of the other engineering experts on all sides as well. Mr. Davidson also noted that many changes as requested by the opposing parties have been adopted in the August 2020 version of the site plans and that these plans shall be submitted based on agreed changes during the hearing itself for final review and approvals by the Tribunal.

[123] There was substantial contest between experts regarding the aspect of "rehabilitation". This was related to Dufferin County Official Plan policy 4.4.2.2 and the Town of Mono Official Plan policy 12 (1) (d). Mr. Davidson explained that the Applicant/Appellant plans to carry out operations in phases and during the interposing times areas not actively being excavated will be rehabilitated on an interim basis. He

stated that this is a preferred approach as such areas will be further excavated on a phased approach basis. He emphasized that the final rehabilitation would take place once the phased extractive work has been completed in a specific area. Mr. Stoval and Mr. Dorfman contested that the official plans call for “progressive” and not such interim rehabilitation. Mr. Davidson opined that the net effects of the approach adopted by the Applicant/Appellant in efficient development and excavation of aggregate resources achieve the same end objective as sought in the official plans.

[124] Mr. Davidson further opined and added that the areas to be extracted are well separated with sufficient separation from planned extractive areas; the rehabilitation plans are well designed to preserve the return of the extraction area to near pre extraction forms while making best interim uses including possible greening or cropping of the disturbed areas.

[125] The Town and PM raised concerns the official plans do not require protection or aggressive development of possible tertiary aggregate resources. Mr. Davidson added that demand and such analysis of aggregates marketing is not required per statute as implied in opposing parties’ submission regarding development of tertiary resource areas versus other better areas that could be developed in other places nearby or across the province. Mr. Davidson concluded that the Applicant/Appellant requested OPA (Exhibit 46) to the Town of Mono Official Plan is appropriate and represents good planning as well as it is in the public interest.

[126] The Tribunal has considered all the evidence before it, including all material that was before the approval authority and the Town staff when they made their decision. The Tribunal finds that the existence of substantial aggregate resources has been established and the PPS protects and encourages the suitable development of such strategic resources. The Tribunal further finds that no fatal issues have been established by the opposing parties regarding the Act and the provincial interest, consistency with the PPS 2020, or conformity with the Dufferin County Official Plan or the Town of Mono Official Plan. The Tribunal finds that the evidence of Mr. Davidson and the unfettered expert opinion evidence of Applicant/Appellant experts support the

approval of OPA sought by the Applicant/Appellant.

[127] The Tribunal concludes that the OPA has regard for the provincial interest and meets the consistency test with respect to PPS 2020 and the conformity tests with respect to the Dufferin County Official Plan section 4.4.2.1 (d).

[128] Mr. Davidson presented that the area to be licenced for extraction is currently zoned 'A' (Rural) generally permitting agriculture, forestry and conservation uses. In order to develop licenced aggregates extraction and pit operation, an 'MX' (Extractive Industrial) zoning is sought by the Applicant/Appellant. Mr. Davidson further added that exceptions are also sought to provisions in the 'MX' zoning with respect to sections 16(2)(b), section 16(2)(c) and section 16(2)(d) of the MX zoning in the Town of Mono Zoning By-law Number 78-1.

[129] Mr. Davidson opined that the proposed ZBA is justified based on the expert opinion evidence of the Applicant/Appellant's experts. Mr. Davidson opined that the exceptions are justified as proper and due mitigation measures have been developed and established in operations plans where avoidance of impacts was not possible. Mr. Davidson opined that the ZBA is thus consistent with the PPS 2020.

[130] Mr. Davidson further elaborated and stated that; compatibility with adjacent properties has been maintained as much as possible; there is no noticeable impact on the surrounding natural environment; surface water and groundwater will not be impacted; the intent and purpose of the Dufferin County Official Plan is maintained; and the intent and purpose of the Town of Mono Official Plan is maintained.

[131] The Tribunal having considered all the evidence before it accepts the evidence presented by Mr. Davidson and the supportive evidence presented by the Applicant/Appellant's experts. The Tribunal finds that the requested ZBA is consistent with PPS 2020, conforms with the County and Town Official Plans and represents good planning and is in the public interest.

ARA

[132] In review of the ARA licence application appeal, the ARA S. 12 (1) directs as follows;

Matters to be considered

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. R.S.O. 1990, c. A.8, s. 12; 1996, c. 30, s. 9 (1, 2); 2002, c. 17, Sched. F, Table; 2017, c. 6, Sched. 1, s. 11 (1); 2017, c. 23, Sched. 5, s. 2.

[133] Based on the Tribunal's consideration of all material before it and its findings earlier in this decision, the Tribunal determines that subsections 12 (1) {(a), (b), (d), (e), (f), (g), (h), and (i)} have been fully and satisfactorily addressed through the tested evidence of Applicant/Appellant's experts as well as after due consideration of evidence of opposing experts.

[134] The Tribunal has reviewed the comments and submissions of the Town in having regard for subsection 12 (1) (c). The Tribunal notes that while there have been differences of expert opinions, the Applicant/Appellant has significantly adapted suggested and substantive changes through inclusion and updating of site operations plans. The Tribunal further notes that some changes were adopted and accepted by the Applicant/Appellant during the testimony of experts during the hearing.

[135] In consideration of subsection 12 (1) (j), the participants at the hearing were canvassed and agreed that there were no known issues with previous non-compliance with the permits received and operations carried out by the Applicant/Appellant and that the Applicant/Appellant has carried out such businesses for greater than a century of operations through various forms of family enterprises. A letter from MNRF dated June 19, 2018 (Exhibit 33, Tab B) states general approval of the then application for the proposed Violet Hill Pit, Category 3, Class “A” Application under the ARA.

[136] The Tribunal having considered all the evidence on file and the evidence of experts and other witnesses at the hearing finds that the Applicant/Appellant has met the onus for the issuance of the requested licence by MNRF subject to finalization of site operation plans to incorporate agreed to changes during and prior to the commencement of the hearing; the execution of due development agreement with the Town; and the confirmation from the Nottawasaga Conservation Authority to confirm approval of the design and erosion control for the construction of the driveway entrance. The Tribunal finds that MTO approvals will be required before the issuance of the requested licence by MNRF.

ORDER

[137] The Tribunal orders that the appeals are allowed in part, and;

1. The Town of Mono Official Plan amendment is approved generally in the form of Exhibit 46; and
2. The Zoning By-law Number 78-1, as amended, will be amended generally in the form of Exhibit 45; and
3. The Applicant/Appellant shall submit to the Tribunal for final review and issuance within 30 days of the issuance of this decision, final versions of the official plan amendment and the zoning by-law amendment after suitable review of form and content with the consent of the Town of Mono.

[138] The Tribunal allows the Appeal in part under the Aggregate Resources Act. The Tribunal's final order and direction to the Minister of Natural Resources and Forestry (MNR) to issue the licence is withheld pending fulfillment of the following requirements;

1. The Town of Mono confirms that a Development Agreement has been executed with Greenwood Aggregates Limited;
2. The Town of Mono confirms that the Site Plans dated August 8, 2020 have been amended to its satisfaction; and
3. The Town of Mono and the Nottawasaga Conservation Authority confirm that they have approved the design and erosion control for the construction of the driveway entrance.

Subject to confirmation of the above, the Tribunal will issue its final order and will direct that the MNR issue a licence under the Aggregate Resources Act, conditional upon the Ministry of Transportation Ontario confirming with MNR that all necessary approvals and permits have been issued.

[139] The Tribunal may be spoken to if any issues arise.

"Jatinder Bhullar"

JATINDER BHULLAR
MEMBER

If there is an attachment referred to in this document,
please visit www.elfto.gov.on.ca to view the attachment in PDF format.

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