

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: April 29, 2022

CASE NO(S): OLT-22-002101
(Formerly) PL190391

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

Applicant and Appellant: Fowler Construction Company Ltd.
Subject: Request to amend the Official Plan - Refusal
of request by Township of Ramara
Existing Designation: Rural
Proposed Designated: Mineral Aggregate Extraction
Purpose: To permit the expansion of the existing
licensed quarry area
Property Address/Description: 7723 Rama Road
Municipality: Township of Ramara
Approval Authority File No.: OP-1/17
OLT Case No.: OLT-22-002101
Legacy Case No.: PL190391
OLT Lead Case No.: OLT-22-002101
Legacy Lead Case No.: PL190391
OLT Case Name: Fowler Construction Company Ltd. v. Ramara
(Township)

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

Applicant and Appellant: Fowler Construction Company Ltd.
Subject: Application amend Zoning By-law No. 2005-85
- Refusal of Application by Township of
Ramara
Existing Zoning: Rural (RU)
Proposed Zoning: Mineral Aggregate Extraction (MAE)
Purpose: To permit the expansion of the existing
licensed quarry area
Property Address/Description: 7723 Rama Road

Municipality:	Township of Ramara
Municipal File No.:	Z-8/17
OLT Case No.:	OLT-22-002102
Legacy Case No.:	PL190392
OLT Lead Case No.:	OLT-22-002101
Legacy Lead Case No.:	PL190391

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

Referred by:	Katie O'Connell
Objector:	Greg Armstrong
Objector:	Marilyn Armstrong
Objector:	William Armstrong
Objector:	Gary Bennett; and others
Applicant:	Fowler Construction Company Ltd.
Subject:	Application for a Class A licence for the removal of aggregate
Property Address/Description:	Part Lot 40, Concession Broken Front
Municipality:	Township of Ramara
OLT Case No.:	OLT-22-002103
Legacy Case No.:	MM200028
OLT Lead Case No.:	OLT-22-002101
Legacy Lead Case No.:	PL190391

Heard: February 22 to March 16, 2022 by video hearing

APPEARANCES:

Parties

Counsel

Township of Ramara	J. Ewart
Fowler Construction Company Ltd.	K. Mullin
Ramara Legacy Alliance	D. Donnelly

DECISION DELIVERED BY N.P. ROBINSON AND P. TOMILIN AND ORDER OF THE TRIBUNAL

OVERVIEW

[1] The Appellant, Fowler Construction Company Ltd. (“Fowler”) sought and was refused a zoning by-law amendment and official plan amendments to permit the expansion of the Fleming Quarry (“Proposal”) in the Township of Ramara (“Township”).

[2] Fowler proposes to extend the Fleming Quarry (“Quarry Extension”). The existing Fleming Quarry (“Existing Quarry”) has been licensed since the 1970s and is designated and zoned to permit aggregate extraction. It is an established land use, with an established haul route and is a close to market source of high-quality aggregate.

[3] Many local residents are concerned that the Proposal will further exacerbate what they perceive to be existing safety issues. The Ramara Legacy Alliance (“RLA”), a group representing the interests of the objectors to the Proposal, called substantial evidence to assist the Ontario Land Tribunal (“Tribunal”) in adjudicating the within matter.

[4] There are no outstanding concerns relating to natural heritage, cultural heritage, agriculture, visual impacts or impact on water resources. The thrust of the hearing was focused on issues of noise, blasting, air quality and traffic for which Fowler has offered mitigation measures to minimize the impacts both from the Quarry Extension and the Existing Quarry.

[5] The most significant substantive issues in dispute relate to impacts of traffic operations and blasting. The Tribunal heard from several witnesses, who expressed serious concerns about traffic infractions, including the non-compliance of truck drivers with stop sign, that could pose a threat to the health and safety of those in the community. In relation to blasting, the RLA has raised the spectre of flyrock leaving the Quarry Extension and insists on a blasting exclusion setback which: (i) is not required by legislation, policy or guidelines; (ii) has not been imposed on any other quarry in Ontario; and (iii) would likely sterilize the resource.

PROPOSAL

[6] The Quarry Extension is proposed on 8.7 hectares (“ha”) of lands located directly to the north of the Existing Quarry. The operation and rehabilitation of the Quarry Extension is to be integrated with the Existing Quarry. The Quarry Extension will use the same entrance/exit and haul route as the Existing Quarry and be subject to the same annual extraction limit of 300,000 tonnes.

[7] Both the Existing Quarry and the Quarry Extension contain a high quality granite product used for the skid-resistant surfacing of Provincial highways. The Existing Quarry is one of the closest sources of this product for the Greater Toronto and Hamilton Areas, as well as for southwestern Ontario. The evidence of the land use planners who testified before the Tribunal, was that the Existing Quarry is a close to market source of aggregate.

[8] The Existing Quarry has been licensed since the 1970s. The site plan does not limit the hours of operation of the Existing Quarry and contain few limitations on the operation of the Existing Quarry.

[9] Fowler has also applied to the Minister of Northern Development, Mines, Natural Resources and Forestry (“Minister”) for an amendment to the site plan for the Existing Quarry to: (i) deepen the Existing Quarry; (ii) eliminate the northern setback to allow integration of the Quarry Extension; (iii) reduce the western extraction setback to 30 metres (“m”) from 52 m; and (iii) add operational restrictions based on the recommendations of the technical reports completed for the Quarry Extension (“Site Plan Amendment”). These operational restrictions include restrictions on the hours of operation, erection of noise berms, and implementation of the recommendations of a November 2017 Blast Impact Analysis.

[10] Based on reserve estimates and an anticipated annual production of 200,000 tonnes, there is approximately 20 years of production left in the Existing Quarry based on existing approvals. The Site Plan Amendment would add 22 years to the Existing Quarry.

[11] The land use planners who testified before the Tribunal all agreed that, based on the site plans dated December 2021, the Quarry Extension does not raise any planning issues related to natural environment, water resources, agricultural resources, cultural heritage resources, visual impacts, rehabilitation and closed landfill.

[12] The instruments which are required to permit the Quarry Extension and which are before the Tribunal include:

- (a) An application for an amendment to the Township Official Plan (“Township OP”) to change the designation from Rural to Mineral Extraction Area (“OPA”);
- (b) An application for an amendment to the Township Zoning By-law to change the zoning from the Rural (RU) Zone to the Mineral Aggregate Extraction (MAE) Zone (“ZBA”);
- (c) An application for a Category 2, Class A licence under the *Aggregate Resources Act* (“ARA Application”).

[13] The Existing Quarry and the proposed Quarry Extension are located within a rural area of the Township, 3 kilometres south of Highway 169. The lands on which the proposed Quarry Extension is located are designated Rural in the Township OP.

[14] The lands to the east of the Quarry Extension are vacant lands owned by Fowler measuring 56.1 ha. A large rural property with a dwelling located 87 m from the extraction limit sit to the north of the subject lands. Switch Road, a local Township Road, is located to the south of the subject lands along with some vacant land. One will

find Rama Road, a County primary arterial road, and an unused CN rail line to the west of Rama Road.

[15] Further west of Rama Road is a shoreline and rural residential community known as Floral Park, situated along the eastern shore of Lake Couchiching. The closest rural residential dwelling is 224 m to the proposed extraction area and the closest shoreline residential dwelling is 159 m to the proposed extraction area.

[16] The lot fabric west of Rama Road is predominantly smaller rural residential parcels, and the lands east of Rama Road located north, south and east of the Quarry Extension are predominantly larger rural properties. The area surrounding the Quarry Extension already includes a range of land uses.

[17] On December 16, 2021, the Tribunal issued a Procedural Order which included a set of 26 issues for adjudication.

ANALYSIS

Aggregate Resources Act (Issue 14)

[18] The purposes of the *Aggregate Resources Act* (“ARA”) include providing for the management of aggregate resources in Ontario and minimizing adverse impacts on the environment in respect of aggregate operations.

[19] Section 12 of the ARA sets out the 11 matters that the Minister or the Tribunal shall have regard to when deciding whether a license should be issued. Of particular relevance to the Quarry Extension are subsections 12(b) the effect of the operation of the quarry on nearby communities; 12(g) any planning and land use considerations; 12(h) the main haulage routes and proposed truck traffic to and from the site; and 12(i) the quantity and quality of aggregate on the site.

[20] Brian Zeman was qualified by the Tribunal to give expert opinion evidence in the area of land use planning. Mr. Zeman's evidence was that the ARA Application has appropriate regard for the matters set out in s. 12 of the ARA. Mr. Zeman was not cross-examined on his opinion on s. 12 of the ARA.

[21] Similarly, Allan Ramsay was qualified by the Tribunal to give expert opinion evidence in the area of land use planning. Mr. Ramsay referred to non-compliance with the *Highway Traffic Act* in his discussion of s. 12 and acknowledged that subsection 12(j) of the ARA deals with the applicant's history of compliance with the ARA and regulations—not off-site non-compliance with other legislation.

[22] The Tribunal is satisfied that the ARA Application has appropriate regard for the matters to be considered under s. 12 of the ARA.

Planning Act and Provincial Policy (Issues 1, 2 and 3)

[23] Section 2 of the *Planning Act* requires the Tribunal to have regard to the matters of Provincial interest identified in that section. Of particular relevance are subsections 2(c), which concerns the conservation and management of natural resources and the mineral resource base; 2(h), which concerns the orderly development of safe and healthy communities; and 2(o), which concerns the protection of public health and safety.

[24] Subsection 3(5) of the *Planning Act* also requires that the Tribunal's decision be consistent with the Provincial Policy Statement 2020 ("PPS") and conform or not conflict with the Growth Plan for the Greater Horseshoe ("Growth Plan").

[25] Section 1.1.5 of the PPS permits the management and use of resources on rural lands. Mr. Ramsay, the land use planner called by RLA, conceded that the character of a rural community broadly includes the uses permitted on rural lands, including aggregate uses.

[26] Section 1.2.6.1 of the PPS addresses land use compatibility between major facilities such as the Quarry Extension and sensitive uses. It requires that adverse effects be avoided or, if avoidance is not possible, minimized and mitigated in accordance with provincial standards, guidelines and procedures. The definition of “adverse effects” is the same as in the *Environmental Protection Act* (“EPA”). All of the land use planners and Anneliese Grieve, who was qualified to give evidence related to the social impacts of the Proposal, agreed that the assessment of land use compatibility must be based on provincial guidelines, standards and procedures.

[27] Section 2.5.1 of the PPS requires mineral aggregate resources to be protected for long term use, and s. 2.5.2.1 directs that as much of the mineral aggregate resource as is realistically possible shall be made available as close to the markets as possible. All the land use planners agree that the Existing Quarry is a close to market source of aggregate.

[28] Section 2.5.2.2 requires extraction to be undertaken in a manner which minimizes social, economic and environmental impacts. It does not require elimination of impacts or elimination of risk.

[29] The PPS also directs in s. 2.5.2.3 that mineral aggregate resource conservation be undertaken including through the use of accessory recycling facilities, where feasible. The proposed ZBA for the Quarry Extension would permit aggregate recycling, and Mr. Zeman’s evidence was that the existing processing plant is capable of recycling aggregate. The noise impacts of the processing plant were assessed by the noise and vibration expert, John Emeljanow, who testified on behalf of Fowler.

[30] The Growth Plan also addresses aggregate extraction. Section 4.2.8.6 of the Growth Plan provides that decisions on planning matters must be consistent with the policies of the PPS that deal with the management of mineral aggregate resources.

Fowler's land use planner, Mr. Zeman, and RLA's land use planner, Mr. Ramsay, agreed that the planning applications conform with the Growth Plan.

[31] Mr. Zeman's opinion was that the planning applications have regard for matters of Provincial interest, are consistent with the PPS and conform with the Growth Plan. Mr. Zeman was not cross-examined on these points.

[32] The Tribunal is satisfied that the proposed amendments have appropriate regard for matters of Provincial interest under the *Planning Act*, are consistent with the PPS, and conform with the Growth Plan.

County of Simcoe Official Plan (Issue 4)

[33] The mineral aggregate resources policies of the County of Simcoe Official Plan ("County OP") largely mirror and implement the policies of the PPS. The County OP contains the following additional relevant policies:

- (a) Section 4.4.5 which provides that an amendment to the County OP is not required to permit mineral aggregate operations; and
- (b) Section 4.4.6 which requires mineral aggregate operations to minimize impacts to adjacent or nearby uses by reason of dust, noise or other effects.

[34] In addition, the preamble to s. 4.4 provides that applications for new or expanded mineral aggregate operations are to be supported by studies that are based on "predictable, measurable effects on people and the environment" and to be evaluated in accordance with provincial policy, standards, regulations and guidelines. On cross-examination, Mark Dorfman, who was called by the Township to give expert evidence in the area of land use planning, stated that this direction means that impacts are to be assessed based on objective standards set out in the provincial guidelines.

[35] Mr. Zeman's evidence was that the OPA and ZBA conform with the County OP, including s. 4.4.6. Mr. Zeman was not cross-examined on his opinion.

[36] The Tribunal is satisfied that the proposed amendments conform with the County OP.

Township of Ramara Official Plan (Issues 5 and 6)

[37] The Township OP maps High Potential Mineral Aggregate Resource Areas ("HPMARAs") on Schedule D and contains policies that protect HPMARAs from development that would preclude or hinder their operation. Section 5.3.4.5 of the Township OP makes it clear that applications for mineral aggregate operations are not limited to HPMARAs.

[38] Section 5.3.4.11 encourages the operators of licensed quarries to ensure that planned expansions of licensed areas are compatible with existing and planned uses in the Township. Section 9.11.5 sets out the Township's requirements for applications to permit aggregate extraction.

[39] Mr. Zeman's evidence was that the ZBA conforms with the Township OP.

[40] The Tribunal is satisfied that the proposed amendments conform with the Township OP.

Noise Impacts (Issue 7)

[41] Mr. Emeljanow was qualified by the Tribunal to give expert opinion evidence in relation to noise. Mr. Emeljanow explained that s. 2.2.8 of the Aggregate Resources of Ontario Provincial Standards ("ARA Standards") requires that a noise assessment report be prepared to demonstrate that provincial noise guidelines can be satisfied if extraction is proposed to take place within 500 m of a sensitive receptor. The applicable

noise guideline is NPC-300, which requires an assessment of the predictable worst noise impact of stationary sources. Mr. Emeljanow also testified that the site as a whole – in other words the integrated Existing Quarry and Quarry Extension – is the stationary source.

[42] Mr. Emeljanow prepared a Noise Impact Analysis dated November 2017. That analysis looked at the sound levels at the second storey plane of window of the sensitive receptors and concluded that with the recommended mitigation, the proposed integrated Quarry would comply with the sound level limits for a Class 2 area, namely 50 dBA during the day and 45 dBA during the night. Mr. Emeljanow explained that 40 dBA is equivalent to the sound level in a closed office and 50 dBA is equivalent to the sound level in an open office.

[43] Mr. Emeljanow further confirmed that the mitigation measures recommended in the Noise Impact Analysis were reflected on the Site Plan Notes, as were the additional noise mitigation and monitoring measures referred to in a reply witness statement authored by Mr. Zeman. Mr. Emeljanow was not asked to provide his opinion on whether continuous noise monitoring or assessment of cumulative noise impacts would be feasible or beneficial, or how such monitoring and assessment would take place.

[44] On cross-examination, Mr. Emeljanow was asked about measuring sound levels at outdoor points of reception and noted that, those sound levels would be lower than at the second storey plane of window because of ground refraction and the effect of the noise berms. Mr. Emeljanow also stated on cross-examination that he modelled the sound levels from the permanent processing plant, so that if the processing plant was capable of crushing aggregate for recycling, then the noise impacts of such operations had been assessed.

[45] The Tribunal is satisfied that the Quarry Extension will not result in any unacceptable noise impacts, and that the monitoring and mitigation measures proposed are sufficient.

Air Quality Impacts (Issue 8)

[46] The only witness qualified to give expert opinion evidence on air quality was Bridget Mills. Ms. Mills conducted an Air Quality Study, which concluded that there would be no health-based or nuisance air quality impacts from the Quarry Extension. The evidence before the Tribunal was that silica dust will be below the provincial ambient air quality criteria, as well as the occupational health and safety criteria. As with the Noise Impact Analysis, the Air Quality Study assessed the integrated Quarry operation.

[47] Fugitive dust is a nuisance impact. Ms. Mills testified that she had recommended that Fowler adopt a Dust Management Plan. One key element of the Dust Management Plan is the introduction of an automatic sprinkler system. The Dust Management Plan is intended to be a living document which is updated as required.

[48] RLA's lay witness, Ron Fry, raised concerns about dust and did not accept that implementation of the Dust Management Plan would mitigate fugitive dust. RLA's land use planner, Mr. Ramsay, did not express concerns about air quality. On cross-examination, counsel for RLA suggested to Ms. Mills that silica dust is a carcinogen, which she disputed. Ms. Mills' evidence on this point is not contradicted by any qualified opinion evidence.

[49] The Tribunal is satisfied that there will be no unacceptable air quality impacts and that the monitoring and mitigation proposed is sufficient.

Blasting Impacts (Issue 9)

[50] The Tribunal benefited from the testimony of Robert Cyr and Mark Morelli, who were called to testify by Fowler, and William Hill, who was called to testify on behalf of the RLA in relation to blasting. Fowler argues that the Tribunal should prefer the

evidence of Messrs. Cyr and Morelli over that of Mr. Hill. The Tribunal recognizes that Messrs. Cyr and Morelli are experienced in preparing blast impact analyses addressing the requirements of the ARA and provincial guidelines. Mr. Cyr has been qualified to give expert opinion evidence in numerous quarry hearings and has worked on hundreds of quarries. By contrast, the witness called by RLA, Mr. Hill, has not prepared a blast impact analysis for a quarry in Ontario; is not familiar with the ARA Standards; and has given evidence only twice before.

[51] The following comments from the *Bates v Ontario (Natural Resources & Forestry)*, 2021 CanLII 4264 (ON LPAT) ("*Bates*") decision are particularly relevant here:

[93] It is quite clear to the Tribunal that Mr. Hill's evidence amounts to speculation and unfounded criticism which has as its goal the refusal of a licence for the proposed quarry. Under cross-examination, he again conceded that his approach to flyrock was intended to remove all risk but refused to concede that this approach would eliminate the ability to quarry the lands. He also refused to concede that blasting could be designed for the proposed quarry that would reduce the risk of flyrock.

[52] Mr. Hill's testimony in the instant matter was similar to that in *Bates*. Mr. Hill refused to concede that it was possible to design a blast without it resulting in flyrock. Mr. Hill's evidence was that the risk of flyrock is 1 in every 166 or 180 blasts. Mr. Cyr's evidence is that flyrock incidents are rare. The evidence before the Tribunal is that there have been no flyrock incidents at the Existing Quarry since Fowler assumed the licence in 2012, and that during that time, there have been 1 to 2 blasts per season.

[53] The ARA Standards require that if a sensitive receptor is located within 500 m of an extraction limit, a blast design report must be prepared to demonstrate that the provincial guidelines can be satisfied. The provincial guidelines are NPC-119 which establish limits for ground vibration and overpressure. Neither the ARA Standards nor NPC-119 require that an analysis of flyrock be included in a blast impact analysis and the ARA Standards do not require a setback or exclusion zone for flyrock.

[54] A Blast Impact Analysis dated November 2017 (“2017 BIA”) was prepared and concluded that blasting could take place at the Quarry Extension in accordance with the NPC-119 limits for ground vibration and overpressure, and which recommended certain mitigation and monitoring measures. Following comments from the Township’s peer reviewer – who did not request a flyrock analysis – and from Mr. Hill, an updated Blast Impact Analysis dated September 2019 (“2019 BIA”) was prepared.

[55] In the 2019 BIA, a maximum flyrock throw was calculated based on one particular blast design – the design of the initial blast. That calculation generated a maximum throw from face flyrock of 57 m and maximum throw from crater flyrock of 171 m, assuming a 2.0 m collar length. Mr. Cyr’s evidence was that flyrock risk can be mitigated through blast design. It needs to be controlled at the site level by the blaster in charge, based on case-by-case analysis involving the design of each particular blast and observations obtained from the blast and drill logs.

[56] Mr. Hill testified that a safety factor of 4 times the maximum crater flyrock throw of 171 m should be applied to establish a blast exclusion zone of 684 m. Mr. Hill took this position despite acknowledging that: (i) the 171 m calculation is based on one particular blast design; (ii) the blast design will vary depending on the location of the blast; and (iii) the maximum flyrock throw calculation will change depending on variables such as collar length. By contrast, Mr. Cyr’s evidence is that it is not appropriate to apply a fixed blast exclusion zone to dynamic blast designs.

[57] Mr. Cyr further testified that the operational plan for the quarry has been designed to retreat towards the closest receptors in order to project overpressure and flyrock away from the receptors. Mr. Zeman also spoke to the operational plan and phasing in his evidence and pointed out the direction of blasting at different phases, which will be largely toward the south and east.

[58] Mr. Cyr testified that the applicable regulation strictly prohibits the ejection of flyrock from a quarry, and that it was enforced by several Ministries. Mr. Hill agreed that

there is a legislative requirement to report flyrock incidents, and penalties for failing to report. Mr. Cyr also testified that he was not aware of any quarry in Ontario that has a flyrock exclusion zone established at the licensing phase, as did Mr. Zeman. Mr. Hill also acknowledged that his recommendations in other cases to impose a flyrock exclusion zone have not been accepted.

[59] On cross-examination of Mr. Cyr, counsel for the RLA raised concerns about the fact that blasters in Ontario are not required to be licensed. In response to this concern, Mr. Zeman recommended a change to the Blasting Protocol to require the blaster in charge to be licensed. Counsel for the RLA also cross-examined Messrs. Cyr and Morelli about the fact that Fowler closes Rama Road and Switch Road for blasts. The evidence of Messrs. Zeman, Cyr and Morelli is that, this is a common practice and is done to provide an additional level of safety. Mr. Zeman's evidence was that during the one blast he witnessed, traffic was stopped for approximately 5 minutes. Mr. Fry also acknowledged that during the July 23, 2021 blast, traffic was stopped for 5 to 7 minutes. In its Updated Blasting Protocol, Fowler commits to providing the County and the Township with notice the day before a scheduled blast to confirm that there are no concerns with respect to the stoppage of traffic. The Tribunal agrees that stopping traffic for a short period of time is a reasonable safety precaution which does not create significant impacts on the community.

[60] The Tribunal is satisfied that the proposed blasting activities will not result in any unacceptable impacts and that no additional mitigation measures are required.

Traffic Impacts (Issue 17)

[61] Fowler submitted a Traffic Impact Study ("TIS") dated November 2017 by TMIG in support of the Quarry Extension. The TIS concluded that both the intersection of Switch Road and Rama Road and the site access on Switch Road would operate with excellent operational characteristics and substantial reserve capacity under future total traffic conditions. The TIS was reviewed by the Township's peer reviewer and further

analysis undertaken in response to the peer review comments. The Township peer reviewer was ultimately satisfied, and the Township's traffic safety witness Russell Brownlee does not dispute TMIG's conclusions.

[62] The haul route for the Existing Quarry is westbound from the site access to Rama Road, then north on Rama Road to Highway 169, other than for local deliveries. The intersection of Switch Road and Rama Road is under the jurisdiction of the County, as is the Rama Road portion of the haul route. The County did not express any concerns with the TIS or the use of Rama Road. The Township's traffic safety expert Mr. Brownlee agreed that Switch Road and Rama Road are geometrically appropriate to use as haul routes, and that the intersection sightlines are appropriate for an 80 km/h road.

[63] In February 2019, Fowler was made aware of reports made to Township Council by members of the Floral Park community about trucks failing to stop at the intersection of Switch Road and Rama Road.

[64] In response to these concerns, on March 6, 2019, Fowler issued a letter to all of its customers which notified customers that: (i) the designated haul route must be used unless making a local delivery; (ii) posted speed limits and the stop sign at the intersection must be observed; and (iii) *Highway Traffic Act* Regulation 577 dealing with tarping loads must be adhered to. The letter went on to note that Fowler would be installing a traffic camera and monitoring for infractions, and that repeat offenders would not be tolerated or welcome at the Existing Quarry.

[65] At the July 11, 2019 public meeting, Mr. Fry showed some of his videos of the infractions. Fowler let the community know at the meeting that if they saw a truck failing to stop, they should record the licence plate and let Fowler know, and Fowler would take disciplinary action.

[66] Fowler installed a camera at the corner of Switch Road and Rama Road, but it was not able to clearly record licence plates and also required manual review of hours of videotape to identify infractions. Fowler also hired paid-duty police officers to monitor the intersection for a period of time and had Fowler staff monitor for a period. There was an immediate short term improvement, but it did not last.

[67] The approach which Fowler's transportation planning expert, Michael Dowdall, has recommended to address the off-site non-compliance with the *Highway Traffic Act*, and which Fowler has agreed to implement upon approval of the Quarry Extension, has three aspects:

- (a) Installation of a camera which will use Automatic Number Plate Recognition, and will be capable of recording licence plates and confirming whether a truck made a complete stop and generating an incident report daily as required.
- (b) Implementation of a Trucker Safety Protocol which sets out the expectations for all drivers and a progressive discipline policy to address infractions. Reports of infractions and discipline will be shared with the County, Township and the Community Liaison Committee ("CLC"). Mr. Brownlee testified that the Trucker Safety Protocol is consistent with similar policies for other quarries.
- (c) Establishment of a CLC which will be a forum for the community to raise traffic concerns and to allow for communication and transparency.

[68] RLA's lay witness, Mr. Fry, would not agree that the three-pronged approach would help to address the traffic safety concern. This stated, Mr. Brownlee, who was qualified to speak to the issue of transportation safety, acknowledged that the Proposal was a reasonable approach provided it was implemented vigorously, and that it was consistent with the approach recommended in his witness statement. Mr. Ramsay, the land use planner called by the RLA, also agreed that the three-pronged approach would

be helpful to address traffic safety, and that securing it through an agreement with the Township and the County would be a “step forward”.

[69] Mr. Fry also raised concerns about the use of Rama Road by trucks, including concerns about interactions with pedestrians and cyclists, the width of the paved shoulder, the absence of sidewalks, and the 80 km/h speed limit. However, he conceded that the speed limit, the width of the shoulder and the decision whether to include sidewalks are all matters within the jurisdiction of the County. He further acknowledged that enforcement of the speed limit on Rama Road is a matter for the police, not Fowler. Messrs. Brownlee and Ramsay acknowledged that the planned function of Rama Road is to accommodate large volumes of traffic, including truck traffic. In particular, Mr. Ramsay agreed that Rama Road is exactly the type of road that is supposed to carry truck traffic.

[70] The Existing Quarry can continue for approximately 20 more years without any further approvals, and a further 22 years with the Site Plan Amendment. Truck traffic associated with the Existing Quarry will continue for the life of the Existing Quarry. Fowler has proposed an approach to address the stop sign non-compliance – which legally is the responsibility of the police and road authorities to address – which will be an improvement over the existing situation. Although concerning, the Tribunal relies on the expert testimony before it and finds that the revised approach will mitigate, to the extent possible, the recurrence of infractions.

[71] The Tribunal is satisfied that Fowler has addressed the mitigation of impacts on Switch Road and has demonstrated that the Quarry Extension will not result in unacceptable traffic operations or safety impacts at the intersection or along the haul route.

Social and Community Impacts (Issues 15, 18, 23)

[72] On the issue of community character, Messrs. Dorfman and Ramsay agreed that the character of the Floral Park community includes the Existing Quarry. Mr. Ramsay qualified his opinion by stating that while the Existing Quarry is part of the existing character, its impacts were expected to cease. Ms. Grieve, the social impacts expert, also testified that the community is mature, stable and cohesive, and that many residents have chosen to transition from seasonal to permanent residency in a context where the Existing Quarry is operating.

[73] Ms. Grieve acknowledged that she is not qualified in the areas of noise, blasting and vibration, air quality, traffic safety, or land use planning.

[74] Ms. Grieve's evidence on social impact was based largely on her review of comments made at the public meeting and interviews with residents. On cross-examination, she conceded that she interviewed only approximately 16 people out of the 490 or so people who live within 1 km of the Quarry Extension. She could not say whether any of the 16 people she interviewed were members of RLA. She also did not speak with the landowners to the north of the Quarry Extension, who do not oppose the Quarry Extension, or to Fowler. She did not contact the responsible Ministries to find out if there were complaints about the Existing Quarry, and the complaint information she reviewed from the Township was largely from the public meetings.

[75] Ms. Grieve conceded that none of the ARA, the County OP or the Township OP require a social impact assessment, and also that the Township did not ask Fowler to undertake one. She agreed that applicable provincial guidelines establish measurable, objective standards and that social impacts, by contrast, are subjective. However, her opinion is that, in order to understand whether there are adverse effects, there should be a consideration of the particular characteristics of the people affected by the Existing Quarry and proposed Quarry Extension.

[76] Ms. Grieve's opinion is at odds with basic principles of land use planning and the jurisprudence of the Tribunal. Land use planning is concerned with the uses of land and not the users of land, and it is the compatibility of uses that must be assessed. The Tribunal has expressed this principle in a number of cases: see *6 & 7 Developments Ltd. v. Guelph (City)*, 2004 CarswellOnt 6270 (OMB), para. 33(10); appeal dismissed *Residents for Sustainable Development in Guelph v. 6 & 7 Developments Ltd.*, 2005 CarswellOnt 8298 (Div. Ct.) and *Caldwell Construction Ltd. v Kirkland Lake (Town)*, 2018 CanLII 58222 (LPAT), para. 48.

[77] As Mr. Emeljanow testified, noise may at times be audible. Vibration from blasting will be perceptible but, as Mr. Cyr noted, there is "zero probability" of damage to homes or structures from blasting that takes place in accordance with NPC-119. Dust may be visible, but there will be no health or nuisance air quality impacts. There will be truck traffic on Switch Road and Rama Road, but Fowler has committed to a proactive monitoring and enforcement program to address the traffic operation issues that have been raised.

[78] The Tribunal is satisfied that appropriate mitigation will be in place to minimize any adverse impacts; that the applications comprehensively address the potential adverse impacts on the local community; and that the proposal does not give rise to an undue impact on the surrounding area and its character.

Other Issues

[79] The totality of the evidence presented during the hearing supports the following findings:

1. Issue 10: (a) No, the proposed quarry will not result in any unacceptable hydrogeological impacts; (b) No additional mitigation or monitoring measures are required.

2. Issue 11: The proposed site plan drawings and licence conditions contain adequate monitoring and mitigation measures to ensure no impact on water wells.
3. Issue 12: Aggregate recycling should be a permitted ancillary use in the Mineral Aggregate Extraction Zone. Aggregate transfer station, concrete plant and asphalt plant should not be permitted.
4. Issue 13: As agreed amongst the planners, a holding symbol is not required.
5. Issue 16: Yes, the proposed amendments appropriately implement the ARA Application.
6. Issue 20: Yes, the proposed Site Plan Notes are comprehensive and represent longer term commitments to operate the Quarry Extension to Township policies/standards and they provide certainty that monitoring and mitigation measures will address foreseen and unforeseen impacts. The evidence of each of the land use planners is that the commitments in the Site Plan Notes are enforceable by the Minister against Fowler.
7. Issue 21: Yes, Fowler has carried out progressive rehabilitation in compliance with the licence requirements for the Existing Quarry.
8. Issue 22: No, the Site Plan Notes should not limit extraction to 1.5 m above the seasonally high groundwater table.
9. Issue 24: The appropriate form of the ZBA should be substantially in accordance with the ZBA found at pages 265-266 of the Zeman Witness Statement (Exhibit 5) with the deletion of the permissions for all ancillary uses except aggregate recycling. The appropriate form of the Site Plan should be substantially in accordance with Exhibit 2.
10. Issue 25: Yes, the Tribunal deems it necessary for Fowler to enter into an agreement with the County and the Township to secure the traffic camera and Trucker Safety Protocol.
11. Issue 26: Yes, the Proposal represents good planning and is in the public interest.

[80] The Proposal represents a close to market source of aggregate that is critical to the construction and maintenance of the roads of the province of Ontario and will benefit the motorists who use those roads—including the residents of the Township.

ORDER

[81] The Tribunal Orders that the:

- (a) appeal of the Township of Ramara refusal of Fowler Construction Company Ltd. application for the OPA is allowed and the OPA is amended as set out herein in Schedule “A”.
- (b) appeal of the Township of Ramara refusal of Fowler Construction Company Ltd. application for a Zoning By-law Amendment is allowed in principle and in a form substantially in accordance with pages 265-266 of Exhibit 5; and
- (c) Minister of Northern Development, Mines, Natural Resources and Forestry is directed to issue a Category A, Class 2 licence subject to the ARA Site Plan as set out herein in Schedule “B”, as modified in accordance with the conditions precedent set out below and forming part of this Order.

[82] The Tribunal further Orders that its Final Order is withheld pending:

- (a) Confirmation from counsel for the Township of Ramara that the Zoning By-law Amendment is in a form satisfactory to the Township;
- (b) Confirmation from counsel for Fowler Construction Company Ltd. that Fowler Construction Company Ltd., the Township of Ramara and the County of Simcoe have entered into an agreement to secure the traffic camera to be installed at the intersection of Switch Road and Rama Road, and the Trucker Safety Protocol set out herein in Schedule “C”; and
- (c) Confirmation that Fowler Construction Company Ltd. has revised its application to the Minister Northern Development, Mines, Natural

Resources and Forestry for a Site Plan Amendment for the Existing Quarry to incorporate the modifications to the Existing Quarry Site Plans as set out in the Reply Witness Statement of Brian Zeman dated February 7, 2022.

"N.P. Robinson"

N.P. ROBINSON
VICE-CHAIR

"P. Tomilin"

P. TOMILIN
MEMBER

Ontario Land Tribunal

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

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

OLT-22-002101 – Schedule A

**AMENDMENT NO. XX
TO THE
OFFICIAL PLAN OF
THE TOWNSHIP OF RAMARA**

**AMENDMENT NO. XX TO THE OFFICIAL PLAN OF
TOWNSHIP OF RAMARA**

PART A – THE PREAMBLE

1. Purpose of the Amendment

The purpose of this Amendment is to change the land use designation shown on Schedule “A” attached, from “Rural” to “Mineral Aggregate Extraction Area” to permit the licensing of a quarry.

2. Location

The Amendment is specific to the lands located in Part of Lot 40, Concession Broken Front, Geographic Township of Rama, Township of Ramara, known as 7723 Rama Road.

3. Basis of the Amendment

The Official Plan of the Township of Ramara currently designates the subject land as “Rural”. The applicant has made an application to amend the Official Plan to permit the licensing of the subject land as a quarry under the *Aggregate Resources Act*. There is a companion amendment to the Ramara Zoning Bylaw 2005.85. Only those lands that are proposed to be licensed are designated as “Mineral Aggregate Extraction Area”. The area subject to this Amendment is 8.7 hectares (21.5 acres). The subject property has 280 metres of frontage along Rama Road.

PART B – THE AMENDMENT

All of the Amendment entitled PART B – THE AMENDMENT consisting of the attached text and the schedule constitute Amendment No. XX to the Official Plan of the Township of Ramara.

1. Schedule “A” entitled Land Use Plan is hereby amended by designating approximately 8.7 hectares (21.5 acres) located in Part of Lot 40, Concession Broken Front, Geographic Township of Rama, Township of Ramara as “Mineral Aggregate Extraction Area” instead of “Rural”, as shown on Schedule “A” attached hereto.
2. Amendment No. XX shall be implemented by means of a Zoning Bylaw Amendment enacted pursuant to the provisions of Section 34 of the *Planning Act*.
3. The provisions of the Official Plan of the Township of Ramara, as amended, shall apply in regard to the interpretation of this Amendment.

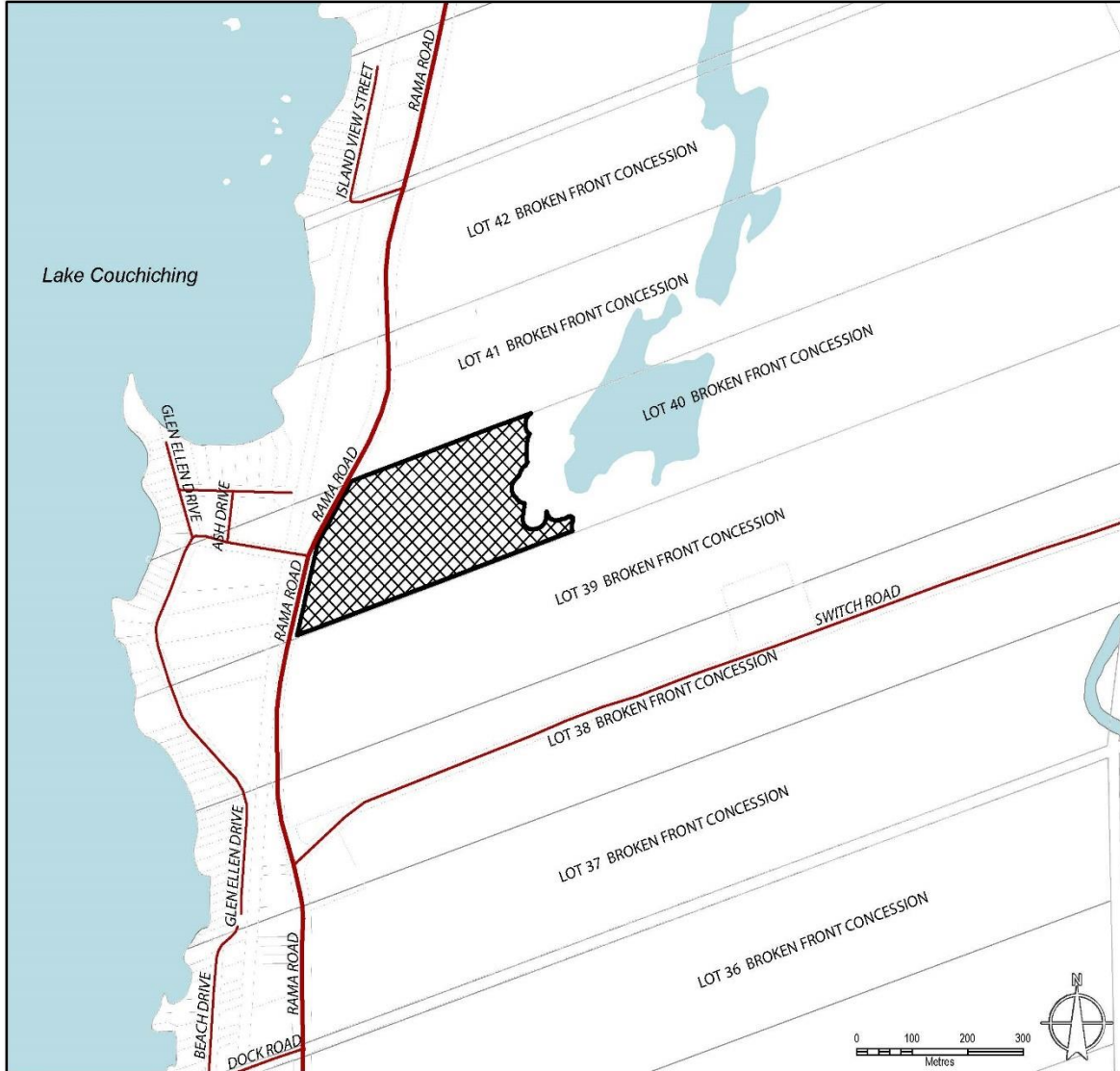
PART C – THE APPENDIX

The following appendices do not constitute part of Amendment No. XX, but are included as information supporting the Amendment.

1. MHBC letter to Township Staff requesting Pre-consultation meeting dated March 13, 2017.
2. Township Pre-consultation meeting summary dated April 6, 2017.
3. County of Simcoe Pre-consultation meeting comments dated July 4, 2017.
4. MHBC letter and correspondence to County of Simcoe regarding Pre-consultation comments dated August 2017.
5. MHBC letter to County of Simcoe regarding County Official Plan Significant Woodland policies dated October 16, 2017.
6. Planning Report prepared by MHBC dated _____, 2017.
7. Water Resources Report prepared by Golder Associates Ltd. dated _____, 2017.
8. Natural Environment Report prepared by Riverstone Environmental Solutions Inc. dated _____, 2017.
9. Archaeological Assessment prepared by Golder Associates Ltd. dated _____, 2017.
10. Noise Impact Analysis prepared by Valcoustics Canada Inc. dated _____, 2017.
11. Blasting Impact Analysis prepared by Explotech Engineering Ltd. dated _____, 2017.
12. Traffic Study prepared by TMIG dated _____, 2017.
13. D4 Landfill Impact Assessment prepared by Terraprobe Inc. dated _____, 2017.
14. Aggregate Resources Act Site Plans for the existing quarry prepared by MHBC dated _____, 2017.
15. Aggregate Resources Act Site Plans for the proposed extension prepared by MHBC dated _____, 2017.

**SCHEDULE 'A' TO
OFFICIAL PLAN AMENDMENT _____**

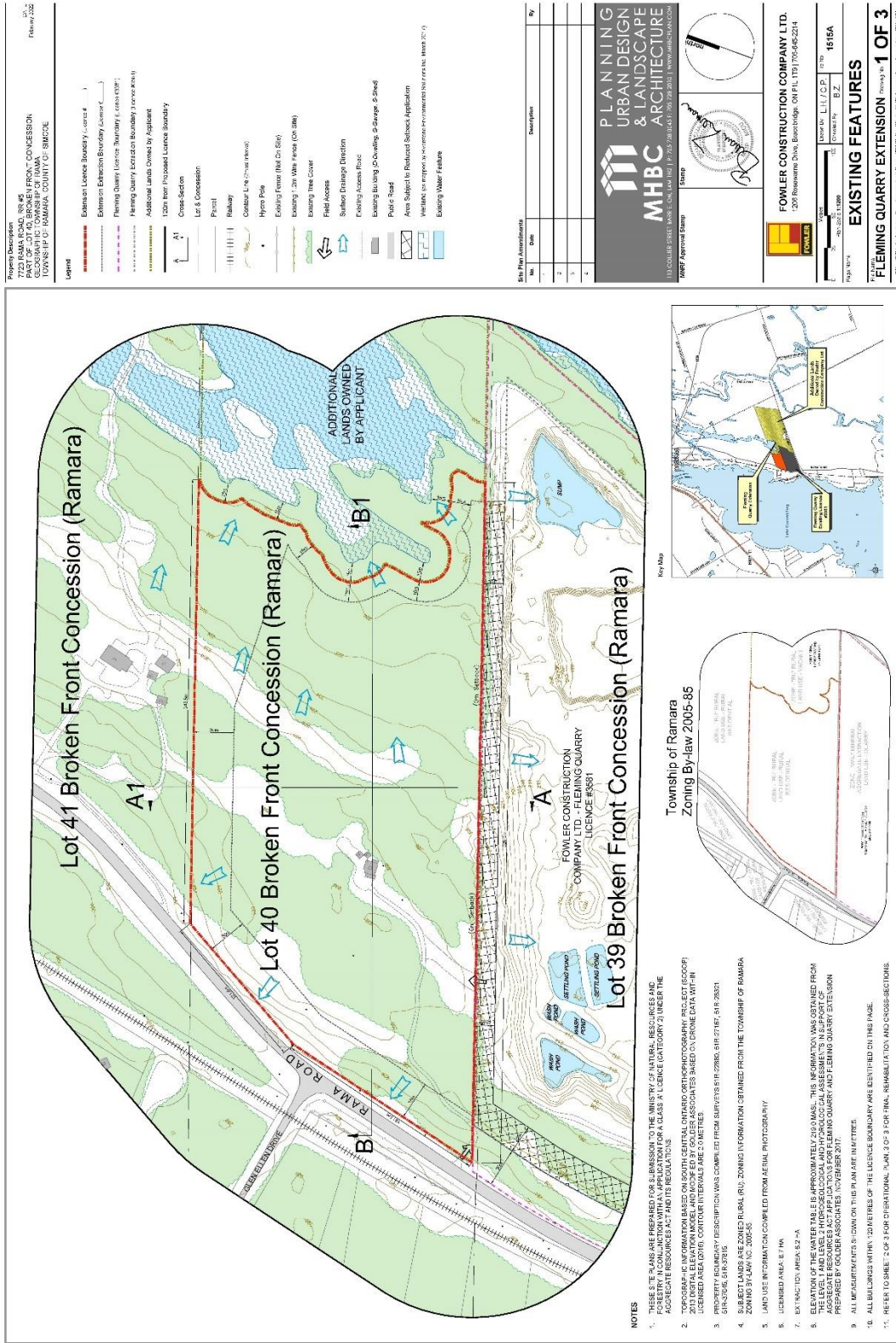
Part of Lot 40, Broken Front Concession
Geographic Township of Rama
Township of Ramara
County of Simcoe



Legend

 Lands to be redesignated from Rural to Mineral Aggregate Extraction Area

OLT-22-002101 – Schedule B



NOTES

- THESE SITE PLANS ARE PREPARED FOR SUBMISSION TO THE MINISTRY OF NATURAL RESOURCES AND FORESTRY IN ACCORDANCE WITH THE REGULATIONS UNDER THE AGGREGATE RESOURCES ACT AND ITS REGULATIONS.
- TOPOGRAPHIC INFORMATION BASED ON SOUTH CENTRAL ONTARIO ORTHOPHOTOGRAHY, 2002, SET (SCOP) 2010 DIGITAL ELEVATION MODEL AND MODIFIED BY GOLDBER ASSOCIATES BASED ON DRONE DATA, WTT-IN LICENSED AREA (2016) CONTOUR INTERVALS ARE 2 METRES.
- PROPERTY BOUNDARY DESCRIPTION WAS COMPILED FROM SURVEYS 57R (2000), 57R (2017), 57R (2021) CONVEYED TO THE TOWNSHIP OF RAMARA.
- ZONING INFORMATION OBTAINED FROM THE TOWNSHIP OF RAMARA ZONING BY-LAW (2005-85).
- LAND USE INFORMATION COMPILED FROM AERIAL PHOTOGRAPHY.
- LICENSED AREA: 67 HA.
- EXTENT: 101 WMSA, 59-A.
- ELEVATION OF THE WATER TABLE IS APPROXIMATELY 230.0 MASL. THIS INFORMATION WAS OBTAINED FROM GROUND PENETRATING RADAR (GPR) DATA OBTAINED FROM GOLDBER ASSOCIATES AS PART OF APPLICATIONS FOR FLEMING QUARRY AND FLEMING QUARRY EXTENSION PREPARED BY GOLDBER ASSOCIATES, NOVEMBER 2017.
- ALL MEASUREMENTS ARE DOWN ON THIS PLAN ARE IN METRES.
- ALL BUILDINGS WITHIN 120 METRES OF THE LICENCE BOUNDARY ARE IDENTIFIED ON THIS PAGE.
- REFER TO SHEET 2 OF 3 FOR OPERATIONAL PLAN, 3 OF 3 FOR IMA, SUBMITTATION AND CROSS-SECTIONS.

Notes

1. ALL PROVISIONS OF THE CONSTRUCTION ACT AND THE CONSTRUCTION ACT REGULATIONS APPLY TO THIS PROJECT. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE RELEVANT AUTHORITIES.

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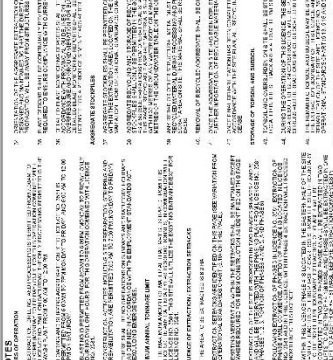
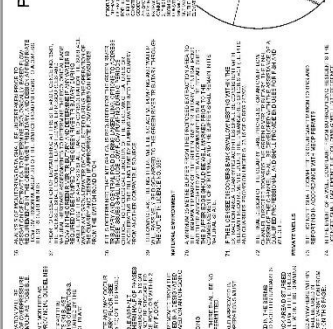
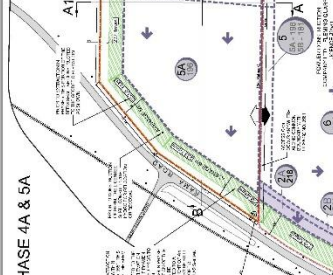
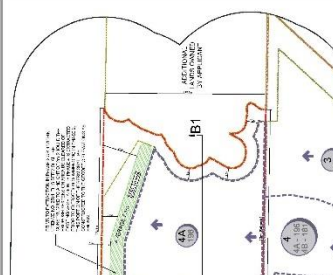
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Legend

- Extension Licence Boundary (dashed line)
- Excavation Licence Boundary (solid line)
- Planning Quary Licence Boundary (dotted line)
- Fleming Quarry Excavation Boundary (solid line)
- Additional Leas Holders by Applicant (solid line)
- Phase Boundary (dotted line)
- 100m from Extension Licence Boundary (dashed line)
- Railway (dashed line)
- Hydro Pole (circle)
- Boring Point (circle)
- 1.7m Wire Fence (Exclusionary Fence) (dashed line)
- HMI Access (arrow)
- Operational Entrance (arrow)
- Direction of Excavation (arrow)
- Public Road (dashed line)
- Berm (dashed line)
- Depth of Excavation (circle)
- Aggregate Recycling Area (dashed line)
- Course Station (arrow)

Site Plan Amendments

No.	Date	Description	By
1			
2			
3			
4			

MHBC ARCHITECTURE

PLANNING URBAN DESIGN & LANDSCAPE ARCHITECTURE

13 COLLEGE STREET, ARLINGDALE, QLD 4071. PHONE: 07 5535 2833. WWW.MHBC.COM.AU

Stamp

FOWLER CONSTRUCTION COMPANY LTD.

728 HEMMINGWAY DRIVE, STANBRIDGE, QLD 4179. PHONE: 07 555 2174

Stamp

OPERATIONAL PLAN

FLEMING QUARRY EXTENSION

2 OF 3

DATE: 27/04/2022

SCALE: 1:100

PROJECT: FLEMING QUARRY EXTENSION

Property Description
 PART OF LOT 40, BROKEN FRONT CONCESSION
 GEOMORPHIC TOWNSHIP OF RIMA
 MUNICIPALITY OF YORK REGION, COUNTY OF SIMCOE

Legend

- Extension Line of Boundary (dashed line)
- Extension Excavation Boundary (dotted line)
- Planning Quarry License (yellow)
- Planning Quarry License (yellow)
- Additional License (yellow)
- 100m from Proposed Quarry Site (yellow)
- Coordinate Elevation at 20m ASL
- Cross-Section A1
- Proposed
- Existing
- Proposed Woodlot
- Proposed Tree Cover
- Proposed Wetland
- Proposed Surface Damage Location
- Proposed Building Footprint (C-1, C-2, C-3, C-4, C-5, C-6, C-7, C-8, C-9, C-10, C-11, C-12, C-13, C-14, C-15, C-16, C-17, C-18, C-19, C-20, C-21, C-22, C-23, C-24, C-25, C-26, C-27, C-28, C-29, C-30, C-31, C-32, C-33, C-34, C-35, C-36, C-37, C-38, C-39, C-40, C-41, C-42, C-43, C-44, C-45, C-46, C-47, C-48, C-49, C-50, C-51, C-52, C-53, C-54, C-55, C-56, C-57, C-58, C-59, C-60, C-61, C-62, C-63, C-64, C-65, C-66, C-67, C-68, C-69, C-70, C-71, C-72, C-73, C-74, C-75, C-76, C-77, C-78, C-79, C-80, C-81, C-82, C-83, C-84, C-85, C-86, C-87, C-88, C-89, C-90, C-91, C-92, C-93, C-94, C-95, C-96, C-97, C-98, C-99, C-100)
- Proposed Lake Filling (Water Level: 220m ASL)
- Existing Elevation
- Final Elevation
- Vertical Foot

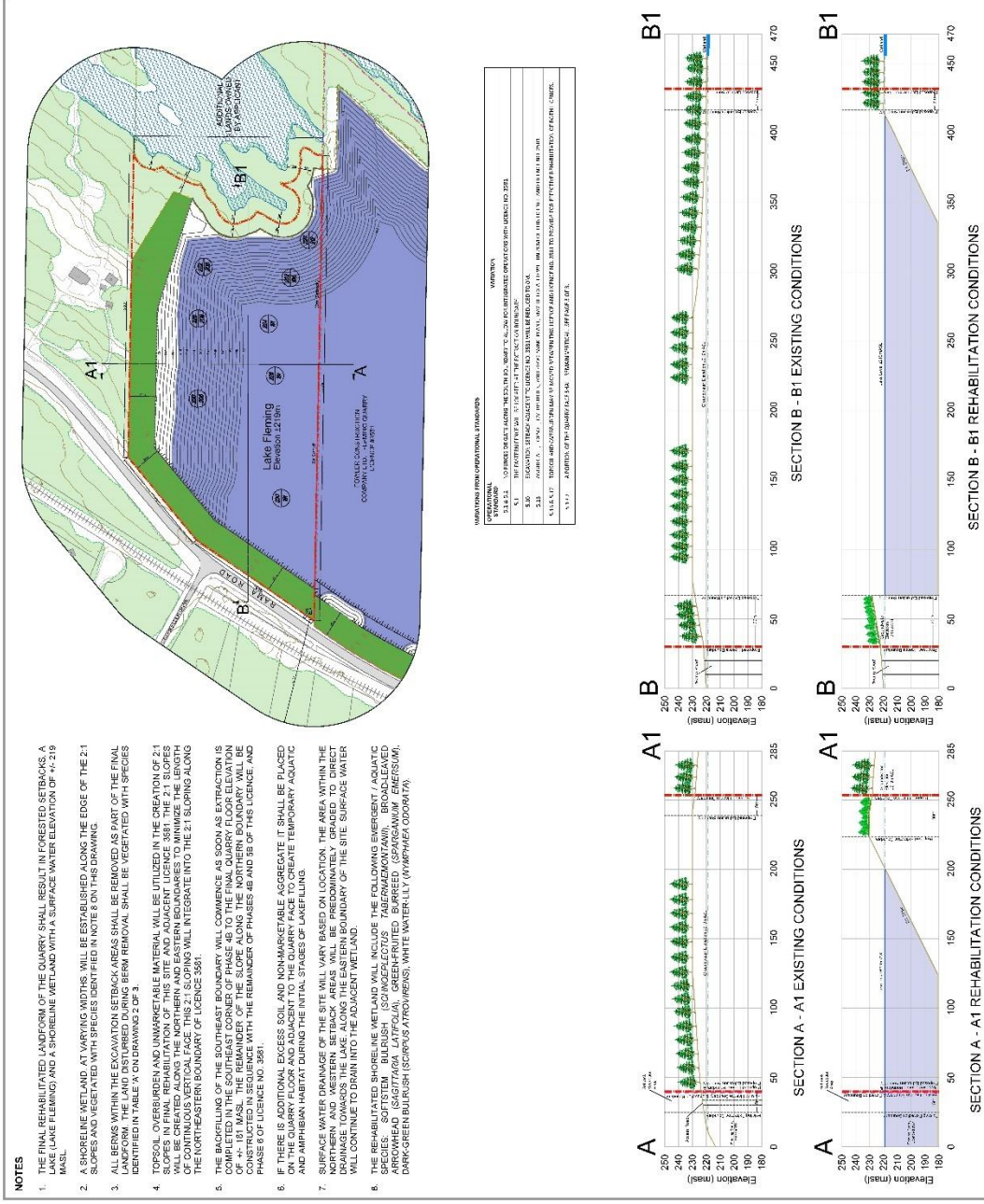
Site Plan Amendments

No.	Date	Description	By
1			
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PLANNING URBAN DESIGN & LANDSCAPE ARCHITECTURE
 MHC ARCHITECTURE

FWLER CONSTRUCTION COMPANY LTD.
 1200 Woodbine Dr. W. Scarborough, ON M1V 1Y1 (705) 460-2114

REHABILITATION PLAN & CROSS-SECTIONS
FLEMING QUARRY EXTENSION (Drawn No. 3 OF 3)



OLT-22-002101 – Schedule C

**Your Project.
Our Passion.**

Attention: Freight Vendors, Customers & Fowler Employees

Subject: Fleming Quarry – Trucker Safety Protocol

Please remember to have respect and courtesy for the community when picking up products at Fowler Construction's Fleming Quarry.

All drivers are reminded that the surrounding roads are used by cyclists, pedestrians and school bus routes and caution should be taken at all times. Fowler takes trucking safety very seriously and the community has identified ongoing concerns with traffic from our Fleming Quarry operation. This includes independent haulers and our own employees. The primary concerns identified relate to:

- Failure to make a complete stop at the intersection of Switch Road and Rama Road;
- Failure to utilize the identified haul route for the Fleming Quarry;
- Failure to tarp loads leaving the quarry;
- Arriving prior to the quarry opening and idling in the surrounding community.

These actions are unacceptable to the company, will not be tolerated and as a result Fowler has developed the following Trucker Safety Protocol which will take effect immediately. Failure to comply will result in disciplinary action and suspension from the site in accordance with the below provisions.

Fleming Quarry Site rules:

- Trucks are to obey all aspects of the Highway Traffic Act including posted speeds and traffic signs;
- Specifically, all cars and trucks leaving the Fleming Quarry must stop at the stop sign at the intersection of Switch Road and Rama Road. Fowler will be installing a camera at this intersection subject to permission from the County of Simcoe. The camera will be capable of recording licence plates and confirming whether the truck/vehicle completed a full stop and an incident report will be prepared daily;
- Aggregate trucks entering and exiting the site must follow the designated haul route. The haul route to the quarry follows Simcoe County Road 169 to Rama Road to Switch Road. The haul route leaving the quarry follows Switch Road to Rama Road to Simcoe County Road 169. All haul trucks are required to use this route unless they are making a local delivery. Please see the attached map to provide more clarity. Fowler will be installing a new camera at its entrance/exit that is capable of recording licence plates and confirming whether the truck followed the approved haul route, except for those making local deliveries and an incident report will be prepared daily;



1206 Rosewarne Drive, P.O. Box 630,
Bracebridge, Ontario, P1L 1T9
Phone: (800) 268-7687 www.fowler.ca Fax: (705) 645-5025



- All loaded aggregate trucks must cover their loads before leaving the Fleming Quarry. This will be enforced by our scale house staff and trucks will not be permitted to leave the site until their load has been tarped;
- Shipping from the Fleming Quarry starts at 6am Monday to Saturday. Under no circumstances should trucks arrive at the site before 6am. Trucks are not permitted to park on Rama Road, Switch Road or other surrounding roads at any time, especially prior to the site opening each morning. Fowler staff that open the quarry each morning will record licence plates of trucks found parking on surrounding roads prior to 6am.

Recording and Disciplinary Actions:

Fowler has assigned staff member(s) responsible for reviewing the daily camera reports and implementation of the following disciplinary actions.

During the operating season, Fowler shall provide monthly reports on infractions and disciplinary action taken to the County of Simcoe and Township of Ramara.

The Trucker Safety Protocol, infraction and disciplinary reports shall be reviewed with the Community Liaison Committee.

The Trucker Safety Protocol shall be updated as required based on the infraction reports and input from the Community Liaison Committee.

The following disciplinary actions will be taken for independent contractors who fail to obey the above noted site rules:

- First infraction: written warning identifying the observed infraction.
- Second infraction: one week suspension from the Fleming Quarry.
- Third and any subsequent infraction: one year suspension from the Fleming Quarry.

Fowler employees who fail to observe traffic laws at the intersection of Switch Road and Rama Road will be subject to Fowler's Progressive Discipline Policy. At a minimum, and based on the employees compliance record, discipline will be a written warning, followed by suspension and ultimately could lead to termination of employment.

The above Truckering Safety Protocol has been prepared for the benefit and safety of haulers, employees and the community.

A copy of this Trucker Safety Protocol shall be posted on our website at <https://www.fowler.ca/fleming-quarry/>

Haul Route is highlighted in blue:

