

# **The Corporation of the City of Kawartha Lakes**

## **Planning Advisory Committee Report**

**Report Number PLAN2019-062**

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**Meeting Date:** December 4, 2019

### **Regular Meeting**

**Title:** An application to amend the Township of Eldon Zoning By-law 94-14 on land described as Lots 30, 31, and 32, Concession 1, geographic Township of Eldon, vacant land Rohallion Road - 676249 Ontario Ltd.

**Description:** To change the zone category on a portion of the property (0.8 ha.) from the Agricultural (A1) Zone to an Agricultural – Exception Thirty (A1-30) Zone to permit the establishment of an explosive storage facility to serve the local aggregate industry on land described as Lots 30, 31, and 32, Concession 1, Township of Eldon, City of Kawartha Lakes, identified as vacant land south side Rohallion Road (676249 Ontario Ltd).

**Ward Number:** 1

**Author and Title:** Janet Wong, Planner II

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### **Recommendations:**

**That** Report PLAN2019-062, an application to amend the Township of Eldon Zoning By-law 94-14, be received;

**That** application D06-2019-004, respecting a proposed Amendment to the Township of Eldon Zoning By-law to permit an explosive storage facility substantially in the form attached as Appendix 'E' to Report PLAN 2019-062 be approved and adopted by Council;

**Department Head:** \_\_\_\_\_

**Legal/Other:** \_\_\_\_\_

**Chief Administrative Officer:** \_\_\_\_\_

**That** in accordance with Section 34(17) of the Planning Act, Council having considered the change to the proposed Zoning By-law Amendment to include the use of the Holding (H) symbol with a condition for its removal that the development of an explosives storage facility be subject to site plan control, deems no further public notice to be necessary; and

**That** the Mayor and Clerk be authorized to execute any documents and agreements required by the approval of these applications.

## Background:

The statutory public meeting was held by the Planning Committee on April 10, 2019 and the following resolution was passed:

**Moved By** M. Barkwell; **Seconded By** Councillor Veale

**Recommend That** Report PLAN2019-020, respecting Lots 30, 31, and 32, Concession 1, Township of Eldon, and identified as vacant land south side of Rohallion Road, 676249 Ontario Ltd – Application D06-2019-004, be received; and

**That** the proposed Zoning By-law Amendment respecting Application D06-2019-004, be referred back to address any issues raised through the public consultation process and for further review and processing until such time that all comments have been received from all circulated agencies and City departments and that any comments and concerns have been addressed.

**Carried**

This report addresses that direction.

The applicant has submitted a rezoning application to allow 0.8 ha. of the 201 ha. property to be used for an explosives storage facility to service a number of local quarries in the City of Kawartha Lakes as well as Township of Ramara. A blasting contractor (Maxam) will have a small mobile office trailer, magazine, and equipment storage units on site from which about five (5) staff will operate with possible expansion to 10 staff. The trailer will be used for office work. Maxam will transport the required materials to the quarries where the blasting will occur, with staff generally leaving the site in the morning and returning in the afternoon. The safe storage and transportation of explosives is federally regulated under the Explosives Act and Explosives Regulation, 2013 under the Explosives Act. Licensing is issued by the Federal Ministry of Natural Resources (Natural Resources Canada). The Regulation identifies criteria for all aspects of explosives including storage, transport, and use. The Province also regulates the safe use of explosives through the Ministry of Labour Occupational Health and Safety Act.

Owner:	676249 Ontario Ltd (James Dick Construction Ltd)
Applicant:	Leigh Mugford, James Dick Construction Ltd.
Legal Description:	Lots 30, 31, and 32, Concession 1, geographic Township of Eldon
Official Plan:	Rural and Environmental Protection, City of Kawartha Lakes Official Plan
Zone:	Agricultural (A1) Zone on Schedule 'A' of the Township of Eldon Zoning By-law No. 94-14

Lot Area: 201 ha. [496 ac. – Applicant]  
Site Servicing: No water and sewage disposal services currently exist  
Existing Uses: Vacant – cattle ranching  
Adjacent Uses: North: Rural and Quarry  
East: Rural largely vacant, one residence  
South: Rural vacant  
West: Rural vacant (Township of Ramara)

## **Rationale:**

The property is located at the southeast corner of the Mara-Carden Boundary Road and Rohallion Road (See Appendices A and B). The property is currently being used for cattle ranching as soil conditions are not suitable for crop production. Although mapping indicates the presence of a watercourse, the applicant has indicated that they inspected the property with the Kawartha Region Conservation Authority (KRCA) in 2018 and there is no wetland or watercourses in the vicinity of the proposed development. The southern side of the property is within a Source Water Protection area; however this does not extend to the location of the proposed facility.

The site for the proposed facility has been selected to comply with Explosives Regulation 2013 setback criteria from sensitive receptors including roads and dwellings. The type of explosives to be stored is considered non-sensitive, which means the materials will not detonate on their own.

Given that the current zoning does not permit the proposed use, the A1 Zone needs to be amended to permit the explosives storage facility comprised of an office, magazine, and storage equipment units associated with operating the business. Transport trucks will deliver materials to the site. To ensure site development is carried out in a manner that cover design matters such as driveway and entrance requirements, lighting, fencing, and grading, it is appropriate to consider site plan control to implement the proposal. This will ensure certain exterior design elements are adequately provided for and maintained, which can be secured through a Site Plan Agreement that is registered on title to the property. The use of the holding (H) symbol will ensure that this agreement is entered into prior to development and would not be removed until such time as the detailed plans are submitted that satisfy the requirement of City Departments.

The applicant has submitted the following reports and plans in support of the application, which have been circulated to various City Departments and commenting Agencies for review:

1. Planning Justification Report prepared by Neal DeRuyter, MacNaughton Hermesen Britton Clarkson Planning Limited (MHBC), dated August 2018. This document discusses the appropriateness of the application in the context of the Growth Plan for the Greater

Golden Horseshoe (2017), Provincial Policy Statement (2014), applicable City of Kawartha Lakes Official Plan and Township of Eldon Zoning By-law 94-14.

2. Preliminary Concept Plan, MHBC, June 2018
3. Species at Risk Assessment, Niblett Environmental Associates Inc., September 9, 2019. This report identified Bobolink and Eastern Meadowlark threatened species habitat in the vicinity of the proposed development as well as significant wildlife habitat for the Grasshopper Sparrow a species of special concern.
4. Revised Concept Plan, MHBC, November 5, 2019 (See Appendix C).

Staff has reviewed the Planning Justification Report and accompanying documentation filed in support of the proposed zoning by-law amendment. Staff has evaluated the appropriateness of the proposal as responses from other City Departments and commenting Agencies have been received. Further discussions have been conducted with the applicant to refine the proposal with respect to concerns raised and applicable policies and/or zoning provisions.

## **Provincial Policy Conformity**

### **Growth Plan for the Greater Golden Horseshoe (2019):**

This application must conform to the applicable policies of the Growth Plan (GP). Section 2.2.9 indicates development outside of settlement areas may be permitted:

1. the land use is not appropriate in settlement areas:
  - i) is compatible with the rural landscape and surrounding local land uses,
  - ii) will be sustained by rural service levels, and
  - iii) will not adversely affect the protection of agricultural uses and other resource-based uses such as mineral aggregate operations.

There are seven licenced quarries within 5 km of the site. The proposed use will support the local quarry operations and is not a suitable use near or in settlement areas. Additional rural service requirements would not be anticipated. As only 0.8 ha of 201 ha will be used for the operation, the agricultural use would be able to coexist with the proposed use.

The property has been identified as being within the Provincial Natural Heritage System. The habitat of endangered species and threatened species is considered to be a natural heritage feature contributing to Provincial Natural Heritage. Significant wildlife habitat is also a natural feature that is to be protected for their economic, environmental and social benefits. The habitat for bobolink and eastern meadowlark, being two threatened bird species, has been identified on the property. The habitat of grasshopper sparrow is considered to be significant wildlife habitat as the bird is considered to be a species of special concern. Section 4.2.2.4 indicates that the Provincial Natural Heritage System for

the Growth Plan does not apply until it has been incorporated into the City Official Plan and until such time the current City Official Plan policies will apply. See comments below under Section 2 Provincial Policy Statement (2014) and City of Kawartha Lakes Official Plan Conformity.

The properties surrounding the subject lands are at least 80 ha. in size. There is one residence about 1.6 km to the east for the proposed storage area on one property on the east side of Bolsover Road. There are licenced quarry properties on the north side of Rohallion Road. The proposed facility is a safe distance from the dwelling as well as any sensitive receptors as required by the Explosives Act.

Therefore, this application appears to conform to the policies of the Growth Plan.

### **Provincial Policy Statement (2014):**

The Provincial Policy Statement (PPS) provides policy direction on matters of Provincial interest. Healthy, integrated and viable rural areas should be supported through a number of approaches including promoting the diversification of the economic base and employment opportunities through services and the sustainable management of resources. Rural land uses are permitted on rural lands. Development that is compatible with the rural landscape, can be sustained by rural service levels, and supports a diversified rural economy by protecting agricultural and other resource-related uses should be promoted. The PPS Section 2.1 Natural Heritage policies apply as further detailed below. Development is to be directed away from areas of flood risk.

The aggregate industry is an important industry to the economy of the City, but can be a constraint to the surrounding use of land. The proposed facility is a land use that is compatible with and supports the local aggregate industry thereby efficiently using land and supporting the economy while co-existing with surrounding agricultural uses.

Of the natural heritage features or areas identified in Section 2.1 of the PPS, the habitat of threatened species as well as significant wildlife habitat have been identified on or adjacent to the development area. For the habitat of threatened species, commonly referred to as 'species at risk habitat', Section 2.1.7 indicates development and site alteration is only permitted when carried out in accordance with the Provincial Endangered Species Act. The Province has established habitat assessment guidelines as well as permitting procedures to protect the loss of species at risk habitat from development. The applicant has prepared a Species at Risk Assessment following accepted protocols, which confirms that of potential species at risk only bobolink and eastern meadowlark were found to be using the property. In accordance with Provincial requirements, as the area affected is less than 30 ha. the owner is required to submit a Notice of Activity prior to undertaking construction and is not required to be issued a benefit permit by the Province (Ministry of Environment, Conservation and Parks - MECP). The Notice of Activity serves to notify the Province that works will be undertaken and the nature of the project can be carried out with best management practices to

meet the intent of the Endangered Species Act. The KRCA has reviewed this report and found that it adequately characterized the birds and their habitat.

Section 2.1.5 indicates that development shall not be permitted in significant wildlife habitat unless it has been demonstrated that there will be no negative impacts on the natural features or their ecological functions. The Species at Risk Assessment indicates that the significant wildlife habitat for grasshopper sparrow is coincident with the habitat for bobolink and eastern meadowlark and the measures implemented as part of the Notice of Activity noted above will benefit this species. Thus there would be no negative impact.

Therefore, the application appears to be consistent with the PPS.

### **City of Kawartha Lakes Official Plan Conformity:**

The property is mainly designated Rural with Environmental Protection (EP), following watercourses based on Ontario Base Mapping, in the City of Kawartha Lakes Official Plan (CKLOP). The EP designation is intended to apply to provincially significant wetlands, watercourses and floodplains. As the KRCA has confirmed that there is no watercourse within the proposal's development limits, the EP policies of the CKLOP do not apply. No change to the CKLOP is required as policies allow for consideration of an alternate use permitted in the abutting land use designation.

#### **Rural Designation**

The location of the proposed facility is designated Rural. The Official Plan provides strategic direction for development of the City. An economic goal is to promote the growth and enhance the industrial base of the City in an environmentally, social and economically responsible manner. The Rural designation goals are:

1. to promote the growth and development of the City's agricultural and natural resources through a sound economic, social, and environmental framework.
2. protect agricultural land that is primarily class 4-7 for agricultural production from fragmentation, development and land uses unrelated to agriculture.
3. preserve and promote the rural character of the City and the maintenance of the natural countryside.

Permitted uses identified in the Official Plan are intended to provide direction on the policy intent and not intended to represent a complete list of permitted uses. The Rural designation states that the primary use will be agriculture in the form of ranching and forestry. New uses that are compatible with and do not hinder the agricultural use will be permitted.

The proposed use will allow ranching on the property to continue. There will be low traffic flow to and from the property similar to a farm operation. Only employees would be accessing the property. The low intensity, small scale commercial-industrial business within a 200 ha area would not significantly alter the rural character of this part of the City, appearing largely inactive for most of the day. In response to concerns with safe ingress/egress, the proposed

entrance to the facility has been relocated easterly 65 m. in order to comply with City Roads Division requirements for a safe access. Thus, the explosives storage facility would not adversely affect traffic movement and is a use appropriate to a low density rural location. Design requirements to minimize potential damage to City road infrastructure can be addressed through the use of site plan control. The use of a mobile office trailer with minimal disturbance to the land also means the land could readily revert back to agricultural use if the site is no longer required to serve the aggregate businesses.

### **Natural Heritage System**

The CKLOP incorporates a description of features that are to be considered part of the Natural Heritage System. One feature is the habitat of threatened species, of which bobolink and eastern meadowlark habitat has been identified. The policy direction is that no new development will be permitted within significant habitat of threatened species. However development and site alteration may be permitted in adjacent areas provided that an Environment Impact Study (EIS) shows that the proposed development will have no negative impact on the species or habitat. As well, significant wildlife habitat has been identified for grasshopper sparrow, a species of special concern. CKLOP policy for significant wildlife indicates that development may be permitted if it has been determined through an EIS that there will be no negative impact. As noted above under the discussion of the Provincial Policy Statement, measures in accordance with Provincial requirements will ensure that there will be no negative impact on the species or habitat of these species. The use of the Holding provision (see below - Zoning By-law Compliance) will ensure that no development is undertaken prior to meeting the requirements of the Province with respect to the Endangered Species Act.

The application appears to be in keeping with the general policies of the City of Kawartha Lakes Official Plan

### **Zoning By-Law Compliance:**

The subject land is zoned Agricultural (A1) Zone in the Township of Eldon Zoning By-law 94-14. The applicant has submitted a Zoning By-law amendment application for consideration. The application proposes to add a site-specific exception to the A1 Zone to permit, in addition to the permitted A1 Zone uses, an explosives storage facility on a portion of the property.

The application appears to comply with all other relevant provisions of the Zoning By-law.

Through the review, in conjunction with the applicant, it has been determined that the use of the Holding provision (H) would be appropriate, with removal of the H provision subject to registration of a site plan control agreement on title. This agreement would ensure that the development of the site implements suitable measures related to the issues raised with respect to the entrance and species at risk.



## **Financial/Operation Impacts:**

There are no financial considerations unless Council's decision to adopt or its refusal to adopt the requested amendment is appealed to the Local Planning Appeal Tribunal. In the event of an appeal, there would be costs, some of which may be recovered from the applicant.

## **Relationship of Recommendations to the 2016-2019 Strategic Plan:**

The Council Adopted Strategic Plan identifies these Strategic Goals:

- A Vibrant and Growing Economy
- An Exceptional Quality of Life
- A Healthy Environment

This application aligns with the vibrant and growing economy goals as it adds business support and strengthens the local aggregate sector. The proposal aligns with the goal of a healthy environment through the reduction in greenhouse gas production generated from vehicle traffic by creating a centralized explosives facility without adverse impacts on natural heritage features.

## **Review of Accessibility Implications of Any Development or Policy:**

There are no accessibility implications for the City.

## **Servicing Comments:**

The lot is currently not serviced. Bottled water and a portable toilet facility will service the site.

## **Consultations:**

Notice of this application was circulated to persons within a 500 metre radius, agencies, and City Departments which may have an interest in the application and a public meeting was held on April 10, 2019. Written and oral comments were received from the public at the public meeting. To date we have received the following comments:

### **Agency Review Comments (initial circulation):**

Building Division (March 13, 2019): advised that they have no concerns with the above noted application.

Building Division – Part 8 Sewage Systems (March 22, 2019): the site will not be serviced by a water supply (well or surface water) and the trailer will not be equipped with a bathroom or other fixtures for the office employees. A portable

privy will be required to be provided on the site for sanitary requirements to service the mobile trailer office.

Community Services Department (March 19, 2019): advised that they have no concerns or comments with respect to the application.

Development Engineering Division (March 19, 2019): advised that they have no objection and no requirements to permit the establishment of an explosive storage facility.

Kawartha Region Conservation (April 3, 2019): Advised that based on their mandate, there is no impact on natural heritage, natural hazards, or water quality/quantity. They did advise that Ministry of Environment, Conservation and Parks be contacted for species at risk that staff observed on the property.

Economic Development – Agriculture (April 9, 2019): Advised that they are supportive of this application.

**Agency Review Comments (resulting from Public Meeting):**

Public Works - Roads Division (August 29, 2019): Indicated that the use of Rohallion Road for access to the property with the driveway 65 m. (centreline of the entrance) from the corner of Rohallion Road and Mara-Carden Boundary Road along with an entrance culvert a minimum length of 15 m. would allow for trucks to safely turn into and out of the property.

Kawartha Region Conservation Authority (October 4, 2019); advised that the Species at Risk Assessment adequately characterized the habitat to determine the impacts. The owner will have to contact the Ministry of Environment, Conservation and Parks (MECP) to establish the use and requirements of a Notice of Activity Form.

**Public Comments (from initial circulation):**

Written and or oral comments were received from four people. Generally, the concerns raised were: poor notification sign location, liability insurance, site security, effect on species at risk, location more appropriate in another municipality, safe access to the site, need for a dedicated haul route for the transportation of explosives, and the proposal being a precursor to an aggregate licence. With respect to the public comments, the applicant has provided a letter response (See Appendix 'D'). Staff is accepting of the response.

**Development Services – Planning Division Comments:**

The appropriate documents in support of the application have been submitted and circulated to the appropriate agencies and City departments for review and comment. The application conforms to the Growth Plan and is consistent with Provincial Policy Statement. The application conforms to the City of Kawartha Lakes Official Plan. An explosives storage facility, as is the transport of explosives, is also subject to Federal Regulatory compliance. About 0.8 ha of the 201 ha property is to be rezoned to permit the proposed explosives storage

facility, and no negative impacts are anticipated from the proposed use. Staff recommends that the development be subject to site plan control to ensure entrance design measures are implemented and maintained into the future and Endangered Species Act compliance has been/will be implemented. As such the Holding Symbol should be placed on the subject lands such that the facility cannot be constructed prior to a site plan control agreement being registered on title.

In accordance with the City's Official Plan, prior to the removal of a Holding Symbol, the City needs to ensure that the owner or applicant has satisfied all requirements identified by the municipality or any other agency having jurisdiction to address any concerns. Some of the issues the site plan process will address are:

- siting of the proposed building and its elevations;
- site servicing;
- lot grading and drainage;
- driveway location and access;
- illumination;
- fencing; and
- site signage

Staff will ensure through this process that the construction and development respects the environment. The site plan process will also provide a mechanism to require performance securities to ensure the proposed development is constructed and maintained in accordance with approved plans, which the building permit process alone is not designed to control.

Staff respectfully recommends that in accordance with Section 34(17) of the Planning Act, Council consider the change to the proposed by-law with respect to imposing site plan control as a condition of removal of the Holding (H) symbol (See Appendix E). If Council choose to change the proposed zoning by-law to facilitate this minor amendment, a public meeting is not required for this procedure.

## **Conclusion:**

Staff supports the application for Zoning By-law Amendment to change 0.8 ha of land to add an explosives storage facility based on the information contained in this report and the comments received, provided that as a condition of removal of the Holding (H) symbol, the property be subject to Site Plan Control. Staff respectfully recommends that the application, as amended, be referred to Council for APPROVAL.

## Attachments:



Appendix A.pdf



Appendix B.pdf



Appendix C.pdf



Appendix D.pdf



Appendix E.pdf

Appendix 'A' – Location Map

Appendix 'B' – Aerial Photo

Appendix 'C' – Revised Concept Site Plan

Appendix 'D' – James Dick Construction Ltd. Letter, November 6, 2019

Appendix 'E' – Draft Zoning By-law Amendment

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**Department Head:** Chris Marshall, Director of Development Services

**Department File:** D06-2019-004