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July 24, 2024

Submission to: **Winnipeg Metropolitan Region – Plan20-50**

From: **Chris Lorenc, B.A., LL.B., President & CEO, MHCA**

Subject: **Economic prosperity through regional collaboration**

The Manitoba Heavy Construction Association (MHCA) thanks the WMR for the opportunity to contribute feedback for the public hearings regarding Plan20-50 – a regional plan for the Winnipeg Metropolitan Region (WMR). *The MHCA supports the Plan.*

The MHCA grounds all its advocacy in the principle of economic growth, which returns revenues to all levels of government, supporting the world-class quality of life Manitobans enjoy. Without such revenues, discussions about sustaining and improving health care, education and vital core public services are moot.

The MHCA strongly supports regional collaboration and planning, to organize investments and services that benefit residents, amplifying returns long-term to municipalities, and by extension the province and country.

Supporting a regional approach and vision the WMR municipalities can better support and leverage the natural and “home-made” advantages that provide the superior standard of living for citizens and compete for emerging economic growth opportunities whether sourced from within or external to Manitoba.

The MHCA would be happy to continue to engage broadly on Plan20-50.

However, our submission addresses specifically the necessary collaboration between WMR municipalities and its residents, the Province of Manitoba and industry on the stewardship, development and protection of mineral resources, in particular aggregate resources.

The WMR is uniquely blessed by a natural - *but finite* - wealth of high-quality aggregate deposits, providing high-grade limestone as well as sand and gravel to support infrastructure.

Aggregates are foundational to all infrastructure – industrial, commercial and residential, as well as the cultural and recreational facilities and assets that help make our communities complete and liveable.

Without aggregates nothing gets built. Without access to high-quality aggregate deposits near infrastructure works, all public and private development projects and assets would become much more expensive. That would affect not only project budgets but reduce net economic benefit and therefore revenue returns to governments. That affects us all.

The value of aggregates is recognized universally, and for that reason is prioritized as a critical mineral in provincial legislation, including land use and planning.

And the *WMR Plan20-50 rightly recognizes resource stewardship as a pre-eminent goal,* guiding the development of regional planning and collaboration:

“Agriculture and mineral aggregate resources are important economic assets and contribute to the region’s prosperity as they generate substantial income, employment, and export opportunities.”

MHCA further supports Plan20-50’s stated goal to protect access to aggregate (mineral) resources, set out in Sec. 4.2 Mineral, Oil and Natural Resources, and in the following passage:

“To maintain viable industries, protection of resource bases from incompatible land uses is critical to ensuring their ongoing access. Not only do resource lands support economic prosperity, but they are also vital to environmental stewardship and can be an important component to building a climate resilient region.”

The history of aggregate resource development in the capital region dates to our early road and structures built in a newly organized Red River Valley. As settlement and cities grew, competition for land naturally developed.

As Plan20-50 acknowledges, it is that fine balance of competing land use interests that the region – as a community – must address.

The MHCA has recently engaged in consultations regarding the review of the *Planning Act*. In that exercise a number of concerns and suggested approaches to their resolution were raised. We offer these to the WMR, to inform the approach of Plan20-50, and indeed the future of collaborative successful regional development.

Bill 19, which took effect June 2018, made substantive changes to the *Planning Act*, to streamline regulatory processes, including the municipal decision-making process on applications for establishing or expanding aggregate pits and quarries, and reduce administrative burdens on municipalities and planning districts.

The MHCA offers these comments regarding access to and extraction of aggregate resources generally, and to the municipal bylaw/Planning Act processes.

1. Local opposition - Respectfully our experience is that local opposition to aggregate extraction operations almost regardless of its nature, remains prevalent within the capital region, where competing priorities and perspectives threaten finite and mapped high quality aggregate reserve zones with sterilization.
 - a. Regional municipalities are growing, some quickly, creating a demand for residential and commercial development, which has increasingly encroached in close proximity to identified and mapped out aggregate resources.
 - i. We understand and respect that municipal councils face political risk in decision-making, especially in the face of significant ‘vocal minority’ interests opposing pit/quarry operations or developments.
2. Economic return - the foundational role aggregates play to the broad economic health is uncontested. However, municipalities see greater, more immediate return from residential development.
 - a. This weighs upon the decision-making as all municipalities struggle to balance demands with limited revenue-generating resources; and
 - b. As demand for new residential development grows, it encroaches upon finite aggregate resource zones and existing aggregate operations. As a result, land use conflicts arise.
3. Environmental concerns - we acknowledge that aggregates operations are large and disruptive land use activities. As a result, however, they are therefore vulnerable to unsubstantiated claims of environmental degradation, threat to community liveability and water quality.
 - a. To our knowledge, there have been no reliable scientific studies or analyses that have shown

aggregate operations disrupt, impair or pose abiding *unmanageable risk* to the environment; and

- b. Mineral development and especially aggregate operations in proximity to municipalities are among the heaviest regulated provincial development activities:
 - i. As a result, proponents face multiple levels of land use and environmental clearances from numerous provincial government department branches (including Environment and Climate Change).
4. Process - Bill 19 was intended to bring consistency, integrity, transparency and reliability to the application and decision-making process for aggregate operation proponents. While process improvements have been seen, proponents and residents alike, need to be able but at present cannot, rely on consistent and evidence based municipal application of the Planning Act requirements.
- a. Aggregate producers continue to experience lengthy application and decision-making processes at the municipal level. The application/decision-making process, including response times that contemplate public hearings, can extend up to 255 days.
 - i. A protracted, expensive process shoulders proponents with real business risk and cost.
 - b. Industry experience suggest that opposition from residents, including a 'vocal minority', heightens political risk for municipal councils and administrations, some of which appear to reflexively defer final decision to the Municipal Board.
 - c. Some municipalities resort to the use of bylaws to impose requirements on aggregate producers/proponents:
 - i. Inclusion of requirement for development agreements; setting objectives far too high, obstructing ability to develop; and
 - ii. Moving all aggregate operations/applications from 'permitted use' to 'conditional use'; subjecting proponents to lengthy decision-making process and risk.
 - d. 25-objector threshold is too easy to meet, to trigger public hearings of applications.
 - i. Experience of industry is that a 'vocal minority' easily collects signatures of residents, in absence of good awareness of the pit/quarry applications and the regulations proponents meet and the accommodations development proposals include to minimize impacts environmentally and to nearby residents.
 - ii. A definition of '*material*' interest in the application to enable the right of appeal should be considered and introduced. That principle is well defined and enshrined in our judicial process. The right of appeal is not automatic. Mixed law and fact generally are required as the demonstrated element to enable a right to appeal.
 - e. The right of appeal to the Municipal Board - whose decision is to be final - should be appreciated and respected by all parties to an application - proponent and local community interest alike. Respectfully however, the process requires refinement to support integrity of decision-making:
 - i. Appeals to the Municipal Board should not be '*de novo*' hearings but appeals assessing evidence-based decisions made at the municipal level – *see also above*.
 - ii. The Municipal Board is under-resourced – lack of subject matter expertise/ capacity/staff has created lengthy backlogs, undermining the usefulness of the appeal right.
 - iii. Municipal Board panels are deliberating on complex matters of land use and development, in the absence of good expert counsel.

- iv. The Municipal Board does not have the status of a quasi-judicial body, with the right to call and test evidence. This creates the risk of unfounded or unsupported submissions. The Municipal Board should have the right to call expert evidence as is the case with the Public Utilities Board (PUB); and
- v. Properly resourced, the appeal process, parties to the process and the Municipal Board would benefit from the introduction of case management officers. Two parallel examples:
 1. At the Manitoba Labour Board, a case management officer (employee) attempts to mediate a compromise. Only when those 'time-limited' efforts fail is a hearing date set before the Manitoba Labor Board. The success rate is very high and has significantly reduced the number of paneled hearings; and
 2. Judicially Assisted Dispute Resolution (JADR) at the Manitoba Court of King's Bench has been available since 1994. Participation is voluntary and informal, subject only to the requirements that it be requested jointly by counsel for the parties. Experience suggests that in reviewing Statements of Claim filed in comparison to the number of trials heard, only 2% to 3% of the claims filed actually proceed to trial. The remaining 97% to 98% of the Statements of Claim filed are settled, discontinued or abandoned.

In closing, the MHCA, on behalf of the heavy construction and aggregate-supply industry, stresses it has been and continues to be a collaborative partner with capital region residents, municipalities and the Government of Manitoba, working to help ensure pit and quarry development and operations are in close concert with environmental stewardship and community interests.

The aggregate industry strives to be a good neighbor and corporate citizen. It was central to and continues to advocate for the improvement of the Quarry Rehabilitation Program. The program is funded by a per tonne of aggregate extraction levy paid by industry dedicated by legislation to the progressive rehabilitation of spent pits and quarries, and repurposing of the land for natural amenities or built assets that leave a lasting, beneficial legacy for the communities in which we work. This concept was introduced by the MHCA and adopted by the provincial government in 1991.

Our commitment to following the highest of environmental and land-use standards remains strong. Our record of engagement and development/operation speaks for itself.

To continue that history of collaborative and responsible resource development, foundational to economic growth and prosperity, the industry and an informed public need a regulatory and decision-making process with integrity, providing clarity, transparency, structure, workable timelines, consistency.

We thank the WMR and partner capital region municipalities for your work and look forward to a Plan20-50 that supports economic growth to the region and province, returning prosperity for generations to come.

Respectfully submitted,



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cc MHCA Board of Directors