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Rocky View County, AB T3R 1B9

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DELIVERED BY EMAIL
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Ms. Laura Friend, Manager, Board Reviews
Natural Resources Conservation Board
4th Floor, Sterling Place
9940 - 106 Street
Edmonton, AB T5K 2N2

Dear Ms. Friend:

Re: Scott Pit Project Application - Proposed Application Requirements

Heidelberg Materials Canada Ltd. (“**Heidelberg**”) is seeking approval of its Scott Pit Project (the “**Project**”) to mine aggregate materials on 05-26-02-W5M (the “**Project Lands**”) in Rocky View County (the “**County**”). On November 27, 2024, the Government of Alberta prescribed the Project to be reviewed by the Natural Resources Conservation Board (“**NRCB**”) through an Order in Council (the “**Application**”).

As part of the review process, the NRCB issued its “Proposed Application Requirements for the Heidelberg Materials Canada Ltd. Scott Pit Project” dated February 18, 2025 (the “**Application Requirements**”).

Thank you for the opportunity to provide comments on the Application Requirements. The negative impacts of the Project, if allowed to proceed, will be extreme, and impact a broad area of Bearspaw and beyond. The significant adverse impacts of the Project include:

1. risks to human health from several sources, including broadcasting carcinogenic dust and significantly increased vehicular traffic on already congested roads;
2. permanent and unmitigable damage to water, both surface and subsurface, including pollution of subsurface water used by certain residents for their drinking water;
3. disruptive noise and light pollution from gravel mining, including onsite blasting and crushing;
4. permanent and unmitigable alterations to an environmentally sensitive area; and

5. significant property value damage over a broad area, including the corresponding reduction in property tax revenues for Rocky View County.

This is only a partial list of the significant and unmitigable harm that the Project will cause. The NRCB's Application Requirements must be sufficiently broad to ensure all impacts are properly reviewed before determining whether the Project is in the public interest.

In addition to the impacts being extreme, Heidelberg's Application seeks to overturn the decades of settled expectations of residents, established by County decisions made in the public interest rejecting aggregate mining on the Project Lands. The County's rejections of aggregate extraction on the Project Lands, the multiple municipal planning documents, and the consistent approval of new residential development in proximity to the Project Lands, have all created settled expectations that incompatible aggregate extractions will not be permitted.

Backdrop to the Application

There is a long history of attempts by Heidelberg, its subsidiaries and affiliates, to develop one of the largest aggregate mines in Canada in the heart of a country residential area in Bearspaw. Heidelberg, or its subsidiaries and affiliates, tried to gain approval to develop the Project Lands for aggregate extraction three times in the last 30 years (1994, 2010 and 2021).

Each and every time, the attempts to rezone the Project Lands to allow aggregate mining was soundly rejected. Since the first rejection in 1994, landowners have bought lands, built homes, and established their lives in reliance upon these sound decisions that the appropriate use of the Project Lands is for country residential living.

Members of Bearspaw Community Coalition (the "**Coalition**") are intimately familiar with these applications. Members presented extensive technical evidence at the most recent hearing in 2021. This evidence demonstrated the exceedingly flawed nature of the proposed aggregate mine on the Project Lands.

The Bearspaw Community Coalition

The Coalition was formed in direct response to the Application. Our Coalition is composed of homeowners in the 16 Bearspaw communities directly affected by the Project. The Project will irreparably harm all members. Currently, the Coalition is 326 Bearspaw residents strong and growing.

Members of the Coalition have been extensively involved in the prior failed Heidelberg applications to the County. Most recently in 2021, Coalition members, at their own expense and with no financial assistance from Heidelberg as the project proponent, provided extensive evidence in opposition during the application. This included evidence from independent experts on impacts to the environment, human health, wildlife, water (including residents' drinking water), noise and air quality, destruction of property values including loss of property tax revenues, and cumulative effects, among other critical areas that must be considered when evaluating the public interest.

The Coalition respects the NRCB's interest in an orderly process. To that end, the Coalition is striving to unite an extensive group of directly and adversely affected Bearspaw residents to speak with a united voice, eliminate repetition to the extent possible, and engage common technical experts.

Heidelberg stated in its introductory letter, dated December 5, 2024, that it has conducted technical studies covering: “existing surface and groundwater conditions, wetlands, air quality, wildlife and habitat inventories, vegetation and soil conditions, traffic impact, noise, visual impacts, economic impacts, and historical resources.”¹ The Coalition requires the opportunity to respond to these studies.²

Effective citizen participation leads to better decision making. The Alberta Court of Appeal has held:

Granting standing and holding hearings is an important part of the process that leads to development of Alberta’s resources. The openness, inclusiveness, accessibility, and effectiveness of the hearing process is an end unto itself. Realistically speaking, the cost of intervening in regulatory hearings is a strain on the resources of most ordinary Albertans, and an award of costs may well be a practical necessity if the Board is to discharge its mandate of providing a forum in which people can be heard. In other words, the Board may well be “thwarted” in discharging its mandate if the policy of costs is applied restrictively. It is not unreasonable that the costs of intervention be borne by the resource companies who will reap the rewards of resource development.³

The Court of Appeal’s holding has been proven true in the past applications to rezone the Project Lands. Most recently in 2021, every technical position of Heidelberg was comprehensively addressed and refuted by independent, unbiased and highly credible experts put forward by Coalition members. Fortunately, the NRCB process allows for intervener funding and the Coalition will be seeking funding from Heidelberg directly and, if refused like in 2021, by application to the NRCB. The Coalition’s efforts to unite many landowners will focus these requests for intervener funding in an effective manner.⁴

Comments on the Application Requirements

The Coalition considers the NRCB’s Application Requirements to be broad and extensive, which is entirely appropriate for a large industrial mining project in the heart of a country residential area. The Coalition commends the NRCB for providing an issues list that is commensurate to the industrial activity that is sought to be undertaken, and entirely commensurate with the approach taken by other regulators charged with assessing the public interest. In the past, the Coalition has successfully addressed and refuted attempts by Heidelberg to limit both the issues to be addressed and the scope of the impacts.

The Coalition provides comments for the NRCB on the following sections of the Application Requirements to ensure that the NRCB is not limited in the evidence of harms it must assess:

1. Section 1.4: Public Engagement and Indigenous Consultation;

¹ Letter from Heidelberg Materials North America to the Natural Resources Conservation Board, dated December 5, 2024 at pdf 2.

² Natural Resources Conservation Board, “Intervener Funding: Process Guide” (July 2024) at 1.

³ *Kelly v Alberta (Energy Resources Conservation Board)*, 2012 ABCA 19 at para 34.

⁴ Natural Resources Conservation Board, “Intervener Funding: Process Guide” (July 2024) at 3 and 5.

2. Section 2: Regulatory and Planning Framework;
3. Section 3.1: Project Description;
4. Sections 3.2 and 5.5.2.1: Water Management & Hydrogeology Impact Assessment;
5. Section 3.4: Conservation and Reclamation; and
6. Sections 5.1 & 6.1: Air Quality & Public Health.

Specific details about the Project and Application are scant. Additional issues will undoubtedly emerge during the public consultations required by the NRCB. As expressly and correctly noted by the NRCB in its draft Application requirements “[t]he final submission will be based on... the public consultations...” among other things.⁵

Section 1.4 of the Application Requirements: Public Engagement and Indigenous Consultation

Section 1.4 of the Application Requirements states that Heidelberg must provide “the presentation materials and associated documents (e.g. agendas, minutes, briefings) used for public meetings.”⁶ The Coalition requests that the NRCB broaden this requirement and require Heidelberg to provide a comprehensive consultation record of all materials received from the public, and their responses to those materials, throughout its consultation. Heidelberg should not be able to simply summarize, synthesize or take editorial license with the public’s comments or only produce selective materials from its consultation efforts. Any questions, letters or documents received, during consultation and Heidelberg’s responses must be produced without any editorialization by Heidelberg. This is entirely consistent with the approach of other regulators.

For consultation to be effective, the NRCB must require Heidelberg to present a substantially complete application prior to consulting with the public. Heidelberg appears to rely significantly on technical studies. Early disclosure of all technical studies is necessary to allow the Coalition to review those studies with its independent and unbiased experts and address issues during consultation. Completed studies should be produced immediately. The Coalition notes that Heidelberg says it has already completed them.⁷ The proposed timing is critical as it allows residents to engage with Heidelberg’s evidence and will allow for interveners to seek interim funding to retain contrary experts in a targeted way, contributing to more complete record that is developed on an orderly basis.

Failed consultation is a hallmark of a failed project. Heidelberg should be required, in the Application Requirements, to explain how it has addressed the concerns of the Bearspaw community. It is this community that bears the harms of the Project while Heidelberg reaps the financial benefit.

⁵ Natural Resources Conservation Board, “Proposed Application Requirements for the Scott Pit Project,” dated February 18, 2025 at 1.

⁶ Natural Resources Conservation Board, “Proposed Application Requirements for the Scott Pit Project,” dated February 18, 2025 at 2.

⁷ Letter from Heidelberg Materials North America to the Natural Resources Conservation Board, dated December 5, 2024 at pdf 2.

Prior to the Coalition responding with evidence refuting the Heidelberg studies, it requires the entire evidence, including technical reports, of Heidelberg. In short, the Coalition is entitled to see, analyze and respond to the entire Heidelberg case and Heidelberg should not be permitted to only present it (or alter it) at the actual hearing.

Heidelberg's technical studies must also include their underlying bases and methodologies to comply with this consultation requirement and the Coalition submits with sections 5.1, 5.2 and 6.1 of the Application Requirements as well. In past applications, Heidelberg, or its subsidiaries and affiliates, presented data in relation to the Project's impacts in confusing or misleading ways. For example, in the 2021 application, Heidelberg's noise study averaged noise levels over a 24-hour period, which included the times when the proposed Project would not be operating and producing sound. This led to understated impacts of when loud aggregate blasting would take place. This is just one of multiple examples from Heidelberg's most recent application.

Section 2 of the Application Requirements: Regulatory and Planning Framework

Section 2 of the Application Requirements states that Heidelberg must identify all pertinent municipal, provincial and federal legislation, policies, approvals and current multi-stakeholder planning initiatives applicable to the review of the Project, including applicable municipal plans among other things.⁸

Heidelberg must also provide the decisions and materials from its previous three applications to the County. The County, in the exercise of its own jurisdiction, comprehensively assessed and continues to assess where aggregate extraction, like the Project, can and cannot occur within the County.

In rejecting Heidelberg's applications, the County balanced economic, environmental, and social interests by considering the nature of the project under review, its location, public support for the project, the project's impact on the natural environment, and the project's contribution to public benefits. The County also considered that there were abundant alternative aggregate sources that would be less harmful to the public throughout the County and broader region. Over decades, the County has consistently found that developing the Project Lands for aggregate extraction was not in the public interest. These decisions are also relevant to section 3.1.13, which requires Heidelberg to provide an analysis of alternatives considered.

The County's Municipal Development Plan, and the Area Structure Plan and Aggregate Resource Plan it is developing, already provide alternatives for aggregate extraction that have been determined to be in the public interest. These plans (in place or being developed) have already balanced and assessed where aggregate extraction can and cannot occur. They are the product of extensive and ongoing study, consultation and public engagement. Any determination of the public interest in this Application must consider the County's sound approach to residential development balanced with aggregate development in appropriate areas.

⁸ Natural Resources Conservation Board, "Proposed Application Requirements for the Scott Pit Project," dated February 18, 2025 at 2.

Section 3.1 of the Application Requirements: Project Description

Section 3.1.3.g.vii requires Heidelberg to describe the planned operating hours and days for the conveyance structures.⁹ The NRCB should require Heidelberg to explain the planned operating hours and days for other aspects of its operation as well. The Application Requirements should include a similar requirement for other relevant activities such as, site preparation, extraction, blasting, crushing and screening, maintenance and reclamation, among others.

Sections 3.2.3 and 5.5.2.1 of the Application Requirements: Water Management & Hydrogeology Impact Assessment

Section 3.2.3 of the Application Requirements requires Heidelberg to “[d]etail any permanent or temporary alterations, realignments, or creation of watercourses, waterbodies, and wetlands.”¹⁰

Section 5.5.2.1 of the Application Requirements also requires Heidelberg to “[d]escribe project components and activities that have the potential to affect groundwater resource quantity and quality at all stages of the Project.”¹¹

Members of the Coalition provided comprehensive unbiased expert evidence on this topic in 2021. As those experts evidenced, the Project Lands are situated above an alluvial aquifer, which is the source of water in the area. Excavation on the Project Lands will impact this formation resulting in devastating effects:

1. it will impact the drinking water wells that tap directly into the aquifer. There are approximately 50 properties adjacent to the Project Lands that rely on domestic wells for drinking water. These are at a substantial risk of contamination from the Project. This is a risk where there is no margin for error and the NRCB should require Heidelberg to detail the Project’s impact in relation to these property owners;
2. it will lower the water table for surrounding inhabited residences, impacting water supply; and
3. it will result in the permanent regional dewatering of the wetlands across the broader area. This will have negative impacts on wetlands, creeks and rivers outside of the Project Lands.

The Application Requirements are appropriately broad and encompass this critical issue. However, there should be no room for any uncertainty. Heidelberg is proposing to excavate and operate a mine on lands that are structurally lower than an ‘updip’ environmentally sensitive area where wetlands are plentiful, wildlife abounds, and people have built their homes relying on the existing zoning of country residential.

⁹ Natural Resources Conservation Board, “Proposed Application Requirements for the Scott Pit Project,” dated February 18, 2025 at 4.

¹⁰ Natural Resources Conservation Board, “Proposed Application Requirements for the Scott Pit Project,” dated February 18, 2025 at 5.

¹¹ Natural Resources Conservation Board, “Proposed Application Requirements for the Scott Pit Project,” dated February 18, 2025 at 11.

Section 3.4 of the Application Requirements: Conservation and Reclamation

Reclamation is a crucial component of the public interest. Vague indications of future conservation and reclamation efforts are not sufficient for a project of this nature. Section 3.4 of the Application Requirements should require Heidelberg to precisely describe the expected condition of the Project Lands post mining operations and identify the appropriate end uses for the Project Lands, given that expected condition. In short, the aggregate is removed, and a deep, extensive pit will be left behind.

An aggregate mining operation on the Project Lands will leave the area permanently altered. It will be impossible to reclaim the Project Lands to an equivalent quality land use. The Project Lands are currently zoned for agricultural use and designated for future country residential use. The appropriate future use of these lands is country residential. Both current types of contemplated land use will be impossible if the Project goes ahead.

The Project Lands are also environmentally significant. They contain approximately 50 identified wetlands that include breeding grounds for various local species. They also have high ecological drainage value.

Instead of being left with land that is a home for diverse wildlife and has important ecological functions, the County will be left with a pit that is chronically saturated with water and will require perpetual water management funded by ratepayers whose property have been devalued. The Project Lands will no longer be suitable for any other planned use while profits flow to Heidelberg's foreign parent company and leave costly liabilities behind.

As such, the NRCB should require detailed conservation and reclamation plans at the outset. These should also include compensation proposals for devaluing and dewatering the surrounding lands, which will be unacceptable to the residents of the County, as well as set-aside funding for reclamation. The Application requirements should explicitly require this information.

Sections 5.1 & 6.1 of the Application Requirements: Air Quality & Public Health

The Application Requirements must specify the range of air quality considerations in either section 5.1 or 6.1 of the Application Requirements. In past applications before the County, Heidelberg, or its affiliates, has presented deficient or incomplete information and has failed to acknowledge the relevant health impacts to make its application more persuasive.

Notably, 5-micron and 2.5-micron particles must be accounted for in the Application Requirements. These are dangerous, carcinogenic particles that are found in high concentrations of 'clean' aggregate deposits, such as those found on the Project Lands. Standard gravel industry monitoring only typically samples for 10-micron particles (or larger) and without clear requirements there is a serious risk that long-term health consequences could be omitted from the Application.

Conclusion

The outcome of Application is vital to the well-being of the residents of Bearspaw. They have relied on three rejections and decades of sound municipal planning in deciding to call the County their home. The Project will inevitably upend those expectations and cause significant and unmitigable harm.

The current version of the Application Requirements acknowledges the need for an intensive review of the Project. However, there is no room for error or after the fact interpretations seeking to narrow or limit the scope of the Application. The transparent aim of reducing the Project's serious harmful impacts is vital in determining whether it is in the public interest.

Therefore, the Coalition respectfully requests that the NRCB incorporate the comments set forth in this letter into the Application Requirements.

We thank the NRCB for this opportunity to comment on the Application Requirements.

Yours truly,

The Bearspaw Community Coalition

A handwritten signature in blue ink, appearing to read "John Weatherill", enclosed within a large, loopy oval flourish.

John Weatherill, On Behalf of the Bearspaw Community Coalition