

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: December 22, 2023

CASE NO(S): OLT-22-003833

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

Applicant/Appellant

R.W. Tomlinson Limited

Subject:

Application to amend the Zoning By-law –
Refusal of application

Description:

To allow the property to be used for a
permanent asphalt plant and a ready-mix
concrete plant

Reference Number:

PLZACO 2020 052

Property Address:

8205 County Road 2

Municipality/UT:

Greater Napanee/Lennox and Addington

OLT Case No:

OLT-22-003833

OLT Lead Case No:

OLT-22-003833

OLT Case Name:

R.W. Tomlinson Limited v. Greater Napanee
(Town)

PROCEEDING COMMENCED UNDER subsection 41(12) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended.

Subject:

Site Plan

Reference Number:

PLSPMI 2022 076

Property Address:

8205 County Road 2

Municipality/UT:

Greater Napanee/Lennox and Addington

OLT Case No:

OLT-22-004616

OLT Lead Case No:

OLT-22-003833

Heard:

August 14, 2023, closing submissions
received September 22, 2023, by Video
Hearing

APPEARANCES:**Parties****Counsel**

R.W. Tomlinson Ltd.
("Tomlinson/Applicant/Appellant")

M. Polowin
J. Polowin
K. Duquette

Town of Greater Napanee ("Town")

J. Ewart

Keep Napanee Great ("KNG")

R. Lindgren
J. Wilson

DECISION DELIVERED BY D. CHIPMAN AND ORDER OF THE TRIBUNAL

[Link to Order:](#)**INTRODUCTION**

[1] The matter before the Tribunal was a hearing of the appeal filed by R. W. Tomlinson Ltd. under s. 34(11) of the *Planning Act* ("Act") on the refusal by the Town of Greater Napanee ("Town") on an application to amend the Zoning By-Law ("ZBA") and pursuant to s. 41(12) of the Act on the Town's failure to consider the Site Plan Application within the legislated timeframe.

[2] The Applicant is proposing to establish a permanent asphalt plant on a portion of the lands approximately 6.2 hectares ("ha") (15.4 ac) in size, where crushed stone and sand will be combined with asphalt cement in a process to produce hot-mix asphalt ("HMA"). The proposed HMA plant would be located immediately adjacent to the R. W. Tomlinson Napanee Quarry, which is an active operating quarry licensed under the *Aggregate Resources Act* ("ARA"). R. W. Tomlinson owns an approximately 27 ha (66.6 ac) parcel of land described as Part of Lot 21 & 22, Concession 7, in the former Township of North Fredericksburg, and known municipally as 8205 County Road 2. ("Subject Lands").

[3] The Applicant is also seeking zoning permission to include, subject to a holding provision, a ready-mix concrete batching plant that is not specifically contemplated at this time.

[4] The Subject Lands are zoned 'M4- Extractive Industrial'. In accordance with the Town Official Plan ("OP"), the Applicant is seeking a site-specific zoning while maintaining the M4 zoning (M4 Zone to M4-3-H Zone). Currently the M4 Extractive Industrial zoning does not permit a permanent asphalt plant on the Subject Lands, it does however, allow for a portable plant that can only remain at one location for no more than one year or that is specific to the duration of a road project, whichever is shorter. The Applicant has historically operated a portable asphalt plant onsite in 2018 and 2021.

[5] Keep Napanee Great ("KNG") was conferred Party Status at the Case Management Conference on September 20, 2022, and was directed to work with the Town to coordinate expert witnesses to reduce duplication. The Tribunal was furnished with a hearing plan which outlined the cooperative witnesses on behalf of the Town and KNG as well as the Appellant's respective witnesses.

[6] For the reasons that follow, the Tribunal has determined that the applicable Provincial, County and Town planning policies have demonstrated that the proposed permanent HMA plant is a compatible land use, and that potential impacts related to dust, odour, noise and traffic can be minimized and mitigated in accordance with provincial and municipal requirements and best management practices.

[7] Therefore, this appeal is allowed, and the ZBA approved, subject to the conditions outlined in the draft ZBA and the Site Plan agreement.

HISTORY OF THE APPLICATION PROCESS

[8] The application was submitted in August of 2020, along with the following materials:

1. Planning Justification Report (MHBC, August 2020)
2. Stormwater Management Design Brief (Groundwork Engineering Limited, June 2020, revised December 2020)
3. Acoustic Assessment (Freefield Ltd., August 2020, revised January 2021, further revised May 2021)
4. Environmental Impact Assessment (Ecological Services, June 2020)
5. Traffic Impact Assessment (Castleglenn Consultants, July 2020, revised January 2021)
6. Air Quality Impact Assessment (Golder, September 2021)
7. Best Management Practices Plan for the Control of Fugitive Dust (Golder, September 2021)
8. Best Management Practices Plan for Odour (Golder, October 2021)

[9] Through pre-consultation with the Town and through public comments received, additional studies were submitted which included an air quality assessment and best management practices plans for dust and odour. The ZBA was subject to agency and technical review process including expert peer reviews retained on behalf of the Town.

[10] Based on the Town's overall review of the documents submitted, planning staff recommended that the Town approve the ZBA application. On April 5, 2022, Town Council refused the application.

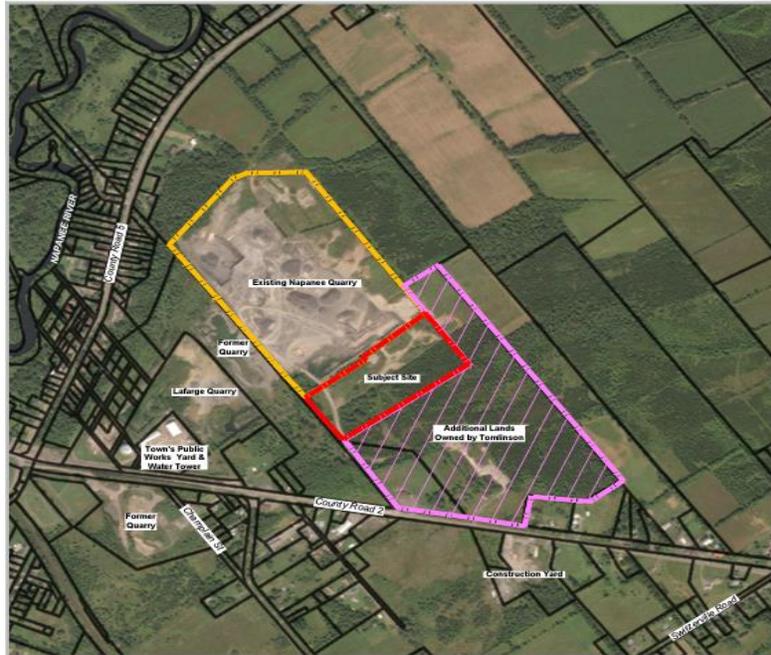
[11] A Site Plan application had also been submitted. The Town informed the Applicant that they would not be proceeding with any review efforts at the time of the

submission. The Site Plan application was appealed based on the Town's failure to make a decision within 60 days, pursuant to s. 41(12) of the Act.

THE DEVELOPMENT PROPOSAL

[12] The Applicant anticipates producing a maximum of 80,000 tonnes of asphalt per year, depending upon demands during construction season. The HMA plant would be operational for approximately 160 days out of the year, and shipping will mostly occur during the day. The Applicant is seeking approval for a 24-hour operation to service highway projects that require overnight paving such as Highway 401. A new truck route off County Road 2 will be used to access the asphalt plant.

[13] The HMA Plant consists of several components, including bins, conveyors, tanks, the rotary drum dryer/mixer and silos. The HMA plant essentially combines three main input materials: aggregate materials, Recycled Asphalt and Liquid Asphalt Cement, to produce the HMA product. The processing operation is not enclosed within a building. Raw aggregate materials and Reclaimed Asphalt Pavement are proposed to be stored outside.



SITE AND CONTEXT

[14] The Applicant's property is approximately 27 ha in total, the area required for the proposed HMA plant includes structures, open storage and landscaped areas and is limited to the northern portion of the property (approximately 6.2 ha / 15.4 ac). Of the 6.2 ha (15.4 ac) within the Subject Lands, the physical footprint of the HMA plant will be approximately 2,220 meters squared ("m²") (0.22 ha), with the remainder of the area being used for truck movements, materials storage and setbacks. The surrounding land uses are quarries, industrial operations, wooded areas, and residential and commercial development along County Road 2. The Applicant also owns the lands immediately north, east and south of the Subject Lands. To the west are industrial uses and the Lafarge Quarry. The Subject Lands are in a predominantly disturbed condition, being an area where excess overburden from the quarry and imported topsoil were historically stored. They also contain a portion of the existing driveway for the quarry. The southern half of the Tomlinson lands contain red cedar woodlands and a mixed woodland. Residential uses occur in a dispersed form to the south, and in a more cohesive manner to the northwest and north, alongside County Road 5 (Palace Road).

[15] The Subject Lands are not within the ARA licensed area of the Applicant's quarry.

[16] Adjacent land use designations include Fringe Area (south and east), Arterial Commercial (south along County Rd 2), Industrial (west) and Aggregate (north). The Applicant owns the lands designated Fringe Area adjacent to the Subject Lands. No portion of the Fringe Area lands are subject to this appeal.

AGREED FACTS

[17] It was agreed by all Parties that the adjacent quarry is an existing land use licensed to operate under the ARA (Licence No.4425), and the Environmental Compliance Approval ("ECA") application for the asphalt plant is not before the Tribunal.

[18] It was agreed that both the HMA plant and ready-mix concrete plant are also subject to approvals from the Province through Ministry of Environment, Conservation and Parks ("MECP") under the *Environmental Protection Act* ("EPA") and its regulations, which would be in the form of an ECA.

[19] All Parties agreed that the Subject Lands are designated 'Aggregate' in the Town's OP. Nearby lands along County Road 2 are primarily designated 'Industrial' and 'Arterial Commercial'. There are existing industrial uses in the immediate area including licensed quarries, and the Town's public works yard. The HMA plant and future concrete batching plant are proposed to be located on lands immediately south of the quarry.

[20] From the evidentiary record, inclusive of maps, photographs, and the testimony of all witnesses, the Tribunal was provided with a comprehensive overview of the history

of the Quarry, the proposed HMA site, the immediate and surrounding spatial context and features of the Site. None of this factual information was disputed.

LEGISLATIVE FRAMEWORK

[21] When considering an appeal of an application to amend a ZBA filed pursuant to s. 34 of the Act, the Tribunal must have regard to matters of provincial interest as set out in s. 2 of the Act which requires that decisions of the Tribunal affecting planning matters be consistent with the Provincial Policy Statement, 2020 (“PPS”). This provincial document sets out detailed policies that address matters such as land use compatibility.

[22] Section 41 of the Act requires that an application for a Site Plan be submitted to establish the design and technical aspects of the proposed plant in terms of building and open storage locations, structural elevations, lot grading and drainage, stormwater management, landscaping, etc.

[23] In consideration of the statutory requirements set out above, the Tribunal is directed to render a decision that is, pursuant to s. 2.1(1) of the Act, having regard to the decision made by Council, and to any information and materials that Council considered in making its decision. Lastly, the Tribunal must be satisfied that the proposed ZBA and Site Plan application represent good planning and is in the public interest.

WITNESSES

[24] The Tribunal heard from sixteen expert witnesses called by the Parties. All expert witnesses were qualified by the Tribunal, upon their education, experience, technical and speciality expertise, qualifications and/or professional accreditation to provide expert opinion evidence in their respective fields of expertise. Most had

previously been qualified by, and appeared before, the Tribunal or the former Ontario Municipal Board. They were:

Those individuals appearing on behalf of the Applicant:

1. Neil DeRuyter, Land Use Planner
2. Emily Lau, Air Quality Engineer
3. Sadie Bachynski, Engineer, Acoustic Assessment (under summons), Cambium Inc., Peer Review
4. Hugh Williamson, Engineer, Acoustic Assessment
5. Trevor Copeland, Engineer and Senior Project Manager (under summons)
6. Arthur Gordon, Traffic and Transportation Engineer, Traffic Impact Study
7. Vanessa Skelton, Engineer and Transportation Project Manager (under summons), Peer Review
8. Rob Snetsinger, Environmental Consultant
9. Martin Burger, Civil Engineer Stormwater Management
10. Byron Keene, Senior Water Resources Engineer, Jewel Engineering (under summons) to conduct a Peer Review of Stormwater Management
11. Dave Eastcott, Water Resources Technologist with Quinte Conservation Authority, Peer Review
12. Mark Touw, Land Use Planner, Arcadis IBI Group

Those individuals appearing on behalf of the Town of Greater Napanee and Keep Napanee Great:

1. Scott Manser, Engineer, Engineer, air quality assessment, odour, and dust, ORTECH Consulting Inc.,
2. John Emeljanow, Engineer, Acoustics Assessment, Valcoustics Canada Ltd.
3. Kent Randall, Land Use Planner, EcoVue Consulting Services Inc. (Town)

4. Mark Dorfman, Land Use Planner

[25] Three lay-witnesses appeared at the hearing to make submissions and provide evidence on the issues raised. They provided no evidence other than their own sworn testimony and their originally filed objections. They are:

1. Catherine Hannah, Lay-witness
2. Casey Wells, Lay-witness
3. Amelie Mills, Lay-witness

[26] The lay-witnesses addressed concerns, and essentially looked for reassurances as to how information will continue to be provided and how ongoing future concerns and matters of compliance would be addressed in terms of community impacts on air quality, dust and noise.

EVIDENCE

[27] The Tribunal received and recorded all exhibits to the hearing, which were identified and assigned an exhibit number.

THE ISSUES

[28] The Issues List forming part of the Procedural Order governed the presentation of the evidence and the Hearing of this Appeal. From a policy context, the issues before the Tribunal require the general determinations of whether the proposed ZBA and associated Site Plan application have sufficient regard to the Provincial interests listed in s. 2 of the Act, is consistent with the Provincial PPS, conforms to the County of Lennox and Addington (“County”) Official Plan (“COP”), conforms to the OP, and in general, represents good planning and is in the public interest.

Was the Notice of Refusal issued by the Town of Greater Napanee consistent with the decisions of the Council? Did the Refusal meet the requirements of the Planning Act?

[29] The crux of Issue 1 was the wording of Town Council's refusal of the ZBA through Resolution No. 167/22 which was presented to Council on April 5, 2021. The Applicant emphasized that Council's refusal through Resolution No. 167/22 should be verbatim to what occurred in the meeting by simply stating, without support or elaboration.

[30] Contrary to the above, the Notice of Refusal issued on April 12, 2021, did not simply state what had occurred, but instead expanded on the resolution, by stating:

The proposed By-law Amendment is not in the best interests of the community, does not adequately protect drinking water sources and groundwater, may result in unacceptable adverse impacts on nearby residents due to dust, odour, traffic and noise emissions, and is generally not compatible with the existing uses in the area.

[31] The Applicant noted that while this Appeal is being heard as a hearing *de novo*, it bears saying that the Notice of Refusal does not conform to the language adopted by Council, and therefore Council never voted on the language used in the issued resolution that included the words:

does not adequately protect drinking water sources and groundwater, may result in unacceptable adverse impacts on nearby residents due to dust, odour, traffic and noise emissions. And is generally not compatible with the existing uses in the area.

[32] The Applicant submitted that the Notice of Refusal was not valid, was not borne out by the studies before Council, and represents an attempt to add colour to the proceedings. It was their position that the Appeal is a non-decision Appeal, also under s. 34 (11) of the Act, and that there is no evidence of any resolution or By-law that delegated authority to staff to issue a Notice of Refusal based on grounds not adopted

by Council. The Applicant maintains the Notice of Refusal is therefore of no force and effect, and merely represents an attempt by staff to supplement the bare language of the Refusal Resolution, with no authority.

[33] The Town stated that the Notice must also provide “a brief explanation of the effect, if any, that the written submissions made before the decision of Council and the oral submissions provided at the public meeting, had on the decision”. The Town submitted the Notice provided an explanation of the purpose and effect of the ZBA, a statement that Council made a decision to refuse the ZBA, and a written explanation for that refusal. The Town maintained that the reason for refusal aligns with the Resolution that was passed at the Council meeting on April 5, 2021, which notes that the ZBA is being denied on the basis that it is “not in the best interests of the community”.

[34] The Town stated the explanation of the reasons for refusal refer to the “best interests of the community”, which was simply reflective of the number of public comments received.

[35] The Town relied upon s. 2.1(1) & (3) of the Act and asked that the Tribunal have regard to Council’s decision to refuse the application. The Town submitted that it followed all statutory requirements of the Act in processing the ZBA application. Public notices were provided, well-attended public meetings were held, and staff reports were prepared. At the conclusion of this process and assessing all that it had heard, Council decided to refuse the requested rezoning for reasons set out in its decision.

[36] The Town’s Counsel stated s. 2.1(3) of the Act, which explicitly states that “written and oral submissions from the public relating to the planning matter” are to form part of the “information and materials” that the Tribunal “shall have regard to.”

[37] The Tribunal’s role is to consider the reasons expressed by Council and think about them when evaluating the evidence heard at the Hearing. At a Hearing, all Parties

are provided with the opportunity to present a full case and provide additional evidence should they so choose. The public is also invited to participate in the Hearing in various ways. Most importantly, the Tribunal must exercise its independent judgement, based on the totality of evidence before it when arriving at its conclusion.

[38] In *City of Ottawa v. Minto Communities Inc.*, 2009 CanLII 65802 (ON SC) (“*Minto Case*”) at paragraph 30 the Tribunal notes:

Furthermore, it is important to keep in mind that the appeal process before the Ontario Municipal Board is not merely a *lis* between parties, but a process requiring the OMB to exercise its public interest mandate. The decision to be made by the Board transcends the interests of the immediate parties because it is charged with responsibility to determine whether a land planning proposal is in the public interest. At first instance, that public interest is determined by Municipal Council, but on an appeal the Board has the obligation to exercise its independent judgment on the planning merits of the application and to assess the proposal and the positions of the parties from the perspective of applicable legislation, regulations, provincial plans, the provincial policy statement, official plans and bylaws and even the potential impact on neighbouring municipalities. In doing so, it brings its own expertise to bear.

[39] In the *Minto* case, the Tribunal found that having regard for Council’s decision is not the same as maintaining it, and that it is the Tribunal’s responsibility to, based on the totality of the evidence provided, decide whether the ZBA and proposed Site Plan is in the public interest in this hearing *de novo*.

[40] In this matter, the evidence presented was extensive. It was the role of this Tribunal to consider all of the evidence to move this matter forward to a conclusion.

Is the proposed Zoning By-law amendment to permit a permanent asphalt plant at 8205 County Road 2 in Napanee consistent with the 2020 Provincial Policy Statement?

[41] Section 2 of the Act requires the Tribunal to have regard to the matters of Provincial interest identified in the Provincial Policy Statement, 2020, (“PPS”).

[42] Section 1.1.1 a) of the PPS requires the promotion of efficient development and land use patterns and s. 1.1.1 c) states that development and land use patterns which may cause environmental or public health and safety concerns should be avoided.

[43] The Parties agreed that that the proposed asphalt plant is a “Major Facility” and that the residences are sensitive land uses as defined in the PPS.

[44] Sections 1.2.6.1 and s.1.2.6.2 of the PPS provide:

1.2.6.1 Major facilities and sensitive land uses shall be planned and developed to avoid, or if avoidance is not possible, minimize and mitigate any potential adverse effects from odour, noise and other contaminants, minimize risk to public health and safety, and to ensure the long-term operational and economic viability of major facilities in accordance with provincial guidelines, standards and procedures.

1.2.6.2 Where avoidance is not possible in accordance with policy 1.2.6.1, planning authorities shall protect the long-term viability of existing or planned industrial, manufacturing or other uses that are vulnerable to encroachment by ensuring that the planning and development of proposed adjacent sensitive land uses are only permitted if the following are demonstrated in accordance with provincial guidelines, standards and procedures: adverse effects to the proposed sensitive land use are minimized and mitigated; and potential impacts to industrial, manufacturing, or other uses are minimized and mitigated

[45] The PPS defines “adverse effects,” with reference to the definition in the *Environmental Protection Act* (“EPA”), to mean one or more of; a) impairment of the quality of the natural environment for any use that can be made of it; b) injury or damage to property or plant or animal life; c) harm or material discomfort to any person; d) An adverse effect on the health of any person; e) impairment of the safety of any person; f) rendering any property or plant or animal life unfit for human use; g) loss of enjoyment of normal use of property and h) interference with normal conduct of business.

[46] Mr. De Ruyter stated that the proposed asphalt plant will be located on lands designated and zoned for aggregate extraction uses but are not located within the ARA licensed area of the Napanee Quarry.

[47] He further explained that there are extensive Industrial-designated lands along County Road 2 west of the Subject Lands. He noted, there are existing and former quarries, and the Town's public works yard within the vicinity of the Subject Lands. In addition, he explained that Tomlinson owns the lands immediately north, east and south of the Subject Lands.

[48] Mr. De Ruyter stated the proposal in accordance with PPS s.1.2.6.1, which was peer reviewed and found acceptable by Town staff, includes appropriate methods to mitigate and minimize adverse effects between a major facility and sensitive land uses that include the use of design measures, buffering and/or separation distances.

[49] These site-specific measures include:

- a. Separation distance between sensitive land uses and the heavy industrial uses implemented through site-specific zoning. The site-specific zoning ensures that the asphalt plant and future concrete plant will only be located in the M4-3 Zone of the Subject Lands;
- b. Siting the asphalt plant including the batch tower, silo, tanks, baghouse, feed bins, conveyors and outdoor storage beyond 300 m of any sensitive land uses;
- c. Placement of the entrance directly onto County Road 2, an existing truck route, and locating the internal driveway on the eastern portion of the Subject Lands with Tomlinson owning the adjacent lands on either side of the driveway. The closest off-site house to the proposed entrance and driveway is owned by Tomlinson (8173 County Road 2);
- d. Intervening lands also owned by Tomlinson to act as a further buffer area;

- e. Retaining intervening wooded areas (open space) between the proposed asphalt plant and sensitive land uses and County Road 2;
- f. Acoustic barriers;
- g. Restrictions on plant equipment; and,
- h. Implementation of best management practices to assist with controlling dust and odour emissions from the plant.

[50] Mr. De Ruyter stated the MECP guidelines on land use compatibility under the EPA are intended to be a planning tool used to separate incompatible land uses when a change in land use is proposed. He informed the Tribunal that Tomlinson has historically operated a temporary HMA plant with the approval and within the guidelines of the MECP Guideline D-6 that are used to prevent, or minimize, the encroachment of sensitive land use upon industrial land use and vice versa due to possible adverse effects on sensitive land use created by industrial operations.

[51] Mr. De Ruyter advised that in recognition of this, a critical design principle for the asphalt plant has been to maintain a separation of 300 meters (“m”) from the actual permanent asphalt plant footprint and would be specifically identified and regulated as part of Site Plan Control, as well as the Environmental Compliance Approval (“ECA”).

[52] Mr. De Ruyter illustrated to the Tribunal that the nearest houses are situated in a more concentrated type of settlement to the north and northwest and located more than 300 m from the Subject Lands. Individual residential lots along County Road 2, the closest off-site houses, are located on lands that are designated Industrial and are located along a major arterial road that is considered a truck route and within close proximity to the Lafarge Quarry as well as Tomlinson’s Napanee Quarry, both licensed quarry operations under the ARA.

[53] Mr. De Ruyter stated that there are no significant natural features (as outlined in PPS s.2.1.4, 2.1.5, 2.1.6 and 2.1.7) located on the Subject Lands. There will be no

negative impacts on potential species at risk habitat (Eastern Meadowlark) on adjacent lands due to the separation distance (150 m) and intervening large berm and red cedar woodland.

[54] Mr. Randall maintained that the construction of the asphalt plant has the potential to limit the development and efficient use of lands in the vicinity. According to the D-6 Guidelines he stated, the area within the separation distance (buffer area) should only contain uses that are compatible with the industrial use and should not contain sensitive uses.

[55] Mr. Randall proffered that since the proposed HMA plant will be located on lands outside of the licensed area of the quarry, it appears that the 300 m separation distance would extend to areas that are not currently within a buffer from quarry operations and further the types of uses that will be permitted within the buffer area will be restricted, which limits the promotion of efficient development and land use patterns, contrary to s.1.1.1 (a) of the PPS.

[56] Mr. Randall explained that the documents submitted by the Appellant identify types of emissions beyond those that might result from normal quarry operation including naphthalene. He opined that the Applicant has not adequately demonstrated a land use pattern that will not cause environmental or public health concerns, as required in s.1.1.1 (c) of the PPS.

[57] Section 2.5.2.4 of the PPS states; “Mineral aggregate operations shall be protected from development and activities that would preclude or hinder their expansion or continued use or which would be incompatible for reasons of public health, public safety or environmental impact.” Mr. Randall opined that the above provision provides significant protection for the continuation of mineral aggregate operations from development and activities that would hinder their expansion or use.

[58] In cross-examination, both Mr. Randall and Mr. Dorfman agreed that the proposed concrete batching plant is a Class II facility, and that the required separation distance is only 70 m and that there are no sensitive land uses within that distance.

[59] The Tribunal accepts the evidence of both Mr. De Ruyter and Mr. Touw, who has served as the Town's planning consultant for 13 years, and who was tasked with preparing the original report for the Town, that the proposed development is consistent with the PPS. It has been satisfactorily demonstrated that the HMA plant conforms to the PPS regarding minimum separation distances and will comply with applicable regulatory and guideline limits on nearby sensitive land uses, through methods to mitigate and minimize adverse effects between a major facility and sensitive land uses.

Does the rezoning conform with the County of Lennox and Addington Official Plan?

[60] It was agreed that the Subject Lands are under the single land use designation of 'Urban Area' in the County OP. As confirmed by the County and Town through pre-consultation, an amendment was not required to the County's OP based on the broad policy direction in C1.3 'Permitted Uses in Urban Areas', which permits a range of uses in accordance with local OP policies and D5.2 (Mineral Aggregate Resources, Location) land use designations.

[61] Mr. DeRuyter opined that several of the D5 policy objectives appear to mimic the PPS mineral aggregate policies in stating that proposed asphalt plants shall protect mineral aggregate resources for long-term use and would not hinder adjacent quarries, including the Tomlinson's Napanee Quarry.

[62] Policy E2.2.2 of the County OP states that the function of all County Roads is to connect Urban Areas and Provincial highways. Mr. De Ruyter demonstrated that the HMA plant would be accessed from a County Road utilizing a new driveway leading off

from County Road 2. County Road 2 is classified as a “Rural Arterial” and County Road 5 (Palace Road) is classified as an “Urban Collector”, and both roads are existing truck routes.

[63] Policy E2.3 (b) of the County OP states that MECF guidelines shall be considered to ensure appropriate land use compatibility between industrial and sensitive land uses when considering development applications.

[64] Mr. De Ruyter noted that the MECF guidelines have been considered in this application and conceptual design of the proposed plant. The Subject Lands are separated and buffered from sensitive uses. Further, the ECA process under the EPA ensures that any potential adverse effects are minimized and mitigated in accordance with Provincial guidelines for operating an HMA plant.

[65] The Tribunal finds that the proposed asphalt plant meets the overall policy direction contained in the County’s OP with the methods outlined in the Tomlinson’s mitigation and minimization measures.

Town of Greater Napanee Official Plan

[66] The ‘Aggregate’ designation within the OP allows for the extraction of aggregate resources such as gravel, sand, and stone. The designation also permits a number of associated operations in Policy 4.3.3.1 (Permanent Uses) including uses such as blasting, crushing, screening, washing, storage, aggregate recycling and other similar uses. Permanent asphalt and concrete plant uses are contemplated within this policy:

Permanent concrete batching plants, and permanent asphalt batching plants may be permitted by placement in a separate zone category provided these associated operations are compatible with other uses permitted by this Plan and in no way retard the rehabilitation of these areas for other land use. The Zoning By-law will differentiate between permanent and portable asphalt and concrete batching plants and outline separate zone provisions applying thereto.

[67] The Tribunal heard that as required by Policy 4.3.3.1 of the PPS, it must be demonstrated that the permanent concrete and HMA plant uses are compatible with other uses permitted by the OP and that in no way retard the rehabilitation of these areas for other land uses.

[68] Mr. De Ruyter stated that although an OPA is not required for this proposal, the ZBA must consider and address other applicable policies to determine if, and describe how, the proposal is “compatible with other uses” permitted by the OP.

[69] The Subject Lands are approximately 300 m from lands designated ‘Low Density Residential’ in the OP along Palace Road. Mr. De Ruyter stated that there are, and will remain, industrial uses in-between the Subject Lands and the residential uses in the long-term. The 300 m buffer area comprises an approximate area of 48.7 ha with approximately 65% of the buffer area, and are lands owned by Tomlinson including the existing quarry. No portion of the buffer areas contain any houses or other sensitive uses, and no lands within the buffer area are zoned or designated Residential or Institutional. He noted, the entire area is located within the existing 500 m buffer from the quarry. Further, the proposal would not prevent the efficient expansion of the settlement area given the presence of a licensed, active quarry and supply of other available lands for potential urban expansion.

[70] Mr. De Ruyter informed the Tribunal, and Mr. Randall agreed on cross-examination, that with the exception of the Fringe Area, none of the adjacent designations permit new residential uses and that new dwellings are prohibited within 500 metres of an area zoned Extractive Industrial Zone in which the removal and processing of rock is involved.

[71] The Tribunal heard that lands designated as ‘Fringe Area’ are generally identified on the basis of being possible directions of future growth, beyond the 20-year time

horizon of the OP, and where in the path of the logical extension of existing designated growth areas and expanding municipal services. Both agreed that no urban development is permitted on these lands until a Secondary Plan has been completed. Mr. De Ruyter informed the Tribunal that Tomlinson currently owns the lands designated 'Fringe Area'.

[72] Mr. De Ruyter further clarified that the Town's planning consultant, did not recommend the Fringe Area as the next logical area to be considered for urban development on the basis of several existing development constraints not limited only to the existing quarry. Section 4.3.3.1 of the OP speaks to compatibility "with other uses permitted by this Plan". New sensitive land uses are not permitted in the Fringe Area designation.

[73] It was Mr. Randall's position that while it is understood that the Subject Lands are designated Aggregate, it is important to note that the lands are located within an Urban Settlement Area and are subject to those policies, as well. Section 4.6, which applies to the Urban Settlement Area, includes policies for residential, commercial, industrial and institutional uses and also policies related to urban design and Fringe Areas. It does not include policies for aggregate uses and operations. He stated that this is an important distinction, as compatibility issues associated with aggregate uses and operations are more likely to arise in the main settlement area where development generally has a greater density and where sensitive land uses are generally more prevalent.

[74] He proffered that using the minimum area of influence distance of 500 m noted in s.4.3.3.6, there is a significant area within the adjacent 'Fringe Area' that has not been assessed. He stated that the 'Fringe Areas' must be properly planned, environmentally sound, and provide "open long term strategic options" for growth.

[75] Mr. De Ruyter noted that Mr. Randall and Mr. Dorfman's Witness Statements reference 500 m from the proposed asphalt plant. He demonstrated that the

recommended minimum separation distance for the proposed asphalt plant is 300 m based on the MECP D-6 Guideline on Compatibility between Industrial Facilities (“D-6 Guideline”). The D-6 Guideline does not recommend a minimum separation distance of 500 m for the proposed asphalt plant. The distinction in the separation distances is that new dwellings are prohibited within 500 m of the existing Tomlinson Napanee Quarry in accordance with s. 4.4 g) of the Town’s ZBA. He emphasized that this provision exists regardless of the application for the proposed asphalt plant.

[76] The Tribunal is satisfied through the evidence presented by Mr. De Ruyter that no changes to the OP designation are required to permit the proposed uses. The proposal meets the requirements of compatibility with surrounding designations, as none of the remaining adjacent designations permit sensitive uses such as new residential. Siting the asphalt plant including the batch tower, silo, tanks, baghouse, feed bins, conveyors, and outdoor storage beyond 300 m of any sensitive land uses will also aid in ensuring compatibility.

[77] The Tribunal heard that the Town has yet to undertake a Secondary Plan on the ‘Fringe Area’ which is intended to accommodate, or potentially accommodate, future urban growth within the urban settlement area. Given the existing aggregate extraction activity directly abuts the lands to be rezoned, as well as the presence of another licensed quarry to the west between the Subject Lands and the edge of the urbanized area, the possible future development in this area will already be constrained due to these existing aggregate operations. As such, the addition of a permanent asphalt plant and a concrete batching plant will not prevent the future development of the ‘Fringe Area’ of the Town from being appropriately planned and used for serviced, urban growth. The Tribunal is satisfied that the site-specific zoning ensures that the HMA plant and future concrete plant will only be located in the M4-3 Zone of the Subject Lands.

Does the proposed use implement and conform with the Aggregate designation in the Town's Official Plan?

[78] It was agreed by the Parties that the Subject Lands are designated Aggregate on Schedule "C" of the OP. According to s.4.3.3.1 of the OP , permanent asphalt plants are permitted in the Aggregate designation subject to "placement in a separate zone category".

[79] Permanent concrete batching plants, and permanent asphalt batching plants may be permitted by placement in a separate zone category provided these associated operations are compatible with other uses permitted by this Plan, and in no way retard the rehabilitation of these areas for other land use.

[80] The current zoning on the Subject Lands permits a wide range of aggregate extraction and related uses including a pit, quarry, aggregate recycling and processing facilities, and portable asphalt and concrete plants.

[81] It was Mr. Randall's opinion, that mineral aggregate operations should be located outside of settlement areas, which are intended to be the focus of growth and development that would otherwise conflict with the aggregate operations. In instances where there are existing aggregate operations within settlement areas, all measures must be taken to avoid conflict with existing and future sensitive land uses. As such, expansions to those existing operations should be limited as much as possible. In his opinion, any proposed expansion to an aggregate operation within a settlement area must clearly demonstrate that the existing and future development patterns within the surrounding lands are not negatively impacted.

[82] Mr. Randall was of the opinion that given that the permanent asphalt plant does not meet the compatibility test in s.4.3.3.1 of the Greater Napanee Official Plan

(“GNOP”), the proposed use does not implement and conform to the Aggregate designation in the GNOP.

[83] Mr. Dorfman opined that the permitted uses in the Aggregate designation only apply outside the Urban Settlement Area and therefore does not apply to the Subject Lands.

[84] Mr. De Ruyter explained that Mr. Dorfman was inferring that there are currently no permitted uses from an GNOP perspective on the Subject Lands or existing quarry despite those lands being designated Aggregate. He stated that by applying Mr. Dorfman’s interpretation, the EPA and Rural designations in the Urban Settlement Area shown on Schedule “C” would have no meaning or effect.

[85] The Tribunal agrees that the proposed use implements and conforms with the Aggregate designation as outlined by Mr. De Ruyter. The Subject Lands allow the HMA to be subject to a separate zone category as sought by the Applicant.

Is the proposed use appropriately designed, and sufficiently buffered and separated from sensitive land uses to ensure appropriate land use compatibility and the prevention or mitigation of any potential adverse effects in accordance with applicable provincial standards and requirements?

Noise

[86] The Town required that the noise study be prepared in support of the application and include the cumulative impacts of the combined quarry and asphalt plant operations. The assessment of potential impacts and noise mitigation measures through the study was peer reviewed.

[87] The Tribunal heard it was identified that noise levels at all existing nearby residential uses meet Provincial standards. With respect to 24-hour operations, the Tribunal was informed lower noise limits apply during the evening/overnight hours and that the ECA process also places limits on noise for 24-hour operations if such an operation is approved by the Province.

[88] The noise study prepared in support of the application included the cumulative impacts of the combined quarry and asphalt plant operations. Mr. Williamson stated that an Acoustic Assessment Report was carried out according to the applicable MECP noise assessment guidelines (NPC-300 Guidelines) and applicable policies in the GNOP.

[89] He further explained that noise levels have been predicted at the critical receptors using “predictable worst case” assumptions under normal operations. The predictable worst case is interpreted as meaning the greatest noise impact anticipated under normal operating conditions. The assessment considered the noise impacts on nearby sensitive land uses. The assessment concluded that noise levels from the asphalt plant at nearby receptors are in compliance with MECP sound level limits as set out in NPC-300, provided that the required noise mitigation measures such as restrictions on operations, berms and barriers have been designed to ensure all operations are in compliance with the applicable sound level limits. Based on the anticipated number of truck movements from the quarry to the asphalt plant, noise from this operation was considered insignificant.

[90] Mr. Emeljanow stated that he needed additional information and clarification before he could comment fully on Tomlinson’s noise studies and, therefore, he could not support the reports’ findings that the proposed facility could operate in compliance with the NPC-300 Guideline Limits. He stated that the Tomlinson’s Acoustic Assessment Report should include an assessment of impulse noise sources, and the background sound levels at the receptors need to be better calculated to ensure existing quarry

traffic is removed and accurate sound levels are applied. He further emphasized that there is the potential for exceedances of the NPC-300 Guideline Limits and that additional receptors should be studied. He identified that the Tomlinson report only modelled generic equipment and not the existing quarry operations or the equipment that will be used. It was also submitted that the predictable worst-case scenario likely was not assessed for each possible receptor.

[91] The Tribunal finds that through the evidence provided, it has been sufficiently demonstrated that cumulative noise levels from the asphalt plant and existing quarry will meet the MECP sound level limits within the noise mitigation measures. The Tribunal notes that the information provided in testimony by Mr. Emeljanow did not focus on how the sound levels will affect the sensitive areas, but instead argued that there are gaps and flaws in the data used when assessing the noise impacts of the proposed facility.

Environment

[92] The Tribunal heard there is no significant woodlands, significant wetlands, significant valleylands or Areas of Natural and Scientific Interest (ANSI) located on or within 120 m of the Subject Lands. Potential species at risk habitat for Eastern Meadowlark is present in an adjacent field approximately 150 m east of the Subject Lands. The assessment concluded that this habitat, and these species, will not be at risk from asphalt plant activities as a result of this separation distance and intervening buffers including an existing 10 m berm, dense red cedar woodland, and a treed fence line.

Air Quality, Odour- dust

[93] The Tribunal heard that Tomlinson provided an Odour Best Management Practices Plan, and also assessed emissions that impact odour production. These assessments were peer reviewed on behalf of the Town and it was found that odour is not anticipated to negatively affect compatibility. It was demonstrated to the Tribunal

that based on the assessed and calculated amounts provided by the sensitive receptors and based on the dispersion modelling both the asphalt plant and the quarry could operate without exceeding air quality criteria.

[94] Tomlinson also provided a detailed Air Quality Impact Assessment, that was peer reviewed by the Town, that examined a number of emission sources that could generate emissions such as dust. A Best Management Practices Plan for the Control of Fugitive Dust was also submitted. Peer reviews found that any air emissions were below standards in the legislation. These findings were maintained through the expert's cross-examination of the evidence provided to the Tribunal.

[95] Mr. Manser identified the following material deficiencies in Tomlinson's data collection, analysis, and predicted air quality and dust impacts which demonstrate that Tomlinson has not met its evidentiary burden. He stated that there is missing information, evidentiary gaps, unsubstantiated assumptions in the Applicant's Emission Summary and Dispersion Modelling Report, Air Quality Impact Assessment, dust and odour Best Management Practices Plans, and Air Quality Impact Assessment Addendum.

[96] He found that a number of the Applicant's studies fall short in their conclusions. He provided the example of the Air Quality Impact Assessment and Air Quality Impact Assessment Addendum which in his opinion, showed exceedances of the air quality standards at off-property locations for total suspended particles and silica. He opined that all emission sources of total suspended particles and silica should have been included in the Emission Summary and Dispersion Modelling Report. He maintained that the Air Quality Impact Assessment used the incorrect default silt content for unpaved and paved roads resulting in a significant underestimation of emissions. Based on this, he concluded that it is premature to conclude that the proposed facility will comply with the applicable legislative and policy requirements. However, Mr.

Manser agreed on cross-examination that there is no specific evidence of exceedances of emissions.

[97] Questions regarding potential negative impacts on public health were addressed in an email presented to the Tribunal from KFL&A Public Health which undertook a review of the proposal, and prepared an evidence brief that assessed potential public health implications from an asphalt plant. It identified that there is low risk to short-and long-term health of residents due to impact on air quality and airborne contaminants. They did identify potential risks from respirable dust and offensive odours, but appeared to be satisfied that mitigation measures could manage these potential impacts.

[98] The Tribunal finds that a thorough review of the maximum predicted concentrations of emissions are below environmental limits set by the MECP, and notes that the local Public Health Unit, having been the only health authority commenting on the application, found that there is low risk to short and long-term health effects of nearby residents as a result of the proposed asphalt plant. The Tribunal accepts that ambient odours and plumes from silos are common in industrial and manufacturing neighbourhoods. The Tribunal notes that further assessment will be conducted by the Province through the separate Environmental Compliance Approval process.

[99] The Tribunal thoroughly considered all the scientific data which was produced through evidence, and determined that it cannot conclude that odour emissions from the HMA Plant will result in exceedances to MECP standards or loss of enjoyment of normal use of property.

Traffic

[100] A Transportation Impact Assessment (“TIA”) was completed by the Applicant and reviewed by both the County and the Town’s traffic engineer peer reviewer. The TIA found that the existing road network will operate with an acceptable level of service consistent with applicable standards, subject to the provision of an eastbound turning

lane at the site entrance. The findings of the report were accepted by the County and peer reviewer after revisions were made in response to comments provided.

[101] The study assessed the potential impacts of truck traffic from the proposed asphalt plant on the surrounding road network also taking into account trucks utilizing the same access from the existing quarry. The existing access / County Road 2 and County Road 2 / County Road 5 (Palace Road) intersections were assessed as requested by the municipalities. The proposed access to the asphalt plant has been now moved from the existing quarry access driveway to approximately 200 m east on County Road 2. An Addendum to the TIA was completed which assessed the new proposed access location.

[102] A second addendum report provided an evaluation of the “2020 Factored Existing Traffic” to adjust for the Covid pandemic health restrictions measures that were in place versus more “current” traffic information collected on Tuesday, June 13th, 2023, which also assessed the new proposed access location.

[103] A worst-case scenario was developed based on trucks delivering 1,800 tonnes of hot-mix asphalt during peak season. This scenario would result in 13 trucks entering and leaving the site during peak hour. This accounts for both exported materials (HMA) and imported materials for the asphalt plant. The majority of these trucks (approximately 70%) would use the haul route of County Road 2 to County Road 5 (Palace Road) to Highway 401. The remainder would use County Road 2 to access markets to the east or within the Town of Napanee. Each of these roads are existing truck routes.

[104] The proposed asphalt plant would add an additional truck every five-to-six minutes to the existing arterial truck routes surrounding the proposed development. The TIA concluded that this will likely have a negligible impact on the surrounding roadway network.

[105] A left-turn warrant analysis was undertaken for the existing quarry access and County Road 2. It was determined that a slip lane would be required based on traffic volumes in the afternoon peak hour. The slip lane would serve to separate the turning vehicles from the advancing through movement. The dimensions of the left-turn lane, storage and taper would be determined subsequent to a geometric review of the access and County Road 2. The appropriate time to undertake this work would be through the Site Plan control approval process.

[106] The Traffic Study found that the plant would result in one additional truck trip every five minutes at maximum production rates during "peak hours". Truck traffic from the plant would utilize County roads which are designed and built to accommodate such heavy truck traffic. There are significant economic, social and environmental benefits of locating an asphalt plant near sources of high-quality stone (Napanee Quarry) which is a key ingredient for the production of asphalt.

Storm Water Management

[107] The Tribunal heard that the proposed use is not anticipated to introduce materials or activities that would pose an unusual risk to groundwater. The Tribunal was informed that should there be a liquid asphalt spill, it is understood that its "high viscosity" meaning that it will not easily run off and, in a worst-case scenario, be absorbed into the ground or travel through cracks in the limestone bedrock. To further reduce risk to groundwater, the Applicant will be required to implement risk mitigation measures to reduce or avoid incidents of spills that would be pose a risk to the environment or human health. These risk mitigation measures are implemented through the ECA required before the use is permitted.

[108] The Tribunal heard that the HMA plant will require stormwater management control of post-development flows to pre-development level for the two-year to 100-year storm events. The plan will require the construction of a wet storage pond.

[109] Quinte Conservation is supportive of the stormwater water management strategy which conforms to the requirements outlined by Quinte conservation and Bay of Quinte Remedial Action Plan. The municipality can also apply conditions to development through the Site Plan control process.

Water Source Security

[110] The Applicant's studies and peer and agency reviews all indicated that drinking water sources and groundwater will be protected. The Subject Lands are not located within a source water protection area, as they are far removed from the Intake Protection Zone for the Town's backup water supply along the Napanee River and are located over 650 m from the Napanee River.

Natural heritage Impacts

[111] There are no lands designated as Environmental Protection Areas or Environmentally Sensitive Areas on or adjacent the Subject Lands. An Environmental Impact Assessment ("EIA") was completed that determined that there is no Species At Risk habitat that would be negatively impacted by the development. This EIA was reviewed by Quinte Conservation, which did not identify any additional concerns.

[112] Based on the aforementioned conclusions, the Tribunal determined that the Applicant has satisfied its burden of proof that the HMA plant would not result in adverse effects on the environmentally sensitive area.

Does the rezoning and the development of an asphalt plant represent good planning?

[113] ZBA No. 02-22 places the Subject Lands in the Extractive Industrial (M4) Zone

that already permits a wide range of aggregate extraction and related uses including a pit, quarry, aggregate recycling and processing facilities, and portable asphalt and concrete plants.

[114] The Tribunal heard that the Tomlinson portable asphalt plant has operated in accordance with the MECP regulations over the course of two non-consecutive years. Benefits resulting in the approval of the separate zoning category would allow a permanent HMA plant to operate.

[115] The Tribunal heard the economic benefits of a permanent plant would include employment opportunities, a reduction in product to market distance for asphalt materials needed in road repairs, the proximity to Highway 401 for access to markets and sites requiring the material which results in a reduction in green house emissions.

[116] With regard to the PPS, the proposed HMA plant has a direct relationship to Ontario's prosperity in ensuring efficient development and land use patterns and the protection of resources.

CONCLUSION

[117] The Tribunal finds that through the comprehensive public and agency consultation as well as voluntary consultation undertakings, the Applicant has met the planning process obligations under the Act.

[118] The Tribunal took into consideration the comments from three community members who addressed the Tribunal as well as the written submissions received, and all were weighed accordingly in the findings on this matter.

[119] The Subject Lands are well served by a network of arterial roads designed to accommodate truck traffic including County Road 2, County Road 5 (Palace Road) and

Highway 401 which is located approximately 3.5 kilometres from the existing access on County Road 2. The availability of the proposed HMA plant would result in shorter haul distances for delivery of HMA to road projects in the Napanee area and well beyond.

[120] The Tribunal heard the dispute over whether the approval of the proposed HMA would give rise to land use conflicts that would not be compatible with the surrounding area. The Tribunal finds that it has been sufficiently demonstrated that the proposed HMA plant is a compatible land use with other nearby industrial, aggregate and residential uses and that potential impacts related to dust, odour, noise and traffic can be minimized and mitigated in accordance with Provincial and municipal requirements as long as environmental requirements, conditions and controls are fastidiously adhered to.

[121] The Tribunal notes that aside from requiring municipal land use permissions, all HMA plants in this province are required by law, to obtain an ECA for noise and air quality from the MECP. Without these approvals in place, a HMA plant will not be permitted to operate, even if allowed in the M4 zone. If an ongoing HMA operation that has an ECA violates that ECA, the MECP has the power to issue warnings or orders, or to prosecute in order to obtain compliance or abatement.

[122] Based on the evidence, findings and reasons summarized, and after due consideration for all of the arguments set forth in the opening statements and the written final statements of the Parties, the Tribunal finds that the Applicant has demonstrated that the requested ZBA and Site Plan application is consistent with the PPS and conforms to the Official Plans for the County of Lennox and Addington and the Town of Greater Napanee.

ORDER

[123] **THE TRIBUNAL ORDERS** that the appeal is allowed, and that Town of Greater Napanee By-law No. 02-22 is amended as set out in **Attachment 1** to this Decision.

[124] **THE TRIBUNAL ORDERS** that the site plan prepared by McIntosh Perry dated June 29, 2023, is approved subject to the conditions set out in **Attachment 2** to this Order.

“D. Chipman”

D. CHIPMAN
MEMBER

Ontario Land Tribunal

Website: 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.

SCHEDULE "C"
DRAFT ZONING BY-LAW AMENDMENT

ATTACHMENT 1

TOWN OF GREATER NAPANEE

BY-LAW NUMBER _____

BEING A BY-LAW TO AMEND ZONING BY-LAW NUMBER 02-22

WHEREAS the Council of the Corporation of the Town of Greater Napanee received a request to amend Zoning By-law 02-22 to allow the use of a portion of the property at 8205 County Road 2 for a permanent asphalt plant and a concrete batching plant, subject to certain restrictions;

AND WHEREAS the proposed change in zoning conforms to the applicable land use designation and policies of the Official Plan of the Town of Greater Napanee;

AND WHEREAS the Council of the Corporation of the Town of Greater Napanee deems it advisable to amend By-law 02-22, as amended;

NOW THEREFORE the Council of the Corporation of the Town of Greater Napanee hereby enacts as follows:

1. THAT Schedule 15 of By-law 02-22 is hereby amended by changing to M4-3-H the zone symbol of the lands shown as "Zone Change to M4-3-H" on Schedule 'A' attached hereto and forming part of this by-law;

2. THAT, Section 5.30.4 Exception Provisions – Extractive Industrial Zone is hereby amended by the addition of the following new subsection following 5.30.4.2:

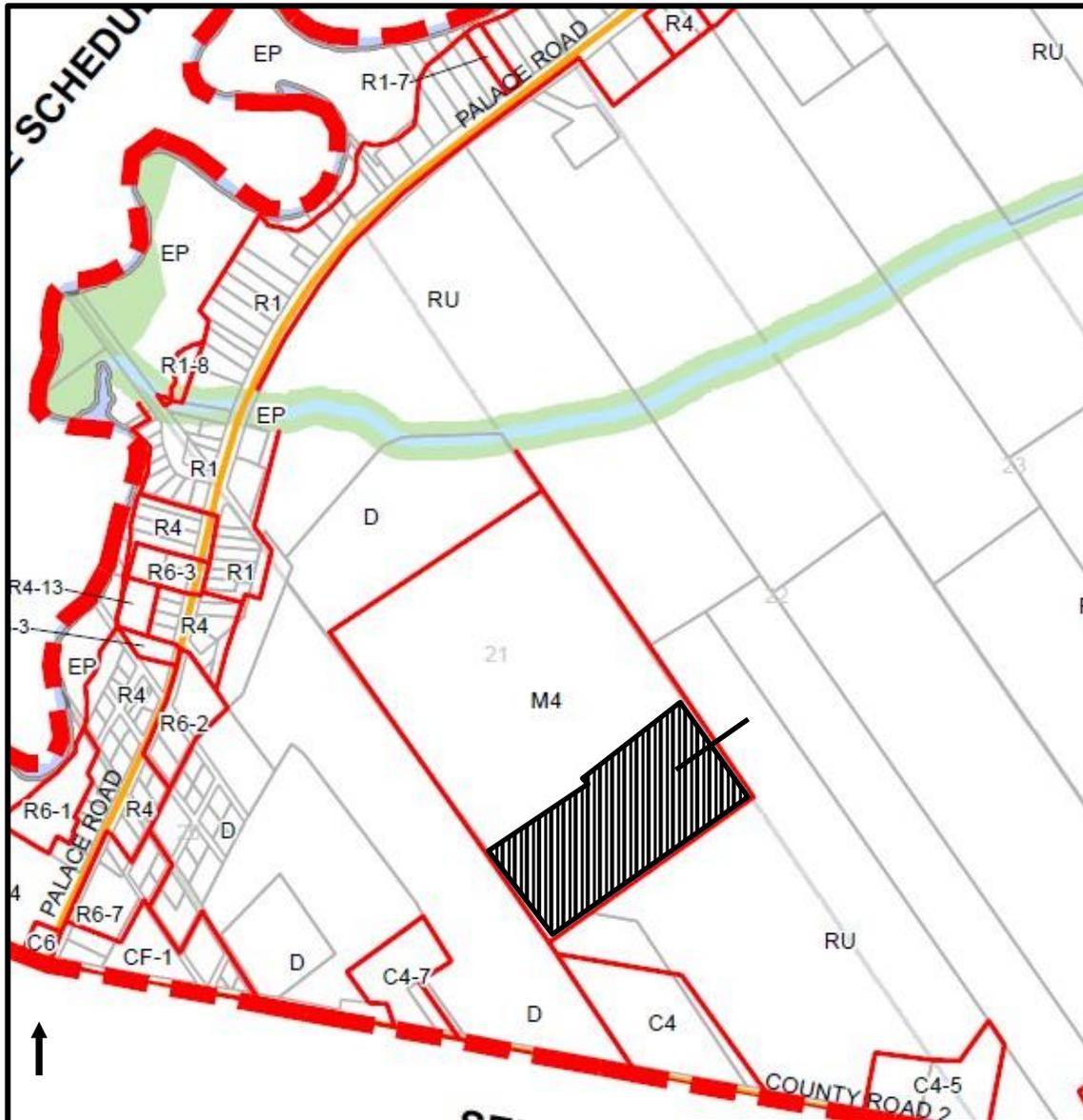
5.30.4.3 Extractive Industrial Exception Three (M4-3-H) Zone

(8205 County Road 2, Part of Lot 21, Concession 7, geographic township of North Fredericksburgh)

Notwithstanding any provisions to the contrary, within the M4-3-H Zone, the following provisions apply:

- a) Additional permitted uses:
 - i. Permanent Asphalt Plant
 - ii. Concrete Batching Plant
- b) Rear Yard (minimum): 15 m, except that it may be reduced to 0 m where abutting another lot in the M4 zone
- c) Distance Separation (minimum): No permanent asphalt plant or concrete batching plant shall be located within 300 metres of a dwelling house or dwelling unit or area zoned for residential purposes where such lands are held under distinct and separate ownership. No permanent concrete batching plant shall be located within 100 metres of a dwelling house or dwelling unit or area zoned for residential purposes where such lands are held under distinct and separate ownership.
- d) Holding Provisions:
 - i. The '-H' symbol applies to the Concrete Batching Plant use
 - ii. The '-H' symbol may be removed in accordance with Section 36 of the *Planning Act* and the applicable General Provision of the Zoning By-law including, but not limited to, the provision of supporting technical studies completed by qualified persons to the satisfaction of the Town.

3. THIS By-law shall come into force and take effect on the date of this Order.



Schedule 'A' to By-law No.

8205 County Road 2
 Part of Lots 21 & 22, Concession 7, Former Municipality of
 North Fredericksburgh, Town of Greater Napanee

Drawn By: MT (IBI Group) Scale:
 NTS
 Project: 124158-F
 Date: March 2022



ATTACHMENT 2

SCHEDULE "D"
DRAFT SITE PLAN AGREEMENT

SITE PLAN CONTROL AGREEMENT

THIS AGREEMENT made in triplicate this ___ day of _____, 2023.

BETWEEN:

R.W. TOMLINSON LIMITED

hereinafter referred to as the "OWNER"

OF THE FIRST PART

- and -

**THE CORPORATION OF THE TOWN OF GREATER
NAPANEE**

hereinafter referred to as the "Municipality"

OF THE SECOND
PART

WHEREAS the Owner has made an application to the Municipality for permission to develop those lands more particularly described on Schedule "A" attached hereto (the "Owner's Lands");

AND WHEREAS by an Order of the Minister of Municipal Affairs and Housing under section 25.4 of the Municipal Act, The Corporation of the Township of Adolphustown, The Corporation of the Township of South Fredericksburgh, The Corporation of the Township of North Fredericksburgh, The Corporation of the Township of Richmond and The Corporation of the Town of Napanee were amalgamated on January 1, 1998, to form The Corporation of the Town of Greater Napanee as the successor municipal corporation;

AND WHEREAS under section 9.1(1) of the Order, any by-laws of a former municipality passed under the Planning Act continue as the by-laws covering the area of the former municipality now forming part of the new Town;

AND WHEREAS the Council of The Corporation of the Town of Greater Napanee passed Site Plan Control Area By-law No. 98-88 for the approval of site plans pursuant to the

Planning Act, as amended;

AND WHEREAS the Council of The Corporation of the Town of Greater Napanee has approved those plans for the development of the Owner's Lands set out in Schedule "C" to this Agreement (the "Site Plan Drawings"), subject to the Owner entering into a Site Plan Control Agreement with the Municipality;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the approval by Council of the Site Plan Drawings and other good and valuable consideration, the Owner hereby agrees with the Municipality as follows:

1) The Owner shall, at its sole risk and expense and to the satisfaction of the Municipality, develop the Owner's Lands in accordance with the Site Plan Drawings, and shall construct, use, and maintain those facilities and works set out in the Site Plan Drawings in accordance with the terms of this Agreement. The Approved Site Plan Drawings on file with the Municipality are hereby incorporated by reference into this Agreement. In the event of any dispute as to which drawing is incorporated by reference into this Agreement, the copy on file with the Municipality shall govern.

2) The following Schedules are attached to and form part of this Agreement:

Schedule "A" Description of Lands

Schedule "B"- Security for Works

Schedule "C"- Site Plan Drawings

Schedule "D"- Grants of Easement and Other Public Lands

Schedule "E"- Municipal Conditions

Schedule "F"- Approving Authorities and Agencies

3) The Owner shall comply with any amendments, additions or deletions to the Site Plan Drawings that the Municipality may reasonably require after the date of this Agreement in order to better ensure the proper and orderly development of the Owner's Lands and the construction of the works and facilities required by this Agreement.

4) Without limiting the generality of the Owner's obligations set out in clause 1 of this Agreement, the Owner covenants and agrees to develop the Owner's lands in accordance with those municipal conditions set out in Schedule "E" to this Agreement.

5) Prior to the commencement of any construction, to obtain all other permits and approvals required by any other agency or authority having jurisdiction, including, without limiting its generality, those agencies and authorities set out in Schedule "F" to this Agreement.

- 6) The Owner shall deliver to the Municipality and/or County of Lennox and Addington those deeds or grants of easement or rights-of-way set out on Schedule "D".
- 7) As security for the performance of the Owner's obligations under this Agreement, the Owner shall deposit with the Treasurer of the Municipality cash or an irrevocable letter of credit of a Canadian chartered bank in a form satisfactory to the municipality in accordance with the requirements in Schedule "B". Provided that the municipality shall not draw down on the letter of credit unless the Owner is in default in the performance of an obligation under this Agreement and such default continues for more than fifteen
(15) days after the Municipality delivers written notice to the Owner requiring the Owner to remedy the default.
- 8) Upon completion of all works and facilities and prior to the release of any securities, the Owner shall deliver to the Municipality the certificate of a consulting engineer licenced under the Professional Engineers Act (Ontario) confirming that all works and facilities have been installed in accordance with this Agreement.
- 9) Except as may otherwise be provided for in this Agreement, the Owner shall complete the construction of all works and facilities within six (6) months of the date of occupancy of the building; but in cases of undue hardship, the Municipality may extend in writing any time for completion required by this Agreement.
- 10) If any lien is claimed pursuant to the Construction Act for the supply of services or material in connection with the construction or maintenance of any portion of the works or facilities located on a public street or highway or any lands owned by the Municipality or any other public authority, the Owner shall be considered in default under this Agreement and shall continue to be in default until all liens are discharged, and the Municipality may, in its absolute discretion, use the security deposited by the Owner to pay into court any amounts required to discharge all liens plus costs.
- 11) If any portion of the Works or facilities will be located on a public street or highway or any lands owned by the Municipality or any other public authority, the Owner shall, as a condition of this Agreement, keep in force until such works or facilities have been approved by the Municipal Engineer a comprehensive plan of public liability and property damage insurance acceptable to the Municipality that provides insurance coverage in respect of any one occurrence to the limit of at least five million dollars (\$5,000,000) exclusive of interest and costs, against loss or damage resulting from bodily injury to, or death of one or more persons

and loss of or damage to property. The policy shall name the Municipality and the County of Lennox and Addington as additional insured.

- 12) The policy shall provide coverage against all claims for all damages or injury including death to any person or persons or damage to any property of the Municipality or any other public or private property resulting from or arising out of any act or omission on the part of the Owner or any of its servants or agents during the construction or maintenance of the works. The policy shall include completed operations coverage liability, blanket written contractual liability with respect to non-owned licensed vehicles and shall have no exclusion pertaining to shoring, blasting (unless a separate certificate of insurance for blasting is provided prior to the start of blasting), excavating, underpinning, demolition, pile driving, caisson work and work below ground surface including tunnelling and grading. The issuance of a policy of insurance shall not be construed as relieving the Owner from responsibility for other or larger claims, if any, for which the Municipality may be held responsible.
- 13) The Owner shall provide the Municipality with a Certificate of Insurance in a form satisfactory to the Municipality together with such proof as the Municipality may require that all premiums on the policies of insurance have been paid and that they are in full force and effect. If the Owner fails to pay premiums or otherwise keep the policies in force, the Municipality may pay premiums or take out additional policies as it considers necessary and the Owner shall pay all costs.
- 14) In the event the Owner is in default in the performance of any obligation under this Agreement and such default continues more than fifteen (15) days after the Municipality delivers written notice to the Owner requiring the Owner to remedy the default, the Municipality may, without further notice to the Owner, do such thing at the Municipality's expense as it may reasonably require necessary to remedy the default, and the Municipality may recover the expense incurred in doing such thing by action or the same may be recovered in like manner as municipal taxes in accordance with the provisions of Section 446 of the Municipal Act, 2001, S.O., 2001, C. 25, as amended.
- 15) Time shall be of the essence of this Agreement and of any extension of time that may be agreed upon by the parties.
- 16) The Municipality will make reasonable efforts with the number of personnel available to it to inspect the works and facilities to be constructed in accordance with the Site Plan Drawings and this Agreement, but the Owner shall indemnify and save harmless the

Municipality, its servants, agents and contractors from any responsibility or liability arising directly or indirectly from any failure or delay in completing such inspections.

- 17) The Owner hereby grants to the Municipality, its servants and contractors, a licence to enter the Owner's Lands during normal operating hours for the purpose of inspecting the works and facilities and to perform any work arising from or the result of any default by the Owner under this Agreement.
- 18) It is the intent of this Agreement that the Municipality shall not incur any expense for the development of the Owner's Lands and every obligation of the Owner under this Agreement shall be deemed to include the words "at the expense of the Owner", unless specifically stated otherwise.
- 19) The Owner agrees to pay the legal, engineering, landscape architectural, planning and administrative costs incurred by the Municipality to process the Site Plan Drawings, including but not limited to, the preparation of this Agreement and all plans and specifications, and the supervision and inspection of the Works.
- 20) All invoices, costs and expenses received or incurred by the Municipality and payable by the Owner shall be paid within thirty (30) days of the Municipality's invoice or demand for payment to the Owner, failing which the Owner shall be in default under this agreement and shall continue in default until payment plus all accrued interest is made in full.
- 21) Interest shall be paid by the Owner on all overdue amounts at the same rate per annum and calculated in the same manner as the Municipality charges on overdue municipal taxes and any payments received shall be applied first on account of accumulated interest and then on the outstanding amount.
- 22) The Owner consents to the registration by the Municipality at the Owner's expense of this Agreement against the title to the Owner's Lands and, in accordance with s. 41(10) of the Planning Act, all of the terms and conditions of this Agreement may be enforced against the Owner and any and all subsequent owners of the Owner's Lands.
- 23) The Owner shall ensure that the requirements of this Agreement and the Site Plan Drawings are brought to the attention of its contractors, employees and workers prior to the start of any construction.
- 24) All covenants in this Agreement shall be construed as being joint and

several and that, when the context so requires or permits, the singular number shall be read as if the plural were expressed, and the masculine gender as if the feminine or neuter gender, as the case may be, were expressed.

- 25) Notwithstanding any other provision to the contrary, this Agreement shall, at the option of the Municipality, lapse and be of no further force and effect if the building permit expires or is revoked, or if construction of the building shown on the Site Plan Drawings is not commenced within two (2) years of the date of this Agreement.
- 26) The Owner covenants and agrees that nothing in this Agreement releases the Owner from the obligation to comply with the provisions of all other by-laws of the Municipality that may now or in future be in effect, except where such provision would conflict with the terms and conditions of the Environmental Compliance Approval issued under the Environmental Protection Act.
- 27) Any dispute between the parties with respect to this Agreement shall, at the request of a party, be submitted to arbitration pursuant to the Arbitrations Act and the decision of the arbitrator or, if more than one, the decision of a majority shall be final and binding on the parties.
- 28) Each party shall pay its own costs of the arbitration and shall share equally the costs of the arbitrator(s).
- 29) The Owner agrees that if any section, clause or provision of this Agreement, is for any reason declared by a Court of competent jurisdiction to be invalid the same shall not affect the validity of the Agreement as a whole or any part thereof, other than the section, clause, or provision so declared to be invalid and it is hereby declared to be the intention that all the remaining sections, clauses or provisions of this Agreement shall remain in full force and effect, notwithstanding that one or more provisions thereof shall be declared to be invalid.
- 30) This Agreement shall endure to and be binding upon the parties hereto, and their respective successors and assigns.

IN WITNESS WHEREOF the parties hereto have by the hands and seals executed this agreement as of the first date set out above.

SIGNED, SEALED AND DELIVERED:

**THE CORPORATION OF THE TOWN OF GREATER
NAPANEE**

Per:

Terry Richardson – Mayor

Jessica Walters – Clerk

We have authority to bind the Corporation

R.W. TOMLINSON LIMITED

Per:

Rob Pierce – Senior Vice President

I/We have authority to bind the Corporation

SCHEDULE "A"MUNICIPAL ADDRESS

8205 County Road 2 LEGAL DESCRIPTION

Part 2, Plan 29R-905, Part of Lot 21, Concession 7, Township of North Fredericksburgh,
Town of Greater Napanee, County of Lennox and Addington.

Being PIN 45116-0106.

SCHEDULE "B"**SECURITY FOR WORK**

In accordance with clause 7 of this Agreement, the Owner shall deposit with the Treasurer of the Municipality at the time of entering this Agreement cash or a letter of credit in the amount of ##### dollars (\$###) as per the Financial Securities Estimate prepared by McIntosh Perry as security for the performance of all the Owner's obligations under this Agreement.

Upon completion to the satisfaction of the Municipality of the works and facilities to be constructed in accordance with this agreement and the performance by the Owner of all other obligations under this Agreement, and upon receipt of the certificate of the consulting engineer required by clause 8 of this Agreement, the security or any balance thereof remaining shall be returned to the Owner. The release of security shall apply to each phase of the works contemplated by this Agreement.

SCHEDULE "C"**SITE PLAN DRAWINGS**

DRAWING-01- Site Plan Scale
-1:1000

-Revision 3 dated June 29, 2023

-Prepared by McIntosh Perry
Prepared by Astec, Inc.

DRAWING-02- Lot Grading Plan Scale

- 1:1000

Revision 6 dated July 25, 2022

Prepared by Groundwork Engineering Limited

DRAWING-03- Erosion and Sediment Control Plan

Scale – 1:1000

Revision 6 dated July 25, 2022

Prepared by Groundwork Engineering Limited

DRAWING-04- Entrance Improvements Plan

Scale -1:250

Revision 1 dated August 2, 2022

Prepared by McIntosh Perry

DRAWING-05- Asphalt Plant Layout and Elevations

Revision 2 dated February 13, 2020

The listed drawings shall be kept on file at the offices of the Municipality. The copies on file with the Municipality shall govern in the event of any dispute.

SCHEDULE "D"**GRANTS OF EASEMENT AND OTHER PUBLIC LANDS****Road Widening**

The Owner shall convey to the County of Lennox and Addington a road widening along County Road 2 as described on the Entrance Improvements Plan. A Reference Plan shall be provided to the County for review and approval prior to depositing the Plan with the Land Registry Office and completing the land transfer. The land transfer and registration shall be completed at the Owner's expense.

SCHEDULE "E"

MUNICIPAL CONDITIONS

The Owner further covenants and agrees to develop the Owner's lands in accordance with the following Municipal Conditions:

1. The Owner agrees drawings shall be revised to the satisfaction of the General Manager/CBO, or designate, as deemed necessary.
2. Any portion of the Owner's Lands which is intended to be used for snow storage shall be set back from property lines, foundations, fencing or landscaping a minimum of 1.5 metres. Snow storage areas shall not occupy driveways, aisles or required parking spaces.
3. The Owner agrees an electronic copy of the site plan drawings shall be provided to the Municipality in both AutoCAD and PDF formats upon final approval of the drawings.
4. The Owner shall be responsible for installing and maintaining all sediment and erosion controls in accordance with the approved drawings and best management practices prior to and during construction activities.
5. The Owner shall install all exterior lighting and signs in accordance with the site plan drawings and shall direct any light emitted from lighting downwards and away from adjacent uses or streets.
6. If required, the Owner shall obtain all required permits and approvals for any sanitary and water connections, including septic systems.
7. All policies will be taken out with insurers and in a form satisfactory to the Municipality from time to time acting reasonably. The Owner agrees that certificates of insurance or, if required by the Municipality, certified copies of the policies, will be delivered to the Municipality as soon as practicable after the placing of the required insurance or its renewal from time to time or if requested at any time by the Municipality.
8. The Owner agrees to construct all works and facilities in a good and workmanlike manner and, where applicable, according to the Municipality's normal standards and specifications.
9. The Owner agrees to take all reasonable precautions to reduce dust, noise and other nuisances and to ensure public safety during the

development of the Owner's Lands and construction of the works and facilities required by this Agreement.

10. The Owner agrees to obtain the approval of Hydro One Networks Inc. prior to connecting to or relocating existing hydro services.
11. The Owner agrees to provide a letter from a qualified professional engineer certifying in a form satisfactory to the Municipality that the storm water management system located on the Owner's Lands has been constructed in accordance with the Site Plan Drawings.
12. The Owner agrees to develop the Owner's Lands generally in accordance with the Municipality's site plan control guidelines in effect on the date of this agreement, a copy of which the owner hereby acknowledges receiving.
13. The Owner agrees that prior to any blasting for the installation of any of the works, if required, the Owner shall notify the Municipal Engineer in writing at least twenty-four (24) hours before the start of blasting. All blasting operations shall be conducted in accordance with OPSS 120, as amended, including but not limited to: notifications, designs, monitoring, warnings, pre-blast surveys and post-blast reporting.
14. The Owner agrees to construct all storm water facilities in accordance with the Storm Water Management Plans approved by the Cataraqui Region Conservation Authority and the Municipality.
15. Prior to any paving of the entrance, the Owner shall verify with the Municipality whether final lift of asphalt has been applied and taper asphalt accordingly to existing surface, if required.
16. That 24-hour access to the site be provided to emergency services by lockbox or other mechanism in case of emergency to the satisfaction of the Municipality.
17. The Owner agrees to perform daily pre-work sweeps of the construction area to ensure no species at risk are present and to remove any wildlife from inside the construction area.
18. The Owner agrees to install erosion and sediment control measures per the approved Erosion and Sediment Control Plan and industry best

practices during any construction works and maintain these measures until all disturbed ground has been permanently stabilized.

19. The Owner agrees to undertake the required road works outlined on the Entrance Improvements Plan. Applicable road occupancy and entrance permit(s) shall be obtained from the County prior to undertaking any road works. The entrance improvements shall be completed to the satisfaction of the County prior to use of the new entrance and operation of the facility.
20. Prior to operation of the facility, the Owner agrees to provide confirmation that the noise barriers are constructed in accordance with the recommendations of the Acoustic Assessment Report (AAR) dated December 13, 2022 prepared by Freefield Ltd. The operation of the Hot Mix Asphalt Plant is also subject to the required noise mitigation measures outlined in Section 7 of the AAR. Should any revisions be required to the noise barriers or other forms of noise mitigation, an updated study shall be provided to the Municipality for review and approval.
21. Prior to operation of the facility, the Owner shall obtain appropriate Environmental Compliance Approval(s) from the Ministry of the Environment, Conservation and Parks.
22. The Owner agrees to undertake the operation of the facility in accordance with the Best Management Practices Plans for Odour and Fugitive Dust dated April 2023 prepared by WSP, as may be amended from time to time.

SCHEDULE "F"**APPROVING AUTHORITIES AND AGENCIES**

The Owner shall be responsible for obtaining all permits and approvals required for the development of the Owner's Lands from all applicable agencies and authorities having jurisdiction, including but not limited to the following:

APPLICABLE LAW**AGENCY**

- | | |
|---|---|
| 1. The Ontario Building Code | Town of Greater Napanee
Growth &
Expansion
Services 99-A
Advance Avenue
Napanee, ON
K7R 3Y5
613-354-3351 |
| 2. Sign Permit | Town of Greater
Napanee Growth
& Expansion
Services 99-A
Advance Avenue
Napanee, ON
K7R 3Y5
613-354-3351 |
| 3. Provincial Signs,
Transportation of Ontario Building Location,
Entrance Permits, and
Drainage onto Provincial
Highways | Ministry of
(M.T.O.)
355 Counter Street
Kingston, Ontario K7L 5A3
Phone: (613) 544-2220 extension 4675 |
| 4. Entrance Permits | Town of Greater
Napanee Growth
& Expansion
Services 99-A
Advance Avenue
Napanee, ON
K7R 3Y5
613-354-3351 |

- OR
 The County of Lennox and Addington 97
 Thomas Street East
 Postal Bag 1000, Napanee, Ontario, K7R
 3S9
 Phone (613) 354-4883
5. Work Permit for Shoreline
 Construction Permits
- Ministry of Natural Resources,
 Kingston Area Office
 P.O. Box 7200
 Kingston,
 Ontario, K7L
 5S8, Phone
 (613) 531-5700
 Fax (613) 531-5730
6. Fill Permits
- Cataraqui Region
 Conservation Authority,
 R.R. #1, P.O. Box 160,
 Glenburnie, Ontario KOH
 1SO Phone: (613)546-
 4228
7. Labour Approvals
- Ministry of Labour,
 Beechgrove
 Complex, 51 Heaks
 Lane Kingston,
 Ontario K7M 9B1
 Phone: (613) 545-
 0989
8. Private and Public Sewer
 Approvals; Exhaust Air Approvals
- Ministry of the Environment,
 1259 Gardiners Road
 P.O. Box 22032
 Kingston, Ontario K7M 8S5
 Phone: (613) 549-4000
9. Septic and Holding Tank
 Approvals, Restaurant and
 Public Use Approvals
- Town of Greater Napanee
 Growth & Expansion Services
 99-A Advance Avenue
 Napanee, ON K7R 3Y5
 613-354-3351

10. Hydro One
Hydro One PO Box 4300
Kingston, ON L3R 5Z5
Phone: (800) 369-7536
11. Bell Canada
Bell Canada
Floor 6, 449 Princess Street
PO Box 3000
Kingston, Ontario
K7L 4Z9 Phone:
(613) 548-5940
12. Natural Gas
Union Gas
1653 Fortune
Crescent
Kingston, Ontario
K7P 0E9 Phone:
(613)389-4000
13. Cable
Cogeco Cablevision
950 Syscon Road,
PO Box 5076,
Stn Main
Burlington, ON
L7R 4S9
14. Office of the Fire Marshal
Office of the Fire Marshal,
5775 Yonge St.,
7th Floor North
York, Ontario
M2M 4J1 Phone:
(416) 965-4858
15. CNR
Canadian
National Railways
Suite 503, 277 Front
Street West
Toronto, ON M5V
2X7
Phone: (416) 217-2466

16. CMHC
Canada Mortgage
and Housing
Corporation,
100 Sheppard
Ave. E., Suite
300
Toronto,
ON M2N
6Z1 Phone:
(416) 221-
2642
17. Airport
Transport Canada
330
Sparks
St.
Ottawa,
ON K1A
0N5
Phone: (866)995-9737 or (613)990-2309
18. Fuel Safety
Authority
Technical Standards and Safety
14th Floor, Centre Tower 3300 Bloor Street
West Toronto, Ontario
M8X 2X4
Phone: 877-682-8772
19. Fire Department
Greater Napanee Fire
Department 66
Advance Avenue
Napanee,
ON K7L
3L4 Phone:
(613)354-
3415
20. Condominium & Apartment
Buildings
Tarion
1580 Merrivale
Rd., Suite 508
Ottawa, ON K2G
4B5
Phone: (877)982-7466 or (416)229-9200