

**Local Planning Appeal Tribunal**  
Tribunal d'appel de l'aménagement  
local



**ISSUE DATE:** July 02, 2020

**CASE NO(S):** MM190008

The Ontario Municipal Board (the "OMB") is continued under the name Local Planning Appeal Tribunal (the "Tribunal"), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

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

Referred by:	Sharon Rew
Objector:	Sharon and Brian Cranstone
Objector:	David and Catharine Durdevic
Objector:	W.K. Kullhay and Family
Objector:	Deanna MacKay; and others
Applicant:	Halton Crushed Stone Ltd.
Subject:	Application for a Class A licence for the removal of aggregate
Property Address/Description:	Part Lots 11 & 12, Concession 10 & 11
Municipality:	Town of Erin
LPAT Case No.:	MM190008
LPAT File No.:	MM190008
LPAT Case Name:	Cranstone v. Ontario (MNRF)

**Heard:** October 16, 2019 in Hillsburgh, Ontario

**APPEARANCES:**

**Parties**

**Counsel\*/Representative**

Halton Crushed Stone Limited

Marc Kemerer\*

Scott Martin, Sarah McKinnon, Diane Sardi and Brook Bradburn

Ed Delaporte

David and Catherine Durdevic

Self-represented

W.K. Kulhay and family No one appeared

Deanna MacKay No one appeared

### **DECISION DELIVERED BY JOHN DOUGLAS AND ORDER OF THE TRIBUNAL**

[1] This was a hearing in the matter of a referral to the Tribunal by the Ministry of Natural Resources and Forestry (“MNRF”) pursuant to s. 11(5) of the *Aggregate Resources Act* (“ARA”) with respect to objections launched against a licensing application for a proposed extension of operations by Halton Crushed Stone Limited (the “Applicant”) for lands legally described as Part Lots 11 and 12, Concession 10 and 11 (the “subject property”). Applications for amendments to the Official Plans (“OPAs”) of the County of Wellington (the “County”) and the Town of Erin (the “Town”), and an application for a Zoning By-Law Amendment (“ZBLA”) had also been appealed. The Tribunal disposed of the appeals for the OPAs and the ZBLA which were approved in early summer of 2019.

[2] The Applicant applied for a Class A, Category 3 (pit above water) licence under the ARA. The proposed licenced area is 62.3 hectares (“ha”) in size with approximately 56.4 ha proposed for extraction. The maximum number of tonnes of aggregate applied for is 725,600 tonnes in any calendar year. No increase to tonnage permitted per year is proposed. The existing haul routes would continue to be used.

[3] The subject property is located to the south and east of the Village of Erin, on the east and west sides of Tenth Line between Wellington Road 52, to the north, and Sideroad 10, to the south. The Tenth line road allowance is included within the proposed pit application. Extracting this road and the setbacks adjacent to the road would be subject to a future agreement with the Town.

[4] Evidence provided to the Tribunal shows the subject property divided into four lots A through D. Lots A and lot C are both shown situated to the west of Tenth Line. Lot A occupies all of Lot 11, Concession 10, and the southern half (or thereabouts) of Lot

12, Concession 10. Lot C is the north half of Lot 12, Concession 10 and is the closest of the lots to Erin Village. Lots B and D are shown situated to the east of Tenth Line. Lot B occupies all of Lot 11, Concession 11. Lot D occupies all of Lot 12, Concession 11.

[5] The existing aggregate extraction operation, known as the Erin Pit, is located in Lots A and B, the southern portion of the subject property. The Erin Pit is an above-water operation that extracts aggregate resources.

[6] The proposal is to extend the Erin Pit on both sides of the Tenth Line from the northern limits of Lots A and B to Wellington Road 52. The proposed extension of the Erin Pit operation is to occur in Lots C and D, and is intended to be extracted in four phases, with Lot C being Phase 1. Lot D is intended to be extracted in three phases proceeding from the south to the north, starting with Phase 2 being the southern third of Lot 12, Concession 11. Phase 3 would extract the middle third of the lot. The top third of the Lot 12, Concession 11, Phase 4, is proposed to be extracted in three sub-phases being 4a (centre), 4b (northwestern corner) and 4c (the north eastern corner). After aggregate extraction is complete, the subject expansion lands are to be progressively rehabilitated and returned to agriculture.

[7] The Applicant submitted applications to amend the Official Plan (“OP”) and Zoning By-law (“ZBL”) to permit the proposed extension to the pit. The Tribunal disposed of the appeals of those applications filed pursuant to the *Planning Act* (as amended by Bill 139) and in accordance with s. 22(11.0.10) and s. 34(26.3), the Tribunal issued an Order, based on the consent of the parties, allowing the appeals in part having been satisfied as to the draft instruments’ consistency with the Provincial Policy Statement, 2014 (which was the version of the PPS in force and effect at that time) and conformity with applicable Provincial Plans including the Growth Plan for the Greater Golden Horseshoe and the Greenbelt Plan . As a result, the only matter currently before the Tribunal is the referral of this matter pursuant to s. 11(5) of the ARA.

[8] There were originally 13 objections in total to the ARA application, including: four

review agencies, MNRF, the County, the Town, and the Credit Valley Conservation Authority (“CVCA”). There were also objections from nine land owners. Through the review process all four agencies and several land owners withdrew their objections. MNRF referred the application to the Tribunal and requested a hearing to resolve the remaining matters brought forward by several objectors.

[9] At the time of the hearing the following objectors remained: Scott Martin and Sara McKinnon; Ed Delaporte; Diane Sardi and Brook Bradburn; Deanna MacKay; Wendy Kulhay and family; and David and Catherine Durdevic.

[10] With respect to referrals under s.11(5) of the ARA, the Tribunal must have regard to the listed criteria and matters in s. 12(1) of the ARA including whether the proposed project will have effects on the environment, the nearby communities, ground and surface water resources, or agricultural resources.

[11] A Procedural Order (the “PO”) was issued by the Tribunal in July 2019, including the objectors list of issues for the hearing:

1. Will the proposal result in unacceptable:
  - (a) noise impacts?
  - (b) traffic safety impacts?
  - (c) dust impacts?
2. Are the proposed setbacks appropriate?
3. Will the proposal adversely impact the local water supply?
4. Are there adequate measures to monitor water quality?

[12] In addition to these issues raised above, during the hearing the objectors raised

concerns with respect to process: the settlement approval process was flawed and did not respect the residents' information; the process was not open and transparent and failed to uphold the Town's code of ethics; communications between the objectors and Town Council and the Mayor were not satisfactory. To some objectors this demonstrated how residents' concerns have not been fairly heard or addressed.

[13] This proceeding is a hearing *de novo*. The Tribunal's role is to consider the evidence presented at the hearing and arrive at a determination on the identified issues based upon that evidence. A retroactive critiquing of the process leading up to the hearing is of little or no assistance to the Tribunal in the determination of the issues now before it.

[14] What is left for the Tribunal to dispose of are the issues set out in the PO which have been reproduced in paragraph [11] of this decision.

[15] The Tribunal, following a review of their qualifications, heard from the following expert witnesses testifying on in support of the proposal by the Applicant:

- Stuart Elkins was qualified by the Tribunal to provide expert opinion evidence in the field of Transportation Planning.
- Nicholas Sylvestre-Williams was qualified by the Tribunal to provide expert opinion evidence in the area of acoustics;
- Brian Sulley was qualified to provide expert opinion evidence in the area of air quality;
- Kevin Fitzpatrick was qualified to provide expert opinion evidence in the area of hydrogeology and water resources; and,
- Neal DeRuyters was qualified by the Tribunal to provide expert opinion evidence in the area of land use planning.

[16] Technical reports and plans in support of the proposed Aggregate Licence were presented to the Tribunal in Exhibits 2 and 3, including the following: “Noise Impact Study” prepared by Aercoustics (“noise study”); “Transportation Brief” prepared by Paradigm (“transportation brief”) and a peer review undertaken by Triton Engineering Services Limited (“transportation peer review”); “Dust Management Plan” and “Final Report - Best Management Practices Plan for Dust” prepared by RWDI; “Level 1 Hydrogeological Study” prepared by WSP (“hydrogeological study”) and peer review undertaken by Blackport Hydrogeology Inc.; and, “Planning Report and ARA Summary Statement” (“planning report”) and “Visual Impact Review” (“visual impact review”) prepared by MHBC, and a peer review of the visual impact review undertaken by WND Associates. The Tribunal understands that the recommendations of the technical experts are incorporated as Conditions on the Site Plans required as part of the Aggregate Licence and enforceable by MNRF.

[17] The Tribunal will address its analysis and findings related to the evidence presented for each of the issues set out in paragraph [11].

[18] The Tribunal was advised that those objectors that have withdrawn their objections did so on the basis of agreements between themselves and the Applicant. The provisions of those agreements have been incorporated into the Site Plan (Exhibit 6B).

**ISSUE 1 – Will the proposal result in unacceptable: (a) Noise impacts? (b) traffic safety impacts? (c) dust impacts?**

#### **ISSUE 1 a) Noise Impacts**

[19] Mr. Sylvestre-Williams presented the Tribunal evidence based on the noise study completed for the proposal. He advised that in preparing the study consideration had been given to the equipment that would be used on the site as well as the noise receptors (e.g. a residence) around the site. Mr. Sylvestre-Williams advised the Tribunal that the Province sets the limits for noise.

[20] Mr. Sylvestre-Williams testified that the noise study led to the following recommendations for mitigating potential noise impacts:

- a) Limiting the amount of equipment and noise emissions from equipment;
- b) Limiting the hours of operation of extraction, processing and shipping; and
- c) For each of the phases, an acoustic berm, with a stipulated height and location, was recommended, as well as specific limits on the amount and location of equipment that could operate.

[21] Mr. Sylvestre-Williams testified that the recommendations from the study that was completed were based on a peak hour of 25 trucks per hour, even though the peak truck traffic for the peak hour is expected to be 14 trucks per hour. He noted that the study concluded that “With the implementation of the recommended noise controls, the proposed aggregate pit operation is predicted to satisfy the MOECC [MECP] noise guidelines”.

[22] Mr. Sylvestre-Williams advised the Tribunal that two rounds of peer review of the noise study were completed by the noise peer reviewer for the Town, HGC Engineering. He further testified that as a result of the peer review and discussions with objectors the proposed berm heights had been raised in some areas, and he testified that a clause was added to s. 1.2.11 of the Site Plan (Exhibit 6B) that states: “No aggregate recycling operations, storage of unprocessed recyclable materials or storage of recyclable product, including blended recyclable product, shall be permitted on the lands subject to the Pit Extension.”

[23] As a result of the revisions, Mr. Sylvestre-Williams testified that there will be even lower noise impact than originally predicted.

[24] Mr. Sylvestre-Williams testified that in his opinion, the potential noise impacts from the proposed operations will not exceed the provincial noise limits at all

neighbouring receptors as established by the Ministry of the Environment, Parks and Conservation (“MECP”) and the MNRF. The proposed operation has been designed to meet all provincial noise limits and the hours of operation will be regulated by the ARA site plans.

[25] Mr. Silvestre-Williams further testified that the Applicant accepted the peer reviewer’s recommendation that a noise audit be prepared within the first year of extraction to assess sound levels arising from the processing plants operating concurrently in Phase 1. The audit will be provided to the Town and the County for review. Wording to this effect is included on the Site Plan (Exhibit 6B).

[26] The Tribunal is satisfied based on the testimony of Mr. Sylvester-Williams that potential noise impacts from the proposed operations will not exceed provincial noise limits.

### **ISSUE 1 b) – Traffic Safety Impacts?**

[27] Mr. Elkins presented to the Tribunal evidence based on, among other materials and reports, the transportation brief, and transportation peer review, completed for the proposal.

[28] Mr. Elkins advised the Tribunal that both the County and Triton Engineering, the firm that conducted the peer review, found the traffic study methodology to be acceptable and agreed that all intersections are, and will, operate at an acceptable level of service. The peer review confirmed that modifications to the site and the haul routes are not required. He testified that despite these conclusions, the Applicant went further in terms of its transportation planning to respond to concerns expressed by local residents regarding truck traffic. He noted that the Applicant has developed a trucking policy for all trucks hauling aggregate from the expanded Erin Pit. The Trucking policy includes a process for submitting complaints to the Erin pit dispatch office regarding potential safety issues or infractions from trucks using the Erin Pit. The Applicant is required to respond to these complaints and outline potential actions and next steps if



an infraction is identified.

[29] Mr. Elkins testified that the existing driveway to Tenth Line will be utilized for the proposed extension of Phase 1. A new driveway to Tenth Line will be constructed approximately 130 metres (“m”) north of the existing driveway to support the planned Phase 2-4 operations. To support the Phase 2 – 4 operations the existing offices and scales will be moved to the Phase 2 – 4 lands.

[30] Mr. Elkins advised that the existing haul routes will continue to be utilized by traffic generated by the subject operation. In his opinion there will be no unacceptable impacts from the subject proposal, particularly because there will be no changes to the licensed annual rate of extraction or the haul route.

[31] Mr. Elkins testified that in his professional opinion there will be no unacceptable traffic safety impacts from the approval and operation of the subject proposal.

[32] The Tribunal is satisfied based on the unchallenged testimony of Mr. Elkins that there will be no unacceptable traffic safety impacts from the approval and operation of the subject proposal.

### **ISSUE 1 c) – Dust Impacts?**

[33] Concerns had been raised by the objectors about the potential health impacts of fugitive dust emissions given the reduced distance from operations if the proposed expansion is improved.

[34] Mr. Sulley presented the Tribunal evidence based on the dust management plan and Final Report - Best Management Practices Plan for Dust.

[35] Mr. Sulley advised the Tribunal that given that the proposed expansion would take the operation closer to residences to the north of Wellington County Road 52 careful consideration was given to potential dust impacts. He noted that the Dust

Management Plan developed in 2017 was quite good but benefited from additional clarification and augmentation.

[36] Mr. Sulley testified that it is important to ensure that operations are harmonized between dust mitigation and noise mitigation, stating that beneficial practices in terms of noise restriction generally also benefit dust control. He testified that the use of berms and planting of vegetation for visual and noise restriction purposes also serve dust control purposes. Mr. Sulley testified that he is generally satisfied with the vegetative/tree screens to be provided on site. He advised that his opinion is based on the tree screening provided on site and that the dust management plan does not take into account tree screens located off-site. However, although not relying on it, he did note heavy tree screening on neighbouring properties is also beneficial.

[37] Mr. Sulley also testified to dust suppression measures set out in the dust management plan including the spraying of water and use of ministry authorized chemical dust suppressants to suppress dust related to on-site operations.

[38] Mr. Sulley testified that in his opinion, subject to the mitigation measures set out in the dust management plan, that the proposed expansion of the pit will operate within the appropriate air quality benchmarks at the neighbouring properties. He further opined that while fugitive dust cannot be eliminated entirely, adherence to the dust management plan will ensure that the probability of such impacts will be minimized in accordance with Provincial standards. He noted that in the unlikely event that impacts do occur, which is not anticipated, the plan provides a defined mechanism for dealing with complaints.

[39] The Tribunal is satisfied, based on Mr. Sulley's uncontested expert opinion evidence, that dust impacts will be minimized in accordance with Provincial standards.

## **ISSUE 2 - Are the proposed setbacks appropriate?**

[40] The objectors are of the opinion that the setbacks at the north end of the

proposed expansion are insufficient. They are requesting a 300 m setback from the urban boundary consistent with their interpretation of s. 6.6.1 of the County's OP: "in order to recognize environmental and land use constraints to the establishment of mineral aggregate operations, the following are not included in the Mineral Aggregate Overlay: urban centres and hamlets plus 300 metres beyond their boundaries."

[41] Mr. DeRuyters presented the Tribunal evidence based on the planning report, visual impact review, and the peer review of the visual impact review.

[42] In his evidence on setbacks, Mr. DeRuyters addressed the objectors' contention that in accordance with s. 6.6.1 of the County's OP, a 300 m setback from the urban boundary and certain residences should be applied.

[43] Mr. DeRuyters testified that this setback does not apply to the subject property, as these lands are already zoned to permit aggregate extraction and are included in the County's Mineral Aggregate Resource Overlay. The fact that Lot C was already zoned for extraction was considered by the County when the Mineral Aggregate Overlay was prepared and approved through County OPA No. 81 in 2014.

[44] Mr. DeRuyters advised that over time the Applicant has increased the setbacks to address objector concerns. In response to concerns about the proximity of the pit to nearby homes and the Village of Erin in particular, the Applicant increased the setback to 90 m in the northeast corner of Lot C, as outlined above, and to 75 m in the northeast corner of Lot D. Mr. DeRuyter noted that the submitted application proposed setbacks of 30 m in each corner). The remainder of the setback along Wellington Road 52 is 30 m in accordance with ARA requirements and the Town's ZBL. Mr. DeRuyters further noted that as a result of the 90 m setback the urban boundary is located more than 100 m from the extraction area at the closest point. The closest house within Erin Village would be approximately 200 m from the extraction area.

[45] Mr. DeRuyters advised the Tribunal that to limit the duration that aggregate extraction is occurring nearest the village, the Applicant has agreed to a time limit of two

years to complete extraction within 185 m of the urban boundary.

[46] Mr. DeRuyters testified that as confirmed by the noise and visual peer reviews, the proposed pit including the 90 m setback has been specifically and appropriately designed and buffered to mitigate adverse effects on sensitive land uses.

[47] Mr. DeRuyters opined that subject to the proposed mitigation measures outlined in the ARA Site Plans (Exhibits 6 A through D), including the acoustic and visual berms, tree screens and vegetation plantings, the proposed setbacks are appropriate.

[48] As noted earlier in this decision, in considering whether a license should be issued or refused, the Tribunal shall have regard to the criteria set out in s. 12(1) of the ARA. Mr. DeRuyters explained how, in his opinion, each of the criteria in s. 12 (1) (a) through (k) had been considered through this process.

[49] Mr. DeRuyter opined that the proposed expansion of the Erin Pit represents wise resource management and good planning. He noted that there are no planning applications before the Tribunal as the implementing amendments were approved by the Tribunal in June 2019 and are now in full force and effect. He opined that the matters to be considered under the ARA have been addressed and it would be appropriate for the Tribunal to recommend issuance of the license subject to the ARA Site Plans that have been filed with the Tribunal as Exhibits 6 A through D.

Based on the unchallenged evidence of Mr. DeRuyter, the Tribunal is satisfied that adequate regard has been had to the criteria set out in s. 12(1) of the ARA and that the proposed setbacks, as set out in the site plans, are appropriate. **ISSUE 3 - Will the proposal adversely impact the local water supply? and ISSUE 4 - Are there adequate measures to monitor water quality?**

[50] The objectors (the Durdevics in particular) raised concerns about potential adverse impacts on water quality and quantity.

[51] Mr. Fitzpatrick presented evidence to the Tribunal based on the hydrogeological study and peer review. He stated that the study summarizes and presents historic hydrogeological data which has been recorded from the existing Erin Pit since 1996 (approximately 20 years of data). This data was used to predict potential impacts to local groundwater and surface water resources from the proposed extension.

[52] Mr. Fitzpatrick testified that the operations at the Erin Pit are purely mechanical in nature, including the excavation of sand and gravel resource and mechanical crushing of the product. There are no chemicals used in the operations, therefore the potential risk to groundwater contamination is low. He noted the fuel and petroleum products at the Site are managed according to the applicable Provincial regulations, and that a Spills Contingency Plan is in place and enforced. These measures lower the risk of fuel groundwater contamination.

[53] Mr. Fitzpatrick testified that the Applicant has obtained an Environmental Compliance Approval and a Permit to Take Water ("PTTW") from MECP to operate their aggregate washing plant at the existing pit. He noted that these separate approvals went through a public and technical review process and the approved instruments include monitoring programs to ensure that groundwater quality and quantity is monitored and protected.

[54] Mr. Fitzpatrick testified that the conclusion of the hydrogeological study is that there will be no negative impacts to local groundwater or surface water resources as a result of the proposed future above water table extraction activities. He advised that the Study does recommend a comprehensive monitoring program with detailed mitigation measures to ensure potential negative impacts to not occur.

[55] Mr. Fitzpatrick advised the Tribunal that the peer review of the hydrogeological study concluded that the existing pit has not impacted local water resources and that no negative impacts to water resources are anticipated with the proposed expansion. In reply to questions from Mr. Durdevic, during cross-examination, regarding potential impacts to his well which is located approximately 120 m from the proposed extension,

Mr. Fitzpatrick maintained that no impacts on Mr. Durdevic's well are predicted.

[56] Mr. Fitzpatrick noted that the existing Erin Pit has been operated for over 20 years and, to date, no impact on the water table or local groundwater users has been observed. Extraction will remain at least 1.5 m above the groundwater table. He testified that in the unlikely event that excavation activities at the site are determined to be negatively impacting the water table, further excavation in the impacted area will be suspended until appropriate mitigation measures can be developed. He further advised that if groundwater-related complaints are received from local groundwater users, the conditions of the PTTW require that the MECP be immediately notified and that the Applicant investigate the complaint. If impacts to the groundwater users are observed as a result of operations at the Erin Pit, the Permit requires that the Pit restore groundwater supply to the affected user.

[57] Mr. Fitzpatrick advised that the review agencies involved in the application have no outstanding hydrogeological concerns, including the protection of local water supply and water quality. Mr. Fitzpatrick testified that in his professional opinion the proposal will not adversely impact the local water supply and there will be adequate measures in place to monitor water quality.

[58] Based on the uncontested expert opinion evidence of Mr. Fitzpatrick, the Tribunal is satisfied that the proposal will not adversely impact the local water supply and further that there will be adequate measures in place to monitor water quality.

## **CONCLUSION**

[59] Although sincerely held, the concerns raised by the remaining objectors with respect to the issues set out in paragraph [11] of this decision were not supported by objective evidence and/or independent experts and amount to mere apprehensions of concern. As a result, the objectors have not successfully demonstrated that approval of the extension will result in unacceptable adverse impacts in terms of noise, traffic safety, dust or on water quality or quantity.

[60] Based on the uncontested evidence of five expert witnesses, the Tribunal is satisfied that the criteria set out in s. 12 (a) through (k) of the ARA were addressed appropriately and on that basis has reached a determination to request the Minister to issue the Licence subject to the prescribed conditions and in compliance with the site plans filed as Exhibits 6(a) to 6(d).

## **ORDER**

[61] The Tribunal directs the Minister to issue the licence subject to the prescribed conditions contained in, and in accordance with the site plans for the Erin Pit Extension filed as Exhibits 6(a) through to 6(d):

- Exhibit 6(a) – Existing Features
- Exhibit 6(b) – Operational Plan
- Exhibit 6(c) – Rehabilitation Plan, and
- Exhibit 6(d) – Cross Section Plan

[62] The Tribunal so orders.

*“John Douglas”*

JOHN DOUGLAS  
MEMBER

If there is an attachment referred to in this document,  
please visit [www.elto.gov.on.ca](http://www.elto.gov.on.ca) to view the attachment in PDF format.