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BREAKING NEWS

ONTARIO SUPERIOR COURT UPHOLDS DUNTROON EXPANSION DECISION, DISMISSING JUDICIAL REVIEW SOUGHT BY NEC

Court reaffirms key facts in decade-long approval process

In a victory for fact-based decision-making and the validity of the regulatory process, the Ontario Superior Court of Justice has dismissed the Niagara Escarpment Commission (NEC)'s application for a judicial review of the June 2012 approval by the Consolidated Hearings Board of Walker Aggregates' Duntroon Quarry expansion.

In reaching its decision yesterday to reject the Judicial Review request, the panel of three Justices of the Divisional Court unanimously agreed that all legislation and policies had been fairly and reasonably applied, the facts well-considered and no legal errors were made by the Consolidated Hearings Board in reaching its majority decision last year.

A Judicial Review is different from an appeal of a case in that it seeks to challenge a decision on the basis of a legal error. Writing the court's judgment, Justice Katherine Swinton was unequivocal, "The decision of the majority of

the Joint Board [Consolidated Hearings Board] reveals no legal error is reasonable, given the governing legislation and policies and the evidence before it."

The Justices also rejected the noise impact argument put forward by the Clearview Community Coalition (CCC), a local citizen's group – noting that it is unrealistic to compare noise to a hypothetical scenario of no existing Duntroon quarry and that Walker had presented expert evidence of the steps taken to minimize noise along the haul route.

The NEC and the judgment reaffirmed key factors that weighed in the Consolidated Hearing Board's initial approval of the Duntroon expansion:

- the positive history of the existing quarry
- the lack of negative impact on the use of water supplies from the existing quarry
- the continued presence of natural heritage features in close proximity (reforestation of adjacent areas that would create habitat in the same forest)
- the proposed continued use of the established haul route – including its noise mitigation efforts

This decision also upholds the Consolidated Hearing Board's interpretation of the "no negative impacts" test of the Provincial Policy Statement (PPS) and related provisions in the Niagara Escarpment Plan (NEP) to protect unique ecological areas. The court's written judgment concluded, "[the] NEC has failed to identify any conflict between the NEP and the PPS, nor has it shown that there would have been a different outcome if the approach suggested by it had been adopted because the NEP is more stringent than the PPS."

This refers to the extensive reforestation of lands, proposed by Walker, within and adjacent to the extraction area. The court agreed with the Consolidated Hearing Board's assessment that the boundaries of natural features are defined by their ecological characteristics and functions, not by property ownership – as the NEC has argued.

The NEC was also ordered to pay $15,000 in legal costs to Walker and $5,000 to the County of Simcoe and Township of Clearview jointly.

According to the company's website, Walker's Duntroon Quarry expansion application earned the support of the Township of Clearview, the County of Simcoe, the County of Grey and many local citizens because Walker listened to

people in the area and worked to minimize environmental and noise impacts to the greatest extent possible – well beyond what was required by legislation and policy. Local residents and officials also recognized significant economic benefits would result from the proposed quarry expansion, including new jobs, increased economic activity for local businesses, as well as the ability of the municipality to source aggregates for their own use from a local business.

Millions of dollars in road improvements, financial support for Clearview Township's acquisition of environmental lands and tree planting were other local benefits promised by Walker Aggregates and cited in the court's judgment.

This Ontario Superior Court decision concludes a decade-long approval process which included the longest hearing on record for a quarry expansion – 139 days and 36 expert witnesses.

For further information:

News release from Walker Aggregates on the court's decision: http://www.walkerind.com/articleview.html?article_num=123

Full text of the Court's decision:
www.canlii.org/en/on/onscdc/doc/2013/2013onsc2497/2013onsc2497.html

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