

Special Edition Stepping Stones



THE DUNTROON QUARRY EXPANSION NEWSLETTER

April 21, 2011

Message from Walker Aggregates' Vice-President

Testimony and cross examination of the planner for the Niagara Escarpment Commission, Kathryn Pounder, has been the focus of the proceedings of the Consolidated Hearings Board since our last special edition of Stepping Stones on April 6.

Cross examination of Ms. Pounder will continue into next week and be followed by testimony by the planner for the Clearview Community Coalition, Tony Usher. After that, Walker Aggregates will have an opportunity to reply to new testimony from witnesses in opposition to our application raised after we presented our case. Then the lawyers for all parties will prepare written – and possibly also verbal – final arguments.

The board has indicated testimony must be completed by May 31. This will mean the hearing will have lasted almost 13 months.

As we come to the end of this long and arduous process, we'll keep our neighbours and friends updated on the developments of the hearing with future special editions of Stepping Stones. Please feel free to contact me with any questions about the quarry expansion or the hearing process at 705-445-2300 extension 224, or in Niagara at 905-227-4142, or visit our website at <http://walkerind.com/walker-aggregates/duntroon-expansion.html>.

A handwritten signature in black ink, appearing to read "Ken Lucyshyn".

Ken Lucyshyn

NEC Planner Provides Details on Quarry Expansion Opposition

In her ongoing testimony, the planner and senior strategic advisor for the Niagara Escarpment Commission (NEC) continued to point to reasons why an expanded Duntroon Quarry application should not be approved. Kathryn Pounder argued before the Consolidated Hearings Board that the application does not meet the policies of the Niagara Escarpment Plan for redesignating Escarpment Rural Area land to Mineral Resource Extraction Area land. She also maintained the application does not meet the objectives of the plan.

She told the board the quarry application does not protect the natural environment, Walker Aggregates has not proven that water issues can be addressed and the quarry expansion will result in a negative impact to the habitat of endangered butternut trees on the site.

Ms. Pounder also said that the boundary of the regional Area of Natural and Scientific Interest (ANSI) on the site, which was determined by the Ministry of Natural Resources, should also have been reviewed by the Niagara Escarpment Commission and that the NEC staff should have been invited to determine the boundary of the wetlands that are within the ANSI. As it stands now, the ANSI will be protected from aggregate extraction with a 10-metre setback, but Ms. Pounder says an interior forest area associated with that ANSI will not be protected, but should be.

Ms. Pounder maintained the reforestation planned by Walker might not be successful due to issues such as invasive species or drought, that the lake that will result from the rehabilitated quarry "will be of very low ecological value" compared to the significant

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woodlot it is replacing, and that approval of the quarry expansion will result in a restricted access to the Bruce Trail and the trail parking lot on County Road 91.

"The proposed extraction does not maintain the natural system on this site, and the enhancement of this natural system has not been demonstrated," she said.

Earlier, Ms. Pounder said that a mega-quarry planned for Melancthon would be a better site for a local aggregate operation than the proposed Duntroon Quarry expansion. Although, the board allowed some information about the Highland Melancthon Quarry proposal to be entered into evidence, chair Chris Conti stressed that evidence about other applications was speculative and that the board was not interested in hearing extensive evidence about the feasibility of other applications.

At least one member of the Consolidated Hearings Board wondered how it is at all possible that quarries could be allowed in the Niagara Escarpment Plan Area, given Ms. Pounder's testimony against the proposed expansion.

She told the board that one of the development criteria of the Niagara Escarpment Plan states "Any development permitted should be designed and located in a manner as to preserve the natural, visual and cultural characteristics of the area."

"How does any quarry do that?," the board member asked. Ms. Pounder responded that there could be some quarries in the plan area that would not be visible.

Earlier testimony indicated that the proposed Duntroon Quarry expansion would be hidden from public view, except for the portion that will be along the section of County Road 91 that is proposed to be closed to public traffic.

Among other objections, the NEC planner said a man-made cow pond on the proposed quarry site should be left where it is now located, and not moved to allow for aggregate extraction as Walker Aggregates is planning to do. She said the pond should have been included as part of a larger regional Area of Natural and Scientific Interest (ANSI) when it was surveyed by the Ministry of Natural Resources in 2003, and that the NEC should have participated in determining the boundary but was not invited to do so.

Speaking to the road agreement whereby County Road 91 would be transferred to Clearview Township, a portion closed and transferred to Walker, and Sideroad 26/27 upgraded, Ms. Pounder said the NEC and the Bruce Trail Conservancy should have been consulted during settlement discussions that led to the road agreement. She said the agreement has implications for the Bruce Trail which crosses Sideroad 26/27. She also said that the planned upgrading of 26/27 has not been demonstrated as being compatible with the rural landscape.

Ms. Pounder maintained the road agreement is at odds with the provincial Greenbelt Plan which provides that the government is to "Encourage the development of a trail plan and a coordinated approach to trail planning and development in the Greenbelt."

She also said the agreement is at odds with the Provincial Policy Statement (PPS) in that County Road 91 would not be safe as it is now constructed to handle traffic from an expanded quarry. On the other hand, she said that upgrading it would also be contrary to the PPS which notes that development should be appropriate to available infrastructure.

Ms. Pounder said closing the road is a way to get around the dilemma but argued it is "bad planning."

She continued to attempt to explain her opposition to the proposed expansion, in light of a policy framework which allows for quarrying in the Niagara Escarpment Plan Area.

Ms. Pounder pointed to provisions in the PPS to make her case, including one which states, "The diversity and connectivity of natural features in an area, and the long-term ecological function and biodiversity of natural heritage systems, should be maintained, restored, or where possible improved..." She said the quarry expansion does not comply with this policy because it would not maintain the natural system on the site, which prompted a board member to wonder on which site this policy could be upheld for a quarry application.

Ms. Pounder responded that not all sites would have the same functions and connectivity of natural features as the Duntroon Quarry expansion site.

She then reiterated previous testimony made by the NEC's ecologist in expressing opposition to the application from a policy perspective.

In defense of her position that the quarry should not be allowed because it would have a negative impact on part of the woodland that is considered significant, she maintained that there are plenty of other woodlands in the Niagara Escarpment that would not be determined to be significant or would not have the same natural systems.

Ms. Pounder told the board that she agrees with the testimony of Ontario's Environmental Commissioner, Gord Miller, who opposed the concept of "net gain compensation" to mitigate potential negative impacts. "There are no policies in the Niagara Escarpment Plan that speak to compensation or net gain," she said, referring to Walker Aggregates' plan to replace a forested area it intends to remove for aggregate extraction.

She did say mitigation can be used in a development project to enhance beneficial effects, which prompted board chair Chris Conti to ask, "How do you distinguish that from net gain?" He then went on to ask, "Why would you bother enhancing [natural features] if you didn't have a negative impact?"

Ms. Pounder replied that not all development projects create what is essentially a negative impact.

The NEC planner was critical of Simcoe County's stance of not being opposed to the project. She went to selected sections of the County of Simcoe's Official Plan to point to policies she felt the quarry expansion would violate. As an example, she said, "The Greenland policies of the County of Simcoe Official Plan have, to my mind, not been satisfied."

Ms. Pounder also told the board, "I don't see how you could conclude that there are no negative impacts on the county's natural heritage system." In previous testimony, County planner Kathy Suggit said the municipality relied on the expertise within the Ministry of Natural Resources to determine if there would be negative impacts to the provincially significant wetlands and endangered species habitat resulting from the expansion.

Ms. Pounder went on to say that the County's Official Plan does not allow for the disruption or destruction of landscape features, something she believes would occur with Walker Aggregates' plan to grade some of the land to direct surface water from one area to another. She also testified that she believed the road settlement agreement is "inconsistent" with the County's Transportation Master Plan. In elaborating

on the road agreement and pointing to the goals of the County's Official Plan, Ms. Pounder said, "It has not been demonstrated to us that this is a wise use of the County's resources."

This prompted a question from a board member who asked, "So we have to determine if the County has made a wise use of its resources?" Ms. Pounder replied this was in fact the case, according to the Provincial Policy Statement. She went on to say, "In my opinion this [road agreement] does not represent good planning."

In summing up her testimony on whether the quarry expansion application fit with the County's Official Plan, she said, "The policies of the County's Official Plan are not satisfied by the approval of an amendment..."

Ms. Pounder then offered her opinion on how the quarry expansion application is also inconsistent with the Official Plan of the Township of Clearview. The Township is also not opposed to the expansion.

Towards the end of her testimony for the day she told the board that in her opinion, the Rob Roy 2 wetlands – which is on the proposed quarry property but will be protected from extraction – should be redesignated under the Niagara Escarpment Plan from Escarpment Rural to Escarpment Natural, to offer it extra protection.

When a board member asked how that might be done, Ms. Pounder responded that, "The NEC could do that but I [also] think it is within this board's ability to do that."

Pounder next took aim at the Ministry of Natural Resources (MNR), saying it ignored the policies of the Niagara Escarpment Plan and the Township of Clearview in coming to its position on the expansion.

As was often the case since she first took the stand, Ms. Pounder was questioned by board members on her testimony. "Aren't the MNR to comment on matters of their own jurisdiction?," one board member asked. Ms. Pounder replied that the MNR's position is also at odds with provisions of the Provincial Policy Statement and the ministry's own Statement of Environmental Values.

Later, Ms. Pounder explained her opinion that the Walker Aggregates' quarry application is contrary to the provisions in the provincial Aggregates Resources

Act. Pointing to the act's matters to be considered in issuing or refusing a quarry license, she cited considerations such as the effect of the operation on the environment, the effect on nearby communities and the suitability of progressive final rehabilitation plans as areas where the Duntroon Quarry expansion falls short.

She then went on to say, "There is a concern that once aggregates have been removed, the operator would have no incentive to rehabilitate the site."

"Are you suggesting that Walker would not rehabilitate their existing site?," a board member asked. He also asked her about financial assurances that Walker has agreed to put up, to guarantee the expanded quarry is rehabilitated when aggregate extraction is complete.

Ms. Pounder responded that it will be a long time before both quarries are rehabilitated, and spoke to the responsibility of The Ontario Aggregates Resources Corporation (TOARC) if an operator defaults on its rehabilitation obligation. She explained in such a circumstance, TOARC need not carry out the rehabilitation according to the site plan the operator has filed with the MNR.

She said she wanted the board to understand that the default position calls for minimum rehabilitation, which does not address the NEC's concern that the surrounding natural features will be supported, such as by the potential need to pump water to the nearby wetlands in perpetuity.

The draft adaptive management plan (AMP) to implement monitoring and to mitigate any unforeseen negative impacts of an expanded Duntroon Quarry also came under fire from Kathryn Pounder.

"As a new tool, we have to be very careful about our expectation about what they [AMPs] can do," she said, adding there are no policies or procedures at the Ontario Ministry of Natural Resources (MNR) that address adaptive management plans.

"If the use is acceptable and the application satisfies existing planning regimes, and there are no negative impacts, then AMPs can be used as a tool," Ms. Pounder said. However, she added, "An AMP should not be relied upon to defer the planning tests that have to be relied upon at the time of approval."

She went on to testify that AMPs are highly complex

documents that require a high level of sophistication to administer. Ms. Pounder said neither the NEC nor the MNR have the expertise or resources to monitor the effectiveness of an AMP for an expanded Duntroon Quarry, pointing out that the MNR has only one hydrogeologist on staff and the local district office of the MNR has 2.5 aggregate inspectors to oversee 500 pits and quarries.

She took the board to an NEC report about a quarry in Acton which does not have an AMP – operated by Dufferin Aggregates and approved by the NEC – where she outlined some issues about monitoring and mitigation actions at that quarry.

"I bring this to the board's attention to identify concerns regarding the complexity of monitoring and mitigating operations such as this."

She also spoke to the NEC's approval of a Dufferin quarry application in Milton, which does have an AMP, but said that application was different because the mitigation being proposed did not have a "net gain" element as is the case with the Duntroon expansion, in the plans to reforest an area greater than the woodlands to be removed.

She also said the Milton quarry included a provision whereby Halton Region and the local conservation authority would take on final rehabilitation efforts and ongoing monitoring. Walker Aggregates is proposing to undertake its own rehabilitation of the Duntroon Quarry expansion, while providing financial assurances, held by an independent third party, to guarantee that the rehabilitation is undertaken.

As for the Walker AMP itself, Ms. Pounder testified, "It's my opinion that the proposed mitigation measures have not been demonstrated to alleviate negative impacts." She said the provisions of the AMP, such as the use of injection wells to pump water from the quarry to nearby seeps and streams, have not been proven to work.

At the beginning of her eleventh day of testimony in chief, Ms. Pounder continued to outline her opposition to the Duntroon Quarry expansion, from taking issue with the plan to monitor and mitigate possible quarry impacts, to the quarry's hours of operation, the conservation easement planned for the expanded quarry after it has been rehabilitated, to the road agreement with the County of Simcoe and Township of Clearview.

She said if County Road 26/27 is reconstructed to take the flow from the proposed closed section of County Road 91, then a development permit from the NEC would be required. Also relating to the road agreement, she said it has not been demonstrated that County Road 91 can be safely designed with a posted speed limit of 60 kilometres per hour. "I do not believe most drivers would adhere to the limit," she said, and later added, "A safe and appropriate haul route has not been provided" for the quarry expansion.

In summing up her evidence in chief Ms. Pounder stated, "This area has already been negatively impacted by the existing [Duntroon] quarry," and that a quarry expansion would result in a cumulative impact to the Niagara Escarpment.

"The proponent has failed to demonstrate no negative impacts to a significant number of natural heritage features and functions."

During cross examination, the NEC planner was forced to backtrack on some of her testimony.

Ms. Pounder had maintained a supply/demand analysis was required to determine the need for a quarry, and had raised the planned Melancton Quarry application as an alternative to the Duntroon Quarry expansion and a means to supply aggregate to the local market.

Walker lawyer Wayne Fairbrother introduced an NEC staff report from April 6, 2010, that recommended approval of a protocol whereby, "Demonstration of need for mineral aggregate resources, including any type of supply/demand analysis, shall not be required, notwithstanding the availability, designation or licensing for extraction of mineral resources locally or elsewhere." Fairbrother also introduced evidence that the NEC had approved the use of the protocol at a meeting just over a week later.

When asked about the protocol Ms. Pounder said she was aware of it but had not read it, and believed that it was before the Ministry of Natural Resources awaiting finalization. When pressed by Fairbrother, she went on to say, "I was wrong in terms of my understanding of the previous protocol and the fact that a supply/demand analysis was not required."

Under further questioning Ms. Pounder also confirmed that a motion by the NEC's Public Interest Advisory Committee to oppose the Duntroon Quarry expansion was prepared before the committee members had heard presentations from the Clearview Community Coalition and Walker Aggregates, and before they had toured the site of the proposed quarry expansion. The presentations and site tour were part of a meeting on June 2, 2009, at which the committee voted to oppose the expansion.

Also during cross examination, Ms. Pounder confirmed the NEC received Walker Aggregates' application for an amendment to the Niagara Escarpment Plan in May of 2005 and received full documentation relating to the request in October, but did not initiate its review process for another seven months.

"Is that the normal amount of time?," Fairbrother asked. "I would hope not," Ms. Pounder responded, adding, "It depends on the complexity of the application."

In response to questioning by Fairbrother, Ms. Pounder also confirmed that mineral extraction is permitted in the Niagara Escarpment Plan Area, subject to satisfying policy considerations and development criteria.

Cross examination of Kathryn Pounder continues.