

Insights for Gravel Watch on the Ontario Municipal Board's Order on the Aikensville Pit (File no. OP-2005-03)

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Dear Members of Gravel Watch,

Ric asked me to provide some feedback on the Aikensville Pit hearing. I happily obliged. As we all know, OMB Member N.C. Jackson ordered the MNR not to issue an Aggregate Licence to Capital Paving Inc., the proponent for the proposed pit. There were some really good reasons for this decision. Below are my thoughts about some key reasons for the Board's ruling. I also highlight some important lessons that community groups can derive from the hearing. I hope you find these insights somewhat enlightening. All the best in your ongoing battles and policy reform efforts. Don't give up: everything changes!

Key reasons for refusal

1. Jackson found that the methodology used by Capital to assess impacts on surface and groundwater was flawed (see p. 15 of the hearing report):

- The surface and groundwater inputs and outputs assessment methods did not take an ecosystems approach and, notably, did not consider how the inputs and outputs change with the land gradient and over the estimated 5 to 7 year period of proposed excavation.
- The Board found that the methods used were inferior to the extensive water balance

methods set out in the Oak Ridges Moraine Conservation Plan Technical Paper Series. Jackson asserted that the ORMCP methodology is more reflective of an ecosystems approach and more appropriate for use upon another Moraine, i.e., the subject Paris Moraine.

- Jackson found that Capital failed to establish a water table reflective of the most recent water levels. Jackson determined this failure to be “not good planning” (see p. 16).
- “The Board finds that Capital has failed to satisfactorily analyze ground and surface water on the site as a whole...as a result, the Board cannot accept the Capital assertions that there will not be impacts harmful to an existing high level environmental regime” (p. 16).

2. Because the Board found that Capital failed to satisfactorily analyze ground and surface water on the site, and because of the close relationship between water and ecology, the associated ecological studies were also ruled to be unacceptable: “...the finding of the Board on ecology must reflect the same failure of Capital to prove the protection of the ecology on site and off...” (p. 17).

3. **Jackson’s interpretation of the PPS was that it should be applied in its entirety even though the policies may “differ” when applied to the same project. Jackson is presumably referring to the conflicting policies within the PPS with respect to, for example, protecting aggregate resources and water quality, etc. Jackson applied the PPS Aggregate policies in such a way as not to override other PPS policies (see p. 17): “...those policies are applied to determine whether extraction proposed is realistic and whether social and environmental impacts can be minimized. The Board concludes extraction proposed is not realistic given that the possible environmental impacts have not been minimized ” (p. 17-18).

4. Jackson found that the minimum separation distance and zone of influence proposed by Capital was insufficient in that they did not comply with the MOE’s Noise Screening Process for Section 9 Applications. The minimum separation distance to achieve compliance with Ministry noise guidelines is 1000 metres from Aggregate crushing operations (p. 18).

5. Jackson found that the proposed noise level would exceed MOE guidelines for the maximum level at the closest residential property to the excavation site. Moreover, the Board preferred the use of rural guidelines as opposed to urban guidelines for this case (p. 20).

6. Jackson found the discharges of fine particulate matter and crystalline silica in excess of MOE

guidance documents (Ambient Air Quality Criteria). Jackson found that Capital's Best Management Practices Plan failed to mitigate potential impacts: "The Board's finding is that public health concerns may result inconsistent with policy 1.1.1(c) of the PPS" (p. 20). Jackson also pointed out that the Board was not convinced that Capital modeling considered worst-case scenarios and best data. The above points (4, 5 and 6) led Jackson to find that Capital failed to demonstrate the social impacts would be minimized.

Lessons for future community battles over proposed pits and quarries

- Jackson's application and interpretation of the PPS (see point 3) seems to have been of paramount importance in this case. Jackson may have set an excellent precedent with respect to what communities should expect from the Board in pit and quarry related decisions and beyond. **More research is required to determine the differences in pit and quarry hearing outcomes based on the Board's application and interpretation of the PPS (e.g., Jackson used the PPS in its entirety as opposed to using Aggregate policies to override other policies).
- The significance of the natural heritage (wetlands, woodlots, headwaters, fish habitat, etc.) in and surrounding the proposed site played an integral role in this case. Wherever possible, citizens should focus on designating sensitive lands and getting them recognized in Official Plans and by the Province. This act of designation and the designation itself raises awareness and provides leverage in OMB hearings for a variety of potentially harmful developments.
- Expert testimony by OMB standards is testimony by people who have significant experience and education with respect to the subject at hand. Also, if the expert is a good speaker and presents himself/herself well, this is all the more appreciated.
- The Oak Ridges Moraine Conservation Plan Technical Reports provided an excellent example in this case. Community groups should refer to reports generated by such organizations with genuine mandates to protect valued natural heritage.
- The Board is biased towards expert knowledge as opposed to local knowledge, but local knowledge backed by "hard" science seems to be more believable.