

# Local Planning Appeal Tribunal

## Tribunal d'appel de l'aménagement local



**ISSUE DATE:** June 21, 2018

**CASE NO(S):**

PL171297

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

|                               |   |
|-------------------------------|---|
| Applicant and Appellant:      | Caldwell Construction Ltd.  |
| Subject:                      | Application to amend Zoning By-law No. 12-019 - Refusal of the Application by the Town of Kirkland Lake |
| Existing Zoning:              | Rural (RA)  |
| Proposed Zoning:              | Mineral Extraction (ME) Special   |
| Purpose:                      | To permit a pit/quarry and the processing of materials  |
| Property Address/Description: | TECK MC L16527, L16528; Parcel 10191CST   |
| Municipality:                 | Town of Kirkland Lake   |
| Municipal File No.:           | 22  |
| OMB Case No.:                 | PL171297  |
| OMB File No.:                 | PL171297  |
| OMB Case Name:                | Caldwell Construction Ltd. v. Kirkland Lake (Town)  |

**Heard:** May 1, 2018 in Kirkland Lake, Ontario

## APPEARANCES:

### Parties

Caldwell Construction Ltd.  
("Applicant" / "Appellant")

Town of Kirkland Lake ("Town")

### Counsel

Rajan Kehar

William Thomson

## **DECISION DELIVERED BY S. TOUSAU AND ORDER OF THE TRIBUNAL**

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### **INTRODUCTION**

[1] The Applicant proposes to establish a mineral aggregate operation (a “quarry”) in a rural area at the south limit of the Town. The owners of an adjacent dwelling are opposed to the quarry because the noise and vibration from blasting and other operational disturbances are expected to exacerbate the serious mental health condition of one of the owners.

[2] Town Council refused the application for Zoning By-law Amendment (“ZBA”) and the Applicant appealed the Town’s decision to the Ontario Municipal Board, now the Local Planning Appeal Tribunal (“Tribunal”).

[3] After the appeal was filed, the Town conducted a formal dispute resolution process under s. 34(11.0.0.1) of the *Planning Act* (“PA”) which was ultimately unsuccessful in satisfying the adjacent owners, but did result in a partial settlement between the Appellant and the Town. The partial settlement was such that the Town no longer opposed the ZBA, but took no position on the matter at the hearing. Counsel for the Town was present throughout the hearing but did not tender or question witnesses and did not make submissions.

[4] The adjacent owners, Diane Rioux and Emile Deschamps, were represented by Ms. Rioux. Mr. Deschamps lives with a serious mental health condition of post-traumatic stress disorder (“PTSD”) resulting from his overseas military service to Canada. Mr. Deschamps did not attend the hearing.

[5] Ms. Rioux requested and was granted Participant status in the hearing. The Tribunal advised Ms. Rioux that it is common for an adjacent owner to an application to be granted Party status in a hearing. However, Ms. Rioux was content with Participant status as she wished to read a statement to the Tribunal and file written documents but

did not want to tender or question witnesses. At Ms. Rioux's request, the Tribunal, with consent of the Parties, received her evidence in the middle of the Appellant's case to allow Ms. Rioux to depart the hearing early on account of her own health. Ms. Rioux did not remain in attendance for the balance of the Appellant's case and submissions.

[6] Ms. Rioux entered into evidence personal health information pertaining to her husband, Mr. Deschamps. The Tribunal offered to keep this information confidential and out of the public record. However, Ms. Rioux advised that Mr. Deschamps' military service and his resulting mental health condition are well known and fundamental to their objection to this application, and should remain part of the public record.

[7] The general issue at hand is the compatibility of a quarry next to a dwelling. However, the deep issue in this case is whether the planning legislation and policy directives to protect a person's health apply to an individual person's circumstances or to persons generally and collectively.

[8] After a careful review of the evidence against the background of relevant legislation, policy and guidelines as set out in this Decision, the Tribunal will allow the appeal and approve the ZBA, notwithstanding its unfortunate potential effects on a neighbouring resident and veteran.

## **LEGISLATIVE TESTS**

[9] In making a decision under the Act with respect to this appeal, the Tribunal must have regard to matters of provincial interest as set out in s. 2 of the Act, and must have regard to the decision of the approval authority and the information considered by the approval authority under s. 2.1(1) of the Act. The decision must be consistent with the Provincial Policy Statement ("PPS") and must conform with or not conflict with the Growth Plan for Northern Ontario ("GP") under s. 3(5) of the Act. In addition, the ZBA must conform with the Town's Official Plan ("OP") under s. 24(1) of the Act.

[10] Also relevant to this case are the D-series Guidelines on Land Use Compatibility (the “D-Guidelines” or “D-#” using the relevant number) issued by the Director, Environmental Planning Branch of the Ontario Ministry of the Environment and Climate Change (“MOECC”).

[11] The *Aggregate Resources Act* (“ARA”) does not apply in Northern Ontario, although the reviews conducted by commenting agencies for this application were guided by the ARA in anticipation of its eventual application in Northern Ontario.

## **THE APPLICATION AND SETTING**

[12] The proposed quarry location is a 30 hectare (“ha”) property described as Parcel 101091CST (the “property” or “site”) to the west of Highway 112 (“Hwy 112”) at the municipal boundary of the Town, several kilometres south of the built up area of Kirkland Lake.

[13] The quarry property does not abut Hwy 112, but after settlement discussions, the Town sold the intervening parcel to the Applicant to provide direct access from Hwy 112 to the proposed quarry.

[14] The east half of the property contains a central bedrock outcrop and the west half consists of treed areas and a creek. The Ontario Northland Railway traverses the property and separates 7 ha in the southwest corner from the balance of the property.

[15] The quarry is proposed in the central bedrock outcrop where an eastward-facing blast face and processing area would be established. Extraction would progress from east to west with annual extraction up to 25,000 tonnes, although demand in a typical year is expected to be closer to 10,000 tonnes. To produce 25,000 tonnes of aggregate, one blast per year is required, followed by processing the rock with a licenced mobile crusher, owned by the Applicant, brought onto the site for a few weeks once or twice per year. The aggregate would be stockpiled on site and removed by

truck as needed. The quarry would operate during the non-winter seasons between 7 a.m. and 7 p.m. daily in compliance with the Town's noise by-law.

[16] The ZBA, as revised by the Applicant in preparation for this hearing, would zone the central area of the property as Mineral Extraction, keeping the zoned area 600 metres ("m") from the dwelling to the southeast and prohibiting processing and stockpiling of aggregate within that 600 m separation. The ZBA would also require the quarry to be set back 15 m from any property line, 20 m from the railway, and 60 m from the creek.

[17] The quarry would also be subject to a site plan and associated agreement to be approved by the Town under s. 41 of the PA. The site plan and agreement would reflect the setbacks of the ZBA and impose related conditions and performance requirements on the Applicant.

[18] To the southeast of the site, Ms. Rioux and Mr. Deschamps reside on the abutting 16 ha property located outside of the Town within the unincorporated Township of Otto. Their dwelling is situated in the southern corner of their land close to Hwy 112 and the Ontario Northland Railway. Like the quarry property, their property is treed and bisected by a creek valley.

## **BLAST IMPACT ASSESSMENT**

[19] In support of the application, a Blast Impact Assessment ("BIA") was prepared by Reza (Ray) Jambakhsh, a Professional Engineer in mining and a licenced surface blaster. Mr. Jambakhsh is the Chief Technical Advisor, Explosive, Blasting and Vibrations for DST Consulting Engineers Inc. and was qualified by the Tribunal to provide opinion evidence in the area of explosives, blasting and vibration related to surface quarry operations.

[20] To produce the proposed annual quantity of material, Mr. Jambakhsh advises that one blast per year is necessary and that the total duration of the blast would be less

than one second. Several small blast holes are used to fracture the quarry face. The explosives are detonated in sequence but are perceived as one single blast of less than one second total duration. To reduce the impact of the blast on the Rioux/Dechamps dwelling (the “dwelling”), the proposed quarry face will face east (as compared to an earlier proposal facing southeast) to direct the vibration and noise away from the dwelling.

[21] The industry standards for the protection of persons and property from blasting are established by the MOECC in its Guidelines for Blasting in Mines and Quarries, and by the Department of Fisheries and Oceans Canada in its Guidelines for the Use of Explosives In or Near Canadian Fisheries Waters (collectively the “Guidelines”).

[22] Mr. Jambakhsh explains that a blast produces a wave of energy, observed as vibration, that travels through the rock and declines rapidly with distance from the blast. The Guidelines limit the vibration that may reach a sensitive receptor, such as a dwelling, to 12.5 millimetres per second (“mm/s”) of peak particle velocity. Where necessary, the amount of explosive used can be adjusted to produce a desired level of vibration at the sensitive receptor. Using standard explosive quantities and depths for quarry blasting, Mr. Jambakhsh calculates the vibration at the dwelling from a blast 650 m away to be 2.76 mm/s, and if the blast were 300 m away to be 9.5 mm/s. At the revised quarry setback of 600 m, the vibration is predicted to be less than 3 mm/s, or approximately 25% of the allowable limit of 12.5 mm/s.

[23] A water well is considered a sensitive structure and subject to the same vibration protection in the Guidelines as dwellings. Based on the above results, Mr. Jambakhsh concludes that vibrations will not affect the well on the neighbour’s property.

[24] Regarding water quality, Mr. Jambakhsh reports that the quarry floor must maintain a minimum 2 m depth to the water table. At this site, the water table is at 310 metres above sea level (“masl”) and the quarry floor will be 320 masl, for a 10 m separation.

[25] A blast also produces overpressure, perceived as low frequency noise or concussion, that in Mr. Jambakhsh's experience is usually the greatest concern of neighbours. The Guidelines limit overpressure at a sensitive receptor such as a dwelling to 128 decibels ("dB"). Mr. Jambakhsh reports that overpressure is more difficult to predict because it is highly influenced by the weather conditions at the time of blasting. Factors such as heavy cloud cover or a temperature inversion (cooler air aloft) can increase overpressure. However, Mr. Jambakhsh advises that using standard blasting techniques and observing proper weather conditions, as is common practice for licenced blasters, will ensure compliance with the Guidelines.

[26] To predict expected dB levels, Mr. Jambakhsh applied an industry standard calculation based on average weather conditions. At 650 m away, the overpressure at the dwelling is calculated to be 107.71 dB. At 575 m away, the overpressure is approximately 110 dB. The final proposed setback of 600 m would place the predicted overpressure between these two results, well within the Guideline limit of 128 dB according to Mr. Jambakhsh.

[27] Fish habitat is protected by the Guidelines with an overpressure limit of 100 kilopascals ("kPa") in the water body and a vibration limit of 13.0 mm/s at the water's edge. Using standard blasting procedures, Mr. Jambakhsh calculates a required setback of 58.44 m from the watercourse and notes that a reduced setback of 30 m could be achieved with reduced charges (explosives) in the blast holes. The draft ZBA proposes a minimum 60 m setback from the watercourse.

[28] The report recommends blast design parameters and detailed reporting to ensure compliance with the Guidelines. Mr. Jambakhsh also recommends monitoring equipment to measure the blast effects in the vicinity of the dwelling, and pre-blast well water testing as a baseline for future comparison if needed.

[29] In summary, Mr. Jambakhsh concludes that blasting can occur in compliance with the Guidelines as close as 300 m to a neighbouring dwelling without damage to

property or harm to persons. He finds that the proposed ZBA setback of 600 m will provide a substantial buffer producing offsite effects well below the Guideline limits.

[30] In addition, Mr. Jambakhsh testified that it is now routine best practice to provide written notice of blasting to neighbours 24 hours in advance of planned blasting. The notice would advise of the date and time of blasting, subject to favourable weather conditions. Mr. Jambakhsh recommends this practice.

## **ISSUES AND ANALYSIS**

[31] Ms. Rioux provided a thorough explanation of the traumatic effects of area mining and quarry operations on her husband's mental health and the resulting impacts to her and their children. With the support of Mr. Deschamps' written statement and a letter from his psychiatrist, she testified that Mr. Deschamps' PTSD symptoms are triggered and exacerbated by blasting from mining and quarry operations in the area, including blasting from several kilometres away. While a blast may only last one second, Ms. Rioux explained that the effects on Mr. Deschamps' mental health are severe and can last for weeks or months. In their experience, any blast brings on these severe effects regardless of the level of noise or vibration. They feel strongly that Mr. Deschamps requires a quiet and peaceful environment that will be further undermined by another quarry operation close to their property. At present, two existing quarries operate to the north of the current proposal, between 1 and 1.5 km north of their house.

[32] Ms. Rioux and Mr. Deschamps oppose the quarry on the basis that, in their opinion, the law requires that a person's health must be protected from adverse effects, the separation distance for the quarry must be measured to their lot line and not to their dwelling, and they fear the quarry will affect their well water's quality and quantity.

[33] Planning evidence was provided by two Registered Professional Planners ("RPP"/"Planners") both of whom were qualified to provide opinion evidence in the area of land use planning. Ashley Bilodeau, RPP, is the Manager of Planning and Land

Development for the Town who testified under summons from the Applicant. Jamie Robinson, RPP, is a consulting planner who testified in support of the application.

### Adverse Effect

[34] The primary issue in this case is whether the proposed quarry will cause an adverse effect under the meaning of Ontario's laws and policies, given their reference "to any person."

[35] Ms. Rioux's evidence, as well as that of the Planners, pointed the Tribunal to the legislation, policies and guidelines that require the consideration of adverse effects when planning for major facilities, such as a quarry, in proximity to a sensitive land use, such as a dwelling.

[36] Section 1.2.6 of the PPS sets out the provincial expectation for planning in these circumstances:

*Major facilities and sensitive land uses should be planned to ensure they are appropriately designed, buffered and/or separated from each other to prevent or mitigate adverse effects from odour, noise and other contaminants, minimize risk to public health and safety, and to ensure the long-term viability of major facilities.*

[37] The PPS takes its definition for "adverse effects" from the *Environmental Protection Act* ("EPA") and includes the following factors relevant to this application:

- 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 ... unfit for human use;
- g) loss of enjoyment of normal use of property.

[38] These PPS policies flow from the provincial interests articulated in s. 2 of the Act including "(h) the orderly development of safe and healthy communities" and "(o) the protection of public health and safety."

[39] The PPS must also be read in conjunction with s. 14(1) of the EPA:

... a person shall not discharge a contaminant or cause or permit the discharge of a contaminant into the natural environment, if the discharge causes or may cause an adverse effect.

[40] The EPA definition of contaminant includes sound and vibration.

[41] The government of Ontario maintains a series of guidelines, collectively known as the D-Guidelines and administered by the MOECC, as “a guide for land use planning authorities on how to decide whether new development or land uses are appropriate to protect people and the environment” (D-1, p. 1). The D-Guidelines are not intended to alter or modify the definition of adverse effect in the EPA (D-1, p. 1). Their objective is to “minimize or prevent” the exposure of persons to adverse effects (D-1, s. 1.2).

[42] “Incompatible land uses are to be protected from each other” and because “distance is often the only effective buffer,” “adequate separation distance ... is the preferred method of mitigating adverse effects” (D-1, p. 4). “The separation distance should be sufficient to permit the functioning of the two incompatible land uses without an adverse effect occurring” (D-1, p. 4). Separation distance itself is addressed in a later section of this Decision.

[43] If the discharges “cannot be reasonably mitigated or prevented to the level of a trivial impact,” the facility “shall not be permitted” (D-1, p. 4). “Trivial impact” is defined as “so minor that there would not be an adverse effect,” with the qualification that “the timing and magnitude of the contaminant discharges should be related to the sensitive land use’s normal use periods” (D-1-3, p. 3). However, residential land uses are considered sensitive 24 hours per day (D-6, s. 1.2).

[44] Ms. Rioux attests that the above requirements are contravened by this application because of the particular nature of Mr. Deschamps’ illness. The blasts will negatively affect his health, cause harm and discomfort, and impair the safety of Mr. Deschamps and those around him. She contends that these adverse effects are clearly not trivial, cannot be mitigated by the proposed separation, and therefore shall not be permitted according to the D-Guidelines.

[45] While recognizing the difficult situation, both Planners explained that planning evaluations are not able to take account of every individual's health condition. Ms. Bilodeau focusses on land use compatibility generally to assess whether adverse effects between the two land uses are satisfied. Mr. Robinson concludes that adverse effects are avoided sufficiently if the application satisfies all relevant guidelines. In the opinion of both Planners, the proposed separation distance and the calculated noise and vibration levels result in the conclusion that the quarry will be compatible with the adjacent residential land use.

[46] The Tribunal finds that the resolution of this issue rests with what is meant in the EPA and PPS by "any person" in the definition of adverse effect. If these words mean 'each individual person' then the Tribunal must find that the quarry will cause an adverse effect on Mr. Deschamps and his family, and the application would fail the necessary legislative tests. Alternatively, if these words mean 'persons generally' then the Tribunal must find that the quarry will not cause an adverse effect on the generic occupants of a neighbouring dwelling, as confirmed by the blast study results and compliance with the D-Guidelines, and the application may be approved.

[47] The purpose of the EPA is "to provide for the protection and conservation of the natural environment" (s. 3(1)). This broad and general wording is complemented by the provincial interests in the PA pertaining to safe and healthy communities, and public health and safety (s. 2). Further, the PPS and the D-Guidelines refer to planning for "land uses" and preventing "land use" conflicts. In connection with separation distance and buffers, D-1-1 notes that "the buffer(s) should permit the normal functioning of the two incompatible land uses without conflict" (s. 4.3, emphasis added).

[48] Based on the above context, the Tribunal finds that "any person" with respect to an adverse effect means 'persons generally' who occupy a land use and not 'each individual person' with his or her own specific conditions and vulnerabilities. As supported by the Planners' opinions, land use planning is concerned with the compatibility of land uses, and not the land users *per se*. While it is people who create

and occupy land uses and who derive the benefits therefrom, land use planning rises above the level of the individual to the collective “public” when considering the proper arrangement of land uses.

[49] In this case, quarries and dwellings are deemed incompatible, and to prevent or mitigate the negative effects between uses, various measures are employed including separation distance, noise and vibration limits, and quarry design in accordance with various directives of the D-Guidelines. These standards are considered to reduce the adverse effects to a trivial level for the occupants of a residential land use. Additional requirements may be imposed by the Town such as hours of operation and serving notice of blasting.

[50] A finding by the Tribunal in the alternative would create an infinite array of potential incompatibilities to reconcile in land use planning, as numerous as there are persons, and incompatibilities would change as persons moved from one location to another or as their circumstances change. Using this case as an example, a quarry may be suitably located near a dwelling containing healthy persons, but may become unsuitable when one of those persons becomes ill. It would be impractical for a use to cease operating based on the changing needs of its neighbours. Land use planning attempts to anticipate and address potential incompatibilities between uses prior to development such that their normal functioning may occur.

[51] Planning at the level of land uses is unable to accommodate the extenuating circumstances of individual persons. As demonstrated in this case, where compatibility is found to be reasonably achieved between two land uses, and where further accommodation may be necessary as a result of an individual's circumstances, that accommodation unfortunately falls to the individual. Using a simplistic example, a restaurant may be required to comply with accessible design criteria, but it is not responsible to provide a mobility aid for a customer with a disability. This example illustrates the subtle division of responsibilities, and is not intended to derogate from the

seriousness of the matter at hand. Ms. Rioux's evidence was effective in apprising the Tribunal of the profound effects of PTSD on Mr. Deschamps and their household.

[52] The Tribunal's finding that planning is for land uses, and not for users *per se*, results in this application satisfying the legislative and policy requirement to not create an adverse effect. In this case, "any person" is considered to mean 'persons generally' who would occupy a residential use. The demonstrated compliance with the D-Guidelines leads to the finding that the quarry will be compatible with the adjacent residential use.

[53] In making this finding, the Tribunal notes that the proposed quarry face is oriented away from the dwelling, a blast lasts less than one second, noise and vibration at the dwelling are well within permitted limits, blasting is expected to be as infrequent as once per year, and provisions for notice will be implemented.

#### Separation Distance

[54] Ms. Rioux and Mr. Deschamps insist that the separation distance to the quarry must be measured from their property line and not from their dwelling, as required by the D-Guidelines. If their interpretation is wrong, Ms. Rioux requested a full explanation.

[55] The Planners agree on how to read the D-Guidelines to establish a complying separation distance as follows. A quarry is a Class III industry and ascribed a 1,000 m potential influence area. Site studies for the specific use may determine the actual influence area but should not be less than 300 m. Because blasting has the largest impact on setbacks, a BIA was required by the Town as part of the ZBA application. The BIA determined that the quarry could locate as close as 300 m to the dwelling and remain within the Guideline limits for vibration and noise. The proposed 600 m separation provides an additional buffer to the minimum setback.

[56] Each Planner referred the Tribunal to the guidelines in D-6 for allowing the required separation distance to be measured from the quarry to the dwelling as

opposed to the neighbour's property line. A required separation distance may extend beyond the quarry site's boundary (s. 4.2.5). Where the ZBA will restrict the industrial use to a particular location on the site by way of a setback, the setback may be included as part of the separation distance (s. 4.4.3). This portion of the separation is on the quarry property. For sensitive uses, measurement is taken from where the actual sensitive activities occur (s. 4.4.4). This portion of the separation may be on the sensitive use property. D-1-3 defines a sensitive land use as "a building, amenity area or outdoor space where routine or normal activities occurring at reasonably expected times would experience one or more adverse effects ..." (p. 3).

[57] Ms. Bilodeau and Mr. Robinson conclude that the sensitive residential land use on the neighbouring property is confined to the dwelling and immediate outdoor area around the dwelling that is used for routine and normal activities associated with the dwelling. They consider the balance of the property in its natural forested state and traversed by a creek to not constitute a sensitive use. No evidence was advanced by Ms. Rioux that the remainder of the property was used for any purpose associated with their dwelling. However, Mr. Robinson testified that even if the property were used occasionally for hiking, hunting, wood cutting or other outdoor purposes, in his opinion these would not be routine activities as contemplated by the guideline. Mr. Robinson likened these outdoor uses to the example in D-6 where a hospital is considered a sensitive use but its parking lot is not, despite that persons would be accessing the parking lot regularly.

[58] Ms. Rioux directed the Tribunal to Appendix C of D-6-3 and posited that the asterisk exception to using the property line does not apply in this case. The Tribunal finds the diagram and descriptions in D-6-3 to be consistent with the Planners' interpretation. The notation identified by a double asterisk says that "where the established use of on-site and ancillary lands associated with a sensitive land use are not of a sensitive nature (e.g. a parking lot or roadway), measurement may be taken to where the sensitive activities actually begin" (D-6-3, Appendix C, p. 1).

[59] Based on the Planners' evidence, the Tribunal considers the sensitive use to be the dwelling and immediate surrounding area and not the remainder of the 16 ha property which may be used for occasional outdoor activities.

[60] Of the 600 m proposed separation between the closest part of the quarry and the dwelling, approximately two-thirds would be on the Rioux/Deschamps property and one-third would be on the quarry property. Along the quarry's 600 m setback line, these proportions vary because of the shape and configuration of the properties.

[61] The Tribunal finds that the measurement and application of the proposed separation distance is consistent with the D-Guidelines. The requested ZBA establishes the dwelling as the point of measurement for the separation distance rather than the edge of the cleared amenity area around the dwelling. This approach is supported because a dwelling provides a fixed point of measurement whereas its surrounding amenity area may vary over time. The doubling of the BIA's 300 m separation distance is more than enough to account for a relatively small cleared amenity area around the dwelling.

### Well Water

[62] Ms. Rioux believes that her well water quantity has been affected by blasting at area quarries more distant than the proposed site. She observed declining yield in the well following area blasting in 2017 until the well ran dry in early 2018. Ms. Rioux believes that the vibration from blasting may close the rock pores that provide for groundwater flow.

[63] With reference to the BIA, Mr. Jambakhsh explains that wells are not considered vulnerable to damage from blasting until a vibration of 50 mm/s is imparted on the well. The Guideline limit is 12.5 mm/s and the anticipated actual vibration at this well is less than 3 mm/s. Mr. Jambakhsh recommends that the well be tested prior to development of the quarry and following blasting to confirm no negative effects on the well.

[64] The Tribunal accepts the evidence of Mr. Jambakhsh and is satisfied that the recommended blasting procedures and water well testing address the concern of water quantity.

### Legislative Tests

[65] Having made determinations on the three main matters at issue, the Tribunal accepts the uncontradicted planning evidence of both Ms. Bilodeau and Mr. Robinson regarding the remaining legislative tests for the proposed ZBA.

[66] The application has regard for the provincial interests of s. 2 of the PA in connection with mineral resources, the protection of public health, and the provision of employment opportunities. The ZBA is consistent with the PPS including the mineral aggregate resource policies for accessing resources close to markets, minimizing social, economic and environmental impacts, and appropriate site rehabilitation. The ZBA conforms with the GP by supporting a diversified and prosperous economy and by providing the necessary materials for the development of infrastructure while providing adequate protection of the environment.

[67] The Planners also reviewed the OP and conclude that the ZBA conforms with its requirements for aggregate extraction, compliance with the D-Guidelines, compatibility and natural environment. The OP directs that the implementation measures, such as those recommended by the BIA, agencies and municipal departments be imposed through site plan control and an associated agreement. Ms. Bilodeau demonstrated that the standard approach of the Town to quarry applications involves a comprehensive site plan and agreement. An environmental compliance approval from MOECC will be required as part of the site plan approval process.

[68] The Tribunal notes that the Town's original refusal of the application was based on concerns of compatibility with neighbouring residential uses. The Town's position evolved through the mediation process to one of not opposing the ZBA and taking no position on the application at the hearing. The ZBA before the Tribunal was revised

from the original application to define the proposed quarry location more precisely and to establish specified setbacks. Both Planners recommend that the revised ZBA be approved based on their conclusion that it satisfies all applicable requirements and represents good planning.

### Conclusion

[69] The Tribunal will allow the appeal and approve the ZBA in its revised form.

[70] Land use planning differentiates and separates incompatible uses to prevent or minimize adverse effects on the persons occupying those land uses. The individual characteristics of the current occupants of a land use do not set the standard for establishing an adverse effect. The standard is more general and relates to an assessment of compatibility between two land uses such that persons generally may occupy those uses without adverse effects.

[71] Separation distances are measured from the main activity area of one land use to that of another. Intervening lands, in this case being natural forest areas, may comprise the separation distance regardless of ownership.

[72] The planning evidence was uncontested that the ZBA satisfies all applicable requirements and is suitable for approval. The Town will ensure that appropriate measures are implemented through the site plan control process.

[73] The Tribunal recognizes that the effects already experienced by the Rioux/Deschamps household from area mining and quarry operations may be continued with this application. Ms. Rioux's evidence was forthright, honest and backed by professional documentation that Mr. Deschamps' condition is severe and life altering. However, in making this Decision, the Tribunal has necessarily had regard to land use planning jurisprudence.

**ORDER**

[74] The Tribunal orders that the appeal is allowed in part and Zoning By-law 12-019 is amended in accordance with Exhibit 13 as set out in Attachment 1 to this order.

*“S. Tousaw”*

S. TOUSA  
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.

**Local Planning Appeal Tribunal**

A constituent tribunal of Environment and Land Tribunals Ontario  
Website: [www.elto.gov.on.ca](http://www.elto.gov.on.ca) Telephone: 416-212-6349 Toll Free: 1-866-448-2248

## ATTACHMENT 1

Exhibit: 13  
File #: \_\_\_\_\_

THE CORPORATION OF THE TOWN OF KIRKLAND LAKE  
By-Law No. \_\_\_\_\_ -OMB  
Being a By-Law to Amend  
the Corporation of the Town of Kirkland Lake's  
Zoning By-Law No. 12-019

WHEREAS authority is granted under Section 34 of the Planning Act, R.S.O. 1990;

AND WHEREAS an application has been made to the Town of Kirkland Lake to amend the Town of Kirkland Lake's Zoning By-Law No. 12-019;

AND WHEREAS this By-law conforms to the Town of Kirkland Lake's Official Plan;

NOW THEREFORE BE IT RESOLVED THAT THE COUNCIL OF THE CORPORATION OF THE TOWN OF KIRKLAND LAKE ENACTS AS FOLLOWS:

1. That the Zoning Schedules to the Zoning By-law 12-019 be modified to add a "Mineral Extraction Special One (ME-1)" Zone to the properties described as, Part of Mining Claim L16527 and L16528, Parcel 10191CST and as illustrated on Schedule A1, attached hereto.
2. That the following be added to Section 28:

**28.8 Special Zone - Mineral Extraction Special One (ME -1) Zone**

- a) That the permitted uses and provisions of the ME Zone shall apply, unless modified herein.
- b) Site Specific Zone Provisions for a Quarry:
  - i. Minimum Setback from all property lines – 15 metres
  - ii. Minimum Setback from Creek – 60 metres
  - iii. Minimum Setback from Quarry processing and stockpiling area to Existing Dwelling – 600 metres
  - iv. Minimum Setback from Rail line - 20 metres
  - v. Site operations must occur in compliance with the Site Plan Control Agreement
  - vi. Where there is conflict between the setback requirements, the most restrictive setback shall apply.
- c) For the purposes of the ME-1 Zone, the definition of a Quarry shall be as follows:

**Quarry**

A place where consolidated rock has been or is being removed by means of an open excavation and is crushed, processed and stockpiled to supply material for *construction*, industrial or manufacturing purposes, but does not include a *wayside quarry* or open pit metal mine.



## SCHEDULE A1

### LEGEND

Site Boundary

Lands to be rezoned to the Mineral Extraction Special One (ME-1) zone

### Caldwell Quarry

Highway 112  
Town of Kirkland Lake  
District of Timiskaming

|  |                     |
|--|---------------------|
| DATE   | April 27, 2018      |
| SOURCES  | ESRI                |
|  | 0 40 80 120 160 200 |
|  | Metres              |
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| P L A N N I N G U R B A N D E S I G N & L A N D S C A P E A R C H I T E C T U R E    |                     |