MTAG/MTE NEWSLETTER

A Briefing Note regarding the six representative Gravel Pit/Quarry appeals brought by Wellington County before the Assessment Review Board in 2020

Background

In March 2022, we learned that the Ontario Divisional Court would be hearing formal arguments regarding whether the Assessment Review Board (ARB) made any "errors in law" when rendering its Final Decision in the six representative Wellington County Gravel Pit appeals.

The Divisional Court hearing occurred in December 2022, and was held before a panel of three judges. All parties to these appeals – the municipalities, the property owners and MPAC – were represented, and all parties argued their respective positions. And while the primary issue related to the applicability of the ARB's decision to properties outside Wellington County, there were also arguments presented regarding how lands within gravel pits/quarries should be classified for tax purposes.

These appeals were not unexpected. Wellington County and all the individuals assisting it worked together to ensure that the position of the County was fully presented and defended before the Divisional Court. Significantly, not all aspects of the ARB's Interim and Final Decisions were appealed to the Divisional Court.

This meant that the primary question before the Divisional Court was the matter of classification, and not the ARB's decisions regarding how to determine CVA. It also meant that regardless of the outcome of these appeals, the increases in CVA won by the County of Wellington before the ARB were not in question.

On Friday, February 3, 2022, the Divisional Court's decision was released, with its ruling being open to appeal until February 21st. That deadline for seeking leave to further appeal the Divisional Court's decision has now passed, and no party to this matter has submitted a request to pursue this matter further before the Courts. This means that the Divisional Court's decision can now be considered as final and binding.

The purpose of this ***MTAG / MTE NEWSLETTER*** is to review what this means and how this most recent Decision, as well as those previously rendered by the ARB, can be expected to impact all municipalities in Ontario.

Analysis

After considering the arguments, the Divisional Court dismissed the appeals in their entirety. In other words, the Court found that, in its opinion, the ARB had made no errors in law.

The County won on every argument before the Court, as the Court thoroughly dismissed every point MPAC, and the owners made. In fact, the County's classification argument was adopted by the Court in full.

In particular, the following paragraphs in the Court's Decision (see attached) should be noted:

- Para 55 – there is no evidence that every legislative amendment impacting the aggregate industry was intended to maximize its benefit "to the detriment of every other taxpayer in the province who must, then, take on more of a tax burden."

- Para 81 (and this was mentioned earlier re Capital Paving) – "we agree with the Board's finding that it would offend the legislative scheme for a property owner to be able to "sit on" licensed land which has no other use or purpose other than excavation/extraction, not actively excavate or extract it on the classification day and then claim the benefit of a lower tax rate"

- Para 89 (regarding the questionnaires) – "the evidence before the Board was that the Owners' responses on the questionnaires were erroneous, self-serving…the questionnaires are not sourced in the Act or Regulation and were not endorsed by the Board. They cannot be a substitute for MPAC's statutory duty."

- Para 90 – "The Board's Decision will result in the Owners being taxed at a higher rate, which they look to avoid, having previously benefited from MPAC's approach…The Board's Decision requires that MPAC make efforts to determine land classification…"

Discussion

The effect of this decision will be to tighten the rules surrounding how gravel pits are to be valued for property tax purposes. While existing legislation has specified the activities relating to the production of aggregate that are to be in the industrial Tax Class, how these activities captured for the purpose of determining the classification of lands tended to be "open for interpretation".

The ARB's initial rulings sought to provide clarity to the scope of the activities caught by the legislation. The challenge to this scope was the primary focus of the property owners' and MPAC's appeal to the Divisional Court. Regardless, now that the decision of the Divisional Court upholding the ARB's rulings is final, MPAC will be expected to implement the ARB's decision.

So, what does this mean to municipalities who have gravel pits and quarries within their boundaries?

1. That the ARB found that the way in which MPAC has been valuing extraction properties for property tax assessment purposes is flawed and should be changed. (This was never subject to appeal).

2. That the appropriate classification of lands used for the scope of activities listed in the legislation should be “Industrial” and that scope should recognize the dynamic nature of a gravel pit operation.

3. That lands which were sometimes previously not identified as being used for the extraction of aggregate should now be classified as being so, and therefore part of the Industrial Tax Class.

4. That the underlying value MPAC has been applying to lands licenced as gravel pits and quarries was too low and should be increased.

5. That the valuation and classifications MPAC places on gravel pits and quarries in all jurisdictions – not just Wellington County – can be expected to increase, thereby generating new, additional tax revenues for all municipalities with these types of properties on their tax rolls.

Caveat

There is, however, a caveat regarding this direction from the ARB and the Divisional Court.

Neither this decision by the Divisional Court nor those previously rendered by the ARB stipulate when their direction to MPAC regarding valuation must be implemented. Further, the statutory requirements for MPAC to implement decisions such as this are elastic, meaning that unless there is a specific requirement for it to review the value of a property as of a specific date, that MPAC has the flexibility to implement these changes when it believes it can do so.

This means that the only way for municipalities to ensure that MPAC will revisit the value of the gravel pits and quarries on their assessment rolls for the current, 2023 taxation year (and beyond) is to file protective appeals on these properties before the March 31, 2023 deadline for doing so.

Therefore, if your municipality has not already done so, it should now consider filing such appeals before March 31, 2023 in order to ensure that any revaluation that MPAC returns in response to these rulings is effective for and will apply to them for at least the current 2023 taxation year.

(*NOTE: For those municipalities who have already filed appeals prior to 2023, your appeals from prior years should be deemed to apply to 2023*).

Conclusion

Wellington County initiated its appeals before the ARB more than six years ago. The County undertook to do so because it believed that there was too much variation in how gravel pits and quarries were being valued for assessment purposes, that these gravel pit/quarry properties appeared to be greatly undervalued and that the classification was incorrect in many instances.

At all turns, including before both the ARB and the Divisional Court, the County's positions and suggested remedial actions have been tested and proven to be reasoned, practical and appropriate. With the conclusion of the appeal before the Divisional Court upholding the changes in how gravel pit/quarry properties should be valued by MPAC for assessment purposes, **all Ontario municipalities can now benefit from the work of the County of Wellington.**

Should your municipality have gravel pits and quarries on its assessment roll, and want to ensure that for the 2023 Taxation Year it receives the benefits from the changes the County of Wellington has won, namely:

- Changes in how base land values are determined; and
- The tightening of the classification regarding what lands are in the Industrial Tax Class

Then **your Municipality needs to file protective appeals with the ARB for these properties before March 31, 2023.**

By filing such "Protective Appeals" you ensure that when MPAC is able to address the valuations of Gravel Pits and Quarries across the Province, that these revised valuations will apply to gravel pit/quarry properties on your Tax Roll for 2023 and subsequent Taxation Years. If you do NOT file appeals, then MPAC is under no obligation to apply a revaluation retroactively, meaning that your municipality may lose revenues it otherwise could have received.

Further, the filing of a Protective Appeal also means that when the next Province-wide Re-valuation does finally occur, the amount of assessment subject to phase-in may be less than it would have otherwise been, meaning greater tax revenues, sooner for your municipality.

This is why we recommend that if your municipality has not already filed appeals on its Gravel Pit/Quarry properties, that you immediately review your assessment rolls to determine what properties on it are classified as Gravel Pits &/or Quarries AND proceed to file the necessary appeal documents with the ARB before March 31, 2023.

If you are interested in learning how MTAG PPC, MTE, and MTE PPC may be able to help you in this or any other aspect of assessment base management, appeals &/or Tax Policy, do not hesitate to contact us.

MTAG PPC, MTE, MTE PPC and our staff of experienced professionals are here to help you.

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DIVISIONAL COURT FILE NO.: DC- 21-961-00
DATE: 20230203

ONTARIO

SUPERIOR COURT OF JUSTICE

DIVISIONAL COURT

McWatt A.C.J.S.C.J. and Sachs and Lemay JJ.

BETWEEN: MUNICIPAL PROPERTY ASSESSMENT CORPORATION Appellant	*Donald G. Mitchell*, for the Appellant
– and – ST MARYS CEMENT INC., CAPITAL PAVING INC., PRESTON SAND AND GRAVEL COMPANY, AND 2416854 ONTARIO INC. Appellant	*Jeff Cowan*, for the Appellant
– and – CRH CANADA INC. Appellant	*Richard Minster and Dan Rosman,* for the Appellant
– and – COUNTY OF WELLINGTON Respondent	*Cynthia B. Kuehl, Rebecca Shoom, and Marshall Dupuy*, for the Respondent
	HEARD at Toronto (by videoconference): December 8, 2022

McWatt A.C.J.S.C.J.

REASONS FOR DECISION

[1] This is a statutory appeal pursuant to section 43.1(1) of the *Assessment Act*, R.S.O. 1990, c. A.31 (the "Act") and Rules 61.01 & 61.04 of the *Rules of Civil Procedure*, RRO 1990, Reg 194. Leave to Appeal was granted on March 7, 2018 (2022 ONSC 1458 (Div Ct)). The parties appeal from the March 29, 2021 Interim Decision and the October 19, 2021 Amended Decision (collectively referred to as the "Decision") of the Assessment Review Board ("The Board"), which classified more of the land used for gravel pit operations as "industrial", and not as "residential" land. Industrial land is taxed at a higher rate than residential land. The Board found that land owned by gravel pit operators (the Owners) that is classified as residential (as opposed to industrial) is to the benefit of the Owners and to the detriment of all other taxpayers of the County of Wellington (the "County").

[2] Since s.43(1) only allows appeals to the Divisional Court based on errors of law, the Appellants request that the Decision be set aside and remitted to the Board based on errors of law made in it.

BACKGROUND

A. Legislative Background and MPAC's Assessment Formula

[3] Section 3(1) he Act provides that all real property in Ontario is liable to assessment and taxation, subject to listed exemptions. In 2008, the Ontario legislature amended the Act in section s. 3(1)20 to provide that the value of minerals in, on or under land (aggregate) be exempt from taxation. Prior to that legislative change, other forms of minerals were already exempt from taxation. The legislative change formalized MPAC's pre-existing land value assessment methodology and ensured consistency in the approach of taxing mineral producing properties. For the 2008 assessment cycle, MPAC used industrial land values to determine current value assessments ("CVA").

[4] MPAC's assessments of aggregate properties were appealed in 2008 and 2012 by the Ontario Stone, Sand and Gravel Association ("OSSGA"), which resulted in nearly 600 appeals. Those appeals were settled by MPAC before 2016, and MPAC and OSSGA negotiated a new formula for the assessment of gravel pits and quarries. The County was not involved in the negotiations.

[5] The land value for the purpose of CVA became approximately $9,200/acre in the three southernmost municipalities in the County - Puslinch, Erin and Guelph/Eramosa (the "member municipalities"). This value compared to an industrial land rate of up to $137,000/acre in some other areas.

[6] MPAC also continued its practice of permitting the Owners to determine the classification of their land and, thereby, the tax rate to be paid. MPAC asked the Owners to submit forms advising which of their lands fell within various property classes, based on the use to which they

were putting the land. MPAC did not always receive the forms back from the landowners and it conducted no audits to determine the accuracy of forms it did receive.

B. The Representative Appeals

[7] The County commenced approximately 50 appeals of of the land use classification of portions of aggregate properties on behalf of three of its member municipalities for the 2016 assessment cycle. The County asserted that, contrary to the legislation, MPAC's formula did not accurately determine the current value of the land because the lands were not classified properly.

[8] The County, MPAC, and the Owners agreed that six of the appeals would be heard as "representative appeals" (the "Representative Appeals"), with the intention that those appeals would result in valuation and classification principles which could be applied to the assessment of the other aggregate properties subject to appeal. No other municipalities or counties were part of the agreement.

[9] Properties selected as the Representative Appeals were:

1. A site owned by Capital Paving Inc. (the "Capital Pit"), located in the County's "Puslinch Economic Development Area" ("PEDA"). Processing and stockpiling aggregate from other sites occur on the property and land has been readied and held for extraction. Approximately 16 acres of this site was rezoned from "industrial- extractive" to "industrial-general" in 2008. MPAC, however, failed to recognize that zoning change until 2020, but has now acknowledged that the assessment of those 16 acres should be increased from $9,200/acre to the industrial rate of $137,000/acre.

2. A site owned by CRH Canada Inc. (the "Dufferin Pit"), located in the PEDA. No extraction has been done on this property for over ten years; rather, it is used for processing aggregate from other sites.

3. Two sites owned by Preston Sand and Gravel Company and 2416854 Ontario Inc., respectively ("Roszell Pits #1 and #2"), which are in an agricultural area of the municipality of Puslinch. Roszell Pit #1 was licensed for aggregate extraction after its purchase in 2007; Roszell Pit #2 began its operations in 2017.

4. A site owned by St. Mary's Cement Inc. (the "Neubauer Pit"), located in a rural area of Puslinch. It commenced aggregate operations in 2017.

5. A site owned by St. Mary's Cement Inc. (the "Hillsburgh / Huxley Pit"), located approximately 40km from the 401 and Hwy 6 interchange in the municipality of Erin. It is an established pit with considerable amounts of disturbed land and active operations.

C. The Applicable Statutory Provisions

[10] There were two central issues in the Representative Appeals.

[11] First, the Board determined whether MPAC was correctly assessing the land at its "current value" pursuant to section 19(1) of the Act when applying the Act's assessment formula. Despite it not being a specific complaint in any ground of appeal, the Board found that the land was all being undervalued.

[12] Second, the Board had to determine if the properties in the Representative Appeals had been properly classified. They considered what portions of the properties ought to be classified within the industrial class, with reference to ss. 6(2)2.2-2.3 of the O Reg 282/98 Regulation. The section sets out that:

> 6(2) The following are included in the industrial property class:
>
> 2.2 For the 2000 and subsequent taxation years, the portion of,
>
> i. land that is licensed or required to be licensed under Part II of the *Aggregate Resources Act*, or
>
> ii. land that would be required to be licensed under Part II of the *Aggregate Resources Act* if the land were in a part of Ontario designated under section 5 of that Act,
>
> that is used for,
>
> iii. extracting anything from the earth,
>
> iv. excavating,
>
> v. processing extracted or excavated material,
>
> vi. stockpiling extracted or excavated material, or
>
> vii. stockpiling overburden.
>
> 2.3 For the 2000 and subsequent taxation years, roadways and structures on a portion of land that is licensed or required to be licensed under Part II of the *Aggregate Resources Act* if the roadway or structure is used in connection with an activity listed in paragraph 2.2.

D. The Evidence Before the Board

[13] The Board heard detailed evidence about the activities taking place in gravel pit operations. Over the course of a year, a gravel pit site is used for extraction: the land is being disturbed /

stripped to prepare it for excavation. excavation is occurring, and land rehabilitation is occurring on the other end. As excavation and extraction occur, the aggregate obtained is stockpiled. The stockpiles move, grow and shrink over time as stockpiled material is moved about and off the site.

[14] The aggregate must be processed. Gravel pit properties frequently have ponds to source water to wash the gravel as part of its processing. The Owners' position was that they are not "used for" "processing", within the meaning of s. 6(2)2.2 of the Regulation, because no processing happens in the ponds. They considered "processing" to be limited to "literally the equipment that either sieves to the size of sand and stone, and/or crushes it." They took the same position for sediment ponds, notwithstanding that they too are used as part of the processing cycle.

[15] The aggregate is then stockpiled into piles, which may be in different locations and will grow or shrink as aggregate is added or removed. Trucks and equipment must drive up to the stockpiles to load or unload the material. The Owners considered the land "used for" "stockpiling", within the meaning of s. 6(2)2.2, to include only the actual stockpile itself, with a small "halo" around it for the area used by trucks and loaders to actively load or unload. In their view, the land over which the trucks and machinery drive to access the stockpiles would not be included, even though the truck movement over the site is essential to the activity of stockpiling.

[16] The Board also heard evidence that MPAC's approach to the classification of gravel pits involved sending questionnaires - MPAC's "Gravel Pit and Quarry Questions and Answers" (MPAC's questionnaire) - to gravel pit and quarry owners, requesting information regarding how the lands were being used. The questionnaire listed certain categories of land present in a gravel pit operation, identified how MPAC classified those categories, and requested that property owners report the acreage of land in each category. MPAC would classify and assess the land based on these self-generated responses provided in the questionnaire from landowners. There was no evidence of any independent audit by MPAC, meaning that the Owners' information determined the classification and the tax rate on the land in question.

[17] The Owners' evidence about MPAC's questionnaires and their responses to it included the following:

(a) MPAC's questionnaires would be sent to the Owners at inconsistent intervals. The Owners might receive the questionnaire annually, every two years, or at even greater intervals. Each year, they might receive a questionnaire for some sites but not for others. Not all questionnaires were returned by them to MPAC.

(b) The Owners' completed questionnaires contained errors, some of which were only discovered during the hearing. Despite knowing that MPAC had incorrect information about the use of their property, owners would not take steps to correct it, but rather would wait until whenever they received the next questionnaire from MPAC to do so.

(c) The Owners applied their own interpretations to MPAC's questionnaire. For example, Mr. Lourenco (witness/representative for the Capital Pit) would prepare a sketch of the site showing generally where different uses occurred, based on an aerial photo that he had used for several years; Mr. Hanratty (witness/representative for St. Mary's) would get

aerial imagery done of the sites annually. Mr. Hanratty unilaterally picked a period of a month as a representative time of the site's use.

(d) The Owners applied narrow interpretations to the categories in MPAC's questionnaire to maximize their beneficial tax treatment. For example, for both "stockpiling" and "excavating", the owners did not include the land over which the trucks and machinery drove for stockpiling or excavating purposes. These were included as "disturbed area" (which MPAC's questionnaire indicated would fall in the residential class).

(e) The land categories described in MPAC's questionnaire are not sourced in the *Act* or the Regulation, and do not necessarily reflect the realities of the gravel pit operation. For example, MPAC's questionnaire indicates that setbacks with berms would be classified as industrial, while setbacks without berms would be classified as residential – even though both are regulatory requirements for gravel pit operations.

[18] It became clear to the Board during the hearing that MPAC's use of their questionnaires had led to inconsistent results. For example, on the Capital Pit land, a portion of the land was rezoned from industrial extractive, which applies to licensed gravel pit operations, to industrial. On receipt of MPAC's questionnaire, the landowner characterized that rezoned land as unlicensed land, which was accurate – but had the result of MPAC classifying the land in the default residential class, rather than the industrial class, despite its industrial zoning.

[19] The Owners' evidence further supported the Board's findings that they may be maintaining aggregate licenses on their sites, while claiming that no activity was occurring, to benefit from the assessment scheme. For example, Mr. Lourenco's evidence was that a portion of the licensed area of his site (6.1 acres on a 100-acre site), that had been partially extracted years ago and was readied for extraction, was being used from time to time by a local College for field instruction and for support of his separate construction business. Neither of these uses were permitted by the zoning on the property. His view was that this land still ought to be valued at the lower land rate (of $9,200 vs. $137,000/acre) because of its aggregate license, but ought not to be captured within the industrial class even though the land was readied and being held for extraction until a specific type of job came in. The County's expert, however, provided photographic evidence of the land being used for stockpiling with machinery and trucks driving over it in July 2020.

[20] This evidence about the use to which the land was being put for gravel pit operations convinced the Board that actions taking place on the properties fell within the scope of the specific activities listed in s 6(2)2.2.

E. The Board's Decision

[21] The Board issued its Interim Decision on March 29, 2021 [*County of Wellington v Municipal Property Assessment Corporation, Region 22*, 2021 CanLII 26723 (ON ARB)].

[22] During its submissions, MPAC had urged the Board to use its questionnaire as the guide for the Decision. However, the Board did not endorse or rely on the questionnaire. Instead, it based its conclusions on its interpretation of the Regulation and its factual findings of what it meant, in the context of a gravel pit operation, to excavate, extract, process and stockpile.

[23] In its reasons, the Board relied on the relevant legislative provisions. It found that s. 6(2)2.2 of the Regulation refers to "the portion of" land being used for the activities of operating a gravel pit, rather than the term "the land" (as used in other provisions). The Board found that the language in the Regulation was the "key difference" in the classification treatment of unlicensed vs. licensed lands. Specifically, it found that the words "the portion of" permitted a split classification of the land, with unlicensed land not falling into the industrial class, and licensed land capable of falling into the industrial class if it is used for extracting, excavating, processing, or stockpiling. Otherwise, land would fall into the residential or farmland classes.

[24] The Board then interpreted the gravel pit activities itemized in s. 6(1)2.2 of the Regulation. The Board rejected the Owners' position that the language "used for" in the provision meant that "Only land specifically '*in use'* for the listed activities on the classification date should fall within the industrial property class."

[25] The Board, instead, concluded that the listed activities are intended to capture "activities that are integral to the [extraction] operation". That extracting, excavating, processing and stockpiling are the key activities of a gravel pit operation. It found that those activities should not be interpreted narrowly or in isolation, but rather should incorporate the steps which are integral to those activities because of the "dynamic nature of the mining operation". Being "used for" an activity therefore required understanding what the activity entails in the context of the overall mining operation.

[26] For example, the reference in s. 6(2)2.2 to "processing" includes land on which sediment and source ponds are located, to the extent that those ponds are used for any part of processing. The activity of "processing" cannot be completed without using the ponds for that purpose. Similarly, all areas in which trucks and equipment drive or maneuver for such purposes as accessing stockpiles would be included in the industrial class because that land is being used for extracting, excavating, processing, or stockpiling. Again, those listed activities cannot take place without the movement of those trucks and equipment. The land is being "used for" those activities, as the scope of the activity includes truck movement.

[27] The Board also interpreted s. 6(2)2.3 of the Regulation with respect to "roadways".

[28] The Board agreed with the County's position that the use of the words "in connection with" in the context of roadways and structures means those items will be captured by the industrial class whether they are used either exclusively or non-exclusively for the activities listed in s. 6(2)2.2. This finding distinguished "in connection with" from "used for" - by which the Owners meant exclusively used for. The language of "used in connection with" meant that, if trucks and equipment used in the mining operation are driving or maneuvering over a roadway, but other vehicles unrelated to the mining operation also use that roadway (e.g. for the movement of farm-related equipment), the roadway would still be captured in the industrial class under s.6(2)2.3 because the roadway is being used "in connection with" that activity.

[29] As a result, the Board found, in the Interim Decision, that the following land is captured by the industrial class per ss. 6(2)2.2-2-3 of the Regulation:

- land that is occupied by berms as required by the subject license issued by the MNRF.

- land that is being excavated or extracted, or land that has been excavated or extracted, but not yet rehabilitated.

- land that is used for movement of machinery, vehicles, trucks, equipment, stackers, screening machinery, either mobile or stationary that is related to excavating, extracting, processing and stockpiling.

- land that is used for processing of aggregate material that is extracted from the subject licensed area or that has been extracted from another property, including the area of machinery related to washing or screening, either mobile or stationary, the areas of access to that machinery, the area comprised of ponds designated for settling, the area comprised of ponds used for the source of water for washing or any lands used by trucks and other vehicles involved in any of these activities.

- roadways that are used at any time in connection with any of these activities, either exclusively or non-exclusively.

- buildings, structures either permanently or temporarily on the property used partially or exclusively for, or in connection with, the activities above.

[30] After the release of the Board's Interim Decision, the parties to the Representative Appeals cooperated to apply the principles in the ruling to arrive at new classification allocations and assessment values for the properties at issue. The parties agreed to the following clarifications of the Board's Interim Decision:

i. For each source pond with inlet pumps, one acre of the pond per pump, regardless of the pond's size, is included in the industrial property class. The balance of the pond would be in the residential class.

ii. Where there is active extraction below the water table, a five-meter "halo" will be applied to the outer edge of the pond being actively extracted. That "halo" will be in the industrial property class, while the remainder of the pond created by below water extraction will be in the residential property class. The area outside the halo in the pond (for example, the centre of the pond) would reflect areas where extraction had been to the full depth, and therefore are considered rehabilitated.

iii. Land that has been fully extracted, is not being used for extraction or stockpiling, but has not been rehabilitated, will be in the residential property class.

[31] The Board delivered a Final Decision on October 13, 2021 (amended October 19, 2021), adopting these clarifications and accepting the parties' revised assessments and allocations.

[32] The Board's Decision did not result in all licensed areas on the properties becoming classified as industrial. Instead, consistent with the Board's interpretation of "the portion of land",

only some acreage of the licensed areas became classified as industrial according to both the Board's Decision and the parties' agreed clarifications.

ISSUES

[33] MPAC and the Owners' leave to appeal application was granted with respect to the following two issues:

> (a) Whether the Board misinterpreted the applicable legislative provisions with respect to what is properly included in the industrial class for lands licensed under the *Aggregate Resources Act*; and
>
> (b) Whether the Board failed to classify the lands at issue based on their use on the statutory classification day.

[34] The Appellants seek an Order that this matter be remitted to the Board for a hearing on the issue of the proper classification of the properties under appeal, in accordance with the reasons of this Court.

[35] They maintain that the standard of review on this appeal is either correctness or palpable and overriding error, depending on the characterization of the questions at issue on the appeal. When applying the correctness standard on a review of an administrative decision, the reviewing court is to either uphold the underlying determination or substitute its own view (*Minister of Citizenship and Immigration v Vavilov*, 2019 SCC 65 at para. 54). In such cases, a matter will only be remitted back to the administrative decision-maker in certain circumstances. For example, the Divisional Court has remitted matters back to the Board in circumstances where the Board had not actually fulfilled its mandate to determine current value at first instance, and where the evidence necessary for the Court to make that determination is unavailable (*Municipal Property Assessment Corporation v Zarichansky*, 2020 ONSC 1124 (Div Ct)).

[36] The County maintains that the circumstances of this case are not akin to that type of case. This is not a case where the Board did not fulfill its mandate at first instance, nor is there insufficient evidence for the Board to substitute its own ruling if the appeal is allowed and the matter sent back.

[37] We agree.

[38] The County also maintains that this court – like the Board – need not make a determination at all about the classifications of the particular properties at issue. This court need only interpret the Regulation to determine if the Board's Decision on classification principles is correct, and if not, then the Court ought to substitute its own view of the applicable principles for the Board's. The parties may then apply those principles to the subject properties themselves, just as they did following theBoard's guidance.

[39] If this appeal is allowed, the County submits that the appropriate remedy is for this court to substitute its own Decision for the Board's (only in respect of those issues for which a legal error has been committed), and not to remit the matter back to the Board for a hearing on the classification of the properties at issue. The matter should be remitted to the Board for the limited purpose of issuing a

new Decision reflecting this court's directions, and the parties' application of those directions to the specific properties.

[40] The County, otherwise, requests that this appeal be dismissed, with costs.

[41] The appeal should be dismissed. Here are the reasons why.

STANDARD OF REVIEW

[42] Being a statutory appeal of a Decision of the Assessment Review Board, pursuant to s. 43.1(1) of the *Assessment Act*, leave to appeal was granted only with respect to questions of law.

[43] However, while the questions under appeal as formulated appear to be questions of law, they can only be answered by considering the evidentiary basis for the Board's Decision. The Board had to consider the practicalities of gravel pit operations and property owners' past practice with respect to compliance with the Regulation. To the extent these issues contain questions of law, then the standard of review on those questions is correctness. To the extent these issues raise questions of mixed fact and law (which the County asserts is the case), we have no jurisdiction as our jurisdiction is confined to errors of law alone.

ANALYSIS

[44] MPAC and the Owners maintain that their appeal lies in errors the Board made interpreting the *Act*. The essence of their complaint is about how the Board determined what activities on licensed land could be said to be within the scope of "excavating", "extracting", "processing" and "stockpiling". We find that all the Board's factual findings were solidly grounded in the evidence before it. That evidence supports the Board's interpretation of the legislative provisions at issue here and its rejection of the various positions advanced by MPAC and the Owners.

[45] The Board's conclusions with respect to classification are consistent with the text of the statutory provisions at issue, the broader legislative scheme, and the evidence it heard. The Board's Decision is also consistent with the principled basis of property assessment and taxation. In its Decision, the Board arrived at a result that meant that more of the land used for gravel pit operations would be classified as "industrial", and not as "residential" land.

(a) ***The Board did not misinterpret the applicable legislative provisions with respect to what is properly included in the industrial class for lands licensed under the Aggregate Resources Act.***

LAND

[46] In the Decision, the Board found that the activities listed in s. 6(2)2.2 are intended to be representative of the core activities involved in a gravel pit operation. MPAC and the Owners maintain that the listed activities should be interpreted narrowly, as capturing only those portions of land on which an excavator, a stockpile or processing equipment are located – what they describe as, "only land specifically 'in use' for the listed activities" – and excluding such areas as those that are primed and ready for excavation, or that are essential in the process of excavating, extracting, stockpiling, or processing.

[47] The legislation does not contain the language "in use". Instead, it contains the words "used for", which required an assessment of the nature and scope of the activities carried out on the gravel pit properties. The Board carried out this assessment by determining what it means to "excavate", "extract", "process" or "stockpile" based on the evidence it heard. In the end, the Board defined those activities in a manner consistent with the operational realities of a mining operation. Those operational realities are not included in how the Appellants suggest the licensed land should be assessed for tax purposes.

[48] At the hearing, the County's expert explained that to use land to extract, excavate, process or stockpile in a gravel pit operation, moving equipment around the licensed areas and extracting from different sections of the property takes place over time. Neither MPAC nor the Owners disputed this evidence. MPAC's expert agreed that extraction and processing are dynamic activities, and that MPAC recognizes them as such. In fact, MPAC's questionnaire, at Q11, advises gravel pit owners that the industrial class "includes all areas being used for operation of the gravel pit". This is consistent with the Board's findings about the regulatory provisions.

[49] We find that the Board used the correct approach to interpret the activities listed in s. 6(2)2.2 of the Regulation. The evidence established that excavation and extraction take place over an ever-shifting area of land where ground is prepared and excavated on an ongoing basis, stockpiles grow and shrink or appear and disappear, and land may be rehabilitated on the back end on a rolling basis. The Board considered this industry context in interpreting the scope of the listed activities - what the land was being "used for" - along with the statutory text and context.

[50] The narrower interpretation of what it means for land to be "used for", proposed by the Owners, would permit a gravel pit owner to be extracting or excavating over a large parcel of land, regularly moving back and forth across the property, but only a particular area on which the excavator is located at a particular time –the classification day – would ever be classified as industrial land. This is not a reasonable interpretation of "land" […] "that is used for".

[51] The Owners' interpretation is also inconsistent with MPAC's questionnaire, at Q 9, related to the application of s. 6(2)2.2. In the document, MPAC advises gravel pit owners that "If the extraction is carried on at any time [during the year], the gravel pit is classified as active and is subject to taxation at the appropriate class", even if the pit is only being used for a couple of months each year.

LISTED ACTIVITIES

[52] The Appellants challenge the Board's approach to interpreting the listed activities.

[53] MPAC and the Owners take issue with the fact that the Board placed "land that has been excavated or extracted, but not yet rehabilitated" and "land that has been excavated or extracted" in the industrial class. Yet, the parties agree with the Board's order that land that had been fully extracted, is not being used for extraction or stockpiling, but has not been rehabilitated, would be in the residential property class rather than the industrial class.

[54] The Appellants disagree with the Board's finding that land which has only been partially extracted, not yet rehabilitated and being held in that state for extraction, may fall into the industrial class where it has no other or competing legal use. The Board concluded that if the land's use is

being held for extraction, then it is being used for extracting. It has no other functional use. And, if this were not the correct conclusion, property owners could ready ground for extraction and maintain their aggregate license for an entire site, gaining a tax benefit for decades by maintaining, for taxation purposes, that there is no gravel pit activity occurring as of the classification date.

[55] One of MPAC's claims in the appeal is that there is a purported legislative intention in s. 6(2)2.2 of the Regulation to benefit the aggregate industry with favorable tax treatment, but there is no evidence of any such legislative intent contained in the legislation or anywhere else. We agree with the County's submission, which acknowledges that some legislative amendments to the Act have resulted in beneficial treatment for the aggregate industry. For example, the 2008 amendment exempting minerals from taxation. There is no evidence otherwise, however, that every amendment to the Act impacting the aggregate industry is intended to maximize benefit to the industry to the detriment of every other taxpayer in the province who must, then, take on more of a tax burden.

[56] The County further submits, and we agree, that any intention to benefit the aggregate industry does not mean that the provision must be interpreted in favor of a maximum benefit to the industry, to the exclusion of the broader purposes of the legislation. Rather, s. 6(2)2.2 must also be interpreted considering the overall purpose of the Regulation, which was expressed by the Board when it quoted the Decision of *Tocher v Municipal Property Assessment Corp., Region No. 25,* 2014 CareswellOnt 1509 (ARB), at para. 29:

> In making a decision in this matter it is necessary for the Board to try to understand the legislator's intent when O. Reg. 282/98 was enacted. The Board's opinion is that the intent of the legislation is not to allow property owners the opportunity of a "free ride" by not paying their fair portion of property taxes according to the appropriate property classification.

[57] In its submissions before this panel, the County pointed to the fact that section 6(2)2.2 of the Regulation does provide some benefit to the aggregate industry. The County is correct. Unlike other types of land, the Regulation provides for land on which mining operations are located to be split, such that only the portion of the land which is licensed and used for mining operations is captured by the industrial class. This kind of split classification is not permitted for other land carrying on industrial activity. For example, in the past, the Board has classified full parcels of land as industrial where as little as 5% or 9% of the land was being used for industrial purposes (see *Premier Fluid Systems Inc v Municipal Property Assessment Corp, Region* No 15, 2003 CarswellOnt 4865 (ARB), at paras. 23-24 [B269*]; Control Chem Holdings Inc v Ontario Property Assessment Corp, Region* 15, [2000] OARBD No 892, as summarized in 886381 *Ontario Inc. v Municipal Property Assessment Corp., Region No. 13*, 2011 CarswellOnt 3532 (ARB), at para. 175).

[58] The Board's interpretation of the activities in s. 6(2)2.2 recognizes that the 2008 legislative amendments benefit the aggregate industry while, at the same time, preventing the property owners from getting a "free ride", contrary to the broader legislative intention.

[59] The Owners' proposed interpretation would result in this type of "free ride". It would allow them to avoid paying their fair portion of property taxes and benefit from a lower tax class despite their operation of an active mining business.

[60] MPAC complains next that the Board's interpretation of s. 6(2)2.2 of the Regulation concerning roadways makes s. 6(2)2.3 redundant. Paragraph 6(2)2.3 of the Regulation specifically states that "roadways and structures on a portion of land that is licensed or required to be licensed under the *Aggregate Resources Act,* RSO 1990, c A.8 (the "ARA") is classified in the industrial property class if the roadway or structure is used in connection with an activity listed in paragraph 2.2" The Appellants submit that the legislature does not speak in vain. Therefore, if the Board's broad interpretation of "used for" was to be accepted, there would be no need to include paragraph 2.3 in the Regulations. The Board's broad interpretation reads the words "in connection with" into paragraph 2.2 such that any land used in connection with the listed activities is included in the industrial class. Section 6(2)2.3 becomes redundant. MPAC argues that the Board's interpretation must be wrong.

[61] However, s. 6(2)2.3 of the Regulation makes it clear that only roadways and structures used in connection with the activities listed in paragraph 2.2 are to be included in the industrial class.

[62] Furthermore, the Board's interpretation of "used for" is contrary to how those words have been interpreted in s. 6 of the Regulation. A distinction exists between the interpretation of "used for" and "used … in connection with", with "used for" being given a narrower interpretation.

[63] The Respondent submits, and we agree, that the Board's interpretation of s. 6(2)2.2 of the Regulation does not make s. 6(2)2.3 redundant. At the hearing before the Board, the County submitted, and the Board accepted, that the phrase "used in connection with" in s. 6(2)2.3 connotes exclusive or non-exclusive use. Even with the Board's interpretation of the scope of the activities in s. 6(2)2.2, land not exclusively used for those activities would not be captured in the industrial class, unless it contains a roadway or structure that is exclusively or non-exclusively used for those activities. There is no inconsistency or redundancy.

[64] We also find that the Board made no error in referring to the definition of "excavate" in section 1(1) of the "ARA" as a reference point in its consideration of the definition of "excavate" in s. 6(2)2.2 of the Regulation. Courts frequently turn to extrinsic interpretive aids when interpreting legislation, and have recognized that, for example, cross-jurisdictional comparison of statutes dealing with the same subject matter may be instructive (*Canada (Canadian Human Rights Commission) v Canada (Attorney General),* 2011 SCC 53 at para 57). The ARA is expressly connected to ss. 6(2)2.2-2.3 of the Regulation, which apply to land which is licensed under the ARA. Sections 6(2)2.2-2.3 apply in respect of land that is licensed or would be required to be licensed if part of a designated geographic area, under Part II of the A: General, O Reg 282/98, s. 6(2)2.2-2.3.

[65] And where such a direct and express link exists, and in the face of a lack of definition in the statutory wording, it was open to the Board to look to the ARA for guidance. The ARA's broad definition of "excavate" – including the preparation of land for excavation, in addition to actively

excavating – supports the Board's approach to interpreting the activities listed in s. 6(2)2.2 of the Regulation.

[66] However, even if the Board ought not to have considered the definition of "excavate" in the ARA, that error would not have impacted the Board's ultimate Decision, which was properly based on the operational realities of mining operations as set out in the evidence on the hearing.

Land Used "In Connection With" the Listed Activities

[67] The Owners complain that the Board's interpretation of ss. 6(2)2.2-2.3 of the Regulation captures land other than roadways and structures that is used "in connection with" the activities listed in s. 6(2)2.2.

[68] The Owners maintain that the Board's interpretation effectively adds to the activities listed in s. 6(2)2.2 other activities that are "in connection with" them. They specifically point to the Board's finding that the industrial property class includes "land that is used for movement of machinery, vehicles, trucks, equipment, stackers, screening machinery, either mobile or stationary that is related to excavating, extracting, processing and stockpiling".

[69] The Owners submit that this is so because the Board's accepted the evidence of the County's expert with respect to the interpretation of the Act, specifically that s. 6(2)2.2 of the Regulation would capture all land "involved in the industrial pit and quarry activity" and that is "supporting activity necessary for a mine's operation". The Owners maintain that language of the County's expert is too broad.

[70] There is no suggestion in the Board's Decision, however, that it relied on the evidence of the County's expert. There is no reference to the County's expert anywhere in the Board's Decision and, at least with respect to the valuation decision, the Board did not accept the County's evidence on valuation methodology. And the language used by the County's expert is not what was adopted by the Board, which instead itemized what specific activities in a gravel pit operation are caught by the categories in s. 6(2)2.2.

[71] The Owners also object to the Board's use of the words "related to" the stated activities. In classifying source ponds as lands used in connection with or related to processing, the Decision, the Owners submit, ignores the definition of "land" in section 1(1) of the Act, which defines land to include "land covered with water". They maintain that only land is assessable and not water. It is the water only that is used in processing aggregates, not the land underneath.

[72] We find, however, that the Board's language is not intended to mean 'in connection with' as used in s. 6(2)2.3. Rather, the language the Board used should be read in context of its Decision. The language reflects the Board's finding that the activities listed in s. 6(2)2.2 are not to be read narrowly, but rather are to be interpreted in a manner which recognizes the operations of a gravel pit. This is distinct from the Board's findings in respect of s. 6(2)2.3, where it expressly uses the language of "in connection with". We agree with the County's submission that the Appellants' seizing on specific word choices, in isolation, to suggest that the Board misinterpreted the Regulation, ignores the meaning of the Board's reasons as a whole, its consideration of the evidence, and its overall interpretation of the provision.

[73] The Owners suggest that the Board classified source ponds as lands used in connection with or related to processing, thereby ignoring the definition of "land" in s. 1(1) of the Act. Contrary to the Owners' submission, there is no suggestion in the Board's Decision that it considered water to be assessable for tax purposes. Rather, it is the ponds – which are land covered in water, as is expressly included in the statutory definition of "land" – which is assessable. That land is "used for" processing – not used "in connection with" it. As some of the pond is a natural feature of the land and not used for the gravel pit operation, the Board accepted that only one acre per inlet is used to reflect that "portion of the land" that is used for processing.

[74] These concerns, expressed by the Owners and MPAC, seem to be about how the Board interpreted the listed s. 6(2)2.2 activities themselves. That interpretation is a question of mixed fact and law and we find that the Board's interpretation was reasonably grounded in the evidence, and gives rise to no legal error.

[75] Finally, the Owners also suggest that the Board erred in its conclusions about what constitutes a "roadway" for the purpose of s. 6(2)2.3. They suggest that only formal, defined roads ought to be captured in the industrial class. There is no suggestion that the Board actually considered anything other than a formal, defined road to be a "roadway" under s. 6(2)2.3 of the Regulation. The Board considered land, over which vehicles, machinery, etc. move or travel, whether a formal road or not, to be caught in the industrial class under s. 6(2)2.2, as that land is being "used for" the activities listed in s. 6(2)2.2. The Owners' evidence before the Board was that driving machines around the site is necessary for excavating, extracting, processing and stockpiling. Again, it makes sense that if a machine must be driven on the land to excavate or to stockpile, that land is being "used for" that purpose, whether it is a roadway or not.

[76] There is no basis to justify interfering with the Board's Decision with respect to the scope of land captured in the industrial class. The Board properly reviewed the legislative context and evidentiary record and arrived at an interpretation of the Regulation that is consistent with the statutory scheme and the reality of gravel pit operations. The Board's Decision is grounded in the legislation and the evidence, and correctly applied the Regulation within the evidentiary context.

(b) ***The Board did not Fail to classify the lands at issue Based on their use on the statutory classification day.***

The Significance of the Classification Day

[77] Section 19.3 of the Act provides that land is to be classified for a particular taxation year as of June 30 of the previous year. This is known as the "classification day". MPAC and the Owners assert that the Board erred by effectively ignoring the classification day in its Decision. They point to paragraph 54 of the Decision where the Board sets out that:

> [54] Classification is determined based on the use of the land as of June 30 of the preceding year (s. 19.3 of the Act). A change in classification results from a change in actual use. The Board finds that s. 6(2)2.2 should be interpreted to account for the dynamic nature of a mining operation, which includes gravel pits. As further explained below, the activities listed in s. 6(2)2.2 are all encompassing

> and not to be viewed as frozen in time. Unless and until a 'change in actual use' is determined, the classification does not change.

[78] We find that the Board did not ignore the classification day. They clearly recognized it in the paragraph above. What they did do was to interpret s. 6(2)2.2 of the Regulation in a manner that accommodated the classification day and made it workable. Nowhere in the Board's Decision did the Board indicate the classification day would be anything other than June 30 nor did they "effectively" ignore it.

[79] Their interpretation of s. 6(2)2.2, which accommodates the dynamic nature of a mining operation, does not ignore the Act's use of the classification day. While the property class for a particular portion of land is to be determined by the actual use of a property at the classification day of June 30 in the year before the applicable taxation year, "actual use" reflects the function of a property (*Sgambelluri v Municipal Property Assessment Corporation, Region 18*, 2015 CanLII 58803 (ON ARB), at para. 32).

[80] The Board was correct in not freezing a property as of the classification day and carving out which areas are used for specific activities. It, instead, correctly looked at the property's function or purpose on that date.

[81] MPAC criticizes the Board's Decision to include, in the industrial class, "land that was not used for excavating or extracting anything from the earth on the classification day […] if it had been extracted or excavated in the past." They specifically point to the reclassification of a portion of "Disturbed Land" located on the Capital Paving property from residential to industrial, even though the land had not been excavated or extracted since sometime before 2007. In fact, despite that, excavation/extraction on that property has not been completed. That "Disturbed Land" is only partially extracted, and it has not been rehabilitated. As of the classification day, its only legal use, as contemplated by the legislature, was for purposes of extraction or excavation. The land has no function or purpose other than extraction or excavation, which the property owner may choose to continue at any time. We have already said that we agree with the Board's finding that it would offend the legislative scheme for a property owner to be able to "sit on" licensed land which has no other use or purpose other than excavation/extraction, not actively excavate or extract it on the classification day and then claim the benefit of a lower tax rate, while still preserving their ability to return to excavating or extracting it at any time.

[82] We agree with the County's submission that if a gravel pit owner who is extracting a site strategically chooses not to operate its gravel pit on the classification day (e.g. gives its workers the day off so no machinery is being run), this cannot permit the property owner to escape potential industrial classification. Any other interpretation would defeat the property classification scheme and provide property owners with a clear path to circumventing proper tax assessment contrary to the purposes of the statute.

[83] The classification day should be understood and used as a representation of the property's function on that day. Even if a portion of property is not actively being excavated on the classification day, its function as of that date may still be for the purpose of excavation, thereby attracting an industrial classification under s. 6(2)2.2.

[84] MPAC and the Owners' own expressed practices and understandings of the classification day support that conclusion:

(a) MPAC's "Gravel Pit and Quarry Questions and Answers" document advises gravel pit owners that "The Industrial Class includes all areas being used for operation of the gravel pit." Further, a gravel pit is classified as active, and subject to taxation, if extraction is carried on "at any time", even if extraction is carried on for only a couple of months each year.

(b) Mr. Hanratty's evidence was that, for the purpose of MPAC's questionnaire, they take aerial imagery of their sites annually, but not necessarily on the classification day. They use the aerial photos to look "at the use of the property for about a period of a month in and around [the classification day] to show what the active use was at the time", and "it represents a period of time recognizing the dynamic nature of the site".

(c) Mr. Mitchell's evidence (witness/representative for the Dufferin Pit) was that he understood MPAC's questionnaire was expected to capture activity not just on the exact classification day, but also the days following it.

[85] The Owners also take issue with the following portion of the Board's Interim Decision at paragraph 60:

> Further, applying too narrow of an interpretation, as submitted by the owners and MPAC, would necessitate undue effort, checking and counter- checking of what 'activity' was occurring on what specific patch of land at a specific time (i.e. the classification date). This is not a realistic expectation to place on MPAC or the owners.

[86] The Owners submit that this conclusion of the Board's is based on what is "convenient", in relation to the classification of land on the June 30th date. As we have already stated, however, it is based on a purposive reading of the legislation, so that s. 6(2)2.2 of the Regulation and s. 19.3 of the Act are read together in a logical and consistent manner. The Board did not ignore the classification date, but rather came to an interpretation that allowed it to be applied in a meaningful way.

[87] The Owners propose that the classification day requires an exact assessment of precisely what parts of land are being used for the activities listed in s. 6(2)2.2 of the Regulation, defined narrowly, on June 30th. Their position is that, for example, an industrial classification should be applied only to the specific land that is actively being excavated on the classification day – even if the Owners had begun to prepare the additional space, and the very next day, the pit being excavated in fact does grow. This is what the Board referred to as the Owners' proposed approach of "checking and counter-checking what 'activity' was occurring on what specific patch of land at a specific time or the classification date. Such an approach is inconsistent with not only the Owners' own evidence as to their practices, as noted above, but also the classification date's focus on function and use as a representation for the taxation year. The Board's interpretation recognized what is involved in a mining operation and permits the land to be assessed based on its function as of the classification date.

[88] It was also no error for the Board to consider the practical capabilities and resource limitations of MPAC when interpreting the Act. The Board recently took a similar approach in *National Car Rental (Canada) Inc. v Municipal Property Assessment Corporation, Region 15*, 2022 CanLII 53352 (ON ARB) at para 93. Section 36 of the Act provides that "assessments of land under this Act shall be made annually between January 1 and the second Tuesday following December 1") in determining that s. 36 of the Act does not require MPAC to assess properties annually:

> The Board also observes that if s. 36(1) required that MPAC mandatorily annually reassess a property value, this would require that MPAC annually reassess the values of all five million properties in Ontario. The resource implications of such an interpretation are significant, to say the least. If the Legislature intended such a result, it would have provided a clear and express statement to this effect. Such wording is not present in s. 36.

[89] Contrary to the Owners' contention, MPAC's questionnaires do not solve the issue of MPAC's resources. As noted above, the evidence before the Board was that the Owners' responses on the questionnaires were erroneous, self- serving, and/or reflected different or overly narrow - and therefore self-serving - interpretations of the land categories listed. In addition, the questionnaires are not sourced in the Act or Regulation and were not endorsed by the Board. They cannot be a substitute for MPAC's statutory duty.

[90] The Owners' and MPAC's objections to the Board's Decision do not arise out of true legal errors. The Board's Decision will result in the Owners being taxed at a higher rate, which they look to avoid, having previously benefited from MPAC's approach to classification and valuation of aggregate-producing properties. The Board's Decision requires that MPAC make efforts to determine land classification, rather than solely relying on property owners' self-reports of land use as MPAC has done for many years now. It will be done, going forward, based on a reasonable balance between MPAC's obligation to assess current land values and its available resources.

[91] The Board 's decision is correct in law.

DISPOSITON

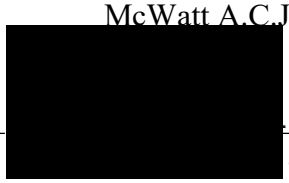
[92] The appeal is dismissed.

COSTS

[93] By agreement of the parties, the Appellants shall pay the Respondent, County of Wellington, $15,000, all inclusive, within 30 days.

McWatt A.C.J.S.C.J.

I agree



achs J.

I agree

Lemay J.

Date of Release: February 3, 2023

CITATION: Municipal Property Assessment Corporation et. al v. County of Wellington 2023 ONSC 591
DIVISIONAL COURT FILE NO.: DC- 21-961-00
DATE: 20230203

ONTARIO

SUPERIOR COURT OF JUSTICE

DIVISIONAL COURT

McWatt A.C.J.S.C., Sachs, and Lemay JJ.

BETWEEN:

MUNICIPAL PROPERTY ASSESSMENT CORPORATION

Appellant

– and –

ST MARYS CEMENT INC., CAPITAL PAVING INC., PRESTON SAND AND GRAVEL COMPANY, AND 2416854 ONTARIO INC.

Appellant

– and –

CRH CANADA INC.

Appellant

– and –

COUNTY OF WELLINGTON

Respondent

REASONS FOR DECISION

McWatt A.C.J.S.C.

Released: February 3, 2023