

Responses to 26-June-2018 Delegations on the McLaren Wayside Pit

The following are the Town's responses to questions extracted from correspondence received from delegates to the Town's Wayside Pit reports in 2018:

(Note: a full copy of the correspondence received from delegates is attached to the end of the 10-July-2018 memo staff provided to Council and is included as Schedule D to this report, 2019-0152).

Questions from delegate:

1) Why was the pursuit of a Wayside Pit permit so stubbornly pursued by the Town despite clear advice from MNR officials and resident objections that McLaren Rd. clearly did not qualify for such a license?

- 4) Why would the Town of Caledon participate in a prolonged process that involved trying to find "wiggle room" to evade established ARA and MNR requirements?
5) Why was this approach not abandoned when the questionable machinations became apparent?

Staff Response:

Staff involved with the original MNR (now MNRF – Ministry of Natural Resources and Forestry) discussions and the permit application are no longer employed at the Town. Accordingly, current staff reviewed past Council reports and concluded that staff, at the time, were following Council direction in pursuing a wayside pit licence for the unopened road allowance on McLaren Road. Various reports on the McLaren Wayside Pit (e.g. status, progress on the application, awards etc.) were reported to Council over the years and there was change in Council direction on this topic. Further, based on MNRF's issuance of the wayside pit licence, staff believe that the Town's application/ resubmission(s) ultimately complied with the Aggregate Resources Act and satisfied the concerns of the MNRF.

Question from delegate:

2) Who stood to benefit if a Wayside Permit were obtained, and to what extent (accurate dollar figures please)?

Staff Response:

According to the August 12, 2014 staff report, PW-2014-059, utilizing aggregate from the Town's own wayside pit was projected to result in a net benefit to the Town of \$384,940 (after considering \$651,860 in costs for licences, extraction and other costs).

If the question is related to benefit of private sector consultants, contractors associated with the project, the Town cannot comment on net financial benefit (or profit) related to private sector organizations. However, it is generally understood that for-profit contractors and consultants that provide the Town services and products benefit or earn revenues that exceed their costs. Otherwise, these for-profit organizations would not be sustainable in the long-term.

Question from delegate:

3) What was the cost to the Town (taxpayers) for the staff involvement in pursuing the wayside permit for 7 or 8 years (\$ figures please)?

Staff Response:

The financials related to the Town's McLaren Wayside Pit project are summarized in this report (Report 2019-0152) – In summary:

- The Council-approved budget for the McLaren Wayside Pit project (capital project #11-054) was \$696,119; and
- Net expenses totaled \$261,657.30

The financial information has been reviewed by an independent external auditor. The external auditor's report is attached as Schedule C to this report and summarized in the first section (Part A) of this report to put the audit findings/conclusions in context to what staff had originally reported in 2018.

Question from delegate:

[Note: Questions 4 & 5 were combined with Question 1, above]

6) It is obvious that the Simpson and Kennedy projects were concocted to try to legitimize a wayside pit application rather than find a suitable source, wayside or otherwise, for an already planned project. Who spearheaded this complex and prolonged effort?

Staff Response:

The Kennedy Road project to support population and employment growth in the Mayfield West/Southfields area of Town has been included in the Town's Development Charges Background Study since at least 2004. That is, in accordance with the *Development Charges Act*, the Town prepares a Development Charges Background Study at least every five (5) years to support Development Charges imposed on the development community to support infrastructure (such as roads, new community centres, new fire stations, libraries) associated with growth (e.g. additional population and employment). In the 2004 Development Charges Background Study, the need for the Kennedy Road project was identified to support planned growth in the Mayfield West/Southfields area. Staff did not investigate background studies prior to 2004, however, the growth in the area and resulting need for road infrastructure may have been identified prior to 2004.

Simpson Road is a local service road that should be the responsibility of local landowners to construct. However, landowners in the area have not been able to organize and construct this road for over a decade and Council directed staff to complete the Environment Assessment/design and construct the road with future recovery from the benefiting landowners. The construction the road and related infrastructure/servicing will likely lead to non-residential development in the area, which will provide the Town non-residential assessment growth to collect property taxes from.

Question from delegate:

7) Why was the Simpson project not done after all?

Staff Response:

The Simpson Road Project has been split into three sections:

- a) Simpson Road (just South of George Bolton Parkway)
 - This section has been constructed and reported under capital project #14-093
- b) Simpson Road (just North of George Bolton Parkway)
 - Property acquisitions were being finalized
- c) Simpson Road (just North of Mayfield Road)
 - Environmental Assessment complete;
 - The Town is working with the Toronto and Region Conservation Authority (TRCA) for development approval;
 - A Landowners Group has been formed in the area and the intent is to transfer the construction phase of the project to the landowners.

Question from delegate:

8) Why was only 18% of the aggregate extracted from the ROW allegedly used on the 2 identified projects?

Staff Response:

The Town's contractors constructed based on Engineering designs for these roads. Based on the designs and requirements during actual construction, the Town/Town's contractor only used the amount of aggregate required for the construction of Kennedy Road and Simpson Road projects. Weigh tickets were used to track aggregate extracted from the former McLaren Wayside Pit and aggregate used for each of the Town road projects. These weigh tickets have been reviewed by the Town's external auditor. See Part A of this report for the external auditor's findings.

Question from delegate:

9) It appears that the alternate uses of the remaining 82% - sale, storage, future use, etc. - violates the ARA as pointed out by Deputy Minister Carrie Hayward; what is the Town's position vis-à-vis this contravention?

Staff Response:

The sale of the pit run material is not allowed per the wayside pit licence. This was an unintentional violation of the licence by current staff unfamiliar with all of the conditions of the licence. That is, due to turnover in staff involved with the project over the past 8 to 10 years,

Infrastructure Services (previously “Public Works”) staff involved with the project are no longer with the Town and the loss of institutional knowledge resulted in an unintentional violation of the licence towards the end of the project.

As noted above, this violation was unintentional as evidenced by the public nature in which the Town advertised the sale of the pit run material – e.g. on a website established for governments to auction off surplus materials and equipment (see more information in the response to question #14, below). Fortunately, being so transparent/public about the sale, the Town was informed, (by a third party that noticed the posting), that this sale was not allowed per the wayside pit licence. This violation was subsequently communicated, by the Town, to the MNRF. The Ministry of Natural Resources and Forestry acknowledged the Town’s unintentional violation in March 2018 and did not fine the Town. The Town waited until after this acknowledgement before completing the sale of the pit run material in 2018.

Overall, this violation highlights and supports the current staff’s recommendation (in the 26-June-2018 report 2018-78 and this report) that the Town not proceed with wayside pits on unopened road allowances in the future as aggregate extraction/operations is not a core business for the Town.

Question from delegate:

10) Can we see the contracts involved in the 2 projects and the trucking ‘tickets’ pertaining thereto?

Staff Response:

As noted previously in this report, staff summarization of the tonnage per the weigh tickets have been reviewed, verified, and opined by an independent external auditor who is a certified professional accountant. As it relates to unit pricing in contracts applied to aggregate extracted from the former McLaren Wayside Pit, the Town’s external auditor was requested to review this (see Schedule C, Procedure #17) and did not note any issues.

Question from delegate:

11) It appears from the report that the amount paid to LaFarge for the extraction of Town gravel from the ROW was \$397,020.53. What specifically does this include? – i.e. trucking (to where?), screening, washing, etc.?

Staff Response:

As noted in Part of this report (Report #2019-0152), the McLaren Wayside Pit expenditures (capital project #11-054) total \$261,657.30 comprised of actual expenditures of \$284,098.47 less a refund of \$22,441.17 from MNRF. The expenditures include archaeological

assessments, natural environment technical report, groundwater study, survey, aggregate extraction, actual permit fee, and fencing.

Question from delegate:

12) Were there any additional costs incurred that are not mentioned in the report?

Staff Response:

A capital project to capture all expenses related to the Town's McLaren Wayside Pit project was approved by Council and established in 2011, capital project #11-054, and has been open since that time for staff to allocate and track costs related to the McLaren Wayside Pit work, which includes work related to obtaining the wayside pit licence, extraction of aggregate, and the surrender of licence. Aside from \$5,700 of project management fees, staff time, over the years, related to the tracking, reconciliation, and reporting on the former McLaren Wayside Pit is not captured in capital project #11-054.

Question from delegate:

13) What is the market value of the 123,797 tonnes extracted if it were to be purchased or sold by the Town from an alternate source? Is it \$8.39/tonne? or \$857/tonne? or \$1.16/tonne? And why is there 3 different values in the report ascribed to the extracted aggregate?

Staff Response:

Please see Part A of this report. The Town's external auditor verified revenues and provided an opinion on the reasonability of the market prices used.

Question from delegate:

14) Who purchased the 75,000 tonnes of pit run sold by the Town?

Staff Response:

The pit run was advertised on a government surplus site, GovDeals.ca, on 27-July-2017 to provide an open and transparent forum for interested parties to place a bid for the materials. The Town, like other municipalities, regularly disposes of surplus materials/equipment using GovDeals.ca. This promotes an open and transparent process and promotes competitive bids. The highest bid was received from James Dick Construction Ltd. As noted the Town's response to question #9, above, the sale of the pit run was an unintentional violation of the wayside pit licence and the closing of this auction/sale was delayed until MNRF was notified and acknowledged this violation.

Question from delegate:

15) Please also refer to document “MNRchronologydocuments3” attached and answer all questions therein.

Staff Response:

The document “MNRchronologydocuments3” is also included in the 10-July-2018 memo (attached to this report as Schedule D). Questions extracted from this document are as follows (with staff responses following):

Question from delegate:

October 6, 2014 – Letter from Jane Ireland (MNR) to LaFarge confirming that MNR will proceed with issuance of “minor site plan amendment” for 2 adjacent pits once documents are signed by LaFarge. Also letter from MNR to LaFarge: [MNR will] “Allow the importation of of aggregate from the McLaren wayside ... **for storage.** ... or audit purposes, material extracted form this [LaFarge] licence **must be stored separately from that extracted from the McLaren Rd. permit.**”
Was this actually done, and what are the 2 locations? Is there an audit of the 2 quantities? Also it is still apparent that “storage” is anticipated.

Staff Response:

Infrastructure Services (previously “Public Works”) staff with direct knowledge of this matter are no longer employed at the Town of Caledon. However, the Ministry of Natural Resources and Forestry performed on-site inspections of the former McLaren Wayside Pit, where there were no non-compliance issues were identified. Based on this, staff believe that the Town and LaFarge complied with the requirement of proper separation of materials extracted from the Town’s wayside pit and the LaFarge pits (under separate aggregate licences).

Question from delegate:

Feb 2 2015 – letter from MNRF to Caledon reminding Caledon of the requirement to track/report tonnage removed on a monthly basis and that no method of doing so has been yet identified. Permit issued.
Where are these records and what do they show?

Staff Response:

The tonnage extracted from the former McLaren Wayside Pit was previously reported in 2018. The records and weigh tickets have been reviewed, verified, and opined by an independent external auditor who is a certified professional accountant. Please see Part A of this report for more details.

Question from delegate:

16) Will the new ROW/trail become or remain as Town property, and will additional expenses accrue to taxpayers for rehabilitation and/or maintenance of the trail?

Staff Response:

This matter has been referred back to staff. As noted in Part B of this report (Report #2019-0152), staff will complete additional research before providing Council with a recommendation on this matter.