



**STAFF REPORT  
ACTION REQUIRED  
with Confidential Attachment**

**Appeal of MOE Approval Issued to New Sabby Concrete & Supplies, 32 Caledonia Road**

<b>Date:</b>	December 16, 2009
<b>To:</b>	Etobicoke York Community Council
<b>From:</b>	City Solicitor
<b>Wards:</b>	Ward 17
<b>Reason for Confidential Information:</b>	This report is about litigation that affects the City and contains advice that is subject to solicitor-client privilege.
<b>Reference Number:</b>	

**SUMMARY**

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New Sabby Concrete and Supplies Inc. (“New Sabby”) is a concrete batching facility that operates at Caledonia and St. Clair Avenue West. In Spring, 2009, New Sabby applied to the Ministry of Environment (“MOE”) for a certificate of approval (“C of A”), which it was required to do as a result of changes to the regulations under the *Environmental Protection Act*.

The City filed objections to New Sabby’s application with the MOE. On August 4, 2009, however, the MOE issued a C of A to New Sabby.

The City applied to the Environmental Review Tribunal (the “Tribunal”) for leave to appeal the MOE’s decision to issue the C of A.

The Tribunal granted the City leave to appeal the specific issue of whether the C of A issued to New Sabby is compliant with applicable noise level requirements. The Tribunal has scheduled a hearing on this specific issue for April, 2010.

The confidential attachment to this report contains legal advice from the City Solicitor with respect to the hearing before the Tribunal.

## **RECOMMENDATIONS**

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The City Solicitor recommends that:

1. City Council adopt the recommendations in the Confidential Attachment; and
2. City Council authorize the public release of the confidential recommendations in Attachment 1 if adopted by City Council.

## **FINANCIAL IMPACT**

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The financial implications are set out in the confidential attachment.

## **DECISION HISTORY**

At its meeting on April 29 and 30, 2009, City Council approved a recommendation from the Etobicoke York Community Council and directed the City Solicitor “to retain outside environmental consultants” and to take such measures as necessary to oppose the issuance of a C of A by the MOE to New Sabby.

On November 10, 2009, the Etobicoke York Community Council directed Municipal Licensing and Standards, Toronto Water, and Transportation Services to review New Sabby’s operations in respect of matters within their respective jurisdictions.

At its meeting on November 30, December 1, 2, 4 and 7, 2009, City Council adopted recommendations from the Etobicoke York Community Council and directed that the MOE be requested to reinvestigate the environmental and health concerns of the community in view of an environmental spill of cement that occurred on October 31, 2009, and that the MOE apply strict restrictions on New Sabby’s C of A as this industrial use is not compatible with the residential community.

## **ISSUE BACKGROUND**

### *New Sabby’s Operations at 32 Caledonia Road*

New Sabby operates a concrete batching facility at 32 Caledonia Road. The facility is proximate to the intersection of Caledonia Road and St. Clair Avenue West. The facility has been operating at this location for over 20 years.

New Sabby is located in a residential area with detached and semi-detached housing directly to the east and west and short distances away to the north and south. There are two cultural centres operated in close proximity to New Sabby. Other businesses are also located on Caledonia Road and St. Clair Avenue West.

Residents and businesses in the area have made their opposition to New Sabby's operations known to the City and to the MOE directly. Broadly speaking, the objections relate to the noise from vehicles and processes carried on at the site and dust emissions.

### ***New Sabby's Application for a C of A Was Granted By MOE***

As a result of changes to the regulations under the *Environmental Protection Act*, New Sabby was required to apply for a C of A from the MOE. It had previously been permitted to operate without a C of A.

New Sabby's application to receive a C of A was posted for public comment on the Environmental Registry in May, 2009. Residents, businesses, and the City provided comments directly to the MOE in June, 2009. The MOE advised the City that it considered the information received and sought further information in response from New Sabby.

On August 4, 2009, issued the C of A to New Sabby.

On August 19, 2009, the City filed a request for leave to appeal the MOE's decision with the Tribunal.

### ***Summary of the C of A's Terms***

The terms upon which the C of A was issued to New Sabby included the following requirements, among others:

1. that New Sabby properly operate and maintain the equipment, and prepare an operating and maintenance procedures manual in accordance with good engineering practices and the recommendations of its equipment suppliers. In the manual, New Sabby was specifically required to identify all appropriate measures to minimize noise and dust emissions from all potential sources at the facility;
2. that New Sabby implement a best practices plan for the management of dust and for dust suppression measures;
3. that records on the maintenance, repair and inspection of equipment, the carrying out of dust suppression measures, and the receipt of any complaints be maintained; and
4. that New Sabby retain an independent consultant to conduct an acoustic audit of the facility and submit a report on the results to the MOE by February 4, 2010.

### ***Environmental Review Tribunal to Conduct Hearing into Noise Level Issue***

After the City filed its application for leave to appeal the MOE's decision to issue a C of A to New Sabby, both New Sabby and the MOE filed submissions asking the Tribunal to

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deny the City leave to appeal. Both New Sabby and the MOE took the position that the decision to issue a C of A to New Sabby and the terms upon which the C of A was issued were appropriate.

On November 2, 2009, the Tribunal granted the City leave to appeal on a single issue and denied the City's application for leave to appeal on other issues.

Specifically, the Tribunal granted the City leave to appeal the MOE's decision to issue the C of A on the ground that:

the C of A is not compliant with the requirements of the MOE's publication NPC-205, entitled Sound Level Limits for Stationary Sources in Class 1 & 2 Areas (Urban).

The Tribunal denied the City's application for leave to appeal on issues related to the emissions (dust) from the site.

The City filed its notice of appeal with the Tribunal on November 13, 2009.

### ***Next Steps in Preparation for Tribunal Hearing***

The Tribunal scheduled the following:

1. a pre-hearing meeting on Wednesday, February 3, 2010; and
2. a hearing on Wednesday, April 14, Thursday, April 15, and Friday, April 16, 2010.

## **CONTACT**

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## **SIGNATURE**

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Anna Kinastowski  
City Solicitor

## **ATTACHMENTS**

Attachment 1 – Confidential – Appeal of MOE Approval Issued to New Sabby Concrete & Supplies, 32 Caledonia Road

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