

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Cowichan Valley (Reginal District) v.
Cobble Hill Holdings Ltd.,*
2016 BCCA 432

Date: 20161103
Docket: CA43548; CA43549

Between:

Cowichan Valley Regional District

Respondent/
Appellant on Cross Appeal
(Petitioner)

And

**Cobble Hill Holdings Ltd., South Island Aggregates Ltd. and
South Island Resource Management Ltd.**

Appellants/
Respondents on Cross Appeal
(Respondents)

Before: The Honourable Madam Justice D. Smith
The Honourable Madam Justice Dickson
The Honourable Mr. Justice Fitch

On appeal from: An order of the Supreme Court of British Columbia, dated
March 21, 2016 (*Cowichan Valley (Reginal District) v. Cobble Hill Holdings Ltd.*,
2016 BCSC 489, Victoria Docket No. 13-3547).

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Place and Date of Hearing:

Vancouver, British Columbia
August 17 and 18, 2016

Place and Date of Judgment:

Vancouver, British Columbia
November 3, 2016

Written Reasons by:

The Honourable Madam Justice D. Smith

Concurred in by:

The Honourable Madam Justice Dickson

The Honourable Mr. Justice Fitch

Summary:

The appellants are owners of fee-simple land on which they operate a rock quarry pursuant to a mine permit issued under the Mines Act. The quarry cavity was initially backfilled with “clean” soil. The appellants subsequently obtained an amended permit under the Mines Act and a permit under the Environmental Management Act to import contaminated soil that was permanently encapsulated in engineered synthetic-lined cells for the backfilling of the quarry cavity where it is capped with a meter of clay and two meters of soil. The EMA permit also authorized an alternative facility that would permit the appellants to undertake bioremediation of the imported contaminated soil on site. The alternative facility was not included in the amended mine permit and, while constructed, has not been put into operation. The CVRD appealed the EMA permit to the Environmental Appeal Board. The appeal was dismissed. The CVRD then pursued the underlying petition in which it applied for declaratory and injunctive relief against the appellants on the basis that their operation contravened the permitted uses of land under the Local Government Act. The judge agreed and granted the relief requested. However he dismissed the CVRD’s application for mandatory injunctions to remove the contaminated soil already backfilled and the bioremediation facility. On appeal, the appellants submitted that the quarry is a mine, that the Province has exclusive jurisdiction under the Mines Act for site reclamation of a mine, and that the backfilling of a quarry is integral to site reclamation. The CVRD contended that a quarry is not a mine, that only the extraction of the aggregate falls within the exclusive jurisdiction of the Province, and that all other non-extraction activities including site reclamation is subject to local government land use regulation. Held: Appeal allowed in part. Cross appeal is dismissed. Under the Mines Act, a quarry is a mine and its site reclamation, which includes the backfilling of the quarry cavity, is a mining activity. The bioremediation of the imported soil on site is not integral to site reclamation and is subject to local government land use regulation.

Reasons for Judgment of the Honourable Madam Justice D. Smith:

Overview

[1] The excavation of a rock quarry and its site reclamation are at the center of this longstanding dispute. Excavation is the extraction of aggregate from a landform, which typically leaves the landform with a cavity or pit. Reclamation is the restoration of the affected landform to its pre-quarry state by backfilling the cavity with soil. Soil includes sand, gravel or rock.

[2] Reclamation is an integral part of quarrying. An approved site reclamation plan is required under s. 10 of the *Mines Act*, R.S.B.C. 1996, c. 293 before the Ministry of Energy and Mines (the “MoM”) will issue a quarry permit. Reclamation plans that raise environmental concerns also require a permit from the Ministry of the Environment (the “MoE”) under s. 14 of the *Environment Management Act*, S.B.C. 2003, c. 53 (the “EMA”).

[3] The Province has jurisdiction over mining. Using this permitting process, it regulates the extraction of aggregate and site reclamation.

[4] The appellants submit the Province has exclusive jurisdiction over mining, which includes quarries. They say it is the sole regulator of quarries and any related on-site activities for the duration of the mine’s operation. The respondent submits that other than extraction of the aggregate, all other non-extraction quarry activities, including site reclamation, are a use of land that are subject to local government regulation under the general zoning power in the *Local Government Act*, S.B.C. 2016, c. 1, (the “LGA”). The respondent contends the provincial jurisdiction over mining does not override local government’s jurisdiction over land use where each jurisdiction is acting within its respective powers.

[5] The parties’ dispute was triggered when the Province granted the appellants a permit to import contaminated soil onto the quarry site to backfill the quarry cavity.

[6] Although multiple issues were raised in the appeal and cross appeal, the central issue in my respectful view is one of jurisdiction. For the reasons below, I am

of the view that the Province has exclusive jurisdiction to regulate the operation of a quarry and its site reclamation, provided the reclamation activity is integral to restoring the affected landform.

Background

[7] Cobble Hill Holdings Ltd. (“CHH”) is the fee-simple owner of a parcel of land south of Shawingan Lake. The land is situated in the Cowichan Valley and the Shawingan Lake watershed on Vancouver Island. On the western slope of the land a quarry excavation cuts into the hill. Surface water flows down the hill, through the excavation and into an ephemeral stream on the neighbouring property, which is also owned by the appellants.

[8] South Island Aggregates Ltd. (“SIA”) began to operate the rock quarry in 2006. In 2015, South Island Resource Management Ltd. (“SIRM”) took over the quarry operation. SIRM is the current operator. I shall refer to these entities collectively as the “appellants.”

[9] The respondent, Cowichan Valley Regional District (the “CVRD”), is the local government with zoning authority in the area. In 1986, pursuant to the provisions of the *LGA*, the CVRD adopted the Electoral Area “B” Zoning Bylaw No. 985 – Shawnigan Lake (the “Zoning Bylaw”).

[10] The Chief Inspector of Mines (the “Chief Inspector”) issues permits under the *Mines Act* for mining and quarry operations. The permit includes requirements to reclaim the landform to its “pre-mining state”. It also includes a requirement for a level of land productivity at the end of the operation. The Chief Inspector decides if the quarry has been successfully reclaimed at the end of its life.

[11] In 2006, the quarry land was zoned for residential use. At that time, the quarry permit authorized the appellants to reclaim the site by importing “clean” soil (albeit all soil contains some contaminants) and restoring the landform to the pre-quarry residential land use.

[12] In 2007, the quarry land zoning was changed to F-1 (primary forestry) and industrial uses including excavation, milling and crushing. This was in keeping with the CVRD's Official Community Plan that lists mining as one of its principle objectives. The zoning change allowed the appellants to change the nature of the soil they imported. Under the forest/industrial zoning industrial IL soil (also "clean" soil) could be imported onto the site without a permit. The zoning change also reduced the minimum lot size to 80 hectares beyond the size for residential subdivision.

[13] In 2009, the quarry permit was amended. The amendment authorized the site to be reclaimed with imported soil that met MoE Soil Guidelines for backfilling the quarry and, if the MoE required one, a waste management permit before the soil was brought onto the land.

[14] In 2011, the appellants applied to the MoE to further amend the quarry permit to allow them to import contaminated soil and associated ash (non-hazardous). They also requested a waste discharge permit to construct an on-site facility for backfilling the quarry (the "Landfill Facility") and an on-site facility for treating the contaminated soil (the "Soil Treatment Facility"). In addition, they applied to upgrade the existing water treatment system and settling pond for the increased discharge of effluent.

[15] In August 2013, the MoE granted the permit. The MoE permit (i) requires the imported soil to meet MoE Soil Guidelines for the intended "end land use" (forestry/industrial) when the quarry activities are completed, and (ii) authorizes the management and processing of the contaminated soil by one of two ways: the Landfill Facility or the Soil Treatment Facility. Both are subject to stringent environmental requirements, monitoring and inspections.

[16] The Landfill Facility stores contaminated soil in engineered, synthetic-lined cells, that are "permanently encapsulated" in the cavity of the quarry, where they are capped with a meter of clay and two meters of residential-grade soil. No associated ash has been included with the soil to date.

[17] The Soil Treatment Facility is a rectangular, asphalt-paved pad (approximately 1,800 square meters) for the bioremediation of the soil to be deposited into the quarry cavity. Bioremediation is a natural waste management technique that uses the naturally occurring processes of organisms to remove, break down or neutralize the concentrations of organic contaminants through biodegradation. The facility has been constructed but has not been put into operation.

[18] The MoE permit contemplates monitoring the site reclamation process for the life of the mine, estimated at between 40 – 50 years. At the completion of the quarry activities, the permit requires the land surface and watercourses to be reclaimed to a forestry/industrial land use (the end land use) and the surface level of the land restored to its prior 3% (flat) slope.

[19] After the MoE permit was granted, the MoM amended the quarry permit to provide for the mandatory requirements of the MoE permit. It authorized the Landfill Facility but did not include the Soil Treatment Facility as a requirement for reclamation.

[20] The CVRD has acknowledged the need to treat and manage contaminated soil in the Province. However, along with some of its residents, it has continuing concerns about the appellants' modified reclamation plan.

[21] In October 2013, the CVRD commenced the underlying petition. In the petition, it claimed that the Landfill Facility and the Soil Treatment Facility were not permitted land uses under the Zoning Bylaw and it requested a number of declaratory and injunctive orders, effectively to prohibit the appellants from continuing the modified on-site reclamation process. It also filed an appeal of the MoE permit with the Environmental Appeal Board (the "EAB"), where it obtained a stay of the MoE permit pending the EAB decision. The appellants successfully applied to vary the stay order, permitting them to complete four of their soil deposit contracts.

[22] The EAB hearing occurred over 31 days in March and July 2014. During the hearing, the CVRD raised a number of health and safety concerns about the impact of the modified reclamation process on the environment generally and on the Shawnigan Lake watershed in particular. The CVRD claimed the contaminants would enter the environment and threaten the drinking water and fish habitat. It also claimed the design of the Landfill Facility would not overcome those risks.

[23] The EAB found otherwise. It accepted the evidence of the MoE experts, the mine inspectors and other experts who had been brought in to challenge the MoE position that the appellants' operation would not impair the environment or the watershed. The EAB also found that it would be speculative to commit to monitoring the Landfill Facility after the quarry was abandoned in 40 to 50 years, as that decision would be dependent on the results of ongoing monitoring over the life of the quarry. In March 2015, the EAB dismissed the appeal in comprehensive written reasons.

[24] The CVRD then resurrected its petition and proceeded with a 10-day hearing before Mr. Justice MacKenzie.

Relevant legislative provisions

[25] The following legislative provisions are relevant to the issues raised in this appeal.

The Mines Act

[26] The *Mines Act* provides the following definition of a “mine” and a “mining activity”:

Definitions

1 In this Act:

“**mine**” includes

(a) a place where mechanical disturbance of the ground or any excavation is made to explore for or to produce coal, mineral bearing substances, placer minerals, rock, limestone, earth, clay, sand or gravel,

(b) all cleared areas, machinery and equipment for use in servicing a mine or for use in connection with a mine and buildings other than bunkhouses, cook houses and related residential facilities,

(c) all activities including exploratory drilling, excavation, processing, concentrating, waste disposal and site reclamation,

(d) closed and abandoned mines, and

(e) a place designated by the chief inspector as a mine;

“mining activity” means any activity related to

(a) the exploration and development of a mineral, coal, sand, gravel or rock, or

(b) the production of a mineral, a placer mineral, coal, sand, gravel or rock,

and includes the reclamation of a mine;

[Emphasis added.]

[27] A mine therefore includes the excavation of sand, gravel or rock and its site reclamation.

[28] A mine permit may be issued under s. 10 of the *Mines Act* only if the applicant has first obtained an approved reclamation plan:

10(1) Before starting any work in, on or about a mine, the owner, agent, manager or any other person must hold a permit issued by the chief inspector and, as part of the application for the permit, there must be filed with an inspector a plan outlining the details of the proposed work and a program for ... the protection and reclamation of the land ... affected by the mine ...

(2.01) Without limiting subsection (1.1) or (2), terms and conditions imposed under those subsections may include terms and conditions respecting any or all of the following;

...

(d) environmental protection and reclamation.

[Emphasis added.]

The LGA

[29] In the *Municipal Act*, S.B.C. 1957, c.42, “land” was defined as:

“Land” means the soil or ground without improvements, and includes land covered by water, and all quarries and substances in or under the land other than mines or minerals. [Emphasis added.]

[30] The *Municipal Act Amendment Act*, S.B.C. 1959, c. 56, changed the definition of “land” to its current wording in the *LGA*. The *LGA* incorporated the definition of “land” from the *Community Charter*, S.B.C., 2003, c.26 (the “CC”), which no longer includes quarries:

Definitions

“land”

(a) for the purposes of assessment and taxation, means land as defined in the Assessment Act, and (b) for other purposes, includes the surface of water, but does not include

(i) improvements

(ii) mines or minerals belonging to the Crown, or

(iii) mines or minerals for which title in fee simple has been registered in the land title office;

[31] The 1959 *Municipal Act Amendment Act* also added the local government zoning power to its jurisdiction. The general zoning power is now found in s. 479 (formerly s. 903) of the *LGA*. It may only be exercised in relation to “land” as defined by the *LGA*. Section 479(1) provides:

Zoning bylaws

479 (1) A local government may, by bylaw, do one or more of the following:

...

(c) regulate within a zone

(i) the use of land, buildings and structures

...

(3) The power to regulate under subsection (1) includes the power to prohibit any use or uses in a zone.

[32] Section 327 (formerly s. 723) of the *LGA* sets out the authority for a regional district to regulate or prohibit a service in relation to the deposit and removal of soil:

Removal and deposit of sand, gravel and other soil

327 (1) This section applies to a regional district only if the regional district provides a service in relation to the control of the deposit and removal of soil and the control and deposit of other materials.

(2) The board may, by bylaw, regulate or prohibit

(a) the removal of soil from, and

(b) the deposit of soil or other material on any land in the regional district or in any area of the regional district.

...

(4) Section 9 [spheres of concurrent authority with the LGA] of the Community Charter applies to a provision in a bylaw under subsection 2 that

(a) prohibits the removal of soil, or

(b) prohibits the deposit of soil or other material and that makes reference to quality of soil or material or to contamination.

[Emphasis added.]

[33] The CVRD does not provide a service for the deposit of soil and does not have a soil deposit bylaw.

[34] Sections 8 and 9 of the CC, which are incorporated into the LGA, provide:

Fundamental Powers

8 (3) A council may, by bylaw, regulate, prohibit and impose requirements in relation to the following:

...

(m) the removal of soil and the deposit of soil or other material.

Spheres of concurrent authority

9 (1) This section applies in relation to the following:

(e) bylaws under section 8 (3) (m) [*removal and deposit of soil and other material*] that

(i) prohibit soil removal, or

(ii) prohibit the deposit of soil or other material, making reference to quality of the soil or material or to contamination.

(2) For certainty, this section does not apply to

(a) a bylaw under section 8 that is under a provision not referred to in subsection (1) or is in respect of a matter to which subsection (1) does not apply,

(b) a bylaw that is authorized under a provision of this Act other than section 8, or

(c) a bylaw that is authorized under another Act, even if the bylaw could have been made under an authority to which this section does apply.

(3) Recognizing the Provincial interest in matters dealt with by bylaws referred to in subsection (1), a council may not adopt a bylaw to which this section applies unless the bylaw is

- (a) in accordance with a regulation under subsection (4),
- (b) in accordance with an agreement under subsection (5), or
- (c) approved by the minister responsible.

[Emphasis added.]

[35] Section 4.2 of the Zoning Bylaw provides that land may only be used as specifically permitted:

4.2 Land or the surface of water shall not be used and structures shall not be constructed, altered, located or used except as specifically permitted by this bylaw.

[36] Section 4.4 of the Zoning Bylaw also permits uses accessory to the permitted principal use in the F-1 zone. It provides:

4.4 Except where otherwise specifically stated all uses permitted by the bylaw include those uses accessory to the permitted principle uses and all buildings or structures include all buildings or structures reasonably auxiliary to buildings and structures constructed located or used with respect to permitted principal uses.

[Emphasis added.]

“Accessory” is defined as “ancillary or subordinate to a principal use”.

“Principal” with respect to a use is defined as “primary and chief”.

[37] The permitted land uses are listed in s. 7.4(a) of the Zoning Bylaw. Only the listed uses “and no others” are permitted. They include:

7.4 F-1 - Primary Forestry

(a) Permitted uses

The following uses and no others are permitted in an F-1 zone:

- (1) The management and harvesting of primary forest products excluding sawmilling and all manufacturing and dry land log sorting operations;
- (2) Extraction crushing milling concentration for shipment of mineral resources or aggregate materials excluding all manufacturing;
- (3) Single family residential dwelling or mobile home;
- (4) Agriculture silviculture horticulture;
- (5) Home based business;
- (6) Bed and breakfast accommodation;

- (7) Secondary suite or small suite on parcels that are less than 10.0 hectares in area;
- (8) Secondary suite or a second single family dwelling on parcels that are 10.0 hectares or more in area.

[Emphasis added.]

[38] Section 5.20 of the Zoning Bylaw deals with contaminated soil and waste. It provides:

5.20 Contaminated Soil and Waste

Unless explicitly permitted in a zone, no parcel shall be used for the purpose of storing contaminated waste or contaminated soil, if the contaminated material did not originate on the same legal parcel of land that it is being stored on.

[39] The CVRD has not received approval for this bylaw from the minister responsible.

The EMA Act

[40] The Code does not define “land” or “land use”. However, s. 1 of the *EMA* defines “land” as “the solid part of the earth’s surface including the foreshore and land covered by water”.

[41] The introduction of waste into the environment requires a permit under the *EMA*. Section 14 mandates:

14 (1) A director may issue a permit authorizing the introduction of waste into the environment subject to requirements for the protection of the environment that the director considers advisable and, without limiting that power, may do one or more of the following in the permit:

- (a) require the permittee to repair, alter, remove, improve or add to works or to construct new works and to submit plans and specifications for works specified in the permit;
- (b) require the permittee to give security in the amount and form and subject to conditions the director specifies;
- (c) require the permittee to monitor, in the manner specified by the director, the waste the method of handling, treating, transporting, discharging and storing the waste and the places and things that the director considers will be affected by the discharge of the waste or the handling, treatment, transportation or storage of the waste;

- (d) require the permittee to conduct studies and to report information specified by the director in the manner specified by the director;
- (e) specify procedures for monitoring and analysis, and procedures or requirements respecting the handling, treatment transportation, discharge or storage of the waste that the permittee must fulfill;
- (f) require the permittee to recycle certain wastes and to recover certain reusable resources, including energy potential from wastes.

[42] The EAB imposed conditions in the MoE permit under most of the categories listed in s. 14(1)(a)–(f).

The Judgment

[43] Before MacKenzie J., the appellants submitted that (i) the Province has exclusive jurisdiction to regulate all activities associated with reclaiming a quarry because a quarry is a “mine” and (ii) site reclamation is a “mining activity” as defined under the *Mines Act*. They argued that the CVRD’s jurisdiction to regulate their use of the land will only be re-engaged when the quarrying activities, including reclamation, are complete. In the alternative, they submitted that reclamation is an integral, necessary and core aspect of “extraction”, which is a permitted land use under s. 7.4(a)(ii) of the Zoning Bylaw, and is also an “ancillary use” to the permitted principal use of “extraction” under s. 4.4 of the Zoning Bylaw.

[44] The CVRD contended that it has the jurisdiction to regulate the appellants’ deposit and placement of reclamation soil under its general zoning power in s. 479 of the Zoning Bylaw. It argued that (i) the appellants’ reclamation activities are effectively a landfill, and that a landfill is a use of land subject to regulation by the CVRD; (ii) all of the appellants’ non-extraction activities, which include associated or related “mining activities, are not excluded from the definition of “land” in s. 1 of the *LGA*, based on the interpretation of “land” in the *LGA* in *Squamish (District) v. Great Pacific Pumice Inc. et al.*, 2003 BCCA 404 [*Pumice*] and are prohibited as they do not fall within the permitted uses in s. 7.4(a)(ii) of the Zoning Bylaw; and (iii) based on *Pumice*, the storage and processing of materials approved under a provincial permit can be regulated or prohibited by the local government’s general zoning power, absent the use of the land being expressly permitted under s. 7.4(a).

[45] The judge agreed with the CVRD. He concluded that the appellants' reclamation activities are not integral, necessary, core or ancillary to their excavation or extraction activities and are therefore subject to land use regulation by the CVRD. In particular, he held:

(1) Based on *Vernon (City) v. Okanagan Excavating (1993) Ltd.* (1995), 9 B.C.L.R. (3d) 331 (C.A.), the extraction of aggregate is a *profit à prendre* (a right to take something from the land) and therefore is not subject to local government land use regulation; however based on *Pumice*, all other "non-extraction" activities are subject to zoning regulation:

[79] ... there is no issue local governments do not have the authority to regulate extraction of aggregate material (see [*Vernon*]). The CVRD submits however, that while extraction of a mineral or aggregate material is not a land use, all other "related activities" are land uses and subject to zoning, citing [*Pumice*], and that a mining permit does not trump local government zoning. That is, the CVRD says all "non-extraction components" are subject to zoning bylaws.

[Emphasis added.]

(2) While "extraction" is a permitted land use under s. 7.4(a)(ii) of the Zoning Bylaw, reclamation is not; nor is it an "integral", "core", or "necessary" activity to the extraction activity (accepting the opinion of the CVRD's expert that the appellants' reclamation activities were not "necessary" or "normal" for a small quarry):

[86] In my view, it is only activities that are integral to extraction of the resource that can escape local land use regulation. Moreover, I am unable to agree that reclamation is an integral and necessary aspect of the actual extraction process, such that a local government is precluded from exercising its zoning power to restrict reclamation activities. In my view, to accede to the submission advanced by the [appellants] would be contrary to the general principles enunciated in both *Great Pacific Pumice* and *Vernon*.

...

[90] The CVRD's intention or purpose in passing the bylaw was to permit the extraction of resources, including other specific mining activities. However, in my view, this does not mean the petitioner intended to relinquish its jurisdiction to control what land use activities occur on land where a resource is being extracted, as long as any

land use restriction does not interfere with or prohibit extraction of the resource. I cannot agree with the [appellants] when they say that if I interpret extraction to exclude reclamation, they could not extract the aggregate and this would mean the CVRD did not intend to allow mining. As the Court of Appeal outlined in *Neilson v. Langley (Township)*, [1982] B.C.J. No. 2313, at para. 18, the interpretation of municipal bylaws should be done with a view to giving effect to the intention of the municipal council. I am satisfied the intent of the CVRD is clearly to permit extraction and the specified processing activities, at the same time enforcing the zoning bylaw.

[91] In my view, even though there must be a reclamation plan in order to obtain a mining permit, reclamation is not a “core” or integral mining activity that escapes local zoning regulations. It is different than extraction of the mineral or aggregate. As a result, I am satisfied that the [CVRD] has jurisdiction to regulate non-extraction mining activities, including reclamation activities.

[92] For the same reasons, I am unable to agree with the [appellants’] other argument that any activity [emphasis in original] that might be considered reclamation is a principal permitted use. While this bylaw specifically permits other mining activities, I am satisfied that even if the importation and encapsulation of this material could be considered reclamation, as this activity is not integral to the extraction of the aggregate, it cannot be considered a permitted land use under s. 7.4 of the zoning bylaw.

[Emphasis added.]

- (3) The site reclamation was not an “accessory use” to the authorized principle “extraction” activity:

[96] ... I am satisfied the purpose broadly served by the F-1 zone is to allow for the extraction of minerals and aggregate, as well as crushing, milling and concentration for shipment, and that the purpose of s. 4.4 is to allow uses that are ancillary, or necessary, to the actual permitted uses, that is, activities that are required in order to extract the aggregate and get it to the marketplace. As a result, I am unable to agree with the [appellants] that the activities taking place on the property are “accessory” to extraction, crushing or milling, such that they can be considered a permitted accessory use.

[Emphasis added.]

- (4) The reclamation process of permanent encapsulation of waste soil in engineered cells for deposit into the cavity of the quarry is a landfill and therefore subject to the Zoning Bylaw, which does not expressly permit the land to be used as a landfill:

[113] ... I also agree with the CVRD that whether the respondents are operating a landfill or reclaiming the quarry depends on the context of the activity and what is actually occurring on site. While I give due weight to the opinions of both experts, having regard to the totality of the evidence, I am satisfied the [CVRD] has established that the permanent encapsulation of waste soil in the engineered cells has, in fact, created a landfill that is properly characterized as a land use, and is subject to the zoning bylaw. Moreover, I am satisfied a landfill is not a permitted use, either under the “implied exclusion approach” and the operation of s. 4.2 and s. 7.4 of the zoning bylaw, or pursuant to the test of statutory interpretation as outlined in *Paldi [Paldi Khalsa Diwan Society v. Cowichan Valley (Regional District), 2014 BCCA 335]*.

[Emphasis added.]

(5) There is no operational conflict between the activities of the appellants under the quarry permit issued pursuant to s. 10 of the *Mines Act*, and the CVRD’s prohibition of their site reclamation activities under the Zoning Bylaw pursuant to the *LGA*, if the appellants restrict their reclamation activities to only those land uses permitted by the CVRD:

[89] I am unable to accept that such a conflict exists. In my view, these enactments are capable of existing together harmoniously as an integrated regulatory scheme pertaining to land use and mining legislation. The CVRD is not attempting to prohibit reclamation activities; it simply seeks to restrict them to comply with permitted land uses under zoning bylaw. As for the MoE permit, it gives permission to the respondents to import waste and permanently encapsulate it if they so desire. The permit in no way compels [emphasis in original] the respondents to do anything, nor does the zoning bylaw prohibit in any way extraction of the aggregate material (see *Greater Vancouver (Regional District) v. Darvonda Nurseries Ltd.*, 2008 BCSC 1251). I conclude the regulations can co-exist.

(6) In light of his conclusion that the “landfilling of imported waste on the property is not a permitted principle or accessory land use”, it was unnecessary to decide what the judge referred to as the appellants’ alternative submission, namely that s. 5.20 (which prohibits the storage of contaminated soil), was a valid and enforceable provision of the Zoning Bylaw. He observed in *obiter*:

[117] What was somewhat inconsistent, however, was the [appellants] then went on to submit that adding soil to the land “is the

deposit of soil, which whether worded as storage or otherwise, cannot be controlled without a s. 723 bylaw, and cannot be controlled as to quality without ministerial approval.”

[118] Be that as it may, it was only if the petitioner was unsuccessful on its primary argument would it be necessary to consider the [appellants] ‘alternative’ argument that s. 5.20 is *ultra vires* the CVRD’s power to zone land uses, on the basis that, if a local government wishes to control the quality of soil being deposited on land, contaminated or not, that power is found in s. 723 of the LGA (as it then was), not pursuant to the land use power in s. 903, and that without ministerial approval, local governments cannot pass any provision that refers to the quality of soil.

[46] In the result, the judge found that the appellants’ site reclamation was a landfill that was subject to land use regulation under the CVRD’s general zoning power. As it was not an expressly permitted use under s. 7.4(a), the site reclamation activities were prohibited. He granted the CVRD’s request for declaratory orders that the Landfill Facility, Soil Treatment Facility and importing contaminated soil for permanent encapsulation in engineered cells were not permitted land uses under the Zoning Bylaw, as well as injunctions restraining the appellants from engaging in each of those activities.

[47] The judge declined to order a mandatory injunction for the removal of the facilities or the “product” already on site, including the deposited encapsulated cells, relying on the expertise of the MoE and EAB as to the safety of the “product”. He also declined to order a mandatory injunction for the removal of the concrete lock blocks in the soil management area and the upgraded water treatment system, which he found “can be a legitimate and important use within the parameters of extraction and the other permitted mining activities of crushing and milling” under s. 7.4(a)(ii) of the Zoning Bylaw 9 at para. 125.

[48] The appellants appeal the judge’s declaratory and injunction orders. The respondent cross appeals the orders dismissing its applications for mandatory injunctions.

Issues

[49] The appellants raise several issues on appeal. They submit the judge:

- (a) erred in law by concluding that a regional district has legislative authority to regulate mines and mandatory mine activities that take place within them (paras. 86 and 91);
- (b) erred in law by concluding that a regional district can, by virtue of general land use or “zoning power”, control or regulate the deposit of soil, particularly with reference to quality (paras. 117 and 118). They say the judge misconstrued the issue as applicable only to the appellants’ alternative arguments, failed to apply the statutory scheme, and ignored applicable authority that a bylaw, which in effect, regulates soil deposit, (at least with respect to quality) absent appropriate ministerial approval, is not enforceable;
- (c) erred in interpreting the purpose of the Zoning Bylaw (at paras. 90 and 92) and in concluding that the reclamation activity constitutes a “landfill” that the CVRD intended the Zoning Bylaw to prohibit (para. 113); and
- (d) erred in concluding that only uses accessory to extraction, and not to mining, are permitted under accessory use (para. 96).

[50] In the cross appeal, the CVRD submits the judge erred in not ordering the appellants to remove the Landfill Facility, the Soil Treatment Facility, and waste materials from the site when he found they were in breach of the Zoning Bylaw. In those circumstances, it submits, “the public interest is at stake in the enforcement of a zoning bylaw”, citing *Langley (Township) v. Wood*, 1999 BCCA 269 at para. 17.

On Appeal

[51] I propose first to address the judge’s finding that the appellants’ site reclamation is a landfill, which, if the judge were correct, would determine the appeal. The operation of a landfill is a land use that is subject to local government zoning. A quarry permit under the *Mines Act* does not authorize a landfill.

A. Is the quarry site reclamation a landfill?

[52] The quarry site reclamation is not a landfill. The finding that the appellants are operating a landfill appears to have been derived principally from the language in the EAB decision. In its reasons, the EAB refers to the initial quarry permit under the *Mines Act* as the “mine permit” and defines the MoE permit as “the Permit”.

[53] The EAB report noted that the MoE permit applies to “the discharge of refuse from a contaminated soil treatment and to the landfill facility”. It described the authorized works as “a landfill, engineered lined landfill cells ...” and the context of this “landfill” as the deposit of the imported soil contained in these engineered lined cells into the cavity of the quarry. It stated: “‘Landfilling’ in this case does not mean that contaminated soils are simply deposited into the quarry; rather, the soil will be encapsulated in engineered cells.” It also used the term “landfill” interchangeably with “backfill” and “reclamation” to describe depositing the soil into the excavated land. This was in contrast to its description of the “discharge” of liquid effluent, or “emission” of air contaminants. In short, the purpose of the soil deposit was clear; it was always meant to backfill the quarry pit.

[54] There is no evidence that the Landfill Facility was intended to create a landfill *per se*, as that term is generally understood, namely a municipal waste dump where all types of refuse are deposited. The MoE permit authorizing the Landfill Facility is governed by the *EMA*, which includes 47 regulations. The *EMA* regime regulates the discharge of environmental “waste”, including waste streams from air emissions, liquid effluent streams, and soil deposits. The *EMA* also defines “municipal solid waste” as “refuse that originates from residential, commercial, institutional, demolition, land clearing or construction sources” or “refuse specified by a director to be included in a waste management plan”. Municipal solid waste does not include soil.

[55] The Landfill Facility was authorized under the *Mines Act* for site reclamation of the excavated quarry land. It bears no resemblance to a municipal waste dump.

[56] In my opinion, it was factually incorrect for the judge to characterize the appellants' reclamation activities as a landfill. Such a characterization ignored the context of the *EMA* regime in approving and regulating the construction and operation of the Landfill Facility.

B. Is a quarry a “mine” and its reclamation a “mining activity” under the *Mines Act*?

[57] A quarry is a mine and its site reclamation is a mining activity.

[58] Historically, quarries were included in the definition of “land” in the 1957 *Municipal Act*. The 1959 *Municipal Act Amendment Act* changed the definition of “land” by deleting any reference to quarries.

[59] The appellants submit the quarry and its site reclamation fall within the definition of a “mine” and a “mining activity”, respectively, under the *Mines Act*. The CVRD contends a quarry is not a mine as it does not fall within the “mines” exclusions in the definition of land in the *LGA*, and that its non-extraction activities fall within the definition of “land” based on the historical meaning of the “mines” exclusion in the *LGA*, as interpreted in *Pumice*.

[60] The modern approach to statutory interpretation is that “the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament” (*Sullivan on the Construction of Statutes*, 6th ed. (Toronto: Lexis Nexis, 2014 at p. 1). As well, *Sullivan* at p. 421, citing *Canada (Attorney General) v. Public Service Alliance of Canada*, [1991] 1 S.C.R. 614 at paras. 23 and 25, instructs that statutes which deal with the same subject:

... are presumed to be drafted with one another in mind, so as to offer a coherent and consistent treatment of the subject ... The provisions of each are read in the context of the others and consideration is given to whether they are part of a single scheme. The presumptions of coherence and consistent expression apply as if the provisions of these statutes were part of a single act.

[61] The modern approach to statutory interpretation also requires that the words of a legislative provision be interpreted in a manner that takes into account their context. See *Peachland (District) v. Peachland Self Storage Ltd.*, 2013 BCCA 273 at para. 19; and *R. v. Summers*, 2014 SCC 26 at para. 55.

[62] In my view, both the excavation of the quarry and its Landfill Facility are a use of the land that falls squarely within the respective definitions of “mine” and “mining activity” under the *Mines Act*: a “mine’ includes a place where mechanical disturbance of the ground or any excavation is made to explore for ... rock ...and site reclamation”; and “mining activity’ means any activity related to the reclamation of a mine.” The use of land refers to the use of the surface of the land. It is the disturbance of the surface of the land for the excavation of rock that is, by definition, a “mine” and a “mining activity”.

[63] Site reclamation, which includes the restoration of the excavated land, is also a use of land that falls within the definition of “mine” and “mining activity”. Reclaiming land to its pre-mining state refers to restoration of the surface of the land, in this case to the forest/industrial use. The permit refers to the restoration of the surface of the land to a certain level of productivity consistent with its pre-mining state.

[64] It is clear from these provisions that reclamation is an integral part of the unified regulatory regime for the oversight of mining in the Province. In short, excavation of a quarry and its site reclamation are simply two sides of the same coin.

C. Does the Province have exclusive jurisdiction over the regulation of mines and their related site reclamation activities?

[65] Mines and mining activities include depositing soil for site reclamation. The movement of soil is regulated under a comprehensive regime developed by experts, administered by statutory decision makers, and subject to specialized administrative tribunal appeal.

[66] The Province's interest in mining is significant. That is evident by the extensive requirements that must be met before a MoM permit and, where required, a MoE permit, are issued.

[67] The Legislature clearly intended to ensure that the Province's jurisdiction over the regulation of mines and mining activities is maintained because of the importance of mining to the provincial economy. That intention is apparent in the following legislative provisions: (i) the express exclusion of "mines" in the definition of land in the *CC*; (ii) the express recognition of the provincial interest in mining in s. 9(1) of the *CC*, adopted in the *LGA*, that requires a council to obtain the approval of the minister responsible before a bylaw prohibiting the deposit of contaminated soil will be enforceable; and (iii) related legislative provisions and statutes that reserve control of mines and mining activities to the Province to ensure a unified provincial regulatory scheme, including the following: *Health, Safety and Reclamation Code*, Part 10 (reclamation standards) [the "Code"]; *Building Act*, S.B.C. 2015, c. 2, s. 2(b); *Contaminated Sites Regulation*, Part 1 (the definition of "soil") and Part 6, *Metalliferous Mines Regulation Act*, R.S.B.C. 1948, c. 218, s. 2 (the definition of "mine"); *Land Act*, R.S.B.C. 1996, c. 245, s. 19 (quarrying land); *Mineral Tenure Act*, R.S.B.C. 1996, c. 292, s. 1 (definition of "mineral"); and *Mines Fee Regulation*, (definition of "mineral or coal mine", and "pit or quarry").

[68] The CVRD contends the "mines" exclusions in the *LGA* definition of "land" is limited to only those mines or minerals that were historically registered in the land titles office separately from the land. It relies on the comments in *Pumice*, which I shall discuss below, to support this position. However, regardless of whether "mines" in the definition of "land" in the *LGA* refers to its historical meaning as "substances on or under the surface" that are capable of severance from the surface as a separate tenement (as found in *Pumice*), or extends to its modern and broader meaning that is captured by the definitions in the *Mines Act*, it is clear that the Legislature intended to exclude some forms of mines and mining activities from the definition of "land" in the *LGA*.

[69] That intention is also apparent in the legislative requirement for provincial oversight of bylaws for the removal and deposit of soil. Section 9(3) of the *CC*, which is incorporated into the *LGA*, expressly requires the approval of the minister responsible in order for a soil deposit bylaw to be enforceable. This is expressly stated for the purpose of “[r]ecognizing the Provincial interest in matters dealt with by bylaws ...” that “prohibit soil removal or ... prohibit the deposit of soil or other matter, making reference to quality of the soil or material or to contamination.”

[70] The CVRD does not provide a service for controlling soil deposits and removals. Nor does it have a soil deposit bylaw issued under s. 327 of the *LGA*; it has been unable to obtain provincial approval for such a bylaw. The CVRD cannot regulate or prohibit a specific use of land under its general zoning power in s. 479 of the *LGA*, which requires bylaws to be passed to regulate or prohibit a specific land use within a zone. The CVRD can only regulate the use of land if (i) the land to be regulated falls within the definition of “land” in s. 1 of the *LGA*, and (ii) if the use of land is one that is expressly permitted under s. 7.4(a)(ii) of the Zoning Bylaw as that provision authorizes “no others”. In the absence of a soil deposit bylaw, the CVRD cannot regulate or prohibit the deposit of soil on the appellants’ land.

[71] The CVRD submits that it has the authority to prohibit the deposit of contaminated soil on the appellants’ land under s. 5.20 of the Zoning Bylaw. Section 5.20 prohibits storing contaminated soil if the soil does not originate on the same land. The CVRD attempted to distinguish this provision by its use of the word “storage” rather than “deposit” to circumvent the requirements of s. 327. In my respectful view, this is a distinction without a difference. Storing soil that does not originate on the same land requires the soil to be deposited on site. In short, s. 5.20 is a soil deposit bylaw that in my view is unenforceable, absent provincial approval.

[72] In the alternative, the CVRD submits that because s. 5.20 was passed in 2004 it is not subject to the requirement for ministerial approval. However, the requirement for ministerial approval under the *CC* came into effect on January 1, 2004 and therefore s. 5.20 would have been subject to ministerial approval to be

enforceable when it was passed. In any event, ss. 723(4) and (4.1) of the *LGA* were also in effect on January 1, 2004 and those sections require ministerial approval for any bylaws that prohibit the removal or deposit of soil, or that reference the quality or contamination of soil.

[73] The necessity of provincial approval for an enforceable soil removal bylaw was confirmed in *Vernon*. There, the Court held that the local government did not have the authority to regulate the removal of soil (including sand, gravel and rock) from the land in the absence of ministerial approval of a bylaw prohibiting its removal. Subsequent to this decision, the bylaw was amended to include the requirement for ministerial approval of a bylaw for “the deposit of soil or other matter, making reference to quality of soil or material or to contamination.”

[74] In my opinion, the CVRD has not demonstrated a legislative intention that would authorize it to regulate or prohibit the deposit of soil on the appellants’ property pursuant to (i) the general zoning power under s. 479 of the *LGA*, (ii) the specific requirements for a soil deposit bylaw under s. 327 of the *LGA*, or (iii) under s. 5.20 of the Zoning Bylaw.

[75] In these circumstances there is no operational conflict between the *Mines Act* and the *LGA*.

Pumice

[76] I turn then to *Pumice*. The circumstances in *Pumice* involved an off-site storage and processing facility for the mineral pumice. The mining of the mineral took place some 65 kms away. In that context, the Court held that those activities (storing and processing the pumice) did not fall within the “mines” exclusion for the definition of “land” in s. 1 of the *LGA*. This was based on an interpretation of the word “mine” in the exclusion of “land” in the *LGA* as being the “excavation o[f] substances on or under the surface” (at para. 49), and that did not include “all mining activities on the surface of land” (at para. 48) [emphasis added]. In those circumstances, the Court held that the off-site land on which the pumice was stored and processed was subject to municipal land use regulation.

[77] The Court also recognized the significance of “the mining regime” from the *Mines Act* and the Code:

[41] ...The *Mines Act* and the regulations promulgated under it constitute a code that governs the development of a mine from exploration until closure or abandonment, designed to protect people’s health and safety, the environment, and cultural resources, and to ensure reclamation.

...

[43] Under the *Mineral Act*, ... and its successors up to and including the *Mineral Tenure Act* ... the Legislature has provided security of tenure of minerals to the mining industry...With that mineral lease comes not only the right to extract the minerals, but also the afore-mentioned surface rights and the controls in the *Mines Act*, *supra*, and the Health, Safety and Reclamation Code for Mines in British Columbia, 1997.

[44] The mining industry is also subject to the *Mineral Tax Act*, R.S.B.C. 1996, c. 291, the *Mining Right of Way Act*, R.S.B.C. 1996, c. 294, the *Canadian Environmental Protection Act*, 1999, S.C. 1999, c. 33, the *Heritage Conservation Act*, R.S.B.C. 1996, c. 187, and the *Waste Management Act*, R.S.B.C. 1996, c. 482. The respondent and the intervenors see great harm and no good in being subject as well to the municipal zoning power in the exercise of their surface rights to access their minerals.

[Emphasis added.]

[78] In the result, the Court decided that the mining regime does not “trump” the local government regime, as was argued by Great Pacific Pumice Inc., where the impugned activities involved off-site storage and processing of a mined mineral. In those circumstances, the Court concluded that a piece of land, not designated by the Province as a mine, did not fall within the exclusive jurisdiction of the Province simply because it was being used for a purpose tangentially related to mining.

[79] To appreciate the reasoning in *Pumice*, it is necessary to review the submissions of the parties in that case. The respondents had argued that all mining activities, both on-site and off-site, even if they were unrelated to reclamation of the affected land, were subject to exclusive provincial regulation, as mining legislation “trumps” municipal legislation. In the course of addressing this submission, the Court undertook a review of the historical evolution of the relevant municipal legislation, including the *Municipal Act*, R.S.B.C 1936, c. 199, and the 1957 *Municipal Act*. The former Act had defined “land” as “the ground or soil and everything annexed to it by nature, or that is in or under the soil (except mines and minerals, precious or base,

belonging to the Crown), and shall include the interest of a person in land held under timber lease or timber licence from the Crown in the right of the Dominion.” The latter Act had defined “land” as the “soil or ground without improvements,” and it included “land covered by water, and all quarries and substances in or under the land other than mines or minerals.” The 1959 *Municipal Act Amendment Act* removed quarries from the definition of “land”. In 1989, the *Mines Act* was first enacted and it included a definition of “mine” that would appear to include a quarry. At para. 27 the Court observed:

[27] This understanding of the phrase “mines or minerals” is also consistent with the definition of mine in the *Mineral Act*, 1896, c. 34, s. 2, to which reference was made in the *Land Registry Act Amendment Act*, 1905, *supra*:

“Mine” shall mean any land in which any vein or lode, or rock in place, shall be mined for gold or other minerals, precious or base, except coal:

If this remains the meaning of “mines or minerals,” [i.e. the excavation of substances in or under the ground] the exemption [in the *LGA*] cannot apply to the respondent’s Squamish facility [the off-site storage and processing of pumice].

[80] The Court concluded:

[48] In concluding the Legislature did not intend to broaden the meaning of “mines” [in the exclusions of “mines” in the definition of “land” in the *LGA*] so as to include all mining activities on the surface of the land, I have not forgotten that “every enactment must be construed as always speaking” and that the vernacular use of the word “mines” in the 21st century in British Columbia is broader than its vernacular meaning in the 19th century in the United Kingdom.

[81] The focus of these comments then was to clarify the meaning of the exclusion of mines in the definition of “land” in the *LGA*. It did not include an analysis of the definition of “mine” or “mining activity” in the *Mines Act*. With respect to the *Mines Act*, the Court observed generally:

[39] In the exercise of its responsibility to the citizens of British Columbia generally, the Legislature has enacted a comprehensive regime governing the mining industry’s use of publically owned minerals. It is not a resource allocation or land use scheme.

...

[41] Over the years, those historic rights have been increasingly regulated. Section 5 of the *Ministry of Energy and Mines Act*, R.S.B.C. 1996, c. 298, empowers the Minister “to regulate all mining activity” and section 4 provides that his duties, powers and functions “extend to and include all matters relating to energy, mineral resources and petroleum resources.” The *Mines Act* and the regulations promulgated under it constitute a code that governs the development of a mine from exploration until closure or abandonment, designed to protect people’s health and safety, the environment, and cultural resources, and to ensure reclamation.

[82] *Pumice* did not address the issue before us, namely whether a quarry and its site reclamation are captured by the definition of mine and mining activity in the *Mines Act*. If a quarry and its site reclamation are captured by the definition, then in my opinion, they are subject to the exclusive jurisdiction of the Province.

[83] The CVRD contends that, based on the comments in *Pumice*, any surface area on which a quarry or mine operates falls within the definition of “land” in the *LGA*, and is subject to ss. 4.2 and 7.4(a)(ii) of the Zoning Bylaw, which expressly permits only “extraction” of the aggregate. The CVRD maintains that as none of the appellants’ non-extraction activities are expressly permitted under s. 7.4(a)(ii), those activities can be prohibited pursuant to the general provisions of the Zoning Bylaw or s. 5.20. With respect, I cannot agree.

[84] The ratio of *Pumice* is that off-site storage and processing activities are not site reclamation. I agree. Reclamation is the restoration of that part of the landform affected by excavation. Off-site mining activities do not meet that purpose. Both the excavation of the land and its reclamation must take place on-site. It was in this context that the Court held a “mine” was “confined to an excavation of substances on or under the surface” (at para. 49) and did not include “all mining activities on the surface of land” (at para. 48) [emphasis added]. The Court did not find that site reclamation was not a “mine” or “mining activity” under the *Mines Act*.

[85] The oft-quoted passage in *Quinn v. Leathan*, [1901] A.C. 495 (H.L.) is apposite in these circumstances:

...there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be

proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides.

[Emphasis added.]

[86] The CVRD's submission that the land cannot be returned to its pre-mining state if the engineered capsules remained buried beneath the surface incorrectly narrows the meaning of "pre-mining state". Reclamation does not require the land to be returned to the exact condition it was in before the amended quarry permit was issued. The MoM permit requires the surface of the land to be restored to a level of productivity after the operation is complete consistent with the forestry/industrial end land use. Ultimately, however, it is the decision of the Chief Inspector as to whether the appellants have successfully reclaimed the quarry.

[87] The CVRD accepted the appellants' jurisdiction to reclaim the quarry land with "clean" soil. SIRM operates the quarry under an integrated mining and environmental permitting process that has continued since the quarry began in 2006 and, until 2013, with the CVRD's concurrence. Only when the nature of the soil was changed did the CVRD challenge the Province's jurisdiction to reclaim the quarry land in this manner.

[88] In my view, it is clear that the Province has exclusive jurisdiction over the regulation of quarries/mines and their related site reclamation activities.

D. The soil treatment facility

[89] As previously stated, reclamation is the process of restoring the surface of the mined land to the landform that existed before the mining permit was granted. It continues until the mining activities are complete, after which the local government's jurisdiction over the use of the surface of the land is re-engaged. The Landfill Facility involves depositing soil to backfill the quarry cavity. The objective of this facility is to restore the excavated landform.

[90] It is not clear to me that the same can be said of the Soil Treatment Facility. It seems to me, that the purpose of the Soil Treatment Facility is independent of, and not integral to, restoring the landform. Currently, however, managing and treating the soil is done off-site and then the soil is imported onto the appellants' property.

[91] The issue is whether the activities of the Soil Treatment Facility fall with the reclamation of a "mine" or "mining activity" under the *Mines Act*. In my view they do not. They are not integral to the restoration of the landform.

[92] The bioremediation of the contaminated soil is a processing activity that, to date, has been carried on off-site. Its activities are conducted on the surface of the land, separate from the mine. In this context, it is similar to *Pumice* as well as *Cowichan Valley (Regional District) v. Lund Small Holdings Ltd.*, (09 November 2000) Victoria 00/2934 (B.C.S.C.), where the on-site treatment of imported contaminated soil was enjoined. To be clear, it is the use of the land to process off-site materials, not the construction of the physical facility, that is subject to local government regulation. When the quarry activities are complete, the Soil Treatment Facility will have to be dismantled just like any other of the remaining mining apparatuses used in the excavation.

[93] In sum, even if it may be more operationally prudent, more energy efficient and more environmentally sustainable to process the imported soil on-site to backfill the quarry, local government jurisdiction is engaged and must authorize the operation. If the Province wants to regulate on-site processing of soil imported from off-site for reclamation purposes, it must amend the *Mines Act*.

[94] In these circumstances, I agree with the judge that the Soil Treatment Facility is subject to the CVRD land use jurisdiction. As it is not a permitted use of the land under s. 7.4(ii) of the Zoning Bylaw, its operation, not the physical structure which may have other uses, is enjoined.

E. Disposition

[95] The Province has exclusive jurisdiction over mines, which include quarries, and site reclamation. The Landfill Facility reclaims the appellants' quarry. The Soil Treatment Facility does not.

[96] In the result, the appeal is allowed, save and except for the order enjoining the appellants from operating the Soil Treatment Facility. The cross appeal is dismissed.

The Honourable Madam Justice D. Smith

I AGREE:

The Honourable Madam Justice Dickson

I AGREE:

The Honourable Mr. Justice Fitch