

Latest Update from City Of Burlington Website: <https://www.burlington.ca/en/your-city/Burlington-Executive-Airport.asp>

1. The city brought an application to the Ontario Superior Court of Justice, seeking an order to compel the Burlington Airpark Inc. to file an application for a site alteration permit under the city's Site Alteration By-law 64-2014 for fill deposited between 2008 and 2013.
 2. On June 30, 2016, the Ontario Superior Court (Justice Gibson) agreed with the city and ordered the Airpark to file the required application by Aug. 31, 2017. The decision was appealed by the Airpark to the Ontario Court of Appeal.
 3. The Ontario Court of Appeal heard the appeal on March 28, 2017 and released its decision on May 24, 2017.
 4. The decision of the Court of Appeal was decided on the single issue of whether or not the lower court erred by giving the city's new site alteration by-law retroactive effect, requiring the Airpark to apply for a permit for work done before the new by-law was enacted.
 5. The Court found that the city's new site alteration by-law was "prospective" in nature, requiring only that a person apply for a permit before work is undertaken and contained no transition provision for dealing with remediating work done without a permit under the repealed 2003 by-law. The construction of the by-law was neither retroactive in nature (intended to operate at a time prior to its enactment), nor was it retrospective (by-law operates forward from enactment but attaches new consequences for the future for events that took place before the by-law was enacted).
 6. The Court also found that the city could not rely on section 52 of the *Legislation Act, 2006* which provides that if an Act or regulation is repealed, amended, revoked or replaced, a proceeding commenced under the former Act or regulation is continued under the new one as much as possible. Section 52 was found to not apply to municipal by-laws.
 7. The city was ordered to pay the Airpark's costs on the appeal in the amount of \$40,000 and the parties are to work to agree on the cost award to Airpark in respect of the overturned lower court decision, failing which the Court of Appeal will fix the costs based on written submissions.
 8. This latest decision does not affect the first decision of the Ontario Court of Justice (Justice Murray) in November 2013 that was upheld by the Court of Appeal in June 2014 that determined that the Airpark is subject to the city's site alteration by-law for fill activity taking place on the site.
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1. The city's new site alteration by-law will apply to any future fill works taking place at the Airpark, including works to be undertaken in the north-west quadrant of the site. The city will be exercising its regulatory authority in respect of any future works.
 2. There are two other regulators, being the Ministry of the Environment and Climate Change (MOECC) and Conservation Halton (CH) that have a continuing interest in the activities that have been undertaken at the Airpark.
 3. The Airpark installed sewage works on its site without the required Environmental Compliance Approval (ECA). This issue remains outstanding.

4. Conservation Halton regulates portions of the Airpark property, including the tributary to Bronte Creek that crosses Appleby Line and borders Bell School Line. CH has provided detailed input to the MOECC on the Airpark's application (since withdrawn) for ECA.
5. MOECC has taken the position that the Airpark must obtain the necessary approvals from the city (now limited by the Court of Appeal decision) and CH before it will proceed with the ECA application. The Airpark has withdrawn its application. However, the issues remain outstanding and need to be addressed.
6. Council has directed staff to undertake an advocacy role in urging the other regulators to take action to address the issues present on the Airpark site.