



REPORT NO: DS 2019-25

TO: COUNCIL

SUBMITTED BY: Harold O’Krafka, MCIP RPP
Director of Development Services

PREPARED BY: Harold O’Krafka, MCIP RPP
Director of Development Services

REVIEWED BY: Grant Whittington, CAO

DATE: October 28, 2019

SUBJECT: Proposed Changes to the Aggregate Resources Act (ARA)

RECOMMENDATION:

That Report DS 2019-25 be received for information; and,

That Report DS 2019-25 be forwarded to the Ministry of Natural Resources and Forestry as the Township of Wilmot’s comments on the proposed changes to the Aggregate Resources Act (ARA).

SUMMARY:

The Ministry of Natural Resources and Forestry announced proposed amendments to the Aggregate Resources Act (ARA) and its regulation on September 20th, 2019.

Comments on the changes are required prior to November 4th through the Environmental Registry of Ontario (ERO) portal.

The proposed changes are described in general but the specific language of the changes has not been provided for review. This report summarizes the proposed changes and offers comments on specific areas of concern for the Township of Wilmot.

BACKGROUND:

The Ministry of Natural Resources and Forests (MNRF) is responsible for managing Ontario's aggregate resources. In early 2019 the Ministry hosted an Aggregates Summit "to gain insights on how best to cut red tape, create jobs and promote environmental stewardship and economic growth within the aggregate industry." MNRF also gathered input through an online survey.

As a result of the input the MNRF is proposing changes which it believes will "reduce burdens for business while also ensuring the environment is protected and Ontarians continue to have an opportunity to participate in processes that may impact them."

REPORT:

Aggregate Resources Act (ARA)

The general changes proposed to the ARA, as described by MNRF would:

"Strengthen protection of water resources by creating a more robust application process for existing operators that want to expand to extract aggregate within the water table, allowing for increased public engagement on applications that may impact water resources. This would allow municipalities and others to officially object to an application and provide the opportunity to have their concerns heard by the Local Planning Appeal Tribunal."

"Clarify that depth of extraction of pits and quarries is managed under the Aggregate Resources Act and the duplicative municipal zoning bylaws relating to the depth of extraction would not apply."

New aggregate extraction operations are required to analyze the impacts on groundwater resources and other impacts prior to a municipality approving zoning to allow extraction and to allow MNRF to issue a license.

Historically the concern of municipalities has been that to extend extraction below the water table after zoning was in place involved only MNRF approval without a truly public process and without opportunity for appeal.

For this reason the Region of Waterloo introduced provisions related to vertical zoning for aggregate operations wherein local municipalities (such as Wilmot) would zone aggregate extraction not only horizontally but also vertically and in so doing require a full zoning amendment process to be undertaken prior extending an extraction license below the water table.

Requiring the rezoning would ensure all pertinent studies required by the municipality to evaluate the proposal, and a full public vetting of the proposal, would be considered prior to MNRF being able to approve the license.

Approval of the Regional policies were deferred by the Province in approving the Regional Official Plan and similarly then the Township of Wilmot's proposed vertical zoning policies were deferred by the Region in approving the Township Official Plan.

These proposed changes to the ARA align with proposed changes to the Provincial Policy Statement (PPS) and make it clear that the province will not permit the vertical zoning concept to be advanced.

The Township believes that MNR is continuing to minimize true public and agency scrutiny of expanded aggregate extraction operations below the water table to interest and advantage of the aggregate industry at the expense of reasonable public discourse.

The Township is not convinced that providing the opportunity for comment and appeal goes far enough in addressing the historic concerns and desires for a full public vetting of significant amendments to pit licenses such as extraction below the water table.

“Clarify the application of municipal zoning on Crown land does not apply to aggregate extraction”

Given the limited amount of Crown land in Wilmot Township this is not viewed as a concern for Wilmot Township.

“Clarify how haul routes are considered under the Aggregate Resources Act so that the Local Planning Appeal Tribunal and the Minister, when making a decision about issuing or refusing a licence, cannot impose conditions requiring agreements between municipalities and aggregate producers regarding aggregate haulage. This change is proposed to apply to all applications in progress where a decision by the Local Planning Appeal Tribunal or the Minister has not yet been made. Municipalities and aggregate producers may continue to enter into agreements on a voluntary basis.”

While it is difficult to fully understand the scope of these changes, in the absence of specifics, it would appear that this change relates to an OMB hearing in 2017 wherein the OMB imposed an agreement on a operator to pay a fee to an adjoining municipality for wear and tear on a portion of the haul route above and beyond the license fees which would be received by the host municipality.

In Wilmot haul routes are typically controlled via road weight restrictions and any local road improvements are required prior to the passing of the implementing zoning bylaw. Provided this general description does not expand its scope to place limits on road improvements and road limits prior to the approval of zoning bylaws the Township does not see this limitation as problematic.

“Improve access to aggregates in adjacent municipal road allowances through a simpler application process (i.e. amendment vs a new application) for an existing license holder, if supported by the municipality”

Extraction of gravel from within existing road allowances by adjoining pits has not been an issue in Wilmot nor is the Township aware of any proposals to do so. Given the final approval for such is ultimately controlled by the Township there are no concerns with this proposed amendment.

“Provide more flexibility for regulations to permit self-filing of routine site plan amendments, as long as regulatory conditions are met.”

Minor amendments to site plans have for many years been of concern to the Township and in particular the process for notification of the Township only after the amendment has been granted.

Further streamlining is of significant concern and in the absence of the specifics of what is proposed the Township is opposed to the minor site plan amendment process as it stands and as it is apparently proposed to be further degraded to the sole benefit of the aggregate industry. The Township believes that all amendments to site plans, however minor, should be circulated to the host municipality for comment prior to decisions being made on the acceptability of same.

Regulations

In addition to the amendments to the ARA the MNRF is also considering some regulatory changes, including:

“enhanced reporting on rehabilitation by requiring more context and detail on where, when and how rehabilitation is or has been undertaken.”

In the absence of specific details it is almost impossible to ascertain the beneficial impact of ‘enhanced reporting’.

“allowing operators to self-file changes to existing site plans for some routine activities, subject to conditions set out in regulation. For example, re-location of some structures or fencing, as long as setbacks are respected”

Again in the absence of specific details it is almost impossible to ascertain the beneficial impact of ‘self-filing’. In general the Township has concerns about the reference to relocation of structures given the importance of requiring operators to confirm zoning compliance and obtain building permits for most structures.

“allowing some low-risk activities to occur without a licence if conditions specified in regulation are followed. For example, extraction of small amounts of aggregate if material is for personal use and does not leave the property”

Recognizing the absence of specific details in general the Township has concerns with what would constitute small amounts of aggregate and the very real potential that excavating even small amounts of aggregate in an inappropriate location could cause harm to adjoining land owners and/or the environment. As such in the absence of specific details the Township is opposed to this proposal.

“clarifying requirements for site plan amendment applications”

In the absence of specific details it is almost impossible to ascertain the beneficial impact of ‘enhanced reporting’.

“streamlining compliance reporting requirements, while maintaining the annual requirement”

In the absence of specific details it is almost impossible to ascertain the impact of further streamlining compliance reporting. What could be more streamlined than the existing self-evaluation annual compliance report?

“reviewing application requirements for new sites, including notification and consultation requirements”

In the absence of specific details it is almost impossible to ascertain the impact of new application requirements.

In general given the language towards streamlining the Township is concerned that existing notifications should be enhanced and timeline for consultation expanded. The recent Planning Act changes to limit zoning amendment approval windows to 90 days certainly should be of cause for concern and the Province should consider providing a more reasonable time frame for reviewing zoning amendment applications for mineral aggregate extraction of 180 days or longer.

ALIGNMENT WITH THE TOWNSHIP OF WILMOT STRATEGIC PLAN:

Communication of proposed changes to Provincial legislation promotes and informed community.

Providing comments to MNRF on proposed changes to the ARA and its implementing regulations affords the opportunity to promote the protection of our natural environment, our quality of life and our belief that approvals should be transparent and open to public input and review.

FINANCIAL CONSIDERATIONS:

Financial impacts of the proposed changes to the ARA and its regulations are unknown at this time given the generality of the notice and the lack of specific details by which to judge any fiscal impact on the Township of Wilmot.

ATTACHMENTS:

No attachments.