

October 18th, 2019

Ministry of Natural Resources and Forestry Natural Resources Conservation Policy Branch 300 Water Street Peterborough, ON K9J 8M5

Attention: Mr. Andrew MacDonald

Re: Proposed amendments to the Aggregate Resources Act ERO 019-0556

Dear Mr. MacDonald:

On behalf of our Client, the Municipality of Brighton, we submit herein comments in respect of the proposal as referenced above, being ERO 019-0556.

A report to Council on October 15th, 2019 served to summarize the proposal as currently understood, together with providing comments on the proposed content of the new regulation. As passed by resolution of Council, Staff have been directed to provide a copy of the report to the Ministry, representing the Council of the Municipality of Brighton's comments on the proposed regulatory changes.

Thank you.

Sincerely,

LANDMARK ASSOCIATES LIMITED

Darryl J. Tighe, **M**.Sc., RPP, Municipal Planning Consultant

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Enclosure Dt:lp

cc: Municipality of Brighton - Client



Municipality of Brighton

Council Meeting

Council Meeting Date:	October 15 th , 2019
То:	Council
Prepared By:	Darryl Tighe and Lucy Pronk, Municipal Planning Consultants
Reviewed By:	Bob Casselman, CAO
Department:	Planning Services
Subject/Title:	Proposed Amendments to the <i>Aggregate Resources Act, R.S.O.</i> 1990

RECOMMENDATION:

- 1. That Council receives the report regarding *Amendments to the Aggregate Resources Act, R.S.O. 1990* for information, as prepared by the Municipal Planning Consultants; and
- 2. That Council direct Staff to submit a copy of the report to the Province, representing the Council of the Municipality of Brighton's comments on the proposed regulatory changes.

BACKGROUND/PURPOSE:

In March of 2019, the Ministry of Natural Resources and Forestry (MNRF) hosted an Aggregate Summit. The Summit provided an opportunity for industry stakeholders to assess the issue of balancing the environmental and economic success of the aggregate industry. A survey was issued following the summit which gathered further input. The key themes introduced were as follows:

- Reducing duplication, inefficiency, and inconsistency in application and approval processes
- Improving access to aggregate resources
- Protecting agricultural lands and water resources

- Enhancing rehabilitation
- Continue public engagement and outreach on any proposed changes to the ARA framework

In response to this feedback and with the goal of reducing burdens for businesses while protecting the environment, the Ministry is proposing changes to the ARA framework together with the corresponding Ontario regulations.

The following will serve to review changes to the *Aggregate Resources Act R.S.O. 1990* and related changes to Ontario Regulation 244/97. Comments are being received until November 4th, 2019 on the *Environmental Registry of Ontario* (ERO).

Aggregate Resources Act R.S.O. 1990:

The following summary of proposed changes was taken from the Proposal Summary issued by the *Environmental Registry of Ontario* on September 20th, 2019. The document can be viewed in its entirety as Attachment 1 to this report.

- 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 that duplicative municipal zoning by-laws relating to the depth of aggregate extraction would not apply
- clarify the application of municipal zoning on Crown land does not apply to aggregate extraction
- 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.
- 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
- provide more flexibility for regulations to permit self-filing of routine site plan amendments, as long as regulatory conditions are met.

Regulatory changes to O.Reg 244/97:

- enhanced reporting on rehabilitation by requiring more context and detail on where, when and how rehabilitation is or has been undertaken.
- 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
- 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
- clarifying requirements for site plan amendment applications
- streamlining compliance reporting requirements, while maintaining the annual requirement
- reviewing application requirements for new sites, including notification and consultation requirements

COMMENTS:

A number of the proposed changes to the ARA and O.Reg 244/97 pertain directly to the application and licensing process with the MNRF, and will not receive comment within the scope of this report. The following is a summary of the impact the proposed changes may have on the Municipality of Brighton and Staff's response to said changes.

The proposed changes call for a more robust application process with respect to expansion of existing aggregate extraction into the water table; however, it has not been made clear what these changes would consist of. Section 4.11.3 'Policies for New or Expanding Mineral Aggregate Operations' of the Municipality of Brighton Official Plan states the following:

"As a general policy, a mineral aggregate operation for a pit should not be established within 150 metres for a pit above the water table and within 300 metres for a pit below the water table or sensitive land uses."

In the absence of further details, staff efforts are compromised in terms of determining whether the current policy is adequate or whether it requires amending in order to maintain consistency with the proposed robust application process. Staff is of the opinion that the current application process with the Municipality provides sufficient opportunity for feedback and appeal if necessary.

The proposed changes state that extraction depth is to be managed under the ARA and not regulated by the municipal zoning by-law. The Municipality's Zoning By-law does not currently

regulate the depth of aggregate extraction and as such is not impacted by the proposed change.

The proposed changes clarify that municipal zoning does not have jurisdiction over Crown lands with respect to aggregate extraction. Currently the Municipality has two designated Crown lands, the first is PW 4274 'Brighton Provincial Wildlife Area' located North of Highway 401 and East of County Road 26 and the second is P4478 'Presqu'ile Provincial Park'. Neither of these locations are currently subject to aggregate extraction, nor are these areas identified for future extraction.

The proposed changes hinder the Minister and LPAT from imposing agreements related to aggregate haulage between municipalities and aggregate producers. The changes do not impede the municipalities and aggregate producers from entering into voluntary agreements. It is unclear what would constitute a voluntary agreement, as the Ministry did not provide a definition. The Municipality's Official Plan currently states under Section 4.11.3 'Policies for New or Expanding Mineral Aggregate Operations':

"It shall be the policy of this Plan that the Municipality, when considering a new mineral aggregate operation or an expansion of an existing operation, will have regard to existing adjacent land uses that might be affected by a pit or quarry operation. This may be reflected through measures such as extraction setbacks and/or other mitigative techniques such as the use of vegetation or berms to provide screening, restrictions on the location of machinery, the timing of extraction operations, and the location and condition of haul routes. These requirements may be implemented through: i) Conditions on the licence and/or site plan under the Aggregate Resources Act at the time of licensing by the MNR;

ii) Regulations in a site-specific Zoning By-law for the property; and

iii) Provisions in a development agreement under Section 3.2.8 of this Plan."

It appears that Section 4.11.3.i would no longer be consistent with the proposed changes to the ARA and may need to be amended should these changes receive approval. It has not been made clear whether the Municipality will have the ability to mandate haul routes via Development Agreement, this clarification is necessary given that Section 4.11.4 'Development Agreements' of the Municipality's Official Plan currently states:

"Development Agreements: Such an agreement may address, but shall not necessarily be limited to the following matters: An indication of the haul routes to be used and requirements for the improvement and maintenance of the haul routes"

The Municipality currently utilizes haul routes to mitigate environmental impact and damage to Municipal infrastructure while ensuring public safety. Staff is of the opinion that the Municipality should have jurisdiction over haul routes through the implementation of Development Agreements.

One of the proposed changes aims to improve access to aggregates in adjacent municipal road allowances by using an amendment opposed to a new application. Staff supports this proposal given that the Municipality will be circulated on all amendments. If the Municipality does not support the proposal use of the road allowance its position would override the amendment.

The proposed changes call for more detailed reporting on rehabilitation; insofar as it is assumed that this change is referring to the rehabilitation plan that the operator submits directly to the Ministry. However, Section 4.11.3 'Policies for New or Expanding Mineral Aggregate Operations' of the Municipality's Official Plan calls for:

"Progressive rehabilitation of mineral aggregate operations to accommodate subsequent land uses will be required. Plans for the rehabilitation of the site shall be acceptable to the Municipality."

Staff is of the opinion that the Municipality could also benefit from improvements to the reporting on where, when and how rehabilitation is or has been undertaken. If additional measures are being taken to report on rehabilitation the Municipality would anticipate access to said updates.

The proposed changes allow some low-risk activities to occur without a license, including the extraction of aggregate material for personal use given it does not leave the property. The Municipality's Official Plan does not contemplate a situation where extraction would occur without a license and therefore does not anticipate this proposed change. Section 4.11 'Aggregate Resources' states:

"For the purposes of this Plan, "mineral aggregate operation" means the extraction of mineral aggregate resources and related activities, and includes: Lands under licence or permit, other than for wayside pits and quarries, issued in accordance with the Aggregate Resources Act, or successors thereto;"

The provisions that follow assume that the lands are under license and therefore would have no jurisdiction over aggregate extraction for personal use without a license. The question arises as to whether the regulation provided by the Ministry will be sufficient in the eyes of the Municipality.

The proposed changes call for clarification and review of the application process for new sites and site plan amendments. The Province's goal is to streamline the application process for the producers; however, without further detail Staff have found it difficult to determine the impact proposed application changes may have on the Municipality. This section references modifications to the notification and consultation requirements but does not provide clarification, Staff requests more information regarding these proposed changes.

No changes to aggregate fees are being proposed at this time, however, the Ministry is still interested in hearing feedback on the current rates. The breakdown of the 2019 fees and royalties can be viewed in its entirety as Attachment 2 to this document. Currently the fees collected by the Ministry are distributed as follows:

- 3% to the Aggregate Resources Trust for rehabilitation and research
- 61% to the local municipality (e.g. the Municipality of Brighton)
- 15% to the upper-tier municipality (e.g. Northumberland County)
- 21% to the Crown (minimum)

Staff accept that this is representing a fair dispersion of the collected funds and that no changes should be made at this time.

Given the potential impact to the Municipality it is unfortunate the regulations have not yet been provided by the Province for review. Staff would therefore recommend that the Province ensure proper engagement with municipalities at such time as the new regulations become available; and to provide adequate time for review, consultation and comment prior to those regulations being approved. It has not been made clear when the regulations would come into effect or what the potential transition deadline may be, we request a sufficient amount of time for Council to consider impacts and otherwise implement any revised or new by-laws.

Should Council direct, this report can be submitted to the Environmental Registry of Ontario *for official comment*.

All of which is respectfully submitted for Council's consideration and hopeful assistance.

Submitted by:

Lucy Pronk, M.Sc. Planner Landmark Associates Limited

Attachments

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Darryl J. Tighe, M. C., RPP, Director of Planning Landmark Associates Limited



Attachment #1 – Proposal Summary as prepared by ERO Attachment #2 – Notice Regarding Changes to Aggregate Fees and Royalties Attachment #1

Proposal details

Aggregate Resources Act

The Ministry of Natural Resources and Forestry (MNRF) is responsible for managing Ontario's aggregate resources, regulated under the *Aggregate Resources Act* (ARA). Aggregate resources are non-renewable resources like sand, gravel and rock that are needed for infrastructure that supports the quality of life that Ontarians enjoy today. They are used to construct the buildings we live and work in, the roads, the airports and subways we use to get from place to place, and for many other necessary services like sewers and power generating stations. Most of the aggregate produced in Ontario comes from private land in the southern region of the province where most Ontarians live.

Ontario requires a continued supply of aggregate resources. Approximately 160 million tonnes of aggregate are needed in Ontario each year. Yet, it is equally important to manage and minimize the impact extraction operations may have on the environment and on the communities that surround them. These operations are located across our diverse province, and the regulatory framework that manages them must be fair and predictable and flexible enough to be effective. In March of 2019, the Ministry hosted an Aggregates Summit. The Summit was an opportunity for industry, municipal and Indigenous leaders to share their ideas for cutting red tape, creating jobs and promoting environmental stewardship and economic growth within the aggregate industry. We also gathered further input through an online survey, ending May 31.

Key themes heard:

- • reducing duplication, inefficiency, and inconsistency in application and approval processes
- improving access to aggregate resources
- protecting agricultural lands and water resources
- enhancing rehabilitation
- • continue public engagement and outreach on any proposed changes to the ARA framework.

As a result of this input, the Ministry is proposing changes to the aggregate resources framework to 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.

Summary of proposed changes

We are proposing to make amendments to the *Aggregate Resources Act*, while continuing to ensure operators are meeting high standards for aggregate extraction, that 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 that duplicative municipal zoning by-laws relating to the depth of aggregate extraction would not apply

• • clarify the application of municipal zoning on Crown land does not apply to aggregate extraction

• • 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.

• • 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

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

We are 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.

• 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

• • 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

- clarifying requirements for site plan amendment applications
- • streamlining compliance reporting requirements, while maintaining the annual requirement

• • reviewing application requirements for new sites, including notification and consultation requirements

While no changes to aggregates fees are being proposed at this time, the Ministry is also interested in hearing your feedback on this matter.

We are committed to consult further on more specific details related to the regulatory proposals, including any proposed changes to aggregate fees at a later date.

Public consultation opportunities

Ontario Government's Summit on Aggregate Reform (March 2019):

• provided an opportunity for industry, municipal and Indigenous leaders to share their ideas for cutting red tape, creating jobs and promoting economic growth within the aggregate industry
• input was also received via email and through an online survey, which closed May 31, 2019. A total of 378 aggregate reform comments were received from the following groups: • Members of the public

• Industry, industry associations, consultants

- Municipalities, municipal associations
- Non-governmental organizations (NGOs)
- Academia, and
- Indigenous communities

Notice regarding changes to aggregate fees and royalties

Ontario Ministry of Natural Resources and Forestry

July 2017

Changes have been made to aggregate fees and royalties. These changes follow extensive public and stakeholder consultation and better reflect the interest of all Ontarians. The following information is intended to provide you with a summary of the key fee changes – however, the amended Ontario Regulation 244/97 can be viewed at: https://www.ontario.ca/laws

Changes to Fees:

Starting on January 1, 2018, the annual fees charged on aggregate licences and permits, and the issuance fees charged on wayside permits will increase. The new fees will be charged on aggregate (or, in the case of permits, on aggregate and topsoil) removed from the site in 2018. The new fees will be payable by March 15, 2019. The new charges are as follows:

Authorization Type	Charges on 2018 Production
Class A Licence (private land)	19.8 cents / tonne or \$689, whichever is greater (previously 11.5 cents/tonne, or \$400 minimum)
Class B Licence (private land)	19.8 cents / tonne or \$344, whichever is greater (previously 11.5 cents/tonne, or \$200 minimum)
Wayside Permit (issuance fee)	19.8 cents / tonne or \$689, whichever is greater (previously 11.5 cents/tonne, or \$400 minimum)
Aggregate Permit (Crown land) – where permit conditions authorize removal	<i>Fee</i> : 19.8 cents / tonne or \$689, whichever is greater (previously a set fee of \$200)
of more than 20,000 tonnes per year	This will be in addition to the current royalty rate ¹ of 50 cents / tonne (minimum) or more

¹ permit holders with mining leases: see "Changes to fees for sites operating on mining leases"



Authorization Type	Charges on 2018 Production
Aggregate Permit (Crown land) – where permit conditions authorize removal	<i>Fee</i> : 19.8 cents / tonne or \$344, whichever is greater (previously a set fee of \$200)
of 20,000 tonnes or less per year	<i>This will be in addition to the current royalty rate² of 50 cents / tonne (minimum) or more</i>

Future increases to fees:

In the future, fees and royalties will be adjusted annually to account for inflation. This adjustment will follow the Ontario Consumer Price Index and will begin to be applied to fees and royalties payable in 2020 (i.e., for 2019 production). The ministry will post the adjusted fees and royalties on a website before January 1st of every year, starting in 2019.

Changes to fees for sites operating on mining leases:

All aggregate removed under an ARA authorization from land that is subject to a mining lease must pay an annual royalty (50 cents / tonne minimum). Payment of royalty for bedrock removed from sites with a mining lease that existed before May 10, 2017, will be phased-in as follows:

- the minimum royalty for aggregate removed in 2018 is 16.7 cents/tonne
- the minimum royalty for aggregate removed in 2019 is 33.3 cents/tonne (note: this fee will be subject to an indexing adjustment).

For aggregate removed in 2020, the minimum royalty on these sites will be equivalent to the minimum royalty charged on all other permits.

Reductions to Aggregate Permit Fees (Crown land):

Fees may be reduced if all of the below conditions are met:

- the site is located in an unorganized territory (i.e., there is no municipality present) or within a single-tier municipality
- the material is owned by the Crown



² permit holders with mining leases: see "Changes to fees for sites operating on mining leases"

- the material is being used for a provincial project or for the construction and maintenance of forest management roads that are open to the public
- the fee has not been charged to the buyer of the aggregate

Where do fees go?

Fees collected from licences, wayside permits and aggregate permits will be distributed approximately as follows:

- 3% to the Aggregate Resources Trust for rehabilitation and research
- 61% to the local municipality in which the site is located
- 15% to the upper-tier municipality in which the site is located
- 21% to the Crown (minimum).

If you have any questions, please contact your local aggregate inspector.



Avis concernant les modifications apportées aux droits et redevances sur les agrégats

Du ministère des Richesses naturelles et des Forêts

Des modifications ont été apportées aux droits et redevances sur les agrégats. Ces modifications font suite à un processus de consultation approfondi auprès de la population et des intervenants et rendent compte plus adéquatement de l'intérêt de tous les Ontariens. Les renseignements qui suivent visent à vous fournir la synthèse des principaux changements – toutefois, on peut voir le règlement 244/97 de l'Ontario modifié à l'adresse : <u>https://www.ontario.ca/fr/lois</u>

Modifications aux droits:

À partir du 1er janvier 2018, les droits annuels sur les licences ou permis d'extraction d'agrégats, et les droits sur les permis d'exploitation en bordure d'un chemin augmenteront. Les nouveaux droits porteront sur les agrégats (ou dans le cas de permis, sur les agrégats et la terre végétale) enlevés du terrain en 2018. Les nouveaux droits seront payables au plus tard le 15 mars 2019. Voici ces nouvelles modifications :

Type d'autorisation	Droits sur la production de 2018
Licence de catégorie A (terrain privé)	19,8 cents/tonne ou 689 \$, le plus élevé des deux montants prévalant (auparavant 11,5 cents/tonne, ou 400 \$ minimum)
Licence de catégorie B (terrain privé)	19,8 cents/tonne ou 344 \$, le plus élevé des deux montants prévalant (auparavant 11,5 cents/tonne, ou 200 \$ minimum)
Licence d'exploitation en bordure d'un chemin (droits de délivrance)	19,8 cents/tonne ou 689 \$, le plus élevé des deux montants prévalant (auparavant 11,5 cents/tonne, ou 400 \$ minimum)



Juillet 2017

Type d'autorisation	Droits sur la production de 2018
Permis d'extraction d'agrégats (terres de la couronne) – quand les conditions du permis autorisent l'enlèvement de plus de 20 000 tonnes par année	<i>Droits</i> : 19,8 cents/tonne ou 689 \$, le plus élevé des deux montants prévalant (auparavant des droits fixes de 200 \$) <i>Cela s'ajoutera au taux³ actuel des redevances de 50 cents/tonne (minimum) ou plus</i>
Permis d'extraction d'agrégats (terres de la couronne) – quand les conditions du permis autorisent l'enlèvement de 20 000 tonnes ou moins par année	<i>Droits</i> : 19,8 cents/tonne ou 344 \$, le plus élevé des deux montants prévalant (auparavant des droits fixes de 200 \$) <i>Cela s'ajoutera au taux³ actuel des redevances de 50 cents/tonne (minimum) ou plus</i>

Augmentations des droits à venir :

À l'avenir, les droits et redevances seront rajustés annuellement pour tenir compte de l'inflation. Ce rajustement suivra l'indice des prix à la consommation de l'Ontario et s'appliquera aux droits et redevances payables en 2020 (c'est-à-dire pour la production de 2019). Le ministre affichera les droits et redevances rajustés sur un site Web avant le 1^{er} janvier de chaque année, à partir de 2019.

Modifications aux droits pour les terrains assujettis à un bail minier :

On doit payer des redevances annuelles (50 cents/tonne minimum) sur tous les agrégats enlevés conformément à une autorisation en vertu de la Loi sur les ressources en agrégats (LRA) sur un terrain assujetti à un bail minier. Le paiement des redevances pour le substrat rocheux enlevé sur les terrains assujettis à un bail minier en vigueur avant le 10 mai sera appliqué graduellement comme suit :

- Les redevances minimales pour les agrégats enlevés en 2018 seront de 16,7 cents/tonne.
- Les redevances minimales pour les agrégats enlevés en 2019 seront de 33,3 cents/tonne (prenez note que ces droits seront assujettis à un rajustement en fonction de l'inflation).



³ Les titulaires d'un permis assorti d'un bail minier : voir « Modifications aux droits pour les terrains assujettis à un bail minier »

Pour les agrégats enlevés en 2020, les redevances minimales sur ces terrains seront équivalentes aux redevances minimales facturées sur tous les autres permis.

Réduction des droits relatifs aux permis d'extraction d'agrégats (terres de la couronne):

Les droits peuvent être réduits si le titulaire remplit toutes les conditions ci-dessous :

- Le terrain se trouve sur un territoire non érigé en municipalité (c'est-à-dire qu'aucune municipalité ne s'y est installée) ou dans une municipalité non régionalisée
- Les matériaux sont la propriété de la Couronne
- Les matériaux sont utilisés pour un projet provincial ou pour la construction et l'entretien de chemins forestiers qui sont ouverts au public
- Les droits n'ont pas été facturés à l'acheteur des agrégats

Où vont ces droits?

Les droits recueillis sur les licences, les permis d'exploitation en bordure d'un chemin et les permis d'extraction d'agrégats seront répartis approximativement de la façon suivante :

- 3 % au Fonds des ressources en agrégats pour le rétablissement et la recherche
- 61 % à la municipalité locale où le terrain est situé
- 15 % au palier supérieur du gouvernement municipal dans la municipalité ou le terrain est situé
- 21 % à la Couronne (minimum).

Si vous avez des questions, n'hésitez pas à communiquer avec l'inspecteur des agrégats de votre région.

