

Report To:	Regional Chair and Members of Regional Council
From:	Bob Gray, Acting Commissioner, Legislative and Planning Services and Corporate Counsel
Date:	October 16, 2019
Report No. - Re:	LPS117-19 – Proposed Amendments to the Aggregate Resources Act

RECOMMENDATION

1. THAT Report No. LPS117-19 re: “Proposed Amendments to the *Aggregate Resources Act*” be endorsed.
2. THAT the Regional Clerk forward a copy of Report No. LPS117-19 to the Ministry of Natural Resources and Forestry, the Ministry of Municipal Affairs and Housing, the City of Burlington, the Town of Halton Hills, the Town of Milton, the Town of Oakville, Conservation Halton, Credit Valley Conservation, the Grand River Conservation Authority, the Niagara Escarpment Commission, the Association of Municipalities of Ontario, and Halton’s MPPs for their information.

REPORT

Executive Summary

- On September 20, 2019, the Ministry of Natural Resources and Forestry (MNRF) posted a Proposal Notice (ERO Number 019-0556) to the Environmental Registry entitled “Proposed Amendments to the *Aggregate Resources Act*”. The MNRF deadline for comments is November 4, 2019.
- The Province did not release specific details or changes to the *Aggregate Resources Act (ARA)*, and instead only released a “Summary of Proposed Changes” and some regulatory changes that are under consideration. Wording of the proposed amendments to the *ARA* has not been made public.
- A joint submission through the Halton Area Planning Partnership (HAPP) has not been prepared due to the limited time available to review and compile comments.
- If pursued, the changes would reduce municipal involvement in quarry applications and operations, particularly with regards to municipal input on site plan

amendments and reduce the ability of the Minister and the Local Planning Appeal Tribunal (LPAT) to impose conditions on haul route agreements.

- Regional staff have requested to be engaged in consultations regarding the proposed changes to the ARA and the regulations, and will continue to request future involvement.

Background

In Ontario, the extraction of aggregate resources such as bedrock, sand, gravel, and clay is regulated by the *Aggregate Resources Act* (ARA). Specifically, the ARA provides for management of the aggregate resources, controls and regulates aggregate operations, requires rehabilitation of land forms where aggregate has been excavated, and minimizes adverse impact on the environment from aggregate operations in the Province. The Ministry of Natural Resources and Forestry (MNRF) has a dual role in that it is responsible for managing aggregate resources and for issuing licenses to extract aggregates under the ARA.

Since 2012, the Province has been undertaking reviews of the ARA. To date, three proposed amendments have been released through the Environmental Registry (EBR/ERO). In October 2015, “A Blueprint for Change: A proposal to modernize and strengthen the ARA policy framework” was released for public consultation. In October 2016, Bill 39 – *Aggregate Resources and Mining Modernization Act, 2016* was released for public consultation and generally had the same intentions as the “Blueprint for Change”. Regional Council endorsed comments on these proposals through Report No. LPS12-16 and Report No. LPS05-17 respectively. Although generally supportive of Provincial efforts to modernize and strengthen the ARA approvals framework, the reports identified challenges with providing meaningful comments given the lack of detail and rationale for changes.

In February 2019, the Province announced its most recent round of aggregate reform through a news release entitled “Ontario Committed to Promoting Economic Growth in Aggregate Industry” with the stated intent to cut red tape, create jobs, and promote economic growth. Consultation with industry leaders was held on March 29, 2019 at the Province’s Summit on Aggregate Reform. Regional staff requested to attend but were not provided the opportunity. The Province’s website indicates that 70 representatives from the aggregate industry, municipalities, indigenous communities, and key stakeholders were in attendance. Following the Summit, the MNRF invited the public to submit ideas about the challenges and opportunities facing Ontario’s aggregates sector through online surveys.

On September 20, 2019, the Province released its proposal on aggregate reform through ERO Number 019-0556 with a 45-day commenting period ending on November 4, 2019. The Province released only a “Summary of Proposed Changes” together with some regulatory changes under consideration. The details of the proposed changes including

wording of the proposed amendments to the *ARA* have not been made public. The stated intent of the proposed changes is “to reduce burdens for business while maintaining strong protection for the environment and managing impacts to communities”. HAPP was not convened to provide comments to the Province given the short commenting window and the absence of detail on the proposed changes.

Discussion

The ERO Number 019-0556 refers to six proposed amendments to the *ARA* and identifies six regulatory changes which are under consideration. This section of the report outlines a summary of the proposed changes and comments for Council’s consideration.

Proposed Amendments to the *ARA*

The MNRF is proposing to make amendments to the *ARA* with the intent on addressing the following points:

1. ***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.***

Currently, aggregate operators are allowed to amend existing aggregate licenses to move extraction from above the water table to below the water table by making a request to the Minister of Natural Resources and Forestry. This does not involve a public process and it is not mandatory for the Minister to solicit comments from municipalities. At the present time, neither municipalities nor the public have the right to object which would trigger a hearing on such an amendment. The proposed change would provide opportunities for municipal and public input and the ability to trigger a hearing where experts can provide opinions as to the suitability of extraction below the water table and the potential impacts to drinking water quality and quantity. The proposed change would also enhance protection of all water resources, including drinking water sources. Regional staff are generally supportive of the proposed change, however, the Province should consult further on the specific details of this amendment to ensure municipal interests are fully addressed.

2. ***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.***

Zoning is the main local municipal instrument for controlling the use of land, including the use of land for aggregate extraction. Many municipalities consider

extraction above the water table and extraction below the water table as different land uses with different impacts. As a result, many local municipalities include maximum depths of extraction for aggregate operations in zoning by-laws.

Extraction of aggregates below the water table changes the landscape resulting in the creation of permanent ponds. This has implications for post-rehabilitation land use compatibility and also potential implications for nearby water resources. Below water table extraction could also cause greater disturbances to surrounding areas due to blasting, scraping, crushing, processing, large-scale dewatering and discharge, and the movement of heavy trucks, etc. Also, deep extraction sites may require on-going maintenance post-rehabilitation and may require larger buffers which could pose restrictions on the surrounding land uses including the planning and development of those lands.

The proposed change would have significant implications for municipalities. Staff recommend that the Province not restrict the applicability of municipal zoning by-laws for aggregate operations including the setting of maximum extraction depths so that municipalities can have input on projects that impact the community and environment.

3. Clarify the application of municipal zoning on Crown land does not apply to aggregate extraction.

The proposed amendment would not apply in Halton Region. Based on information from the MNR Crown Lands Portal, Bronte Provincial Park is the only Crown land in Halton Region.

4. 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 license, 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.

Haul routes are essential to the success of any aggregate operation and are often decision-making factors in the issuing of quarry licences. Aggregate haul routes also have the potential to generate significant impacts on communities. For example, heavy truck traffic from aggregate operations can give rise to increased road maintenance costs, impacts to traffic operations and road safety, noise and dust, etc. Aggregate haulage cannot be accommodated on all municipal roads. However, all Regional roads are designed to permit heavy truck traffic although some Regional roads currently have load restrictions which must be adhered to.

Given the issues with aggregate haulage, Ontario municipalities routinely secure haul route agreements with aggregate operators to simultaneously outline expectations and responsibilities for road maintenance/upgrades and to protect the safety of quarry operators, and the public. Haul route agreements are routinely required by the LPAT as conditions of approval for proposed aggregate operations. Halton Region currently has haul route agreements with Dufferin Aggregates for the Milton Quarry and the Acton Extension Quarry, and has an Access Agreement with Meridian Brick for the Tansley Quarry.

The proposed *ARA* change appears to be designed to take this vital tool away from the Minister and the LPAT. As a result, it is not clear how public safety, and road access, function, and maintenance will be protected. More specifically, this change has the potential to impact ongoing applications in and around Halton Region, including the Reid Road Reservoir Quarry application currently undergoing Provincial review, as well as the Hidden Quarry proposal in the Township of Guelph-Eramosa, wherein the proponent proposes to use haul routes on Main Street and Mill Street in Acton. The impact of heavy truck traffic is a primary concern with the Hidden Quarry application. The Hidden Quarry LPAT hearing concluded in July 2019 and no decision has been released at the time of writing.

It is unreasonable to preclude the Minister and LPAT from imposing conditions on haul routes through agreements in cases where they are warranted by facts. This is particularly so when financial costs, and human and environmental safety are at risk. Such costs and risks should not be borne by citizens and taxpayers of the host and adjacent municipalities. Halton staff recommend that the ability for the Minister and the LPAT to impose conditions on haul routes not be removed.

5. *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.*

Halton Region staff support a simpler application process. However, the proposed change to allow aggregate extraction in adjacent municipal road allowances requires fulsome consideration of safety, traffic flow/movement, and haul routes. It is recommended that the Province engage municipalities on the specific nature of the change proposed to ensure municipal interests are fully addressed.

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

Currently, the MNRF has discretion as to whether or not to circulate site plan amendments to municipalities for comment. In some cases, the MNRF reviews and makes decisions without municipal input and the revised final site plan is provided to the municipality for information. Municipalities need to be consulted on the proposed change including the definition of “routine site plan amendments”

as it could have implications on quarry monitoring and mitigation activities as it relates to off-site impacts.

Regulatory Changes Under Consideration

The ERO website indicates that the Province “is considering some regulatory changes, including:”

1. *Enhanced reporting on rehabilitation by requiring more context and detail on where, when and how rehabilitation is or has been undertaken.*

Regional staff support enhanced reporting on rehabilitation. In the absence of other sources, the Region relies on the annual Compliance Assessment Reports (CARs) for information on rehabilitation, for use in the State of Aggregate Resources Reports prepared and submitted to Regional Council every two years. Current reporting in the CARs as it relates to rehabilitation is often inconsistent and repetitive. Halton staff support any enhancement to rehabilitation-related reporting as it would be useful information for the public and municipalities.

2. *Allowing operators to self-file changes to existing site plans for some routine activities, subject to conditions set out in regulation. For example, relocation of some structures or fencing, as long as setbacks are respected.*

As previously noted, municipalities do not automatically have an opportunity to comment on site plan amendment applications. The MNRF reviews and decides on such applications without municipal input. The revised final Site Plan, containing MNRF-approved revisions is then submitted to the municipality for information. Municipalities need to review and have input on the conditions in the regulation and understand what “routine activities” mean in order to provide meaningful comments with respect to such regulatory changes.

3. *Allowing some low-risk activities to occur without a license 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.*

It is recommended that the Province share drafts of the revised regulations, including definitions of terms. There has been no information provided to define “low-risk activities” and “personal use”.

4. Clarifying requirements for site plan amendment applications.

Municipalities need to be provided with an opportunity to comment on the content of the revised regulations and cannot provide meaningful comments until that time.

5. Streamlining compliance assessment reporting, while maintaining the annual requirements.

Halton Region could support “streamlining” if it provides up-to-date and accurate information that is verified by the MNRF and if the proposed change does not involve a reduction in the level of detail than what is currently provided. There is considerable municipal and community interest related to how impacts are managed and documented through the compliance assessment reporting process.

6. Reviewing application requirements for new sites, including notification and consultation requirements.

Notification and consultation requirements should not be less than what is currently prescribed. Municipalities need to be provided with an opportunity to comment on the content of the revised regulations and cannot provide meaningful comments until such time.

Conclusion

Halton Region recognizes the challenges with amending the *ARA* to accommodate industry, indigenous, and municipal interests. Previous Provincial attempts at modernizing and strengthening the *ARA* were generally supported by the Region. However, it is difficult to understand and comment on the current proposed amendments given the absence of any specifics, details, definitions and the associated rationale. It appears, that aside from the protection of water resources, the intent is to further limit municipal input/involvement in aggregate applications and operations. Halton Region is not supportive of these changes, particularly the proposed change to preclude the Minister and LPAT from addressing haul route issues by requiring agreements with municipalities.

It would be beneficial if the Province simultaneously released proposed changes to the *ARA* and to the standards and regulation so that municipalities and the public could understand and comprehensively comment on the full extent of the changes. The ERO indicates that the MNRF is committed to consulting further on more specific details related to the regulatory proposals, including any proposed changes to aggregate fees at a later date. The Region wishes to be part of the on-going consultation process on the proposed changes to the *ARA* and to the regulations.

FINANCIAL/PROGRAM IMPLICATIONS

There are no direct financial implications associated with the recommendations contained in this report.

Respectfully submitted,



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Approved by



Jane MacCaskill
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If you have any questions on the content of this report,
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Attachments: None