



REPORT ADM-2019-024

TO: Mayor and Members of Council

FROM: Patrick Moyle, CAO/Clerk

MEETING DATE: October 16, 2019

SUBJECT: The Aggregate Resources Act
File: L11-MIN

RECOMMENDATION

That Report ADM-2019-024 regarding The Proposed Amendments to the Aggregate Resources Act (ARA) be received; and

That Council authorize a copy of the report, inclusive of all Attachments, to be forwarded to the Ministry of Natural Resources and Forestry.

Purpose

To provide Council an update on the proposed changes to the Aggregate Resources Act.

Background

The Aggregate Resources Act (ARA) is the foundation piece of provincial legislation which governs the mining of sand, gravel and rock in Ontario. While the Act governs the extraction and rehabilitation of material, municipalities have a shared jurisdiction to manage the local impacts of aggregate activities through the land use planning process.

Puslinch Township has a considerable supply of aggregate, is close to the market and therefore has an interest in ensuring that the appropriate processes are in place to guide the planning and implementation of aggregate operations.

The Ministry of Natural Resources and Forestry have proposed a number of changes to the current legislation which are intended to “reduce burdens for business while maintaining strong protection for the environment and managing impacts on communities”

The proposed changes have been developed by the Ministry and posted on the Environmental Registry of Ontario for a 45 day period.

Implications for Puslinch

Many of the proposed changes rely on subsequent Regulations which have not been made public at this time. This is a concern because some of the proposed legislative changes regarding additional measures to strengthen water resource protection, increased public engagement and the ability for parties to object to applications to the Local Planning Appeal Tribunal are all significant changes to current practices. It would be useful for the Province to engage all stakeholders on the how these measures will be actually implemented. In this way the complete impact of these legislative changes can be full understood and evaluated.

Puslinch has used the Zoning bylaw to regulate the depth of extraction when considering the planning merits of an application. The new Act appears to remove the municipality’s right to use zoning to regulate a component of the extraction activities and in its place have assigned this as an exclusive provincial responsibility. Again it is unclear as to how this will be implemented and any municipal concern could be eliminated if there was a better understanding of any proposed regulation relating to this matter.

In its report to County Council, planning staff have identified concerns relating to vertical zoning as well as appropriateness of using holding provisions of the zoning bylaw to regulate below water table extraction. It would appear that the Province wants to maintain exclusive jurisdiction and hopefully introduce a public notification and engagement process that at a minimum, replicates the municipal

zoning process. However, it is unclear that this is the intent and in a worse case scenario, a public process with appeal rights may be compromised.

The summary of the proposed changes (see Attachment B) contains further information regarding the forthcoming regulations. One such proposed regulation is intended to “clarify requirements for site plan amendments”. This could mean many things and more clarity is required as to what specifically is being proposed.

Another proposed regulation is being contemplated to “review application requirements for new sites, including notification and consultation requirements”

Again it would be more helpful if there was greater clarity around how and who will be reviewing applications for new aggregate uses in the Township

When considering any planning application the matter of access and traffic impacts are critical components of an approval process. An approved and enforceable haul route plan is an important element of an aggregate operation and that plan is typically codified in an agreement between the road authority and the aggregate company. It would appear that the proposed amendment would prohibit this requirement unless the operator volunteers to enter into an agreement. It is recommended that the road authority be permitted to require a haul route agreement and if the proponent does not agree, they should have the right to appeal to the Municipality and failing that have right of appeal to LPAT.

A highly regulated industry requires an appropriate level of enforcement. A great deal of work goes into a land use planning decision, a licence and a site plan. In order to retain confidence in the process of establishing and monitoring a mining operation which in many cases is in close proximity to non industrial uses, a robust monitoring and enforcement program is essential. The proposed changes do not appear to strengthen the role of the Ministry as the regulator. It is therefore critical that the Ministry be provided with additional resources for greater inspection and enforcement.

This amendment does not contemplate any changes to the property assessment and the resulting tax property tax contributions of aggregate operations. The

County has retained experts to develop the case for a fairer contribution to the tax base which presumably reflects the current value (CVA) of aggregate operations in the Township. The Township should continue to support the efforts of the County to realize a fairer tax treatment for this industrial use.

The dormant aggregate pits and quarries and the rehabilitation of these interim uses has been not been addressed in these amendments. There have been several examples of rehabilitation plans which have been successfully implemented throughout the Province and unfortunately there have been some which have not. One means of ensuring that there is the necessary incentive to rehabilitate to a final use would involve the establishment of a closure date to be part of a license and a firm deadline for rehabilitation. A more stringent financial penalty for lack of compliance is also necessary in much the same way as municipalities require the posting of securities as part of a site plan agreement under the Planning Act.

Conclusion

The amendments to the ARA either fall short of addressing the land use planning interests of community or there is a lack of information on how these proposed amendments will be implemented through the yet to be released regulations. In some instances the changes may in fact be better than the current state but it is impossible to assess given the lack of information.

Attachments

Attachment A – Comments from John McNie, Puslinch resident and member of Mill Creek Stewards

Attachment B – Proposed Amendments to the Aggregate Resources Act

October 16, 2019
Township of Puslinch
Council
7404 Wellington Rd. 34
Guelph, ON, N1H-6H9



6927 Concession 2, RR#22
Cambridge, ONT
Canada, N3C-2V4

Re: The Provincial Request for Comments on Proposed Changes to the Public Policy Statement and the Aggregate Resources Act.

**Attn: Mr. James Seely, Mayor
Councillors: Bulmer, Goyda, Roth and Sepulis**

In July of this year our Mill Creek Stewards group had the opportunity to make a presentation to Puslinch Council; specifically over concerns for a potential rezoning of a significant piece of wetland/floodplain for aggregate extraction and broadly over concerns for what we perceived as an underlying factor, the Province's erosion of Township rights.

The recent proposed changes to the Province of Ontario's Aggregate Resource Act (ARA) and the Public Policy Statement (PPS), addressed by this written presentation and illustrated in our attachment, validate and unfortunately exacerbate these concerns.

Our attachment demonstrates on Page One, the land area encompassed by the Township of Puslinch. On Page Two, we see the presently established aggregate bearing land* (in Puslinch; Burford, Donnybrook, Gilford and Brisbane Loam). On Page Three, we add in, as required by the proposed changes, the Province's potential aggregate bearing land** (in Puslinch; Dumfries Loam). On Page Four, we add in the buffer required by the Province's proposed changes, to protect those lands, and on Page Five, the Township land that to all intents and purposes, remains under Council jurisdiction.

We say remains under Council jurisdiction because although Page Five presents at first glance a ridiculous scenario, on second glance it presents a frightening reality. That reality reflects the following, very real proposed changes to the ARA and the PPS, which would seriously undermine the already precarious relationship between the Province and its Municipalities including Puslinch Township.

- restricting development or activities that would preclude or hinder expansion or continued use of existing aggregate extraction sites (PPS 2.5.2.4)
- identifying prospective sites for aggregate extraction and restricting development and activities that would preclude or hinder their development (PPS 2.5.1)
- defining lands adjacent to identified deposits of mineral aggregate resources and restricting their development (PPS 2.5.2.5)
- eliminating the requirement to show need for expansion or new site development for mineral aggregate resources (PPS 2.5.2.1)

In general, proposed changes to the PPS and ARA, give to the municipalities with the provincial right hand and take away with the provincial left. The giving and taking however are so vague that the end result could easily be *all taking* as confirmed in the following example.

Right hand: Strengthen protection of water resources by creating a more robust application process if the proposed extraction will involve the water table. This will allow municipalities to officially object and to have their concerns heard by the local LPAT.

Left hand: Clarify that depth and expansion of areas of extraction are managed under the ARA not municipal zoning by-laws. Clarify that haul routes are managed under the ARA, not under municipalities or LPAT.

Result: *All taking*, as the municipalities lose any meaningful opportunity for input into their local protection of water resources and roads.

Other proposed change details include permitting aggregate extraction in fish habitats (PPS 2.1.6, 2.5.2.2), endangered species habitats (PPS 2.1.7, 2.5.2.2), natural heritage systems (PPS 2.1.2, 2.5.2.2), prime agricultural land (PPS.2.5.4) and natural features (PPS 2.1.1, 2.5.2.2), as aggregate extraction use of the land is "interim". Even "interim" is irrelevant if "substantial" amounts of mineral aggregate resources are present below the water table or if "other alternatives" have been considered by the applicant and found "unsuitable" (PPS 2.5.4). After

“interim” use, rehabilitation of exhausted aggregate areas is proposed as a “long-term requirement” with the goal of “mitigating” negative impacts to the “extent possible” (PPS 2.5.3).

Mr. Mayor and Councillors, these are just a few of the many proposed changes that not only seriously imbalance the Provincial-Municipal relationship but also disrespect it and any disrespectful, imbalanced relationship is bound to fail, in turn betraying the public our governments are elected to serve.

It is critical at this time that Puslinch and Ontario’s other municipalities, ensure their voices are heard loud and clear at Queen’s Park, in strong opposition to these proposals and in strong support of a more equitable future relationship.

For the Mill Creek Stewards
John McNie

* Example: -pits on north and south sides of Conc. 2, east of Sideroad 20S.

-pit on south side Laird Rd at Sideroad 10.

** Example: -pit on south side of Con 2 at intersection with Conc. 7.

-pit on County Rd 34, east of Townline Rd.

*&** Example: -pit on Concession 7, east of County Rd 34.

Attachment re: Proposed changes to the
Provincial Policy Statement and Aggregate Resources
Act



PUSLINCH
TOWNSHIP

2.5.1:

Mineral Aggregate Resources shall be protected for long-term use..



2.5.1:

..... deposits of mineral aggregate resources shall be identified.



2.5.2.4

Lands adjacent to deposits of mineral aggregate resources shall be protected from development or activities that would preclude or hinder expansion or continued use of aggregate operations...



The amount of Puslinch Township remaining under
the jurisdiction of Puslinch Council.

ZERO

I hope this update finds everyone well. Recently the Province of Ontario has proposed changes to the Aggregate Resource Act. These proposed changes have been posted on the Province's Environmental Registry website also known as "ERO" (Environmental Registry of Ontario). Any time the Province proposes changes to legislation, those proposals are posted on the ERO for public comment including from your local municipality.

According to the ERO posting, the purpose of the proposed changes are "to reduce burdens for business while maintaining strong protection for the environment and managing impacts to communities". After a review of the initial posting, Council expressed some concerns with the proposed changes to the Aggregate Resource Act (referred to the ARA going forward) and has asked staff to prepare a report for their review.

One example is the proposed cutting of red tape by confirming that a local zoning bylaw can not be used to limit the depth of extraction. Some municipalities, including Puslinch, have tried to use elevation based vertical zoning to permit extraction above the water table but not into the water table. Your Council will be discussing the value of vertical zoning in relation to aggregate extraction as part of our comments regarding this change. It is in our best interest that the local community has the decision capabilities to protect our environment, water and community. Responsible aggregate extraction should include a prohibition on below the water table extraction. It is so very important that individuals like yourselves comment on the Environmental Registry that local control over extraction of aggregate **BEGINS** to be in control of the local stakeholders, you and I. Puslinch has provided more than its fair share to supporting growth.

Another proposed change is to stop providing copies of approved Site Plans to the local municipality when a new pit is approved. These Site Plans are the "blueprints" for how a licensed pit will be operated and rehabilitated. This is a concern since this is the information that the rezoning decision was based on as part of the planning process. Also, the industry has a track record in our Township of not following site plans with no repercussion. So this change would make it harder for our residents to know if a particular operator is actually following the approved site plans.

Another significant proposal is the first bullet on the ERO, that speaks about the strengthening of source Water protection through a more robust application process that would allow Municipalities and others to officially object to licensed operators that want to expand extraction to below the water table and have their concerns heard by the Local Planning Appeal Tribunal.

To open a new pit or quarry an operator needs two approvals. Proper zoning under the local municipal bylaw and a License issued by the Ministry of Natural Resources and Forests (MNR) which includes the approved Site Plans associated with that licence. . As I was recently told these are the two rails the train rides on. Once a site has been rezoned and licensed the process of

applying for below the water table extraction only requires an amendment to the Licence and Site Plans with little if no recourse for the municipality since the zoning approval is considered to be to an undefined depth. Based on the proposed amendments the only real change from the current process would be that a Licensee would not be able to appeal a condition added to a licence relating to Source Water Protection that was added by the Minister. Operators would still be able to appeal any conditions added to the Site Plans by the Minister even if they were added to improve Source Water Protection. Its very important to point out the affect on our community on the below the water table extraction. The most significant impact is the loss of land. Aggregate companies are being subsidized by Puslinch taxpayers. If an aggregate company rehabilitates a pit/quarry, which rarely happens as they pay less tax on a pit vrs farmland or any other use other than gravel.

We are left with an open body of water that pays very little in tax for the end of time affecting all generations to come and tax payers. Across Ontario there is designation that Prime Agricultural land essentially a protected asset.....except if you can truck it away as gravel!!

Your Council and staff along with local levels of Government are reviewing the proposed changes. We are very concerned with the vagueness along with the difficulty with correlating the proposed changes directly to the relevant legislation or policy.

I understand that this is a mountain of information to understand and I am no different. What I do know is that these proposed changes take what was little influence, I will not use control as an adjective as we have never had control over the future of our community in regards to aggregate extraction, and lessons the influence we currently have. The future of the entire west side of our wonderful community is at risk. As a community we all need to comment on the Environmental Registry and express that **below the water table extraction** needs to be prohibited for the mast majority of circumstances and put our Water and agricultural as a priority in this Province.

In summary:

1. Specifically mentioning that vertical zoning by-laws will not be permitted is terribly worrisome. As a Community we deserve the right to decide if its safe to extract below the water table.
2. All amendments to aggregate site plans regardless if they are Minor or Major should be sent to the municipality for review.
3. A system of self reporting of any kind in regards to aggregate industry can not be effective. if approved Site Plans are not provided to the local municipality since. the MNRF) has been ineffective at overseeing aggregate operations.
4. Aggregate haul routes need to be defined as the Municipalities cannot maintain all route options to standards sufficient to support heavy truck traffic.
5. Ministry of Natural Resources held a summit on these proposed regulation changes excluding Municipalities. The information these proposed changes represents a flawed study.
6. Aggregate levy's need to be increased to support Municipalities infrastructure funding deficits

7. The proposed changes on the Environmental Registry are not reflected in the proposed changes to the ARA. Residents should be able to see what changes are being proposed to specific components of all Provincial legislation, regulation, standard or policies that will achieve the stated outcomes. .

I encourage you comment to the Province the proposed amendments. The listed items above do not represent an all inclusive set of concerns, however with the short amount of time they represent our serious concerns.

Here is a link to the proposed changes <https://ero.ontario.ca/notice/019-0556>

Submission must be made by November 4th 2019 on the Environmental Registry of Ontario or contact

Andrew MacDonald

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705-755-1222

Email address

aggregates@ontario.ca

James Seeley

Mayor of Puslinch

519-400-7984

Proposed amendments to the Aggregate Resources Act

<u>ERO (Environmental Registry of Ontario) number</u>	019-0556
Notice type	Act
Act	Aggregate Resources Act, R.S.O. 1990
Posted by	Ministry of Natural Resources and Forestry
Notice stage	Proposal
Proposal posted	September 20, 2019
Comment period	September 20, 2019 - November 4, 2019 (45 days) Open
Last updated	September 20, 2019

This consultation closes at

11:59 p.m. on:

November 4, 2019

Proposal summary

Changes are proposed to the *Aggregate Resources Act* to reduce burdens for business while maintaining strong protection for the environment and managing impacts to communities.

Proposal details

Aggregate Resources Act

The Ministry of Natural Resources and Forestry (MNR) 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 (Aggregate Resources Act) 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

Supporting materials

Related links

[Aggregate Resources Act](https://www.ontario.ca/laws/statute/90a08)
(<https://www.ontario.ca/laws/statute/90a08>)

Ontario Regulation 244/97 (Aggregate Resources Act)
(<https://www.ontario.ca/laws/regulation/970244?search=aggregate>)

View materials in person

Some supporting materials may not be available online. If this is the case, you can request to view the materials in person.

Get in touch with the office listed below to find out if materials are available.

Natural Resources Conservation Policy Branch
300 Water Street
Peterborough , ON
K9J 8M5
Canada

 [705-755-1222](tel:705-755-1222)

Comment

Let us know what you think of our proposal.

Have questions? Get in touch with the contact person below. Please include the ERO (Environmental Registry of Ontario) number for this notice in your email or letter to the contact.

[Read our commenting and privacy policies. \(/page/commenting-privacy\)](/page/commenting-privacy)


Submit by mail

Andrew MacDonald
Natural Resources Conservation
Policy Branch
300 Water Street
Peterborough , ON
K9J 8M5
Canada

Connect with us

Contact

Andrew MacDonald

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