



The Corporation of the Town of Milton

Report To: Council

From: Barbara Koopmans, Commissioner, Planning and Development

Date: October 28, 2019

Report No: PD-039-19

Subject: Proposed Amendments to the Aggregate Resources Act (ARA)

Recommendation: THAT Report PD-039-19 be received for information;

AND THAT staff be directed to submit comments as outlined in Report PD-039-19 to Ontario's Ministry of Natural Resources and Forestry (MNRF);

AND THAT staff be directed to continue to monitor the proposed changes to the Management of Aggregate in Ontario initiative and report back to Council as required.

EXECUTIVE SUMMARY

Since early 2012, the Province has been undertaking a review of the Aggregate Resource Act (ARA). To date specific amendments and details of the proposed changes to the ARA have not been released. In March of 2019, the Province held an Aggregate Summit with invitations being sent to producers, industry experts and selected municipalities. Neither the Town nor the Region received invitations to this Summit. Subsequent to the Summit, staff understand that a survey and requests for email submissions on the materials discussed was provided to attendees.

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" (ARA). The MNRF deadline for comments is November 4, 2019. The Province did not release specific details or changes to the Aggregate Resources Act (ARA). They did however release a "Summary of Proposed Changes" that are under consideration. Wording of the proposed amendments to the ARA have not been made public

REPORT

Background



In Ontario, the extraction of aggregate resources is regulated through 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.

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. Staff are of the opinion that Provincial efforts to modernize and strengthen the ARA approvals framework is a good thing however the details of the changes being contemplated have yet to be released. Once the details are released, staff will provide an update to Town Council for further consideration.

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. Neither Town nor Regional staff were invited to attend this summit.

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".

Traditionally these types of legislative changes are assessed jointly between the Region and its local municipal partners. Given the short commenting window and the absence of detail on the proposed changes, this approach is not available.

Discussion

The Province is proposing the following changes to aggregate management in Ontario. As noted earlier in this report, detailed policy and legislative changes were not released, just broad based general language. Below Council will find a summary of the proposed changes followed by an initial commentary by Town staff.

- 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.

Staff Response:

This would allow municipalities like Milton to officially object to an application and provide the opportunity to have their concerns heard by the Local Planning Appeal Tribunal. This approach appears to be in principle a positive change. Staff will however need to review the detailed amendment to confirm.

- 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.

Staff Response:

This appears to take away long standing local municipal controls and enforcement activities. Extraction below the water table has significant and broad reaching implications to a community. The risk to ground water contamination is higher, the potential need for long-term mitigation mechanisms is likely and as a result, the need for additional controls and oversight at the municipal levels is important to safeguard the public interest and safety. Staff have significant concerns with this proposed change.

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

Staff Response:

There does not appear to be significant implications for the Town as all Crown Lands in the Town accommodate infrastructure and/ or institutions.

- 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.

Staff Response:

If the agreements are voluntary, there would be little incentive for producers to enter into any agreements. Haul route agreements are typically required to ensure that the haulage operators are using the approved and agreed upon haul routes, that public safety is maintained to the highest degree possible, that these routes are maintain to the appropriate standards, unforeseen negative impacts are acknowledged and addressed quickly, improvements required to accommodate aggregate haulage are paid for by the aggregate producer and that over tipping is prohibited as it impacts the structural integrity of the municipal infrastructure. All of these matters have financial implications for the municipality that owns the infrastructure where the haul routes are located. The proposed use of municipal infrastructure to transport aggregates should also ensure that the municipality can protect the long term integrity of this critical infrastructure, provide municipalities with the ability to control its us and to permit municipalities to recover the costs associated with the impacts to this infrastructure from the aggregate producers.

- 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.

Staff Response:

This option should only be considered if supported by the municipality and at their sole discretion.

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

Staff Response:

The implications as to the true effect of this amendment will largely depend on what is meant by the word "routine". The self-regulating model used within the aggregate industry is not seen by some to be the most transparent approach to oversight. Any change made to the site plan needs to be at the very least communicated to the municipal and agency partners to determine the implications of any impact and to determine if their interests are being compromised.

The Province 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.

Staff Response:

Staff support enhanced reporting. Staff will however need to review the detailed amendment to confirm that the process is resulting in an enhancement.

- 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.

Staff Response:

Again, as with the previous self-filing and/ or reporting item above, any change made to the site plan needs to be at the very least communicated to the municipal and agency partners to determine the level of impact based on their areas of expertise and authority. Municipalities should be able to determine if their interests are being impacted. This review should also include the ability for municipal staff to confirm compliance from a zoning perspective where zoning applies (outside NEP Area).

- 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.

Staff Response:

This permission will also need to comply with all municipal property standards requirements, site alteration and fill by-law requirements, etc.

- Clarifying requirements for site plan amendment applications.

Staff Response:

This appears fine but not details were provided.

- Streamlining compliance reporting requirements, while maintaining the annual requirement.

Staff Response:

More oversight by the Ministry has long been identified as a priority for some municipalities versus further self-regulation by proponents and operators. Greater sharing of information with municipalities and agencies is also a welcomed improvement.

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



Staff Response:

More emphasis on pre-consultation with agencies and municipalities, greater transparency in all aspects of the application and pre-application filing process, enhanced and earlier notification municipalities and agencies is also encouraged.

Conclusion

Staff appreciate the challenges associated with contemplating amendments to the *ARA* to accommodate industry, indigenous, and municipal interests. It is however, difficult to clarify a position on an amendment and develop meaningful comments without reviewing the detailed amendments. Staff are of the opinion that the primary intent of the changes is to further reduce municipal input/involvement in the aggregate applications review process and to further enhance the abilities for producers to self-regulate the process and reporting activities as it relates to aggregate extraction. It is unclear at this time what if any impact the proposed amendments will have on municipal interests.

Going forward 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. It will be at that point in time that Town staff will be able to identify impacts to Town interests.

Financial Impact

None arising from this Report

Respectfully submitted,

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Commissioner, Planning and Development

For questions, please contact: Stirling Todd, MES, MCIP, RPP Phone: Ext. 2272
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Attachments

None

CAO Approval
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