

Gravel Watch Ontario

Submission to the

Aggregate Reform Initiative March 2019

Gravel Watch Ontario is pleased to contribute to the discussions regarding aggregate policy reform in Ontario. It is in Ontario's best interest to have an effective, efficient and responsible aggregate policy framework and regulatory landscape in which the industry can operate.

Gravel Watch Ontario

Gravel Watch Ontario is a province-wide coalition of citizen groups and individuals that acts in the interests of residents and communities to protect the health, safety, quality of life of Ontarians and the natural environment in matters that relate to aggregate resources. Formed in 2003 we have over a decade of experience in advising both communities and government agencies in aggregate matters.

We acknowledge the role that aggregates play in supporting a high standard of life for Ontarians. We are aware though of the high social and environmental impacts that aggregate extraction activities can have on the natural environment and the communities that host these industrial activities.

Gravel Watch Ontario Mandate

Gravel Watch Ontario therefore has a dual mandate. The first is to support our members, and their local communities, in dealing with issues related to proposed or existing aggregate operations. While Gravel Watch Ontario as an organization does not take on an advocacy role regarding any specific application or operation, we will provide information, advice and support to local groups. We take the themes from these activities as input to our policy work.

The second part of our mandate deals with representing local communities and the public at large in policy and regulatory work related to aggregates. These

engagements can be directly related to the aggregate file such as reviews of the Aggregate Resources Act (ARA) or indirectly related in broader planning or environmental areas such as Source Water Protection or the Co-ordinated Land Use Policy Reviews.

Through these activities we have developed a reputation for constructive contributions and positive relationships.

Gravel Watch Ontario is in a unique position to assist with the government's work on the aggregates file. Our members typify the public's experience with aggregate policy and regulations in Ontario.

Gravel Watch Ontario is committed to working with, and is already working with, many different stakeholders. When it comes to aggregate policy, we find that while different stakeholders may debate the direction that needs to be taken, we all generally agree that improvements are needed. We offer our experience and assistance to make that happen.

Background Context

We acknowledge that the aggregate industry is a key component of the supply chain for many downstream industries. Whether it is the manufacturing of consumer products, industrial products or the more visible construction industry, all of them require a reliable source of aggregates.

Aggregates however are one component of the supply chain and the economic value that aggregates provide is maximized when used to support these other activities.

Aggregate extraction alone is not a primary driver of economic growth in Ontario. Economic growth in Ontario drives the demand for aggregates.

Digging up more stone and stockpiling it will not significantly increase Ontario's economic output.

The key question therefore is, is the aggregate industry in Ontario able to provide a sufficient supply of high-quality product to meet the demand from downstream activities?

There have been no media reports of projects having to be delayed or cancelled due to a lack of aggregate supply. Neither have there been reports of a significant rise in the price of aggregates in Ontario. If aggregates were supply constrained, economic theory would predict that the price for them would be increasing. In fact, the aggregate industry appears to be very competitive with current projects attracting multiple bids from different suppliers each with very competitive pricing.

While Ontario can benefit from an improved, effective and efficient aggregate regulatory environment, aggregates themselves do not drive Ontario's prosperity and currently the aggregate industry continues to provide the product needed to support Ontario's prosperous economy. Although there may be opportunities for improvements to aggregate policy and the regulatory landscape, there is no evidence of an industry in crisis.

Industry Hyperbole

Even though it is expected that every industry will promote itself, some of the hyperbole offered by the aggregates industry is extreme.

Statements such as "without it [aggregates], everything stops" are exaggerated and disingenuous.

While not wanting to be accused of using hyperbole ourselves we would offer a reminder of the "rule of threes" when it comes to sustaining the conditions necessary for supporting human life. As humans we can't live for 3 weeks without food, nor 3 days without water, nor 3 minutes without air. So that without healthy food to eat, safe water to drink and clean air to breath human life stops. An absence of those conditions might be more justification for stating that "everything stops".

Another narrative frequently offered is in the form of a “crisis of supply” declaration. Decades ago the same industry consultants claimed the same imminent shortage. Thus far no crisis of aggregate supply has occurred in Ontario. While numerous reports have been written on the subject of the aggregate supply in Ontario over the years, all of the studies reviewed highlight that the available data is limited. While the demands side of aggregates can be informed by the level of consumption, the understanding of the reserves of this resource whether licenced or not is limited. Broad estimates are typically used in the studies leading to best guess conclusions. The behaviour of the aggregate marketplace is certainly not indicating that any widespread shortage of supply exists.

As we look to reform aggregate policy and regulation in Ontario it is important that we clearly identify what issues we need to focus on and to deal with the facts as it relates to those issues.

Past Stakeholder Efforts Can Assist in the Work

While we acknowledge that Ontario has a new government with new priorities, the aggregate file was well explored in the recent past. Starting in 2013 a series of activities was undertaken to study the aggregate file and included all-party committee hearings convened in locations across Ontario. Days of industry and non-industry stakeholder meetings were held on specific topics.

Several reports were produced culminating in the [Blueprint for Change](#) document. Additionally, changes were made to the Aggregate Resource Act, with portions of the revised Act being proclaimed, while others awaited the development of supporting regulations.

As stakeholders now come together to explore the best way forward, it would be a lost opportunity not to take advantage of the work and analysis created through the pervious industry and non-industry multi-stakeholder discussions.

Providing Greater Clarity and the Process of Aggregate Extraction Sitting

All stakeholders would benefit from greater certainty regarding where the extraction of aggregate occurs in Ontario.

For the industry there are costs associated with evaluating the suitability of a site, acquiring an interest in the lands and determining the corporate investments required to enable extraction. It all adds up to a sizable investment in corporate resources.

For Communities, and for the people of Ontario, their homes typically represent their single largest investment. Beyond this, their homes and properties are the places where they raise their children, enjoy their leisure, recreation time and retirement. There is an emotional attachment to their homes and community.

It is the collision of these two interests that makes the sitting of aggregate operations so challenging. The rock is located where it is. And when aggregate producers enter a community determined to start extraction, both the corporation and the families impacted are determined to protect the major investment each is making or has made.

Increasing certainty for all stakeholders in matters related to where aggregates can be extracted would go a long way in reducing the conflicts. Industry needs to know where the resource can be extracted from and communities need to know where they can put down roots and live their lives.

The existing licencing framework, with multiple streams of activity involving multiple agencies, is complicated and multi-faceted. However, the undertaking being proposed, the operation of a very socially and environmentally intrusive industrial process, is a complex matter.

Aggregate operations are often excluded from the straightforward processes and regulatory requirements given other industrial processes. Instead they are granted processes that are customized to support the aggregate industry.

For example, the treatment of emissions under the Ministry of the Environment, Conservation and Parks protocols requires other Class III Industrial activities to

comply with specific separation distances from sensitive receptors. The aggregate industry is however excluded from these general guidelines because of the expectation that a detailed analysis will be completed within the aggregate licencing process.

Treating aggregates as a special case has given rise to a number of complex and time consuming aggregate specific processes.

It would be a mistake though to simplify the licencing process by excluding stakeholders and not appropriately dealing with the potential threats and concerns that must be addressed given the intrusive nature of aggregate extraction. Simplification that removes the thoroughness required to ensure public and environmental safety would not be in the best interest of Ontarians. The process must remain thorough and rigorous in order to deal with all aspects of the proposed industrial activity. This would include soliciting, acknowledging and incorporating the input from other third-party stakeholders into the final decision.

MNRF's Role

The current role played by the Ontario Ministry of Natural Resources and Forestry during the sitting process is deficient when put in the context of their overall mandate in managing aggregates. For example, while MNRF aggregate staff oversee the applicant's execution of a "proponent driven process" for a licence application, they do not weigh in on the content of those application documents.

An application for a proposed aggregate operation includes many technical studies. Assessing the validity, accuracy and completeness of those studies is effectively outsourced to the municipalities and other participants during the administrative review of those applications in OMB or now LPAT hearings. MNRF, as the lead government ministry for the management of aggregates in Ontario, should have the expertise to evaluate applications and enforce consistent best practices across the province.

Administrative Hearings – the new Local Planning Appeal Tribunals (LPAT)

Gravel Watch Ontario made several submissions during the Ontario Municipal Board review process. Concerns were raised that any new appeal tribunal process would need to consider how aggregate matters would be dealt with. Unfortunately, we were left with the perception that the concerns were neither understood nor addressed in the new LPAT procedures.

In very brief terms the current situation would require, at a minimum, two separate hearings; one dealing with the zoning matters under the Planning Act and the other dealing with the aggregate licence under the Aggregate Resource Act (ARA). The old OMB procedures typically combined these two matters before the board and addressed them in a single hearing. To determine if the proposed land use represents good planning under the Planning Act; the operational characteristics of the proposed aggregate extraction site would need to be known. To determine those characteristics, adjudication of the ARA licence application would need to be completed. A combined hearing would allow a full investigation of the ARA and Planning Act matters through expert testimony and vigorous cross examination.

Gravel Watch Ontario Commitment

Gravel Watch Ontario is committed to ensuring that Ontarians continue to enjoy the quality of life we expect as residents of this great province. We are committed to working with all stakeholders, industry and non-industry alike, to ensure that the aggregate policy framework and regulatory environment provide for the supply of aggregates while at the same time respecting the natural environment required to support life as well as the communities where these industrial activities are occurring.

Gravel Watch Ontario Recommendations

1) Aggregate Resource Reserve Data as well as Demand / Consumption Data is collected by the province and made available to inform decisions.

- Aspects of current policy create an awkward situation for stakeholders evaluating proposed aggregate operations. On one hand, the Provincial Policy Statement specifies that applicants are not required to demonstrate need for proposed operations. On the other hand, applicants often claim a critical need for new aggregate operations by presenting data implying a shortage of supply. Gravel Watch Ontario's position is that supply and consumption studies for aggregates at a regional level should be maintained by MNRF. This level of information compiled at a regional scale should not impact the open competitive marketplace but would provide insight into the criticality of any particular proposed aggregate operation.

2) Increase the role of MNRF in aggregate licence application processing while ensuring all stakeholders' voices are still heard.

- MNRF, as the lead organization for the management of aggregates in Ontario, should possess the expertise required to evaluate applications and enforce consistent best practices across the province while maintaining the critical role that independent third-party reviewers provide. The current situation of effectively outsourcing the debate over aggregate licences to the municipalities and non-industry third parties is an abdication of MNRF's role.

3) Move Aggregate Planning Hearings to an LPAT Part I Hearing Type so that they may be combined with ARA Licence hearings.

- In order to determine if a proposal represents good planning under the Planning Act it would be virtually impossible not to take into consideration the operational characteristics of the proposed aggregate extraction activities that would be determined by adjudication of the ARA licence. Due to this interrelationship between the ARA licence and the associated land use planning decisions, changes to the LPAT appeal process allowing for the two matters to be combined would facilitate the full exploration of the proposal via expert testimony and vigorous cross examination

4) Move ahead with the revisions to aggregate policy and regulations previously identified as the result of comprehensive multi-stakeholder consultations.

- Recommendations have already been prepared to modernize and increase the effectiveness of aggregate policy in Ontario. Clarifications regarding required studies for new extraction site applications or amendments to existing licences have been suggested. Updates to the notification and consultation requirements have been proposed. Steps to modernize how information is shared have been prepared. Suggestions around implementing “permit by rule” for some activities or the self-filing of minor site plan amendments have been made. Revisions to the existing compliance report process have been proposed. The groundwork for these and other improvements to the aggregate regulatory environment has been started; the focus should be on completing that work.

Concluding Comments

Gravel Watch Ontario and its members appreciate the opportunity to add our perspective to the discussion of aggregate policy and regulation in Ontario. We thank the government for this opportunity and look forward to next steps.

Should you have any questions or would like to discuss our comments in more detail, please feel free to contact us.

Sincerely,

A handwritten signature in black ink that reads "G. Flint". The signature is written in a cursive style and is underlined with a single horizontal stroke.

Graham Flint, B.A.Sc., P.Eng.

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Appendix

The Ontario Stone, Sand & Gravel Association (OSSGA) has issued a document entitled Untangling Red Tape – Addressing Duplication and Redundancy in the Various Processes Related to the Aggregate Industry. This document makes a number of bold recommendations but fails to present the necessary data to justify the claims. Should there be government interest in a detailed exploration of the recommendations, Gravel Watch Ontario would desire an opportunity to provide our perspectives. In advance of an indication of that interest we offer the following brief comments:

OSSGA - Untangling Red Tape Submission

Primary Recommendations:

1) Establish Single Point of Responsibility at the Provincial level for application processing

- as expressed in our earlier comments, we agree that the current licence application process can be improved. However, any resulting application process must remain thorough and rigorous in order to address all aspects of the proposed industrial activity. This must include soliciting, acknowledging and incorporating the input from all third-party stakeholders into the final decision.

2) Lack of Service Standards and Consistency within Ministries

- we support recommendations that deliver more certainty for all stakeholders. We do not however support the simplistic recommendation to move decisions back to MNRF district offices. It has been well documented that some district offices have made producer desired decisions that were not in compliance with official MNRF policies. Consistency of service standards must be the goal, not an industry preferred outcome.

3) Problem with Implementation of Existing Legislation and Policies

- the premise of this recommendation is based on manifesting a fear that we are about to “run out of aggregate”. While these same claims have been made for

decades by the industry, the market has yet to show the characteristics of an imminent aggregate shortage. The data related to aggregate reserves is insufficient to justify making decisions that negatively impact the natural environment and healthy prosperous communities.

- on the matter of the newly implemented LPAT processes and the inability to have a single combined Planning Act / ARA hearing; we support the call to modify the process to allow for a single combined hearing.

1.0 Duplications and Inefficiencies

1.1 ARA Applications

- as previously presented, MNRF should take a lead role and greater control of the process, but not at the expense of input from other stakeholder organizations whether they be ministries, other agencies, municipalities, non-governmental groups or the public.

1.2 Operational Permits

- suggestions to improve the effectiveness of the review process for operational permits would be supported. This would not be achieved by eliminating the participation of legitimate stakeholders who have an interest in the outcome or expertise to bring to the process. The document implies that form isn't important and that only function should be considered by some stakeholders. We strongly disagree. In the example presented in the recommendations, a land use decision regarding an asphalt plant needs to consider the size, scale and operational nature of the plant. It is unreasonable to suggest all those aspects could be determined later during an ECA permit process after planning approval is granted. The key information required to determine that the proposed land use would represent good planning would not be available until after the land use decision already was made. Any land use approval provided in this scenario would be similar to providing a blank cheque.

1.3 NEC Development Control Permits

- aggregate extraction is a permitted land use in the NEC plan area. In fact, there are many who feel that aggregate extraction has been the single land use that has most impacted the escarpment. Ontario has decided to strictly manage development on the escarpment lands through the NEC development control permit process, and that is the process that all land use proposals on the escarpment must satisfy.

2.0 Service Standards and Consistency

- improving the service levels and achieving greater consistency in the decisions and the time taken to receive them, is something we would support.

3.0 Problems with Implementation of Existing Legislation and Policy

3.1 Prohibitive Legislation

- certainty is a shared goal and as a result we support the existing two-year OPA freeze.
- administrative hearings are costly and time consuming for all parties, we agree with the recommendation to move back to a combined ARA Licence and Planning Act hearing.

3.2 Prohibitive Provincial Plans

- without definitive data indicating some kind of imminent shortage of aggregates, there is simply no justification to supersede other important provincial priorities such as the greenbelt and species at risk protection.

3.3 Inappropriate Criteria for Listings of Threatened and Endangered Species

- this recommendation implies that protecting the habitat of species at risk is not required if threats to that species includes threats other than habitat loss or if the habitat loss is also occurring in another jurisdictions. The level

of species loss being reported in Canada is alarming; once a species is identified as being at risk all reasonable efforts must be taken to protect it.

3.4 Hours of Operation

- this recommendation once again raises the debate of form and function. To imply that operational characteristics such the hours of operation do not influence the determination of whether or not a land use is appropriate is incongruent with the tests required to determine whether a particular proposed land use represents good planning.

3.5 Access to Aggregates within Municipal Road Allowances

- as this recommendation deals with establishing new lands for extraction under the ARA, a new licence would be required; however, given the specifics of this scenario perhaps a special class of licence would be appropriate along with associated specific application requirements.

3.6 Environmental Compliance Approvals for Closed Loop Systems

- we strongly oppose the premise of this recommendation. Aggregate operations do not “handle” water in a “closed loop”. The water used in aggregate operations is subjected to numerous external influences, losses and contaminates. In typical settings for these operations, ground water resources are separated from the industrial water by only minimal distances. The requirement for ECA should remain.

3.7 Importation of Fill

- pits and quarries across Ontario must not become the quick solution for the issue of excess soil in Ontario. Pits and quarries should not become dumping grounds for excess soil. Aggregate operators should not be viewing the importation of excess soil as a new revenue stream. Extraction occurs where it does because that’s where the resource is located. Other commercial uses at those locations need to be considered separately from the business of aggregate extraction.

- given the recent work done on excess soils in Ontario by the MOECP, we do acknowledge the need to revisit the current MNRF policies on fill importation in order to harmonize the approaches.

3.8 First Nations Consultation

- Gravel Watch Ontario does not have the necessary background to comment on this recommendation.

OSSGA - Securing Access to Stone, Sand & Gravel document

The recommendations included in this document build off of the narrative that there is a “crisis of supply” of aggregates in Ontario. As mentioned previously there is insufficient reserve data, licenced and un-licenced, to justify such a claim. There are also no indications in the marketplace that supply is being constrained. As a result, all these recommendations which seek to weaken established governmental priorities and the characteristics that make Ontario a great place to live, work and play, are therefore premature and unjustified.

We do not support any of the following recommendations.

OSSGA - Securing Access to Stone, Sand & Gravel

1) ENDANGERED AND THREATENED SPECIES (ESA) HABITAT (Within the Growth Plan NHS, Greenbelt NHS and ORMCP Linkage Area)

Allow aggregate extraction within endangered and threatened species habitat subject to authorization under the Endangered Species Act.

2) SIGNIFICANT WOODLANDS (Within the Growth Plan NHS, Greenbelt NHS and ORMCP Linkage Area, Countryside Area and NEP Escarpment Area)

Permit extraction in significant woodlands that can be replaced and enhanced on the landscape subject to demonstration of ‘no negative impact.’

3) PROVINCIALLY SIGNIFICANT WETLANDS (Within the Greater Golden Horseshoe)

Permit extraction in small Provincially Significant Wetlands that have limited ecological function or contribution to the provincially significant wetland complex.

4) BELOW WATER EXTRACTION AND OTHER NATURAL HERITAGE FEATURES (Within the ORMCP Natural Linkage Area)

Permit extraction below water within the ORMCP Linkage Area. Permit extraction within natural heritage and hydrologic features subject to the provisions of the Provincial Policy Statement within ORMCP and NEP.

5) ORMCP NATURAL CORE AREA

Allow for consideration of extraction within the ORMCP Core Area Subject to Stringent Rehabilitation Requirements and Protection of Important Natural Features.

6) EXPANDING THE GREENBELT

The Province should suspend any further study to expand the Greenbelt Plan.