



Report: PDL-CPL-19-41

Region of Waterloo

Planning, Development, and Legislative Services

Community Planning

To: Chair Tom Galloway and Members of the Planning and Works Committee

Date: November 5, 2019

File Code: D05-02

Subject: Regional Response to Proposed Amendments to the Aggregate Resources Act (ERO Posting No. 019-0556)

Recommendation:

That the Regional Municipality of Waterloo forward Report PDL-CPL-19-41, dated November 5, 2019 to the Ministry of Natural Resources and Forestry as its response to the Province's proposed amendments the Aggregate Resources Act (ERO Posting No. 019-0556).

Summary:

The Provincial government is consulting on proposed changes to the Aggregate Resources Act (ARA). The ARA is the primary legislation governing the approval and operation of pits and quarries in Ontario. This report provides comments and recommendations on matters of Regional interest, including: protecting municipal drinking water resources; securing agreements for haul routes; engaging the public on aggregate applications; and reporting on the rehabilitation of aggregate sites.

Report:

On September 20, 2019, the Province released a summary of several proposed changes to the ARA for public review. The intent is to streamline the approval of mineral aggregate operations.

Waterloo Region is currently the fifth largest producer of sand and gravel by volume in Ontario, and the second largest in Southwestern Ontario. Given the importance of aggregates to the Region's economy, and the potential impacts of extraction on groundwater resources, the natural environment and host communities, any proposed

changes to the ARA is a significant matter of Regional and area municipal interest.

Key Comments to the Province

Zoning By-laws relating to the Depth of Aggregate Extraction

The Province is proposing to amend the ARA to prohibit municipalities from regulating the depth of aggregate extraction in their zoning by-laws. Staff do not support this proposed change because:

- 1) A municipality's authority to restrict the use of land under the Planning Act includes the right to set both the horizontal and vertical boundaries of the permitted use. Therefore, municipalities have the authority to include the depth of extraction of a mineral aggregate operation in their zoning by-laws;
- 2) Extraction of mineral aggregates close to, or below the water table has the potential to impact the quantity and quality of water, including vulnerable and sensitive groundwater resources. Many municipalities across Ontario, including Waterloo Region, rely on groundwater for a significant portion of their drinking water. As a result, it is inappropriate to prevent municipalities from using zoning by-laws to protect their valuable drinking water resources; and
- 3) Currently, any operator licensed for an above-water-table pit can apply to extend extraction down into the water table. All that is required is a site plan amendment approved by the MNRF. Such an amendment may or may not be circulated to municipalities, and if circulated, they have a limited role in the review and no right of appeal. To address this issue, some municipalities have passed zoning by-laws that would trigger a zone change application whenever an operator applied to increase the depth of extraction. This process enables the municipality to require the submission of studies, and identify any potential groundwater issues.

Recommendation: The Province should not amend the ARA to prohibit municipalities from regulating the depth of aggregate extraction in their zoning by-laws.

Public Engagement for Site Plan Amendments relating to Water Resources

The Province is proposing to introduce a more robust application process for existing aggregate operators that want to extract below the water table, however, there are limited details on this proposal. This process would potentially allow for increased public engagement on site plan amendments under the ARA that may impact water resources. It may also allow municipalities and others to formally object to such amendments to the MNRF, and give them the right to appeal to the Local Planning Appeal Tribunal if their concerns are not addressed.

Staff support this proposed change and believe it would help increase the level of municipal involvement whenever existing operators propose to increase the depth of

extraction below the water table. Currently, the Ministry has the sole discretion to decide whether and to whom to circulate any such amendments, and there are no rights of appeal. If adopted, this change could provide for public consultation and notification to municipalities, who would have input into the technical studies necessary for the proposed site plan amendments. Giving municipalities and others the right to appeal could achieve the same objectives sought through municipal zoning by-laws.

Recommendation: The Province should proceed to implement a more robust application process for site plan amendments under the ARA that may impact water resources, but modify it so that the new process would also apply to situations where:

- 1) an existing above-water-table operation applies for permission to extend extraction below 1.5 metres of the water table; or
- 2) an existing below-water-table operation applies for permission to extract deeper underground and penetrate the aquitard overlying a municipal aquifer.

Additional details on this process are requested.

Aggregate Haul Routes

The government is proposing to clarify how aggregate haul routes are considered under the ARA such that the Minister and the LPAT, when making a decision about issuing or refusing an aggregate license, cannot impose conditions requiring agreements between municipalities and aggregate operators regarding aggregate haulage. This change would apply to all applications in progress where a decision by the Minister or the LPAT has not yet been made. Municipalities and aggregate producers could enter into agreements only on a voluntary basis.

Staff do not support these proposed changes. In considering applications for a new mineral aggregate operation, the Region and the area municipalities typically require applicants to carry-out reasonable road improvements (e.g., installing turn lanes, upgrading road surfaces, and facilitating safe access to and from a site), or to direct truck traffic to certain haul routes. These requirements are often secured through agreements between the municipality and the aggregate operator. As such, it is essential that municipalities maintain the ability to require applicants to enter into agreements related to reasonable roads improvements and aggregate haul routes.

Recommendation: The Province should not amend the ARA such that the Minister and the LPAT cannot impose conditions requiring agreements between municipalities and aggregate producers relating to reasonable road improvements and aggregate haulage.

Enhanced Reporting on Aggregate Rehabilitation

The Province is considering new regulations that would require more enhanced reporting from aggregate operators on the progress of their rehabilitation efforts. This

reporting process would require operators to provide more context and detail on where, when and how rehabilitation is or has been undertaken. The content, scope and frequency of the new reporting process would be prescribed through regulations under the ARA, which have yet to be released by the Province.

Staff support this proposed change to better monitor and help improve rehabilitation rates in Ontario. However, we note that enhanced reporting on rehabilitation will not in itself result in higher rehabilitation rates. Other potential measures could include requiring security deposits, establishing tighter rehabilitation timelines, and increasing enforcement and fines for unnecessary delays in rehabilitation.

Recommendations: The Province should proceed with its proposal to require enhanced reporting from aggregate operators regarding their rehabilitation efforts. The Province should also consider implementing other potential measures to help increase rehabilitation rates in Ontario, such as requiring security deposits, establishing tighter timelines for rehabilitation, and increasing enforcement and fines for unnecessary delays in rehabilitation.

Streamlining Compliance Reporting

Currently, the ARA requires aggregate operators to conduct an annual self-assessment of their aggregate operation and to submit a Compliance Assessment Report. In practice, these standardized reports are simply collected by the MNRF and are not systematically reviewed for errors or omissions. The Province is now proposing to streamline these compliance reporting requirements.

While staff appreciate the need for streamlining, the Province has not released any details on how the current compliance reporting process would be changed. It is important to maintain a high level of compliance reporting, particularly for larger aggregate sites, to ensure compliance with the ARA and to monitor rehabilitation. Staff are concerned that the proposed change could potentially downgrade the current self-compliance assessment process.

Recommendation: The Province should ensure that any proposed streamlining measures do not downgrade the current level of annual compliance reporting, especially for larger, more complex operations that may impact groundwater or natural heritage resources.

Public Notification and Consultation Requirements

The Province is reviewing its current application requirements for new aggregate sites, including public notification and consultation requirements. While the Province has not released any details, we would be supportive of any measures that would enhance the current public participation process.

The current zoning and licensing process for new aggregate operations follows a dual

process under the Planning Act and the Aggregate Resource Act. The process can be fairly complex and difficult to navigate for community members who are less familiar with aggregate terminology and planning procedures. A common complaint is that more time and clearer information is needed for the public to participate effectively in the process. Where public concerns cannot be satisfactorily resolved, this can result in costly and protracted LPAT hearings that effectively take the final decision out of the hands of local authorities.

Recommendation: The Province should update its current application requirements for new aggregate sites, including notification and consultation requirements, to enhance the public participation process under the ARA.

Aggregate License Fees

The ARA currently requires aggregate operators to pay an annual licencing fee of 19.8¢ per tonne. The fee is dispersed as follows:

- 61% or 12.0¢ to the area municipality;
- 15% or 3.0¢ to the County or Regional municipality;
- 3% or 0.6¢ to the Aggregate Resources Trust (for abandoned site rehabilitation and research); and
- 21% or 4.2¢ is retained by the Province.

While the Province is not proposing changes to the fee at this time, it is interested in obtaining feedback on this matter.

The Region uses its share of the fee to help pay for the repair and maintenance of Regional roads. In the Region's submission to the Province on Bill 39 (Aggregate Resources and Mining Modernization Act, 2017), Council recommended that the fee be increased to reflect the full costs of upgrading and maintaining roads for aggregate haulage, and that the fee then be indexed to the Building Construction Price Index. Starting in 2020, the above fee will be indexed to the Consumer Price Index rather than the Building Construction Price Index.

Recommendation:

The Province should index its annual aggregate licensing fee to the Building Construction Price Index to better reflect construction-related inflation.

Other Proposed Changes

The Province is proposing several other regulatory changes to simplify administration of the ARA. Two examples include:

- allowing operators to self-file changes to existing site plans for routine activities (e.g.,

re-locating some structures or fencing as long as setbacks are maintained); and

- allowing low-risk activities to occur without a license if certain conditions are followed (e.g., extracting small amounts of aggregates for personal use on the property).

While we have no objection in principal to simplifying certain regulations, the Province has not provided any details of the proposed changes. Staff will continue to monitor any proposed regulations and report back to Council as required.

Next Steps:

If adopted, this report would represent the Region's submission to the Province on its proposed changes to the ARA. To meet the November 4, 2019 commenting deadline, an advanced copy of this report has been sent to the Province as a placeholder pending Regional Council's consideration.

Corporate Strategic Plan:

The comments and recommendations in this report support Strategic Objective 3.2 - Protect the quality and quantity of our water resources.

Financial Implications:

Nil.

Other Department Consultations/Concurrence:

This report was prepared with input from Water Services and Legal Services.

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