

May 1, 2020

Ministry of Natural Resources and Forestry
300 Water Street
Peterborough, ON K9J 8M5

To Whom It May Concern,

**RE: Proposed Regulatory Changes under the Aggregate Resources Act
ERO 019-1303**

At the council meeting held on April 29, 2020, Middlesex Centre Council received a report regarding the proposed amendments to Ontario Regulation 244/97 and the Aggregate Resources of Ontario Provincial Standards.

Enclosed is a report that was approved by Middlesex Centre Council that addresses the proposed changes; namely,

- Protection of water resources;
- Managing the depth of pits and quarries;
- Access to Aggregates in municipal road allowance;
- Self-filing of routine site plan amendments;
- Low risk operations without a permit;
- Study and information requirements;
- Site plan and license / permit conditions; and
- Operating requirements for all sites.

Thank you for your consideration and allowing the municipality to comment.

Sincerely,



Michael Di Lullo, MPA, CMM III
Chief Administrative Officer

Encl.

cc: Chris Traini, County Engineer, County of Middlesex
Rob Cascaden, Director of Public Works and Engineering, Middlesex Centre



Meeting Date: April 29, 2020

Submitted by: Michael Di Lullo, CAO and Rob Cascaden, Director of Public Works and Engineering

Report No: CAO-18-2020

Subject: Proposed Amendments to Aggregate Resources Act, R.S.O 1990 Ontario Regulation 244/97 and the Aggregate Resources of Ontario Provincial Standards under the Aggregate Resources Act

Recommendation:

THAT the overview of comments on the proposed amendments to the Aggregate Resources Act, R.S.O. 1990, outlined in staff report CAO-18-2020 be endorsed;

AND THAT a copy of staff report CAO-18-2020 be provided to the Ministry of Natural Resources and Forestry and the County of Middlesex.

Purpose:

The Ontario Government released proposed amendments to the Aggregate Resources Act, R.S.O. 1990 and this report is a comprehensive review of the proposed changes and the municipality's response to provide feedback to the Ministry of Natural Resources during the intake commentary period.

Background:

The Government of Ontario, as part of its Supporting Growing Communities plan, proposed changes to the Aggregate Resources Act, R.S.O. 1990 (ARA) and associated regulations in the fall of 2019. On September 20, 2019, the government released proposed legislative changes that aim to "support our growing communities and promote economic growth within the aggregate industry while continuing our commitment to protect the environment and address community impacts". The proposed amendments to the Aggregate Resources Acts were posted on the Environmental Registry of Ontario (as ERO # 019-0556) from September 20, 2019 to November 4, 2019. The ***Better for People, Smarter for Business Act, 2019*** (Bill 132) was passed by the Ontario Legislature and received Royal Assent on December 10, 2019. Schedule 15 (previously schedule 16) of the final ***Better for People, Smarter for Business Act, 2019*** amended the *Aggregate Resources Act*.

Subsequently changes are now proposed to the subsidiary regulations and standards related to the Act. The proposed amendments to Ontario Regulation 244/97 and the Aggregate Resources of Ontario Provincial Standards under the Aggregate Resources Act were posted on February 12, 2020 in the Environmental Registry of Ontario (as [ERO # 019-1303](#)) for public input with an original deadline of March 31, 2020. Due to the pandemic, the public input period has been extended to May 15, 2020.

The Province has also emphasized that “aggregate resources play a vital role in Ontario's communities and economy”, confirming that in 2017, “Ontario's aggregate industry generated over \$1.6 billion in production revenue and supported more than 29,000 jobs in aggregate-related sectors to our communities”.

Analysis:

The document which proposes the changes the regulations, “Proposals to amend to Ontario Regulation 244/97 and the Aggregate Resources of Ontario Provincial Standards under the Aggregate Resources Act February 2020” is laid out in 5 sections as follows:

1. Proposed Changes for Applications to Establish a New Site
2. Prescribed Rules for Minor Excavations
3. Proposed Changes to How New and Existing Sites are Managed and Operated
4. When Changes are Proposed to Come into Effect
5. Regulatory Impact Assessment

The first 3 sections contain the “rule” changes whereas the last 2 identify when the proposed changes would come into effect and the anticipated impacts.

The main objectives of the changes to the ARA and the proposed changes to the regulations being considered by the Province are summarized below along with our municipal response:

1. Protection of Water Resources:

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.

Municipal Review:

The Municipality of Middlesex Centre supports changes to the ARA that will ensure the protection of water resources. Majority of aggregate operations are in the rural community that relies on wells for their drinking water. Protecting ground water from contamination is essential to the integrity of well water. This is addressed in

Section 1.1.1. *Water Reports*, Section 3.3.1 *Site Plan Amendment Process* and Section 3.3.3 *Amendment to Expand an Existing Site Below the Water Table*.

The updated regulation includes some updated requirements for hydrogeological “water” reports as well as the method of determining the elevation of the water table.

2. Managing depth of extraction of pits and quarries:

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.

Municipal Review:

The Municipality supports proposed policy change to manage the depth of extraction of pits and quarries under the ARA. However, the Municipality recommends that information about the depth of extraction of pits and quarries should be available to the municipality during its review of the application. The proposed changes to the regulation do not identify the implementation of this change

3. Access to Aggregates in Municipal Road Allowance:

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.

Municipal Review:

The Municipality supports this change to improve access to aggregate extraction within municipal road allowances adjacent to an existing operation. Since this requires the support of the municipality and documentation to that affect to accompany the amendment applications, there are sufficient controls in place. This is incorporated into the regulation change under section 3.3.2 *Amendment to Expand into a Road Allowance*.

4. Self-filing of routine Site Plan Amendments:

The ministry is proposing to allow existing operators to make changes to site plans for certain small and routine amendments without the need for ministry review and approval (e.g. self-filing). In order to be eligible for self-filing, the operator will need to comply with all requirements set out in regulation.

Municipal Review:

The Municipality is in support of this change as it will reduce the time required to proceed with these minor changes. The regulation provides examples of

amendments eligible for self-filing and although not exhaustive, this provides good context for the level of amendments which would be considered eligible. There may be some concern with holders of a license self-filing amendments which should not be completed in this manner but the since compliance inspections will still be completed any items not meeting the regulations can be addressed and license holder(s) would be subject to enforcement actions. The Ministry will also have the ability to audit self-filed amendments for compliance. We feel this is a benefit to the municipality as a license holder and a benefit to other private operators to reduce the time frame for minor but necessary amendments. This item is discussed in Section 3.3.4 *Self-Filing of Site Plan Amendments of the attached report*.

5. Allowing low risk operations without a permit:

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.

Municipal Review:

This item has been developed into Section 2.1 “Excavation from Private Land or Land Owned by a Farm Business” of the regulation document. The Municipality does not support the proposal to allow these minor excavations on private lands without the issuance of a licence. While there are a number of conditions identified to provide control we are concerned this might open our agricultural areas to routine small aggregate extraction operations without the fulsome review that would typically be undertaken in support of an ARA license (e.g. land use planning policy compliance, road entrance requirements, setbacks from natural heritage, etc. are all matters that likely should be considered).

It is clear that these items are to be reviewed and taken into consideration by the landowner but we feel it will be difficult to monitor these sites for compliance. Since majority of all extraction operations occur in the rural areas the requirements for permit would ensure that the ministries, agencies and municipalities review and propose measures to safeguard the community against possible effects of extraction activities, including contamination of ground water. It is recommended that all aggregate operations should obtain permits to extract aggregate whether the operations are low risk or not and regardless of the size of the extraction.

Currently the wording proposes a maximum volume of aggregate and maximum area of disturbance that is allowed per excavation over a 3-year period. If this remains in the regulation, we recommend that this be further clarified to restrict the total volume of aggregate which can be extracted and the total area of disturbance for an individual property as the current wording appears to imply that a property owner could create a new excavation every year so long as they rehabilitate the prior excavation first.

6. Study and Information Requirements

Changes are proposed to the technical report requirements for applicants under the *Aggregate Resources Act*, which will help limit potential impact of aggregate sites. Some of the key updates are:

- The ministry is proposing to better clarify how the water table is determined, who is qualified to prepare a water report and enhance the information required as part the report.
- The ministry is proposing to update the cultural heritage report requirements to ensure that the scope and content is consistent with the Province's cultural heritage policy framework.
- The ministry is proposing to update the requirements in the natural environment report to align with the current natural heritage policies in the Provincial Policy Statement (PPS).

Municipal Review:

The Municipality is in support of these changes as outlined in "*Proposals to Amend Ontario Regulation 244/97 and the Aggregate Resources of Ontario Provincial Standards under the Aggregate Resources Act*"

7. Site Plan and License/Permit Conditions

There are proposed changes to the regulations to improve the flexibility of items identified in site plans (i.e. general area of stock piles instead of specific), methods to modernize the site plan application requirements, and the ministry is proposing to update the list of professionals that are considered to be qualified to prepare a site plan for Class A licences to include professional geoscientists and professional planners.

Municipal Review:

The Municipality is in support of these changes.

8. Operating Requirements for All Sites (New and Existing)

Some minor operational changes/clarifications are proposed for all sites and the implementation of dust controls for existing sites in addition to new sites.

Municipal Review:

The Municipality is in support of these changes.

9. When Changes are Proposed to Come into Effect

Some changes are proposed to come into effect immediately upon approval of the updates, while others would come into effect later, to allow for some lead-time for operators to come into compliance with the new requirements. Some sections will

come into effect upon approval, some after 6 months and the remainder after 1.5 years.

Municipal Review:

No comment.

Financial Implications:

N/A

Strategic Plan:

This matter aligns with following strategic priorities:

- 1c. Planning & Positioning: Realizing development potential.
- 5e. Operational Excellence: Forging partnerships with other levels of government.
- 5f. Operational Excellence: Adapting to changing demands and expectations.

Attachments:

Attachment 1 – Email from Ministry of Natural Resources and Forestry dated February 13, 2020