

<b>To:</b>	Warden Hicks and Members of Grey County Council
<b>Committee Date:</b>	October 24, 2019
<b>Subject / Report No:</b>	PDR-CW-43-19
<b>Title:</b>	Proposed Changes to the Aggregate Resources Act
<b>Prepared by:</b>	County Planning Staff
<b>Reviewed by:</b>	Kim Wingrove
<b>Lower Tier(s) Affected:</b>	All municipalities
<b>Status:</b>	Recommendation adopted by Committee of the Whole as presented October 24, 2019 per Resolution CW206-19; Endorsed by County Council November 14, 2019 per Resolution CC91-19;

## Recommendation

1. That Report PDR-CW-43-19 regarding an overview of the proposed changes to the Aggregate Resources Act be received; and
2. That Report PDR-CW-43-19 be forwarded to the Province of Ontario and confirmed as the County of Grey's comments on the proposed regulation changes posted on the Environmental Registry through posting #019-0556; and
3. That the Report be shared with member municipalities having jurisdiction within Grey County; and
4. That staff be authorized to proceed with submitting these comments prior to County Council approval as per Section 25.6(b) of Procedural By-law 5003-18.

## Executive Summary

The Ministry of Natural Resources and Forestry (MNRF) has released a summary of proposed changes to the Aggregate Resources Act (ARA). Comments are being requested by November 4, 2019. County staff have reviewed the proposed changes and have provided comments which are included in this Report. Further clarification is required for some of the proposed changes in order to better understand what is being proposed. The province has committed to further consultation on more specific details

related to the regulatory proposals, including any proposed changes to the aggregate fees. It is recommended that the Staff Report be sent to the MNRF as the County's initial comments on the proposed changes to the ARA.

## Background and Discussion

The Ministry of Natural Resources and Forestry (MNRF) is responsible for managing Ontario's aggregate resources which are regulated under the Aggregate Resources Act (ARA). The Province notes that Ontario requires approximately 160 million tonnes of aggregate each year. In March of this year, MNRF hosted an Aggregates Summit where certain industries, municipal and indigenous leaders were invited to share their ideas on how to improve the aggregate industry. An online survey was also released in May of this year. The Province notes that the following comments were heard as part of that consultation:

- 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 framework.

As a result of this input, MNRF is proposing changes to the Aggregate Resources Act which the Province notes will 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.

The Province has released a summary of the proposed changes to the Aggregate Resources Act and are asking for comments by November 4, 2019. It would be beneficial to see the actual proposed changes to the Act in order to better understand the changes being proposed. It is recommended that the Province provide a 'redlined' version of the Aggregate Resources Act showing the actual proposed changes to the legislation and providing municipalities and other stakeholders additional time to review the draft legislation. The Province has noted that they 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. The County is supportive of further opportunities for consultation on these changes.

The following is a summary of the proposed changes to the Aggregate Resources Act as well as comments from County staff on the proposed changes:

1. 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.

**Comment:** There are some existing pit and quarry operations that have proposed to go below the water table in the past. These often raise concerns about potential impacts to the water and often neighbouring property owners are concerned about having pits and quarries operate below the water table. Grey County appreciates the province recognizing the public interest in extraction below the water table and supports a more robust application process for existing operators wanting to go below the water table.

2. 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.

**Comment:** Municipal efforts to regulate depth of extraction or “vertical zoning” have arisen due to a lack of engagement opportunities for license amendments. This change makes sense together with the changes noted in (1) above.

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

**Comment:** There is relatively little Crown land in Grey County outside of the Niagara Escarpment Plan (NEP) area. If zoning does not apply, Plan amendments would also not be required to enable a zoning change. The NEP does require aggregate operations to conform to Official Plans, and so Official Plan Amendment(s) may be required if extraction was proposed on crown land within the NEP. It would be of concern if the Crown-owned lands were leased to a private operator who might be exempt from the standard approval process. It is recommended that this matter be clarified.

4. 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.

**Comment:** Haul routes can generate neighbourhood concerns regarding offsite impacts of extraction, in terms of noise/dust/vibration, safety, and impacts to road infrastructure. Sorting out agreements can significantly extend the review process. Voluntary agreements may help to address concerns with operations, but if entered into need some mechanism to ensure that they are followed. The use of haul route agreements is sometimes necessary in situations where considerable upgrades to the roads are necessary to make a safe haul route. If haul route agreements are removed as a formal tool for addressing impacts of operations, then tonnage fees for Municipalities will need to increase.

Grey County has suggested in the past that the tonnage fees should increase to \$0.20 per tonne for upper-tier municipalities and that tonnage fees to local municipalities should increase as well in order to negate the need for municipalities to enter into haul road agreements.

Clarification is required around circumstances when a municipality requests an agreement and the proponent refuses or cannot reach an agreement (i.e. if LPAT can't pass an order conditional on an agreement will the matter be refused or could it be approved with no agreement?). It appears that LPAT would need to make a decision without the requirement for a haul road agreement and if this is the case, County staff recommends that haul route agreements should still be required if a municipality requests one and if made voluntary, the aggregate fees should be increased significantly (see comments under Item#13 below).

It would also be helpful to establish criteria for haul route agreements (i.e. are they only with the host municipality (lower and upper tiers), or can other municipalities many kilometres away along the primary haul route also request an agreement? Enforcement rules on haul road agreements would also be beneficial. Clarification should also be provided to indicate that haul road agreements can apply to haul routes/entrances only and should not apply to other operational matters on site (e.g. hours of operation).

5. 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.

**Comment:** Recolour Grey Official Plan policies currently recognize opportunities to extract within road allowances and even beneath roads subject to the Aggregate Resources Act. Reducing barriers to extraction in these circumstances could help to make materials available and increase flexibility and options in developing a comprehensive approach to

rehabilitation where there are clusters of aggregate operations. This flexibility should be integrated into extraction and progressive rehabilitation plans to maintain natural corridor functions that unopened road allowances and extraction setbacks often provide between extraction operations. The simpler application process should only apply where the proposal is to encroach into a road allowance that won't impact the operation of the existing road if supported by a municipality. If the proposal is to extract within the municipal road allowance which causes the need to remove and/or relocate the road either on a permanent or temporary basis, then a more robust application process should be required including consultation with adjacent municipalities, members of the public, public agencies, etc. The new Grey County Official Plan does include some policies that considers these principles – Sections 5.6.5(13) and (14) of the Grey County OP. Grey County requests further clarification on the what is being considered in terms of a 'simpler application process'.

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

**Comment:** Streamlining routine amendments is appropriate. We note that many operations are increasingly complex, and the definition of "routine" is important to understand. A summary of some regulatory (Ontario Regulation 244/97) changes also being considered follows – further consultation will occur on regulations. More clarification regarding these proposed changes is recommended.

7. Enhanced reporting on rehabilitation by requiring more context and detail on where, when and how rehabilitation is or has been undertaken.

**Comment:** Grey County supports provincial efforts to encourage rehabilitation of areas where extraction has been completed that are not needed for ongoing operations. It is recommended that wording be included around maximum disturbed area provisions to ensure that progressive rehabilitation is encouraged, where feasible.

8. 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.

**Comment:** These amendments appear to be appropriate; we would suggest that the regulation include 'and other operational requirements'. For matters that were either part of an LPAT Order or through minutes of settlement that were approved by the LPAT, these matters should be required to remain in place without the ability for the

operator to self-file changes to existing site plans. If there are conditions set in a site plan that were issued by the LPAT, these should be clearly identified on the site plan as matters that need to remain in effect and cannot be altered through this proposed self-filing process.

9. 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.

**Comment:** A personal use exemption is appropriate. Grey County encourages the province to take care in crafting the details of the regulation and provide adequate resources to monitor it for abuse. Conservation Authorities and their regulated areas should still be respected for 'low-risk activities'. For example, if the small amount of aggregate is in a regulated area, a permit from the conservation authority may be required prior to extraction.

10. Clarifying requirements for site plan amendment applications.

**Comment:** Grey County encourages clarity in requirements.

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

**Comment:** Recent aggregate extraction proposals in Grey County have included complex annual monitoring requirements to avoid impacts to groundwater, species at risk, and other provincial interests. Grey County encourages the province to ensure that streamlining annual reporting requirements maintains or enhances their effectiveness in tracking compliance with operations requirements.

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

**Comment:** Grey County recognizes that review under the Aggregate Resources Act often generates changes to proposed aggregate developments and encourages proponents to proceed through the Aggregate Resources Act notification and consultation process, including First Nations engagement, and to resolve issues under that Act to the extent possible before filing formal applications for local planning approvals. Consultation with municipalities and consideration for Official Plan requirements should be considered in the amended Act with a strong emphasis on pre-submission consultation being required with municipalities/counties . Further clarification is also required on the

proposed notification and consultation requirements being considered for new sites.

13. While no changes to aggregate fees are being proposed at this time, the Ministry is also interested in hearing feedback on fees.

**Comment:** Review of Aggregate fees is strongly recommended if Municipalities are no longer able to compel proponents to address impacts to infrastructure through haul route agreements. Grey County has been advocating for quite some time to increase the aggregate fees in order to avoid cumbersome haul route agreements. Here is a link to a previous staff report on this matter - [Staff Report - TR-CW-14-17](#). Grey County has also made delegations to previous Minister's on this topic matter asking the Province to increase the aggregate fees.

Another fair option would be to allocate the aggregate fees according to the roads that they are using. For example, if the primary haul route for an aggregate operation is using a local municipal road to get to a Provincial Highway then the total aggregate fees collected for that operation should be allocated to the local municipality and the Province. Likewise, if an aggregate operation is using just County roads and Provincial Highways as their primary haul route, then the aggregate fees should be allocated to the County and the Province. This would need to be added to the reporting requirements provided by Operators to The Ontario Aggregate Resources Corporation (TOARC) and then TOARC can calculate and allocate the aggregate fees based on the actual roads used as the primary haul route.

## Legal and Legislated Requirements

At this stage it is difficult to fully comment on the summary of the proposed changes until we have seen the draft legislation changes. The Province has committed to further consulting on the proposed changes which the County supports.

## Financial and Resource Implications

The proposed change that could have a financial impact to the County and municipalities is the change to make proposal haul route agreements voluntary without increasing the aggregate fees. If haul route agreements are voluntary, and LPAT will be required to make decisions without considering the need for a haul route agreement, then the County requests that the aggregate fee for upper-tier municipalities increase from 3 cents per tonne to 20 cents per tonne. Another option to consider is to allocate the aggregate fees for each operation based on the actual usage of roads as the

primary haul route. By increasing the levy, or allocating the fees based on actual usage, it would negate the need to have haul route agreements related to aggregate fee increases which benefits both aggregate operators and municipalities.

## Relevant Consultation

- Internal (Planning Staff, Transportation Services Staff, Legal Staff, Finance Staff)
- External (Bruce County staff, Local Municipal Staff – copy of the report to be provided to local municipalities)

## Appendices and Attachments

[Proposed Changes to the Aggregate Resources Act – ERO Posting 019-0556](#)

[TR-CW-14-17 Proposed Changes to the Aggregate Fees and Royalties](#)