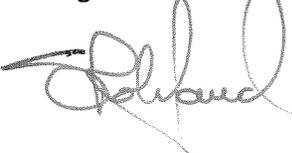


Hamilton

CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Planning Division

TO:	Mayor and Members Committee of the Whole
COMMITTEE DATE:	April 15, 2020
SUBJECT/REPORT NO:	Proposed Amendments to the Ontario Regulation 244/97 (Aggregate Resources) – Request for Comments (PED19207(a))
WARD(S) AFFECTED:	Wards 9, 11 to 15
PREPARED BY:	Joanne Hickey Evans (905) 546-2424 Ext.1282
SUBMITTED BY:	Steve Robichaud Director, Planning and Chief Planner Planning and Economic Development Department
SIGNATURE:	

RECOMMENDATIONS

- (a) That the City of Hamilton supports the regulatory changes to Ontario Regulation 244/97 (Aggregate Resources) that are intended to:
 - (i) improve the notification and consultation process for licence applications;
 - (ii) modernize the site plan process; and,
 - (iii) require the submission of additional studies be completed to address provincial land use planning policy for all licence applications.
- (b) That the City requests the following additional changes to Ontario Regulation 244/97 to:
 - (i) require aggregate operators to use the latest technologies for data collection for air quality, ground and surface water monitoring to ensure more accurate and current information is available to the municipality and the public;

OUR Vision: To be the best place to raise a child and age successfully.

OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

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- (ii) require the notification distance for licence application be the same for both landowners and residents and to add a new requirement that notification distance would be a minimum of 500 m or within the area of influence, whichever is greater;
 - (iii) require aggregate operators to make the annual compliance readily available by posting it on the Ministry of Natural Resources (MNR) or the aggregate operator's website; and,
 - (iv) amend the site plan requirements:
 - 1. to include a review of the past, current and future impacts on water resources for expansions below the water table; and,
 - 2. to require that rehabilitation plans for a quarry/pit to be updated every 10 years to ensure the rehabilitation measures are current and appropriate since there is no defined time frame as to when the rehabilitation plan has to be implemented. The updated plans must be reviewed by the municipality and the appropriate Conservation Authority.
- (c) That Report PED19207(a) be forwarded to the Province. This Report is considered the City of Hamilton's formal comments on ERO Posting 019-1303.

EXECUTIVE SUMMARY

On February 20, 2020, the Province posted proposed changes to Ontario Regulation 244/97 and the Aggregate Resources of Ontario Provincial Standards under the *Aggregate Resources Act*. ERO 019-1303. Comments are due by March 30, 2020 (47 day posting). It is proposed to submit this report after the March 24, 2020 Planning Committee meeting with a note that this matter will be considered by Council on April 1, 2020 to ensure that the City's comments are received by March 30, 2020 ERO deadline.

This ERO posting is a follow up to the October 2019 posting that proposed changes to the Aggregate Resources Act (ARA).

The purpose of the changes, among others, is:

- to modernize and streamline the site plan process for licence applications;
- to increase public notification for licence applications;
- to establish consistent processes between crown and private land; and,

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- to require the same planning/hydrological studies that are required as part of an Official Plan Amendment and/or rezoning for a new quarry/pit.

The majority of the changes that affect the municipality and its residents can be supported. However, further changes to the regulations are appropriate:

- to ensure consistent licence application notification for landowners and residents and establish that 500m notification is a minimum but notification should be within the area of influence, whichever is greater;
- to ensure data collection for air quality and surface and ground water monitoring uses the latest technology and rehabilitation plans are updated at least every 10 years in consultation with the municipality and the appropriate Conservation Authority;
- to require a study that identifies the cumulative past, current and future impacts on water resources for expansions below the water table; and,
- to require operators to make the annual compliance report available on-line instead of by request.

Alternatives for Consideration – See Page 7

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: N/A

Staffing: N/A

Legal: N/A

HISTORICAL BACKGROUND

1.0 City Comments on the *Aggregate Resources Act (ARA)*

In October 2019, the City provided formal comments (PED19207) to the Ministry of Natural Resources and Forestry (MNR) on proposed amendments to the *Aggregate Resources Act (ARA)*.

The City supported several of the amendments to the ARA and associated regulations that were intended to:

- (i) strengthen the protection of water resources for extraction within the water table as part of a more robust application process for existing operations;

- (ii) increase public engagement for applications that may impact water resources;
- (iii) enhance reporting on rehabilitation; and,
- (iv) review the notification and consultation requirements for new applications.

However, the City expressed concerns about: the vagueness of specific changes to the regulations and impacts on the City and its residents; the time frame in which to comment on these changes and lack of specific time frame for public input on the notification and consultation requirements for new applications.

In the staff report PED19207, staff identified some additional concerns about haul routes. The ERO posting indicated that revisions will clarify how haul routes are considered under the ARA so the Local Planning Appeal Tribunal (LPAT) and the Minister, when making a decision on a licence, cannot impose conditions requiring agreements between municipalities and aggregate producers regarding aggregate haulage. Agreements can still be entered into between municipalities and aggregate producers on a voluntary basis.

2.0 Better for People, Better for Business Act (Schedule 15 - Bill 132)

In December 2019, Bill 132 received Royal Assent. Schedule 15 included amendments to the ARA. Many of the changes were enacted to allow for changes to the Ontario Regulation 244/97. However, one specific change was an amendment to Subsection 12(1.1) that states “the Minister or LPAT shall not have regard to on-going maintenance and repairs to address road degradation that may result from proposed truck traffic to and from the site.” However, this amendment clarifies “that initial road upgrades or improvements can continue to be considered when making a decision about a new site.” (Source: <https://ero.ontario.ca/notice/019-0556>).

3.0 Comments on O. Regulation 244/97 under the Aggregate Resources Act

On February 20, 2020, the Province posted proposed changes to Ontario Regulation 244/97 and the Aggregate Resources of Ontario Provincial Standards under the *Aggregate Resources Act*. ERO 019-1303. Comments are due by March 30, 2020 (47 day posting).

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

N/A

RELEVANT CONSULTATION

- Hamilton Water, Public Works Department

ANALYSIS AND RATIONALE FOR RECOMMENDATION(S)

As noted in the background section of this Report, staff commented on changes to the ARA Act and associated regulations in October 2019. At that time, specific changes to the regulations were not identified. This ERO posting contains the detailed changes to the regulations.

1.0 General Comments

Many of the changes proposed in the Regulation affect licence requirements (e.g. site plan submissions, operational requirements, details of site operation, crown versus private land requirements, etc.) for aggregate operators. The majority of the changes that affect the municipality and its residents can be supported. They include:

1.1 New requirements

There are several new requirements to ensure that studies required by the Greenbelt Plan and the Provincial Policy Statement (e.g. addressing well head protection, addressing cultural heritage landscapes and built heritage, identifying maximum disturbed area on site plans for pits/quarries that are subject to the Greenbelt Plan) are undertaken as part of a licence application. These studies are similar to studies required for an Official Plan Amendment and/or rezoning for a new quarry/pit.

Comment: These requirements are necessary to ensure environmental and land use planning policies of the provincial government are addressed similar to other processes.

1.2 Modernizing Site Plan Process

The site plan process is intended to be more flexible and modernized. Electronic submissions for the site plans will include a Pdf format, and provision of digital coordinates for the boundaries of the site, etc.

Recommendation: The electronic submissions for site plans should be GIS based rather than pdfs to allow for greater precision and to view the boundaries of the licenced area/site more accurately.

In addition, digital sensors should be used for air quality, ground and surface water monitoring to ensure data is accurate and up-to-date.

1.3 Notification/Consultation Process for Licences

There are several proposed improvements to the notification and consultation process for licences. Specifically,

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- Requiring aggregate operator to notify residents within 500 m of site of a licence application in addition to the existing requirement to notify landowners within 120 m of the site;
- Increasing the notification/consultation period from 45 to 60 days to allow for responses to a licence application. Aggregate operators would be required to respond to any concerns identified. If the concerns are not addressed, the commenter would have 20 days to file a formal objection and then the operators have a 2 year time frame to resolve all objections; and,
- Allowing aggregate operators to request an extension to the 2 year time frame, if warranted.

Recommendation: For consistency and fairness, the notification distance for the licence application should be the same for both land owners and residents. In some cases, the impacts from the quarry/pit may be greater than 500m. A further notification requirement should be included that states the minimum notification distance is 500 m or within area of influence, whichever is greater. An area of influence is determined through hydrological studies.

1.4 Amendment to a Site Plan

1.4.1 Expansion Below the Water Table

Aggregate operators are permitted to make an application to MNRF to expand an existing site below the water table. They are required to submit various reports to agencies and notify the public of the proposed amendment. The process for commenting on these amendments is similar to those requirements noted above. There is no limit to the number of times an operator can apply for such an amendment.

Recommendation: A new requirement should be added to the Hydrogeological (Water) Report to address the existing and future cumulative impacts on water resources not just the immediate expansion. This requirement is necessary, especially where older quarries have limited current data to address water resource impacts.

1.4.2 Rehabilitation Plans

As part to the ARA process, operators are required to submit rehabilitation plans, many of which span a significant time period. There is no requirement for a rehabilitation to have a schedule for completion nor do changes to the plans have to be circulated to the municipality. As a result, rehabilitation plan could be approved and not implemented for 30 years. During this time frame, the environmental and community impacts and best practices have changed. These Plans have become more comprehensive over time.

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There is no requirement for these plans to be updated over the rehabilitation time frame. Each year the operators are required to identify what rehabilitation has taken place.

Recommendation: Since there is no schedule for the completion of the Rehabilitation Plans, there is often significant time that has elapsed between approval and implementation.

To ensure these plans remain current, the regulation should be amended to require aggregate operators update the rehabilitation plans every 10 years and the plans must be reviewed by the municipality and the appropriate Conservation Authority, if necessary.

1.5 Annual Compliance Reporting

Every year aggregate operators are required to file an annual compliance report which is available to the public only on request.

One of the proposed recommendations is the report must include more details progressive and final rehabilitation activities; including, detailing the phase of rehabilitation that is being worked on, rehabilitation activities that are undertaken during that year.

Recommendation: In the interest of transparency, these compliance reports should be posted and easy to find on the MNRF or aggregate operators' website.

ALTERNATIVES FOR CONSIDERATION

The City could choose not to comment on ERO Posting #19-1303.

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Community Engagement and Participation

Hamilton has an open, transparent and accessible approach to City government that engages with and empowers all citizens to be involved in their community.

Economic Prosperity and Growth

Hamilton has a prosperous and diverse local economy where people have opportunities to grow and develop.

Clean and Green

Hamilton is environmentally sustainable with a healthy balance of natural and urban spaces.

APPENDICES AND SCHEDULES ATTACHED

Appendix "A" – Ontario Regulation 244/97 and the Aggregate Resources of Ontario
Provincial Standards under the *Aggregate Resources Act*. ERO 019-
1303

Proposed amendments to Ontario Regulation 244/97 and the Aggregate Resources of Ontario Provincial Standards under the Aggregate Resources Act

ERO number

019-1303

Notice type

Regulation

Act

Aggregate Resources Act, R.S.O. 1990

Posted by

Ministry of Natural Resources and Forestry

Notice stage**Proposal****Proposal posted**

February 12, 2020

Comment period

February 12, 2020 - March 30, 2020 (47 days) Open

This consultation closes at 11:59 p.m. on:

March 30, 2020

Proposal summary

Changes are being proposed to Ontario Regulation 244/97 and the Aggregate Resources of Ontario Provincial Standards under the *Aggregate Resources Act*.

Proposal details

Aggregate Resources Act

Ontario's aggregate resources are primarily regulated under the Aggregate Resources Act (ARA). These non-renewable aggregate resources include stone, sand, and gravel.

Ontario requires a continued supply of aggregate resources. Approximately 160 million tonnes of aggregate are needed in Ontario each year. Yet, it is equally important to manage and minimize the impact extraction operations may have on the environment and on the communities that surround them. These operations are located across our diverse province, and the regulatory framework that manages them must be fair and predictable and flexible enough to be effective. Most of the aggregate produced in Ontario comes from private land in the southern region of the province where most demand exists.

Background

The Ministry of Natural Resources and Forestry has gathered perspectives from industry, municipalities, members of the public, Indigenous communities and other stakeholders for making changes to the way in which extraction of aggregate resources is regulated in Ontario.

Amendments to the *Aggregate Resources Act* were made on December 10, 2019, as part of Bill 132, the *Better for People, Smarter for Business Act*.

To build on those changes, we are consulting on proposed regulatory changes and are looking for your feedback.

The details of the proposed changes can be found in the supporting material document titled: **Proposals to amend Ontario Regulation 244/97 and the Aggregate Resources of Ontario Provincial Standards under the *Aggregate Resources Act***

Proposed regulatory changes

For new pits and quarries:

- enhancing the information required to be included in summary statements and technical reports at the time of application
- improving flexibility in how some standard site plan requirements can be implemented and modernizing how site plans are created
- creating better consistency of site plan requirements between private and Crown land and better alignment with other policy frameworks
- updating the list of qualified professionals who can prepare Class A site plans
- updating the required conditions that must be attached to a newly issued licence or permit
- adjusting notification and consultation timeframes for new pit and quarry applications
- changing and clarifying some aspects of the required notification process for new applications
- updating the objection process to clarify the process
- updating which agencies are to be circulated new pit and quarry applications for comment

For existing pits and quarries:

- making some requirements related to dust and blasting apply to all existing and new pits and quarries (requirements which were previously only applied to new applications)
- updating and enhancing some operating requirements that apply to all pits and quarries, including new requirements related to dust management and storage of recycled aggregate materials
- providing consistency on compliance reporting requirements, while reducing burdens for inactive sites

- enhancing reporting on rehabilitation by requiring more context and detail on where, when and how rehabilitation is or has been undertaken
- clarifying application requirements for site plan amendments
- outlining requirements for amendment applications to expand an existing site into an adjacent road allowance
- outlining requirements for amendment applications to expand an existing site into the water table
- setting out eligibility criteria and requirements to allow operators to self-file changes to existing site plans for some routine activities without requiring approval from the ministry (subject to conditions set out in regulation)

Allowing minor extraction for personal or farm use:

- outlining eligibility and operating requirements in order for some excavation activities to be exempted from needing a licence (i.e., if rules set in regulation are followed). This would be for personal use (max. of 300 cubic meters) or farm use (max. 1,000 cubic meters)

While no changes to aggregates fees are being proposed at this time, we are committed to reviewing and consulting further on any proposed changes to aggregate fees and royalties.

Regulatory impact analysis

The anticipated environmental consequences of the regulatory proposal are positive as the proposed changes reflect necessary updates to both application requirements for new sites (e.g. technical reports) and existing operational standards and prescribed conditions (e.g. dust mitigation and blast monitoring) that protect the environment and minimize community impacts.

The anticipated social consequences of the proposal are positive. Proposals include modernizing and clarifying timelines, processes and requirements for notification and consultation for both private and Crown land applications. This will ensure proper processes are followed for community engagement and consultation on proposals.

The anticipated economic consequences of the proposal are neutral to positive. While many of the proposed changes are intended to reduce burden, streamline approvals and add flexibility for new applicants and existing operators, some of the proposals may add additional requirements and costs depending upon the unique applicant or operator circumstances and the combinations of applicability of the proposals to a particular application type and existing operation.

For more information on the estimated potential cost savings or increases, please refer to Section 5 of the document.

These are estimated costs/savings. Comments are welcome from those incurring the costs to better help the Ministry understand the real costs or savings associated with these proposals.