



HEALTHY COMMUNITIES • SUSTAINABLE COMMUNITIES

December 9, 2015

Ms. Katie Rosa
Aggregate Resources Officer
Ministry of Natural Resources and Forestry
Policy Division
Natural Resources Conservation Policy Branch
Resource Development Section
300 Water Street
Peterborough, ON K9J 8M5

A Blueprint for Change - A Proposal to Modernize and Strengthen the Aggregate Resources Act Policy Framework - EBR Registry Number 012-5444

Dear Ms. Rosa,

On behalf of the Ontario Professional Planners Institute (OPPI), I am submitting the Institute's response with regards to the consultations on a Blueprint for Change – A Proposal to Modernize and Strengthen the Aggregate Resources Act Policy Framework - EBR Reference Number 012-5444.

OPPI is the recognized voice of the Province's planning profession. Our more than 4,000 members work in government, private practice, universities, and not-for-profit agencies in the fields of urban and rural development, community design, environmental planning, transportation, health, social services, heritage conservation, housing, and economic development. Members meet quality practice requirements and are accountable to OPPI and the public to practice ethically and to abide by a Professional Code of Practice. Only Full Members are authorized by the Ontario Professional Planners Institute Act, 1994, to use the title "Registered Professional Planner" (or "RPP").

OPPI members have reviewed the "A Blueprint for Change" from the perspective of Registered Professional Planners who provide their professional services and expert opinions to the public and private sectors in Ontario, including aggregate operators, municipalities and community groups. In this review, we also reflected upon the two submissions, dated May 14, 2012 and June 6, 2012 that OPPI made to the Standing Committee on General Government. In addition, representatives from OPPI participated in the two briefing sessions on November 4, 2015 and December 3, 2015, conducted by the Ministry of Natural Resources and Forestry (MNRF), prior to completing this submission.

Our review of the Blueprint is framed according to three broad issues:

1. Harmonize the application of the Aggregate Resources Act (ARA) and Planning Act/Niagara Escarpment Planning and Development Act procedures and adapt the ARA to other legislation and policies such as the Greenbelt Plan, Clean Water Act, etc.;
2. Clarify and provide for effective communication in the ARA notification and consultation procedures; and
3. Improve, modify and monitor ARA standards and procedures.

OPPI supports the overall intent to streamline the policies as a significant step forward in improving the management of aggregate resources in Ontario. We appreciate that details will be forthcoming from the Ministry.

OPPI acknowledges that Ontario requires a continued supply of aggregate resources. It is equally important to recognize and manage the impacts those extraction operations may have on natural features and functions and communities. We agree that what is proposed in the Blueprint must be fair, transparent, predictable and flexible.

This submission categorizes the various proposals in the Blueprint according to three issues that frame our discussion. We recognize that there are four key goals in this proposed Blueprint, and these are referenced in the following responses.

1. Harmonization of Complex Legislative Procedures

In recent years, the number and complexity of statutes, regulations, provincial plans and policies have greatly expanded. Professional Planners are routinely required to apply a variety of skills, knowledge and procedures in planning practice. This is particularly the case when considering applications for aggregate resource operations. The *Aggregate Resources Act* including the related Regulations, Standards and Guidelines are intended to focus on day-to-day aggregate operations, whereas Planners need to consider the zoning and consequential impacts of aggregate operations in the context of the *Planning Act* and the *Niagara Escarpment Planning and Development Act*. We are required to frame our opinions and recommendations according to the provisions of the Provincial Policy Statement 2014, Greenbelt Plan, Oak Ridges Moraine Conservation Plan, Growth Plan for the Greater Golden Horseshoe, Niagara Escarpment Plan and Lake Simcoe Protection Plan, where applicable.

Professional Planners and our professional colleagues are also adhering to the guidelines, standards and requirements under the *Environmental Protection Act* (for noise, dust and vibration consideration), the *Ontario Water Resources Act* (for water management consideration), and the *Clean Water Act* (for consideration of source water protection in vulnerable areas). Each of these statutes has its own interpretation and implementation guidelines that are to be taken into account.

Foremost, we are guided by upper-tier, single-tier, and local municipal Official Plans when considering the land use implications of aggregate operations within communities.

We view the Blueprint not only as a focus on the provincial administrative procedures that need to be changed but also a proposal that changes the manner in which MNRF intends to review and consider aggregate applications. In this respect, the proposals are valid, yet Registered Professional Planners understand that the provincial administrative procedures are one side of a complex and delicate balance. The other side of this balance is stated in the Blueprint on page 1, paragraph 3, as follows:

Yet, it is equally important to recognize and manage the impact extraction operations can have on the environment and on the communities that surround them.

In this submission, we contribute both sides of the balance and in doing so, we encourage the Ministry to consider these issues and gaps when drafting the proposed statute, regulations and standards. In this first Issue, we respond according to what we see as the relevant proposals and Goals.

Plain language summaries of proposals and technical studies (Goal 3)

OPPI agrees with this proposal. A plain language summary should contain a description of all of the aspects of the proposed operation including the applicant planner's explanation of the conformity with Official Plans and the zoning by-law requirements, and the recommendations for mitigating community and natural environment impacts with reference to other statutes, regulations, standards and guidelines.

Similarly, it is expected that the executive summaries of the technical studies need to be in plain language but the content needs to be included in the overall plain language summary.

OPPI suggests that there should be a guideline that distinguishes between the content and scope of the overall plain language summary and the executive summaries in the technical studies. We advise that the Ministry should adapt the Federal Government's guide for plain language and embedded check lists, among others.

New requirements for requests to lower extraction depth below water table (Goal 2)

OPPI agrees with the proposal to require a new licence application under the ARA if the proponent intends to change extraction from an above the groundwater table to below the groundwater table.

The application should follow the same procedures as a new application to require consideration of all applicable legislation and standards, Official Plan policies, the submission of all relevant technical studies, and consultation with affected municipalities, agencies and communities that apply to a new application.

Although the intent is to provide a rigorous assessment of the below water table extraction, the Ministry's proposal needs to provide clear guidance to municipalities that are interested in enacting zoning by-laws that regulate below water table extraction through zoning provisions.

New application for small, temporary operations on farms (Goal 1)

OPPI agrees with this proposal, subject to further consideration of the future regulations that set out the licensing standards. Our interest is to protect the integrity of prime agricultural areas and nearby communities in rural areas. Criteria should be, for example, included in the Provincial Standards that allow that when a hill is to be levelled, it is for agricultural purposes, and that the aggregate extraction could take place only down to the average grade of the surrounding agricultural land.

New requirements to extract stockpiles of Crown-owned aggregates (Goal 1)

OPPI agrees with this proposal.

New permitting for removing stockpiles of aggregate on Crown land (Goal 1)

OPPI agrees with this proposal.

New ability to waive application requirements in unique circumstances (Goal 1)

OPPI agrees with the proposal for flexibility. OPPI recommends that, as a minimum requirement, within municipal jurisdictions, the municipality should be consulted to determine whether this proposal conforms to the existing approved official plan and zoning by-law.

New ability to refuse to accept applications on Crown land (Goal 1)

OPPI agrees with this proposal subject to understanding that this approach will not be applied to applications on private lands. OPPI understands the need for the applicant to undertake pre-consultation with the Ministry and the municipalities in all cases.

Flexibility for grandfathering existing sites in newly designated areas (Goal 1)

OPPI understands that this is a unique circumstance similar to other land uses. The Ministry must establish the criteria to determine whether an existing operation is legal. This requires consultation with the municipalities who are capable of establishing that the site is legal, legal non-conforming or illegal with regard to the current zoning by-law. The proposed regulation should require that an opinion will need to be provided by a Registered Professional Planner indicating the planning status of the site.

Under these circumstances, OPPI understands that the existing legal operation does not require full assessment of impacts on the community or the natural environment.

New Permit-by-Rule approach (Goal 1)

OPPI recommends that this new approach to regulation should be more clearly stated. The fundamental test should prescribe that there will be no impact on the natural environment and communities from the proposed operation. The Ministry and the proponent must be required to consult with the municipalities. The proposed regulation should require that an opinion will need to be provided by a Registered Professional Planner indicating the status of the current in effect zoning of the site.

Extraction of aggregates from private land for personal use (Goal 1)

OPPI understands this proposal as providing some flexibility to landowners. OPPI recommends that the list of conditions should include the requirements for an ARA site plan and a rehabilitation plan.

The Ministry should also ensure that in establishing this regulatory process, there is no potential conflict with a municipality's site alteration by-law and natural heritage policies, and that the process is consistent with and in conformity to policies for development and site alteration in Provincial Plans, the Provincial Policy Statement 2014, and Official Plans.

Establish conditions on existing sites related to source water protection plans (Goal 2)

Under the *Clean Water Act*, the source water protection plan must include policies that regulate and restrict the handling of fuel and fuel storage in designated vulnerable areas. Under the Act, the Risk Management Officer is responsible for determining the impact of an activity and has authority to impose conditions, such as a Risk Management Plan on activities in vulnerable areas. The municipality has the authority to restrict certain land uses as well.

OPPI understands the proposal to establish regulations that would change existing conditions for the operation to reflect the source water protection plan policies for existing and future activities. In addition, the regulation should include the provision that the Ministry must consult with the Risk Management Officer and the municipality when considering conditions and that a Risk Management Plan may be required.

2. Notification and Consultation

In the previous submissions by OPPI, it was recommended the province should take the opportunity to harmonize consultation under the *Planning Act*, the *Aggregate Resources Act*, and through the Environmental Registry to achieve integrated transparency and accessibility. We recognize that some applicants for aggregate operations provide technical materials on their website and undertake broader consultation with communities and agencies.

The current aggregate process has rigid timelines and strict rules that drive the process by applicants. Planners functioning under the planning and related processes take the time to fully understand and assess proposals to determine likely impacts and consequences, particularly with respect to communities and the natural environment.

Planning requires direct face-to-face consultation and discussion of ideas before authorities make decisions; it is not just sending letters of concern and complaint to the Ministry and the applicant. Although municipalities are generally restricted by the legislation to focus on the zoning by-law, it is the position of OPPI that aggregate applications and all of the supporting documentation should be made available at the beginning of the aggregate resource process together with the required planning applications. OPPI recommends that an on-line provincial registry be initiated to fulfill the obligation of transparency and public accessibility to information.

OPPI recommends that the Environmental Registry should, as a priority, provide an on-line link to applicants' websites and the MNRF Registry where detailed information is available to the public.

OPPI recommends that responses through the Environmental Registry should be accepted by MNRF and applicants as a source of comments and objections.

The joint process of early notification, pre-consultation, and ongoing direct consultation on ideas between applicants, municipalities and communities will improve the understanding between participants and lessen the need for dispute resolution. In this second Issue, we respond to what we see as the relevant proposals and Goals.

Enhanced impact assessments related to natural environment, water, cultural heritage, noise, traffic and dust (Goal 2)

OPPI agrees that impact assessments should be undertaken for all applications respecting expansions to existing and to future sites. The proposed regulation and standards must establish the scope and content of all technical studies rather than leaving this to the discretion of the applicants. All of these studies should be made available at the time of the aggregate and planning applications.

It would be helpful if prospective applicants consult with agencies, municipalities and Risk Management Officers prior to all applications to establish the scope and content of risk assessments.

Traffic studies for proposals that are 100,000 tonnes and higher should include the impacts of activities on external haul routes. In particular, truck noise impacts on external haul routes need to be assessed as part of the required background reports. Furthermore, OPPI has previously cited issues of early-morning truck queuing, braking/accelerating on steep hills, traffic infractions, and using non-designated haul routes as issues that need to be addressed in the consultation and approval processes. OPPI continues to encourage the Ministry of the Environment and Climate Change to collaborate with MNRF to establish noise standards for sensitive land uses in the vicinity of external haul routes.

OPPI has indicated in its previous submissions that there is GPS technology used to monitor truck movements and to investigate complaints regarding compliance to noise and speed recommendations. We continue to recommend this approach.

New studies for applications on agricultural lands (Goal 2)

OPPI supports the approach to assessing all proposed extraction operations on prime agricultural lands and within prime agricultural areas. This is critical as the basis for establishing the protocol for continuously rehabilitating extracted sites back to the pre-extraction conditions or better.

The requirement for a pre-extraction agricultural capability "statement" for applications more than 20,000 tonnes per year on lands in agricultural use but not on prime agricultural lands or in prime agricultural areas is rather complicated. The criteria should include a test whether the land has the capability for agricultural production. If there is a Land Evaluation and Area Review (LEAR) study in the municipality, this should be used

as the primary test for capability.

Enhanced summary statement for all applications (Goal 2)

OPPI agrees with enhanced summary statements. In addition, OPPI recommends that the summary should go beyond information regarding transportation and traffic, dust, aggregate quantity and quality and rehabilitation. This summary should be comprehensive and provide a full explanation of the proposal, mitigation and monitoring and impacts on the community and the natural environment, and the range of other approvals that are required.

New requirements for applications for extraction from bed of lake or river (Goal 2)

OPPI understands that this is a rare occurrence. The terms of reference should be discussed with the relevant conservation authority, municipality and federal ministries and agencies and allow for consultation with these agencies.

New timeframes, notification areas, consultation requirements (Goal 3)

OPPI understands the need for variable timeframes. Our preference is to not extend the “length of the engagement period” at the back end but to provide sufficient time at the front end for pre-consultation with agencies, municipalities and communities and for discussion of ideas. OPPI encourages the Ministry to adopt the principle of avoiding the current standard of adversary lengthy and expensive tribunal hearings particularly for proposed operations 100,000 tonnes and over per year. Rather than establishing a 135 to 180 day period for initial review and public/agency comment, we propose that the entire consultation period be set at 240 days. This should accommodate the municipal planning processes as well as the aggregate review process.

OPPI agrees with the initial timelines for operations of under 100,000 tonnes. In our view, all timelines for operations 3.5 million tonnes and over should be determined by the terms of reference.

The notification areas for all operations are acceptable provided that the definition of “boundary” is clear. OPPI suggests that boundary should correspond with the proposed licence area. We believe that “internal haul roads” must be included within the “boundary area” and licence area.

OPPI does not support the proposal that only applications to extract 1 million tonnes and more per year will be required to provide a public website with application information and agency comments. OPPI continues to recommend that the Ministry should establish an on-line Registry that provides current information for all sites and applications including proposed site plans, applicants’ technical studies, peer reviews, monitoring information and compliance reports. The site should be easily available and provide public information for existing and proposed sites as well as information regarding complementary Planning Act applications. Municipalities should have the capability to upload information regarding current associated Planning Act applications.

New requirement for notification and consultation with Aboriginal communities (Goal 3)

OPPI supports respectful notification and consultation with Aboriginal Communities. OPPI appreciates that the provincial government has the Duty to Consult with these communities. In our opinion, the requirements should be clarified by the Provincial Government to assist applicants and municipalities.

Update communication for applications (Goal 3)

OPPI agrees with this proposal. This should apply to all applications.

Allow for peer review requirements for technical studies in the future (Goal 1)

OPPI supports provincial regulations regarding peer reviews. We believe that a standard for peer review should be the same for the province and for municipalities. Peer reviews are important components of the consultation process and should be given provincial recognition now, rather in the future.

OPPI recommends that the province together with the aggregate industry, the professions and municipalities collaborate on preparing guidelines for peer reviews to be used as a shared resource by all participants in the process.

Ministry requires additional studies, information and updated site plans for existing sites (Goal 2)

In its submission to the Standing Committee on General Government, OPPI made the following recommendation:

A requirement for licences and permits to be subject to review on a periodic basis so that operators are required to be as consistent as reasonably possible with current legislation and policy and to update operating conditions and best practices. Opportunities to encourage completion of extraction and rehabilitation over a reasonable period of time should also be explored.

OPPI does not support this proposal if this approach would establish uncertainty for operators, municipalities and communities. The Ministry will need to establish clear triggers that would precipitate a need for additional studies, information and updating existing site plans. Our initial response is that triggers may be framed around issues where the modelling assumptions used in the initial studies need correction; significant changes to provincial plans and policies arise requiring modifications to impact mitigation; and there are unforeseen community and natural environment impacts that require modifications to aggregate operations.

OPPI sees the need to recognize and entrench Adaptive Management Plans in the Regulations and the Standards in order to provide for unforeseen site plan and operational changes. Criteria for what constitute an acceptable Adaptive Management Plan should be included in the Provincial Standards. While the use of such plans should remain optional, where an applicant, by reference in its site plan, proposes to rely on an Adaptive Management Plan, then an initial version of the Adaptive Management Plan should form part of the application and be prepared in accordance with the requirements

of the Provincial Standards.

In its submission to the Standing Committee, OPPI cited the example, as follows, where long term monitoring and mitigation beyond the life of the extraction are not acceptable:

OPPI indicated that 'no approvals should occur where monitoring and mitigation requirements extend in perpetuity beyond the life of the operation'. We have since encountered instances where continued water pumping, for example, is required to prevent flooding, maintain stream base flows, and protect natural heritage features. Notwithstanding this, OPPI is still of the view that very long term or perpetual solutions are generally undesirable and should be avoided if at all possible.

3. Standards and Prescribed Conditions

In its previous submissions, OPPI recognized the overdue need to comprehensively review the Provincial Standards unrevised since 1997. The need for the review was considered because of new and revised technical approaches introduced by the aggregate industry over the last two decades, not to mention the evolution of provincial planning law and policy over the same period.

This review of standards should include consideration of resolving community and natural environment impacts beyond the boundary of the aggregate site. Without the usual consultation, the aggregate industry has adopted new Best Practices that should be considered in a provincial review. In this third Issue, we respond to what we see as the relevant proposals and goals.

OPPI is open to actively participating with MNRF and the aggregate industry in a comprehensive review of Provincial Standards led by the Ministry.

Updates to site plan information and prescribed conditions (Goal 2)

In principle, OPPI supports this standard and the application of conditions. OPPI recognizes that the maximum disturbed area is applicable to all sites in the Protected Countryside within the Greenbelt Plan. OPPI understands the specific need to protect the natural heritage features and functions in this provincial plan area. OPPI, however, suggests that there needs to be clearly stated provincial objectives if this standard is to be applied to all sites in designated areas.

Add conditions and time limits to primary purpose exemption orders (Goal 1)

OPPI agrees with this proposal.

Standardize references and interpretation of tonnage limits (Goal 1)

OPPI agrees with the proposal to standardize the wording and interpretation of tonnage limits for all approvals. OPPI agrees that improved wording such as "removed from site" emphasizes the importance of considering the entire area within the boundary of the licence.

OPPI supports the importation of materials to a site for blending with native materials to

create recycled products provided that any additional impacts have been assessed and the use is provided for in the aggregate licence. OPPI agrees that total tonnage limits should include native materials and recycled products using imported material.

OPPI recommends that required traffic studies should consider truck movements carrying imported materials for blending and recycling with respect to haul route impacts for noise.

In order that the objective of recycling is achieved, the Ministry should ensure that municipal zoning by-laws provide recycling as an accessory permitted activity within aggregate sites.

Reporting requirements for site rehabilitation and for removal of recycled or blended materials (Goal 2)

OPPI supports this enhanced reporting requirement, subject to the tonnage limit conditions.

Record-keeping on the importation of fill for rehabilitation (Goal 2)

OPPI supports the need for an Excess Soil Policy in order to guide municipalities that have or will have municipal fill by-laws. OPPI understands the efficacy of importing fill to a site particularly with regard to progressively rehabilitating a site for agricultural uses. OPPI cautions that any provincial policy should not interfere with the municipality's authority to enact fill by-laws under the *Municipal Act* for sites outside licenced areas.

Requirements for detailed record-keeping during operation (Goal 1)

OPPI supports this proposal.

Streamlining and changing frequency of self-compliance reports (Goal 3)

OPPI understands this proposal and is concerned regarding the reduction in reporting timelines. Annual reporting is important to municipalities and communities since this provides a reasonable and timely measure of compliance with site plan requirements and conditions. Extending mandatory reporting to every two years is not acceptable for Class A licences, 20,000 tonnes or more per year. OPPI recommends that all licences for 100,000 tonnes and more per year be required to report annually. Smaller sites could provide reports every two years.

In addition to the proposal for the frequency of reports, OPPI recommends that the report format needs to be changed to require more rigorous reporting and detailed information regarding compliance with site plan requirements and conditions regarding mitigation and monitoring. If the operation is subject to an Adaptive Management Plan, then the changes to mitigation measures should be reported as well.

OPPI recommends that MNRF systematically review and analyze these reports to determine compliance with existing approvals.

Requests for site plan amendment or change to conditions, and enhancing local involvement on significant changes (Goal 3)

OPPI supports the need to rationalize the criteria that trigger notification and consultation on proposed “significant” changes to site plan requirements and conditions. A Ministry guideline entrenching policies and procedures will go a long way in providing consistency across all licenced sites.

OPPI does not entirely subscribe to the second point in the list of suggested changes. The criteria to determine significance should be applied to all situations where changes or amendments are considered. The proposal to allow applicants to intervene would not be transparent to municipalities and communities. OPPI prefers that transparency and accessibility prevail at the beginning of all application processes.

OPPI recommends that the component in the third point follow the same principle as above.

OPPI supports proposals that entrench transparency in all applications even where non-significant changes are advanced.

Enable self-filing of amended site plans for minor changes (Goal 1)

OPPI supports this proposal with the proviso that all “minor” amendments and changes should be circulated to municipalities and agencies. OPPI recommends that “minor” amendments and changes should not modify the integrity of approved technical recommendations arising from approved studies. Further, changes arising from an Adaptive Management Plan should be acceptable if they conform with the site plan.

Remove minimum and increase maximum fines for offences under the Act. (Goal 1)

OPPI has no comment on this proposal.

Provisions for compliance inspection and false reporting (Goal 1)

OPPI has no comment on this proposal.

New and enhanced powers related to ‘no consent’ transfers and revocation in special circumstances (Goal 1)

OPPI has no comment on this proposal.

Changes to provide liability for Ministry employees (Goal 1)

OPPI has no comment on this proposal.

Modify Aggregate Resources Trust agreement and establish performance reporting for the future (Goal 1)

OPPI has no comment on this proposal.

Move specific requirements from the Act to the Regulations or Standards (Goal 1)

OPPI supports this proposal.

Consolidate all exemptions to the definition of “rock” in one location (Goal 1)

OPPI requires clarification of the intent of this proposal.

Establish performance reporting requirements in the future (Goal 1)

OPPI supports this proposal.

Establish certification and training programs in the future (Goal 1)

OPPI supports this proposal.

Fees

Align annual fees for Crown land permits and private land licences (Goal 4)

Disburse fees to recipients that have road responsibilities (Goal 4)

Index fees and royalties to Consumer Price Index (Goal 4)

Change royalty charge on sites with a mining licence and easier to find administrative fees (Goal 4)

Ability to waive fees on private land sites (Goal 4)

Ability to make changes in the future that allow for broadening of the collection, disbursement and use of fees and for programs to evaluate their effectiveness (Goal 4)

Improve clarity and reflect current practices (Goal 1)

OPPI recognizes that the Ministry along with OSSGA, AMO and TAPMO are undertaking discussions to consider a revised approach to fees. OPPI has no opinion on this matter and will later inform itself of the planning implications of the proposal.

Relevant Questions from Ministry to Frame Response

1. **What do you feel is the most important proposal put forward in the paper? Do you agree with it? If so, why? If not, why not?**

OPPI submits that the most important bundle of proposals relates to Notification and Consultation. In this submission, OPPI recommends that consultation between applicants, agencies, municipalities and communities should be more direct and transparent.

2. Do you think that the proposed changes are comprehensive enough? If not, what do you think is missing?

OPPI views the proposals as improving the administrative policies and procedures of the Ministry of Natural Resources and Forestry. This focus is understandable. OPPI is, however, assessing these proposals from the perspective of its constituent participants - aggregate operators, municipalities and communities. As indicated in this submission, there are significant gaps that do not improve notification, consultation, transparency, technical studies, mitigation and monitoring standards, and impacts on communities and municipalities.

3. Do you support the Ontario government in moving forward with the changes as outlined in the paper? If not, which proposals do you not support and why?

On balance, OPPI supports the proposals. Where there are gaps, this submission states the position of OPPI. There are few proposals that are not supported by OPPI.

OPPI's response to questions 4 through 9 in this submission are from the perspective of Professional Planners rather than in the eyes of an aggregate operator.

We welcome the opportunity to meet with you and your staff to discuss our submission and answer any questions. Please feel free to contact me at (416) 668-8469 or by email at l.ryan@ontarioplanners.ca.

Sincerely,



Loretta Ryan, MCIP, RPP, CAE
Director, Public Affairs
Ontario Professional Planners Institute

Copy: Hon. Ted McMeekin, Minister of Municipal Affairs and Housing