



HEALTHY COMMUNITIES • SUSTAINABLE COMMUNITIES

November 18, 2016

Mr. Hal Leadley  
Coordinator  
Resources Development Section  
Natural Resources Conservation Policy Branch  
Ministry of Natural Resources and Forestry  
300 Water Street  
Peterborough, ON, K9J 8M5

**Bill 39 and Schedule 1 - Aggregate Resources and Mining Modernization Act, 2016**  
**EBR Registry Number: 012-8443**

Dear Mr. Leadley:

On behalf of the Ontario Professional Planners Institute (OPPI), I am submitting the Institute's response with regards to Schedule 1 of Bill 39 - *Aggregate Resources and Mining Modernization Act, 2016*.

OPPI is the recognized voice of the Province's planning profession. Our almost 4,500 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").

On December 9, 2015, OPPI sent in a submission to the Ministry of Natural Resources and Forestry regarding 'A Blueprint for Change.' In reviewing this proposed Bill, we have referred to and reflected upon this previous submission. A copy is enclosed for your convenience. OPPI continues to support the overall intent to streamline the law and policies as a significant step in improving the management of aggregate resources in Ontario.

We appreciate that Bill 39 provides for updated regulations that will deal with the specific requirements for aggregate resource management with a focus on the framework to regulate pits and quarries. Generally, the framework provides for revised oversight by the Ministry, updated fees and royalties, the requirement for enhanced studies supporting proposed and existing pits and quarries, and changes to public and agency participation. This Bill and the current Ministry approach do not, however, deal with the issue of harmonization of the *Aggregate Resources Act* and related provincial legislation. In particular, we stress the need to harmonize consultation under the *Planning Act* and

the *Aggregate Resources Act*, to achieve integrated transparency and accessibility. We encourage the Ministry and related ministries to continue to assess how other planning and environmental legislation can be better coordinated with the *Aggregate Resources Act*.

We recognize that the Bill provides that many significant amendments will come into force and effect when proclaimed. These include several subsections where regulations are required and where subsections are repealed. OPPI hopes and expects that draft regulations and provincial standards will be put forward for public review and we will take the opportunity to review and comment.

Our submission regarding Schedule 1 of Bill 39 provides our views on proposed changes to the *Aggregate Resources Act* that are of particular interest to the planning profession.

The following references are to the *Aggregate Resources Act* with the corresponding section references in Bill 39 in brackets.

### **Section 1 [Subsections 1 (2) and (3)] Definitions**

OPPI expects to have the opportunity to review the future Regulation that will define “established pit or quarry” and prescribe the definition of “material”.

### **Section 7(2) [Subsection 7 (2)] Application for Licence**

We agree with the proposed change from removal of aggregate “from a pit or quarry” to removal of aggregate “from the site of a pit or quarry”. This clarifies that the proposed licence area and the site are the same area.

### **Section 7(3) [Subsection 7 (3)] Application for Licence**

We support the proposed amendment to require that “every application for an aggregate licence shall be prepared in accordance with the regulations and include such documentation as may be prescribed”. OPPI expects to have the opportunity to review the proposed Regulation.

### **Section 8 [Subsection 8] Site Plans for Licences**

We do not support, without further justification, the significant change that would allow a regulatory exemption to the current requirement that all licence applications includes a site plan. In the Blueprint for Change, it was suggested that a streamlined process apply to situations where aggregate is removed for small, temporary operations on farms. We supported this in principle.

Under existing Section 8(1) of the Act, there is discretion to define a site plan under the regulations. We believe that it would be appropriate to maintain the statutory requirement that all applications include a site plan and to use the regulations to prescribe a streamlined application process for certain types of uses, including a simplified sketch as contemplated in the Blueprint for Change, to be a site plan for the purpose of certain applications. OPPI expects to have the opportunity to review the proposed Regulation.

## **Sections 9 and 10 [Subsection 9] Reports with Applications**

We understand the reason to delete the requirement of a report to be included with an application for a licence. The Bill changes Section 67 to place more stress on the role of regulations to govern the content of applications including documentation and site plans. OPPI expects to have the opportunity to review the proposed Regulation.

## **Section 11 [Subsection 10] Notification and Consultation**

Section 11 requires that the applicant must comply with the prescribed notification and consultation procedures. The Bill removes the provision that any person may object to the application and provide the applicant and the Minister with notice of the objection. Now, the notification and consultation procedures will presumably be included in a future regulation under Subsection 67 (1) (f.1). As well, the names and addresses of individuals who participated in the application process may be made public “unless the individual requests that his or her name and address remain confidential.”

The Bill includes a new provision that allows the Minister to “require the applicant to prepare a custom plan that meets the requirements set out in Subsection (4) and the prescribed requirements and to submit the plan to the Minister.”

The term “custom plan” is awkward and potentially misunderstood. It appears to introduce in this Act an approach that is similar to that used for terms of reference under the *Environmental Assessment Act*. The proponent will have considerable latitude to define the scope of work and the consultation approach within limits set by the regulations. We understand that the “custom plan” is intended for larger and complex aggregate applications, but there needs to be clear justification for prescribing the threshold. This flexible approach may be acceptable in principle, but our position will depend upon the review of the draft regulations.

This alternative notification and consultation procedure that is within the Minister's discretion is novel and certainly supports OPPI's position that as much of the public consultation should be undertaken at the front-end of the application process. It is not clear from the proposed amendments whether the applicant's surveys and studies will be completed prior to the Minister's consideration of the application or whether these surveys and studies could be included in conditions of the Minister's approval. OPPI prefers that the application be complete at the time of the application.

Subsection 11 (5) changes how the Minister refers a matter to the Ontario Municipal Board. This strengthens the procedure to determine which objections are recognized in the hearing process.

Subsection 11 (6) is an important improvement to the Board hearing process that requires the Minister to be a Party “if he or she notifies the Board of his or her intention to be a party.” OPPI supports this clarification.

Subsection 11 (8) clarifies the situation where all the parties, except the applicant, withdraw from the hearing before the commencement of the hearing, and then the Minister decides to issue or refuse to issue the licence. This relieves the Board from making a decision and should streamline the hearing process. This assumes that there is not mediated or negotiated settlement of issues prior to the start of the hearing.

OPPI generally supports, in principle, the proposed notification and consultation process and the changes to the Board hearing procedure. This will depend on the future draft regulatory provisions governing “custom plans.”

OPPI expects to have the opportunity to review the proposed Regulation.

#### **Section 12(1) [Subsection 11 (1)] Matters to be considered by Minister**

The addition of the Minister’s consideration of the effects on municipal drinking water sources is acceptable. OPPI suggests that, particularly in rural Ontario and outside serviced settlement areas, the possible effects on private drinking water sources are a critical issue that should be considered in this amendment.

#### **Section 12(2) [Subsection 11 (2)] Copies of final site plan**

The Bill removes the requirement that the licensee shall send the licence and the final site plan to the municipality in which the site is located. We do not support this significant change. Municipalities should be made aware of the licence and particularly the final site plan as a means of informing their residents and in planning for land uses and other activities in the area of the licenced pit or quarry. This proposed amendment should be removed.

#### **Section 13 [Subsection 13] Amendment to licence and site plans**

The Bill provides that there will be minor amendments to the site plans that do not require Minister’s approval. This procedure will be established in a regulation. OPPI assumes that the regulation will establish the thresholds for minor and major site plan amendments. The regulation should include the requirements for amendments to site plans or new site plans.

#### **Section 15 [Subsection 16] Compliance Reports**

The current requirement that compliance reports be submitted annually would be removed by the Bill. OPPI expressed its concern that annual reporting is important to municipalities and communities since this provides a reasonable and timely measure of compliance. The future regulation should establish the thresholds for the submission of compliance reports. OPPI prefers that operations with larger extraction limits should be required to annually submit compliance reports. The Bill should continue to provide that the compliance report is required to be sent to the municipality in which the site is located.

#### **Section 16 [Subsection 17] Site Plan Amendments**

It appears that the repeal of this entire section of the Act will have the effect of deleting any notice or consultation requirements for site plan amendments. OPPI suggests that where major site plan amendments are proposed by the licensee or the Minister, the notification and consultation requirements that are to be established for new licence applications should also apply to these site plan amendments. This will require public consultation and notification to municipalities and require the necessary studies to be completed. OPPI expects to have the opportunity to review the proposed regulation.

## **Sections 23 to 46 [Subsections 21 to 38] Wayside Permits and Aggregate Permits**

The amendments are acceptable, subject to comments analogous to our comments reflect our comments on licences.

## **Section 48 [Subsection 39] Rehabilitation**

OPPI supports the proposed new requirement that “every licensee and every permittee shall submit reports on the progressive rehabilitation and final rehabilitation of the site at the prescribed times and shall prepare and submit the reports in accordance with the regulations.” OPPI expects to have the opportunity to review the proposed Regulation.

## **New Sections 62.2, 62.3, 62.4 [Subsection 45] Technical Studies and Reports**

The new Section 62.2 would provide that where the applicant for a licence or permit or a licensee or permittee is required to prepare technical or specialized studies or reports these studies or reports “shall be reviewed in accordance with the regulations by persons or entities outside the Ministry who have the prescribed qualifications.” The outside reviews shall be reported to the Minister. The applicant, licensee or permittee shall pay the costs of the reviews.

This provision amounts to outside peer reviews of studies and reports. OPPI welcomes this approach to independent peer reviews with some caution. The reviews must be made publicly available to municipalities and to persons who have a participatory interest in the matter, prior to the decision of the Minister. The Regulation should establish the criteria and questions to be addressed by the independent peer reviewer. OPPI expects to have the opportunity to review the proposed Regulation.

The new Sections 62.3 and 62.4 would provide that the Minister may require operational information from the licensee or permittee, and direct the licensee or permittee to conduct inventories, surveys, tests or studies. The latter shall be required if the Minister considers the “environmental impact the operation of the pit or quarry is having or may have on the area surrounding the site,” among other considerations. OPPI expects to have the opportunity to review the proposed Regulation. OPPI expressed some concerns regarding this proposal in our December 9, 2015 submission.

## **New Subsections 71 (5) and (5.1) [Subsection 52(2)] Application and Licence requirements**

The current Act allows the person to operate a pit or quarry without a licence during a prescribed period after the part of Ontario is designated under the Act. There is an important change in Subsection (5) that provides that “proof that the location of the pit or quarry is in compliance with all relevant zoning By-laws” is required “if requested by the Ministry.” In Subsection (5.1), the Minister shall issue the licence if he/she is satisfied that “the location of the pit or quarry is in compliance with all relevant zoning by-laws.”

OPPI sees a conflict between this proposed change and existing Subsection 12.1 (1) that provides: No licence shall be issued for a pit or quarry if a zoning by-law prohibits the site from being used for the making, establishment or operation of pits or quarries.

In our view, proposed Subsection 71(5) 3. (ii) should read: proof that the pit or quarry is not prohibited by a zoning by-law. This will bring the new requirement in compliance with existing Subsection 12.1(1) of the Act.

**New Subsection 71.1 [Subsection 53] Removal of aggregate from site**

On the day when this provision comes into force, every licensee or permittee shall not, in any calendar year, remove aggregate (including recycled aggregate) that exceeds the amount permitted amount to be excavated or removed from the site during the calendar year. This is an acceptable provision that avoids conflict with communities and municipalities.

OPPI continues to support this provincial initiative. We welcome the opportunity to meet with you and staff to discuss our submission and to further explore these ideas and recommendations. In particular, we look forward to further participation in the review of draft changes to Regulations and Provincial Standards.

Please contact me at 416-668-8469 or by email at [l.ryan@ontarioplanners.ca](mailto:l.ryan@ontarioplanners.ca).

Sincerely,

A handwritten signature in black ink, appearing to read 'L. Ryan', followed by a horizontal line.

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

Copy: Hon. Ted McMeekin, Minister of Municipal Affairs