



SUBMISSION OF THE ONTARIO PROFESSIONAL PLANNERS INSTITUTE TO THE STANDING COMMITTEE ON GENERAL GOVERNMENT: REVIEW OF THE AGGREGATE RESOURCES ACT

MAY 14 2012

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Good afternoon Mr Chair and members of the Standing Committee. My name is Paul Stagl, and I am President Elect of the Ontario Professional Planners Institute (OPPI). I have with me today, Mr. Steven Rowe, who has prepared a presentation on behalf of our Institute for your Committee's consideration and Loretta Ryan our Director of Public Affairs.

Thank you for the opportunity to address you today on this important topic, the review of the Aggregate Resources Act (ARA).

OPPI is the recognized voice of the Province's planning profession and is the governing body for approximately 4,000 professional members. "Registered Professional Planners" (R.P.P.) and all other OPPI members are governed by the OPPI Act (1994) and a Professional Code of Practice. We are also the Ontario Affiliate of the Canadian Institute of Planners.

Our RPP professionals work in government, private practice, universities, and non-profit agencies in the fields of urban and rural development, urban design, environmental planning, transportation, health and social services, heritage conservation, housing, and economic development. For further information, go to: www.ontarioplanners.on.ca

OPPI has collaborated with many organizations including the Ministry of Municipal Affairs and Housing on a number of planning initiatives over the past decade, such as Planning by Design – A Healthy Communities Handbook. We have also partnered, to name a few, with the Heart and Stroke Foundation and the Ontario Public Health Association.

We have also made presentations to various Standing Committees on best practices, and in that regard we are delighted to have been invited today to speak to your review of the ARA.

OPPI recognizes the important role aggregates have to play in enabling the development of infrastructure that supports growth. OPPI members are often

on the “front line” when aggregate applications are reviewed, working with proponents and review agencies and dealing with community concerns and policies to protect our natural heritage and water resources.

The Institute has a history of involvement in a number of Government initiatives relating to aggregate planning. In particular, OPPI was represented on both the Aggregate Resource Advisory Committee and the Technical Expert Panel for the 2010 State of the Aggregate Resource in Ontario Study, with which you will be familiar. Also, OPPI made a submission to the Ministry of Municipal Affairs and Housing’s five-year review of the Provincial Policy Statement under the Planning Act that included consideration of aggregate-related issues – this may be found at: http://www.ontarioplanners.on.ca/pdf/OPPI_PPS_Five_Year_Review_Comments.pdf.

Mr. Steven Rowe is the leader of the Environmental Working Group of the Institute’s Policy Development Committee. Mr. Rowe has direct experience coordinating teams of approval agencies and technical reviewers in their consideration of major aggregate applications, and, on behalf of OPPI, has been working with a group of OPPI professionals to prepare our submission today.

Steven Rowe MCIP, RPP

Good afternoon Mr Chair and Committee members.

In preparing this submission I have consulted with other OPPI members with experience in aggregate related matters. Their expertise is based on work within the aggregate industry, with consulting firms, for municipalities and community groups affected by aggregate applications, and in the academic sector.

More than 20 years have elapsed since the Pits and Quarries Act was replaced by the ARA, and it is more than 15 years since the last significant changes to the ARA that, among other things, resulted in the publication of the Aggregate Resources of Ontario Provincial Standards.

This period has seen radical changes in the regulatory landscape for aggregate proposals due to the expanding scope of other legislation and policies. To meet new requirements, the industry is proposing engineering solutions that were not anticipated when the current rules were written. The industry has developed a number of new “best practices” that should now be considered as standard requirements. The public expects more from all planning processes. The scale of some large extraction proposals has expanded beyond our previous experience, and the time periods required to manage the post-extraction environmental effects of some large projects have similarly lengthened.

This Review of the Aggregate Resources Act is therefore timely. Particularly because the Act itself is quite general in nature, I should make clear that we interpret your mandate as including Regulation 244/97 under the Act, and the Aggregate Resources of Ontario Provincial Standards which are essentially part of that Regulation. A step has already been taken in direction of review with the completion of the "State of the Aggregate Resource in Ontario" study.

We have grouped our comments into three themes that we hope will be of assistance to you in preparing your report to the Legislature. These are as follows:

- The need to consider the ARA review in the context of **other legislation and policies** that work in conjunction with the ARA,
- The need for a **comprehensive public review of the Provincial Standards**, which comprise the implementation tool for many of the matters included in the scope of your review. This theme is further subdivided into sub-themes regarding complexity, consultation and transparency, best practices, and special considerations regarding haul routes,
- Considerations for **agency review** of aggregate applications.

RELATED LEGISLATION AND POLICIES

The number and complexity of legislative and policy requirements that apply to the consideration of aggregate applications has greatly expanded. These include:

- Section 12.1 of the ARA requires that land be zoned for pit and quarry use before an aggregate licence can be issued. Zoning is subject to municipal jurisdiction under the Planning Act, or to Niagara Escarpment Commission jurisdiction in the Niagara Escarpment Planning Area,
- Planning Act decisions (zoning, Official Plan) essentially relate to the principle of an extraction use on the proposed site, however in practice these decisions are usually made with reference to the detailed documentation produced in support of an ARA application. The Province has identified the conservation and management of natural resources and the mineral resource base as one of a number of matters of Provincial Interest in the Planning Act,
- Planning decisions must be consistent with the Provincial Policy Statement (PPS). The PPS has policies relating to aggregate resources, natural heritage, water resources, and other related matters. All of these policies must be considered and reconciled in each planning decision. The policies guide the location and siting of aggregate operations. The PPS itself is currently under review,

- Since the ARA and Planning Act/NEPD Act processes cover a good deal of common ground there is need to harmonize their application, technical report and process requirements,
- Other Provincial Plans such as the Greenbelt Plan, Oak Ridges Moraine Conservation Plan, Lake Simcoe Protection Plan and Niagara Escarpment Plan may also apply,
- Technical aspects of many operations require approval under the Environmental Protection Act (noise, vibration, air quality) or the Ontario Water Resources Act (water management), though conditions relating to these aspects are also included or referenced on ARA site plans,
- Aggregate operations may be constrained by limitations identified under the Clean Water Act (source protection) or the Endangered Species Act (habitat of species at risk),
- The proposed Melancthon Quarry has been designated under the Environmental Assessment Act. The EA Act requires a planning process to identify a proposal or project, and it remains to be seen how it will be applied to a project that has already been identified and that has a parallel review and approval process.

Certain elements remain constant however, and OPPI supports the need to protect and manage aggregate resources, the need for Provincial regulation, and the need to minimize (or avoid) adverse impacts.

The Ontario Government has adopted a number of innovative models for environmental review of other types of projects such as streamlined environmental assessments (e.g. electricity projects, waste disposal and transit) and the Renewable Energy Approvals process, which consolidates a number of processes into a single stream. If your Committee decides to consider alternative environmental review approaches, we recommend that special attention be paid to promoting an appropriate balance between local (municipal) jurisdiction of land use matters and provincial powers controlling aggregate extraction and supply.

COMPREHENSIVE REVIEW OF THE PROVINCIAL STANDARDS

As noted above, a review of the Provincial Standards is well overdue and we hope that this will be included among your recommendations to the Legislature, along with recommendations to modify the ARA where necessary to accommodate such changes. The review may also result in changes to MNR's Policies and Procedures Manual for the administration of the Aggregate Resources Act.

Dealing with Complexity

- There is a high degree of dissatisfaction from all stakeholders about a complex, and in some cases, duplicative process. The process needs to be integrated, more transparent and understandable,
- A number of quarry proposals now incorporate engineered solutions to mitigate or prevent potential impacts on the natural environment and water resources. These include groundwater recirculation to replenish aquifers and maintain wetlands, and grouting to slow groundwater flow through rock. Environmental mitigation may be subject to “Adaptive Management Plans” that enable measures to be tailored to conditions as they evolve, rather than having fixed requirements. While these approaches are based on engineering principles they are recent introductions and have not been tested over the long term on aggregate sites in Ontario. The “precautionary principle” should be applied in reviewing such proposals,
- Major aggregate proposals often prescribe systems such as groundwater pumping and water diversion that need to operate beyond the life of a licence over the very long term, or in perpetuity. To ensure the long-term viability of these systems proponents may seek to establish agreements and financial arrangements with agencies. While this may provide agencies with the opportunity to make beneficial use of former aggregate operations, this ultimately places in public hands the long term fate of the site and any contingencies that may occur,
- In its 2010 submission on the review of the PPS, 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 baseflows, 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,
- A review of the Provincial Standards could recognize and give direction regarding these new technical approaches, and give consideration to alternative administrative approaches, perhaps involving a central agency where there is a need for overseeing implementation of rehabilitation, monitoring and long-term management, and financial matters,
- There may be a case for adding another class of licence in the ARA and the Provincial Standards to take account of very large scale aggregate applications,

- While standards and Prescribed Conditions are helpful, OPPI favours a flexible approach to technical review that takes advantage of opportunities to optimize conditions on and around the site through provisions such as additional buffering and screening.

Public Consultation and Transparency

- While the scope of required consultation in the Provincial Standards is limited, proponents often go further and take steps such as posting technical materials on a website and conducting extensive consultation programs. Larger proponents should be brought into line with these best practices,
- As a minimum, the Planning Act's accessibility guarantees with regard to application materials should be replicated in the ARA. In addition, at least for Class A applications, all other relevant materials that decision-makers will rely on should be made available without restriction, including peer reviews, agency comments, and staff planning reports. All such materials should be available online in searchable digital form,
- There is an opportunity to harmonize consultation for the Planning Act, Aggregate Resources Act and Environmental Bill of Rights processes,
- Stakeholders have found the current timelines and process to be excessively rigid, especially for larger and more complex projects. This can be a source of misunderstanding and conflict between proponents and stakeholders,
- Information on existing pits and quarries should be more widely available to the public. We suggest an Internet-based registry that can be used to access licences, supporting documents and compliance information for existing as well as expanding and new operations. Similar registries exist today for brownfield sites and Environmental Compliance Approvals under the Environmental Protection Act,
- The Provincial Standards should provide for complaint response procedures that include sharing of responsibilities between operators and public agencies, for larger operations.

Best Practices

- In the years since the Provincial Standards were written aggregate operators have continued to develop improvements to industry best practices that reduce the impact of extraction and haulage on surrounding areas. Consideration should be given to applying these practices to Class A aggregate sites at least, perhaps by supplementing the Prescribed Conditions in the Provincial Standards,
- Additional resources should be assigned to promoting aggregate recycling and the work of Aggregate Recycling Ontario. Price incentives for recycling should be considered,
- Rehabilitation is an important aspect of aggregate planning and long-term landscape planning. The Province should consider the documentation of lessons learned and best practices, site documentation upon licence surrender, and improvements in rehabilitation reporting to further promote and enhance the quality of aggregate site rehabilitation,
- We have noticed an increase in the importation of fill materials to rural sites including former pits and quarries. While this is not directly under the auspices of the ARA it is related to pit and quarry rehabilitation and changes are required so that this activity is more effectively monitored and controlled,

Haul Routes

- Although haul routes are considered in the ARA process, they lie outside the area controlled by the licence and the authority of the licencing process to regulate them remains unclear. Haul-related complaints regarding early-morning queuing, braking/accelerating on steep hills traffic infractions and straying from the designated haul route are frequently expressed by the public,
- A new quarry can turn a quiet township road into a busy truck route. There are no noise requirements applying to aggregate or other truck routes,
- Some aggregate site operators penalize truckers who do not abide by the rules set in the licence or established by the operator but enforcement is difficult. New GPS – based technology is available and often used in the transportation industry to monitor truck movements. Use of this technology to investigate public complaints would be beneficial in improving compliance,
- Levies for the maintenance of haul routes benefit only the host municipality of the aggregate operation. Haul routes may pass through

municipalities that incur additional road maintenance costs but do not benefit from the levies,

- There should be provision for designated haul routes to change over time as highway infrastructure evolves and provides opportunities for more suitable routes,
- Required improvements to a haul route in response to an aggregate application may require a process under the Municipal Class Environmental Assessment, which in this type of instance can only be initiated by a Municipality. A municipality that opposes a quarry can decline to initiate a Class EA process, or to reach an agreement regarding the cost of improvements. There should be a process to deal with such situations.

The review that we recommend of the Provincial Standards would obviously be led by MNR. However, given the importance of this document, it should be a very open and thorough review, with extensive consultation with and input from stakeholders and the interested general public. MNR's review of the Natural Heritage Reference Manual, leading to issue of a new edition in 2011, sets an excellent precedent. OPPI would be pleased to take an active part in any future review of the Provincial Standards.

AGENCY REVIEW

- The agencies that conduct technical reviews and make decisions on aggregate applications vary widely in their legal mandate and areas of interest. Often their areas of responsibility overlap. While there are instances where more than one agency is responsible for similar areas of interest, these agencies are often at different levels of government (i.e. provincial/municipal) or apply their expertise differently (e.g. groundwater as a drinking water source versus groundwater as a hydrological contributor to wetlands),
- Duplication has been reduced to a degree for more complex projects by forming "joint agency review teams" that share expertise and experience, provide a resource to the public and allow for joint communication with the proponent. They also have a useful role in pre-consulting with proponents to establish what would be expected in an ARA application. In some instances aggregate proponents have provided financial resources for independent technical peer review that is shared by the agency team. While the formation and operation of these teams does not require legislative or regulatory changes they should be encouraged,
- The Standards should provide that municipalities have the option to undertake an objective, independent peer review of the proponent's applications,

- Aggregate applications may precipitate a requirement for action by agencies, for example to conduct assessments under the Endangered Species Act or wetland evaluations. The timing of these assessments can create considerable delays, and there should be a mechanism to ensure that they form part of a complete application or take place early in the process,
- There is widespread public concern with the role of MNR in the aggregate review process. Since MNR is responsible for both aggregate planning and (to a large extent) the protection of natural heritage, there is a perception that tradeoffs between these areas of interest should not be taking place within a single ministry,
- We concur with the views expressed by the Environmental Commissioner of Ontario to this Committee, that MNR needs to have sufficient resources to administer the application of the Act, especially in relation to the more complex applications discussed above,
- This concern also extends to resources for MNR and other agencies to review aggregate applications, especially in instances where application fees do not apply, or where the proponent does not provide support for independent technical review,
- Many aggregate sites are operating based on licences that have been in place since the ARA first came into effect in 1989. There is an argument for licences to be subject to review to enable more up-to-date conditions and operating standards to be introduced on a periodic basis, consistent with current legislation and policy.

END NOTE

As indicated by the Environmental Commissioner in his submission to your Committee, industry, NGO, municipality and community collaborations are currently taking place to establish third-party volunteer certification for aggregates. This could add an additional, welcome and constructive dimension to the process in the years to come.

That completes the submission on behalf of OPPI. We welcome your questions.

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