

How to Increase Benefits for Aggregate-rich Municipalities: A Case Study Approach

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Major Research Paper

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Introduction

Purpose Statement

The purpose of this research is to determine how municipalities with a high concentration of aggregate extraction operations function within the broader aggregate legislative framework.

Goals and Objectives

The goal of this research is to examine the *Aggregate Resources Act (ARA)*, *Provincial Policy Statement (PPS)*, *Planning Act*, and other relevant legislation relating to aggregate extraction to determine what impacts they are having collectively and individually on municipal decision-making.

The objectives of this research are as follows:

- Identify specific policies and sections of aggregate legislation that are impacting municipalities the most;
- Identify specific actions taken by municipalities to gain some control over the approval of aggregate applications;
- Gauge the effectiveness of provincial aggregate policies from a municipal perspective; and
- Determine the impact of provincial land-use legislation on the Town of Caledon and the Town of Puslinch

Research Question

The main question that my research seeks to answer is: how can the institutional framework in Ontario on aggregate extraction be made more equitable for municipalities without compromising our future need for aggregates.

Problem Statement

The Greater Toronto Area (GTA) has long been an area of population growth, for Ontario as well as Canada. At the present time the population of the GTA is approximately 6.4 million people, while the surrounding area of central Ontario which includes much of the remaining areas of the Greater Golden Horseshoe accounts for about 2.9 million. According to recent projections, the population of the GTA is set to increase to 9.4 million by 2041; the central region of Ontario is projected to experience a population increase to 3.6 million (Ministry of Finance, 2014).

Much of Ontario's existing infrastructure is aging and either needs to be replaced or repaired. However, recent reports have stated that the material needed to accommodate this growth in the GTA and elsewhere is rapidly being depleted. The province had informally been giving aggregate extraction a high priority for decades prior to the initial PPS. In its current form, the PPS, combined with the provincial interests stated in the *Planning Act* has formalized this idea that aggregate extraction has one of, if not the highest priority of activities in the province. This has had the effect of severely limiting the role of municipalities in the approval of aggregate extraction applications. Furthermore, the primary benefit (the aggregate levy) that municipalities who host these activities receive is considered by all parties involved to be woefully inadequate.

The issue is that the province is getting exactly what they want – aggregates – while the municipalities that host these activities are not getting enough in return relative to the social, cultural, and environmental impacts inherent to aggregate extraction.

Literature Review

History of Aggregate Approvals

Approving aggregate license/permit applications in Ontario used to look far different than what is currently in place. Starting in the 1960s municipalities had decision-making authority with regards to proposed pits and quarries. It was not until the 1970s, when the province began regulating the industry itself, taking control of the activity from the municipalities. Prior to the existence of any provincial policy document, in 1986 the province created the Mineral Aggregate Resource Policy Statement (MARPS). Among other things these policies gave local jurisdictions a mandate as to the volume of aggregate they were to produce (Chambers & Sandberg, 2007).

Prior to the ARA coming into force the primary piece of legislation for aggregates in Ontario was the *Pits and Quarries Control Act*. This act, although not as comprehensive as the current ARA contains many similar elements relating to the issuance of a license or wayside permit and the public consultation process. This act was in place until 1990 when the ARA first came into law.

Perceived Issues of Aggregate Extraction in Ontario

Among members of the public and municipalities across the province there is an overall perception that aggregate extraction operations receive preferential treatment. This is done through an approvals process that limits the involvement of municipalities and members of the

public. At the forefront of this is the provision in the PPS regarding demonstration of need. Need is something that all other businesses and industries in Ontario have to demonstrate when they are moving or expanding their operations. However, issues like population growth and deteriorating infrastructure across the province, particularly in the Greater Golden Horseshoe in recent decades has led to province to exclude aggregate producers from this requirement.

Procedural issues involving public (agency) consultation and the order in which ARA license applications and *Planning Act* applications (official plan amendments and/or zoning by-law amendments) are also important talking points. Consultation under the ARA is perceived as being far too short, while the way ARA and *Planning Act* applications are currently processed have in many cases caused confusion with the public. In very few cases has the producer gone above and beyond the minimum consultation requirements of the ARA.

Another perceived issue relates to the role of the Ontario Municipal Board (OMB) in the process. As the appeal body for local planning decisions, the role of the OMB has been debated for many years. Although municipalities are free to implement their own policies (in conformity with the PPS) the perception is that the OMB defers to provincial policies when rendering their decisions.

For the public and municipalities, after uses of surrendered and/or abandoned aggregate sites is seen as a major issue because of the history of sites going unrehabilitated after extraction. As it stands now, municipalities and the public do have some input on the after uses, but not as much as they would like. Once an after use(s) have been determined, the public and the municipality are left hoping that the producer will carry out the extraction and subsequent rehabilitation in the manner that was agreed upon. This is because once the site is licensed, municipalities no longer have control over what happens on that land. The perception is that the province is not holding the producers to their site plans and/or rehabilitation plans.

But perhaps the most important issue for municipalities relates to the aggregate levy, which is universally perceived as being inadequate relative to the impact the activity has on the natural environment and the social fabric of the community it is located in.

Environmental Assessments and the ARA

Although not directly addressed in the body of this paper, there is a broader perception among the public that aggregate extraction operations do not have to undergo an environmental assessment as described in the *Environmental Assessment Act*. It is true that aggregate producers are required to complete numerous studies as part of their application, such as natural environment studies and hydrogeological studies, but no formal assessment process like that described in the *Environmental Assessment Act* is carried out. Two environmental assessment processes will be broadly outlined as it relates to the class environmental assessments (EA) for Crown forestry and the environmental screening process for waste management projects, specifically landfills/dumps.

Before the processes are discussed, it is important to note that the *Environmental Assessment Act* generally does not apply to the private sector, although in some cases it does. As we are familiar with, many aggregate producers belong to the private sector. The individual EA process is only applied to large scale, complex undertakings that have the potential to cause significant environmental effects (Province of Ontario, 2016). The first step in the EA process is for the applicant to develop and then submit a Terms of Reference document through consultation with the public, aboriginal communities and government agencies. The Terms of Reference is required to contain certain basic information such as how the assessment will be conducted, the purpose of the undertaking, the reasons for and alternatives to the undertaking, a description of the environment on the proposed site along with the potential environmental effects to the site, and their consultation plan (Province of Ontario, 2016). Once the applicant has submitted the Terms of Reference, the Ministry of the Environment and Climate Change (MOECC) will conduct an internal review of the document and make a decision to approve or deny the document within 12 weeks.

The next step involves putting together the environmental assessment. The applicant is required to consult with the public, aboriginal communities and government agencies and to include a record of their consultation in the assessment. Other information to be included in the assessment is a list of potential environmental effects and what they will do to mitigate them, a monitoring framework if the undertaking is approved, and the results of the planning/ decision-making process (Province of Ontario, 2016). Once the assessment is completed and submitted, the MOECC will co-ordinate a public and government review of the assessment, during which

time the public will have seven weeks to provide comments. After the seven week commenting window has passed, the MOECC will have five weeks to write and publish a review of the comments submitted, the applicant's response to these comments, a discussion on the applicant's compliance with the terms of reference and whether or not they have met the requirements under the EAA (Province of Ontario, 2016).

Once the review has been published, the public, aboriginal communities, and government agencies have five weeks to provide their comments. In addition to providing comments, anyone can request a hearing. After this final commenting period, the Minister (MOECC) has 13 weeks to make a decision. The Minister can decide to refer it to mediation, refer it to the Environmental Review Tribunal for a hearing, or to render an approval, approval with conditions, or to refuse the EA (Province of Ontario, 2016). If and when the applicant receives approval for their EA, they are still required to obtain other approvals for their undertaking as required.

The environmental screening process for landfills/dumps is laid out in a regulation (*Ontario Regulation 101/07*) under the *Environmental Assessment Act* and its associated guide. Part 2 of the regulation lays out the types of waste management projects that are required to undergo an individual environmental assessment through the process described above. One example is landfills with a waste disposal volume of over 100,000 m³ are required to undergo an individual EA (Government of Ontario, 2014). Part 3 of the regulation lays out the type of waste management projects that do not have to undergo an individual EA, but have to go through the environmental screening process instead. For example, a landfill with a waste disposal volume greater than 40,000 m³ but smaller than 100,000 m³ would have to proceed through the environmental screening process (Government of Ontario, 2014). Depending on how the application proceeds, there is an opportunity for the public to request the application be elevated to an individual EA.

The first step in the environmental screening process is for the applicant to prepare and issue a public Notice of Commencement of Screening to the public near where the project will take place, government agencies, Aboriginal communities and any other interested parties (Province of Ontario, 2007). The next stage is for the proponent to develop a problem/opportunity statement, providing their reasons for wanting to proceed with the project.

In addition, at this stage the applicant is to provide a detailed description of all project phases including construction, operation and retirement.

At the next stage the applicant shall apply a screening checklist to identify any potential environmental effects of the project. The applicant would then be required to describe any potential environmental effects, concerns/ issues to be addressed later on in the screening process, positive effects of the project, and any other approvals the project may require (Province of Ontario, 2007). The findings from these early stages will then be reviewed with Aboriginal communities, government agencies, and other interested parties in a formal public meeting. Following this meeting, the applicant will then conduct any necessary studies and assessments to determine the nature of the potential environmental effects determined earlier, and what if any, mitigation measures are required. The applicant would then be required to come up with management/mitigation measures for the potential negative effects that have been identified. At this stage, monitoring requirements are also to be discussed.

Following this stage, another mandatory public meeting will be held with government agencies (including the Ministry), Aboriginal communities, and other interested parties to discuss what has taken place up to that point. In the next stage, the applicant is required to do two main things. The first of which is to identify the net environmental effects and determine their significance. This is to be done by considering the value/importance of what is to be affected, the significance and duration of the effect, the extent and likelihood of the effect, whether or not the effect is reversible, and the ecological and social context of the effect (Province of Ontario, 2007). The applicant will then assess the positives and negatives of the project. In the next stage, if the applicant considers the effects significant enough to warrant further study, then additional studies/assessments are to be carried out. It is at this point that the applicant will compile their findings into an environmental screening report. Once the report is completed, the applicant is to publish a Notice of Completion of Environmental Screening Report so that Aboriginal communities, government agencies, and other interested parties have access (Province of Ontario, 2007). The notice must contain information that indicates where copies of the report can be obtained or reviewed. The report and its associated studies shall be made available to the public for 60 calendar days. If there is no elevation requests are made

during the review period, then the applicant is to complete the Statement of Completion form and submit it to the MOECC.

Under the *Environmental Assessment Act*, 11 separate classes of undertakings for common projects with predictable environmental effects are in place. The class that will be outlined is forest management on Crown lands. A major component of this process is the development of a Forest Management Plan (FMP). The prescribed process is found in the *Forest Management Planning Manual*. This manual describes two phases for the preparation of an FMP. The first phase involves the planning for the first five years of the ten year period the plan is in place. The second phase involves planning for the final five years of the ten year period.

The first phase of developing the FMP has five steps, with consultation taking place at each one along the way. Ideally the process is supposed to take 36 months, but this is often exceeded. The first step of this process involves the preparation of a forest management plan by a lead author (registered professional forester) along with a planning team appointed by the local MNRF District Manager which will have one member of the local citizen committee (LCC) (Province of Ontario, 2014). The District Manager will also appoint a project manager to aid in the production of the plan by setting out timelines for plan preparation, public consultation, and assigning responsibilities to members of the planning team. Also at this stage, the plan author along with the planning team will review and if necessary revise the previous Terms of Reference for the FMP and this draft will be submitted to the District Manager who will review it for a minimum of 60 days (Province of Ontario, 2014). If changes are made, the planning team (among others) must sign off the changes and send it back to the District Manager who will then forward it to the Regional Director for approval. In addition, decision support systems will be used to help develop the long-term planning direction, and background information will also be gathered and updated. Once all of this has been completed, the initial stage of public involvement will take place.

In the second stage of phase one, the planning team will review and revise if necessary the current long-term management direction of the FMP. Specific items that may need to be revised include forest classifications, assumptions of the forest model, and management objectives (Province of Ontario, 2014). Management considerations (i.e. changes to the forest condition) will be considered at this stage with respect to planning the proposed operation and

how they may affect the long-term management direction. In addition, several strategic models will be utilized as a way to quantify the current state of the forest. Furthermore, forest sustainability and management objectives compatible with sustainability are also required to be determined at this stage. Indicators will be established for the criteria identified by the planning team and will be used as a baseline for the final analysis. There will be a second consultation activity once all the basic requirements stated above along with several others have been met.

After this consultation, local Ministry of Natural Resources and Forestry (MNRF) staff will review the comments and come up with a list of modifications to the long-term management direction, which will then be signed off on by the District Manager and returned to the planning team (Province of Ontario, 2014). Once final modifications have been approved, the process of selecting harvesting, renewal, and tending areas will begin. The areas selected for harvesting will be evenly distributed over each five-year term. Also at this stage, operational prescriptions will be put together for all harvest, renewal, and tending areas as it relates to areas of concern (i.e. sensitive environments), specific directions from a forest management guide, species at risk, and those developed by the planning team or through other planning activities (Province of Ontario, 2014). In addition, silvicultural ground rules will be established by a registered professional forester with guidance from the plan author. The last major item required to be demonstrated before the third consultation activity is the determination of sustainability which will consider the overall achievement of the long-term objectives, the spatial analyses conducted during step two, as well as the social and economic assessment conducted during that step (Province of Ontario, 2014).

Upon the conclusion of this most recent consultation, the planning team will review the comments received and make changes if they believe they are needed. Once any changes are made, the planning team will complete and submit a draft FMP for review by local MNRF staff. This review period is to be 60 days in duration. Also as part of this review, MNRF staff will provide a list of recommendations to the FMP before submitting the list to their coordinator at least ten days before the review window expires. The coordinator will forward these recommendations to the District Manager who will in turn provide them to the plan author. Once the plan author has received these recommendations, they are to submit them as part of a

package including the draft FMP to be made available for public review (Province of Ontario, 2014).

Following the public review, the planning team and the coordinator will compile all of the comments received. Over the next 15 days the planning team shall review all comments received and decide whether or not changes need to be made to the list of recommendations. If changes are required then the coordinator will make the necessary changes and forward it to the District Manager. Once the District Manager has sent these changes to the plan author, the planning team has 30 days to incorporate these changes into the FMP. After these changes are incorporated, the plan author shall submit the FMP for review by local MNRF staff. This review period is 15 days, and if the changes were incorporated to the satisfaction of the District Manager then they will approve it and send it to the Regional Director for their approval (Province of Ontario, 2014). The planning team will conduct one final consultation activity with the public to show them the approved FMP.

The second phase of an FMP will begin if the Regional Director endorses the continuation of the existing FMP. In an ideal scenario this phase will take 20 months to complete. Changes may be made to the planning team if necessary. Once the necessary changes are made, the plan author along with their team will work with the District Manager to, among other things review and update the Terms of Reference, alter responsibilities of the team members and set out the planning schedule for the second five year term (Province of Ontario, 2014). Background information gathered and reviewed during phase one will be reviewed again at this stage. Furthermore, the harvesting, renewal, and tending areas identified during phase one will also be reviewed and altered if necessary. Operational prescriptions will be developed for harvest, renewal, and tending areas for this phase of the operation. Silvicultural ground rules will be reviewed and updated if necessary at this point. After all requirements have been completed, a public consultation activity will take place, presenting the findings to that point.

After this initial consultation activity for this phase, the planning team are to compile and review the comments received. If they deem it necessary then they will recommend changes to the existing operations and include them in a draft planned operations report to be submitted for review by local MNRF staff (Province of Ontario, 2014). This review is to last 30 days. Following their review, MNRF staff will make a list of required alterations to the draft planned

operations document submitted and following the same process for step four of phase one, the list of required alterations will be sent to the planning team. Both the list of required alterations and the draft planned operations report will be made available for public comment at this stage.

At the conclusion of the public commenting period, the planning author and the coordinator will compile the comments received. The rest of the process for this step is the same as it is for the final step of phase one.

As we can see, the assessment processes in place for landfills/dumps and Crown forestry are very thorough with regard to their assessment and evaluation of environmental impacts, as well as with public and Aboriginal consultation. What follows is an examination of the approvals process for aggregate extraction operations in Ontario.

[Aggregate Resources Act](#)

Having briefly outlined the history of the licensing of aggregate operations in Ontario and their perceived issues, it is time to review the current institutional framework. In Ontario there are two different ways aggregate applications get processed depending on where the site is being proposed. This is not to say that an application in Kingston is treated differently than an application in Hamilton; it simply depends on whether the proposed site is on private or Crown land. Should the applicant propose extraction on private land, then an aggregate licence will be required to start extracting on the site. Whereas if the applicant proposes to extract on Crown land, then an aggregate permit would be required. The process to get a license in Ontario is more complex than it is to get a permit.

To begin, when an applicant is applying for a license or a permit they must furnish the MNRF with an application that meets all information requirements before being processed. These requirements will vary depending on the type of license they are seeking and where they are proposing to operate.

Once a license application has been deemed complete by the MNRF, a public notice is issued and the application package gets circulated to the public and other agencies for comments. These other agencies may include the upper and lower-tier municipality, conservation authorities, and local ratepayer groups. In their submission the applicant would have to include

technical studies such as Hydrogeological assessments, Natural Environment assessments, Cultural Heritage assessments and noise assessments, depending on the nature of the application.

The public notice shall be issued a minimum of 20 days in advance of a mandatory public information session to landowners within 120m of the property and in a local newspaper. Following this information session, both the general public and public agencies have a minimum of ten days to provide a written Notice of Objection including the reasons for their objection.

If there are objections, then the applicant will have to work with these individuals, groups, and /or agencies to resolve them. In the event that the objections get resolved, then the applicant will need to amend the application in consultation with the MNRF, secure withdrawal letters, and submit documentation of notification and consultation to the MNRF. At this stage, the Minister will receive a recommendation, and will then decide to either refuse to issue a licence, or issue a licence with conditions.

The license application process for aggregate permits is even more streamlined than those on private land. For an aggregate permit, the entire consultation phase is a maximum of 20 days from the time a notice is issued for the public and public agencies to provide comments or objections. Formal consultation for these applications in the form of a public information session will only be held if the Minister deems it necessary. Furthermore, a written notice will be sent out to landowners within 120m of the property, but nothing to the community at large. The remainder of process is the same as it is for aggregate licences.

The process is different for licenses compared to permits when objections cannot be resolved. When objection(s) cannot be resolved for license applications the process in Figures 1 & 2 will be followed, which may include a hearing at the OMB. When an application cannot be resolved for a permit application, the process in Figure 3 will be followed.

LICENCE APPLICATION PROCESS UNDER THE ARA - CATEGORIES 1 TO 8 (chart 1 of 2)

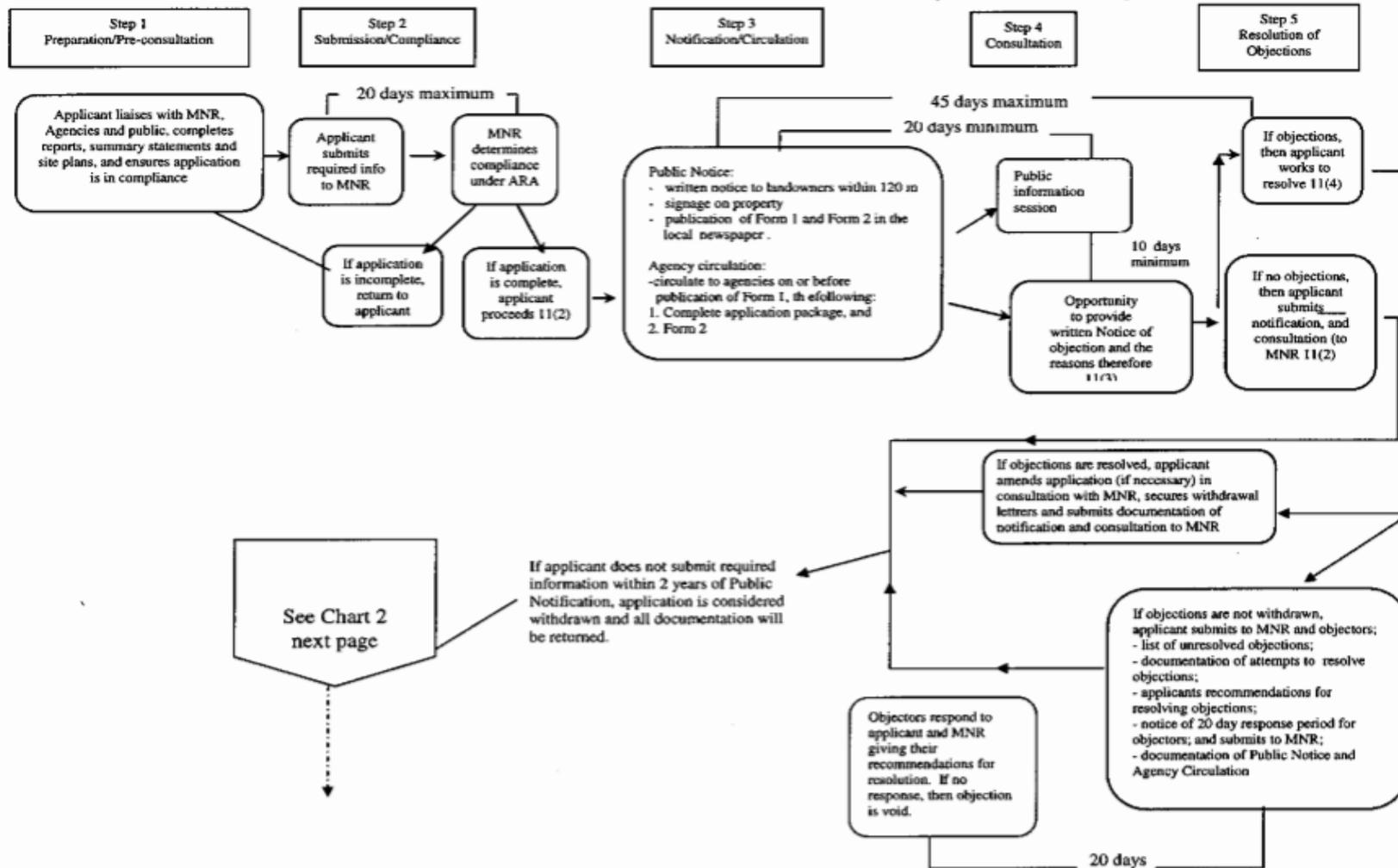


Figure 1: Aggregate licensing process in Ontario on private lands (Part 1) (Ministry of Natural Resources and Forestry, 2008).

**LICENCE APPLICATION PROCESS
UNDER THE ARA - CATEGORIES 1 TO 8 (chart 2 of 2)**

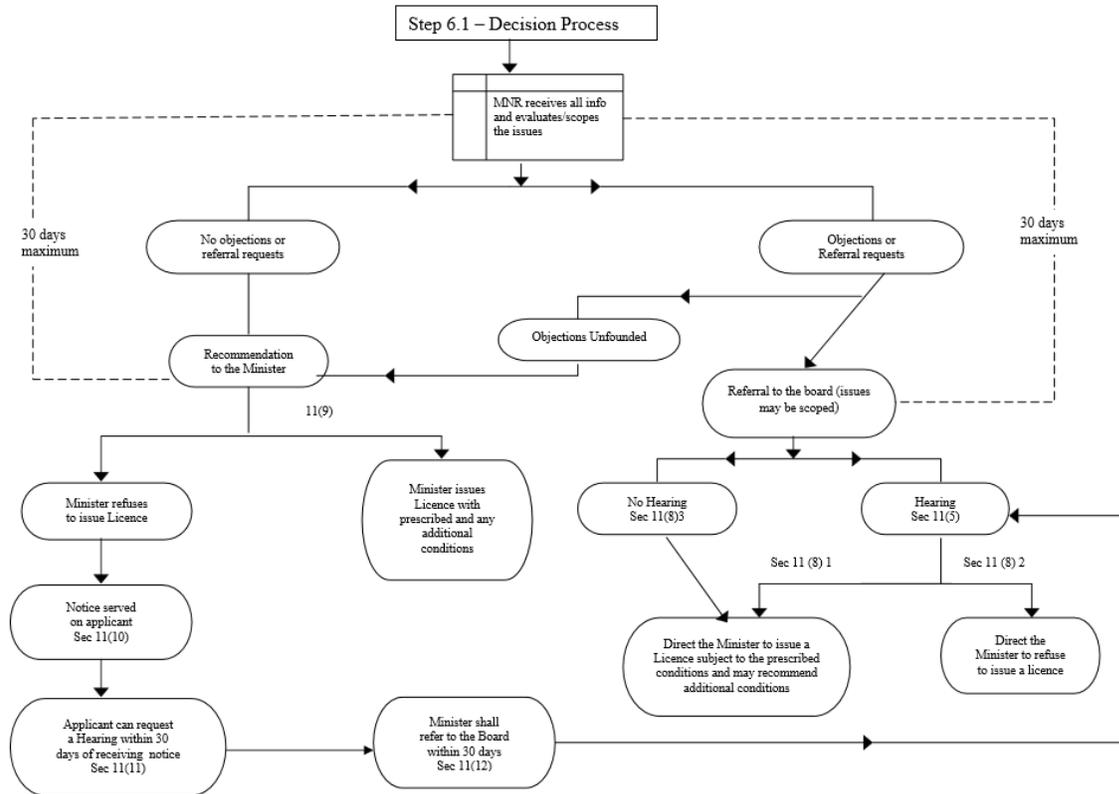


Figure 2: Aggregate licensing process in Ontario on private lands (Part 2) (Ministry of Natural Resources and Forestry, 2008).

AGGREGATE PERMIT APPLICATION PROCESS UNDER THE ARA - CATEGORIES 9 TO 13

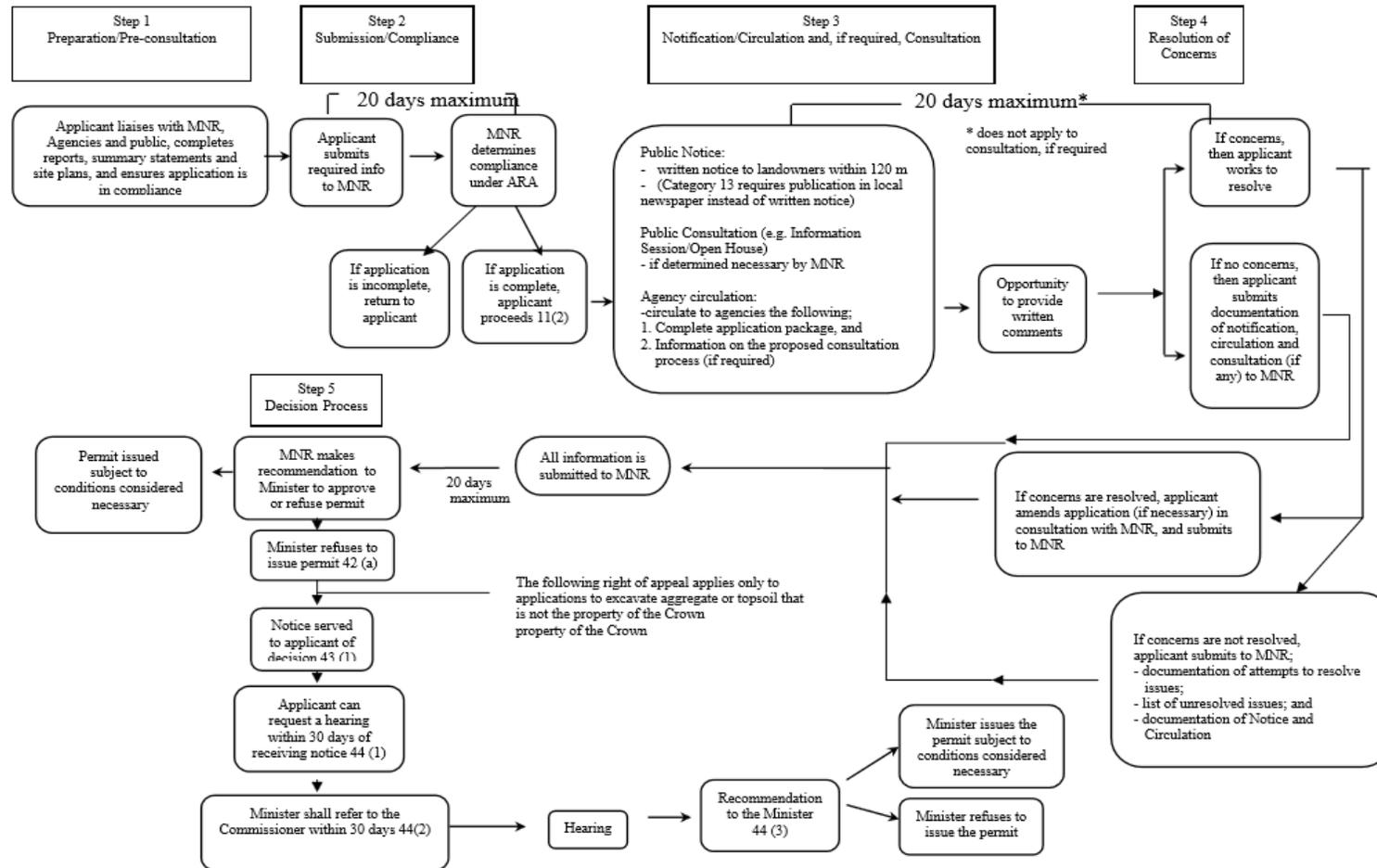


Figure 3: Aggregate permitting process on Crown Land (Ministry of Natural Resources and Forestry, 2008).

Under the ARA, the OMB can choose to do one of the following when looking at a licence application:

- Direct the Minister to issue the licence subject to prescribed conditions and any additional conditions they have specified; or
- Direct the Minister to refuse to issue the licence; or
- Refuse to consider the objection

The final approval of aggregate applications rests with the Minister of Natural Resources and Forestry. Section 12.1 of the ARA states that 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 and quarries. In these cases, the applicant must consult with the municipality where the extraction is being proposed and seek a zoning by-law amendment and possibly an official plan amendment. These amendments would have to be approved under the prescribed process of the *Planning Act* detailed below.

[State of the Aggregate Resource in Ontario Studies \(SAROS\)](#)

In 2009 various consulting firms helped put together a comprehensive series of papers showing the current state of the aggregate resource in the province. These papers deal with topics such as the value of aggregates, aggregate consumption and demand, reuse and recycling, aggregate reserves in existing operations, future aggregate availability and alternatives analysis, and rehabilitation.

The economic value of aggregates in Ontario is very high, with primary industries (i.e. extraction and on-site processing) having generated approximately \$2.9B in gross output and creating approximately 16,600 full-time jobs in 2007 (AECOM Canada Ltd, 2009). Meanwhile secondary industries (i.e. industries who use aggregates to produce goods) generated approximately \$3.2B in gross output and 18,300 full-time jobs in 2007 (AECOM Canada Ltd, 2009). This report also examined the social and environmental values that people have towards the activity. It stated that people have concerns about the social and environmental impacts of the activity, but still appreciate the economic stimulus it brings to their community.

On average over the past 20 years, Ontarians have used 164 million tonnes of aggregates per year; and this is expected to increase by 13 per cent annually over the next 20 years (Altus

Group, 2009). However, due to the increase in population density over that time, our per capita consumption has actually declined. A concerning trend that came to light in another report stated that we are extracting aggregates 2.5 times faster than we are licensing new pits for extraction (Golder Associates, 2009). More than two-thirds of sites in the GTA are being rapidly depleted, creating a dire situation. The current system in Ontario is based on extracting aggregates from local sites and using them within the same region.

To further complicate this issue 93 per cent of the high-quality aggregate deposits that are not currently licensed have limiting constraints such as planning boundaries, environmentally sensitive areas, and prime agricultural lands (Ontario Ministry of Natural Resources, 2010). Those areas that are not constrained are almost exclusive to eastern Ontario.

The only feasible alternatives identified were underground mining and mega-quarries (MHBC Planning, 2009). The former is very expensive (up to three times more than traditional surface mining), while the latter because of its scale creates the necessity for greater mitigation of social and environmental impacts. According to this report, previous studies have been carried out to determine the feasibility of bringing aggregates into population centres from remote sources. These studies have shown that this is not feasible because of economic, social, and environmental reasons (MHBC Planning, 2009). Furthermore, substantial political and economic resources would need to be mobilized to switch away from the close-to-market philosophy.

In the past ten years, the use of recycled aggregate has increased from four per cent in the 1990s to seven per cent. As a result, approximately 13 million tonnes of recycled aggregate were used in road construction per year from the early 1990s to 2006 (LVM Jegel, 2009). Despite the increased use of recycled aggregates in Ontario, many municipalities are opting to use fresh aggregates in place of recycled materials.

The paper on rehabilitation came to the conclusion that legislative or policy changes are not needed as much as more tools to maximize the usefulness of existing rehabilitation programs. It specifically made reference to a comprehensive best practices document for producers and aggregate resource officers. In addition to this, the report also revealed some common public perceptions regarding rehabilitation activities. Some of these are: an apparent lack of visual progress on rehabilitation activities, delays in provincial enforcement and in producers starting rehabilitation, a lack of evidence of effective rehabilitation aside from some commonly cited

examples, and the fact that they (the public and producers) are not receiving information about rehabilitation to better their understanding and perform adequate rehabilitation on their sites (Skelton Brumwell & Associates and Savanta Inc., 2009).

Blueprint for Change

The review of the ARA began in earnest in March 2012 when the Standing Committee on General Government received authorization from the Legislative Assembly to do so. Over the following year, the Committee held public hearings and made several visits to abandoned, proposed, and active extraction sites. Their work temporarily came to halt in October 2012 because of the prorogation of the Legislature. It was not until April 2013 when the Committee received re-authorization to review the ARA. By October 2013 the Committee had completed its report which made 38 recommendations on ways to improve and modernize the Act. The report paid particular attention to improving each of the licensing, site plan approval, and administrative processes, compatibility of aggregate extraction with other land uses, cumulative impacts on surface and groundwater sources, and improving rehabilitation for active and abandoned aggregate sites.

In October 2015 the province built off the recommendations of this committee and put together a document entitled “A Blueprint for Change: A Proposal to modernize and strengthen the Aggregate Resources Act policy framework”. This document makes specific recommendations on changes to the Act itself. Many of the notable changes that this document proposes relate to applications for new aggregate licenses on private land, and aggregate permits on Crown land. These include enhanced study requirements relating to the natural environment, natural heritage, water impact studies, and new studies for noise, traffic, and dust. In addition, it is being proposed that agricultural impact studies be required for all proposed operations on prime agricultural land.

Due to the nature of proposals and technical studies, it can be very challenging for the public and municipalities to make sense of what an applicant is proposing. That is why this report is proposing that a plain language summary of the proposal be required for all applications; and that all technical studies contain an executive summary written in plain language.

This document also proposes to expand the consultation window on new aggregate applications. Whereas the current system of consultation is dependent on location (Crown land v. private land), the class of license, and whether or not it is above or below the water table, the new system will be based entirely on the amount of aggregate removed annually. The minimum amount of time set out for consultation in this new system is 45 days for wayside applications, while the maximum amount of time would be for very large operations (i.e. those that extract >3.5Mt) and those that extract from the bed of a lake or river. In these cases the amount of time for consultation would be set out in the Terms of Reference.

Provincial Policy Statement

The PPS forms the foundation of land use planning across Ontario. This document contains policy statements on a number of specific topics such as the natural environment, water resources, and mineral aggregate resources. Many of the key provisions of the PPS are outlined below.

As a general statement, Section 2.5.1 of the PPS states that “*mineral aggregate resources shall be protected for long-term use...*”

Section 2.5.3.1 of the PPS goes on to state that “*demonstration of need shall not be required regardless of availability, designation or licensing for extraction of the resource locally or elsewhere.*”

Furthermore, Section 2.5.2.4 of the PPS states that “*aggregate extraction shall be protected from development activities that would preclude or hinder the expansion or continued use or which would be incompatible for social reasons.*”

As for rehabilitation in general, Section 2.5.3.1 states the policy as follows:

“*Progressive and final rehabilitation shall be required to accommodate subsequent land uses, to promote land use compatibility, to recognize the interim nature of extraction, and to mitigate negative impacts to the extent possible...*”

Much of the land base of rural Ontario is agricultural. Although it is not a major land use for the case studies chosen for this research, it is important to state Ontario’s policy for aggregate extraction in these areas:

“In prime agricultural areas, on prime agricultural land, extraction of mineral aggregate resources is permitted as an interim use provided that the site will be rehabilitated back to an agricultural condition.”

To conclude, Section 2.5.4.1c establishes a priority for protection of prime agricultural land in this order: specialty crop areas followed by Canada Land Inventory Class 1, 2 and 3 lands.

Planning Act

As it relates to aggregate extraction, a *Planning Act* application is only required when an official plan amendment or zoning by-law is required. Once an official plan amendment has been requested, council shall forward a copy of the request, the prescribed information, and any other information council feels they need to the appropriate approval authority. Within 30 days of the applicant paying the processing fees for their application, council shall inform them that they have or have not been provided all of the information that was requested. It is at this point that the application shall start to be reviewed. The plan amendment will be put together at the municipality, and a notice of a public meeting will be made within the community.

It is mandated that at least one public meeting be held to provide the public an opportunity to comment on the amendment being proposed. The approval authority (i.e. upper-tier municipality for a lower-tier municipality or the Minister of Municipal Affairs for an upper-tier municipality) will also have a chance to review the supporting information, the public will have an opportunity to view all the information including the proposed amendment, and outside agencies being consulted are among the other consultation activities that take place. Once council has been given the amendment to review, they may choose to adopt it or refuse it. If council refuses to amend their official plan, they shall provide written notice of their decision to all parties involved, no later than 15 days after refusing it. If council approves the amendment or no appeal is filed within 20 days (in the case of a refusal), the amendment is adopted by the municipality. If there is an appeal, it will go to the OMB who have the following powers pertaining to official plan amendments under s. 17, ss. 50.

- approve all or part of the official plan (amendment);
- make modifications to all or part of the amendment and approve all or part of the amendment as modified as an official plan (amendment);

- refuse to approve all or part of the plan (amendment)

These powers do not encompass the entire official plan approval process. If the Minister of Municipal Affairs and Housing (MMAH) is of the belief that a matter of provincial interest is or is likely to be adversely affected by the plan or parts of the plan, they may advise the OMB of this prior to the hearing. Section 2 of the *Planning Act* gives a list of all matters of provincial interest which includes “the conservation and management of mineral aggregate resources.” Once a provincial interest such as this has been declared, the OMB no longer makes the final decision on the approval of the official plan. In these cases the final determination is made by the Lieutenant Governor in Council.

In addition, if the local council refuses or fails to act on a proposal to amend its official plan within 180 days of the application being complete, either the applicant proposing the amendment, Minister (MMAH), or the appropriate approval authority may appeal to the OMB on the basis of non-decision. Also, the public has a right to appeal to the OMB, if after 180 days the approval authority has failed to give notice of its decision regarding the proposed amendment.

Amending a zoning by-law is similar to that of an official plan amendment, except that there are two different appeals processes depending on whether council amends or refuses to amend the zoning by-law. Once the amendment has been applied for, the applicant shall provide the municipality all of the information that it has requested. Like the official plan amendment process above, the council shall let the applicant know within 30 days of receiving the processing fees that they have or have not provided all the information requested.

Next the by-law is prepared by the municipality, and a notice of a public meeting shall be given to the community at least 20 days in advance. Following the public meeting, council may choose to either approve or refuse the zoning by-law amendment. If the amendment is approved, council shall issue a written notice of this approval no later than 15 days after the amendment was passed. If there is to be an appeal of the approval, then it must be received within 20 days of the above notice being issued. If there is an appeal, the OMB has the following powers under s.34, ss. 26, except when a provincial interest is declared.

- dismiss the appeal without a hearing; or

- allow the appeal in whole or in part and repeal the by-law in whole or in part; or
- amend the by-law in such manner as the Board may determine; or
- direct the council of municipality to repeal the by-law in whole or in part; or
- to amend the by-law in accordance with the Board's order

The same appeals process outlined above is followed if council refuses to amend its zoning by-law. In these cases, the powers of the OMB on appeal relating to zoning by-law amendments are as follows:

- dismiss the appeal; or
- amend the by-law in such manner as the Board may determine; or
- direct that the by-law be amended in accordance with the Board's order

Similarly to the process of an official plan amendment, if council refuses or fails to act on an application for a zoning by-law amendment within 120 days, then the applicant proposing the amendment or the Minister may file an appeal to the OMB.

Methodology

The methods utilized for this research are an institutional analysis and case study examination as well as a series of key informant interviews. The institutional analysis focused on current provincial legislation relating to aggregate extraction such as the ARA, PPS, and *Planning Act* described above. Other legislation reviewed at this stage included provincial land use plans such as the *Niagara Escarpment Plan*, *Greenbelt Plan*, and the *Oak Ridges Moraine Conservation Plan*. A recently completed aggregate application document was obtained from each of the chosen municipalities and also reviewed at this stage.

The key informant interviews were conducted over the span of about two months with representatives associated with both the Town of Caledon and the Town of Puslinch. The interviews centred on procedural elements of current institutional framework around aggregates at the provincial level as well as the potential after uses of surrendered sites.

Case Study Selection

The two case studies chosen for this research were the Town of Caledon and the Town of Puslinch. Both towns are among the top aggregate producing municipalities in the province, which made them ideal selections. Furthermore, each of them are in relatively close proximity to

major population centres. Caledon is recognized as having the highest density of gravel pits in North America. In addition to this, each of the major provincial land use plans has lands within the town's boundaries. Puslinch is another area of high-density aggregate extraction, which is found primarily in the southern area near Highway 401. The only provincial land use plan that has lands within the town's boundaries is the *Greenbelt Plan*.

Results

Question 1: How important is aggregate extraction to your community?

Based on the interviews conducted with representatives of the two communities chosen for this research (Caledon and Puslinch), two starkly different pictures were painted regarding the importance of the activity in their jurisdiction. Each of the interviewees associated with the Town of Caledon regarded aggregate extraction as being very important within the town. Various reasons were cited for this, the most referenced being economic in nature. Other reasons included the provincial need for the resource and the popularity of the activity not just in terms of the density of sites, but also in terms of general discussion throughout the community. It is also important to note the negative aspects with regards to importance. Although not brought up by all interviewees, the negative aspects of the importance of the activity mentioned in Caledon related to the aggregate levy, social and environmental impacts.

As for the interviews conducted with those associated with the Town of Puslinch, it appears as though aggregate extraction is not as important to them relative to Caledon. Based on the interviews, the activity is still important in Puslinch, but not as important as it used to be. Specifically referenced was the fact that the amount of aggregate being extracted in Puslinch has been declining in recent years and that sites that are currently licensed for extraction are not being extracted on. The activity is still a dominant land use in terms of scale, but the economic importance of the activity for the town is not as great as it once was.

Question 2: Are aggregate producers involved in the community away from the extraction site?

Like Question 1 above, there is a clear difference as to the degree of involvement of producers between the two municipalities chosen. Based on the interviews, producers in the Town of Caledon are very heavily involved in the community away from the extraction site. Interviewees cited sponsorships of community events such as the Canada Day celebration and

charity sporting events. Once again, the aggregate levy was mentioned, specifically with regard to the ongoing negotiations between the producers and the municipalities to raise it.

As for Puslinch, producers are involved in the community away from the extraction site, but not to the degree that they are in Caledon. They do contribute funds to local initiatives when needed, but their primary involvement is through the non-profit organization, “Friends of Mill Creek”. Based on the interviews, the producers recognize their impact on the natural environment and through Friends of Mill Creek are actively rehabilitating the creek. It was specifically mentioned that a representative from one of the producers sits on the board of Friends of Mill Creek. They also provide equipment and materials for when restoration activities take place and give Friends of Mill Creek access to their consultants when asked.

Question 3: How can municipalities be protected from aggregate extraction when “demonstration of need” is not required? Do you feel the PPS protects you enough in this regard?

Based on the answers received, it became clear from a municipal perspective, that the PPS does very little to protect municipalities, at least directly. Indirectly however, the PPS does contain policies relating to the natural environment and agriculture that offers some protection, but overall the perception is that it does not do very much. What this means is that in Ontario, municipalities have to take steps to protect themselves through their official plan and zoning by-law. Specifically referenced was OPA 161 in the Town Caledon, which among other things lays out which areas are designated as an aggregate resource and which are designated aggregate reserve. It also lays out certain tests and criteria that producers are required to meet for a proposed operation. Some of the criteria include conforming to the town-wide aggregate management objectives, the applicable land-use and resource management policies for the area in which it is located, as well as the Rehabilitation Master Plan, when one is in place. Depending on the nature of the application, the applicant may also be required to complete a Traffic Impact Study, assess social impacts, complete a Visual Impact Report, as well as complete all environmental studies required by their official plan and other approval authorities, proving that there will not be any “unacceptable impacts”. Tying into the next question, one interviewee specifically stated that the OMB does not consider need when it comes to approving new sites.

They made specific reference to the recent approval of the Olympia Pit which is separated from an existing line of pits that they feel still has a lot of material left in reserve.

Question 4: Should the OMB have the final say on aggregate extraction operations?

The interviewees were evenly divided between maintaining the current system where the OMB hears the appeals of aggregate operations requiring either an official plan or zoning by-law amendment and municipalities having the final decision-making authority on these matters. One thing that was common among a majority of the interviewees is the feeling that the process is not functioning the way it should. On appeal, decisions made at the municipal level are not taken into consideration by the OMB. In essence the OMB reviews the application anew, unlike the legal system which checks to see if a decision was made in error. One respondent does not believe that the OMB really does not add any value to the process; specifically that their decision is no more binding than that of the municipality.

Question 5: How well does the OMB protect municipalities/consider their interests with respect to aggregate extraction operations?

First of all, the results of the interviews indicate that the OMB does in fact consider municipal interests as part of their decision-making. One respondent commented that the OMB protects municipal interests to the extent of their official plan. It is one of the many things that they consider when making a decision on appeal. This was not unanimous however, because multiple interviewees were of the belief that the OMB does not consider municipal interests at all. It also became clear from these interviews that the OMB places an emphasis on provincial policy over municipal policy. Another important item gleaned from the interviews is that when OMB hearings occur it often comes down to which side has the best experts and who tells the best story.

Question 6: Should Planning Act applications be processed before ARA applications in cases when both are required?

What this question essentially came down to is whether to keep the process the way it is (process both applications concurrently), have the *Planning Act* application come first, and a blending of the two processes. The results of this question are mixed; three interviewees believed that the two processes should run concurrently, three believed that the *Planning Act* application

should come first, and two think that there should be a blending of the two processes. Two valid points were made by those who believe the processes should run concurrently. The first of these cites a provision in the ARA where a license cannot be issued until after the zoning (*Planning Act*) application has been approved. The other argument made is that by separating the two processes, the studies that would have been conducted for the first application may not be valid by the time the second process starts. In addition, one interviewee provided comments on a potential blending of the processes, where they expressed concern that if we go in that direction the province would take control over the entire process like they did with wind power.

The interviewees who preferred that the *Planning Act* application come first offered similar comments on the process to those who preferred blending the two. One of the common concerns brought forward by supporters of each option is that the process, as it is currently causes confusion among members of the public. Specifically that the public does not necessarily understand that they are two separate processes and as a result, who they are supposed to submit their comments to. The other common concern is that the information that municipalities receive from the developers (specifically the site plan) for *Planning Act* applications is not what they need. The reasoning behind this is that the province has control over what happens on the site, not the municipality. As a result, the municipality has to put in more work to get the information they need to assess *Planning Act* applications, from the developers.

Question 7: What constitutes a fair and equitable process to you as a municipality? Are you happy if the public is happy? Can concerns be predicted and addressed at an early stage in the process?

Several ideas were provided by the interviewees relating to the first question. The most common concept was to involve the public from a very early stage in the process to anticipate what potential problems may arise later on. Also included in this is the need to minimize social impacts through various conditions on the license. The need for clarity and transparency from the producer on the nature of their application is another concept that was brought up. If this is done, then this would allow for trust to be built slowly between the producer and the community. Procedural adjustments such as incorporating a sunset clause into the license and linking the site plan to the zoning were also suggested.

As expected on the second question, it became clear very quickly that the public will almost never be unanimously happy about anything, never mind an extraction operation. What it comes down to then, would be the objections. One of the interviewees made an important distinction between technical objections on the nature of the application itself and personal objections. The technical objections can be negotiated while personal objections cannot. There is something to be said for how comments on aggregate applications are being treated as objections. One interviewee brought up the idea that this may foster some negative feelings on an application when none exist.

As it relates to the third part of this question, the results of the interviews indicate that concerns can indeed be predicted and addressed at an early stage of the process. One example kept cropping up throughout the interviews in Caledon; that of the Limebeer Pit. In this case the producer engaged the local cottage community even before they submitted their license application. As a result, concerns were addressed and the community had a direct say as to what they wanted the after use of the site to be. Furthermore, Caledon has a policy in their official plan that requires the producer to outline how they went above and beyond the minimum consultation standards when submitting their application.

Question 8: Is there anything Ontario can learn from other jurisdictions to improve fairness?

The results from my interviews indicate that municipal employees/representatives in Ontario are not very familiar with the planning process around aggregates in other jurisdictions. The one interviewee that had some knowledge of other jurisdictions commented that relative to other provinces, Ontario has a more extreme process. Unsurprisingly, one specific improvement that was brought up on multiple occasions was the aggregate levy and how inadequate it is. Another improvement that was brought up relates to enforcement under the ARA. The interviewee specifically mentioned the less than thorough examination of compliance reports, which allows some smaller producers to get away with things. Since municipalities have no jurisdiction on licensed sites, this is a major concern for them. Aside from this, the question instead focussed on how they feel about their aggregate extraction policies relative to other municipalities in the province. Multiple interviewees representing the Town of Caledon see themselves as having the strongest aggregate policies and that other municipalities look to what they are doing when putting together their own.

Question 9: Does the current framework give municipalities and the public adequate opportunity/sufficient time to provide comments on these applications?

A majority of the interviewees believed that there is not enough time for municipalities and the public to provide comments on extraction applications. Specific reference was made to the sheer volume of information and expertise needed to fully understand the applications and the various studies in such a short period of time. The recently published Blueprint for Change described earlier has taken steps to extend the commenting period based on the volume of material to be extracted from the site. Those who believed that there is enough time given to municipalities and the public, expressed pessimism that extending these commenting windows would likely not change the final outcome of these applications.

Question 10: Have you found that restoring agricultural land back to agriculture after extraction has taken place to be possible and desirable?

Based on the interviews conducted, one thing became clear when it comes to restoring back to agriculture: it's not easy. Many of the interviewees knew of sites where rehabilitation back to agriculture had gone well, as well as ones where they had not. Two of the interviewees brought up concerns with the current policy framework for rehabilitation. One recommended including sunset clauses on the zoning for aggregate sites to further ensure that rehabilitation occurs. The other believes that producers need to be held more accountable by the province through greater enforcement when they stray from their rehabilitation plans. In addition, multiple interviewees believed that rehabilitating back to agriculture is possible and desirable as long as extraction stays above the water table. One final item of note brought up during the interview process is that the industry has invested recently into a study to improve rehabilitation in this area.

Question 11: In what ways are you involved with determining the after uses of an aggregate extraction operation that is being closed?

Many of the interviewees said that they were not really involved with determining after uses. The councillors interviewed unanimously said that they are not really involved with determining after uses, although they are involved in obtaining other information from producers at the application stage. One interviewee stated that about all you can do as a councillor is to try

and persuade the producer to give you what you need. Planners that were interviewed had greater involvement at the application stage as well as through discussions with the producers.

Question 12: What after uses does the town/township envision for the active extraction sites in their jurisdiction?

Question 13: Can you tell me how likely are the restoration plans to be implemented in the current policy environment relating to aggregate extraction?

During the interviews, questions 12 and 13 were asked together. One important thing that came to light when asking these questions to representatives of the Town of Caledon was that the town is currently in the process of putting together a Rehabilitation Master Plan for all active sites in their jurisdiction. At this point however there are no concrete ideas as to what type of rehabilitation will take place at what site. All that exists right now are ideas for after uses such as recreation, tourism, sports, agriculture; the after uses will depend on what the use was prior to extraction and where it is located. Based on my interviews, there is no clear sense within the town as to how likely these plans are to come about until the Rehabilitation Master Plan is in place.

Due to the fact that many of the licensed areas in Puslinch are not extracting at the present time, planning for after uses is not taking place to the same degree as they are in Caledon. The major rehabilitation plan in Puslinch is known as the Big Lake proposal, which would see many of the existing pits (which have extracted below the water table, making many small lakes) be combined into one or more larger lakes. There was an opportunity recently in Puslinch for the town to sit down with the producers to come up with a multi-use rehabilitation plan for these sites that ultimately fell through. Although this may no longer be an option for the town, the Big Lake proposal still has some legs. A resolution on this matter is not expected to be made for many years and there is no guarantee of it being approved at that time. If it does receive approval it could open the possibility for something similar to be implemented elsewhere in the town.

Question 14: How well does protected area legislation protect municipalities from aggregate extraction operations? Do they make the licensing process more equitable for municipalities?

The responses to this question were all over the map. Some interviewees commented that provincial land use plans, namely the *Greenbelt Plan* offer significant protection for

municipalities. Specific reference was made by multiple interviewees to the maximum disturbed area provision of the *Greenbelt Plan* which is forcing producers to rehabilitate a percentage of the site before extracting from another area of the site. It is interesting to note that all interviewees who believe that these plans offer significant protection are currently, or were at one point associated with the Town of Caledon. Other interviewees were of the belief that at least in their jurisdiction that these plans offer very little protection to their municipality. Various reasons were cited, namely the fact that none of the plans ban aggregate extraction outright.

Question 15: In what ways does the other legislation (i.e. OWRA and the ESA) make the licensing process more equitable for municipalities? Do they do enough to make a difference?

The sense that I got from the interviewees on this question is that the *Endangered Species Act* (ESA) is the primary piece of legislation that can slow down/stop an aggregate operation. Nearly all of those interviewed made reference to the fact that it adds another layer of protection when licenses are being considered and creates an added awareness of the environmental impacts of these operations. Furthermore, some interviewees see this other legislation, namely the ESA as offering better protection than the provincial land use plans. One interviewee specifically referenced *Places to Grow* as legislation that offers more protection than the *Greenbelt Plan*.

Discussion

Based on the results of the interviews it became clear that municipal workers/councillors in both Caledon and Puslinch have many concerns regarding the current institutional framework around aggregate extraction. Many of the issues that came up revolved around public consultation. The issue that proved to be the most interesting was whether or not *Planning Act* applications should be processed before ARA applications are opened. Since the status quo involved both applications being processed concurrently, only the other two answers will be examined in greater depth.

This discussion will begin with the option where the *Planning Act* application is fully processed before the ARA application is opened. It is made clear in the ARA that no license can be issued until the requisite zoning is in place. So, what municipalities across the province (and the ones in this study) have done is not pre-zone any lands for extraction, which forces the producers to get the zoning from them before they can get a license from the province. Since the province has put such a high priority on aggregate extraction through its policies in the PPS

detailed earlier, this is just about the only thing municipalities can do to influence the process. So why then do we have a system where the two processes run concurrently? Why not amend the ARA to mandate that producers get their approval under the *Planning Act* before seeking a license?

The amount of time provided to the producers to obtain their license once an application is opened is two years. Based on the interviews, it is clear that applications remain open for much longer than this two-year window. It is the belief of the author that by requiring that *Planning Act* application be concluded first, that once a license application is initiated by the producer that they would be able to obtain a license within two years. Municipalities such as Caledon and Puslinch already ask for traffic studies, noise studies, natural environment studies, and many others to be done in the current system. Many of these studies are unlikely to change over the span of just a year or two in the location where extraction is being proposed, barring extreme events in the area. As a result, the producer would be able to submit these same studies as part of their license application. It is true that they may still be required to complete other studies during the licensing process, but not nearly as many as they would have to presently. Perhaps the most important outcome of this would be that the province is clearly putting municipal interests first with regard to these applications because most issues with these applications manifest themselves at the municipal level.

It should be noted that the issues detailed above regarding the amount of time set out for consultation are exclusive to the licensing process under the ARA. These are proposed to change as part of the recently released Blueprint for Change document. Would these changes be necessary if the *Planning Act* applications were required to come first? In short, the answer is yes. Even if the *Planning Act* application were to come first, the two processes look at things in very different ways and the consultation period for licensing applications would need to be extended. This would be despite the fact that commenting agencies and the public will have had a chance to thoroughly review any studies submitted by the producer as part of the *Planning Act* application.

However, it may not end up resolving any of the confusion that many members of the public experience when they attend these public meetings. As it stands now, the public shows up at a meeting expecting their questions to be answered and concerns to be addressed by whoever

is running the meeting. In some cases they find out that the questions and concerns they have are not valid to the application the meeting is being held for, leading to their confusion. By having the *Planning Act* process run first, members of the public, when they come to the statutory public meeting(s) still run the risk of their questions and concerns not being relevant to that particular discussion. An idea that came up over the course of the interviews to address this issue of confusion is running the two process simultaneously with a blended consultation process.

In this scenario, the public would show up to the meeting where there would be representatives of the producer including their consultants, representatives of the town, and the province all available to answer questions and provide comments. This would ensure that anyone who chooses to attend the meeting will be able to determine who to ask their questions to and who to submit their comments/objections to. Therefore, it should be expected that the amount of confusion among the public would drop significantly. It is also important to note for this scenario that the time period for consultation under the ARA would not have to align exactly with that of the *Planning Act* application; all that would matter is that the public meeting for each process take place at the same time. In addition, there would be no risk of any of the studies becoming outdated while the applications are being processed.

However in this scenario the amount of time that it would take to obtain a license would likely remain roughly as long as it is currently. That is to say, it would take longer than the two year time window currently in place. Unfortunately this scenario would have the effect of saying to municipalities that their needs are not as important as that of the province because the status quo would have essentially been maintained.

An interesting idea that arose during the interviews is setting a timeframe for the zoning of sites for extraction (i.e. a sunset clause). Not surprisingly aggregate producers have opposed this idea, primarily for philosophical and economic reasons. Being private companies, they do not like being told what they can and cannot do. Economically, once they have permission to extract, they want to maximize the profitability of the activity. As a result, they will wait until it is most advantageous for them to start extracting. A big part of this is the need locally for the resource. Without need there can be no extraction. Despite the fact that there is great need for the resource province-wide, this provision is one that is the most controversial for municipalities. They feel as though they have no say as to whether or not an application gets approved or not

because the province has included it in the PPS since 2005. The only way that this could be made fairer for municipalities is if the provision itself were no longer a part of the PPS. But given the province-wide need for the resource, this is not very likely to happen in the near future.

Presently the OMB plays a central role on appeal for local planning decisions on all planning matters across the province including official plan and zoning by-law amendments for aggregate applications. The fact that there was no unanimity regarding who should make the final decision on these matters is not surprising because many municipalities feel as though they should have control over what goes on in their jurisdiction. The *Municipal Act* lays out the responsibilities delegated to municipalities from the province. Passing by-laws relating to aggregates is not one of those assigned to the municipality. Despite all the responsibilities that the province has downloaded to municipalities, aggregate extraction is one of the main ones that they have decided to hold on to.

As stated in a previous section of this report, many interviewees were of the belief that the appeals process to the OMB needs to change. This is consistent with sentiment from municipalities across the province. One thing that could be tweaked to aid municipalities is the way that the OMB goes about making its decisions; starting from scratch rather than reviewing the earlier decision. As it is currently, it appears that whichever side on appeal has the most convincing experts and tells the best story is more likely to prevail. If the OMB were to function such that the appeal is centred on the previous decision rather than the application as a whole, then the process would operate in a more equitable manner from the municipal perspective.

All this is not to say that municipalities cannot do anything to protect themselves from these activities. In fact, as stated earlier the Town of Caledon recently implemented a significant official plan amendment relating to aggregate extraction in their jurisdiction. This is seen by many of those interviewed with the town as being a large step, which in the words of one interviewee gives them the “Cadillac of policies”. Municipalities in a similar situation to Caledon can protect themselves from aggregate extraction by beefing up their official plan. Given the significance of extraction in Caledon, if policies like the ones they recently implemented can be approved provincially, who’s to say that similar policies cannot be passed elsewhere in the province?

As it relates to making the whole process transparent from start to finish, another thing that comes to mind; that is improving/enhancing enforcement of the ARA. This is another item that has been addressed in the Blueprint for Change document. However there is no clear timetable for if, or when changes will be made to enforcement provisions under this act. Enforcement has long been an issue for the MNRF, having experienced significant funding cuts over the last number of years. With the economy in another downturn, there are not many options available to get more funding. At the moment, the most likely source of funding would come from an increase to the aggregate levy.

Currently the aggregate levy is set at 11.5 cents/tonne of aggregate extracted, with 6 cents/tonne going to the lower-tier municipality and 3.5 cents/tonne to the province. This fee is recognized by all parties involved (i.e. the province, municipalities and the producers) as being woefully inadequate. As such, negotiations are ongoing between TAPMO and the OSSGA in efforts to increase the levy significantly. The municipalities want the levy to increase to gain more economic benefit from hosting these activities, while the producers want the increase to improve enforcement of the act to crack down on chronic violators (TAPMO/OSSGA Aggregate Levy Committee, 2014). In addition, a small portion of this fee goes toward the rehabilitation of legacy sites as part of the Management of Abandoned Aggregate Properties (MAAP) program run by the Ontario Aggregate Resources Corporation (TOARC). TOARC does considerable research into different rehabilitation techniques across the province. Increasing the levy would also provide additional funding to this program. This research could go a long way in determining the best rehabilitation techniques for certain environments, as well as ease some of the concerns municipalities may have regarding how the site is to be rehabilitated.

Another way to provide greater benefits to municipalities is through the after uses of the pits/quarries themselves. It is important to note that once a site has been licensed for extraction, the municipality in which it is located does not have much say as to what goes on during and post extraction. Incorporating a sunset clause into the license is something that would be beneficial to municipalities, but because of the reasons stated earlier, it is something that is not likely to come about. One thing that could be done is more meaningfully involving the public and the municipality in determining what after uses they would like to see for a potential site. There are examples where this has been done and the results have been promising. By involving

outside parties in determining the after uses for an extraction site this could help in building trust between the industry and the public.

Other legislation such as the *Ontario Water Resources Act* and the *Endangered Species Act* provide an additional layer of protection to municipalities through various permitting requirements. Since these pieces of legislation have been identified as offering more protection to municipalities than provincial land use plans, they will not be discussed here. Each of the major provincial land use plans do not outright ban aggregate extraction, although as part of the Co-ordinated Land Use planning review the Niagara Escarpment Commission has proposed to ban all new aggregate extraction on their lands. This would stand to benefit not just the Town of Caledon which has considerable escarpment lands in their jurisdiction, but all municipalities with extraction activities within the plan area.

The argument could be made that the various EA processes outlined earlier are much more thorough than the approvals/licensing process under the *ARA* and *Planning Act*. Specifically with regards to the class EA process for Crown forestry, there is almost no comparison to be made. The sheer amount of public involvement that takes place along with the tools used for assessing impacts on the forest, and the broader goals and objectives formally established at the start of the process are evidence of this. The class EA process for waste management projects is also much more thorough in terms of the amount of consultation carried out. There is however, one similarity to the licensing process under the *ARA*. Both the regulation governing waste management projects and the prescribed process under the *ARA* have classified projects into different categories depending on the size/volume (of extracted material) of the proposed project.

In a much broader sense, an applicant submits basic information and other studies (if they think it necessary) as part of an application for a license under the *ARA*, or an application for a zoning by-law or official plan amendment under the *Planning Act*. It is only when the application(s) are circulated for comments that the commenting agencies and the public are able to identify what additional information they need before finalizing their comments. In contrast, the public and the municipality are involved from an early stage in the class EA process to help scope the assessment itself. Whereas under the *ARA* there is only one mandatory public

meeting, during the class EA process under the *Environmental Assessment Act*, the public and municipality are required to be involved throughout until the assessment has received approval.

There are a number of reasons that support the idea that aggregate operations should be approved under the *Environmental Assessment Act* rather than the ARA. The primary reason for this is the expanded role of consultation under the *Environmental Assessment Act*. By expanding the role of consultation in the licensing of aggregate operations this could – much like requiring the *Planning Act* applications to be processed prior to ARA applications – have the effect of putting the needs of the public and municipalities at the heart of the discussion. This would be especially true if it is done at an early stage in the process where the public and municipalities would have the chance to scope the assessment to address any concerns they may have with regards to a particular application. In addition, this could help to build trust between all parties involved in the licensing/approvals process (i.e. the public/municipalities, producers, and the province). It is clear from this perspective that the public would be better served through a class EA process.

The enhanced consultation described in the previous paragraph could also stand to benefit the aggregate industry itself. If the industry is able to establish trust with the public through extended periods of open, transparent consultation, and incorporating their input into the Terms of Reference, then everyone involved would stand to benefit over the long term. The benefits to the industry could include a more positive perception among members of the public towards the industry. Another way that a class EA process could be beneficial to the industry ties back to the consolidation of multiple studies into one document. Currently producers spend considerable funds to hire consultants to conduct various assessments on their behalf. By consolidating everything into one document, this has the potential to save producers significantly on consulting costs.

At this point it is important to consider the implications of transitioning from the current framework of aggregate approvals under the ARA and the *Planning Act* to the prescribed process under the *Environmental Assessment Act*. One obvious implication is that MNRF would no longer have control over the licensing of aggregate sites. As a consequence, MNRF as we now would be a shell of what it currently is and may be merged with MOECC at some point thereafter. Another implication would be that the prescribed licensing process under the ARA

would no longer be applicable under this new regime and a new one would need to be developed because of the significant differences between the two processes. Using a class EA for aggregate operations would provide a standard process for all proposed pits and quarries which as described earlier, requires provincial approval. This would distinguish this land use from more common land uses such as subdivision or condominium developments. Given that EA's are approved by the MOECC – who has the option to defer to the Environmental Review Tribunal – another implication would be that the OMB would no longer be involved in the licensing of aggregate sites, although it would still be involved in *Planning Act* applications.

As it relates to the after uses of aggregate sites, it is questionable whether or not there is a way to assess them as part of a class EA process. Under Part 2.1 of the *Environmental Assessment Act* there is a list of eight items required to be included in the approved Terms of Reference. The Minister does have the ability to require additional information be included that is not otherwise listed. Therefore, if a new aggregate site is being proposed the Minister could in theory require an assessment of the potential after uses of the site. However, given the complex and uncertain nature of determining after uses this may not yield the desired results.

Caledon Example

In September 2010, the Town of Caledon approved an official plan amendment and corresponding zoning by-law amendment to allow for a new aggregate pit to be opened. What follows is an example of a plain language summary of this application.

In November 2005, the Town of Caledon received applications from Lafarge to amend the town's official plan and zoning by-law to allow a new aggregate pit on a parcel of land known as the Lawford Property. The application to amend the official plan would re-designate the lands from General Agriculture Area and Environmental Policy Area to Extractive Industrial Area and Environmental Policy Area. For the zoning by-law amendment, the lands would be re-zoned from Agriculture (A1) to Extractive Industrial and EPA 1.

Simultaneously, Lafarge submitted an application for a Class A, Category 3 (above water table) aggregate license to the Ministry of Natural Resources for this property. The site is approximately 400ac (162ha), of which 215ac (87ha) will be used for extraction. This pit is an expansion of the existing Petch-Presswood Pit to the south of this property. Approximately 750k tonnes of material will be extracted on an annual basis combined from each of the three pits.

Extraction on this site will be conducted in two phases. Prior to extraction starting on the second phase, 33% of the extracted area for phase one is to be rehabilitated. Rehabilitation will take place on a south-north gradient.

The consultation process included a notice being issued to landowners within 120m of the proposed site, a mandatory public meeting, and an additional smaller meeting with landowners in the immediately vicinity of the site. Several concerns were brought up during this process including public health impacts relating to dust and noise, property devaluation, groundwater impacts, and road safety relating to truck traffic. Lafarge had several consulting firms put together technical studies to examine everything from impacts on the natural environment including hydrogeology to acoustics and visual impacts. The Town of Caledon then brought in outside parties to peer-review these studies. Many of the recommendations of these studies have been incorporated into ARA site plan conditions.

The applications were also examined with regard to provincial, regional and municipal level policies. Of note, the application was found to be consistent with the PPS, the Region of Peel's Official Plan, and the Town of Caledon's Official Plan.

[Puslinch Example](#)

An application to amend the Town of Puslinch's zoning by-law was submitted to the town by Cox Construction to expand the existing Puslinch Pit. This application would rezone the lands from Agriculture (A) to Extractive Industrial (EXI).

An application was also submitted to the Ministry of Natural Resources and Forestry for a Class A, Category 1 (below water) aggregate license. The applicant is seeking to license 48ac (19.5ha) for extraction, of which approximately 43ac (17.4ha) will be used for extraction. Since the extraction will be going below the water table, rehabilitation of this site will take place around the extracted area and will occur after extraction is complete.

Cox Construction held two public meetings (October 2013 and January 2014). At these meetings several issues were raised by the public including impacts related to surface and groundwater, traffic, noise and dust impacts, and the proximity to an existing licensed area. An air and noise assessment was completed by Trinity Consultants on behalf of the applicant. The results of this study showed that the new extraction would not exceed the MOECC noise criteria.

The County of Wellington is of the belief that this pit will not impact the existing road system, existing agricultural operation, or surface or groundwater resources. In addition, the applicant has addressed all provincial and county policies. As a result, they support the proposed zoning by-law amendment.

Recommendations

Based on the results given above and their subsequent discussion, the following recommendations are being made to make the institutional framework more equitable for municipalities without compromising our future need for aggregates.

1. The aggregate levy should be increased to offset the social and environmental costs to municipalities that are home to aggregate extraction.
2. Additional funding should be put towards research on improving existing rehabilitation techniques and developing new techniques for abandoned sites.
3. Additional funding should be put towards improving enforcement under the ARA.
4. Consultation activities under the ARA should be expanded to more meaningfully involve the public and the municipality in the process, including determining the after uses of the extraction site.
5. No changes should be made to how *Planning Act* applications and ARA applications are processed. Although potential changes such as blending the consultation processes and mandating that applicants receive approval under the *Planning Act* should be thoroughly examined.

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