



resources

State of Aggregate Resources in Niagara Region

Technical Addendum Report

May 2nd, 2018





Table of Contents

1	INTRODUCTION	1
1.1	Background	1
1.2	Purpose of the Technical Addendum	1
2	AGGREGATE RESOURCES ACT CHANGES	2
2.1	Context	2
2.2	Key Changes to the ARA	3
2.3	Summary of Key Implications for Regional Official Plan	5
3	UPDATES TO PROVINCIAL PLANS	6
3.1	Context	6
3.2	Key Changes to the Growth Plan and the Greenbelt Plan	6
3.3	Key Changes to Niagara Escarpment Plan	10
3.4	Summary of Key Implications for Regional Official Plan	12
4	RECOMMENDATIONS	14
4.1	Updated Policy Recommendations	14
4.2	New Policy Recommendations Resulting from the 2017 Documents	15
	REFERENCES	16

1 INTRODUCTION

1.1 Background

In late 2014, the Region of Niagara launched a project to review and update its Official Plan policies for aggregate resources. The Regional Official Plan policies for aggregates had not been updated for some time and required a detailed review to ensure alignment with the Provincial Policy Statement (2014) and other Provincial plans. In January 2016, the State of Aggregate Resources in Niagara Region report was completed and presented to the Region's Planning Committee. The report provided recommendations for updating the aggregate policies of the Regional Official Plan. While the Region was in the process of preparing an Official Plan Amendment to implement the policy recommendations, the Province launched a review of the Growth Plan for the Greater Golden Horseshoe (Growth Plan), the Greenbelt Plan and the Niagara Escarpment Plan, completed an update to the *Aggregate Resources Act* (ARA) and implemented reforms to the Ontario Municipal Board through Bill 139. These policy and legislative changes have implications for the Regional Official Plan and were not contemplated in the State of Aggregate Resources report. The Region is now in the process of drafting a new Official Plan. The work being completed as part of the aggregate policy project will form the basis for new policies in the new Official Plan, and will take into consideration the above-noted policy and legislative changes.

1.2 Purpose of the Technical Addendum

The purpose of the following Technical Addendum report is to provide a high-level review of the legislative changes which have occurred since the completion of the State of Aggregate Resources in Niagara Region background report. This Technical Addendum Report should be read in conjunction with the 2016 Background Report, State of Aggregate Resources in Niagara Region. This Report provides an overview of the updates to the ARA, the Growth Plan, the Greenbelt Plan, and the Niagara Escarpment Plan and identifies additional policy gaps in relation to the Region's current ROP¹. The policy recommendations of this Report, combined with the previous recommendations will provide the basis for a new set of aggregates policies which will form part of the Region's new Official Plan.

The following report is organized into four main sections. This first section provided a brief introduction, explaining the purpose of the report. The second section covers changes to the ARA. The third section provides commentary on applicable policy changes in the three Provincial plans. The fourth section provides a summary of policy and other recommendations.

¹ Note that this report does not provide an exhaustive list of all policy changes. Readers should refer to the parent documents for additional details.

2 AGGREGATE RESOURCES ACT CHANGES

2.1 Context

The ARA (2017) was enacted by the Province to manage aggregate resources, control and regulate aggregate operations, identify requirements for rehabilitation of land from which aggregates have been extracted and to minimize the adverse impacts that an aggregate operation may have on the environment. The Ministry of Natural Resources and Forestry (MNRF) is responsible for administering the ARA. The role of the MNRF includes overseeing the rules governing the management of aggregates; issuing licences, permits and changes to existing approvals; inspecting aggregate operations and responding to complaints; enforcing compliance; and ensuring site rehabilitation is carried out. The ARA applies to most of Ontario's pits and quarries including lands under water, crown-owned lands (including aggregates and topsoil) and private lands. It should also be noted that some areas of private land are not covered by the Act. In these areas, the local municipality may regulate pit and quarry operations.

In 2013, the Province initiated a review of the ARA and applicable policies and regulations, such as O. Reg. 244/97 and Provincial policies and procedures, with the aim to modernize and to strengthen the existing policy framework. The proposed changes are outlined in the Province's discussion paper entitled *A Blueprint for Change*, which was released by the Province in 2015. The document lays out the following goals:

- **Stronger oversight** by introducing new tools, powers and provisions that improve effectiveness, efficiency and flexibility;
- **Environmental accountability** by updating and enhancing application requirements, developing new tools to deal with existing sites and improving record keeping and reporting;
- **Improved information and participation** by improving consistency in requirements, enhancing opportunities for involvement and making information more accessible and easier to understand; and,
- **Increased and equalized fees and royalties** by changing Crown land fees and royalties, indexing fees and royalties, working with municipal organizations.

In 2016, The Province introduced Bill 39, the *Aggregate Resources and Mining Modernization Act* with the intent to modernize the ARA and the *Mining Act*. The proposed amendments to the ARA included increased oversight by the Minister over aggregate operations, the need for enhanced studies for proposed and existing pits and quarries, changes to public and agency consultation, as well as updates to fees and royalties. A 60 day public review period was held from October 2016 to December 2016. Bill

State of Aggregate Resources in Niagara Region: Technical Addendum to the Background Report



39 received royal assent on May 10, 2017. A number of regulations are expected to be released to implement Bill 39. A schedule of the forthcoming regulations has not been identified at the time of publication of this report.

2.2 Key Changes to the ARA

The most recent amendments to the ARA focus on the need to balance economic growth and job creation with the protection of the natural environment. The ARA (2017) provides greater oversight to the Minister and places greater responsibility on aggregate operators to demonstrate compliance with the Act. As noted previously, several aspects to the updated ARA will be introduced over time. For example, the ARA makes reference to the replacement of the Ontario Municipal Board (OMB) with a Local Planning Appeal Tribunal (LPATA), which came into effect on April 3, 2018. Any responsibilities under the ARA that were allocated with the OMB are transferred to the LPATA². Under O. Reg. 101/18 any matter raised prior to the LPATA will be managed under the OMB Act. The key changes to the ARA are summarized below.

2.2.1 General Changes

- In general, the majority of the changes to the ARA are related to the licensing process and have little direct implication on municipal planning policies.
- The definition of ‘aggregates’ is expanded to include recycled aggregates (Section 71.1.3).
- A new section was added on liability which states that inspectors, public servants, and the Minister are protected from liability for any acts that were done in good faith under the Act (Section 4.1.1).
- Fee changes pertaining to the ARA came into effect on January 1, 2018. Approximately 61% of the fees collected from licences, wayside permits and aggregate permits are to be allocated to the local municipality in which the site is located, along with 15% to the upper tier municipality to help address any impacts caused from hauling aggregates on municipal roads. The balance is allocated to the Crown and the Aggregate Resources Trust for rehabilitation and research.

2.2.2 Licensing and Permitting

- Under the ARA (2017) a broad set of changes were made to the aggregate licensing requirements. Under the amended ARA, the Minister has been provided with increased decision-making powers including powers to amend and revoke licenses (Section 11.9, 11.10

² Bill 139 *Building Better Communities and Conserving Watersheds Act, 2017* has been approved by the Government of Ontario and the changes are effective as of April 3, 2018. The Act replaces the Ontario Municipal Board with a Local Appeals Body and includes a number of changes to the appeals process. Transition regulations are laid out under O. Reg. 101/18. Going forward, the key test for appeals will be whether or not a municipal council has correctly applied Provincial Policy, underscoring the importance of having municipal plans which are up to date, and in alignment with the PPS, Growth Plan, Greenbelt Plan and other applicable Provincial plans.

State of Aggregate Resources in Niagara Region: Technical Addendum to the Background Report



and Section 20.1 a to d), designate Crown land as land where no aggregate extraction is permitted (Section 34.6), and the preparation of a site plan. A significant change to the *Act* is a license holder's ability to make minor amendments to a site plan without Ministerial approval. The ability to make minor amendments without requiring Ministerial approval has not yet been implemented and will be assessed through future regulation..

- Under special circumstances, the amended ARA allows a license or permit applicant to submit a customized plan. The customized plan must lay out the notification and consultation requirements and the surveys and studies to be completed as part of the application (Section 11.3 and Section 35.1.1).

2.2.3 Environmental Protection and Reporting on Rehabilitation Activities

- In addition to the Minister considering the effects of an aggregate operation on ground and surface water resources, emphasis is added on the protection of drinking water in determining whether a licence or permit should be issued (Section 12.1 e).
- As part of the application process, a review of technical or specialized studies must be carried out by a qualified expert outside the Ministry (Section 62.2.1).
- In addition to carrying out progressive and final site rehabilitation, the amended *Act* requires aggregate operators to submit a rehabilitation report at prescribed times (Section 48.1.1).

2.2.4 Public and Agency Consultation

- While Aboriginal consultation was previously taken into consideration through the ARA process, this requirement is now specifically identified in the ARA. The amended ARA requires that the Minister consider whether adequate consultation with Aboriginal communities has been carried out before making any decisions related to aggregate licenses or permits that may have an adverse effect on Aboriginal or treaty rights (Section 3.1).
- It should be noted that section 12.2 of the ARA no longer requires the applicant for an aggregate operation to communicate the issuance of a license or permit to the municipality in which the site is located (Section 12.2). This change was made to reflect the fact that the Ministry is responsible for notification to area municipalities.

2.2.5 Fees and Penalties

- The ARA introduces an overall change in penalties. The amended *Act* includes a maximum penalty amount of \$1,000,000 and a new maximum daily fine of \$100,000 for each day the offence occurs (Section 58.1 and 58.2).

2.3 Summary of Key Implications for Regional Official Plan

The changes to the ARA through Bill 39 are heavily focused on the legislative framework of the ARA. While there was a desire on behalf of the industry, municipal governments and professional associations to see significant changes to harmonize the ARA license process with *Planning Act* processes, the updated ARA did not address harmonization. Accordingly, there are very few changes within the updated ARA which inform official plan policies. The following summarizes the main implications for the Region's new Official Plan:

- Section 27.3 pertaining to the Niagara Escarpment Plan Area has remained unchanged and no wayside pits are permitted in the area. Wayside pits are also not permitted in a residential zone or an area zoned for environmental sensitivity. However, wayside pits continue to be a permitted use in the Escarpment Rural Area in the NEP (2017). The Regional Official Plan policies under the Niagara Escarpment Plan should include the appropriate reference in regards to wayside pits in the NEP³.
- The amendment pertaining to the increased protection of drinking water sources means that there is an opportunity for the Region to include policies which protect water resources⁴. It should be noted that this policy direction reinforces the policies of the PPS and Provincial Plans which also provide direction for protecting and managing impacts on water resources. In addition, the Region may want to clearly articulate study requirements for areas that are identified as sensitive in the Region's Plan due to their proximity to drinking water or sensitive hydrologic features (to ensure that the studies completed under the ARA would address *Planning Act* considerations as well).
- A key change to the ARA is that the requirement for consultation with Aboriginal communities to determine the potential impact of the aggregate operation on treaty rights is now specifically identified. In addition, greater emphasis is also placed on notifying and consulting with the public. In the context of the ARA, Aboriginal consultation is the Crown's responsibility unless delegated to the proponent. The Region may still choose to undertake consultation, as appropriate.

³ It should be noted that the Region will need to decide how the new Official Plan will address alignment with the NEP. At a minimum, the Plan would include a schedule and a policy reference guiding the reader to the NEP.

⁴ In general, drinking water sources are presumed to refer to both municipal sources and private wells; however the ARA does not specify the type of drinking water sources to be protected.

3 UPDATES TO PROVINCIAL PLANS

3.1 Context

The Growth Plan, the Greenbelt Plan, the Niagara Escarpment Plan (NEP), and the Oak Ridges Moraine Conservation Plan build on the Provincial Policy Statement (PPS) and work together to provide the overarching land use planning framework for their respective planning areas. In February 2015, the Province initiated a co-ordinated land use planning review to improve the harmonization and alignment of the policy framework between the four plans. The changes to the plans emphasize the importance of balancing growth with the protection of the natural environment.

Generally, the approach for all of the plans was to emphasize policy alignment and harmonization across all of the plans. For example, the 2005 version of the Greenbelt Plan provides extensive direction for aggregates within the Greenbelt Area, while the Growth Plan contained only one policy on aggregate resources. The changes resulting from the coordinated land use planning review have resulted in four plans which are well aligned and have a consistent approach for aggregate resource areas.

Of relevance to the Region of Niagara are the Growth Plan, the Greenbelt Plan, and the NEP. The key changes to each plan were released in 2017 and are outlined in the sections below. The policies of the Growth Plan and Greenbelt Plan are similar and are presented in one section to avoid repetition. A separate section describes the changes applicable to the Niagara Escarpment Plan.

3.2 Key Changes to the Growth Plan and the Greenbelt Plan

The Growth Plan provides municipalities with direction on where and how to grow. The Plan focuses on planning matters such as the protection of the natural environment and the management and rehabilitation of mineral aggregate resources in Ontario. The Greenbelt Plan provides municipalities with long-term guidance on the protection of the countryside, agricultural lands, and natural heritage resources, as well as the management and rehabilitation of aggregate resources in the Greenbelt area.

While both plans feature references throughout the plans, they both include specific sections which provide the key policy framework for mineral aggregate resource areas:

- **Growth Plan:** Section 4.2.8 of the Growth Plan includes seven major policies on mineral aggregate resource areas.
- **Greenbelt Plan:** Section 4.3.2 of the Greenbelt Plan includes eleven major policies on mineral aggregate resource areas. The distinction between policies in the Greenbelt Plan and Growth Plan is that the policies of the Greenbelt Plan apply to lands within the Protected Countryside designation of the Greenbelt Plan.

State of Aggregate Resources in Niagara Region: Technical Addendum to the Background Report



As noted above, the main emphasis on the changes involved aligning the Growth Plan policies with the Greenbelt Plan's policy framework. The following summarizes several of the key changes.

3.2.1 Consistent Definitions

Whereas the Growth Plan, 2005 did not define the term "Mineral Aggregate Operation", the amended Plan defines the term as follows:

- a) "Lands under license or permit, other than for wayside pits and quarries, issued in accordance with the *Aggregate Resources Act*;
- b) For lands not designated under the *Aggregate Resources Act*, established pits and quarries that are not in contravention of municipal zoning by-laws and including adjacent land under agreement with or owned by the operator, to permit continuation of the operation; and,
- c) Associated facilities used in extraction, transport, beneficiation, processing, or recycling of mineral aggregate resources and derived products, such as asphalt and concrete, or the production of secondary related products."

The above definition aligns with the Greenbelt Plan (2017) the Niagara Escarpment Plan (2017) and the PPS (2014). All three plans also include the same definition for Mineral Aggregate Resources which also aligns with the PPS. It is important to note that the above-noted definition necessitated a number of modifications to the Greenbelt Plan's policies, as certain policies in the previous version distinguished between new operations and expansions to existing operations. In the updated version of the Plan, this distinction applies to a more limited suite of policies (e.g. see policy 4.3.2.9c). It is also important to note that the NEP (2017) continues to not allow asphalt plants, concrete plants, brick manufacturing plants and other similar manufacturing uses in Mineral Resource Extraction Areas (e.g., see section 1.9.3.10 of NEP).

3.2.2 Protection and Reuse of Mineral Aggregate Resources

The Growth Plan (2017) and the Greenbelt Plan (2017) identify mineral aggregates as a key resource for Ontario's economic growth and the building of complete communities. Section 2.2.9 of the Growth Plan and Section 4.3.2.1 of the Greenbelt Plan have been amended to emphasize the protection of mineral aggregate resources. Subsection 2.2.9(3.iii) of the Growth Plan states that development activities (e.g., management and use of resources, resource-based recreational uses, and other rural uses) on rural lands that are located outside of settlement areas may be permitted as long as these activities do not have an adverse effect on mineral aggregate operation.

In addition, policy changes in Section 4 of the Growth Plan pertain to maximizing the use of previously extracted resources and to contribute to the reduction of greenhouse gas emissions. Subsection 4.2.8 of the Growth Plan introduces policy on the recovery and recycling of mineral aggregate resources to be reused for manufacturing, construction, industrial, or maintenance purposes. Notably, the Greenbelt

State of Aggregate Resources in Niagara Region: Technical Addendum to the Background Report



Plan only refers to the recycling of aggregate resources in the context of the definition for mineral aggregate operation.

3.2.3 Management of Mineral Aggregate Resources

The amended Growth Plan and Greenbelt Plan provide direction for new mineral aggregate operations. Under subsection 4.2.8.2 of the Growth Plan an application for a new mineral aggregate operation in key natural heritage or hydrological features within the Natural Heritage System must demonstrate the following:

- How connectivity between key natural heritage and key hydrologic features are maintained before, during and after excavation;
- How an operator will immediately replace habitat lost with equivalent habitat on or adjacent to a site;
- How the water resource system will be protected and enhanced; and;
- How any key natural heritage and key hydrologic features and their associated vegetation protection zones will be addressed, see Section 4.2.8.4 b) and c) and 4.2.8.5 c).

In the context of the Greenbelt Plan the above policy applies to all new mineral aggregate operations on lands within the Protected Countryside (Section 4.3.2.3 b). Amendments to the policy in the Growth Plan include the introduction of the terms key natural heritage features and key hydrologic features and reference to the vegetation protection zones.

Under the amended Growth Plan and Greenbelt Plan an application for the expansion of an existing mineral aggregate operation that requires approval under the ARA is permitted within the Natural Heritage System if the application is consistent with the PPS and satisfies rehabilitation requirements.

Despite the permissions above, no new mineral aggregate operations, wayside pits, or quarries are permitted within the following key natural heritage and hydrologic features of the Growth Plan (Section 4.2.8.2 a) and the Greenbelt Plan, 2005 and 2017 (Section 4.3.2.3 a):

- Significant wetlands;
- Habitat of endangered species and threatened species; and,
- Significant woodlands unless the woodland is occupied by young plantation or early successional habitat, in which case Plan specific rehabilitation requirements must be addressed, see Sections 4.2.8.4 and 4.2.8.5 of the Growth Plan and Sections 4.3.2.6 and 4.3.2.7 of the Greenbelt Plan

3.2.4 Mineral Aggregate Operations on Prime Agricultural Lands

A key change pertains to mineral aggregate operations in prime agricultural areas and lands within the Protected Countryside of the Greenbelt. Under Section 4.2.8.3 of the amended Growth Plan and Section 4.3.2.4 of the amended Greenbelt Plan an agricultural impact assessment is required for new mineral aggregate operations in prime agricultural areas. The expectation is that the Agricultural Impact

State of Aggregate Resources in Niagara Region: Technical Addendum to the Background Report



Assessment will provide context for understanding the impacts on the existing agricultural system, as well as an opportunity to examine ways in which the proposed operation can maintain or improve the connectivity of the Agricultural System, if possible. The Agricultural Impact Assessment also provides a baseline for understanding how rehabilitation can occur in the future, as sites in prime agricultural areas are to be rehabilitated to an agricultural condition (in accordance with Policy 2.5.4 of the PPS, 2014).

It is also worth noting that policy 2.3.5.1 of the PPS prevents the removal of lands from Prime Agricultural Areas (except for settlement area expansion), underscoring the notion that aggregate extraction is an interim use. This means that a new operation would be accommodated through an Official Plan site specific exception (rather than a re-designation). Building on this direction from the PPS, policies in section 3.1.2 of the Greenbelt Plan state that lands in a Specialty Crop Area are not to be redesignated in Official Plans for non-agricultural uses. This also applies to lands in a Prime Agricultural Area under section 3.1.3 of the Greenbelt Plan. While a new mineral aggregate operation or the expansion of an existing mineral aggregate operation may be permitted through a site specific policy exception to the municipal Official Plan, the lands would retain the Specialty Crop Area or Prime Agricultural land use designation.

3.2.5 Progressive and Final Rehabilitation

The Growth Plan introduces a broad range of rehabilitation policies pertaining to new mineral aggregate operations. Subsection 4.2.8.4 sets out the following rehabilitation requirements for new mineral aggregate operation:

- a) The disturbed area of a site will be rehabilitated to a state of equal or greater ecological value and the long-term ecological integrity of the entire site will be maintained or enhanced;
- b) If key natural heritage or key hydrologic features exist or have existed on the site, the health, diversity, and size of these key features will be maintained or enhanced and rehabilitation will take place as early as possible (4.2.8.4 b.ii);
- c) Aquatic areas that remain after extraction must be rehabilitated to aquatic enhancement and represent the natural ecosystem of the particular setting or ecodistrict, as well as meet the intent of policy 4.2.8.4 b.i); and,
- d) Final rehabilitation of a site located outside the Natural Heritage System will reflect the long-term land use of the general area, taking into consideration provincial and municipal policies.

For new mineral aggregate operation that are located within the Natural Heritage System subsection 4.2.8.4.5 of the Growth Plan applies. The rehabilitation policies in the Growth Plan align with sections 4.3.2.5 and 4.3.2.7 of the Greenbelt Plan, 2005 and 2017.



resources

State of Aggregate Resources in Niagara Region: Technical Addendum to the Background Report

3.2.6 Municipal Official Plan Policies for Conservation and Reuses of Mineral Aggregate Resources

The Growth Plan, 2017 calls upon municipalities to develop and implement Official Plan policies that provide a strategy for the conservation of mineral aggregate resources, including the recovery, recycling, and reuse of aggregate materials (Section 4.2.8.1).

In addition, planning related decisions must be consistent with the mineral aggregate resource policies in the PPS. Subsection 4.2.8.7 of the Growth Plan, 2017 states that “[w]here an application under the *Aggregate Resources Act* has been received and deemed complete by the Province as of July 1, 2017, any applications under the *Planning Act* to permit the making, establishment or operation of the pit or quarry to which the *Aggregate Resources Act* application relates, if approved, will not be subject to the policies of [the Growth Plan].”

3.3 Key Changes to Niagara Escarpment Plan

The purpose of the Niagara Escarpment Plan (NEP) is to maintain the Escarpment’s natural environment and to ensure that any new development is compatible with the natural environment. The NEP’s main policies for aggregate resources are mainly found in Sections 1.9 and 2.9 of the Plan. In general, the changes to the NEP were undertaken to ensure harmonization of key terms, principles and policies between other Provincial Plans and the NEP. The following section highlights relevant changes.

3.3.1 Management of Mineral Aggregate Resources

The NEP (2017) has expanded the permitted uses under Section 1.9.3 to include recycling and reprocessing facilities of mineral aggregate resources. These uses must not conflict with Official Plan policy, zoning by-laws, and NEP policy. The recycling and reprocessing of aggregate is exempt from development control pursuant to S.19.1 of Regulation 828.

Section 1.9.2 of the NEP (2017) introduces new policy language on the development of new mineral aggregate operations within a new Mineral Extraction Area to clarify where a Plan amendment is required. Under the NEP (2017), section 1.2.2, a mineral aggregate operator may apply for an amendment to the NEP to redesignate the Escarpment Rural Area to Mineral Resource Extraction for new mineral aggregate operations produce more than 20,000 tonnes annually. New licensed mineral aggregate operations producing up to 20,000 tonnes annually continue to be a Permitted Use in subsection 1.5.3.17 of the NEP, as in the NEP 2005, subject to meeting the Development Criteria in section 2.

An amendment to the NEP is required to redesignate the Escarpment Rural Area to Mineral Resource Extraction Area. An application for redesignation is evaluated within the context of the NEP and takes into consideration the following (Subsection 1.2.2.3):

State of Aggregate Resources in Niagara Region: Technical Addendum to the Background Report



- a) Protection of the Escarpment environment;
- b) Opportunities for achieving the objectives of the *Niagara Escarpment Planning and Development Act* through the final rehabilitation of the site;
- c) The protection of prime agricultural areas, the agricultural capability of the land, and the potential for rehabilitation for agricultural uses; and,
- d) Opportunities to include rehabilitated lands in the Niagara Escarpment Parks and Open Space System.

In addition, all other relevant policies within the NEP are being considered when evaluating an application to amend the NEP. Subsection 1.2.2.4 provides an overview of the application requirements to amend the NEP. A further Plan amendment is required to allow any After Use of a formerly licensed site pursuant to the NEP subsection 1.9.5.

Although subsection 2.9.1 of the NEP (2017) permits the establishment of mineral aggregate operations in key natural heritage features and the vegetation protection zone, aggregate operations are not permitted to locate in wetlands and significant woodlands that are not comprised of young plantations.

Mineral aggregate operations and wayside pits and quarries may be permitted in a key natural heritage feature which is the habitat of endangered and threatened species, if in compliance with the Endangered Species Act, 2007 (NEP Section 2.9.2). The use of offsite material for the purposes of the rehabilitation of a pit or quarry is permitted and should improve the soil capability for agriculture, but licensed sites cannot be used for a commercial fill or landfill operation (NEP Section 2.9.8).

Subsection 2.9.1 conforms to the Growth Plan and the Greenbelt Plan with the exception that mineral aggregate operations “may be permitted in a key natural heritage feature or the vegetation protection zone..., which is solely the habitat of endangered species and threatened species and not any other key natural heritage feature” if it complies with the *Endangered Species Act, 2007* (Subsection 2.9.2).

Section 2.9.3 of the NEP (2017) introduces a set of provisions that apply to proposals for mineral aggregate operations including wayside pits and quarries, accessory uses, accessory facilities and haul routes. The following set of provisions has been introduced under the amended NEP:

- An agricultural impact assessment is required in prime agricultural areas;
- Progressive and final rehabilitation of the licensed site must be completed to a state of equal or greater ecological values; and,
- The protection of the Escarpment environment within and outside a licensed extraction area.

3.3.2 Reuse of Mineral Aggregate Resources

The NEP (2017) introduces subsection 1.9.20 pertaining to the recycling of imported asphalt and concrete within lands that are designated as Mineral Resource Extraction Area and as specified under 1.9.20. Examples of provisions that apply to the recycling of asphalt and concrete include:



resources

State of Aggregate Resources in Niagara Region: Technical Addendum to the Background Report

- The recycling storage area in a quarry must be above water table at all times;
- The use of recycled asphalt in the portable asphalt plant will be limited;
- The recycling use is considered accessory and is not allowed to continue after extraction is complete;
- The licensee must operate the recycling use; and,
- The recycled use may not be used in the rehabilitation of the quarry.

3.3.3 Rehabilitation Requirements

The NEP, 2017 introduces new rehabilitation requirements for mineral aggregate operations in the Mineral Resource Extraction Area. Under subsection 2.9.2 the progressive rehabilitation of mineral aggregate operations is encouraged and that sites are restored to an equal or greater ecological or agricultural value prior to its original state. In prime agricultural areas, if rehabilitation requirements cannot be met for the extraction of a substantial deposit of high quality mineral aggregate resources below the water table, the rehabilitation of the remaining areas to agricultural use will be a first priority. Also, no new Mineral Extraction Areas were added to the Niagara Escarpment Plan area.

3.4 Summary of Key Implications for Regional Official Plan

Current provincial policy directives indicate a general shift towards the recycling and reuse of aggregates and more stringent requirements on site rehabilitation. Implications for new ROP policies as a result of the most recent amendments to the Growth Plan, the Greenbelt Plan, and the NEP include the following⁵:

3.4.1 Protection and Reuse of Mineral Aggregate Resources

- The Regional Official Plan should emphasise the need to protect mineral aggregate resources for long term use.
- The recycling and reuse of mineral aggregate resources is identified as a key policy objective in the provincial plans. The Regional Official Plan should include policy direction to support and promote the recycling and reuses of mineral aggregate resources. There will be opportunities to provide additional guidance on how the Region and other municipalities can promote the reuses of mineral aggregate resources.

⁵ It should be noted that the Region will need to decide how the new Official Plan will address conformity with the NEP, as there are several options which would inform the overall approach to conformity. The overall approach will provide direction as to how much detail is included in the aggregates policies for the NEP area in the Regional Official Plan. At a minimum, the Plan would include a schedule and a policy reference guiding the reader to the NEP area.

State of Aggregate Resources in Niagara Region: Technical Addendum to the Background Report



3.4.2 Agricultural Impact Assessment

- Amendments to the Growth Plan, the Greenbelt Plan, and the NEP require an agricultural impact assessment for new mineral aggregate operations in prime agricultural areas. For Niagara Region it is important that the mapping of prime agricultural areas is up to date and not in conflict with the Growth Plan and the Greenbelt Plan in order to provide clear direction for aggregate operators, as the Region has previously identified mapping inconsistencies.
- From a policy perspective, it is important to consider that while the PPS and the policy changes in the Greenbelt Plan prevent the removal of lands from prime agricultural and specialty crop areas for mineral aggregate operations; mineral aggregate operations would be permitted as a site-specific policy exception to the municipal Official Plan if approved.

3.4.3 Rehabilitation Requirements

- For Niagara Region, the Growth Plan, the Greenbelt Plan, and the NEP policies should be considered in the rehabilitation of the licensed site and protection of key natural heritage features and key hydrologic features⁶. Direction relating to the location of new aggregate areas should be consistent with the information provided in the Plans.

⁶ Definitions of key natural heritage features and key hydrological features are provided under section 3.2.5 of the Greenbelt Plan (2017).

4 RECOMMENDATIONS

This final section includes two parts. The first part includes some minor additions to previous recommendations made as part of the Background Report. In general, these additions are intended to provide more clear alignment with the recent policy changes which emphasize the importance of aggregate recycling and reuse, as well as the need to plan for progressive and final rehabilitation. The second part includes new recommendations based on changes to the ARA and provincial planning documents.

4.1 Updated Policy Recommendations

It is recommended that the Region consider the following minor additions as part of the new Official Plan project (for the development of new aggregate resource policies). As noted above, the following are modifications to recommendations in the Background report (changes are underlined and italicized):

Direction to area municipalities: Provide clear direction, for local municipalities to implement, related to appropriate local policies for protecting the resource, supporting aggregate extraction, *recycling and reuse*, adequate mitigation measures such as buffering and screening, and minimizing adverse impacts on surrounding land uses.

Encourage the *recovery and* use of recycled aggregates in appropriate locations in the ROP policies: The ROP policies should promote the *recovery and* use of recycled aggregate for public and private applications. The policy framework should be directed both internally, at Regional projects and also towards external users/consumers of aggregates.

Promote *progressive and final* rehabilitation: The Region is required to promote *progressive and final* rehabilitation to ensure alignment with the Provincial Policy Statement and other Provincial Plans. There is an opportunity for the ROP to provide informed policy guidance on how progressive and final rehabilitation could occur in the Niagara context, recognizing both the challenges and opportunities associated with progressive and final rehabilitation.

4.2 New Policy Recommendations Resulting from the 2017 Documents

4.2.1 New Policy Recommendations to be Considered for the Official Plan

The Provincial Plans and the PPS should form the roadmap for drafting the new policies in the Region Official Plan. Given the recent changes the land use planning appeals system in Ontario, it is important that the new Regional Official Plan policies are closely aligned to Provincial policies. The test for future appeals hinges on the implementation of Provincial policy and hence the need to ensure alignment and clarity. Given the Provincial role in the license process under the ARA it is important that the Region's policies are scoped to the Planning Act aspects of aggregates resources and avoid aspects which are regulated under the ARA (e.g. such as providing direction on depth of extraction, operating hours, tonnage limits, and site plan control).

Encourage reporting practices: In the past, the ARA required that a licensee provide municipalities with a copy of the compliance assessment report. The Region should encourage aggregate operators to forward the rehabilitation reports required by the ARA and the agricultural impact assessment required under the Growth Plan, the Greenbelt Plan, and the NEP to the Region and applicable local municipalities.

4.2.2 Other Recommendations for Consideration

Clarify what constitutes a minor amendment under the ARA (2017): It is anticipated that a regulation will come forward at a later date describing the details for a minor amendment to site plans. It is recommended that the Region reach out to the Ministry of Natural Resources and Forestry on what constitutes a minor amendment under the ARA (2017) in order to inform future policy under the ROP.

The Region should be aware that it will receive an overall increase in licensing fees for the maintenance of its road. Niagara Region should be aware that as of January 1, 2018 municipalities are receiving an overall increase of revenue from licensing fees to help address any impacts caused from hauling aggregates on municipal roads. While the ratio of licensing fees received will not change, the Region should take measures to ensure that the fees are set aside for maintaining and improving haul routes.

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