

Ministry of Natural Resources

Corporate Management Division  
Policy and Planning Coordination Branch  
Land Use and Environmental Planning Section  
Robinson Place, 5<sup>th</sup> Floor N  
300 Water Street, PO Box 7000  
Peterborough, ON K9J 8M5  
Telephone: 705-755-2560  
Fax : 705-755-1971



May 3, 2007

Mr. Graham Flint  
Chair, Friends of Rural Communities and the Environment  
c/o Lawson Park Limited  
R.R. #1, Box 15  
Freelton, ON L0R 1K0

Dear Mr. Flint:

Re: Application for Review – File No. R2006031 under the *Environmental Bill of Rights (EBR)* requesting that MNR review the *Aggregate Resources Act (ARA)* to create a process that screens out certain quarries under the ARA and the Planning Act at an early stage

---

On March 5, 2007 the Ministry of Natural Resources (MNR) undertook a preliminary review related to the above noted Application for Review under the *Environmental Bill of Rights (EBR)*.

The MNR has considered your application for review in accordance with the provisions of Section 67 of the *Environmental Bill of Rights* and has determined that the public interest does not warrant a review of the matters raised in this application.

A Notice of Decision has been prepared and attached to this correspondence in accordance with the provisions of Section 70 of the EBR and provides further details on MNR's decision.

In the event that you have questions regarding the above, or would like additional information about the EBR, please contact Jim Boothby, Environmental Planning Analyst at (705) 755-5042 or [Jim.Boothby@Ontario.ca](mailto:Jim.Boothby@Ontario.ca)

Yours truly,

A handwritten signature in black ink, appearing to read "Sharon Rew".

Sharon Rew  
A/EA & EBR Coordinator/Team Leader

c: Peter Lapp, Office of the Environmental Commissioner of Ontario  
David MacLeod, Ministry of Municipal Affairs and Housing

# NOTICE OF DECISION

## Application for Review – Environmental Bill of Rights

File No. R2006031

### BACKGROUND

On March 5, 2007 the Ministry of Natural Resources (the Ministry) received from the Environmental Commissioner of Ontario (ECO) an application for review (R2006031) under subsection 61 (2) of the *Environmental Bill of Rights* (EBR).

The applicants state their belief that there is need for an early mechanism through which proposals under the *Aggregate Resources Act* (ARA) and the *Planning Act* could be evaluated and screened before they enter existing processes for evaluation and review. The application requested:

- (1) A review of the need for a new policy, Act or regulation for matters governed by the ARA and the *Planning Act*. The review is to consider a new policy, amendment to the Act and/or regulation, as appropriate, to provide an early screening/evaluation mechanism for applications.

Subsection 67 (1) of the EBR requires the Minister to consider each application in a preliminary way to determine whether the public interest warrants a review in his or her ministry of matters raised in the application. This Notice of Decision has been prepared to fulfill the Ministry's notice obligations under the EBR.

### DECISION

The Ministry has considered the application in accordance with Part IV of the EBR and determined that the public interest does not warrant a review within the Ministry regarding the provision of an early screening/evaluation mechanism for applications under the ARA. The Ministry understands that the application has also been sent to the Ministry of Municipal Affairs and Housing, whose mandate includes the *Planning Act*.

### KEY CONSIDERATIONS IN SUPPORT OF DECISION

- There is a need to gather up-front and consider all necessary/relevant information, often of a complex and/or highly technical nature, for analysis and informed decision-making.
- The ARA, in providing a fair and set process for all participants including applicants, stakeholders and the wider public to participate in the process and have their interests considered, meets principles of MNR's SEV for giving people a voice in decisions affecting their lives.
- Environmental protection is afforded by the existing ARA framework; in particular, up-front mandatory requirements for technical reports prepared by qualified individuals and review by mandated agencies.
- Protection of mineral aggregate resources for long-term use through land use planning, and minimizing social and environmental impacts of aggregate extraction through land use planning and the administration of the ARA are in accordance with MNR's SEV.

- The ARA, in requiring lands to be zoned for mineral aggregate extraction prior to the granting of a licence, ensures that land use planning processes are respected.
- MNR undertakes program reviews periodically, which can bring about legislative and process improvements.

## **RATIONALE FOR DECISION**

Subsection 67 (2) of the EBR explains how applications may be considered in order to determine whether the public interest warrants a review in the ministry of the matters raised in the application. The Ministry has considered:

- a) the ministry Statement of Environmental Values;
- b) the potential for harm to the environment if the review applied for is not undertaken;
- c) the fact that matters sought to be reviewed are otherwise subject to periodic review; and
- d) other matters the minister considers relevant.

### **a) The Ministry's Statement of Environmental Values (SEV):**

The Ministry of Natural Resources is responsible for managing Ontario's natural resources, in accordance with the statutes it administers. The Ministry administers the ARA. The Ministry of Municipal Affairs and Housing (MMAH) administers the *Planning Act*.

The Ministry's long-term vision is for a healthy environment that is naturally diverse and supports a high quality of life for the people of Ontario through sustainable development. The Ministry is committed to managing natural resources in an ecologically sustainable manner. This over-riding goal, as described in the Ministry's Statement of Environmental Values (SEV), is, "To contribute to the environmental, social and economic well-being of Ontario through the sustainable development of natural resources".

The SEV is based on MNR's strategic policies set out in *Direction '90s*. Thus, the SEV states, "With respect to non-renewable resources, sustainable development implies that these finite resources will be conserved, protected from incompatible land uses, and that the sustainability of related resources and ecological processes, will be considered in the planning and authorizing of extraction and site rehabilitation." It can be noted that MNR has since updated its strategic policies. *Our Sustainable Future*, MNR Strategic Directions February 2005, states five key organization goals. One goal is Economic Growth for Ontario Communities: MNR will contribute to strong, healthy communities in Ontario by supporting existing and pursuing new opportunities for sustainable economic growth within the resource sector."

MNR's SEV clearly indicates that MNR is committed to the sustainable development of natural resources. Through its SEV, MNR has stated its support for considering

environmental, social and economic factors and for providing opportunities for public consultation on decisions.

The SEV contains a number of objectives that are supported by the ARA and the aggregate resources program. These are summarized as follows:

- ◆ ensure the long-term health of ecosystems;
- ◆ ensure the continuing availability of natural resources for the benefit of the people of Ontario;
- ◆ economic development must be environmentally sustainable;
- ◆ the restoration and rehabilitation of degraded environments; and
- ◆ protect natural heritage and biological features of provincial significance.

The SEV also contains a number of policy principles to clarify what sustainable development means in the context of MNR's goals and objectives. Two of these principles are particularly relevant to this review:

- 1) "Sustainable development relies on integrated management approaches which consider the full range of environmental, social and economic factors when decisions are made about the use of natural resources;" and
- 2) "The development of sustainability will lead to change. This change must be directed in a way that attempts to be fair to all those affected. Consequently the people affected must have a real voice in the decisions affecting their lives."

Regarding principle 1) above, the ARA and its regulations (i.e. Aggregate Resources of Ontario Provincial Standards (AROPS)), provide for a range of technical reports to be submitted that support this principle and informed decision-making. These include hydrogeological reports, natural environment reports, blast design reports, noise assessment reports and cultural heritage resource reports.

When reviewing this application, MNR considered its SEV and found that the ARA met the SEV's commitment to sustainable development. Please see further discussion in section b) below.

Regarding principle 2) above, there are set notification and public participation requirements under the ARA. This due process, along with EBR Registry posting requirements and any associated *Planning Act* process ensure that all people affected are treated fairly in terms of opportunities to have a voice in the licensing decision. Applicants and those concerned about a proposal should have equal opportunities to have their interests considered and the current processes allow this.

The legislative authority in the ARA and the regulations to provide for public notification and consultation in licence application decisions is already well established. The ARA requires aggregate licence applications to undergo a comprehensive process of review in order to anticipate and prevent negative environmental impacts. An integral component in any review is public and agency participation in the decision process.

The ARA and the regulations (AROPS) and the policies and procedures of the Ontario Municipal Board (OMB) related to providing information to objectors prior to a decision provide an open consultation process for new licence application and planning approvals. The ARA process requirements include a public information session and formal public commenting period; circulation of information pertaining to the application to adjacent landowners and specified agencies; as well as attempts by licence applicants to resolve all objections filed during the application process. Additionally, an application can potentially be appealed to the Ontario Municipal Board (OMB) for mediation by an OMB appointed representative.

When reviewing this application, MNR considered its SEV and found that the ARA met the SEV's commitment to giving affected people a voice in the decision making process. Please refer to section d) below for a more detailed explanation regarding opportunities for the public to participate or have their concerns considered in the decision-making process.

**b) The potential for harm to the environment if the requested review is not undertaken**

There is no potential harm to the environment if the review is not undertaken.

Environmental protection is afforded by the existing ARA framework. The ARA and its regulations (AROPS) provide a strong environmental basis for analysis and informed decision-making by requiring up-front consideration of all relevant environmental factors and for providing opportunities for public consultation and agency review on decisions which are fair for all affected participants. Issues are often complex, and require assessment and analysis of a highly technical nature. Consequently, new applications require a number of up-front mandatory technical reports, prepared by qualified individuals.

A summary of the current technical report requirements follows (refer to section d) below and/or the technical report standards as outlined in the AROPS for details).

**Technical Report Requirements under the ARA**

Technical reports accompanying an application for a licence must be prepared by a qualified person. Each report must state the qualifications and experience of the individual(s) who have prepared the report. Report requirements will vary depending on the nature of the undertaking (category of licence application) and may include information on the following:

- ◆ Natural Environment Report (Level 1/2)
- ◆ Cultural Heritage Resource Report (Stage1-4)
- ◆ Hydrogeological Report (level 1/2)
- ◆ Blast Design Report
- ◆ Noise Assessment Report

The level of detail and analysis required will vary depending on the potential for adverse effects and proximity to natural and ecological features, sensitive receptors and known or high potential cultural heritage resources.

In addition, the determination of the water table elevation (AROPS Summary Report) must be prepared by a qualified person.

The multiple opportunities for the public to comment on or appeal the application also provide means to ensure that decisions, regardless of who makes them, will take into account environmental considerations and any potential for harm to the environment. Please refer to section d) below for a more detailed explanation regarding opportunities for the public to participate or have their concerns considered in the decision-making process.

**c) The fact that matters sought to be reviewed are otherwise subject to periodic review**

The implementation of the ARA and the regulations (including the AROPS) and ultimately the success of the ARA are matters of on-going review by policy staff in the aggregate resources program. Internal periodic reviews are a part of on-going business. The Ministry anticipates that a review of the AROPS will be undertaken within two years and there will be the opportunity for the public to participate in the consultation process.

**d) Other matters that are relevant**

**Existing Notification and Consultation Requirements under the Aggregate Resources Act (ARA)**

The notification and consultation process is outlined in the AROPS and is similar for all licence applications regardless of the category of application. The process is proponent-driven, meaning that the applicant is responsible for carrying out all notification and consultation steps including attempting to resolve public and agency concerns. All information with respect to the application is available to the public (refer to "Public Participation" below).

As a part of the process, each applicant for a licence must:

- ◆ Hold an information session for the public;
- ◆ Provide written notice of the application to adjacent landowners, along with the details of the public information session;
- ◆ Advertise the application in the local newspaper;
- ◆ Advertise the date, time and place of the public information session in the local newspaper;
- ◆ Post a sign on the property indicating that a licence application has been submitted for the site and outlining the details of the public information session;

- ◆ Circulate the application package to agencies identified in the AROPS, along with notification of the public information session;
- ◆ Meet legislated notification timelines:
  - 45-day public and agency notification and commenting period;
  - Information session held within the 45-day notification period and the applicant must provide at least 20 days notice prior to the session and 10 days after the session;
  - 20-day notice to outstanding objectors; objectors must respond or their objection will be deemed to be withdrawn;
  - Within 30 days of receiving required information, MNR must make a recommendation to the Minister of Natural Resources in accordance with section 11 of the ARA;
- ◆ Attempt to resolve all objections filed during the application process; and
- ◆ At the completion of the notification and consultation period, submit a package\* to MNR outlining all of the objections, how the applicant attempted to resolve the objections, and whether there are any objections that they were not able to resolve.

\*This package must be submitted within two years of the start of the notification/consultation period, or the application is considered withdrawn.

## **Municipal Zoning**

Municipalities have the prime responsibility for land use planning under the *Planning Act*. Municipalities determine the appropriateness of a proposed land use through the review and approval of applications to amend their land use controls (i.e. official plans, zoning by-laws) under a process established by the *Planning Act*. A new pit or quarry, or expansion of an existing operation usually requires amendments to the municipal official plan and/or zoning by-law.

*Planning Act* approvals connect directly with the ARA in the following way: No licence can be issued if a zoning by-law prohibits the site from being used for the operation of a pit or quarry. The applicant must provide proof of proper zoning during the application process before the licence is sent to the Minister for signing.

The processing of the applications for amendments under the *Planning Act* can be on-going while a licence application under the ARA is being processed.

## **EBR Registry Posting**

MNR is required to post new licence applications on the environmental registry under the EBR for a minimum of 30 days. This posting provides the public and/or the municipality with an additional opportunity to comment on the proposal. (There is an exception provided for a licence issued in accordance with subsection 71(5) of the ARA, i.e., established pit or quarry in a part of the province newly designated as being subject to the ARA.)

## **Public Participation**

Licence applications are advertised to the public, at the start of the 45-day notification period under the ARA, through newspaper notices in the local paper and the placement of a sign on the property under application. These notices will advise the public of the date, time and location of the public open house under the ARA.

Any member of the public may attend the open house, where the applicant is required to present and explain all of the details of the proposed operation.

Any member of the public may also provide comments or objections to the applicant and MNR prior to the closing of the 45-day notification period. If a member of the public files an objection letter with the applicant and MNR during this period, the applicant must try to resolve all of the issues raised in the letter.

If there are any outstanding objections that cannot be resolved by the applicant, the ARA application may be referred by the Minister (delegated to the District Manager) to the OMB for a hearing. Objectors have an opportunity to attend the hearing and raise their concerns before the Board. Appeals of applications to amend an official plan and/or zoning by-law for the same aggregates proposal may be heard as part of the same OMB hearing if these matters have been submitted concurrently.

## **Licence Issuance or Refusal**

If the ARA application is not referred to the OMB for a hearing and the appropriate zoning is in place, the Minister may decide, whether to issue or refuse to issue the licence. Consideration for issuance/refusal must be based on matters under subsection 12(1) of the ARA. Refusal to issue by the Minister is appealable, by the applicant, to the OMB. This decision may also be subject to a 3rd party appeal under the EBR (see EBR Registry Posting).

If the ARA application is referred to the OMB for a hearing, the OMB may direct the Minister to issue the licence or refuse to issue the licence. The OMB, in considering the issuance/refusal, must have regard to the matters under subsection 12(1) of the Act.

## **Potential Technical Reports required under the ARA:**

**Hydrogeological Level 1:** Preliminary hydrogeologic evaluation to determine the final extraction elevation relative to the established groundwater table(s) in both unconsolidated surficial materials (if present) and the consolidated bedrock strata, and the potential for adverse effects to groundwater and surface water resources and their uses (e.g. waterwells, groundwater aquifers, surface water courses and bodies, discharge areas, etc.);

**NB:** A Permit to Take Water may be required if any part of the operation utilizes, ponds by flow restriction, or diverts ground and/or surface water on, or from the

site.

**Hydrogeological Level 2:** Where the results of Level 1 have identified a potential for adverse effects of the operation on ground water and surface water resources and their uses, an impact assessment is required to determine the significance of the effect and feasibility of mitigation. The assessment should address the potential effects of the operation on the following features if located within the zone of influence for extraction below the established groundwater table, where applicable;

A technical report must be prepared by a person with appropriate training and/or experience in hydrogeology to include the following items;

- (a) waterwells;
- (b) springs;
- (c) groundwater aquifers;
- (d) surface water courses and bodies;
- (e) discharge to surface water;
- (f) proposed water diversion, storage and drainage facilities on site;
- (g) methodology;
- (h) description of the physical setting including local geology, hydrogeology, and surface water systems;
- (i) water budget;
- (j) impact assessment;
- (k) mitigation measures including trigger mechanisms;
- (l) contingency plan;
- (m) monitoring plan; and
- (n) technical support data in the form of tables, graphs and figures, usually appended to the report.

**Natural Environment Level 1:** determine whether any of the following features exist on and within 120 metres of the site: significant wetland, significant portions of the habitat of endangered or threatened species, fish habitat, significant woodlands (south and east of the Canadian Shield), significant valley lands (south and east of the Canadian Shield), significant wildlife habitat and significant areas of natural and scientific interest;

**Natural Environment Level 2:** impact assessment where the level 1 identified any features on and within 120 metres of the site in order to determine any negative impacts on the natural features or ecological functions for which the area is identified and any proposed preventative, mitigative or remedial measures;

**Cultural Heritage Resource Stage 1:** determine if there are any known significant archaeological resources on the subject property and the potential of the site to have heritage resources;

**Cultural Heritage Resource Stage 2:** property survey by a licenced archaeologist if stage 1 identifies known resources or a medium to high potential for heritage resources on the site and mitigation, if recommended;

**Cultural Heritage Resource Stage 3 and 4:** detailed site investigation by a licensed archaeologist (e.g. test pits, plowing fields and survey) when recommended by stage 2 and mitigation through excavation, documentation or avoidance, if recommended;

**Noise assessment report:** If extraction and/or processing facilities are within 500 metres of a sensitive receptor, a noise assessment report is required to determine whether or not provincial guidelines can be satisfied;

**Blast Design report:** This is required if a sensitive receptor is within 500 metres of the limit(s) of extraction to demonstrate that provincial guidelines can be satisfied.

## **SUMMARY OF RATIONALE FOR MINISTRY DECISION ON THE REVIEW REQUEST**

The requirements under the ARA for technical reports and the consideration of those reports by those making decisions on applications under that act uphold the sustainable development principles of MNR's SEV. Moreover, the potential social and environmental impacts of a proposed mineral aggregate operation are complex and the established processes provide the mechanisms for analyzing these complexities.

The opportunities for comment on ARA applications overall are consistent with providing a meaningful opportunity for public participation in the decision-making processes. The public is provided with opportunities to become aware of applications and to express any concerns, including any environmental concerns, related to the applications. These processes were determined to be directed in such a way as to be fair to all parties affected.

Adequate opportunities for the public to participate in decision-making on an aggregates proposal are legislated. This upholds the principle under MNR's Statement of Environmental Values that people affected must have a real voice in the decisions affecting their lives. To screen out applications before they enter processes put in place to achieve good land use decisions made with public input and scrutiny would prevent all parties from participating.

There is a strong environmental basis for the review of aggregate proposals. Therefore, the potential for harm to the environment would not be lessened if a pre-screening mechanism was established.

MNR undertakes its own program reviews periodically, which can produce legislative or regulatory process improvements as well as improvements to standard operating procedures.

In response to this request MNR staff carefully reviewed the submission from the applicants and determined that the public interest does not warrant a review in MNR.