OSSGA
ONTARIO STONE, SAND
& GRAVEL ASSOCIATION

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Jocelyn McCauley, Clerk
Standing Committee on General Government
Room 1405, Whitney Block
Queen's Park, Toronto, ON M7A 1A2

By E-mail: comm-generalgov@ola.org

Comments on Bill 132: Better for People, Smarter for Business Act, 2019

The Ontario Stone, Sand & Gravel Association (OSSGA) is pleased to provide comments on Bill 132: *Better for People, Smarter for Business Act, 2019.*

OSSGA is a not-for-profit association representing over 280 sand, gravel and stone producers and suppliers of products and services that serve the industry. Collectively, our members supply the majority of the 164 million tonnes of aggregate used, on average, each year in the Province to build and maintain Ontario's infrastructure needs. OSSGA works in partnership with governments, agencies and members of the public to promote a safe and competitive aggregate industry, contributing to the creation of strong communities in the Province.

The proposed changes to the ARA, through Bill 132, are important to reducing red tape, promoting environmental stewardship and supporting economic growth within the aggregate industry. Upon careful review of the proposed legislation, OSSGA has made the following recommendations which we believe will provide further clarity to the proposed changes.

1.0 Haul Routes (Section 12.0 of the ARA)

1.1 Context

An integral component to the operation of any pit or quarry is the haul route: how materials extracted from a site are transported to the customer. As part of an application for a new pit or quarry, road traffic studies are conducted to determine the effects of truck traffic on the road network. It is common practice for producers and local municipalities to enter into agreements on road improvements to substandard entrances and haul routes as part of the consultation period in an application review.

In addition, the industry pays an aggregate levy to The Ontario Aggregate Resources Corporation (TOARC), who then redistributes more than 60% of these funds back to municipalities which can then choose to use the funds for infrastructure maintenance. At current production levels in Ontario, the aggregate industry contributes over $12 Million annually to host municipalities. This is in addition to the normal revenue streams related to gasoline taxes and commercial vehicle licenses.

Recently, there have been situations where municipalities that host aggregate sites have tried to impose an additional road maintenance fee as a condition of approval on a new pit or quarry application. These site-specific requests are in essence an additional levy, beyond the TOARC fees. This practise duplicates the Province wide system and may create a commercial disadvantage as some operations within the same market will have higher operating costs associated with the additional road maintenance fees. Furthermore, it would see the aggregate industry paying twice, when no other industry or road users are paying a levy at all.

"Pass-through" communities, where the aggregate is not being produced but whose roads are being used to transport aggregate from source to market, have also attempted to impose a levy on aggregate producers. This happened in Simcoe County where GioFam was ordered by LPAT to negotiate a haul-route agreement with the County. This proposed change in the legislation will remove the authority of Local Planning Appeal Tribunal (LPAT) or the Ministry of Natural Resources and Forestry (MNRF) to make such a ruling in the future.

1.2 Bill 132

Bill 132 introduces an amendment to Section 12 of the *Aggregate Resources Act (ARA)* to provide clarity that neither the Minister, nor the Local Planning Appeal Tribunal (LPAT) shall "have regard to road degradation that may result from proposed truck traffic to and from the site." This is intended to limit the authority to charge fees over and above the Province's ARA levy.

1.3 OSSGA Recommendation

OSSGA supports the intent of this amendment. Aggregate producers already pay the aggregate levy that municipalities can use for road repair and maintenance. However, there is a concern around the possible misinterpretation of the term "road degradation".

For greater clarity, OSSGA recommends that the amendment be revised to read:

> "Exception (1.1) Despite clause (1) (h), the Minister or the Local Planning Appeal Tribunal shall not have regard to any maintenance and repair of the haulage routes that may be required as a result of proposed truck traffic to and from the site"
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> If the change in wording is not accepted as proposed, OSSGA asks that the term 'road degradation' be defined in the Act to include 'maintenance and repair'.

Again, it is not uncommon for haul road agreements to be entered into with municipalities on the improvement of roads not previously used to transport aggregate, but ongoing maintenance and repair work should not be paid for through an industry specific additional fee.

2.0 Vertical Zoning (Section 12.1 of the ARA)

2.1 Context

To secure an aggregate license, an applicant must successfully complete an application under *The Aggregate Resources Act (ARA),* and a zoning application under *The Planning Act*.

The zoning application is intended to approve the principle of land use.

The ARA application process governs all aspects of the operation of a pit or quarry, including whether the site can extract 'above' or 'below' water. To make this determination, extensive studies are undertaken to address and mitigate potential impacts (e.g. hydrogeology, hydrology, natural environment, etc.), and then are peer reviewed by multiple agencies, including municipalities.

The issue is what level of government regulates the depth of extraction. The Province intends to keep this regulation at the Provincial level, and it should not be duplicated under zoning by laws.

2.2 Bill 132

An amendment is being introduced to Bill 132 to clarify that depth of extraction is (and always has been) governed by the ARA:

> Exception (1.1) If a zoning by-law prohibits a site in a part of Ontario designated under subsection 5 (2) from being used for the making, establishment or operation of pits and quarries, any restriction contained in the zoning by-law with respect to the depth of extraction at the site is inoperative.

The proposed changes do not take away any authority that the municipalities currently have. What they do is help clarify which level of government regulates the depth of extraction. No one is proposing to relax the rules or remove controls. Everyone agrees the protection of our water resources is paramount. Depth of extraction at a pit or quarry is governed by *The Aggregate Resources Act* – as it has been for decades. The additions simply provide clarity with respect to that fact.

2.3 OSSGA Recommendation

OSSGA supports this amendment, but is concerned as written, **it only applies** to by-laws that prohibit a site from being used for a pit or quarry. This does not make sense. If a zoning by-law permits a pit or quarry but restricts it to above the water table, 12.1(1.1) will not apply and the restriction is operative. OSSGA believes the section should apply to any zoning by-law and recommends the following:

> "Exception (1.1) Any restriction contained in a zoning by-law with respect to the depth of extraction at a pit or quarry at a site in a part of Ontario designated under subsection 5(2), is inoperative."

3.0 Site Plan Amendments to Extract Below Water (Section 13.1 of the ARA)

3.1 Context

Producers are granted licenses that are subject to site plans which regulate whether extraction can occur 'above' or 'below' the water table. Sometimes, an aggregate producer will at a future date want to explore the feasibility to extract reserves that are below the water table.

The current process for a producer to add below water extraction to its license is to apply for a special form of "Major Site Plan Amendment". This requires that the appropriate hydrogeology and other detailed studies be conducted. The associated consultation process for this type of major site plan amendment includes public notice, a public meeting and invited comments from municipalities and other stakeholders. Technical review is completed by MNRF and Ministry of the Environment, Conservation and Parks. MNRF then makes the decision whether to approve the Major Amendment. There is currently no opportunity to object to the application or appeal the Ministry's decision.

OSSGA is aware there have been assertions made in the media recently that aggregate extraction is a threat to groundwater reserves. It is important for the Standing Committee to understand that quarries and pits that operate below the water table are required to mitigate impacts to nearby sensitive features – such as wells, streams and wetlands. No chemicals are involved in the extraction of processing of aggregate materials. Aggregate extraction is a clean industry.

Further, extracting below the water table allows for a volume of aggregate to be excavated that would otherwise require disturbing more ground area and opening additional sites for extraction. Carefully controlled below water extraction is a smart, efficient and safe practice to deliver close-to-market aggregate to the growing communities of Ontario, utilizing existing infrastructure.

3.2 Bill 132

Bill 132 is introducing a new enhanced amendment process that includes an opportunity for public and municipal objections, and a mechanism for the decision to grant a below water amendment to be referred to the Local Planning Appeal Tribunal:

> 13.1 (1) This section applies if a license or site plan does not allow extraction below the water table in an area and the licensee wishes to amend the license or the site plan to lower the depth of extraction from above the water table to below the water table in that area.
>
> Application (2) The licensee may apply at any time to the Minister for an amendment to the license or site plan and the following rules apply:
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> 1. If there are no prescribed requirements and procedures in respect of the amendment, the licensee shall comply with the requirements and procedures that would apply under the regulations if the application were being made for a new license.
> 2. If there are prescribed requirements and procedures in respect of the amendment, the licensee shall comply with the prescribed requirements and procedures.
> 3. If the application is in respect of an amendment to a site plan, subsections 16 (2), (3) and (4) apply.

(4) The Minister may refer the application and any objections arising out of the notification and consultation procedures in respect of the amendment to the Local Planning Appeal Tribunal for a hearing, and may direct that the Local Planning Appeal Tribunal shall determine only the issues specified in the referral.

3.3 OSSGA Recommendation

OSSGA recognizes that municipalities are seeking a stronger voice in the consideration of a license moving from above to below the water table, and in general is supportive of this change.

We are, however, once again concerned with some of the wording in the proposed amendment.

As written, section 13.1 (1) is very prescriptive with respect to this process being triggered if a site plan does not allow extraction 'in an area'. Currently, a producer could have a 'below the water' extraction, and for a variety of reasons may want the shape of the 'area' to deviate from the original plan (because of the nature of the reserve for example). In this case, OSSGA does not believe this 'more rigorous' process should be triggered, and that the change should be handled as a regular Major Amendment, without the objection and appeal provisions. The following changes would make it clear that this applies to a new below the water table application:

13.1 (1) This section applies if:

(i) a license or site plan does not allow extraction below the water table ~~in an area~~ and the licensee wishes to amend the license or the site plan to allow extraction below the water table ~~in that area~~; or

(ii) a license or site plan allows extraction below the water table and the licensee wishes to amend the license or the site plan to materially increase the area of extraction below the water table.

Section 13.1(2) addresses the rules for making an application to go below the water table. Subsection 1. refers to prescribed requirements and procedures, and if none exist, the application shall be treated as a new pit or quarry application. It is not appropriate (or we believe intended) to require an existing license holder to apply for a new license with requirements for a full suite of reports (e.g. archaeology, natural heritage, noise, blasting, etc).

Instead we propose that:

1. This section of the Act not be proclaimed until such a time as the prescribed requirements and procedures are ready. And the Section be revised accordingly:

   Application (2) The licensee may apply at any time to the Minister for an amendment to the license or site plan and the following rules apply:

   1. The licensee shall comply with the prescribed requirements and procedures.
   2. If the application is in respect of an amendment to a site plan, subsections 16 (2), (3) and (4) apply.

OSSGA thanks you for the opportunity to comment on this new legislation.

Ontario's aggregate industry is one of the province's most heavily regulated industries. Twenty-five different pieces of legislation and literally dozens of regulations determine where, when and how stone, sand and gravel is extracted. And that's a good thing. Our industry wants to work in partnership with communities, to bring the aggregate that we all use every single day of our lives - to where it's needed in the most environmentally and economically way possible.

Regards,

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