SUBJECT: Halton Area Planning Partnership (HAPP) joint submission regarding proposed changes to the Provincial Aggregate Resources Act

TO: Planning and Development Committee

FROM: Planning and Building Department

Report Number: PB-14-17

Wards Affected: All

File Numbers: 145-23

Date to Committee: January 31, 2017

Date to Council: February 13, 2017

Recommendation:

Endorse the Halton Area Planning Partnership (HAPP) Joint Submission respecting Bill 39 – An Act to amend the Aggregate Resources Act and the Mining Act, as contained in Appendix B to PB-14-17, which was sent to the Province on December 5, 2016 to meet the Provincial deadline for comments; and

Direct the City Clerk to forward the resolution of Council, subject to endorsement of the recommendations contained in planning and building department report PB-14-17, and any additional comments from Council, as well as staff report PB-14-17 with Appendix B (HAPP Joint Submission respecting Bill 39– An Act to amend the Aggregate Resources Act and the Mining Act) to the Ministry of Natural Resources and Forestry.

Purpose:

The purpose of this report is to recommend that Council endorse the submission prepared by HAPP in response to the proposed Bill 39 – An Act to amend the Aggregate Resources Act and the Mining Act and provide an opportunity for Council to provide additional comments.
This report relates to the following objectives of the City of Burlington Strategic Plan:

A City that Grows

1.1 Promoting Economic Growth

1.1.h The City of Burlington’s rural areas will be economically and socially active, producing agricultural products and providing rural recreational activities for the city.

A Healthy and Greener City

3.1 • Healthy Lifestyles

3.1.h The city supports Halton Region’s rural strategy, including support for growing food locally.

3.2 • Environmental and Energy Leadership

3.2.a The city has a healthy, natural heritage system that is protected, well connected, conserved and enhanced and forms a fundamental component of the city’s urban and rural areas.

3.2.f The city reinforces its strong position in protecting the existing urban-rural boundary.

An Engaging City

4.1 • Good Governance

4.1.a The city is known for its sound decision-making processes through initiatives such as creating a Charter of Good Governance that reinforces Burlington’s responsibilities, accountabilities and objectives.

4.1.d Burlington’s position is articulated to senior levels of government on pressing policy matters.

Background and Discussion:

For the past several years the Provincial Government has been engaged in efforts to update the legislative and policy framework respecting aggregate resources. In 2015 the Province released *A Blueprint for Change: A Proposal to Modernize and Strengthen the Aggregate Resources Act Policy Framework* for public review and comment. The Halton Area Planning Partnership (HAPP) prepared a joint submission commenting on the proposals. The City of Burlington provided a response endorsing the HAPP submission through PB 12-16.
On October 6, 2016 notice of Bill 39, a bill to amend both the Aggregate Resources Act and the Mining Act, was posted on the Environmental Registry by the province for public review and comment. Information regarding the proposed legislation can be found at:

http://www.ebr.gov.on.ca/ERS-WEB-External/displaynoticecontent.do?noticeId=MTI5NTI5&statusId=MTk2MzA4&language=en

The province indicated that the proposed legislation would be the first step in modernizing and strengthening the management of mineral aggregate resources in Ontario. It referred to A Blueprint for Change in describing the background to Bill 39.

The members of HAPPP have collaborated in reviewing Bill 39 and preparing a Joint Submission to the Province containing a common set of comments on the proposed legislation. The members of HAPPP involved in the Joint Submission were the City of Burlington, the Town of Milton, the Town of Halton Hills and the Region of Halton. The Town of Oakville is supportive of the principles embodied in the Joint Response but, as the Town does not have aggregate operations within its boundaries, it has not commented specifically on this review. The HAPPP Submission has been forwarded to the province in order to meet the December 5, 2016 deadline.

Mineral aggregate resources include sand, gravel, clay and bedrock. Mineral aggregates are important to Ontario’s economy as raw materials used in developing infrastructure and in constructing the buildings that we live and work in.

Currently there are three active aggregate operations in Burlington:

1. Nelson Quarry, located on the Mount Nemo Plateau;
2. Forterra Brick’s Aldershott Quarry, located off the North Service Road near King Road; and
3. Forterra Brick’s Burlington Quarry, located on the west side of Tremaine Road just north of Highway 407.

In recent years there has been significant community concern in Burlington respecting:

- Nelson Aggregates’ application to expand its Mount Nemo quarry; and
- the operation and expansion of the Aldershott Quarry.

Aggregate extraction has ceased at the former Hanson Brick Burlington Pit south of Highway 407 west of Bronte Creek and the site has been rehabilitated. Eleven other former, closed or abandoned pits and quarries are located within the City’s boundaries.
Discussion

The Existing Regulatory Framework

The Aggregate Resources Act (ARA) establishes the provincial legislative framework for the licensing and regulation of mineral aggregate extraction operations in Ontario. The Ministry of Natural Resources and Forestry (MNRF) is responsible for:

- overseeing the rules governing aggregate management;
- issuing licenses and permits and approving changes to existing licenses and site plans;
- inspecting aggregate operations and responding to complaints;
- enforcing compliance; and
- ensuring timely rehabilitation and closure of aggregate sites as extraction operations are completed.

The province has made aggregate operators responsible for much of the monitoring and compliance reporting on their own operations (i.e., self-compliance).

A Provincial licence issued under the Aggregate Resources Act is required in order to establish a new mineral aggregate extraction operation, or to expand an existing operation. In addition amendments to the Halton Region and local Official Plans are required to permit the change in land use to mineral resource extraction. Thus the OP amendment process provides the means for municipalities to see that community concerns and local planning objectives are addressed.

The City and Halton Region have had extensive involvement in reviewing aggregate licence applications. They also have had extensive experience in dealing with community concerns regarding ongoing aggregate operations.

Highlights of the Proposed Legislation

The topics of interest to Burlington that are addressed in the proposed legislation include the following:

General

- Enabling the Minister to require licensees and permittees to submit information related to their operations and to conduct and report on inventories, tests, surveys and studies;
- Standardizing annual tonnage limits for all existing licences and permits, and including all aggregate and recycled aggregate in those limits;
• Standardizing and enhancing the provisions for amending site plans and licence or permit conditions and allowing licensees and permittees to self-file minor site plan amendments in circumstances that would be set in regulation;

• Recognizing that the Minister must consider whether adequate consultation with Aboriginal communities has been carried out;

• Allowing the Minister to add conditions to existing sites, without tribunal hearings, to implement a source protection plan under the *Clean Water Act*;

• Enhancing powers related to the transfer and revocation of permits and licences;

• Enhancing authority respecting management of the Aggregate Resources Trust;

• Enabling peer review of technical studies to be required at the expense of the applicant, licensee or permittee;

• Clarifying and enhancing the provisions that allow regulations respecting record keeping and reporting on aggregate operations;

• Allowing self-compliance reporting to be required more or less frequently than once per year as prescribed by regulation;

New operations

• Allowing custom plans to be developed that outline study and consultation requirements for applications in some site specific situations;

• Enabling the Minister to waive application requirements in unique situations;

• Authorizing regulations exempting specific activities from licencing or permitting requirements if specific conditions are met;

Enforcement

• Increasing the maximum penalties under the *Act* and supporting enforcement by way of Part I tickets under the *Provincial Offences Act*;

• Establishing clear offense provisions for submitting false or misleading information in a report or in information required under the *Aggregate Resources Act*;

• Protecting the inspectors, public servants, and the Minister from liability;

Fees and royalties

• Increasing flexibility respecting collection and distribution of fees and royalties;

• Requiring existing fees to be established in regulation;
Enabling new fees for a broader array of requests (e.g., requests for amendments, acceptance of surrender);  

Enabling the Minister to waive certain fees; and

Ontario Municipal Board Hearings

- Allowing the Minister to specify when the Ministry will require official party status at an OMB hearing, and allowing the Board to send referrals back to the Ministry where objections have been resolved before a hearing starts.

Key Themes of the HAPP Joint Submission

Many of the changes to the Aggregate Resources Act proposed in Bill 39 are enabling in nature, providing the Minister with the authority to issue or amend regulations. The province has not provided specifics about the directions that it intends to take in those regulations. As a result it is difficult to comment comprehensively on the directions that the province is proposing to take.

HAPP maintains that the comments that it provided through its submission to the Province on the Blueprint document in December 2015 remain valid and must be addressed in Bill 39 and in the regulations and other provincial initiatives that follow. The key points in HAPP's submission on the Blueprint can be found in Appendix A.

The HAPP Joint Submission on Bill 39 is attached as Appendix B. The Joint Submission first summarizes the key points raised by HAPP and then offers detailed comments on the proposed legislation. HAPP's key comments are as follows:

1. Provincial consultation and communication

The changes to the ARA proposed in Bill 39 should not move forward until the province’s accompanying aggregate resources implementation framework (i.e. updated/ new regulations, standards or policies) is circulated for public comment and review. It is not possible to fully assess how the Bill will contribute to modernizing and strengthening aggregate resource management in the absence of information about the regulations and other measures that will follow.

2. Clarification of the concept and implications of “Custom Plans”

Bill 39 introduces custom plans as a new instrument that would enable the Minister to establish project-specific study and consultation requirements for a licence application that differ from the generally established requirements. A rationale has not been provided for why custom plans are needed. HAPP has
serious reservations about allowing these alternate plans without a transparent explanation of the content and use of these plans.

3. **Ensure adequate notice to municipalities**

Requirements for notices and copies to municipalities would be removed from various sections of the Act. They must be re-instated in order to keep municipalities and agencies apprised of any changes.

4. **Compliance reporting requirements**

Compliance reports should be produced by aggregate operators on at least an annual basis.

5. **Requirements for rehabilitation reporting**

The requirement for the submission of rehabilitation reports is a good first step in ensuring that rehabilitation takes place in a timely manner. This amendment will help to address concerns with respect to the monitoring and reporting of rehabilitation efforts.

6. **Addressing public complaints**

A dispute resolution mechanism and changes to Provincial Standards are required to deal with public complaints. Complaints regarding operational issues such as dust, noise and vibration are not being addressed satisfactorily by aggregate operators and/or the MNRF.

HAPP strongly believes that changes to modernize and improve the *ARA* are necessary and important. However, HAPP found it very difficult to provide comprehensive comments on *Bill 39* as the Province has not provided sufficient rationale and explanation for the proposed changes or indicated how they will provide the basis for implementing a stronger, more environmentally sustainable, accountable and streamlined *ARA* process. HAPP strongly recommends that the proposed legislation not move forward until proposed regulations and standards have been circulated for comment and the province has explained:
1. the nature of and rationale for the proposed changes to Bill 39;
2. how the proposed amendments address the goals set out in the *Blueprint for Change* document;
3. how they fit into the broader aggregate resources policy framework; and
4. how they will be implemented through regulations and other means.

**Strategy/process**

While HAPP did prepare a Joint Submission on the ARA review and submitted it to the province within the 60 day commenting period, it was not possible to prepare a staff report for Committee/Council decision within that time period.

It is expected that in the future the Province will bring forward further proposals for new or revised regulations, policies and standards and that HAPP will prepare joint submissions in response. The Province should be expected to provide a minimum 90 day review period to enable municipal Councils to fully assess and respond to the proposed changes.

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**Financial Matters:**

There are no financial impacts directly related to the subject report. HAPP has advocated an increase in the fees that are paid by an aggregate operator and forwarded to the affected municipalities to compensate for municipal impacts.

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**Connections:**

Legal Services was consulted with respect to the HAPP submission.

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**Public Engagement Matters:**

Public consultation has been led by the Province. In 2012 the Ontario Legislature’s Standing Committee on General Government held hearings and received submissions from a wide variety of stakeholders. The Province held a series of engagement sessions in 2014 to consult with key stakeholders, agencies, and Aboriginal communities about the management and regulation of aggregate resources in Ontario. In 2015 the province released *A Blueprint for Change: A Proposal to Modernize and Strengthen the Aggregate Resources Act Policy Framework* for public review and comment.
Conclusion:

*Bill 39* would introduce significant changes to the legal framework for managing aggregate resources in Ontario. The HAPP Joint Submission on the *Aggregate Resources Act Review* provides the City with the means to add weight to its comments and recommendations. HAPP strongly recommends that the Province not move forward with the proposed legislation without providing municipalities with more information to assess the implications as outlined in this report.

Respectfully submitted,

Don Campbell, MSc(Pl), MCIP, RPP
Senior Planner
(905) 335-7600, ext. 7641

Appendices:

A. Key Points from the HAPP Joint Submission in Response to *A Blueprint for Change: A Proposal to Modernize and Strengthen the Aggregate Resources Act Policy Framework* (December 2015).

B. HAPP Joint Submission in Response to *Bill 39 – An Act to amend the Aggregate Resources Act and the Mining Act* (December 2016).

Notifications:

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**Report Approval:**

All reports are reviewed and/or approved by Department Director, Director of Finance and Director of Legal. Final approval is by the City Manager.