



Report: PDL-15-04

**Region of Waterloo**  
**Planning, Development and Legislative Services**  
**Commissioner's Office**

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**To:** Chair Ken Seiling and Members of Regional Council

**Date:** June 3, 2015                      **File Code:** L15-20

**Subject: Regional Official Plan – Ontario Municipal Board Appeals – Proposed  
Aggregate Policies Settlement**

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**Recommendation:**

That The Regional Municipality of Waterloo approve the settlement of the Ontario Municipal Board appeals of the Regional Official Plan pertaining to the aggregate policies as generally described in Report PDL-15-04, dated June 3, 2015 and authorize the Commissioner of Planning, Development and Legislative Services to sign Minutes of Settlement and any ancillary or related documents or agreements on behalf of the Region to finalize such settlement for submission to the Ontario Municipal Board.

**Summary:**

The Region of Waterloo has reached a proposed settlement with all parties respecting appealed aggregate policies in the Regional Official Plan. This report recommends the formal approval of this settlement by Regional Council. Three of the five key policy issues have been resolved to Regional staff's satisfaction. The remaining two key policy issues are proposed to be deferred and would be dealt with following the completion of the Provincial review of the Aggregate Resources Act. In the interim, applicable policies guiding aggregate extraction will remain in force and effect under the existing Regional Official Policies Plan (ROPP).

**Report:**

On June 16, 2009 Regional Council adopted the new Regional Official Plan (ROP). The ROP was subsequently approved with modifications by the Minister of Municipal Affairs and Housing (MMAH) on December 22, 2010. A total of 26 appeals to the ROP were received including three appeals specific to policies relating to aggregate resources.

The three appeals were from the Ontario Stone, Sand and Gravel Association (an organization that represents the interests of the aggregate producers), the Region of Waterloo and the Township of Woolwich. At the first pre-hearing conference, the Province and the County of Wellington were also made parties to the hearing with their primary interest being the aggregate policies.

The Region of Waterloo had five key issues that were the subject of its OMB appeal:

- a) Ensuring that appropriate analysis of the cumulative impact of existing and proposed aggregate operations is undertaken as part of the review of new aggregate applications. The Region of Waterloo had proposed that aggregate extraction, particularly below the water table needed to be supported by studies that addressed the cumulative impact of existing and proposed operations before approvals of new extraction operations were permitted. In the case of extraction below the water table the Region had proposed subwatershed scale hydrogeological analysis would be required to support any new applications. Through its modifications imposed as part of the approval of the ROP, MMAH weakened the policy commitment to cumulative impact analysis relating to aggregate extraction. OSSGA through its appeal also sought to scope any cumulative impact analysis required by the ROP.
- b) Restricting aggregate extraction in Environmentally Sensitive Policy Areas (ESPAs). ESPAs are a long standing environmental designation in the Region of Waterloo and the policy framework in the in force and effect Regional Official Policies Plan (ROPP) as approved by the Province in 1995 restricts aggregate extraction within these environmental areas. Through its modifications imposed as part of the approval of the ROP, MMAH provided that aggregate extraction could occur in portions of ESPAs.
- c) Protection of Significant Woodlands based on the definition of such Significant Woodlands as approved by Regional Council in the ROP (greater than 4 hectares in size) and the limited conditions under which consideration of aggregate extraction within such areas could occur. Through its modifications imposed as part of the approval of the ROP, MMAH provided a broader set of conditions under which aggregate extraction within Significant Woodlands could occur. In addition, as part of its appeal, OSSGA challenged the definition of Significant Woodlands contained in the ROP.
- d) Restricting aggregate extraction within the two year time of travel of the Region's municipal water supply wells. Through its modifications imposed as part of the approval of the ROP, MMAH provided that any such restrictions would only be in place until the source water protection plan being prepared under the provisions of the Clean Water Act was implemented in the Region of Waterloo through future amendment to the ROP.
- e) Regulating the depth of extraction through the use of vertical zoning to ensure that appropriate studies were submitted before any subsequent changes to an

aggregate license permitted extraction below the water table. Through its modifications imposed as part of the approval of the ROP, MMAH eliminated all policies associated municipal regulation of aggregate extraction below the water table on the basis that this was a Provincial responsibility through the Aggregate Resources Act. This position is supported by OSSGA through their appeal.

In addition to the above, there were a number of other minor issues raised through the various appeals.

Negotiations to date have been productive, with resolution of all the minor issues having been completed. The first three key issues identified above are now being proposed through a settlement to be entered into by the Region, the Township of Woolwich, OSSGA and MMAH. Given the nature of their participation in the process, the County of Wellington will not be executing the Minutes of Settlement, but rather will be moving to ratify the proposed modifications related to cumulative impact analysis at its next meeting of County Council.

The proposed settlement provides for appropriate cumulative impact analysis to be undertaken as part of the processing of development applications seeking to allow aggregate extraction. Modifications proposed to the policies simply clarify the process and are acceptable to Regional staff.

The proposed settlement provides for complete restrictions on aggregate extraction in ESPAs.

The proposed settlement maintains the designation criteria for Significant Woodlands as originally adopted by Regional Council as part of the ROP. Modifications to the policies regulating the conditions under which aggregate extraction may be permitted within poorer quality portions of Significant Woodlands (such as plantations, early successional habitat, areas of high disturbance, areas of low ecological diversity with high percentage of non-native species, small areas of non-provincially significant marsh or thicket wetland, hedgerows and minor areas on the perimeter of the feature) are supported by Regional staff as properly balancing the competing Provincial interests of protecting the natural environment and ensuring access to natural resources. The modified policies also provide that any portions of Significant Woodlands that are removed to permit aggregate extraction will be replaced or restored within a reasonable period of time with habitat of greater extent and/or ecological value as part of the rehabilitation plans, to promote, where possible, a net ecological gain.

With regard to the remaining two issues addressing extraction of aggregates within the two year time of travel of municipal water supply wells and municipal regulation of extraction below the water table, it has been agreed that a resolution to these issues should await the finalization of the source water protection plan under the provisions of the Clean Water Act and the completion of the review of the Aggregates Resources Act

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currently being undertaken by the Province, which review is expected to be concluded by the Province within the next year. It is proposed that resolution of these issues be deferred until the next comprehensive review of the ROP, anticipated through this settlement to occur in 2019.

As part of the approval process before the Board, Regional staff will ensure that the applicable policies existing in force and effect under the ROPP (corresponding to those being proposed for deferral in the new ROP) remain in effect until such time as the deferrals have been addressed. This will ensure that policies are in place to govern the existing holding provisions in area zoning by-laws and any applications for aggregate extraction that are submitted in the intervening period.

### **Area Municipal Consultation/Coordination**

All Area Municipalities were involved in the development of the ROP. This is especially important as local official plans must conform to the ROP under the Provincial Planning Act. In the cases of aggregates, Regional staff has worked particularly closely and cooperatively with the Township of Woolwich, as the Township is also an appellant.

### **Corporate Strategic Plan:**

The ROP supports all focus areas of the Strategic Plan, and particularly Focus Area 2: Growth Management and Prosperity.

### **Financial Implications:**

There are no direct costs related to the implementation of this settlement should these policies be finally approved by the Ontario Municipal Board.

### **Other Department Consultations/Concurrence:**

All Departments were involved in the preparation of the ROP.

### **Attachments:**

Nil.

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