

# The Corporation of the City of Kawartha Lakes

## Planning Advisory Committee Report

Report Number PLAN2019-016

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**Date:** March 6, 2019

**Time:** 1:00 p.m.

**Place:** Council Chamber

**Regular Meeting**

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**Ward Community Identifier:** Ward 8 – Manvers (Oak Ridges Moraine)

**Subject:** An application to permit the expansion of an existing Licensed Class A - Category 3 Pit above water table, with accessory uses and an application to amend the Oak Ridges Moraine Zoning By-law 2005-133 to permit an aggregate operation (VicDom Sand and Gravel)

**Author/Title:** Mark LaHay, Planner II

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### Recommendations:

**Resolved That** Report PLAN2019-016, respecting Conc. 1, Part Lot 15, geographic Township of Manvers, “VicDom Sand and Gravel – Application D06-02-009’, be received;

**That** Zoning By-Law amendment respecting application D06-02-009, substantially in the form of Appendix “E” to Report PLAN2019-016, be adopted by Council and forwarded to the Local Planning Appeal Tribunal for approval; and,

**That** after the Zoning By-law amendment respecting application D06-02-009 is adopted, staff shall then advise the Local Planning Appeal Tribunal and the Ministry of Natural Resources and Forestry that Council withdraws its objection to the application by VicDom Sand and Gravel for a Licence under the Aggregate Resources Act.

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**Department Head:** \_\_\_\_\_

**Legal/Other:** \_\_\_\_\_

**Chief Administrative Officer:** \_\_\_\_\_

## **Background:**

The owner has submitted an application to the City to amend the Oak Ridges Moraine Zoning By-law (ORMZB) to permit a mineral aggregate operation (gravel pit) on the subject lands. Concurrently, the owner has submitted an application to the Ministry of Natural Resources and Forestry (MNRF) for a licence under the Aggregate Resources Act (ARA) for the proposed gravel pit. Any land use approval and conditions that result from the City's review of the application for a license will be reported to the MNRF for consideration. These applications are being processed concurrently. However, the MNRF cannot issue a license unless the land is zoned to permit the proposed pit use.

Following the Public Meeting held on March 5, 2014, the Planning Committee made the following recommendation:

**Moved by Councillor Dunn, seconded by Councillor Macklem, Recommend That** Report PLAN2014-014, **VicDom Sand and Gravel - D06-02-009**, be received;

**That** the proposed rezoning application, D06-02-009, submitted by MHBC Planning, Urban Design and Landscape Architecture on behalf of VicDom Sand and Gravel (Ontario) Ltd. be referred back to staff for further review and processing; and

**That** all interested parties be notified of Council's decision.

### **Carried PC2014-007**

At the regular Council Meeting on March 25, 2014, Council adopted the Planning Committee Minutes from March 5, 2014:

**Moved by Councillor O'Reilly, seconded by Councillor Warren, Resolved That** the Minutes of the March 5, 2014 Planning Committee Meeting, be received and the recommendations adopted.

### **Carried CR2014-292**

This report addresses that direction.

The subject land is located within the Oak Ridges Moraine (ORM) on the south east side of Highway 115 and fronts onto both Boundary and Micro Roads. The current use of the land is marginal agricultural and the cash crop is winter wheat. This land is not identified as a prime agricultural area. The soil capability of this land for agriculture is 70% Class 6 and 40% Class 4, which is not considered Prime Agricultural land. Durham Region and the Municipality of Clarington are located to the south. Refer to Appendix 'A' and 'B'.

VicDom Sand and Gravel, the owner, currently owns and operates the licensed pit on the abutting land to the west of the subject land. The licensed area of this pit is approximately 21 ha. (51.8 ac.) of which 17.014 ha. (42 ac.) is approved for extraction and shall not extract closer than 1.5 m. above the water table. This pit has been operating since 1953. The application proposes to expand the existing pit operation to the east encompassing an additional 35 ha. (86 ac.) of which 18.5 ha (45.7 ac.) is proposed for extraction and to also extract no closer than 1.5 m. above the water table. The current maximum limit of the licensed area is 554,000

tonnes/year. The proposed maximum limit with the expansion would increase to 700,000 tonnes/year.

The existing forest corridor on the subject land has been impacted by a long-existing network of trails. The existing on-site haul driveway is proposed to use a portion of this trail to connect the existing pit operation to the proposed pit.

The current pit is accessed via the west entrance from Boundary Road, which is the existing haul route to Highways 35 and 115. This access is also proposed to be used by the expanded pit operation. The City of Kawartha Lakes maintains this portion of Boundary Road, which will continue as the haul route for the proposed expansion. Therefore, no alternative access or haul route is proposed and no new impacts on abutting rural residential properties are anticipated from related truck traffic.

The land uses abutting this land include Highway 115 to the north, the existing VicDom Manvers Pit to the west, agricultural and residential uses to the east and the Ganaraska Forest and a residential use to the south. Two rural residential dwellings exist in close proximity to the proposed pit. The dwelling to the east is approximately 35 m. from the proposed pit and the dwelling to the south is approximately 50 m. from the proposed pit.

Owner:	VicDom Sand and Gravel (Ontario) Ltd. /978970 Ontario Inc.
Applicant:	MHBC Planning, Urban Design and Landscape Architecture
Legal Description:	Concession 1, Part Lot 15, geographic Township of Manvers
Official Plan:	Oak Ridges Moraine Linkage Area in the City of Kawartha Lakes Oak Ridges Moraine Policy Area (VCOP No. 104)
Zoning:	Oak Ridges Moraine Linkage Area (ORMLA) in the Oak Ridges Moraine Zoning By-law 2005-133
Site Size:	34.8 ha (86 ac.)
Site Servicing:	No buildings are proposed and therefore, servicing is not required
Adjacent Uses:	North: Highway 115 East: Agricultural and residential South: Ganaraska Forest and residential West: existing pit operation

### **Public Meeting:**

On March 5, 2014 Planning Committee held the required public meeting and received Report PLAN2014-014. Refer to Appendix 'C'.

Area residents Robert and Jacqueline Randle, and Daniel and Leona Andrews objected to this application.

The following concerns were raised by area residents and MNRF:

- Drainage and water run-off;
- Dust control;
- Effects on tourism;

- Impacts on groundwater level;
- Maintenance of existing roads;
- Noise from machinery and trucks and odours from diesel fuel/exhaust;
- Number of pits in the area and operations on Saturdays;
- Truck traffic volumes;
- Width of the on-site haul driveway through the forest, and
- Wildlife found in the forest.

Subsequent to the public meeting, the following has occurred:

- The ARA Site Plan was revised to provide more landscaping along the top of the berm along Micro Road.
- A more detailed analysis of alternate on-site haul driveway routes and an external haul route were completed to address ecological, social and environmental impacts.
- The proposed on-site haul driveway has been altered.
- The ARA Site Plan has been revised to increase the setback to the woodlot from 15 m. to 30 m.
- The rehabilitation Site Plan has been revised in accordance with ORMCP policy.
- More detailed investigations confirmed absence of whip-poor-will on-site;
- revised the on-site haul driveway and reduced the width through the forest from 20 m. to 13.5 m. and confirmed existing external haul route is appropriate.
- A more detailed response to the 1.25 km. Policy 35(3) of the ORMCP was provided by the applicant.
- Updated comments and Site Plan revisions reflect the 2014 Provincial Policy Statement, the 2017 Growth Plan, and 2017 Oak Ridges Moraine Conservation Plan.

VicDom has revised, updated and prepared the following studies:

1. Water Resources Assessment prepared by Golder Associates, dated March 2013.
2. Noise Impact Study prepared by Golder Associates, dated October, 2013, updated November 2016 to address Swallow Acoustics (retained by Andrews) comments that Class 3 designation should be applied for noise limits at all points of reception (PORs).
3. Level 1 and Level 2 Natural Environment Technical Report prepared by Golder Associated, dated February, 2014, August 20, 2015.
4. Planning Report and Summary Statement prepared by MHBC Planning, Urban Design and Landscape Architecture, dated October, 2015 and Addendum to said document dated February 2019.
5. Technical Memorandum prepared by Golder Associates, dated March 21, 2016.

6. Response to Siskinds (law office) Notice of Objections prepared by MHBC, dated March 21, 2016 and further response to Siskinds comments dated July 25, 2016, prepared by MHBC dated November 23, 2016.
7. Operation Plans and Rehabilitation Plans prepared by MHBC dated June 24, 2016 and subsequently revised a number of times to address comments from the peer reviews completed by experts retained by the City for noise and hydrogeology and to address comments to satisfy MNRF. The latest Plans are dated October 17, 2018.

These studies have been reviewed by the MNRF, the City's peer-reviewers and/or planning staff. Additionally, comments have been received from:

Municipality of Clarington - May 1, 2014 - no objections provided that the recommendations contained in the technical reports are implemented; native species be incorporated with the vegetative screening within the extraction setback area including land containing berms; the Planting Plan be circulated to the Municipality of Clarington for comment.

MTO – November 2, 2015 – no objections; will require a clearance letter from City prior to issuance of Building and Land Use Permit.

Otonabee Region Conservation Authority – December 16, 2015 – revisions to the natural heritage technical recommendations dated August 20, 2015 and the Planning Report & Summary Statement dated October 2015 address the concerns previously expressed by ORCA. No further objections to the application.

MTO - January 13, 2016 – has previously reviewed the proposed haul route, which is the existing haul route for the existing and abutting pit owned and operated by VicDom Sand and Gravel, and has endorsed this haul route.

Region of Durham – January 29, 2016 – implement the recommendations of the acoustical report, traffic report and hydrogeology report. Requests notice of any future decision.

EXP Services Inc. – (City's hydrogeological, water resources & well survey peer-reviewer) - April 11, 2016 – their concerns have been satisfied with changes to the Site Plans that require an additional monitoring well along Boundary Road and a detailed Spills Action Plan.

MTO – December 5, 2016 – No concerns with plans provided. MTO clearance provided November 29, 2016 still applies.

Otonabee Region Conservation Authority – December 12, 2016 – reduced internal haul road reduces the impact on adjacent woodland areas and ORCA has no further objections.

Municipality of Clarington – December 21, 2016 - responses by applicant provided to Clarington on August 2, 2016 and November 23, 2016 addressed their comments to provide a berm and tree plantings along the frontage of Highway 115, within the 30 m. licence setback.

Jade Acoustics Inc. – (City's noise peer –review consultant) – April 21, 2017 - has reviewed Noise Peer Review Response letter provided by Golder Associates dated January 18, 2017 for compliance with MECP noise guidelines and

finds that in general, the Noise Impact Assessment has been prepared in accordance with the MECP procedures and accepted engineering practice.

EXP Services Inc. – July 26, 2018 - final peer review comments advising they are satisfied that all matters relating to hydrogeologic report components have been adequately addressed.

MNRF - January 28, 2019 - letter issued confirming their issues have been adequately addressed and they intend to withdraw their objection to the ARA licence, after the ARA Site Plans dated October 17, 2018 are filed. Previous comments and concerns relating to species at risk and alternatives with respect to the internal haul road have been addressed resulting in a proposal that provides for temporary removal of treed area for the internal haul road, enhancement plantings in a portion of the existing woodland, edge plantings along the existing woodland, reforestation area after extraction and plantings in natural regeneration area after extraction.

## **Rationale:**

Since the public meeting, the ARA Site Plans have been revised a number of times and the extraction and rehabilitation operations are proposed in four phases. Refer to Appendix 'D(1)' to 'D(5)' for latest plans dated October 17, 2018. The site extraction will occur according to product demand and once extraction of a phase is exhausted, the site will be rehabilitated and extraction will proceed to the next phase. The existing pit will be rehabilitated to a greater extent than is currently required by MNRF. The existing forest will be rehabilitated to increase its sustainability as an isolated corridor of significant woodland. As a result the proposed area to be reforested/planted (19 ha.) is significantly greater than the existing woodlot (10 ha.) that will be retained on site.

The current pit operates above the water table, as will the proposed pit. Therefore, a permit to take water from the Ministry of the Environment, Conservation and Parks (MECP) is not required. Both the MNRF and MECP have the authority to require VicDom to replace a potable water supply if any such well is impacted by the operation of the pit. MECP has a protocol in place to ensure the temporary provision of potable water in the case of well interference.

On September 9, 2016, the City received notice that the application for license had been referred by the MNRF to the Ontario Municipal Board (OMB), now known as the Local Planning Appeal Tribunal (LPAT) due to unresolved objections. Currently, the City is an objector to this application and should remain so until the Zoning By-law to permit the proposed mineral aggregate operation (pit) use has been adopted by Council.

On November 17, 2017, the applicant appealed the proposed zoning by-law amendment to the LPAT due to the failure of the City to make a decision on the Planning Act application. The parties involved include VicDom, City of Kawartha Lakes, MNRF, Leona and Daniel Andrews and Bill Owens and Kelsey Sylvestre, who replace Robert and Jacqueline Randle after buying their property on Micro Road. Two LPAT prehearing conferences have been held on May 28, 2018 and October 11, 2018 to deal with preliminary and procedural matters such as establishing parties and participants and identifying issues. Another prehearing

conference is scheduled to be held on March 25, 2019, with an outstanding issues list and City direction expected with respect to a recommendation on the application.

### **Applicable Provincial Policies:**

The property contains natural heritage features (Significant Woodlands) and aggregate resources (sand and gravel), both of which are considered valuable and should be protected. Further to Report PLAN2014-014, there have been updates to Provincial Plans and Policy including the updated Growth Plan (2017), Oak Ridges Moraine Conservation Plan (2017) and Provincial Policy Statement (2014).

As the ARA application was deemed complete on May 14, 2014, the subject zoning by-law amendment application to permit the making, establishment or operation of the pit, is not subject to the policies of the Growth Plan (2017) and continues to be supported by the Growth Plan (2006) by protecting and managing valuable assets and resources, including mineral aggregates.

The ORMCP (2017) does not result in any changes being required to the proposal within the Natural Linkage Area of the ORMCP and it appears to conform to the relevant Part II, III and IV Sections. This includes significantly enhanced progressive and final rehabilitation to satisfy MNRF's requirements, which will establish a natural self-sustaining woodlot; satisfying MNRF by surveying the site for significant wildlife habitat and species at risk and incorporating into the ARA Site Plans appropriate mitigation and monitoring; and establishing that proper connectivity if maintained in a Natural Linkage Area to satisfy MNRF. The Haul Route Summary that was provided concluded that taking into consideration the historical logging use and related disturbance through the woodlot that the overall ecological benefit through compensation and enhanced rehabilitation constitutes good planning and conforms to the ORMCP.

The 2014 Provincial Policy Statement (2014 PPS) provides policy direction for the appropriate development of land, while protecting resources of provincial interest, public health and safety, and the quality of the natural environment. This application considers a number of Provincial policy interests including mineral aggregate resource availability from a close to market location, protection of significant natural heritage features and areas of ecological functions, the protection of groundwater and surface water resources, operational design to ensure no adverse impacts on adjacent sensitive land uses and protecting significant cultural heritage and agricultural resources. The application for the pit extension reflects wise management of resources and is in the public interest after considering economic, environmental and social factors and appears to be consistent with the 2014 PPS.

### **Oak Ridges Moraine:**

The property is located within the Oak Ridges Moraine and is subject to the policies of the following documents:

- the Oak Rides Moraine Conservation Plan (ORMCP);
- the City's Oak Ridges Moraine Policy Area - Amendment Number 104 to the Victoria County Official Plan (VCOP No. 104); and
- the City's Oak Ridges Moraine Zoning By-law 2005-133 (ORM ZBL).

### **Oak Ridge Moraine Zoning By-law Compliance (ORM ZBL):**

The application proposes amendments to:

- Section 6.9 which adds mineral aggregate operations as a permitted use; and to
- Section 6.10 to permit a 13.5 m. wide unpaved driveway through a significant woodland area, which also requires a reduction of the area identified on Schedule F as Woodland Area, equal to the area of the proposed pit.

These proposed changes are appropriate and consistent with the ORMCP and VCOP No. 104.

### **Other Alternatives Considered:**

No other options were considered at this time.

### **Financial/Operation Impacts:**

There are no financial impacts unless Council's decision to approve or refuse to approve the requested amendment is appealed to the Local Planning Appeal Tribunal. In the event of an appeal, there would be costs, some of which may be recovered from the applicant.

### **Relationship of Recommendations to the 2016-2019 Strategic Plan:**

The Council Adopted Strategic Plan identifies these Strategic Goals:

- A Vibrant and Growing Economy
- An Exceptional Quality of Life
- A Healthy Environment

This application aligns with the Healthy Environment strategic goal as it protects and enhances water quality; protects natural features and functions; and manages aggregate resources.

### **Servicing Comments:**

The proposed use does not require water or sanitary services and therefore, such servicing is not considered in this report. If however, the owners decide to drill a well for dust control purposes, the Health Unit will be contacted at that time. Also, if the amount of water taking is more than 50,000 L/day, a permit is required from the MECP. The owner has provided that if a new well is installed for dust control purposes, this water taking amount will not be exceeded.

### **Consultations:**

The following City Department and Divisions were consulted and have no objection to this application: Building Division, Development Engineering, Water and Wastewater Division, and EMS.

Planning Staff have had a number of meetings with the applicant and their Consultants. The applicant has also met separately with the resident objectors on different occasions to provide additional information and address their concerns.

More recently on October 1, 2018, Planning Staff met with the applicant and their hydrogeologist and Daniel and Leona Andrews. Planning Staff also met with both resident objectors, the applicant and their noise consultant on January 23, 2019, with the City's noise peer reviewer available to comment and clarify any noise related issues. A number of items were discussed including pit classification versus noise classification. In this case, Class 3 (rural) sound level limits are applied which holds the pit operator to a stricter standard. In addition, there was discussion about the types of equipment to be used as well as types of screens being implemented to mitigate noise. There was also discussion regarding dust mitigation, location of the portable crusher, the dug well and drilled well on the Andrews property including required monitoring and the height of the berms across from the Andrews property. The City has engaged peer review consultants to review the hydrogeological and noise studies at the applicant's expense. Based on extensive reviews and changes to both reports, our peer review consultants are now satisfied that these reports are acceptable and that any impacts can be adequately mitigated. The owner will install a groundwater monitoring equipment in the Andrews' well. Our noise peer review consultant is satisfied that all necessary notes with respect to noise performance standards are contained on the ARA Site Plans.

### **Development Services – Planning Division Comments:**

The application proposes to change the zone category on this property from the Oak Ridges Moraine Linkage Area (ORMLA) Zone to the Oak Ridges Moraine Mineral Extraction Exception One (ORMME-1) Zone. This will permit a mineral aggregate operation and ancillary uses to the operation. The applicant also proposes to amend Section 6.9 and 6.10 of the Special Provisions, which will permit an aggregate operation located within a Significant Woodland and a Natural Heritage Feature. The application appears to conform to Provincial Plans and appears to be consistent with the 2014 PPS. Given the results of the public consultation, the revised technical standards and the revised recommendations and final comments, these proposed changes to By-law 2005-133 are considered appropriate. Refer to Appendix 'E' to this Report.

### **Conclusions:**

City staff and peer-reviewers have completed their review of the application and the updated supporting studies and revised Site Plans incorporating changes that satisfy the MNRF. Details of any required noise mitigation measures will be established on the ARA Site Plans to be filed with the MNRF by the applicant prior to the issuance of a Class 'A' license.

Consequently, staff supports the application to amend Zoning By-law 2005-133.

Therefore, based on staff's review of the updated reports, recommendations from the City's peer-reviewers and the information contained in this report, staff respectfully recommends:

- that application D06-02-009, to amend the ORM Zoning By-law to permit an aggregate extraction use (pit), be adopted by Council and forwarded to the LPAT for approval; and

- that after this amendment to the ORM Zoning By-law is approved, staff shall then advise the Ministry of Natural resources and Forestry that Council withdraws its objection to the application by VicDom Sand and Gravel for a Licence under the Aggregate Resources Act.

### Attachments:

The following attached documents may include scanned images of appendices, maps, and photographs. If you require an alternative format, please call Mark LaHay, Planner II, (705) 324-9411 ext. 1324.



Appendix 'A' – Location Map

Appendix 'B' – Air Photo

Appendix 'C' – Report PLAN2014-014

Appendix 'D(1-5)' – Revised Operation Plans

Appendix 'E' – Proposed Zoning By-law Amendment

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**Department Head E-Mail:** [cmarshall@kawarthalakes.ca](mailto:cmarshall@kawarthalakes.ca)

**Department Head:** Chris Marshall, Director of Development Services

**Department File:** D06-02-009