



The Corporation of the Town of Milton

Report To: Council

From: Barbara Koopmans, Commissioner, Development Services

Date: July 20, 2020

Report No: DS-027-20

Subject: Update Report - Application for a Class 'A' License, Category 1 and 2 Pit and Quarry Below the Water Table by James Dick Construction Limited - 9210 Twiss Road

Recommendation: THAT Report DS-027-20 be received for information.

EXECUTIVE SUMMARY

The purpose of this report is to provide Council with an update on the Town's review of the Reid Road Reservoir Quarry (RRRQ) Aggregate Resources Act (ARA) Category "1 & 2", Class "A" below water license application as submitted by James Dick Construction Limited (JDCL) and will address:

- The ARA application status, process and timelines
- The Town's role in the application review and its responses to date
- The Joint Agency Review Team (JART) mandate and work to date
- The status of the request to the Province to conduct an Environmental Assessment
- The requests for adoption of an interim control by-law (ICBL)

Staff recommend that the Town continue to participate in the JART process as originally directed by Council. The process allows for a comprehensive technical review of the JDCL application. As such, an interim control by-law is not required since no planning matter has been identified that is not being appropriately addressed through the ARA application process, and that the Town is legislatively authorized to regulate.

It is important to note that through the JART process, the Town has filed two Letters of Objections to the Ministry of Natural Resources and Forestry and the applicant (September 2018 and July 2019). These Letters state the application has failed to address the matters listed in s. 12(1) of the ARA, and the application in its current state does not constitute good planning and is not in the public interest. Therefore, the Town remains in objection of the current application.



REPORT

Background

The application proposes a new pit and quarry located on a property with the municipal address 9210 Twiss Road in Milton. JDCL has applied for a license covering approximately 29.4 hectares (73 acres) of land with an extraction area for sand, gravel, and bedrock of approximately 25.7 hectares (63.5 acres). The maximum annual tonnage is proposed by JDCL to be approximately 990,000 tonnes. No corresponding Planning Act applications have been filed with the Town of Milton or Halton Region.

Aggregate Resources Act Application and Approval

Pursuant to the ARA, the MNRF prescribe processes through which the applicant is to solicit input from the owners of land in the vicinity of the application as well as from a number of other provincial ministries, public agencies and utilities including the Town, the Region and the Conservation Authority. Where a Planning Act application is not required, as is the case with the JDCL application, the role of the Town of Milton is as a commenting agency to the MNRF. Town Council is not the approval authority for the application.

It is further significant to note that this is largely an applicant-driven process. The role of the Town is to complete a technical review of the application in order to determine whether the proposal conforms to applicable policy and meets the technical criteria set out in the legislation.

Project Status

According to the MNRF and ARA timelines, the JDCL application is currently in the commenting and review stage. The application will remain in this stage until the two year review period as identified in the ARA (two years from the application notice date of August 2, 2018) has expired or alternatively the Minister has made a decision on the application prior to the review period ending. That review period would have normally ended on August 2, 2020.

In response to the current COVID-19 pandemic, the Province has suspended decision-making timelines otherwise prescribed in provincial legislation including those in the ARA and Planning Act through their Emergency Orders. Staff are advised that the deadline to complete the review is not August 2, 2020, however, the revised date is not known at this time.

Notwithstanding the suspension of the prescribed decision-making timelines, staff continue to evaluate the materials submitted by the proponent and to request additional information and/or clarification as required to ensure that full information is considered prior to the conclusion of the review and the preparation of a final report. Staff have also



contacted the MNRF and JDCL to ensure that all current information produced by JDCL in support of their application is consistently made available to all objectors and posted on the JDCL or MNRF website for everyone to access.

Discussion

Review Process

There are three main components to the Town's review and reporting on the JDCL Reid Road Reservoir Quarry application. These include:

1. The Town's objection letters;
2. The Joint Agency Review Team's (JART) technical review of the application and supporting materials; and
3. Staff reports to Town Council.

Letters of Objection

In accordance with the ARA requirements, the Town of Milton issued its initial letter of objection to JDCL and MNRF in September 2018. This letter outlined the Town's concerns with the ARA application and supporting documentation as submitted by JDCL. It was and continues to be important for the Town to maintain an objection to the application in order to ensure that it retains its ability to participate in the ongoing application evaluation process.

On December 11, 2018, JDCL issued a response letter to the Town's letter of objection as required in the ARA. In April 2019, JDCL requested that all objectors either confirm in writing that their objection has been resolved through their individual discussions with JDCL to date or alternatively that they would like to maintain their objection as their concerns had not been satisfactorily addressed.

On May 15, 2019, the Town of Milton issued an additional letter reconfirming to the MNRF and JDCL that the Town wished to maintain its objection to the proposed quarry as the Town's objections/ issues had not been resolved and confirming that the Town remains in opposition to the quarry as proposed.

Since April 2019, JDCL has not requested any further confirmation from those who have previously provided JDCL and the MNRF with a written objection letter that their objections either remains or alternatively that their objection has been resolved.

Joint Agency Review Team (JART)

As directed initially by Council through PD-050-18, staff from the Town of Milton have participated in the collaborative review of the ARA application through a Joint Agency

Review Team (JART) process together with staff from Halton Region and Conservation Halton. The JART is composed of staff from each agency who ensure that the technical review undertaken by the public agencies is completed in a coordinated, comprehensive and efficient manner.

Mandate

This Regionally-led process ensures that all agencies can take advantage of the unique technical expertise that is available within each organization. Where specific expertise is not available within the JART partner organizations, outside technical experts are retained to assist JART with the technical review of specific components of the ARA application and supporting documentation as prepared for the applicant. The agencies retain one expert in each technical area where the expertise does not exist within the organizations rather than individually retaining subject-matter experts thereby avoiding duplication of effort and incurring additional expense.

The JART process has been adapted with respect to the JDCL application. The original JART protocol was developed in order to address applications for new or expanded quarries for which a Regional Official Plan Amendment under the Planning Act was required. In the case of the JDCL application, as no Planning Act application has been submitted, the role of JART is to co-ordinate the technical evaluation of the application, requesting additional information and clarification from the applicant as required, in order to complete the review.

In order to accomplish this mandate, it is an inherent component of the JART review and the ARA process to review the supporting materials provided by the applicant and obtain additional information and/or clarification as may be required in order to allow that technical evaluation to be completed. While the JART review is accordingly iterative in nature, it is intended to result in the provision of an independent, objective professional assessment of the application and supporting materials to inform Council's consideration of the application. The result of the JART review will determine whether the application conforms to applicable legislative requirements and technical criteria.

Public Engagement Opportunities

Due to the technical nature of the review, it is JART's role to ensure that the information provided by the applicant is publicly available. A public consultation component is not triggered in the absence of Planning Act application. Both Town and Regional staff have endeavored to make current information available for public review on their respective web sites at:

- [Town of Milton](#)

- [Halton Region](#)

The public is required by legislation to be consulted through the ARA process by the proponent and should direct any comments or concerns directly to the proponent and to the Ministry. Interested persons may also address Council in response to any staff reports tabled for consideration. In short, while the procedure for public consultation is different than in Planning Act applications, there are still opportunities for public input.

JART Review to Date

JART released its initial comprehensive review comments to JDCL and the MNR on July 31, 2019. The cover letter that accompanied the comments summarizes the key issues identified by the JART partnership with the JDCL's application and supporting documentation. The detailed comment table was prepared by agency staff with input from Halton Region's retained consultants in certain areas where the agencies lacked that expertise.

On May 29, 2020, JART issued their second set of comprehensive review comments to JDCL and MNR. These comments include the original JART comments, the responses provided by JDCL and the most recent updated comments/ responses from JART. The JART partners are presently waiting for a response to the comments, issues and concerns noted by JART with the JDCL application as currently submitted and for updated documentation and technical reports. Some of the outstanding issues/ concerns are as follows:

- The JDCL reports do not reflect the most current provincial direction, policies, and protocols;
- There is a lack of, incomplete and inaccurate baseline data and there is a lack of documented triggers/targets, response protocols, operational procedures and measures to fully comment on the applications/ supporting documentation;
- The submitted JDCL reports currently inadequately consider the potential for impacts, there are cross report conflicts, inconsistencies between the proposed Site Plan drawings and reports and some of the analysis is incomplete; which leads to improper justification of conclusions;
- There are several incomplete analyses or a lack of justification to support a number of the proposed targets, measures and conclusions in reports;
- The proposed monitoring program for during and post extraction is inadequate and the proposed process for demonstrating efficacy of mitigation measures pre-extraction is insufficient;
- There is little indication of how the rehabilitation being proposed will occur in accordance with MNR best practices, including the 2006 Aggregate Resources Program Policies and Procedures; and

- Reid Side Road and the 401/ Guelph Line interchange is not currently designed to accommodate the anticipated traffic generated by the proposed quarry and it is not clear on how much aggregate will be extracted annually thus understanding the actual number of return trips to the proposed quarry.

To date, the JART agencies have not received satisfactory responses from JDCL to resolve all of their unique objections nor have they received updated technical reports that have been prepared in a manner consistent with what JART understands to be the technical requirements and legislation governing their preparation. Until this occurs, the issues noted in the Town's objection letters remain unresolved and staff is not in a position to present a final report to Council.

Staff Reports

Town Council has considered two staff reports to date related to the Reid Road Reservoir Quarry. Staff provided an initial report PD-050-18 to Milton Council on September 10, 2018, and an update report PD-024-19 to Milton Council on May 27, 2019. As previously noted, through the first report, staff received direction to undertake the review of the application through the JART process. The second report was provided to Council as an update of the application review.

Upon completion of the JART process, staff will provide a final report to Council outlining the results of the JART evaluation and advising whether the objections raised by the Town and our partner agencies have been satisfactorily addressed from a technical perspective.

Environmental Assessment

On July 25, 2019, Member of Provincial Parliament for Milton, Parm Gill, formally requested that the Minister of Environment, Conservation and Parks (MECP) undertake an Environmental Assessment (EA) of the proposed Reid Road Reservoir Quarry project. No further information or direction on this request has been made available by the Province to date. Staff will continue to monitor this request and any resulting EA process and update Town Council as new information is related by the Province.

Request for Council Adoption of an Interim Control By-law

In response to the JDCL application, Council has received requests to adopt an Interim Control By-law. An Interim Control By-law (ICBL) is a by-law pursuant to Section 38 of the Planning Act which allows the temporary suspension of development permissions where Council has directed that a study be undertaken to address an issue for which it deems to not be adequately addressed through current land use planning policy and regulation.

An ICBL may be passed for a period of one year, with the ability to be extended for an additional year, in order to provide time to study the issue identified and to implement any identified changes to planning policy or regulation.

In the present case, the JDCL ARA application, it has been suggested that an ICBL should be passed by Council in order to allow the completion of studies regarding, among other matters, by-laws in relation to air quality, below water table blasting techniques and current zoning regulations.

Air Quality, Blasting and Water Resources

With respect to air quality, blasting, water resources and other issues arising from the operation of the quarry, staff notes that these are matters which are regulated by the Province pursuant to Section 12(1) of the ARA.

Specifically, in considering applications, the Minister or the LPAT must, among other matters, have regard to the effect of the operation of the pit or quarry on the environment and on nearby communities as well as on any possible effects on ground and surface water resources including drinking water sources.

Pursuant to Section 66, the provisions of the ARA state that “this Act, the regulations and the provisions of licenses and permits and site plans (pursuant to the ARA and not the Planning Act) apply despite any municipal by-law, official plan or development agreement and, to the extent that a municipal by-law, official plan or development agreement deals with the same subject-matter as this Act, the regulations or the provisions of a license or permit or a site plan, the by-law, official plan or development agreement is inoperative”.

As such, any municipal policies or by-laws arising from studies undertaken by the municipality would be superseded by the ARA and, consequently, would be of no force and effect in further regulating the quarry operation.

Accordingly, it is staff’s opinion that it is not appropriate to pass an ICBL for the purpose of gaining time to study a Municipal Act by-law such as an air quality by-law. An ICBL is only permitted under s.38 of the Planning Act to study “land use planning policies.”

Zoning

It has also been suggested that since the Town’s Zoning By-law does not contain provisions setting performance standards for such matters as the lot frontage, area, coverage, setbacks, landscaped open space including buffers or other attributes related to extractive uses, it would be appropriate for Council to adopt an interim control by-law to allow a study to be completed which would recommend amendments to the current zoning regulations.

Consideration

The JDCL site is unique in that it is the only site which is currently within an Extractive Industrial (MX) Zone for which there is not a current license granted by the Province pursuant to the ARA.

- It is significant to note that, while there are a number of other quarry sites in Milton, these are located within the Niagara Escarpment Plan Area where the Town does not have zoning control.
- Any other proposal to establish a new quarry or expand an existing one outside of the Niagara Escarpment Plan Area would trigger a rezoning application (at a minimum) and therefore trigger a Planning Act process and evaluation in conjunction with a review of the associated ARA application. Site specific setbacks, buffering and other requirements would then be implemented through the ARA site plan.

Analysis

Consequently, staff is of the opinion that an interim control by-law would only suspend the current zoning permissions applicable to the JDCL site, since no other site without a current license is zoned to permit extractive industrial uses as of right.

Consideration

Staff is further of the opinion that, in considering the provisions of the ARA discussed above, the manner in which the Town's current Zoning By-law regulates extractive industrial uses is entirely appropriate.

- The zoning regulations contain a single provision which states that lands within the MX zone are regulated in accordance with the site plans approved under the Aggregate Resources Act
- Each quarry application has unique attributes and should be evaluated comprehensively based upon legislated and technical criteria. As such, appropriate site-specific regulations must be determined to address the unique recommendations arising from the nature of the proposed operation and its supporting contextual studies, once approved, and implemented through the ARA site plan.

Analysis

A standardized or generic set of regulations would not anticipate or address the site-specific considerations required to appropriately regulate each unique application and to that extent, would not be defensible.

Rather, deferring to the site-specific requirements of an individual site plan under the ARA would ensure that an appropriate regulatory framework is implemented, enforced and harmonized with the legislative requirements.

Further, as the requirements of the ARA site plan would supersede regulations imposed through a municipal Zoning By-law by reason of s.66 of the ARA, staff is of the opinion that there is no benefit to the public to set standards that will inevitably be superseded.

Based upon the foregoing, in light of the legislative provisions governing the regulation of quarries, particularly Section 66 of the ARA, and in the absence of the identification of a land use planning issue that could be studied resulting in a change to the Town's current policy and regulatory regime, staff does not recommend that an interim control by-law be adopted.

Official Plan Amendment 31

It has also been noted to Council that the policies of OPA 31 have not been implemented through an amendment to the Town's Comprehensive Zoning By-law 144-2003, specifically as it relates to the JDCL site.

Analysis

In this regard, staff advises that there is an outstanding appeal of OPA 31 by JDCL as it relates to the quarry site. A conformity amendment would have the effect of removing the current Extractive Industrial (MX) zone from a portion of the site and, given that there is an active application proposing a new quarry on these lands, staff anticipate that such an amendment would also be appealed to the LPAT.

If the LPAT upheld the appeal JDCL would still be entitled to seek a Regional and Town Official Plan Amendment and a Zoning By-Law Amendment to permit the use. The various amendments would be reviewed under the same JART technical review process the current licensing applications are undergoing.

Conclusion

It is the responsibility of staff to provide opinion evidence which is fair, impartial, objective and unfettered in order to ensure that Council has the information required to make an informed decision. In accordance with Council direction, staff has been completing a comprehensive review and evaluation of the JDCL application through the JART process. As discussed in this report, the mandate of JART is inherently technical in nature, intended to ensure that Council has before it independent, objective professional advice to support its ultimate recommendations regarding the proposal to the Ministry of Natural Resources and Forestry.



The Corporation of the Town of Milton

In accordance with the ARA and the Ministry's process for the evaluation of applications for new or expanded quarries, the proponent is to consult with the public and report to the Ministry with respect to the results of that consultation. The public has an ability to object to the issuance of a license by writing to the proponent and the Ministry and providing reasons for that objection. While certainly Council has an interest in understanding the objections of Milton residents, it is of critical importance that residents avail themselves of the objection mechanisms set out in the ARA process and correspond directly with the Ministry and the proponent.

For the reasons set out in this report, staff does not recommend that Council adopts an interim control by-law but rather that staff continues to complete the technical evaluation of the JDCL application through the JART process, as previously directed by Council, and report to Council upon completion of that evaluation.

Financial Impact

None arising from this Report

Respectfully submitted,

Barbara Koopmans, MPA, MCIP, RPP, CMO
Commissioner, Development Services

For questions, please contact: Barbara Koopmans Phone: 2301

Attachments

none

CAO Approval
Andrew M. Siltala
Chief Administrative Officer