

April 30, 2021

Calinda Manning
Integrated Aggregate Operations Section
Ministry of Natural Resources and Forestry
Submitted by email: calinda.manning@ontario.ca

Dear Ms. Manning

Re: ERO 019-3449 Miller Paving Limited – Changes to the site plan for a pit or quarry

Miller Paving Limited has applied to the MNRF to amend the rehabilitation plan for Boyington Pit #3, ARA Licence No. 6578, in the Township of Uxbridge. Their request is to change the final rehabilitation of a 10 hectare area and permit an industrial final land use on that portion of the site. Should this amendment be approved, Miller plans to request that a 36.6 hectare area of the licensed site (within which the 10 hectare area proposed for changes to the final rehabilitation plan is located) be surrendered from the ARA licence and transferred to the municipality for oversight and regulation. Public comment has been invited.

I write on behalf of Green Durham Association (GDA), a not-for-profit charitable organization. GDA has for many years worked closely with partners such as municipalities, private landowners and conservation authorities to add to conservation land holdings, the creation of trail and natural heritage linkages connecting conservation lands and communities, and the stewardship of these lands. GDA is dedicated to protecting the forests, farmlands and natural areas which lie northeast of Toronto in Uxbridge, North Pickering and adjacent Greenbelt lands. GDA members have worked closely with conservation authorities, municipalities and other partners in the development of an overall conservation and trail plan for the south Uxbridge area. We have long had an interest in the many aggregate pits in our geographical area of interest, and in what happens to them once extraction ceases.

We have been closely following the proposal for Boyington Pit #3. We have reviewed the plans and reports available on the Township of Uxbridge website. We have also reviewed the licence and site plan for Boyington Pit #3 on file at the Ministry of Natural Resources and Forestry (MNRF). Through a Freedom of Information request made by one of our members, we have also reviewed the compliance reports submitted by Miller, and the inspection reports prepared by MNRF staff. We have submitted a letter outlining our concerns about this proposal to the Township of Uxbridge. We have now retained a lawyer to help sift through the legal concerns which we believe are associated with this proposal. Our concerns about the posting on the ERO are outlined below.

Illegal uses?

There are two contractor's yards on the property, one is situated in the area zoned as "M5-1" and another in the area zoned as M3-1. Both of these zoned areas are also the lands identified in the proposal to be removed from MNRFO oversight and from regulation under the ARA. According to inspection reports completed by MNRFO, the equipment in both these contractors' yards is unrelated to aggregate extraction and therefore not in compliance with the licence. According to the inspection reports, MNRFO has requested that the equipment be removed on successive visits to the site since 2010. The most recent inspection report, dated November 19, 2020, noted instead an **increase** in the amount of equipment unrelated to aggregate extraction.

Under the ORMCP and ORMCA the contractor's yards are quite clearly a non-legal, non-compliant use. Neither the ARA (and Miller's licence) nor the ORMCP/A would support them as a legal use. It is important that the MNRFO enforces compliance and the site be brought into conformity with the licence prior to any release of the lands so that the Township of Uxbridge understands that those uses are not legal. The MNRFO cannot pass illegal uses over to the Township of Uxbridge. To do so would be to effectively deny the residents of Ontario the protection offered under the ARA that is designed to regulate and ensure compliance with the terms of the licence.

Section 63 (1) of the ARA states "Where an inspector finds that any provision of this Act or the regulations is being contravened, he or she may give to the licensee or permittee or to the person whom the inspector believes to be the contravener, his or her supervisor or foreman, or any of them, an order in writing directing compliance with the provision and may require the order to be carried out forthwith or within such time as the inspector specifies (2006, c. 19, Sched. P, s. 1 (6))". Granting the request to remove these lands from ARA oversight without first ordering the owner to clean up the site removes the obligation of the owner to comply with the repeated inspection requests. Miller should be required to remove all of the equipment and materials - both contractors yards that include outdoor storage - and be given a deadline to do so. Similarly all the non-permitted uses and non-compliant issues should first to be brought into conformity with the licence.

Rehabilitation?

The ERO post currently states: "An application has been made by Miller Paving Limited to change the final rehabilitation of a 10 hectare area of the licensed site to recognize existing grades and permit an industrial final land use. The portion of the site subject of the amendment is the south west corner of the licensed area." The existing licence does not allow imported fill in the rehabilitation plan. The planned importation of 1,000,000 m³ of fill will cover about 15 hectares of the site so the amendment for rehabilitation is about 50% greater than the 10 hectares stated in the ERO posting. We ask that this error be acknowledged by MNRFO and that the ERO posting be corrected and re-posted with a new comment period.

The Final Rehabilitation Plan from Miller's existing Licenced Site Plan states: "Most areas of the pit, with the exception of the asphalt batch plant area, will be graded and covered with overburden strippings and topsoil during the ongoing operation in accordance with the progressive operation/rehabilitation plan. The ultimate pit faces will be treated with overburden and topsoil from stockpile located on the pocket areas mentioned in the operational program.

All graded areas will be seeded”. Once the aggregate has been removed, as shown on the rehabilitation drawings in the licence, the “ultimate pit faces will be treated with overburden and topsoil from stockpiles”.

Miller intends to import 1,000,000 m³ of fill to increase the land area for industrial use. They are also incorporating an illegal contractor’s yard including outside storage, construction of a 40,000 sq ft indoor storage building, expansion of the M5-1 lands for increased stockpiling as well as filling the M3 lands surrounding the M5-1 and M3-1 borders to create slopes from fill. The M3 lands will incorporate stormwater management facilities and infiltration basins to accommodate all the runoff from the industrial lands. This proposal has little to do with “rehabilitation”. This is Industrial Development which is being presented as a Rehabilitation Amendment. It is solely for Miller Paving’s financial benefit to have a fill site and additionally a pre-graded development site for industrial after-use. Once MNRF gives approval, the Township of Uxbridge will have a much harder time turning down Miller Paving’s Application for Site Plan Approval. If approved, the MNRF are not only accomplices to bad behaviour but will also be allowing that bad behaviour to be grandfathered.

Community betrayed

Residents living near aggregate pits co-exist with the inconvenience of noise, trucks, and dust while pits are undergoing active extraction. Aggregate extraction is an “interim use” and once extraction “and other related activities have ceased” (pg. 28, Provincial Policy Statement, 2020 - Under the Planning Act (ontario.ca)), the expectation is that the pit will be rehabilitated and turned over for other uses which are consistent with the character of adjacent and nearby land. This is stated in Provincial Policy Statement 2.4.3.1 and 2.5.3.1, repeatedly in Ontario Stone Sand and Gravel Association materials and is the expectation of all those who live near the Boyington #3 Pit.

Section 41.1 (1) of the Aggregate Resources Act (ARA) states “The Minister may accept the surrender of an aggregate permit on being satisfied that the permittee’s annual aggregate permit fees and rehabilitation security payments, and special payments if applicable, have been paid and that the rehabilitation has been performed in accordance with this Act, the regulations, the site plan, if any, and the conditions of the permit”. 1996, c. 30, s. 37.(Aggregate Resources Act, R.S.O. 1990, c. A.8 (ontario.ca)). To grant the request by the owner to give up the licence is to also grant them the opportunity to sidestep an obligation made when the licence was issued.

Miller has explained it plans to transform the land in question to a permanent industrial use. In order to construct this permanent industrial use, Miller will be importing vast quantities of fill. A change in oversight from ARA to the Planning Act will enable this industrial development to proceed. An industrial site in this location is not compatible with the surrounding neighbourhood, it is not compatible with the regulations outlined in the ARA and Provincial Policy Statement as mentioned above, nor is it compatible with the Oak Ridges Moraine Conservation Plan (ORMCP). A change from the rehabilitation plans outlined on the existing licence to now bring in one million cubic meters of imported fill to facilitate the erection of a large building, a contractor’s yard including outdoor storage and material stockpiles creating a permanent industrial use is not acceptable. We question whether it is legal and for this reason have retained legal counsel.

Section 6 (6) in the ORMCP states “Nothing in this Plan applies to prevent the conversion of an existing use to a similar use, if the applicant demonstrates that the conversion, (a) will bring the use into closer conformity with this Plan; and (b) will not adversely affect the ecological integrity of the Plan Area”. Section 6(7) states “If the existing use has adverse effects on the ecological integrity of the Plan Area, any application to expand the building structure or use or to convert the existing use to a similar use shall be considered with the objective of bringing the use into closer conformity with this Plan”. There is nothing about the Miller proposal for Boyington Pit #3, which brings these lands into closer conformity with ORMCP.

Section 6 (8) of the ORMCP states: “...existing means lawfully in existence on November 15, 2001 and for greater clarity does not include a use, building or structure that is in existence on that date without being lawful;”. The contractors’ yards including outside storage are not a permitted use according to the licence issued under the ARA in 1995. They were not in the site plan prior to the November 15, 2001 ORMCP date. Therefore, the contractors yards including outside storage have never been a legal use under the ARA licence and as such, would not be a permitted use under the ORMCP on November 15, 2001 to the present, nor are they a permitted use with respect to the land in the Countryside area designation. The site plan has not been updated to demonstrate how the equipment and materials related to extraction of aggregates. These non-legal, non-conforming uses have not been brought into compliance. This needs to be addressed prior to granting the request to remove land from MNRF oversight.

Other ARA, MNRF policies which do not appear to support this Major Site Plan Amendment are as follows:

- A.R. 2.03.00 Licence Site Plan Amendments: by Licensee under Guiding Principles states “Site plan amendments should not be processed to bring the licensee into compliance with the legislation until appropriate enforcement action has been taken to correct the violation(s).”
- A.R. 7.00.00 Enforcement - General states “Aggregate Inspectors must ensure that a consistent enforcement approach is taken with an aim of approaching 100% compliance within the industry.”
- AR 2.06.00 Licence Surrender, Aggregate & Petroleum Resources Guiding Principles states: A licence shall be surrendered only when the licensee has rehabilitated the site in accordance with the Act, the regulations (including the Aggregate Resources of Ontario Provincial Standards), the site plan and the conditions of the licence. The licensee must request the surrender of a licence and MNR is not obligated to accept the surrender until the site is rehabilitated to the satisfaction of the Aggregate Inspector.”.

Summary

1. Allowing licenced land to be surrendered without first bringing the site into compliance shows support for Miller’s Township application and disregard for compliancy and law under the ARA Licence and ORMCP/A.

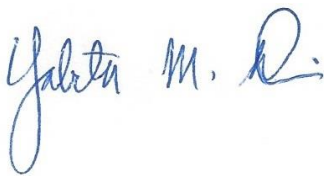
2. Approving the Rehabilitation amendment shows MNRF support for the proposed development and final proposed uses that are not lawful under the existing License or the ORMCP/A.

One of our concerns is that if the “rehabilitation” amendment and the surrender of the licence are approved, MNRF support will make it harder for Uxbridge Township to do the right thing and turn down Miller’s application. Uses which are not permitted under the current ARA Licence would become “existing uses” and only the ORMCP/A is left to stop the unlawful development. If the MNRF does not enforce the ARA or ORMCP/A, who is to say the Township is going to save the day? The MNRF has not been regulating and enforcing the licence and current laws (both ARA and ORMCP/A). We believe this is wrong and will lead to political repercussions.

The ERO posting is incorrect and misleading and does not give interested parties and concerned citizens enough information upon which to make an educated comment. The 10 hectares described as the rehabilitation amendment area is in reality over 15 hectares of land. The ERO posting states that all residences within 120m of the licensed site have been notified and we know that this has not occurred. The industrial after-use is not fully described on the ERO posting and the details of Miller’s application to the Township of Uxbridge have not been provided. Non-compliant uses and unenforced compliance by the MNRF has not been mentioned in the ERO posting.

We are left with the impression that the MNRF is saying as little as possible to assist Miller and release them from their licence. The MNRF thus gets rid of compliance and enforcement issues in the process. Miller can then deal more easily with the Township of Uxbridge and proceed with the proposed development. MNRF becomes complicit in setting a precedent which could be exploited by others in the aggregate industry to sidestep their licence obligations and introduce new industrial uses onto the Oak Ridges Moraine. We urge MNRF to deny Miller’s request to amend the rehabilitation plan and surrender the licence regarding Boyington Pit #3, order that Miller remove equipment and materials unrelated to aggregate production, and insist that Miller follow through on rehabilitation plans as outlined in the licence. We ask that you inform us about any decision to approve or deny the rehabilitation amendment and/or release of the 36.6 hectares

Yours truly,



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