

For Information

DATE: August 8, 2013

REPORT TITLE: **REVIEW OF THE AGGREGATE RECYCLING PROMOTION ACT - BILL 56**

FROM: Dan Labrecque, Commissioner of Public Works

**OBJECTIVE**

To inform Regional Council about pending Provincial legislation: *The Aggregate Recycling Promotion Act (Bill 56)* and the potential impacts to the Region of Peel in terms of design, specifications, procurement and quality control for materials.

**REPORT HIGHLIGHTS**

- The Region of Peel has a long history of using recycled aggregates in innovative and effective ways.
- In April 2013, a private members Bill was introduced by Dufferin-Caledon MPP Sylvia Jones, *The Aggregate Recycling Promotion Act (Bill 56)*.
- Under Bill 56, contracts for construction work in the public sector cannot exclude the use recycled aggregates.
- If passed in its current form, Bill 56 will impact Regional road, water and wastewater contracts.
- **Bill 56 does not currently provide any specifications or provisions to ensure a clean, consistent quality supply of recycled aggregates.**
- The Region has drafted preliminary special provisions to ensure recycled aggregates meet requirements for quality, cleanliness and long term performance.
- These provisions will be developed into detailed specifications that will be added to future road tenders if Bill 56 passes.
- The Transportation Division will continue to implement projects that effectively use recycled aggregates.

**DISCUSSION****1. Background**

The Region of Peel has a long track record of using recycled aggregates in innovative and effective ways in road rehabilitation projects. On March 21, 2013 staff presented a report to Regional Council titled "Update on the Use of Recycled Aggregates in Regional Road Construction Projects" (Resolution 2013-218). The report summarized the success of the Transportation Division in implementing projects that use recycled aggregates. As well, the Transportation Division hosted a workshop in October, 2012 aimed at advancing the use of

August 8, 2013

## REVIEW OF THE AGGREGATE RECYCLING PROMOTION ACT - BILL 56

recycled aggregates in a positive way. Since that time, a new piece of Provincial legislation on the subject of recycled aggregates has come forward that needs to be considered.

In April 2013, a private members Bill was introduced by Dufferin-Caledon MPP Sylvia Jones. The first reading carried forward is called "The Aggregate Recycling Promotion Act – Bill 56". It is expected to be debated at Queen's Park in September, 2013 with Royal Assent expected sometime in early 2014. A copy of proposed Bill 56 is found in Appendix I of this report and via the internet:

[http://www.ontla.on.ca/web/bills/bills\\_detail.do?locale=en&Intranet=&BillID=2777](http://www.ontla.on.ca/web/bills/bills_detail.do?locale=en&Intranet=&BillID=2777)

### 2. Overview of the *Aggregate Recycling Promotion Act* – Bill 56

The intent of Bill 56 is to promote the use of recycled aggregates by mandating they be fairly considered for use in public construction projects. For example, currently there is no legislation prohibiting agencies from stipulating that only contracts which use 100 per cent virgin or primary aggregates will be considered.

Historically, in some circumstances, Regional contracts for road construction did require the use of only virgin material, given project location and expected detailed design requirements. If Bill 56 is passed, it will impact procurement, contract administration, and construction materials for road, water and waste water projects including:

- the structure and language of tenders
- how suppliers are qualified as part of the tender process
- the evaluation and awarding of tenders
- the ability to ensure a clean, consistent, quality supply of construction aggregates
- how contracts are administered, material testing and quality control, and
- job-site processes.

The Bill as it currently stands does not provide any provisions to ensure a clean, consistent quality supply of recycled aggregate and does not provide a clear definition of what the term recycled aggregates specifically references. The lack of a clear definition may open up the use of aggregates which do not suit accepted and proven best practices. Poor quality material could lead to shorter asset life and increased costs.

### 3. Proposed Direction: Develop Special Provisions for Quality Control

The Region's technical working group on recycled aggregates has expressed the need for a standard set of provisions as part of Bill 56. Currently, several agencies across the GTA are in the early stages of individually developing such special provisions. The consensus is that a standard set of provisions, as part of Bill 56, would assist agencies in the practical use of recycled aggregates and thus support the intent of the Bill 56.

As part of the Region's evolving use of recycled aggregates and in anticipation of Bill 56, Transportation staff has drafted preliminary provisions for the sourcing, procurement and quality control processes for recycled aggregates. These provisions are based on the pillars of strength, quality and long term cost effectiveness that are fundamental to the Transportation Division's strategy for the use of recycled aggregates and have been included in Appendix II. More detailed, engineering based specifications will be developed in collaboration with the Region's Water and Wastewater Departments, other agencies and geotechnical

August 8, 2013

**REVIEW OF THE AGGREGATE RECYCLING PROMOTION ACT - BILL 56**

engineers moving forward. The MTO will be encouraged to develop material and quality control specifications for various uses. Staff will forward a copy of this report to the Province with a request to meet and discuss the proposed specifications being developed by the Region in order to proactively address our concerns and foster a partnership with the Province in development of the final Bill.

**CONCLUSION**

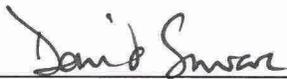
Bill 56 could receive Royal Assent and become legislation sometime in 2014. In anticipation of this, general provisions addressing the sourcing, procurement, and quality control processes for recycled aggregates have been drafted by staff in order to comply with legislation if passed.

The quality of aggregates used in road construction is important. A fundamental component to Peel's long term pavement asset management/financial strategy is building and designing roads for maximum lifespan with quality materials. Ensuring that aggregate resources used for construction projects are a clean, consistent quality and supply is rigorously tested is key to delivering construction projects that are designed for the long term and support financial stability.

The Transportation Division has continued to implement projects that use recycled aggregates. An update to Council in 2014 will review the short term performance of existing pilot projects that use recycled aggregates and provide an update on proposed Bill 56.

  
Dan Labrecque  
Commissioner of Public Works

**Approved for Submission:**

  
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D. Szwarc, Chief Administrative Officer

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c. Legislative Services

August 8, 2013

**REVIEW OF THE AGGREGATE RECYCLING PROMOTION ACT - BILL 56**

**APPENDIX I**

**Proposed Bill 56 (as of August 8, 2013)**

Bill 56 2013

An Act to prohibit certain restrictions on the use of aggregates in performing public sector construction work

Preamble

Ontario residents expect the Government of Ontario to take a leadership role in balancing the relationship between primary aggregate extraction and secondary aggregate recycling, the latter of which contributes to preserving the environment.

Ontario residents expect the Government of Ontario and the broader public sector, including government-funded institutions, to conduct business in a sustainable way that is both operationally and economically viable.

Ontario residents also expect that, where appropriate, recycled aggregates will be fairly considered for use in all construction contracts entered into by the Government of Ontario and the broader public sector. This allows for a better balance between the need for primary aggregate extraction and secondary aggregate recycling in Ontario.

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Definitions

1. In this Act,

“aggregate” has the same meaning as in the *Aggregate Resources Act*; (“agrégats”)

“construction work” means constructing, altering, decorating, repairing or demolishing buildings, structures, roads, sewers, water or gas mains, pipe lines, tunnels, bridges, canals or other works at a site or performing other work of a similar nature that is prescribed by the regulations made under this Act; (“travaux de construction”)

“public sector” means,

(a) the Crown in right of Ontario, an agency thereof, or an authority, a board, a commission, a corporation, an office or an organization of persons, a majority of whose directors, members or officers are appointed or chosen by or under the authority of the Lieutenant Governor in Council or a member of the Executive Council,

(b) the corporation of a municipality in Ontario,

(c) a local board as defined by the *Municipal Affairs Act* or an authority, a board, a commission, a corporation, an office or an organization of persons, some or all of whose members, directors or officers are appointed or chosen by or under the authority of the council of the corporation of a municipality in Ontario,

(d) a board as defined in the *Education Act*,

(e) a university in Ontario or a college of applied arts and technology or post-secondary institution in Ontario, whether or not affiliated with a university, the enrolments of which are counted for purposes of calculating annual operating grants entitlements,

**REVIEW OF THE AGGREGATE RECYCLING PROMOTION ACT - BILL 56**

(f) a hospital referred to in the list of hospitals and their grades and classifications maintained by the Minister of Health and Long-Term Care under the Public Hospitals Act or a private hospital operated under the authority of a licence issued under the Private Hospitals Act,

(g) a corporation with share capital, at least 90 per cent of the issued shares of which are beneficially held by or for an employer or employers described in clauses (a) to (f), and every wholly-owned subsidiary thereof,

(h) a corporation without share capital, the majority of whose members, directors or officers are members of, or are appointed or chosen by or under the authority of, an employer or employers described in clauses (a) to (f), or a wholly-owned subsidiary thereof,

(i) a board of health under the Health Protection and Promotion Act,

(j) the Office of the Lieutenant Governor of Ontario, the Office of the Assembly, a member of the Assembly or the offices of persons appointed on an address of the Assembly,

(k) any authority, board, commission, corporation, office, person or organization of persons, or any class of authorities, boards, commissions, corporations, offices, persons or organizations of persons, prescribed by the regulations made under this Act,

(l) Hydro One Inc. or any of its subsidiaries, and

(m) Ontario Power Generation Inc. or any of its subsidiaries. ("secteur public")

Usage of aggregates to perform construction work

2. (1) No person or body that forms part of the public sector shall, in calling for tenders for any construction work, refuse to consider a bid for the sole reason that it proposes that the work, or any part of it, can or will be performed using aggregates that are not newly produced.

Same, contract

(2) No person or body that forms part of the public sector shall refuse to enter into a contract for the performance of construction work for the sole reason that the contract permits or requires the work, or any part of it, to be performed using aggregates that are not newly produced.

Regulations

3. The Lieutenant Governor in Council may make regulations,

(a) doing anything described as prescribed in the definition of "construction work" in section 1 or clause (k) of the definition of "public sector" in that section;

(b) specifying what constitutes aggregates that are not newly produced for the purposes of section 2;

(c) exempting any person or body or class of person or body from any provision of this Act or the regulations made under this Act, and prescribing conditions or restrictions that apply in respect of an exemption;

(d) governing transitional matters that, in the opinion of the Lieutenant Governor in Council, are necessary to implement this Act or the regulations made under it.

**REVIEW OF THE AGGREGATE RECYCLING PROMOTION ACT - BILL 56**

Commencement

4. This Act comes into force on the day it receives Royal Assent.

Short title

5. The short title of this Act is the Aggregate Recycling Promotion Act, 2013.

**EXPLANATORY NOTE**

The Bill prohibits any person or body that forms part of the public sector from refusing to consider a bid for construction work or from refusing to enter into a contract for construction work for the sole reason that the work, or any part of it, can or will be performed using aggregates that are not newly produced. The term "public sector" is broadly defined.

REVIEW OF THE AGGREGATE RECYCLING PROMOTION ACT - BILL 56

APPENDIX II

General Special Provisions for Peel's Use of Recycled Materials

These draft quality control provisions lay out a process to ensure recycled aggregates meet requirements for quality, cleanliness and long term performance.

Principle	Quality Control Provisions Required
<b>Fair and Transparent Procurement</b>	<ul style="list-style-type: none"> <li>• Standard tender language needs to be developed that clearly defines the special provisions required for the use of recycled aggregates, to ensure bids for road tenders can be fairly evaluated and awarded. Key provisions include:                             <ul style="list-style-type: none"> <li>○ the ability to specify what specific types of material will be used in road construction on project by project basis, based on detailed engineering design requirements</li> <li>○ the flexibility to award bids based on total cost and not materials used</li> <li>○ criteria and protocols need to be developed to document how awarded tenders have complied with legislation (Bill 56) as part of the tendering process</li> </ul> </li> </ul>
<b>Material Sourcing</b>	<ul style="list-style-type: none"> <li>• Knowing the source/origin of recycled aggregates is critical to the successful implementation in road works. Key provisions include:                             <ul style="list-style-type: none"> <li>○ conducting supplier site visits to ensure quality process and stockpile management are in place</li> <li>○ documentation should be available from suppliers that establishes the source of recycled materials as well as the chain of custody</li> </ul> </li> </ul>
<b>Management and Control of Supply</b>	<ul style="list-style-type: none"> <li>• The ability to qualify suppliers in an open manner through Peel purchasing mechanisms will help establish a pool of qualified suppliers. Key provisions include:                             <ul style="list-style-type: none"> <li>○ having controls regarding the supplier of the recycled materials as either a primary or sub is vital to ensure quality is not circumvented</li> <li>○ having some form of product certification</li> </ul> </li> </ul>
<b>Quality Assurance and Control</b>	<ul style="list-style-type: none"> <li>• Development of a comprehensive process for testing materials at source and on the jobsite. Key provisions include:                             <ul style="list-style-type: none"> <li>○ establishing a new process to test for chemical and physical properties</li> <li>○ ensuring the absence of deleterious materials</li> <li>○ setting the frequency for testing, establishing the type of test, who completes and pays for testing</li> <li>○ the impact more tests will have on project timelines</li> </ul> </li> </ul>
<b>Hierarchy of Applications</b>	<ul style="list-style-type: none"> <li>• Recognition that recycled aggregates come in many different forms (reclaimed concrete, recycled asphalt) and are best used in specific applications to gain the best environmental, engineering and long term cost benefit. Key provisions include:                             <ul style="list-style-type: none"> <li>○ multiple specifications need to be developed for each specific use/application of recycled material</li> <li>○ a hierarchy could be established that clearly outlines which recycled aggregates are approved for what application (i.e.: under sidewalks or roads)</li> </ul> </li> </ul>