

# **Making the most of Manitoba's aggregate resources**

## ***'Issues to Solutions' Consensus Report***

### **EXECUTIVE SUMMARY**

#### **INTRODUCTION**

The Reeves and CAOs of the RMs of Hanover, Rockwood, Springfield, the Executive Director and Director of Advocacy of the Association of Manitoba Municipalities (AMM), the President and the Policy Analyst for the Manitoba Heavy Construction Association (MHCA) met on January 3, 2018 in Rockwood, for the purposes of reviewing issues affecting planning and land use management associated with establishing new or adjusting existing quarry operations in Manitoba.

The below - an executive summary of the full brief - represents consensus views of the participants, to be presented to the provincial Pits & Quarries Advisory Committee charged with the review, of which each of the participants are members, at its January 11, 2018 meeting.

It is a product of months of discussion and represents significant improvement over what exists, along with a commitment to ongoing dialogue and collaborative work to monitor developments going forward.

#### **CONTEXT**

*The Mines, Planning and Municipal Acts* collectively establish provincial jurisdiction over most of Manitoba's mineral resources. This legislative framework has been evolving since the 1970s. *Aggregate mining is both a land use, and a use of land*, an industrial activity that can be left rehabilitated for future use. There are circumstances however, where pit and quarry operations are not an appropriate land-use activity.

While reasonable efforts are required to address local concerns, the process must recognize the need to protect access to aggregate deposits to support infrastructure development.

Industry is increasingly frustrated in attempts to establish quarries in areas clearly identified with medium to high quality aggregate deposits due largely to conflicting land-use development, and local opposition. As a result, Manitoba loses investment, jobs and new tax revenues. Further, hauling distances have increased, driving up the cost of all construction projects.

This uneasy relationship requires clarification to ensure Manitobans' interests are reasonably accommodated.

So, what are the issues and their potential solutions reached by consensus?

#### **Issue #1: Pits & Quarry Approvals (at pages 4/5):**

Development Plans shall identify medium to high quality aggregate deposits, and in such circumstances aggregate extraction shall be a *'Permitted Use'* and not subject to conditional use hearings. Municipalities shall require development and servicing agreements.

Where a new or existing operation requires a conditional use hearing, the practice shall be modelled after the Technical Review Committee (TRC) process currently in place for applications to establish large livestock operations, namely:

- i) The application is made to the minister;
- ii) The TRC reviews all its technical, environmental (water protection) and related aspects;
- iii) The TRC provides a publicly available report to Council with recommendations;
- iv) Council notices and holds public hearing within 30 days of receiving the TRC report;
- v) Following hearing, Council posts criteria-based decision.

**Issue #2: Revenues to Municipalities (at pages 5/6):**

To ensure consistent taxation across Manitoba and increase revenues to municipalities, proceed as follows:

1. As proposed by the RM of Springfield, increase the existing *Aggregate Mining License* fee from \$0.150 (2013) to \$0.2399 (2018) and *Aggregate Transportation Levy* from \$.0341 (2013) to \$.0545 (2018) *provided* that all municipalities that host aggregate extraction above a minimum annual tonnage be required to levy and collect each fee; **AND**
2. Adjust the fees annually by the rate of inflation, consumer price index, construction inflation, or as otherwise may be agreed upon.

**Issue #3: Update Quarry Rehabilitation Program (at page 7):**

Undertake a full update of Manitoba's Quarry Rehabilitation Program to ensure revenues and standards meet reasonable rehabilitation expectations.

**Issue #4: Ongoing Oversight Aggregate Resources Development (at page 7):**

Establish a voluntary (no per diems) advisory council to the minister, struck outside its process to appoint individuals to provincial Boards and Commissions, with representatives from the MR, MI, GET, AMM and MHCA. It would monitor aggregate resource development; expedite communication and co-ordination; make recommendations to the minister, or respond to requests for recommendations from the minister, arising from its evolving experience.

We respectfully submit that the above approach is balanced, progressive and addresses the many interests at stake.

Respectfully submitted for consideration,

RM of Hanover  
RM of Rockwood  
RM of Springfield  
Association of Manitoba Municipalities (AMM)  
Manitoba Heavy Construction Association (MHCA)

January 9, 2018

## **Making the most of Manitoba's aggregate resources** ***'Issues to Solutions' Consensus Report***

### **PURPOSE**

This brief identifies ways to move from *'Issues to Solutions'* -- solutions that can further clarify the existing legislative and policy frameworks supporting access to aggregate sources, while better addressing factors that motivate local residents to oppose development of these strategic resources.

The solutions are offered to ensure that we make the most of Manitoba's aggregate resources, while respecting the principles of sustainable development. They are directed to better accommodate aggregate mining in the context of other land uses development, to provide for appropriate land-use mix and balance, and to help address local concerns, while serving the best interests of all Manitobans.

### **LEGISLATIVE CONTEXT**

*The Mines & Minerals Act* (Sec. 2) establishes that making the most of Manitoba's aggregate mineral resources is a legislated priority, and that protection of these rich, finite deposits is expressly an area of provincial responsibility:

*Sec. 2(1): "The objective and purpose of this Act is to provide for, encourage, promote and facilitate exploration, development and production of minerals and mineral product in Manitoba, consistent with the principles of sustainable development."*

*The Planning Act*, which establishes Manitoba as the provincial land-use authority, broadly provides further protection for access to the extraction of minerals, including aggregates. In addition, the Planning Act (Sec. 41) requires compliance of municipal by-laws, in support of these provincial objectives.

These two acts are supported by *The Municipal Act*, which requires municipal compliance with provincial land-use authority legislation and regulation:

*Sec. 230: "A by-law that is inconsistent with an Act or regulation in force in the province is of no effect to the extent of its inconsistency."*

Together, the three acts provide a broad policy and program framework to assert the priority of making the most of Manitoba's mineral resources. This cumulative legislative framework has been evolving since the 1970s in recognition of these same issues.

### **ISSUES TO SOLUTIONS**

#### **Issue #1: Pits & Quarry Approvals**

To ensure clarity of process accompanying an application to establishing new or affect the operations of existing pits & quarries, the following is proposed:

#### **Solution - Permitted Use:**

1. Development Plans shall identify medium to high quality aggregate deposits on lands, and in such circumstances the mining of these aggregate deposits shall be accommodated as a *'Permitted Use'* and not subject to a conditional use hearing under the Planning Act. This would transparently identify the intent without denying, in appropriate circumstances, the application of conditional use hearings under Part 7 of The Planning Act.

The municipality shall require the aggregate operator and/or land owner to enter into development and servicing agreements on terms and conditions agreeable to all parties.

2. In support of the above, Manitoba shall develop and provide to municipalities, a model for development plans as they relate to zoning matters on aggregate resources, where such have proven successful in

facilitating mutual benefit to the municipality, residents, industry and best public interests. We suggest the RM of Rockwood's development plan, as an example.

**Solution - Conditional Use:**

Where conditional use applications are required for new or existing operations, model a process following the existing conditional use process for livestock operations involving 300 or more animals. The process generally speaking, would include the following steps:

- (i) the application is made to the Minister;
- (ii) it is referred to a Technical Review Committee (TRC) made up of officials from the Departments of Mines, Conservation, Water Stewardship, Municipal Relations, Manitoba Infrastructure (and others as required).

The purpose of the TRC is to manage the full review of the application. It:

- a. undertakes and provides a full review of its technical, regulatory and environmental compliance aspects;
  - b. can require the applicant to provide any reasonably required or additional material;
  - c. provides recommendations in a full written report (TRC Report) to the Minister and Council based on the site-specific characteristics of the proposed location;
  - d. ensures that the report is public and available for review and copying; and
  - e. appears at the public hearing at which the application is considered to speak to its report and address any arising questions.
- (iii) the Council shall hold a noticed public hearing on the application no later than 30 days after receiving the TRC Report. After holding the hearing, Council shall promptly make and publicly post a 'Notice of Decision.' It can approve the application if:
    - a. The TRC Report has:
      - i. determined that the proposed operation will not create a risk to health, safety or the environment, or that any such risk can be reasonably minimized or mitigated;
      - ii. found that the proposal will be generally compatible with the general nature of the surrounding area and any effects can be reasonably addressed or mitigated;
      - iii. found that it is generally consistent with the development plan and is not inconsistent with any applicable provincial land-use regulation or policy.
    - b. Any proposed condition by Council must be demonstrably relevant and reasonable, mindful of the TRC Report, its development plan and in any event, not inconsistent with any applicable provincial land use regulation or policy(s).

**Issue #2: Revenues to Municipalities:**

Local opposition to the mining of aggregates is often based on a perception that municipal tax revenue from pits and quarries is disproportionately low. While the province and broader region benefit from reduced infrastructure costs through access to proximate aggregate sources, local residents directly affected by this heavy industry and associated truck traffic often perceive that they also lose out financially.

Industry supports fair taxation of mining properties, and has historically worked with the AMM, affected municipalities and provincial departments in support of those objectives.

An MHCA initiative in the early 1990s led to a municipal/government/industry collaboration that culminated in a much more progressive municipal taxation system. The ineffective personal and property tax appraisal system was replaced in the *'Aggregate Mining and Transportation Fees and Agreement Regulation,'* under The Municipal Act.

It established a prescribed maximum *'Aggregate Mining License Fee'* based on tonnage annually produced from pits and quarries, supplemented by a *second 'Aggregate Transportation Levy'* based on tonnage per kilometer of municipal road used.

Notwithstanding petitions to government by municipalities and industry, the minister responsible for The Municipal Act did not review the maximum fees, nor make any amendments to their levels by January 2013, as prescribed by the said Regulation. Hence, they have not been adjusted since 2013.

**Solution:** update and increase the above referenced fees with an effective date in 2018 to be determined, as follows:

1. As proposed by the RM of Springfield, increase the existing *Aggregate Mining* License fee from \$0.150 (2013) to \$0.2399 (2018) and *Aggregate Transportation Levy* from \$.0341 (2013) to \$.0545 (2018) provided that all municipalities that host aggregate extraction above a minimum annual tonnage be required to levy and collect each fee; **AND**
2. Adjust the fees annually by the rate of inflation, consumer price index, construction inflation, or as otherwise may be agreed upon.

### **Issue #3: Update Manitoba's Quarry Rehabilitation Program – AGREED AS ADJUSTED**

Whenever a new pit or quarry is proposed, a concern is often raised regarding the potential abandonment of lands, post mining, in a derelict condition that is unsafe, unproductive and diminishes the value of adjoining properties.

In Manitoba, there is a program designed to minimize the impacts. The Manitoba Aggregate Pit & Quarry Rehabilitation Program levy was established in 1991, and was an initiative of the industry, through the MHCA in consultation with AMM and provincial departments.

The levy (currently \$0.12/tonne) is collected by all aggregate producers and remitted at the end of each year to the Mines Branch (GET). When the property owners determine that the aggregate minerals are depleted, they apply to the Mines Branch to draw funds for the rehabilitation. Land is restored to a safe, environmentally stable condition, compatible with adjoining properties. Progressive rehabilitation is encouraged.

This unique Manitoba program has been enormously successful. Since 1993, some 2,617 projects have seen 10,362 hectares of land rehabilitated (see Table 2).

|               | Number of Projects | Area (hectares) | Expenditure         |
|---------------|--------------------|-----------------|---------------------|
| 1993          | 75                 | 360             | \$490,776           |
| 1994          | 115                | 544             | \$696,287           |
| 1995          | 89                 | 392             | \$537,762           |
| 1996          | 87                 | 303             | \$501,173           |
| 1997          | 77                 | 257             | \$629,526           |
| 1998          | 189                | 868             | \$1,813,227         |
| 1999          | 197                | 993             | \$2,109,259         |
| 2000          | 168                | 689             | \$1,958,460         |
| 2001          | 124                | 440             | \$1,235,368         |
| 2002          | 112                | 458             | \$1,443,200         |
| 2003          | 116                | 514             | \$1,633,775         |
| 2004          | 90                 | 413             | \$1,552,113         |
| 2005          | 88                 | 345             | \$1,393,270         |
| 2006          | 97                 | 408             | \$1,789,061         |
| 2007          | 85                 | 234             | \$1,299,101         |
| 2008          | 118                | 397             | \$2,230,824         |
| 2009          | 122                | 423             | \$2,294,285         |
| 2010          | 117                | 332             | \$2,337,560         |
| 2011          | 104                | 338             | \$2,224,262         |
| 2012          | 113                | 346             | \$2,474,783         |
| 2013          | 91                 | 329             | \$3,341,629         |
| 2014          | 75                 | 300             | \$3,106,309         |
| 2015          | 84                 | 368             | \$3,597,506         |
| 2016          | 84                 | 310             | \$3,439,025         |
| <b>TOTALS</b> | <b>2,617</b>       | <b>10,362</b>   | <b>\$44,128,542</b> |

Mines inspectors in Growth, Enterprise & Trade (GET) oversee project administration, contracting work to private operators. They also ensure the levy collection and adherence to pit and quarry operating standards. The Quarry Rehabilitation Program is a very good example of sustainable development.

Policies governing rehabilitation standards, contracting procedures and administration have been periodically reviewed and refined, by consultation between government and industry. The program's goal is to balance the funds collected with expenditures to ensure lands are rehabilitated approximately in pace with the expansion of pits and quarries. As this program also addresses rehabilitation of pits and quarries mined in past decades, there is catch-up to be achieved.

We can always look for improvement. A 2011 program review saw the levy rate rise to \$0.12 per tonne, and the limit for sole-source contracting increase to \$50,000 to expedite progressive work. In 2013, the staff-administration charge recovered from the fund rose to 85%.

A new review of the program should look at these matters:

- Is the program still meeting the broad goal?
- Should the tender requirement threshold level be raised and if so to what amount?
- Are the standards of rehabilitation appropriate?
- Is the levy rate sufficient given current/projected rehabilitation costs, and the backlog of applications?
- Are staffing levels adequate, and is the proportionate recovery of staff expenses from the Rehab Fund Account appropriate given the current balance of job duties?
- Is there a need to undertake more projects to balance with the annual expansion of pits and quarries?
- Can the financial checks and balances be improved?
- Are ancillary pit and quarry operating standards adequate?

Effective rehabilitation of depleted pits and quarries is a significant offset to local concerns. It is essential this program continues to be successful. Industry takes considerable pride in the program and as a primary stakeholder it should be directly involved in any such review.

**Solution:**

1. Undertake a full review of Manitoba's Aggregate Pit & Quarry Rehabilitation Program, by a committee composed of representatives from the MR, MI, GET, AMM and the MHCA. (see below proposed committee Issue #4)

**Issue #4: Ongoing Oversight Aggregate Resources Development**

It is clearly in the Province's interests and its responsibility to ensure that collectively, we make the most of Manitoba's aggregate resources, while addressing reasonable local concerns and respecting the principles of sustainable development. This serves the collective best interests of all Manitobans.

Toward those goals, it is suggested a voluntary Minister's advisory committee be set up, to monitor and thereby quickly address emerging issues.

**Solutions:**

1. Establish a permanent (no per diem) "Ministers Advisory Council on Aggregate Pits & Quarries" struck outside Manitoba's process to appoint individuals to provincial Boards and Commissions, with representatives from the MR, MI, GET, AMM and the MHCA;
2. The Advisory Council would monitor aggregate resource development; expedite communication and the necessary inter-departmental co-ordination. It could recommend to the Minister adjustments and/or improvements to the program frameworks, including related best practice, technical updates and respond to ministerial requests for advice.

**SOLUTIONS' CUMULATIVE BENEFITS**

In summary, we offer this 'Issues to Solutions' brief to assist in providing a clear, transparent, level playing field to all interested parties. The benefits of the recommended solutions include:

1. Clarifying legislative intent and jurisdictional authority (with or without amendments) helps ensure that all interested parties understand provincial policy, and respective scope of authorities to make decisions;
2. Introducing technical review process and reporting helps ensure applications meet requirements protecting provincial and local interests, assisting municipalities, residents and industry in their considerations;
3. Introducing clear criteria-based municipal decision making, clarifying responsibilities;
4. Protecting access to aggregates in a balanced, transparent manner; recognizing the imperatives of addressing reasonable community concerns; mitigating land-use conflicts; respecting the principles of sustainable development thereby building broader community trust in the aggregate extraction process;
5. Ensuring province-wide, consistent, level playing field taxation through updated and predictable Aggregate Mining License Fee and Aggregate Transportation Levy returns is sound tax policy, and concurrently increases revenue streams to municipalities arising from aggregate extraction activities in their communities. These revenues could help blunt local perceptions associated with quarry activities;
6. Implementing costs to Manitoba are minimal as recommendations utilize existing capacities and effectively fill unfilled positions with required skill sets to achieve objectives. The returns to Manitoba arising from new investment, jobs and resulting revenues concurrent with competitive aggregate costs, are significant;
7. Establishing an ongoing volunteer advisory committee to the minister working with line departments, municipalities and industry, providing aggregate extraction policy recommendations, monitoring for continuous improvement, alerting to an emerging challenge and responding to any ministerial inquires;
8. Enhancing revenue streams to the Quarry Rehab Program to improve the program and its standards; and
9. Preserving competitive pricing of aggregates encourages investment in Manitoba, new jobs and tax revenues to governments.

Manitoba's finite aggregates, should be sustainably developed for generations in a manner that respects the principles of sustainable development, while addressing and mitigating land-use conflicts. Protecting access to aggregate deposits is critical to avoiding significant increases to the cost of public and private infrastructure and construction projects, specifically although not exclusively, in its Capital Region.

We respectfully submit that the above approach is balanced, progressive and addresses the many interests at stake.

Respectfully submitted for consideration,

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 RM of Rockwood  
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