

Title: 1594784 Ontario Ltd.

Date: November 13, 2019

STAFF REPORT

PROPOSAL:

The application for Zoning By-law Amendment seeks to amend By-law 2010-100Z being the Zoning By-law for the City of Greater Sudbury by changing the zoning classification of the subject lands from "RU", Rural to "RU(S)", Rural Special. The proposed rezoning is intended to recognize an existing aggregate transfer site that is presently operating on the subject lands.

The owner has submitted a Concept Plan and a Traffic Impact Study (TIS) in support of the proposed rezoning that would allow for the continued operation of an aggregate transfer site on the subject lands.

As background to the rezoning request, By-law Enforcement Services issued a Notice of Violation to the owner on April 25, 2018 noting that the subject lands were being used as an aggregate transfer site, which is not a permitted land use in the "RU" Zone. Staff understands that numerous complaints were filed with By-law Enforcement Services with respect to the illegal use of the lands as an aggregate transfer site between April 2018 and July 2018.

In response to the violation notice, the owner in response proceeded to submit a Pre-Consultation Application to the City on May 14, 2018. The Sudbury Planning Application Review Team (SPART) considered the rezoning that would be required at a meeting on May 30, 2018. The owner later attended the Planning Services Division and completed a Pre-Consultation Understanding Agreement on June 4, 2018. The rezoning application was received by the City on July 5, 2018 however it was deemed to be incomplete pending submission of both a scoped TIS and a Public Consultation Strategy. The rezoning application was deemed to be complete after the above items were submitted on July 23, 2019.

Existing Zoning: "RU", Rural

The "RU" Zone permits a single-detached dwelling, a mobile home dwelling, a bed and breakfast establishment within a single-detached dwelling and having a maximum of two guest rooms, group home type 1 within a single-detached dwelling and having a maximum of ten beds, a seasonal dwelling located on a legal existing waterfront lot, a private cabin accessory to a permitted seasonal dwelling and a private home daycare. Permitted non-residential uses includes an agricultural use subject to compliance with any special setback provisions, an animal shelter, a forestry use, a hunting or fishing camp, a garden nursery, a kennel provided that applicable buffer provisions to residential uses are complied with, a public utility and a veterinary clinic.

Requested Zoning: "RU(S)", Rural Special

The proposed rezoning would recognize as a permitted use an existing aggregate transfer site that is presently operating on the subject lands. An aggregate transfer site is defined in the City's Zoning By-law as, "Any premises used for the sorting, storing and distribution of aggregate materials including topsoil and peat." The "RU" Zone does not permit an aggregate transfer site.

Location and Site Description:

The subject lands are located on the south side of Municipal Road #4 and to the east of Fairbank Lake Road in the community of Worthington. Perch Lake is located to the east of the subject lands and the Totten Mine is located to the south-east of the lands. The lands have a total lot area of approximately 1.11 ha (2.75 acres) with approximately 148 m (485.56 ft) of lot frontage on Municipal Road #4. The lands presently contain an operating aggregate transfer site.

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Surrounding Land Uses:

North: Rural residential use and well vegetated, vacant mining industrial and rural land.

East: Mining industrial use and vacant rural lands.

South: Well vegetated, vacant mining industrial and rural land.

West: Rural residential uses and well vegetated, vacant rural lands.

The existing zoning and location map attached to this report indicates the location of the subject lands to be rezoned, as well as the applicable zoning in the immediate area.

Site photos depict the subject lands an aggregate transfer site with a mound of aggregate material along with several pieces of equipment. Additional photos which provide views along Municipal Road #4 as well as the driveway entrance from Municipal Road #4 to the Totten Mine lands are also depicted for contextual purposes.

Public Consultation:

The statutory Notice of Application was provided to the public by newspaper and to nearby landowners and tenants located within 240 m (800 ft) of the subject lands on July 23, 2019. The statutory Notice of Public Hearing dated November 21, 2019 was provided to the public by newspaper and to nearby landowners and tenants located within 240 m (800 ft) of the subject lands.

The owner was also advised of the City's policy recommending that applicants consult with their neighbours, ward councilor and key stakeholders to inform area residents of the applications prior to the public hearing. The owner indicated to staff that they would be consulting with area residents, but that the details as it related to their public consultation strategy were still being considered at the time of application. At the time of writing this report, staff are not aware if the owner undertook any public consultation in the local community prior to the statutory public hearing.

At the time of writing this report, no emails or letter submissions have been received by the Planning Services Division. Staff did receive several phone calls seeking clarification on the application to rezone the lands.

POLICY AND REGULATORY FRAMEWORK:

The property is subject to the following policy and regulatory framework:

- [2014 Provincial Policy Statement \(PPS\)](#);
- [2011 Growth Plan for Northern Ontario](#);
- [Official Plan for the City of Greater Sudbury](#); and,
- [Zoning By-law 2010-100Z](#).

The PPS and the Growth Plan for Northern Ontario, along with the City's Official Plan, provide a policy framework for land use planning and development in the City of Greater Sudbury. This framework is implemented through a range of land use planning controls such as, but not limited to, zoning by-laws, plans of subdivision and site plans.

2014 Provincial Policy Statement:

Municipalities in the Province of Ontario are required under Section 3 of the Planning Act to ensure that decisions affecting planning matters are consistent with the 2014 Provincial Policy Statement (PPS). The following PPS policies are applicable to this application for rezoning:

1. Section 1.1.5.2 outlines that permitted uses on rural lands are to include the management or use of resources, resource-based recreational uses, limited residential development, home occupations and home industries, cemeteries and other rural land uses;
2. Section 1.1.5.4 outlines that development which is compatible with the rural landscape and can be sustained by rural service levels should be promoted;
3. Section 1.1.5.5 outlines that development on rural lands shall be appropriate to the infrastructure which is planned or available and avoid the need for the unjustified and/or uneconomical expansion of infrastructure;
4. Section 1.1.5.6 outlines that opportunities should be retained to locate new or expanding land uses that require separation from other uses;
5. Section 1.1.5.6 outlines that opportunities to support a diversified rural economy should be promoted by protecting resource-related uses and directing non-related development to areas where it will minimize constraints on these uses;
6. Section 1.3.1 outlines that economic development and competitiveness is be promoted by:
 - a. Providing for an appropriate mix and range of employment and institutional uses to meet long-term needs;
 - b. Providing opportunities for a diversified economic base, including maintaining a range and choice of suitable sites for employment uses which support a wide range of economic activities and ancillary uses, and take into account the needs of existing and future businesses;
 - c. Encouraging compact, mixed-use development that incorporates compatible employment uses to support liveable and resilient communities; and,
 - d. Ensuring the necessary infrastructure is provided to support current and projected needs; and,
7. Section 1.3.2 generally outlines that municipalities are to plan for, protect and preserve employment areas for current and future uses and ensure that the necessary infrastructure is provided to support current and projected needs.

Growth Plan for Northern Ontario:

Municipalities in the Province of Ontario are required under Section 3 of the Planning Act to ensure that decisions affecting planning matters conform with the Growth Plan for Northern Ontario. Staff has reviewed the planning matters contained within the Growth Plan for Northern Ontario and are satisfied that the application to rezone the lands conforms to and does not conflict with the Growth Plan for Northern Ontario.

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Official Plan for the City of Greater Sudbury:

The subject lands are designated Mining/Mineral Reserve in the Official Plan for the City of Greater Sudbury. Mining/Mineral Reserve Areas are to be protected from development that would preclude or hinder the establishment of new operations or access to the resource unless:

1. The resource use would not be feasible;
2. The proposed land use or development serves a greater long-term public interest; and,
3. Issues of public health, public safety and environmental impact are addressed.

Permitted uses in the Mining/Mineral Reserve include mining and mining-related uses, mineral aggregate uses, smelting and refining uses, pits and quarries and related uses, and accessory uses and structures associated with mining. Other uses such as forestry and other resource-related compatible uses, recreation, parks and open space, and wildlife management may also be permitted provided they do not preclude future mining activities. Other industrial uses that will not preclude future mining activities may be permitted subject to rezoning and the implementation of site plan control where appropriate.

Section 4.6.1.3 of the Official Plan specifically outlines those matters to be reviewed when considering applications to rezone lands within the Mining/Mineral Reserve designation:

1. The impact on the environment, particularly new mining operations which must be located where there will be little or no impact on natural heritage features and functions;
2. Indirect impacts on the utilities and services provided by the City;
3. The impact on surrounding land uses;
4. The impact on cultural heritage and archaeological resources;
5. The aesthetic appearance of the proposed development; and,
6. The benefit of the mining or mining-related use to the City.

New lot creation for rural residential development is not permitted on lands designated Mining/Mineral Reserve.

The application conforms to the Official Plan for the City of Greater Sudbury subject to a review of the above noted land use planning considerations.

Zoning By-law 2010-100Z:

The lands are presently zoned "RU", Rural in the City's Zoning By-law. The owner is requesting that the subject lands be rezoned to "RU(S)" in order to recognize an existing aggregate transfer site that is presently operating on the subject lands. No site-specific relief from any general or parking provisions or from the development standards of the parent "RU" Zone is being requested by the owner.

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Department/Agency Review:

The application including relevant accompanying materials has been circulated to all appropriate agencies and departments. Responses received from agencies and departments have been used to assist in evaluating the application and to formulate appropriate development standards in an amending zoning by-law should the application be approved.

During the review of the proposal, comments provided by circulated agencies and departments included the following:

The City's Drainage Section, Operations, and Water/Wastewater have each advised that they have no concerns from their respective areas of interest.

Building Services has no concerns with the proposed rezoning but notes that the current extent of the aggregate transfer operations may encroach onto abutting lands to the east.

Development Engineering advises that the lands are not presently serviced with municipal water and sanitary sewer infrastructure.

Roads, Traffic and Transportation have noted that the lands have been used for an aggregate transfer site for several years. The change of use has caused significant deterioration of Municipal Road #4 due to heavy vehicles turning in and out of the site. The TIS indicates that material will be hauled from a pit on Spanish River Road in the future. Fairbank Lake Road at a distance of 50 m (164.04 ft) west of C Johnson Road to Spanish River Road and Spanish River Road itself have not been constructed to a standard which will support the volume of heavy vehicles that has been described in the TIS. Should the hauling of material continue to occur on the existing roads, it is anticipated that the condition of both Fairbank Lake Road and Spanish River Road will continue to deteriorate with both roads requiring significant resources to maintain a drivable condition. It is recommended that as a condition of any approval that the owner be required to enter into an agreement with the City for the upgrading of Spanish River Road and Fairbank Lake Road from the identified pit to 50 m (164.04 ft) west of C Johnson Road to a standard which can support the heavy vehicle volume identified in the TIS. The TIS also identified improvements that could be made for site access to the aggregate transfer site. Staff are in agreement with the recommendations as outlined in the TIS and recommend that these improvements be implemented through a site plan control agreement.

PLANNING ANALYSIS:

The 2014 PPS, the 2011 Growth Plan, and the City of Greater Sudbury Official Plan, and other relevant policies and supporting guidelines were reviewed in their entirety. The following section provides a planning analysis of the application in respect of the applicable policies, including issues raised through agency and department circulation.

The proposed rezoning is consistent with the PPS for the following reasons:

1. The proposed aggregate transfer site is related to the management and operation of a nearby mining industrial use (ie. Totten Mine) that is resource-based and is considered to be a permitted use on rural lands;
2. The proposed aggregate transfer site is compatible with the abutting mining operation and by nature of the land use the property does not require any private water or sewer infrastructure. There are a number of vacant parcels in close proximity to the lands including lands already zoned for mining purposes. Staff is satisfied that the condition of Municipal Road #4 and the on-site circulation of transport traffic can be appropriately addressed through site plan control;

3. Staff is of the opinion that no unjustified and/or uneconomical expansion of infrastructure is required as this area is not serviced with municipal water and sanitary sewer infrastructure. The TIS has identified infrastructure upgrades with respect to the condition of Municipal Road #4 in this location and staff are recommending as a condition of approval that these conditions be addressed to the satisfaction of the City;
4. The subject lands are located within an identified reserve in the City's Official Plan and no new lot creation for residential purposes is permitted. This has in this particular area been successful in retaining the opportunity for new mining and mining-related uses to locate in the area which typically require appropriate buffering from other types of land uses;
5. The proposed use being that of an aggregate transfer site is related to an immediately abutting resource-based mining operation and would be appropriately directed to this area in the City. Non-related development to mining and mineral operations is otherwise most appropriate locations in the City;
6. Staff is of the opinion that the proposed aggregate transfer site contributes positively to the mix and range of employment options in the area to meet long term needs. The proposed land use would also permit an ancillary use to a mining operation, which contributes to a diversified economic base in the City;
7. The lands are within an identified reserve for employment-related land uses in the City's Official Plan and development related to mining and mineral uses and their accessory uses is supported in those policies contained in the City's Official Plan.

Staff in general has no concerns with respect to the proposed rezoning conforming to the applicable policies in the Official Plan for the City of Greater Sudbury. Those policies relevant to the development proposal which is intended to recognize an existing aggregate transfer site that is presently operating on the subject lands are discussed in detail below.

With respect to general Mining/Mineral Reserve policies in the Official Plan, staff has the following comments:

1. Staff is of the opinion that an aggregate transfer site is an accessory use that is directly associated within nearby mining operations at Totten Mine and is therefore a permitted use within the Mining/Mineral Reserve;
2. Staff is recommending that site plan control be applicable on the lands in order to address operational and required road and traffic-related improvements;
3. Staff is of the opinion that the proposed aggregate transfer site would not preclude or hinder the establishment of a new operation or access to a resource and is accessory to a permitted and active mining operation on abutting lands;
4. The proposed aggregate transfer site is in part temporary in nature and any future access for mining or mineral purposes would remain feasible;
5. Staff advises that the proposed use being that of an aggregate transfer site positively contributes to and serves a greater and longer term public interest in terms of being an accessory and necessary use related to mining and mineral extraction operations in the immediate area;
6. Staff is satisfied that through conditions of approval and site plan control that issues related to public health, public safety and environmental impact can be adequately addressed;

7. With respect to those matters to be reviewed when considering applications to rezone lands:
 - a. During pre-consultation with the owner no concerns were noted by Environmental Planning Initiatives and it is noted that there are no new mining operations being proposed, as the aggregate transfer site is accessory to a nearby operating mine (ie. Totten Mine);
 - b. No issues with respect to indirect or negative impacts on City utilities and services were identified by circulated agencies and departments;
 - c. The proposed aggregate transfer site is located on along a portion of Municipal Road #4 that contains mostly large and vacant parcels of well vegetated land. There are however some residential uses in the area and Municipal Road #4 also provides access to Fairbank Provincial Park and a number of seasonal dwellings on Fairbank Lake. Staff is satisfied that through the use of site plan control that impacts on surrounding properties can be mitigated from a good land use planning perspective;
 - d. No issues with respect to cultural heritage or archaeological resources were identified by staff or circulated agencies and departments during review of the rezoning application;
 - e. Staff anticipates through site plan control that the aesthetic appearance of the aggregate transfer site can be improved in a manner that better integrates the use with the road and surrounding properties. The submitted TIS identified road improvements along Municipal Road #4, as well as improved on-site site circulation and access, that can be improved through the use of site plan control as a good land use planning tool. Staff would further advise that the site planning process will examine buffering and landscaping to abutting uses where necessary and appropriate;
 - f. Staff advises that permitting an aggregate transfer site in this location will contribute positively to the mining operation at the Totten Mine. Sand is brought to the lands from surrounding pits and is stored before being transported when required to the Totten Mine. Staff further understand that the aggregate transfer site provides sand for backfilling purposes and the submitted TIS has indicated that storage on the mining lands themselves is limited and that off-site storage is essential to operations; and,
8. It is noted that no new lot is being proposed for rural residential development.

Staff is therefore of the opinion that the proposed rezoning conforms to the Official Plan for the City of Greater Sudbury.

The owner is requesting that the subject lands be rezoned from "RU", Rural to "RU(S)", Rural Special. Staff note that abutting lands are presently zoned "M4", Mining Industrial which permits an aggregate transfer site. Staff would recommend that the "RU" zoning of the lands be retained with site-specific provisions due to the accessory nature of the proposed use and any future use of the land would require a further rezoning to convert the lands back to any other use normally permitted under the parent "RU" Zone. This will afford the City the opportunity to ensure that once the aggregate transfer site use is discontinued that appropriate land use planning considerations are examined for any future use of the lands. The amending zoning by-law should also recognize the lands as being a site plan control area.

There are no buildings proposed on the lands and therefore staff has no concerns with respect to building separation, yard setback, maximum lot coverage, or maximum building height requirements under the parent "RU" Zone. Staff notes under Part 5, Section 5.3, Table 5.4 of the Zoning By-law that there are no minimum parking space requirements for the proposed aggregate transfer site as there are no buildings located on the lands presently. The TIS did identify the need to consider on-site traffic circulation, driveways and aisles, which staff is recommending be considered and addressed through site plan control. Staff has included in the Resolution section of this report a recommendation that the amending zoning by-law address any parking provisions relief required once the site planning process has been completed.

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It is recommended that the subject lands be designated as a "Site Plan Control Area" under Section 41 of the Planning Act in order to address operational and land use planning concerns related to permitting an aggregate transfer site in this particular location fronting Municipal Road #4. There is residential traffic along Municipal Road #4 and staff is of the opinion that utilizing site plan control in this instance will achieve a reasonable balance between existing residential uses in the area and the Totten Mine and its accessory and related land uses in the area.

CONCLUSION:

Staff has reviewed the development proposal and is satisfied that it conforms with the Official Plan for the City of Greater Sudbury. The development proposal is also generally consistent with the land use planning policy directions identified in the PPS. Staff also notes that the application conforms to and does not conflict with the Growth Plan for Northern Ontario. Staff is recommending that prior to the passing of an amending zoning by-law that a site plan control agreement be completed and registered on title of the lands. Staff is further recommending that the use of the land be restricted to only that of an aggregate transfer site and related accessory uses.

The following are the principles of the proposed site-specific amending zoning by-law:

- That the amending zoning by-law not be enacted until a site plan control agreement between the owner and the City has been completed and registered on the title of the lands to the satisfaction of the Director of Planning Services;
- That the only permitted use of the subject lands be that of an aggregate transfer site and related accessory uses;
- That any further and appropriate relief that is required from parking provisions of the Zoning By-law be provided for, and,
- That the amending zoning by-law designate the lands as a site plan control area.

The Planning Services Division therefore recommends that the application for Zoning By-law Amendment be approved in accordance with the resolution section of this report.