



Report to: Development Services Committee

Report Date: April 23, 2013

SUBJECT: Miller Paving Limited
7781 Woodbine Avenue
Surrender of the aggregate licence for the existing former
aggregate pit

File No. SU 06 105672

PREPARED BY: Scott Heaslip,
Senior Project Coordinator, Central District

Andrea Wilson-Peebles,
Assistant City Solicitor

RECOMMENDATION:

- 1) That the staff report dated April 23, 2013 titled “Miller Paving Limited, 7781 Woodbine Avenue, Surrender of the aggregate licence for the existing former, aggregate pit,” be received.
- 2) That, upon receipt of an executed Indemnity from Miller Paving Limited, in a form satisfactory to the City Solicitor, the Commissioner of Development Services be authorized to execute a letter to the Ministry of Municipal Affairs supporting the surrender of the Aggregate Licence #6548.
- 3) That Staff be authorized and directed to do all things necessary to give effect to this resolution.

PURPOSE:

The purpose of this report is to recommend that Council authorize the Commissioner of Development Services to send a letter to the Ministry of Natural Resources (“MNR”) supporting the surrender of the aggregate licence for Miller’s former aggregate pit located on the east side of Woodbine Avenue, north of 14th Avenue. This is to facilitate the future urban development of the lands for commercial and industrial purposes, in accordance with a draft approved plan of subdivision.

BACKGROUND:

In 2006, Council approved Official Plan and zoning by-law amendments and granted draft plan approval for a proposed plan of subdivision for the lands on the east side of Woodbine, north of 14th Avenue (the “Miller Lands”). This original approval was renewed in December, 2011 for a further 3 years. The proposed draft plan (Figure 2) has an area of approximately 29.4 hectares. The west portion (17.5 hectares) is proposed to be developed with commercial uses and the east portion (9.7 hectares) with industrial uses.

The Miller lands contain a former aggregate extraction pit, which is proposed to be filled and re-graded for the proposed subdivision in accordance with Markham Engineering standards. The Owner has provided an EMP (Environmental Management Plan) to the City for these works. The EMP has been peer reviewed and City staff will ensure it is implemented.

The Miller lands are subject to an aggregate licence from the MNR. The use of lands which are subject to an aggregate licence is under the control of the MNR, rather than the municipality. The owner can only use the lands in accordance with the provisions of the aggregate licence. Authority over such lands does not revert back to the municipality until the MNR has accepted the surrender of the licence.

According to the conditions of its aggregate licence, Miller cannot undertake any physical works on the lands to implement the proposed plan of subdivision until the aggregate licence has been surrendered. The licence conditions also require that certain rehabilitation works be undertaken before the licence can be surrendered.

The normal objective of the MNR is to ensure that former pits are returned to a condition appropriate for an agricultural use, or if a pit is to remain as topographic features in the landscape, that it is environmentally sustainable and visually compatible with the surroundings. This must be done to MNR's standards.

However, in this case, MNR staff have advised that they will accept the surrender of the aggregate licence for the Miller Lands without requiring the usual rehabilitation if a number of conditions are met. One of these conditions is receipt of written confirmation from the City that it is aware of the aggregate licence, the current condition of the lands and the MNR's normal rehabilitation requirements, and that it does not object to the surrender of the licence prior to completion of Miller's rehabilitation obligations (the "Consent Letter").

OPTIONS/ DISCUSSION:

The conditions of draft approval for the Miller subdivision require the owner to provide a clearance letter from the MNR confirming that rehabilitation has been completed to the satisfaction of the MNR. Ministry staff recognize that it may not be necessary to apply the MNR's normal rehabilitation requirements to the Miller pit, which is located in an urban area and is proposed to be redeveloped for commercial and industrial uses.

Legal, Engineering and Planning staff met with MNR staff and Miller's legal and technical staff to discuss this matter. The representatives from Miller and the MNR are in agreement that it is not necessary for Miller to complete the rehabilitation works required by the conditions of the aggregate licence (the removal of all equipment, stockpiles and buildings, re-grading to acceptable slopes, topsoiling and replanting) as these works would be removed for the proposed industrial/commercial plan of subdivision.

After consulting with Miller and the MNR, staff are satisfied that the rehabilitation works described above are not required for the future development of the Miller lands in accordance with the approved draft plan of subdivision. In order to ensure that any liability arising from the City's issuance of the Consent Letter or the non-completion of the rehabilitation works, is assumed by Miller, staff recommend that a signed Indemnity be received from Miller prior to sending the Consent Letter to the MNR.

Staff recommend that the Commissioner of Development Services be authorized to execute the Consent Letter attached hereto as Appendix 'A', subject to receipt of a signed Indemnity from Miller (Appendix 'B'), to the satisfaction of the City Solicitor, to ensure that the City is not exposed to any potential legal liability by executing the Consent Letter.

FINANCIAL CONSIDERATIONS AND TEMPLATE: (external link)

Not applicable.

HUMAN RESOURCES CONSIDERATIONS

Not applicable.

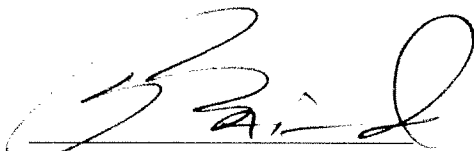
ALIGNMENT WITH STRATEGIC PRIORITIES:

The requested letter will facilitate the implementation of Miller's proposed plan of subdivision. This will provide significant areas of commercial and employment use, and will facilitate the construction of a stormwater management pond which is required for the proposed widening of Rodick Road between 14th Avenue and Miller Avenue.

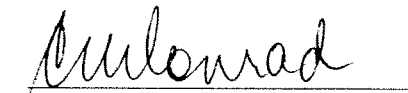
BUSINESS UNITS CONSULTED AND AFFECTED:

Legal, Planning and Engineering staff collaborated on this report.

RECOMMENDED BY:



James Baird
Commissioner, Development
Services



Catherine M. Conrad
City Solicitor

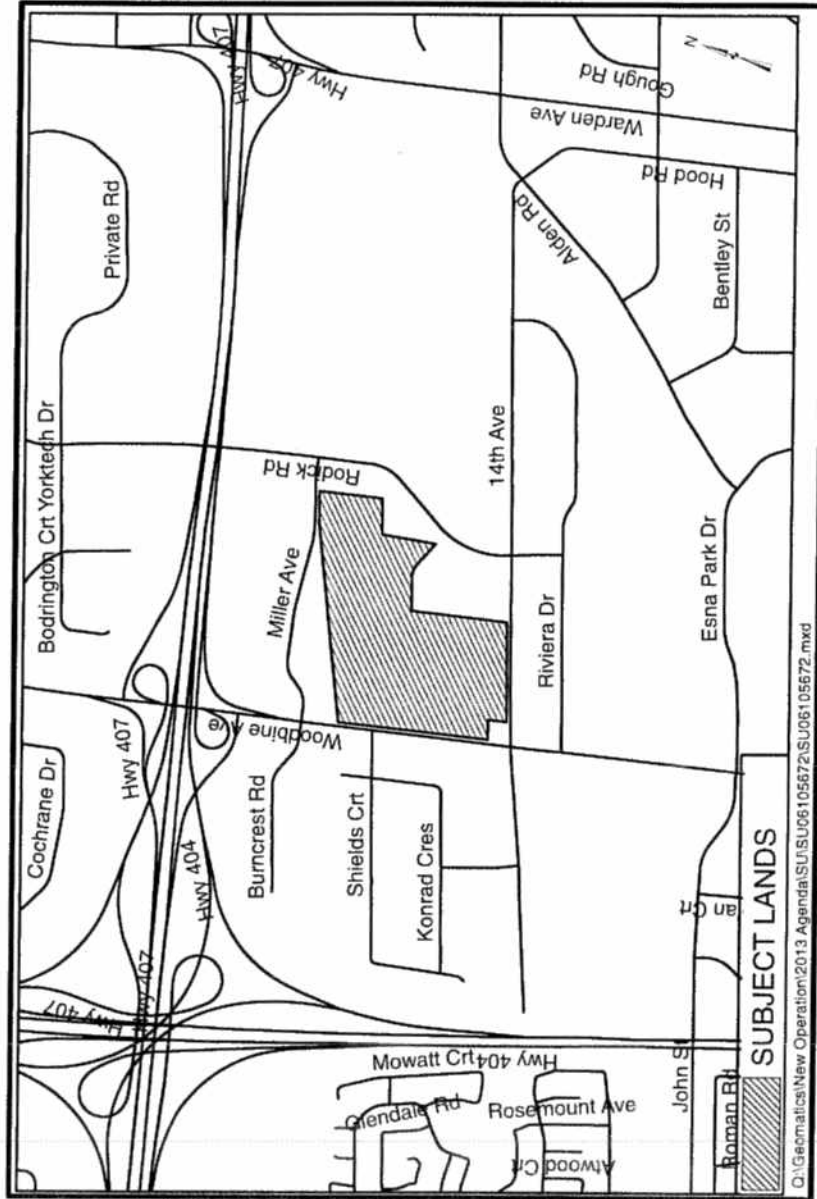
ATTACHMENTS:

Figure 1	Location
Figure 2	Draft plan of Subdivision
Appendix 'A'	draft letter
Appendix 'B'	draft Indemnification

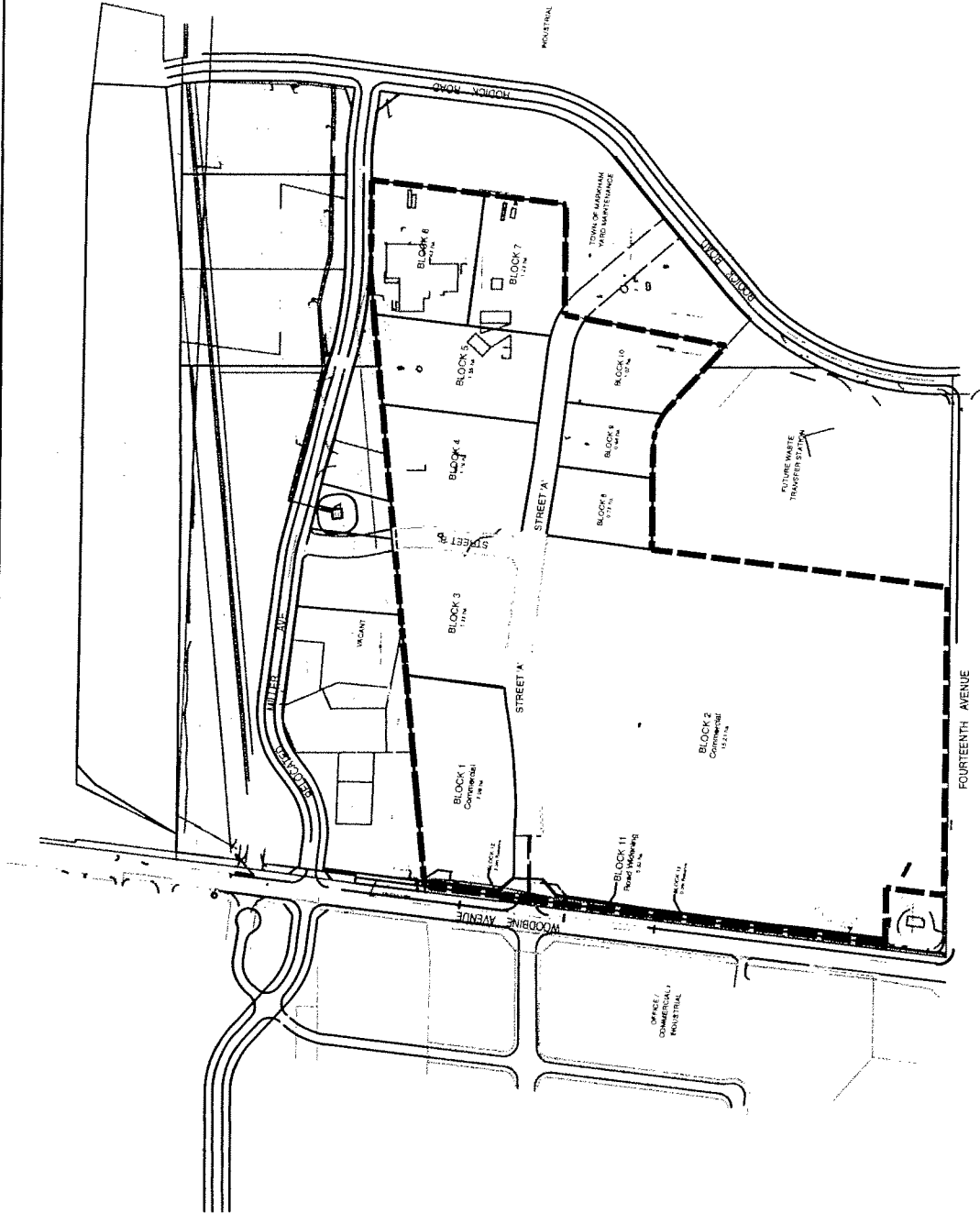
Applicant/agent:

Tom Jones
Property Manager
The Miller Group
505 Miller Avenue
Markham, Ontario
L3R 9R8
Tel 905-475-6660, ext. 3133
Email: tom.jones@millergroup.ca

File path: Amanda\File 06 105672\Documents\Recommendation Report



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DRAFT PLAN OF SUBDIVISION

APPLICANT: MILLER PAVING LIMITED
7781 WOODBINE AVENUE

FILE No. SU. 06105672 (SH)

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 SUBJECT LANDS

March 5, 2013

Ministry of Natural Resources
50 Bloomington Road West
Aurora, Ontario,
L4G 3G8

Attention: Kayla Stephenson
Aggregate Resources Officer

Dear Ms. Stephenson:

**Re: Miller Paving Limited
Proposed surrender of Aggregate Licence #6548, issued under the *Aggregate Resources Act*
Part Lots 6 & 7, Concession 4, (east of Woodbine Ave and south of Miller Ave),
City of Markham (the "Subject Property")**

Please be advised that the City of Markham has been requested by Miller Paving Limited to provide this letter to the Ministry of Natural Resources ("MNR") indicating that it is aware of Aggregate Licence #6548 held by Miller Paving Limited ("Miller"), the current condition of the Subject Property and that it does not object to Miller surrendering its Aggregate Licence.

Miller received Draft Plan of Subdivision approval in 2006 for the redevelopment of Subject Property and renewed in December 2011 for a further 3 years. Condition # 20.1 of the Draft Plan Approval requires Miller to rehabilitate the aggregate extraction lands to the satisfaction of the Ministry of Natural Resources and surrender the Aggregate Licence. One of the conditions of the Aggregate Licence is the completion of a rehabilitation plan attached thereto prior to its surrender. MNR and Miller met with the City on February 20, 2013. At that meeting, Miller and MNR indicated that the surrender of the Aggregate Licence without completion of the rehabilitation plan is appropriate and asked that the City provide written confirmation that it does not object.

Further to the February 20, 2013 meeting between representatives from Miller, MNR and the City, this letter confirms that Miller and the MNR have satisfied the City that not all of the rehabilitation originally identified by MNR is necessary to carry out the development approved by the City on November 9, 2010. Therefore the City of Markham does not object

to Miller surrendering Licence # 6548 at this time, subject to Miller executing an Indemnity satisfactory to the City.

Yours truly,

Jim Baird, MCIP, RPP
Commissioner of Development Services

Cc Tom Jones, Miller Paving Limited
 Brian Lee
 Richard Kendall/
 Scott Heaslip/
 Soran Sito,
 Andrea Wilson-Peebles

INDEMNITY

This Indemnity is given this _____ day of _____, 2013 by **MILLER PAVING LIMITED** ("Miller") in favour of **THE CORPORATION OF THE CITY OF MARKHAM** (the "City").

RECITALS:

- A. Miller is the registered owner of the lands legally described as Part Lots 6 and 7, Concession 4, City of Markham (the "**Lands**");
- B. Approximately 10.7 hectares of the Lands (as shown in green in the air photo base map attached hereto as Schedule "A") are the subject of Aggregate Licence # 6548 (the "**Licence**") issued by the Ministry of Natural Resources (the "**MNR**") under the *Aggregate Resources Act* (Ontario), which Licence includes, among other things, a rehabilitation plan (attached hereto as Schedule "B") to be completed as a condition of the surrender of the Licence (the "**Rehabilitation Obligations**");
- C. In connection with Miller's proposed future development of the Lands for commercial/ industrial uses, the City approved a draft plan of subdivision in 2006 which contains certain conditions of Draft Plan Approval, including the surrender of the Licence;
- D. Miller wishes to surrender the Licence to fulfill the conditions of Draft Plan Approval; and
- E. The MNR has agreed to accept the surrender of the Licence subject to receiving from the City a letter, in substantially the form attached hereto as Schedule "C", indicating that the City has no objection to Miller surrendering the Licence without completing the Rehabilitation Obligations (the "**Letter**").

NOW THEREFORE in consideration of the premises and other good and valuable consideration, Miller hereby agrees with the City as follows:

1. In consideration of the City's issuing the Letter, Miller agrees to indemnify and save the City its directors, officers, Mayor, councillors, employees and specifically the Commissioner of Development Services, agents, harmless from and against any and all actions, causes of actions, suits, claims, demands, liabilities, payments, costs, damages, charges, fees, penalties, and expenses (including reasonable legal fees and out of pocket expenses), including any losses or damages which have been caused or contributed to by any negligence, negligent misrepresentation, breach of the *Occupiers' Liability Act* or breach of statutory duty on the part of the City or on the part of anyone for whom the

City is in law responsible, ("**Liabilities**") incurred, paid or suffered by the City as a result of the City's issuance of the Letter and/or Miller not undertaking the Rehabilitation Obligations.

2. Any obligation of Miller to indemnify the City under this Indemnity is subject to the following conditions:
 - (a) delivery of the Letter to the City and receipt and acceptance by the MNR of the Letter; and
 - (b) acceptance by the MNR of the surrender of the Licence and release of the Rehabilitation Obligations by delivery of the Letter.
3. This Indemnity shall ensure to and is binding upon the parties hereto and their respective successors and permitted assigns.
4. This Indemnity shall not be assignable by either party without the prior written consent of the other party.
5. The invalidity or unenforceability of any provision of this Indemnity shall not affect the validity and enforceability of any other provision and each provision of this Indemnity shall be enforced to the maximum extent permitted by applicable law. Any invalid or unenforceable provision shall be deemed severed from this Indemnity.
6. This Indemnity shall be governed by the laws of the Province of Ontario.

IN WITNESS WHEREOF Miller has hereunto duly executed this Indemnity as of the date first above written.

MILLER PAVING LIMITED

By: _____

Name:

Title:

I have the authority to bind the Corporation