

April 8, 2014

Grey County

Attention: Members of the Committee
Sarah Morrison, Intermediate Planner

**RE: H. Bye Construction Ltd. (Applicant)
Flanagan Expansion Pit (Flanagan Pit No. 2)-Official Plan Amendment (OPA-124)
Flanagan Existing Pit (Flanagan Pit No. 1)
Grey County Official Plan (GOP)
Planning Report February 2012 (Report) by Cuesta Planning Consultants (Consultants)
Natural Environment Studies Level 1 by AET Consultants 2011 (NES 2011) & (AET NES 2012)
Hydrogeological Report by HGI Services Ltd. submitted in December 2008 (HGI Report 2008)
Ministry of Natural Resource (MNR),
Planning Act (PA), Provincial Policy Statement (PPS), Aggregate Resources Act (ARA)**

Dear Members of the Committee,

The County called a Public Meeting held on March 19, 2014 because the OPA-124 Planning Report described the Flanagan Pit No. 2's location and related data "within the Aggregate Resources Area" and recently the location was determined to be "outside the Aggregate Resources Area" subsequently an OPA is required under GOP 2.7.4

I object to the OPA-124 proceeding without additional information and technical studies in accordance with GOP 2.7.4 and ARA 2.01.04 to 2.01.09.

The purpose of this letter and the attached Appendix 1 is to assist the Members of the Committee with a comprehensive review of OPA-124, Planning Report, Technical Studies, Site Plans and Pre-consultation as required by legislation under the provincial law and policy; Planning Act (PA), Provincial Policy Statement (PPS), Environmental Act (EA), Ontario Water Resources Act (OWRA), Aggregate Resources Act, and how provincial law and policy is implemented by the County Official Plan.

PLANNING REPORT

Included in this letter is a summary of comments and recommendations which are highlighted in greater detail in the attached Appendix 1 Planning Report Flanagan Pit No. 2:

The repetitive use of the word "expansion" in the Applicant's Report supports the premise that the OPA-124 Application may have been misinterpreted as an expansion pit of the existing pit. Further, the Report states "Official Plan and local Zoning by-law amendments which would permit the **expansion of an existing Class "A" Category 3 licence** by H. Bye Construction Limited".

ARA 2.01.03 Policy – Expansion of a Licenced Area

There is no provision in the legislation to add or expand an existing licenced site. New areas, not previously licenced, must be processed as a new licence application...requires a new licence, site plan and technical reports (studies and documents must contain current data and current site conditions).

The Flanagan Pit No. 2 – 2011 ARA Licence Application is considered a new application in the MNR system, has been issued a new Licence Application No. 625400 and will be considered a separate licence if issued . Further, Flanagan Pit No. 2's licensed boundary is separate from Flanagan Pit No. 1 licensed boundary – confirmed by Sarah DeBortoli MNR Aggregate Technical Specialist.

April 8, 2014

Planning Report – Technical Studies

Report's response to compliance with ARA & GOP Technical Studies and Planning Report lists three technical studies as stand-alone and suggests to the approval authority "**may also opt to review the original reports which accompanied the initial pit application submitted in December, 2008**".

Question #3: Should the Report ask the approval authority to decide which technical studies are to be submitted when GOP 2.7.4 and ARA 2.01.03 to 2.01.09 provide guidelines and policy for all documents required for the approval of OPA-124?

Report - Grey County Official Plan (GOP)

GOP 2.7.4 1 (b) 3 (a) 4 & 5 Policies for the Establishment of New Mineral Resource Extraction Operations

GOP 2.74 3 (a) Submission of copies of all documentation provided to the MNR as required for licensing, pursuant to the Aggregate Resources Act;

GOP 2.7.4 3(f) Hydrogeological Study, prepared by a qualified individual, shall be required for proposed aggregate operations which are proposing to proceed below the established water table level identified in the Aggregate Resources of Ontario: Provincial Standards

Comment: The above GOP 2.7.4 (f) Hydrogeological Study is not consistent with ARA 2.01.06 Hydrogeological Report Standards below.

ARA 2.01.06 Hydrogeological Report Standards

Hydrogeological Report Guiding Principle: To determine if an aggregate operation will not adversely affect the water table or ground water regime (e.g. wetlands, areas of natural and scientific interest or nearby wells), it is necessary to establish where the water table is, in relation to the depth of extraction. The report must also carefully consider mitigative measures by a qualified individual.

Policy: For licence applications proposing to extract aggregate material from within or near the water table (i.e. pit within 1.5 metres or quarry within 2 metres); a Hydrogeology report must be prepared by a qualified individual.

Comment: The GOP 2.7.4 (f) should be consistent with ARA 2.01.06 and, therefore I recommend that the Applicant produce a new Hydrogeological Report as required under ARA 2.01.05 and ARA 2.01.06.

Question #11: Did a Professional Geoscientist or Professional Engineer (practice of professional geosciences) prepare the portion of the Planning Report that relates to Hydrogeological Studies and statements as required under Summary Report Standards ARA 2.01.05 and ARA 2.01.06?

Question #12: What time of year did the Hydrogeologist perform site inspection i.e. April/May or September/October when water table levels are at their highest? The Hydrogeology Assessment dated 2008 states the site was inspected but does not give the time of year.

Question #14: Why did the Hydrogeology Assessment 2008 not utilize methods as described in Summary Report Standards ARA 2.01.05 i.e. drilled test holes?

Question #15: Was the Hydrogeologist present when the developer's excavation of test pits for near surface deposits did not intersect the water table as method to determine water table levels. What time of year was the excavation conducted?

April 8, 2014

Question #15(a): Why did two other applications submitted in 2011 use methods as described in ARA 2.01.05 Summary Report Standard and ARA 2.01.06 i.e. drill test holes?

Question #18: Why did the Hydrogeology Assessment report the Beatty Saugeen River as the only surface water on the property when there is a wetland to the east of Flanagan Pit No. 1?

Comment: I request a site inspect to determine surface water within 120 metres from the site.

Question #19: Why was a base line study not conducted in 2008 for the quality and quantity of surface and ground water in order to perform future comparison analyst?

Question #19 (a) Why was the first surface water evaluation for Flanagan Pit No. 1 conducted in November, 2013 by Gamsby and Mannerow Limited and not after 12 months of operation in 2009 as required under "Operation Drawing 2 "Note 6. On an annual basis after first 12 months of operations the owner/operator...shall have qualified professional review river and floodplain adjacent to the haul route..."conducted a study which only included...surface water evaluation of the Beatty Saugeen River adjacent to the haul route near Grey Road 9 in November 2013?

Question #34: How did the Applicant substantiate "there may be localized perched water tables" without a current Hydrogeological assessment to determine sufficient methods to mitigate the negative impact of the flow of water to ditches during heavy rainfall that may over flow to surface water?

Comment: The following is an example of how the County must review and the PPS and apply it to each situation.

PPS 4.3 This Provincial Policy Statement shall be read in its entirety and all relevant policies are to be applied to each situation

PPS 2.2 Water

PPS 2.2.1 Planning authorities shall protect, improve or restore the *quality and quantity of water* by:

- a. using the *watershed* as the ecologically meaningful scale for planning;
- b. minimizing potential *negative impacts*, including cross-jurisdictional and cross-*watershed* impacts;
- c. identifying surface water features, ground water features, hydrologic functions *and* natural heritage features and areas which are necessary for the ecological and hydrological integrity of the watershed; implementing necessary restrictions on development and site alteration to:
 1. protect all municipal drinking water supplies and *designated vulnerable areas*; and
 2. protect, improve or restore vulnerable surface and ground water, sensitive surface water

REPORT 2.3 Natural Heritage Resources

The NES 2011 exceeded the minor variance to update a NES with current information. The NES 2011 did not function as a stand alone report as required under ARA 2.01.07.

Question #28: Why did the Applicant's NES 2012 not conduct full-season, in-season or partial-season surveys of wildlife, fish and flora habitat (riparian cover, wetlands, rivers) not completed for the site and the adjacent lands within 120 metres of the subject lands as required under ARA 2.01.07, PPS 2.1.4, 2.1.5 and 2.1.6 ?

Question #29: Why did the Consultant conduct only two field studies November 23, 2011 and August 17, 2012?

April 8, 2014

Traffic Impact Study

The Report forecasts an estimated annual tonnage of 40,000 to determine that a traffic impact study is not required.

The Flanagan Pit No.1 2008 OPA used an estimated annual tonnage of 40,000. The Hydro One project at its peak production in the summer of 2010 had truck rotations that increased from 10-12/day to over 200/day.

Comment: Would it not have been prudent of the County and Applicant to have produced a traffic impact study once it became known that the Applicant had entered into a Hydro One Contract and increased truck traffic could have posed a risk to public safety.

PLANNING ACT

In the Report the Applicant is to state and substantiate compliance with Planning Act.

PA: The protection of the financial and economic well-being of the Province and its municipalities.

The Report's compliance response related to 2007 Hydro One \$25,000 annual levy fee shared between Province and Municipalities which relates to Flanagan Pit No. 1 in 2008.

Question: Why did the Report not provide a forecast for Flanagan Pit No. 2's levy fee based on the Report's estimated annual tonnage of 40,000 which would yield approximately \$4,400 levy fee split between Province and municipalities?

Comment: The Township collects from "all township gravel pits" an average annually levy fee of \$27,000 i.e. approx. 3 cents/tonne (2009 \$23,350.01; 2010 \$26,371.81; 2011 \$33,345.67; 2012 \$25,237.92.)

PA: The interests of all agencies are considered by the circulation requirements of the Planning Act & the Aggregate Resources Act

The Report's compliance response "The interests of all agencies are considered by the circulation requirements of the Planning Act & the Aggregate Resources Act"

Question: When did the Applicant circulate the MNR Letters June 25, 2012, March 26, 2012 (MNR Letters) to Municipalities regarding non-compliance issues relating to A.R.A 2.01.04 to 2.01.09?
April 11, 2014

PA: The protection of public health and safety

The Report's compliance response "The pit design, fencing, access and control features, as well as dust controls are intended to provide appropriate public health and safety measures in keeping with various provincial standards."

Comment: The Applicant's filed Licensee Assessment Reports from 2011 to 2013 and the following remedial measure appears:

-ARA B5 Site Protection -required 1.2m post with page wire fencing around site and Applicant's remedial measure to mitigate non-compliance was to install an electrical wire fence around Flanagan Pit No.1.

April 8, 2014

-other non-compliance issues, setbacks have been stripped and topsoil stockpiles outside licence boundary

The MNR's inability to review all Licensee Assessment Reports has placed the public safety at risk.

The MNR Aggregate Technical Specialists has 200 pits to monitor – Staff inspects 1 pit every five years. The MNR first inspection of Flanagan Pit No. 1 and inspection of Flanagan Pit No. 2 site occurred 1 in October, 2013.

PRE-CONSULTATION

☐ Grey County Official Plan: Mandatory Pre-Consultation GOP 6.186.18 Complete Applications pages 115 to 118

- The County of Grey and local municipal staff will provide a written recommendation on whether or not a planning application can be deemed complete in reference to the Planning Act and/or municipal requirements.
- A written recommendation that an application is complete from County or municipal staff will ensure the applicant that their application will be processed within the time limits prescribed under the Planning Act.
 - 2011 no formal meeting held or a letter sent for the pre-submission consultation
 - series of phone calls and discussions with applicant and their consultant
 - indicated requirements would be the same as the original application, with updated studies to the original Flanagan Pit.
 - Staff was of the opinion that sufficient discussion occurred to constitute pre-submission consultation and therefore the application was received, and deemed complete.
 - staff had an additional meeting with the applicant's planner on January 30, 2014 which indicated the need for the resubmission of the application.
- Prior to making a decision on whether or not a County-level application is complete the applicant is required to make a pre-consultation appointment with County. .
- If an applicant submits a County application without any pre-consultation, the application will be returned to the applicant and a pre-consultation meeting will be arranged.
- A request for further information shall not affect the 'completeness' of an application, or impair the timelines referenced above.
- Information on what will be required for each application type is included in the Table below. Scoping on the specific studies required for each application will be done at the time of pre-consultation. Where a local municipality has an official plan which contains complete application requirements for local applications, then the local requirements will prevail.

Conclusion & Recommendation:

The County is obligated to contemplate the implications and consequences in respect to accepting the OPA-124 that is not in compliance with provincial and municipal legislation that will become part of the public record used to monitor Flanagan Pit No. 2:

- Pre-Consultation 2011
- Site Plans
- Planning Report February 2012
- NES 2012
- HGI Report 2008
- Noise/Dust Assessment Study
- Traffic Impact Study

I recommend that the Members of the Committee object to the OPA-124 until:

1. the MNR and SVCA are able to provide measures to minimize risk to the Public and Natural Heritage supported by technical studies and documents that contain current data and site conditions as required under the Provincial Legislation.
2. the County can ensure there is no liability risk: to tax payers, health and safety of the Public and Natural Heritage
3. the County has considered the Cumulative effect of seven pits operating within 3 km radius of Holstein and the Beatty Saugeen River
4. the Certificate of Approvals from Jurisdictions authorized to approve and review technical studies have been received by the County and are part of the Public Record.
6. the County requests a Peer Review of technical studies
7. the Applicant and Township have entered into Development Agreement with input by a Public task force: to reduce negative visual impact, operating hours, review of ARA compliance reports by township and a security deposit for peer review and inspection by neighbours of pit site.
8. the County, MNR, SVCA and Applicant circulate information to the Public as required under PA and Conservation Authority Act.

Closing:

I trust that the above comments, concerns, questions and recommendations in respect to specific planning and land use matters regarding proposed Grey County OPA-124 to establish a pit at Part Lot 1 Concession 16 in the Township of Southgate, County of Grey shall be given due consideration by the County of Grey, the Ministry of Natural Resources, and H. Bye Construction Limited and its representatives during the planning, land use and approval process as required under the Planning Act.

Yours truly,

Jo Chisholm
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