

Addendum to Report PDR-PCD-13-12

To: Chair Wright and Members of the Planning and Community Development Committee
From: Sarah Morrison, Intermediate Planner
Meeting Date: April 15, 2014
Subject: **Flanagan Pit Expansion, County OPA 124**
Status: **Recommendation Lost as presented per *PCD43-14*; Staff was directed to prepare an additional Addendum Report for PCD Committee May 13, 2014 as per *PCD44-14***

Recommendation(s)

WHEREAS an application for a County Official Plan Amendment Application has been received for an expansion of a pit into an area not designated 'Aggregate Resource Area' on Schedule B of the County Official Plan;

NOW THEREFORE BE IT RESOLVED THAT the Addendum to Planning report PDR-PCD-13-12 is hereby adopted;

AND THAT the proposed amendment to the County of Grey Official Plan to designate the subject lands as "Mineral Resource Extraction with Exceptions" for the lands described as Part of Lot 1, Concession 16, Township of Southgate (Geographic Township of Egremont) to permit the expansion of a gravel pit be supported;

AND FURTHER THAT the appropriate by-law be prepared for consideration by County Council.

Background

The County has received an application from Cuesta Planning Consultants on behalf of H. Bye Construction, to amend the County Official Plan to allow for the expansion of a pit operation on March, 21, 2012. It was deemed complete on April 4, 2012 and a joint public meeting was held with the Township of Southgate on June 6, 2012. Minutes from this public meeting can be found online at: [June 6, 2012 Public Meeting Minutes](#).

It was later determined that the notice had incorrect mapping. The Township held a second public meeting on September 5, 2012. The County did not participate at this meeting.

On June 25, 2012, OPA 80 came into effect, which removed the need for an OPA if the property fell within the Aggregate Resource Area on Schedule B of the County Official Plan (OP). At that time staff reviewed the application and determined that the OPA was no longer required and advised the applicant to withdraw their application on June 28, 2012, the file was closed on July 25, 2012.

During the review of the local applications it was determined that staff had made an error in interpreting the proposed area for expansion which was not in the Aggregate Resource Area as originally interpreted, and that a County OPA was required. Staff advised the applicant that they would be required to resubmit the application. On February 1, 2014 the County received the new application. The application was deemed complete on February 14, 2014. The public meeting was held on March 19, 2014. Minutes from this meeting can be found at the following link: [March 19, 2014 Public Meeting Minutes](#)

The proposed amendment would allow for the expansion of an existing 2.27 hectare (5.6 acre) licensed pit area, with 1.43 (3.5 acres) hectares currently under extraction. The expansion will add an additional 7.29 hectares (18 acres) of licensed area with an additional 5.18 hectares (12.8 acres) proposed for extraction. The sand and gravel pit operation also requires a Municipal Official Plan Amendment and Zoning By-law Amendment from the Township of Southgate. The Township of Southgate has adopted the Local Official Plan Amendment, and will be bringing the zoning by-law amendment to council in the near future.

The applicant has applied for a Class "A", Category 3 License under the *Aggregate Resources Act*. The applicant proposes to retain a license limited to a maximum of 40,000 tonnes annually and extraction would remain a minimum of 1.5 metres above the water table. The principle haul route for the pit will remain the same, travelling west on Grey Road 9 to Highway 6 and then south to the Mount Forest area.

The property is approximately 10 km north east of Mount Forest on the north side of Grey Road 9. It is legally described as Part of Lot 1, Concession 16, Township of Southgate (geographic township of Egremont). The subject property is presently being farmed and includes a house, barn and outbuildings. Extraction limits will remain outside the 150 metres from the on-site dwelling as per the provincial standards. The subject property is also traversed by a hydro line corridor and a tributary of the Beatty Saugeen River.

The lands immediately surrounding those proposed for re-designation are currently used for farming or remain in a natural state. The majority of the surrounding lands

appear to be held in large acreages. However, there are a few small non-farm parcels in the area. Within the County Plan the lands in the area are designated as Agricultural and Hazard Lands. A portion of the property is designated as “Hazard Lands”; however no development or re-designation is being proposed for these areas of the property.



Map 1 – Location of Subject Lands

Cuesta Planning Consultants submitted a Planning Report in support of the proposal. In addition, the applicant has also submitted a Natural Environment Technical Report Level 1, a Stage 1 & 2 Archaeological Assessment, a Hydrogeological Assessment and site plans and materials related to the license application. A Noise Assessment was deemed not to be necessary as there are no sensitive receptors within 150 metres of the proposed area for extraction. These reports can be found online at: <http://www.grey.ca/services/planning-development/new-planning-applications/flanagan-pit-expansion/>

Agency Comments Received

Ministry of Municipal Affairs and Housing (MMAH)

In an email dated April 2, 2014 MMAH indicated that they did not identify any matters of provincial interest.

Ministry of Natural Resources (MNR)

In a letter dated December 2, 2013 MNR indicates that all outstanding objections have been addressed, they recommend that a site plan note be added as a best management practice that any vegetation removal/clearing for mineral aggregate development be completed outside of the breeding bird season on the lands identified

as alfalfa hay fields (as per the mapping provided to the MNR by Cuesta Planning Consultants source from AET consultants).

Provided the above note is added to the site plans as a note to the natural environment site section of the operation plan, the MNR is satisfied that the outstanding issues have been addressed and remove their objections.

Saugeen Valley Conservation Authority (SVCA)

In a letter dated March 17, 2014 the SVCA indicated that they have no objection to the approval of the Official Plan Amendment.

If development or alteration including construction, reconstruction, conversion, grading, filling or excavation is proposed in or near the Regulated Area, the SVCA should be contacted, as a permit may be required.

Public Comments Received

Written comments and verbal comments at the public meetings were received from the following individuals:

June 6, 2012 Public Meeting:

- Marilyn Ellis
- Anna-Marie Fosbrooke
- Carol McCarthy

March 19, 2014 Public Meeting:

- Doug Karrow
- Jo Chisholm
- A.J. Hans Viirlaid
- Francis Giles
- Terry DaSilva
- Bill Celhoffer
- Ken Melbourne
- Judy Smallacombe
- Carolyn & Peter Kienitz
- Randy Bye

A summary of the concerns/questions are listed below:

- Is the proposed area for expansion to be extracted concurrently with the existing licensed area? The original pit should be depleted first.
- How does progressive rehabilitation occur when a portable processing pit on the floor is present? An asphalt plant is not compatible with the Holstein Area. The

current pit is not being rehabilitated progressively. Request an annual status report from the proponent to determine the remaining gravel quantity and when the existing pit is anticipated to be depleted.

- Has the operator started to rehabilitate the existing pit?
- Are there butternut trees on the property?
- Has a noise assessment been completed? If an assessment isn't required information should be provided demonstrating how potential noise impacts will be mitigated.
- Did the original application require a traffic impact assessment?
- The Hydrogeological study should be updated.
- A neighbouring pit application (Peyton Pit) indicates that they observe endangered species on the Flanagan property.
- A traffic study assessing the cumulative impact should be required.
- Want to see annual compliance reports showing the monitoring wells on site.
- What are the onsite mitigation measures for dust?
- The operating hours of the pit are not in compliance with the Township's Noise by-law.
- Object to the OPA without a full financial analysis. Such an audit would verify the Township's financial position have not been compromised
- The NETSR Level 1 is not in compliance with the County OPA (2.7.2) or the ARA.
- What is the cumulative effect on the area with 7 proposed or existing pits in the area?
- There are two identified endangered species on site, significant valleylands and significant wetlands are present on site and/or are in the area, request that a NETSR Level II be completed for the application.
- Better monitoring needs to be done around the Beatty Saugeen River, its adjacent lands and the quantity and quality of its water.
- Request that the reports be peer reviewed
- A cumulative study of social, economic and environmental impacts of 7 gravel pits in Holstein area is completed
- A moratorium be placed on present and future gravel pits until the PPS has been thoroughly heeded.
- Property value will depreciate.
- Are the lands Prime Agriculture?
- MNR does not have sufficient staff to monitor the existing number of pits in Grey County.
- There are existing non-compliance issues with the current pit operation that have not been addressed.
- Was there pre-consultation with the County?
- Request to not accept the proposed OPA.

- Is each application specific to the site
- Concerns with regard to the development agreement and would like to see the local municipality and the County work together.
- What is the process with the County with regard to issues and negotiation;
- People cannot afford to move and we came to the rural area to enjoy country living;
- Who is sued if the water is contaminated?
- The application is incomplete and should not move forward

Applicant Comments:

- The applicant spoke and indicated how he had addressed concerns with regard to the entrance and road into the site.
- He also indicated that he operated in error past November and took responsibility for the error.
- He indicated that the rehabilitation would be to place the pit back into agricultural lands.
- Mr. Bye indicated that aggregate helps with all aspects of the Community as local people own the majority of the pits and local people are employed.

Analysis of Planning Issues

Planning Authorities must have regard to matters of Provincial Interest, the criteria of the *Planning Act* and be consistent with the Provincial Policy Statement (PPS). Decisions must also conform to the County of Grey Official Plan and any Municipal Official Plans which are in force and effect.

Planning Act

Section 1.1 of the *Planning Act* outlines the purposes of the Act. The purposes of the Act promote sustainable economic development in a healthy natural environment within a land use planning system, led by provincial policy and matters of provincial interest. Section 2 of the *Planning Act* sets out matters of provincial interest, which decision makers must be consistent with when carrying out their responsibilities under the Act. Most relevant matters of provincial interest to the application are: (a) *the protection of ecological systems, including natural areas, features and functions*; (b) *the protection of the agricultural resources of the Province*; (c) *the conservation and management of natural resources and the mineral resource base*; (o) *the protection of public health and safety*; and (p) *the appropriate location of growth and development*.

- (a) The SVCA reviewed the proposal (letter dated March 17, 2014) and have no objection to the approval of the amendment. MNR has also reviewed the proposal and are now satisfied that the outstanding natural heritage issues have been addressed, subject to the revisions being made to the site plans.

- (b) All of the proposed licensed area is within the Agricultural designation of the County Official Plan. In the Canada Land Inventory (CLI) mapping the property has been identified as predominantly Class 5, which are mainly non-prime soils. The remaining class of soil found on the property is a 3P Class soil that indicated more moderately severe limitations. The applicant is proposing to progressively rehabilitate the subject property to an agricultural end use and will stockpile the soil onsite to use in the rehabilitation process, so as to use the rehabilitated lands for farming following the extraction.
- (c) Official Plan Amendment No. 80 (OPA 80) to the Grey County Official Plan places approximately 60 % of the property within the Aggregate Resource Area. The area proposed for extraction falls outside the area. The subject Official Plan Amendment (if passed) would allow for said extraction.
- (o) There have been a number of studies prepared in support of the application in order to ensure that the proposal meets Provincial, County and the local standards for the establishment of a mineral aggregate operation.

There have been concerns raised by the public that include noise, dust and truck traffic.

With regard to noise concerns, due to the proximity of any sensitive receptors to the proposed area it would not be necessary to perform any noise study as it would meet the minimum MOE sound level guidelines. The applicant has also installed a more modern version of the back-up beeper on his equipment which is considerably quieter than traditional back-up beepers.

With regard to dust control the applicant will have to meet the provincial standards, and dust suppressant will be applied. Should dust exceed standards after approvals are issued, the Ministry of Natural Resources will deal with complaints under the license.

Truck traffic is not anticipated to change as the amount proposed to be extracted annually will not exceed what was previously contemplated with the original proposal.

- (p) The accompanying studies indicate that the proposed extraction of the resource is feasible in this location and can be done within the legislative requirements.

Provincial Policy Statement (2005)

Section 1.1.4.1 (a) of the PPS allows for uses and activities in rural areas which relate to the management and use of resources. Subsection (e) of this same section speaks to the protection of locally important agricultural and resource areas. In this regard the aggregate would be extracted as an interim use, while the long term viability of agriculture would be protected, as the lands would be rehabilitated to an agricultural end use. Also within this section, subsection (f) speaks to the separation of incompatible

land uses. Through the supporting studies, the applicant has demonstrated that Provincial standards can be met between the proposed pit and adjacent land uses.

Section 2.5 of the PPS is intended to provide for the establishment of aggregate extraction operations in an appropriate fashion. Section 2.5.4.1 of the PPS speaks to extraction of aggregate in prime agricultural areas; it requires a suitable rehabilitation plan to be in place. In this regard, the applicant is proposing to progressively rehabilitate the subject property to an agricultural end use and will restore substantially the same area and quality of soil.

Section 2.6 of the PPS requires significant built, cultural and archaeological resources to be conserved. In this case the applicant completed a Stage 1 & 2 Archaeological Assessment. The recommendations of the archaeological assessment concluded that the property be considered free of any archaeological concern. It should be noted that the County has also circulated the application to the Saugeen Ojibway Nation and the Métis and no comments have been received.

Provincial Policy Statement (2014)

On April 30, 2014 the PPS 2014 will come into effect. The decision of Council will be made after this date and therefore all decisions made after this date need to consistent with these updated policies.

Section 1.1.5.2 (a) of the PPS allows for uses and activities in rural areas which relate to the management and use of resources.

Sections 1.1.5.7 and 1.1.5.8 speak to the protection of locally important agricultural and resource areas. In this regard the aggregate would be extracted as an interim use, while the long term viability of agriculture would be protected, as the lands would be rehabilitated to an agricultural end use.

In Section 1.1.5.4 and 1.1.5.5 speaks to the existing services, infrastructure and compatibility. The proposed pit expansion will use the same haul route as the current pit and will not be increasing the truck traffic. Through the supporting studies, the applicant has demonstrated that Provincial standards can be met between the proposed pit and adjacent land uses.

Section 1.2 of the PPS talks about coordination between agencies, through the legislation of the Planning Act. All required agencies were circulated for comment including aboriginal communities in the area and the Metis. As mentioned, the County has also circulated to the Saugeen Ojibway Nation and the Métis and no comments have been received.

Section 2.0 of the PPS speaks to the Wise Use and Management of Resources, specifically Section 2.1 speaks to Natural Heritage and Section 2.2 speaks to Water. Both the Ministry of Natural Resources and the SVCA have commented and indicated that they are satisfied with regard to Natural Heritage and Water.

Section 2.3.6.1 a) of the PPS speaks to extraction of aggregate in prime agricultural areas; it requires a progressive rehabilitation to occur where possible. It is the intent of the applicant to progressively rehabilitate the subject property to an agricultural end use.

Section 2.6 of the PPS requires significant built, cultural and archaeological resources to be conserved. In this case the applicant completed a Stage 1 & 2 Archaeological Assessment. As noted previously, the recommendations of the archaeological assessment concluded that the property to considered free of any archaeological concern. No comments have been received from the Saugeen Ojibway Nation or the Métis. Based on the above, staff are of the opinion that the proposed amendment is consistent with the 2005 PPS as well as the 2014 PPS.

Grey County Official Plan

Within the County Official Plan Section 6.3 sets out the criteria for amending the County Plan. The supporting studies have sufficiently demonstrated how the proposed amendment meets the goals and intent of the County Official Plan.

Under Section 2.7 of the County Plan, the County requirements are set out for the establishment of new mineral aggregate operations. Many of the County's requirements have already been addressed in the review of the Provincial legislation and policy. Furthermore, the applicant pre-consulted with the County and has submitted the necessary reports and studies.

Financial / Staffing / Legal / Information Technology Considerations

There has been significant opposition from neighbouring landowners with regard to this application. A positive decision could result in an appeal to the Ontario Municipal Board (OMB). If the application is appealed to the OMB, legal costs associated with such a hearing could occur.

Link to Strategic Goals / Priorities

The subject application is a private development application. The processing of such applications in a timely and efficient manner would fall under the Planning department's core business mandate.

This development application should have no direct impact on the County's ability to achieve corporate strategic goals and priorities; staff recommends that the proposed

amendment be approved as it conforms to the goals and objectives of the County Official Plan and is consistent with the *Planning Act* and the Provincial Policy Statement (2005 and 2014).

Attachments

None.

Respectfully submitted by,

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Intermediate Planner

Director Sign Off: *Randy Scherzer*