

May 9, 2014

**Grey County**

Attention: Members of the Planning and Community Development Committee  
Sarah Morrison, Intermediate Planner

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

Dear Members of the Committee,

Further to the Planning and Development Committee Meeting held April 15, 2014, I would like to clarify concerns and non-compliance issues raised during the meeting and recent issues that have materialized since the meeting as follows:

1. Staff Report presented April 15 - Both the Ministry of Natural Resources and the SVCA have commented and indicated that they are satisfied with regard to Natural Heritage and Water

The following examples within this letter and attachments will demonstrate that NES 2011 and HGI Report 2008 are not stand alone reports.

The Archaeological Assessment (Stages 1&2) dated 2011 was the only stand alone study submitted with OPA-124.

Definition of Stand Alone Report: means a report based on , ARA Provincial Standard Policies, studies must contain current data and existing conditions on site and within 120m. See MNR letter dated June 25, 2012.

2. MNR and CA Review of Technical Studies

MNR does not have jurisdictional authority to provide the Municipalities with approval or review of technical studies for an OPA-124. There are no policies within the GOP, ARA, PPS, and PA that give the MNR authority for approval or review for County's OPA. Further the MNR's scope and criteria is limited to the review of technical studies for the approval of ARA licence Application and not for approval OPA-124 as required under GOP and related ARA, PPS, and PA.

Sarah Debortoli, MNR Technical Specialist's email "The MNR may only provide guidance on what the requirements are under the Aggregates Resources Act. For further information about the Planning Act and requirements in general or for a specific application please contact your local municipal planning department or County planning department."

MNR is required to consult with County before carrying out or authorizing any undertaking that the ministry considers will directly affect any municipality as well as collaborate current natural heritage data with CA as per PA 6(2) and CAA 6.9.

2. The CA's policies and mandate were not sufficient to provide the criterion for a review of technical studies for OPA-124 as required under the GOP and related ARA, PPS, and PA. The CA should have come to the same conclusion as the MNR that NES 2011 was not a stand alone report based on GOP 2.7.4 and related ARA.

CA and Municipalities must enter into a Technical Service Agreement in order to provide scope and criteria for CA Staff, including CA Staff Biologist and Hydrologist, to review Site Plan, Planning Report, NES 2011 and HGI Report 2008 for OPA-124 as required under the GOP and related ARA, PPS and PA. It should be noted that the CA has not reviewed the replacement NES 2012. See attached APPENDIX A Review of CA Letter dated March 17, 2014.

### **3. GOP 2.7.4 (3) (e) "Letter of Opinion"**

I have been advised by the County that a Hydrogeology Study is not required for mineral aggregate operations proposing to remain above the established water table level identified in ARA Provincial Standards.

I have reviewed GOP 2.7.4 (3)(e) reference to a "letter of opinion" by a qualified individual estimating the current water table level and I cannot find any citation to a "letter of opinion" as per ARA Provincial Standards.

I have reviewed GOP 2.7.4 (a) which requires a "Hydrogeology Study" as required under ARA 2.01.06 and this is not consistent with GOP 2.7.4 (e) "letter of opinion".

ARA 2.01.06 For licence applications proposing to extract aggregate material from ...pit within or near 1.5 metres or quarry within 2 metres, a Hydrogeological report must be prepared by a qualified individual...Information sources to determine... water table on the site may include existing well data, surface water elevations of nearby water bodies or features, and testing (e.g. wells/holes) by the applicant.. . The report must indicate the time of year when the testing was performed and how the elevation was established.

### **4. HGI Report 2008 must comply with GOP 2.7.4 ARA 2.01.03, 2.01.06**

The MNR June 25, 2012 Letter stated "the application and associated technical studies are to support a new ARA licence application and need to meet the ARA Provincial Standards on their own, objecting the NES 2011 but not the 2008 Hydrogeology Study.

Sarah DeBortoli confirmed the MNR accepted the HGI Report 2008 because the Applicant's site plans used GPS to determine water table elevations. A GPS is used for accurate surveying including elevations but GPS cannot see below the ground level.

I have asked the CA and MNR whether they used a Hydrologist in their review of the HGI Report 2008 and to date I have not received a response.

The MNR will not accept any objections or concerns after the 45 day period which started in June, 2012 with regard to technical studies. The County places the onus on the Public to contact the

MNR or Applicant when many non-compliance issues are cross referenced under GOP 2.7.4 and related ARA and, therefore, become the County's responsibility to answer. The County has considerably more leverage to question the MNR or CA than the Public.

5. Development Agreement GOP 2.7.3

The Township's SOP 5.6.2 requires the applicant to enter into a Development Agreement prior to enactment of the implementing a Zoning By-Law. The GOP requires the Township's Development Agreement to be entered into prior to Council's enactment of implementing Zoning By-Law Amendment.

Standard Development Agreement should be considered by Municipalities to address Public and County's concerns regarding expenditures to maintain roads at current levy fees as well as visual, noise, quantity and quality of water negative impact. Too often it is left to the Public to negotiate measures to mitigate negative impact that are already required under GOP and PPS. See attached Grey County Transportation Master Plan & Kawartha City Road Study. See PPS 4.6 PPS does not prevent planning authorities/decision-makers from going beyond the minimum standards.

6. GOP and PPS must be read in its entirety and relevant policies applied to each situation. Balance must be struck between the competing priorities for the protection of the mineral resources and the need to address the goals of the Official Plan encouraging growth and prosperity, ensure health and safety of the Public, protection of natural environment, resources, and cultural heritage.

7. GOP 2.7.3 (2) All mineral aggregate operations shall comply with the Aggregate Resources Act and its regulations as amended from time to time.

MNR Staff have confirmed the Flanagan Pit No. 1 has outstanding non-compliance issues that relate to aggregate operations i.e. stockpiling outside the licensed boundary.

I request that the County contact the MNR and request an inspection of the site to ensure all outstanding non-compliance issues relating to Flanagan Pit No. 1 are cleared before approving OPA-124.

**CONCLUSION:**

I am not against Aggregate Mineral Extraction, but I am in favour of a due diligence process and procedure required to ensure compliance with GOP and related ARA, PPS and PA before the Committee's approval of OPA-124.

The provincial and municipal policy is clear that the burden of proof is the applicant's responsibility to demonstrate there will be no negative impact. I have raised objections and concerns substantiated by policies and standards in the GOP and related ARA, PPS and PA that should be addressed by the County.

The Committee must determine whether the Applicant has complied with GOP, ARA, PPS and PA. I recommend to the Committee that should an applicant fail to meet the requirements of any of the GOP subsections the OPA-124 must fail.

Yours truly,

Jo Chisholm

