

**LOCAL PLANNING APPEAL TRIBUNAL**

**PROCEEDING COMMENCED UNDER** subsection 17(40) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: James Dick Construction Limited  
Subject: Failure of the County of Wellington to announce a decision respecting Proposed Official Plan Amendment No. OP-2016-09  
Municipality: County of Wellington  
OMB Case No.: PL170688  
OMB File No.: PL170688  
OMB Case Name: James Dick Construction Limited v. Wellington (County)

**PROCEEDING COMMENCED UNDER** subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: James Dick Construction Limited  
Subject: Application to amend Zoning By-law No. 40/2016 - Refusal or neglect of Township of Guelph/Eramosa failed to make a decision  
Existing Zoning: Agricultural Zone and Environmental Protection Zone  
Proposed Zoning: Extractive Industrial Zone and Environmental Protection Zone  
Purpose: To permit a mineral aggregate extraction operation  
Property Address/Description: 8532 Highway 7  
Municipality: Guelph Eramosa  
Municipality File No.: ZBA 06/16  
OMB Case No.: PL170688  
OMB File No.: PL170472

**PROCEEDING COMMENCED UNDER** subsection 11(5) of the *Aggregate Resources Act*, R.S.O. 1990, c. A.8, as amended

Referred by: Minister of Natural Resources and Forestry  
Objector: Shirley Allen  
Objector: Ron & Debbie Brennen  
Objector: John & Ann Brophy  
Objector: Dennis & Laura Campbell; and others  
Applicant: James Dick Construction Limited  
Subject: Application for a Class A licence for the removal of aggregate  
Property Address/Description : Part Lot 1, Concession 6  
Municipality: Guelph Eramosa  
OMB Case No.: PL170688  
OMB File No.: MM150034

**OUTLINE OF ARGUMENT**

**CRC ROCKWOOD INC.**

## OVERVIEW

1. Despite over 20 years of work and data, and seven years of active analysis and review, the Applicant has failed to satisfy the statutory tests required for approval.
2. In particular, they have failed to properly evaluate:
  - a. the ecological function of the adjacent lands to the proposed quarry;
  - b. the habitat of endangered and threatened species on and around the proposed quarry;
  - c. the cold water fish habitat in Brydson Creek;
  - d. the potential effect on drinking water supplies, both in private wells locally and in the Rockwood municipal system;
  - e. whether the identified significant cultural heritage landscape on 6<sup>th</sup> line will be conserved;
  - f. the potential impacts on agricultural operations in the area;
  - g. future declining quarry lake levels and external influences;
  - h. the magnitude of water level quantity and quality change in the quarry influence zone;
  - i. meaningful methodologies for reduction of the applicant predicted doubling of already impaired existing groundwater;
  - j. Tributary B function as a beneficial Pathogen Filter for recharged runoff water;
  - k. the overburden / bedrock aquifer / quarry drawdown connection in the De Grandis Pond / Dug Well area;
  - l. water quality and quantity triggers; and
  - m. hydrogeological impacts of wash water fines (former silt and clay aquitard materials) in the proposed quarry lakes;

3. Having failed to properly evaluate these matters, the Applicant has not "... demonstrated that there will be no negative impacts on the natural features or on their ecological

functions"<sup>1</sup> with respect to:

- a. the provincially significant wetlands<sup>2</sup> adjacent to the proposed site alteration, and the significant wildlife habitat contain in those wetlands;
  - b. Prove that there will be no development and site alteration in the habitat of endangered and threatened species and species of concern<sup>3</sup>, specifically the little brown Myotis, eastern wood pe-wee and snapping turtles;
  - c. Demonstrate no negative impact on the ecological functions of the significant cold water brook trout habitat found in Brydson Creek; and
  - d. Adequately demonstrate no potential impact on the municipal water supply in Rockwood, including anticipated population and employment growth in the area.
4. As a result, the following key issues have been unresolved in a manner consistent with the statutory tests, and cannot be resolved prior to the Tribunal issuing a decision based on the evidence it has heard:

- i. Whether it has been demonstrated that there will be no negative impacts on the provincially significant wetlands adjacent to the proposed quarry, or on their ecological functions;
- ii. Whether it has been demonstrated that there will be no negative impacts on the significant wildlife habitat contain in those wetlands, or on their ecological functions;
- iii. That there will be no development and site alteration in the habitat of endangered and threatened species, specifically the little brown myotis and eastern wood pe-wee;
- iv. That there will be no negative impact on the ecological functions of the significant cold water brook trout habitat found in Brydson Creek;

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<sup>1</sup> PPS policy 2.1.8

<sup>2</sup> Referred to in this hearing as the Allen Wetlands and the De Grandis pond.

<sup>3</sup> PPS policy 2.1.7

- v. That there will be no impact on the municipal water supply in Rockwood, or on local water wells, including based on updated source water protection modelling which is being finalized;
  - vi. Whether there is an overburden and bedrock connection via a fracture(s) between the De Grandis Ponds and the bedrock aquifer;
  - vii. What the drawdown will be in the provincially significant wetlands (Allen wetland and De Grandis pond) to the north of the proposed quarry;
  - viii. What the effect of that drawdown might be on the significant wildlife habitat found in those wetlands;
  - ix. That blasting can safely take place and the public will be adequately protected from flyrock through the application of adequate distance setbacks;
  - x. That the significant cultural heritage landscape on the 6<sup>th</sup> Line will be conserved;
  - xi. That there will be no negative impacts on the agricultural operations in the area.
5. While some of these unresolved matters could potentially be addressed through further testing, study and analysis, this is not an appropriate outcome. Many years and hundreds of thousands of dollars have been spent responding to these applications. The issues that have not been resolved are not new. They could have, and should have, been studied in order to provide the Tribunal with a complete answer to the questions raised. Having failed to adequately satisfy these tests, the applications should be refused. It is not in the public interest to have an unending process, and finality is required.
6. In the event that the Tribunal is inclined to issue an approval notwithstanding the shortcomings of the evidence, then the following should be required:
- a. A seismic test prior to the initiation of blasting, to ensure that the risk of untested blasting is not borne by the residents;
  - b. Characterization and impact assessment for PSW north of site (Allen Wetland and De Grandis pond) based on ecological, hydrological, and hydrogeological data, and a water balance assessment;

- i. In the absence of site access to Allen Wetland to complete surveys, the establishment of a larger buffer (>30 m) including hydrologic barrier to mitigate potential impacts. Buffer should be based on scientific literature and case studies, not just minimum recommended distance.
- c. Hydrological and hydrogeological monitoring stations within Allen wetland;
- d. Establishment of a Community Liaison Committee;
- e. Installation of an outer circle of elevation controlled sentry multi level groundwater quantity and quality monitoring wells in the quarry influence area (Hunter WS Revised Fig G7.3) ;
- f. Deepen existing shallow bedrock perimeter monitoring wells on proposed quarry site (Hunter WS Revised Fig G7.3) and install new Monitors 29 and 30 in the future west quarry pond area;
- g. Use data loggers and observe water quality in May and October of each year for monitor wells. Observe water quality in Quarry Lakes in February, May and October each year;
- h. Observe water quality in Brydson Spring (SW 15) during May and September each year. Monitor water quality in SW4 and RS1 during May of each year;
- i. Monitor groundwater quantity and quality for two years prior to any overburden excavation and bedrock extraction (base line) and through all quarry operational phases;
- j. Predict operational quarry lake levels based on the more comprehensive groundwater monitoring network and the recognition of external influencing factors (Tier 3 Guelph / Guelph Eramosa) ;
- k. Specify a single water quantity elevation trigger alert at 345.5 m asl (red) and 346.0 m asl (amber) at Monitor Well M19D as a surrogate for all the proposed Quarry;
- l. Specify a water quality trigger alert for Nitrate (N) at 2.5 mg /L (red) and 2.0 mg/ L (amber) in quarry lakes and downgradient groundwater monitors;
- m. The Red Alert means stop all overburden excavation, bedrock extraction and aggregate washing activities until return to amber conditions;
- n. Protect the full extent of Tributary B floodplain, beneficial pathogen filter and recharge function through the proposed quarry site as a method of protecting Brydson Springs and Creek;
- o. Exclude disposal of washwater and overburden fines in the quarry lakes;
- p. Exclude blasting from behind the specified blasting lines;

- q. Design progressive rehabilitation (cliff edge and created wetlands) to accommodate predicted and actual changing quarry water levels;
  - r. Reformat, index and edit Site Plans as User Friendly (findable notes) enforceable documents;
  - s. Replace designated private water wells in the quarry influence area with deep wells cased to 327 m asl and with pathogen water treatment or preferably provide municipal water connection (Hunter WS Revised Fig G7.3);
  - t. Monitor water quality in these replaced wells unless a municipal water supply is implemented;
  - u. Provide appropriate mitigation for the De Grandis, Allen and other private owner loss of spring flow and pond water as a result of quarry operations;
  - v. Mitigate adverse water level changes as appropriate and as identified through the sentry and perimeter groundwater quantity and quality network; and
  - w. Allocate responsibility for adverse water level change to the Quarry Operator, City of Guelph and / or County of Wellington as appropriate.
7. These appeals need to be assessed against the totality of the evidence and work that has been done over the years – the errors, the lack of weight given to the concerns raised.
8. This hearing is the result of a lengthy process with many studies, peer reviews and public participation and comment. Notwithstanding that process, the proposal and evidence continued to change even during the hearing, with mistakes, oversights and errors being corrected on the fly.
9. The proposal is predicated on more work being done, and on monitoring being carried out with the goal of preventing negative impacts on the community, its residents and the natural environment. The credibility of, and weight that can be given to, this work must be evaluated in the context of the entire history of this matter. When so much is based on “leave it to us” you need to assess the credibility of that assertion.
10. In particular this hearing has revealed:

- i. The 2012 hydrogeological model was wrong and predicted drawdowns 80% lower than what is currently predicted. The ‘sign offs’ on that model were also wrong and should be given no weight;
- ii. The air quality model was wrong, based on an error that was overlooked for 7 years;
- iii. The noise model was wrong; based on errors that had been pointed out years ago, and ignored;
- iv. The cultural heritage impact study is based on an adjustment to the cultural heritage landscape boundary made for the sole purpose of accommodating the entrance to the quarry;
- v. The “agricultural impact” assessment did not consider the actual agricultural operations, and made no effort to speak to the owners of those operations;
- vi. The traffic impact study is based on traffic counts that include the Friday of a long weekend, which was not noted by the peer review;
- vii. The elevations of bedrock on the earlier versions of the site plans were wrong – even when there were boreholes that should have been referenced;
- viii. The 2019 Blasting Impact Assessment uses a formula that requires a setback 4 times greater than the distance generated by the model, but makes no reference to this in the report, and does not apply the 4 times multiplier;
- ix. The 2014 Blasting Impact Assessment used a formula for peak particle velocity that the author no longer relies on;
- x. The assessment of habitat for little brown Myotis used a methodology that has far less sampling time than MNRF protocols require;
- xi. The natural heritage impact work has taken a far too narrow approach, only looking out 120 metres and not beyond, ignoring the natural heritage systems approach;
- xii. The flooding impact work fails to properly account for the required 5 metre zone.

### **Consideration of community interests**

11. What has been missing from the vast majority of the evidence in this hearing is a consideration of the interests of the community within which this quarry is proposed.
12. This is going to be at least a twenty year operation that will represent a fundamental change to this area. Despite this, it was not until the very last day of evidence that you heard any consideration of the community, the history of the area and the uses that surround the property.
13. Mr. Dorfman undertook all of that work in his witness statement, showing the history and the uses, and gave consideration to the community and their concerns.
14. You will not find any reference to the community in Mr. Wynia's evidence or his witness statement, other than a passing reference to the fact that jobs will be created.
15. Ideally, planning is about people. Not specific individuals, but about how and where uses are permitted and how they interact with each other and potentially impact each other.
16. Evidence of the applicant is focused on the resource. It is there – it has been protected, and it is time to extract it, in their view.
17. Aggregate is important, and has an important role to play in the economy and in planning. But it is subject to all the same tests as any other land use and all the same principles when it comes to planning considerations.
18. It doesn't matter how long it has been identified, how long it has been owned by a resource company, how long they have intended to extract it or how much money has been spent studying it. It doesn't matter that the competition in the market place is dominated by large companies who are vertically integrated. These are not factors that

should be given any weight. The tests are the tests and if they aren't met when you come before this Tribunal for approval, you don't get the approval.

19. One consideration that has been given completely inadequate consideration is the community and their concerns. The notion that groups become entrenched and subject to confirmation bias is unfair and inaccurate. Same can be said of some of the evidence from the applicant's experts. Anything that doesn't support the desired result – isn't given consideration or weight.

20. The notion of “what is the point of protecting the resource if you cannot extract it” seems to underly much of the approach that has been taken. It is not an appropriate or balanced approach.

## **Hydrogeology**

21. All the hydrogeological evidence on impacts is predicated on a model that is a mathematical approximation of reality. All the hydrogeologists agree on one thing: modelling is uncertain. This is reflected in some of the data points that we can compare between what has been measured in the real world versus what the model assumes as existing conditions:

- a. The modelled groundwater level at the De Grandis pond is 2 metres above the actual surface of the ground;<sup>4</sup>
- b. The measured groundwater level in the areas of MP1, 2 and 9 differs from the modelled level in that area by between 3-4 metres;<sup>5</sup>

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<sup>4</sup> Evidence of Garry Hunter, June 27.

<sup>5</sup> Ex, 39, Tab 4, 4 pages before Appendix B, cross examination of S. Denhoed, May 30 immediately after lunch break.

- c. The root mean squared error for the model on the site in the bedrock is .95, which means that the modelled drawdown at the boundary could be as much as 5.2 metres;<sup>6</sup>
  - d. The maximum absolute difference is 1.6 metres, which means that the drawdown could be as much as 6.1 metres;<sup>7</sup>
  - e. The root mean squared error for the model in the bedrock off site is 4.09 metres, and the maximum absolute difference is 15.6 metres;<sup>8</sup>
  - f. All the modelling in the area of the De Grandis Ponds and Allen wetlands is based on inference and assumptions, given the absence of actual bedrock water levels in that area.
24. In order for the Harden model to be correct, the source water protection model has to be wrong.
25. The graphical representations of the Harden model that represent impossibilities are passed off as “graphics glitches” instead of potential errors in the model.<sup>9</sup>
26. Key question is whether there is a connection between the De Grandis ponds and the bedrock aquifer, through a fracture in the bedrock.
27. All the evidence points to there being such a connection. Numerous photographs showing the pond frozen in winter – except in one area where there is an upwelling. Consistent with 8 degree groundwater coming up out of a fracture.<sup>10</sup>

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<sup>6</sup> Ex. 76, p. 121.

<sup>7</sup> *Ibid.*

<sup>8</sup> Ex. 76, p. 120.

<sup>9</sup> Cross examination of Dr. Worthington.

<sup>10</sup> Ex. 114A and B – Dr. De Grandis presentation.

28. Mr. Watson's ground penetrating radar report clearly shows there is evidence of a fracture.
29. Simplest explanation is most likely to be correct – there is a fracture and a bedrock connection. This has broad implications – drawdown more likely to have direct effect on the source of Tributary B and the Allen Wetlands. Much greater potential for there to be a negative impact on these provincially significant wetlands and the significant wildlife habitat contained in them.
30. The evidence also clearly demonstrates the potential for a connection between the Rockwood Wells and the quarry. Mr. Hunter and Dr. Worthington both testified that there is the potential for such a connection. The modelling for the wells clearly show a .5- 1.0 m drawdown in the area of the quarry at 2031.<sup>11</sup>
31. Mr. Hunter's evidence demonstrated the detailed knowledge he has and work he has done. Many of the issues that he raised in earlier reports turned out to be correct, including the level of the groundwater in the bedrock as it related to the processing plant, and the need to model the overburden layer.
32. His review of the work done by Mr. Denhoed has the hallmarks of a credible, objective witness – acknowledging where he believed the model was more reliable, and disagreeing, with reasons, where he didn't.

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<sup>11</sup> Hunter Figure G1.2, Ex. 55, Tab 3A

33. His concern about the potential for a larger drawdown of up to 7 metres based on the available data is entirely appropriate. Taking existing data and drawing informed inferences as to what might be occurring elsewhere is a large part of hydrogeology.
34. The suggestion that Mr. Hunter testified that the excavation limit should be moved to include M19 is completely wrong. Para. 99 of his witness statement says that the model should be moved to include M19.
35. Suggestion that Mr. Hunter was confused about what Mr. Denhoed did and when is completely wrong. There are 2 letters to the GRCA, one dated Sept. 8, 2017,<sup>12</sup> one dated Sept. 14, 2017<sup>13</sup>. It was Mr. Denhoed who wasn't sure what the September 8 letter was, it appeared to be an early draft that was put into the record.
36. The criticisms<sup>14</sup> that he contradicts himself in his witness statement is completely inaccurate. Paragraph 102 begins by saying "Notwithstanding ..." and goes on to explain his concern. Para. 103 explains why he transposed information – he was looking at actual data. It is ironic that his analysis is being criticized on the very basis of what most of their work and modelling does – draw inferences.
37. Transposing monitor wells is an entirely valid concept in this circumstance, based on the hydraulic conductivity data and without more monitor wells.<sup>15</sup>

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<sup>12</sup> Book 39, Tab 4.

<sup>13</sup> Book 35 Tab 2.

<sup>14</sup> JDCL final submissions, p. 17.

<sup>15</sup> Cross examination of G. Hunter, and ex. 148, paras. 4, 5, 9, 45, 63, 64, 68, 73, 74, 79, 80, 122, 123, 124, 125, 126, 127, 133, 134, 169, 170, 176, 229, 230, 231, 266, 267, 268, 269.

## **Fish in Brydson Creek**

38. There are brook trout in Brydson Creek.

39. An inference was made that there might not be brook trout there, because Mr. Schiefele and Dr. Wren said that they had not seen any there. There is no doubt that Dr. Schiefer saw trout there.

40. The evidence is clear not only that brook trout are there, but the Applicant has known they are there for many years:

We have no concerns with MNRF identifying Brydson Creek as a coldwater stream that supports brook trout as we were aware of the presence of trout in this creek *prior to Dr. Schiefer's investigation*. (emphasis added).

Book 35, Tab 4, p. 13, February 9, 2018 letter from Harden Environmental to the GRCA, signed by S. Denhoed and G. Scheifele

41. While further fish surveys are “proposed” over a number of years (not expressly required)<sup>16</sup>, this work could have, and should have, been done sooner.

42. Baseline spawning surveys were first agreed to in February, 2018<sup>17</sup>. There was ample time to carry out monitoring and present that evidence to this Tribunal. Having failed to do so, it is not appropriate to have the work done later when it is not subject to the same level of scrutiny.

43. Water quality is key – the stream is already high in nitrates and therefore even more sensitive to change. Sentry wells at the boundary of property, with a contingency plan to shut down operations if triggers are met can be too late for downstream impacts – the

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<sup>16</sup> Site plans, p. 2, “Fish Survey” para. 5.

<sup>17</sup> Book 35, Tab 4, p. 12, Feb. 9 2018 Harden letter to GRCA.

water has already left the property at that point. Their own model shows that there is a clear groundwater connection between large portions of the site and the springs – call it karst, call it a conduit, it doesn't matter. The only way that their model works is for there to be water moving at 75m/day through the site and to the discharge point. Dr. Schiefer's evidence: "Shifting baseline syndrome". Since we have already lost 80% of the trout population we become accustomed to the notion that land use change leading to some loss is acceptable.

. **Natural Heritage**

47. The burden is on the applicant to meet the PPS test of demonstrating no negative impact on protected natural heritage features and their functions.

48. The work that has been done has been unduly limited – focused on the site plus 120 metres, based on the ARA.

49. There is a broader imperative to consider the broader natural heritage system, and Mr. Scheifele's work has not done that.

50. Despite the presence of a provincially significant wetland complex that extends on to the subject property, did not study, nor seek permission to study the remainder of the wetland complex in the Allen Wetlands and the De Grandis ponds.

51. We now know that there is significant wildlife habitat in these wetlands, which is dependent on adequate water levels.<sup>18</sup> There is no evidence that demonstrates there will be no negative impact on these wetlands and this habitat.

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<sup>18</sup> Evidence of Z. Harris and K. Konze, exs. 146 and 147.

52. There is evidence of habitat on the site of little brown Myotis, based on the limited monitoring that was done.<sup>19</sup>
53. The monitoring that was done did not meet the standards for bat habitat monitoring established by the MNR.<sup>20</sup> These protocols were established after the designation of the Myotis as endangered, and well before the exchange of evidence in this hearing. The question of the presence of Myotis habitat was clearly engaged and proper analysis should have been done.
54. The presence of eastern wood pe-wee habitat has also been established<sup>21</sup>. The habitat identification standards for EcoRegion 6E<sup>22</sup> clearly establish that the presence of the species during breeding periods constitutes protected habitat.<sup>23</sup>
55. The notion that habitat of endangered and threatened species can be harmed or altered when the species isn't there is not supported by the evidence, or by anything in writing.
56. The evidence is Messrs. Harris and Konze was clear and credible: the natural heritage report is out of date, and does not adequately address the vegetation communities and species within the provincially significant wetland complex.
57. The requirement in the PPS to demonstrate that there will be no negative impacts on protected natural heritage features and their functions has therefore not been met.

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<sup>19</sup> Evidence of G. Scheifele and K. Konze.

<sup>20</sup> Witness statement of K. Konze, ex. 55, Tab 5, para. 5.3.2.

<sup>21</sup> *Ibid*, Exhibit F.

<sup>22</sup> Ex. 84.

<sup>23</sup> Evidence of K. Konze.

## **Blasting**

58. When dealing with the potential dangers associated with blasting, a worst case scenario and a most conservative approach is appropriate, as agreed to by Mr. Cyr.

59. That approach has not been taken here.

60. Mr. Hill's evidence (based on many decades of experience in the mining and blasting field) was clear that the Blasting Impact Assessment does not properly account for flyrock.

61. The 2014 BIA did not account for flyrock at all. For the purposes of determining vibration impacts, it utilized a formula that Mr. Cyr can no longer rely on.

62. Mr. Cyr's company in the past has used and relied on the USBOM model to determine flyrock distances, but in this case they used the Terrock formula.<sup>24</sup>

63. He used the exact formulas transposed directly from the Terrock paper, but completely omitted the requirement of a safety factor of 4 times for personnel. This should have resulted in a setback of 4 times the largest modelled distance of 128 metres, or 512 metres. This is approximately the same distance that the USBOM model would have generated.<sup>25</sup>

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<sup>24</sup> Exhibit 75

<sup>25</sup> Ex. 161.

64. The use of the Terrock model without making any reference whatsoever to the addition of the safety setbacks was irresponsible and inappropriate. The addition of that setback is clearly shown in another Terrock report in exhibit 164.

65. The BIA has also failed to properly account for how vibrations might move through saturated rock. The recommendation to monitor blasting for a year leaves the risk entirely on the residents and heritage buildings in the area. As many as four blasts will be needed to determine the effects on the area – and each of those blasts represents a risk.

### **Agricultural Impact**

66. Report done by Mr. Stoevel purports to conclude that there will be no negative impacts on agriculture in the area.

67. The report does not meet the draft Agricultural Impact Assessment guidelines from OMAFRA<sup>26</sup>. While these guidelines are draft, they do suggest the most basic of steps: talk to the people whose operations might be impacted.

68. No discussion with witnesses you heard from: Natalie Jaroszewski, Dr. De Grandis and Henrietta Kingshott.

69. They gave clear evidence about their operations and their concerns, none of which were taken into account by the Stoevel report.

70. Suggestion that there is evidence of other mushroom farm operations near quarries. There is no such evidence. Putting airphotos and printouts from websites to a witness

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<sup>26</sup> Exhibit 68

who doesn't know anything about them isn't evidence. If they wanted to prove anything about those operations they should have called evidence on them – but didn't.

### **Traffic Impact**

71. Agree with and adopt the submission of Halton Region and the Town of Halton Hills.

72. Refer to the evidence of Mary Cuerrier with respect to the concerns of the residents on 6<sup>th</sup> line.

73. She also pointed out what the other experts had not – that the traffic counts on which the TIS is based did include a Friday before the Family Day long weekend, which it was agreed is not a representative day.

### **Noise**

74. The noise impact evidence presented lacks credibility.

75. No detail has been provided on how the noise impact study was updated, nor any details as to what the noise levels are at the receptors. The report filed only gives an example of the noise predicted at a single receptor.

76. The peer review and sign off on the work done should be given no weight whatsoever. It did not pick up or identify the errors in the report, nor did it identify (as Mr. Hunter – a lay person when it comes to noise did in 2015)<sup>27</sup> the modelling that was not done.

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<sup>27</sup> Exhibit 157 – letter from G. Hunter to Township of Guelph Eramosa, also contained in Book 13, Tab 4.

## **Cultural Heritage**

77. There is a rich cultural heritage in this area, as reflected in the detailed evidence from Mr. Duff.<sup>28</sup>

78. Mr. Stewart's evidence was surprising. He clearly identified that the treed verge of the 6<sup>th</sup> line north of Highway 7 is a cultural heritage landscape, and also confirmed it is significant.<sup>29</sup>

79. In order to say that the landscape was 'conserved' as required by the PPS, he moved the boundary of the cultural heritage landscape north of the property – since the addition of the quarry entrance would disrupt the landscape.

80. Moving the boundary of a landscape in order to justify the lack of conservation of it is completely unjustifiable and inappropriate.

## **Visual Impact**

81. The work that was done is outdated as a result of the changes to the berm that came from the noise evidence. The berm will be a metre higher and up to 6 metres wide at the base.

82. Mr. Harrington agreed that the means of mitigating visual impacts (the berm) can itself have a visual impact. He had not considered the visual impact of the revised berm, since it was a completely new development in the middle of the hearing.

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<sup>28</sup> Ex. 55, Tabs 16 and 17.

<sup>29</sup> "Significant" as defined in the PPS (Ex. 29, tab 9, p. 49 "...resources that have been determined to have cultural heritage value or interest for the important contribution they make to our understanding of the history of a place, an event or a people".

## **Planning**

83. Important question to be considered is the impact of the proposal on the community.
84. Only on the last day of the hearing did you hear from Mr. Dorfman about what the community consists of – a review of the uses and where people live and work.
85. His evaluation was the most comprehensive analysis of the land use planning history of the area and the applicable issues, taking into account the history of evolution of the area, and its intended uses.
86. Mr. Wynia’s analysis and opinion do not adequately consider the community, which ought to be an important aspect of the evaluation of planning impacts. Mr. Dorfman acknowledged the importance of aggregate – but the same cannot be said of Mr. Wynia acknowledging the importance of the potential impacts from extraction.
87. Mr. Dorfman’s conclusions are clear and well reasoned – that the proposal does not conform to the County Official Plan and the character of the community.<sup>30</sup>
88. He provides a detailed and comprehensive analysis of the County of Wellington Official Plan as well as the PPS which supports his opinion that the appeals should not be allowed.<sup>31</sup>

## **Conclusion**

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<sup>30</sup> Ex. 167 pp. 10 and 11.

<sup>31</sup> Ex. 55, Tab 7, pp. 14-33.

89. The Applicant has had ample opportunity to demonstrate that the statutory tests in this matter have been met. They have failed to meet the standard. They have failed to demonstrate how those tests are met.

90. They have also failed to properly consider this community and the impacts that the proposed quarry will have. Those impacts cannot be mitigated by further study and monitoring. The applications must therefore be refused.