



# Committee Report

**To:** Warden Janice Jackson  
Members of the Planning and Development Committee

**From:** Mark Paoli  
Director of Planning and Development

**Date:** September 16, 2021

**Re:** Consent Application B-2021-022

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## Recommendation:

That Consent Application B-2021-022 be approved; and

That the Secretary-Treasurer of the Land Division Committee be authorized to sign the Decision Sheet.

## Summary:

The application is to sever a parcel of land approximately 50 ha in size. The retained parcel is approximately 173.66 ha +/- . Both the severed and retained parcels will continue to be used for alfalfa hay production. The lands are owned by H J Sieber Farms Ltd. and are located on the east side of Bruce Road 23 between Concession Road 5 and Concession Road 7 in Kincardine. The lands to be severed have the civic addresses 360 and 396 Bruce Road 23 and are vacant. The applicant is not proposing to construct any buildings or structures.

The Municipality signed the verification of Conditions on August 26, 2021.

## Alignment with Guiding Principles:



**GOOD GROWTH**  
To put growth in the right locations with the right services



**AGRICULTURE**  
To support our key economies, including supporting a thriving agriculture community



**CONNECTING**  
To improve our ability to move people, goods, and information between communities



**HOMES**  
To increase the supply and mix of homes



**BUSINESS**  
To create opportunities for a diversity of businesses, jobs, and employers



**COMMUNITIES**  
To create wellbeing through access to healthy complete communities



**HERITAGE**  
To identify and manage our cultural heritage resources



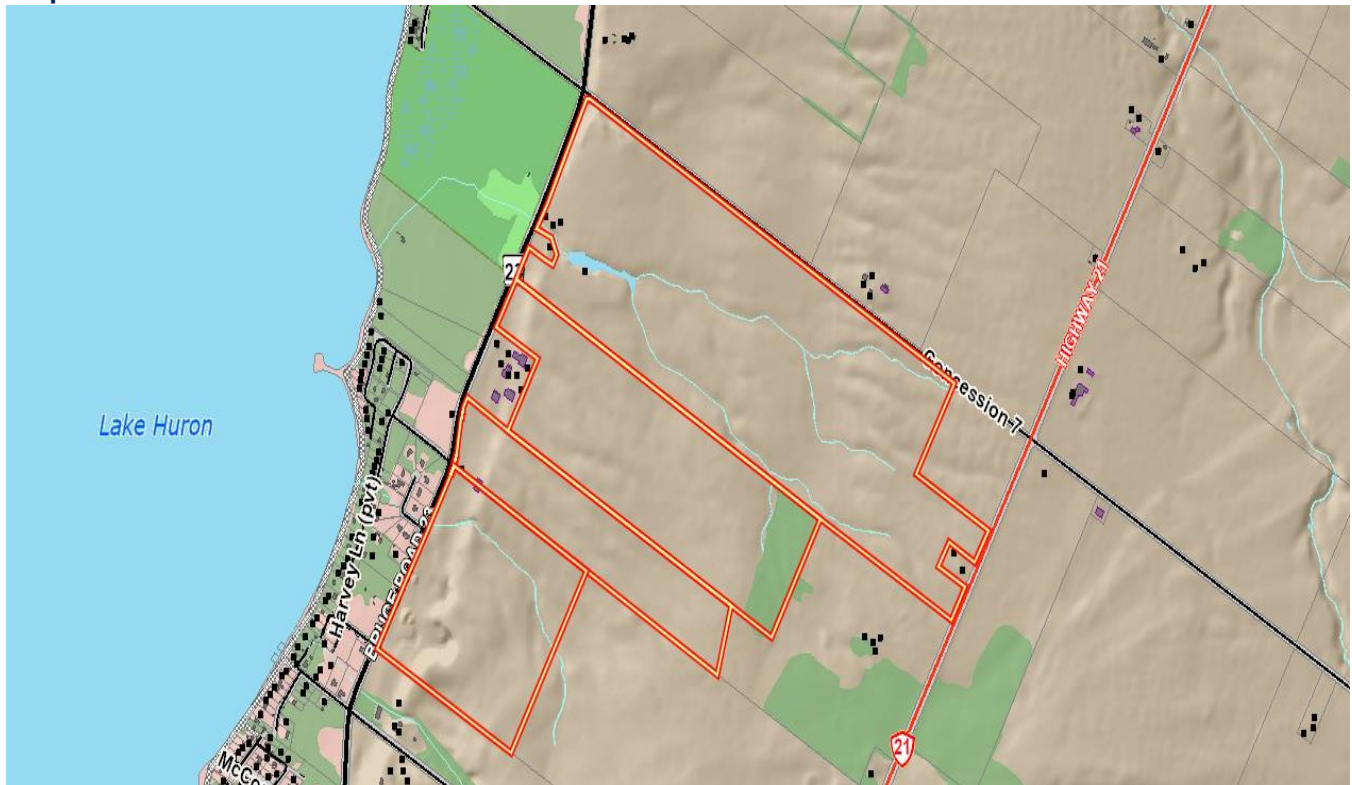
**NATURAL LEGACY**  
To manage natural resources wisely for future generations

● Not applicable  
● Not aligned  
● Aligned  
● Strongly aligned

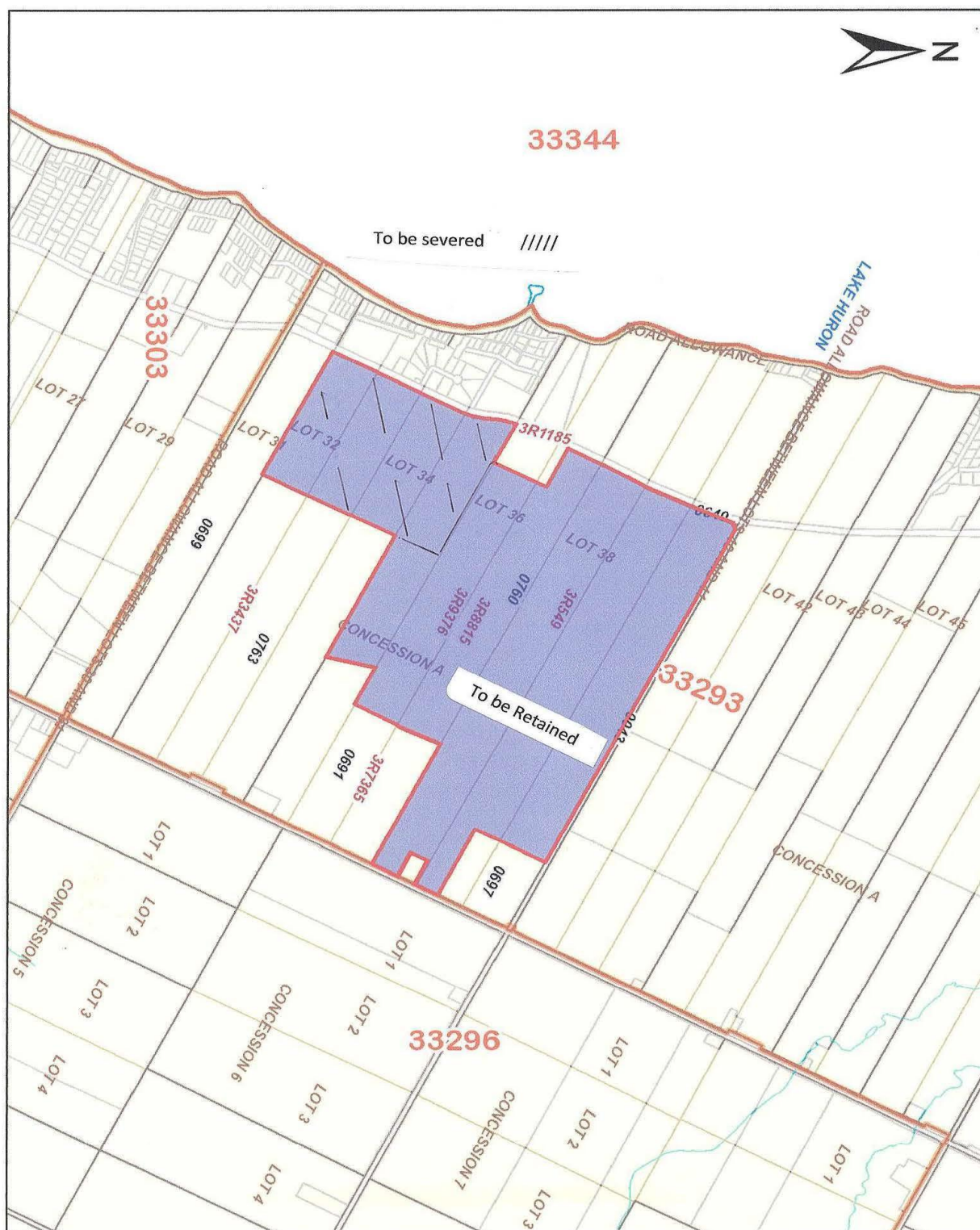
The proposal is strongly aligned with the Agricultural Guiding Principle as the severed and retained lots are of an appropriate size and farming will continue the way it is currently occurring on the lands. There will be no loss of agricultural production resulting from the proposed consent.

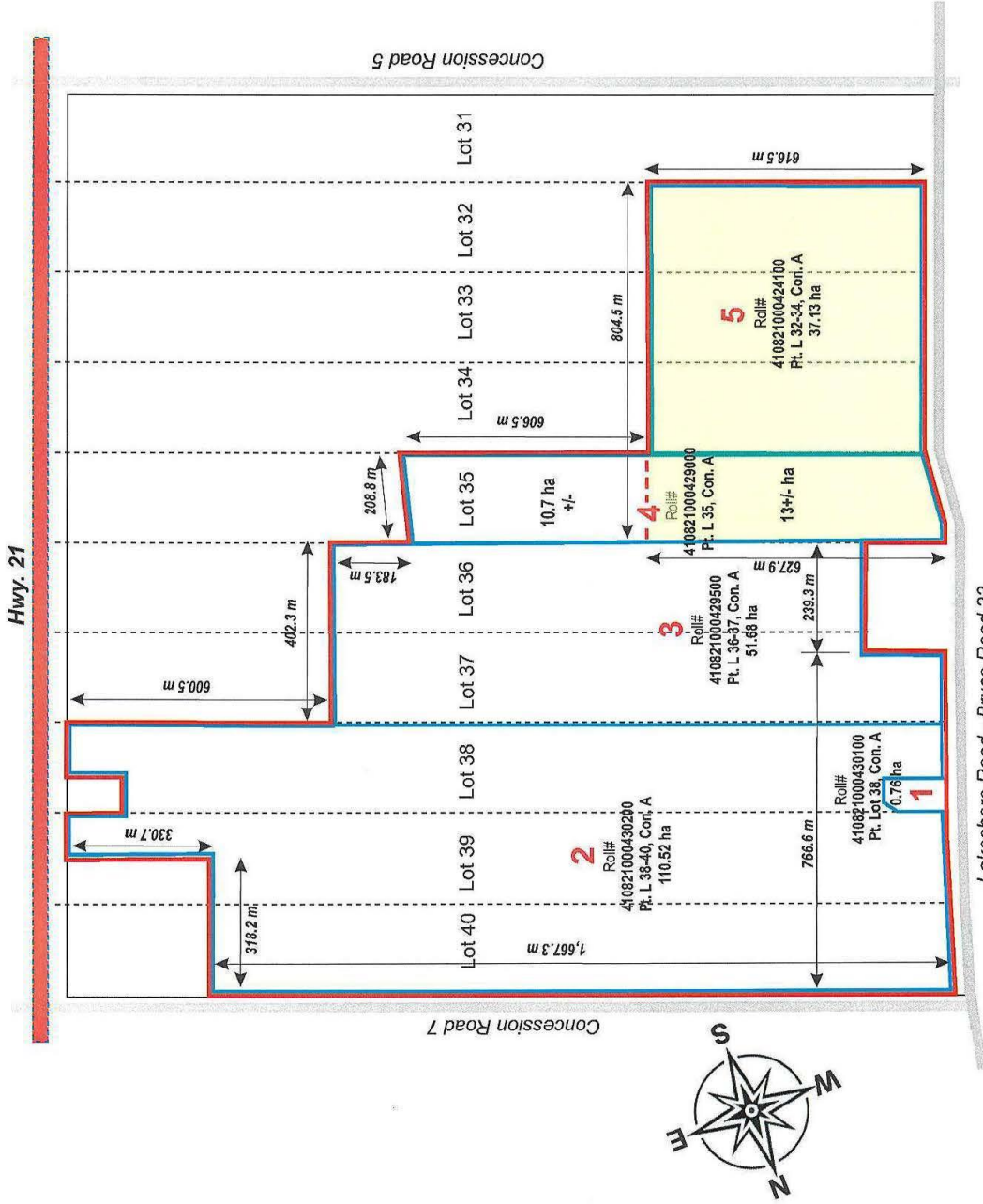
On balance, this proposal is aligned with the Guiding Principles and the Vision of a healthy, diverse and thriving future.

### Airphoto



## Site Plan



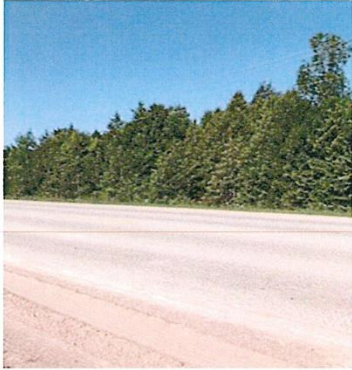


**Part Lot 32-40, Con. A, Mun. Kincardine PIN: 332930760**

**Area to be severed off**



Rehabilitation Area Lot 32 Concession A Kincardine



Land across the road from entrance



Alfalfa Crop

Area of rehabilitation



## Planning Analysis

The following section provides an overview of the planning considerations that were factored into the staff recommendation for this application, including relevant agency comments (attached), public comments (attached) and planning policy sections.

### Natural Heritage and Natural Hazards

There is a watercourse on 360 Bruce Road 23. The watercourse is an unnamed tributary of Lake Huron and is considered a natural hazard feature. The Saugeen Valley Conservation Authority (SVCA) in comments attached has stated that SVCA staff are of the opinion that the negative impacts to fish habitat and its adjacent lands and to significant wildlife habitat will be negligible, and the preparation of an Environmental Impact Study (EIS) is not required for this severance proposal.

### Ongoing Fill Operation

Two property owners across from the subject lands advise that the landowner has been operating an unlicensed pit on the lands to be severed (see attached comments). It is stated that miscellaneous debris from various construction companies is being dumped onto the site. The concern is that the natural landscape features on the affected portion of the site has changed over the years.

The Bollands say the watercourse on the subject land drains into a ditch which sometimes overflows on to the road at the side of their property. They further advise that their neighborhood is a water protection zone. They are concerned with impacts of the ongoing pit operation to water quality and or ability to efficiently 'protect' drinking water in the area. They are requesting that the County or municipality stop the wayside pit operation.

Likewise, the Waltons advise of the borrow / wayside pit which they say contractors are using as both a stockpile area for excavated soil and for infilling the property. They want the permanent wayside pit designation to be reversed (Note there is no pit 'designation or zone' on the subject land). In 2018, they lodged complaints with both the Chief Building Official at the municipality and with the Ministry of the Environment. They object to "the permanent disposal and infill of materials of unknown quality and cleanliness at this site".

The applicant's consultant reports that prior to the 1980s, Lots 32/33 which is part of the lands to be severed was a gravel pit, but it is not clear if it was a licensed pit. The area affected constitutes 10 acres (4.04 ha) of the 50 ha to be severed. The 10 acres are under lease to Kempton Construction Ltd. who entered into an agreement with H J Sieber Farms Ltd. in the 1990s for Disposal of Surplus Materials (clean fill). However, there is no formal rehabilitation plan or timeframes to complete the process.

Material is tested at the construction sites prior to being transported to fill the subject lands. Kempton Construction has kept test records since August 22, 2018. The applicant has indicated that clean road debris, clay, sand, and topsoil from construction sites is used as fill and that no concrete or asphalt is deposited on the site. The applicant's intent is to rehabilitate the area back to farmland.

Of the 10 acres affected, 2 acres were filled in 2020 and covered with topsoil and rehabilitated to farmland. An additional 2 acres is used for gravel storage. 5 acres still need

to be rehabilitated. The remainder of the area was rehabilitated prior to 2020 and is currently long grass. The majority of the lands to be severed (113.5 acres or 45.9 ha) is currently producing an alfalfa hay crop.

The activity of placing fill on the lands appears to be outside of a regulatory framework in this instance as the Director of Infrastructure at the Municipality of Kincardine advises that the municipality does not have a fill by-law. The Ministry of Natural Resources has confirmed that they have no record of a pit or license having been issued for the subject lands under the Aggregate License Act. Further, they have not approved a pit rehabilitation plan for the site. The Ministry licensing records are kept for a ten-year timeframe. If there was ever an aggregate license that was revoked, it would have been deleted from the Ministry files after ten years. Licensed pits are required to meet certain standards of operation and there is a requirement to rehabilitate the area at the end of extraction in accordance with a Ministry approved rehabilitation plan.

The concerns raised by neighbors regarding fill being brought onto the property is outside the scope of the Planning Act and cannot be addressed adequately through the consent process. A municipal fill by-law is the appropriate tool for regulating fill activities which are not licensed under the Aggregate Resources Act or within a Conservation Authority Regulated Area.

#### [Lot Creation in Agricultural Areas](#)

The lands are in a prime agricultural area. The Provincial Policy Statement (PPS) permits lot creation for agricultural uses, provided the lots are of a size appropriate for the type of agricultural use(s) common in the area. Both the newly created parcel and the retained parcel will continue to be cultivated for alfalfa hay. New lots should be sufficiently large to maintain flexibility for future changes in the type or size of agricultural operations. The Bruce County Official Plan requires a minimum farm size of generally 40 hectares (100 acres) for new or remnant farm parcels. Both the newly created farm parcel and the retained farm exceed this minimum size. The Bruce County Federation of Agriculture has confirmed that 50-hectare farms are common in Bruce County and are of an appropriate size for the cultivation of different types of crops e.g., wheat, corn etc. The Federation has also confirmed that alfalfa hay production is a common crop in Bruce County.

The Land Division Policies of the County Official Plan (Section 6.5.3) include criteria for consent applications, and these are included in the appendix.

#### **Financial/Staffing/Legal/IT Considerations:**

Potential Appeal to Local Planning Appeal Tribunal

#### **Report Author:**

Barbara Mugabe, Planner

#### **Departmental Approval:**

Mark Paoli, Director of Planning & Development

#### **Approved for Submission:**

Sandra Datars Bere

Chief Administrative Officer

## Appendices

- County Official Plan Map
- Local Zoning Map
- Detailed Policy Analysis (Included as Attachment)
- Agency Comments
- Notice of consent (Included as Attachment)
- Public Comments (Included as Attachment)
- Staff Response to Public Comments
- Decision Sheet for Signature Consent (Included as Attachment)



The map displays the Township of Kincairdine, which is outlined in orange. The township is divided into several land parcels, some of which are labeled with section numbers (e.g., Section 5.13.16, Section 5.13.14, Section 5.13.23, Section 5.13.3, Section 5.13.28). The map also shows various concessions (Concession 5, Concession 7) and hazards (Haz). The township is bordered by Lake Huron to the west and Highway 21 to the east. The map is color-coded: green for agricultural land (Ag), red for urban land (Sec\_Urb), and blue for water (Lake Huron). The map is titled 'Map of the Township of Kincairdine' and includes a legend and a scale bar.

**Detailed Policy Analysis:** (Included as an Attachment)

## Agency Comments

Bruce County Transportation and Environmental Services

- No comment.

Department of Infrastructure and Development

- Please note Port Head MD runs through 360 Bruce Road 23 (Planning staff understand this comment to relate to a municipal drain).

Risk Management Office: (comments are included as an Attachment)

Saugeen Valley Conservation Authority: (comments are included as an Attachment).

## Staff Response to Public Comments

**Andrew and Amanda Bolland** of 16 Stoney Island Crescent- comments are included as an attachment.

**Staff Response:** The concern raised about the pit operations have been discussed above. The applicant's agent has advised that there is no active pit operation on the site. Rather, the landowner is actively rehabilitating the area following use as a pit. The activity relating to the ongoing rehabilitation of the pit area cannot be dealt with through this consent process. The writer and the applicant's agent have reached out to the Ministry of Natural Resources and Forestry, the Municipality of Kincardine and also to the Saugeen Valley Conservation Authority. Their responses are outlined above.

The second concern raised which is associated with the rehabilitation operation noted above relates to truck traffic along Bruce Road 23. The applicant has responded that the flow of traffic travels to and from the south and very seldom from the north. Up to 90% of the fill comes from Kincardine which is a south direction. The distance from the site entrance to Stoney Island Crescent (the location of the Bolland and Walton properties) is 350+- metres. Trucks will continue pulling into and out of the site for as long as the rehabilitation process is underway. As there is no approved rehabilitation plan, potential impact to neighbors from truck volume / noise has not been assessed. It is beyond the scope of this consent process to require a transportation study and or mitigation measures.

The third concern raised is regarding 'word of mouth' information circulating in the neighborhood about the landowner's intention to build residential units in the future. Planning staff are not aware of this intent on the part of the landowner. It should be noted however, that should the severance be approved, in terms of residential development, the zoning by-law would permit the construction of a farm dwelling on the newly created lot. Multiple dwelling units are not permitted under the official plan policy and zoning by-law. The lands are outside of Kincardine's urban boundary.

**Nell and Larry Walton** of 20 Stoney Island Crescent - comments are included as an attachment. The Waltons object to 'both the sale of the land and the current inconsistent and illegal use of the property as a permanent wayside pit/ infill'.

**Staff Response:** It is staff's understanding that there is no active extraction occurring on the subject land. The landowner is infilling an area that was a gravel pit prior to the 1980s. The Zoning By-law includes the following definitions:

*PIT: means a place where unconsolidated gravel, stone sand, earth, clay, fill, mineral or other material is being or has been removed by means of an open excavation to supply material for construction, industrial or manufacturing purposes, but does not include a wayside pit.*

*WAYSIDE PIT or WAYSIDE QUARRY: shall mean a temporary pit or quarry opened and used by or for a public authority solely for the purpose of a particular project or contract of road construction and not located on the road right of way.( Wayside pits/ wayside quarries /portable asphalt plants are permitted in any zone, except those areas of existing*

*development or particular environmental sensitivity which have been determined to be incompatible with extraction and associated activities).*

The applicant does not have information as to whether the site was used prior to the 1980s as a pit or a wayside pit. Extraction on the site has since ceased and the ongoing infilling will ultimately increase the area that can be used for cropping which is an appropriate land use on the site.

The Planning Act does not address concerns such as a neighbor's objection to the sale of the lands.