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Warden Peabody & Members
of Bruce County Council
c/o Linda White, Clerk
County of Bruce
Administration Centre
30 Park Street, PO Box 70
Walkerton ON N0G 2V0

Dear Warden Peabody & Members of Council:

**Re: Application for Official Plan Amendment by Carson's Supply
5331 Bruce Road 3, Town of Saugeen Shores (the "Subject Property")
County File No.: C-2023-004**

We are the solicitors for Dan and Marjorie O'Driscoll, who live in their retirement home at 5389 Bruce County Road 3, Port Elgin. The O'Driscolls' home immediately abuts the Subject Property, which is the subject of the above application to permit a concrete manufacturing plant with outdoor storage and parking, and a polyvinyl chloride (PVC) extrusion manufacturing facility to be established on agricultural lands.

The proposal is being advanced by Carson's Supply to attempt to spread part of an existing heavy industrial manufacturing facility into another area of Saugeen Shores. The reports indicate that part of the reason for that proposed relocation is that the industrial use has been extremely disruptive to nearby residents at its existing location, which has led to numerous complaints. These complaints include noise, dust and traffic resulting from the nature of this industrial operation and the extended hours in which it takes place. The industrial use has shown itself to be incompatible with nearby residents.

Nature of Planning Concerns

Our clients are concerned that the proposed expansion of this heavy industrial facility into an agricultural area would increase the burden of the demonstrated land use incompatibility by importing it into another area of the Town. Simply put, this industrial use has proven itself to be incompatible with residential uses, and should be relocated or expanded to a property which is well separated from people's homes. The Subject Property is within close proximity of more than twenty (20) residential dwellings in the surrounding agricultural area..

We have reviewed the planning justification report prepared by Cobide Engineering Inc. and other documents submitted with the applications, including the planning response dated July 12, 2024. They do not provide an adequate basis upon which these applications can or should be recommended or approved. Our concerns include the following:

1. The proposal to permit a pre-cast concrete and PVC fabrication facility on lands immediately adjacent to our clients' home and more than twenty (20) other nearby

homes would create obvious incompatibilities that cannot be adequately mitigated. The unavoidable difficulties presented by proximity to people's homes is recognized at page 6 of the applicant's own planning consultant report (emphasis added):

“Pre-cast concrete fabrication is considered a “heavy industrial” use and creates dust and noise; and uses process waters to mix the concrete. Currently, there are minimal setbacks between Carson’s Supply and the adjacent residential uses and there have been several complaints against the business from adjacent residential uses in the past.”

The setbacks proposed in the application will not come close to addressing these obvious concerns.

2. The application proposes to convert land that is currently designated, zoned and used for agricultural purposes to industrial purposes. This is inconsistent with provisions of the *Provincial Planning Statement, 2024* that protect and preserve agricultural lands. There is no good planning or policy reason to choose these lands for this use.
3. The Subject Property is presently farmed, and has been very productively used for agriculture for many decades. The applicant has not demonstrated why these particular lands should be removed from their prime agricultural designation and agricultural use, and has instead tried to minimize the clearly demonstrated and long-standing fertility of these lands. The County should not permit the removal of 13.5 hectares (33.4 acres) of agricultural lands in active production when there are other locations on which the proposed use can be located.
4. In addition to noise and dust concerns, the proposal would create a significant traffic increase in a rural/residential area that would not be compatible with the existing residences. We understand that the proposed facility would operate at all hours of the day and night, which would create incredibly disruptive impacts on the existing nearby residents who currently live in a quiet part of the agricultural countryside.
5. It has not been demonstrated (and no attempt has been made to show) that the noise and dust created by the Applicant's proposed operations on the subject property would comply with Ministry of the Environment guidelines and not create unacceptable negative impacts on the nearby residents. Even if those requirements could be met, the guidelines are more directed to ensuring that new residential development will not unduly impact existing industrial facilities, and are not intended as a means to shoehorn industrial uses into an existing residential area.
6. There are other lands within the County that are already designated and/or zoned for this type of industrial use, including an industrial subdivision near the Bruce Power facility and the Brockton Industrial Park. Those long-planned industrial lands should be utilized for this purpose rather than greenfield agricultural areas. The applicant's claims for why it cannot go to one of those other locations do not withstand even simple scrutiny. For example, the applicant has said that they cannot go to certain properties such as the Bruce Energy Industrial Subdivision because only Bruce Power-affiliated businesses are allowed at that location. We are aware that Seven Acres Cannabis operates its 440,000 square foot facility in that Industrial Park, which is inconsistent with the applicant's assertion. Other stated reasons for rejecting properly zoned alternative are similarly unsupported, and are not reasons to approve the application.



7. The fact that properly designated and zoned lands may be more expensive to acquire is not a valid reason to approve the type of agricultural land conversion that is being proposed.
8. The fact that the applicant has acquired the Subject Property should also have no bearing on Council's consideration of the lack of planning merits of this application. Planning should be a forward-looking process, whereas in this case it is clear that the applicant is attempting to reverse-engineer a significant redesignation of lands that it was able to acquire at agricultural prices. The County would be setting a troubling precedent if it gave any weight to the applicant's ownership of the Subject Property as suggested in the application materials.

In summary, the Subject Property is clearly not an appropriate location for this type of heavy industrial use. The County would never have chosen it for this type of use, and has not within its current County-wide Official Plan process. This heavy industrial use, which is already creating significant land use incompatibility problems at its existing location, should not be permitted to spread to another area in which similar or more severe incompatibilities are unavoidable.

There are other areas within the County in which this use could be accommodated, and the applicant should be directed to those locations. Important planning goals and good land use planning should not be sacrificed simply because the Subject Property has been proposed without adequate rationale. On behalf of our client, we urge County Council to find that this heavy industrial use **should not be permitted** on the Subject Property and to refuse this application.

Additional Legal Consideration

One important issue that has arisen since this application was filed is that third parties, including directly interested residents such as our clients and their residential neighbours, no longer have a right of appeal to the Ontario Land Tribunal if Council approves this application. This is a recent denial of natural justice which is troubling and may some day be revisited, but stands as the current state of the law.

Conversely, if Council **refuses** the application, the applicant would have a right of appeal and our clients and their neighbours would have a legal right to participate in that appeal hearing. This would present a more fair option that would allow the merits of the application to be tested before an expert Tribunal based on all of the evidence over a period of days, rather than determined in a quick fashion over a few hours at a single Council meeting.

Accordingly, we ask that if any Member of Council has any doubt at all in their mind about whether designating the Subject Lands for heavy industrial use is a good idea, it is a more fair outcome to refuse the application. If the applicant chooses to pursue the appeal route despite the overwhelming planning reasons against it, our clients and their neighbours would have a fair opportunity to present their planning position and have it determined on its merits. A Council approval will deny all rights to obviously affected residents of the County.



Thank you for your attention to this matter and consideration of our comments, which are extremely important to our clients. We hereby request to be provided with advance notice of all future Committee or Council meetings that are held to consider this matter. We further request to be provided with copies of any decisions that are made at such meetings.

Yours truly,

MILLER THOMSON LLP

Per:



Steven J. O'Melia

SJO/dms

c: Dan and Marjorie O'Driscoll (via email: triggerdano@gmail.com)
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