

Local Planning Appeal Tribunal
Tribunal d'appel de l'aménagement
local



ISSUE DATE: November 15, 2018

CASE NO(S): PL120363

The Ontario Municipal Board (the “OMB”) is continued under the name Local Planning Appeal Tribunal (the “Tribunal”), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

PROCEEDING COMMENCED UNDER subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	Carlyle Development Corp.
Subject:	Request to amend the Official Plan - Refusal of request by the Township of Baldwin Rural
Existing Designation:	Rural
Proposed Designated:	Industrial Extractive
Purpose:	To permit the development of a quarry
Property Address/Description:	Lot 8, Concession 2
Municipality:	Township of Baldwin
Approval Authority File No.:	625203
OMB Case No.:	PL120363
OMB File No.:	PL120363
OMB Case Name:	Carlyle Development Corp. v. Baldwin (Township)

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

Applicant and Appellant:	Carlyle Development Corp.
Subject:	Application amend Zoning By-law No. 578 - Refusal of Application by the Town of Baldwin Rural
Existing Zoning:	Rural
Proposed Zoning:	Industrial Extractive
Purpose:	To permit development of a quarry
Property Address/Description:	Lot 8, Concession 2
Municipality:	Township of Baldwin
Municipality File No.:	625203
OMB Case No.:	PL120363
OMB File No.:	PL120364

Heard: September 19, 2018 in McKerrow, Ontario

APPEARANCES:

<u>Parties</u>	<u>Counsel*/Representative</u>
Carlyle Development Corp.	M. Allemano*
Corporation of the Township of Baldwin	P. Cassan*
Texas MacDonald	Self-represented

MEMORANDUM OF ORAL DECISION DELIVERED BY HUGH S. WILKINS ON SEPTEMBER 19, 2018 AND ORDER OF THE TRIBUNAL

INTRODUCTION

[1] The Carlyle Development Corp. (“Appellant”) seeks to develop a Category 4, Class “A” Quarry Above Water on lands described as South ½ Lot 8, Concession 2 (“subject property”) in the Township of Baldwin (“Township”). The subject property is 36.77 hectares in size. It is located north of Highway 17 near its intersection with Highway 6 and northwest of the Hamlet of McKerrow.

[2] On January 27, 2012, the Appellant submitted an application to amend the Township’s Official Plan and its Comprehensive Zoning By-law No. 578 to permit the development. Township Council refused the application and the Appellant appealed the Township’s decision under s. 22(7) and 34(11) of the *Planning Act*. On September 21, 2012, the proceedings were adjourned to allow time for related applications under the *Aggregate Resources Act* to be determined.

[3] The proposed Official Plan Amendment would re-designate the subject property from “Rural” to “Industrial Extractive”. The proposed Zoning By-law Amendment would rezone it from “Rural” to “Industrial Extractive” and “Environmental Protection Area”.

[4] In March 2018, the Parties engaged in mediation and agreed to settle the appeals. On September 19, 2018, the Tribunal convened a settlement hearing in McKerrow at which it heard land-use planning evidence in support of the proposed settlement.

EVIDENCE, SUBMISSIONS AND FINDINGS

[5] Glenn Tunnock was qualified and provided land-use planning opinion evidence on behalf of the Township. He opined that the proposed Official Plan and Zoning By-law Amendments are consistent with the Provincial Policy Statement, 2014 (“PPS”) and conform to the Township’s Official Plan.

[6] Regarding the extraction and use of aggregate resources, Mr. Tunnock stated that the proposed amendments are consistent with s. 2.5 of the PPS in that the Township has set aside reasonable amounts of aggregate for extraction and is protecting aggregate resources for long-term use.

[7] With respect to compatibility with other nearby land uses, Mr. Tunnock stated that s. E.10.2 of the Township’s Official Plan restricts quarry operations less than 1000 metres (“m”) from residential and other sensitive uses. He said the proposed quarry would be developed in two phases to ensure effective monitoring and mitigation steps are taken to eliminate any nuisances caused by its operation. He said Phase 1 of the project would be in an area that respects the 1000 m set back in the Township’s Official Plan. He said Phase 2 would come as close as 750 m from rear residential property lines in McKerrow, but it may only proceed if the Township is satisfied with the operational practices during Phase 1. He said the lands where Phase 2 would take place would be zoned Industrial Extractive with the Holding Symbol “H” (IE-h). The lifting of the holding symbol would be conditional on the implementation of any required improvements or recommendations in monitoring reports regarding Phase 1 to the satisfaction of Township Council. He said any noise, vibration, dust, or drinking water concerns would need to be addressed to the satisfaction of Council before the hold is lifted. Mr. Tunnock said the remainder of the subject lands would be zoned

“Environmental Protection Area”. This includes all lands on the subject property that are not labelled as Phase 1 or 2 in Schedule “A” to the proposed Zoning By-law Amendment. He said an access road would run through those lands, but extraction operations would be prohibited there.

[8] Mr. Tunnock stated that the Appellant plans to use a private road to access the proposed quarry and that the project would have little impact on Township roads.

[9] With regard to natural heritage issues, Mr. Tunnock stated that the Appellant undertook a series of environmental studies as required under the *Aggregate Resources Act*, which have identified the natural features on or near the site. He said the site plans for the proposed project provide separation to protect Eastern Whip-poor-will habitat, fish habitat and turtle habitat in the area, consistent with s. 2.1 of the PPS. He said the proposed development is separated from the wetlands in the area and there are no provincially significant wetlands nearby.

[10] Mr. Tunnock stated that the proposed Official Plan and Zoning By-law Amendments provide for aggregate resource protection for long term use, ensure the project’s compatibility with surrounding land uses, and protect the environment. He opined that they are consistent with the PPS and conform with the Township’s Official Plan and that they represent good land use planning.

[11] Mr. MacDonald stated that he supports the proposed Official Plan and Zoning By-law amendments.

[12] Nanette Boucher, who is a participant in this proceeding, stated that her concerns have been addressed.

[13] Having considered the uncontradicted opinion evidence of Mr. Tunnock, the Tribunal found that the proposed Official Plan and Zoning By-law Amendments are consistent with the PPS, conform with the Township’s Official Plan, and represent good planning. At the settlement hearing, the Tribunal approved both the Official Plan Amendment and Zoning By-law Amendment in principle.

ORDER

[14] The Tribunal orders that:

- a. the official plan amendment appeal is allowed in part, and the proposed Official Plan Amendment No. 1 to the Township's Official Plan is approved in the form appended as Attachment 1 to this Decision;
- b. the zoning by-law appeal is allowed in part, and the proposed Zoning By-law Amendment to amend the Township's Comprehensive Zoning By-law No. 578 is approved in the form appended as Attachment 2 to this Decision.

"Hugh S. Wilkins"

HUGH S. WILKINS
MEMBER

If there is an attachment referred to in this document,
please visit www.elto.gov.on.ca to view the attachment in PDF format.

Local Planning Appeal Tribunal

A constituent tribunal of Environment and Land Tribunals Ontario

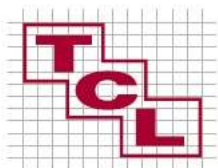
Website: www.elto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

ATTACHMENT 1

Amendment # 1 to the Official Plan – Township of Baldwin

September 19, 2018

Tunnock Consulting Ltd.



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Part A – The Preamble does not constitute part of this amendment.

Part B – The Amendment containing the following text and Schedule A, constitutes Amendment # 1, to the Official Plan of the Township of Baldwin

The intent of the current Industrial – Extractive land use designation in the Township Official Plan is consistent with Section 2.5.1 of the Provincial Policy Statement (2014) through the identification on the Land Use Schedule of lands for mineral aggregate extraction.

“Mineral aggregate resources shall be protected for long-term use and where provincial information is available, deposits of mineral aggregate resources shall be identified” (PPS 2.5.1). The addition of the Carlyle quarry site through the approval of Official Plan Amendment # 1 further reinforces the intent of the provincial policy statement by providing for the extraction of additional aggregate materials.

The Official Plan Amendment is also consistent with PPS 2.5.2.1 since, the Township of Baldwin has designated “as much of the mineral aggregate resources as is realistically possible” and these resources are made available to local markets. Just over 5 % of the land base has been designated of which approximately 73% is licensed for extraction (i.e. some 309.9 ha) “In addition to legally existing pits and quarries, Aggregates Resource Areas have been designated Industrial – Extractive on Schedule ‘A’, land Use Schedule. These areas have been identified as having deposits of aggregates, with the potential for future extraction. It is a policy that such areas are to be, wherever possible, protected and preserved for future extractive use.” The addition of the Carlyle quarry will make additional aggregates available to local markets.

PPS Section 2.5.2.1 does not require the “Demonstration of need for mineral aggregate resources, including any type of supply/demand analysis, shall not be required, notwithstanding the availability, designation or licensing for extraction of mineral aggregate resources locally or elsewhere.” The official plan amendment does not seek to justify a supply/demand analysis so much as to acknowledge the value of the resource for extraction purposes keeping in mind the need to balance resource extraction with land use compatibility.

Social, Economic and Environmental Impacts

Section 2.5.2.2 of the PPS requires extraction to be undertaken in a manner which minimizes social, economic and environmental impacts. A series of technical reports were prepared over the last several years with the intent of addressing the requirements for the issuance of a license under the *Aggregate Resources Act*. More specifically, the technical reports submitted are intended to meet the requirements of the *Aggregate Resources Act, Provincial Standards of Ontario – Category 4 – Class A Quarry Above Water* as follows:

Section 2.2.1 – Natural Environment Level 1

- *Natural Environment Level 1 Report*, Great Lakes Environmental Services Inc, July, 2009

Section 2.2.2 – Natural Environment Level 2

- *Natural Environment Level 2 Report*, Great Lakes Environmental Services Inc, July, 2009
- *Final Supplemental NEL 1/NEL 2: Significant Habitat of Endangered or Threatened Species*, Tulloch Environmental, June 27, 2016

Section 2.2.3 – Cultural Heritage Resource Stage 1

- Boreal Heritage Consulting

Section 2.2.4 – Cultural Heritage Resource Stage 2

- Not required

Section 2.2.5 – Cultural Heritage Resource Stages 3 and 4

- Not required

Section 2.2.6 – Noise Assessment

- Not undertaken since receptor deemed to be beyond the limiting distance of 500 m

Section 2.2.7 – Blast Design Report

- *Blast Impact Analysis and Design*, DST, June 2010

In addition, a *Groundwater Summary Report*, Harden, August 14, 2009 was undertaken to assess groundwater flows, surficial water bodies and impact on groundwater wells. However, no baseline study of water well conditions was undertaken because all of the wells were beyond the 500 m study area associated with the proposed quarry site.

With some minor changes resulting from a peer review by the Ministry of Natural Resources and Forestry (MNRF), the licensing approval authority, the MNRF were prepared to issue a license for the quarry subject to the lands being rezoned for a quarry operation.

“Within the framework of the provincial policy-led planning system, planning authorities and decision-makers may go beyond these minimum standards to address matters of importance to a specific community, unless doing so would conflict with any policy of the Provincial Policy Statement.” (PPS, p. 3. Policies Represent Minimum Standards).

Consequently, the Township is entitled to impose a higher separation distance as a policy measure to provide, in this case, for the full development of residential and highway commercial lands within the Township, a matter which is of prime importance to the long-term development of Baldwin.

Section E.10.2 of the Official Plan established a 1,000 m influence area or separation distance applicable to new pits and quarries. Section E.10.2 describes the concept of an influence area, and also states that “Incompatible land uses, such as residential uses are not supported within the influence area. The 1,000 m separation distance standard is essential to protecting the long-term development interests of the Township. Official Plan Amendment No. 1 is intended to reflect the policy intent of the Official Plan by establishing a 1,000 m separation distance for the Phase 1 of the quarry operation as illustrated in **Figure 3. The 1,000 m separation distance has been interpreted to be consistent with Section 1.2.6 of the provincial policy statement cited as follows:**

“1.2.6 Land Use Compatibility

- 1.2.6.1 *Major facilities and sensitive land uses* should be planned to ensure they are appropriately designed, buffered and/or separated from each other to prevent or mitigate *adverse effects* from odour, noise and other contaminants, minimize risk to public health and safety, and to ensure the long-term viability of *major facilities*.”

It is noted that a ‘*major facility*’ is defined to include an extraction operation in the PPS (see underline).

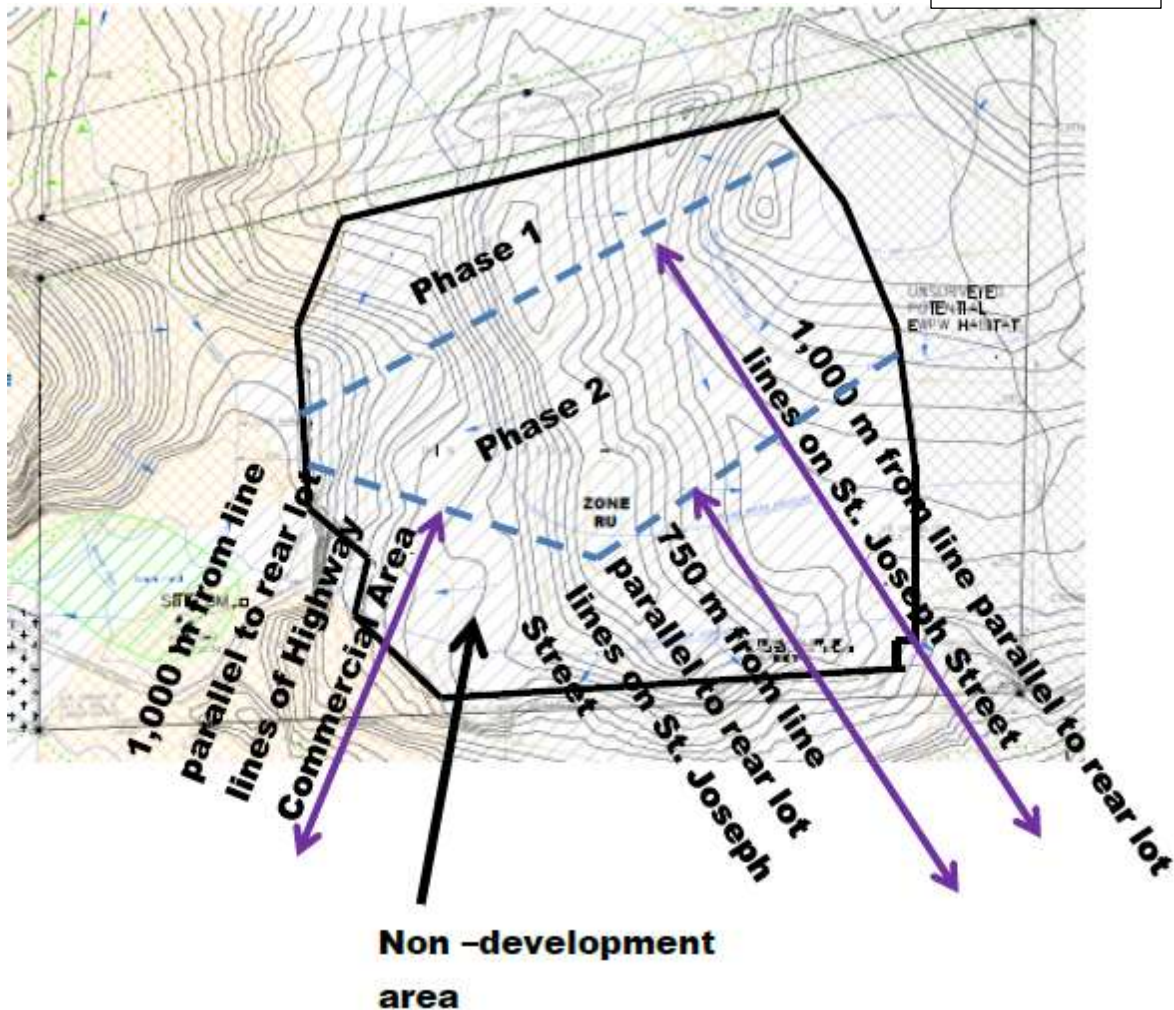
“Major facilities:

means facilities which may require separation from *sensitive land uses*, including but not limited to airports, transportation infrastructure and corridors, *rail facilities, marine facilities,*

sewage treatment facilities, waste management systems, oil and gas pipelines, industries, energy generation facilities and transmission systems, and resource extraction activities.”

The phasing of the quarry operation over the next several years will ensure that this major facility is also consistent with the Provincial Policy Statement: 1.1.1 d) – “avoiding development and land use patterns that would prevent the expansion of settlement areas in those areas which are adjacent or close to settlement areas.” The Highway Commercial area and the Hamlet of McKerrrow are the only settlement areas within the Township and being the focus of future development as envisioned by PPS 1.1.3.1 Settlement areas shall be the focus of growth and development, and their vitality and regeneration shall be promoted; hence, measures to achieve land use compatibility are essential for the development of the settlement area of McKerrrow and the associated Highway Commercial Area.

Figure 3



Approval of Phase 2, which is to be placed in a holding zone in the zoning by-law will be conditional upon meeting satisfactory performance conditions such as meeting the requirements of the *Aggregate Resources Act* license, satisfactorily meeting any required improvements or changes as set out in a monitoring report prepared by a qualified professional with respect to such matters as noise and blasting mitigation, dust mitigation and reparations, if necessary to any domestic wells negatively impacted by the quarry operation. The intent of the policies will be to continue to ensure that any mineral aggregate operation is compatible with sensitive and other land uses in the Township.

The basis of the amendment is also dependent on sustaining groundwater resources for domestic well water supplies and to this extent requiring a baseline well water study of the 12 closest water wells including two (2) commercial water wells.

Summary

The future development of the Township of Baldwin is dependent on resource development as well as the development of the settlement area of McKerrow and the associated Highway Commercial node at the intersection of Highway 17 and 6. The Township has designated a substantial area for aggregate resource use in locations that avoid the potential for land use incompatibility. There is also a large bedrock resource area which can be used for extraction without compromising a 1,000 m separation distance. McKerrow and the Highway Commercial corridor are the only settlement area within the Township and Council's interest in protecting this area for long-term development. The establishment of a new quarry is based on maintaining an appropriate separation distance between the quarry and sensitive and other land uses as well as ensuring that the operation of the quarry site complies with provincial licensing requirements and conditions of development required by the Township of Baldwin.

PART B – THE AMENDMENT

DETAILS OF THE AMENDMENT

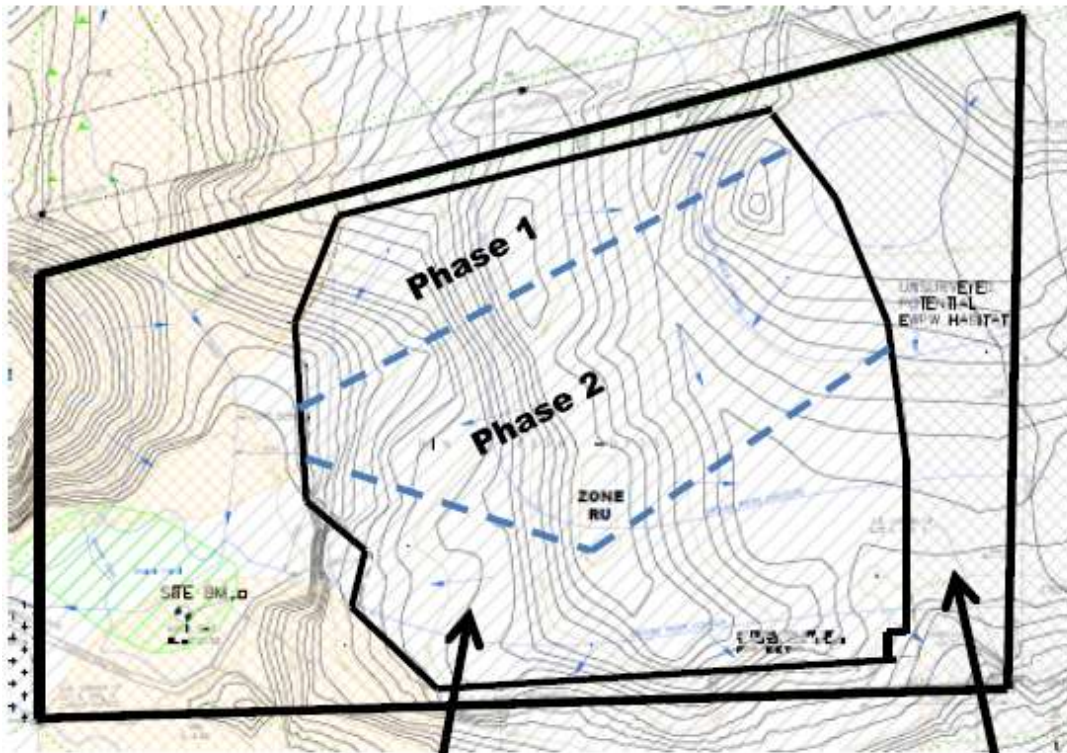
The Official Plan is amended as follows:

- Item (1)** Section E.10.2 is amended by adding a new section to the end of the policy as follows:
9. Lands described as the S ½ Lot 8, Concession 2, Township of Baldwin which are designated Industrial-Extractive on Schedule 'A' to the Official Plan may be used for a mineral aggregate operation subject to the following development criteria and conditions:
 - A. The lands are licensed under the *Aggregate Resources Act*.
 - B. Phase 1 of the quarry, as illustrated on Schedule 'A' to this amendment may be operated as a mineral aggregate operation and shall be zoned in an Industrial-Extractive zone in the Township's comprehensive zoning by-law. Phase 2 shall be placed in an Industrial-Extractive holding zone as enabled under Section 36 of the *Planning Act*. Lands to the south of Phase 2 shall be placed in a non-development zone except for a haulage route corridor. The balance of the lands south of Phase 2 shall otherwise be left in their natural state. A staging area of approximately 100 m by 100 m in area shall be permitted in the northwest corner of Phase 2. A haulage route shall be permitted across the Phase 2 area.
 - C. Up to three blasts may be conducted in a calendar year with prior public notice having been given to indicate the date and time of a blast.
 - D. A baseline well water study shall be conducted to document existing well conditions of the twelve (12) closest wells to the quarry site of which two (2) of the wells shall be commercial wells. A follow up assessment of well conditions shall be undertaken following one (1) year of blasting experience. The study shall also assess current benzene conditions to ensure the direction of groundwater is not affected by the quarry.
 - E. Access to the quarry site shall be limited to a haulage route connecting to Highway 17. Use of Township roads for trucking aggregate materials from this quarry site shall not be permitted except for commercial deliveries of aggregate materials. Haul road dust as well as quarry dust shall be mitigated so as not to provide any adverse effects to nearby residential or business properties..

- F. A monitoring report shall be prepared by a qualified professional that addresses compliance with the *Aggregate Resources Act* license, blast performance and dust mitigation. The report shall only be required in years where a blast is undertaken. The report shall be distributed to the owner of the quarry, the Municipality and the MNRF.
- G. Any required improvements or recommendations made in the monitoring report shall be implemented in a timely fashion and with confirmation by municipality.
- H. Lifting of the holding zone under Section 36 of the *Planning Act* shall be conditional upon implementing any required improvements or recommendations set out in any monitoring report to the satisfaction of Council. A noise study designed to meet the requirements of NPC -300 of the Ministry of the Environment and Climate Change may be required as a condition of lifting the holding zone where Council is not satisfied that the monitoring report addresses noise and vibration matters.

Item (2) Schedule 'A' to the Official Plan of the Township of Baldwin is hereby amended by redesignating the S ½ Lot 8, Concession 2, Township of Baldwin comprising 36.77 ha. in total property area as Industrial-Extractive.

Schedule 'A' to Official Plan Amendment # 1



**Non -development
area**

**Lands designated
Industrial-Extractive
on S 1/2 of Lot 8,
Concession 2,
Township of Baldwin**

IMPLEMENTATION AND INTERPRETATION

The implementation and interpretation of this amendment shall be in accordance with the respective policies of the Township of Baldwin Official Plan.

ATTACHMENT 2

APPENDIX 1 – ZONING BY-LAW AMENDMENT

THE CORPORATION OF THE TOWNSHIP OF BALDWIN
By-law No. _____

BEING A BY-LAW TO AMEND
BY-LAW No. 578

WHEREAS pursuant to the provisions of the Planning Act, RSO 1990, Section 34, the Council of a Municipality may enact by-laws regulating the use of lands and the erection of buildings and structures thereon;

AND WHEREAS under Section 36 (1), the Council of a local municipality in a by-law passed under Section 34, by the use of the holding symbol 'h' in conjunction with any use designation, specify the use to which lands, buildings or structures may be put at such time in the future as the holding symbol is removed by amendment to the by-law;

AND WHEREAS By-law No. 578 regulates the use of land and the use and erection of buildings and structures within the Township of Baldwin

AND WHEREAS the Council of the Corporation of the Township of Baldwin deems it advisable to amend By-law No. 578 to implement the policies of Official Plan Amendment # 1 respecting the redesignation of certain lands for a mineral aggregate operation, placing other lands in a holding zone and placing other lands in a non-development zone;

NOW THEREFORE, the Council of the Corporation of the Township of Baldwin enacts as follows:

1. That certain lands, legally described as part of the South ½ Lot 8, Concession 2, Township of Baldwin illustrated as Phase 1 on Schedule 'A' to this by-law are hereby zoned as **Industrial-Extractive (IE) Zone**.
2. That certain lands, legally described as part of the South ½ Lot 8, Concession 2, Township of Baldwin illustrated as Phase 2 on Schedule 'A' to this by-law are hereby zoned as **Industrial-Extractive (IE-h) Zone**. Notwithstanding the holding zone provision, a staging area measuring approximately 100 m by 100 m shall be permitted in the northwest corner of Phase 2 and a haulage route through Phase 2 shall also be permitted.
3. That other lands, legally described as part of the South ½ Lot 8, Concession 2, Township of Baldwin and illustrated on Schedule 'A' to this by-law are hereby zoned as **Environmental Protection Area (EPA) Zone** and that the uses in the

Environmental Protection Area (EPA) Zone shall be limited to a conservation use where the lands are left in their natural state except to allow for an access haulage route through this area.

4. That the zone boundaries of the **Industrial-Extractive (IE) Zone** and the **Industrial-Extractive (IE-h) Zone** and the **Environmental Protection Area (EPA) Zone** are shown on Schedule “A” to this by-law which zone boundaries and map are hereby declared to form part of this by-law.
5. That the south limit of Phase 1 illustrated as Phase 1 on Schedule ‘A’ to this by-law shall be 1,000 m measured as the shortest horizontal distance from a line parallel to the rear lot lines of the lots fronting on the north side of St. Joseph Street in the hamlet of McKerrow to the nearest edge of the south boundary of Phase 1.
6. That the south limit of Phase 2 illustrated as Phase 2 on Schedule ‘A’ to this by-law shall be 750 m measured as the shortest horizontal distance from a line parallel to the rear lot lines of the lots fronting on the north side of St. Joseph Street in the hamlet of McKerrow, and 1,000 m from the rear lot lines of the Highway Commercial uses, respectively to the nearest edge of the south boundary of Phase 2 and that these lands constituting all of Phase 2 shall be placed in the IE-h holding zone subject to clause 2 above.
7. That the lands within the IE-h holding zone may be used for a mineral aggregate operation with the lifting of the holding zone ‘h’ symbol and subject to meeting the conditions set out in Official Plan Amendment # 1.
8. That all other provisions of By-law 578 shall continue to apply.
9. That this by-law shall take effect subject to the requirements of the *Planning Act*.

That this by-law shall come into force and take effect upon an Order issued by the Ontario Municipal Board.

Mayor

Clerk

Schedule 'A' to By-law

