

**Ontario Land Tribunal**  
Tribunal ontarien de l'aménagement  
du territoire



**26-024-OLT Attachment 1**  
**26-025-OLT Attachment 2**

**ISSUE DATE:** July 22, 2025

**CASE NO(S):** OLT-23-001146

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

Applicant/Appellant: Losani Homes (1998) Limited  
Subject: Request to amend Official Plan-Failure to adopt the requested amendment  
Reference Number: ZAC-21-039/UHOPA-21-018  
Property Address: 1400 South Service Road  
Municipality/UT: Hamilton/Hamilton  
OLT Case No.: OLT-23-001146  
OLT Lead Case No.: OLT-23-001146  
OLT Case Name: Losani Homes (1998) Limited v. Hamilton (City)

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

Applicant/Appellant: Losani Homes (1998) Limited  
Subject: Application to amend the Zoning By-law – Refusal or neglect to make a decision  
Description: To permit 986 residential units within four apartment buildings including two commercial buildings  
Reference Number: ZAC-21-039/UHOPA-21-018  
Property Address: 1400 South Service Road  
Municipality: Hamilton/Hamilton  
OLT Case No.: OLT-23-001147  
OLT Lead Case No.: OLT-23-001146

**Heard:** April 22 to May 2, 2025 by Video Hearing;  
Closing submissions, May 30, 2025 in writing

**Parties**

Losani Homes (1998) Ltd.  
("Appellant" / "Applicant")

City of Hamilton ("City")

**Counsel**

Denise Baker  
Narmada Gunawardana

Peter Krysiak  
Melanie Benedict

**DECISION DELIVERED BY ERIC S. CROWE AND ORDER OF THE TRIBUNAL**

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**[Link to the Order](#)**

**INTRODUCTION**

[1] The Tribunal held an eight-day hearing regarding an Official Plan Amendment ("OPA") and Zoning By-law Amendment ("ZBA") pertaining to the lands municipally known as 1400 South Service Road ("Subject Site"), in Stoney Creek of the Regional Municipality of Hamilton ("Region").

[2] Losani Homes (1998) Ltd. are the Applicant/Appellant for the OPA and the ZBA who are seeking to develop two 16-storey residential apartment buildings (264 units each) and two 8-storey residential apartments (229 units each), for a total of 986 residential units, plus two commercial buildings and a 3-storey office building.

[3] The proposed applications were appealed to the Ontario Land Tribunal ("OLT") on November 8, 2023 for failure of the City to make a decision within the statutory time frames on the applications in accordance with the requirements of the *Planning Act* ("Act").

[4] A revised Concept Plan was submitted by the Applicant/Appellant dated February 25, 2025, which includes a mix of residential and non-residential uses, including 840

residential units, and 11,200 square metres (“m<sup>2</sup>”) of commercial Ground Floor Area (“GFA”), with most of the GFA anticipated to be office/commercial space in a mix of buildings that includes three and four storey buildings, and one single-storey building, with potential for a fourth 3-storey office building on lands between the eastern boundary of the Subject Site and natural heritage system area.

[5] The Revised Concept Plan also changed the residential density from High to Medium to be in compliance with PPS 2024 policy 2.8.1.4 in regard to office floor area to less than 4000 m<sup>2</sup> which is the established threshold for major office uses as outlined in the Urban Hamilton Official Plan (“UHOP”).

### **PURPOSE OF THE OPA**

[6] The purpose and effect of the updated OPA is to amend Volume 1, Schedule E and Schedule E1 of the UHOP to redesignate the rear portion of the Subject Site from ‘Employment’ and ‘Business Park’ designation to Neighbourhoods” to permit residential uses at the rear of the Subject Site and to facilitate a mixed-use development. The front portion of the Subject Site will remain designated ‘Employment’ and ‘Business Park’ for the development of office and commercial uses and has an area of approximately 2.27 hectares (“ha”). The proposed ‘Neighbourhoods’ designation will apply to the rear portion of the lands and have an area of 4.64 ha. The Open Space has an area of approximately 0.36 ha.

[7] The updated OPA proposes site specific provisions for the Medium Density designation, as follows:

- Permit a maximum building height for residential uses up to 16 storeys, as detailed in the ZBA.
- Establish a minimum GFA of non-residential uses to be constructed prior to occupancy of a multiple dwelling.

[8] An amendment to the Fruitland Winona Secondary Plan (FWSP) proposes to redesignate the rear portion of the Subject Site from “Business Park” to “Medium Density Residential” with a new site-specific policy area to implement the OPA. The Medium Density area to be amended in the FWSP reflects the area being amended on Schedule E-1 of the Official Plan to Neighbourhoods.

## **PURPOSE OF THE ZBA**

[9] The updated ZBA proposes to implement the OPA, and rezone the Subject Site with site specific exceptions, as follows:

- a) Modifying the M3 Special Exception 404 to a specific area on the front portion of the lands and revising Special Exception 404 as follows:
  - Permit a maximum GFA for office uses up to 5,000 m<sup>2</sup> per building;
  - Minimum landscape strip of 1.5 m along the easterly lot line; and,
  - Non-residential parking rate of 2 spaces / 100 m<sup>2</sup>.
  
- b) Amending the zoning on the rear portion of lands from M3 Special Exception 404 to Mixed Use Medium Density (C5) with the following site-specific regulations:
  - Permit a minimum interior side yard of 4.5 m;
  - A maximum building height of 56 m (16 storeys) which is further defined to a specific area as per the proposed Height Schedule;
  - To establish a minimum GFA of non-residential uses to be constructed prior to occupancy of a multiple dwelling; and,

- The ZBA also proposes to allow for non-residential parking and residential visitor parking to be shared across the entire site.
- c) The ZBA proposes to maintain the Hazards Lands (P5) zoning on a portion of the Subject Site that reflects the limits of the identified natural areas; and,
- d) The ZBA proposes holding (“H”) provisions that reflect the agreement with the Engineers.

## **DECISION**

[10] For the following reasons, the Tribunal allows the OPA appeal pursuant to s. 22(7) and allows the ZBA appeal pursuant to s. 34(11) both under the Act.

### **Subject Site and Surrounding Uses**

[11] The Subject Site is located approximately 192 m east of the intersection of South Service Road and Fifty Road. The Subject Site has a frontage of approximately 207 m along South Service Road. The site is approximately 7.27 ha.

[12] Within the immediate context, the Subject Site is bound by South Service Road and the Queen Elizabeth Way (QEW) to the north, a vacant Prestige Business Park (M3) Zone to the east, a MTO property to the west, and the Canadian National Railway (CN Railway) to the south. The Subject Site is traversed by Fifty Mile Creek (Stoney Creek Watercourse No. 12), which flows north-easterly and ultimately drains north to Lake Ontario.

[13] Further North is the QEW, low density residential properties, Fifty Point Conservation Area and Lake Ontario, to the east are vacant Prestige Business Park (M3) Zoned lands, Fifty Creek, a former aggregate operation, and further east is the

Town of Grimsby. To the south, there are specialty crop lands that are outside of the Urban Boundary. To the west beyond the MTO property there is the South Service Road and Fifty Road intersection, and further west is a commercial plaza.

**Subject Site (Appellants/Applicants Visual Evidence Book, Exhibit 4)**





[16] The Tribunal must also be satisfied that the ZBA conforms with the UHOP, and that the OPA and ZBA represent good land use planning and are in the public interest.

### **ORDER OF EVIDENCE AND WITNESS**

[17] It was agreed by the Parties that the following Order of Evidence and Witnesses would govern the Hearing:

#### **Applicant/ Appellant**

1. Eldon Theodore, Urban Design;
2. Daryl Keleher, Land Economics;
3. Victor Garcia, Acoustical/Vibration;
4. Ken Glasbergen, Natural Heritage Planning;
5. Dave Aston, Land Use Planning;

#### **City**

6. Charlie Toman, Policy Planning;
7. Antony Lorus, Land Economics;
8. James Van Rooi, Land Use Planning; and,
9. Melissa Kiddie, Natural Heritage Planning.

## AGREED STATEMENT OF FACTS

[18] The Parties' experts entered into an Agreed Statement of Facts ("ASF") on Planning, Engineering and Natural Heritage and agreed on several issues.

[19] The ASF for Planning dated January 31, 2025 agreed on several issues including the 2024 Provincial Planning Statement ("PPS 2024") is in effect as of October 20, 2024 and the applications are required to be consistent with the PPS 2024. The UHOP predates the *Planning Act Amendments* approved through Bill 97 and has not yet been updated to be consistent with the PPS 2024.

[20] Through the ASF on Engineering dated January 13, 2025, the Parties agree that all issues pertaining to servicing for the proposed development are resolved including storm and sanitary drainage and water distribution and that neither the City nor the Applicant /Appellant would be calling engineering evidence to speak to servicing issues.

[21] The ASF concerning Natural Heritage dated February 28, 2025 includes several issues including that Fifty Creek is located adjacent to the Subject Site and that the development proposal is consistent with the PPS 2024 in terms of Policies 4.1.6 and 4.1.7 concerning fish habitat as well as habitat of endangered species and threatened species. In addition, that only native species are proposed to be planted within the Vegetative Protection Zone ("VPZ") and that trees currently exist within and adjacent to the Subject Site.

[22] All the issues for Servicing and Traffic were resolved between the Parties removing them from the Issues List for the purpose of this hearing with the understanding that these items may be considered further at the site planning stage with the appropriate holding provisions in the proposed ZBA.

## ISSUES

[23] The Tribunal was presented with approximately 33 issues and sub issues from the Procedural Order before the hearing which was slightly revised at the commencement of the hearing (removing issue 1). There were several issues that were non applicable due to the ASF on Servicing and Traffic. The central issue for determination in this case is whether the Subject Site is an Employment Area as defined in the PPS 2024 and if not, can it be developed as proposed by the OPA and ZBA. Therefore, the Tribunal has identified and summarized the core issues that pertain to this hearing.

[24] Section 2 of the Act is not at issue. The City agrees that the Subject Site is in an Urban Area and is generally an appropriate location for growth and development.

## ANALYSIS AND FINDINGS

### Issue 1; Definition of “Areas of Employment” and “Employment Area”

[25] On October 20, 2024, the new Act definition of “**Area of Employment**” came into effect including the new definition of “**Employment Area**” under the new PPS 2024 which had no transition regulations of land use planning matters. The Province had stated that the change to the “**Area of Employment**” definition is intended to increase housing supply. From announcement to implementation, the Province provided two months for local municipalities to implement these significant changes into Official Plan policy.

[26] A comparison of definitions of “Area of Employment” of the Act and “Employment Area” of the PPS 2024 was introduced in evidence by Mr. Aston (Exhibit 6).

**Comparison of Definitions of 'Area of Employment' and 'Employment Area'**

<b>Planning Act</b>	<b>PPS</b>
<p>"area of employment" means an area of land designated in an official plan for clusters of business and economic uses, those being uses that meet the following criteria:</p> <ol style="list-style-type: none"> <li>1. The uses consist of business and economic uses, other than uses referred to in paragraph 2, including any of the following:                             <ol style="list-style-type: none"> <li>i. Manufacturing uses.</li> <li>ii. Uses related to research and development in connection with manufacturing anything.</li> <li>iii. Warehousing uses, including uses related to the movement of goods.</li> <li>iv. Retail uses and office uses that are associated with uses mentioned in subparagraphs i to iii.</li> <li>v. Facilities that are ancillary to the uses mentioned in subparagraphs i to iv.</li> <li>vi. Any other prescribed business and economic uses.</li> </ol> </li> <li>2. The uses are not any of the following uses:                             <ol style="list-style-type: none"> <li>i. Institutional uses.</li> <li>ii. Commercial uses, including retail and office uses not referred to in subparagraph 1 iv; ("zone d'emploi")</li> </ol> </li> </ol>	<p>Employment area: means those areas designated in an official plan for clusters of business and economic activities including manufacturing, research and development in connection with manufacturing, warehousing, goods movement, associated retail and office, and ancillary facilities.</p> <p>An employment area also includes areas of land described by subsection 1(1.1) of the Planning Act.</p> <p>Uses that are excluded from employment areas are institutional and commercial, including retail and office not associated with the primary employment use listed above.</p>

[27] Mr. Aston advised the PPS 2024 narrows the types of uses that make up an Employment Area and which uses are excluded from an Employment Area. The Employment Area definition and PPS 2024 now encourage a mix use of lands, including employment uses and sensitive land uses, located outside of Employment Areas. The result of which jobs can be located throughout a municipality instead of isolated in Employment Areas.

[28] Mr. Aston advised the PPS 2024 no longer requires municipal comprehensive reviews to remove lands from Employment Areas to permit non-employment uses or to broaden permitted uses, as was required by PPS 2020.

[29] Mr. Toman has conceded the Subject Site is not an "Areas of Employment" under the Act, however, contends that the Subject Site is an "Employment Area" under the new PPS 2024.

[30] Mr. Toman testified, that on November 5, 2024, Information Report PED24203 was presented to the Planning Committee summarizing how the recent Provincial policy and legislative changes impact Employment Areas and outlining the Planning Divisions

proposed approach to reviewing and updating the UHOP to be consistent with these changes.

[31] In March 2021, the City released a City Land Needs Assessment to 2051 Technical Working Paper prepared by Mr. Lorius. This report was subsequently updated in LNA 2025. The 2021 Land Needs Assessment is no longer relevant since the province approved the City's No Urban Boundary Expansion growth strategy. An updated 2025 Employment Area Land Needs Assessment ("LNA") was prepared by Mr. Lorius. The 2025 LNA analysis is structured to achieve policy driven density objectives to the plan horizon of 2051; in this case the City wide UHOP target of 29 jobs per ha.

[32] In addition, Mr. Lorius completed a Technical Memorandum ("Memo") dated January 6, 2025 that sets out the results of the LNA of the Subject Site at the time primarily high-density residential. The revised proposal changed to medium density.

[33] Through the Memo, the changes made to the "Area of Employment" definition in the Act has significantly reduced the permitted uses in these areas from what may be permitted in many of the City's designated Employment Areas, specifically excluding uses like standalone retail, commercial, office and institutional uses. The policies of the new PPS 2024 now permit removal of lands from employment areas through conversions outside of a municipally led comprehensive review.

[34] Mr. Lorius testified that the PPS 2024 definition of Employment Areas is similar to and refers to the Act's definition with a few minor differences. The general intent is to facilitate the provision of new housing supply on existing employment lands with office, retail and institutional use. The change in definition for Employment Areas is particularly significant for land use planning in the City because it affects virtually the entire business park and industrial supply, estimated at about 242 ha.

[35] On January 6, 2025, the City Staff received the Memo prepared in response to the direction from Council to defer consideration of the conversion of the Subject Site to

a future phase of the Municipal Comprehensive Review. City Staff supported the Memo's conclusions.

[36] Mr. Toman testified that the subject applications were considered under the previous PPS 2020 and Growth Plan policies as the applications are directly related to an Employment Land conversion request that is still being considered under the City's Urban Focused Municipal Comprehensive Review.

[37] Mr. Toman advised that staff report PED24203, highlighted the need for the City to undertake another comprehensive review and update to its Employment policies to be consistent with the PPS 2024. In Mr. Toman's opinion, it is premature to consider conversion of designated Employment Areas until this review and update has been completed.

[38] The concern from the City is the permission to entertain private conversion requests at any time, coupled with reliance on the narrow Act's definition of "Area of Employment," may result in piecemeal erosion of the City's current "Employment Area" designated lands, should an applicant be successful in arguing that they are not within an "Area of Employment."

[39] Mr. Lorus testified that both policy and definition need to be considered and the PPS policy supports the planned function of the Subject Site as an Employment Area.

[40] Mr. Toman had previously acknowledged to Council that it was likely that most of the lands in the City would not meet the PPS 2024 Employment Area definition. Mr. Toman maintained his position that the Subject Site is an Employment Area.

[41] Mr. Keleher testified "Employment areas" are defined in the 2024 PPS which is generally consistent with the definition of 'area of employment' from the Act. Therefore, the PPS 2024 appears to implement the Act by requiring municipalities to protect "Employment Area" lands where lands are designated in an OP for 'clusters' of

'business and economic uses' which are limited to manufacturing and warehousing uses. In Mr. Keleher's opinion, the Subject Site is neither an "employment area" under the PPS 2024 nor an "area of employment" under the Act.

[42] Mr. Keleher testified, the definition of "Employment area" in the UHOP which includes reference to the PPS 2020 has been taken directly from the PPS 2020 in order to be consistent with the PPS that was in-force at the time this definition was incorporated into the UHOP. According to Mr. Keleher, this definition has not been updated to reflect the definition of "Employment Area" in the new PPS 2024. In Mr. Keleher's opinion, this definition would no longer apply as it is not consistent with the applicable PPS 2024, allows for a broader range of uses than the PPS 2020 definition of same, in that it is inclusive of 'office' uses, and includes the term 'but not limited to' those primary uses which include office, manufacturing and warehouses.

[43] According to Mr. Keleher, the site is not located in a 'cluster' of lands designated for 'business and economic uses', as the site is isolated from any other surrounding lands that would meet the definition of 'area of employment'. Rather, the lands are surrounded by the QEW highway to the north with residential uses beyond the highway, a rail corridor to the south with agricultural uses beyond the rail corridor, natural heritage lands to the east, and a planned MTO transportation hub to the west. The lands are not contiguous to other 'employment area' lands such that they could be considered part of a 'cluster' of employment lands.

[44] In Mr. Keleher's opinion, the proposed development will not remove lands from an 'employment area' given that the Subject Site doesn't meet the definition of employment area. Therefore, the PPS 2024 policies that apply to employment areas do not apply to the Subject Site.

[45] Mr. Aston testified the Subject Site has a list of uses permitted by the UHOP which are uses that are expressly excluded from the definition of Employment Area

under the PPS 2024 and therefore the Subject Site does not meet the definition of Employment Area.

[46] Mr. Aston testified, that the Subject Site is zoned Business Park 'M3' exception 404 and Conservation/Hazard Land 'P5' in ZB 05-200. The M3 zone conforms to and implements the Business Park designation under the UHOP and permits a range of employment, commercial and institutional uses, including offices, hotels and retail uses as noted under section 9.3.1. Further site-specific exception 404 to the M3 zone permits additional uses including a tourist information centre, travel plaza, commercial recreation, financial establishment and medical clinic among others.

## **Findings**

[47] The Tribunal prefers the evidence of Mr. Keleher and Mr. Aston. The definition of Area of Employment and Employment Area are substantially the same. The Tribunal agrees with Mr. Aston when he concluded that since the City agrees that the lands are not an Area of Employment under the Act, they cannot also be an Employment Area under PPS 2024.

[48] The Subject Site is zoned Business Park 'M3' exception 404 and Conservation/Hazard Land 'P5' in ZBL 05-200. The Tribunal agrees with Mr. Aston, that The M3 zone conforms to and implements the Business Park designation under the UHOP and permits a range of employment, commercial and institutional uses, including offices and retail uses.

[49] The Tribunal prefers the evidence of Mr. Keleher that the Subject Site is physically separated from other lands that would meet the definition of Employment Area. The Subject Site is not an Area of Employment under the Act or an Employment Area under the PPS 2024 because it does not meet the requirement for "clusters of business and economic activities" as required by those definitions. The evidence has

shown the lands are not contiguous to other 'employment area' lands such that they could be considered part of a 'cluster' of employment lands.

[50] Mr. Keleher testified the area east of fifty road is designated business park and the 'contiguous corridor' that Mr. Lorus refers is located west of Winona Road. Mr. Keleher advised the area in between those two-business park designated lands are lands that are designated for Neighbourhoods and District Commercial and permit residential and a wide range of commercial uses.

[51] Mr. Keleher advised the lands in Grimsby east of Hunter Road permit industrial, office commercial and residential uses. In Mr. Keleher's opinion, with which the Tribunal agrees, the corridor is not contiguous and the Subject Site and the lands east of Fifty road are not part of the cluster of business and economic uses.

[52] Mr. Toman acknowledges that the Business Park designation for the Subject Site allows a variety of office and commercial uses. Mr. Toman also advised that Planning Staff are implementing a work plan to ensure that the Employment Area lands in the City are in line with the new provincial policy that further restricts uses in this areas.

[53] Mr. Lorus advised that both the definition and policy must be considered, otherwise you obtain a result contrary to the PPS 2024 directions to protect Employment Areas. Mr. Lorus states this interpretation based solely on the definition alone leads to the conclusion that the City has no employment areas at all, which is squarely in contrast with long standing provincial directions to protect employment areas and produces "*an interesting dynamic in the policy architecture and to manage that, I turn to the section in the PPS that directs municipalities to assess and update the employment land supply.*"

[54] Mr. Toman relied on a map titled **Non- Industrial Land Uses** (Exhibit 5 Tab 6) to demonstrate that the surrounding area was primarily industrial and therefore was a "cluster[s] of business and economic activities." Under cross examination Mr. Toman

conceded that he cannot confirm the accuracy of this map which was made under his direction, as there was errors found on it.

[55] The City submits the intent of the City's map was to show a corridor of employment uses, not to show a detailed inventory of all uses in every designated Employment Area. Since the Appellant's own map shows that there are many areas of employment uses in the subject corridor, there is no basis for disregarding the City's evidence on that issue.

[56] However, the Tribunal finds Mr. Toman conceded under cross examination that this map was flawed, therefore, none of the City witnesses could rely on the map despite doing so for the purpose of preparing evidence for this hearing. Thus, the Tribunal gave no weight to this evidence or other witnesses that relied on it.

### **Premature**

[57] Mr. Lorius asserts the Employment Land conversion request that is still being considered under the City's Urban Focused Municipal Comprehensive Review and it is premature to consider conversion of designated Employment Areas until this review and update has been completed. The City has recognized that the UHOP will be updated to be consistent with the employment changes in PPS 2024 and has created a workplan to complete this update in phases. The Province only confirmed what policies apply to the proposal on December 20, 2025 when it issued its decision to not enact transition regulations.

[58] Although the Tribunal acknowledges that the PPS 2024 had no transition provisions when it was enacted and the City's request to the Province for specific transition provisions they were seeking in November 2024, the Province did not grant the delay request or implement any transition policies. Mr. Toman also acknowledged that the City has also not passed an OPA to allow for these consistency amendments to take place.

[59] In addition, Mr. Aston highlighted policy 6.1.7 which states:

Where a planning authority must decide on a planning matter before their official plan has been updated to be consistent with the Provincial Planning Statement, or before other applicable planning instruments have been updated accordingly, it must still make a decision that is consistent with the Provincial Planning Statement.

[60] The Tribunal agrees with Mr. Aston that this policy contemplates a situation exactly like this where an Official Plan has not been updated and indicates that the planning authority and the Tribunal must still make a decision that is consistent with the PPS.

[61] The Tribunal finds this policy direction does not require the City to update the Official Plan before a decision can be made on the Applications and therefore the proposed OPA and ZBA are not premature.

[62] In regard to the argument whether most of the lands in the City would not meet the PPS 2024 Employment Area definition, Mr. Keleher testified, a Staff Report to the Planning Committee dated November 5, 2024, which states;

The effect of the legislation changes will mean that the City's land use policies for permitted uses in Employment Areas and implementing regulations like the Zoning Bylaw will no longer be aligned with the "Area of Employment" definition in the Planning Act. Areas that continue to permit uses that are now excluded under the Planning Act definition like stand-alone office, retail, commercial and institutional uses, will no longer be considered as "Area of Employment under the Planning Act., and therefore not protected from appeals from decisions related to requests for conversion to nonemployment uses.

[63] The Tribunal finds the application proposes to maintain an employment function through the proposed split designation in the OPA and ZBA on the Subject Site which will permit non-residential uses, including offices, which could generate 524 jobs on the subject site. This helps furthers the provincial goal of intensification for development of new homes while maintaining employment opportunities in the City.

[64] Therefore, based on the evidence before it and the facts and circumstances of this case, the Tribunal finds the Subject Site is neither an Area of Employment nor an Employment Area and as such is available for redevelopment as proposed by the OPA and ZBA.

## **Issue 2 – Land Economics/Land Use Compatibility**

### Land Economics

[65] Mr. Toman contends the Subject Site does not constitute an area of intensification under the PPS, since the Subject Site is within a UHOP Designated Greenfield Area not a Strategic Growth Area under the PPS 2024.

[66] Mr. Toman and Mr. Lorius both testified, the LNA analysis of the City's land supply for employment indicates that the City may need up to 250 ha of land for employment uses to meet demand by the year 2051. According to Mr. Toman removal of the Subject Site lands from the employment area land base, as well as potential impact to the viability of the remainder of the surrounding employment area quadrant will further strain capacity by approximately 20 ha. Retention of the employment area lands in the quadrant is recommended by the LNA.

[67] Mr. Toman advised, with respect to Policy of 2.3.1, the UHOP establishes a minimum intensification target of 80% and the FWSP establishes a minimum target of 70 people and jobs per ha. According to Mr. Toman, the Subject Site is outside the Built-up Area and the residential development would not contribute to the City's intensification Target. The FWSP already exceeds the PPS's 2024 target of 50 residents and jobs per ha in designated growth areas. In Mr. Toman's opinion, the proposed residential density/form can already be accommodated within the City's built-up area.

[68] Mr. Lorius testified the employment generation of 524 jobs would equate to an employment density of 72 jobs per ha. According to Mr. Lorius the proposal instead

should be considered a net loss of employment potential from a City-wide perspective because it is not simply total employment that matters to land use planning for industrial and commercial uses, but rather the number of jobs by type: particularly the former, which generally requires a location within a designated Employment Area and the latter that generally does not and can be accommodated elsewhere in the community.

[69] Mr. Lorius highlighted the City's adoption of No Urban Boundary Expansion Growth Strategy, which seeks to accommodate all forecast growth in population and employment within the current Urban Boundary.

[70] Mr. Keleher advised the City's employment forecast would see growth from 238,000 jobs in 2021 to 357,000 jobs in 2051. These forecasts are the basis of the City's consideration of employment land supply and demand in their municipal comprehensive review process known as "GRIDS 2".

[71] Mr. Keleher testified, the Updated Development Concept would provide office space that is estimated to generate more jobs (524 jobs) than a traditional employment uses (industrial or warehousing) would generate, the development will optimize the use of the site and reduce the reliance on other employment lands in the City in achieving the City's employment growth forecast. According to Mr. Keleher, by generating employment at a rate above the planned densities for employment lands, the Subject Site is over-contributing to the economic growth of the City and Region.

[72] Mr. Aston opined that what is being proposed through the Proposed Development is to maintain the function of the existing Business Park component and adding in residences to optimize the use of the Subject Site. Mr. Aston opined that the Proposed Development would efficiently utilize the land and resources. The Proposed Development would use existing infrastructure, does not require an expansion of major roads and is in proximity to employment and commercial use and is within walking distance to existing transit and the planned multi modal hub at Winona Crossing.

[73] Mr. Aston provided evidence that the Proposed Development supports the economic development policies set out in section 2.8.1 by encouraging intensification of employment uses through maintaining an area as Business Park and providing opportunity for an increase in jobs through the creation of future office uses.

#### Land Use Compatibility - Noise

[74] Mr. Toman's evidence and reasons are partially relied on through Mr. Lorus Memo. Mr. Toman comments the Memo notes that impacts could include land speculation for other employment sites in the area.

[75] The QEW north of the Subject Site falls within the category of *Major goods movement facilities and corridors* as defined in the PPS 2024. The QEW is also identified as a Core Regional Route in Metrolinx 2041 Regional Transportation Plan.

[76] Mr. Keleher testified, while the PPS 2024 directs municipalities to 'protect' employment areas in proximity to major goods movement facilities and corridors, given the broad range of facilities that would meet the Provincial definition of what a major goods movement facility and corridor is, the City would need to protect lands designated solely for manufacturing and warehousing uses on any employment areas within proximity to highways, rail corridors, ports, airports, intermodal terminals, truck terminals, freight facilities, etc. As such, this "protection" does not apply to this site. In addition, it is a medium density residential use.

[77] Mr. Toman advised, the Planning Justification Report and Noise Feasibility Study submitted as part of the OPA and ZBA application did not undertake a land use compatibility analysis to assess a "hypothetical" worst case scenario based on the existing land use permissions on the surrounding Industrial lands. It only applied the Provincial D-6 guidelines to established uses which is not consistent with the guidelines.

[78] Mr. Toman testified the Provincial D-6 Guidelines establishes three classes of Industrial uses based on the outputs, scale, process and operation/intensity. The guidelines provide recommended minimum separation between each class of Industrial use. The Subject Site and lands within the quadrant are designated and zoned to permit uses that are categorized as Class III facilities.

[79] Mr. Aston also provided evidence that no Major Office was being provided on the Subject Site as the ZBA limits the size of the office to 3,395 m<sup>2</sup> which would not meet the definition of Major Office. With respect to other PPS 2024 policies, Mr. Aston also provided evidence that there are no land use compatibility concerns resulting from the Proposed Development. He opined that lands within 300 m of the Subject Site are already constrained by existing land uses or land use permissions on the Subject Site and adjacent lands for sensitive land uses.

[80] Mr. Aston and Mr. Theodore opined that the proposed Medium Density Residential designation criteria is addressed by the Proposed Development as it provides for a mix of housing types and unit sizes; implements sustainable building and design principles; does not result in any shadow or overlook conditions; provides a transition of building heights and appropriate setbacks and stepbacks; and is within a 45 degree angular plane from the sensitive residential land uses to the southwest.

[81] Mr. Theodore also provided evidence that the proposed scale, density and height of the Proposed Development is appropriate for the location and that it will not have adverse impacts on the surrounding area.

[82] Mr. Theodore also opined that the built and emerging character of the area is comprised of a variety of residential forms and commercial shops and services. He opined that the Proposed Development is in keeping with the character of the evolving shopping centre to the west which anticipates residential uses to contribute to shops and services.

[83] Evidence provided by Mr. Aston of an approved medium density residential development on Vince Mazza Way which is adjacent to commercial and office uses. Mr. Toman advised in regard to policy 2.1.6 in PPS 2024 which stated;

The range and mix of land uses is already accommodated within the surrounding area, including permissions for up to four dwellings per residential lot. In addition, the Urban Hamilton Official Plan and Fruitland Winona Secondary Plan permits a similar residential development nearby at Vince Mazza Way and South Service Road which is a more suitable location for a mixed-use medium density residential development given its close proximity to amenities and transit.

[84] Mr. Aston provided evidence that Vince Mazza Way development was approved without a noise study or an odour study requirement.

[85] Mr. Garcia was qualified to provide expert opinion evidence in the area of acoustic and vibration engineering. Mr. Garcia prepared both a Noise Feasibility Study dated July 26, 2021 and a Noise and Vibration Feasibility Study dated February 27, 2025.

[86] Mr. Garcia provided evidence that the Proposed Development is feasible from a noise perspective. He provided evidence that while future road and rail traffic sound levels are expected to exceed MECP guidelines, feasible means exist to mitigate the sound level in the dwelling units to within the applicable criteria. With respect to stationary noise, he provided evidence that the noise from proposed commercial/office uses is expected to be within the applicable criteria.

[87] Mr. Garcia also opined that the Subject Site is already constrained by existing sensitive land uses such that a "hypothetical" worst case scenario is never done in a case like this since the impact of potential uses can vary so much depending on orientation, building heights etc. In a case like this where the vacant lands are located closer to existing sensitive land uses to the south of the railway, the uses of these vacant industrial lands are already constrained as the existing or planned sensitive land

uses on adjacent lands would have to be considered which would mean Class III facilities are not appropriate from a noise perspective.

[88] While Mr. Van Rooi maintained that the Proposed Development does not meet the Ministry of Environment guidelines as there is no guarantee that the MTO lands won't be sold and a hypothetical worst case scenario was not analyzed, Mr. Van Rooi conceded that there are existing and permitted sensitive land uses on the Subject Site and area that in itself is a constraint. He also conceded that Mr. Garcia, the only qualified noise expert, explained why a worse case scenario is not done in case like this.

[89] On cross examination, Mr. Toman and Mr. Van Rooi conceded there was no longer any noise concern as it relates to the land to the west of the Subject Site, however Mr. Van Rooi maintained his position that there still could be concerns with respect to the lands to the east of the Subject Site. Under cross examination, Mr. Van Rooi was not aware of the comments provided by the MTO that they have no objection to the proposal, nor was he aware of the City's own study that identified the MTO lands as non-developable.

## **FINDINGS**

[90] The Tribunal prefers the evidence of Mr. Aston, Mr. Keleher, Mr. Theodore, and Mr. Garcia on the policies of the UHOP and PPS 2024 in regard to land economics, and compatibility.

[91] Mr. Lorius noted that it is not simply the total jobs that matter to planning policy for industrial and commercial land uses. The purpose and intent of land use planning for Employment Areas is to protect these lands for the specific uses that require those locations and cannot locate in other areas. The profile of employment in Employment Areas also tends to include a range of jobs in traditional industrial activities that are generally not found in commercial areas or other mixed-use areas.

[92] The Tribunal agrees with Mr. Keleher that there is no distinguishing between jobs in the employment forecast, as a job is a job. Mr. Keleher noted that the UHOP does not plan for specific types of jobs because there is a wide range of permitted uses provided in the implementing ZBL. He noted that under this policy Business Parks are planned for a minimum of 38 jobs per ha and the Proposed Development is planned for 70 jobs per ha which is 141% higher than the City estimates.

[93] The Tribunal has heard evidence from the City witnesses that the Applicant/Appellant has not undertaken adequate analysis to determine how the proposed sensitive land use (e.g. residential) avoids or mitigates potential adverse effects from potential development or redevelopment of the surrounding Employment Area based on existing as a right zoning based using Provincial D series guidelines.

[94] However, Mr. Aston testified he completed a detailed analysis of the surrounding land uses in the context of the provincial guidelines relating to separation distances, being the D-6 guidelines. Mr. Aston noted that the municipally initiated site-specific zoning provision 404, plans for the Subject Site to be used for many other uses including an indoor soccer facility, a bank, a hotel and office uses.

[95] The purpose of the Memo prepared by Mr. Lorius was to look at forecasted demand and land supply and was acknowledged to be a preliminary Memo. The relevancy of the Memo comes into question and evidence relied upon it since the Memo relies on many of the findings in the 2021 LNA despite the fact that the 2021 was admittedly completed under a different policy regime and does not consider the implications of the new Area of Employment definition under the Act and Employment Area definition under the PPS 2024.

[96] The PPS 2024 direction states that Official Plans are the most important vehicle to implement the PPS 2024 and there are policies requiring the Official Plans to be

consistent with the PPS. However, in this case the City has not updated its UHOP to be consistent with the PPS 2024.

[97] Mr. Lorius testified that the results of the LNA served to provide context for the assessment of the conversion. The City submits It would be unreasonable to discard the broader land use review, which was directed by Council to be undertaken as part of the appeal related to this matter.

[98] However, in cross examination, Mr. Lorius agreed that the 2021 LNA was completed under a different policy context. The Memo was a preliminary analysis only and that both the demand and supply analysis therefore, the total findings in the Memo could change based on further inputs. Therefore, the Tribunal did not disregard the broader land use review but only gave minimal weight to the Memo and the evidence that was relied upon it.

[99] Based on the evidence of the Applicant/Appellant's experts the Tribunal finds that the Proposed Development to be implemented through the OPA and ZBA for approval does not result in any land economic or land use compatibility concerns and these policies are consistent with PPS 2024.

## **CONNECTIVITY**

[100] The City contends, this proposal does not maintain or enhance the character of the area. Although the area is transitional and subject to change, the proposal introduces a built form that is not anticipated for the area. The proposal also disrupts a land use pattern between employment lands that may hinder their development capabilities and introduces densities and heights that were not anticipated for the entirety of the Secondary Plan area. The proposal is an isolated site that has no access to the broader area through transit or multi-use paths.

[101] Mr. Toman testified, the Queen Elizabeth Way and CN rail line result in physical land use barriers which would limit the ability not just residents with disabilities but all residents to safely and conveniently access nearby services and amenities without a private automobile. Limited mobility options have a greater impact on equity-servicing groups.

[102] Mr. Toman testified, there is no pedestrian infrastructure, active transportation facilities, or transit service benefiting the site from a multimodal perspective. Public service facilities in the area have not been planned to accommodate additional high or medium-density developments in this isolated, eastern quadrant.

[103] Mr. Toman advised under policy E.2.1 of the UHOP that the section of South Service Road north of the Subject Site does not constitute an Urban Node as it is a designated Employment Area which does not allow a mix of residential uses and is not serviced by transit. According to Mr. Toman the City has recently completed its OP review which considered and ultimately did not support redesignating the lands from an Employment Area within the Urban Structure of the UHOP.

[104] Mr. Lorius testified he had concerns with the compatibility of significant high-density residential uses on the Subject Site within the existing and planned local land use context. According to Mr. Lorius the site is currently located in an area with limited pedestrian connectivity, transit access, and proximity to essential services such as schools, community centers, and medical facilities. Mr. Lorius highlighted the UHOP policies on high-density residential uses, however did acknowledge on cross examination that the revised concept plan called for a medium density development.

[105] Mr. Van Rooi testified that the Subject Site was isolated. Mr. Van Rooi testified about his concerns regarding walking distances to public facilities such as schools. Mr. Van Rooi noted that a person would have to walk from the residential area down South Service Road, which he calculated to be about 570 m. Mr. Van Rooi opined that this distance is inconvenient for most people.

[106] Mr. Theodore provided his opinion that the Subject Site does not have to wait for adjacent lands to develop to allow for the Subject Site to develop. He noted that provided through the site plan process the design protects for appropriate and realistic interconnectivity with abutting landowner, then connectivity is protected. Mr. Theodore opined that the Proposed Development protects for future connections to the east and west and when the adjacent lands eventually develop, they will build on the protected connections from the Subject Site allowing for porosity and interconnectivity between adjacent lands. To this point the Concept Plan shows pedestrian sidewalks along the north property limit along South Service Road and a potential trail along the hydro corridor lands.

[107] Mr. Theodore also testified that there was a transit stop approximately 400 m (as the crow flies) from the Subject Site in addition to a possible pedestrian trail or foot path through the hydro corridor.

[108] Mr. Aston testified that there are public facilities in the area, being schools, parks and open space. In addition, a person can walk to Winona Crossing commercial plaza, or to transit that takes you within the area or into downtown.

[109] Mr. Aston advised a Traffic Impact Assessment and update was completed and the transportation experts have resolved the transportation issues on the basis of a holding provision in the proposed ZBA.

## **FINDINGS**

[110] The City contends, the proposal does not support the urban structure and function contemplated by UHOP Policies as it does not focus growth to an Urban Node or Urban Corridor and is not near a Major Transit Station Area. The proposal is not connected well with existing transit and is not expected to be serviced with higher order

transit. While there is a sidewalk along South Service Road, the commercial uses are outside a comfortable walking distance from the Subject Site.

[111] Through cross examination, Mr. Van Rooi agreed that the Subject Site is within the catchment areas for Catholic Elementary, Catholic High School, Public Elementary and Public High Schools and therefore, there were schools available for the school aged residents of the Proposed Development.

[112] Mr. Van Rooi under cross examination acknowledged, that the City's School Site Design Guidelines for Active and Sustainable Transportation notes that for elementary school distances under 1.2 km and for distances under 3.2 km for secondary schools are considered to be well within typical walking and cycling trip distances.

[113] The City asserts, while the proposal does contribute to a range of housing options, the Subject Site is not readily accessible by existing transit and appears auto dependent. Residents unable to drive may have restricted participation in society. Therefore, this is not a proposal that contributes to a complete community.

[114] Mr. Van Rooi under cross examination, acknowledged that the MTO, who owns the abutting lands to the west, was aware of the residential uses proposed for the Subject Site and had no concerns.

[115] The Tribunal finds that the City's argument that the Subject Site is not readily accessible by existing transit and appears auto dependent and is not a proposal that contributes to a complete community cannot be sustained based upon the below noted evidence.

[116] The Subject Site is within City's School Site Design Guidelines for Active and Sustainable Transportation, and is within the catchment areas for Catholic Elementary, Catholic High School, Public Elementary and Public High Schools for school aged residents of the Subject Site.

[117] In regard to isolation, Mr. Van Rooi under cross examination also acknowledged the policies in the UHOP which contemplates the walking distance to Community parks being 2 km and the Subject Site was well within 2 km of the Community park.

[118] Mr. Van Rooi testified, there are reports suggesting development of a higher density helps support transit.

[119] In response to this City's argument, the Applicant/ Appellant provided case law in *Sonoma Homes Inc. v. Hamilton (City)*, where the Tribunal found densities come first in order to support transit and not the other way around (Further analysis is provided under the heading Book of Authorities below).

[120] However, in regard to the same decision, the City submits the Applicant/ Appellant ignores provisions of prior policy documents also carried forward that support the City's position, namely that municipalities identify areas as a focus of residential development in the Strategic Growth Areas and that they plan for, protect and preserve Employment Areas.

[121] The Tribunal prefers the evidence of Mr. Theodore who testified the Subject Site does not have to wait for adjacent lands to develop to allow for the Subject Site to develop. He advised that through the Site Plan process the design protects for appropriate and realistic interconnectivity with the abutting landowner, and therefore connectivity is protected. The Proposed Development shows pedestrian sidewalks along the north property limit and along south service road and a potential trail along the hydro corridor lands.

[122] Therefore, based on this evidence, especially the cross examination evidence of the City's witnesses, the Tribunal finds the proposed development is not isolated and there are no connectivity issues and conforms to the Urban Design policies of the UHOP.

## NATURAL HERITAGE

### Environment Impact Study (EIS)

[123] Ms. Kiddie testified that the proposed development and site alteration will negatively impact the Core Areas and their functions. Namely, the proposed design will result in:

- a) The reduction of ecological functions;
- b) The reduction of plant and animal movement;
- c) Fragmentation of larger landscape connections via encroachment (including trampling, dumping, removal of vegetation);
- d) Reduction of biodiversity;
- e) Increased vulnerability to invasive species;
- f) Increased human/wildlife interactions (including predation of wildlife by pets);
- g) The loss of vegetation and increased runoff; and,
- h) Increased soil compaction due to grading.

[124] Mr. Glasbergen drafted an EIS dated August 2021 and a revised EIS dated January 31, 2025. Mr. Glasbergen relied on the Revised EIS through his oral testimony.

[125] Ms. Kiddie testified, a revised EIS was submitted January 31, 2025 to address a revised concept plan. This information was submitted after the application had been appealed to the Tribunal and was not formerly reviewed by Natural Heritage Planning staff.

[126] Ms. Kiddie highlighted the fact that The August 4, 2021 EIS was prepared and submitted prior to the approval of a ToR (ToR approved August 24, 2021). As per the City's EIS Guidelines.

### Field Work Surveys

[127] Mr. Glasbergen advised the revised EIS provides the fieldwork that was completed over a three year period from 2021 to 2023.

[128] Ms. Kiddies testified that Field Work Requirements include that the timing of species surveys is critical to the characterization of features and their functions. In Ms. Kiddie's opinion, the deviations from biological inventories were not identified by the Applicant/Appellant's consultant or approved by Natural Heritage Planning staff.

[129] Ms. Kiddie noted paragraph 58, of the EIS Guidelines which highlight the most appropriate season for specific surveys is to be identified in the ToR. In Ms. Kiddie's opinion, several field inventories are missing or have not been completed as per the approved ToR (August 24, 2021).

[130] The timing of the surveys and how they relate to the approved ToR is provided below which include Vegetation and Migratory Bird Surveys:

Inventory	Approved ToR Timing	EIS (August 4, 2021) Timing	Revised EIS (Jan.31, 2025) Timing
Vegetation Survey	2 season  Spring (May to early June)  Fall (Sept. to Oct.)	2 season  Spring (May 13, 2021)  Summer (Aug. 2, 2021)  <b>*Fall Survey missing</b>	2 season  Spring (May 13, 2021)  Summer (Aug. 2, 2021)  <b>*Fall Survey missing</b>
Migratory Bird Surveys	Fall (August to October)  <b>*As per MNRF protocols surveys are</b>	Spring (March 21, 28, April 3 and April 13, 2021)  <b>*Fall</b>	Spring (March 21, 28, April 3, and April 13, 2021)  <b>*Fall</b>

Inventory	Approved ToR Timing	EIS (August 4, 2021) Timing	Revised EIS (Jan.31, 2025) Timing
	<b>to be at least 2 times week during peak migration period (March to May; end of August to October)</b>	<b>surveys are missing</b>	<b>surveys are missing</b>
Amphibian Call Survey	3 surveys between April and June	3 surveys May 18, June 3, and June 17, 2021  <b>*First survey conducted late in season (missing early April calls; no rationale for change)</b>	3 surveys May 18, June 3, and June 17, 2021  <b>*First survey conducted late in season (missing early April calls; no rationale for change)</b>

Watercourse Characterization	June	July 27, 2021	July 27, 2021
		<b>*no rationale for deviation; intermittent streams are to be assessed when there is</b>	<b>*no rationale for deviation; intermittent streams are to be assessed when there is</b>
Inventory	Approved ToR Timing	EIS (August 4, 2021) Timing	Revised EIS (Jan.31, 2025) Timing
		<b>likelihood of water</b>	<b>likelihood of water</b>

[131] Ms. Kiddie testified, that the analysis provided within the EIS and revised EIS is not reflective of appropriate survey methodology or the approved ToR, namely,

- Landbird Migratory Stopover Area;
- Special Concern and Rare Wildlife Species

[132] Ms. Kiddie advised, the revised EIS concluded that the Subject Lands (specifically within the cultural agricultural lands) do not support significant migratory bird habitat. It's Ms. Kiddie's opinion, that these conclusions have been made using insufficient information. Specifically:

- Timing of Surveys: As per Table 2 (Completed Field Work) within the revised EIS, 4 migratory bird surveys were completed in the spring for the Subject Lands (March 21, March 28, April 3, and April 13, 2023). It is Ms. Kiddie's opinion, that

this does not meet the requirements/expectations set out in the approved ToR (fall surveys were to be completed). In addition, the spring surveys do not meet the Ministry of Natural Resources and Forestry (“MNR”) requirements (complete surveys 2 times per week during the migration period; March to May and end of August to October);

- Further, within Appendix E (Significant Wildlife Habitat Assessment) of the revised EIS, it has been identified that “fall migratory bird surveys confirmed the absence of SWH”. It is Ms. Kiddie’s opinion this is contradictory to the level of effort identified within Table 2 (Completed Field Work) as additional migratory bird surveys were not completed in the fall; and,
- Number of Surveys: On page 30 of the revised EIS, it has been stated “in total, nine surveys were completed, and all had similar results, with a low density of songbirds identified”. It is Ms. Kiddie’s opinion that this statement does not provide an accurate account of the field work that was completed. Separate breeding bird surveys (June 11 and June 28, 2021) and migratory bird surveys were completed. These surveys are different and are not comparable.

[133] Ms. Kiddie testified the revised EIS concluded that the Subject Site does not contain habitat for Special Concern and Rare Wildlife Species. However, in Ms. Kiddie’s opinion, this conclusion is not reflective of the existing conditions as it relates to the Monarch Butterfly (Special Concern).

[134] Ms. Kiddie highlighted Vegetation Communities which on the revised EIS, it has been stated “there is currently no significant wildlife habitat (i.e., milkweed community) within the Subject Property”. It is Ms. Kiddie’s opinion, that this is in contradiction to information provided within Appendix A (Floristic Inventory and Data Cards). Common Milkweed has been observed within the Dry-Fresh Mixed Meadow associated the majority of the Subject Site. Milkweed is the host plant for Monarch.

[135] In summary, Ms. Kiddie testified the EIS is to provide recommendations on mitigation measures and design measures to accommodate or enhance existing natural features and functions. It is Ms. Kiddie's opinion that the Applicant/Appellant's revised EIS does not provide sufficient measures to mitigate the impacts of the proposed development.

[136] Mr. Glasbergen admitted that not all of the surveys adhered to the timelines noted in the ToR agreed to between himself and the City. However, he notes that the surveys were done within the Province's protocols and he has full confidence that the collected data is good, appropriate, and entirely sufficient to characterize the natural heritage features and functions of the Subject Site and the adjacent Core Area.

[137] In Mr. Glasbergen's opinion the site is not considered a significant wildlife habitat. Mr. Glasbergen noted, as it relates to the Monarch Butterfly, that a small amount of milkweed was found at the Subject Site, which is a host plant for monarch butterflies. However, an assessment was conducted to see if larvae was present to see if the milkweed was acting as a host plant, however no larvae was present. Mr. Glasbergen also noted that in addition to the milkweed, there needs to be a diversity of plants for monarch butterflies to form a habitat. He concluded that the Subject Site is not a SWH because there were not enough of the additional species, mix of species, and the small size of the milkweed patches found.

[138] Mr. Glasbergen testified that only one vegetation community exists on the Subject Site which is described as Dry-Fresh Mixed Meadow Ecosite. The vegetation communities reflect the historical agricultural uses. Mr. Glasbergen' provided an aerial image of the Subject Property from 1999. The image shows how the entire property was vineyards and the majority of the Fifty Creek Valley was orchard.

[139] Mr. Glasbergen advised that two breeding bird surveys in 2021 and three in 2022 were conducted. Of the eighteen (18) birds recorded, all were common or abundant in the City with the exception of the cliff swallow (observed collecting mud from the temp

SWM pond – presumably using either South Service Road or QEW bridge), which is uncommon. No breeding habitat for these species is present on the Subject Site.

[140] Mr. Glasbergen advised, six (6) different survey dates have been identified for the Migratory Bird Surveys between the Subject Site and the adjacent site at 34 Bridgman Lane. Mr. Glasbergen advised there was a data sharing agreement in place between the owners of the Subject Site and 34 Bridgman Lane and therefore data from surveys done for 34 Bridgman Lane have also been considered in the EIS for the Subject Site.

[141] Mr. Glasbergen testified that six migratory bird surveys were conducted in the fall of 2021 and spring of 2023. Over those visits, on average thirty-four (34) individual birds were observed with a max count of forty-one (41). For a site to be considered Candidate SWH for Migratory Land Bird Stopover it requires a minimum of greater than two hundred (200) birds a day. The single fall visit had a total of twenty-two (22) birds when excluding flocks of European starlings (non-native species) sitting on the hydro-lines located off-property.

[142] Mr. Glasbergen opined that overall, between the breeding bird surveys and the migratory bird surveys carried out over multiple years and at various times of the year, the results were consistent that the Subject Site only supports a low abundance and richness of birds, with the majority being common or abundant within the City.

#### Vegetation Protection Zones (VPZ)

[143] Ms. Kiddie advised VPZs have been identified within the Stoney Creek Urban Boundary Expansion (SCUBE) Subwatershed Study. For the Subject Site, a 30 m VPZ has been identified to be provided to Fifty Creek, Fifty Mile Wetland, and Fifty Creek Valley ESA. This was based on the requirements within the former Stoney Creek Official Plan (Stoney Creek Open Spaces and Natural Environment System).

[144] Within the revised EIS, a 15 m VPZ has been identified for Fifty Creek, Significant Woodland, and the Fifty Creek Valley ESA. A 30 m VPZ has been identified for the Fifty Mile Wetland.

[145] Ms. Kiddie testified that the revised EIS concluded that the reduction of the VPZ from 30 m to 15 m is satisfactory because there are no rare or significant habitat or species within the valley. However, in Ms. Kiddie's opinion this rationale does not consider that features and their functions have not been adequately assessed.

[146] Ms. Kiddie noted, the proposed land use is another factor to consider when assessing VPZ widths. Residential uses are likely to result in encroachment (trampling, vegetation removal, dumping), creation of informal trails, an increase vulnerability to invasive species, and greater exposure of wildlife to predation from pets.

[147] To mitigate these impacts, it is Ms. Kiddie's opinion that a 30 m wide VPZ should be provided to the Significant Woodland/Fifty Creek Valley ESA as envisioned in the Subwatershed Study.

[148] Mr. Glasbergen provided evidence that the Proposed Development will retain the entirety of the Fifty Creek Valley with a 15m VPZ. He provided evidence that the 15 m VPZ is sufficient and that Ms. Kiddie has already supported a 15m VPZ as an adequate VPZ for the Fifty Creek Core Area for the adjacent property at 34 Bridgman Lane. While Ms. Kiddie stated that she was taking her guidance from the SCUBE for insisting on a 30m VPZ, on cross examination she conceded that the City has deviated from this standard when approving the 15m VPZ on the adjacent property.

[149] Ms. Kiddie testified that the VPZ is not sufficient because residents may dump debris, clip the vegetation, create trails, and have pets. On cross examination Ms. Kiddie agreed that this was the potential for any residential development abutting a core area. She agreed that with respect to these concerns, a mitigation measure would be fencing, which she agreed the City could require as part of the site plan process.

## Trees

[150] Ms. Kiddie highlighted that trees provide a variety of functions to the overall community (i.e., canopy cover, energy conservation, mental health benefits, wildlife habitat). This is recognized within UHOP Volume 1 policy C.2.11.1. which states;

The City recognizes the importance of trees and woodlands to the health and quality of life in our community. The City shall encourage sustainable forestry practices and the protection and restoration of trees and forests.

[151] Ms. Kiddie testified, a tree inventory has been provided within Appendix C of the revised EIS. This Plan inventoried 58 trees. The tree species observed within the Subject Site included Black Walnut, Manitoba Maple, Eastern White Cedar, Crack Willow, Ohio Buckeye, Black Cherry, Green Ash, Austrian Pine, Norway Spruce, Sweet Crab-apple, Common Pear, and Norway Maple.

[152] It is Ms. Kiddie's opinion that the design of the development does not consider:

- The importance of trees to the health and quality of life in the community; and,
- The integration of existing vegetation through the protection and restoration of trees

[153] Ms. Kiddie advised the trees within the Subject Site contribute to these services thus supporting the urban forest and a healthy, livable community;

- Canopy Cover;
- Biodiversity Conservation; and,

- Physical and Mental Health Well-being

[154] Mr. Glasbergen provided evidence that seventeen (17) live trees are proposed to be removed which includes five (5) non-native trees. Mr. Glasbergen advised that one hundred (100) native trees will be planted based on the planting area of the VPZ.

[155] Ms. Kiddie opined that the protection of existing mature trees is essential to growing the urban forest and reach the City's canopy cover target. Some of the trees within the Subject Site are capable of growing into large trees and that these trees have the potential to contribute significantly to the canopy cover within the City. She stated, that the design of the development does not consider the importance of trees within the Subject Site and a loss of canopy cover will result if the development, as proposed is approved.

[156] Mr. Glasbergen testified, there will be street trees and landscape trees within the development. He opined that there will be a net gain of tree canopy cover on the property. Though Ms. Kiddie referred to a woodlot on the Subject Site in her examination in chief, she admitted under cross-examination that there was no woodlot on the Subject Site.

[157] Ms. Kiddie testified that Black Walnut, a native species, is to be removed from the Subject Site. It is her opinion that with the removal of native species there will be an opportunity for increase invasive species colonization. This will reduce the biodiversity within the larger community and result in a less resilient urban forest.

[158] Ms. Kiddie highlighted, within the City's Urban Forest Strategy, trees can provide people with calmness, serenity, and improved quality of life. They also encourage outdoor activity. In her opinion, the trees within the Subject Site contribute to a healthy community by: i) reducing pollutants (airborne pollutants have been linked to a variety of different diseases such as heart disease, respiratory illness); ii) regulating temperatures; and iii) allowing for access to nature in the City. In addition, the removal of the trees

within the Subject Site will reduce the functions/benefits that the trees provided. Thus, contributing to a less healthy community.

[159] Ms. Kiddie agreed that neither the UHOP nor the Tree Protection Guidelines contemplate the preservation of all trees on all sites in the City. While she maintained that she had concerns about the tree removal on the Subject Site, she admitted under cross-examination that her concerns were related to seven trees only. She also agreed that while there is a one-to-one compensation policy for the removal of trees, it was Mr. Galsbergen's evidence that more than 100 trees will be planted in the VPZ which will exceed the City's own compensation policies. Despite voicing concerns regarding the potential for planting non-native species, Ms. Kiddie admitted under cross-examination that only native trees will be planted as per the agreement in the ASF and the City's control over the planting as part of the site plan process.

## **FINDINGS**

### **Environment Impact Study (EIS)**

[160] The Tribunal accepts the explanation of Mr. Glasbergen in regard to the timing of the surveys being conducted prior to the finalization of the ToR. Mr. Glasbergen noted that it takes time for the City and other agencies to review and approve the ToR, and field work may require to start prior to the approval of the ToR to not miss any timing windows. On cross examination Ms. Kiddie acknowledged, the timing of the surveys in comparison to the ToR approval is not abnormal. Ms. Kiddie testified that it was becoming a problem that several applicants start the fieldwork before submitting and getting the ToR approved.

[161] The Tribunal is not recognizing that surveys being conducted prior to the finalization of the ToR is a common industry practice, however in this case both witnesses acknowledged it does happen at times. In this case the Tribunal has reviewed the surveys and timings and finds the EIS was completed with all relevant information.

The Tribunal finds it is reasonable in this case that Mr. Glasbergen did not want to miss the timing window of the various surveys and potential to delay the project and proceeded before the finalization of the ToR. The Tribunal would not dismiss it as an administrative error as suggested by the Applicant/Appellant counsel, however, agree that the data collected is sufficient for Mr. Glasbergen to come to the conclusions he did.

### **Field Work Surveys**

[162] The Tribunal finds that there were six (6) surveys completed between the Subject Site and the adjacent site at 34 Bridgman Lane. On average only thirty-four (34) individual birds were observed with a max count of forty-one (41). The Tribunal agrees with Mr. Glasbergen from his experience there wasn't an additional need for another 30 surveys since for a site to be considered Candidate SWH for Migratory Land Bird Stopover it requires a minimum of greater than two hundred (200) birds a day. Mr. Glasbergen described the Subject Site as having a low ecological value with a low abundance of birds. There is nothing in the evidence to suggest otherwise.

[163] Mr. Glasbergen noted that Ms. Kiddie said the protocols require at least two surveys a week during the peak breeding season. Mr. Glasbergen pointed out that the protocol doesn't require at least two surveys a week but recommends two surveys a week.

[164] Mr. Glasbergen testified the structures that are required for Barn Swallow for their nesting were not present on the site. He described it as foraging species, so they're feeding over the property, not using it for nesting.

[165] In regard to the amphibian surveys Mr. Glasbergen testified, the amphibians only heard calling on the first survey. A total of three American toads and one green toad, or one green frog were heard calling from the temporary storm pond near South Service Road. The lack of amphibian calling is not surprising given the general lack of amphibian habitat present, both on the Subject Site and within the Valley. In addition, a

high highway noise would be detrimental for amphibian calling, which ambient noise negatively impact breeding amphibians and also breeding birds.

[166] The noise studies have demonstrated that traffic and train noise are sufficient at this site to negatively impact wildlife on the site that depend on auditory calling. Therefore in Mr. Glasbergen's opinion, the high level of ambient noise creates the reduction of the ecological function of Core Area as it relates to both the amphibian breeding, and the calling, and the breeding birds.

[167] The Tribunal agrees with Mr. Glasbergen that a comparison cannot be made between the Subject Site to the Fifty Point Conservation Area. Although it is agreed that a comparison was not required for the EIS, Ms. Kiddie contends that observations from the Fifty Point Conservation Area by the Hamilton Conservation Authority ("HCA") assisted in the scoping of the field inventories that were to be completed to characterize the Subject Site.

[168] Mr. Glasbergen provided evidence that Fifty Point Conservation Area is located within five kilometres of the Subject Site. The Fifty Point Conservation Area is located close to the lake on the north side of the QEW corridor. The Tribunal agrees with his conclusion that the two sites are not comparable and do not function in the same way ecologically. Migratory birds found on one site in the Conservation area, is not a basis to conclude the species is found on the Subject Site. The QEW is a permanent barrier separating them.

[169] Mr. Glasbergen testified the Rusty Blackbird was found at the Fifty Point Conservation Area. He advised none of their surveys found these birds and they don't have the breeding bird habitat, like the actual habitat that they would use as they typically breed in boreal force.

[170] The Tribunal prefers the evidence of Mr. Glasbergen in regard to surveys. Even though there are shortcomings to the EIS and some surveys Mr. Glasbergen has

conducted are in no way detrimental to the overall protection of the Natural Heritage core areas and their functions.

### **Vegetation Protection Zones (VPZ)**

[171] The Tribunal prefers the evidence of Mr. Glasbergen in regard to Ms. Kiddie's contention that the proposal is not consistent with the heritage requirements of the PPS 2024 because natural heritage features and their functions are not being protected for the long term, the diversity and connectivity of the features and their functions are not being maintained, restored, or improved and the "no negative impact" test as it relates to natural heritage features and functions is not being met.

[172] In regard to biodiversity, Mr. Glasbergen opined that it's very unlikely the Core Area community will experience a shift towards a less diverse, more disturbed, more tolerant, and in the base of dominated community. He advised, the native plantings within the VPZ, will increase the biodiversity of the Core Area and will act as a source of native vegetation to potentially expand into the Core Area and improving its biodiversity. In his opinion, the concern is not that the development will result in non-native vegetation being introduced into the Core Area, and the reduction in biodiversity of the Core Area. Rather, there's a greater concern that the non-native vegetation currently existing within the Core Area will encroach into the native plantings of the VPZ.

[173] Mr. Glasbergen testified that anytime they find milkweed, they do an assessment to see whether or not the milkweed is providing or is acting as a host plant. They always look at the milkweed to see if there's any egg or larvae present and in this case they didn't find any. Mr. Glasbergen also advised they also look at sort of the total number of milkweed plants and the assemblage of which it's in and that was an assessment that they did.

[174] Mr. Glasbergen testified SWH is where a significant wildlife happening that's supporting a large numbers of habitat, not just because there are a few stems of

milkweed, and a host plant for Monarch, that anywhere where there's milkweed or small patches of milkweed, that it should be SWH. Mr. Glasbergen opined it needs to meet a higher test and the criteria you need along with the milkweed, you also need a diversity of plants because milkweed is the host plant at the larval stage for the Monarch. According to Mr. Glasbergen you also need more than just the milkweed. You also need other blooming species of plants so that there's actually nectar and things for the butterflies to feed on.

[175] The Tribunal agrees with Mr. Glasbergen, that the meadow community that is on the Subject Site does not meet the criteria of, these ballooning species. Therefore, there isn't enough of the additional species, the mix of species, the size of the habitat, to determine to say that this site should be a Candidate SWH because there are a few patches of milkweed.

[176] In regard the Core Area's connectivity functions and its ability to provide wildlife movement and passage across the landscape, and the influence that the development will have on these functions to the Fifty Creek Valley, Mr. Glasbergen testified that the Fifty creek valley is just over 900 m in length. This greatly reduces its ability to provide connectivity for land based wildlife and the movement of plants across the landscape between the natural areas.

[177] The Tribunal finds the proposed development will retain the entirety of the Fifty Creek Valley with a 15 m VPZ. By protecting the Valley feature and enhancing it through native plantings, the connectivity and linkage functions it provides will be maintained.

[178] In regard to the City's argument that the 15 m VPZ on the adjacent 34 Bridgman Lane property is not comparable due to it being a severance and was temporarily sufficient because the severance was only to facilitate the sale of the land the Tribunal finds this is not sustainable.

[179] The Tribunal agrees with the Applicant/Appellant's counsel's submission, that in accordance with the zoning, all that would be required is site plan approval. Under section 41 of the Act, an EIS is not one of the requirements for a site plan application. Therefore, a development could occur as of right at 34 Bridgman Lane with the 15 m VPZ, which is the same VPZ contemplated for the Subject Site.

[180] The Tribunal finds the Fifty Creek Valley is a local isolated feature. The Tribunal relies on the evidence of Mr. Glasbergen that the QEW and the South Service Road Corridor to the north is a major fragmentation of barrier to plants and wildlife movement and Highway 8 to the South, which is also a physical limit of the vegetation corridor and would inhibit wildlife movement. South of Highway 8 to the Niagara Escarpment, there is no vegetated network to provide corridor linkage function.

### **Trees**

[181] In regard to trees, the Tribunal has difficulty understanding Ms. Kiddie's reasoning concerning this proposed development. Ms. Kiddie disagreed with Mr. Glasbergen's notion that the trees proposed to be removed were not significant because of their low quantity and because they were not part of a woodland. Ms. Kiddie contends these trees are considered part of the urban forest. The urban forest includes individual trees, groups of trees, and woodlands on public and private property within the urban area. Ms. Kiddie also concluded that the Applicant/Appellant did not put sufficient consideration towards integrating existing vegetation into the design of a development, pursuant to the City's Tree Protection Guidelines.

[182] The Tribunal finds it important to point out that the Subject Site was previously vineyards, and the majority of the Fifty Creek Valley was orchard. The Tribunal does not disagree with the City's Urban Forest Strategy, that trees can provide people with calmness, serenity, and improved quality of life and they also encourage outdoor activity.

[183] The Tribunal also agrees with Ms. Kiddies reasoning that the trees contribute to a healthy community by:

- i) reducing pollutants (airborne pollutants have been linked to a variety of different diseases such as heart disease, respiratory illness);
- ii) regulating temperatures; and
- iii) allowing for access nature in the City.

[184] However, the Tribunal strongly disagrees that the removal of only seven (7) trees from the Subject Site will in anyway reduce the functions/benefits that the trees provided. Thus, contributing to a less healthy community.

[185] The Tribunal finds it difficult to reconcile Ms. Kiddies testimony to this development or any other development on her strict interpretation of polices in regard to Natural Heritage. In regard to the VPZ she testified it is not sufficient because residents may dump debris, clip the vegetation, create trails, and have pets. The Tribunal even questioned this since any development with a VPZ would have the same issues. On cross examination she acknowledges that a fence could mitigate this concern and this could be completed at the site specific stage.

[186] In regard to trees, again this development or any other development that cut trees would not be sustainable and even in this case it is determined to be seven (7) trees. In this case replanting of one hundred (100) trees was in the plan. The Tribunal finds that the cutting of 7 low quality trees and replanting of 100 trees cannot prevent the proposed development because it conflicts with reducing pollutants, regulating temperatures and allowing for access nature in the City. Any development that proposes to cut one (1) tree in Ms. Kiddies interpretation would conflict with these policies. The Tribunal finds there were reasonable mitigation measures in the plan ie; fencing and replanting, that satisfies the Natural Heritage policies for the City and the Province.

[187] The Subject Site is designated and zoned for development except for the section on the southeast (Natural Heritage) which is zoned P5. That the portion zoned P5 will remain zoned as P5 as part of the Proposed Development.

[188] The Tribunal finds that the City's argument that the proposed development does not consider the mitigating effects of vegetation as a response to climate change, does not consider the integration and optimization of existing vegetation, and does not promote green infrastructure and consider the impacts of residents is not sustainable as noted in the reasons above.

### **City Requested Holding Provision**

[189] Ms. Kiddie advised that if the Tribunal determines that the proposed development can occur on the Subject Site, it is her opinion that a holding provision should be included within the ZBL to address additional field work requirements. In addition, a revised Tree Protection Plan should be prepared and approved prior to the start of any on-site works. Opportunities to optimize the preservation of existing vegetation should be explored to retain more trees within the Subject Site. Landscaping areas that are set out in the ZBL should allow for adequate tree planting to occur on site. To support tree growth, each tree planted on site should have access to adequate soil volume.

[190] The Tribunal defers the holding provision within the ZBL and a revised Tree Protection Plan to the Parties since the Tribunal trusts that the Parties have their own duties and will make their own determinations on these matters at the Site Plan stage for this development.

## BOOK OF AUTHORITIES

[191] The Tribunal has reviewed the Applicant/Appellant's Book of Authorities of seven (7) cases and has considered four (4) cases from the Applicant/Appellant that have similar fact patterns or issues. The City did not provide any cases.

[192] Although determinations in other cases are neither binding nor do they fetter the discretion exercised by the Tribunal, the Tribunal has exercised its discretion in referencing the four noted cases below.

### Premature

[193] In regard to a premature application since the City has not completed its Official Plan to conform with the new PPS 2024, the Tribunal references case *J&B Developments LP v. Hamilton (City)*, 2021 CarswellOnt 5073 at para 106 which states:

This finding is directed by the GP itself. As stressed in the Applicant's closing submissions a guiding principle of the GP s. 1.2.1 is to "prioritize intensification and higher densities in strategic Growth areas..." (emphasis added) in pursuit of complete communities, the efficient use of land and, importantly here to support transit. As arose in oral evidence, given that the City has not completed the studies and amendments anticipated by the GP, Mr. Falletta emphasizes this paragraph in s. 5.1:

Where a municipality must decide on a planning matter before its Official Plan has been amended to conform with this plan, or before other applicable planning instruments have been updated accordingly, it must still consider the impact of the decision as it relates to the policies of this plan which require comprehensive municipal implementation.

[194] The Tribunal agrees with the Member in this case, as noted previously, although there is no longer a Growth Plan the new PPS 2024 policy 6.1.7 states that when an Official Plan has not been updated it indicates that the planning authority must still make a decision that is consistent with the PPS.

## Precedent

[195] In regard to the City's argument of setting a precedent since the Subject Site forms part of a larger corridor of active employment use, the proposed residential uses would negatively impact the overall viability of the employment area by limiting opportunities for future employment and introducing the risk of setting a precedent for higher value uses elsewhere in Stoney Creek and Niagara Region, the Tribunal referred to case *Mikmaa (Pramount) Inc. v. Hamilton (City)* 2025 CarswellOnt353 at para 41 which states;

Furthermore, the Tribunal does not agree with Counsel for the City that by allowing the development of this apartment building, a precedent would be established that a building of eight storeys or higher can occur "in any location of the City". This assertion is speculative. Each development application is evaluated based on its own unique circumstances and applicable policies, and determined based on its own merits.

In addition, case *Dundas Ossington Developments v. Toronto (City)*, 20219 CarswellOnt 10726, at para 24 the Member states;

In terms of precedence all planning applications and/or development proposals are scrutinized for consistency and/or conformity with the policy objectives established by the Provincial and planning regimes and are ultimately determined on their own individual merits....

[196] The Tribunal agrees with the Tribunal panel and the Member in these decisions that planning applications are determined based on their individual merits. However, the Tribunal understands there is a legal precedent and a planning precedent. The Tribunal is not unmindful to the fact that planning authorities in future planning applications will use OLT decisions as comparable to influence their planning rationales. However, determinations in other cases are neither binding nor do they fetter the discretion exercised by the Tribunal. The Tribunal can exercise its discretion to cases which it has done in this case.

## Connectivity and Transit

[197] In regard to the City's argument of connectivity and transit, the Tribunal referred to case *Sonoma Homes Inc. v. Hamilton (City)*, 2019 CarswellOnt 2838 at Para 27 which states:

The Growth Plan now appears to recognize that intensification and higher densities are needed to support transit viability. In other words, that densities comes first in order to support transit and not the other way around. In the Tribunal's mind, this is a logical and sound approach to land use planning and fiscal management of transit systems.

[198] The Tribunal agrees with the Tribunal Member in this case, and evidence provided that even though there is no longer a Growth Plan the PPS 2024 recognizes intensification and higher densities are needed to support transit viability.

## **SUMMARY OF FINDINGS**

[199] The appeals were a result of the failure of the City to make a decision within the statutory timeframes. The Tribunal finds based on the evidence, findings and reasons summarized, and after due consideration for all of the arguments set forth in the opening and closing submissions of the Parties, that the proposed development by providing a mix of land uses that can contribute to the achievement of the City's employment growth target through providing non-residential uses, have appropriate regard for matters of provincial interest pursuant to s. 2 that represents good land use planning and is in the public interest.

[200] Furthermore, the applications are consistent with the PPS 2024 and conforms to the UHOP. The applications conform and further the goals, objectives and policies of the UHOP and provides the appropriate standards of expansion through the proposed ZBLA. The applications protect the natural heritage.

[201] The Tribunal finds it important to note that throughout the hearing the Tribunal heard evidence that there was not an issue in the Procedural Order issues list only to

have City Counsel or City witnesses provide submissions or evidence on issues that were not in the Procedural Order. City Counsel made final submissions on Section 2 of the Act that it is not at issue advising the City agrees that the Subject Site is in an Urban Area and is generally an appropriate location for growth and development. However, goes on to provide submissions with respect to Section 2 of the Act in reference to Mr. Van Rooi's testimony. Similarly, Mr. Van Rooi provided evidence in relation to servicing and transportation even though these issues were resolved through ASF or applicable holding provisions as agreed by the Parties.

[202] The Tribunal would note in this case there were approximately 31 issues and sub issues in the Procedural Order along with ASF from the Parties experts. The Tribunal would note that providing evidence or making submissions on resolved issues or that are not on an Issues List of the Procedural Order only prolongs a hearing with no evidentiary value to the merits of the case.

[203] The Tribunal would also note specific instances the evidence it relied or gave weight to. Mr. Lorius acknowledgement that the LNA was a preliminary analysis only therefore, the total findings in the Memo could change based on further inputs. Additionally, even though Mr. Lorius and Mr. Toman maintained their views on Employment Area under the PPS 2024 and clusters of employment lands and interpretations it was their reliance on the Map (Non-Industrial Land Uses) which was found to have inconsistencies and unreliable.

[204] Although the Tribunal had no issues with their forthright testimony, the evidence these City witnesses relied on was found to be preliminary and in one case unreliable. All City witnesses on cross examination highlighted inconsistencies on their original witness statements, however, did clarify and acknowledge these inconsistencies and were forthright when they were presented with opposing evidence.

[205] The Tribunal had difficulty with the City's reasoning of the proposed development with that of Vince Mazza Way development which was approved without a noise study

or an odour study requirement but required one for the Subject Site. In addition, the recommendation of a 30 m VPZ zone for the Fifty Creek Core Area but allowed for a 15 m VPZ zone for the adjacent property at 34 Bridgman Lane.

[206] The Tribunal finds it important to point out that in regard to whether a Natural Heritage Planner or Land Use Planner should be given less weight or discounted because they haven't completed in the case of a Natural Heritage Planner an EIS report themselves or survey studies or in the case of a Land Use Planner he/she hasn't completed a land use compatibility study. The Tribunal agrees with Counsel for the City that it is neither fair or accurate to imply this and it would also apply to the other Party witnesses who haven't completed certain reports.

[207] In this case, Ms. Kiddie and Mr. Van Rooi's employment function is to review these reports regularly which they both have extensive experience to do and have done and it isn't necessary for them to actually have completed many of these reports themselves to come to a determination or expert opinion on. The Tribunal did not give less weight or discount their testimony based on not completing a prescribed number of reports or surveys themselves. Even though the Applicant/Appellant provided jurisprudence with case *Celinski v. Ontario (MNR)*, 2020 CarswellOnt 17332 in regard to expert witnesses and lay witnesses and studies completed. This case can be distinguished from the present one on the basis that in that case it was an Aggregate Resources case. The Member states in that case:

*Moreover, the evidence and opinion of an expert witness in an aggregate matter is typically specialized and technical and or scientific in nature and will often require that studies be completed or peer reviewed to substantiate their qualified opinions.*

[208] There was no lay evidence in this case. All witnesses were qualified experts in their field and this case was not an Aggregate matter.

**ORDER**

[209] **THE TRIBUNAL ORDERS THAT** the appeal is allowed and the Official Plan of the City of Hamilton is amended as set out in **Attachment 1** to this Order.

[210] **THE TRIBUNAL FURTHER ORDERS THAT** the appeal against By-law No. 05-200 of the City of Hamilton is allowed in part and By-law No. 05-200 is amended as set out in **Attachment 2** to this Order.

[211] The Tribunal authorizes the municipal clerk of the City of Hamilton to assign a number to this by-law for record keeping purposes.

*“Eric S. Crowe”*

ERIC S. CROWE  
MEMBER

**Ontario Land Tribunal**

Website: [www.olt.gov.on.ca](http://www.olt.gov.on.ca) Telephone: 416-212-6349 Toll Free: 1-866-448-2248

The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal (“Tribunal”). Any reference to the preceding tribunals or the former Ontario Municipal Board is deemed to be a reference to the Tribunal.

**BY-LAW NO. 26-024-OLT****ATTACHMENT 1****Urban Hamilton Official Plan****Amendment No. 237**

The following text, together with Appendix “A”, attached hereto, constitutes Official Plan Amendment No. 237 to the Urban Hamilton Official Plan.

**1.0 Purpose and Effect:**

The purpose and effect of this Amendment is to redesignate a portion of the lands to Neighbourhoods and Open Space for “Part B” as shown on Appendix “A” to this Amendment and located at 1400 South Service Road, Stoney Creek, and to establish a new Site Specific Policy for these lands within the Fruitland Winona Secondary Plan.

**2.0 Location:**

The lands affected by this Amendment are known municipally as 1400 South Service Road, in the former City of Stoney Creek.

**3.0 Basis:**

The basis for permitting this Amendment is to accommodate mixed use development, including office, commercial and residential dwellings on the rear portion of the lands. The front portion as shown as “Part A” on Schedule “A” will remain designated Employment Area – Business Park. The objective is to develop the lands with a full range of uses in conformity with overall Provincial and City policy planning direction.

**4.0 Actual Changes:****4.1 Volume 1 – Parent Policies**

## **Schedules**

### **4.1.1 Schedules**

- a. That Schedule B of the Urban Hamilton Official Plan be amended to modify the boundary of the natural heritage system limits as shown on Appendix “A” to this Amendment.
- b. That Schedule E of the Urban Hamilton Official Plan be amended to redesignate a portion of 1400 South Service Road as ‘Neighbourhoods’ as shown as Part “B” on Appendix “B” to this Amendment.
- c. That Schedule E-1 of the Urban Hamilton Official Plan be amended to redesignate a portion of 1400 South Service Road as ‘Neighbourhoods’ and ‘Open Space’, as shown as Part “B” on Appendix “C” to this Amendment.

## **4.2 Volume 2 – Secondary Plans**

### **Maps**

#### **4.1.2 Map**

- d. That Volume 2: Map B.7.4-1 – Land Use Plan of the Fruitland-Winona Secondary Plan be amended by: redesignating a portion of 1400 South Service Road as ‘Medium Density with Site Specific Policy - Area P’ and ‘Natural Open Space’, as shown as Part “B” on Appendix “D” to this Amendment.
- e. That Schedule B.7.4-2 of the Fruitland-Winona Secondary Plan be amended by: modifying the boundary of the Core Areas designation limits as shown on Appendix “E” to this Amendment

### **Text**

#### **4.2.1 Chapter B 7 Stoney Creek Secondary Plans**

- f. That Volume 2 Stoney Creek Secondary Plans, Section B.7.4 – Fruitland Winona Secondary Plan be amended by adding a new Site Specific Policy, as follows:

#### **“Site Specific Policy – Area P”**

B.7.4.18.16 For lands identified as Site Specific Policy – Area P on Map B.7.4.1 - Fruitland Winona Secondary Plan – Land Use Plan, designated “Medium Density”, and municipally known as 1400 South Service Road, and shown on Site Specific Policy P on Map B.7.4.1 – the following policies shall apply:

- a) Notwithstanding Policy E.3.5.8 building heights shall not exceed 16 storeys.
- b) A minimum of 2,750 square metres of non residential uses on the Business Park designation as shown in Part ‘A’ on Appendix “E”, shall be constructed prior to occupancy of a Multiple Dwelling, as shown in Part ‘B’ on Appendix “E”.

**5.0 Implementation:**

An implementing Zoning By-Law Amendment and Site Plan will give effect to the intended uses on the subject lands.

This Official Plan Amendment is Schedule “1” to By-law No. passed on the 22nd day of July, 2025.

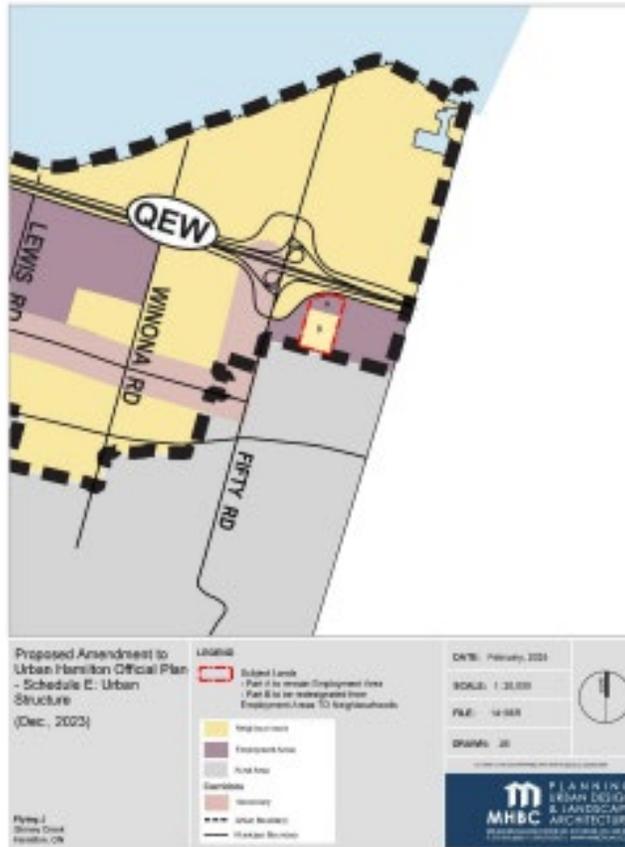
# The City of Hamilton

OLT Case No. OLT-23-001147

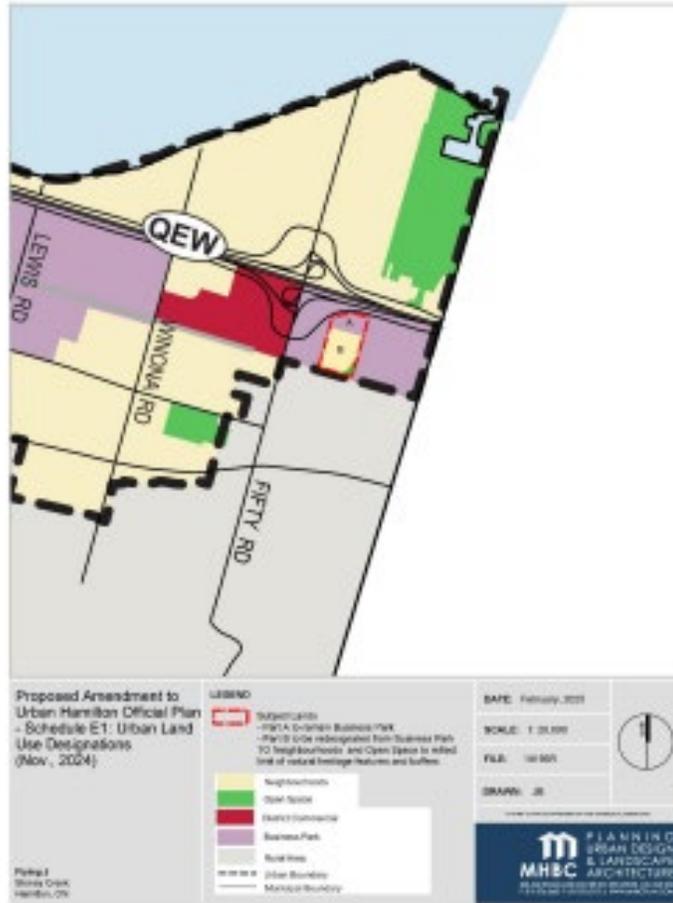
Appendix "A"



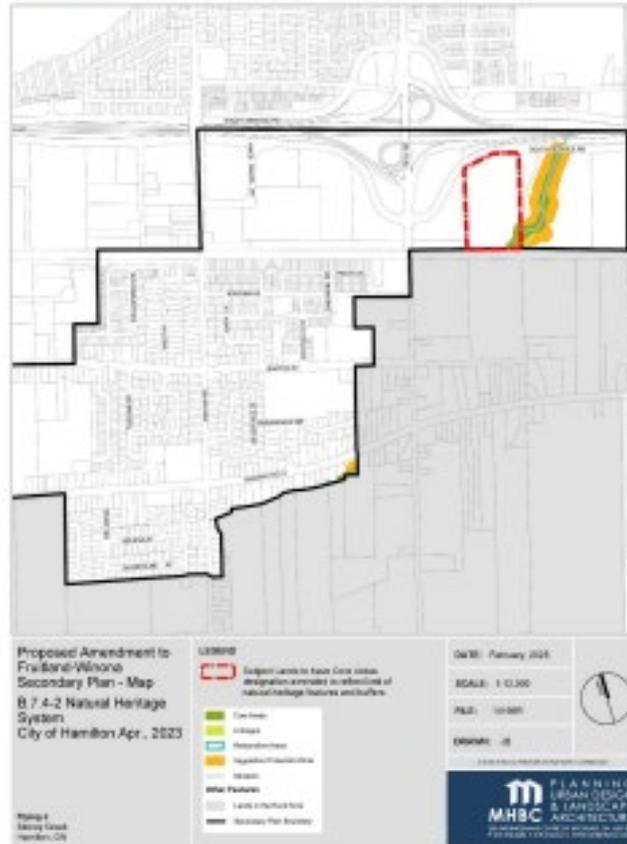
**Appendix "B"**



Appendix "C"



Appendix "D"





**ATTACHMENT 2****CITY OF HAMILTON  
BY-LAW NO. 26-025-OLT****A By-law to amend Zoning By-law 05-200 to Permit the Development of a Mixed Use Development on Lands Located at 1400 South Service Road (Stoney Creek)**

**WHEREAS** this By-law conforms with the Urban Hamilton Official Plan upon adoption of Official Plan Amendment No. 237;

**NOW THEREFORE** the Ontario Land Tribunal amends Zoning By-law No. 05-200 as follows:

1. That Schedule “A” – Zoning Maps, Map No. 1260, 1312, 1313 is amended by changing the zoning from Prestige Business Park Special Exception 404 Zone (M3 404) to Mixed Use Medium Density (C5, 964) Zone, for the lands known as 1400 South Service Road, the extent and boundaries of “Part B” which are shown on Schedule “A” to this By-law.

2. That Schedule “C” – Special Exceptions, of By-law No. 05-200 is hereby amended by modifying existing Special Exception 404 the extent and boundaries of “Part A” which are shown on Schedule “A” to this By-law, as follows:

404. Within the lands zoned Prestige Business Park (M3, 404,H215) Zone, identified on Map Nos. 1260 and 1313 of Schedule “A” – Zoning Maps and described as 1400 South Service Road, the extent and boundaries of “Part B” which are shown on Schedule “A” to this By-law, the following special provisions shall be modified:

a) Notwithstanding Special Exception 404 subsection b. iv), the

minimum landscape strip along the easterly lot line shall be 1.5 metres.

- b) Notwithstanding Subsection 9.3.3 g), the maximum permitted gross floor area for Office use within an individual building, excluding accessory office, shall be limited to 3,995 square metres

3. That Schedule “C” – Special Exceptions, of By-law No. 05-200 is hereby amended by adding an additional special exception as follows:

“964. Within the lands zoned Mixed Use Medium Density (C5, 964, H215) Zone, identified on Map Nos. 1312 and 1313 of Schedule “A” – Zoning Maps and described as 1400 South Service Road, the extent and boundaries of “Part B” which are shown on Schedule “A” to this By-law, the following special provisions shall apply:

- a) Notwithstanding Subsection 10.5.3 c), the minimum required interior side yard shall be 4.5 metres.
- b) Notwithstanding Subsection 10.5.3(d) the maximum building height shall be 56.0 metres, in accordance with Schedule “B” of this by-law
- c) Notwithstanding Section 10.5.1, a Multiple Dwelling shall be permitted in Part ‘B’ on Schedule “A” to this By-law, with the construction of a minimum of 2,750 square metres of nonresidential uses in the M3 404 zone, as shown in Part ‘B’ on Schedule “A” to this By-law.
- d) Notwithstanding Section 10.5.3 g) the Built form for New Development provisions shall not apply.

4. Notwithstanding, Section 5, the required parking rate for non-residential parking shall be 2 spaces / 100 m<sup>2</sup> and provided within Part ‘A’ on Schedule “A” to this By-law.

Residential visitor parking and non-residential may be shared across Part 'A' and part 'B' on Schedule "A" to this By-law.

5. That Schedule "D" – Holding Provisions be amended by adding the additional Holding Provision as follows:

215 Notwithstanding anything to the contrary of this By-law, within lands zoned Prestige Business Park (M3, 404, H215) and Mixed Use Medium Density (C5, 964, H215) Zone, identified on Map No. 1260, 1312. 1313 of Schedule A – Zoning Maps and described as 1400 South Service Road, no development shall be permitted until such time as:

a) That the Owner submit, a revised Functional Servicing Report (FSR) to demonstrate that there is a suitable sanitary sewer outlet with sufficient capacity available, including but not limited to, installation of a new sanitary sewer along South Service Road from the wester property limit to east property limit of the subject site to service the proposed development in accordance with the Development Charges Background Study and Comprehensive Development Guidelines and financial policies, to the satisfaction of the Director of Development Engineer.

b) That the Owner submits an updated Watermain Hydraulic Analysis Report (WHAR), identifying the modelled system pressures at pressure district levels under various boundary conditions and demand scenarios, to demonstrate that the municipal system can provide for required flows to support the proposed development, to the satisfaction of the Director of Development Engineer.

c) Make satisfactory arrangements with the City's Growth Management Division and enter into and register on title of the

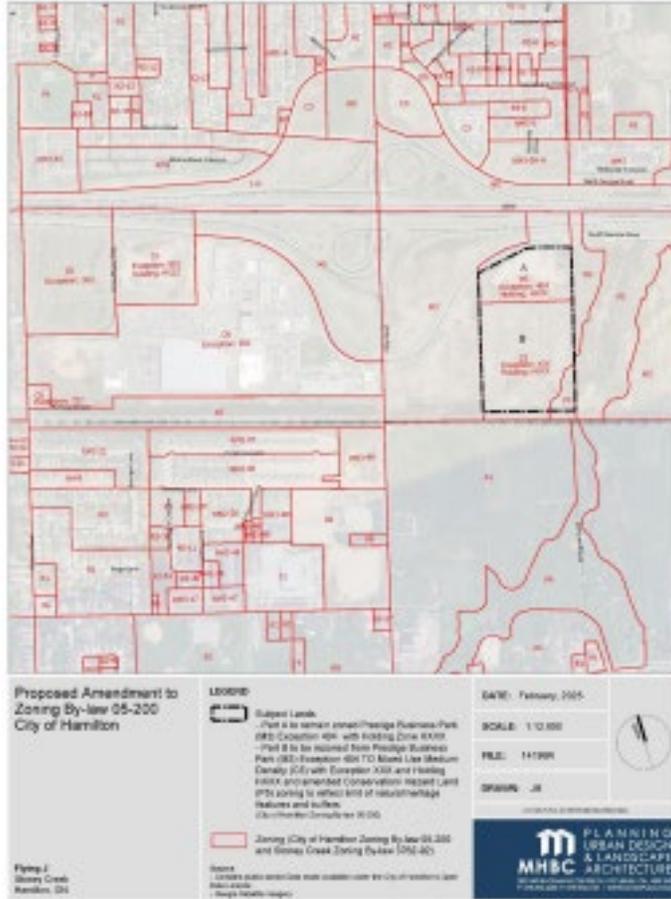
lands, an External Works Agreement with the City of Hamilton for the design and construction of any required improvements to the municipal infrastructure required to facilitate the proposed development, should it be determined that upgrades or extensions are required to the infrastructure to support the development, in accordance with the FSR, WHAR and City's Financial Policy, accepted by the City's Director of Development Engineering.

d) That the Owner submit and receive approval of an updated Transportation Assessment demonstrating that the adjacent road network has sufficient capacity to accommodate the proposed development and outlines any transportation system improvements required to support the development, which will be installed entirely at the Owner's cost, to the satisfaction of the Manager of Transportation Planning.

6. That the Clerk is hereby authorized and directed to proceed with the giving of the notice of passing of this By-law, in accordance with the Planning Act.

**APPROVED by Ontario Land Tribunal this 22nd day of July, 2025.**

Schedule "A" - Zoning Map



Schedule "B"

