

December 14, 2023

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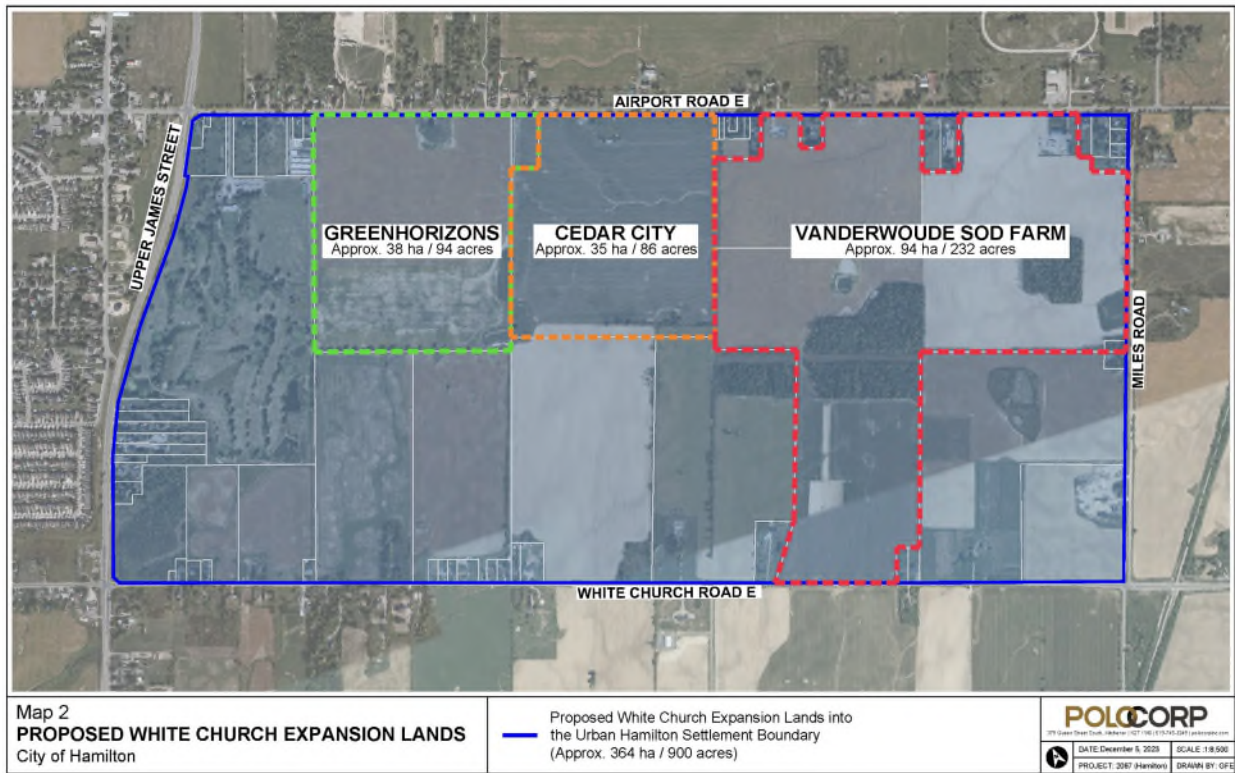
Re: Bill 150
ERO Number 019-7885
Hamilton Official Plan
ERO Posting 019-5732
Ministry Reference Number 25-OP-229116

Provincial Modifications to Hamilton Official Plan Should be Retained to Include New Community Area in Settlement Area

We act for Cedar City Developments Inc. with respect to this matter, and their lands located at the corner of Upper Centennial Parkway and Highland Road East, as illustrated in the photo below.



We also act for Cedar City with respect to their lands on Airport Road in the White Church Secondary Plan Expansion area of Hamilton, as illustrated in the illustration below showing the expansion lands.



All of the Upper Centennial lands, and the majority of the Airport Road lands were properly included in settlement area, in conformity with the Growth Plan for the Greater Golden Horseshoe, the Provincial Land Needs Assessment Methodology and consistent with the Provincial Policy Statement, by way of modification and approval of the Hamilton Official Plan by the Minister of Municipal Affairs on November 4, 2022. The small portion of the Airport Road lands not included was by virtue of the use of the 28 NEF contour by the City of Hamilton planning staff to define potential community area boundaries - when the use of the 30 NEF contour is the requirement of the Provincial Policy Statement.

The City of Hamilton Council adopted an Official Plan Amendment following their Municipal Comprehensive Review that did not conform with the Growth Plan for the Greater Golden Horseshoe, and did not follow the provincial Land Needs Assessment Methodology. Astonishingly, despite the non-conformity of Hamilton's adopted Official Plan with Provincial policy and Planning Act requirements, the Province has now brought this Plan into force through Bill 150.

That Official Plan was adopted contrary to the professional advice of the City's Planners and Planning consultants, who maintained that it was not in conformity with the legal provincial policy requirements. The Official Plan includes no settlement area expansion to the year 2051.

The Minister should restore the modifications to settlement area made previously by the Province to include the settlement area expansion produced by a proper Land Needs Assessment. In the alternative, the Government should introduce amendments to Bill 150 restoring the Minister's authority under section 17 (55) of the Planning Act to refer Official Plans, in part, to the Ontario Land Tribunal for a hearing - and the Minister should then refer the previous modifications to the Tribunal for a hearing that will consider the modifications based upon expert planning evidence, and tested against the requirements of the Growth Plan, the Provincial Land Needs Assessment Methodology, and the Provincial Policy Statement.

Hamilton is an Increasingly Attractive Destination for New Homeowners in the Greater Golden Horseshoe

As housing prices continue to rise, and the supply of family housing is further restricted in Toronto, families continue to move out seeking their first home. While singles and couples may be content to live in an apartment (often as a temporary arrangement), once they have children, the demand is overwhelmingly for grade-related housing - especially detached and semi-detached homes. As the supply of that form of housing shrinks, families are looking further afield to find their homes. A result has been the growing popularity of Hamilton as a destination to call home. New suburbs represent the most attractive place to settle down.

Past market trends show that Hamilton has been delivering only 40% of its new housing in the form of intensification. Single family homes are the preferred choice of homebuyers.

The Growth Plan and Land Needs Assessment Methodology Require Municipalities to Deliver a Market-Based Supply of Housing “To the Extent Possible”

The Growth Plan and the Provincial Policy Statement on Land Use Planning require that housing be delivered in a market based supply fashion. That includes delivering a full range and mix of housing types to meet market demand.

The Provincial policy direction is clearly set out in section 1.4.3 of the Provincial Policy Statement:

1.4.3 Planning authorities shall provide for an appropriate range and mix of housing options and densities to meet projected market-based and affordable housing needs of current and future residents of the regional market area ...

The Growth Plan for the Greater Golden Horseshoe includes, in policy 2.2.6.1 a) i., a requirement for municipalities to plan for housing by “identifying a diverse range and mix of housing options ... to meet projected needs of current and future residents” - which constitutes a direction to deliver a housing supply that responds to market demand.

In addition, the Provincial Land Needs Assessment Methodology must be followed by municipalities, according to section 2.2.1.5 of the Growth Plan, to determine “the quantity land required to accommodate forecasted growth to the horizon of this Plan”.

The Provincial Land Needs Assessment Methodology requires municipalities to use, as the starting point of their Land Needs Assessment, a market-based housing need forecast, with a market-based mix of housing types. That must then be adjusted to achieve the Growth Plan intensification target (50%) and greenfield density (50 people and jobs per hectare). But the Land Needs Assessment Methodology restricts the degree of this adjustment strictly. Any departure from the market-based housing need forecast and mix of housing types must be done **“while ensuring the provision of a market-based supply of housing to the extent possible”**. Once the adjustment has satisfied the Growth Plan density and intensification targets, no further departure from the market-based supply is permitted.

These above provisions represent changes to the Provincial Policy Statement and Growth Plan (including Land Needs Assessment Methodology) by the current

Government over the policies of the previous Government. Previous policies put the focus on limiting suburban development, and compelling development and new housing to be overwhelmingly in apartments. The current Government's new policies were intended to more closely reflect what Ontario residents actually wanted as their housing. The serious housing supply shortage, and resulting housing crisis price escalation, are the clearest demonstration of the success of the previous policies that aimed to, and succeeded in, restricting housing supply in forms that Ontario families sought. However, this is a serious failure from the perspective of aspiring homeowners - especially young families and new Canadians seeking to share in the Canadian dream of home ownership enjoyed by previous generations.

However, some municipalities and planners have preferred to ignore these policy changes, and carry on as if the old policies remain in place unchanged.

In the case of Hamilton, City staff seem to have attempted a "compromise" between the the old and new policies - resulting in a settlement area expansion, but one that falls far short of the expansion that would result from properly following the prescribed provincial methodology.

Hamilton's Consultants Set Out a Range of Options for Settlement Expansion

The consultant for the City, Antony Lorius, set out a range of options for settlement area expansions, in a March 29, 2021 report.

Current market trends (market-based supply)	3440 HA
Growth Plan Minimum (Market "to the extent possible")	2190 HA
Increased Intensification Thresholds	1630 HA
Ambitious Intensification	1340 HA

There is little question that properly following the Land Needs Assessment methodology would lead to a result somewhere in the neighbourhood of the "Growth Plan Minimum" option of 2190 HA. It includes 50% intensification - the provincial Growth Plan target. That is the option that represents a market-based supply, after adjustment to meet the Growth Plan targets - meeting the targets, while providing a "market-based supply of housing to the extent possible".

However, there was considerable political pressure from members of Council and organized anti-suburban groups to have less settlement area expansion.

Hamilton Council Chose a Politically-Driven No Settlement Area Expansion Option

On March 29, 2021, Hamilton Council deferred making a decision on a preferred growth option, and initiated a public consultation process, in which the activists groups were strongly organized, and participated heavily.

In November 2021 staff returned to Council with results of the consultation, and supplementary analysis, recommending the “Ambitious Intensification” option. Council instead directed staff to bring back a “no settlement area expansion” option. On June 8, 2022 Hamilton City Council adopted the official plan amendment reflecting the no settlement area expansion approach.

There is No Available Land Needs Assessment, or Planning Justification for Hamilton Council’s No Settlement Area Expansion Decision

When Hamilton Council made the decision to adopt an Official Plan with no settlement area expansion, they did so in the absence of any supportive planning justification or land needs assessment.

The only land needs assessment and peer review before Council identified a need for significant settlement area expansion. In addition, the only planning reports before Council supported a significant settlement area expansion.

As such, the decision of Council to adopt a “no settlement area expansion” plan is not only contrary to the requirements of the Growth Plan and the Provincial Policy Statement, it is also contrary to the professional planning and land needs assessment reports that Council had in their possession when making their decision.

Hamilton Council’s decision was made in a complete absence of supporting planning evidence or support.

Hemson Technical Report for Growth Plan Forecasts a Need for 93,800 New Grade-Related Units Between Now and 2051

The province's consultants for the Growth Plan Schedule 3 population growth forecasts were Hemson Consulting. In August 2020, they released their technical report regarding those forecasts.

The forecasts for Hamilton anticipate a need for 121,300 new dwelling units between 2021 and 2051.

Of that, according to Hemson, 61,700 (or 50.9%) of the required new housing would be single-detached. Once row housing demand is added, the total of grade-related units would be 93,800 (77%) of the total demand. Only 27,500 apartments and accessory units are required (22.7% of the total demand).

These numbers are in stark contrast to the no settlement area expansion model in the City's official plan, that will result in virtually no new singles and semi's, and only a small number of infill townhomes. Simply put, the Hamilton Official Plan comes nowhere close to meeting the expectations set out by the provincial consultants in their technical report for the province.

Hamilton Planners Recommended Inclusion of the Upper Centennial Lands in the Settlement Area Expansion for Hamilton

In preparing their analysis of potential settlement area expansion, planners for the City of Hamilton mapped the available "whitebelt" lands with potential for inclusion in a settlement area expansion.

However, a significant quantity of those lands are around the Hamilton Airport, and are within the Noise Exposure Forecast 28 contours related to runways at the airport. Those whitebelt lands are considered inappropriate for community area uses, due to the airport noise. Such constrained lands are coloured blue in the mapping below, and were only considered for possible

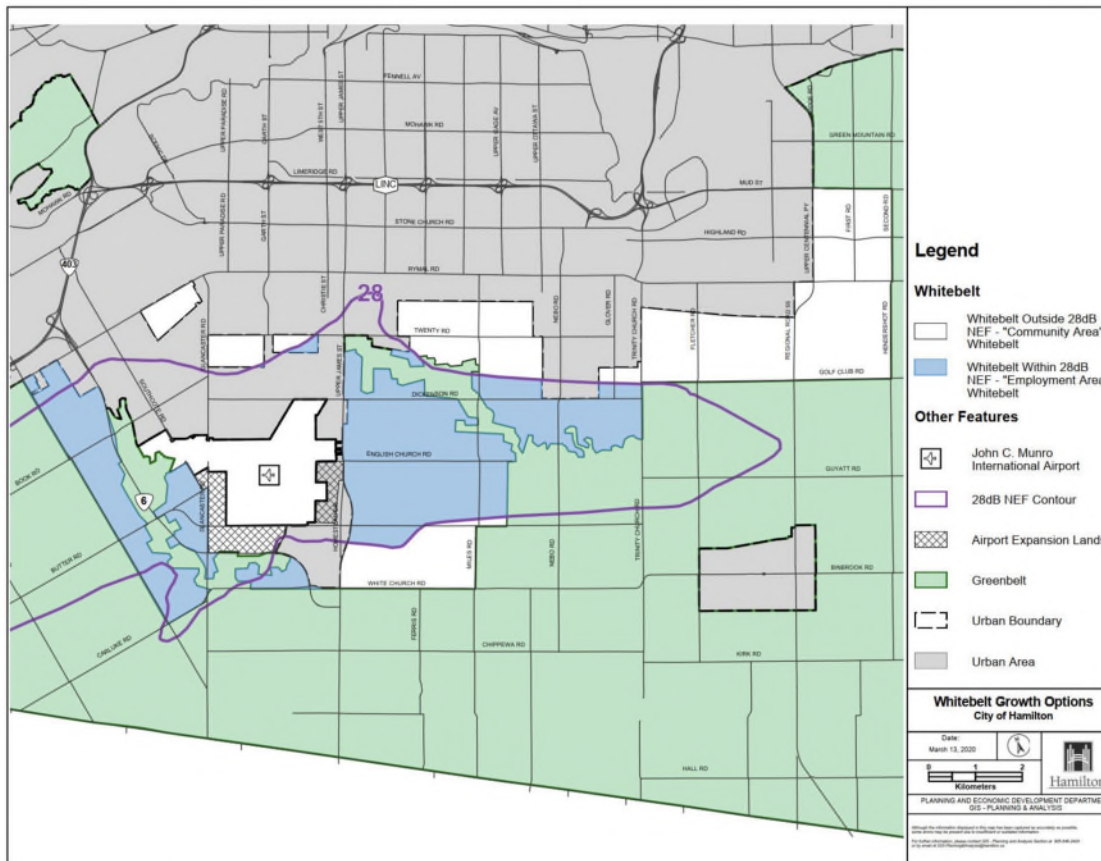


FIGURE 1: WHITEBELT LANDS IN HAMILTON

employment use.

However, the City's use of the 28 NEF contour in this fashion is contrary to the requirements of the Provincial Policy Statement and the Federal Government's policy regarding sensitive uses around airports. Both the Federal and Provincial policy call for the restriction of sensitive uses like residential only above the 30 NEF contour. In this fashion, Hamilton has inappropriately applied the land use restrictions, contrary to provincial policy.

Under section 3 of the Planning Act, in exercising his statutory obligation to make Planning decisions, the Minister is legally duty-bound to make such decisions consistent with the requirements of the Provincial Policy Statement. In this case, that means the the Minister is legally obliged to modify the Hamilton Official Plan to apply the 30 NEF contour as the proper standard, below which residential uses are permitted.

The lands coloured white in the map on the previous page are the whitebelt lands that are not constrained by the (excessive) airport noise contours. There are four principal whitebelt areas with community area potential:

- 1) Elfrida - on the east (1200 gross ha, 930 net ha)
- 2) Twenty Road East - North and south of Twenty Road East, in vicinity of Miles Road (450 gross ha, 270 net ha)
- 3) Twenty Road West/Garner Road - Three smaller areas, north of the airport and around Twenty Road West (175 gross ha, 125 net ha)
- 4) Whitechurch - The southernmost area, in the Whitechurch Road (350 gross ha, 275 net ha)

The airport lands are shown in white, but are not under consideration for development. The total potential whitebelt for community area under the study conducted by Hamilton's planners and expert consultants was 2175 gross hectares, or 1600 net hectares after exclusion of lands for things like natural heritage features, as provided in the Growth Plan.

It is worth noting that the market-based, Growth Plan conformity forecast is for a need of 2190 net hectares - which would include all of the whitebelt lands with community area potential in the settlement area,

The second option identified by staff (Increased Intensification), requiring 1630 net hectares of new community area, would also require including all of the whitebelt with community area potential in the settlement area.

Staff, however, recommended the “Ambitious Intensification” scenario, which required a total of 1340 hectares of new community area. As a result, the staff recommendation did not incorporate the 275 net hectares of land in the Whitechurch area of the whitebelt in their settlement area expansion recommendation.

Of note, under all the options identified by staff in the land needs assessment work, the Cedar City Upper Centennial lands would be included in the settlement area expansion as new community area to meet forecast market housing need. Under the scenarios that conform with the Provincial requirements of the Growth Plan, the Land Needs Assessment Methodology, and the Provincial Policy Statement, the Airport Land Roads would also be included in settlement area.

Upper Centennial Lands Already Have Public Infrastructure for Servicing Available

The Upper Centennial lands already have the potential to be connected to municipal sewer and water with little difficulty. The lands were included in the City’s 2006 Water and Wastewater Master Plan Class Environmental Assessment. The City completed the Environmental Assessment for the necessary key infrastructure improvements in 2019 - those were an elevated water storage facility and pumping station.

A new gravity trunk sewer has already been constructed along Upper Centennial Parkway (the west boundary of the Cedar City site). An existing 400mm water main has been constructed along Highland Road West to the intersection with Upper Centennial Parkway.

Thus, the lands already enjoy available municipal infrastructure services, and should be able to develop to deliver new housing at an early opportunity.

Bill 150 Lacks a Proper Legal Basis - Planning Act Establishes a Comprehensive Scheme for Regulating and Managing Land Use Planning - Bill 150 Establishes a Parallel System, Without Replacing the Existing Regime

The Planning Act establishes a comprehensive arrangement for the management of land use approvals, including official plans, for the province of Ontario. Bill 150 is fatally flawed, as it establishes a parallel process - while not replacing the existing planning regime. When the Planning Act fills the entire space of establishing a comprehensive process and regime, it is not legally proper for the Government to establish a parallel system for approvals, that lacks the statutory protected processes and guarantees that are established by the Planning Act. As such, Bill 150 is not legally proper.

Furthermore, the application of Bill 150 fails to satisfy the requirements of Section 3 of the Planning Act that the Minister (the drafter and sponsor of Bill 150), must act in conformity with Provincial Plans (such as the Growth Plan) and consistent with Provincial Policy.

The process established by the Minister for making decisions on which Provincial Modifications to Official Plans should be retained, lacks any step that satisfies the section 3 obligations of the Minister to ensure decisions are in conformity with Provincial requirements. The original modifications - in particular as they relate to the Cedar City lands - were based upon expert planning evidence, and the application of the policies of the Growth Plan and the Provincial Policy Statement. The effect of Bill 150, if the Minister does not retain that modification, will mean the the current Minister will not be acting in conformity with his section 3 Planning Act obligations.

Of note, there has been no finding in any Tribunal or Court that the previous Minister's modification decisions were not properly made in accordance with his statutory obligations under section 3 of the Planning Act. The current Minister's decisions and actions must be measured against that fact.

The effect and consequence of the process that the Minister has indicated he will follow to determine which modifications will be retained is potentially discriminatory in its application.

Some property owners in other municipalities have enjoyed the opportunity to have local Councils make considered decisions asking the Minister, based upon Provincial Policy requirements, to have modifications retained affecting their lands. However, in the case of the City of Hamilton, where Council continues to act in a capricious fashion, and deliberately and arbitrarily disregard professional planning advice, and make decisions contrary to provincial requirements, property owners are denied such equal and fair application of Provincial Policy requirements. Through Bill 150, the Government is endorsing this arbitrary and capricious behaviour by Hamilton Council - all of which is contrary to the statutory obligations under section 3 of the Planning Act. As such, the process adopted by the Minister for considering which Official Plan Modifications to retain - which lacks a statutory basis - is flawed and discriminatory as it affects Cedar City and their lands on Upper Centennial, and on Airport Road in Hamilton, as compared with landowners in other Municipalities where Councils are following their Planning Act and Policy requirements and obligations.

This discriminatory effect is contrary to the equality provisions of the Charter of Rights - of particular concern with respect to action by the Provincial Government depriving the landowners not just of their property and economic rights, but of the procedural rights that they would otherwise enjoy - and that other landowners enjoy.

In the Reference re Secession of Quebec, (1998 CanLii 793 (SCC), [1998] 2 SCR 217) the Supreme Court of Canada held the following:

“At its most basic level, the rule of law vouchsafes to the citizens and residents of the country, a stable, predictable and ordered society in which to conduct their affairs. It provides a for individuals from arbitrary state action.”

It is just such arbitrary state action, with discriminatory consequences imposed against select citizens, that is the consequence of the unusual and improper approach embraced by the current Minister of Municipal Affairs with respect to the rollback of previous Official Plan modification and approval decisions. This constitutes a clear action contrary to the rule of law, and the Charter of Rights equality provisions.

Elsewhere in the same decision, the Supreme Court observed that;

“The rule of law requires the creation and maintenance of an actual order of positive laws which preserves and embodies the more general principle of normative order.”

The parallel planning system established by Bill 150, which applies only to certain landowners in certain circumstances, is the essence of undermining the established “normative order” and “rule of law” to which the Supreme Court indicates is the required “actual order of positive laws”. The further informal process of the Minister on how decisions will be made on retaining modifications lacks any statutory basis, and will be Prima Facie unfair and discriminatory as it affects my clients.

The only curative for the flaws above is to restore aspects of the actual Planning Act processes and procedural guarantees that are displaced by Bill 150 as it affects a limited range of citizens. In particular, subsequent legislation should be adopted by the legislature to permit the operation of the Minister’s section 17 (55) Planning Act powers to refer previously made Ministerial modifications to be referred to the Ontario Land Tribunal in cases where landowners have made such a request. By doing so, and then referring such requested modifications which the Minister is not willing to retain, to the Tribunal for a hearing, will allow a restoration of some of the procedural rights available under the Planning Act. Matters such as the appropriate designation of the Cedar City lands on Upper Centennial, and on Airport Road in the City of Hamilton, could then be considered based upon expert planning evidence, tested by cross-examination, and measured against the requirements of the Planning Act, the Growth Plan for the Greater Golden Horseshoe and the Land Needs Assessment Methodology.

The Minister Should Retain the Modification to the Hamilton Official Plan and Approve the Settlement Area Expansions to include Cedar City's Airport Road and Upper Centennial Lands in Settlement Area, or Refer the Question of Their Land Use Designation as Settlement Area to the Tribunal

It is clear that the Growth Plan and Provincial Policy require the Minister to provide additional settlement area expansion beyond that identified and recommended by Hamilton Planning Staff. The previous settlement area modifications to the Hamilton official Plan, made by the previous Minister, represented completely proper decisions made in conformity with the Growth Plan, the Provincial Land Needs Assessment Methodology, and consistent with the Provincial Policy Statement - as required by section 3 of the Planning Act. Any decision by the Minister and Government that results in the reversal of these modifications will be made contrary to the Government's and Minister's Statutory obligations and duties under section 3 of the Planning Act.

The Minister plays an important role in the planning process. Under the law, he has particular statutory obligations that he MUST exercise under the law when he makes decisions. He cannot wash his hands of his section 3 Planning Act statutory obligation to apply his judgment to the application of Provincial Policy in the Growth Plan and the Provincial Policy Statement when making approval decisions. Official Plan Approval decisions are decisions of the Minister, and must be taken in accordance with his section 3 obligations - they are NOT decisions of the Municipality. He cannot merely act as a non-judgmental cipher for Municipal requests - where those requests run contrary to the previous Minister's properly made decisions under the Planning Act, properly following the section 3 requirements, and based upon good planning evidence.

Thus, the options available to the Minister that are fully compliant with the Growth Plan and Provincial Policy are as follows:

- 1). Modify the Hamilton Official Plan to reflect a settlement area expansion of 2190 HA.; or,
- 2) Introduce amendments to Bill 150 to restore the Minister's authority to refer requests for modifications to the Hamilton Official Plan to the Ontario Land Tribunal for a hearing pursuant to section 17 (55) of the Planning Act; and,

3). Refer the Hamilton Official Plan to the Ontario Land Tribunal, including the settlement area modifications and the application of the 30 NEF contour, for a hearing, based upon expert evidence, tested and measured against legally required provincial plan conformity and Provincial Policy Statement consistency.

If steps 2 and 3 are selected, the Minister should, in the referral, advise the Tribunal of his concern that the City of Hamilton did not properly follow the Land Needs Assessment Methodology - in particular, its requirement for “ensuring the provision of a market-based supply of housing to the extent possible” (page 9) and “providing a full range and mix of housing options to meet the market-based demand of housing that meets the current and future needs of residents” (page 13).

Yours sincerely,



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