



Jennifer Meader

TMA Law

25 Main Street West, Suite 2010

Hamilton Ontario Canada L8P 1H1

Office: 905.529.3476 x2740

Cell: 416.605.0508

jmeader@tmalaw.ca

VIA ONLINE COMMENT SUBMISSION

May 9, 2024

Ministry of Municipal Affairs and Housing
Provincial Land Use Plans Branch
13th Floor, 777 Bay Street
Toronto, ON M7A 2J3

Dear Sir/Madame:

**Re: COMMENTS ON PROPOSED PROVINCIAL PLANNING POLICY STATEMENT
ERO No. 019-8462
VanLegend Regina GP Corp.**

We are counsel to VanLegend Regina GP Corp. ("**VanLegend**"), owner of lands municipally known as 6 Regina Street North, 24, 28, and 34 Erb Street East, within the City of Waterloo ("**Subject Lands**").

Our client is proposing to develop the Subject Lands with a 25-storey tower, containing 289 residential units, office, and commercial at grade, as well as above-ground parking. To allow for the development, an application for an Official Plan Amendment and Zoning By-law Amendment ("**Application**") was submitted to the City of Waterloo ("**City**") on March 31, 2022. The Application was subsequently appealed to the Ontario Land Tribunal on account of the City's failure to make a decision within the requisite timeframe.

We are writing to provide comments on behalf of VanLegend in respect of the proposed Provincial Planning Statement. Specifically, our client's interest relates to policy 5.2.5 ("**SPA Policy**"), which is currently not proposed to change from the version set out in the Provincial Policy Statement, 2020. That SPA Policy reads as follows:

Despite policy 5.2.3, development and site alteration may be permitted in certain areas associated with the flooding hazard along river, stream and small inland lake systems:

- a) in those exceptional situations where a Special Policy Area has been approved. The designation of a Special Policy Area, and any change or modification to the official plan policies, land use designations or boundaries applying to Special Policy Area lands, must be approved by the Ministers of Municipal Affairs and Housing and Natural

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Resources and Forestry prior to the approval authority approving such changes or modifications;

Unfortunately, in respect of the development proposal for the Subject Lands, this policy is being misinterpreted. Initially, the policy was interpreted to mean a change in height and density within a SPA required ministerial approval but was broadened to include any proposed policy or designation change for lands within an SPA, as part of an Official Plan Amendment application required to facilitate a proposed development. The misinterpretation has significantly delayed VanLegend's development proposal, while it has been subjected to an unprecedented process. Through that process, VanLegend's development proposal has essentially been required to comply with the guideline entitled "Procedures for Approval of New Special Policy Areas (SPAs) and Modifications to Existing SPAs Under the Provincial Policy Statement, 2005 (PPS, 2005), Policy 3.1.3 – Natural Hazards – Special Policies Areas" ("**SPA Guideline**"). This SPA Guideline is intended to apply to the creation of, or modification to, existing SPAs, specifically where the municipality is the proponent. It is not intended to apply to private applications, and especially not when the private application does not propose to modify, in any way, the policies or designations set out in the Official Plan relating to the Special Policy Area. The process that the development proposal is being put through does not accord with the intent and purpose of the SPA Guideline or the SPA Policy. We are not aware of any other privately-initiated, site-specific Official Plan Amendment application that has been put through a similar process, led in part by the applicant.

The unique process that has been created for this particular development proposal runs contrary to the purpose and intent of creating SPAs. SPAs are used to recognize existing built-up areas within communities that have historically existed within the floodplain and are therefore usually coordinate with established downtowns. In the City of Waterloo, the SPA is also coordinate with Uptown Waterloo's Urban Growth Centre and a Major Transit Station Area, where significant growth is anticipated. SPAs are intended to be permissive of development, so long as the Official Plan policies related to the SPA are met. In addition to SPAs, the PPS also contemplates One Zone Policy Areas and Two Zone Policy Areas. SPAs are intended to be the most flexible in terms of permitting development. Yet, in this case, the process that the development proposal has been subjected to is more onerous than even a One Zone Policy approach. Were it not for the location of the Subject Lands in a SPA but instead located where a Two Zone Policy area for flood plains was applied, the fact that an OPA is required would be irrelevant. If the two-zone concept applied instead of the SPA, development would be permitted in the flood fringe subject to appropriate floodproofing, regardless of the type of application.

The purpose and intent of the SPA Policy is to require Ministerial approval only when the SPA designations and policies of the official plan are proposed to change. In this case, because the Application includes an Official Plan Amendment ("**OPA**") to increase the height and density permissions on the Subject Lands, the SPA Policy has been misinterpreted to require approval by Ministers of Municipal Affairs and Housing and Natural Resources and Forestry. The OPA for the development proposal does not in any way change the SPA designations or SPA policies. In fact, the OPA fully conforms to the SPA policies set out in the City's Official Plan and has been approved by the Grand River Conservation Authority. Yet, in this particular instance, the SPA Policy has been misinterpreted to require Ministerial approval simply because an OPA is required. This interpretation is wrong and completely defeats the purpose of having an SPA in place.

Furthermore, the interpretation of the SPA Policy in this case is not consistent with how the SPA Policy

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has been interpreted and applied elsewhere in the Region of Waterloo and other municipalities within the Province. Two recent, and salient examples are as follows:

1. In 2022, the City of Cambridge adopted a privately-initiated OPA to significantly increase the height and density permissions for the property municipally known as 130 Water Street North. Located directly on the banks of the Grand River within the Galt City Centre Floodplain SPA, the OPA permits a 37-storey and 28-storey development containing 253 residential units and 146 hotel suites, and increases the permitted floor space index from 2.0 to 10.09. The OPA was subsequently approved by the Region of Waterloo and was found by both Cambridge and the Region to conform to the PPS. No Ministerial approval was required.
2. An application, including an OPA to significantly increase the height and density permissions, for the property municipally known as 45 The Esplanade within the City of Toronto. The OPA would permit a two-tower, 682-unit mixed use development within the Lower Don SPA. The application has been appealed to the Ontario Land Tribunal on the basis of the City's failure to make a decision. Neither the Ministry of Municipal Affairs and Housing nor the Ministry of Natural Resources and Forestry is participating in the proceeding.

Given the inconsistent application of the SPA Policy and its misinterpretation in the case of the VanLegend Application, we submit that clarifying language is required, to ensure fair and consistent treatment of all applications going forward. We would propose the following modification:

- a) in those exceptional situations where a Special Policy Area has been approved, ~~The designation of a Special Policy Area, and any changes or modifications to the Special Policy Area policies in an official plan policies, and any changes or modifications to the Special Policy Area land use designations or boundaries in an official plan applying to Special Policy Area lands,~~ must be approved by the Ministers of Municipal Affairs and Housing and Natural Resources and Forestry prior to the approval authority approving such changes or modifications;

We would welcome the opportunity to speak with you regarding VanLegend's concerns and experience, and the inconsistent treatment that has resulted from the current wording of this policy.

Yours truly,



Jennifer Meader
JM/jm