

September 23, 2022

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

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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.



The City of Hamilton has adopted an Official Plan Amendment following their Municipal Comprehensive Review that does not conform with the Growth Plan for the Greater Golden Horseshoe, and did not follow the provincial Land Needs Assessment Methodology. It is now before the Minister for his consideration.

Contrary to the professional advice of the City's Planners and Planning consultants, the Official Plan includes no settlement area expansion to the year 2051.

The Minister should either modify the City's adopted Official Plan to include the settlement area expansion produced by a proper Land Needs Assessment, or the Minister should refer the matter to the Ontario Land Tribunal for a hearing.

### **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 consultant's 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.

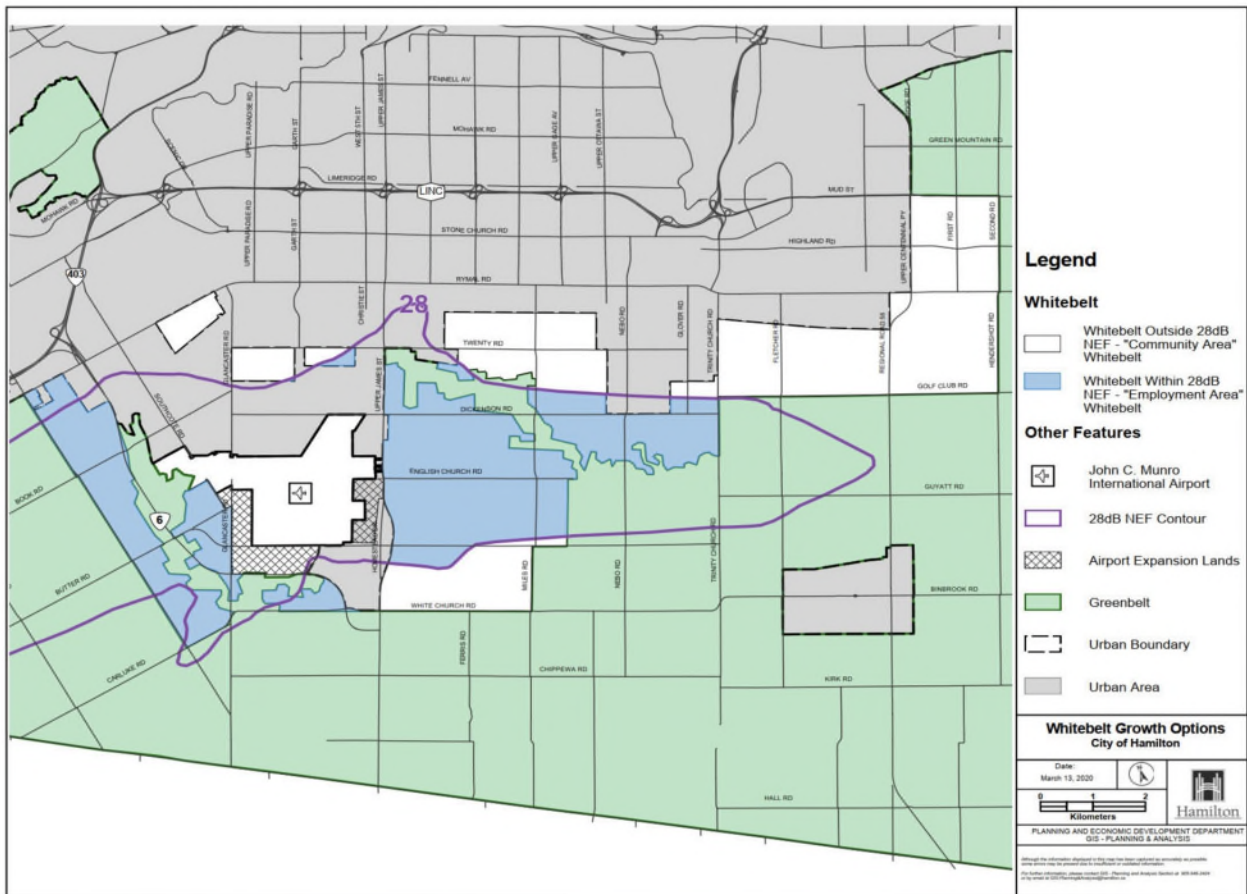
## **Hamilton Planners Recommended Inclusion of the Subject Lands in the Settlement Area Expansion for Hamilton**

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 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 employment use.

The lands coloured white in the map below are the whitebelt lands that are not constrained by the 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)



**FIGURE 1: WHITEBELT LANDS IN HAMILTON**

The airport lands are shown in white, but are not under consideration for development. The total potential whitebelt for community area is 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 requires 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 lands would be included in the settlement area expansion as new community area to meet forecast market housing need.

### **Subject Lands Already Have Public Infrastructure for Servicing Available**

The Cedar City 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.

### **Province Can Modify the Adopted Plan, or Refer It to The Land Tribunal for a Hearing**

Under section 3 of the planning act, the Minister, in carrying out his responsibilities and making planning decisions, must act in conformity with provincial plans (in this case the Growth Plan for the Greater Golden Horseshoe), and consistent with the Provincial Policy Statement on land Use Planning. A decision to approve the official plan adopted by Hamilton Council will not be consistent with the Provincial Policy Statement, or conform with the Growth Plan.

The Provincial Policy Statement in policy 1.1.1.b) requires municipalities to accommodate a “*market-based range and mix of residential types (including single-detached, additional residential units, multi-unit housing and housing for older persons)*”. The Hamilton official plan does not provide this market-based range and mix including single-detached housing.

The Growth Plan requires, in policy 2.2.1.5, that municipalities must use the Land Needs Assessment Methodology to determine the need for land to accommodate growth over the horizon of the Official Plan (now 2051). The methodology, on page 9, while allowing for adjustments to the market-based supply forecast to achieve the density and intensification targets of the Growth Plan, requires “ensuring the provision of a market-based supply of housing to the extent possible”. That means that, if the plan’s numbers depart from a market-based supply more than necessary to achieve 50% intensification, and 50 people and jobs per hectare in the Greenfield Area, the plan will NOT be in conformity with the Growth Plan.

On page 13, the methodology explains an aspect of this in more detail. The methodology says that the market-based forecast should be adjusted to meet the density targets of the Growth Plan “while still 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”, and if that is not possible, an alternative density target should be sought.

Thus, the Minister cannot approve the Official Plan as adopted by Hamilton and be following the requirements of section 3 of the planning act to act in conformity with the Growth Plan, and consistent with the Provincial Policy Statement.

Only the “Growth Plan Minimum” option (2190 HA settlement area expansion) identified by the City’s consultants would satisfy the requirements of the Growth Plan (including the Land Needs Assessment Methodology) and the Provincial Policy Statement on Land Use Planning.

But under any settlement area expansion scenario, the Cedar City lands would be included as new community area.

As such, from the perspective of our client, we would be satisfied with a provincial decision to modify the Hamilton Official Plan to reflect the settlement area expansion recommended by Hamilton Planning Staff in the Ambitious Density Scenario. That would include the Elfrida lands including the Cedar City lands.

However, 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.

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.
- 2). Refer the Hamilton Official Plan to the Ontario Land Tribunal for a decision.

If option 2 is 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 truly,

AIRD & BERLIS LLP



Hon. Peter Van Loan  
Partner

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