

July 24, 2023

Hon. Steve Clark
Minister of Municipal Affairs and Housing
777 Bay Street - 17th Floor
Toronto, Ontario
M7A 2J3

Dear Minister Clark;

**Re: Proposed Provincial Planning Statement
ERO Number 019-6813**

**Transportation Policies
Airport NEF Contours and Sensitive Use Prohibitions
Proposed Policy 3.4.2
Minor Modification to Prevent Abuse of Policy**

Dear Minister:

We act for Cedar City Mount Hope Inc., owners of land in proximity to Hamilton's Mount Hope Airport. We are writing to request a minor change to proposed Policy 3.4.2 to prevent it being abused in a fashion that prevents the construction of housing that is otherwise contemplated as appropriate under provincial policies.

In particular, while the existing (and proposed) Provincial policy provides a virtual prohibition on residential uses on lands that exceed 30 NEF/NEP noise levels to protect against adverse noise impacts, the City of Hamilton, for example, has instead applied a much more restrictive 28 NEF/NEP standard.

The result is that a significant quantity of housing that would otherwise be permitted, cannot proceed. The consequence is a further constraint on Ontario's housing supply.

We recommend that this challenge can be addressed through a minor change, (really a clarification) by inserting the word “only” to the existing and proposed policy prohibition on lands exceeding the 30 NEF/NEP standard:

3.4.2 Airports shall be protected from incompatible land uses and development by:

- a) prohibiting new residential *development* and other sensitive land uses **only** in areas near *airports* above 30 NEF/NEP;
- b) considering redevelopment of existing residential uses and other sensitive land uses or infilling of residential and other sensitive land uses in areas above 30 NEF/NEP only if has been demonstrated that there will be no negative impact on the long-term function of the *airport*; and
- c) discouraging land uses which may cause a potential aviation safety hazard.

The proposed change will focus the exercise of the prohibition of residential development ONLY in those areas intended by the provincial policy, and not permit the prohibition to be applied in other areas with lower noise levels that are considered acceptable under provincial policy. This is really a clarification, that will ensure the policy is applied as it is intended. The proposed change is supported by the enclosed planning opinion from Korsiak Planning.

We expect that this modification will make possible the addition of significant new housing in areas with lower noise levels deemed appropriate for residential development under provincial standards - housing which is otherwise being blocked currently under municipal mis-application of the existing policy.

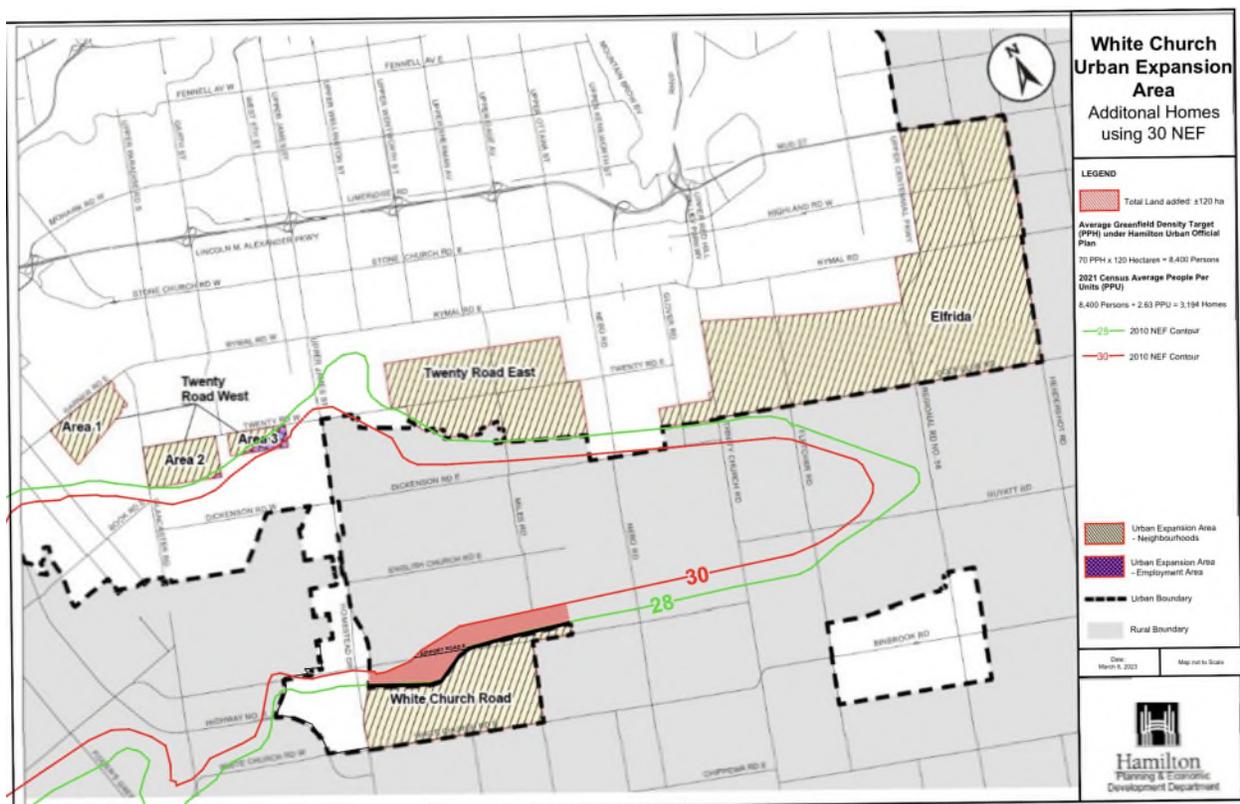
The Problem: Municipalities Can Apply More Restrictive Standards than Policy Contemplates to Prohibit Residential Development that Conforms with Provincial Policy

The problem that has arisen in practice, is that municipalities can disregard the current policy contemplating a prohibition on residential development and sensitive land uses in areas experiencing greater than 30 NEF/NEP. They can, instead, adopt more restrictive prohibitions. This has happened with the City of Hamilton.

Hamilton has chosen to adopt a standard of 28 NEF/NEP. This means that residential development becomes prohibited in areas that are quieter than the 30 NEF/NEP standard, despite Provincial policy.

The move from the 30 NEF/NEP contour line to a 28 NEF/NEP contour line results in much more land being captured and subject to the prohibition on residential development.

The illustration below shows the difference between the 30 and 28 NEF/NEP contour lines on lands south of the airport in Hamilton. The result of using the 28 NEF/NEP contour to establish the limit of residential development is a significant loss of potential housing that could otherwise be constructed under the Provincial policy.



NEP/NEF refers to composites of Noise Exposure Forecasts and Noise Exposure Projections. The noise exposure forecast is a method, developed by the U.S. Federal Aviation Agency to predict the degree of community annoyance from aircraft noise (and airports) on the basis of various acoustical and operational data. Noise exposure projections are based on a projection (not a forecast) of aircraft movements for up to 20 years into the future, and includes aircraft types and runway configurations that may materialize within this period. The NEF/NEP contours are a composite mapping of the two, and are approved by Transport Canada. The NEF/NEP contours do change over time, with, for example, increased flight numbers increasing the noise levels, and quieter aircraft engines reducing noise levels.

The Current and Proposed Policy As Written is Not Sufficient to prevent Abuse By Municipalities Adopting More Restrictive Standards to Prohibit Residential Development

It might well be suggested that the current policy as written is sufficient to ensure that the 30 NEF/NEP standard is applied by municipalities in making land use planning decisions.

However, as the proposed Provincial Planning Statement is written, the airport NEF/NEP policy does permit municipalities to adopt more restrictive standards. That is because the section of the Provincial Planning Statement entitled “How to Read this Policy Statement” indicates that the policies are “minimum standards” and that municipalities “may go beyond” the minimum standards - in the case of the airport noise policy, prohibiting residential development by applying a more stringent noise standard than 30 NEF/NEP. This is an invitation to abuse the policy to prohibit residential development more than necessary to satisfy provincial (and federal) standards.

The portion of the proposed Provincial Planning Statement in question reads as follows:

Policies Representing Minimum Standards

The policies of this Policy Statement represent minimum standards.

Within the framework of the provincial policy-led system, planning authorities and decision-makers may go beyond these minimum standards to address matters of importance to a specific community, unless doing so would conflict with any policy of this Policy Statement.

This interpretation guidance provides sufficient room for municipalities like Hamilton to conclude that they may apply a more restrictive noise standard than the standard found in the Provincial Policy (i.e. prohibiting residential at 28 NEF/NEP instead of 30 NEF/NEP). The consequence is an abuse of the provincial policy to unduly and unreasonably restrict and prohibit the development of much-needed housing.

The best way to prevent such an abuse, is to modify the airport noise policy to ensure that the prohibition on residential development is applied ONLY in areas exceeding 30 NEF/NEP. This can be done by the simple addition of the word “only” to the policy to ensure it operates that way - and that the municipality can not “go beyond these minimum standards” in the case of this policy.

Federal Policy Supports the Use of the 30 NEF/NEP Standard

It is significant that the Federal Government, through Transport Canada, also applies the same 30 NEF/NEP standard that is reflected in the proposed Provincial Planning Statement.

The statement below is from Transport Canada's Noise Exposure Forecast program publication:

Transport Canada recommends that where the NEF exceeds 30, new residential development should not proceed. If it does, regardless of this caution, a detailed noise analysis should be conducted and noise reduction practices should be implemented. In this scenario, it is the developer's duty to inform all prospective residents of possible irritants.

The Federal statement recommends residential development should not proceed where the 30 NEF/NEP is exceeded. However, there is some contemplation that residential development might be able to be managed above 30 NEF/NEP, if sufficiently mitigated and managed.

Of note, there is no suggestion that a prohibition on residential development should be applied at sound levels below the 30 NEF/NEP standard.

Hamilton is an Outlier - Most Municipalities with Major Airports Apply the 30 NEF/NEP Contour in their Planning Standards - A Minor Policy Change Will Not Cause Disruption

The use of the 28 NEF/NEP contour line to mark the limit of permitted residential development by Hamilton appears to be an outlier.

Municipalities with major airports, such as Toronto, Mississauga, and Ottawa have applied the 30 NEF/NEP standard found in provincial and federal policy in their planning decisions on where to prohibit residential development.

As such, the requested change will not disrupt the long-established planning processes around airports in these other major municipalities. Instead, it would likely only come into play in Hamilton's shaping of land use policies relating to lands newly included in settlement area and their surroundings around Hamilton's Mount Hope Airport. Until now, the majority of land around that airport has been in the countryside, with little urban development.

As such, the consequence of the policy change will be to guide the development of land use policies for Hamilton for the future, without disrupting established planning decisions which have been made appropriately by other municipalities in the past.

A Minor Change to (Clarification of) the Policy has the Potential to Permit the Development of 3,200 Units of Additional Housing in Hamilton

The adoption of the requested change will have the effect of ensuring that almost 300 acres of land on which Hamilton proposes to prohibit residential development, will be able to welcome new housing.

It is estimated that 3,200 units of new housing for families could be constructed on such lands. This housing would conform entirely with the noise protections contemplated by the existing and proposed provincial policy. In addition, there would be no impact on the ability of the airport to continue its operations - as Provincial and Federal noise standards would be fully respected.

Only the abuse of the current Provincial Policy by Hamilton applying a more restrictive prohibition on residential development is currently preventing the housing from being delivered. The requested minor change with the insertion of the word “only” - really a clarification of the intent of the Provincial Policy - would reverse this abuse and excessive prohibition on residential development.

Requested Change to Policy Is Really A Clarification, Better Articulating the Intent of the Policy

The requested change in the wording of the policy is, in reality, a clarification. There is nowhere any suggestion that the intent of either the Federal or the Provincial Government that residential development should be prohibited on lands that do not exceed the 30 NEF/NEP noise level.

As such, it can fairly and conclusively be stated that the application of a different, and more restrictive (28 NEF/NEP) standard by a municipality to prohibit additional residential development is an abuse of the existing (and proposed) policy. Such an abuse is not contemplated in any policy discussions by either Provincial or Federal Governments. In both cases, 30 NEF/NEP is the clearly desired and sought standard for application.

The wording change requested in this submission represents a clarification of the intention of the Government behind the policy. Such a change will ensure that the policy is applied, and done so without any abuses or excesses that result in the unnecessary loss of housing potential that conforms with the applicable standards.

Conclusion: A Minor Change to Proposed Policy 3.4.2 Will Prevent Abuse, Ensure Appropriate Application of Policy, and Result in the Delivery of Additional Appropriate and Much Needed Housing

The proposed (and existing) Provincial Policy on Airport land use compatibility prohibits new residential development in lands near airports above 30 NEF/NEP. This is an appropriate standard and reflects the Federal recommended standard as well.

However, as written, it is open to municipalities to “go beyond” this standard, and further prohibit residential development at lower noise levels.

The proposed policy should be modified - really clarified - to ensure that the prohibition on residential development is applied above the 30 NEF/NEP levels, and ONLY above that level.

Such a clarification can be achieved by inserting the word “only” in 3.4.2 a) before the words “in areas near *airports* above 30 NEF/NEP”.

The proposed policy and clarification is as follows:

3.4.2 *Airports* shall be protected from incompatible land uses and development by:

- a) prohibiting new residential *development* and other sensitive land uses **only** in areas near *airports* above 30 NEF/NEP;
- b) considering redevelopment of existing residential uses and other sensitive land uses or infilling of residential and other sensitive land uses in areas above 30 NEF/NEP only if has been demonstrated that there will be no negative impact on the long-term function of the *airport*; and
- c) discouraging land uses which may cause a potential aviation safety hazard.

Such a change or clarification will ensure that municipalities cannot take advantage of the policy to unduly and unreasonably prohibit residential development that would otherwise be permitted under provincial policy.

The need for this change is particularly important at a time when the province faces a housing supply crisis, and there is an urgent need to remove unreasonable barriers to the delivery of housing. The policy change, or clarification, would be expected to deliver an additional 3,200 units of new housing at a time of great need.

The change can be made without disrupting the established existing land use planning practices in municipalities around major airports in Ontario. It will primarily guide the future development of future land use policies around the airport in Hamilton, where new development will be taking place in the future.

The Minister is encouraged to clarify the proposed airport land use compatibility to ensure that its property intent is carried out, and as requested in this submission.

We would be pleased to discuss this matter further.

Yours sincerely,



AIRD & BERLIS LLP

Hon. Peter Van Loan
Partner

HV

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