

March 19, 2024

Hon Paul Calandra
Minister of Municipal Affairs and Housing
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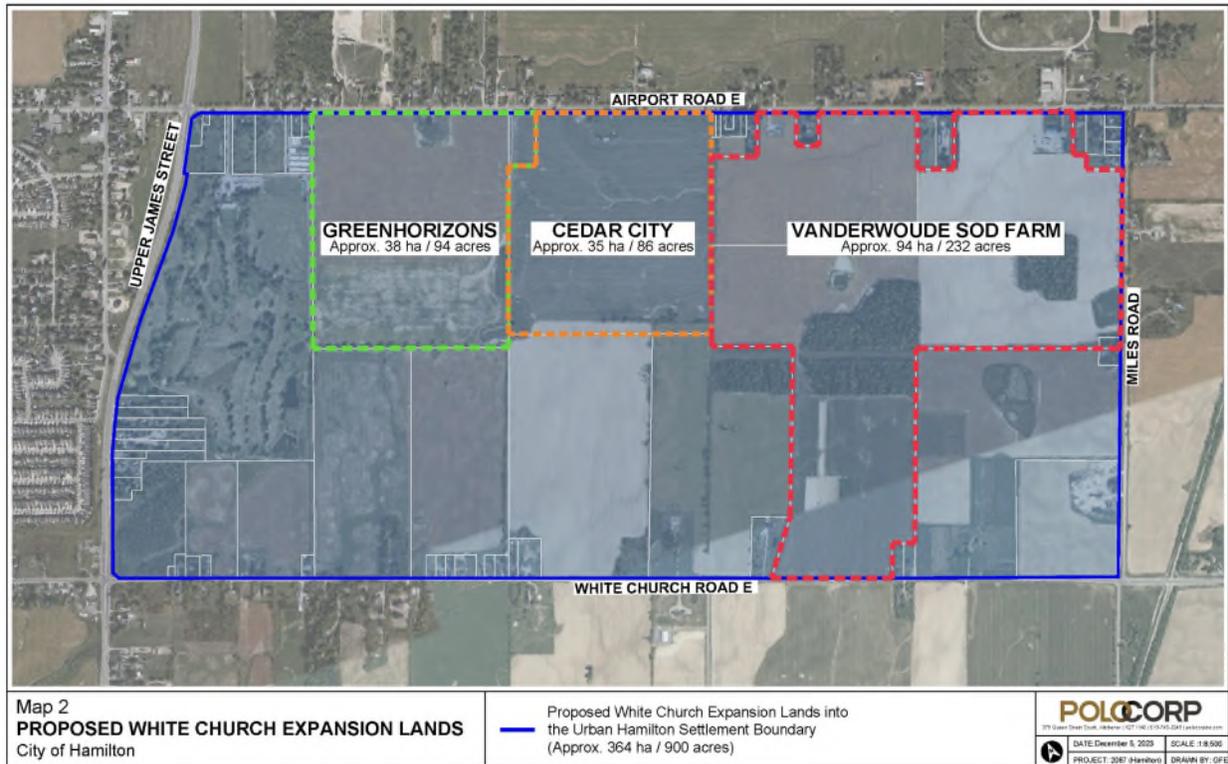
Re: Bill 162
ERO Number 019-8273
Hamilton Official Plan
Ministry Reference Number 25-OP-229116

**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 and for Greenhorizons 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.

We are writing to request that Bill 162 be amended to include to restore the modifications made by the Minister of Municipal Affairs that included the above-noted lands in Hamilton's Settlement Area in the City's Official Plan.

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.

By way of amendment to Bill 162, the Province should restore the modifications to settlement area made previously by the Minister of Municipal Affairs. to include the settlement area expansion produced by a proper Land Needs Assessment. In the alternative, the Government should introduce amendments to Bill 162 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.

Allowing Hamilton to Flagrantly Disregard Provincial Policy and the Growth Plan While Limiting Housing Supply Would Represent a Dangerous Precedent - Undermining the Land Use Planning Regime in Ontario

The Province of Ontario has a land use planning system that is Provincially-led, and policy-driven.

The City of Hamilton has flagrantly disregarded Provincial Plans and Policy in adopting an Official Plan with no settlement area expansion. This is contrary to the requirements of the Growth Plan for the Greater Golden Horseshoe and its Land Needs Assessment Methodology. It is also contrary to the requirements of the Provincial Policy Statement.

Under section 3 of the Planning Act, all decision-makers (including Municipalities and Ministers) must act in conformity with the Growth Plan in consistent with the Provincial Policy Statement.

The Ministry of Municipal Affairs warned Hamilton that such conduct would be contrary to the City's legal obligations. Still - Hamilton openly defied Province and paid no heed to their legal obligations.

Fortunately, the previous Minister of Municipal Affairs took action to maintain the rule of law under the Planning Act - and took action to ensure that no municipal decision-maker could act with impunity, behaving as if they were above the law. While exercising his legal obligations as the approval authority under the Planning Act, the Minister made appropriate and necessary modifications to the Hamilton Official Plan, adding new settlement area. This was done in accordance with the requirements of the Growth Plan, the Land Needs Assessment Methodology, and the Provincial Policy Statement. The modifications represented sound and appropriate land use planning, supported by evidence and by policy.

This action by the Minister in modifying the Hamilton Official Plan ensured continued confidence in the Ontario land use planning system. It demonstrated that Provincial law would be applied, and the policy-driven system would function properly.

Unfortunately, Bill 150 reversed these sound and proper planning decisions - creating a situation where Municipalities are being effectively told that they can act with impunity - that there are no consequences to flagrantly ignoring their legal obligations under the Planning Act. This has undermined confidence in the legal regime in place, encouraging municipalities to act with no regard for their legal obligations, all while making the severe housing crisis in Ontario even worse.

Those paying the price are the young families and new Canadians who find themselves losing the opportunity to share in the dream of home ownership.

The way to correct this very dangerous precedent is to amend Bill 162 to restore the modifications made by the previous Minister to the Hamilton Official Plan.

In the alternative, Bill 162 could be amended to restore the Minister's section 17(55) Planning Act power to refer the Official Plan to the Ontario Land Tribunal for a hearing, where the planning merits can be considered based upon evidence, tested through a proper legal proceeding.

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 no doubt 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.

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.

All Expert Evidence in the Planning Process Supported Settlement Area Expansion in Hamilton - There was No Expert Evidence to the Contrary

The Province, in preparation of the Growth Plan Schedule 3 growth forecasts, retained qualified experts to provide the basis to determine the need for new settlement areas to accommodate population growth. The Hemson Technical Report for Growth Plan forecast a need for 93,800 new grade-related units in Hamilton to the 2051 planning horizon.

Antony Lorius, the qualified planning consultant retained by Hamilton undertook an analysis indicating a market-based need for all the Hamilton “white-belt” lands to be included in settlement area. Hamilton’s own staff planners recommended a significant settlement area expansion for Hamilton.

As noted above, there was no professional planning evidence supporting the decision of Hamilton Council to block any settlement area expansion.

As such, the Minister’s modifications represented a proper correction, to ensure the integrity of the land use planning system in Ontario.

The Province Should Retain the Modification to the Hamilton Official Plan and include the Settlement Area Expansions to include Cedar City’s Airport Road and Upper Centennial Lands, and the Greenhorizons Lands in Settlement Area and, or Bill 162 should be Amended to Permit Referral of the Question of Settlement Area Expansion 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.

The Province plays the primary role in the planning process - ensuring its integrity, and that the Planning Act is followed.

The options available to the Province that will demonstrate that Municipalities cannot act with impunity and a flagrant disregard for the law are the following:

- 1). Amend Bill 162 to restore the modification to the Hamilton Official Plan to reflect a settlement area expansion of 2190 HA.; or,
- 2) Introduce amendments to Bill 162 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).

Please find attached the earlier submissions made by Aird & Berlis on behalf of Cedar City, and by Polocorp Inc. planning consultants on behalf of Greenhorizons respecting Bill 150 and the reversal of the original appropriate modifications made by the previous Minister.

Yours sincerely,



Hon. Peter Van Loan P.C., K.C.

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Michael Klimuntowski - Chief of Staff
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