GSAI
Glen Schnarr & Associates Inc.

Partners:
Glen Broll, MCIP, RPP
Colin Chung, MCIP, RPP
Jim Levac, MCIP, RPP
Jason Afonso, MCIP, RPP
Karen Bennett, MCIP, RPP

In Memoriam, Founding Partner:
Glen Schnarr

July 14, 2025 GSAI File: 1484-004

(Via Email)
Hon, Robert Flack
Ministry of Municipal Affairs and Housing
777 Bay Street
Toronto, ON M7A 2J3

RE: Mississauga Official Plan 2051
Starmont Estates Inc.
2555 Erin Centre Boulevard, City of Mississauga
ERO No.: ERO #0250465

Glen Schnarr and Associates Inc. (GSAI) are the planning consultants to Starmont Estates Inc. (the "Owner') of the lands municipally known as 2555 Erin Centre Boulevard, in the City of Mississauga (the 'Subject Lands' or 'Site'). On behalf of the Owner, we are pleased to submit this Comment Letter in relation to the Council adopted Mississauga Official Plan 2051, currently under review by the Ministry of Municipal Affairs and Housing (ERO No. 0250465, Ministry Reference # 21-OP-249936).

As background, GSAI participated in the Mississauga Official Plan Review initiative ('OP Review initiative') and provided Comment Letters identifying areas of concern with the draft Mississauga Official Plan 2051 released for public review. As further outlined in these previous Comment Letter, provided in Appendix I, the concerns raised predominantly related to the City's proposed City Structure, growth management framework, housing framework and application of a built form-based policy framework. Despite these concerns being raised to City Staff and Council members, these concerns were not addressed in the iteration of the Mississauga Official Plan 2051 adopted by Mississauga Council in April 2025.

As the Ministry continues to review the Mississauga Official Plan 2051, we request that you consider making the following changes:

1. Modify the City Structure so that the Subject Lands are removed from the Central Erin Mills Neighbourhood Character Area and instead added to the Central Erin Mills Growth Node, to further implement Provincial policy objectives of directing compact, mixed-use,

transit-supportive and pedestrian-oriented development on lands within Built-Up Areas and on underutilized plaza sites;

2. Removal of Policy 4.2.2, Policy 4.2.3 and Policy 4.2.4 as they surpass what is required by the Ontario Building Code and conflict with the recent clarification provided by Bill 17 on the local municipality's authority to require performance standards that go beyond the minimum requirements of the Building Code.

3. Deletion of onerous housing requirements under Policies 5.2.3, 5.2.4, and 14.2.1.5.1 that prescribe the number of family-sized units and affordable units in residential projects. If permitted, these policies will contrast Provincial and Ontario Land Tribunal Decisions and create inflexibility for housing projects to meet market demands, rendering them unviable.

4. Significant revisions to the built form-based policy framework under Policies 8.6.1, 8.2.9.c), 8.6.2.5 and 8.6.2.6. Together, these sections overly restrict the definition of building typologies and elevate urban design guidance to policy by enforcing that transition can be achieved through the use of setbacks, stepping down of buildings, angular plane applications, separation distances and other means which have the effect of reducing viable development.

5. Revise Policy 10.2.6.3 that seeks the replacement of existing retail and service commercial space. Rather than requiring a minimum percentage of existing non-residential space to remain, we request a policy mechanism that would permit an appropriate amount of ground-level non-residential space based on market assessments. As drafted, this policy is inappropriate given in-effect Provincial direction to encourage the redevelopment of underutilized plazas and the concurrent Retail Market Study being undertaken by the City.

Further explanation on why the aforementioned requests are being made are provide below for your consideration.

Background:

The Subject Lands are located on the north side of Erin Centre Boulevard, east of Erin Mills Parkway. The Site is currently improved with a local retail plaza comprised of a low-rise, multi-tenant commercial structure and surface parking areas. It is surrounded by an established woodlot and municipal park to the north, a Stormwater Management Pond to the south, Erin Mills Parkway and the regional mall facility referred to as Erin Mills Town Centre to the west and an established residential Neighbourhood segment to the east. Based on the in-effect policy framework, the Subject Lands are located within the Region of Peel and City of Mississauga Urban Area, within the City of Mississauga's Built-Up Area, within the Central Erin Mills Neighbourhood component of the City Structure and are designated 'Mixed Use' by the Mississauga Official Plan. The Site

is also located along Erin Mills Parkway which is a Regional Arterial and Higher Order Transit Corridor. Additionally, the Site is located in close proximity and a comfortable walking distance of existing transit services, including the Erin Mills Town Centre Bus Terminal located diagonally across from the site, a multitude of parks and greenspaces as well as services, amenities and facilities to meet daily needs. Furthermore, the Site is located within an evolving area of the City of Mississauga given existing tall built forms are located to the south and east, along Erin Mills Parkway and along Eglinton Avenue West.

Comments:

We have reviewed the Mississauga Official Plan 2051, as adopted by Mississauga Council in April 2025, and have the following five (5) concerns. Our concerns are further described below.

1. ***City Structure***

Chapter 3, Managing Growth presents a refined growth management framework for the City. More specifically, Chapter 3 outlines how growth and development is to be managed across the City up to the year 2051 in accordance with a refined City Structure. Chapter 3.3 and a revised Schedule 1 provide further direction and clarity on this City Structure framework. We highlight that the Subject Lands continue to be identified as being located within the Central Erin Mills Neighbourhood Character Area. As described in the previous Comment Letters, we remain concerned about the City Structure as adopted and request that the Ministry modify the City Structure so that the Subject Lands are removed from the Central Erin Mills Neighbourhood Character Area and instead added to the Central Erin Mills Growth Node. Inclusion of the Subject Lands within the Central Erin Mills Growth Node is appropriate, would enable appropriate and compatible, mixed-use and transit-supportive development to occur, would further implement Provincial policy objectives of directing compact, mixed-use, transit-supportive and pedestrian-oriented development on lands within Built-Up Areas and on underutilized plaza sites, identified as a Strategic Growth Area in the Provincial Planning Statement (PPS) 2024, and would not comprise the overall City Structure.

Furthermore, Section 3.3.2 states that "Neighbourhoods typically accommodate the lowest densities and building heights". Given the above-noted locational attributes of the Site, particularly it being in proximity to transit services and located along a recognized Arterial and Transit Corridor, the continued inclusion of the Subject Lands within the Neighbourhood component of the City Structure is a significant missed opportunity and in our opinion, contrary to Provincial objectives which encourage higher density, compact, mixed-use development particularly in proximity to existing and planned transit services. Based on the above, in our opinion, the continued exclusion of the Subject Lands from the Central Erin Mills Growth Node by City Staff and Council, despite multiple requests for the City Structure delineations to be reviewed, is inappropriate and is a missed opportunity to enable compact, transit-supportive, mixed-use

development to occur in an appropriate location that will support in-effect Provincial, Regional and local policy objectives.

2. Sustainability

Chapter 4, Sustaining the Natural Environment provides the refined policy framework for how lands and resources are to be managed. This includes policies which relate to how development is to respond to a changing climate. Of particular concern are Policy 4.2.2, Policy 4.2.3 and Policy 4.2.4 which state:

> *'4.2.2. Mississauga will support the planning and design of new communities and buildings that aim to achieve near net zero emissions.'*
>
> *'4.2.3. Mississauga will support efforts to protect against the impacts of the changing climate with adaptation measures that make the city more resilient to climate change impacts including extreme weather events.'*
>
> *'4.2.4. Mississauga will build communities that are compact, low-carbon, mixed-use and transit-supportive. The City will promote renewable energy, energy conservation and efficient design. These initiatives will reduce greenhouse gases and help the city achieve its emission targets.'*

Collectively, the above-noted policies provide policy strength for sustainability initiatives and measures, such as the recently adopted City of Mississauga Green Development Standards. The policies as drafted are unnecessary and in practice, serve to encourage Staff to require onerous sustainability measures that endeavour to require development proponents to implement features and technologies that are well above and beyond what is required by the Ontario Building Code. This practice is contrary to the authority granted municipalities by the Ontario Building Code Act and is contrary to the recent clarification provided by Bill 17. We request that the above-noted policies be removed so that the policy requirements are clear and a municipality's authority is not extended beyond what is permissible.

3. Housing

Chapter 5 provides the refined City-wide housing policy framework. Of relevance to the Subject Lands, this City-wide policy framework is supplemented and further informed by the Central Erin Mills Growth Area policies as well. built form and site development policy framework.

We remain concerned with the housing policy framework as adopted. Of particular concern are Policies 5.2.3, 5.2.4, 14.2.1.5.1 which state:

'5.2.3. To achieve a balanced mix of unit types and sizes, and support the creation of housing suitable for families, development containing more than 50 new residential units is encouraged to include 50 percent of a mix of 2-bedroom units and 3-bedroom units. The City may reduce these percentages where development is providing:

a. social housing or other publicly funded housing; or
b. additional needs housing such as residences owned and operated by a post-secondary institution or a health care institution or other entities to house students, patients, employees or people with specific needs.'

'5.2.4. The City will plan for an appropriate range and mix of housing options and densities that contributes to achieving the following housing targets:

1. 30 percent of all new housing units are affordable housing (rental and ownership), of which 50 percent of all affordable housing units are encouraged to be affordable to low-income households. The majority of units affordable to low-income households are anticipated to be rental and will include units such as subsidized housing, supportive housing, emergency shelter beds, and transitional housing; and
2. 25 percent of all new housing units are rental tenure. These rental units include private rental market and non-market units.'

'14.2.1.5.1. Residential development permitted by any land use designation will include:

a. A minimum 10 percent housing units that are below-market for each development application proposing more than 50 residential units. This will be comprised of units targeted for a range of middle income households. Approximately half of these units will be larger, family-sized dwellings containing more than one bedroom ....'

The above-noted policies are concerning and require revision. With regard to Policy 5.2.3, the policy as adopted is overly restrictive. While the word "encouraged" is appreciated in the policy, in practice, the policy has and will continue to be used to demand development proponents include a significant proportion of larger, family-sized units. The desire for 50% of all residential units to include 2-bedroom and 3-bedroom unit configurations will challenge the delivery of much needed housing units in appropriate location to satisfy Provincial policy objectives and local Housing Pledges, in the midst of a Provincial housing crisis. Furthermore, the policy objective of encouraging 50% of all new units to be family-sized is contrary to Provincial objectives which do not specify this and is also a significant departure from the objectives of neighbouring jurisdictions such as the City of Toronto, where 25% of units are encouraged to be larger family-sized units through the City of Toronto's Growing Up Urban Design Guidelines. We request that the Ministry remove Policy 5.2.3.

Policy 5.2.4 is also concerning and should be removed. In accordance with in-effect legislation, a municipality cannot require affordable housing units to be provided unless a property is located within an Inclusionary Zoning Area. For certainty, the Subject Lands are not located within a Protected Major Transit Station Area and are therefore not within an Inclusionary Zoning Area. As a result, the Subject Lands and other lands across the City of Mississauga which are similarly not subject to Inclusionary Zoning policies and requirements, cannot be required to provide affordable housing units as part of a development application. Policy 5.2.4 requires revision to ensure compliance with legislation and change from a policy requirement that affordable housing units be provided regardless of a Site's location. We also highlight that Peel Region Housing and the non-profit sector will and should continue to play a pivotal role in the delivery of affordable housing. This is reaffirmed in the City of Mississauga's Partners in Homebuilding: Mayor's Housing Task Force Report.

A similar concern to above is raised by Policy 14.2.1.5.1 which applies to lands within the Central Erin Mills Growth Node. We highlight that this policy was developed as a component of a previous planning study referred to the Reimagining the Mall initiative. The Reimagining the Mall initiative was a design-oriented planning study undertaken by a consultant Project Team and culminated in a policy framework which established policies to guide how six mall-based areas across the City of Mississauga could redevelop over the long-term into compact, vibrant, complete communities. However, a core component of this mall-based policy framework were housing policies. The above-noted policy was subject to a previous Ontario Land Tribunal Decision, dated September 6, 2023 (see Appendix II of this Letter) where the Tribunal found that this policy and other similar policies were tantamount to Inclusionary Zoning and were also ultra vires to the authority conferred to the City of Mississauga under the Planning Act. As stated in paragraph 149 of this Decision, the above-noted policy was not approved. We are deeply concerned that a Tribunal refusal of this policy continues to be included in the Council adopted policy framework. We require that Policy 14.2.1.15.1 be deleted.

4. Built Form & Transition

Chapter 8 provides a refined built form and site development policy framework for lands across the City. More specifically, Chapter 8 and in fact policies throughout the Mississauga Official Plan 2051 have been developed as a transition to a built-form based policy framework. This relates in instances where policy is overly restrictive and instances where urban design guidance has been elevated to policy. We are concerned with this transition to a built form-based policy framework and highlight concerns with Policies 8.2.9.c), 8.6.2.5 and Policy 8.6.2.6. Policy 8.2.9.c) states that the City's vision will be supported by site development that demonstrates context sensitivity and transition. A similar concern is shared with Policy 8.6.2.5 which states that transition can be achieved through the use of setbacks, stepping down of buildings, angular plane, separation distances and other means. Lastly, Policy 8.6.2.6 states that developments will provide a transition

in building height and form between Strategic Growth Areas and adjacent Neighbourhoods with lower heights. Should the Subject Lands be added to the Central Erin Mills Growth Node, they would be considered a site within a Strategic Growth Area and adjacent to a Neighbourhood. Thus, Policy 8.6.2.6 is problematic.

Chapter 8.6.1 also contains a policy definition for how low-rise, mid-rise and high-rise buildings are to be interpreted. We oppose this policy definition and request that the definitions and characterizations of built form typologies be removed.

Overall, the above-noted policies are concerning. As the policies suggest, there are various ways of ensuring appropriate transition can be provided. There is also ambiguity given transition is not a defined term. In our opinion, elevating appropriate transition and the ways that transition, including the use of angular plane provisions, can be achieved from urban design guidance to policy is alarming. This concern is furthered by Urban Desing Guidelines, which are applied as companion documents to the Official Plan, which suggest that a development application conform to a 45 degree angular plane, without specifying how the angular plane is to be applied. Any policy or guidance requiring that an angular plane be applied as a means to control transition is overly restrictive, misleading and contrary to good practice. In our opinion, any angular plane requirement should be removed from the Official Plan. Angular planes are one of many urban design guidance tools that can and should remain in the area-specific Built Form Standards, if at all. Elevating such urban design guidance to policy will restrict development and efficient, high-quality built forms where development ought to be directed in the midst of a Provincial housing crisis. Furthermore, the inclusion of angular planes and other urban design guidance in policy is contrary to Provincial objectives and contrary to the findings of the City of Mississauga Mayor's Task Force. Finally, the continued inclusion of such policies to require transition be provided in such manners with frustrate expeditious development approvals and will also result in costly, inefficient built forms. As an example, the requirement that built forms respect an angular plane results in substantially reduced gross floor area, a reduced number of dwelling units to be accommodated, and terraced built forms that are costly to construct and significantly less energy efficient than would otherwise be the case. We also highlight that given the above implications, neighbouring jurisdictions such as the City of Toronto have recently updated their Built Form or Urban Design Guidelines to eliminate the practice of angular planes. Based on the above, we respect that the built form policies be modified to eliminate the practice and policy requirement that will lead to inefficient and costly built forms to be mandated.

5. Retail Replacement

By way of context, the Subject Lands are currently designated Mixed Use by the in-effect and by the Council adopted Mississauga Official Plan. While a site-specific Official Plan Amendment application was submitted to the City of Mississauga in December 2024 and if approved, would

serve to re-designate the Site to 'Residential High Density' along with introducing modified development standards by way of a new Special Site policy, the adopted Mixed Use policies as presented are concerning.

To be clear, we support components of the adopted Mixed Use policy framework as policy such as Policy 10.2.6.2 is a significant improvement over the current in-effect policy framework which requires a site to be re-designated when the principal use is to be residential. We support the adopted policy framework which no longer specifies that a re-designation is required to an applicable residential category when the predominant use is residential on an existing Mixed Use designation site.

We are however concerned with the retail replacement requirements presented in Policy 10.2.6.3. As presented, Policy 10.2.6.3 requires replacement of existing retail and service commercial space; however, the quantum of replacement space to be required is unclear. Regardless, the policy is also unnecessarily restrictive, will hinder development and does not adequately reflect the post-pandemic market. Requiring a development to provide the same or even a significant percentage of existing non-residential space to be replaced in a development does not adequately capture market trends, does not enable a property owner to 'right-size' the space to avoid significant void areas and does not reflect best practices. In our opinion, this policy is premature given there is in-effect Provincial direction to encourage underutilized plazas to redevelop to support the provision of housing. It is also premature given the City of Mississauga has stated it is currently undertaking a Retail Market Study to better understand where retail may be needed and the type of retail that is needed to support community needs. Rather than requiring a minimum percentage of existing non-residential space to remain, we request a policy mechanism that would permit an appropriate amount of ground-level non-residential space based on the findings of an independent Market Impact Assessment, to the satisfaction of Staff. This policy mechanism would enable sufficient flexibility as development of underutilized retail plazas come forward and a way for development to proceed in a manner that supports Provincial and local objectives.

Chapter 17, Special Sites

Revisions are contemplated to the Special Site policy framework. Specifically, a new Chapter 17 is contemplated which presents all Special Site policies, presented in sequential order, rather than as components of the parent Character Area policies. While we support the transition to a refined policy framework that balances the Provincial and local objectives, we also request that a housekeeping Amendment be provided at the appropriate time in the future to recognize and implement the outcome of the current development approval and request for the Subject Lands to be subject to a Special Site policy.

Organization

A final overarching concern is the length and organization of the Mississauga Official Plan. As adopted, the Mississauga Official Plan, exclusive of implementing Schedules, is 713 pages. This is a significant and overly complicated policy framework meant to guide how growth and development occurs across the City of Mississauga up to the year 2051. We respectfully respect the Ministry to require modifications to streamline and simplify the local policy framework so that broader, overall policy objectives are identified. Simplification of the Official Plan would enable the Official Plan to function as intended – as a strategic document which provides policy guidance. Further detail regarding matters such as setbacks, angular planes, etcetera can and should be provided either through companion documents such as Secondary Plans, Urban Design Guidelines or the implementing Zoning By-law. This approach would also ensure consistency with how Official Plans are crafted for neighbouring jurisdictions such as the City of Brampton, Town of Oakville, Town of Milton and the City of Toronto. Furthermore, a streamlined Official Plan would enable a document that is more easily accepted, can be understood by community members and would support the Provincial objective of Bill 17 for a consistent planning framework for lands across the Province of Ontario.

Conclusion

In summary, we are concerned with the Mississauga Official Plan 2051 and request that the Ministry consider our proposed modifications to the Official Plan. Thank you for the opportunity to provide these comments. We wish to be informed of any future decisions made.

Yours very truly,
GLEN SCHNARR & ASSOCIATES INC.

Jim Levac, MCIP, RPP
Partner

Stephanie Matveeva, MCIP, RPP
Associate

cc. Julian Baldassarra, Starmount Estates Inc.
Gabe DiMartino, Starmount Estates Inc.
Carmina Tupe, Starmount Estates Inc.

GSAI
Glen Schnarr & Associates Inc.

Appendix I / Previous Comment Letters

GSAI
Glen Schnarr & Associates Inc.

Partners:
Glen Broll, MCIP, RPP
Colin Chung, MCIP, RPP
Jim Levac, MCIP, RPP
Jason Afonso, MCIP, RPP
Karen Bennett, MCIP, RPP

In Memoriam, Founding Partner:
Glen Schnarr

March 15, 2024 GSAI File: 1484 – 003, 1484 – 004, 1484 - 005

(Via Email)
Chairman and Members of the Planning and Development Committee
c/o Angie Melo, PDC Coordinator
City of Mississauga
300 City Centre Drive
Mississauga, ON L3B 3C1

RE: Mississauga Official Plan 2051
Petruso Point Service Corp., Starmont Estates Inc.
3435 Eglinton Avenue West, 2555 Glen Erin Boulevard & 2980 Crosscurrent Drive, City of Mississauga

Glen Schnarr and Associates Inc. ('GSAI') are the planning consultants to Petruso Point Service Corp. and Starmont Estates Inc. (collectively, the 'Owners') of the lands municipally known as 3435 Eglinton Avenue West, 2555 Glen Erin Boulevard and 2980 Crosscurrent Drive, in the City of Mississauga. On behalf of the Owners, we are pleased to be providing this Comment Letter in relation to the ongoing Mississauga Official Plan Review initiative.

Background Information:

GSAI has been participating in the Mississauga Official Plan Review initiative ('OP Review initiative') as well as various related City initiatives. We understand that when complete, the City's OP Review initiative will culminate in a new draft Official Plan (the 'Mississauga Official Plan 2051') that will modify the policy framework permissions for lands across the City, including the Subject Lands.

By way of context, the Owners have land holdings across the City of Mississauga. This Letter relates to three (3) parcels, each with their own context and locational characteristics. The existing context of each parcel is as follows:

3435 Eglinton Avenue West

The Site, municipally known as 3435 Eglinton Avenue (hereinafter the '3435 Eglinton Lands') is located on the north side of Eglinton Avenue West, west of Tenth Line West. It is currently improved with a local retail plaza comprised of two (2), low-rise multi-tenant commercial structures and surface parking areas. Based on the in-effect planning policy framework, the 3435 Eglinton Lands is located within the Churchill Meadows Neighbourhood Character Area, is in proximity to the Winston Churchill 403 Major Transit Station Area (in accordance with Schedule E-5, Major Transit Station Areas, Region of Peel Official Plan), and is designated 'Convenience Commercial' (in accordance with Schedule 10, Land Use Designations, Mississauga Official Plan). Based on the above, the Site has recognized development potential.

When considered collectively, the in-effect policy framework identifies the 3435 Eglinton Lands as an appropriate and desirable location for higher density, compact development to occur. This is strengthened by the Site's locational characteristics of being within 300 metres of various street-level transit services, the Mississauga Transitway network and the planned 407 Transitway network. Additionally, the Site is located within walking distance of various services, amenities, facilities, parks and greenspaces to meet the daily needs of residents and support Churchill Meadows as a vibrant, complete, 15-minute community.

2555 Glen Erin Boulevard

The Site, municipally known as 2555 Glen Erin Boulevard (hereinafter the '2555 Glen Erin Lands') is located on the north side of Erin Centre Boulevard, east of Erin Mills Parkway. It is currently improved with a local retail plaza comprised of a low-rise multi-tenant commercial structure and surface parking areas. Based on the in-effect planning policy framework, the 2555 Erin Centre Lands is located within the Central Erin Mills Neighbourhood Character Area, is immediately adjacent to the Central Erin Mills Major Node Character Area (in accordance with Schedule 9, Character Areas, Mississauga Official Plan), and is designated 'Mixed Use' (in accordance with Schedule 10, Land Use Designations, Mississauga Official Plan). Based on the above and the surrounding context, the Site has recognized development potential.

When considered collectively, the in-effect policy framework identifies the 2555 Erin Centre Lands as an appropriate and desirable location for higher density, compact development to occur. This is strengthened by the Site's locational characteristics of being immediately adjacent to and within 300 metres of various street-level transit services, the Mississauga Transitway network and the Erin Mills Bus Terminal facility. Additionally, the Site is located within walking distance of various services, amenities, facilities, schools, parks and greenspaces to meet the daily needs of residents and support Central Erin Mills as a vibrant, complete, 15-minute community.

2980 Crosscurrent Drive

The Site, municipally known as 2980 Crosscurrent Drive (hereinafter the '2980 Crosscurrent Lands') is located on the east side of Winston Churchill Boulevard, south of Crosscurrent Drive. It is currently improved with a local retail plaza comprised of a low-rise multi-tenant commercial structure and surface parking areas. Based on the in-effect planning policy framework, the 2980 Crosscurrent Lands is located within the Meadowvale Neighbourhood Character Area and is designated 'Convenience Commercial' (in accordance with Schedule 10, Land Use Designations, Mississauga Official Plan). Based on the above and the surrounding context, the Site has recognized development potential.

When considered collectively, the in-effect policy framework identifies the 2980 Crosscurrent Lands as an appropriate and desirable location for higher density, compact development to occur. This is strengthened by the Site's locational characteristics of being within 300 metres of various street-level transit services. Additionally, the Site is located within walking distance of various services, amenities, parks and greenspaces to meet the daily needs of residents and support Meadowvale as a vibrant, complete, 15-minute community.

Concerns Related to the Draft Mississauga Official Plan 2051:

We have reviewed the draft Mississauga Official Plan 2051 ('Draft OP'), released on February 12, 2024. The draft policies propose revisions to Chapters 3 (Directing New Development), 5 (Housing Choices), 8 (Well Designed Healthy Communities), 10 (Land Use Designations), 14 (Neighbourhoods) and select Schedules. We support the move to a modified policy framework to guide how growth is to be managed in accordance with Provincial, Regional and local policy initiatives and the release of a complete, draft Official Plan so that the evolving policy framework can be evaluated in its totality. Based on our review of the Draft OP, we have a number of concerns as outlined below.

Chapter 3: Directing New Development

The Draft OP continues to provide guiding policy direction for how growth and development is to be managed in accordance with a City Structure. The proposed City Structure, as presented on Schedule 1, remains largely unchanged from the in-effect Mississauga Official Plan. In the case of the 3435 Eglinton Lands, 2555 Glen Erin Lands and 2980 Crosscurrent Lands, the proposed City Structure continues to identify the sites as being located within the Neighbourhood component of the City Structure. While we support the continued use of a policy framework, structured by the City Structure, the continued inclusion of the above-noted lands within the Neighbourhoods component may further challenge the delivery of refined, optimized, redevelopment forms in appropriate locations.

Chapter 5: Housing Choices and Affordable Homes

A new housing-related policy framework is proposed and is presented in Chapter 5, Housing Choices and Affordable Homes. Policies 5.2.2, 5.2.4, 5.2.5 and Table 5.1 as stated below are particularly concerning:

> *'5.2.2. Phased development will have a range and mix of housing types for each development phase.'*

The purpose of this policy is unclear. As written, the policy appears to place an obligation on development proponents to provide a range of housing types, without specifying what is meant by housing type. For example, as written, the policy could be interpreted to require that each development phase is required to provide two or more housing types, such as apartment-style units, ground-oriented units, townhouse-style units, etcetera. The requirement for each development phase to provide a variety of housing types will be problematic and can challenge the ability to deliver high-quality housing options for current and future residents. In our opinion, the policy should be revised to enable greater flexibility by encouraging phased developments to provide a range and mixture of housing units, rather than referencing housing type.

> *'5.2.4. To achieve a balanced mix of unit types and sizes, and support the creation of housing suitable for families, development containing more than 50 new residential units is encouraged to include a minimum of 50 percent of a mix of 2-bedroom units and 3-bedroom units. The City may reduce these percentages where development is providing:*
>
> - *social housing or other publicly funded housing; or*
> - *specialized housing such as residences owned and operated by a post-secondary institution or a health care institution or other entities to house students, patients employees or people*

with special needs'

We note that the above-noted policy has been revised since the previous draft policy was presented in the Bundle 3 Draft OP in May of 2023. Notwithstanding that the policy has been revised since the previous iteration, we remain concerned In our opinion, the above-noted policy should be revised and any reference to specific percentage of larger dwelling units should be removed. As written, the requirement for any number of units to be of a certain type will challenge Provincial, Regional and local policy objectives of delivering a variety of attainable housing options for current and future residents. It will also challenge the delivery of housing units in appropriate locations that are in proximity to existing and planned transit networks and support the creation of complete communities, while also being in the midst of a Provincial housing crisis. Instead, the policy should be revised to encourage a range of housing units to be provided so that the changing needs of residents can be met.

'5.2.5. The City will plan for an appropriate range and mix of housing options and densities by implementing Regional housing unit targets shown in Table 5.1'

Table 5.1 – Peel-Wide New Housing Unit Targets

Target Area	*Targets*
Affordability	*That 30% of all new housing units are affordable housing, of which 50% of all affordable housing units are encouraged to be affordable to low income households*
Rental	*That 25% of all new housing units are rental tenure*
Density	*That 50% of all new housing units are in forms other than detached and semi-detached houses. Note: These targets are based on housing need as identified in the Peel Housing and Homelessness Plan and Regional Housing Strategy*

The above-noted policy and Table 5.1, as written, are concerning and should be removed. Use of the Region-wide housing targets, as established by Policy 5.2.5 and Table 5.1 are concerning and contrary to the powers of the City. Furthermore, the above-noted housing-related targets have not been adapted nor studied to ensure applicability at the specific City-wide scale. Furthermore, the requirement in Table 5.1 that 30% percent of all new housing units are to be affordable housing units and the requirement that 25% of all new housing units be rental in tenure have been deemed illegal by Ontario Land Tribunal decisions and will challenge the rapid delivery of housing units, in appropriate locations. Policy 5.2.5 and Table 5.1 must be removed.

Chapter 8: Well Designed Healthy Communities

A new urban design-related policy framework is proposed and is presented in Chapter 8, Well Designed Healthy Communities. Policies 8.4.1.17, 8.4.5.2 and 8.6.2.5 as stated below are particularly concerning:

> *'8.4.1.17. Built form will relate to the width of the street right-of-way.'*

As written, this policy is concerning and requires further consideration and modification. In our opinion, the requirement for a built form to have a relationship to the width of the Right-of-Way ('ROW') on which it fronts is inappropriate. As written, the policy will apply a one-size-fits-all approach to sites across the City, regardless of their location and unique attributes and its context. The policy also does not account for the diverging widths of streets across the City. Requiring that a built form relate to the street on which it fronts does not adequately account for the variation of street classifications and will challenge the ability to provide efficient, high-quality, refined, compact, mixed-use, transit supportive development forms in the desired locations. This policy requires revision to eliminate a universal application of building height limits based on a site's location along a street, greater flexibility to permit buildings of appropriate scales and heights is paramount.

> *'8.4.5.2. Privately owned publicly accessible spaces will be designed in accordance with the city's standards for public open spaces.'*

The above-noted policy is concerning and vague. In our opinion, the above-noted policy requires revision to provide for sufficient flexibility based on a site's locational attributes and development contexts. The statement that Privately Owned Publicly Accessible Spaces (POPS) be designed in accordance with City Standards is concerning given City Standards for public open spaces do not always reflect the as-built condition of encumbered lands being provided as privately owned, publicly accessible spaces. Furthermore, greater acknowledgement is required that POPS of varying size, locations and configurations can be successfully planned, designed and delivered in various ways. Based on the above, we recommend that the above-noted policy be modified to encourage compliance with the applicable City Standard and that conformance with the City's Standard for public open spaces not be required in this instance. .

> *'8.6.2.5. Transitions between buildings with different heights will be achieved by providing a gradual change in height and massing. This will be done through the use of a variety of methods including setbacks, the stepping down of buildings, the general application of a 45 degree angular plane, separation distances and other means in accordance with Council-approved plans and design guidelines.'*

The above-noted policy is concerning. In our opinion, the above-noted policy should must be revised to exclude the requirement that any development be required to conform to a 45 degree angular plane. As the policy suggests, there are various ways of ensuring appropriate transition can be provided. In our opinion, a policy requirement that a development application conform to a 45 degree angular plane, without specifying how the angular plane is to be applied, is overly restrictive and unnecessary. The 45 degree angular plane requirement will challenge development for the following reasons:

- application of an angular plane eliminates a significant percentage (up to 50%) of available gross floor area or

dwelling units while we are in the midst of a housing crisis;

- application of an angular plane significantly increases the cost of construction, thereby reducing project feasibility;
- application of an angular plane negatively and adversely impacts building sustainability/energy efficiency due to heat loss arising from stepping and or terracing; and,
- application of an angular plane is contrary to good planning and design practices found in other jurisdictions.

For the above noted reasons, the angular plane requirement of Policy 8.6.2.5 must be removed.

Buildings and Building Types

The draft MOP proposes refinements to the urban design-related policy framework and an evolution towards a built form-based policy framework. Section 8.6.1 of the Draft OP presents the refined built form policy framework and provides a characterization of how each built form is to be generally understood. Of relevance to the 3435 Eglinton Lands, 2555 Glen Erin Lands and 2980 Crosscurrent Lands, the Draft OP framework presents characterizations of mid-rise and high-rise built forms. These built forms are characterized as follows:

> *'b. Mid-rise buildings: in Mississauga, mid-rise buildings are generally higher than four storeys with maximum heights as prescribed by area-specific policies and land use designations. Their height should not exceed the width of the right-of-way onto which they front, and they must ensure appropriate transition to the surrounding context. Mid-rise buildings can accommodate many uses and provide transit-supportive densities yet are moderate in scale, have good street proportion, allow for access to sunlight, have open views to the sky from the street, and support high-quality, accessible open spaces in the block. Mid-rise buildings provide good transition in scale to adjacent low-rise built forms.*
>
> *c. High-rise buildings: they represent buildings with height maximums as prescribed by local area policies and land use designations. High-rise buildings, which can also be referred to as Tall Buildings in this Plan, provide transit-supportive densities and play an important role in allowing the city to meet its growth targets, especially within Strategic Growth Areas.'*

The above mid-rise and high-rise building characterizations are problematic. Specifically, the 3435 Eglinton Lands, 2555 Glen Erin Lands and 2980 Crosscurrent Lands are not subject to a Local Area Plan. Instead, the sites collectively are subject to Neighbourhood Character Area policies and the applicable land use policies. The above characterizations do not adequately capture the reality of development forms and do not provide for sufficient flexibility to accommodate high-rise or tall buildings at appropriate locations outside of Local Plan Area boundaries. We are also concerned with the characterization of mid-rise buildings as having a permitted height range and requiring that this built form have a relationship to the width of a street upon which it fronts. For the above-noted reasons, we oppose the mid-rise and high-rise building characterizations. These characterizations must be modified to recognize the existence and allow permission for these built forms at appropriate locations across the City.

Chapter 10: Land Use Designations

The Draft OP proposes refinements to the land use policy framework and an evolution towards a built form-based policy framework. This evolution and associated policy refinements are concerning. In accordance with the Draft OP Schedule 7, Land Use Designations, a number of properties across the City have been re-designated or permissions otherwise modified. In our opinion, there are instances where this is akin to down designations and if adopted, would result in the loss of development permissions available in existing permissions. This is unacceptable and should not be carried forward.

In the case of the Subject Lands, the proposed land use designations (Schedule 7) are concerning. Specifically, Schedule 7 maintains the current 'Convenience Commercial' designations on the 3435 Eglinton Lands and the 2980 Crosscurrent Lands. Schedule 7 also maintains the 'Mixed Use' designation on the 2555 Glen Erin Lands.

Maintenance of the 'Mixed Use' designation on the 2555 Glen Erin Lands is concerning. Section 10.2.6 of the Draft OP contains the parent Mixed Use policy framework which any development application must be evaluated.. We are concerned with Policies 10.2.6.2 and 10.2.6.3 as stated below.

> *'10.2.6.2. The planned function of lands designated Mixed Use is to provide a variety of retail, service and other uses to support the surrounding residents and businesses. Development on Mixed Use sites that includes residential uses will be required to contain a mixture of permitted uses. This mix of uses is required in order to create complete communities with destinations that are close enough for walking and cycling to be the most attractive transportation option. In addition to mitigating traffic congestion, this enhances human health and reduces greenhouse gas emissions.'*

> *'10.2.6.3. Redevelopment of Mixed Use sites must maintain the same amount of non-residential floor space.'*

The above-noted policies require revision. Collectively, the above-noted policies are unnecessarily restrictive and may challenge the ability for lands to be appropriately redeveloped. Specifically, that a range of retail, service and other uses be provided can be a challenge for development proponents to accommodate and may challenge a proponent's ability to offer a sufficient and efficient non-residential floor area. Similarly, the policy requirement that existing non-residential floor area be replaced does not adequately accommodate the evolving context of communities and market trends. Furthermore, the policies noted above may hinder the development potential of designated Mixed Use lands and the lands' ability to support contextually appropriate development that is able to further implement Provincial, Regional and local policy objectives for compact, mixed-use, complete communities. Lastly, the above-noted policies do not satisfactorily reflect changing market trends nor does it enable a proponent to provide an appropriate amount of non-residential. Greater flexibility is needed to enable vibrant, compact, efficient redevelopment forms to be implemented in appropriate locations.

Chapter 14: Neighbourhoods

Revisions are contemplated in Chapter 14 for lands located within the Neighbourhood component of the City Structure. In the case of the 3435 Eglinton Lands, 2555 Glen Erin Lands and 2980 Crosscurrent Lands, these sites are located within the Churchill Meadows, Central Erin Mills and Meadowvale Neighbourhood Character Areas, respectively. As such, each site it is subject to the parent Neighbourhood Character Area policies presented in Section 14.1.1, General, and the

Character Area-specific policies. We highlight that the Neighbourhood Character Area policies for the Central Erin Mills and Churchill Meadows communities are absent from the Draft OP. This absence is concerning and prevents an evaluation of the Draft OP in its totality.

When considered collectively, the refined Neighbourhood policy framework and in particular Policies 14.1.1.6 and 14.1.2.2 as stated below are problematic.

> *'14.1.1.6. Intensification within Neighbourhoods may be considered where the proposed development is compatible in built form and scale to surrounding development, enhances the existing or planned development and is consistent with the policies of this Plan.'*

> *'14.1.2.2. Within Neighbourhood Character Areas, development of Mixed Use sites that are over 1 ha in size will:*
>
> *a. maintain the same amount of commercial floor space;*
> *b. ensure a significant range of retail and service commercial uses that meet the needs of the local population is provided;*
> *c. include a mix of low and mid-rise buildings with maximum heights not exceeding the width of the street right-of-way that they front onto, up to a maximum of 8 storeys;*
> *d. have a maximum floor space index (FSI) of 1.75 to guide the form, massing and density of proposed buildings;*
> *e. provide a well-connected road system, including the addition of public roads to encourage walking, cycling and support public transit;*
> *f. ensure roads surrounding blocks are public and meet City of right-of-way and design standards;*
> *g. provide public open space that is designed and located to create a central focus, in accordance with the policies of this Plan and the City's Park Plan;*
> *h. provide for appropriate massing and transition to surrounding context;*
> *i. ensure newly created blocks maximize connectivity, pedestrian walkability, vehicular access, servicing routes and internal permeability. Block perimeters will generally not exceed 520 m;*
> *j. include a variety of unit sizes and tenures to accommodate a range of households;*
> *k. explore opportunities for energy conservation through design and the use of renewable energy sources; and*
> *l. adhere to urban form and design policies of this Plan and the City's Green Design Guidelines.'*

Firstly, we are opposed to policy requirements for non-residential replacement. The policy requirement to replace existing non-residential floor space in a development is overly restrictive and will challenge an ability for proponents to provide a sufficient amount of non-residential space that is capable of accommodating the evolving contexts of communities and market trends. In addition to this concern, the above-noted policies when considered collectively are overly restrictive and require revisions. We oppose the maximum building height of 8 storeys identified and request that this height limitation be removed. Furthermore, the statement that intensification within Neighbourhoods may be considered is contrary to the policy objectives identified throughout the Draft OP. While certain Neighbourhood Character Area lands are not suitable for higher density, compact, mixed-use development, the 3435 Eglinton Lands, 2555 Glen Erin Lands and 2980 Crosscurrent Lands are an appropriate and desirable locations for this type of development to occur. The statement that intensification may be considered will challenge the development potential

of lands. Similarly, the policy requirements that a significant, without clarity on how significant is to be understood, range of retail and service commercial uses be provided, that a range and mixture of specified building types be provided and that public open spaces be provided amongst other matters are unnecessarily restrictive. These policy provisions should be removed and instead, sufficiently flexible evaluation criteria should be provided to enable contextually appropriate, compatible intensification developments to occur in appropriate locations.

Meadowvale Neighbourhood Character Area

As mentioned above, the 2980 Crosscurrent Lands are located within and are subject to the Meadowvale Neighbourhood Character Area policies. The Draft OP presents refinements to Chapter 14.10, Meadowvale that are concerning. Of relevance to the 2980 Crosscurrent Lands, Policies 14.10.2.2, 14.10.2.5, 14.10.2.6 as stated below are of particular concern:

> *'14.10.2.2. Notwithstanding the policies of this Plan, building heights of up to 12 storeys may be permitted on lands designated Mixed Use and Residential High Rise subject to the following requirement:*
> *a. new and existing buildings do not exceed a maximum floor space index (FSI) of 2.0.'*
>
> *'14.10.2.5. The built form in Meadowvale will preserve an open and green character by:*
> *c. ensuring new buildings above four storeys relate to their surrounding context and achieve an appropriate transition in height generally consistent with a 45 degree angular plane to adjacent low-rise residential areas.'*
>
> *'14.10.2.6. Taller buildings between nine and 12 storeys will be required to incorporate podiums that are a minimum of three storeys and a maximum of six storeys. For the purposes of these policies, podium means the base of a building that is distinguished from the taller portion of the building by being set forward or articulated architecturally.'*

The above-noted policies require revision for a number of reasons. Firstly, the policy requirement that building heights for Residential High-Rise lands be limited to 12 storeys is inconsistent with the policy objectives stated elsewhere in the Draft OP. Furthermore, the policy limitation that new and existing buildings not exceed a maximum FSI of 2.0 is concerning. This policy also does not provide sufficient guidance on how the limitation of density is to be applied. For example, as written, Policy 14.10.2.2.a would suggest that the maximum density applies to all lands within an area and not on a site-specific basis. Refinement is required to clarify what scale the maximum density limitation applies to. We also request that the maximum density be increased to enable built forms that are sufficiently dense to support compact, pedestrian-oriented and transit-supportive development forms.

As stated above in this Letter, we are opposed to the application of angular planes. Given the application of angular planes is one of many policy tools available, the policy requirement that an angular plane, without specifying how an angular plane is to be applied, must be removed.

Finally, we are concerned with Policy 14.10.2.6 as written. A policy requirement that mid-rise built forms be designed in such a manner to incorporate a podium is overly restrictive, contrary to good planning and design practices and will challenge the development potential of lands. The application of a podium and tower configuration for lower rise built

forms, when compared to high-rise or tall buildings, does not adequately reflect development realities. This policy should be removed to enable contextually appropriate development forms to be introduced at appropriate locations across the Meadowvale community.

Conclusion:

In summary, we are concerned about the proposed policy directions outlined in the Draft OP and request that modifications as identified throughout this letter be made. Thank you for the opportunity to provide these comments. Our Client, the Owners, wishes to be included in all further engagement related to the OP Review Initiative and wishes to be informed of updates, future meetings and the ability to review and provide comments on the final Official Plan prior to adoption by Council.

We look forward to being involved. Please feel free to contact the undersigned if there are any questions.

Yours very truly,

GLEN SCHNARR & ASSOCIATES INC.

Jim Levac, MCIP, RPP
Partner

Stephanie Matveeva, MCIP, RPP
Associate

cc. Owners
Councillor McFadden
Councillor Butt
Councillor Reid
Ben Phillips, Project Manager, Official Plan Review

GSAI
Glen Schnarr & Associates Inc.

Partners:
Glen Broll, MCIP, RPP
Colin Chung, MCIP, RPP
Jim Levac, MCIP, RPP
Jason Afonso, MCIP, RPP
Karen Bennett, MCIP, RPP

In Memoriam, Founding Partner:
Glen Schnarr

February 21, 2025 GSAI File: 1484-004

(Via Email)
Mr. Ben Philips
Project Manager, Mississauga Official Plan Review
City of Mississauga
300 City Centre Drive
Mississauga, ON L3B 3C1

RE: Mississauga Official Plan 2051
Starmont Estates Inc.
2555 Erin Centre Boulevard, City of Mississauga

Glen Schnarr and Associates Inc. (GSAI) are the planning consultants to Starmont Estates Inc. (the "Owner') of the lands municipally known as 2555 Erin Centre Boulevard, in the City of Mississauga (the 'Subject Lands' or 'Site'). On behalf of the Owner, and further to the Mississauga Official Plan Review Comment Letters, submitted by GSAI, dated March 15, 2024 and June 12, 2024, we are pleased to submit this Comment Letter in relation to the ongoing Mississauga Official Plan Review initiative.

As Staff and Council are aware, GSAI has been participating in the Mississauga Official Plan Review initiative ('OP Review initiative') as well as various related City initiatives. We understand that when complete, the City's OP Review initiative will culminate in a new draft Official Plan (the 'Mississauga Official Plan 2051') that will modify the policy framework permissions for lands across the City, including the Site. This Letter provides our comments on the draft Mississauga Official Plan 2051, released in January 2025.

We have reviewed the draft Mississauga Official Plan 2051, released in January 2025 as well as the Official Plan Review Matrix prepared by City of Mississauga Staff. Based on this review, we highlight that while certain concerns previously raised have been addressed through the removal of certain policies, four (4) primary concerns remain. Our remaining concerns are further described below.

1. City Structure

Chapter 3, Managing Growth presents a refined growth management framework for the City. More specifically, Chapter 3 outlines how growth and development is to be managed across the City up to the year 2051 in accordance with a refined City Structure. Chapter 3.3 and a revised Schedule 1 provide further direction and clarity on the current, proposed City Structure framework. We highlight that the Subject Lands continue to be identified as being located within the Central Erin Mills Neighbourhood Character Area. We remain concerned about the City Structure as drafted and repeat our request that the City Structure be amended to remove the Subject Lands from the Central Erin Mills Neighbourhood Character Area and instead add the Subject Lands to the newly defined Central Erin Mills Growth Node. We remain of the opinion that inclusion of the Subject Lands within the Central Erin Mills Growth Node is appropriate, would enable appropriate and compatible development to occur and would not comprise the overall City Structure. Inclusion of the Subject Lands would

also support the Provincial policy objective of encouraging underutilized lands, such as retail plazas, to be sensitively redeveloped to support complete community and intensification objectives. Furthermore, we request clarification on why the former Uptown Major Node Character Area has been re-classified to be a component of the newly defined Growth Centre component of the City Structure when no other modifications to the decades old City Structure have been made. In our opinion, the continued exclusion of the Subject Lands from the Central Erin Mills Growth Node is inappropriate and is a missed opportunity to enable compact, transit-supportive, mixed-use development to occur in an appropriate location that will support in-effect Provincial, Regional and local policy objectives.

2. Vegetive Buffers

Chapter 4 provides a refined natural environment policy framework. This framework includes policies pertaining to the delineated Natural Heritage System (NHS) lands and the establishment of vegetative buffers to enable the long-term protection of the natural feature and its ecological functions. Of relevance to the Subject Lands, there is an established woodlot that extends northerly. Given the presence of this woodlot, any development application for the Site, as is required by policy, is required to analyze the limits of the woodlot which is a component of the local NHS system and identify a vegetative buffer of sufficient width to protect the natural feature and its ecological functions. We are concerned with the policies as drafted contained in Chapter 4.3 which collectively require that a minimum vegetative buffer width of 10 metres be required. In our opinion, the policy requiring a minimum buffer width of 10 metres is unnecessarily restrictive and requires revision. The appropriate width of a vegetative buffer should be based on a detailed analysis completed by a qualified professional and should be evaluated on a case-by-case basis. As Staff are aware, there are instances across the City where a variable width buffer is the most appropriate solution and is able to achieve the same objective of preserving and protecting the natural feature and its ecological functions for the long-term. Furthermore, variable width buffers have been found to be acceptable and have facilitated appropriate development forms without issue. Based on the above, we are of the opinion that the policy framework as drafted requires revision to enable flexibility based on site-specific contexts as a one-size-fits-all policy approach is not appropriate.

3. Built Form & Transition

Chapter 8 provides the refined built form and site development policy framework. We remain concerned with the transition to a built-form based policy framework and that specific urban design guidance has been elevated to policy. More specifically, we are concerned with Policies 8.2.9.c), Policy 8.6.2.5 and Policy 8.6.2.6. Policy 8.2.9.c) states that the City's vision will be supported by site development that demonstrates context sensitivity and transition. A similar concern is shared with Policy 8.6.2.5 which states that transition can be achieved through the use of setbacks, stepping down of buildings, angular plane, separation distances and other means. Lastly, Policy 8.6.2.6 states that developments will provide a transition in building height and form between Strategic Growth Areas and adjacent Neighbourhoods with lower heights. Should the Subject Lands be added to the Central Erin Mills Growth Node, they would be considered a site within a Strategic Growth Area and adjacent to a Neighbourhood. Thus, Policy 8.6.2.6 is problematic. Policy 8.6.2.6 is followed by the following illustrative graphic, referred to as Figure 8.9:

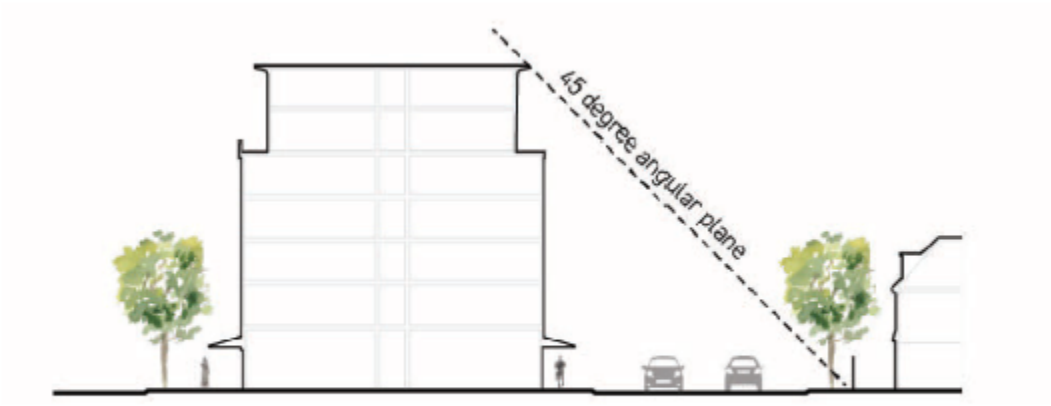


Figure 8.9. Angular planes allow for more gradual transitions between low-rise neighbourhoods to adjacent higher rise developments, while enhancing the pedestrian environment.

The above-noted policies and the above illustrative graphic are concerning. As the policies as drafted suggest, there are various ways of ensuring appropriate transition can be provided. There is also ambiguity given transition is not defined. In our opinion, elevating appropriate transition and the ways that transition, including the use of angular plane provisions, can be achieved from urban design guidance to policy is alarming. This concern is furthered by the above-noted policies which suggest that a development application conform to a 45-degree angular plane, without specifying how the angular plane is to be applied.

Any policy requiring that an angular plane be applied as a means to control transition is overly restrictive, misleading and contrary to good building practice. In our opinion, any angular plane requirement should be removed from the above-noted policies. Elevating such urban design guidance to policy will restrict development and efficient, high-quality built forms where development ought to be directed in the midst of a Provincial housing crisis. Furthermore, the inclusion of angular planes and other urban design guidance in policy is contrary to the findings of the Mayor's Housing Task Force Report, which clearly states that a third-party consultant would be undertaking comprehensive review and update of the City's urban design program, which would include the use of angular plans as design-control tool. Therefore the illustrative graphic provided by Figure 8.9 should be removed to eliminate confusion or policy misinterpretation, while this parallel design review is being undertaken. Additionally, we highlight that neighbouring jurisdictions such as the City of Toronto have eliminated the requirement for application of angular planes as it is recognized that angular plane requirements substantially reduce the gross floor area and number of units that can be efficiently accommodated, require more costly construction methods and therefore directly impact affordability and energy efficiency of development.

4. Retail Replacement

By way of context, the Subject Lands are currently designated Mixed Use by the in-effect and by the draft Mississauga Official Plan. While a site-specific Official Plan Amendment application has been submitted in December 2024 and if approved, would serve to re-designate the Site to 'Residential High Density' along with introducing modified development standards by way of a new Special Site policy, the draft Mixed Use policies as currently contemplated are concerning.

To be clear, we support the proposed policy direction provided by Policy 10.2.6.2 which permits designated Mixed Use to retain this designation when development includes residential uses. In our opinion, the policy as drafted is a significant

improvement over the current in-effect policy framework which requires a site to be re-designated when the principal use is to be residential. We support the policy as currently drafted.

We are however concerned with the retail replacement requirements presented in Policy 10.2.6.3. As drafted, Policy 10.2.6.3 which requires replacement of existing retail and service commercial space is unclear. It is also unnecessarily restrictive, will hinder development and does not adequately reflect the post-pandemic market. Requiring a development to provide the same or even a significant percentage of existing non-residential space to be replaced in a development does not adequately capture market trends, does not enable a property owner to 'right-size' the space to avoid significant void areas and does not reflect best practices. In our opinion, this policy is premature given there is in-effect Provincial direction to encourage underutilized plazas to redevelop to support the provision of housing. It is also premature given the City is currently undertaking a Retail Market Study to better understand where retail may be needed and the type of retail that is needed to support community needs. Rather than requiring a minimum percentage of existing non-residential space to remain, we request a policy mechanism that would permit an appropriate amount of ground-level non-residential space based on the findings of a Market Impact Assessment, to the satisfaction of Staff. This policy mechanism would enable sufficient flexibility as development of underutilized retail plazas come forward and a way for development to proceed in a manner that supports Provincial and local objectives.

Chapter 17, Special Sites

Revisions are contemplated to the Special Site policy framework. Specifically, a new Chapter 17 is contemplated which presents all Special Site policies, presented in sequential order, rather than as components of the parent Character Area policies. While we support the transition to a refined policy framework that balances the Provincial and local objectives, we also request that a housekeeping Amendment be provided at the appropriate time in the future to recognize and implement the outcome of the current development approval and request for the Subject Lands to be subject to a Special Site policy.

Conclusion

In summary, we remain concerned about the proposed policy directions outlined in the draft Mississauga Official Plan 2051 and continue to request that modifications be made. Thank you for the opportunity to provide these comments. Our Client wishes to be informed of updates, future meetings and the ability to review and provide comments on the final Official Plan prior to adoption.

We look forward to being involved. Please feel free to contact the undersigned if there are any questions.

Yours very truly,
GLEN SCHNARR & ASSOCIATES INC.

Jim Levac, MCIP, RPP
Partner

Stephanie Matveeva, MCIP, RPP
Associate

cc. Mayor Parrish and Members of Council
Starmont Estates Inc.

Comment Letter

File #:	**2730**
Date:	**February 26, 2025**

To:	**Mr. Ben Philips** **Project Manager, Mississauga Official Plan Review** **City of Mississauga** **300 City Centre Drive** **Mississauga, ON L3B 3C1**
From:	**Al Benson, SCS Consulting Group** **Misha Golin, SCS Consulting Group**
Subject:	**Mississauga Official Plan 2051** **Starmont Estates Inc.** **2555 Erin Centre Boulevard, City of Mississauga**

SCS Consulting Group Ltd. (SCS) are the environmental consultants to Starmont Estates Inc. (the 'Owner') of the lands municipally known as 2555 Erin Centre Boulevard, in the City of Mississauga (the 'Subject Property'). SCS has reviewed the draft Mississauga Official Plan 2051, released in January 2025, and the Response to Comments Matrix. Our comments in relation to the ongoing Mississauga Official Plan Review are described below.

Chapter 4: Sustaining the Natural Environment

Chapter 4 includes an updated policy framework for the natural environment, including policies related to lands designated as Natural Heritage System (NHS) and their recommended protective buffers. In relation to the Subject Property, a woodlot referred to as Erin Woods Park is located to the north and is included in the City of Mississauga's NHS. As the Subject Property is within proximity to the woodlot, delineating the boundaries of the woodlot and establishing appropriate buffers to protect the natural features and ecological functions of the NHS are required by policy for the development application.

SCS has comments regarding the drafted policies within Chapter 4.3, particularly the requirement for a vegetative buffer of at least 10 metres. This buffer minimum is overly restrictive and does not allow for case-by-case assessments where pre-existing conditions may allow for a variable buffer or one that is less than 10 metres in width. The suitable width of a vegetative buffer should be determined by a qualified professional though detailed analysis and should be evaluated on a site-specific basis. From previous staff experience and knowledge, there are areas throughout the City of Mississauga where a variable buffer width is the most suitable solution, achieving the same goals to protect and preserve natural feature and their

ecological functions for the long-term. Additionally, variable buffers widths have been deemed appropriate in such instances and have allowed for development without issue. Section 4.3.1.6 of the draft Mississauga 2051 OP states "The City will, where feasible, consider opportunities to naturalize City owned lands, particularly where they abut or directly connect areas within the Natural Heritage System." In appropriate cases, a variable buffer width could be paired with enhancement of City owned lands, as proposed for the Subject Property development.

Therefore, SCS believes that the drafted policy framework in regard to NHS buffers requires revision to allow flexibility based on site-specific contexts as a blanket statement policy approach is not suitable.

We recommend the following policies to be reworded as described below, deletions are shown in ~~yellow strikethrough~~:

"4.3.1.9 Generally, buffer widths will be ~~at least~~ 10 metres from the limits of the natural heritage features and ~~at least~~ 30 metres from the limits of a Provincially Significant Wetland or as per provincial requirements."

"4.3.1.10 The appropriate buffer width ~~may exceed the minimums required and~~ will be determined on a site specific basis as part of an Environmental Impact Study or other similar study, to the satisfaction of the City and, if applicable, appropriate conservation authority."

The above wording, including the precursor "Generally", allows for some flexibility with suggested buffer widths and provides the opportunity to determine the most appropriate solutions per case.

Summary

In conclusion, SCS appreciates the opportunity to share our feedback of the draft Mississauga Official Plan 2051. However, concerns remain about the proposed policy directions and revisions to the plan are requested.

Please contact the undersigned if you have any questions or require any additional information.

Sincerely,

SCS Consulting Group Ltd.

c. Mayor Parrish and Members of Council
Starmont Estates Inc.

30 Centurian Drive, Suite 100 Markham, Ontario L3R 8B8 Phone **905 475 1900** Fax **905 475 8335**
www.scsconsultinggroup.com

Appendix II / Mississauga Official Plan Amendment 115, Phase 1 OLT Decision

Ontario Land Tribunal
Tribunal ontarien de l'aménagement du territoire

ISSUE DATE: September 06, 2023 **CASE NO(S).:** OLT-22-002285
(Formerly PL210032)

PROCEEDING COMMENCED UNDER subsection 17(24) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	4005 Hickory Drive Ltd.
Appellant:	Calloway REIT (Mississauga) Inc.
Appellant:	Choice Properties REIT
Appellant:	First Capital (Meadowvale) Corporation; and others
Subject:	Proposed Official Plan Amendment No. CD.03REI – OPA-115
Municipality:	City of Mississauga
OLT Case No.:	OLT-22-002285
Legacy Case No.:	PL210032
OLT Lead Case No.:	OLT-22-002285
Legacy Lead Case No.:	PL210032
OLT Case Name:	Calloway REIT (Mississauga) Inc. v. Mississauga (City)

Heard: February 13-23, 2023 by video hearing

APPEARANCES:

Parties	**Counsel**
City of Mississauga ("City")	L. Magi / A. Biggart
Sheridan Retail Inc.	L. Johnston / M. Nemanic
Calloway REIT (Mississauga) Inc.	M. Laskin / D. Bronskill

First Capital (Meadowvale) Corporation 4005 Hickory Drive Ltd.	M. Laskin
	M. Cara / D. Artenosi (in absentia)
Prime Real Estate Group Inc.	K. Sliwa / M. Reedijk
Choice Properties REIT	P. Bottos
The Children's Centre South Common Court Inc.	

DECISION DELIVERED BY JATINDER BHULLAR AND ORDER OF THE TRIBUNAL

Link to Order

INTRODUCTION

[1] This was a Phase 1 hearing in these Appeals. The Phase 1 hearing was set up for the determination of Affordable Housing issues which are part of an enactment of Official Plan Amendment No. 115 ("OPA-115") by the City of Mississauga (the "City").

[2] OPA-115 in residential use policies, mandates delivery of a fixed percentage of residential dwellings as below market units for purchase or rental ("affordable housing") in planned developments for some of the sites owned by the Appellants. Among the affordable housing policies in OPA-115, there is also reference through two policy statements which encourages the Appellants consider provision of affordable housing for low income residents in conjunction with the Region of Peel which provides for and manages such services.

[3] The Parties have appealed the enactment of OPA-115 under s. 17(24) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended ("Act").

[4] Overall, OPA-115 revises policies pertaining to the Central Erin Mills Node and the Community Nodes that are mall-based and to add definitions for "podium" and

“tactical urbanism”. The lands affected by OPA-115 are located city-wide and include the Central Erin Mills Major Node Character Area; the Malton, Meadowvale, Rathwood-Applewood, Sheridan and South Common Community Node Character Areas (Subject Sites/Properties).

WITNESSES

[5] The Tribunal swore or affirmed all witnesses per their chosen preference. The witnesses were qualified per their requested area of expertise. Prior to such qualification, the Tribunal reviewed witness qualifications, acknowledgements of expert’s duty affirmations, and also received submissions from the Parties, as appropriate.

[6] The Parties who called witnesses and their areas of qualification as qualified by the Tribunal are as follows:

a. City

   i. Ben Phillips – to provide opinion evidence in the area of land use planning; and,

   ii. Chris White – to provide opinion evidence in the area of land economics

b. Calloway/Sheridan/Prime (“Calloway”)

   i. Jim Levac – to provide opinion evidence in the area of land use planning; and,

   ii. Daryl Keleher – to provide opinion evidence in the area of land economics; and specific land use planning policy references

linked to his land economics testimony (only for Calloway/Sheridan)

c. First Capital

i. Ozan Kemal – to provide opinion evidence in the area of land use planning

d. Choice Properties (“Choice”)

i. Stephen Armstrong – to provide opinion evidence in the area of land use planning

[7] The following Parties did not directly call any witnesses:

a. 4005 Hickory Drive Ltd.; and

b. The Children’s Centre South Common Court Inc.

Issues

[8] The issues broadly fall into three areas regarding residential use policies in OPA-115. These areas are:

a. Are below market or affordable housing policies in referred sections of OPA-115, *ultra vires* the Act;

b. Do the below market or affordable housing policies in OPA-115 constitute Inclusionary Zoning (“IZ”) or are tantamount to IZ; and,

c. Are community benefit charge (“CBC”) policies the appropriate or the best or only mechanism to seek below market or affordable housing.

These groupings are not a substitution for issues in the PO. The sole purpose is to help the reader of the decision to contextually understand overall landscape of matters addressed in this decision.

[9] The specific policies in OPA-115 which are before the Tribunal in this hearing related to Central Erin Mills Major Node Character Area are as follows:

> 13.2.5 Residential Uses
>
> 13.2.5.1 Residential development permitted by any land use designation will include:
>
> a. a minimum 10 percent of housing units that are below-market for each development application proposing more than 50 residential units. This will be comprised of units targeted for a range of middle income households. Approximately half of these units will be larger, family-sized dwellings containing more than one bedroom.
>
> For the purposes of this section:
>
> - middle income is defined as Mississauga households with annual earnings between the lowest 40 to 60 percent of income distribution
>
> - below-market ownership housing means housing for which the purchase price results in annual accommodation costs which do not exceed 30 percent of gross annual household income
>
> - below-market rental housing means a unit for which the rent does not exceed 30 percent of gross annual household income
>
> 13.2.5.2 Affordable housing for low income households will be encouraged. It is recognized that affordable housing provision is subject to landowners being able to secure access to adequate funding and on with the Region of Peel as Service Manager for subsidized housing.
>
> 13.2.5.3 Reduced parking requirements will be considered for the below- market and affordable housing units described in policies 13.2.5.1 and 13.2.5.2 as an incentive to encourage their development.
>
> 13.2.5.4 The below-market housing units described in Policy 13.2.5.1 are to be comprised of a mix of both below-market rental and below- market ownership housing when considered across the Node. Individual

development applications are encouraged wherever possible to include a mix of both below-market rental and below- market ownership housing.

13.2.5.5 Land conveyance to a non-profit housing provider such as the Region of Peel will be considered in lieu of the direct provision of some or all of the below-market housing units described in Policy 13.2.5.1. Land parcel size, configuration, location, estimated unit yield and adherence to all other policies of this Plan will be included in this consideration.

13.2.5.6 Any existing below-market rental housing units that are retained under the provisions of the City's Rental Housing Protection By-law will count towards the below-market housing unit requirements described in Policy 13.2.5.1.

Note: All policies except for 13.2.5.2 are anchored or joined to policy 13.2.5.1.

[10] The specific policies in OPA-155 which are before the Tribunal in this hearing and apply to Malton, Meadowvale, Rathwood-Applewood, Sheridan and South Common Community Node Character Areas are the following:

14.1.7.4 Residential Uses

14.1.7.4.1 Residential development permitted by any land use designation will include:

a. a minimum 10 percent of housing units that are below-market for each development application proposing more than 50 residential units within the Meadowvale, Sheridan and South Common Community Nodes. This will be comprised of units targeted for a range of middle income households.

Approximately half of these units will be larger, family-sized dwellings containing more than one bedroom. For the purposes of this section:

- middle income is defined as Mississauga households with annual earnings between the lowest 40 to 60 percent of income distribution

- below-market ownership housing means housing for which the purchase price results in annual accommodation costs which do not exceed 30 percent of gross annual household income

- below-market rental housing means a unit for which the rent does not exceed 30 percent of gross annual household income

> 14.1.7.4.2 Affordable housing for low income households will be encouraged. It is recognized that affordable housing provision is subject to landowners being able to secure access to adequate funding and collaboration with the Region of Peel as Service Manager for subsidized housing.
>
> 14.1.7.4.3 Reduced parking requirements will be considered for the below-market and affordable housing units described in policies 14.1.7.4.1 and 14.1.7.4.2 as an incentive to encourage their development.
>
> 14.1.7.4.4 The below-market housing units described in policy 14.1.7.4.1 are to be comprised of a mix of both below-market rental and below-market ownership housing when considered across the Node. Individual development applications are encouraged wherever possible to include a mix of both below-market rental and below-market ownership housing.
>
> 14.1.7.4.5 Land conveyance to a non-profit housing provider such as the Region of Peel will be considered in lieu of the direct provision of some or all of the below market housing units described in policy 14.1.7.4.1. Land parcel size, configuration, location, estimated unit yield and adherence to all other polices of this Plan will be included in this consideration.
>
> 14.1.7.4.6 Any existing below-market rental housing units that are retained under the provisions of the City's Rental Housing Protection By-law will count towards the below-market housing unit requirements described in Policy 14.1.7.4.1.
>
> **Note**: All policies except for 14.1.7.4.2 are anchored or joined to policy 14.1.7.4.1.

[11] Based on the aforementioned policies, the issues to be determined in this Phase 1 hearing are set in the governing Procedural Order as follows:

> 6. Do the Affordable Housing policies, including policies 13.2.5.1 to 13.2.5.6, inclusive, constitute Inclusionary Zoning?
>
> 7. Did the City carry out the requirements of subsections 16(4) to 16(13), inclusive, of the Planning Act, regarding the Affordable Housing policies?
>
> 18. Are these policies in OPA-115 ultra vires the Planning Act?
>
> 19. If these policies are not ultra vires the Planning Act, should any requirement for affordable housing only be secured as a community benefit in accordance with applicable provisions of the Planning Act?

14. As it relates to Policies 13.2.5.1 to 13.2.5.6 and 14.1.7.4.1 to 14.1.7.4.6

a. Are these policies tantamount to an inclusionary zoning framework?

b. Do the policies comply with the legislative requirements set out in Section 16 of the Planning Act and O. Reg. 232.18?

c. Are these policies ultra vires the authority conferred to the City of Mississauga under the Planning Act?

f. Should policies requiring or encouraging the provision of below-market or affordable housing expressly provide that such matters, where provided, are to be secured as community benefits in accordance with the City's legislative authority under the Planning Act?

7. With respect to policies 14.1.7.4.1, 14.1.7.4.4, and 14.1.7.4.5: do these policies exceed the authority of the City under the Planning Act and O. Reg. 232/18? Should any provision of below-market housing units or conveyance to a non-profit housing provider only be secured as a community benefit in accordance with the applicable provisions of the Planning Act?

[12] In making their case before the Tribunal, the counsel for the City and the Appellants provided legal and closing submissions based in part on the evidence of the witnesses. The totality of evidence included contested land use planning evidence from four witnesses and economics contested evidence from two witnesses. All witnesses also provided their specific and appropriate evidence addressing the enumerated Phase 1 issues within their areas of qualification. The Parties seek the following relief from the Tribunal;

a. The City seeks that the Tribunal dismiss Phase 1 appeals of all Appellants; and,

b. The Appellant seek that the Phase 1 appeals are allowed and that the affordable housing policies in OPA-115 not be approved.

LAND USE PLANNING EVIDENCE

[13] Mr. Phillips, called by the City, reviewed the background activities that led to the development and adoption of OPA-115 by the City. He explained that the activities to consider existing shopping mall sites, the Subject Properties, and surrounding areas started around 2017. He added that Gladki Planning Associates ("Gladki") was retained by the City as the lead consultant to provide planning analysis, with sub-consultants urbanMetrics and DTAH providing expertise in financial analysis and urban design, respectively.

[14] Mr. Phillips opined that OPA-115 provides for the redevelopment of the Subject Sites with additional height permissions for some of the Subject Sites.

[15] Mr. Phillips stated that the Directions Report representing the City staff analysis and recommendations, as presented to City council, recommended a minimum of 20% affordable and/or rental housing in redevelopment areas in order to achieve a diversity of housing types and to meet the needs of different households based primarily on Gladki report recommendations.

[16] Mr. Phillips stated that in 2020, the City engaged urbanMetrics for an updated financial analysis to establish and/or verify the original minimum 20% targets established by Gladki for affordable and/or rental housing. Mr. Philips called it as a "truthing exercise" to review if minimum 20% continued to be feasible level for mandated affordable housing for the proposed OPA-115.

[17] Mr. Phillips stated that based on the urbanMetrics analysis, the OPA-115 final parameters were established "to encourage the provision of low-income affordable units in all Nodes subject to the availability of subsidized funding sources and to require a minimum of 10% affordable units for middle-income households developed within the Central Erin Mills, Meadowvale, South Common and Sheridan Nodes." Mr. Phillips stated that the units required per OPA-115 are characterized as "below-market" as

these have a different affordability threshold than that outlined in the PPS and Growth Plan definitions for “Affordable Housing”.

[18] Mr. Phillips reviewed the policies in the Act specific to section 16 requirements related to adequate provision of affordable housing through policies and measures to be included in official plans. He specifically referred to subsections 16(1)(a.1)); 16(2)(a); 16(5)((a)-(b)) and 16(8). Mr. Phillips opined that as required for matters of Provincial Interest and the statutory direction in the referred subsections, OPA-115 has due regard for the Provincial Interest and from a land use planning perspective, meets the statutory requisites set in the Act.

[19] Mr. Phillips opined that the OPA-115 is consistent with the Provincial Policy Statement 2020 (“PPS 2020”) as well as conforms with the Growth Plan for the Greater Golden Horseshoe, 2017, 2019 & 2019, as amended (“Growth Plan”) as well as the Region of Peel Official Plan (“ROP”).

[20] Mr. Phillips provided direct testimony regarding the various issues as identified in this Phase 1 hearing. The key aspects presented by Mr. Phillips are briefly excerpted/noted below and are based on his witness statement, reply witness statement and oral testimony:

> **Issue 6 and Issue 7:** Mr. Phillips that policies 13.2.5.1 through to 13.2.5.6 are not tantamount to Inclusionary Zoning (IZ). He opined that whereas IZ are more prescriptive and restrictive, the OPA-115 policies provide more flexibility for possible below-market housing delivery. Mr. Phillips described some attributes of OPA-115 as follows:
>
> - Units may be priced for a “range” of middle income households, whereas IZ prescribes the specific income decile for which a unit, based on number of bedrooms, must be affordable;
> - The duration of the affordability term of units is not prescribed;
> - Land dedication in lieu of the direct construction of units is permitted, which the *Planning Act* prohibits for IZ (subsection 35.2(6)); and,

- Affordable rental units retained under the City's Rental Housing Protection By-law can be used to satisfy the OPA-115 requirement, but are excluded from IZ.

Mr. Phillips opined that the OPA-115 policies are as required per subsection 16(1)(a.1) of the *Planning Act* to be included in Official Plans.

Mr. Phillips concluded that OPA-115 is neither like IZ and nor does the City have the ability to establish IZ policies for the Subject Sites.

In addressing Issue 7 regarding if OPA-115 considers or applies the IZ policies 16(4) through to 16(13) in the *Planning Act*, Mr. Phillips opined that OPA-115 is not IZ and as such there is no purpose to assess OPA-115 against such statutory requirements.

Issue 18, 14 and Issue 19: Mr. Phillips stated that the determination and implications of a determination regarding policies in OPA-115 being *ultra vires* the *Planning Act* is a legal determination. He however offered factual context that affordable housing as per subsection 2(j) of the *Planning Act* in the context of Provincial Interest is an aspect that as a planner he recognizes and additionally subsections 16(1)(a.1) and 16(2) support the OPA as way to achieve the policy objectives. He also referred to subsection 16(8) and quoted that this subsection further clarifies that "each subsection of this section shall be read as not limiting what an official plan is required to or may contain under any of the other subsections".

Mr. Phillips further opines that the *Planning Act* uses mandatory language in requiring official plans to have "policies and measures as are practicable to ensure the adequate provision of affordable housing." The Planning Act does not indicate that this can only be secured through the community benefit charge provisions that are available under Section 37. The City may also consider a community benefit charge as part of an affordable housing contribution.

Mr. Phillips concluded that Section 37 is not an exclusive or only way to achieve aspects in support of affordable housing outside of IZ.

[21] Mr. Phillips also provided reply evidence and testified regarding his difference of opinion versus other witnesses. This evidence is on the record and quoted highlights and extracts are provided below:

- [Regarding IZ versus OPA-115 affordable housing policies]… the policies adopted by the City of Mississauga ("City") are "comparable" to Inclusionary Zoning ("IZ"). Comparable can generally be understood to mean, "able to be likened to another" or "of equivalent quality." Official Plan Amendment No. 115 ("OPA-115") is not, nor has it ever been proposed to be, IZ. OPA-115 sets forth the goals and objectives of the City. OPA-115 is not a Zoning By-law.

- OPA-115 will not have the same impact as IZ because these different planning instruments are implemented using different tools (policy versus zoning regulation) and so the effect cannot be said to be the same.

- While level of affordability is not a Phase 1 issue, I would like to offer some clarification to the Tribunal. With respect to rental housing, in OPA 140 (IZP), the definition limits the income distribution to only renter households in the city, whereas in OPA-115, the definition considers all households in the city. This generally results in higher incomes for each decile and therefore provides greater flexibility through higher rent thresholds in OPA-115. The gap between market rent and the maximum permissible rent under OPA-115 is smaller than the maximum permissible rents under OPA 140 (IZP). Similarly, for ownership housing, more flexibility is provided to landowners in OPA-115. For example, a privately run shared equity mortgage approach could be considered to address the below market requirement under OPA-115 but this would not be permitted as part of OPA 140 (IZP). As noted earlier, OPA-115 is not IZ, nor was it ever intended to be. By-law 0213-2022, the City's IZ by-law, was passed concurrently with OPA 140 (IZP) by Mississauga's Council with the intent to give effect to inclusionary zoning Official Plan policies contained in OPA 140 (IZP). There was no concurrent zoning by-law passed to give effect to OPA-115, as it does not contain inclusionary zoning policies. OPA-115 is a different tool with different affordability thresholds. OPA-115 also cannot be enforced in the same manner as IZ. The below market housing policy requirement in OPA-115 is set out as an OP policy and is not a zoning by-law under s. 34 of the *Planning Act*.

- Consistency or inconsistency with Region of Peel policy is not an issue for Phase 1. While this statement is not responsive to any Phase 1 issue, I would like to clarify that any cost recovery, in the form of in-kind Community Benefits Charge ("CBC"), is at the discretion of Council and cannot be guaranteed through OP policy.

- The 'value' of Affordable Ownership as defined in the PPS is not responsive to any of the Phase 1 issues. Mr. Keleher's analysis implies that all affordable housing, secured through any means, which generally meets the definition of affordable, is IZ. However, OPA-115 is a different tool with different affordability thresholds. OPA-115 also cannot be enforced in the same manner as IZ.

- [The *Planning Act*] says that one of the ways to secure affordable housing is through IZ, but subsection 16(8) of the Planning Act does not preclude OPs from containing other policies related to increasing affordable housing. The Planning Act does not require every official plan policy to result in or lead to a specific zoning by-law regulation.

- … is incorrect in suggesting that any provision requiring affordable housing should be identified in a zoning by-law rather than in an OP. The subsection of the Planning Act that he references, s.16(1)(a.1), is specific to OPs and states that "[a]n official plan shall contain, such

> policies and measures as are practicable to ensure the adequate provision of affordable housing;."
>
> - The policies in the Region's Official Plan do not mean that municipalities are barred from having policies to require affordable housing or that such policies are in conflict. Rather these policies supplement Regional policies in a complementary way.
>
> - The City has never indicated that OPA-115 is IZ, nor has the City taken the position that it undertook the process necessary for IZ when preparing OPA-115. The City, understandably, complied with the statutory requirements to adopt an OPA, and not those required for IZ, when adopting OPA-115.
>
> - Given the magnitude of the need for affordable housing, it is prudent that the City utilize all potential tools and measures to increase the affordable housing supply across the city. Accepting in-kind affordable housing units does not preclude the City from securing affordable housing through other means as well. I would also like to clarify that any cost recovery, in the form of in-kind CBCs, is at the discretion of Council and cannot be guaranteed through OP policy.

[22] The Tribunal notes that Mr. Levac called by Calloway, Mr. Kemal called by First Capital and Mr. Armstrong called by Choice provided opinion evidence which contested the land use planning opinion evidence of Mr. Phillips called by the City. The Tribunal encouraged the witnesses Mr. Levac, Mr. Kemal and Mr. Armstrong to not repeat testimony where one of them have already provided testimony and the others agree with it. Consequently in this decision, there is lesser reference to Mr. Kemal and Mr. Armstrong versus Mr. Levac.

[23] Mr. Levac cited a vision statement from the Reimaging the Mall Directions report, dated May 17, 2019:

> Mississauga's mall-based nodes will continue to be community focal points anchored by retail, community facilities, higher density housing forms and transit accessibility. As redevelopment occurs, these areas will evolve into healthy, sustainable, complete communities with: densities and a mix of uses which allow people to meet many of their daily needs locally and within walking distance; an attractive and well-connected built environment that promotes physically active lifestyles, and a unique quality of place which makes these areas vibrant and desirable places to be.

[24] Mr. Levac referring to the OPA-115, stated that Policy 14.1.7.4.1 requires a residential development containing more than 50 units on the Prime Lands, and Sheridan Lands and Calloway Lands to provide a minimum of ten percent (10%) of housing units as below-market housing units targeted for a range of middle-income households. Furthermore, half of these below-market housing units are to be larger, family-sized units containing more than one bedroom.

[25] Mr. Levac reviewed the City's adopted IZ policies as per OPA-140 and highlighted some of the IZ parameters as follows:

- IZ will only apply to those developments with 50 or more ownership units and developments located within delineated Protected Major Transit Station Areas ('PMTSAs');
- Should a development meet these evaluation criteria, a development will be required to provide up to ten percent (10%) of units as affordable units for set period of time. Furthermore, affordable units can be provided off-site;
- Under the City's adopted IZ policies, purpose built rental projects are exempt from IZ obligations; and,
- Sheridan Lands, Prime Lands and Calloway Lands are not located within a Protected MTSA and are therefore not subject to IZ.

[26] Mr. Levac also analyzed the requirements set in the Act and O. Reg. 232/18 with respect to how IZ is further characterized and has required steps towards any implementation. He stated and per his witness statement (sections extracted below as appropriate) inferred as follows:

- Section 16(4) of the Planning Act ('Act') requires that, where a municipality is prescribed, its Official Plan must contain policies authorizing inclusionary zoning by authorizing the inclusion of affordable housing units within buildings or projects containing other residential units and providing for affordable housing units to be maintained as affordable housing units over time;
- Section 16(5) of the Act also states that the Official Plan of a municipality that is not prescribed may contain inclusionary zoning policies for lands

within a protected major transit station area or in an area where a development permit system is adopted or established;

- Sections 16(6) to 16(13) of the Act, inclusive, identify further requirements that must be complied with prior to a municipal Official Plan containing IZ policies; and,

- The required contents of this Assessment Report [for IZ] are further described in Ontario Regulation 232/18. Furthermore, under Sections 16(10) and 16(11) of the Planning Act, this Assessment Report must be updated every five years.

- Ontario Regulation 232/18 sets substantial other requisites for IZ including information requirements and study requirements

[27] Mr. Levac provided the following issue specific testimony referring to his overall evidence (per extracted below from his witness statement) and noted from his oral testimony:

> Issue 7: Did the City carry out the requirements of subsections 16(4) to 16(13), inclusive, of the Planning Act, regarding the Affordable Housing policies?
>
> As noted, at the time OPA-115 was adopted, the City did not complete an Assessment Report, the in-effect Mississauga Official Plan did not contain policies authorizing IZ and the in-effect Mississauga Official Plan did not contain delineated and approved PMTSAs. Additionally, the Sheridan Lands, the Prime Lands and the Calloway Lands do not fall within PMTSAs.
>
> Issue 14: As it relates to Policies 13.2.5.1 to 13.2.5.6 and 14.1.7.4.1 to 14.1.7.4.6
>
> a) Are these policies tantamount to an inclusionary zoning framework?
>
> f) Should policies requiring or encouraging the provision of below-market or affordable housing expressly provide that such matters, where provided, are to be secured as community benefits in accordance with the City's legislative authority under the Planning Act?
>
> Response: In paragraphs 55 to 64, I provide my review of Inclusionary Zoning in relation to the criteria established by Section 16(5) of the Planning Act and Ontario Regulation 232/18, which authorizes policies requiring the inclusion of affordable units in buildings or projects containing other residential units. Mr. Keleher's Witness Statement demonstrates that the units required under OPA-115 meet the definitions of affordability under the PPS such that the ownership units required and some of the rental units

required would be regarded as ‘affordable’. It is therefore my opinion that the policies in Section 14.1.7.4 in OPA-115 are tantamount to IZ, in that they require the inclusion of affordable units in buildings and projects containing other units. Notably, the policies require such units in respect of lands that are not within PMTSAs and without the City having undertaken the detailed analysis required in connection with IZ.

In paragraphs 51 to 54, I provide my review of how the City of Mississauga has utilized the City’s legislative authority under the Planning Act, as amended, to secure affordable housing units as a community benefit. It is my opinion that, to the extent the policies encourage the provision of below-market or affordable housing units, they should specify that those units would be provided as an in-kind contribution towards community benefit charges.

Issue 19: If these policies are not ultra vires the Planning Act, should any requirement for affordable housing only be secured as a community benefit in accordance with applicable provisions of the Planning Act?

Response: As stated throughout, the Sheridan Lands, Prime Lands and Calloway Lands are not located within an area of the City of Mississauga where IZ can apply. As such, it is my opinion that the provision of affordable units, if provided, can and should be secured as an in-kind contribution toward community benefit charges. This is consistent with the approach that has previously been taken to secure affordable housing units in larger scale developments in various areas of the City.

Issue 14: As it relates to Policies 13.2.5.1 to 13.2.5.6 and 14.1.7.4.1 to 14.1.7.4.6

a) Are these policies tantamount to an inclusionary zoning framework?

f) Should policies requiring or encouraging the provision of below-market or affordable housing expressly provide that such matters, where provided, are to be secured as community benefits in accordance with the City’s legislative authority under the Planning Act?

Response: In paragraphs 55 to 64, I provide my review of Inclusionary Zoning in relation to the criteria established by Section 16(5) of the Planning Act and Ontario Regulation 232/18, which authorizes policies requiring the inclusion of affordable units in buildings or projects containing other residential units. Mr. Keleher’s Witness Statement demonstrates that the units required under OPA-115 meet the definitions of affordability under the PPS such that the ownership units required and some of the rental units required would be regarded as ‘affordable’. It is therefore my opinion that the policies in Section 14.1.7.4 in OPA-115 are tantamount to IZ, in that they require the inclusion of affordable units in buildings and projects containing other units. Notably, the policies require such units in respect of lands that are not within PMTSAs and without the City having undertaken the detailed analysis required in connection with IZ.

> In paragraphs 51 to 54, I provide my review of how the City of Mississauga has utilized the City's legislative authority under the Planning Act, as amended, to secure affordable housing units as a community benefit. It is my opinion that, to the extent the policies encourage the provision of below-market or affordable housing units, they should specify that those units would be provided as an in-kind contribution towards community benefit charges.
>
> Issue 19: If these policies are not ultra vires the Planning Act, should any requirement for affordable housing only be secured as a community benefit in accordance with applicable provisions of the Planning Act?
>
> Response: As stated throughout, the Sheridan Lands, Prime Lands and Calloway Lands are not located within an area of the City of Mississauga where IZ can apply. As such, it is my opinion that the provision of affordable units, if provided, can and should be secured as an in-kind contribution toward community benefit charges. This is consistent with the approach that has previously been taken to secure affordable housing units in larger scale developments in various areas of the City.

[28] Mr. Armstrong testified that the OPA-115 Affordable Housing Policies will have the same impact as IZ, but without adhering to the IZ process set out in the Act. He added that these policies allow the City to zone based solely on income (as in IZ), but do not adhere to the IZ criteria, which requires lands to be within a Protected Major Transit Station Area ("PMTSA") or subject to a Development Permit System. Mr. Armstrong also noted other differences as:

- Purpose-built rental housing developments are not subject to Inclusionary Zoning, per Section 7.3.2.e) of the IZ OPA and Section 2.1.34.2.2 of the IZ ZBLA, whereas OPA-115 would require 10% of the units to be "affordable" for applicable purpose-built rental developments.
- The set aside rates vary, depending on the protected major transit station area. The set aside rate for affordable ownership housing units ranges between 5 to 10 percent (after a transition period). The set aside rate for affordable rental housing units ranges between 2.5 to 5 percent (after a transition period). The set aside rates are stipulated in Section 7.3.2.a) of the IZ OPA and Section 2.1.34.2 of the IZ ZBLA
- A discounted set-aside rate may be considered for the delivery of housing for "low-income households" per Section 7.3.2.b) of the IZ OPA

[29] Mr. Armstrong further compared the target demographic for OPA-115 and IZ policies as below and opined OPA-115 directions for income targeting is also part of the IZ regime.

Ownership Units:

	Income Distribution for All Households (Decile)									
	10	20	30	40	50	60	70	80	90	100
"Moderate Income Households" per IZ			X	X	X	X				
"Middle Income Households" per OPA-115				X	X	X				

[30] Mr. Armstrong concluded that OPA-115 is tantamount to IZ except for how the IZ has details of assessments, study requirements as well as targeting transit focussed and enabled developments.

[31] Mr. Kemal testified that OPA-115 encompasses the following:

- The basis of OPA-115, in part and specific to residential uses, is to provide policies that guide redevelopment and intensification of certain Community Node Character Areas into mixed use communities that provide a range of housing options, including affordable housing.
- Policy 14.1.7.4.1.a does not differentiate between ownership and rental. A minimum of 10 percent of housing units that are below-market are required regardless of whether it is owned or rented.
- OPA-115 defines the term 'middle income' to mean Mississauga households with annual earnings between the lowest 40 to 60 percent of income distribution.
- OPA-115 defines 'below-market ownership housing' to mean housing for which the purchase price results in annual accommodation costs which do not exceed 30 percent of gross annual household income.
- OPA-115 defines 'below-market rental housing' to mean a unit for which the rent does not exceed 30 percent of gross annual household income.

[32] Mr. Kemal reviewed the Community Benefits Charges ("CBC") By-law and testified that:

- A land value appraisal is undertaken by the City prior to the issuance of the first building permit and the City determines the amount of the CBC payable.

- The CBC is payable on developments or redevelopments that are five or more storeys in height and contain ten or more residential units.

- The charge is imposed on land through Planning Act approvals that include: a) passing of a zoning by-law amendment or an amendment to a zoning by-law (s.34); b) the approval of a minor variance (s.45); c) conveyance of land to which a by-law passed under Planning Act, subsection 50(7); and d) consent (s.53).

- The City may allow an applicant to provide in-kind contributions towards the payment of the CBC through Council authorization.

- As noted in the CBC Strategy, the "CBC is one growth funding tool at the municipality's disposal to fund the creation of affordable housing units." The Planning Act, section 37, continues to permit this as an in-kind contribution approach.

- The CBC defines in-kind contributions as facilities, services or matters identified in a CBC strategy. This means that housing contributions, such as affordable housing, are eligible as in-kind contributions under the City's CBC framework.

[33] Mr. Kemal provided specific summarizing evidence based on his overall policy analysis noted above as well as his other written and oral testimony.

[34] In the context of Issue 7, Mr. Kemal opined that; the City did not conduct requirements in the Act's s. 16(4) through s. 16(13) as needed for IZ. He noted that the Subject Sites are not identified within the PMTSA category and as such IZ is also not applicable to these.

[35] For Issue 19, Mr. Kemal testified that; the OPA-115 is *ultra vires* as for greater than five storeys or over 10 units, the appropriate allowed mechanism is CBC.

[36] Regarding Issue 14, Mr. Kemal testified that:

- O. Reg 232/18 IZ, s.1 definitions states that "inclusionary zoning by-law" means a by-law passed under section 34 of the Planning Act to give

effect to the policies described in section 16(4) of the Planning Act". He further added that:

- Under the Planning Act, s.16(1), official plans contain goals, objectives and policies established to manage and direct physical change while zoning by-laws, under s. 34, provide land use controls such as permitted uses within buildings.

- According to Provincial Policies, affordable housing is a use or 'type' of housing, such as social housing, that is distinct from general residential use. This is reflected in the Planning Act, s.16 (1) (a.1) that added reference to affordable housing.

- Types of housing are identified as uses in zoning by-laws, such as group homes and long- term care homes, and therefore should be identified in zoning regulations.

- Peel Region Official Plan, December 2018, policy 5.8.3.2.5 indicates that inclusionary zoning is a tool to require affordable housing.

- The City of Mississauga provides a list of affordable housing implementation tools, in its housing strategy, "The Missing Middle" that includes not only inclusionary zoning, but also such tools as section 37 contributions, corporate operational improvements, other reduced zoning standards, as well as financial incentives or municipal land provision.

- The City's Housing Strategy also indicates that the role and responsibility of Peel Region is to provide low income housing, as follows: "The Region of Peel is the designated Service Manager responsible for subsidized housing and housing programs. In this role, the Region sets affordable housing priorities and collects and receives funds to address local affordable housing needs. The focus of the Peel Service Manager has been on vulnerable and low income households."

[37] Mr. Kemal concluded and opined that:

- The City utilized the previous s.37 density/bonusing provision to secure contributions toward affordable housing units.

- Further, the City of Mississauga has approved a CBC Strategy and a CBC By-law, which would permit in-kind contributions for affordable housing initiatives.

LAND ECONOMICS EVIDENCE

[38] Witness for the City, Mr. White provided the updated financial analysis based on his report dated July 23, 2020. Mr. White noted that in part the Financial Analysis Addendum ("FAA;" Exhibit 1.1, Tab 7, page 477) is a revisit to the previous determination of minimum required level of affordable housing at 20% and notes it in his witness statement as follows:

> Planning and Development Committee has recommended a new policy whereby 20% of all residential uses at the various mall-based nodes identified could be required as non-market housing. This recommendation was ultimately adopted by Mississauga City Council in June of 2019. In light of this new direction, the City of Mississauga has asked urbanMetrics to revisit our previous financial analysis and provide an updated assessment as to how the proposed policy change could impact the underlying development feasibility conditions at these nodes. Included herein is a summary of our latest findings in this regard.

[39] Mr. White testified that he is not fully aware of the background and assumptions which were used by Gladcki to recommend the original 20% below market housing target for the Subject Properties.

[40] Mr. White notes the following in his testimony and as noted in his witness statement that the key findings in the FAA are:

- Based on the key underlying assumptions and high-level methodology utilized, the addition of a 20% non-market component into each model reduces the financial feasibility of each conceptual vision. However, there are several policy levers or development parameters that both the City of Mississauga and private landowners could potentially adopt to improve the feasibility of development on each site.

- At the defined rates of affordability provided by the City of Mississauga, the inclusion of non- market rental housing represents less of a financial burden on private industry than non- market ownership housing. However, it is our view that the definition of non-market rental housing adopted by the City of Mississauga for this analysis results in a relatively high monthly rental rate that is approaching typical market averages for this part of the GTA. That is, the non-market rental rate is much closer to current market rates than the corresponding difference between non-market and market ownership products.

- Change in underlying construction hard cost assumptions represent one of the single most responsive factors in our sensitivity modelling. Given the significant scale of development contemplated at each site, as well as likely absorption and development patterns, the construction costs assumed in our analysis are likely to increase over time. In recent years, these costs have increased at a faster rate or outpaced corresponding opportunities for increased revenue generation (i.e., growth in residential rental rates and/or sales prices).

- The COVID-19 pandemic creates significant uncertainty, which may have additional implications for the viability of certain land uses or asset classes. As the understanding of these potential risks becomes clearer, it will be important to allow for sufficient flexibility and responsiveness to ensure that projects can be advanced in a manner that balances the interests and needs of all parties involved in the real estate development process.

[41] Mr. White notes in the FAA and his oral testimony notes that basis for the data is as follows:

- The recommendation from the Directions Report is that a minimum of 20% affordable, including ownership and rental units, should be provided ... The level of detail provided in the City Council recommendation necessitates the development and incorporation of several related assumptions regarding the nature of the non-market housing proposed. Some of these assumptions include the mix of rental and ownership housing, the level or degree/depth of affordability (i.e., the specific income levels being targeted), as well as the size, quality and nature of units delivered.

- Absent this level of detail, urbanMetrics has relied on data and input obtained directly from the City of Mississauga to inform our assessment of this affordable or “non market” housing component at each of the subject nodes. We have also further prepared assumptions independently regarding other elements, including tenure mix, unit size and parking requirements for the sites.

[42] In describing the approach of his analysis, Mr. White enumerated that a residual land value approach was used with the following to be noted:

- Given the preliminary and conceptual nature of the development scenarios being considered as well as the level of statistical detail available at this early stage of the planning process we have adopted a relatively simplified residual land value approach to assess the financial feasibility of each redevelopment concept. As outlined further in this report, this is identical to the approach taken in our 2019 study and essentially involves estimating the future value of each of the mall properties identified (i.e., based on the total revenues and costs

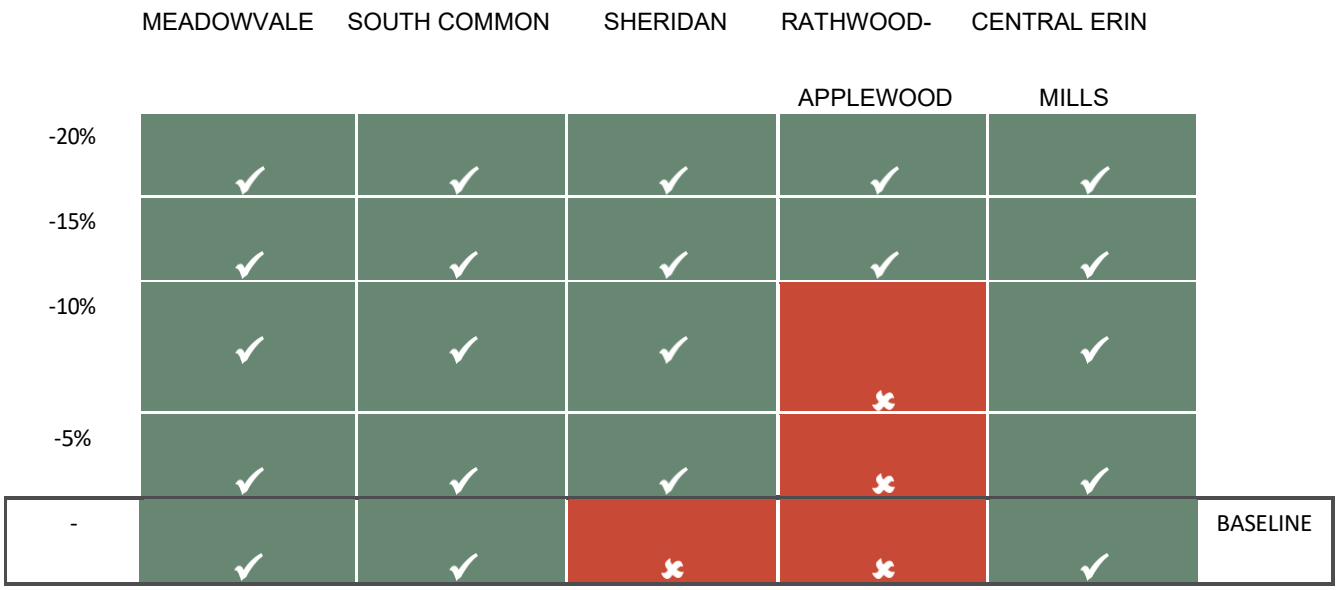
associated with a full build-out of each property, per the demonstration plans) and comparing these against their estimated current value.

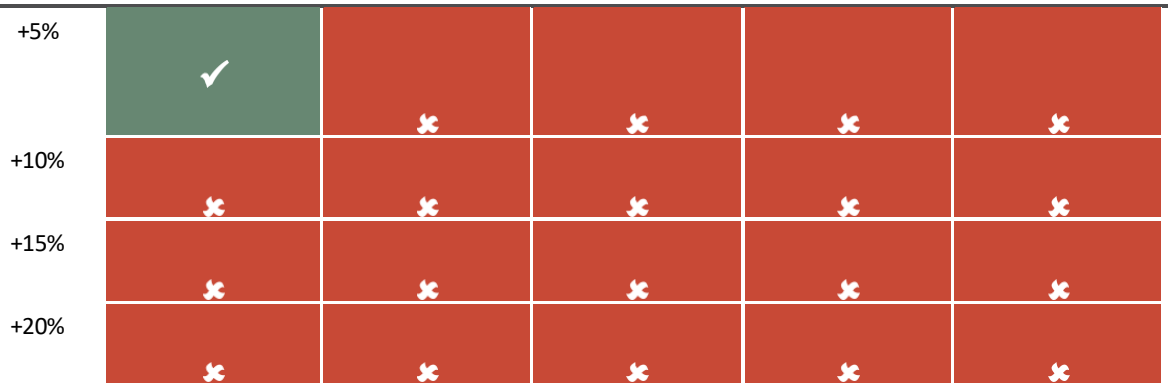
- Our analysis is further limited to evaluating the feasibility of the development concepts identified at each site. Given the preliminary nature of this exercise, no infrastructure costs have been incorporated into this analysis. These costs would represent a further construction cost at each site, which will be determined based on technical engineering work, site and block planning, and discussions with the City of Mississauga.

- Further to above, given the preliminary and conceptual nature of the development scenarios being considered as well as the level of statistical detail available at this conceptual stage of any development process our simplified financial analyses do not take into account the time value of money (i.e., particularly given that the timing of any potential redevelopment is still unknown at this stage). As such, any longer-term risk associated with this scale of development has not necessarily been recognized directly in the numerical calculations presented herein. Similarly, we have not considered any revenue discounts (e.g., rent abatement periods, etc.) or potential cost increases that may ultimately occur as part of the actual construction/operation of the new real estate assets developed.

[43] Mr. White testified and showed examples of costs which impact feasibility assessment. An example cited by Mr. White was “Hard Construction Costs” as follows:

Hard Construction Costs Sensitivity Analysis





SOURCE: urbanMetrics inc. (Exhibit 1, Tab 7, page 498)

Mr. White summarized and testified that:

- Slight changes in hard construction costs can have a significant impact on the financial feasibility of the concepts identified; particularly in the context of providing for non-market housing. It is our opinion that the input hard costs assumed for this analysis likely underrepresent future conditions, if anything, and could therefore potentially over-state the degree of feasibility achieved throughout. When contemplating developments that have longer-term buildouts of greater than 10 years in particular, it is likely that increases in construction cost factors ($/sq ft) will outpace opportunities to offset these increased costs with greater revenue generation.

- As shown in the analysis above, Meadowvale, South Common and Central Erin Mills demonstrate some promise of feasibility under baseline conditions. However, even a 5% change in input hard costs creates a significant deviation. As shown, if construction costs increase by 5%, Meadowvale is the only remaining feasible project. Similarly, an increase of 10% in hard construction costs would render all the sites infeasible. Alternatively, if construction costs were to be reduced by 5-10% (an unlikely scenario in our opinion), feasibility will naturally improve.

[44] In assessing “% of Affordable Housing” sensitivity, Mr. White called by the City, testified that even a 2.5% drop from the originally contemplated 20% is sufficient to establish an increased level of financial feasibility for additional centres. He opined that 20% was a difficult benchmark to achieve as a baseline target as originally stipulated in Gladki report.

[45] Mr. White also provided evidence regarding the impact of changing the ratio of "Non-Market Rental" with "Non-Market Ownership" to determine its impact. He concluded that:

- Based on the defined rates of affordability, non-market rental represents the more financially feasible option relative to non-market ownership status. This is largely a function of the definitions of non-market considered as part of this assessment and as provided by the City of Mississauga. In particular, we note that non-market rental pricing is much closer in line with traditional market rates than the non-market ownership price threshold identified, which suggests a much deeper reduction or "discount" on revenues.

[46] Mr. White also addressed the sensitivity related to the "Depth" of Affordability Level. He showed that if the "Non-Market Ownership" is offered to higher and higher deciles of incomes, the feasibility correspondingly improves as the contributions to support such by market priced units would be reduced.

[47] Mr. Keleher called by Calloway testified that:

- The policies in section 14.1.7.4 require the inclusion of affordable housing units within buildings containing other residential units. Inclusionary zoning does the same thing. The policies also represent a form of regulating the price/rent of housing units.

- For required below-market rental housing, the monthly rents required for units at the low end of the income range stipulated in the policies would accord with the Provincial and Regional definition of "affordable," resulting in overlap with the housing contemplated in the inclusionary zoning provisions of the Planning Act. Units at the high-end of the stipulated income range would have monthly rents that diverge from Provincial and Region of Peel definitions of what is 'affordable,' but would nevertheless be required to be provided at below-market rates. In this regard, the policies represent a form of rent regulation.

[48] Mr. White also provided replies to the evidence of Mr. Keleher. Some key responses and parts of his testimony are noted below:

- The Phase 1 issues could be characterized as a simple determination as to whether the City of Mississauga, through OPA-115, is able to adopt policies requiring new developments to include even 1 unit of housing at a rate just $1.00 below market rates, or as otherwise defined to be

marginally affordable. Therefore, there is no need at this time for any more extensive nor detailed consideration as to the extent, term or depth of affordable housing contemplated, including its potential impact on financial feasibility and/or broader real estate market conditions.

- Further, it is my opinion that any discussion of current or anticipated macroeconomic conditions, housing development trends, the economics of affordable housing development in Mississauga, and/or other real estate market considerations—as presented in the Witness Statement of Mr. Keleher—would be more appropriately addressed in Phase 3 of this proceeding, if at all.

- … an appropriate use of CBC funds and/or suitable approach to reduce CBC's payable to enable affordable housing delivery, I am not aware of these types of decisions being made through Official Plan policy. As such, it is my opinion that these topics would be more appropriately addressed with the City of Mississauga separate and apart from this proceeding.

- The results of any financial feasibility analysis—including those for which I have been responsible as part of the Study and related subsequent updates—are inherently limited by their ability to model market data or other information that are available at a single point in time. The findings of this type of high-level, preliminary analysis are therefore subject to perpetual change as a function of broader macroeconomic conditions and cycles, including those highlighted by Mr. Keleher. It is possible that conditions for financial feasibility could either worsen, or improve, over time.

- Furthermore, unlike other types of land economics assignments (e.g., market demand or "needs" forecasting), financial feasibility assessments are typically unable to reflect the longer-term planning horizon captured by Official Plan policies, which seek to provide more general guidance and direction over many decades.

- While financial feasibility analyses can serve as an important point of reference and helpful tool when developing Official Plan policy, they should not be relied upon in isolation, nor reviewed in the context of any one variable such as constructions costs that provide a mere "snapshot" in time. They should instead be considered more holistically with a range of other relevant economic and non-economic factors.

- Although the more recent supporting data presented in Mr. Keleher's Witness Statement is accurate in characterizing significant construction cost growth in recent quarters, it would be more appropriate in my opinion to characterize these changes in combination with other assumptions for a more complete picture of current—and potential future—feasibility conditions.

[49] Mr. Keleher testified that IZ policies applying to Protected Major Transit Station Areas per s. 16(5) of the Act are applicable, and the City has adopted these. Mr. Keleher added that the implementation of IZ has specific and stringent study and tracking requirements with defined and clear assumptions for all studies. Mr. Keleher emphasized that such regime, as in IZ, is both necessary and essential to create certainty for the delivery of below market or affordable housing. Mr. Keleher stated that the City's approach in OPA-115 does not have the rigour, the management of operational assumptions or tracking of objectives and goals for periods during which the affordable or below market housing for ownership or rental is to be guaranteed.

[50] Mr. Keleher provided a detailed review of s. 37 of the Act related to CBC. He opined that s. 37 mechanisms and framework provide for an appropriate approach to address possible below market or affordable housing in non-IZ context.

[51] Mr. Keleher also reviewed the definition of "affordable" in PPS 2020; affordable ownership from Ministry of Municipal Affairs and Housing ("MMAH") regarding affordable ownership and affordable rental. Mr. Keleher reviewed the Region of Peel affordable rent as per the 2021 data referred to in PPS 2021. Mr. Keleher opined that the decile definitions applied and defined by the City have attributes peculiar and different than the Region's approach, the PPS 2020 references and common economic practices; and are peculiarly arrived at to justify appropriate brackets to establish below market rental and ownership viabilities and prescriptive possible minimum percentage targets in study and updates thereof through Addendum to the study.

[52] Mr. Keleher reviewed the policies in the ROP which highlight multiple affordable housing policies in addition to IZ as follows:

i) Encouraging and permitting secondary suites (5.8.3.2.6)

ii) Giving priority to the development of affordable housing on surplus Regional property (5.8.3.2.9)

iii) Encouraging area municipalities to give priority to sell or lease surplus municipal properties for the development of affordable housing (5.8.3.2.10)

iv) Promoting incentives and funding from different levels of government to encourage residential development to include an affordable housing component (5.8.3.2.11)

v) Encourage community agencies and landowners of suitably sized sites to develop affordable housing (5.8.3.2.12).

[53] Mr. Keleher also reviewed the ROP plan adopted April 28, 2022. In his testimony referring to Peel-Wide new housing targets, Mr. Keleher opined as follows that:

- These are targets to be achieved on a Region-wide basis, and not applied to individual development applications. Where the private market is unable to meet these targets, or to attempt to close the gap between what the targets are and what the market is able to achieve on its own, the Region's policies in the Adopted ROP state that it will collaborate with local municipalities to offer incentives to support affordable and purpose-built housing to achieve the targets in Table 4.

- In addition to potential incentives under policy 5.9.21, the Adopted ROP contemplates several other avenues for the delivery of affordable housing, including prioritizing affordable housing development approvals (5.9.22), collaborating with local municipalities in implementing Inclusionary Zoning (5.9.23), using Region-owned land and buildings for affordable housing projects (5.9.30), using a land bank to secure lands suitable for affordable housing (5.9.31), encouraging lower-tier municipalities, the Province and/or Federal governments to utilize surplus lands for the development of affordable housing (5.9.32), among others.

- 5.9.21 Collaborate with the local municipalities to explore offering incentives to support affordable and purpose-built rental housing to achieve Peel-wide new housing unit targets shown in Table 4.

- Policy 5.9.34 states that the Region will also encourage landowners of 'suitably sized sites' to develop affordable housing.

[54] Mr. Keleher reviewed OPA-115 and testified that in section 14.7.4 related to mall-based community nodes and residential uses therein, the City has used below-market housing definitions that are different than PPS 2020, the Growth Plan and the ROP with respect to "Target Households". He opined that the timing of available data and growth

projections used may produce different results at any given point in time when a development is considered or planned.

[55] Mr. Keleher summarized regarding OPA-115 housing policies as follows:

> i) On one hand requiring the provision of affordable ownership units (as they meet the PPS definitions of affordable ownership) consistent with the Region's definition of IZ, even though the subject sites are not within a PMTSA or subject to a Development Permit System, and
>
> ii) On the other hand, requiring a certain proportion of units to be rental tenure, with some (at lower income deciles) at or below rental rates for affordable rental set out in the PPS, Growth Plan and ROP definitions of affordable rental. At these lower income deciles, the policies in OPA-115 require the delivery of affordable housing. At higher income deciles, the policies require the delivery of housing that is priced above those Provincial and Regional definitions of affordable. However, in this regard, OPA-115 has the effect of regulating or constraining the rent that can be charged even for units that are not considered affordable, based on a calculated 'maximum' that is in turn based on estimated incomes.

[56] Mr. Keleher reviewed the July 2020 urbanMetrics Financial Analysis Addendum presented by Mr. White. Mr. Keleher opined that any percentage numeric requirement for minimum number of below-market units in any future development is unsustainable. He cited the example of Sensitivity Analysis, July 2020 urbanMetrics Financial Analysis Addendum with respect to Hard Construction Costs. He referred to and analyzed the following Figure 15 from the urbanMetrics Addendum report (Exhibit 1, Tab 7, page 498) as follows:

Hard Construction Costs Sensitivity Analysis

	MEADOWVALE	SOUTH COMMON	SHERIDAN	RATHWOOD-APPLEWOOD	CENTRAL ERIN MILLS	
-20%	✓	✓	✓	✓	✓	
-15%	✓	✓	✓	✓	✓	
-10%	✓	✓	✓	✗	✓	
-5%	✓	✓	✓	✗	✓	
-	✓	✓	✗	✗	✓	BASELINE
+5%	✓	✗	✗	✗	✗	
+10%	✗	✗	✗	✗	✗	
+15%	✗	✗	✗	✗	✗	
+20%	✗	✗	✗	✗	✗	

SOURCE: urbanMetrics inc.

- At the baseline scenario, three of the five scenarios were shown by urbanMetrics to not have a significant effect on feasibility of the hypothetical projects.

- However, with even a 5% construction cost increase, the 2020 Addendum finds that development in the South Common and Sheridan Nodes become infeasible. Development in all Nodes becomes infeasible with a 10% construction cost increase. The report notes that any potential offsetting increases to revenues will generally fall behind construction cost increases:

    - Although changes to these input construction costs are dictated by market conditions, this analysis is important in illustrating the inherent risk associated with developments of this scale and horizon. Although market conditions may permit for increased revenue opportunities, in our experience the rate of inflation in input construction costs generally outpaces that of revenues (sale price or rental rates).

Mr. Keleher opined that:

- Even under the base policy direction that the ‘affordable’ rental housing being required by the City isn’t consistent with the Provincial or Regional definitions of “affordable” (though the affordable ownership is, and the affordable rent ranges at lower income deciles also is), the urbanMetrics report found that the development scenarios were not feasible under a 20% or higher cost escalation.

- Consistent with the 2020 Addendum, understanding the impacts of construction cost changes like the significant construction cost escalation

> currently being experienced by the residential construction sector, is "relevant and prudent".

[57] Mr. Keleher did a comparison of the City's IZ policies and the similar policies in OPA-115. Mr. Keleher opined that the unknowns in OPA-115 versus IZ include:

> - How off-site units would be accommodated,
> - How net proceeds from sale of affordable housing units would be distributed, or
> - The time period within which the units must remain affordable or 'below-market.'
> - Therefore, the policies contained in OPA115 do not meet the requirements for IZ OP policies as set out in O. Reg. 232/18.

[58] Mr. Keleher reviewed the CBC implementation by the City. He opined that CBC is actively and substantially used for contributing towards the fulfillment of affordable housing objectives and goals in the City. Mr. Keleher additionally testified that the Amended CBC Section 4 further provides that "certain middle income units", particularly ownership dwellings, are "likely to be provided" through IZ without CBC funding.

[59] Mr. Keleher in his testimony further stated (Exhibit 3, pp 72-73, section 3.5) that:

> - As the CBC Study considers that the costs included in the CBC for affordable ownership housing as being distinct from IZ, the allocation of funding received through CBC to encourage the provision of affordable ownership housing on the subject site would be an appropriate use of CBC funds, and also consistent with Regional policy directing municipalities to encourage the production of affordable housing.
> - Similarly, accepting affordable ownership units towards the CBCs payable by developments on the subject sites is appropriate and consistent with the intended use of CBC funds, given the importance of the "Affordable Housing (Owned)" line item to the capital project list set out in the 2022 CBC Study.

[60] Overall, Mr. Keleher summarized in his testimony and concluded that OPA-115 policies related to affordable housing or below-market housing for rental and ownership

are tantamount to IZ. Mr. Keleher continued that utilizing CBC funds to encourage the production of affordable housing would also be consistent with Regional policy directing municipalities to encourage the production of affordable housing.

[61] Mr. Keleher concluded that the use of CBC is the appropriate and preferred way to provide for what OPA-115 policies for affordable and below market housing try to achieve.

[62] Mr. Keleher also provided reply evidence to Mr. Phillips' testimony and evidence. In reviewing aspects of practicability Mr. Keleher testified that:

- Paragraph 31 of the Phillips WS states that:

  > 31. The City's housing policies within OPA-115 implement these provisions of the Planning Act in a practicable way (that is, in a way that is able to be done or put into action) to ensure affordable housing is provided. These "measures and procedures" include minimum housing requirements as a means to ensure this policy objective is attained as these communities are redeveloped.

- The approach adopted by OPA-115 would not have several elements necessary to allow for a proper functioning of the policy.

- OPA-115 provides no 'term' for the period in which units have to be maintained as 'below-market';

- Unlike the system for IZ, OPA-115 contains no provisions mandating of regular reviews of the reasonableness or appropriateness of the policy through regular updates of the background reports;

- The definitions of 'below-market rental housing' being based on average incomes of all City of Mississauga households (not just renter households) conflicts with the terms of the Region of Peel's definition of affordable rental housing, which is based on the income distribution of all renter households in the regional market area, which may create confusion in implementation.

- Unlike the requirements of IZ regulation 232/18, OPA-115 provides no indication of how the 'net proceeds' of the sale of affordable or below-market housing units will be handled, which may create a bifurcated set of policies for different but similar types of below- market/affordable units depending on the regime they are provided under (IZ or OPA-115)

[63] Mr. Keleher also testified with respect to the assumptions and testimony in Mr. Phillips' analysis and conclusions. He noted the following:

- The Phillips WS relies on the Financial Addendum analysis in attempting to ensure that the policies are 'practicable' as per the Planning Act. Paragraph 29 of the Phillips WS states that:

  > The Planning Act also requires that "an official plan shall contain such policies and measures as are practicable to ensure the adequate provision of affordable housing.

- However, since the July 2020 Addendum, construction costs have escalated significantly.

- Using the South Common and Sheridan demonstration plans as examples, the Addendum report appears to have used a construction cost (hard cost) assumption of $240 per square foot, which is roughly in-line with cost benchmarks published by Altus Group in the 2020 version of the annual Cost Guide.

- While the July 2020 Addendum does not indicate where the construction cost assumptions are from, given the relative similarity between the Altus Group Cost Guide assumptions and the Addendum, it is worth noting that the 2022 Altus Group Cost Guide states that the cost benchmarks are to be used as a guide only, and that the assumptions are based on a clean, open, level site with no restrictions:

Guide Only

The construction cost data contained herein are of a general nature only and subject to confirmation with respect to specific circumstances.

The unit rates for the building types described are an average range exclusively for that type of building. The unit rates assume that a level, open site exists with no restrictions from adjoining properties. It is assumed that stable soil conditions prevail

- If any of the subject sites have site-specific circumstances that would add cost relative to the basic site assumed in the Altus Cost Guide estimates, additional costs would accrue.

ANALYSIS AND FINDINGS

[64] The OPA-115 policies contested in this hearing while identified separately for the Central Erin Mills Major Node Character Area; and the Malton, Meadowvale, Rathwood-Applewood, Sheridan and South Common Community Node Character Areas; were addressed jointly in argument as the policies overlap in content and effect applying to the identified subject properties, as appropriate.

Special Consideration and finding for policies 13.2.5.2 and 14.1.7.4.2

[65] These policies do not directly reference or depend upon the core issue of dispute related to mandated minimum 10% below market housing to be provided by the Appellants in any proposed applicable developments per the OPA-115.

> Central Erin Mills Major Node Character area is as follows:
>
> 13.2.5.2 Affordable housing for low income households will be encouraged. It is recognized that affordable housing provision is subject to landowners being able to secure access to adequate funding and on with the Region of Peel as Service Manager for subsidized housing.
>
> Malton, Meadowvale, Rathwood-Applewood, Sheridan and South Common Community Nodes:
>
> 14.1.7.4.2 Affordable housing for low income households will be encouraged. It is recognized that affordable housing provision is subject to landowners being able to secure access to adequate funding and collaboration with the Region of Peel as Service Manager for subsidized housing.

[66] As identified by underlined text, these policies do not mandate a specific amount or percentage of affordable housing to be provided for low income households within the context of the policies. These policies are differentiated from other policies for below market housing which require or are linked to the mandated delivery of minimum 10%

when they applied to certain size of the proposed development. For example 50 or more residential dwellings.

[67] The Tribunal finds that policies 13.2.5.2 and 14.1.7.4.2 are not directly *ultra vires* as these are not beyond the scheme of the Act. This is due to the fact that an assessment of practicability required under s. 16(1)(a.1) is moot for these policies as these simply suggest that the Appellants work pro-actively and cooperatively with the Region of Peel. The Tribunal notes that for the same reasons these policies neither constitute nor are tantamount to IZ.

[68] Therefore, policies 13.2.5.2 and 14.1.7.4.2 are not further assessed regarding the issues list as these policies are simply encouraging or promoting interworking between the Region of Peel and the Appellants.

Issue 6: Do the Affordable Housing policies, including policies 13.2.5.1 to 13.2.5.6, inclusive, constitute Inclusionary Zoning?

[69] Excluding policy 13.2.5.2, the OPA-115 referenced policies in considerations as follows:

> 13.2.5 Residential Uses
>
> 13.2.5.1 Residential development permitted by any land use designation will include:
>
> a. a minimum 10 percent of housing units that are below-market for each development application proposing more than 50 residential units. This will be comprised of units targeted for a range of middle income households. Approximately half of these units will be larger, family-sized dwellings containing more than one bedroom.
>
> For the purposes of this section:
>
> • middle income is defined as Mississauga households with annual earnings between the lowest 40 to 60 percent of income distribution

- below-market ownership housing means housing for which the purchase price results in annual accommodation costs which do not exceed 30 percent of gross annual household income

- below-market rental housing means a unit for which the rent does not exceed 30 percent of gross annual household income

13.2.5.3 Reduced parking requirements will be considered for the below- market and affordable housing units described in policies 13.2.5.1 and 13.2.5.2 as an incentive to encourage their development.

13.2.5.4 The below-market housing units described in Policy 13.2.5.1 are to be comprised of a mix of both below-market rental and below- market ownership housing when considered across the Node. Individual development applications are encouraged wherever possible to include a mix of both below-market rental and below- market ownership housing.

13.2.5.5 Land conveyance to a non-profit housing provider such as the Region of Peel will be considered in lieu of the direct provision of some or all of the below-market housing units described in Policy 13.2.5.1. Land parcel size, configuration, location, estimated unit yield and adherence to all other policies of this Plan will be included in this consideration.

13.2.5.6 Any existing below-market rental housing units that are retained under the provisions of the City's Rental Housing Protection By-law will count towards the below-market housing unit requirements described in Policy 13.2.5.1.

[70] There was no dispute that OPA-115 is a planning policy framework and not a zoning by-law. Just because it may use similar descriptors and consider similar aspects of housing as an IZ, does not negate the fact of one being a "Plan" and the other being a "Zoning By-law." In the top down planning framework, the Plan and the Zoning By-law represent different and distinct stratums.

[71] The Tribunal accepts the submission and evidence of the City that these policies were never developed in parallel with or following the IZ regimen.

[72] Based on the evidence and submissions of the Parties, the Tribunal finds that policies 13.2.5.1 through policies 13.2.5.6 do not constitute inclusionary zoning.

[73] This matter is also addressed under Issue 14, sub-issue (a) as to whether these policies are tantamount to IZ. The difference being how the common usage and meaning of the words “constitute” and “tantamount” differ or apply.

Issue 7: Did the City carry out the requirements of subsections 16(4) to 16(13), inclusive, of the *Planning Act*, regarding the Affordable Housing policies?

[74] The City submitted that when adopting OPA-115, it was never required to follow the process under s. 16(4) to s. 16(13) of the Act, which address the steps that must be taken for the purpose of enacting an IZ By-law.

[75] Mr. Phillips echoed the City submission in his planning opinion that the relevant s. 16(4) to 16(13) of the Act and these requirements in the Act are specific to IZ and do not apply to OPA-115, a City Official Plan Amendment.

[76] The opposing submissions and planning evidence posited that since aspects in OPA-115 touch aspects similar to IZ, that it was necessary to conduct statutory conformance per requirements in s. 16(4) to 16(13) of the Act.

[77] The Tribunal notes that there may have been some virtue for the City to have consideration for such IZ statutory and regulatory framework in reference to OPA-115 planning and development. However there is no statutory requirement to do so.

[78] The Tribunal finds that there are no requirements in the Act that every possible affordable housing policy other than IZ, meet statutory provisions in s. 16(4) through to 16(13) of the Act.

Issue 18: Are these policies in OPA-115 *ultra vires* the *Planning Act*?

[79] The Act subsection referred to by the City as a basis for OPA-115 residential use policies are as follows:

> **16** (1) An official plan shall contain,
>
> (a) goals, objectives and policies established primarily to manage and direct physical change and the effects on the social, economic, built and natural environment of the municipality or part of it, or an area that is without municipal organization;
>
> (a.1) such policies and measures as are practicable to ensure the adequate provision of affordable housing;

[80] The City provided evidence that subsection 16(1)(a) of the Act requires the City to create policies such as included in OPA-115 for affordable housing. The City also submits, and Mr. Phillips opined that such is a "must" when considering the language "shall contain" in the leading sentence of s. 16(1) of the Act.

[81] The City's ability or authority to develop affordable housing polices in its OP or Official Plan Amendment ("OPA") is not disputable. The City has such rights within the statutory direction in s. 16(1)(a) of the Act.

[82] The City continued to assert that subsection 16(1)(a.1) further required of the City; as in "shall contain"; to establish OPA-115. The City insisted that this was a statutory requirement of the Act.

[83] The Appellants argued that that there is no specific or mandatory requirement in the Act which specifically requires of the City to create one more policy as in OPA-115 while other polices like IZ or CBC are already available.

[84] Tribunal finds that while it is not pivotal on its own for the determination that OPA-115 affordable housing policies are *ultra vires*, the Tribunal concludes based on the submissions of the Appellants that there is no statutory requirement under s. 16(1)(a.1) for the City that it must have OPA-115 given other policies that already exist in City's OP regarding affordable housing which satisfy the underlying statutory requirement.

[85] The City cited case law related to statutory interpretation with reference to *Onyskiw v. CJM Property Management Ltd.,* 2016 CarswellOnt 16388 (S.C.C., Sep 14, 2016) and paragraphs 38 and 39 therein:

> 38 The current state of the law of statutory interpretation recognizes that meaning flows at least partly from context and that a statute's purpose is an integral element of that context: see Pierre-André Côté, The Interpretation of Legislation in Canada, 4th ed. (Toronto: Thomson Reuters, 2011), at p. 300-01.
>
> 39 The question as to how a statutory provision should be interpreted has been answered definitively by the Supreme Court of Canada. On numerous occasions, the court has adopted the approach to statutory interpretation espoused by E.A. Driedger as the only applicable approach, namely:
>
> [T]he words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

[86] The critical and pivotal determinant of *ultra vires* issue is to conclude that the policies in question are not permitted. In this regard for affordable housing policies, these must satisfy the requisites in s. 16(1)(a.1) of the Act. Considering the construct of s. 16(1)(a.1) the following is apparent:

> **16** (1) *An official plan shall contain*,
>
> (a) goals, objectives and *policies* established primarily to manage and direct physical change and the effects on the social, economic, built and natural environment of the municipality or part of it, or an area that is without municipal organization;
>
> (a.1) *such policies and measures as are practicable to ensure the adequate provision of affordable housing;*

[87] For example, if the essence of complete s. 16(1)(a) is read together, the requisite becomes: "An official plan shall contain policies; such policies and measures as are practicable to ensure the adequate provision of affordable housing."

[88] In the consideration of affordable housing, the direction to set goals, objectives or policies is inseparable from an appropriate assessment for practicability. More importantly as it applies to this matter before the Tribunal, the determination of *ultra vires* or *vires* is conjoined and the Tribunal must determine: “Does the Tribunal find that the proposed policies and measures for below market and/or affordable housing as mandated in OPA-115 “are practicable”?”

[89] The City brought to the Tribunal’s attention the case *of Goldlist Properties Inc. v. Toronto (City),* 2003 CarswellOnt 3965 and paragraphs 49 through 51 (emphasis added):

> [49] We turn first to the specific wording of s. 16(1)(a) of the Planning Act. By the terms of s. 16(1)(a), an official plan shall deal primarily with physical change. Section 16(1)(a) does not say that the official plan shall only deal with physical change. A second and related point is that s. 16(1)(a) is framed in mandatory terms and specifies what an official plan “shall contain”. Section 16(1)(a) is cast in terms of the minimum requirements for an official plan, not the outside limits. It does not list heads of power or the subjects that may be addressed by the official plan. There are unquestionably limits to what a municipality may include within its official plan, but the wording and scope of s. 16(1)(a) indicate that those limits cannot be determined solely by a literal application of its terms. To determine what may be included in an official plan, as distinct from what must be included by virtue of s. 16(1)(a), reference must be had to the Planning Act as a whole. In this regard, it is important to bear in mind that the purpose of an official plan is to set out a framework of “goals, objectives and policies” to shape and discipline specific operative planning decisions. An official plan rises above the level of detailed regulation and establishes the broad principles that are to govern the municipality’s land use planning generally. As explained by Saunders J. in [page458] Bele Himmel Investments Ltd. V. City of Mississauga, [1982] O.J. No. 1200 (QL), 13 O.M.B.R. 17 (H.C.J.), at para. 22, p. 27 O.M.B.R.:
>
> Official plans are not statutes and should not be construed as such. In growing municipalities such as Mississauga, official plans set out the present

> policy of the community concerning its future physical, social and economic development.
>
> In our view, it is essential to bear in mind this legislative purpose when interpreting scope of authority to adopt an official plan. The permissible scope for an official plan must be sufficient to embrace all matters that the legislature deems relevant for planning purposes.
>
> [50] Another significant feature of s. 16(1)(a) is that contrary to the submission of the appellants, management of "the social, economic and natural environment of the municipality" are explicitly mentioned as necessary elements of the official plan. While this phrase must be read in light of the requirement that the official plan be primarily concerned with the management and direction of physical change, it hardly supports the appellants' contention that the power to enact an official plan must be strictly limited to the purely physical aspects of land use planning.
>
> [51] As the Supreme Court of Canada recently reaffirmed, in Bell ExpressVu Limited Partnership v. Rex, [2002] 2 S.C.R. 559, 2002 SCC 42, at para. 26, quoting E.A. Driedger, Construction of Statutes, 2nd ed. (Toronto: Butterworths, 1983), at p. 87, the words of any statute "are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament". When one moves from the confines of s. 16(1)(a) to the broader context of the Planning Act as a whole, one finds considerable added support for the argument advanced by Toronto and the intervenors for the authority of a municipality to include in its official plan provisions designed to limit or control the conversion or demolition of rental housing.

[90] The Tribunal notes that *Goldlist* is differentiated from the matter at hand in that:

a. Regarding the setting of minimum requirements in *Goldlist*; OPA-115 requirements and minimum limits are a quite different usage. While the requirement as set out to be a minimum 10% affordable or below market housing, it does not escape the test of practicability that is required by the

Act. If it were, not to be prescribed or mandated, and only set as objectives or goals, then there may be some validity. However, even such a policy must demonstrate and have a basis in practicability..

b. The demolition of rental properties was a key issue in *Goldlist* and it was determined that overall scheme of the Act was supportive and against demolition as to its impact on availability of rental properties.

c. In the matter of prescribing affordable housing as set in OPA-115, the Act provides no such support and only on an exception basis allows such to be set up on a prescriptive or mandated basis as under IZ statutory provisions and indirectly at the discretion of the City through CBC.

d. The overall consideration of affordable housing in the Act falls on goals and objectives. Any exception aside from IZ is explicitly tied to demonstration of policy/policies to the requirement that such “are practicable” not only for policies that mandate but also those that set goals and objectives.

[91] Additionally, the Act has two key aspects linked to affordable housing in s. 16.1 (a.1). Namely the following:

a. “are;” and,

b. “practicable.”

[92] The City made submissions and presented planning and financial evidence where one common feature in the evidence was that the feasibility has and could change with time sensitive parameters. In spite of this, the City proposes to mandate a fixed and static minimum (10%) requirement to be conformed with through OPA-115.

The associated aspects in evidence showing the progression of activities in developing prescribed affordable housing policies is summarily as follows:

- The minimum percentage of affordable or below market housing that would be appropriate.
    - It started with original minimum 20% feasibility for below market housing as part of reimaging the malls with the Gladcki report;
        - it was followed by subsequent processing and presentation of the same to the City Council;
- As the plans progressed to develop an OPA, urbanMetrics revisited economic feasibility directed by the City as a “truthing exercise” and based on urbanMetrics work and use of updated applicable parameters at the time of such study, the minimum requirement for below market housing was lowered from 20% to 10% with fewer target malls;
- urbanMetrics in testimony and in their evidence clearly stated that feasibility was subject to economic variables like housing prices and demand, the income levels for households and the affordability to own or rent by potential households targeted by the OPA-115 policies;
- Throughout all evidence presented by City witnesses, the reference to 10% mandated minimum was in the context of feasibility and not with respect to practicability.

[93] The Appellants made submissions and provided evidence and the following are excerpts and quotes from witness statements:

- The feasibility studies conducted by the City or its witnesses lacked completeness in documenting assumptions, operational parameters

like duration the rentals would be sustained below market, the targeted deciles for below market ownership, the cost variables which were impacted by labour market forces for construction and material costs, service costs and phasing impacts on feasibility;

- The Appellants' evidence also posited that such factors were of a magnitude significant enough that establishing any minimum percentage target for any of the mall sites was fraught with grave uncertainties; and

- The Appellants also submitted that "practicable" implied that in addition to requirement of feasibility it must also make sense; i.e., just because something is feasible does not imply it is necessarily practicable.

[94] The Tribunal notes that let alone a statutory consideration of practicability; the essence of requiring a prescriptive policy directed at affordable housing to be live and pertinent (are practicable – "This direction is in present tense; and requires that "practicable" applies any time a policy is established as well as when such a policy is applied."); all the affordable housing policy construct in OPA-115 is simply based on changing high level feasibility results. It is further based on assumptions that are not static in time and potentially could change the feasibility percentage. There was consensus among all witnesses that the feasibility percentage is dynamic over time. However, the level of change and the direction of change were considered unpredictable. The Appellants argued that the feasibility percentages could vary wildly and even more so be impacted by the type of actual development scenarios and their phasing in practice, versus theoretical modeling assumed by the City. The City while recognizing the variability, asserted that there would be some variability in feasibility but not as much as the Appellants witnesses suggest.

[95] The Tribunal also notes, as the Appellants argued that, throughout the City's economic and planning evidence, the question of overall practicability was rarely covered. The evidence generally stayed in the realm of preliminary economic feasibility

studies based on hypothetical modelling of development scenarios envisaged by the City. The Appellants asserted that actual developments could be dramatically different than any hypothetical modelling based on the conditions that may exist at the time such future developments are proposed.

[96] In issues related to practicability in implementing OPA-115 affordable housing policies, only when it was raised by the Appellants that OPA-115 proposed residential uses policy could not be enabled through a Zoning By-law that the City proposed the use of the “H” Holding By-law as a workaround. The City stated the zoning approvals could be obtained pending the satisfaction of the holding provisions or pending conforming with OPA-115 policies. The Appellants showed how this was an inappropriate and fundamentally perverse way to implement OP policies at the Zoning By-law consideration stage and also in the context of the scheme of the *Act*. The Appellants also showed how such OPA-115 policy would not allow for processing of any Zoning By-law amendment or jeopardize appeal rights and approval of planning matters; a catch 22 situation since the requested policy could not form part of any Zoning By-law since all Parties agreed that the City does not have authority to regulate residential users through a Zoning By-law governing a means test to rent or purchase a dwelling unit; City can only regulate land uses.

[97] The Tribunal notes that when the City sets prescriptive and mandated policy with quantitative requirements that shall be met by any development proposals made by the Appellants (e.g. minimum 10% affordable housing); not goals or objectives to strive for; it immediately creates an onus in the context of the scheme of the Act among other considerations that such policy is practicable not only in essence and general context of the overall Act but also in its specific application. The comparison with *Goldlist* in the context that, “Official plans are not statutes and should not be construed as such” is erroneous. The rigour and force of prescriptive policy which prescribe minimum affordable housing percentage no longer falls in the category of general goals, objectives, policies or measure that can bypass the required specific test of practicability

[98] Additionally, practicability of a policy which is prescriptive must prevail not only when enacted but also at all times when it is applied to specific application(s) for development. For example, when an applicant proposes a development, where OPA-115 affordable housing prescribed limits apply, the practicability of the policy must be assumed to be there as pre-determined by the City through prescribing the same in OPA-115. When read in its normal grammatical usage, s. 16(1)(a.1) of the Act; the practicable is required to be applicable and maintain the applicability in practicable terms at all times such policy is in force or when used for processing development applications, e.g. OPA-115 affordable housing policy.

[99] The City's own witnesses testified that only high level feasibility aspects were assessed at a point in time with hypothetical development scenarios. This is far from a basis to consider an affordable housing policy established to be practicable. One can not but conclude that a policy that is not practicability assessed when established would not just coincidentally become practicable when applied. Hence OPA-115 affordable housing policies neither follow schema of the Act nor satisfy the statutory requirements per s. 16(1)(a.1) of the Act.

[100] However, if such a policy has been framed as a goal and/or objective that should be considered or to be strived for, the actual determination of what specifically could be practicable for a given proposal becomes a joint endeavour which may included studies carried out or reviewed by the approval authority, the applicant and any other interested parties. This is exactly what is espoused in scheme of the Act as a whole and as is described in paragraphs 38-39 of *Onyskiw v. CJM Property Management Ltd.*

> [T]he words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

For the matter at hand, it could translate into effective affordable housing policies that are practicable in actual application to planning matters.

[101] The Tribunal also finds it instructive to review additional submissions and evidence of the Appellants that further reaffirms and leads to similar conclusion as above.

[102] The Appellants submitted that only statutory provision in the Act that provides the City any authority to require affordable housing units in a development is guided by the following subsections in s. 16 of the Act; and more specifically s.16(5) regarding Inclusionary Zoning policies as follows (excerpted below from the Act) :

> (4) An official plan of a municipality that is prescribed for the purpose of this subsection shall contain policies that authorize inclusionary zoning,
>
> (a) authorizing the inclusion of affordable housing units within buildings or projects containing other residential units; and
>
> (b) providing for the affordable housing units to be maintained as affordable housing units over time. 2016, c. 25, Sched. 4, s. 1 (2).
>
> Same
>
> (5) An official plan of a municipality that is not prescribed for the purpose of subsection (4) may contain the policies described in subsection (4) in respect of,
>
> (a) a protected major transit station area identified in accordance with subsection (15) or (16), as the case may be;

[103] The Appellants argue that the City is proposing as though s. 16(1)(a.1) gives them unlimited authority to create policies including mandated availability of affordable housing at the Subject Sites. The Appellants submitted that it makes redundant specific direction of s. 16(5). The Appellants submitted that equivalently, if the City's proposition and interpretation is to be accepted, the City could demand inclusion of affordable housing units anywhere and in any residential development scenario including PMTSAs, non-PMTSA locations and others without the need for statutory framework for IZ.

[104] The Appellants further submit and argue that the Act in s. 16(1)(a.1) requires the proverbial, "… are practicable", litmus test. This test applies to all considerations for affordable housing and applies to establishment of all goals, objectives and policies for affordable housing under the Act.

[105] The Appellants submitted that the legislative permissible scope for an official plan must be sufficient to embrace all matters that the legislature deems relevant for planning purposes. Referring to *Goldlist* they emphasized as follows:

> … To determine what may be included in an official plan, as distinct from what must be included by virtue of s. 16(1)(a), reference must be had to the Planning Act as a whole. In this regard, it is important to bear in mind that the purpose of an official plan is to set out a framework of "goals, objectives and policies" to shape and discipline specific operative planning decisions. An official plan rises above the level of detailed regulation and establishes the broad principles that are to govern the municipality's land use planning generally.

[106] The Tribunal notes that the Appellants have demonstrated the correct schema of how policies within s. 16 have purpose and a statutory compactness that does not coincide with the City's submissions or arguments. The statutory principles in s. 16 are neither ambiguous, general, nor contradictory.

[107] The City in defence of its position for mandating minimum 10% affordable housing requirement cited example of Lakeview Village as a large project where a 5% minimum below market housing was prescribed through a site specific OPA.

[108] The Appellants argued that the cited example represented a mutually developed agreement between the Applicant and the City and per se was not a policy requisite set for the subject site in the City OP. The Appellants argued that arrangements in support for affordable and/or below market housing outside of the IZ framework have always

been established through collaboration between the City and an Applicant for development.

[109] The Tribunal notes in review of submissions by the Parties that Lakeview Village example also demonstrates clearly how assessment for practicability work. There is a requesting party for the below market units (the City) and a provider of below market units (Lakeview Village/Edenshaw). There are trade-offs in planning and development flexibility that leads to possible minimum level of affordable housing which Edenshaw could commit to in a proposed development and which makes sense. Additionally it was not contested when the Appellants submitted that, this was voluntarily agreed upon between the two sides in consideration of s. 16(1)(a.1) context. The Appellants stated that both Parties must have established it to be practicable for it to meet the statutory requirement of the Act.

[110] The Tribunal notes that in review of the evidence and the submissions made; it all leads to the conclusion that practicability in the context of s. 16(1)(a.1) cannot be established on an *a priori* basis; i.e. it cannot be determined before a real development proposal is formulated and the details of such a proposal are specified. What must follow is a joint assessment between the City and an Applicant if there is going to be delivery of a practicable level of affordable housing. It includes consideration of the actual scope of development, time or phasing of development and the location of the development.

[111] The analysis above leads to the potential conflicting perception that IZ somehow works contrary to the postulation above. In this regard the Tribunal reviews evidence regarding IZ presented by the Parties. The evidence regarding IZ shows how the Act specifically and exclusively makes provisions for mandating affordable housing for specific and scoped scenarios. The Act inherently confirms that IZ fits in the overall scheme of the Act inclusive of considerations for practicability through detailed provisions regarding IZ in s. 16 including O. Reg 232/18. The Tribunal also notes that

the City has availed itself of this provision in adopting OPA-140 for IZ implementation in the City.

[112] Overall, the Tribunal concludes that in developing OPA-115 affordable housing policies, which mandate specific levels of affordable housing, the City has taken a leap of faith from high level feasibility studies based on the City's view of how potential owners would develop the Subject Sites with hypothetical development configurations and a variety of financial and demographic assumptions which may bear little to no resemblance to practicable assessment for any site specific developments. Even more troubling is the City's conclusion that somehow these high level, time impacted, feasibility assessments allow it to enact OPA-115 and mandate a minimum 10% of below market housing as a practicable reality.

[113] The Tribunal disagrees with the City's submissions and arguments and finds that the City has simply failed to address practicability of the OPA-115 affordable housing policies as required by the Act. This is also a violation of the overall scheme of the Act which clearly allows for a synergistic variety of other options for the City; e.g. CBC, IZ and voluntary agreements between the City and the Appellants. In consideration of this totality, the Tribunal finds that OPA-115 affordable housing policies as so prescribed in the policies therein, are not permitted by the Act.

[114] As a preamble to a pivotal finding regarding *ultra vires* in this hearing, the Tribunal notes certain observations to simply inform and not direct anyone. Tribunal notes that any finding of *ultra vires* against OPA-115 affordable housing policies does not take away or impinge on any of the following or others as permitted in the Act:

a. It does not prevent the establishment of goals, objectives and policies that support or encourage affordable housing;

b. It does not prevent specification practicable % minimum affordable housing based on a review of specific applications as determined jointly by the Applicant(s) and the City;

i. In such instances the appropriateness or need for the approval of an OPA with such specific detail on a site or application specific basis can be jointly determined by the City and the Applicant(s);

1. For example as in Edenshaw application and approval of OPA cited by the City with 5% affordable housing.

Note: This is the essence of what is intended of parties in consideration of a planning matter by the word “practicable” in s. 16(1)(a.1) of the Act.

c. It does not prevent the formulation of affordable housing regimes considered directly in setting up of CBC allocations for affordable housing;

d. It does not prevent negotiated settlements between the City and Applicant(s) to consider in-lieu arrangements to support affordable housing; and,

e. It does not prevent due regards and considerations for affordable housing as part of CBC policies; and,

f. It does not prevent voluntary contributions by Applicant(s) in support of affordable housing.

[115] The Tribunal concludes that that the mandated affordable housing sought as below market ownership and below market rental under “Residential Uses” policies (except for 13.2.5.2 and 14.1.7.4.2) in OPA-115 are *ultra vires* the Act on two counts:

a. These fail to have due regard for the overall scheme of the Act and proper application of s. 16(1); and together with the following, as well as separately thereof, finds that,

b. These policies fail the required provisions in s. 16(1)(a.1) and are not practicable and hence not permitted.

Issue 19: If these policies are not *ultra vires* the Planning Act, should any requirement for affordable housing only be secured as a community benefit in accordance with applicable provisions of the *Planning Act*?

[116] Other than the generic policies 13.2.5.2 and 14.1.7.4.2 in OPA-115 which encourage affordable housing, the Tribunal determined that the remaining affordable housing policies were *ultra vires* the Act. Overall consideration of this issue or its determination therefore is moot.

[117] Overall, the Tribunal notes that there is no requirement in the Act that was postulated or presented in evidence which demonstrated that all affordable housing be only secured through CBC.

Issue 14: As it relates to policies 13.2.5.1 to 13.2.5.6 and 14.1.7.4.1 to 14.1.7.4.6

a. Are these policies tantamount to an inclusionary zoning framework?

[118] In this issue, the Tribunal is asked to determine whether using the ordinary meaning and usage of the word “tantamount,” the affordable housing policies in OPA-115 are tantamount to IZ.

[119] The only statutory provision under the Act that allows the ability to require mandated affordable housing to be provided within a residential use is per s. 16(5) of the Act.

[120] The City submitted that they have not developed OPA-115 affordable housing policies to be like IZ. In fact the City is right; they have not conducted work regarding the prerequisites for IZ policies including the study requirements, the update requirements, and none were presented by the City in its evidence per the rigour and detail required under IZ policies and regulations.

[121] The Appellants presented evidence showing that many core elements of OPA-115 affordable housing policies are like what IZ policies address. They submitted that the City has created a construct that tries to achieve IZ like mandated results without meeting statutory provisions for IZ or the specific authority and provisions afforded therein. Specifically Mr. Keleher provided a tabulated compilation of how OPA-115 affordable housing policies try to mostly address the assessment report related to IZ and mimics many attributes of the same (Exhibit 3, pages 66-68). Mr. Keleher also compared the City OP policies elements for IZ versus OPA-115 comparable affordable housing policies. He concluded that OPA-115 tries to emulate the same concepts as IZ.

[122] The Tribunal recognizes that the City never approached the development and assessment aspects of OPA-115 as equivalent to IZ implementation. However; the detailed comparative evidence presented by Appellant witnesses established that conceptually or analogously, policies 13.2.5.1 to 13.2.5.6 and policies 14.1.7.4.1 to 14.1.7.4.6 in OPA-115 are tantamount to IZ considerations.

[123] The Tribunal notes that the word “tantamount” includes the meaning among others as to be “equivalent in value, significance, or effect.” It was submitted by one of the Appellants’ Counsel that “if it looks like a duck, walks like a duck, quacks like a duck, it must be a duck.”

[124] The Tribunal having considered all the evidence underlying this issue and submissions by the Parties finds that when considered in the context of common usage and meaning of the word “tantamount;” the OPA-115 affordable housing policies are tantamount to IZ.

Issue 14: As it relates to policies 13.2.5.1 to 13.2.5.6 and 14.1.7.4.1 to 14.1.7.4.6

b. Do the policies comply with the legislative requirements set out in Section 16 of the Planning Act and O. Reg. 232.18?

[125] As has been determined by the Tribunal, these policies do not constitute IZ. Whereas there were parallels identified by the Appellants' witnesses, the direct application of any specific IZ statutory provisions to OPA-115 affordable policies was not established in a well-disciplined way.

[126] It is not appropriate to evaluate OPA-115 affordable housing provisions against applicable statutory framework in the Act which deals with the enablement of IZ for designated PMTSAs in the City. Additionally, there was no dispute that all Subject Sites are outside of designated PMTSA in the City.

[127] The Tribunal thus finds that consideration of O. Reg. 232/18 is not appropriate as it specifically only relates to IZ provisions.

Issue 14: As it relates to policies 13.2.5.1 to 13.2.5.6 and 14.1.7.4.1 to 14.1.7.4.6

c. Are these policies ultra vires the authority conferred to the City of Mississauga under the Planning Act?

[128] In as much as these policies (except for policies 13.2.5.2 and 14.1.7.4.2) flow from the OPA-115 mandated affordable housing policies13.2.5.1 and 14.1.7.4.1; which the Tribunal has determined to be *ultra vires* the Act; the Tribunal finds that these policies flowing from such construct are *ultra vires* the authority conferred to the City under the Act.

[129] The Tribunal notes that policies 13.2.5.2 and 14.1.7.4.2 do not flow from associated mandated minimum 10% provisions in OPA-115 and thus are not *ultra vires* the Act.

Issue 14: As it relates to policies 13.2.5.1 to 13.2.5.6 and 14.1.7.4.1 to 14.1.7.4.6

f. Should policies requiring or encouraging the provision of below-market or affordable housing expressly provide that such matters, where provided, are to be secured as community benefits in accordance with the City's legislative authority under the Planning Act?

[130] There are two aspects that need to be addressed in this sub-issue, 14(f).

1. Should **policies requiring** the provision of below-market or affordable housing expressly provide that such matters, where provided, are to be secured as community benefits (CBC) in accordance with the City's legislative authority under the Act?

2. Should **policies encouraging** the provision of below-market or affordable housing expressly provide that such matters, where provided, are to be secured as community benefits in accordance with the City's legislative authority under the Act?

[131] The City's authority to require or establish goals, objectives and policies to address affordable housing needs in the overall scheme of the Act is well framed by the Act policies in s. 16(1). However, at the present time, as the Tribunal determined earlier in this decision, the ability to mandate or prescribe affordable housing availability and uses; e.g. as in OPA-115; is limited to IZ only. There was no dispute between the Parties that none of the Appellant sites at present qualify for IZ.

[132] There was little to no evidence presented by the City as to how IZ affordable housing is co-ordinated with or managed in relation to CBC. As a result, the Tribunal makes no findings in this regard vis-à-vis IZ and CBC working together in the context of the scheme of the Act.

[133] There was limited evidence provided at the hearing to establish that CBC was the be all and end all to address affordable housing. The Appellants provided evidence that CBC regime establishment and operation accounts for affordable housing as a significant part, if not the dominant part of the consideration in allocations or apportionment of CBC funding. Consequently, the City itself recognizes CBC as an important policy regime for the delivery of affordable housing.

[134] As was shown by the Lakeview Village example by the City; and as noted by CBC appellants; historically, the City and the Applicant(s) work together to agreements supportive of City's policies for encouraging achievement of goals , objectives and policies related to affordable housing.

[135] Given these considerations, the Tribunal finds that the City is not required by the Act to "only" use CBC to provide for affordable housing.

Issue 7: With respect to policies 14.1.7.4.1, 14.1.7.4.4, and 14.1.7.4.5: do these policies exceed the authority of the City under the Planning Act and O. Reg. 232/18?

Should any provision of below-market housing units or conveyance to a non-profit housing provider only be secured as a community benefit in accordance with the applicable provisions of the *Planning Act*?

[136] The role of CBC has already been addressed and the Tribunal makes no further findings in this regard as to whether affordable housing shall only be secured through CBC for achieving any affordable housing goals, objectives or policies in the context of the Act.

SUMMARY OF KEY CONCLUSIONS AND CONTEXT

[137] The Tribunal is very cognizant of the City's desire to address affordable housing or below market housing for its residents. The City made their case eloquently and passionately. Equally the Tribunal heard from the Appellants who have direct interest in

managing their properties now and into the future. The City appears to have selected the approach in OPA-115 based on their claimed lack of success in creating affordable or below market housing through non prescriptive policies. It was not revealed to the Tribunal why the City has failed in achieving its affordable housing goals beyond the assertion that non-mandatory prescribed goals are hard to achieve and thus the prescribed or mandatory requirements to provide certain minimum percentage numbers of units approach in OPA-115.

[138] The Appellants gave examples how the Region of Official Plan provides numerous policy directions and approaches to provide for affordable or below market housing choices. The Appellants also emphasized the collaborative approach in development and planning and development being a fundamental to achieving and ensuring success. As a matter of note, the OPA-115 itself has note of such a direction in policies 13.2.5.2 and 14.1.7.4.2 regarding affordable housing as being encouraged for low income households as Appellants work with the Region of Peel associated programs.

[139] At a holistic level, having received the evidence at the hearing over nearly two weeks, the Tribunal would be amiss if it does not note that the Regional Official Plan policies as reviewed by the Appellants, while not directly of import in the hearing, was demonstratively shown by the Appellants as an example of what s. 16 statutory direction regarding affordable housing espouses.

[140] In the Phase 1 issues before the Tribunal in this hearing, the City's position never developed and became weaker due to clearly flawed interpretation of statutory requirements in s.16 starting with emphasis that the City must have policies and OPA-115 was the answer to this requirement. The evidence showed that there are a variety of options through policies available to the City including IZ in this regard. The Act does not numerically specify as to how many of such policies need to be set up by a City. In other words, the Act does not prescribe that the City must have OPA-115 in addition to IZ and other means and policies to achieve affordable housing in addition to setting of

goals and objectives. The Tribunal noted this kind of flawed and vehement reasoning from Mr. Philips which he repeatedly asserted.

[141] The Tribunal, through the City's evidence, observed the confusion displayed by the City as to what the statutory requirement related to "practicable" was alluding to. The City's financial and planning evidence kept re-hashing "feasibility" or high level visibility or preliminary feasibility as though feasibility and practicability were synonymous.

[142] The Appellants clearly established through their submissions and evidence that OPA-115 affordable or below market housing policies were not practicable. This is fatal to City's case at this Phase 1 hearing. OPA-115 does not satisfy the "practicable" requisition in the s. 16.1 (a.1) of the *Act.*

[143] The City's assertion that since a number, like a "zero" can hypothetically be provided in OPA-115 and that as a result the Tribunal cannot find the OPA-115 with a mandated % requirement to be not practicable. The City submitted that the test was whether any number can be prescribed other than 10%, and if so, the legal test is met and all discussion about 10% or other % being not appropriate becomes moot. The City failed to recognize the scheme of the Act that demands better than this kind of logical justification for an Official Plan, one of the key instruments in the overall scheme of the Act. The City failed to establish that OPA-115 accords with the schema of the Act when making such submissions and providing related evidence.

[144] Finally the Tribunal has reviewed the request from Appellants that the Tribunal refuse approval for affordable housing policies in s.13.2.5.1, 13.2.5.2, 13.2.5.3, 13.2.5.4, 13.2.5.5, 13.2.5.6; and 14.1.7.4.1, 14.1.7.4.2, 14.1.7.4.3, 14.1.7.4, 14.1.7.4.5 and 14.1.7.4.6 of OPA-115.

[145] The Tribunal as noted earlier in the decision recognizes that that there are two policies (13.2.5.2 and 14.1.7.4.2) which are not tied in with the mandated minimum

provision of 10% for affordable housing. These policies specifically reference low income housing delivered under the auspices of the Region of Peel. There was no specific or contested evidence presented regarding the inclusion of these policies in OPA-115 vis-à-vis benefit or even necessity. These policies appear to reflect arrangements that may be in place regardless of OPA-115 and the efficacy of their inclusion in OPA-115 affordable housing context is unclear. The Tribunal does not find these policies to be *ultra vires* the Act.

[146] The Tribunal Directs a review by the City to determine if policies 13.2.5.2 and 14.1.7.4.2 are duplicative and are already in the City's OP or other in-force planning instruments; and remove these from OPA-115 if it is so determined.

[147] Finally, the Tribunal does not propose to restrict the City's desire to develop or establish affordable housing policies. However what is before the Tribunal are not general affordable housing policies but policies mandating affordable housing. These are claimed by the City as being required and also as enacted being permitted by the Act. Based on the analysis and findings already made the Tribunal concludes and finds that:

a. Given the examples of affordable housing tools and practices already in place at the City, the Tribunal finds that the City is not statutorily required by the Act to enact OPA-115, being another affordable housing policy in addition to what is already in place including IZ and CBC; and,

b. Considering the specifics of the OPA-115 policies which mandate minimum levels of affordable housing, the Tribunal finds that these are beyond the scheme of the Act and that these also do not meet the explicit statutory requirement to be "practicable" and are thus *ultra vires* the Act.

[148] In responding to the relief sought by the Parties, the Tribunal finds for the Appellants, in part, and concludes that the following affordable or below market housing policies in OPA-115 are *ultra vires* the Act:

- OPA-115 policies which are *ultra vires* the Act: 13.2.5.1, 13.2.5.3, 13.2.5.4, 13.2.5.5, 13.2.5.6; and 14.1.7.4.1, 14.1.7.4.3, 14.1.7.4, 14.1.7.4.5 and 14.1.7.4.6.

ORDER

[149] **THE TRIBUNAL ORDERS** that the appeals for Phase 1 are allowed in part and the following sections of Official Plan Amendment No. 115 to the Official Plan for the City of Mississauga are not approved: 13.2.5.1, 13.2.5.3, 13.2.5.4, 13.2.5.5, 13.2.5.6; and 14.1.7.4.1, 14.1.7.4.3, 14.1.7.4, 14.1.7.4.5 and 14.1.7.4.6.

"Jatinder Bhullar"

JATINDER BHULLAR
MEMBER