

Local Planning Appeal Tribunal
Tribunal d'appel de l'aménagement
local



ISSUE DATE: July 25, 2018

CASE NO(S): PL160992
PL160993

The Ontario Municipal Board (the “OMB”) is continued under the name Local Planning Appeal Tribunal (the “Tribunal”), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: Haylock Farms Ltd.
Subject: Application to amend the Zoning By-law
-Refusal or neglect of the Township of Centre Wellington to make a decision
Existing Zoning: Agriculture (A)
Proposed Zoning: Residential (R2 and R3) and Open Space (OS)
Purpose: To permit single, semis and townhouses and to permit the public park and stormwater management areas
Property Address/Description: 133 South River Rd.
Municipality: Township of Centre Wellington
Municipality File No.: RZ05/15
OMB Case No.: PL160992
OMB File No.: PL160992
OMB Case Name: Haylock Farms Ltd. v. Centre Wellington (Twp)

PROCEEDING COMMENCED UNDER subsection 51(34) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: Haylock Farms Ltd.
Subject: Proposed Plan of Subdivision - Failure of the County of Wellington to make a decision
Purpose: To permit up to 475 single detached, semi-detached, duplex, townhouse and apartment dwelling units, a park, storm water management pond and walkways

Property Address/Description: 133 South River Rd.
 Municipality: Township of Centre Wellington
 Municipality File No.: 23T-15001
 OMB Case No.: PL160992
 OMB File No.: PL160991

PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: B. Youngblood & 1238576 Ontario Limited
 Subject: Application to amend the Zoning By-law
 -Refusal or neglect of the Township of Centre Wellington to make a decision

Existing Zoning: Agriculture (A)
 Proposed Zoning: Residential (R1C and R3) and Open Space (OS)
 Purpose: To permit multiple residential dwellings a proposed park and stormwater management blocks

Property Address/Description: 27, 32, 40 Broken Front Path, 11 Gilkison Rd.
 Municipality: Township of Centre Wellington
 Municipality File No.: RZ05/15
 OMB Case No.: PL160993
 OMB File No.: PL160993
 OMB Case Name: Youngblood v. Centre Wellington (Twp)

PROCEEDING COMMENCED UNDER subsection 51(34) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: B. Youngblood & 1238576 Ontario Limited
 Subject: Proposed Plan of Subdivision - Failure of the County of Wellington to make a decision

Purpose: To permit up to 238-292 dwelling units. Including 63 to 117 single detached dwellings and 175 multiple residential units on multiple parcels of land

Property Address/Description: 27, 32, 40 Broken Front Path, 11 Gilkison Rd.
 Municipality: Township of Centre Wellington
 Municipality File No.: 23T-15003
 OMB Case No.: PL160993
 OMB File No.: PL161012

Heard: January 29 to February 1, 2018; February 7-9, 2018; and April 3 to 6, 2018 at Elora, Ontario

APPEARANCES:

<u>Parties</u>	<u>Counsel</u>
Haylock Farms Ltd.	Jennifer Meader
B. Youngblood and 1238576 Ontario Limited	Jennifer Meader
Township of Centre Wellington	Peter Pickfield
County of Wellington	Peter Pickfield
Smart Growth Elora + Fergus Residents' Association	Patrick Kraemer

DECISION DELIVERED BY GERALD S. SWINKIN

THE CASES

[1] The Local Planning Appeal Tribunal (the "Tribunal") had before it in this proceeding a consolidated hearing of four appeals under two Case Numbers.

[2] Case No. PL160992 relates to a parcel of land in the Elora settlement area of the Township of Centre Wellington (the "Township") owned by Haylock Farms Ltd. ("Haylock"), municipally known as 133 South River Road ("the Haylock Property"). Haylock filed an appeal due to the failure of Township Council to act on its application for zoning amendment relating to the Haylock Property. Associated with that, Haylock also filed an appeal due to the failure of the County of Wellington (the "County"), as approval authority, to make a decision on its application for draft plan approval relating to the Haylock Property.

[3] Case No. PL160993 relates to a parcel of land also in the Elora settlement area of the Township, lying adjacent to the east of the Haylock Property, owned by B. Youngblood and 1238576 Ontario Limited ("Youngblood"), municipally known as 27, 32,

40 Broken Front Path and 11 Gilkison Road (the “Youngblood Property”). Similar to Haylock, Youngblood filed an appeal due to the failure of Township Council to act on its application for zoning by-law amendment relating to the Youngblood Property. And associated with that, Youngblood filed an appeal due to the failure of the County to make a decision on its application for draft plan approval relating to the Youngblood Property.

[4] The applications for zoning by-law amendment and draft plan approval relating to the Haylock Property were filed in February, 2015 and deemed complete in March, 2015. The applications for zoning by-law amendment and draft plan approval relating to the Youngblood Property were filed in April and March, 2015, respectively and were deemed complete in April and May, 2015, respectively.

[5] It became apparent during the course of the hearing that there was a common directing mind to the development proposal. Haylock and Youngblood (collectively referred to herein as the “Appellants”) were represented by the same counsel and the team of consultants for the Appellants, who gave evidence in the proceeding, spoke on behalf of both parties in the presentation of their evidence.

[6] For the purposes of the hearing, and for the purposes of this Decision, the two parcels were being treated as linked and effectively a unified development proposal. Indeed, as will be evident in the reasons for decision which follow, the stormwater management facility and the groundwater management system, as well as the internal road network, presume a common development platform. Accordingly, for the purposes of this Decision, the Haylock Property and the Youngblood Property will collectively be referred to as “the Site”.

THE POSITION OF THE PARTIES

[7] The appeals were precipitated by reason of the failure of the respective municipalities in making a decision on the applications before them. However, between

the time of the filing of the appeals and this hearing, the Township and the County (collectively herein referred to as the “Municipalities”) and the Appellants were in communication and working together to identify and resolve issues. This was further facilitated by Ontario Municipal Board (as it was then known)-led mediation in late October, 2017.

[8] The upshot of those discussions and the mediation is that the Appellants and the Municipalities came to terms on a mutually acceptable development proposal. The final versions of the respective draft plans, the conditions of draft approval for same and the form of the zoning by-law amendments were documented in Minutes of Settlement executed in January, 2018 by the Appellants and the Municipalities. The Minutes of Settlement were filed with the Board as Exhibit “9” at the outset of the hearing.

[9] The Appellants’ case was put before the Tribunal through seven expert witnesses whose testimony supported the documents, which were included in the Minutes of Settlement.

[10] The Municipalities were represented by a common counsel, Peter Pickfield. The evidence of the Municipalities was called through a single witness, a land use planning consultant, David Butler. Mr. Butler though did advise the Tribunal that there was a municipal review team engaged in the ongoing discussions and mediation consisting of key land use planning staff of the Municipalities and retained experts from the various disciplines which were relevant to the issues arising from the land use proposal.

[11] The Tribunal is under statutory mandate by s. 2.1 of the *Planning Act* (the “Act”) to have regard to any decision made by the municipal council or approval authority relating to the planning matter before it as well as the information and material that was before them. Clause (n) of s. 2 of the Act identifies as a matter of provincial interest the resolution of planning conflicts involving public and private interests. It is therefore not an insignificant fact that the Municipalities have come to terms with the Appellants.

[12] The Tribunal treats the settlement of planning disputes between municipalities and landowner applicants with a generous measure of respect. However, an appeal before the Tribunal, even on a settlement basis, does require Tribunal inquiry to determine that the resolution is in the public interest. The respect referenced above, especially after the very extensive engagement of the Municipalities and the Appellants which occurred in this case, applies to these appeals. However, the resolution was not supported by a local residents' association, Smart Growth Elora + Fergus Residents' Association ("the Association"). The Association retained expert witnesses, five to be exact, and actively challenged the settlement. That challenge requires the Tribunal to test even more carefully the terms of the settlement in order to be satisfied that the settlement is in the public interest. The outcome of that scrutiny is set forth below based upon the various heads of the challenge as they were reflected in the Issues List fixed for this hearing.

THE CONTEXT

[13] The Site is within the defined urban centre of Elora-Salem as designated in the County of Wellington Official Plan (the "County OP"). A portion of the Youngblood Property is within the Built Boundary but the bulk of the Site is within designated Greenfield area.

[14] The Site lies east of the core of the settlement area of Elora and south of the Grand River. The Site fronts on the south side of South River Road, the east limit of the Youngblood Property fronting on Gilkison Road. Along the south limit of the Site runs the Elora Cataract Trailway (also known as the Trestle Bridge Trail), a public trail.

[15] The Haylock Property comprises 22.07 hectares ("ha"). The Youngblood Property comprises 18.25 ha. Both properties are currently used for agricultural purposes. There is one detached dwelling on the Haylock Property and there are three detached dwellings on the Youngblood Property as well as a barn. The dwellings on

the Youngblood Property are accessed by a private lane known as Broken Front Path, which runs from South River Road.

[16] In terms of the character of development in the general vicinity, on the north side of South River Road, between the road and the Grand River, there are variously sized parcels of land which slope to the Grand River and which are improved with single detached dwellings.

[17] To the south of the trailway, which runs along the south limit of the Site, opposite the Haylock Property there is a new subdivision of detached dwellings and townhouse dwellings. Opposite the Youngblood Property, the lands are being used for agricultural purposes with rural residential use. Adjacent to the west of the subdivision lands is a neighbourhood park known as South Ridge Park and beyond that further to the west is an industrial facility.

[18] To the west of the Site are subdivision lands improved with detached and semi-detached dwellings. The southerly portion of the westerly adjacent lands is vacant but is planned to accommodate a further subdivision of similar form housing.

[19] The easterly boundary of the Site abuts Gilkison Road. Gilkison Road is lined with mature trees on both sides. The east side of Gilkison Road is developed with detached dwellings on deep lots, the lots being well treed.

THE SITE

[20] Based upon the testimony of the witnesses and as illustrated on the aerial photos tendered as exhibits, the Haylock Property is largely stripped of vegetation as it has been in agricultural production. There is a dwelling located on it, considerably back from South River Road, with a plantation adjacent to the northeast of it, whose easterly edge is defined by the driveway from South River Road to the dwelling.

[21] A key topographical feature of the Haylock Property is that it rises noticeably from South River Road to a ridge, which lies north of the location of the dwelling and then flattens into reasonably level tableland to the south boundary of the parcel.

[22] The Youngblood Property is marked by a stand of trees and vegetation at South River Road. In fact, this portion of the parcel is designated in the County OP as Core Greenlands. Interestingly, it is this part of the Site which lies within the Built Boundary of the Township as identified in the County OP.

[23] The road known as Broken Front Path traverses this part of the parcel and serves as access to three existing dwellings and a barn located in the central north part of the parcel. By agreement between Youngblood and the Municipalities, as two of the dwellings are apparently understood to have certain heritage attributes although not formally designated under the *Ontario Heritage Act*, those two dwellings will be retained.

[24] The central part of the Youngblood Property has various stands of trees and hedgerows but as it moves south and easterly, the land evidences its use for agricultural purposes and is largely bare.

THE DEVELOPMENT PROPOSAL

[25] The development applications went through a number of iterations since the time of their original filing until their arrival at the Tribunal for this hearing. In fact, quite dramatic changes occurred in the layout of the internal road network and the development blocks. The draft plans and zoning by-law amendments which were before the Tribunal were largely the product of the mediation exercise which took place in the fall of 2017 and the follow up technical studies to support the negotiated development concept, which were completed as recently as the turn of 2018.

[26] The final version of the development concept altered the street pattern from a more conventional grid to central streets which generally follow the topographic contour

lines of the properties. At the request of the Municipalities, only one street accesses South River Road. There will be a single street access to Gilkison Road positioned toward the south of the Youngblood Property. There will be two points of street access to the west, which will tie into streets on the plans of subdivision to the west. There will be four pedestrian and bicycle access links to the Trestle Bridge Trail to the south. It is also noted that the private lane, Broken Front Path, which serves the existing dwellings, is to continue.

[27] The approach taken with both draft plans is to lay out development blocks rather than precisely laying out the lotting at the draft plan stage. The development blocks are identified for low density residential purposes, multiple residential purposes and condominium residential purposes. The low density blocks are intended for detached dwellings but it is expected that a variety of frontages will be established, ranging from 11 metres (“m”) to 15 m. It is further expected that the plan of subdivision will be registered in discrete phases and that at the time of final approval and registration of any given phase, based upon lotting plans reviewed and approved by the Township as a precursor to release for registration, the final plan to be registered will be precisely lotted.

[28] The multiple residential blocks are either identified for street townhouses/cluster townhouses or for apartment building purposes.

[29] The condominium residential blocks are intended for detached dwellings but on portions of the Site where there are topographic or natural features circumstances to be addressed.

[30] Due to the flexibility built into this approach, the unit yield as indicated on the draft plan is expressed as a range. For the Haylock Property, the range of projected detached residential dwellings is 196-261 units. The residential condominium range is 18-25 units. The multiple residential projected yield is 101-181 units. For the Youngblood Property, the range of projected detached residential dwellings is 87-107

units. The residential condominium range is 20-30 units. The multiple residential projected yield is 116-213 units.

[31] Apart from the intention to register the draft plan in phases of smaller registered plans, the settlement also presupposes the imposition of a broader phasing arrangement on the Site. The draft plans have a demarcation line referencing Phase 1 and Phase 2. Phase 1 essentially represents the northern portion of the draft plans and includes the public highway accesses to South River Road, to Gilkison Road and to the more northerly street to the westerly subdivision connecting public highway. The rationale behind this phasing arrangement turns upon the findings of the transportation consultants and the universal recognition that although not required for the first phase of development, a point will be reached where traffic volumes will necessitate certain alterations to the public highway network in the form of lane alterations and possible new traffic signals. Phase 2 would only be released upon a re-evaluation of the capacity of the road network, a determination as to whether road and/or network improvements are required and, if so, that satisfactory arrangements have been made to implement those improvements.

[32] The Site development proposal has a stormwater management pond block located adjacent to South River Road generally centred on the frontage. There are three park blocks proposed as well as the area designated as Core Greenlands, the latter of which is to function as an Open Space block.

[33] The evidence will be further detailed below, but the stormwater management facility to be established within the stormwater pond block is intended to control post-development flows to pre-development levels and to effect a measure of temperature mitigation prior to discharge to an outlet in South River Road, whose waters drain to a channel in what is known as Cecilia Road and from there into the Grand River.

[34] It is also a key feature of the development proposal that a groundwater management system is to be installed to protect the dwellings from infiltration as the

Site is subject to a high groundwater table. The system is designed to take advantage of surface infiltration as well as transmission to the stormwater pond.

[35] Municipal piped water and sanitary sewers are available in the subdivision lands to the west, capable of extension to the east, and the Municipalities, in the filed Minutes of Settlement, have confirmed that there is capacity in these systems which shall be allocated in order to accommodate full build out of the draft plans.

PLANNING POLICY ANALYSIS

[36] The Tribunal heard from three consulting land use planners, David Aston retained by the Appellants, David Butler retained by the Municipalities and Matt Alexander retained by the Association.

[37] All three of them considered the development proposal through four policy lenses: the Provincial Policy Statement (the “PPS”), the Growth Plan for the Greater Golden Horseshoe (the “Growth Plan”), the County OP and the Township of Centre Wellington Official Plan (the “Township OP”).

[38] The Issues List established as part of the Procedural Order governing the hearing isolated the relevant policies from these documents.

[39] The PPS and the Growth Plan set the policy framework within which the County OP and the Township OP must be developed. The County OP was adopted in May, 1999 and was amended as part of the now obligatory five year review on September 26, 2013. This amendment was approved by the Ministry of Municipal Affairs and Housing on April 28, 2014. Similarly, the Township OP was adopted on November 23, 2003 and approved by the Ontario Municipal Board on May 31, 2005. Since that time, the Township OP was amended by OPA 5 as part of the Township’s Growth Plan conformity exercise. The Township OP applies only to the Urban Centres, within which the Site is located.

[40] The planning policy questions were set out in the Issues List and the three consulting planners spoke to them, as referenced below.

[41] The PPS and the Growth Plan are designed to promote efficient land use and development patterns, accommodating an appropriate mix of land uses to meet long term needs, avoiding development and land use patterns that may cause environmental or public health and safety concerns, and promoting cost-effective development patterns and standards to minimize land consumption and servicing costs, among other enumerated matters (s. 1.1.1 PPS).

[42] Settlement areas are to be the focus of growth and development (s. 1.1.3.1 PPS) and the land use patterns are to be based on a density and mix of land uses which efficiently use land, infrastructure and public service facilities (s. 1.1.3.2 PPS). Intensification and compact urban form are encouraged (s. 1.1.3.3 - 1.1.3.5 PPS).

[43] New development in designated growth areas should occur adjacent to existing built-up areas and have a compact form (s. 1.1.3.6 PPS). An appropriate range and mix of housing types and densities are to be provided in locations where infrastructure and public service facilities are or will be available (s. 1.4 PPS).

[44] Healthy active communities are to be promoted by planning public streets, spaces and facilities to be safe, meet the needs of pedestrians, foster social interaction and facilitate active transportation and community connectivity (s. 1.5.1 PPS).

[45] The preferred form of servicing is by municipal water and sewage services (s. 1.6.6 PPS). Transportation systems should be provided which are safe, energy efficient, facilitate the movement of people and goods, and are appropriate to address projected needs, with transportation and land use considerations to be integrated at all stages of the planning process (s. 1.6.7 PPS).

[46] Development and site alteration are not to be permitted in significant woodlands, in significant wildlife habitat, in habitat of endangered or threatened species or adjacent to natural heritage features areas where there may be negative impact on those natural features (s. 2.1.5, 2.1.7 and 2.1.8 PPS). Similarly, water resources are to be protected (s. 2.2 PPS).

[47] As noted above, these broad Provincial policies have now become embedded in the County OP and Township OP through conformity exercises. All three planning witnesses essentially acknowledged that fact.

[48] As the first planning witness to be called, Mr. Aston took the Tribunal through the relevant policies at the Provincial level, the County level and the Township level. The Township OP, having gone through a relatively recent conformity exercise, essentially reflects the final embodiment of the upper levels of policy.

[49] In specific accordance with the requirements of the Growth Plan, the County OP and Township OP have articulated intensification targets. A minimum of 20 percent of all residential development occurring annually will be within the built up area. The designated greenfield area of the County is to be planned to achieve an overall minimum density of 40 residents and jobs per hectare. A minimum of 25 percent of new housing in the County is to be affordable to low and moderate income households (s. 3.3.1 County OP). The Township OP refers to the greenfield density target of 40 persons and jobs per hectare and to 16 units per gross hectare in newly developing subdivisions (s. C.5.6).

[50] It was the evidence of Mr. Aston that the projected range of housing units for the Site would be 538 to 821. Using the persons per unit standards from the Township Development Charge By-law, this translates to 41 to 60 people and jobs per hectare, and to 15.5 to 24 units per hectare. These projections would then conform with the Growth Plan and the Official Plans. Mr. Butler provided his view that based upon the

finally proposed development, he also is of the view that the proposal would conform with the Growth Plan and the Official Plans.

[51] Mr. Alexander did not agree that there was conformity. He takes the view that the target for the built-up area portion of the Site will not achieve the 20 percent mandated in the County OP. That built-up area accommodates Block 12 on the Youngblood draft plan, which comprises 1.462 ha and is intended as the Open Space block to preserve the wooded area now standing on the Core Greenlands designated land. The built-up area also accommodates Block 6 on the Youngblood draft plan, which comprises just over 4 ha and is also considerably wooded. The planning intention regarding this block is that a detailed tree and natural features inventory will be prepared and then, with a view to preserving as many trees as possible, a lotting proposal will be generated premised upon the lands being served by a 6 m private roadway created as part of a condominium. This may result in unorthodox lotting with oversized parcels. Mr. Aston's note on the draft plan indicates that there is an expectation that the development within this block could be 20-30 units.

[52] This natural feature responsive approach to lotting was trumpeted by both Mr. Aston and Mr. Butler as a sensible balancing of the competing objectives of achieving natural area preservation, compatibility with the surrounding community and intensification. The Tribunal accepts the position of these two planners that the weight of the competing objectives here dictates a preferred outcome that will not achieve the residential intensification target for built-up areas on a site specific basis but does achieve other important policy objectives and is in the public interest. The residential intensification target is a policy which is meant to be achieved on a municipality-wide basis, as is apparent from the text of the official plans.

[53] Mr. Aston took the Tribunal through the general Residential Intensification policies as found in s. C. 5.5, which deal with intensification in Urban Centres. The Township OP supports increased densities in newly developing greenfield areas with a broader mix of housing types than has been the norm in small towns. Mr. Aston

confirmed that the densities projected from the development proposal will meet the density targets established by the Province, the County and the Township. Furthermore, with the introduction of the multiple residential units, the goal of expanding the range and mix of housing types within the Elora-Salem Urban Centre is addressed.

[54] The intensification policies are also expressed through the Residential designation policies in s.D.2.1 of the Township OP. Mr. Aston provided an analysis of the Residential Intensification Criteria in s.D.2.12 of the Township OP. Clause (a) of that section speaks to the matter of the compatibility of the new development with the existing, which includes consideration of height, massing, scale, setbacks, orientation, use, built form, architectural character and materials, separation distance, shadowing and privacy. With respect to these elements, Mr. Aston directed the Tribunal to the array of built form around the perimeter of the proposed plans and how it was decided to maintain the edges of the plan with dwelling types consistent with those on adjoining lands, being single detached dwellings, and to orient rear yards opposite rear yards. Permissible building heights will be consistent with the surrounding lands and will therefore ensure that appropriate transition is achieved between the new development and the existing as contemplated by clause (b). The multiple-unit residential development will be positioned interior to the plan with adequate buffering and setback in order to ensure a positive relationship between this built form and the built form adjoining.

[55] Regarding clause (c), and the maintenance of a lotting pattern that is generally consistent and compatible with the predominant character of the area, Mr. Aston turned to the general context plan for the proposal and advised that through the setting of minimum lot areas and lot widths in the zoning by-law amendment, there would be control over the final lotting and that these standards have been designed to ensure consistency with the characteristics of the lots on adjacent lands.

[56] Based on the Traffic Impact Study, assuming adoption of its recommendations as to network improvements, and based upon advice that adequate municipal services and

utilities were available, Mr. Aston concluded that the infrastructure could accommodate the proposed development as referenced in clause (d).

[57] Clause (e) deals with the impact of the development on the streetscape. It is proposed to have lighting and landscaping on the streets in accordance with Township standards and through the zoning by-law to control front yard setbacks in order to create a consistent streetscape similar to the adjoining subdivision lands.

[58] Clause (f) deals with the impact on adjacent properties in terms of grading, drainage, access, privacy and enjoyment of outdoor amenities. In this regard, Mr. Aston relied upon the work done by the Appellants' consulting engineers and is of the view that Township standards will be met with respect to grading and drainage, the design of which minimizes the need for retaining walls and ensures positive drainage to the stormwater management system to be employed on the Site. Through the siting of the buildings and the use of landscaping and fencing, privacy will be protected.

[59] Lastly, clause (g) deals with the conservation of significant cultural heritage resources. As noted above, the Youngblood Property has two dwellings, though not formally designated, which have been determined to have heritage attributes. These dwellings are intended to be retained with little disturbance to their surroundings and their access by the private lane preserved.

[60] Referring back to clause (c) and the lotting pattern, there occurred an unanticipated turn of events for Mr. Aston in his testimony, and his candour in dealing with it made a deep impression on the Tribunal. Mr. Aston, in his testimony in chief, had explained that the largest block on the Youngblood plan, Block 6, was to be developed as a residential condominium based upon a 6 m private road serving single detached dwellings. There was no illustration of the intended lotting. Mr. Aston explained that this block contained significant stands of trees and hedges which had yet to be inventoried in a fully detailed fashion. The intention was that once the precise natural features

inventory had been completed, the consultant team would look at parcelization on a basis of trying to maintain as much of these features as reasonably possible.

[61] Mr. Aston was challenged on this by Mr. Kraemer in cross-examination. In the course of that cross-examination, Mr. Aston revealed that based on preliminary information, most particularly an aerial photo, he had considered a lotting plan in order to test the potential outcome of working within this natural features constraint. He had not brought along his preliminary sketch as, without the final natural features inventory, he could not advance it as a proposal ready for consideration. Also, he indicated that it had not been shared with his client and therefore had no client sanction. It was clear though that there was a sketch reflecting a potential approach. As his testimony was not complete by the end of that hearing day, the Tribunal directed him to bring that sketch to the hearing the following day so that it could be revealed and addressed.

[62] In considering the sketch, it is obvious that this is just a first rudimentary approach to the division of this proposed 4 ha block. The sketch accommodates the two dwellings with heritage attributes presently on the Youngblood Property and reflects the ongoing use of Broken Front Path. More importantly, the sketch reacts to the location of trees and proposes lotting which would allow building envelopes that can avoid removal of many of these trees. The sketch suggests more ample lots in order to allow placement of dwellings further back on a lot or to a side. The sketch also clearly shows that there is likely to be a significant variety of lot areas and configurations so that this portion of the development will truly be unique. Of course, much deeper consideration of the preservation of the natural features and servicing of these parcels will be required and it remains to be seen how the proposal can be implemented, but the Tribunal took the sketch to be an indicator of the thoughtfulness which is being brought to bear on the difficult task of harmonizing the spectrum of, sometimes competing, policies which apply to the Site. The creation of less conventional lotting and the preservation of natural features in these circumstances of better realizing official plan and Provincial policy goals is to be applauded.

[63] Various of the opinions of conformity expressed by Mr. Aston were challenged by Mr. Alexander. Mr. Alexander took a position on Provincial policy and OP conformity that the Tribunal found entirely untenable as it was not mindful of the setting in which the Site is located. He took the position that there was a failure of conformity due to the absence of a full mix of uses on the Site, most particularly the absence of employment uses. When this position was pursued by questions from the Tribunal as to how this would be accomplished, he suggested that Block 14 on the Haylock draft plan could be the site of a retail commercial use.

[64] Block 14 is proposed by Haylock for detached dwellings with north side minimum widths of 20 m, on a condominium 6 m road format with a 6 m vegetative buffer between the block and the south limit of South River Road. There is a significant slope to this block with bedrock close to the surface. The resolution of this use for the referenced area was a key aspect of the negotiations between the Appellants and the Municipalities in order to avoid multiple points of access to South River Road and to put in place a form of development which was more in character with the existing development on the north side of the street.

[65] As such, to suggest that this block be converted to a retail commercial use was astonishing, especially as it was not apparent to the Tribunal that this was an outcome that the Appellants had ever previously articulated or had any desire of seeking. Once again, it sprang from a view that the broad policies should be blindly applied on a site specific basis without regard for the full context or understanding that these high level policies are meant to be applied on a municipality-wide basis.

[66] The credibility of Mr. Alexander was also tested by his assertion that the Site was not serviced by municipal water and sanitary sewers when it was entirely apparent from the record that these services were in the adjoining plans of subdivision and a cursory check of the actions of the Municipalities in settling with the Appellants was that they had committed to allocating capacity to the entire development proposal.

[67] Mr. Alexander also asserted as an objection the absence of a fiscal impact study and demonstration that the proposal should show a net positive impact on the Township's finances. This position likely arose out of the issue regarding the financing of any needed infrastructure improvements. On that point, the Appellants and the Municipalities confirmed that the emplacement of infrastructure in the Site and outside of it necessary to service it would be to the account of the Appellants. It was plain from the list of items established by the Municipalities to constitute complete applications that neither municipality ever requested a fiscal impact study. Further, the Tribunal was not taken to any policy in either of the official plans which required such an analysis for the character of development proposed here and the Tribunal has no knowledge of any residential development where there is an expectation of positive revenue returns to the municipality.

[68] Mr. Alexander, in his testimony acknowledged that he was not opposed to medium density development on the Site but his testimony was conflicting on the matter of the location of the proposed multiple unit dwellings. He took the Tribunal to the Township OP policy in s.D.2.5 (6), which speaks to locating medium density development on major roadways, roadways designed to serve an arterial or collector function. As the proposal here would locate the medium density development on a local road, he believed that this created a situation of non-conformity. In cross-examination by Ms. Meader, he conceded that the policy spoke to "encouraging" the location of medium density on a major road. As an alternative, he posited the upgrading of Gilkison Road to collector road status and the location of the medium density dwellings on Gilkison Road. This seemed to stem from his view of the transportation evidence, most particularly that of the Association's transportation witness, that Gilkison Road was now going to be subject to volumes of traffic which would reflect the function of a collector road. That transportation evidence was not conceded by the Appellants' expert witness.

[69] In any event, Mr. Alexander's proposal would have only the section of Gilkison Road adjacent to the Site re-classified as a collector road, leaving the segment north to

South River Road, and the very significant run of road through the concessions to the south as a local road. This would be a rather curious outcome and not consistent with highway classification practice as the Tribunal understands it.

[70] But more importantly, in cross-examination, Mr. Alexander conceded that locating the medium density development adjacent to South River Road or Gilkison Road would then create a compatibility issue. This was precisely why the Appellants' planners had positioned the medium density interior to the Site. There was a very live and compelling objective of designing the layout of uses to achieve compatibility with existing development. The north side of South River Road and the east side of Gilkison Road are marked by very deep lots with generous width, all of which accommodate only single family detached dwellings. It was a deliberate facet of the planning of the development proposal and its shaping through the mediation exercise that only low density forms would occur at the margins of the site, mixed with the natural features, in order to work harmoniously with the existing development in the vicinity.

[71] Mr. Alexander had reservations about recommending approval of the development proposal on grounds of prematurity in that he believed that further work was required on the studies undertaken with respect to matters of hydrogeology, wildlife habitat, natural features and associated impacts. He also, despite draft Condition 2 requiring detailed lotting plans before final approval, asserted that it was not acceptable planning to approve blocks as presented on the plans here instead of having those blocks lotted out in detail on the draft plan.

[72] Based on the evidence heard in the proceeding by the Tribunal, which will be further detailed below, the Tribunal does not share Mr. Alexander's view regarding the need for more detailed study in order to grant draft approval and approve the associated zoning by-law amendments.

[73] Mr. Butler endorsed the testimony of Mr. Aston. Mr. Butler took time to detail the steps in the development review process and the significant engagement of the

municipal staff and municipal consultant team with the Appellants' consultant team. This engagement started with identification of issues by the Municipalities and then evolved into a collaborative effort, with the assistance of Tribunal-led mediation, which caused many significant changes to the development proposal in order to bring it to a state which, in his judgment, achieved policy conformity and reflected a good development proposal.

[74] To borrow from Mr. Butler's witness statement conclusion, this comprehensive review process resulted in a substantively reconceptualised development proposal and a substantially revised draft plan which is responsive to site constraints and environmental features. The resultant draft plan provides an appropriate, harmonious and compatible interface with the existing residential neighbourhood, meets and exceeds current best principles and practices for urban design and conforms with all relevant Provincial policies and municipal official plan policies.

[75] The Tribunal, subject to determinations arising out of the urban design evidence which will be articulated below, finds the evidence of Mr. Aston comprehensive and compelling and prefers it to that of Mr. Alexander, and accepts the general assessment of Mr. Butler on the success of the collaboration between the Municipalities and the Appellants and compliance with Provincial policies and municipal official plan policies.

HYDROGEOLOGY AND TOPOGRAPHY

[76] The topography of the Site and the groundwater conditions had a major influence on the ultimate design of the subdivision proposal, both in terms of road layout and block patterns as well as with respect to the management of stormwater and groundwater.

[77] There was a certain overlap of evidence with regard to these matters. The Appellants called Peter Gray, a senior hydrogeologist employed with MTE Consultants Inc. ("MTE"), Josef (Jeff) Martens, a consulting professional civil engineer with MTE,

and Stephen Worthington, a karst specialist. The Association called Peter Hayes, a senior hydrogeologist employed by wsp (a professional engineering consulting firm).

[78] To summarize the roles of these experts, Mr. Gray was charged with characterizing the local scale geology and hydrogeology in significant detail so as to develop a Conceptual Site Model that could be used to make technical decisions regarding the proposed development of the property. This was accomplished by reviewing previous geotechnical/hydrogeological reports from 2001 to the present, and by initiating drilling on the Site and establishing test pits and monitoring wells. In all, 30 wells were established and these wells were monitored over a two-year period from 2015. The drilling produced cores in order to understand the Site geology. Groundwater monitoring was achieved by the installation in 23 of the monitoring wells of automatic pressure transducers, which are programmed to record hourly groundwater levels.

[79] The results of this monitoring provide long term groundwater level trends, including factors which contribute to groundwater fluctuations, provide composite high, average and low groundwater levels, assess the hydraulic gradients and determine the direction of groundwater flow.

[80] In addition, hydraulic conductivity was estimated for the subsurface and bedrock units below the Site.

[81] As explained by Mr. Gray, the local system consists of the shallow overburden system and the bedrock system. Hydraulic conductivity was calculated for both systems as well as the high, average and low water levels.

[82] In addition to these parameters, the general chemistry of the water was assessed in order to analyze water quality and establish a benchmark for potential future impact on nearby potable water wells. The Site development will be served by full municipal services, including municipal water supply, but many of the area dwellings are not

connected to the municipal water system and draw their water supply from on-site wells. It is an aspect of the analysis here to understand whether there is likely to be impact on any of those wells, and if so, to determine how such impact can be avoided or to have a contingency to deal with such impact.

[83] On top of consideration of local private well impacts, the proponent of development must abide by the source water protections which emanate from the *Ontario Clean Water Act* and the Source Water Protection Plans which have been established under that legislation. There are mapped areas of intrinsic vulnerability. The assessment of the Site by Mr. Gray suggested that the majority of the Site is in an area of low intrinsic vulnerability and that the land within the Site is not vulnerable to contamination and is not an Issue Contributing Area.

[84] In terms of impact assessment, the stormwater management system was designed to mimic existing surface water flow and shallow groundwater flow conditions. Those flows are generally to the north toward the Grand River. The stormwater management strategy was designed to meet the water balance while directing surplus water directly to the Grand River. MTE does not, based on their analysis and the design of the stormwater systems, anticipate any impacts on water quantity or water quality in the groundwater system.

[85] Mr. Gray acknowledges that during deep sewer and servicing installations and construction of the stormwater management facility, construction dewatering will occur that will necessitate a Permit to Take Water and that special considerations will have to be observed to manage this work.

[86] The upshot of the assessment is that the Site has a relatively high seasonal overburden water table, and it is to be a requirement that the monitoring well system remain in place in order to keep track of these water levels and undertake such modifications to the groundwater control system as may be necessary to ensure its proper functioning. The testimony of Mr. Martens was that this is to be addressed by

the establishment of a groundwater management system, which will involve the installation of perforated pipes in the vicinity of various affected building envelopes to capture groundwater in order to ensure that there is a minimum 0.3 m vertical separation from the underside of the basement floor elevation and seasonal high groundwater level on the affected lot. The final lot grading plans will have to reflect the need to maintain this vertical separation. These matters are built into the conditions of draft approval which have been settled between the Appellants and the Municipalities.

[87] Complementary to the groundwater management system, as it will receive discharge from that system, but also as the principal element in the general stormwater management system for the proposed development, there is to be a major stormwater management facility (“SWMF”) constructed within the Phase 1 portion of the development. It is designed as a hybrid wet pond/wetland to provide quality and quantity control of runoff prior to discharge from the Site. It is to be located at the north of the Site, centrally positioned between the Greenland block and the east limit of Street One (the street which connects with South River Road). The SWMF is composed primarily of land from the Haylock Property (comprising 1.556 ha) but is also made up with land (0.339 ha) from the Youngblood Property.

[88] The positioning of the SWMF is practical in that it lies in the low area of the Site and therefore the natural gravity flow of water is to this direction but it has the aesthetic advantage of working as something of an adjunct to the Greenland block as it will present as a water feature and will be finished with a perimeter of landscaping. It therefore constitutes a transitional element to the existing residential development on the north side of South River Road.

[89] The SWMF will receive water from the storm drains that will be installed in the streets within the plans of subdivision. That drainage water will be conducted into a wet pond whose bottom elevation is 1.5 m deeper than the adjoining permanent pool into which the water subsequently proceeds. The wetland cell will likely be planted with hydrophilic plants such as bulrushes and cattails. The SWMF is to be constructed with

a 0.6 m clay liner in order to control infiltration into the adjoining ground and thereby render academic any issue with potential karstic subsurface conditions. The design of the SWMF is intended to achieve 80% removal of total suspended solids (“TSS”). This is understood as enhanced removal compared to the basic standard of 60%, which may be the condition prevailing today from the Site. Quality control is to be augmented by the installation of oil-grit separators.

[90] The design of the SWMF is also intended to moderate the temperature of the water prior to its entry into the Grand River, which is a cold water fishery. It was the opinion of Mr. Martens that the temperature impact of released stormwater from the SWMF on the Grand River would be on the order of 0.01 degrees and therefore well within the range of acceptable in terms of impact on the cold water fishery.

[91] The discharge from the SWMF is controlled by a further deep pond and orifice control to ensure that post-development flows from the Site will not exceed pre-development flows. The water leaving the SWMF will be conducted by a drainage pipe in South River Road, which will discharge to an open channel in Cecilia Street, being the present outlet for drainage from South River Road and then into the Grand River.

[92] It was the opinion of both Mr. Gray and Mr. Martens that the quantity and quality of discharge from the SWMF would have no material impact on the Grand River.

[93] Mr. Hayes spoke to the geologic and hydrogeologic findings and offered views on the development proposal against that background. He did not take exception to the characterization of the Site.

[94] He believed that MTE had not set up a proper baseline yet concerning area properties served by private wells, as MTE only had test results from one well on the north side of South River Road. In response to that critique, MTE advised that test results can only be obtained with the consent of those owners and that it was to be part of the requirements of the Municipalities that the Appellants be responsible for

addressing any wells that may in future be impacted. The remedy may take the form of responsibility for a deeper drilled well on the affected property or for the delivery of potable water by other means (connection to municipal water as an option).

[95] The Tribunal was directed by counsel for the Appellants and the Municipalities to the inclusion in the conditions of draft approval of the requirement for a private well monitoring and mitigation program applicable to all existing wells that may be impacted. This program is to continue for at least two years, will require investigation of any well interference complaints and is to be guaranteed by the posting of financial security. The Tribunal treats this as responsive to the potential issue.

[96] Mr. Hayes put great emphasis on what he took as insufficient attention to erosion, runoff and sedimentation. He focussed on these concerns as the Site has steep terrain and it would thereby be prone to these effects. He felt that the draft conditions should be more prescriptive in terms of requiring a very strict regimen to ensure adequate siltation control during construction and that there be a mandatory requirement for a rapid response plan in the event of a breach. Furthermore, he believed that specific TSS and turbidity performance standards should be established along with independent oversight and real time monitoring to ensure compliance.

[97] In cross-examination, he allowed that there were conditions of draft approval which will require the Appellants to incorporate in the Subdivision Agreement provisions with respect to the installation and maintenance of erosion and sediment control facilities prior to any grading or construction on the lands as well as an obligation that a qualified environmental inspector inspect the Site during all phases of development. The final fashioning of the obligations of the Appellants will be left to the Municipalities but they may wish to provide in these provisions some of the enhancements which Mr. Hayes has suggested.

[98] He was of the view that insufficient information was available to assess potential impact on the fishery in the Grand River, although he did concede in cross-examination

that in light of the relative volumes involved here (the flow of drainage from the Cecilia Street channel against the flow of the Grand River), the temperature effect might be on the order of 0.01 degree Celsius and contemporary standards generally allow for a 1 degree Celsius alteration.

[99] Mr. Hayes dealt with the presence of karst on the Site. He suggested that where karst is present, it can have a significant impact on hydraulic conductivity and can thereby affect private well water. This related to the testimony of Dr. Stephen Worthington. As there is a significant presence of limestone and dolomite in this area, the interaction of water with this stone can create fracturing and erosion within the stone with a resultant greater conductivity of subsurface water. In the event that this water becomes contaminated, such ease of transport can affect an aquifer adversely.

[100] Dr. Worthington conducted a site visit and based upon visual surface clues, he isolated potential areas of karst influence. In the end, there was only one area which suggested a real potential for karst presence, which was identified as Feature 14. The concern is not only with potential effect on subsurface flows but on the structural integrity of the soil lying above the karst feature. Based upon Dr. Worthington's assessment, a draft condition has been imposed on the Youngblood plan requiring further investigation of Feature 14, including excavation to bedrock, in order to determine whether restrictions should be placed on this area. Mr. Hayes supported Dr. Worthington's recommendations and this condition of draft approval.

[101] A further technique which was being recommended by Mr. Martens to manage the volume of stormwater runoff was to finish the lots in the development with amended soil. As it was explained in his testimony, this involves the on-site engineering of soil with organic material so as to create a medium that will be more absorptive and retain water rather than have it instantly run off. Such retention will encourage infiltration and reduce the volumes being conducted to the street drains and then into the SWMF. The functionality of this approach depends upon having the roof leaders discharge onto the yards surrounding the dwelling rather than being conducted into the storm drain system.

The stormwater report suggested that the roof leaders from the single family and condominium units would discharge to landscaped areas that contain topsoil of sufficient permeability, depth (topsoil depth of approximately 450 millimetres) and quality to infiltrate and evaporate a significant portion of the runoff during wet weather. Apparently, this is a technique which has recently been utilized to good effect and should result in a significant infiltration gain on an annual basis. Mr. Hayes was supportive of this approach.

[102] It is of significant note that the Grand River Conservation Authority, which has primary jurisdiction over the state of the Grand River, has reviewed the proposed servicing of the Site and has accepted in principle the findings and the recommendations in the reports and plans which have been developed for the Site proposal to date.

TRAFFIC AND TRANSPORTATION NETWORK ISSUES

[103] The Tribunal heard from two witnesses on traffic matters, James Mallett, President of Paradigm Transportation Solutions Ltd., called on behalf of the Appellants, and Martin Asurza, Senior Transportation/Traffic Engineer at Asurza Engineers Ltd., on behalf of the Association.

[104] There were three issues identified in the Issues List which were spoken to by these transportation consultants. They could be categorized as two issues: 1) Is the design of the subdivisions efficient, do the proposed roads appropriately connect with the existing municipal road network and has adequate provision been made for secondary emergency access?; and 2) did the Traffic Impact Study prepared in support of the plans provide sufficient information and analysis to support draft approval of the proposed plans? This second issue really concerns whether there is and will be capacity in the municipal road network to accommodate the projected traffic from the development.

[105] Mr. Mallett initially prepared a Traffic Impact Assessment back in January, 2015, to support the development approval applications being submitted by the Appellants. As the development proposal went through revision as part of the settlement between the Appellants and the Municipalities leading up to this hearing, an updated report was prepared in December, 2017. The update report was tendered as evidence in the hearing.

[106] The finding of the traffic assessment conducted by Mr. Mallett is that there is sufficient capacity in the transportation network to accommodate the traffic which would be generated by this development proposal. He does isolate two intersections though which will experience impaired operation in terms of the time to complete left turns from the minor street onto the major road. In this regard, as this outcome is estimated to not be of significance until later in the development programme, his proposal is that the situation be monitored and that the concept of holding back the final portion of the development through a phasing control be employed.

[107] At the conclusion of the Phase 1 development, the road network circumstances would be re-evaluated and if physical or operational modifications were indicated in order to address operational issues, satisfaction of such requirements as were then identified would be a precursor to release of the Phase 2 development.

[108] Mr. Mallett was specific in identifying the likely future issues. These issues were confirmed by Mr. Asurza.

[109] The westbound approach to Metcalfe Street at Water Street and left turn therefrom may degrade from a Level of Service ("LOS") C to LOS F during weekday peak hours. However, despite this decrease in level of service, his assessment showed sufficient available capacity, and the result being that there are simply delays in making the left turn move. This would have the effect of creating queues which would impact movement from High Street, but as High Street presently has only one residence, the

option of closing it or using it as a left turn option (and restricting left turns at Metcalfe Street) presents itself.

[110] Two further intersections are likely to experience significant left turning issues. County Road 21 at County Road 7 may generate queue lengths which will back up into the existing turning circle. The presence of this turning circle constrains the lengthening of the left turn channel. Mr. Mallett's response to this was that a potential remedy is available by way of optimizing the signal operation as this is a signal controlled intersection.

[111] The other affected intersection is County Road 7 and First Line. The affected movement would be the westbound left turn from First Line to County Road 7. The projections of both engineers have this degrading from LOS C at present to LOS E-F during weekday peak hours in future. Based upon current warrants, a traffic signal cannot be justified but it was the evidence of Mr. Mallett that those warrants may change in future and may be sufficient to justify a traffic signal. Alternatively, a roundabout could be considered for this intersection but that option has not yet been fully explored. It would have property acquisition ramifications that are not presently known.

[112] In any event, it was the view of Mr. Mallett that there were available methods to address these operational issues and that it was appropriate to maintain control over the release of the Phase 2 portion of the development until such measures as were necessary to ensure adequate operation of the road network were secured. This could conceivably involve some level of financial participation by the Appellants in the implementation of such works, which he addressed by generating a proportionate share contribution based upon the vehicle generation from the Site as against the broader network contribution.

[113] Mr. Asurza did not disagree with Mr. Mallett on the basic methodology used to assess traffic impact. They, in fact, agreed upon the stress points in the system as

discussed above. Where they did part company was on the distribution of Site traffic to the network. Mr. Asurza took the position that future distribution of traffic from the Site would follow the current general pattern as determined by the Transportation Tomorrow Survey (“TTS”), a data collection exercise managed by the University of Toronto which is relied upon by transportation planners and engineers. Mr. Mallett also references this tool in his report.

[114] Mr. Asurza asserts that Mr. Mallett unreasonably assigned traffic in a fashion which was not consistent with the TTS without providing a rational explanation. Mr. Asurza mapped out the Site projected traffic using the TTS findings derived from the existing usage pattern and compared it with the results expressed in the Paradigm report. In his view, the future assignments of traffic distribution in the Paradigm report do not track the data from the TTS. In his view, the trips projected in the Paradigm report are arbitrarily assigned. His analysis of the data suggests that 87% of trips will be to the west and only 13% to the east. He suggests that Mr. Mallett has essentially doubled the trips to the east. The effect of this arbitrary assignment, he says, is that it understates the impact on the intersections of concern.

[115] The Tribunal understands the point and the argument of Mr. Asurza. He may be correct on this point. Interestingly though, this will not change the outcome. What it may mean is that the need for remedy to the affected intersections would appear sooner rather than later. Therefore, there is a higher likelihood that the deficiencies will be present and apparent before the release of the Phase 2 development and will have to be addressed as a condition of that release, thereby ensuring that the network improvements will have to be addressed.

[116] Mr. Asurza took a position that some redirection of traffic, and consequent intersection relief, could be achieved by removing the street access to South River Road. Mr. Mallett advised that the Municipalities were insistent that there be an access point to South River Road. This also ties into the issue of secondary emergency access. Without an access point to South River Road, there may have been an issue

as to the sufficiency of access to achieve the appropriate response time. Mr. Butler was very adamant on this issue in confirming that the Municipalities were clear that there must be a public highway access to South River Road. Therefore, consideration of Mr. Asurza's alternate scenario, which would have put more traffic on the local streets to the immediate west, and created its own impacts as a result, was not acceptable. In addition to this, in cross-examination, Mr. Asurza acknowledged that s. C.8.3 of the Township OP indicates that through traffic on local roads is discouraged.

[117] There was an issue as to whether adequate provision had been made for secondary emergency access. This was addressed by Mr. Asurza on the basis that the plans did not make clear that there was a gradient of no greater than 8%. A gradient in excess of this standard could create access problems for emergency vehicles in snow and ice conditions. Mr. Martens confirmed that none of the roads would exceed an 8% gradient. The Tribunal is satisfied that there are sufficient points of access to the Site to ensure access for emergency vehicles and that the engineering of the roads is adequate to permit reasonable movement in all seasons.

[118] Mr. Mallett, in his Transportation Impact Study Update issued in December, 2017, in confirming his conclusion that the development proposal can be accommodated within the existing road network nonetheless identified that deficiencies are projected to occur at a limited number of locations due to both background traffic growth and traffic from the proposed development. He provided a variety of recommendations. They were as follows:

- The County Road 7 and County Road 21 traffic signal timing plan be re-optimized, if necessary, after build-out to better support the future traffic volumes and travel patterns;
- Metcalfe Street and Water Street be monitored by the County of Wellington to determine if "time of day" turning restrictions are required during the weekday PM peak hour;

- The County of Wellington monitor, review and determine the feasibility of providing traffic control signals at the intersection of County Road 7 and 1 Line to accommodate future traffic growth. The Applicants are collectively forecasted to contribute 9.4% towards such an improvement;
- The County of Wellington review and determine the feasibility of providing a 15 m extension to existing southbound left-turn lane at Metcalfe Street and Water Street as warranted under the 2031 Horizon. The Applicants are collectively forecasted to contribute 38.6% towards such an improvement;
- The County of Wellington review and determine the feasibility of providing a 15 m northbound left-turn lane and appropriate deceleration lane at South River Road and 1 Line as warranted under the 2031 Horizon. The Applicants are collectively forecasted to contribute 10.1% towards such an improvement; and,
- Regardless of whether the development proceeds, the County of Wellington review geometric conditions of the Gilkison Road approach to South River Road with a view to redesign and reconstruct this intersection to follow TAC standards.

[119] The concluding paragraph of the recommendations indicates that implementation of the above-mentioned mitigation measures not only accommodates future site-generated traffic but also improves some existing operational deficiencies near the Site. In Mr. Mallet's opinion, the proposed infrastructure plan offers numerous operational improvements to this area, improves vehicular and pedestrian safety, and provides enhanced access to the site, making the proposed development a positive addition to the surrounding community.

[120] Based upon the evidence of both transportation engineers heard by the Tribunal, the Tribunal is of the view that these recommendations are reasonable and appropriate. These recommendations will be supported by conditions of draft approval for each proposed plan of subdivision. Those conditions will require the preparation and filing of an update to the Traffic Impact Study to the satisfaction of the Municipalities prior to the release for registration of any plan within the defined Phase 2 area. That release is not to occur unless any external road improvements that have been identified to facilitate the development of the Phase 2 lands have been addressed to the satisfaction of the Municipalities.

[121] There is a further item of external road improvement which was addressed by these witnesses and the planning witnesses. The Appellants have agreed to enter into agreement with the Township for the purpose of committing the Appellants to the reconstruction of South River Road from the northwesterly limit of the Haylock Property to Street One (the internal street connecting with South River Road) to a standard satisfactory to the Township. This section of South River Road at present is a ditched rural section. Immediately to the west of the Site, South River Road is an urban section, complete with sidewalk and storm drains. At the time of the hearing, there was still discussion amongst the parties as to whether a full urban section was appropriate or whether a section with sidewalk only on the south side would be more appropriate in order to maintain the character of the lands on the north side of South River Road. The resolution of the final form of reconstruction should be left to the Appellants and the Township. This obligation though is incorporated in the conditions of draft approval and is deemed appropriate by the Tribunal.

NATURAL ENVIRONMENT ISSUES

[122] Issues 11 to 16 as set forth on the Issues List related to matters of the natural environment and the issues generally stemmed from the need to address the Natural Heritage policies set out in s. 2.1 of the PPS.

[123] The Tribunal heard two witnesses with respect to these issues. The Appellants called David Stephenson. Mr. Stephenson is a Senior Biologist at Natural Resource Solutions Inc. with 30 years of experience in conducting inventories of wetland and terrestrial biological resources, identification of significant and sensitive natural features and impact studies associated therewith. The Association called Dean Fitzgerald, a Senior Ecologist at Premier Environmental Services Inc. His professional career in the private sector commenced about ten years ago but was preceded by increasingly sophisticated academic studies from 1989, culminating in the conferring upon him of a PhD and the conducting of research and teaching at the university level prior to his entry into the field of private consulting.

[124] In order to canvas this evidence, the text of Issues 11 to 16 is transcribed into this Decision along with the summary opinion of Mr. Stephenson as set forth in his expert witness statement. The critique or comment of Dr. Fitzgerald as found in his witness statement and by his oral testimony will follow each of the summary opinions. The Tribunal's analysis and conclusions from those opinions will then be set forth.

Issue 11. Is the study area defined in the Environmental Impact Assessment (NRSI, 2017) prepared for the Youngblood lands ("Youngblood EIA") adequate to assess impacts on adjacent lands for the purpose of achieving consistency with PPS Natural Heritage policies?

What is the relevance of the fact that the Terms of Reference for the Youngblood EIA, were reviewed and accepted by the County's peer reviewer?

Stephenson Response

[125] The previous Terms of Reference for the scoped EIA on the Youngblood Property has been superceded by the updated EIAs. Based on the updated EIAs for both the Haylock and Youngblood Properties, the study areas for both studies include sufficient lands for the purposes of assessing consistency with the PPS natural heritage policies. In both cases, regard has been taken for the entirety of the subject properties, the neighbouring properties as well as lands within approximately 250 m from the subject property. This distance was selected to ensure that a suitable context was considered, including relationship to the Grand River, which is located approximately 200 m to the north.

Fitzgerald Comment

[126] Dr. Fitzgerald levelled pointed criticism at the Planning Justification Report prepared by David Aston on the basis that it asserted conclusions based upon technical reports which were not more fully canvassed in the Planning Justification Report itself. Dr. Fitzgerald was critical of what he treated as sloppy treatment of the terms of reference for further study of the presence of bat habitat but allowed that as the Youngblood EIA ultimately identified the need for further study concerning bat habitat that the appropriate outcome was provided for in the EIA. He did also confirm that, based upon an August 16, 2017 walk of the Site, the study area defined in the respective EIAs seemed to be sufficient to assess impacts on adjacent lands.

Tribunal Analysis

[127] Dr. Fitzgerald concurred that the study areas defined in the EIAs were sufficient to assess impacts on adjacent lands. In his testimony, Dr. Fitzgerald tended to adopt something of a combative tone when commenting on the work of the Appellants' consultants and at times a level of derision as to findings and conclusions drawn by those consultants. He pointed out in his witness statement, and elaborated more fully in

his oral testimony, that his inspection of the property was inordinately constrained, however it did not appear that he sought greater liberty or a more extended opportunity to conduct whatever may have been necessary for a comprehensive inspection of the land. In a telling exchange with the Tribunal, he advised that he did have a camera but only took four photographs. The Tribunal thought this to be odd that so few photos of such an extensive site would be taken and quizzed him about that. His response was that as he was under an obligation to provide copies of all photos which he had taken to the Appellants' consultants, he didn't want them to know what he was thinking, so he accordingly limited the photos which he took. The Tribunal views such a response as somewhat disrespectful of his colleagues and perhaps indicative of a character of partisan behaviour, which is entirely contrary to the Acknowledgment of Expert's Duty which he signed.

Issue 12. Is there sufficient information and analysis provided in the EIA to support the refinement of the Greenlands area that occurs on the Youngblood property, as shown on the County of Wellington Official Plan, Schedule A1?

Stephenson Response

[128] The EIA for the Youngblood property provides clarity in terms of the agreement of the Greenlands boundary with the peer review on behalf of the County. The Greenlands delineation was reviewed in the field during a site visit among the experts retained on behalf of the various parties, which was held in August 2017.

Fitzgerald Comment

[129] Dr. Fitzgerald disputes that the Greenland boundaries have been properly established. He arrives at this conclusion based upon his site walk, historic aerial photographic interpretation and his review of mapping prepared by the Grand River Conservation Authority ("GRCA"). Dr. Fitzgerald has put all of this together so as to apprehend a continuous slope emanating from some point on the Site and proceeding

to the river. He refers to the natural vegetation on this continuous slope without acknowledging those areas on the Site where the agricultural activity has evidently occurred for many years. His analysis also takes no account of the presence of South River Road and the developed properties on the north side of South River Road, where there is evident tableland and significant clearance for the purpose of creating the various and varied building envelopes.

Tribunal Analysis

[130] The exercise which led to the on-site evaluation of Greenland boundaries clearly takes its starting point from the designation in the OP as this designation would have been generated from prior analysis of natural features in the area and would have been predicated on the best available information at the time of OP preparation. It is recognized that the OP designation is somewhat higher level and does require refinement, which typically occurs at the development phase when site walks amongst owner consultants, municipal experts and GRCA staff take place. That is what happened here and the Tribunal heard evidence that there was consensus amongst these persons on the question of the delineation of the Greenland area. The Tribunal has not been provided with any sound basis upon which to reject that consensus.

[131] Dr. Fitzgerald throughout his testimony treated a significant part of the northern part of the Site as being part of the valley wall of the Grand River. At some more theoretical geomorphic level, one cannot argue that the landform does rise from the Grand River up to the tableland on the Site but for planning and regulatory purposes, that presumption is simply incorrect.

[132] Dr. Fitzgerald took the position in his reading of the GRCA mapping that the Site was part of the valley of the Grand River and that the mapping disclosed that the slopes on the Site were steep slopes and therefore candidate areas at risk of severe erosion. The mapping shows no such thing. The GRCA maps that identify the regulated area do

not identify any part of the Site as being within the valley or floodplain of the Grand River. That regulated area does not even come across South River Road.

[133] Furthermore, the mapping in the municipal policy documents, the respective official plans, does not treat the Site as being within a natural hazard area, as would be the case were the Site subject to characterization as part of the watercourse affected area. Apart from the designation of the Greenland, there is no other previously identified basis to treat the other parts of the Site as an area to be segregated for planning purposes based upon topographic or natural features.

[134] This was such a significant error of understanding that it weighed heavily in the Tribunal's approach to Dr. Fitzgerald's evidence and the weight which should be afforded it.

Issue 13. Should the evaluation of natural heritage features on the Haylock and Youngblood properties consider the function that these features contribute at a Regional scale, particularly the Grand River corridor?

Stephenson Response

[135] The updated EIAs consider the function of the natural features on the Haylock and Youngblood properties at a local and regional scale, including the Grand River corridor.

Fitzgerald Comment

[136] As expressed above, Dr. Fitzgerald approached this issue on the premise that the Site was part of Significant Valleyland and he therefore attributed inappropriate importance to the Site's features. He here referred to the Ministry of Natural Resources publication "Significant Wildlife Habitat Manual", whose application was challenged by Mr. Stephenson.

Tribunal Analysis

[137] There was no ultimately compelling evidence before the Tribunal that there would be undue impact from the development of the Site on the Grand River Corridor. The evidence as to temperature impact arising from the discharge of drainage from the stormwater management facility satisfied the Tribunal that it would be *de minimus* in the context of the Grand River. Similarly, there was no material evidence of harm or adverse effect arising from alteration of what has been primarily a cultivated agricultural site whose residual natural features are largely being retained.

Issue 14. Does the woodland identified as the "delineated Greenlands woodland" and illustrated as the "Confirmed Dripline (May 2016)" on Map 2, in the EIS meet the criteria for Significant Woodland?

Stephenson Response

[138] Based solely on area, the plantation within the delineated Greenlands is greater than 1.0 ha and would meet the size criteria for Significant Woodland. However, the current degraded character of the plantation provides very little in situ ecological function.

Fitzgerald Comment

[139] Dr. Fitzgerald stands firm in his opinion that due to the woodlot being greater than 1 ha in size, it automatically constitutes it as significant for PPS purposes and therefore carries a suite of important ecological functions. These functions then require appropriate buffers to ensure ongoing functionality.

Tribunal Analysis

[140] The Tribunal accepts the evidence of Mr. Stephenson that qualitatively, this woodland is degraded and that, in spite of the size of the woodland, is a relevant factor to take into account when approaching this natural feature. Despite its current state, the Tribunal heard that management efforts would be taken to restore the health of this woodland. The Tribunal further notes that the woodland will be abutted by the SWMF, which will have a vegetated edge, and by the residential condominium block that is to be designed with a view to retaining and maintaining natural features. It is expected that the adjacent woodland will be a factor in the final development design of that block and that this will take account of any necessary buffers.

Issue 15. Has there been sufficient inventory and evaluation of natural heritage features including flora, vegetation, breeding and migratory birds, amphibians, reptiles, mammals and insects to characterize the Haylock and Youngblood property to demonstrate consistency with the PPS and conformity with applicable County/Township Official Plan policies noted above?

Stephenson Response

[141] The Youngblood EIA and Haylock EIA provide a tabular summary of field dates and flora and fauna survey approaches. The results of these inventories represent a comprehensive survey of conditions on both the Haylock and Youngblood properties.

Fitzgerald Comment

[142] Dr. Fitzgerald acknowledges that standard methods have been used by the Appellants' consultants and that the biodiversity recorded by them can be regarded as reliable. However, he is critical of the lack of identification of what he has characterized as wetlands on the Site based upon his review of historical aerial photography and to

his observation of wetland vegetation and an American Toad and Northern Leopard Frog. He quarrels with the number of avian Woodland Area Sensitive Species identified in the survey and the consequent absence of a finding of the woodland to be significant on the strength of this aggregate of bird species. He attributes this lack of conclusion to a determination by the consultants that the bird sightings were of non-breeding birds, merely migrating birds. He also takes exception to the lack of identification of various cut oaks with hollow cores that, in his view, would represent strong habitat candidates for Species At Risk (“SAR”) bats.

Tribunal Analysis

[143] Based upon the entirety of the evidence before it, the Tribunal does not find a reliable basis to conclude that the Site presently accommodates any wetlands. The observation of toads and frogs is not reflected in the work of the Appellants’ consultants, who opine that any such observations may arise with respect to the drainage ditches in the road allowance for South River Road. The Appellants’ consultants vigorously challenge the assertion that the observed birds in passing over or through the Site should all be treated as breeding species likely to be using the Site as habitat. There was no such observation of on-site habitat. The Appellants’ consultants suggest that Dr. Fitzgerald has incorrectly identified as oaks trees those that are a Sugar Maple and an American Basswood. With respect to SAR bat habitat, Mr. Stephenson has asserted that such species tend to prefer the attics of buildings as their preferred habitat, of which there are no candidate buildings on the Site, and that as there may indeed be cavities in the trees in the woodland which are used for such habitat, this will be taken into account when the further detailed inventory of the wooded areas are undertaken as a precondition to development, with a view to responding appropriately. The Tribunal is satisfied with the approach being advanced by the Appellants’ consultants.

- a. **Has adequate information been provided on the tree species composition and woodland conditions within the woodlands on the subject property?**

Stephenson Response

[144] The updated EIAs provide detailed Ecological Land Classification, as well as tree tally information for the Greenlands area on the Youngblood property and the Cedar plantation on the Haylock property.

Fitzgerald Comment

[145] Dr. Fitzgerald pointed out that the work of the Appellants' consultants was the subject of a peer review, which pointed out various deficiencies, and although the Appellants' consultants acknowledged the deficiencies and updated the EIA work, Dr. Fitzgerald felt that this should have been documented better. There was also a very strong position taken by Dr. Fitzgerald on the presence of what he advised were provincially rare Red Spruce. It was his position that there was a considerable presence of young and old specimens of this species on the Site and no recognition of that fact in the EIAs.

Tribunal Analysis

[146] The testimony on this matter was difficult in two senses. Firstly, although Dr. Fitzgerald identified the Red Spruce as provincially rare, he asserted that it was in fact plentiful in this area, "hiding all over the place", and even brought into the hearing room a cone from what he identified as a red spruce tree that he found in the vicinity of the Township Hall on his way into the hearing. He asserted that the red spruce were viable and visible in the hedgerows along the rail trail to the south of the Site to heights of 15 – 20 m. Even though this species was not mentioned in the inventory of species prepared by the Appellants' consultants and Dr. Fitzgerald's observation was made during the

group walk, Dr. Fitzgerald indicated to the Tribunal that he made no comment on it during the site walk as he feared that steps would subsequently be taken to remove them. He did say in his examination-in-chief that there is no reference in the authorities to the presence of red spruce in Wellington County. The Appellants' consultants, however, took the position that what he was referring to as a Red Spruce was actually a White Spruce, a species native and common and secure in Ontario. And beyond this, the Appellants' consultants indicate that the trees in question were planted and not natural in their origin, and therefore would not normally be accorded the same level of protection as native trees.

[147] The Tribunal approaches this evidence with caution and has great concern with the lack of transparency and trust which was adopted by Dr. Fitzgerald. Given that the work of the Appellants' consultants has been peer reviewed by the municipal officials and an outside ecological consultancy and that the Appellants' consultants have what appears to be a response which seems to the Tribunal to be credible and defensible, the Tribunal discounts the evidence of Dr. Fitzgerald on this matter.

- b. Does the proposed Management and Enhancement Plan provided in the EIS provide sufficient and adequate mitigation and compensation for loss of woodlands and wildlife habitat on Haylock and Youngblood properties?**

Stephenson Response

[148] The Youngblood EIA proposes a management plan for the Greenlands. It also provides a preliminary assessment of tree removal as well as recommended compensation. The EIA concludes that sufficient compensation for tree removal is provided. A detailed assessment of tree removal will be completed to confirm this assessment as a condition of approval.

[149] The Haylock EIA proposes a management plan for the retained portion of the Cedar plantation. It also provides a preliminary assessment of tree removal as well as recommended compensation. The EIA concludes that sufficient compensation for tree removal is provided. A detailed assessment of tree removal will be completed to confirm this assessment as a condition of approval.

Fitzgerald Comment

[150] There was no discrete comment by Dr. Fitzgerald on this sub-issue, however it can be taken from the balance of his testimony that as he viewed the Greenland area as significant, and that inadequate provision had been made for buffers, that he did not treat the management strategy as appropriate. However, in cross-examination, he did concede that the removal of the six trees necessary to create the SWMF, and the compensatory planting proposed, would not have an adverse effect on the Greenland.

Tribunal Analysis

[151] Based upon the evidence tendered, and bearing in mind that the Municipalities and Conservation Authority are content, the Tribunal is satisfied that the management plans proposed are acceptable in terms of both mitigation and compensation.

c. Is the EIS evaluation of meadowlark habitat on the Youngblood property sufficient?

Stephenson Response

[152] The two EIAs include breeding bird data as well as habitat assessment for Meadowlark. No nesting evidence of Meadowlark was recorded on either property, and no suitable habitat is found on neighbouring lands.

Fitzgerald Comment

[153] Dr. Fitzgerald dealt with this sub-issue relatively summarily by saying that although the aerial photography which he reviewed suggested that there may have been habitat potentially suitable for Eastern Meadowlark, that habitat was modified by cutting in 2016 and 2017. As the habitat has been removed, he didn't contest the conclusion that the EIS evaluation was sufficient.

Tribunal Analysis

[154] As noted above, the experts were of the same view on the issue. The Tribunal simply notes that the suggested inference conveyed by Dr. Fitzgerald that this was a self-interested case of habitat destruction by the owners has no basis in the evidence heard by the Tribunal and is as much consistent with the ongoing use of the lands for active agriculture as for any other inference.

- d. **Given that Bobolink is a species identified as Threatened in Ontario, and that it has been recorded on the Youngblood property, does there need to be additional analysis of the Haylock and Youngblood properties to ensure conformity with the *Endangered Species Act* and the PPS in s. 2.1.7?**

Stephenson Response

[155] The Youngblood EIA clarifies that the observation of bobolink was a single individual flying over the site. The two EIAs state that no evidence of nesting was recorded and no suitable habitat is found on either the Haylock, Youngblood, or neighbouring properties.

Fitzgerald Comment

[156] Dr. Fitzgerald maintained the view that a bobolink observed in spring (the observation apparently having occurred in late May) should not be treated as merely migratory. He then seems to jump to the conclusion that it should be assumed that the bird may be nesting on the Site. This suggestion was countered by the Appellants' consultants by advising that the authorities indicate that bobolinks require large open expansive grasslands with dense ground cover, hayfields or tracts of grassland greater than 50 ha in area as preferred nesting habitat. To this assertion, Dr. Fitzgerald referred the Tribunal to entries of observed bobolink nesting in the general vicinity of the Site as recorded on a bird observation log which is called e-Bird. The nature of the sites where those observations occurred, as recorded on the log, did not match the description of preferred site as referenced in the authorities. To this, Dr. Fitzgerald said that the birds "didn't read the book".

Tribunal Analysis

[157] From the sightings which appeared in e-Bird, it did suggest that bobolink may indeed be rather catholic in their choice of nesting habitat, and further, that there is no absence of sufficient nesting habitat in the County. At its highest, as Dr. Fitzgerald made no positive assertion that the Site was breeding habitat for this bird, Dr. Fitzgerald seemed to be suggesting that it was presumptuous of Mr. Stephenson to treat the sighting as merely migratory. The testimony of Mr. Stephenson was that no evidence of nesting was found on site and that the call of the bird as it passed was a flight call diagnostic of migrating individuals. On this issue, the Tribunal, in light of all of the evidence, will incline to the conclusion advanced by Mr. Stephenson.

- e. **Is the proposed strategy for protecting the regionally significant Hackberry on the Youngblood property sufficient, given that it will occur within a proposed lot that will be in private ownership?**

Stephenson Response

[158] The location of the Hackberry is shown in the Youngblood EIA. It is located on the South River Road right-of-way and is not in an area proposed for development as part of the proposed plan.

Fitzgerald Comment

[159] This was another case of Dr. Fitzgerald pointing out what he treated as inconsistencies in the information provided. He suggests the common hackberry may be present in the plantation on the Youngblood Property.

Tribunal Analysis

[160] The plant in question is identified as regionally significant. If it is determined to be in the plantation on the Youngblood Property through the future further detailed analysis, since that plantation is intended to be preserved and managed, it appears to the Tribunal that there is really no present issue regarding this matter.

Issue 16. Is the proposed inclusion of a stormwater management facility (SWMF), four development lots, a road and portions of eight other lots within an area identified as Significant Woodland and Greenlands consistent with the PPS and in conformity with the County OP and Township OP?

Stephenson Response

[161] The extent of proposed development around and within the Greenlands on the Youngblood property has been assessed in the EIA. The proposal includes a very small overlap of a portion of the stormwater management block (0.69 ha), which amounts to approximately six trees in a predominantly mown lawn area. The EIA

demonstrates that the potential impacts of this overlap are negligible and readily mitigated and compensated, do not impact the current ecological function of the Greenlands both on and off the property, and as such is consistent with the County and Township OPs. The draft plan for the Youngblood property has been revised to remove the four development lots from the Greenlands area.

Fitzgerald Comment

[162] On the premise that the Greenlands are part of significant valleyland and that it is inappropriate to disturb such a feature, Dr. Fitzgerald treats the proposed modification and compensation as not being consistent with the PPS.

Tribunal Analysis

[163] The Tribunal understands and accepts the evidence called by the Appellants that the very modest incursion into the identified Greenland area is necessitated by the design of a properly functioning SWMF, which is an important feature of this development proposal, and that compensatory planting is to occur, with the net result that there will not be any demonstrated impact on this Greenland.

CONCLUSIONS RE NATURAL ENVIRONMENT ISSUES

[164] Following the canvas of the natural environment issues as referenced above, Mr. Stephenson provided a set of conclusions, which are set forth as follows:

- 1) The natural environment Issues identified in Attachment 3 to the Procedural Order have been addressed by the preparation of the Youngblood EIA and the Haylock EIA.

- 2) The updated EIAs provide detailed characterization of the natural features and functions on the subject lands and neighbouring lands of both properties.
- 3) The updated EIAs include analysis of the potential impacts of the proposed developments, and identify mitigation and compensation measures which minimize and offset the potential impacts.
- 4) Recommendations are provided in the EIAs for detailed assessments as conditions of approval that address further levels of detail and permitting.
- 5) The proposed development of the Haylock and Youngblood properties will have no significant negative natural environment impacts.

[165] Having closely considered the evidence of Mr. Stephenson and Dr. Fitzgerald, for the reasons expressed above, the Tribunal prefers the evidence of Mr. Stephenson and treats the conclusions, which he has arrived at in this matter as entirely defensible and reasonable.

URBAN DESIGN

[166] Two planning witnesses were called whose specialty is urban design. Andrea Sinclair was called by the Appellants. Muna Huq was called by the Association. The issue which they both addressed was set out as Issue 10, regarding whether the proposed subdivisions were designed in conformity with the urban design policies of the Township OP and in accordance with current best practices. The issue had three branches:

- a) Are the proposed parkland blocks and pedestrian connections sized and located in accordance with good urban design principles, Township official plan policies and sound planning?
- b) Has the design of the subdivision adequately taken into account environmental and heritage features, site topography, planned function or open space and public amenity spaces, appropriate integration of the plans of subdivision, appropriate road patterns, the relationship between the public and private realm, the nature and character of the community in the vicinity of the proposed subdivision and other contextual factors relevant to sound urban design?
- c) Do the proposed lot dimensions limit the possibility of achieving a built form character and pattern that is compatible with the existing and planned context?

[167] Through the exchange of the expert witness statements and replies thereto, certain issues of dispute between the urban designers fell away. There was agreement that the five-minute walkability standard to public parks was satisfied and that the parkland was appropriately centrally located. There was agreement that the amount of parkland dedication met the requirements of the Act. On this point, it was acknowledged that against the 5% dedication requirement in the Act, 6.4% was the amount being dedicated in the case of this proposal. Ms. Huq conceded that the 1.2 ha minimum size for parkland set out in the Township OP was being met but that there may be some question as to the quantity of land available for programming on Blocks 9 and 18 (as shown on what was labelled as the Overall Draft Plans) after allowing for tree preservation.

[168] Ms. Huq acknowledged that, consistent with s.C.12.2 of the Township OP, Council determines the suitability of parkland and that in this instance, the municipality has endorsed these plans.

[169] However, by s. 12.5.1, the Township OP does expect that parks should be visible from homes and traffic routes within the neighbourhood it serves, for safety reasons. Blocks 9 and 18 as referenced above have frontage on three streets at their north end but then dramatically taper between residential blocks which flank east and west. These blocks terminate at the south limit of the Site and thereby connect with the Trestle Bridge Trail, a recreational trail. The expectation is that there would be a walkway from the trail up into the core of the Site.

[170] The issue, as presented by Ms. Huq, is that this 'stem' of the parkland will abut the rear yards of the residential properties on both sides and, in order to afford a measure of privacy to those homeowners, would likely be fenced with solid screen fences. As it would be intrusive to the residential use to have this walkway illuminated, this will cause the 'stem' to become something of a forbidding space where pedestrians could be at risk without a prospect of escape and, due to the opaque fences, not visible to the adjoining homeowners in order to call for assistance.

[171] The Tribunal concurs in Ms. Huq's observations and believes that this issue is easily enough susceptible of cure. The Tribunal sees the principle of connection to the recreational trail being preserved and the policy intent of the Township OP regarding park access to streets as being achieved by shifting the stem portion of these two blocks to the east so that they will front on the west side of Street One's north/south leg. The residential lands in Blocks 2 and 3 of the Youngblood Plan affected by this shift would be accommodated by way of the extension easterly of Blocks 1 and 4 in the Haylock Plan and the concomitant extension easterly of Street Seven in the Haylock Plan. The proposed zoning of all of these blocks is the same, R1C.58.11, so that the displacement should not result in a material, if any, loss of residential units. The Tribunal observes that the lotting of the additional area of Blocks 1 and 4 would simply follow the pattern established by the limits of those blocks and the relationship of Street Seven.

[172] The Tribunal does apprehend that with this modification, all of the affected lands remain within the Phase 2 areas, so that there should not be an issue regarding the traffic impact agreement between the Appellants and the Municipalities. It is further understood by the Tribunal that this will affect the design of municipal services to these lots but the Tribunal presumes that Mr. Martens and MTE will be able to address this change so that delivery of these services can be properly achieved.

[173] Consequently, although the Tribunal will be authorizing the grant of draft approval of the proposed plans, that draft approval will be granted only upon modification of the plans to reflect this determination of the Tribunal.

[174] In a similar vein, Ms. Huq addressed the circumstances concerning Block 14 on the Haylock Plan. This is the 1.421 ha block at the northwest corner of the Site. It is being proposed by Haylock for development as a condominium with two tiers of dwellings served by a 6 m lane. The description of the proposal by the Appellants' planning consultants and by Mr. Butler was focussed on the settlement between the Appellants and the Municipalities that there would be a 6 m landscape buffer at the north edge of the block to function as a transition element between the development on this block and the existing development on the north side of South River Road. The zoning by-law would prescribe a minimum lot width for the northern tier of lots at 20 m and for the second tier at 15 m. The proposal, similar to the other blocks on the proposed plans, was not presented on a drawing in a lotted fashion but rather as a concept.

[175] Ms. Huq had difficulty in appreciating the nature of the resultant lots and went through an exercise of working from known measurements on the adjacent lands for the purpose of generating what might be a likely lotting scheme for this block. She traced her analysis for the Tribunal with reference to the plans and drawings which she used. The result was that, in allowing for the 6 m buffer and the 6 m lane, the resultant lots would effectively have lot depths of 15 to 16 m and be squarish rather than rectangular.

Such a result is not characteristic at all of the parcels in the vicinity and in fact, would create a result which she described as representing a sharp deviation from the existing context.

[176] As the zoning by-law would allow for three storeys, and given the constrained building envelope which would result, this would tend to generate buildings which were not at all consistent with the character of the area, with particular reference to the north side of South River Road. In her view, the Appellants should have simply considered a single row of dwellings served by a private lane. The Tribunal shares this view. What is being proposed by the Appellants appears to be an attempt to overburden this block and erode what the Tribunal understood to be the principle which was set up to guide the form of development on this block, compatibility with the surrounding area and appropriate transition.

[177] Consequently, Block 14 may remain as it is configured on the draft plan but the zoning by-law will require amendment to ensure that only a single tier of dwellings will be lotted and constructed upon it. It shall remain the case that no direct access to South River Road will be permitted. However, in that regard, and to remain constant to the intention that these dwellings will integrate with the existing pattern of development, the zoning by-law shall require that the principal entrance of the dwellings shall be oriented northward and that there shall be a pedestrian walkway from South River Road to that principal entrance. This does not mean that the functional entrance may not be from the south, where the Tribunal would expect the lane access to be, but rather that the dwelling will present as facing South River Road.

[178] The Tribunal was driven to its conclusion regarding Block 14 based upon the testimony of Ms. Huq. Interestingly, in his final submissions, counsel for the Association, as alternative relief to simple dismissal of the Appellants' appeals, urged upon the Tribunal choices from converting this block to open space to limiting development to a single row of dwellings. In connection with the single row of dwellings, he pressed for a minimum 30 m lot width for those dwelling parcels. Ms. Huq

suggested a single tier of dwellings on this block but she did not advance a position that the lot width should be increased to 30 m. The zoning by-law applicable to the lands on the north side of South River Road requires a minimum lot frontage of 20 m. That was apparently the reason motivating Messrs. Aston and Butler in prescribing 20 m as the lot width for the northern tier of development. The Tribunal believes that, in the context and bearing in mind the regulatory standards applicable to the lands in the immediate vicinity, 20 m is an appropriate lot width/lot frontage.

[179] Ms. Huq and Mr. Butler were also of the same mind with respect to other periphery lands, both of their views informed by the same guiding principle, compatibility with lands on the opposite side of the road. Here the Tribunal refers to what is shown as Block 1 on the Youngblood Plan. This block of land fronts onto the west side of Gilkison Road. Opposite this block on the east side of Gilkison Road are wide, deep lots with single family dwellings. Both sides of Gilkison Road are graced with significant mature trees. The proposed development for this block was for detached dwellings, which were proposed to be located back from the road in order to present with deeper front yards and to avoid injury to the root systems of the mature trees. However, the draft zoning by-law amendment provided standards which theoretically would allow division of the block into lots which could front onto Gilkison Road and onto the internal Street Two.

[180] Mr. Butler conceded that he would be supportive of an amendment to the zoning of this block to prescribe a minimum lot depth of 50 m, which would equate to the depth of the block and would thereby prevent lot severance up the middle of the block. Mr. Butler also suggested that in keeping with the intention of preserving the existing trees, the minimum rear yard depth could be increased from 7.5 m to 10 m. Ms. Huq went further in this regard in that she suggested that in order to preserve some mirroring of the character of the street as between the east and west sides, consideration should be given to prohibiting the erection of solid fencing on the east side of Block 1. However, in cross-examination, she admitted that with preservation of these substantial trees, they will obscure the view of the development on the block and, as such, the compatibility

created by the presence of the trees would not be at odds with the development on the east side of Gilkison Road. It may be that the fine detail of the type and character of fencing which would be appropriate in this location is best left to the site plan stage when the development review will have the benefit of the actual building and site layout proposal.

[181] It goes without saying that access to the dwellings on this block should be from Street Two and not from Gilkison Road. As the proposed zoning for this block is a standard R1A, in order to accommodate the revised minimum lot depth requirement of 50 m and to impose the prohibition on driveways from Gilkison Road, it would be appropriate that the draft zoning by-law amendment be modified to create a further exception provision applicable to this block to deal with these issues. Ms. Huq raised a further concern with respect to Block 7 on the Youngblood Plan. This block is intended for multiple residential purposes. The entire width of the block runs the full length of the southern side lot line of an estate residential lot abutting it to the north. The concern which she expressed is that if not adequately controlled, the construction on Block 7 could impinge on the privacy of the rear amenity area of the estate lot. A secondary concern is the built form relationship as there may be discernible massing adjacent to the lot line if not controlled. Her proposed solution to avoid any problems of this nature that might occur was to utilize an angular plane constructed along the rear lot line of Block 7. The concept commends itself to the Tribunal but there was insufficient detail adduced to allow the Tribunal to finally detail that mechanism in this Decision. The Tribunal will invite the Parties to consider that mechanism and come back with a detailed consensus proposal, failing which the Tribunal will require further submissions on the matter in a form to be determined by the Tribunal.

[182] Ms. Huq decried the absence of more fully fleshed out Urban Design Guidelines being part of the present proposal. She believed that through this device it would be easier to understand whether the Site was being optimally developed and how the built form and public amenities would relate to each other. The Settlement amongst the Appellants and the Municipalities did include what were styled as Planning/Design

Principles applicable to two of the proposed condominium blocks (Youngblood, Block 6 – Phase 1 and Haylock, Block 14 – Phase 1) but no similar guidelines for the balance of the lands. Ms. Huq viewed these Principles as in keeping with the general purpose of an urban design brief and the establishment of urban design guidelines from it but that far greater reach and detail would normally be expected. Ms. Huq did acknowledge to Ms. Meader in cross-examination that the Township OP did not require the development of urban design guidelines as part of the application process and that the list of required submissions for complete application purposes did not include such a document.

[183] The Tribunal again appreciates the general thrust of Ms. Huq's opinion on this point but does acknowledge the position taken by Ms. Meader that Township policy does not require what Ms. Huq has suggested and that the Appellants here have been responsive to the request of the Township in providing the Principles document. Having said that, based upon the requirements of the conditions of draft approval, which will necessitate the development of much more detailed plans for block development before the lotting of those lands and deployment of development, and the consequent consideration of transition and compatibility as part of that exercise, the Tribunal is satisfied that more detailed review will yet occur with a view to integration of the private realm with the public and concerning the relationship with surrounding lands. The treatment of the public space will be in the control of the municipality. The Tribunal trusts that the standards employed will be mindful of functionality and contribution to neighbourhood character.

CONCLUSION

[184] Based upon the foregoing reasons, and subject to the *provisos* which follow, the Tribunal makes the following decisions on the appeals before it:

- a. The Haylock proposed Plan of Subdivision is given draft approval subject to the conditions of draft approval which are set out in Exhibit 9 (Attachment 2A to the draft Order);

- b. The Youngblood proposed Plan of Subdivision is given draft approval subject to the conditions of draft approval which are set out in Exhibit 9 (Attachment 2B to the draft Order);
- c. The appeal with respect to the Zoning Amendment for the Haylock Property is allowed and the form of the Amendment shall be in accordance with Attachment 3A as set out in Exhibit 9;
- d. The appeal with respect to the Zoning Amendment for the Youngblood Property is allowed and the form of the Amendment shall be in accordance with Attachment 3B as set out in Exhibit 9;
- e. At the request of the Municipalities and the Appellants, pursuant to s. 51(56.1) and 51(58) of the *Planning Act*, the County Planning Director shall have the authority to clear the draft plan conditions for the respective draft plans and to administer final approval.

[185] The *provisos* to the implementation of this Decision are that the modifications to the draft plans and zoning by-law amendments as stipulated in Paragraphs 171, 177, 178, 181 and 182 of this Decision shall be prepared and submitted to the Tribunal by the Appellants. Upon receipt of the revised plans and zoning by-law amendments in keeping with the direction of the Tribunal, the final Order of the Tribunal will issue.

[186] In the event that any issues arise in connection with the implementation of this Decision, the Tribunal may be spoken to by way of communication with the case co-ordinator for these appeal cases.

“Gerald S. Swinkin”

GERALD S. SWINKIN
MEMBER

If there is an attachment referred to in this document,
please visit www.elto.gov.on.ca to view the attachment in PDF format.

Local Planning Appeal Tribunal

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