

**Ontario Land Tribunal**  
Tribunal ontarien de l'aménagement  
du territoire



**ISSUE DATE:** June 30, 2023

**CASE NO(S).:** OLT-21-001867  
(Formerly DC190020)

**PROCEEDING COMMENCED UNDER** subsection 14 of the *Development Charges Act*, 1997, S.O. 1997, c. 27, as amended

Appellant:	Niagara Home Builders' Association
Subject:	Development Charges By-law No. 46-2019
Municipality:	City of Thorold
OLT Case No.:	OLT-21-001867
Legacy Case No.:	DC190020
OLT Lead Case No.:	OLT-21-001867
Legacy Lead Case No.:	DC190020
OLT Case Name:	Niagara Home Builders' Association v. Thorold (City)

**Heard:** January 10 -17, 2022 by Video Hearing

**APPEARANCES:**

**Parties**

Niagara Home Builders'  
Association ("Appellant")

City of Thorold ("City")

Glen Douglas Gordon  
and Rolling Meadows  
Development Corporation  
("Rolling Meadows")

**Counsel**

Jennifer Meader  
Meredith Baker

Paul DeMelo

Callum Shedden  
Robert Di Lallo

[Link to Final Order](#)

## **DECISION DELIVERED BY DAVID L. LANTHIER AND ORDER OF THE TRIBUNAL**

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### **INTRODUCTION**

[1] This Decision, delayed in its issuance, determines the Appeal pursuant to s. 14 of the *Development Charges Act* brought by the Appellant with respect to Development Charge By-law No. 46-2019 which was enacted by City Council of the City of Thorold on June 3, 2019. The Appeal challenges the inclusion of four road projects within the Development Charges By-law No. 46-2019 following the completion of the Background Study dated March 21, 2019, and an Addendum to the Background Study dated May 17, 2019.

[2] The Appeal was case managed over a series of attendances and included the hearing of a motion brought to deal with a disagreement over productions and to confirm the final form of the issues list.

[3] Early in the proceeding Mr. Glen Gordon was added as a party to the Appeal. Mr. Gordon is the principal of Rolling Meadows Development Corporation, joined as a party. Rolling Meadows has a vested interest in the appeal, since the practical impact of the Appellant's request to the Tribunal would be the transfer of financial responsibility of the disputed Projects to Rolling Meadows.

### **HEARING**

[4] The Tribunal heard from six expert witnesses called by the Parties, which included Ms. Mauro, an employee of the City who authored the first Staff Report to Council on the Development Charges Background Study and Development Charges By-law (**Tab 13**). Ms. Mauro was called by the Appellant and qualified in the subject of municipal finance.

[5] All expert witnesses were qualified by the Tribunal, upon their education, experience, technical and speciality expertise, qualifications and/or professional accreditation, to provide expert opinion evidence in their respective fields of expertise. Most had previously been qualified by, and appeared before, the Tribunal or the former Ontario Municipal Board.

[6] The Expert Witnesses, and their respective fields of expertise for which they have been qualified, are:

**Appellant:**

**Audrey Jacob** – Land Economics

**William Maria** – Transportation Planning and Engineering

**Maria Mauro** – Treasurer and Director of Municipal Finance for the City

**City:**

**Gary Scandlan** – Land Economics with Expertise in Development Charge Matters

**Rolling Meadows:**

**Daryl Keleher** – Municipal Finance, Development Charges and Land Use Planning

**Stuart Anderson** – Transportation Planning and Engineering

[7] The hearing was conducted as a video hearing and accordingly the Tribunal received and recorded all exhibits to the hearing as electronic documents, which were identified and assigned an Exhibit number during the hearing. This included the primary compendium of documents filed as a Joint Documents Brief, **Exhibit 1**, containing 20 tabulated documents. Some of the Exhibits were used in cross-examination and were password protected as filed. **Exhibit 8** was an Agreed Statement of Facts which identified basic items that the Experts determined were not in dispute.

[8] The List of Exhibits to the hearing is appended as **Attachment 1** to this Decision and Order. Any reference to a Tab in this Decision refers to one of the twenty Tabs in Exhibit 1.

[9] For the purposes of this Decision, the Panel Member has assembled a summary list of abbreviations that have been used. They are as follows:

Abbreviation	Means...
"Barker" and "Uppers"	Barker Parkway and Upper's Lane
"DCs"	Development Charges
"DC Act"	<i>Development Charges Act</i>
"DC Background Study"	City of Thorold Development Charge Background Study (2019) together with the Addendum Report
"DC By-law"	Development Charge By-law No. 46-2019
"DC Eligible"	Development Charges Eligible
"Local Service Policy"	The Local Service Policy appended to the City of Thorold Development Charge Background Study (2019)
"Projects"	Projects A, B, C or D as the case may be
"Rolling Meadows PoS"	Rolling Meadows Plan of Subdivision
"Rolling Meadows SP"	Neighbourhoods of Rolling Meadows Secondary Plan
"Rolling Meadows UDGs"	Rolling Meadows Urban Design Guidelines
"SP Area" or "Secondary Plan Area"	Rolling Meadows Secondary Plan area
"TOP"	Thorold Official Plan

## ISSUES AND DISPUTED PROJECTS

[10] The Procedural Order identified the single overarching issue of whether it was fair and reasonable for the City to have included four specific roadway-related projects within the DC By-law in accordance with the *DC Act* and the relevant Background Study inclusive of the Local Service Policy referenced therein.

[11] The four projects which are at issue, and the costed amount allocated within the DC By-law, are identified as follows:

PROJECT	DESCRIPTION	TOTAL PROJECT COST
A	Barker Parkway Roadworks from Uppers Lane to Highway 20	\$1.95 million
B	Intersection Improvements at Barker Parkway and Highway 20	\$2 million
C	Signalization of Barker Parkway and Highway 58 Intersection	\$1 million
D	Uppers Lane from Highway 58 to Townline Road ("Project 10")	\$4.056 million

[12] The City, supported by Rolling Meadows, takes the position that the four Projects are DC eligible and properly included within the DC By-law. From the evidence, and as indicated in this Decision, the Rolling Meadows PoS, in which Mr. Gordon and Rolling Meadows have an interest, figures rather large in the context of the Appeal and the four Projects in dispute.

[13] The Appellant submits that the Projects are ineligible for inclusion in the DB By-law. More specifically, the Appellant submits that the Projects are local services attributed to the Rolling Meadows PoS.

[14] From the overarching issues the Tribunal has distilled the following focused issues that must be decided by the Tribunal:

- (a) The Tribunal must determine whether each of the Projects are properly included as DC eligible services in the DC By-law or alternatively are each a “local service” as that term is used in the *DC Act*, and therefore ineligible for inclusion in the DC By-law.
- (b) In deciding whether each of the four Projects is a “local service” for the purposes of the *DC Act*, the Tribunal must determine what source material should be considered or given priority.
- (c) In order to determine whether Projects A and D, Upper’s Lane and Barker Parkway, are a local service, the Tribunal must decide their status, character or classification as roadways and, as the Tribunal has considered the evidence, determine the function they serve. Are these roads Arterial Roads or Collector Roads or some other type, and what category do they fall into in the Local Service Policy.
- (d) Are the intersection improvements and signalization works at the intersections of Barker Parkway and Upper’s Lane local services for which Rolling Meadows is “financially responsible” by reason of the policies in the Rolling Meadows SP and Condition 61 to the Rolling Meadows PoS and Subdivision Agreement.

## CONTEXT

[15] As is often the case, determining the spatial and planning context of the subject matter of the Appeal is necessary in undertaking the required analysis and determining the issues.

[16] Appended to this Decision as **Attachment 2**, for visual and spatial reference only, is one of a number of plans, aerial photographs and maps that were submitted in evidence by the parties. It is important to note that this is only one representative sketch which was appended to Mr. Maria's Will-Say statement (**Exhibit 3A**) that conveniently identifies the four Projects relative to nearby roads, the Rolling Meadows SP and the Rolling Meadows PoS (**Tab 16**). The Tribunal's determination of the context is however based upon a "layering" of all of the mapping, schedules and policy material in the evidentiary record and an overall consideration of all of these components together.

[17] As seen in **Attachment 2**, the four Projects essentially relate to two roadways dissecting the area within the Rolling Meadows SP, as well as the Rolling Meadows PoS, which is within the broader area of the Rolling Meadows SP. Facets of the existing and planned roadway structure include the following:

- (a) The two roadways link, or will link, two Provincial highways and a Regional Arterial Road.
- (b) The first road, Barker Parkway runs north to south in an undulating fashion, entering the Secondary Plan area from Highway 58 (Davis Road) to the north and ending at Highway 20 (Lundy's Lane) to the south. **Project A** is that portion of Barker Parkway that runs from the point of intersection of Barker Parkway with Upper's Lane south to Highway 20.
- (c) **Project B** involves the intersection improvements at the intersection of Barker Parkway and Hwy 20. **Project C** involves the intersection signalization and works at the entry point to Barker Parkway from Hwy 58.

- (d) The second roadway is Upper's Lane which runs mostly in a straight line from west to east also beginning at Highway 58/Davis Road to the west and running to Thorold Townline Road (Highway 70) to the east. Where Upper's Lane meets and crosses Highway 58 to the west, it continues thereafter as Allanburg Road and swings due north. Upper's Lane is shown on the various plans as ending at Thorold Townline Road, which is also the eastern boundary of the City and the Rolling Meadows SP.
- (e) **Project D** is comprised of the roadworks for that portion of Upper's Lane that runs, or will run, from Highway 58 to Thorold Townline Road.

[18] The intersection of Barker Parkway and Upper's Lane is identified as "Village Square" and Blocks 1239, 1240 and 1241 in the Rolling Meadows PoS. These particular blocks are identified as high-density residential blocks. In Section B1.8.6.4 of the Rolling Meadows SP, such high-density residential development is proposed to be located with convenient access to the arterial road system. The blocks at the four corners of Barker Parkway and Upper's Lane are designated as Village Square Commercial on Schedule A-3 to the TOP and SP, to "reflect the unique character of this planning community and function as a centrally located mixed-use local convenience centre."

[19] Both Barker and Uppers are classified as Arterial Roads on Schedule "A-3" to the TOP, and to the Rolling Meadows SP. Other treatment of roads and road improvement in the TOP and the Rolling Meadows SP policies is addressed below.

[20] In the City of Thorold Transportation Master Plan (**Tab 20**) both Project A on Barker Parkway and Project D on Upper's Lane are identified as anticipated "New Roads" within the identified Future Road Network. They are also classified in that Master Plan as Future "Urban Collector" roads.

[21] Beyond the roadways, and as to the broader context, the four Projects, and the two subject roadways, are identified on the Rolling Meadows Draft PoS (**Tab 16**) which, in turn, is located within the Neighbourhoods of Rolling Meadows SP area which is laid out in Official Plan Schedule A-3 (**Tab 6**). The area contained within the Rolling Meadows SP is approximately two kilometers (“km”) from west to east at the southern boundary and approximately two km from south to north near the center point of the secondary plan area (with the angular west boundary thus enlarging the north to south depth of the SP area moving from west to east).

[22] Within the area of the Rolling Meadows SP, the Rolling Meadows PoS (Tab 16) presents as three of four “quadrants” divided by two intersecting dividing lines; Upper’s Lane running from west to east; and a Hydro One easement running north and south. The development area of the Rolling Meadows PoS occupies the southwest, southeast and southwest quadrants. There are additional lands to the west and to the east of the Rolling Meadows PoS which are also within the Rolling Meadows SP, some developed and some, as yet, undeveloped.

[23] To assist in understanding the spatial context of this Appeal, the Rolling Meadows PoS is appended as **Attachment 3** to this Decision. Schedule A-3 to the TOP, identifying the area of the Rolling Meadows SP, is appended as **Attachment 4** to this Decision.

[24] As one ascends in overview, the Rolling Meadows SP area, and the Rolling Meadows PoS are centrally located along the western boundary of the City of Thorold, as shown on a number of various Official Plan Maps including Schedule D, Transportation & Utilities, (**Tab 6**). The two highways (Hwy 20 and Hwy 58) and regional roadway that form the borders of the Rolling Meadows SP area are shown in the Attachments. The City’s developed urban area extends to the west and northwest of Hwy 58 adjacent, or near to, the area in which the four Projects are located, with the

City's future growth and development anticipated and addressed in the Rolling Meadows SP area.

[25] The visuals, mapping and schedules forming part of the evidentiary record in this hearing are consistent with the intent of the Rolling Meadows SP, identified in Policy B1.8.1, which is to provide long-term planning that recognizes the strategic positioning of the Neighbourhoods of Rolling Meadows SP area as a new community providing the integration of diverse land uses.

## **LEGISLATION, LOCAL SERVICE POLICY AND OTHER POLICY CONTEXT**

### ***The Development Charges Act***

[26] The starting point for analysis of the issues is the development charges framework provided for within the *DC Act* which creates the distinction between, and treatment of, charges for local services on the one hand, and eligible DC charges related to services arising from development growth, on the other.

[27] It is generally acknowledged that the intent and scheme of the Provincial development charge regime under the *DC Act* permits a municipality to recover the forecasted costs of providing infrastructure and services arising from development growth in a community through development charges identified in a development charge by-law. This concept has sometimes been expressed as “growth pays for growth” and the types of services that may be included in development charges charged for new development applications, must be within the enumerated list in s. 2(4) of the *DC Act*. The *DC Act* sets out the prerequisite steps that must be taken to identify, quantify and collect development charges, which includes the preparation of a Background Study.

[28] The relevant sections are as follows:

## **PART II DEVELOPMENT CHARGES**

### **Development charges**

2 (1) The council of a municipality may by by-law impose development charges against land to pay for increased capital costs required because of increased needs for services arising from development of the area to which the by-law applies.

....

### **What services can be charged for**

(4) A development charge by-law may impose development charges to pay for increased capital costs required because of increased needs for the following services only:

...

4. Services related to a highway as defined in subsection 1 (1) of the Municipal Act, 2001 or subsection 3 (1) of the City of Toronto Act, 2006, as the case may be.

### **Local services**

(5) A development charge by-law may not impose development charges with respect to local services described in clauses 59 (2) (a) and (b).

....

### **Credits for work**

38 (1) If a municipality agrees to allow a person to perform work that relates to a service to which a development charge by-law relates, the municipality shall give the person a credit towards the development charge in accordance with the agreement.

....

## **PART IV GENERAL**

### **Planning Act, ss. 51, 53**

59 (1) A municipality shall not, by way of a condition or agreement under section 51 or 53 of the Planning Act, impose directly or indirectly a charge related to a development or a requirement to construct a service related to development except as allowed in subsection (2). 1997, c. 27, s. 59 (1).

**Exception for local services**

(2) A condition or agreement referred to in subsection (1) may provide for,

- (a) local services, related to a plan of subdivision or within the area to which the plan relates, to be installed or paid for by the owner as a condition of approval under section 51 of the Planning Act;
- (b) local services to be installed or paid for by the owner as a condition of approval under section 53 of the Planning Act. 1997, c. 27, s. 59 (2).

**Limitation**

(3) This section does not prevent a condition or agreement under section 51 or 53 of the Planning Act from requiring that services be in place before development begins.

[29] Section 59 of the *DC Act* expressly prohibits a municipality from imposing a charge relating to a development, or an obligation to construct a service relating to a development, unless it fits within the two identified exceptions as “local services”: (a) the charge involves installed or paid-for local services related to a plan of subdivision “or within the area to which the plan relates” which an owner is obligated to install or pay as a condition of approval of a subdivision agreement under s. 51 of the *Planning Act*; or (b) the charge involves installed or paid-for local services to be borne by an owner as a required condition of approval under s. 43 of the *Planning Act*.

[30] Section 38 supports this by directing that in the event a municipality permits works to be performed that related to a DC eligible project it “shall” give the person a credit towards the DC in accordance with the agreement.

[31] All parties agree, and it is clear in reading the Act as a whole, that the *DC Act* provides no guidance as to what does, or does not, constitute a local service for the purposes of a DC By-law. There is no definition of a “local service” in the legislation. Section 2(5) of the *DC Act* states only that a development charge By-law may not

impose development charges with respect to local services described in clauses 59(2)(a) and (b).

[32] This legislated construct firstly guides the determination of whether a service is a growth-related service as identified in the *DC Act* or a local service and how the Projects might be categorized based upon the source documents submitted in evidence.

[33] As the Appellant has correctly pointed out, a service can be either DC eligible or local, but can never be both. The operation of the *DC Act*, as it relates to services related to a highway, results in the following framework:

- (a) If a project for a service relating to a highway project is not a local service, related to a plan of subdivision or within the area to which the plan relates, where the owner is required to install or pay for that service as a condition of approval of a subdivision, as identified in s. 59(2), then it is eligible to be included within the DC By-law for services arising from development of an area to which the DC By-law applies under s. 2(1) of the *DC Act*.
- (b) Conversely, with the prohibition contained in s. 2(5), if a service relating to a highway project is a local service, related to a plan of subdivision or within the area to which the plan relates, the cost or installation of which is the responsibility of an owner under a condition of approval to a subdivision, then it is ineligible to be included within the DC By-law under s. 2(1) s. 59(1) of the *DC Act*.
- (c) With that delineation in place, the *DC Act* prohibits a municipality, from using a condition or agreement under sections 51 or 53 of the Planning Act to impose a direct or indirect charge relating to, or require the construction of, highway project services that are related to development unless the

services are local services related to a plan of subdivision or within the area to which the plan relates, and the owner is required to install or pay for as a condition of approval under sections 51 or 53 of the *Planning Act*.

- (d) Conversely, and by operation of s. 59(1) and (2) a municipality may only use the mechanism of a condition or agreement under s. 51 or s. 53 of the *Planning Act* to impose a charge, or construct a highway service relating to development, if the highway services are local services related to a plan of subdivision or within the area to which the plan relates.
- (e) By virtue of s. 59(3) and s. 38(1) however, a condition or agreement may be in place which requires works or services to be in place or performed before development begins. If an owner does therefore install highway services in a Project which are DC eligible and not local services, then the municipality is required to give the owner a credit for such works or services towards the development charge. Only if the condition for work and services to be performed, or in place, is for local services and governed by a condition of approval under sections 51 or 53 of the *DC Act* can the Municipality look to such services being performed.

### **The Local Service Policy (and the Development Charges Background Study 2014)**

[34] The Local Service Policy is an integral part of the City's Background Study. A background study is required by the *DC Act* to support a DC By-law. The Regulations under the *DC Act* do not, however, require a local service policy as part of a background study, but many municipalities do utilize such a series of policies to flesh out the delineation between DC eligible projects and projects that constitute local services as provided for in the *DC Act*, under the development charge By-law.

[35] Although local service policies do not have the force of statute, they nevertheless provide important guidance and a framework to properly categorize projects as being either DC eligible and subject to DC credits under the *DC Act* or, alternatively, local services and therefore not DC eligible and possibly the subject of conditions in a development or subdivision agreement. Importantly, they represent a means for a Municipality to exercise the authority and autonomy granted to it under the *DC Act* to determine what is a local service related to a plan of subdivision or within the area to which a plan of subdivision relates.

[36] From an equally important perspective, a background study, within which a local service policy may be included, is a mandatory requirement to the passing of any DC By-law pursuant to s. 10(1) of the *DC Act*. The background study is subject to a public consultation process and must be followed by the passing of the DC By-law within a prescribed time period. In the Tribunal's view there is a priority of process and relevance given to the background study, inclusive of a local service policy if so added, when undertaking an analysis of issues such as those raised by the Appellant in this proceeding.

[37] Accordingly, the City's Local Service Policy can be distinguished from the other source documents reviewed in this hearing. It has some measure of pre-eminence over other planning policies because it is specifically crafted by the Municipality pursuant to the DC regime to further the development charge framework, specific to the development growth and needs of the community, and formally part of the mandatory Background study that gives rise to the DC By-law. While it should conform to the City's Official Plan, the Local Service Policy is firstly purposive to the imposition of development charges through a DC By-law under the *DC Act* and not to the setting of planning policies, as addressed by an official plan or secondary plans. There should not be inconsistencies between a municipality's local service policy and its Official Plan policies by virtue of the operation of s. 24(1) of the *Planning Act*. But where there may be a lack of precision or clarity in mapping or planning policy text, or inconsistencies in

terminology or definitions, the intent and purpose of the local service policy should govern as it provides first guidance to the determination of what is DC eligible or a local service.

[38] The Tribunal has, in coming to this conclusion, considered the Appellant's argument that there are many municipalities that do not have local service policies and the determination and imposition of development charges, and identification of local services still occurs. The Appellant argues that it is unreasonable to look only to the Local Service Policy and ignore other policies such as the Rolling Meadows SP. In the Tribunal's view, this is not persuasive because the City *has* in this case, incorporated a Local Service Policy into its Background Study, to support the DC By-law, just as other municipalities have done. It must therefore be considered of primary relevance to an appeal relating to DC eligible projects and local service projects.

[39] The opening preamble of the Local Service Policy (**Tab 11**) provides as follows:

The following guidelines set out in general terms the size and nature of engineered infrastructure that is included in the City's development charge study, as a project to be financed at least in part with development charges, versus infrastructure that is considered to be a local service, meaning that it is the responsibility of the developer, pursuant to a subdivision or other development agreement.

[40] The provisions that apply to Roads are as follows (emphasis added):

1. Roads

For the purpose of interpreting this guideline the following meanings will be used.

Collector roads are designed for the movement of **light to moderate volumes** of local traffic, at **moderate speeds, to arterial roads or for the distribution of traffic to local roads**. Right-of-way widths shall generally be **20 metres**.

Local roads are designed to accommodate **low volumes** of traffic traveling at **low speeds**. They provide primarily **for land access to abutting properties** and shall be designed to **discourage the movement of through traffic**.

**Arterial roads** are intended to carry **medium to large volumes** of **all types of traffic moving** at **medium speeds**. These roads **serve the major traffic flows between the principal areas of traffic generation**. Rights-of-way shall generally be **from 20 to 26 metres**.

- 1.1 Collector roads Internal to development – Direct developer responsibility under s. 59 of the D.C.A. (as a local service).
- 1.2 Local roads and entrances to development – Direct developer responsibility under s. 59 of the D.C.A. as a local service.
- 1.3 **Collector roads and arterial roads external to development** – Direct developer responsibility if the works are within the area to which the plan relates and therefore a local service under s. 59 of the D.C.A., otherwise **include in D.C. calculation to the extent permitted under s. 5 (1) of the D.C.A.**
- 1.4 Stream crossing and rail crossing road works, excluding underground utilities but including all other works within lands to be dedicated to the City or rail corridors – Include in the D.C. calculation to the extent permitted under s. 5 (1) of the D.C.A.
- 2. Traffic Signals**
  - 2.1 **Traffic signalization within or external to a development – Include in the D.C. calculation to the extent permitted under s. 5 (1) of the D.C.A., excluding on Regional roads which are a Regional responsibility.**
- 3. Intersection Improvements**
  - 3.1 New roads (collector and arterial) and road (collector and arterial) improvements – Include as part of road costing noted in Item 1, to the limits of right of way.
  - 3.2 Intersection improvements within specific developments and all works necessary to connect to entrances (private and specific subdivision) to the roadway – Direct developer responsibility under s. 59 of the D.C.A. as a local service.
  - 3.3 Intersections with Regional roads are a Regional responsibility.
  - 3.4 **Intersections with provincial highways – Include in the D.C. calculation to the extent that they are a City responsibility.**
  - 3.5 Intersection improvements on other roads due to development growth increasing traffic – Include in the D.C. calculation.

[41] It is clear to the Tribunal that the hierarchy of roads created in the above provisions of the Local Service Policy is very much a hierarchy created by function and

distinguishes the three types of roads primarily based upon those differences in function. This is addressed further below.

### **The Thorold Official Plan and the Neighbourhoods of Rolling Meadows Secondary Plan**

[42] The policies of the TOP that identify the different types of roads within the municipality similarly identifies a hierarchy of roads that is also a functional-based approach. The TOP utilizes the same three identifiers as the Local Service Policy but classifies roads somewhat differently.

[43] The wording in the sub-policies in Policy D2.2 of the TOP which creates that similar hierarchy is as follows (emphasis added):

**D2.2.1 Provincial Roads** – “The City of Thorold is served by Highway 58 and Provincial Highway 406 together with four interchanges.”

**D2.2.2 Regional Roads** – “These roads serve a regional role by carrying traffic through and to the City”.

**D2.2.3 Arterial Roads** – “These are **intermediate roads** which **carry significant volumes of traffic from local roads to Regional Roads.**”

**D2.2.4 Collector Roads** – “Collector roads are **local roads** that provide efficient **access between Regional and arterial roads from local roads.**”

**D2.2.5 Local Roads** – “Local roads carry traffic **from the Regional Road system and from the arterial roads to individual properties.**”

[44] The Mapping in **Attachment 4**, Schedule A-3 to the TOP (and the Rolling Meadows SP), classify both Barker Parkway and Upper's Lane as Arterial Roads. The Rolling Meadows SP expressly identifies Schedule A3 as the illustration of the road network in the secondary plan area, which, as indicated, clearly identifies Barker and Uppers as arterial roads.

[45] The policies of the Rolling Meadows SP also provide general guidance on the manner in which the secondary plan road network of collector road system should develop. It speaks to collector road systems and an arterial road network. It also provides for Infrastructure Improvements.

[46] Policy B1.8.13.2, which is later addressed in the analysis of Projects B and C, reads as follows:

**B1.8.13.2 Infrastructure Improvements**

In order to accommodate development within the Neighbourhoods of Rolling Meadows, it will be necessary to address off-site upgrading or expansion of infrastructure such as:

- a) The extension of the Allanburg Road trunk sanitary sewer easterly to the Neighbourhoods of Rolling Meadows;
- b) The construction of a trunk sanitary sewer on Thorold Townline Road;
- c) The extension of the Allanburg Road trunk watermain easterly to the Neighbourhoods of Rolling Meadows;
- d) Signalization of, and upgrading of, collector road intersections with Highway 58 and 20; and OPA 59;
- e) Upgrading of the Thorold Townline Road/Highway 20 intersection.

These off-site works will be coordinated and scheduled as municipal or regional capital projects using contributions from the development community according to the appropriate Development Charges By-law.

Required improvements for the signalization and upgrading of Highway 58 and 20 intersections will be the responsibility of the development community and/or the Province of Ontario.

In order to accommodate development within The Neighbourhoods of Rolling Meadows significant off-site and on-site infrastructure will be

required as described in the following sub-section. Development will be phased based upon the provision of infrastructure, including the road network, and in accordance with the phasing policies of this Plan.

[47] The following direction is provided on the road network in the Rolling Meadows SP, in Policy B1.8.14.2 (emphasis added):

- (i) it is “based on an interconnected and permeable modified grid pattern” as shown in Schedule A3;
- (ii) it is comprised of “a hierarchy of road types determined by adjacent land uses, location, planned function, capacity and speed”;
- (iii) “the **collector road network**” identified in **Schedule A3** is based upon “a continuous east-west and north-south collector road system connecting with the **Provincial Highway and Regional arterial road network** and a minor east-west and north-south **neighbourhood collector road system** connecting with the collector road system”; “the local road system is intended to be flexible in terms of specific location”;
- (iv) the **local road networks** associated with plans of subdivision should allow for interconnection with the collector and neighbourhood collector road system which is achieved by using a grid or modified grid pattern; and
- (v) generally, as a guide in the preparation of plans of subdivision, local neighbourhood roads should have a right of way (“ROW”) of 18 metres (“m”), neighbourhood collector roads should have a ROW of 20 m and contain a bike lane and collector roads should have a ROW of 22 m and contain a bike lane.

[48] With consistency, the policies of the Rolling Meadows SP are also predicated upon the function of the road network within the Secondary Plan area and, as drafted,

cross-reference Schedule A3. The relevant Road Network policies, in their entirety, are as follows:

#### **B1.8.14.2 Road Network**

Access to the development area is from the abutting Provincial Highway and Regional arterial road network. The road network within the development area is based on an interconnected and permeable modified grid pattern, as illustrated as Schedule "A3" Transportation Network Plan.

The Community will have a hierarchy of road types determined by adjacent land uses, location, planned function, capacity and speed. Schedule "A3" Transportation Network Plan identifies the collector road network which is based upon:

- (a) A continuous east-west and north-south collector road system connecting with the Provincial Highway and Regional arterial road network; and
- (b) A minor east-west and north-south neighbourhood collector road system connecting with the collector road system.

The local road system is intended to be flexible in terms of specific locations. The alignment of the road network may be modified to a reasonable degree, in the interest of achieving desirable and appropriate urban design and subdivision patterns.

Phasing will ensure that the road system will be developed in order to accommodate convenient vehicular circulation, to facilitate efficient transit service, and to provide access for the development of non-residential uses which service the residential areas.

In order to provide a transportation system that encourages travel by all modes (vehicular, transit, bicycle and pedestrian), the local road networks associated with plans of subdivision should allow for interconnection with the collector and neighbourhood collector road system. This is to be achieved by using a grid or modified grid pattern which reduces the use of cul-de-sac providing more opportunities for local transit routing and both bicycle and pedestrian access throughout the communities.

Special design features, such as traffic circles and/or planted medians shall be considered at key intersections and along collector roads for aesthetic, environmental and/or traffic calming purposes.

This Plan has not identified preferred right-of-way widths and pavement widths as confirmation of utility locations, emergency access, streetscape design and on-street parking regulations is required.

Generally, to guide in the preparation of plans of subdivision the following shall apply:

- (a) Local neighbourhood roads should have a right-of-width of 18 metres and a pavement width of 8.5 metres;
- (b) Neighbourhood collector roads should have a right-of-way width of 20 metres, contain a bike lane and a pavement width of 9.0 metres;
- (c) Collector roads should have a right-of-way width of 22 metres, contain a bike lane on either side of the travelled portion of the roadway and a pavement width of 11.0 metres; and
- (d) Window streets should have a right-of-way width of 12 metres and a pavement width of 6.5 metres.

[49] The functional approach to the classification of the roadway network in the Local Planning Policy, the TOP and the Rolling Meadows SP, inclusive of Schedule A3, is consistent. As determined from the evidence, what is not consistent is the precise wording and some policy content used to describe the higher order roads, distinguished from the lower order roads.

## **The Rolling Meadows Urban Design Guidelines**

[50] In identifying the road composition within the area of the Secondary Plan, the Rolling Meadows UDGs maintain the same recognition of the hierarchy of roadways based upon the function of the roads as they provide guidance in planning and development in the Plan area. The following is the introduction set out in Section 1.1 of the Rolling Meadows UDGs titled “Primary Collector Road Composition (emphasis added):

### **1.0 Community Identity – Public Realm**

#### **1.1 Primary Collector**

The Neighbourhoods of Rolling Meadows Secondary Plan is structured to provide for a generally symmetrical and centralized primary collector road network which runs in a north south and east west direction. **The primary collector roads serve as the community’s main access thoroughfares from which all neighbourhood and local road networks are accessed.** It is for this reason that the streetscapes treatments are to provide a consistent and recognizable image that **will signal their status within and throughout the community.**

Primary Collector Roads shall have regard to the following guidelines:

1. **The primary collector roads shall also serve as planned community transit corridors.** The provision of transit stops, bus shelters and furniture associated with them will be consistent with the streetscape image presented along the entire length of the primary collector road network. Further enhancement and detailing may occur in the village core.

[51] It is important to note that the Guidelines apply to the entirety of the Rolling Meadows SP and not just to the Rolling Meadows PoS. Other aspects of the Rolling Meadows UDGs reinforce the hierarchy of function of the roadway system in the Secondary Plan area. Neighbourhood Gateways are distinguished from Community Gateways. Neighbourhood gateways are typically located at intersections of the minor collector roads with higher level hierarchy, with some exceptions.

[52] The “Village Core” is also identified, “situated centrally within the community plan area, at the internal intersection of the two primary collector roads and will serve as the hub for community commercial and service needs”.

[53] The Rolling Meadows UDGs includes a Simplified Neighbourhood Schematic within the Rolling Meadows SP, intended to illustrate the four quadrant neighbourhood areas mentioned earlier, with the hub of the higher density Village Square (forming part of the Rolling Meadows PoS) near the center. The two intersecting primary collector roads creating the four neighbourhood quadrants shown on the Schematic (Figure 1) are Upper’s Lane (west/east) and Barker Parkway (north/south).

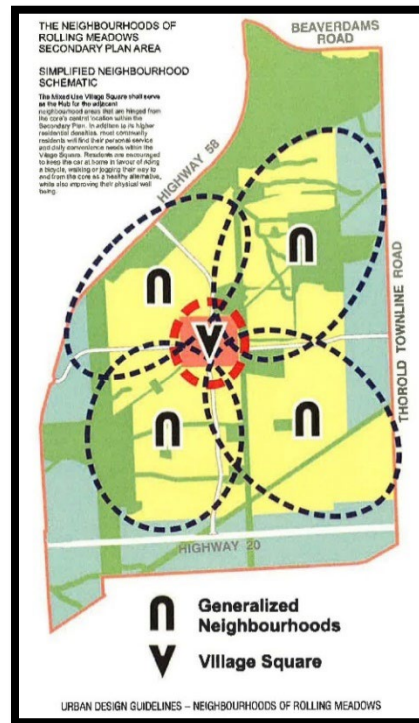


Figure 1

[54] As noted in the Context, the Rolling Meadows PoS forms only a portion of the Secondary Plan area and when overlaid the schematic in Figure 1, the lots and blocks of the subdivision are laid out within the northwest, southwest quadrants and a portion of southeast quadrant depicted in the schematic and created by Uppers and Barker.

## ANALYSIS OF THE EVIDENCE AND FINDINGS – PROJECTS A and D – BARKER PARKWAY AND UPPER’S LANE

### Function, Purpose and Hierarchy of Roads

[55] Planning is about function and growth. How a community functions and how a community evolves, adapts and transforms its functionality as it grows, is planning and development in its most fundamental form.

[56] Paying for a community's evolution of functionality as it grows in the planning process is facilitated by such vehicles as the *Development Charges Act*. Under that Act, a municipality will undertake the required consultation and study process and enact a DC By-law to identify those services that are to be paid for through development charges against land and borne by development itself in the identified area and distinguish those services that are local services to be borne by a developer relative to a specific development. Each municipality is granted the authority, under the *DC Act*, to organize their framework for the collection of funds necessary to pay for new development as a community grows and its functionality evolves and differentiate this from costs to be borne by a developer through conditions imposed under the *Planning Act*. "Growth pays for growth" is the prevailing concept.

[57] It therefore follows that a municipality's exercise of determining what is DC eligible and applying that concept of "growth pays for growth" practically involves an examination of function. If a particular service primarily functions to service the broader growth of the community at large, more than it serves the immediate and more localized needs of a developer's specific development, then it most likely falls within the rubric of "growth pays for growth".

[58] From a common-sense perspective there is little question that a broader growth-related service will also function for the benefit of an immediate and localized area of a community. The very nature of a hierarchy of roadways, as an example, involves one road leading to another, and to another, each functioning differently, some being major corridors, others being local neighbourhood streets and some roads being "in-between", all of them connected. The general question is: what is the *primary* function of each service? The specific question is: what is the primary function of each road within its context and the road hierarchy?

[59] It would accordingly appear appropriate to the Tribunal, that when it is called upon, as it is in this Appeal, to settle a dispute and decide whether a particular service

is, or is not, a local service, or a “for growth” service for which a development charge should properly and reasonably be collected under a municipality’s DC By-law, the Tribunal should be focusing upon the function of the service, which both Parties have addressed in their evidence.

[60] Portions of the evidence presented by some of the witnesses in this hearing have focused upon attempts to explain, rationalize, and reconcile the inconsistencies and differences in the various policies, and different utilized terms, that relate to Barker Parkway and Upper’s Lane. The experts in this hearing have examined the Local Service Policy, the TOP, the Rolling Meadows SP, the Rolling Meadow UDGs, mapping, prior versions of the Local Service Policy and a variety of other source materials and provided their opinion as to how they inform the issue before the Tribunal.

[61] The focus is upon that of function and purpose. The primary document to first consider is the Local Service Policy. Ultimately what must be determined is the character and function of Barker Parkway and Upper’s Lane, and the character and qualities of these two roadways. While some aspects of this evidence, in the reconciling exercise, are helpful in deciding this issue, upon the whole of the evidence, it is the Tribunal’s view that the approach to be used is that identified above. The primary functionality of Upper’s Lane and Barker Parkway as roadways, and those related traffic and transportation service costs for these two roadways as they intersect and connect with other roadways/highways, serves the analysis of the evidence of the experts presented in this hearing for the purpose of sorting out the dispute in this Appeal.

### **Projects A and D - Upper’s Lane and Barker’s Parkway – The Local Service Policy**

[62] For the reasons indicated, the Tribunal is of the view that it must first look to the Local Service Policy as the primary policy for guidance as to whether it is reasonable that Projects A and D are DC eligible. The focus has been the question of whether Barker and Uppers are considered arterial roads, external to development.

[63] The elements of an “arterial road” external to development are parsed out in the definition in the Local Service Policy as follows:

1. Roads which are **arterial roads** are defined as a category of roadway in the Local Service Policy. Other policy documents also classify certain roadways as arterial roads in the City.
2. The volume of traffic carried on an arterial road is **medium to large volumes** (versus: light to moderate volumes for collector roads or low volumes for local roads);
3. The type of traffic which is carried on an arterial road is **all types of traffic** (versus: local traffic for collector roads or local roads);
4. The speed of traffic on an arterial road is traffic moving at **medium speeds** (versus: moderate speeds for collector roads or low speeds for local roads);
5. Arterial roads in Thorold serve **major traffic flows** (versus: light to moderate volumes for collector roads or low volumes for local roads)'
6. The outlying points between which the arterial roads provides services are **between principal areas of traffic generation** (versus: traffic to arterial roads and from local roads for collector roads or traffic to abutting properties along local roads where they are designed to discourage the movement of through traffic);
7. The right-of-way width of arterial roads shall generally be from **20 m to 26 m** (versus: generally 20 m for collector roads).

**Analysis of Evidence – Barker Parkway and Upper’s Lane – Projects A and D**

[64] The Tribunal has considered the evidence in this hearing as it relates to the Local Service Policy and the other planning policies addressed by the witnesses.

[65] The Local Service Policy indicates that the defined three classifications of roadways in Section 1 are to be used for the purposes of interpreting the Policy’s guidelines as to how Roads are treated under the DC By-law. The three classes clearly create a hierarchy of function, with arterial roads being the higher order, collector roads serving the intermediate function, and local roads functioning as the low volume, low speed, smaller right-of-way roads abutting neighbourhood residential lots.

[66] The Tribunal has considered the evidence of the experts as they collectively addressed those six functional criteria of the Arterial Roads defined in the Local Service Policy: 1. medium to large volumes; 2. all types of traffic; 3. moving at medium speeds; 4. serving major traffic flows; 5. between principal areas of traffic generation; and 6. with ROW widths of 20 to 26 m.

[67] It is the Tribunal’s finding, that Barker and Uppers “check all the boxes” for the Arterial Road criteria. Within the myriad of different terms and policy coverage of roads in the various other policy documents, there is consistency in the approach in looking to the hierarchy of roads and their function and purpose.

[68] Mr. Keleher’s evidence is that, from a planning perspective, both Barker and Uppers function as the highest order Arterial Roads under the Local Service Policy, designed to carry large volumes of traffic to connect residents to the two major highways and the regional roads which border the Secondary Plan area, and beyond. Mr. Anderson, in his testimony, shared that view from the perspective of transportation planning, and function, specifically pointing to the grid system for Arterial Roads in the City. Mr. Anderson noted that given the size and scale of the Rolling Meadows SP and

based upon the development pattern in the rest of Thorold, specifically the area to the northwest shown on the Transportation and Utilities Schedule “D” to the TOP, one would expect to see the placement of higher order Arterial Roads such as Barker and Uppers within the Secondary Plan’s four neighbourhood quadrants.

[69] Mr. Anderson’s evidence included an overview of the comparatives in reference terms and the inconsistencies at how roadways are referred to in the various source documents. Ultimately, he returns to Schedule A-3 to the TOP and SP area as it identifies Uppers and Barker as Arterial Roads and Policy B1.8.14.2 of the Rolling Meadows SP, as it explains the tiered functional system (referencing Collector Roads as performing the equivalent function of Arterial Roads) and the Local Service Policy as it explains the same hierarchy of road functionality.

[70] Mr. Anderson concludes that Barker and Uppers represent the highest category of Thorold’s roads, performing a city-wide function, due to the fact that they connect directly to Provincial highways and a regional road, with transit and bike lanes through the Secondary Plan area, leading to the Village Square, and are placed to carry a significant amount of traffic through the Secondary Plan area, and connecting to the lower order local road system within the SP area. It was Mr. Anderson’s evidence that there were no other roadways within the whole of the Secondary Plan area that had the functionality of connecting it to the community and to other adjacent municipalities as it did in the overall context. In the Tribunal’s view, all of the evidence supports Mr. Anderson’s reasoned conclusion.

[71] Messrs. Anderson, Keleher and Scandlan all concur that Barker and Uppers meet all the criteria of Arterial Roads.

[72] Mr. Anderson indicates that traffic volumes on Barker and Uppers would be higher, within the medium to high range, and serve all types of traffic, moving at the expected speed for arterials, at 50 km per hour. While also serving a “local” related

function within the SP area, leading to the yellow local roads shown on Schedule A-3, Uppers and Barker primarily fit best within the definition of Arterial Roads. Mr. Maria, when asked, agreed that the two roads will have the highest volumes of traffic and the highest rates of speed within the Rolling Meadows SP area.

[73] Both Mr. Keleher and Mr. Anderson conclude that Uppers and Barker would, given their clear connectivity to Highways 20 and 58, and to the Regional Road to the west, serve the major traffic flows between points of traffic generation, in turn leading to commercial and employment areas and City-wide community amenities. Mr. Maria concurred that the Highway Commercial area along Highway 20 was a point of traffic generation. All witnesses agreed that with widths of 22 m for both Barker and Uppers, and additional turning lanes at their Village Center intersection, that they were, and would be, the widest of the streets. Mr. Keleher and Mr. Anderson concurred that these two roadways accordingly fall within the ROW width of an Arterial Road identified in the Local Service Policy.

[74] Mr. Keleher and Mr. Anderson, in their evidence, also pointed to the definition of the Collector Road in the Local Service Policy, and the criteria for that type of road, to support the conclusion that Uppers and Barker are Arterial Roads. Their opinions similarly are focused upon the hierarchy of function in the road system and that the “local roads” in Schedule A-3 of the Rolling Meadows SP, identified as collector roads in the Local Service Policy, will perform the function of moving moderate to light amounts of local traffic, at moderate speeds, to the arterial roads or to local roads, and have a ROW width of 20 m.

[75] The Tribunal has considered the evidence of Ms. Jacob and Mr. Maria as they each addressed the Local Service Policy to a more limited extent. Overall, in this regard, as to the relevance and guidance of the Local Service Policy on the issues in this Appeal, the Tribunal prefers the evidence of Messrs. Keleher, Anderson and Scandlan. As has been noted, the Local Service Policy should be given priority of

consideration to the issue at hand. Moreso, the practical importance of function, and the logical consideration of the hierarchy of the road system within the Rolling Meadows SP, the City, and the broader area, are the most sensible and helpful means of determining how Barker and Uppers are to be treated under the DC By-law.

[76] Ms. Jacob, in her testimony as an expert in Land Economics, did not recognize or discuss the manner in which the Local Service Policy provides guidance on roads through emphasis upon functional criteria. Instead, she identified Policy 1.3, and without substantive explanation, concluded that Uppers and Barker were considered a developer responsibility and not eligible for DC funding. Ms. Jacob considered the classification of these Roads as Arterial, in Schedule A-3, and commented that she was “not sure if this was an error” given the policy provisions relating to Roads in B1.8.14.2 of the Rolling Meadows SP which identified Collector Roads. Ms. Jacob’s summary conclusion, referring to the Rolling Meadows SP policies was that Barker and Uppers were Collector Roads and therefore a developer responsibility.

[77] In the Tribunal’s view, Ms. Jacob failed to undertake any meaningful examination of the Local Service Policy, provided no persuasive analysis to support her summary reliance upon the use of “Collector Road” in the Secondary Plan terminology, and provided no practical consideration of function and the common-sense consideration of the Barker and Uppers roadways in their spatial and planning context, and the specific criteria based upon function in the Local Service Policy, as did Mr. Anderson and Mr. Keleher.

[78] Ms. Jacob acknowledged in cross-examination that she relied upon Mr. Maria as the Transportation Planning expert as to the road classification, that she could not recall offhand why Mr. Maria had concluded that Upper’s Lane and Barker Parkway were Collector Roads, but agreed, in coming to that conclusion, that he made no reference to the definitions in the Local Service Policy and had not included them in his analysis. The Tribunal noted, when taken through the Local Service Policy in cross-examination

by Mr. DeMelo, that Ms. Jacob agreed that Uppers and Barker both satisfied most of the criteria for an Arterial Road in the Local Service Policy and ultimately agreeing that the “form and function of these roads” go beyond the Rolling Meadows SP and PoS.

[79] Mr. Maria’s evidence-in-chief initially recognized the functional hierarchy identified in the Rolling Meadows SP (B1.8.14.2) but, in the Tribunal’s opinion, in the whole of his evidence, he thereafter failed to recognize the same preeminent components in the Local Service Policy formulated specifically as a guideline for services to be financed by development charges versus those considered to be a local service. Further, as the Tribunal considered Mr. Maria’s evidence, he also failed to sufficiently apply a functional lens to the context of Barker and Uppers in the more comprehensive manner undertaken by Mr. Anderson and Mr. Keleher.

[80] The Tribunal also has some difficulty with Mr. Maria’s opinion that the labelling of Barker and Uppers as Arterial Roads in Schedule “A-3” of the TOP as an “oversight” and “clearly an error”. Mr. Maria instead prioritized the definition of a Collective Road in the Rolling Meadows SP, to the exclusion of the Local Service Policy, considered the TOP, the Rolling Meadows PoS, the Rolling Meadows UDGs, and concluded that Barker and Uppers were Collector Roads “internal” to the Rolling Meadows PoS under the Local Service Policy and thus local services payable by the developer.

[81] It was only in his Reply Witness Statement, and briefly in his oral evidence that Mr. Maria touched upon the Local Service Policy, opining that the definitions of the roadways there “are a bit general” and failed to specify what types of roads should be in the secondary plan.

[82] In considering Mr. Maria’s evidence in chief, and in cross-examination, the Tribunal is of the view that he has not been persuasive on the topic of internal vs. external and was unduly restrictive in his consideration of what represented growth-related services. Mr. Maria conceded to Mr. DeMelo that DC eligible services arise

from, and support, general growth throughout the City and that the Rolling Meadows SP area, inclusive of the Rolling Meadows PoS, is part of that growth. Mr. Maria nevertheless maintained a position that all development in the secondary plan area, inclusive of any arterial road, cannot be considered growth because it is serving the subdivision, internal and located “within the area to which the plan relates” and therefore not DC eligible. Mr. Maria’s stated opinion was that Barker and Uppers do not meet the Local Service Policy’s terms, contained within the Background Study “and/or” the Rolling Meadows SP and the Conditions to the Rolling Meadows PoS.

[83] The Tribunal has concluded that Mr. Maria’s opinion and position on the eligibility of Projects A and D are not persuasive because ultimately, he has ignored the guidance provided in the Local Service Policy which serves as the instructive development charges directive. Mr. Mario has instead relied upon unsupportable conclusions regarding the form and function of Uppers and Barker, relied heavily upon the wording of the policies in the Rolling Meadows SP (and dismissed Schedule A-3 as correct in the process) and, from the Tribunal’s perspective, unreasonably failed to concede that a roadway may function within a secondary plan area, be external in its function, provide connectivity through and beyond the secondary plan and represent infrastructure primarily servicing growth in the City as it is within the growth area itself, i.e. the Rolling Meadows Secondary Plan area.

[84] Mr. Maria and Mr. Anderson, in considering the classification of Barker and Uppers, also provided their opinions as to their function as against the criteria for Minor Arterials set out the TAC road classification systems. Mr. Anderson opined that both roadways meet the criteria for Minor Arterials in the TAC classification system as they have the same role and function similar to Arterial Roads elsewhere in the City and as identified in the Local Service policy. Mr. Maria disagreed and was of the view that these roadways more closely meet the TAC criteria of collector roads. The Tribunal prefers the priority given to function by Mr. Anderson, as prioritized by the Local Service Policy,

[85] On the whole of the evidence, the Tribunal prefers the transportation planning evidence of Mr. Anderson and the planning and DC related evidence of Messrs Scandlan and Keleher, supporting the identification of Uppers and Barker as functioning as higher order Arterial Roads.

[86] With the evidence leading to the Tribunal's conclusion that Barker and Uppers are Arterial Roads under the Local Service Policy it remains to consider the application of the three guiding sections, 1.1, 1.2 and 1.3 of the Local Service Policy. All witnesses spoke to the application of these sections. There was concurrence that once the Tribunal made the finding that the two roads were Arterial Roads, sections 1.1 and 1.2 would have no application. Otherwise, the witnesses diverged in their views as to how section 1.3 was to be applied.

[87] The Tribunal has considered all of the evidence of the witnesses and adopts the same consistent approach. Given that an Arterial Road cannot be internal to development, under the definitions, it can only be external. Section 1.3 presumptively directs that an external Arterial Road is to be included in a DC calculation to the extent permitted under s. 5(1) of the *DC Act* unless the circumstances demonstrate an exception. Only if "works" are "within an area to which the plan relates" and therefore a local service under s. 59 of the *DC Act*, is the cost of such works not DC eligible.

[88] The witnesses have provided differing opinions with respect to the manner in which this wording is to be considered. Ms. Jacob and Mr. Maria took the approach that since the road was spatially located within the boundaries of the Rolling Meadows PoS, they were within the subdivision area and therefore the type of local services excluded from the DC By-law.

[89] The Tribunal prefers the evidence and functional approach expounded by Mr. Scandlan and Mr. Keleher. Mr. Scandlan, who prepared the DC Background Study and

the Addendum, which included Projects A and D, summarized his evidence on this point in his witness statement (**Exhibit 5A**), and expanded upon it in his oral testimony.

Relying upon the transportation evidence of Mr. Anderson as to the higher order function of Barker and Uppers, Mr. Scandlan states:

Arterial Roads under this policy are to be included in the Development Charge calculation. An exception is provided in Section 1.3 where an external arterial may be a landowner cost if works are within an area to which a plan relates. Generally, this provision is meant to capture situations where a particular development may require localized works (such as a turning lane or sidewalks) on an existing arterial adjacent to the development.

[90] Mr. Keleher's evidence was that he recognized that there seemed to be an inconsistency, wondering how a road project could be both that "external to development" and at the same time "within the area to which the plan relates". He opines that once the road is determined to be external, based upon its form and function, it cannot also be "within" the area and he is inclined to more heavily weight his opinion on whether Project A and D were properly within the DC By-law, by looking to whether the inclusion of these projects were and are fair and reasonable, as the issue is framed in this Appeal. In that respect he concludes that these Arterial Roads, external in function and purpose to the Rolling Meadows PoS, are appropriately included in the DC By-law.

[91] On this aspect of the analysis the Tribunal accepts the submissions of the City, supported by Rolling Meadows. That is, in order to understand what is intended by internal versus external the Tribunal must be guided by the intention of this policy in the Local Service Policy and recognize that the language used in Policy 1.3 is the same language used in subsection 59(2) of the *DC Act* which Mr. Scandlan identified as necessary to capture those works external to a plan, but which relate to the plan in terms of being needed by the plan, but not serving a broader purpose and function. Mr. Scandlan gave the example of a turning lane or intersection improvement on an Arterial Road for a driveway entrance into a box store development. This would be caught by

Policy 1.3 as localized works located on an external road but relating to the development.

[92] Accepting that Uppers and Barker function as Arterial Roads to serve the entirety of the Secondary Plan area, and are not required only for the Rolling Meadows PoS, they accommodate growth and development in the whole of the Rolling Meadows SP and not just one particular plan of subdivision. They are thus fairly and reasonably included in the DC calculation to the extent permitted under s. 5(1) of the *DC Act*.

### **Summary of Findings – Barker Parkway and Upper’s Lane – Projects A and D**

[93] The Tribunal has carefully considered all of the evidence from the witnesses and the documentary evidence record. The multitude of definitions, terms, policies, mapping and documents respecting roads in the City of Thorold, and the differing and contentious approaches to interpreting the written words has been challenging. Ultimately, as has been indicated, it is the primacy of the Local Service Policy as it represents guidance for identifying DC eligible projects under the DC By-law, consistent with the governing rules applicable to DCs under the *DC Act*, and the functional purposive approach to the analysis that, in the Tribunal’s assessment, must govern.

[94] In considering the whole of the evidence as it relates to transportation planning and the character and classification of Barker and Uppers, the Tribunal makes the following findings.

- (a) When using the Local Service Policy as the guideline to determine whether a project is DC eligible or a local service there is nothing contained within the Local Service Policy that requires a reader to turn instead to other policy source documents, such as the TOP, the Rolling Meadows SP, or the Rolling Meadows UDGs. The *DC Act* naturally prevails as the governing

legislative framework, but municipal-level decisions under the DC By-law are guided by the Local Service Policy.

- (b) It is anticipated that the formulation of local service policies to support a DC By-law will be consistent with municipal planning policies and guidelines but where there are inconsistencies, or where information is required to apply the guidelines and policies in a local service policy, external policy documents such as an official plan, secondary plans and urban design guidelines may be examined to assist and inform the application of the local service policy guidelines to the delineation of DC eligible projects and local services.
- (c) The preamble wording to the identification of the types of roadways in the Local Service Policy and the policies of the Rolling Meadows SP contain an important distinction. The Local Service Policy contains guidelines to distinguish between DC eligible services and local services and the functional differences contained in the definition of the three types of roads, Arterial, Collector, and Local, serve that purpose. In contrast, the description of the four types of roads, local neighbourhood, neighbourhood collector, collector and window streets, in the Secondary Plan are provided “generally, to guide in the preparation of plans of subdivision”. This distinction is not irrelevant.
- (d) There is no policy or governing directive contained in the TOP or the Rolling Meadows SP which expressly identifies which roads in the SP area are directly the responsibility of a developer as a local service or are DC eligible. That question is determined only by the guidance and policies in section 1 of the Local Service Policy (and sections 2 and 3 as they relate to traffic signals and intersection improvements).

- (e) The growth anticipated to occur in the Rolling Meadows SP area is a part of the general growth occurring in the City. The evidence indicates that the SP area is sizeable and area-wise, proportionally represents a significant area to accommodate the City's anticipated growth and development.
- (f) The Rolling Meadows PoS represents only a portion of the entirety of the Secondary Plan area which encompasses a larger area. It is fully anticipated, and planned, that the Rolling Meadows SP will include other subdivisions in addition to the Rolling Meadows PoS. It follows that unless an infrastructure project in, and/or leading to, the Rolling Meadows SP area is directly identified as being a local service exclusively to support one specific subdivision development, such an infrastructure project is presumed to be for development throughout the entire SP area and not just one plan of subdivision, such as the Rolling Meadows PoS. The Local Service Policy must be applied in this context.
- (g) Insofar as roads are concerned, both the Local Service Policy and the Rolling Meadows SP recognize a hierarchy of road types determined by functional criteria. The Local Service Policy addresses the hierarchy of roads and project services in all development areas to which the DC By-law applies. Policy B1.8.14.1 dealing with "Road Network" in the Rolling Meadows SP addresses the hierarchy of roads and services in the whole of the SP area.
- (h) The Local Service Policy, on its face, anticipates that in the hierarchy of the road network, some roads will be "local" in the sense that they will directly service a plan of subdivision or components and segments of a subdivision. It also anticipates that some roads will provide connectivity and serve a broader, growth-related function for connectivity to, and from, the greater community and the regional and provincial areas from lands within the

Rolling Meadows SP area. Such roadways represent part of the broader transportation and road network such that they will allow for connectivity for residents outside of the SP area travelling through the SP area. This latter type of road, functioning for such broader connections, accommodates growth.

- (i) The Local Service Policy provides a means to determine, within the road hierarchy, whether a road, on the one hand, primarily functions as a local road in a subdivision or primarily servicing the subdivision or, on the other, functions in a broader fashion. The latter are identified in the Local Service Policy as Arterial Roads, external to development (and not within the area to which the plan relates). They are growth related roads, support development throughout the City and the SP area and are DC eligible.
- (j) The former type of roads are collector roads internal to development. They are the responsibility of the developer, pursuant to a subdivision or other development agreement.
- (k) Upon the whole of the evidence, Barker Parkway and Upper's Lane function, or are intended to function, as follows:
  - 1. they connect points of the regional highway network, i.e. two provincial highways, or one provincial highway and a regional road;
  - 2. they connect principal areas of traffic generation; they thus serve to create broader connectivity from north to south and west to east. In the case of Uppers, it crosses over Hwy 58 to the west, and connects to Allanburg Road which swings north into the developed area between Hwy 58 and the Canal. To the east, Uppers connects to Regional Townline Road and from there north or south;

3. they also act as connectivity routes within and through the entire SP area, including the central Village Square intended to be the central “village core”, not just for the Rolling Meadows PoS, but “throughout the community” for the entirety of the SP area;
  4. they connect residential neighbourhoods of the Rolling Meadows PoS, and will connect residential neighbourhoods of future plans of subdivision in the whole of the SP area, to the lower order collector roads and then to interior local subdivision streets to permit connectivity of these SP residential areas to other parts of the SP area and to the same highways and regional road network in items 1 and 2 above;
  5. they function as the highest order roads within the SP area, being the widest roads, accommodating the highest volume or traffic in medium to large amounts, at the highest speed.
- (l) The Tribunal has considered the Appellant’s submission that is dismissive of Mr. Keleher’s reliance upon his conclusion that Barker and Uppers serve a broader function due to their connections to the broader road network. The Appellant argues: “all roads connect to other roads; this cannot be the basis for finding an external function.” To the Tribunal view, this is incorrect. Connectivity *can* be a basis for finding that a road primarily functions in an external fashion, as the assessment above indicates. The consideration is not simple connectivity but instead the *degree* and *nature* of connectivity of the roads, *in their context*, and the function achieved by such connectivity. This was the “practical and purpose-based approach” that has been relied upon by the Tribunal previously in other decisions, inclusive of the decision cited by the Appellant, *Ocean Club Residences Inc. v. Toronto (City)* 2020

LNONLPAT 576. The decision of the Ontario Superior Court of Justice, Divisional Court, on appeal of the Tribunal's decision, in the three questions of law put before it, did not alter that approach.

- (m) With the functions identified, as the highest order roads within the hierarchy in the Local Service Policy, the Tribunal specifically finds that Barker Parkway and Upper's Lane are Arterial Roads. This is consistent with the identification of these roads as "Arterial Roads" in Schedule A-3 to the TOP and the road hierarchy in the Rolling Meadows SP.
- (n) Although differently termed, this classification in the Local Service Policy is consistent with the road hierarchy identified in the Rolling Meadows SP, where the highest order road identified "to guide in the preparation of plans of subdivision" is the Collector Road. While there is obviously a lack of consistency in the terminology, the policies of the TOP, the Rolling Meadows SP and the Rolling Meadows UDGs are adequately reconciled with the roadway hierarchy and network identified in the Local Service Policy which prevails as the primary guidance for this Appeal and the City's DC By-law.
- (o) Further, both roadways function in a manner that is *external* to the Rolling Meadows PoS and will, as planned, function external to all other subdivision plans that will be added to the growth of the Rolling Meadows SP. It is certainly the case that the Rolling Meadows Plan of Subdivision (**Tab 16**) identifies the areas designated for both Uppers and Barker, but the Tribunal agrees that most roadways will be shown on a plan of subdivision, and the existence of both Barker and Uppers on the PoS does not summarily mean that they are "internal" to the subdivision.

- (p) The Local Service Policy does not identify, or provide, for an “internal” Arterial Road; only an external Arterial Road.
- (q) The Tribunal agrees with the Town and Mr. Gordon, and specifically Mr. Keleher’s and Mr. Scandlan’s evidence, that “external” vs. “internal” is about purpose and function and not physical location. The Tribunal also agrees with the City’s submission that the references to “internal” or “external” to the plan relate to the relationship between the “works” and the development. This is consistent with s. 59(2)(a) of the *DC Act* and reflects the reality that there will sometimes be circumstances where a developer is expressly required to undertake certain works necessary for the development.
- (r) Excepting road works that are external to a plan of subdivision but specifically relate to that plan in terms of being needed by the plan, and function for that purpose, (the box store example) and not for a broader purpose, all Arterial Roads are external and DC eligible.
- (s) For the purposes of Policy 1.3 of the Local Service Policy, given the purpose and function of the highest order Arterial Roads, Barker Parkway and Upper’s Lane are accordingly external to the plan of subdivision.
- (t) Accepting that Uppers and Barker function as Arterial Roads to serve the entirety of the Secondary Plan area, and are not required only for the Rolling Meadows PoS, they accommodate growth and development in the whole of the Rolling Meadows SP, and not just one particular plan of subdivision.

[95] Upon these findings and this analysis, preferring the evidence of Mr. Scandlan, Mr. Keleher and Mr. Anderson, the Tribunal finds that based upon their function, form

and context, Barker Road and Upper's Lane are Arterial Roads which are external to development and do not fall within the exception in Section 1.3 of the Local Service Policy. They are not local roads and are properly in the DC By-law as eligible for inclusion as growth related projects which are to be paid through development charges.

**ANALYSIS OF THE EVIDENCE AND FINDINGS - PROJECTS B AND C –  
SIGNALIZATION OF BARKER PARKWAY AND HWY 58 INTERSECTION AND  
INTERSECTION IMPROVEMENTS AT BARKER PARKWAY AND HIGHWAY 20**

[96] The Tribunal will deal with these Projects together.

[97] The Tribunal has considered all of the evidence from the witnesses on the inclusion of the traffic signalization at the intersection of Barker Parkway and both Provincial Highways No. 58 and 20 and the relevant documents referred to the Tribunal. For the reasons that follow, this signalization and intersection works are properly included as DC eligible projects in the DC By-law supported by the DC Background Study as amended.

[98] The Tribunal has determined that Barker Parkway is an Arterial Road serving a broader function for the community. The signal works required at the intersection of this highest order roadway, with the Provincial Highways to the northwest and south of the Rolling Meadows SP area, have been planned for, and will accommodate, the growth occurring in the SP area and cannot be determined to be required only to service the Rolling Meadows PoS.

[99] The overwhelming evidence relating to the nature of these required works, and the Local Service Policy, supports a finding that Projects B and C are properly DC eligible. Section 2.1 of the Local Service Policy clearly provides that traffic signalization within or external to a development is to be included in the DC calculation to the extent permitted under s. 5(1) of the *DC Act*. Section 3.4 provides that improvements at

intersections with provincial highways are to be included in the DC calculations to the extent that they are a City responsibility. The witnesses have not disagreed with this underlying conclusion. Specifically, Ms. Jacob and Mr. Maria agreed in their testimony, as to the City's responsibility for such works.

[100] The Tribunal agrees with the City's submission that these circumstances are quite different from signalization or intersection works on a Provincial highway that would be necessary specifically to accommodate an intersection necessary to provide direct access to a box-store development off a provincial highway.

[101] The issues however, as raised by the Appellant, is that the operation of planning policy within the Rolling Meadows SP and the added Condition 61 to Rolling Meadows PoS and in the Subdivision Agreement between Rolling Meadows and the City as they apply to intersection works at the Provincial highways, takes these Projects out of the operation of the DC By-law and the Local Service Policy and creates a permitted exception to obligate the owner of the Subdivision to assume financial responsibility for this Project.

[102] Ms. Jacob, and Mr. Maria have both advanced two-fold opinions to support the Appellant's position.

[103] With respect to the policy argument, Ms. Jacob's evidence, supported by Mr. Maria's similar opinion, is that the Rolling Meadows SP Policies B1.8.13.2 and B1.8.14.2 together provide that this signalization work and intersection improvements are located at the intersection of a collector road and a Provincial Highway and is the responsibility of the developer or the Province and thus is not able to be included in the DC By-law nor the subject of any credit agreement for the benefit of Rolling Meadows.

[104] Condition 61 was a condition identified in the modifications arising for the Rolling Meadows PoS identified in the Staff Report in September 2020 (**Tab 18**) which was

previously condition 45 to the original PoS and Agreement (**Exhibit 16**). The references to the roads/streets were changed. Condition 61, as revised, reads as follows:

That prior to final approval, the owner shall enter into a legal agreement with the Ministry of Transportation, whereby the owner agrees to assume financial responsibility for the design and construction of the intersections and associated turn/auxiliary land(s) (*sic*) of Highway 58 and Street 1 (Barker Parkway), Highway 20 and Street 1 (Barker Parkway) and Highway 20 and Street 4 (Crimson Avenue).

[105] Ms. Jacob and Mr. Maria both opine that Condition 61 clearly indicates that these projects are to be a developer responsibility and not a City responsibility and thus not properly to be included for the purposes of the DC By-law.

[106] It is the Tribunal's view that Ms. Jacob's, and Mr. Maria's opinions are not supportable. First, the Tribunal has determined that Barker Parkway is an Arterial Road and not a collector road, whose function, under the Local Service Policy results in Barker Parkway being DC eligible and appropriately included in the DC By-law. Ms. Jacob's and Mr. Maria's opinion as to the manner in which Policy B1.8.14.2 identifies Barker (and Uppers) as part of the collector road network, rather than higher order Arterial Roads as shown in Schedule A-3 to the Rolling Meadows SP and TOP has not been accepted by the Tribunal.

[107] Second, the Tribunal has determined that the Local Service Policy guidance, specifically enacted by the City to govern the determination of DC eligible works and the payment framework for growth and development, must prevail over the Rolling Meadows Secondary Plan, whose purpose under the *Planning Act*, is to provide planning policy for the growth and development plans in the community. Ms. Jacob's, and Mr. Maria's underlying reliance upon the Rolling Meadows SP to support their conclusions is misdirected.

[108] Third, in the Tribunal's view, the identified policies in the Rolling Meadows SP do not, as Ms. Jacob and Mr. Maria conclude, transfer responsibility for the signalization or

intersection improvements identified in Policy B1.8.13.2 as the limited responsibility of Rolling Meadows Land Development Corporation, a single developer within the whole of the Rolling Meadows SP. Rather, this section identifies such works required in the SP area to be the responsibility of the whole “development community”, as identified in the policy. Having the cost of growth and development projects shared amongst the whole development community – as growth pays for growth - is the practical result of the operation of the *DC Act* as it envelopes broader community and growth-related costs into the DC By-law.

[109] In the Tribunal's view, Mr. Maria's testimony suggesting that the additional word “temporarily” should be present to give effect to such an interpretation, ignores the plain meaning of the words in the context of the *DC Act* as it applies to DC eligible projects. When read as a whole, inclusive of the preamble, Policy B1.8.13.2 is identifying infrastructure improvements necessary to accommodate development within the whole of the Neighbourhoods of Rolling Meadows, making off-site upgrading and expansion of infrastructure necessary. In this context, the Tribunal finds that this secondary plan policy is identifying infrastructure to support growth in the community and that the development community as a whole is to contribute. This contribution occurs through the operation of the *DC Act*, the DC By-law and the Background Study and Local Service Policy.

[110] Ms. Jacob's, and Mr. Maria's, analysis also fails to recognize the operation of the *DC Act* to permit works to be performed by a developer and “front-ended” with a subsequent credit given to the developer. The Policy also recognizes that under the provincial structure of highway jurisdiction and responsibilities, certain works are the responsibility of the Province, and the Policy correctly notes this and is worded to provide for that possibility.

[111] This failure to recognize the operation of the *DC Act* to permit works to be performed by a developer and “front-ended” with a subsequent credit given to the

developer also impacts the shared opinion of Ms. Jacob and Mr. Maria, as to the effect of Condition 61, which the Tribunal does not consider reasonable. The obligation of Rolling Meadows to “assume financial responsibility for design and construction” of the intersection improvements at the intersections and the signalization at Barker and Hwy 58 does not, in the Tribunal’s view alter the operation of the *DC Act*, and the City’s ability under its DC By-law and any credit agreements, to formalize arrangements for the expedient performance of works by the developer and simply reimburse the developer through credits afterwards. That is the case here and Ms. Jacob, on cross-examination, conceded that the *DC Act* allowed for front-ending of works with subsequent credit and that nothing in Condition 61 denies Rolling Meadows the opportunity to receive such credits.

[112] The intersection work and signalization forming Projects B and C are not local services. As the Tribunal has noted earlier in this decision the *DC Act* prohibits a municipality from imposing a charge relating to a development to a developer, unless it fits within the definition of a local service under s. 59(2). If it is a DC cost and identified as such, and the developer does perform the work, then a credit is due. Under s. 59(3) and s. 38(1) of the *DC Act*, a condition can be in place that requires the work to be performed by a developer for work that is DC related but is required to give the owner a credit for such works or services. That is the case here.

[113] The Tribunal accepts Mr. Keleher’s and Mr. Scandlan’s opinions, that the interpretation given to Condition 61 by the Appellant is unacceptable because the agreement cannot make DC eligible project services become local services. As Mr. Scandlan indicated: “The wording [of Condition 61] provides that the developer will assume financial responsibility however, in my opinion, this does not remove the ability for these projects to be included as development charge projects and for the developer to fund these works and receive a credit against their development charges payable.”

[114] The Tribunal also accepts the submission of the City and Rolling Meadows that the requirement under Condition 61 speaks to the reality that, because the works at issue in the Appeal are at the intersections with the Provincial highways, the City does not have jurisdiction or control of matters of design or construction of the intersection improvements or signalization and must thus transfer the reporting and approval of the works to the Ministry of Transportation under Condition 61. It is apparent to the Tribunal, and Messrs Scandlan, Keleher, Anderson and Maria agreed, that s. 3.4 of the Local Service Policy is consistent with this construct. If the costs of intersection expenses are to be paid by the Ministry of Transportation, they will be covered but where all, or a portion, of works do not accommodate Ministry highway planning, and is instead required as a result of City's planning, such expenses are the City's responsibility.

[115] Logically continuing, the Tribunal finds that as the DC framework then operates, such works are properly and reasonably included by the City in the DC calculations and thus paid for by the development community. Continuing full circle, where the developer has, in the case here, agreed to be financially responsible for coordinating the design and construction with the Ministry of Transportation, and pays such costs, the developer is entitled to recover such DC eligible costs through credits. Condition 61 does not alter this.

[116] The Tribunal has given consideration to the Subdivision Agreement, introduced by the Appellant as Exhibit 16. The similar wording of the condition requiring Rolling Meadows to cover the intersection expenses in s. 7.14.3 and Condition 61 is noted. The agreement does not, as noted, alter the operation of s. 38 the *DC Act* as it applies to DC eligible projects which are not local services. The Agreement can not make projects and services which are DC eligible become local services, contrary to the *DC Act*.

**Additional Matters**

[117] Various matters were raised in the evidence or submissions that can be addressed briefly.

[118] The content of a legal opinion that was provided to Council relative to the issues to be decided on this Appeal was introduced and addressed in the hearing. To some degree, Ms. Jacob's opinions are based upon this legal opinion. This is, for obvious reasons, irrelevant to the Tribunal's consideration of the evidence and determination of the appeal. The Tribunal is ultimately called upon to decide the issues and it has considered the submissions of all three parties as to the application of the legislation, policies and guidance provided by the Local Service Policy, which was notably given very limited relevance in that legal opinion, without consideration of the defined classes of roads in that Policy, relying mostly upon the TOP and Rolling Meadows SP. Ms. Mauro, when testifying as to her role in the process of determining the DC eligibility of the four Projects, indicated that staff had made no independent conclusion on those determinations and relied upon the "lawyer's letter", and had that letter been different, the recommendations to Council would also "without a doubt" have been different.

[119] The Appellant's witnesses introduced prior versions of the Background Studies conducted in prior years to support certain points raised in the hearing. Though it is possible that information regarding prior treatment of Projects in the DC By-law could have some bearing in an appeal relating to a development charge by-law, in this case the manner in which the City previously included or excluded projects and services as DC eligible or local services in prior background studies or DC By-laws is ultimately of little assistance to the Tribunal in this hearing. There is a practical reason why a municipality is required to secure a new background study each time it enacts a development charge by-law. As a community develops, transitions, grows and updates its planning policies, so too will its development charges framework also adapt and change, provided there is compliance with the requirements of the *DC Act*. There is

naturally a continuity of treatment and approaches that will be seen when examining prior background studies and DC by-laws, and that continuity may be a relevant consideration, but the primary focus, as is the case here, must be the DC By-law and its related Background Study that is the subject of the appeal.

## **SUMMARY OF DISPOSITION**

[120] The Tribunal has carefully considered all of the witness statements and oral testimony of the witnesses inclusive of cross-examination and all of the documents and materials submitted as exhibits in the evidentiary record. The Tribunal has considered the application of the *DC Act*, the extensive written and closing submissions on behalf of each of the three parties, and the authorities submitted.

[121] Upon the whole of the evidence and in considering those submissions, the Tribunal finds that it is fair and reasonable that Projects A, B, C, and D, as challenged in the Appeal, and identified in this Decision, are eligible, and therefore properly identified in the City's DC Background Study, inclusive of Addendum No. 1, and included in the City's DC By-law.

[122] Specifically, upon the findings regarding the form, function and purpose of Barker Parkway, Upper's Lane, and the signalization and intersection works, in their physical and spatial context, and in the context of the City's planning policies inclusive of those set out in the Rolling Meadows SP, the Tribunal finds that all of the works encompassed within the four Projects are not local services under the City's Local Service Policy, Exhibit E, forming part of the DC Background Study.

[123] For these reasons, the Appeal should be dismissed.

**ORDER**

[124] **THE TRIBUNAL ORDERS** that the Appeal is dismissed, and the City of Thorold Development Charges By-law No. 46-2019 remains in force and effect.

*“David L. Lanthier”*

DAVID L. LANTHIER  
VICE-CHAIR

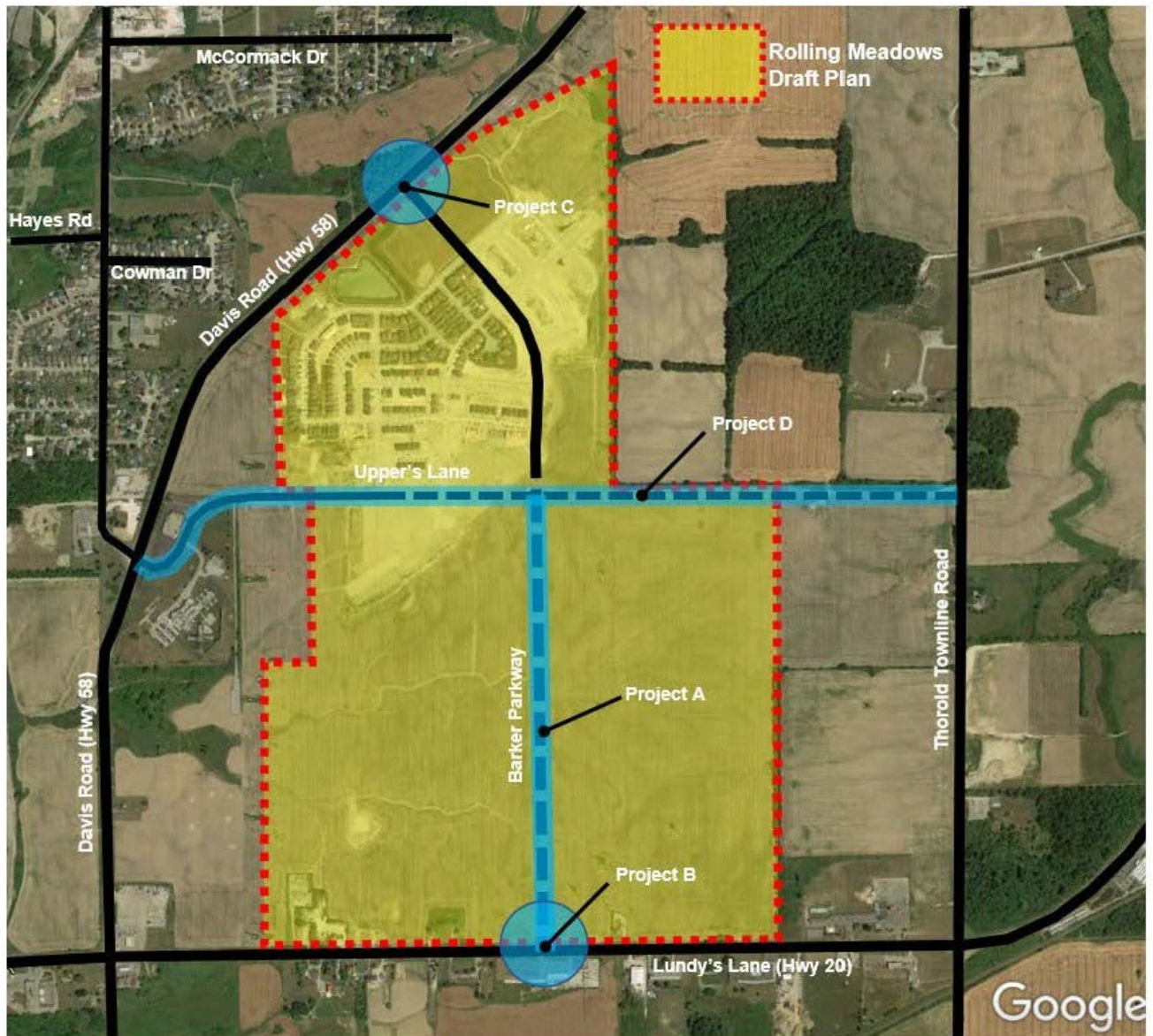
**Ontario Land Tribunal**

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The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal (“Tribunal”). Any reference to the preceding tribunals or the former Ontario Municipal Board is deemed to be a reference to the Tribunal.

**Attachment 1****DOCUMENT EXHIBIT LIST****DC190020 (OLT-21-001867)  
January 10 to January 17, 2022**

<b>Exhibit</b>	<b>Document</b>
1	Joint Document Book (1738 p.)
2A	Witness statement of Audrey Jacob
2B	Reply Witness statement of Audrey Jacob
3A	Witness statement of William Maria
3B	Reply Witness Statement of William Maria
4	Will Say Statement of Maria Mauro
5A	Witness statement of Gary Scandlan
5B	Reply Witness statement of Gary Scandlan
6A	Witness statement of Daryl Keleher
6B	Reply Witness statement of Daryl Keleher
7A	Witness statement of Stuart Anderson
7B	Reply Witness statement of Stuart Anderson
8	Agreed Statement of Facts dated December 20, 2021
9	Full Version of Letter of April 12, 2019 from Mr. Shedden to Thorold re: Projects for Inclusion
10	Schedule A5 to the Plan (boundaries of the Port Robinson Secondary Plan)
11	CV - Maria Mauro
12	Executed Acknowledgement – Maria Mauro
13	Internal DC Team Email dated February 28, 2019
14	2 Google Maps Showing Barkers Parkway (Document 3)
15	Motion Record for Party Status (Document 1)
16	Registered Subdivision Agreement – Glen Gordon Dec 03, 2010
17	Cost Sharing Agreement – June 5, 2018 – City and 2524964 Ontario Inc. (Document 6 pwd. Coffee)
18	Acknowledgement of Expert's Duty Stuart Anderson
19	CV – Stuart Anderson
20	Model Urban Design Guidelines for the Regional Municipality of Niagara

**Attachment 2**

[illegible]

## Attachment 4

