

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



ISSUE DATE: July 27, 2018

CASE NO(S): PL170301
PL170682

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

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

Applicant and Appellant: Brian Domm Farms Ltd.
Subject: Proposed Plan of Subdivision - Failure of the Region of Waterloo to make a decision
Purpose: To permit a multiple residential and mixed-use development
Property Address/Description: Part of Subdivision Lot 1, Concession 12
Municipality: City of Cambridge
Municipality File No.: 30T-16103
OMB Case No.: PL170301
OMB File No.: PL170301
OMB Case Name: Brian Domm Farms Ltd. v. Cambridge (City)

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

Applicant and Appellant: Hallman Construction Ltd.
Subject: Proposed Plan of Subdivision - Failure of the Region of Waterloo to make a decision
Purpose: To permit a multiple residential and mixed-use development
Property Address/Description: Part of Subdivision Lot 1, Concession 12
Municipality: City of Cambridge
Municipality File No.: 30T-16104
OMB Case No.: PL170301
OMB File No.: PL170302
OMB Case Name: Hallman Construction Ltd. v. Cambridge (City)

PROCEEDING COMMENCED UNDER subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	Brian Domm Farms Ltd.
Applicant and Appellant:	Hallman Construction Ltd.
Subject:	Request to amend the Official Plan - Failure of the City of Cambridge to adopt the requested amendment
Existing Designation:	Low/Medium Density Residential & Natural Open Space System
Proposed Designated:	New Secondary Plan - Cambridge West Community
Purpose:	To permit a multiple residential and mixed-use development
Property Address/Description:	Part Of Subdivision Lot 1, Concession 12
Municipality:	City of Cambridge
Approval Authority File No.:	R11/16
OMB Case No.:	PL170301
OMB File No.:	PL170320

PROCEEDING COMMENCED UNDER subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	Brian Domm Farms Ltd.
Applicant and Appellant:	Hallman Construction Ltd.
Subject:	Request to amend the Official Plan - Failure of the City of Cambridge to adopt the requested amendment
Existing Designation:	Low/Medium Density Residential & Natural Open Space System
Proposed Designated:	Low/Medium Density Residential & Natural Open Space System subject to Special Policies
Purpose:	To permit a multiple residential and mixed-use development
Property Address/Description:	Part of Subdivision Lot 1, Concession 12
Municipality:	City of Cambridge
Approval Authority File No.:	07/14
OMB Case No.:	PL170301
OMB File No.:	PL170321

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

Applicant and Appellant:	Brian Domm Farms Ltd.
Subject:	Application to amend Zoning By-law No. (150-85)- neglect of the City of Cambridge to make

Existing Zoning: a decision
Holding Residential Three(H) R3 & Open Space OS 1

Proposed Zoning: R6, RM3, RM4 & RM3, RM4, OS1, OS4 or N2

Purpose: To permit a multiple residential and mixed-use development

Property Address/Description: Part of Subdivision Lot 1, Concession 12

Municipality: City of Cambridge

Municipality File No.: R11/16

OMB Case No.: PL170301

OMB File No.: PL170322

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

Applicant and Appellant: Hallman Construction Ltd.

Subject: Application to amend Zoning By-law No. (150-85) - Neglect of the City of Cambridge to make a decision

Existing Zoning: Holding Residential Three(H) R3 & Open Space OS1

Proposed Zoning: R6, RM3, RM4 & RM3, RM4, OS1, OS4, C2, CS5 or N1

Purpose: To permit a multiple residential and mixed-use development

Property Address/Description: Part of Subdivision Lot 1, Concession 12

Municipality: City of Cambridge

Municipality File No.: R11/16

OMB Case No.: PL170301

OMB File No.: PL170325

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

Applicant and Appellant: Huron Creek Holdings Corp.

Subject: Proposed Plan of Subdivision - Failure of the Region of Waterloo to make a decision

Purpose: To permit a residential development

Property Address/Description: Part Lot 2, Concession 102

Municipality: City of Cambridge

Municipality File No.: 30T-16105

OMB Case No.: PL170682

OMB File No.: PL170682

OMB Case Name: Huron Creek Holdings Corp. v. Cambridge (City)

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

Applicant and Appellant:	Huron Creek Holdings Corp.
Subject:	Application to amend Zoning By-law No. (150-85) - Neglect of City of Cambridge to make a decision
Existing Zoning:	Holding Residential Three(H) R3
Proposed Zoning:	Residential 5, Residential 6 (R-5 and R-6)
Purpose:	To permit a residential development
Property Address/Description:	Part Lot 2, Concession 102
Municipality:	City of Cambridge
Municipality File No.:	R21/16
OMB Case No.:	PL170682
OMB File No.:	PL170702

Heard: June 19-22, 25-26 and 28, 2018 in Cambridge, Ontario

APPEARANCES:

Parties

Brian Domm Farms Ltd.
Hallman Construction Ltd.
Huron Creek Holdings Corp.

City of Cambridge

Regional Municipality of Waterloo

Waterloo Region District School Board

Grand Ridge Estates Ltd.

rare Charitable Research Reserve

Counsel/Representative*

Robert Howe

Kelly Yerxa

Fiona McCrea

Steven O'Melia

Eric Davis

Stephanie Sobek-Swant*

DECISION OF THE TRIBUNAL DELIVERED BY GERALD S. SWINKIN AND JOHN DOUGLAS

[1] This seven day hearing was a testament to the achievement of excellent collaboration together with the pitfalls of failed communication, a celebration of splendid iterative planning along with mutual allegations of the placing of impediments to the

legitimate aspirations of other parties to the process.

[2] The *dramatis personae* in this hearing event were as follows:

- a) the landowners who spearheaded the planning process to establish the new Secondary Plan area known as Cambridge West by the filing of an application for an Official Plan Amendment for that purpose, Brian Domm Farms Ltd. (“Domm”) and Hallman Construction Ltd. (“Hallman”), both of whom also sought draft plan approval for the subdivision of their respective lands and amendment of the Zoning By-law to implement the uses intended for the subdivided land (these two owners shall collectively be referred to herein as the “Owners”);
- b) a landowner who came subsequently into the fold with an application for draft plan approval and associated amendment to the Zoning By-law, Huron Creek Holdings Corp. (“Huron Creek”);
- c) a landowner who has no active development applications in process but who has an interest in the outcome of this proceeding as its land will be contained within the Cambridge West Secondary Plan, Grand Ridge Estates Ltd. (“Grand Ridge”);
- d) the City of Cambridge (the “City”), being the municipality in which all of the landowner lands are located, whose Council has a direct and primary responsibility for the planning of this designated greenfield area;
- e) the Regional Municipality of Waterloo (the “Region”), which is the upper tier municipality of Cambridge, having an interest in the protection of Regional and Provincial policy, and which is the approval authority with respect to lower tier official plan amendments and with respect to the granting of draft plan approval;

- f) the Waterloo Region District School Board (the “School Board”), which has responsibility for providing public school education within Waterloo Region and which in this instance has identified the need for an elementary school site within the proposed Secondary Plan area;
- g) *rare* Charitable Research Reserve (“*rare*”), which is a land trust of over 364 hectares (“ha”) located in the confluence of the Grand and Speed Rivers, which lands border a portion of the area to be contained within the Cambridge West Secondary Plan area;
- h) Karen Ballard, a resident of the existing adjacent neighbourhood and a member of the West Galt Neighbourhood Protection Association, who had Participant status in the proceeding; and
- i) Susan Stublely, whose family owns an 83 acre parcel of land in the Township of North Dumfries to the west of the Cambridge West Secondary Plan area, which parcel of land accommodates most of Barrie’s Lake, who had Participant status in the proceeding.

The Matters before the Local Planning Appeal Tribunal (the “Tribunal”)

[3] The Domm, Hallman and Huron Creek appeals resulted in the following matters being before the Tribunal, all of which were appeals by reason of the failure of the approval authority or the municipal council, as the case may be, to make a decision on the Owner’s application within the time limits prescribed by the *Planning Act* (the “Act”):

- a) an Amendment to the City of Cambridge Official Plan to amend four maps: Map – General Land Use, Map 7a – Major Transportation Facilities and Hydro Corridors, Map 10 – Floodplains, Map 13 – Subwatersheds and Drainage Areas, and a minor text amendment in the nature of housekeeping to Section 1.3.3 to include reference to the new Section 17 Cambridge West Secondary Plan provisions;

- b) an Amendment to the City of Cambridge Official Plan to include the new Cambridge West Secondary Plan policies and mapping, and to implement the Cambridge West Master Environmental Servicing Plan (“MESP”) and the Municipal Class Environmental Assessment process with respect to the collector road system;
- c) the Domm draft plan of subdivision;
- d) the Hallman draft plan of subdivision;
- e) the Huron Creek draft plan of subdivision; and
- f) applications for amendment of City of Cambridge Zoning By-law No. 150-85, as amended, with respect to the Domm, Hallman and Huron Creek lands.

The Status of the Appeals at the Commencement of the Hearing

[4] By the time of the commencement of the hearing, the bulk of the matters that had been in contention were settled amongst the Parties and essentially came before the Tribunal as a settlement.

[5] Those matters which were not settled were defined by an Issues List which had been pared down from that which was originally established. The outstanding issues were all related to matters raised by the School Board.

[6] The Participants advanced their views and concerns in the afternoon of the first day of the hearing. In response to those views and concerns, Mr. Howe called three professional witnesses immediately following the Participant presentations. Those professional witnesses were a consulting civil engineer and two ecologists. Those matters will be touched upon further on in these reasons for Decision but suffice it to say for present purposes that the Tribunal was satisfied that the concerns raised by the

Participants were fully and adequately addressed by the responding professional witnesses.

[7] The Tribunal heard testimony from five professional planning witnesses. The testimony from these witnesses addressed the required confirmation that the approval of the policy documents and plans would be consistent with the Provincial Policy Statement (the “PPS”), would conform with the Growth Plan for the Greater Golden Horseshoe (the “Growth Plan”), would conform with the Region of Waterloo Official Plan (the “Regional OP”) and would be in keeping with the principles and conform with the City of Cambridge Official Plan (the “City OP”).

[8] The five planners were essentially in accord on the appropriateness of the requested approvals in order to create this new Cambridge West Secondary Plan area and to parcelize it according to the draft plans and zone it to implement the planning intention.

[9] This general accord though did not apply with respect to the treatment of the school site block. The School Board, after careful work with Domm, Hallman and the City, did confirm that the final configuration and location of the school site block was acceptable and met their School Site Selection criteria. However, there was no accord over the staging plan proposed by the Owners. There was no accord over the composite zoning which was being proposed for the school site block by the Owners and the City. And there was a clear issue over the nature of the treatment which would occur at the intersection of Bismark Drive and Newman Drive, which occurs at the front of the school site block.

The Area Context

[10] The Cambridge West Community, as the subject area is referenced, is located in the southwest area of the City of Cambridge and represents one of the City's last remaining undeveloped designated greenfield areas. The Cambridge West Community is approximately 90 ha (220 acres) in size. Devil's Creek, a tributary of the Grand River,

and open space lands are located to the east. The Canadian Pacific rail line is located to the south. The Township of North Dumfries is located to the west and north. Existing low-density residential development is located to the northeast. Most of the lands within the Cambridge West Community are owned by four landowners, all of whom were represented at this hearing.

[11] The Cambridge West lands are designated Urban Designated Greenfield Area on Map 3a — Urban Area of the Regional OP (2009). The lands are currently designated as "Low/Medium Density Residential" and "Natural Open Space System" on Map 2 — General Land Use Plan of the City OP (2012). The Low/Medium Density Residential Designation is intended for residential development as well as low impact community uses in certain locations. The "Low/Medium Density Residential" designation permits residential development up to 40 units per ha.

[12] The lands are currently zoned Residential Three (R3) with holding provisions and Open Space (OS1). The holding provisions relate to the provision of infrastructure which has been planned in the context of the comprehensive and integrated process that has occurred.

The Proposed Cambridge West Secondary Plan

[13] The planning rationale and process that ensued to create the planning instruments was fully explained by the consulting planner retained by Domm and Hallman, Paul Britton. Mr. Britton is a seasoned planning consultant with many years of experience particularly in Waterloo Region. He and his firm led the process of developing the proposed Secondary Plan, the Domm and Hallman draft plans and associated zoning, and co-ordinated with the Huron Creek ownership and consultants. He and the other consultants retained by Domm and Hallman were also continuously involved in the MESP and Collector Road Class Environmental Assessment.

[14] The Tribunal here sets forth the evidence provided by Mr. Britton with respect to the Secondary Plan. The four other planning witnesses concurred in the explanation

and opinions expressed by Mr. Britton, save for Shawn Callon, the planner for the School Board, who had divergent opinions as it related to the availability of the school site block but not on the provision of the school site or its location and configuration.

[15] As explained by Mr. Britton, the Secondary Plan was designed to contribute to a complete community that is well connected to the existing urban residential neighbourhoods to the east and northeast. The Secondary Plan establishes the principles for the design and development of the residential community, and establishes the general land use patterns and conceptual locations of community infrastructure such as schools, commercial areas, parks and trails, roads, and services. The Secondary Plan builds on the framework and recommendations of the approved Cambridge West MESP.

[16] The Secondary Plan will be serviced by a system of collector roads, the alignment of which have been determined through the Cambridge West Collector Roads Class Environmental Assessment, the preparation of which has been integrated with the planning process for the Secondary Plan and plans of subdivision.

[17] Bismark Drive is a north-south collector road that will function as the spine of the community, that can evolve into a transit supportive corridor. Two Community Focal Points will be centred around major intersections along this corridor. Residents within the Cambridge West community will be provided with a variety of housing, transportation, community, commercial and recreation options. Two neighbourhood parks totalling approximately 4.65 ha in area located in the central part of the community along Bismark Drive are proposed.

[18] Community Focal Point 1 is located at the intersection of Newman Drive and Bismark Drive. Community Focal Point 1 will have a residential and community infrastructure orientation and will permit uses such as schools, parks, places of worship, health care facilities and recreation facilities as well as higher density multiple residential uses.

[19] Community Focal Point 2 is located at Blenheim Road and Bismark Drive. Community Focal Point 2 will have a commercial retail and service orientation and will permit uses such as a food store and other local serving retail and service commercial uses as well as higher density residential uses.

[20] The Secondary Plan also provides for a Natural Open Space System that is based on, and implements, the Natural Heritage Strategy of the Cambridge West MESP. The Natural Open Space System retains and protects all provincially, regionally and municipally designated natural features including provincially significant wetlands, the adjoining Blair-Bechtel-Cruickston Environmentally Sensitive Landscape (ESL) and Core Environmental Features. The policies of the Secondary Plan provide for buffers and development setback distances that will mitigate potential impacts and protect and enhance these natural features.

[21] The Cambridge West Secondary Plan also contains policies establishing a maximum unit count for the lands in the community, determined with reference to the level of development analyzed in the Transportation Impact Study for the community, while at the same time ensuring that the level of development will achieve the minimum density target established by the Regional OP to implement Growth Plan density targets.

[22] After canvassing the specific provisions of the Act and the policy documents, Mr. Britton offered the opinion that the Cambridge West Secondary Plan has appropriate regard for matters of provincial interest, is consistent with the PPS, conforms to the Growth Plan (2017), conforms to the Regional OP, and represents good planning.

The Draft Plans of Subdivision

[23] Mr. Britton's retainer as it related to the draft plans of subdivision extended only to the lands of Domm and Hallman, and he provided the following evidence.

[24] The Hallman and Domm proposed plans of subdivision establish lots and blocks

to accommodate residential and mixed use development at varying densities and building types, including a block that is available to accommodate an elementary school as requested by the School Board, together with roads and blocks to accommodate Open Space elements and stormwater management facilities. The Hallman plan is planned to accommodate a maximum of 989 residential units, and a minimum of 884 units. The Hallman plan contains a park block of 2.299 ha. The Hallman plan also includes a block of 2.825 ha in area that can accommodate a potential elementary school, or multiple residential uses if the school is not developed (as proposed by Hallman). The Hallman plan contains other multiple residential and mixed use blocks at the Community Focal Points.

[25] The Domm plan is planned to accommodate a maximum of 418 residential units, and a minimum of 371 units. The Domm plan contains a park block of 2.299 ha and a parkette of 0.059 ha. The Domm plan also contains a relatively small block of 0.096 ha in area that is to be consolidated with the potential school block on the Hallman plan.

[26] As with the Secondary Plan, after having canvassed the specific provisions of the Act and the policy documents, he offered the opinion that the proposed plans of subdivision and the proposed conditions of draft approval have appropriate regard for matters of provincial interest, and the criteria set out in s. 51(24) of the Act, are consistent with the PPS, conform to the Growth Plan (2017), conform to the Regional OP, conform to the City OP and the proposed Cambridge West Secondary Plan, and represent good planning.

[27] In addition to the testimony of Mr. Britton, as there was a further proposed plan of subdivision before the Tribunal in the proceeding which had not been managed by Mr. Britton, the Tribunal heard from Brandon Flewwelling. Mr. Flewwelling is a Consulting Land Use Planner who was retained by Huron Creek. The Huron Creek lands comprise 8.3 ha in the northern reach of the Cambridge West Secondary Plan area. The proposed Huron Creek plan would connect with the existing residential community through extension of Newman Drive, Rosecliff Place and Wilkinson Avenue. The Huron

Creek lands are immediately adjacent to the woodland/wetland complex owned by *rare*, which complex is referred to as the “Hogsback”.

[28] The Huron Creek plan would yield 65 single family dwellings, 55 street fronting townhouse dwellings, a walkway block, a stormwater management block and connecting streets.

[29] As did Mr. Britton, Mr. Flewwelling canvassed the specific provisions of the Act and the policy documents and with respect to the Huron Creek proposed plan and the proposed conditions of draft approval, he offered the opinion that they have appropriate regard for matters of provincial interest, and the criteria set out in s. 51(24) of the Act, are consistent with the PPS, conform to the Growth Plan (2017), conform to the Regional OP, conform to the City OP and the proposed Cambridge West Secondary Plan, and represent good planning.

The Proposed Zoning Amendments

[30] The last piece of the analysis addressed by Mr. Britton was the proposed zoning of the Domm and Hallman lands.

[31] His opinion was that the proposed amendments to the City of Cambridge Zoning By-law implement the Cambridge West Secondary Plan and the proposed plans of subdivision. The residential and mixed use blocks are placed in appropriate zoning categories permitting the development contemplated, with special exemptions provided for where necessary.

[32] With respect to the blocks created to be available to accommodate the school, Mr. Britton was advancing what he referred to as “dual” zoning, which was also referred to by others in the proceeding as composite zoning, allowing institutional and residential uses, the residential uses being subject to a holding provision. This proposed zoning was a flashpoint for the School Board and will be discussed in greater detail later in this Decision. Open space blocks are zoned accordingly.

[33] As with the Secondary Plan and the draft plans, after canvassing the specific provisions of the Act and the policy documents, he offered the opinion that the proposed zoning amendments on the Domm and Hallman lands demonstrated regard for matters of provincial interest, are consistent with the PPS, conform to the Growth Plan (2017), conform to the Regional OP, conform to the City OP and the proposed Cambridge West Secondary Plan, and represent good planning.

[34] In his presentation with respect to the Huron Creek lands, Mr. Flewwelling provided a review of the zoning amendments on those lands and came to similar conclusions as Mr. Britton regarding policy consistency and conformity.

Community Consultation

[35] It is important to document that, as relayed by Mr. Britton, despite the fact that the appeals before the Tribunal come by way of owner/applicant entitlement to bring the appeals due to the failure of the approval authority/municipal council in making a decision on their applications, these applications actually had considerable public exposure and opportunity for comment.

[36] As noted earlier in the Decision, the processing of the planning applications was being integrated with the Cambridge West Collector Road Class Environmental Assessment. The Cambridge West MESP, which has been approved by the City, the Region and the Grand River Conservation Authority, and which was subject to a Part II Order request that was dismissed by the Minister of the Environment and Climate Change, satisfied Phases 1 and 2 of the Municipal Class Environmental Assessment for collector road, sewer and water infrastructure for the community. The Cambridge West Collector Road Class Environmental Assessment is intended to satisfy Phases 3 and 4 of the Municipal Class Environmental Assessment for the collector roads in the community, which are Schedule "C" projects.

[37] These particular environmental assessment processes commenced in 2011 and were the subject of a Public Information Centre on May 11, 2011, whose purpose was

to notify agencies and the public that the City was participating with area landowners to undertake the Cambridge West MESP and Secondary Plan. There were a total of six Public Information Centres held over the ensuing years, the last taking place on January 26, 2017.

[38] As part of the process, a Project Team/Steering Committee was created consisting of technical representatives from the City, the Region, the Grand River Conservation Authority and Owner consultant team. This group met at regular intervals to receive comments and information from the public and other stakeholders and to consider that input and provide direction on technical matters.

[39] The applications were formally before City Council at its meeting on February 12, 2018 and addressed by way of a 511 page Staff Report which recommended support for the proposed planning instruments then before the Tribunal, subject to certain ongoing matters to be negotiated. It is apparent from the contents of the report that a full circulation had been undertaken and that considerable public input had been received. City Council did adopt the Planning Department staff recommendations. The matter came back to City Council at its meeting on May 15, 2018 for an update and further direction, continuing to be supportive of the proposed planning instruments.

[40] The Tribunal is satisfied that there has been full exposure of the proposed planning instruments with ample opportunity for the public and stakeholders to comment and that, as a result of the consultation and input, any substantive matters associated with the development proposal and proposed planning instruments has had the attention of the City, Region and other public agencies typically associated with these types of applications.

The Staging of Development within the Secondary Plan Area

[41] A key part of the settlement of the development programme authorized by the proposed planning instruments involved the establishment of a staging scheme. Mr. Britton took the Tribunal through this in detail.

[42] The staging scheme only relates to the Domm and Hallman plans as the Huron Creek plan will have its own stormwater management facility and will take its municipal services from the services in the adjacent existing neighbourhood, as well as having three direct public highway connections through that neighbourhood.

[43] The staging plan was presented as a coloured and labelled overlay on the Domm and Hallman draft plans. Seven stages are identified. The staging will control the registration of individual plans of subdivision authorized under the draft approval. This control is reflected in the form of a condition of draft approval in the Domm conditions (City Condition 104) and in the Hallman conditions (City Condition 112). The text of that condition (and the Domm condition is reproduced here, the Hallman condition being structured slightly differently but to the same effect) is as follows:

The Owner agrees that the plan may be registered in stages in accordance with the following and to the satisfaction of the City Planner and City Engineer:

- a) Stage 1 shall be registered first and concurrently with Stage 1 of Subdivision 30T-16104 [the Hallman plan].
- b) Stages 2 and 3 can be registered in any order but shall be registered concurrently with or subsequent to Stage 1.
- c) Stage 4 shall be registered concurrently with or subsequent to the registration of Stage 3.
- d) Stage 5 shall be registered concurrently with Stage 6 of Subdivision 30T-16104.

[44] The rationale behind the staging plan is that all parties were interested in ensuring that the spine road network and essential services to accommodate development were first in place as the platform upon which the balance of the development could proceed. Stage 1 is delineated in pink on the Staging Plan. It includes the entirety of Bismark Drive (the principal north/south collector roadway central to the neighbourhood) and the realigned Blenheim Road (the east/west collector road link in the southern part of the neighbourhood), the two park blocks, the lands required for three of the stormwater management facilities, certain natural features/open space areas and portions of multiple residential parcels. The intention is that the watermain service, sanitary sewer trunk and storm drainage facilities as well as the

collector roads providing access to the bulk of the Secondary Plan area be fully constructed in order to service the development intended for the Secondary Plan area.

[45] As will be seen, it is incumbent on Domm and Hallman to collaborate as Stage 1 of each of their plans must be registered concurrently. This is due to the fact that the servicing cannot be fully and properly implemented without being completed on both plans due to the connections required.

[46] What Mr. Britton explained though is that once Stage 1 is complete, the progression of the rest of the stages is not necessarily numerically sequential. In this regard, it is to be understood that Stage 2 is identified on the staging plan as strictly the school site block.

[47] And in this regard, a parenthetical explanatory note is here required. The school site block is composed of land almost entirely within the Hallman plan (shown as Block 1 on the draft plan), however in properly configuring the block to meet the criteria and needs of the School Board, and due to the angle of the current underlying land parcel ownerships, it is necessary to secure a sliver of land from the Domm plan, which is a parcel of 0.096 ha shown as Block 18. The intention is that these two blocks would be consolidated to form the unified school block.

[48] This issue of consolidation came to the fore during the course of Mr. Britton's testimony and was addressed in revised conditions of draft approval submitted through him for both of the Domm and Hallman plans. The School Board was seeking clear assurance that the consolidation would occur and that the intended school block would manifest as envisaged in their discussions with the Owners. This resulted in taking in Exhibits 14 and 15, being revised proposed conditions of draft approval advanced by Domm and Hallman relating to School Board matters. The first condition of each of those documents now requires that prior to the registration of Stage 1, there shall be a completed conveyance of what is presently shown as Block 18 on the Domm plan to the owner of the lands which are presently shown as Block 1 on the Hallman draft plan.

[49] It was conceded that such a conveyance in advance of the registration of either plan of subdivision would require a consent from the City Committee of Adjustment. As the conveyed parcel and the adjoining lands to which it is being conveyed are both presently portions of a concession lot, the effect of the conveyance, provided that the stipulation under s. 50(12) of the Act is applied to constitute it as a one-time only consent, would be a merger of title and consequent consolidation of the parcel as required by the School Board. Counsel for the School Board indicated that the revised conditions to facilitate the consolidation were acceptable to the School Board and would adequately address the issue of the consolidation of the school site parcel.

[50] Coming back to the sequence of the stages, Mr. Britton spoke to the mandatory registration of Stage 1 and then the discretion which was left to the Owners to register stages as they determined appropriate subject always to the expressed concurrent registration obligations. He was clear that there was no priority assigned to the registration of Stage 2 and that, in fact, it could be the last stage registered, but that it could also be registered concurrently with Stage 1. The Tribunal fully presumes that bringing Stage 2 forward for registration will depend upon when an Agreement of Purchase and Sale is settled with the School Board.

[51] This circumstance was strongly challenged by the School Board. The School Board not only resisted this outcome but, through the testimony of Mr. Callon, took the position that proper planning required that the school site block (as consolidated) should be included in Stage 1. It was the position of the School Board that the availability of the school site block for conveyance at the earliest stage of development should be secure and that this necessitated its inclusion in Stage 1. For policy support, Mr. Callon relied heavily upon clauses (i) and (m) of s. 2 of the Act, which require that those who carry out responsibilities under the Act have regard to matters of provincial interest including the adequate provision and distribution of educational facilities and the co-ordination of planning activities of public bodies.

[52] Mr. Britton and counsel for Domm and Hallman were adamant that there was no

proper basis to include the school site block within Stage 1 as Stage 2 could be registered concurrently with Stage 1 or at any time thereafter.

[53] The key here is that the draft conditions as advanced by the School Board require a clearance letter from the School Board to the effect that the School Board has entered into an Agreement satisfactory to the School Board for the transfer of the school site block. Domm and Hallman suggest that this condition would position the School Board to require them to enter into an improvident Agreement of Purchase and Sale due to the leverage which this confers upon the School Board, effectively an indeterminate hold on release of the lands for development until they have come to terms with the School Board on the School Board's terms.

The Conditions of Draft Approval as Proposed by Domm and Hallman regarding the School Board

[54] Mr. Britton explained what had been proposed by Domm and Hallman to address the requirements of the School Board, while being fair to the Owners, in the crafting of the conditions of draft approval. According to him, the draft plan conditions pertaining to the school site were drafted with the intent of ensuring that the school site is reserved for a reasonable period of time in order to give the School Board an appropriate opportunity to acquire the site, should it ultimately decide that the site is necessary. He advised that proposed condition 117 for the Hallman plan of subdivision provides as follows:

117. THAT the owner shall reserve Block 1, Stage 2 for the potential acquisition by the Waterloo Region District School Board until the earlier of:
 - a) the acquisition of the lands within Stage 2 of the Plan by the Waterloo Region District School Board;
 - b) the Waterloo Region District School Board advising that it does not intend to acquire the subject block; and
 - c) later of the date which is (i) 10 years from the date of draft plan approval; and (ii) 7 years from the date of commencement of servicing of Bismark Drive and the registration of Stage 1 of the plan.

Stage 2 of the Plan shall not be registered or otherwise developed prior to the reservation period set out above has expired. For greater certainty,

this condition does not preclude site grading and/or the servicing of adjacent roadways providing for service connections for future development of the block. Upon the expiration of the reservation period set out above the City of Cambridge shall remove any 0.3m reserve between Stage 2 and Bismark Drive.

[55] He explained that the above condition provides that the school site will be reserved until the later of 10 years from draft plan approval by the Tribunal, and seven years from the date of commencement of servicing and the registration of Phase 1 of the plan. The condition ensures that the period for the reservation of the site is extended if servicing and registration of the plan are delayed. The reservation period also ends if the School Board decides to acquire the site or makes the decision that it is not needed.

[56] According to Mr. Britton, the 10 year reservation period takes into account the School Board's 2017 - 2027 Long Term Accommodation Plan, which identifies the proposed Cambridge West school site as a medium term priority (6 - 10 years). The 10 year period is consistent with the higher end of school site reservation periods identified in other cases. The 10 year period also recognizes the expected time period for build-out of the community. It is anticipated that the Cambridge West community will be substantially built out in five to seven years from the commencement of servicing.

[57] In Mr. Britton's opinion, the reservation period is also intended to recognize that the land should be made available for development in the event that it is not needed for a school. Finally, he says, fairness to the landowner is also a relevant consideration. Where lands are reserved for a public purpose, the landowner should be entitled to proceed with development of the lands if they are not acquired by a public authority within a reasonable time period. In his opinion, it is not reasonable to require that the lands continue to be reserved beyond the expected build-out of the community.

[58] The School Board entirely rejects the imposition of a reservation period. Mr. Callon asserts that this puts the acquisition of the site in jeopardy as time moves forward and that the School Board should not be put under such a constraint in light of a presumption about the time of community build out and the rigours of securing funding based on the current Provincial funding model.

[59] Mr. Callon argues that the School Board should not be put under a time compulsion as it is not unusual for school boards to consider long-term strategies in the development of their facilities. Where there is a modest capacity available in neighbouring schools, influences such as the rate of house sales by the area developers, the changing demographic makeup of the local housing market, provincial education changes, and activities associated with the planning of other schools and school improvements all come to bear on when a school may be considered for construction. In this situation, the opportunity to build a school may be affected by all of these.

[60] In his opinion, based upon the decision of the Owners and the City to simply designate the school site block as Low/Medium Density Residential in the Secondary Plan and to refrain from introducing a definitive designation of the school site block onto Land Use Map 1 for the purpose of accommodating public service facilities (as Institutional or similar) serves to threaten their acquisition with unnecessary delay. He relayed his observation that certain landowners prefer to wait to negotiate the sale of these sites, speculating that the property will become available for its alternate use, or to pressure the school board to acquire the property through less amicable means such as expropriation.

[61] Similarly, he asserts that the risk associated with not firming up and limiting the school site designation exclusively for public service facilities may jeopardize longer-term planning for several of the School Board's possible community hub partners, encouraging them to locate elsewhere.

[62] He baldly says that he treats the staging programme as advanced by the Owners as only serving to delay the development of the school site and to prioritize and effectively hold the site in reserve for its alternate use.

[63] He then goes on to offer his opinion that the timing of construction of public service facilities (the school in this instance) is at its greatest risk when the opportunity for their property acquisition is not known, and when that fate lies at the whim of the

landowner. He says that this can only be overcome with a requirement that the conveyance of the site be part of the necessary development approval process, meaning that it should be treated as effectively part of the infrastructure which is to be provided in Stage 1.

[64] He finally goes on to unequivocally state that the School Board requires the site in the earliest possible phase to ensure that it is ready for construction in a timely manner. This timing either requires the conveyance of the site upon Stage 1 registration, or an opportunity for the School Board to affect the delay of future phases that will overwhelm existing school accommodation.

[65] The Tribunal will treat of these assertions below, following a review of the positions of the Parties on the matter of the zoning of the school site block.

The Zoning of the School Site Block

[66] As described above, the proposed zoning of the school site block as prepared by Mr. Britton, and supported by the City, reflects a dual zoning that would permit a school or other institutional uses, as well as residential uses. Specifically, it is proposed by Mr. Britton that the following zone categories be applied to the site:

- a) N1 — Institutional: permits schools, a range of institutional uses and place of worship, and retirement and nursing home uses.
- b) RM4 — Residential: permits a range of residential uses, including single and semi-detached units, row houses and other multiple residential uses, but not apartment buildings.
- c) R6 — Residential: permits single-detached dwellings and residential care facilities.

[67] In the opinion of Mr. Britton, the proposed zoning establishes a range of uses

that are appropriate uses in the Community Focal Point. The range of uses conforms to the existing Low/Medium Density Residential designation in the Cambridge Official Plan, and also to the proposed Cambridge West Secondary Plan. The proposed zoning recognizes that if the site is not acquired by the School Board and developed for a school that it is appropriate for the site to be developed for residential uses.

[68] In Mr. Britton's estimation, although the School Board has identified the potential need for a school site, the acquisition of the lands and actual development of a school on the lands is not certain. He observed that, in his experience, it is not uncommon for school boards to identify potential school sites, and then ultimately either not acquire the site, or acquire the site and then sell it again. In fact, he informed the Tribunal that the School Board had acquired a site for an elementary school in the neighbouring community, which was subsequently sold.

[69] As part of his witness statement, Mr. Britton provided four concept plan drawings relating to the school site block. He spoke to these in his oral testimony. One drawing depicted a likely layout for school purposes. This was derived from a plan provided by the School Board which reflected the site plan for the Jean Steckle Public School, a nearby elementary school presumably on a site similarly configured to the school site block in this instance.

[70] Two of the drawings depicted potential single detached/street town development. One of the drawings showed the resultant lots being served by a very tight circular public highway and the other drawing showed the resultant lots being served by a rather bloated hammerhead cul-de-sac. When these concepts were further pursued by questions from the Tribunal, Mr. Britton was candid that he didn't think that they would find favour with the Engineering Section of the City and he didn't hold much hope that they would ultimately be supported by the City. He specifically acknowledged that he would support deletion of the R6 zone from the proposed composite zoning. Despite the clarity of his response, when examined by counsel for the City on the matter, he essentially resiled from this opinion and suggested that these may represent a

reasonable prospect of development form as they would conform with OP policy and still maintain achievement of minimum density. The Tribunal assesses that he was speaking more honestly when he responded to the Tribunal.

[71] The fourth drawing depicted multiple residential development in keeping with the RM4 zoning in the form of townhouses, apparently in a condominium format based upon the suggested internal road width of 6 metres (“m”). He was much more comfortable with this concept as Bismark Drive is a collector road and it is preferred to put higher density uses along a collector road.

[72] Mr. Callon utterly rejected the propriety of the composite zoning. His view of the obligations under the Act, the PPS and the Growth Plan was that there was a clear requirement here to ensure the provision of a site for educational/public service facilities. In terms of satisfying those obligations, he said that this dual zoning caters less to the confirmation and identification of the school use, the adequate provision and equitable distribution of education facilities, than it does to a speculative residential use.

[73] He was clear and adamant that the school site block should only be zoned N1. In aid of this position, it came into evidence, initially through Mr. Britton and also through Ms. Brunn Shaw, the City’s Director of Planning, during their cross-examination by counsel for the School Board, and then directly through Mr. Callon, that the City has underway a consultation regarding the revision and updating of the City’s Comprehensive Zoning By-law. As a result of initial discussion with City staff and consideration of contemporary policy and practice, the outside planning consultant retained by the City to manage the process has prepared a draft by-law and circulated it for public input. Consistently through the mapping of the zoning for the City on the draft, each school site, be it under the jurisdiction of the School Board or the Catholic School Board, has been proposed to be zoned N1 only, no composite zoning.

[74] Mr. Callon was of the view that this reflected contemporary policy and practice and represented good planning. Ms. Brunn Shaw, the City Planner for the City, took the position that this was simply still the product of the consultant without the benefit of full

public input and consideration by City Council and should not be taken as the final position of the City. For the reasons which will be articulated below, the Tribunal here prefers the position of Mr. Callon.

[75] Mr. Britton summarized his position on the composite zoning on his view that it is common planning practice to permit a range of uses on a proposed school site and ensure that a proposed school site is of a size and configuration that support alternative uses. This practice recognizes a number of considerations:

[76] A proposed school site may or may not develop as a school.

[77] Prospective purchasers should be aware of alternative use permissions given uncertainty surrounding school construction and notice obligations.

[78] The costs and inefficiencies associated with additional and future planning processes should a school not materialize.

[79] The additional time delays associated with future planning processes in an era of constrained residential land supply.

[80] The Broad Policy Underpinning of the Secondary Plan Area Proposals and the Tribunal's Analysis and Conclusions

[81] All of the planning witnesses identified as relevant and material to the consideration of the planning matters under appeal the requirements of Section 1.1.1 of the PPS. As a matter of particular focus for this proceeding, specific reference is made to two clauses of that section, which declares that:

Healthy, liveable and safe communities are sustained by (inter alia): b) accommodating an appropriate range and mix of residential (including second units, affordable housing and housing for older persons), employment (including industrial and commercial), institutional (including places of worship, cemeteries and long-term care homes), recreation, park and open space, and other uses to meet long-term needs; and g) ensuring that necessary infrastructure, electricity generation facilities,

transmission and distribution systems, and *public service facilities are or will be available to meet current and projected needs* (italics added).

[82] “Public service facilities” is a defined term in the PPS and it means land, buildings and structures for the provision of programs and services provided or subsidized by a government or other body, such as social assistance, recreation, police and fire protection, health and educational programs, and cultural services.

[83] The proposed elementary school and its site would fall squarely within the term “public service facilities”.

[84] This policy is buttressed by policy in the Growth Plan. Specifically, s. 1.2.1 articulates as a guiding principle support for the achievement of complete communities that are designed to support healthy and active living and meet people’s needs for daily living throughout an entire lifetime.

[85] “Complete communities” are defined in the Growth Plan as places such as mixed-use neighbourhoods or other areas within cities, towns and settlement areas that offer and support opportunities for people of all ages and abilities to conveniently access most of the necessities for daily living, including an appropriate mix of jobs, local stores, and services, a full range of housing, transportation options and public service facilities.

[86] The Cambridge West Secondary Plan and its implementation through the draft plans of subdivision and zoning now before the Tribunal was presented by Mr. Britton with great fanfare as being planning which reached the achievement of a complete community, whereby there was a harmonious integration of a proper mix of uses at densities which will conform with current policy expectations, full protection of natural heritage features and the appropriate and efficient provision of infrastructure and public service facilities.

[87] A centrepiece of this celebration of planning achievement was Community Focal Point 1. Section 3.4.2 of the Cambridge West Secondary Plan states that the

Community Focal Points will function as central activity hubs within the Cambridge West Community and provide a mix and range of uses and amenities to serve the community and surrounding area. The Community Focal Points will be planned to be served by public transit and to be easily accessible to the community through the active transportation network. Each Community Focal Point will be supported by multiple residential developments planned at higher densities within walking distance of the focal points.

[88] Mr. Britton spoke with special conviction about the role of the school in serving this community and the synergies which would be available as a result of the co-location of the school site with the two City park blocks flanking it north and south (acknowledging here that lying between the north limit of the school site block and the south limit of the north park block is an open space natural heritage linkage which forms part of the natural heritage system). This “hub” was to be planned as a campus so that there could be advantageous sharing of facilities and resources between the City and the School Board, all to the benefit of the community. This was entirely in keeping with the policy in Section 3.2.8.2 of the Growth Plan that public service facilities and public services should be co-located in community hubs and integrated to promote cost-effectiveness.

[89] The hub is at the confluence of two of the three collector roads which will serve the Secondary Plan area, and it is complemented by natural heritage area traversing it and abutting it.

[90] It is clearly a fundamental element of the community and is indeed designed to satisfy the Provincial policy imperatives set out in the PPS and the Growth Plan. The proposed school is an integral part of the planned intention.

[91] It is necessary to turn to the evidence of the School Board. The School Board is an agency which is on the circulation list of the authorities who received the development applications. Their earliest comments on these applications indicated a need for a school site within the Cambridge West community. As the circulation and

consultation period progressed, they worked together with the consultants for Hallman and Domm and the City and they arrived at the identification of a school site block which, as the Tribunal understands the testimony of Mr. Britton and Mr. Callon, fully meets the Site Selection Criteria used by the School Board to govern the necessary elements for a school site.

[92] The evidence discloses that all of the physical attributes of the Criteria will be met (which includes size, frontage, shape, location, topography and municipal and utility services). Even the criteria with respect to separation from transmission lines, standing water, noxious or hazardous land uses and various commercial uses will be met. The school site will be “walkable” for the pupils in this area. Vehicular access, especially concerning buses, was an issue due to the site only having one public highway frontage, and due to a suggestion of a potential turning circle at the intersection of Newman Drive and Bismark Drive, but it has subsequently been determined that access to the frontage along the park block for bus parking can be accommodated, and the installation of a turning circle is not fixed but is now under advisement.

[93] The one item which represents a sticking point, as appears on the revised draft of the Criteria, is as to the matter of staging. The document suggests that the site is to be in Phase 1 or 2 of development plans and not independently staged (and shares phase registration with the street and abutting property registration).

[94] The evidence of Mr. Callon was unequivocal on the position of the School Board regarding need. He says in his witness statement, and in his oral testimony, that the School Board requires the site in the earliest possible phase to ensure that it is ready for construction in a timely manner. He further says that it is his opinion that the early conveyance of the site prepares the School Board and community better for the possible phased construction needs of a community hub, and serves to provide the Minister of Education evidence that the School Board is prepared to construct the additional capacity when funds are approved.

[95] Mr. Britton’s response to this position is that Stage 2 can be called forth for

registration at any time and that there is nothing in the staging plan which therefore operates as an impediment to the School Board pursuing its needs. What is necessary is for the School Board and Hallman (assuming the prior conveyance of the Domm Block 18 sliver) to come to terms on an Agreement of Purchase and Sale, or Option Agreement, or some arrangement satisfactory to both parties with respect to School Board acquisition of the site.

[96] Mr. Britton framed the matter using a sports analogy, “the ball is in their (the School Board’s) court.”

[97] The Tribunal, in light of all of the evidence adduced through the proceeding, will also use a sports analogy. It is time for the School Board to step up to the plate.

[98] The Tribunal understands the importance of the school site, not only to the School Board, but to the community which will inhabit this Secondary Plan area. The Tribunal treats the justification for the overall Secondary Plan as depending on various factors but not insignificantly on the provision of a school facility in this community.

[99] A consequence of that determination is that the zoning should reflect this fact. The zoning for the school site block should not be a composite zone. It should be N1 to enable use of the site for educational purposes and such other institutional purposes as are authorized under the City zoning by-law. This will achieve the planning intention and deliver on the policy imperatives expressed in the PPS, the Growth Plan, the ROP and the City OP.

[100] The Tribunal understood the composite zoning as advanced by Mr. Britton as driven by the wish of the Owners to avoid future process in securing a zoning amendment in the event that the School Board did not acquire the site. As envisaged by Mr. Britton, the expectation of the response of a community being deprived of an elementary school in favour of residential uses would undoubtedly be one of rage and resistance, which would surely work as an inhibition on establishing such residential uses. The Tribunal believes that his apprehension is entirely sound, and for good

reason. The current plan is a character of promise to the future community and all of the present players should be held to honour it. That cast includes not only the landowners but the School Board and the municipalities.

[101] The Tribunal was not impressed with the testimony of Ms. Brunn Shaw on this point. Without having considered any design concepts or functional issues, she blithely suggested that residential would be a fit on this site and would conform with the OP designation. She suggested her preference for the R6 low density uses. The texture of that comment was one of default, that low density residential is always an easy fit and can always be made to work.

[102] A fundamental flaw in such reasoning here is that no account is taken of the policy goal of providing adequate and appropriate public service facilities. Not only would the deployment of the school be removed from this block of land but uses would be established which would exacerbate the need. Further residential units would yield further pupil load. The evidence of the School Board is that there is, associated with the residential development proposed through the Cambridge West plan, a demonstrated need for school capacity, which is what has driven their position throughout that a school site must be secured in this community. The conversion of the school site block to residential use under that circumstance cannot be sustained.

[103] It is also worth noting, as was acknowledged by Mr. Britton, Ms. Brunn Shaw and Mr. Callon, that at such time as the block may be considered for conversion to residential use, there may be a whole new policy regime in effect (at the Provincial, Regional and/or City levels) which would not support a conversion as envisaged by the particular zone categories intended to be applied here. As such, it may be unlawful to simply lift the hold on the residential zones to the extent that such a planning action may not conform with applicable policy, and then the whole advantage of the pre-zoning was for naught.

[104] If the position of the Parties is to be accorded any integrity, it is to be taken as a given that the School Board will require this school site block, and therefore the zoning

to be authorized by the Tribunal will follow that conclusion. It will be zoned only N1.

[105] Although no probative or material evidence emerged through the witnesses or from the witness statements, through the stances taken by the parties in the proceeding, the Tribunal detected an air of suspicion on the part of the Owners and the School Board that there would not be a probability or likelihood of productive discussion between Hallman and the School Board with a view to settling a mutually satisfactory arrangement between those parties to secure acquisition of the school site block. Reference to expropriation surfaced continuously but there was no evidence of broken down negotiations. The paucity of evidence on the point largely suggested that there had actually been little discussion to date.

[106] The Tribunal, with respect to the appeals before it, has no jurisdiction, or appetite, to enter into the domain of the negotiation of terms relating to the acquisition of the school site block, and it will not do so out of this proceeding.

[107] The case law is clear on this point. Counsel for Domm and Hallman put a line of authorities before the Tribunal, with which the Tribunal was well familiar, that the Tribunal's jurisdiction on these planning appeals does not permit it to engage in the imposition of provisions or terms which essentially go to the commercial relations between the Owners and the School Board.

[108] The most pertinent cases were *Re Erin Mills Development Corp. v. Peel Board of Education*, [1988] 22 O.M.B.R. 177 (where the School Board was seeking a condition imposing a price formula which would result in a sale at less than fair market value); *Cedar Hills Estates Inc. v. Caledon (Town)*, [1993] O.M.B.D. 1811 (concerning a request by the School Board that the owner be required to enter into a cost sharing agreement with respect to site acquisition costs); *Berlen Development Corp. et al v. Dufferin-Peel Roman Catholic Separate School Board*, [1994] 31 O.M.B.R. 151 (where it was determined by the Municipal Board that its jurisdiction with respect to schools under the Act is limited and does not extend to the provision or funding of school facilities); and *Britannia North Holdings Inc. v. Mississauga (City)*, [1999] O.M.B.D. 479,

38 O.M.B.R. 193 (relating to the lack of authority of the School Board to require the phasing of development).

[109] In arguing the law governing the matter before the Tribunal in this case, Mr. Howe brought to the Tribunal's attention an Act of the Legislature whose short title was the *Education Quality Improvement Act*. This came forward as an omnibus bill amending various pieces of legislation. Section 164 of that Act effected an amendment to Section 51 of the *Planning Act* by introducing a new subsection (25.1), which read as follows:

The approval authority shall impose as a condition to the approval of a plan of subdivision that land that is planned as a school site for any school board that has jurisdiction in the area in which the land is situated be offered to the school board at a price that does not exceed the value of land determined as of the day before the day of the approval of the draft plan of subdivision.

[110] Although the *Education Quality Improvement Act* was given Royal Assent in December, 1997, Section 164 was not proclaimed in force. Mr. Howe advises that by reason of the introduction of s. 10.1 to the *Legislation Act* in 2009, legislative amendments which are not proclaimed in force within 10 years of their enactment are now susceptible of repeal as of the end of the tenth calendar year from their enactment. The relevant subsections of s. 10.1 read as follows:

10.1 (1) On one of the first five days on which the Legislative Assembly sits in each calendar year, the Attorney General shall table in the Assembly a report listing every Act or provision of an Act that,

1. is to come into force on a day to be named by proclamation of the Lieutenant Governor;
2. was enacted nine years or more before December 31 of the preceding calendar year; and
3. was not in force on December 31 of the preceding calendar year. 2009, c. 33, Sched. 2, s. 43 (7).

(2) Every Act or provision listed in the annual report is repealed on December 31 of the calendar year in which the report is tabled unless,

1. it comes into force on or before December 31 of that calendar year; or

2. during that calendar year, the Assembly adopts a resolution that the Act or provision listed in the report not be repealed. 2009, c. 33, Sched. 2, s. 43 (7).

[111] Section 164 was on the Attorney General's list tabled in the Legislature in 2011. The consequence of this is that Section 164 was effectively repealed as of December 31, 2011. The Tribunal put the question to Mr. O'Melia as to whether, absent this provision (Section 164), the Tribunal would have authority to dictate the price at which a school site could be sold. His answer was in the negative. The Tribunal treats that answer as properly reflecting the law.

[112] As noted above, there was a clear subtext to the dealings between the Owners and the School Board which suggested that the intractability between them was embedded in commercial matters as there was absolutely no opposition to the establishment of the lands necessary for the school site, their configuration and the preparation of those lands to accommodate the construction of a school thereon.

[113] Consequently, on the strength of the evidence heard and material filed, the Tribunal will sustain the staging programme being advanced by Domm and Hallman as the Tribunal finds it to be reasonable and tied to the legitimate servicing and development requirements of the municipalities and public agencies involved here. There is nothing in the staging programme which will impede the School Board in securing the school site block once they have come to terms with Hallman.

The Conditions of Draft Approval

[114] The generation of conditions of draft approval came from four sources. As it is part of its function as approval authority, the Region had prepared conditions of draft approval for the three draft plans before the Tribunal. In the normal course of practice in Waterloo, the City generated its own set of conditions relating to City matters and requirements and transmitted those to the Region. They were presented to the Tribunal as a distinct set of conditions but meant to form part of the conditions of draft approval as finally determined.

[115] In addition to these two sources, due to the dispute before the Tribunal in this case, the School Board presented its requested conditions of draft approval related to School Board needs (and it should be noted that the draft conditions prepared by the Region simply put a placeholder condition for the School Board in light of the appeals). This was presented in two alternatives.

[116] The preferred alternative would require the school site block to be contained within the Stage 1 development and that prior to the registration of any stage after Stage 1, clearance would have to be provided by the School Board to the effect that they had entered into an Agreement with the owner for the transfer of the school site. This alternative also contained requirements as to the physical state of the school site and obligations as to giving notice to the public about possible timing issues concerning construction of the school facility (which requirements were not contested by the Owners).

[117] The second alternative contained provisions as to the state of the school site and notice obligations to the public similar to those in the first alternative but, in lieu of the Stage 1 and Agreement provisions, contained a condition that no plan of subdivision after Stage 1 would be registered unless a letter was sent by the School Board confirming that the anticipated students from the plan proposed to be registered are capable of being accommodated in existing or planned schools.

[118] Both of these alternatives were opposed by the Owners. The Owners presented their versions of conditions of draft approval which they argued were appropriate for the School Board's needs. There was a condition requiring conveyance of the sliver Block 18 (on the Domm Plan) to Hallman prior to the registration of Stage 1. Both sets of conditions also contained the public notice provisions requested by the School Board concerning the timing issue with respect to the proposed school within West Cambridge. The Hallman conditions, as the school site block would now come only out of the Hallman Plan as augmented by the sliver block, contained provisions requiring the grading, compacting and seeding of the site, the fencing of the north and east

boundaries of the site and the provision of a report from a qualified consultant confirming the suitability of the site for school construction and the availability of municipal and utility services. As a late addition, and in specific response to a need of the School Board, Hallman obliged itself to allow entry on the site for the purpose of undertaking soil tests and environmental studies.

[119] The City supported the conditions of draft approval for the School Board matters as advanced by the Owners.

[120] Due to its findings on the planning issues and staging, the Tribunal determines that the conditions of draft approval regarding School Board matters as advanced by the Owners, which were set out in Exhibits 14 and 15 (with the modest edits in both for the first condition to better describe the sliver block) are appropriate to address the School Board matters and are the conditions which shall be incorporated into the Region's conditions of draft approval. However, with the determination that the school is a critical element of the community structure here and is intended to be built, and with deletion of the composite, or dual, zoning, the reservation provision which was in the drafts will be struck.

[121] The conditions of draft approval for Huron Creek do not include a placeholder for School Board conditions nor do they include any conditions relating to the School Board matters which are addressed above relating to the Domm and Hallman lands. There does not appear to be any request in the record by the School Board for conditions relating to Huron Creek. However, as it seems that the notice to the public regarding timing issues with respect to school construction would be equally appropriate to purchasers of lots in the Huron Creek plan, in the event that the Tribunal has failed to appreciate the position of the School Board on the matter of conditions to be imposed on Huron Creek, a further submission from the Parties would be accommodated by the Tribunal. Depending upon whether this proceeds as a consent submission, the Tribunal will determine whether further submissions should be heard in a more formal fashion.

Participant Concerns

[122] Earlier in the Decision, the Tribunal indicated that it would return to the concerns which had arisen out of the presentations of the Participants.

[123] As adverted to above, the Stuble family is the owner of considerable acreage to the west in the Township of North Dumfries, which lands include wetland and the bulk of Barrie's Lake. This particularly gave rise to two concerns, contamination or adverse effect on Barrie's Lake and the local creeks, and turtle mortality arising out of vehicular traffic on Blenheim Road (which is called Roseville Road within the limits of the Township).

[124] With regard to the issue of impact on Barrie's Lake and the local creeks, Mr. Howe called Jeff Martens, a Consulting Civil Engineer retained by the Owners. Mr. Martens was responsible for, amongst many other matters, design of the stormwater management system. He described the general principles which were employed to deal with storm runoff, which involves a host of measures, including the grading of the lands, the creation of stormwater management facilities in the form of settling and control ponds and drains to be constructed on the lands. Mr. Martens advised that none of the stormwater management ponds would discharge to Barrie's Lake but rather to appropriate receiving watercourses. Through the management of rooftop drainage (which is relatively clean) and infiltration techniques, water balance to the lands to the west could be appropriately controlled. And finally, in order to address the salt content in winter runoff, which could adversely affect the wetlands to the west, he advised that a special winter diversion pipe would be established to direct road drainage during the winter months away from Barrie's Lake. His conclusive opinion was that there was no likely prospect of adverse effect on the lands to the west and that the drainage system designed for the subject lands would be compliant with contemporary standards and represented the application of best practices. The Tribunal accepts this opinion.

[125] On the matter of turtle mortality by reason of contact with vehicles, Mr. Howe called an ecologist, Jeff Gross. In addition to speaking to the inventory of woodland and

wetland species and the steps which would be taken to be protective of the natural features and these species, Mr. Gross addressed the turtle mortality issue directly. This was intended to be improved through the construction of improved culvert crossings at Roseville and Blenheim Roads and better linkages. Arising out of the MESP exercise, there were a variety of recommendations that were designed to be more protective of the natural areas and would operate to ameliorate the turtle mortality situation. It was his understanding that the recommended steps were to be taken as part of the development programme and that if they were, it was his opinion that there would be no negative impact on natural heritage features. The Tribunal accepts this opinion.

[126] Karen Ballard's presentation was essentially focussed on potential impacts on bird and vegetative species. She spoke specifically about the decline of the Eastern Wood Pewee and about the stated goals of the MESP in maintaining, restoring and enhancing natural heritage features and function in West Cambridge by buffering, enlarging, enhancing and linking crucial areas. She had concerns about the sufficiency of the buffers being proposed and particularly about what is referred to as Hedgerow 1.

[127] She acknowledged that the Eastern Wood Pewee is relatively common but that it has been suffering steady population decline over the last 40 years and that if the decline continues at the same rate, this species faces potential extirpation in a few decades. Her view from the literature is that the decline can be attributed in large part to urban incursion on nesting habitat and that insufficient regard has been had in this instance to the establishment of adequate buffers to preserve that habitat.

[128] In response to these concerns, Mr. Howe called Ryan Archer, an ecologist retained by Huron Creek. The prime habitat area identified by Ms. Ballard was the area referred to as the Hogsback (referenced above), a high level natural area constraint which is made up of upland deciduous forest and provincially significant wetland. This area is adjacent to the Huron Creek lands. Mr. Archer prepared a site level review building upon the natural areas inventory work which was done as part of the MESP. Based upon this work, he made recommendations. One of those recommendations is

that a 15 m buffer be established from the tree dripline.

[129] Ms. Ballard took the view, from her literature review, that a 30 m buffer would be more appropriate. Mr. Archer addressed this in two ways. Firstly, he suggested that there is no empirical data to support a specific buffer distance. The appropriateness of any given buffer will depend on site circumstances. In this instance, he directed the Tribunal to the fact that the natural heritage area to be protected will only be abutted by a small portion of the residential development. Only three lots will abut the feature and the area in question will be rear yard only periodically used. The stormwater management pond will abut the feature and it will have a native vegetated perimeter that effectively functions as an extended buffer. He suggested that this perimeter would be planted with dense, thorny species so as to discourage entry. The 15 m buffer was a recommendation from the MESP and based upon his own independent evaluation of the site circumstances, he believes that it is entirely appropriate, and that there would not be sufficient gain from a 30 m buffer as against the loss of development land that would result. The Tribunal accepts this opinion.

[130] With respect to the pewee, Mr. Archer acknowledged that it was included in his Environmental Impact Statement and that it is a species of conservation concern. He concurred with Ms. Ballard that it is a species which does occur in urbanized landscapes, urban woodlots, but he declared that it is not characterized as an urban tolerant species.

[131] Mr. Archer also spoke to matters raised by Ms. Ballard and Ms. Stublely in terms of acknowledging specific matters and species of concern and the steps which were being taken to address them. In this regard, he advised of the relocation of a snake hibernaculum to a more commodious location and to a compensation planting of butternut trees for some five which would be displaced. He provided a summary opinion that, provided that the recommended mitigation measures are implemented, the proposed development is not anticipated to cause significant negative impacts to adjacent natural features or their ecological function. The Tribunal accepts this opinion.

Minor Matters Addressed in the Hearing

[132] In his review of the Secondary Plan, Mr. Britton put some emphasis on the incorporation of policy in the Secondary Plan promoting active transportation, which inclusion supports the articulation of that policy in Provincial policy. This finds its implementation on the ground in the form of public rights-of-way which conveniently and safely accommodate pedestrians and bicycles as well as the trail system which is envisaged for this Secondary Plan area.

[133] Having heard this testimony, during the course of the review of the proposed zoning amendment by-law, the Tribunal observed that provision had been made for requiring a minimum supply of bicycle parking in the multiple residential forms of development. However, in contrast to the standards which the Tribunal is accustomed to seeing in urban zoning by-laws in the Greater Toronto Area, the standard proposed in this by-law appeared inordinately low at one space per 10 dwelling units. The Tribunal had indicated an expectation of one space per dwelling unit.

[134] The matter was addressed subsequently by Ms. Brunn Shaw. She advised that this standard would be the subject of review as part of the Comprehensive Zoning By-law Review exercise and that it had not yet been explicitly addressed. However, she went on to advise that she had spoken with a staff member in the City's Transportation section and understood that, as an interim measure, it would not be unreasonable to incorporate in this by-law a minimum requirement of one bicycle parking space per five dwelling units. Apparently, by reason at least in part of the limits on public transit in Cambridge, a standard of one space per dwelling unit may not be justified.

[135] On the strength of this evidence, the Tribunal will direct a modification to the zoning by-law to fix the standard of minimum bicycle parking supply at one space per five dwelling units for multiple residential units. The Tribunal would encourage the City, after conclusion of the comprehensive zoning review, to revisit this standard in the Cambridge West zoning amendment to the extent that the City-wide standard becomes more stringent.

[136] Another matter which the Tribunal will comment upon is the divergent views expressed by Mr. Britton and Mr. Callon on the appropriate term to use for the range of community facilities which are referenced in the Secondary Plan. The City OP uses the term “community facilities”, which is the term that had previously been employed in the 2007 PPS, which Mr. Britton has carried forward into the Cambridge West Secondary Plan. That term was subsequently changed to “public service facilities” in the 2014 PPS. Mr. Callon was of the opinion that there should be consistency among the policy documents and that the term in the Secondary Plan should be converted to public service facilities. In response, Mr. Britton explained that the term “community services” was deliberately chosen as, in the Cambridge OP context, it embraces public service facilities but includes more than that and that this local variation should be respected. The Tribunal accepts the explanation advanced by Mr. Britton and will not interfere in the use of this term.

Consent Modifications

[137] Through the course of the hearing certain minor errors in text were discovered and certain matters emerged through the evidence which suggested improvements in expression or formatting. On the latter front, this included a revision to Policy 17.9 and its associated map.

[138] The City requested that there be an expansion of a condition of draft approval applicable to all three draft plans with respect to dealing with buffers in order to include a requirement of the Ministry of Environment and Climate Change’s approval of the MESP, this expanded clause dealing with the Western Chorus Frog.

[139] As identified by Mr. Davis, there was a change to the walkability standard in s.17.5.1(d) of the proposed Secondary Plan from 0.6 kilometres to 0.8 kilometres.

[140] These matters were all treated as appropriate modifications without objection taken by any Party and, as consent matters and considered appropriate by the Tribunal, will be directed modifications set forth on Attachment 1 hereto.

Modifications Directed by the Tribunal

[141] The determinations of the Tribunal with respect to the proposed Official Plan Amendment to adopt the Cambridge West Secondary Plan, the conditions of draft approval and the zoning and the modifications required to implement them are set out on Attachment 1 to this Decision.

[142] Counsel for the Owners is directed to implement the required modifications and circulate them to the other Parties for review and comment. Those Parties shall be afforded a minimum of 10 days to respond. Provided that all Parties confirm their clearance of the modifications, counsel for the Owners shall forward those modified documents to the Case Co-ordinator for Tribunal review. Provided that the Tribunal is satisfied with the modified documents being in accord with this Decision, the final Order of the Tribunal will issue.

[143] In the event that there are matters which must be spoken to arising out of this Decision, the Parties may contact the Case Co-ordinator regarding the particulars and determine the most appropriate method to address those matters.

“Gerald S. Swinkin”

GERALD SWINKIN
MEMBER

“John Douglas”

JOHN DOUGLAS
MEMBER

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

Local Planning Appeal Tribunal

A constituent tribunal of Environment and Land Tribunals Ontario

Website: www.elto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

ATTACHMENT 1

City of Cambridge Proposed Amendments and Modifications:

A. Official Plan Amendment Exhibit 4 Tab A1 page 8:

1. Add:

"1(e) Amend Section 3 of Chapter 1 by deleting "16" in the first line and replacing it with "17"."

B. Secondary Plan —Exhibit 4 Tab B — Secondary Plan:

Page 7 – Revise “Places to Growth” to “Places to Grow”

Section 17.5.1 (d) – delete 0.6 km and replace with 0.8 km

Section 17.5.1 (e) – delete the clause and substitute “The proposed school should be planned together with park facilities.”

Section 17.5.1 (f) – delete in its entirety

Revisions to policy 17.9 – Replace the text and the Figure 4 mapping with the text and mapping as set out in Exhibit 30

C. Conditions of Draft Approval

Condition * Domm (Exhibit 14)
 Plan 30T-16103 — Brian Domm Farms

WATERLOO REGION DISTRICT SCHOOL BOARD CONDITIONS

(*to be inserted in appropriate location in Region of Waterloo conditions)

1. THAT prior to registration of Stage 1, the owner shall convey what is shown as Block 18, Stage 1 of Plan of Subdivision 30T-16103 to the owner of Block 1, Stage 2 of Plan of Subdivision 30T-16104.
2. THAT the owner shall agree in a Subdivision Agreement with the City and/or the Region:
 - (a) That the City of Cambridge and prospective purchasers of property within the plan be advised that, notwithstanding the designation of a School Site, unless the Ontario funding model provides sufficient funds to construct new schools, there can be no assurance as to the timing of new school construction nor a guarantee that elementary school accommodation will be provided within the subject plan.
 - (b) That the owner supply, erect, and maintain a sign (at its expense and according to the Board's specifications) affixed to the permanent development sign for the plan advising prospective residents that students may be directed to schools outside the neighbourhoods within the plan.
 - (c) That the owner notify all purchasers of residential units and/or renters of same, by inserting the following clauses in all offers of Purchase and Sale/Lease, until such time as a permanent school is assigned:

"Whereas the Waterloo Region District School Board has designated this subdivision as a Development Area for the purposes of school accommodation, and despite the best efforts of the Board, sufficient permanent accommodation may not be available for all anticipated students. You are hereby notified that students may be accommodated in temporary facilities and/or bussed to a school outside the area, and further, that students may, in future, be transferred to another school."

Condition * Hallman (Exhibit 15)

Plan 30T-16104 — Hallman Construction

WATERLOO REGION DISTRICT SCHOOL BOARD CONDITIONS:

(*to be inserted in appropriate location in Region of Waterloo conditions)

1. THAT prior to registration of Stage 1 of the plan, the owner shall have acquired the lands shown as Block 18, Stage 1 of Plan of Subdivision 30T-16103 and such lands shall be consolidated with and registered as part of Block 1, Stage 2 of Plan of Subdivision 30T-16104.

2. THAT the owner shall agree in a Subdivision Agreement with the City and/or the Region:
- (a) That Block 1, Stage 2 of the plan, including Block 18, Stage 1 of Plan of Subdivision 30T-16103, (the "School Block") shall not be registered until the earlier of:
 - (i) the owner having entered into an agreement With the Waterloo Region District School Board for the acquisition of the School Block; or
 - (ii) the Waterloo Region District School Board advising that it does not intend to acquire the School Block.
 - (b) That no development shall be permitted on the School Block until the requirements for the registration of the School Block set out on clause (a) have been satisfied or the Waterloo Region District School Board has acquired the School Block. This shall not preclude site grading and/or the servicing of adjacent roadways providing for service connections for future development of the School Block.
 - (c) That the City shall not remove any portion of the 0.3m reserve between the School Block and Bismark Drive until the requirements for the registration of the School Block set out clause (a) have been satisfied or the Waterloo Region District School Board has acquired the School Block.
 - (d) That the City of Cambridge and prospective purchasers of property within the plan be advised that, notwithstanding the designation of a School Site, unless the Ontario funding model provides sufficient funds to construct new schools, there can be no assurance as to the timing of new school construction nor a guarantee that elementary school accommodation will be provided within the subject plan.
 - (e) That the owner supply, erect, and maintain a sign (at its expense and according to the Board's specifications) affixed to the permanent development sign for the plan advising prospective residents that students may be directed to schools outside the neighbourhoods within the plan.
 - (f) That the owner notify all purchasers of residential units and/or renters of same, by inserting the following clauses in all offers of Purchase and Sale/Lease, until such time as a permanent school is assigned:

"Whereas the Waterloo Region District School Board has designated this subdivision as a Development Area for the purposes of school accommodation, and despite the best efforts of the Board, sufficient permanent accommodation may not be available for all anticipated students. You are hereby notified that students may be accommodated in temporary facilities and/or bussed to a school outside the area, and further,

that students may, in future, be transferred to another school."

- (g) That area grading of the School Block, including soil compaction to accommodate a proposed school, shall occur concurrently with area grading of Stage 1, and that no soil, including topsoil, will be stockpiled on the School Block. The owner shall also seed the School Block within 6 months of area grading of the School Block.
 - (h) That the owner agrees to construct a 1.5 m high chain link fence along the easterly and northerly limits of the School Block, save and except in the location of the pedestrian bridge.
 - (i) That the owner grants access to the Waterloo Region District School Board to enter the School Block, on reasonable prior notice, for the purpose of undertaking soil tests and environmental studies.
3. THAT prior to registration of Stage 1, and prior to the approval of the Area Grading Plan and the Servicing Plan for Stage 1, the Owner agrees to provide a copy of the relevant Area Grading Plan and the relevant Servicing Plan to the Waterloo Region District School Board for their review and comment to the City Engineer.
4. THAT prior to registration of Stage 2, the owner shall submit to the Board a report from a qualified consultant confirming in respect of the School Block:
- (a) the suitability of the School Block for school construction purposes, with particular regard to soil bearing capacity, surface drainage, storm water management, topography and environmental contaminants;
 - (b) the final engineering plans as approved by the City of Cambridge which identify the storm drainage system that will service the School Block and the overall grading plans for the complete subdivision area, and,
 - (c) the availability, within the adjacent road allowance, of natural gas, electrical, water, storm sewer and sanitary sewer services, intended to service the School Block.

Condition 37	Domm (Exhibit 4 Tab B3)
Condition 42	Hallman (Exhibit 4 Tab C3)
Condition 30	Huron Creek (Exhibit 5 Tab 2)

Add the underlined to the end of the sentence for each of the three conditions:

THAT prior to servicing, grading and construction of each stage of the plan, the Owner shall submit in respect of such stage a detailed landscaping and management plan for all buffers associated with Open Space Blocks to the satisfaction of the City of Cambridge, including addressing condition #3 in the Ministry of Environment and Climate Change's decision of October 2, 2015 regarding the Western Chorus Frog.

D. Zoning By-law — (Exhibit 4 Tab D1)

1. Revise 6th bullet point in Purpose and Effect statement on page 1 to read:
Institutional N1 – applies to the proposed school block
2. Delete last sentence of second last paragraph of Purpose and Effect statement on page 1
3. Page 2 – Sections 2 and 3 – revise the references to N1/(H)RM4/(H)R6 and substitute with N1
4. Page 5 General Provisions Table bottom row
Amend a) by deleting "10" and replacing with "5".
5. Revise Zoning Map regarding Block 1 on the Hallman plan and Block 18 on the Domm plan to delete N1/H-RM4/H-R6 and replace with N1.
6. Delete Section 13