

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



ISSUE DATE: October 21, 2020

CASE NO(S): PL180816

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

Appellant: 1583618 Ontario Ltd. & Wilstar Management Ltd.
Subject: Proposed Official Plan Amendment No. 113
Municipality: City of Hamilton
OMB Case No.: PL180816
OMB File No.: PL180816
OMB Case Name: 1583618 Ontario Ltd. v. Hamilton (City)

PROCEEDING COMMENCED UNDER subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: 1583618 Ontario Ltd. & Wilstar Management Ltd.
Subject: By-law No. 18-0257
Municipality: City of Hamilton
OMB Case No.: PL180816
OMB File No.: PL180817

Heard: August 27, 2020 by Video Hearing

APPEARANCES:

Parties

1583618 Ontario Ltd. & Wilstar
Management Ltd. (“Wilstar”)

City of Hamilton (the “City”)

Counsel

P. Patterson
K. Butler

P. MacDonald

Plaza Imports Limited (“Plaza”) P. Harrington

DECISION DELIVERED BY S. JACOBS AND ORDER OF THE TRIBUNAL

INTRODUCTION

[1] Plaza proposes to build a mixed-use development with commercial uses at grade and residential units split between two towers of 16 and 18 storeys, at its property located at 925 Main Street West and 150 Longwood Road South in Hamilton (the “subject lands”). The City adopted Official Plan Amendment No.113 to the Urban Hamilton Official Plan (the “OPA”) and passed amending Zoning By-law No. 18-257 (the “ZBA”) to facilitate Plaza’s proposed development.

[2] Wilstar owns two 12-storey apartment buildings immediately to the west of the subject lands, at 981 and 1001 Main Street West, and appealed the OPA and ZBA to the Tribunal. The appeals were originally filed on October 11, 2018, pursuant to s. 17(24) and 34(19) of the *Planning Act*, R.S.O. 1990, c. P. 13 (the “*Planning Act*”). There have been significant legislative and policy changes since the time Wilstar first filed its appeals, which are described below for context.

Legislative and Policy Changes Leading to the Hearing of these Appeals

[3] Wilstar originally filed its appeals pursuant to the legislative regime in place as a result of the *Bill 139, Building Better Communities and Conserving Watersheds Act, 2017* (“*Bill 139*”) amendments to the *Planning Act*, which came into effect on April 3, 2018. The *Planning Act* at that time required a notice of appeal to explain how the approved instruments were inconsistent with the *Provincial Policy Statement*, failed to conform with or conflict with the *Growth Plan for the Greater Golden Horseshoe*, and, in the case of a zoning by-law amendment, failed to conform with an official plan. This has become known as the ‘consistency / conformity test’. In a case where the Tribunal found that an instrument did not meet the consistency / conformity test, the *Planning Act*

required the Tribunal to send the matter back to the municipality to allow it an opportunity to make a new decision on the instrument.

[4] *Bill 139* also introduced the *Local Planning Appeal Tribunal Act, 2017*, S.O. 2017, c. 23, Sched. 1 (“*LPATA*”), which established procedures for certain *Planning Act* appeals, including official plan amendments and zoning by-laws. Pursuant to *LPATA* and subsequent clarification by the Ontario Divisional Court in response to a case stated by the Tribunal,¹ a hearing of such appeals could consist only of submissions by the parties and affidavit evidence required by the Tribunal pursuant to its *Rules of Practice and Procedure*. A hearing under this regime could also include witnesses called and examined by the Tribunal, if the Tribunal elected to do so. These appeals are also subject to a 10-month timeline in which the Tribunal must dispose of them, in accordance with Ontario Regulation 102/18, made under *LPATA* (the “Timeline Regulation”).

[5] Prior to Wilstar’s appeals being scheduled for a hearing, *Bill 108, More Homes, More Choice Act, 2019* (“*Bill 108*”) introduced further amendments to the *Planning Act* and *LPATA*. These changes came into effect on September 3, 2019. As a result of these amendments and the application of Ontario Regulation 303/19, made under *LPATA* to address transition for *Planning Act* appeals, Wilstar’s appeals would be subject to the procedures of *LPATA* as it read on September 2, 2019. That is, the hearing of the appeals would consist only of submissions by the parties. The Timeline Regulation continues to apply to these appeals.

[6] *Bill 108* amended the *Planning Act* by removing the consistency / conformity bases for appeals. It also removed the requirement for the Tribunal to send an inconsistent or non-conforming instrument back to the municipality for a new decision. The *Planning Act’s* Transitional Matters Regulation 174/16 was also amended to allow appellants of certain *Planning Act* appeals, where a hearing was not yet scheduled by the Tribunal, to file a new notice of appeal in accordance with the *Planning Act* as it

¹ *Craft v. City of Toronto*, 2019 ONSC 3636.

read on September 3, 2019. Wilstar did so; while its new notice of appeal maintained issues of consistency / conformity, it also raised concerns related to good planning.

[7] There have also been significant policy changes since Wilstar filed its appeals. The *Provincial Policy Statement, 2014*, and the *Growth Plan for the Greater Golden Horseshoe, 2017* were in effect at that time. At the time of this hearing, there were new versions of both documents: the *Provincial Policy Statement, 2020* (the “PPS 2020”), and the *Growth Plan for the Greater Golden Horseshoe, 2019* (the “Growth Plan 2019”). The Growth Plan 2019 was subsequently amended on August 28, 2020 through Amendment 1. Because this hearing took place on August 27, 2020 and the Tribunal reserved its decision, the Growth Plan 2019 as it read prior to Amendment 1 applies to these appeals.

Procedural History and Timeline for these Appeals

[8] These appeals have been through two case management conferences (“CMCs”) conducted by different panels of the Tribunal. The 10-month timeline to dispose of the appeals commenced on January 28, 2019, following the Tribunal’s preliminary determination that the appeals were valid. The timeline was then postponed as of May 1, 2019 by the first CMC panel, who ordered the timeline postponed until the hearing of the appeals commenced. That panel granted Plaza’s request for party status, and also indicated that the Tribunal did not anticipate calling witnesses at the hearing of the appeals.

[9] During a second CMC in February 2020, the appeals were scheduled to be heard in-person on July 2, 2020. That CMC panel determined the order and length of submissions by the parties. The hearing format was subsequently changed to a video hearing due to COVID-19. The parties requested and were granted an adjournment of that hearing to August 27, 2020, in order to allow enough time to prepare electronic materials, as well as supplementary affidavits to address the PPS 2020 and Growth Plan 2019.

The Hearing and Filed Materials

[10] The Tribunal heard this matter by video hearing, with counsel for the parties making their submissions in the order and timeframes established by the second CMC panel. The City maintained its position from previous CMCs that it would make only limited submissions in support of its approved instruments, with Plaza to take the lead.

[11] This panel did not elect to call witnesses in the hearing and had before it affidavit evidence from two land use planners: Allan Ramsay in support of the appeals, and Matt Johnston, retained by Plaza. Mr. Johnston, as a Principal of Urban Solutions Planning & Land Development Consultants Inc. was the lead planner having carriage of Plaza's redevelopment file. In addition to attending consultation meetings with City staff, he supervised and co-authored the Planning Justification Report and Addendum submitted in support of Plaza's OPA and ZBA applications, and he coordinated submissions made by Plaza's consulting team. In his affidavit, Mr. Johnston indicates that: his opinions are contained in the Planning Justification Report and that he agrees with and supports the planning justifications of City Planning staff as contained in the September 2018 Recommendation Report (the "Recommendation Report"). Both Mr. Ramsay and Mr. Johnston are Registered Professional Planners who have been qualified by the Tribunal and the OMB on numerous occasions. On that basis, this panel has relied on their sworn affidavits as written expressions of their respective land use planning opinions.

[12] The Tribunal marked the following exhibits, noted here for ease of reference:

- Exhibit 1: Enhanced Municipal Record (dated October 26, 2018)
- Exhibit 2: Appeal Record of 1583618 Ontario Ltd. and Wilstar Management Ltd. (dated November 29, 2018)
- Exhibit 3: City of Hamilton Responding Record (dated December 17, 2018)
- Exhibit 4: City of Hamilton Responding Case Synopsis (dated December 17, 2018)

- Exhibit 5: Request for Party Status for Plaza Imports Limited (dated March 29, 2019)
- Exhibit 6: Supplementary Affidavit of Allan Ramsay (sworn June 26, 2020)
- Exhibit 7: Supplementary Affidavit of Matt Johnston (sworn August 18, 2020)

The Subject Lands and Surrounding Area

[13] The subject lands are located at the corner of Main Street West and Longwood Road South, with Highway 403 to the south. The site is approximately 2.08 hectares (“ha”) in area, with 123 metres (“m”) of frontage on the south side of Main Street West and 93.7 m on Longwood Road. The Main Street West parcel, approximately 0.51 ha, is relatively flat with two 1-storey commercial buildings that were used as a motor vehicle sales establishment. The Longwood parcel, approximately 1.57 ha, includes a treed bank sloping approximately 10 m down toward Highway 403, where there is a grass plane with an abandoned tennis court. The sloped portion of the Longwood parcel forms part of a valley system regulated by the Hamilton Conservation Authority (the “HCA”).

[14] Longwood Road South is a collector road, while Main Street West is a major arterial road and a corridor that connects west Hamilton to downtown. By all accounts, and as Mr. Ramsay explains, “the corridor is well served with transit services and is part of the City’s future LRT line” (Exhibit 2, Tab 5, para. 11). The existing transit services include local (Hamilton Street Railway), regional (Coach Canada and Greyhound), and GO Transit routes, all of which have stops within 150 m of the site. Regarding future transit services, counsel, through their submissions, informed the Tribunal that the Province has cancelled the LRT project. While the future of the project is uncertain, the Urban Hamilton Official Plan (“UHOP”) identifies this stretch of Main Street West as a Potential Rapid Transit Line.

[15] There are a mix of commercial, residential, and institutional uses in the surrounding neighbourhood, which the Planning Justification Report describes as an ‘education district node’. Immediately north of the subject lands, along Main Street

West, are low rise, small scale commercial buildings and single detached residential dwellings. Some of these dwellings contain a home occupation or have been converted to commercial uses. Westdale Secondary School, a designated heritage property, is located at the north-east corner of Main Street West and Longwood Road. To the north of the Main Street West corridor is an established residential neighbourhood.

[16] There are additional small scale retailers, service commercial, and office uses located in a two-storey commercial plaza east of Longwood Road South. East of the plaza, along Main Street West, are mostly one- and two-storey small commercial buildings.

[17] Highway 403 is located immediately to the south of the subject lands, and to the southeast is the West Hamilton Innovation District, which consists of buildings associated with McMaster University and other employment uses.

[18] Wilstar's two 12-storey multiple dwelling buildings are immediately to the west of the subject lands. These buildings contain a total of 470 units, housing, as Mr. Ramsay describes, "a diverse population of families, seniors, professionals and students within 1-, 2- and 3- bedroom units" (Exhibit 2, Tab 5, para. 11). Beyond Wilstar's buildings is Columbia International College (the "College"), which includes a two-storey school building and sports field, as well as a five-storey residence building and two-storey classroom building further west along Main Street West.

The Proposed Development and Planning Instruments

[19] Plaza proposes a mixed-use development consisting of two tower elements, connected at the base by a four-storey podium. Tower "A" is proposed at a maximum height of 56 m, or 16 storeys, while Tower "B" is proposed at a maximum height of 62 m, or 18 storeys. Parking is proposed in a two-level underground garage with 156 vehicular spaces and 102 bicycle spaces. The proposed development is concentrated along the frontage of the Main Street West parcel, while the Longwood parcel is

intended to have zoning that will preserve its natural integrity. The HCA has approved a development permit for the proposal and took no part in this proceeding. The building podium is proposed to abut Main Street West with no setback. While the subject lands have Highway 403 directly to the south, the building will be set back over 90 m from the Highway. The building is proposed to be set back approximately 25 m from Wilstar's property.

[20] The subject lands are designated Local Commercial and Open Space in the UHOP and they are also subject to the policies of the Ainslie Wood Westdale Secondary Plan (the "Secondary Plan"). To facilitate its proposed development, Plaza requires an amendment of its UHOP designation to High Density Residential 1, as well as an amendment to the Secondary Plan to permit a height of up to 18 storeys and a density of up to 250 units per hectare ("uph"). The City adopted these amendments in the form of the OPA.

[21] Plaza's proposed development also requires an amendment to the City's Zoning By-law, which zones the site predominately as Community Shopping and Commercial. The ZBA adds the subject lands to Zoning By-law No. 05-2000 and zones the site as Transit Oriented Corridor Mixed Use Medium Density, as well as Conservation / Hazard Land, to reflect the natural features of the Longwood parcel.

[22] The City adopted the OPA and passed the ZBA on September 12, 2018. At that time, and at the time of Plaza's application for these instruments, the proposal was for a lodging house use to be operated as a 1,024-bed, 514-unit student residence for the College. The College has since withdrawn from the project and Plaza intends to proceed with the project as a mixed-use residential development with an operator to be identified. Plaza requires no changes to the approved OPA and ZBA to proceed with its plan.

ISSUES AND ANALYSIS

[23] The key issue in this appeal is whether the proposed development is compatible with its surrounding built environment. The Tribunal must consider this question in the context of the PPS 2020, the Growth Plan 2019, and the UHOP. The parties filed an extensive Issues List prior to the hearing, citing numerous policies in the PPS 2014, the Growth Plan 2019, and UHOP. Before turning to specific policies, the Tribunal finds it helpful to state what is not in dispute. Wilstar raises no issue of impact; in fact, it concedes that the proposal will have no measurable, adverse impact on its property or other adjacent properties, whether by virtue of its height, overlook, or shadow. Wilstar's position is that this proposal is an over intensification of the site and is incompatible with the built environment. In Wilstar's view, the instruments are not consistent with the PPS 2020, do not conform with the Growth Plan 2019, do not represent good land use planning, and the ZBA does not conform with UHOP.

[24] As described earlier, these appeals are subject to the *Bill 108* (or September 3, 2019) version of the *Planning Act*. With respect to the OPA, the Tribunal's powers are set out in s. 17(50) of the Act:

On an appeal or a transfer under this section, the Tribunal may approve all or part of the plan as all or part of an official plan, make modifications to all or part of the plan and approve all or part of the plan as modified as an official plan or refuse to approve all or part of the plan.

The Tribunal's powers regarding the ZBA are established in s. 34(26):

Powers of L.P.A.T.

(26) The Tribunal may,

- (a) on an appeal under subsection (11) or (19), dismiss the appeal;
 - (b) on an appeal under subsection (11) or (19), amend the by-law in such manner as the Tribunal may determine or direct the council of the municipality to amend the by-law in accordance with the Tribunal's order;
- or

(c) on an appeal under subsection (19), repeal the by-law in whole or in part or direct the council of the municipality to repeal the by-law in whole or in part in accordance with the Tribunal's order.

In accordance with s. 3(5) of the *Planning Act*, the Tribunal must ensure that its decision regarding each of the OPA and ZBA is consistent with the PPS 2020 and conforms with the Growth Plan 2019. The Tribunal must also ensure that the ZBA conforms with UHOP (including the Secondary Plan).

[25] Section 2.1 of the *Planning Act* requires the Tribunal to have regard to the City's decisions pertaining to the OPA and ZBA and to any information or material that City council considered in making those decisions. Wilstar submitted that the City made its decision on the basis of the proposed development being intended to house students from the College. The suggestion is that perhaps the City would have arrived at a different decision if student housing were removed from the proposal, or if the College withdrew from the project before council made its decision.

[26] In the Tribunal's view, there are three flaws in this argument. First, it is not linked to the legislative or policy context in which the Tribunal must make its decision; there is no basis in law or policy for the Tribunal to determine whether a proposal should proceed based on who is going to live in the development. Second, the Tribunal, in reviewing the extensive record, does not perceive an apparent reliance by City council on this being a student residence in order to approve the instruments. There is no reference to student housing in either of the instruments before the Tribunal in these appeals. Third, if Wilstar perceived such a reliance by the City on the College's involvement in the project, it could have brought a motion for the Tribunal to consider whether the new information (that is, the College's withdrawal from the project) could have materially affected council's decision, in accordance with s. 17(44.4) and s. 34(24.4). It did not do so. Accordingly, the withdrawal of the College from the project has no bearing on the Tribunal's analysis.

Consistency with the *PPS 2020*

[27] Before considering the specific PPS 2020 policies at issue in these appeals, it is necessary to understand the purpose of the document and how it is to be read. The Preamble states that the PPS “provides for appropriate development while protecting resources of provincial interest, public health and safety, and the quality of the natural and built environment.” It recognizes that the policies may be complemented by provincial plans or by locally-generated policies. To that end, it emphasizes

[m]unicipal official plans are the most important vehicle for implementation of this Provincial Policy Statement and for achieving comprehensive, integrated and long-term planning. Official plans shall identify provincial interests and set out appropriate land use designations and policies.

The PPS 2020 is meant to be read in its entirety so that relevant policies may be applied to each situation, with an understanding of how the policies are meant to work together.

[28] The originally filed affidavits, including the Planning Justification Report and Recommendation Report upon which Mr. Johnston relies in his affidavit, completed their planning analysis under the PPS 2014. Messrs. Ramsay and Johnston filed supplementary affidavits to address the PPS 2020. They both indicate that their opinions have not changed based on the new policies. Mr. Johnston provides analysis of the relevant changes to the PPS 2020 to support his opinion. Mr. Ramsay provides a chart to indicate where wording has changed from the PPS 2014, and provides no analysis of these changes with respect to his opinion. While the Tribunal acknowledges that many of the policies remain the same or similar, the PPS 2020 introduces and emphasizes transit-supportive development in several of the policies that the parties dispute in these appeals. Mr. Ramsay’s supplementary affidavit makes no attempt to address these changes in any meaningful way.

[29] Wilstar, through Mr. Ramsay's original affidavit, submits two reasons why the OPA is not consistent with the PPS 2014, relating to policies 1.1.3.2(b) and 1.1.3.3. The Tribunal's analysis of the PPS accordingly focusses on these policies.

[30] The subject lands are within a settlement area. The PPS 2020 provides that settlement areas "shall be the focus of growth and development" (policy 1.1.3.1), and provides the following direction on land use patterns within settlement areas:

1.1.3.2 Land use patterns within *settlement areas* shall be based on densities and a mix of land uses which:

- a) efficiently use land and resources;
- b) are appropriate for, and efficiently use, the *infrastructure* and *public service facilities* which are planned or available, and avoid the need for their unjustified and/or uneconomical expansion;
- c) minimize negative impacts to air quality and climate change, and promote energy efficiency;
- d) prepare for the *impacts of a changing climate*;
- e) support *active transportation*;
- f) are *transit-supportive*, where transit is planned, exists or may be developed; and
- g) are *freight-supportive*.

Land use patterns within *settlement areas* shall also be based on a range of uses and opportunities for *intensification* and *redevelopment* in accordance with the criteria in policy 1.1.3.3, where this can be accommodated.²

Policy 1.1.3.3 establishes criteria for intensification; the bold text indicates wording that is new to the PPS 2020:

Planning authorities shall identify appropriate locations and promote opportunities for ***transit-supportive development, accommodating a significant supply and range of housing options through intensification and redevelopment*** where this can be accommodated taking into account existing building stock or areas, *including brownfield sites*, and the availability of suitable existing or planned *infrastructure and public service facilities* required to accommodate projected needs.

[31] In Mr. Ramsay's opinion, the OPA is inconsistent with policy 1.1.3.2 and the cross-referenced policy 1.1.3.3, as the proposed development results in an

² Italics contained in quoted excerpts in this Decision are included in the original document to indicate defined terms.

intensification that cannot be accommodated without significant reductions to setbacks and other development regulations. It is his opinion that the compact urban form of the proposal is not appropriate in this area, which is defined by low- and mid-rise buildings.

[32] Similarly, Mr. Ramsay believes that the proposal does not take into account existing building stock or areas. He concedes that some intensification of the subject lands may be appropriate, though not at the density, setbacks and overall intensity of development proposed. The Tribunal must point out that Mr. Ramsay's opinion was based on the PPS 2014 version of this policy. The policy, as it reads in the PPS 2020, introduces and emphasizes the concept of transit-supportive development.

[33] Though it was not referred to in submissions or the supplementary affidavits, the PPS 2020 definition of transit-supportive is instructive:

Transit-supportive: in regard to land use patterns, means development that makes transit viable, optimizes investments in transit infrastructure, and improves the quality of the experience of using transit. It often refers to compact, mixed-use development that has a high level of employment and residential densities, including air rights development, in proximity to transit stations, corridors and associated elements within the *transportation system*. Approaches may be recommended in guidelines developed by the Province or based on municipal approaches that achieve the same objectives.

All affidavits and incorporated planning reports, including Mr. Ramsay's original affidavit, indicate that the subject lands are well served by existing transit. While the future of the LRT is uncertain, UHOP identifies this part of Main Street West as a Potential Rapid Transit Line.

[34] Mr. Johnston, in his supplementary affidavit, indicates that the proposed development, given its location on a future higher order transit corridor, represents an appropriate form of transit-oriented development consistent with the PPS 2020. The Tribunal cannot overlook Mr. Ramsay's omission in his supplementary affidavit to directly address the PPS 2020's emphasis on transit-supportive development. For this reason, the Tribunal cannot accept Mr. Ramsay's opinion regarding policies 1.1.3.2 and

1.1.3.3. His opinion lacks specificity and the contextual analysis required to apply these policies.

[35] Conversely, the Tribunal finds the analysis in Mr. Johnston's affidavits, which relies on the thorough analyses contained in both the Planning Justification Report and Recommendation Report, to take an appropriate, comprehensive approach to interpreting these policies. This approach supports his conclusion that the proposal is consistent with both the PPS 2014 and 2020, as it provides intensification within a settlement area that supports transit, encourages active transportation, and uses surrounding infrastructure.

[36] The Recommendation Report considers the policies relevant to these considerations, as well as policies relating to cultural heritage and archaeology and hazard lands, which were not at issue in these appeals. The Tribunal sees nothing in the record and heard nothing in submissions to contradict Mr. Johnston's ultimate finding of consistency with the PPS 2014 and PPS 2020, based partly on the opinions in the Recommendation Report, which succinctly explains:

The subject property is located within a settlement area as defined by the PPS. The proposal is for a mixed use development consisting of a lodging house and commercial floor space. The proposal is contributing to the mix of land uses in the City that efficiently use land and existing infrastructure, and represents a form of intensification. The proposal seeks a reduction in the amount of vehicular parking and is located in close proximity to public transit including current bus services and the future light rail transit line. (Exhibit 1, Tab 6, p. 10 of 44).

[37] The Tribunal agrees with Mr. Johnston that the OPA and ZBA represent an appropriate form of intensification and transit-supportive development consistent with the PPS 2020. The Tribunal finds that Mr. Ramsay's concerns about built form compatibility are more appropriately addressed within the context of UHOP policies.

Conformity with the Growth Plan 2019

[38] The Growth Plan 2019 “is the Ontario government’s initiative to plan for growth and development in a way that supports economic prosperity, protects the environment, and helps communities achieve a high quality of life” (s. 1.2). The policy directions call for prioritization of intensification and higher densities to make efficient use of land and infrastructure, as well as to support transit viability. A key aim of the Growth Plan 2019 is to support the achievement of complete communities through a range and mix of housing options. Like the PPS, the Growth Plan commends decision-makers to read the entire plan so that relevant policies are applied to each situation.

[39] Here again, the originally filed affidavits for these appeals refer to the Growth Plan 2017. Messrs. Johnston and Ramsay’s supplementary affidavits are intended to address any changes due to the application of the Growth Plan 2019. Mr. Johnston agrees with the analysis in the Recommendation Report that concludes the instruments conform with the Growth Plan 2017, and he provides additional analysis in his supplementary affidavit to support his opinion with respect to the Growth Plan 2019.

[40] Mr. Ramsay’s original affidavit is a useful starting point for narrowing the issues raised regarding the Growth Plan. At paragraph 26, he opines:

[t]he Plaza proposal generally conforms to the principles of the Growth Plan by proposing to accommodate intensification in an area that is designated for infill and intensification. However, the density, scale and massing of the proposal does not conform with the policy provisions that address the need for an appropriate scale of development and transition of built form to adjacent areas.

Mr. Ramsay confirmed in his supplementary affidavit that his opinion is unchanged by virtue of the Growth Plan 2019. In formulating his opinion that the proposed development does not conform with the Growth Plan, he relies on s.1.2.1 (bullet 2), s. 2.2.2(3)(b) and (c) (formerly s. 2.2.2(4)(a) and (b) in the Growth Plan 2017).

[41] The guiding principles for the Growth Plan 2019 are established in s. 1.2.1. The bold text in the second bullet, upon which Mr. Ramsay relies, indicates language that is new to this version of the plan:

The successful realization of this vision for the GGH centres on effective collaboration amongst the Province, other levels of government, First Nations and Métis communities, residents, private and non-profit sectors across all industries, and other stakeholders. The policies of this Plan regarding how land is developed, resources are managed and protected, and public dollars are invested are based on the following principles:

- Support 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.
- Prioritize *intensification* and higher densities **in *strategic growth areas*** to make efficient use of land and *infrastructure* and support transit viability.
- ...

In Mr. Ramsay's opinion, the proposed development is "contrary to the City's overall approach to prioritize intensification and higher densities in other areas of the City," as established in UHOP and the Secondary Plan.

[42] Intensification targets are established in s. 2.2.2, and municipalities are required to develop a strategy to achieve the target in accordance with criteria established by policy 2.2.2.3.:

3. All municipalities will develop a strategy to achieve the minimum intensification target and *intensification* throughout *delineated built-up areas*, which will:

- a) identify *strategic growth areas* to support achievement of the intensification target and recognize them as a key focus for development;
- b) identify the appropriate type and scale of development in *strategic growth areas* and transition of built form to adjacent areas;
- c) encourage *intensification* generally throughout the *delineated built-up area*;
- d) ensure lands are zoned and development is designed in a manner that supports the achievement of *complete communities*;
- e) prioritize planning and investment in *infrastructure* and *public service facilities* that will support *intensification*; and

- f) be implemented through official plan policies and designations, updated zoning and other supporting documents.

...

[43] The Growth Plan 2019 omitted some language and added new language to this section as compared to the 2017 version. Notably, these revisions impact the policies Mr. Ramsay relied upon in his original affidavit. What is now policy 2.2.2.3(c) was previously 2.2.2.4(a), which provided that the municipal strategy will “encourage intensification generally to achieve the desired urban structure.” The current version has replaced the reference to “the desired urban structure” with “throughout the delineated built-up area.” Mr. Ramsay highlights this change in an attachment to his supplementary affidavit but provides no explanation nor analysis as to how this amendment supports his unchanged opinion that the proposed development does not conform with the Growth Plan.

[44] This is also the case in the current policy 2.2.2.3(b), which has added the language, “in strategic growth areas.” Mr. Ramsay again highlights the change without providing an explanation as to how this supports his original opinion.

[45] Mr. Johnston, in his supplementary affidavit, helpfully explains that the policy direction of the Growth Plan 2019 “is to prioritize intensification and higher densities to make efficient use of land and infrastructure and support transit viability” (Exhibit 7 at para. 13). He goes on to explain that these policies apply not only to the proposed development, but to the Main Street corridor, which requires consideration of the applicable UHOP and Secondary Plan policies.

[46] The Tribunal sees no reason, based on Mr. Ramsay’s affidavit evidence, to question the comprehensive analysis undertaken by Mr. Johnston, and City planning staff in the Recommendation Report upon which he relies, in arriving at their shared conclusion of conformity with the Growth Plan 2017. The Tribunal finds that the rationale for this opinion holds true under the Growth Plan 2019, as explained by Mr.

Johnston in his supplementary affidavit. As with the PPS 2020, Mr. Ramsay's failure to explain how changes to these policies continue to support his original opinion brings into question the reliability of his opinion evidence on these policies.

[47] The Tribunal finds that the OPA and ZBA conform with the Growth Plan 2019. The Tribunal recognizes that the Growth Plan policies Mr. Ramsay relies upon point to the City's intensification strategy, as articulated in the UHOP and Secondary Plan. Accordingly, the Tribunal now turns to those policies to consider the remaining question in these appeals: whether the ZBA conforms with the UHOP and Secondary Plan.

Conformity with UHOP and the Secondary Plan

[48] The subject lands are identified as "Primary Corridor" and "Neighbourhoods" on UHOP's Urban Structure Schedule "E", and they are designated as "Neighbourhoods" and "Open Space" on the Urban Land Use Designations Schedule "E-1". The OPA would change the "Open Space" designation on the southerly portion of the subject lands to "Neighbourhoods. In the Secondary Plan, the subject lands are designated "Local Commercial" and "General Open Space" and the OPA changes this designation to "High Density Residential 1" with a site specific policy to allow a maximum building height of 62 m (18 storeys) and density of 250 uph.

[49] The Tribunal must determine whether the ZBA conforms with the UHOP and Secondary Plan as amended by the OPA. Mr. Johnston's affidavits, including the relied upon Planning Justification Report and Recommendation Report, share the opinion that the ZBA conforms with UHOP and the Secondary Plan. The Tribunal has reviewed all of these documents and notes that they undertake detailed and thoughtful analyses of all relevant UHOP and Secondary Plan policies. Rather than replicating that analysis here, the Tribunal will instead focus on the issues of conformity that Mr. Ramsay raises in his affidavits. These are organized by UHOP's Urban Structure policies for Neighbourhoods, Residential Intensification, Urban Design, and the Secondary Plan.

i. *Urban Structure Policies*

[50] As Mr. Ramsay explains, s. E.2.2 of UHOP establishes the elements of the City's urban structure, which includes Urban Nodes, Urban Corridors, Major Activity Centres, Neighbourhoods, Employment Areas and Major Open Space. There are general policies for Urban Corridors and specific policies for Primary Corridors, all of which apply to the subject lands.

[51] Urban Corridors are expected to "[b]e the location for a range of higher density land uses along the corridor, including mixed uses where feasible, supported by higher order transit on the primary corridors" (s. E.2.4.3). Mr. Ramsay agrees that Main Street west is well served by transit services and that it is planned to be part of the City's future LRT line.

[52] With respect to built form along Urban Corridors, s. E.2.4.10 provides that it

shall generally consist of low to mid rise forms, but will vary along the length of the corridors with some areas permitted to accommodate high density and high rise built form. The Primary Corridors shall have a greater proportion of the corridor length in retail and mixed use forms, while the Secondary Corridors shall generally accommodate retail and mixed use forms in small clusters along the corridors with medium density housing located between the clusters.

There is an expectation for intensification in Urban Corridors, as set out in s. E.2.4.11:

Urban Corridors shall be a focus for intensification through the Neighbourhoods which they traverse. However, it is anticipated that intensification will also occur within the surrounding Neighbourhoods, particularly on sites along other arterial roads that are not designated as Urban Corridors.

[53] The design of Urban Corridors is expected to provide a comfortable and attractive pedestrian experience (s. E.2.4.14), and new development is required to respect the built form of existing adjacent neighbourhoods, pursuant to s. E. 2.4.16:

New development shall respect the existing built form of adjacent neighbourhoods where appropriate by providing a gradation in building height.

New development shall locate and be designed to minimize the effects of shadowing and overview on properties in adjacent neighbourhoods.

This, according to Mr. Ramsay, is where the ZBA falls short.

[54] Mr. Ramsay describes the existing built form of the Main Street West corridor, from McMaster University to Highway 403, as mostly low-rise buildings of three storeys or less, except for Wilstar's 12-storey buildings immediately to the west of the subject lands. In his opinion, the ZBA does not respect the existing built form of the adjacent neighbourhood and does not provide a gradation in building height. Wilstar concedes that its concern is not one of impact; it raised no concerns regarding shadowing or overview on its property, nor any adjacent property.

[55] Both Mr. Johnston and Mr. Ramsay indicate that they have reviewed Plaza's Urban Design Brief, prepared by Michael Spaziani. While Mr. Spaziani did not provide affidavit evidence, the Planning Justification Report upon which Mr. Johnston relies refers the reader to the Urban Design Brief for a discussion of relevant urban design policies and their application to the proposed development.

[56] Mr. Spaziani describes the vicinity of the site as having an inconsistent streetscape with vacant sites, exposed parking lots, single storey commercial buildings, and a few detached residences with individual driveway access and two-storey commercial house forms. He explains how, in his opinion, the proposed built form addresses the Urban Corridor policies:

The design of the Subject Site seeks to physically define the edge of the Primary Corridor with an active and attractive pedestrian experience while achieving reasonable intensification levels respectful of the adjacent mixed built form context. To that end a 4 storey streetwall with slender, well-spaced point tower forms above at 15 storeys have been deployed. The tallest built form lies within a 39 degree angular plane of stable Neighbourhoods designations. (Exhibit 1, Tab 15, p. 13).

The Tribunal recognizes that Mr. Spaziani's report was prepared based on an earlier iteration of the proposal, which was subsequently modified to the 16- and 18-storey

tower form that was before City council when it approved the instruments. However, his comments regarding the adjacent context and street wall of the proposal's built form apply to the current proposed development. The Tribunal agrees that the four-storey podium that forms the street wall respects the existing built form of the adjacent neighbourhood, which consists of a range of one- to twelve-storey buildings. The Tribunal finds that the proposal respects the existing built form of the adjacent neighbourhoods and results in no adverse shadowing or overview impacts. The ZBA therefore conforms with s. E. 2.4.16 and the associated relevant Urban Structure policies of UHOP.

ii. Neighbourhoods

[57] The introduction to UHOP's Neighbourhoods policy provides a helpful context for these policies, including how they relate to Urban Corridors and intensification:

Neighbourhoods are where the majority of Hamiltonians live, learn, shop, socialize, and play. A key component of Hamilton's urban structure, the Neighbourhoods element is an all encompassing element representing the concept of complete community at the structural level. Neighbourhoods occupy the greatest proportion of the City, containing a mix of low, medium, and high rise residential areas; various types of roads, parks, open spaces, and commercial areas; and institutions such schools and places of worship.

The Neighbourhoods are bordered and bisected, in a number of locations by Urban Corridors. These corridors are a separate structural element from the Neighbourhoods, but in many locations function as an integral part of the surrounding Neighbourhood, often serving as the central focal point.

Hamilton's neighbourhoods are, by and large, regarded as stable. However, that does not mean these areas are static. These neighbourhoods will see some physical change over time. **Residential intensification within Neighbourhoods is part of the evolution of a neighbourhood and can happen at a range of scales and densities provided the intensification is compatible with and respects the built form and character of the surrounding neighbourhood.** [Emphasis added]

UHOP defines 'compatibility / compatible' as

land uses and building forms that are mutually tolerant and capable of existing together in harmony within an area. Compatibility or compatible should not be narrowly interpreted to mean "the same as" or even as "being similar to".

[58] The policy goals for Neighbourhoods include developing compact, mixed use, transit-supportive, and active transportation friendly neighbourhoods (s. 3.1.1), complete communities (s. 3.1.2), and planning for a range of housing types and densities, including affordable housing (s. 3.1.3). In Mr. Ramsay's opinion, the ZBA does not conform with two policy objectives for Neighbourhoods, relating to enhancing and respecting the character of existing neighbourhoods and promoting intensification of appropriate scale. The relevant objectives are as follows:

3.1 Policy Goals

The following goals apply to the Neighbourhoods land use designation:

...

- 3.1.4 Promote and support design which enhances and respects the character of existing neighbourhoods while at the same time allowing their ongoing evolution.
- 3.1.5 Promote and support residential intensification of appropriate scale and inappropriate locations throughout the neighbourhoods.

He also relies on s. 3.2.4, which provides direction on the scale and design of development in Neighbourhoods:

The existing character of established Neighbourhoods designated areas shall be maintained. Residential intensification within these areas shall enhance and be compatible with the scale and character of the existing residential neighbourhood in accordance with Section B.2.4 – Residential Intensification and other applicable policies of this Plan.

[59] Mr. Ramsay's opinion is that the proposed development does not enhance nor respect the established and emerging scale and character of the area. He describes this area of Main Street West as being predominantly single detached dwellings with some commercial uses in the form of one- and two-storey buildings. It is his opinion that mixed-use redevelopment for this area is planned within a low- and mid-rise built form at a medium density scale, in contrast to what Plaza proposes. Mr. Ramsay also cites UHOP's definition of compatibility, cited above. In Mr. Ramsay's opinion, the "proposed development raises land use compatibility issues with adjacent uses, particularly dealing with matters of nuisance" (Exhibit 2, Tab 5 at para. 46). Mr. Ramsay refers to nuisance several times throughout his affidavit, sometimes linking nuisance to a lack of

buffering or setback between the proposed development and Wilstar's buildings, but otherwise offering no specific explanation of the alleged nuisance.

[60] The Tribunal notes that Wilstar's appeal letter similarly refers to nuisance and cites instances of trespass and loitering on Wilstar's property, allegedly by students from the College. These concerns were not a focus of Wilstar's submissions during the hearing. When the Tribunal posed a question about compatibility, given that Wilstar raises no issue with impact of the proposal, Mr. Patterson emphasized that Wilstar's concern is regarding built form compatibility.

[61] The Tribunal has trouble reconciling Mr. Patterson's submission with Mr. Ramsay's affidavits and with Wilstar's letter of appeal. Neither of Mr. Ramsay's affidavits attempt to address compatibility in the true land use planning sense, which is what UHOP demands. If building forms are not "mutually tolerant and capable of existing together in harmony," surely there is some form of impact that materializes. Wilstar concedes there is no impact here. Mr. Ramsay, Wilstar's retained land use planner, opines there is a compatibility issue with adjacent uses due to nuisance. However, Mr. Ramsay's original opinion was premised on the proposal being planned as a residence for the College. After the College withdrew from the project, Mr. Ramsay provided a supplementary affidavit and acknowledged he was aware of this change. It did not change his opinion with respect to conformity with UHOP and the Secondary Plan.

[62] Here again, the Tribunal must question the reliability of Mr. Ramsay's opinion evidence. His affidavits stand in contrast to the detailed and thorough analysis of these UHOP policies in Mr. Johnston's affidavits and in the reports upon which he relies in support of his opinion. The Tribunal agrees with Mr. Harrington's submission that the Recommendation Report provides a complete answer to any concerns about compatibility (Exhibit 1, Tab 6, page 20 of 44):

Unlike most lands identified on the primary corridor, the subject lands do not form a boundary of a residential subdivision or neighbourhood. Given the site's unique location and surrounding context, staff consider the proposed height of

the building to be appropriate and compatible with the surrounding context. ...[w]ith respect to massing, the applicant has made attempts to reduce the impact of the tower component of the building by stepping back the towers 6.1 metres at floors five to 14 and 7.6 metres from the 14th floor upwards on both towers relative to the podium. Staff are of the opinion that the site's unique characteristics as previously described and location in the City lend itself to a tall building and is appropriate in this instance. Further, through the Site Plan Control process, staff will be requiring exterior cladding and glazing in the upper storeys to help reduce the massing along the street.

[63] Based on the relevant materials in the record, and on the Tribunal's own reading of the relevant UHOP policies, the Tribunal finds no issue of compatibility of the proposed development with the scale and character of the existing residential neighbourhood and reiterates its findings regarding the Urban Structure policies.

[64] Mr. Ramsay also raises concerns about landscaping and buffering as per s. E. 3.6.7, and suggests that a fence or other permanent barrier could ensure compatibility between the proposed development and Wilstar. As Mr. Harrington pointed out, this is an item that is properly addressed at the site plan stage. Wilstar may wish to make this suggestion through that process.

iii. Residential Intensification Policies and Urban Design Policies

[65] An analysis of residential intensification policies is required by operation of s. 3.2.4, above, when considering development in Neighbourhoods. While Mr. Ramsay discusses these policies in detail, his concern again relates to compatibility. Similar to the Neighbourhoods policies, Mr. Ramsay's opinion is based on an incomplete assessment of compatibility. The Tribunal reiterates its findings on compatibility above and prefers the detailed analysis of compatibility in the context of Residential Intensification and Urban Design policies provided by Mr. Johnston and the reports upon which he relies in support of his opinion.

iv. Conformity with the Secondary Plan

[66] The Secondary Plan, in s. 6.2.4, establishes several objectives for development in the Secondary Plan area. Mr. Ramsay acknowledges that the proposed development satisfies some of the objectives, but does not adequately address the following objectives, which are to:

- a) Provide a diversity of suitable housing choice for families, students, seniors and others.
...
- c) Ensure new infill housing and renovations are compatible with existing development.
...
- f) Reduce conflicts between adjacent land uses by buffering and distance separation.
...
- j) Enhance the design and identity of the Ainslie Wood Westdale area by the addition of design features to accentuate streetscapes and gateways.

Mr. Ramsay's analysis of the first three objectives cite nuisance, which the Tribunal has dealt with above. Wilstar alleges no impact of the proposed development and any buffering concerns could be addressed at the site plan stage. Mr. Ramsay also asserts that the development will dominate the Main Street West streetscape. There is no question that Plaza's buildings will be the tallest in this area. That, in itself, does not make the proposal one that is contrary to these objectives.

[67] The Tribunal prefers Mr. Johnston's opinion evidence and finds that careful consideration has been given to the street wall of the proposed development and its appropriate fit within the streetscape. The Tribunal agrees with Mr. Johnston that the ZBA conforms with these secondary plan policies.

[68] In Mr. Ramsay's opinion, the ZBA also does not conform with s. 6.2.3.3, which requires population densities to be "reflective of average densities for similar higher

density residential uses across the City.” He notes that the proposed development, with a density of 250 uph far exceeds the 125 uph attributed to high density sites in the Secondary Plan, and the 200 uph attributed to these sites under UHOP. Certainly, 250 uph exceeds what is established in the Secondary Plan that will be amended by the OPA. That is expected. More importantly, s. 6.2.3.3 speaks to average densities for similar higher density residential *uses across the City*. Mr. Ramsay offers no opinion as to what the average densities are in the City. The Tribunal accepts, based on Mr. Johnston’s affidavit and as articulated in the Recommendation Report, “that the population density proposed is in keeping with the average densities for similar higher density residential uses in the City” (Exhibit 1, Tab 6, p. 30 of 44).

[69] The Tribunal finds, based on the planning opinions before it and its own reading of the relevant policies, that the ZBA conforms with UHOP and the Secondary Plan.

CONCLUSION

[70] The Tribunal finds that the OPA and ZBA are consistent with the PPS 2020, conform with the Growth Plan 2019, that the ZBA conforms with both UHOP and the Secondary Plan, and that the instruments represent good land use planning. Based on the record before it, in these appeals, the Tribunal concludes that careful thought has been given to the proposed development’s fit and compatibility within its existing and planned context. There is reference throughout the record, including in the Recommendation Report that was before City council, to this development acting as a gateway site to the many education uses in the area. The OPA and ZBA achieve relevant Provincial policy directions to achieve appropriate intensification, complete communities, and development that supports transit.

[71] In arriving at this Decision, the Tribunal had regard to the decision of City council to approve these instruments, as well as the information that was before council when it made these decisions, including the Recommendation Report, the Planning Justification Report and other associated reports. While council did not have Mr. Ramsay’s affidavit

before it, the Tribunal has undertaken a careful analysis of his opinion in considering Wilstar's appeals.

ORDER

[72] The Tribunal orders that the appeals are dismissed. Amendment No. 113 to the Urban Hamilton Official Plan is approved.

"S. Jacobs"

S. JACOBS
MEMBER

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

Local Planning Appeal Tribunal

A constituent tribunal of Ontario Land Tribunals

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