

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



ISSUE DATE: April 30, 2021

CASE NO(S): PL190221

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

Applicant and Appellant:	RioTrin Properties (Burnhamthorpe) Inc.
Subject:	Request to amend the Official Plan - Refusal of request by City of Mississauga
Existing Designation:	Mixed Use – Special Site
Proposed Designated:	Mixed Use – Special Site
Purpose:	To permit the intensification of an underused portion of the Property with a 25-storey mixed-use building
Property Address/Description:	3900-3980 Grand Park Drive
Municipality:	City of Mississauga
Approval Authority File No.:	OPA/OZ 15/006
LPAT Case No.:	PL190221
LPAT File No.:	PL190221
LPAT Case Name:	RioTrin Properties (Burnhamthorpe) Inc. v. Mississauga

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

Applicant and Appellant:	RioTrin Properties (Burnhamthorpe) Inc.
Subject:	Application amend Zoning By-law No. 0225-2007 - Refusal of Application by the City of Mississauga
Existing Zoning:	H-C4-Exception (mainstreet commercial)
Proposed Zoning:	H-C4-XX
Purpose:	To permit 25-storey mixed-use building
Property Address/Description:	3900-3980 Grand Park Drive
Municipality:	City of Mississauga
Municipality File No.:	OZ 15/006

LPAT Case No.: PL190221
 LPAT File No.: PL190222

Heard: March 8, 2021, by Video Hearing

APPEARANCES:

Parties

Counsel

RioTrin Properties
 (Burnhamthorpe) Inc. (“RioTrin”)
 (“Appellant/Applicant”) Anne Benedetti
 Max Laskin

City of Mississauga (“City”) Mark Joblin

Fielding Chemical Technologies Inc. (“Fielding”) Meaghan McDermid
 Jamie Cole

DECISION DELIVERED BY T. PREVEDEL AND D. CHIPMAN AND ORDER OF THE TRIBUNAL

[1] The matter before the Tribunal is an appeal pursuant to subsections 22(7) and 34(11) of the *Planning Act* from the refusal of the City on applications to amend the Official Plan (“MOP”) and to amend Zoning By-Law No. 0225-2007 (“ZBA”) by RioTrin

[2] RioTrin owns the lands at 3900-3980 Grand Park Drive (“subject property”) and is proposing to amend the MOP to apply a Mixed Use – Special Site designation on the section of the subject property with a change in zoning to H-C4-Exception (Mainstreet Commercial) to permit a 25-storey, 272-unit apartment building with commercial uses on the ground floor.

[3] The subject property is located at the southwest quadrant of the intersection of Burnhamthorpe Road West and Grand Park Drive. It has a total area of 4.05 hectares with frontages of approximately 68.9 metres on Burnhamthorpe Road West and 278.8 metres on Grand Park Drive.

[4] The development application pertains to a specific portion of the subject property at the northeast corner, referred to as the “Proposed Development.” The carved-out area of the overall lands has an area of 0.56 hectares with 68.9 metres of frontage on Burnhamthorpe Road West and 72 metres of frontage on Grand Park Drive, which is currently occupied by a one-storey retail building with associated surface parking.

[5] The remaining 3.49 hectares of the subject property, south of the Proposed Development, are currently occupied by a series of one-storey retail buildings with surface parking known as Grand Park Plaza. These lands are also owned by the Applicant/Appellant but are not part of the application before this Panel.

[6] Grand Park Plaza shares a portion of its southwestern property line with Fielding, a chemical waste recycling facility. Fielding is a company specializing in the recycling of hazardous waste, including solvents, glycols and refrigerants that would otherwise be destined for disposal or destruction. Fielding has expressed their concerns regarding the proximity of the proposed development application to their ongoing recycling operations.

[7] The Hearing of the appeal took place over the course of 13 days. The conduct of the Hearing was governed by a Procedural Order issued on March 2, 2020, confirming Parties and Participants.

[8] The Panel heard from ten witnesses on behalf of the Parties and received two Participant statements. All witnesses were qualified to provide expert evidence in their respective fields.

Applicant’s Witnesses:

- Glen Broll - Land Use Planning
- Scott Penton - Air Quality and Noise Engineering

- Brian Sulley - Chemical Risk Analysis and Hazardous Modelling
- Peter Norman - Economist
- Tim Beckett – Fire Safety (Summoned)
- Marianne Cassin - City Planner – Expert in Land Use Planning (Summoned)

City's Witness:

- Kevin Bechard – Land Use Planning

Fielding's Witnesses:

- Cyril Hare – Fire Safety
- David Gardner – Emergency Management and Hazard Modelling
- David Riley – Land Use Planning

THE DEVELOPMENT PROPOSAL

[9] RioTrin is requesting to develop a 25-storey mixed use apartment building with retail commercial uses at grade. The apartment building will be located at the northeast corner of the RioTrin site and will provide a four-storey podium base with sides facing both Burnhamthorpe Road West and Grand Park Drive. One of the architectural features of the building is to provide for a step back from the four-storey podium of approximately 5 metres to the base of the tower at the fifth floor. There will be an outdoor amenity area and green roof on the top of the podium surrounding the tower. The southwestern portion of the Proposed Development is occupied by landscaping, a vehicular drop-off area, visitor parking and access to the four level below-grade parking garage. Vehicular access is provided from Grand Park Drive.

[10] The Proposed Development contains 272 residential units, for a total of just over 20,500 square metres of floor space, and approximately 17,300 square metres of retail space on the ground floor. The total floor space index is 4.0. The residential units

include 41 studio units, 53 one-bedroom units, 67 one-bedroom units with a den, 53 two-bedroom units, 29 two-bedroom units with a den and 29 three-bedroom units.

NEIGHBOURHOOD CONTEXT

[11] The Proposed Development is located centrally in the City immediately west of the Downtown Core, within the Fairview District Neighbourhood. Burnhamthorpe Road West, which runs along the northern border of the Proposed Development, is considered a major arterial road with a right-of-way width of 50 metres. Grand Park Drive runs along the eastern boundary with a right-of-way width of 20-26 metres.

[12] The Proposed Development is situated on lands currently designated as mixed-use with a C3-5 zoning.

[13] The area to the north of Burnhamthorpe Road West generally consists of low-density residential, primarily in the form of two-storey detached homes, which are also considered part of the Fairview Neighbourhood.

[14] The lands to the west of the Proposed Development consist of primarily employment, industrial and commercial uses. The two most significant sites within this area are:

1. Fielding, a recycling facility located at 3575 Mavis Road; and,
2. Nye Manufacturing, which manufactures construction equipment, located at 3585 Mavis Road.

[15] Both sites have property lines along the western edge of the subject property.

[16] While this block of industrial and commercial uses is contiguous to a larger employment area extending west of Mavis Road and south along

Mavis Road towards Dundas Street West, it is not designated as an employment area in the MOP, it too is designated as Mixed Use.

[17] The lands to the immediate east along Burnhamthorpe Road West contain a series of high-rise residential buildings known as Pinnacle 1 (28 storeys) and Pinnacle 2 (48 storeys), as well as the City approved “M City” buildings, which have been approved for three condominiums at 61 to 81 storeys in height. They are currently under construction. There is also, a mix of community uses, and low-density residential in the area.

[18] The subject lands within the MOP planning framework permits residential and a host of other uses including the existing industrial uses such as Fielding but envisions them co-existing.

THE ISSUES

[19] The Issues List forming part of the Procedural Order governed the presentation of the evidence and the Hearing of this Appeal. From a policy context, the issues before the Tribunal require the general determinations of whether the proposed MOP Amendment (“MOPA”) and the proposed Zoning By-Law Amendment (“ZBA”) have sufficient regard to the Provincial interests listed in s. 2 of the *Planning Act*, is consistent with the Provincial Policy Statement, 2020 (“PPS”), conforms to the Growth Plan for the Greater Golden Horseshoe, 2019 (“Growth Plan”), conforms to the Region of Peel’s (“Region”) Official Plan (“ROP”), conforms to the MOP, and in general, represents good planning and is in the public interest.

[20] As the evidence was presented over the course of the Hearing, it was noted by the Panel that the primary issue was the proximity of the Proposed Development to the existing Fielding site.

[21] What the Tribunal heard was a dispute over whether the approval of the Proposed Development would give rise to land use conflicts that would not be compatible with the existing industrial use.

[22] In these disputes, the Tribunal is directed to render a decision that is consistent with the PPS and conforms with the Growth Plan pursuant to section 3(5) of the *Planning Act*. These two provincial documents set out detailed policies that address matters such as residential intensification, optimization of infrastructure and land use compatibility.

[23] A careful examination of these policy documents was presented to the Tribunal, at this Hearing, by the witnesses and counsel in their oral and written testimony.

[24] In order to properly evaluate the different elements of this dispute over land use compatibility, the Tribunal felt it was best to review each item on the Issues List presented by the City and Fielding. Prior to doing so, the Staff recommendation and City Council resolution of the proposal will be discussed.

CITY STAFF RECOMMENDATION

[25] In the City Planning Staff Report dated February 22, 2019 (“2019 Staff Report”), City Planning Staff provided Council with a recommendation to amend the MOP to apply a *Mixed Use – Special Site* designation on the Proposal Site and to change the zoning on the Proposal Site to *H-C4-Exception (Mainstreet Commercial)* to permit a 25-storey apartment building with retail commercial uses on the ground floor.

[26] Furthermore, the 2019 Staff Report recommended that the Applicant/Appellant comply with the standards recommended in the Novus Report prepared in support of the Proposed Development by RioTrin to mitigate any potential land use conflicts.

[27] The 2019 Staff Report indicated that the Proposed Development was consistent with PPS 2014 policies regarding intensification and compatibility of sensitive land uses

with major facilities, which are implemented locally through the MOP. With respect to compatibility, the 2019 Recommendation Report refers to Section 6.5.5. of the MOP, and the relevant policies contained within that section, related to residential development within 300 metres of a chemical plant located on Mavis Road.

[28] The 2019 Staff Report determined that, with respect to the compatibility of the Proposed Development with the industrial uses on the Fielding site, the MOP required the following to be considered in the context of new residential uses:

[29] That, in accordance with Policy 16.11.1.1 of the MOP, the proposed residential uses must not be within a 300-metre influence area from the Fielding Chemical Site. While the MOP does not provide explicit direction on how to measure the 300-metre influence area, City Staff made the decision to take this measurement from the “centroid” of the Fielding site, as opposed to the property line. Ms. Cassin provided her opinion evidence that City staff had historically taken this approach with previous development applications.

[30] The 2019 Staff Report recommended approval of OPA/OZ 15/006 principally on the basis that the application meets the PPS, Growth Plan and MOP policies related to intensification, efficient use of services and urban design. It considers that D-6 Land Use Compatibility issues relating to air quality, noise and dust have been addressed through technical reports supporting the application.

[31] The 2019 Staff Report references amending the MOP to remove the residential permissions for the remainder of the plaza lands.

[32] Staff also proposed placing an “H” Holding symbol on the lands to address outstanding technical requirements and to allow for a Section 37 Agreement.

[33] The 2019 Staff Report concludes by stating that the Proposed Development is “*sensitive to the existing and planned character of the neighbourhood.*”

[34] At its meeting held on March 18, 2019, the City Planning and Development Committee recommended refusal of the applications. This recommendation was considered by City Council at its meeting held on March 27, 2019, where Council refused both applications.

ANALYSIS OF EVIDENCE

[35] Section 2 of the *Planning Act* sets out a list of matters of provincial interest, which the Tribunal is required to “have *regard*” to in its disposition of the appeal. The Issues List sets out particular subsections recognized to be in dispute amongst the parties. These were framed as follows:

THE *PLANNING ACT*

Does the proposal have regard to matters of provincial interest in section 2 of the *Planning Act*, including the matters set out in subsections (f), (h), (k), (l), (o), (p) and (r)?

(f) the adequate provision and efficient use of communication, transportation, sewage and water services and waste management systems

[36] RioTrin’s expert planning witness, Mr. Broll, provided evidence, through the corresponding technical studies supporting the application, that the Proposed Development will be adequately served by, and will make efficient use of, existing Municipal sewage and water services, as well as other hydro and communication facilities. The site is proposed as an intensified, mixed-use development in an urban area well-served by public transit.

[37] Mr. Bechard opined that the proposal does not have regard for this subsection of the *Planning Act*, making reference to his concern that the proximity of the Proposed Development could potentially affect the long-term operational viability of Fielding.

[38] Mr. Riley did not contest this issue.

[39] The Tribunal prefers Mr. Broll's evidence and finds that the proposal has regard for this subsection of the *Planning Act*. The site presents an opportunity for intensification and maximization of infrastructure, which is available to accommodate servicing of these lands. The central issue, as will be discussed further, is not whether this site presents an opportunity for the efficient use and optimization of infrastructure. The issue to be explored is whether the proposal will give rise to incompatible land use.

(h) the orderly development of safe and healthy communities

[40] Mr. Broll provided evidence that the proposal would provide an orderly development of a safe and healthy community by providing an assortment of unit types and sizes, creating a variety of housing options, thus building on the principles of a complete community. The proposal supports transit use and is within walking distance of retail amenities.

[41] Mr. Broll emphasized to the Tribunal that, in his professional opinion, this was a safe and healthy community.

[42] Both Mr. Bechard, the City's planning witness and Mr. Riley, Fielding's planning witness, disagreed with Mr. Broll's opinion and opined that the encroachment of sensitive residential land uses within proximity of Fielding would create the potential for adverse air quality, noise and odour impacts between existing industrial facilities and incompatible residential land uses.

[43] Mr. Penton demonstrated by the *Environmental Noise & Air Quality Feasibility Assessment* prepared by Novus Environmental, originally dated July 27, 2015, including all subsequent addendums, dated September 7, 2016, and December 20, 2017, that potential health and nuisance risks due to noise, odour, dust or other factors stemming from nearby industrial operations are not anticipated. Novus included an assessment of the Proposed Development based on MECP's D-6 Guidelines for Compatibility between

Industrial Facilities, as well as the NPC-300 Environmental Noise Guideline, and found the proposal to conform to both. This report was peer reviewed by Amec Foster Wheeler on behalf of the City, who concurred with Novus' findings.

[44] Mr. Broll reminded the Tribunal that Issue No. 13 was removed from the Issues List due to the uncontested feasibility assessment by Novus.

[45] According to the evidence provided by Mr. Beckett, Fielding's record is stellar and the number of incidents on site have been minimal.

[46] The appropriate risk mitigation records have been reviewed and the Tribunal finds that their practices constitute a conscious effort to minimize any risk.

[47] The Tribunal concluded based on the above opinion evidence of Mr. Broll, supported by the Novus report and the subsequent peer review conducted by Amec Foster Wheeler, that the proposal is an orderly development of a safe and healthy community.

k) the adequate provision of employment opportunities

[48] The Proposed Development will create jobs, both temporarily during its planning, development and construction, and permanently in its final form, as the retail space and apartment features will require permanent employees. Mr. Norman, from the Altus Group, provided a detailed analysis of the anticipated economic benefits of the Proposed Development in his report dated November 19, 2020.

[49] Those benefits he informed are estimated to amount to approximately \$310 million in economic activity, approximately \$46 million in tax revenues, and 1,704 jobs (in terms of person-years of employment).

[50] Mr. Norman opined that the new retail jobs should be net of the jobs lost due to the relocation of the existing retail, which will be replaced. He stated that

his analysis was restricted solely to the subject site and did not consider potential impacts to the entire retail block owned by RioTrin or to the other industrial and commercial uses within the entire mixed-use block.

[51] Mr. Bechard's and Riley's concerns regarding employment opportunities were restricted to the potential impact to Fielding's operations, which currently employs over 100 individuals. The impact on Fielding's operations will be dealt with in more detail in the body of this Decision.

[52] The Tribunal agrees with the evidence of Mr. Norman that there will be employment opportunities through the retail operation at grade level and the day-to-day operations and maintenance of the residential building, which will lead to an overall employment benefit for the City.

(l) the protection of the financial well-being of the province and its municipalities

[53] As demonstrated by Mr. Norman's evidence, the proposal will create jobs. Mr. Broll opined that the proposal would allow for additional residential population near employment uses, strengthening the synergy between living and working spaces in the community.

[54] This was contested by Mr. Bechard due to what he thought would be the potential impact to Fielding.

[55] Mr. Broll gave evidence to the fact that the proposal makes good use of existing infrastructure, which is already in place.

[56] The Tribunal notes, from Mr. Norman's oral testimony and economic report, that this proposal will generate \$46 million dollars in tax revenue annually to the City and the Region and generate \$310 million dollars in economic activity.

[57] Due to the reasons given above, the Tribunal prefers the evidence of Mr. Norman and Mr. Broll.

(o) the protection of public health and safety

[58] Mr. Penton's analysis demonstrated to the Tribunal, both in his oral testimony and through his thorough technical analysis, that public health and safety will be protected, for both residents and for visitors to the Proposed Development. Mr. Penton's report concluded that no adverse effects are anticipated at the Proposed Development with respect to odour, noise, or air quality from surrounding industries.

[59] Mr. Sulley's modelling report, dated November 11, 2019, concludes that the typical worst-case release scenarios would not pose a hazard to the Proposed Development in the event of a spill or fire at the Fielding facility. Mr. Penton's report was peer reviewed by Amec Foster Wheeler on behalf of the City and was found acceptable.

[60] The issue regarding public health and safety was debated at great length during this Hearing. The evidence presented by Mr. Hare and Mr. Gardner regarding emergency response in the event of a fire or spill was based primarily on Transport Canada's Emergency Regulations Guideline ("ERG"). This guideline is intended for use by first responders in the event of an emergency, where evacuation may be required.

[61] The Tribunal notes that this ERG is normally not used as a planning tool when making land use decisions. The Tribunal weighed the arguments presented and concluded that this ERG is more appropriately used in dealing with emergency responses and not as a planning tool.

[62] The Tribunal also notes that the City Fire and Emergency Services reviewed the Proposed Development at the time of the application and expressed no concerns.

(p) the appropriate location of growth and development

[63] Based on the evidence provided by Mr. Broll, the Proposed Development is in a location that is appropriate for growth and development, representing an intensified, mixed commercial and residential use, abutting the City's Downtown Core. It is adjacent to similar high-density developments, with public transit options, retail, goods and services in close proximity and is situated along a major road and transit corridor.

[64] Mr. Bechard argued that the Proposed Development is not in an appropriate location due to its proximity to Fielding, and Mr. Riley expressed similar concerns.

[65] However, the City Staff report recommending approval clearly indicated that the City's Planning staff identified this location as being appropriate. Ms. Cassin provided her expert opinion on this to the Tribunal during her oral testimony.

[66] Ms. Cassin gave oral testimony on the City's normal process for evaluating this type of application, both with internal professional staff and with external agencies.

[67] She pointed out that no negative responses or concerns were received by external agencies and internal staff. Ms. Cassin further stated that an additional review with City Fire and the Emergency Management Office was undertaken as a result of Fielding's concerns.

[68] Based on the above, the Tribunal accepts the evidence that the proposed development is in an appropriate location for growth.

(r) the promotion of built form that, (i) is well designed, (ii) encourages a sense of place, and (iii) provides for public spaces that are of high quality, safe, accessible, attractive and vibrant

[69] Mr. Broll opined that the proposal seeks to develop at grade commercial units, which will contribute to the economic activity at street level and will enhance the active

street front in the short and long term. The unique architectural character of the Proposed Development will define Burnhamthorpe Road West, as a well-designed, transit-supportive corridor that encourages a sense of place, enhances the streetscape, and attracts investment.

[70] Based on the evidence presented, the Tribunal is satisfied that the Proposed MOPA and ZBA have sufficient regard to matters of provincial interest as defined in section 2 of the *Planning Act*.

THE PROVINCIAL POLICY STATEMENT, 2020

[71] Section 1.1.1 of the PPS requires the Proposed Development to contribute to a healthy, livable, and sustainable community through providing an efficient development and land use pattern, which is compatible with the existing development patterns adjacent to the Proposed Development.

[72] The Proposed Development is within the City's Settlement Area and forms part of the City's Built-Up Area and will accommodate a range and mix of residential and commercial uses in the Fairview Neighbourhood. The Proposed Development meets the municipal standards for vehicular and pedestrian circulation.

[73] Mr. Broll opined that in accordance with Section 1.1.3.2 of the PPS, the approval of the Proposed Development will facilitate growth within a Settlement Area without the need to expand the City's Built-Up Area. It also advances the objectives of wisely managing growth by providing for intensification within the City's Urban Area and Built-Up Area without the need for additional land.

[74] He informed the Tribunal that the Proposed Development is located immediately adjacent to the Downtown Core, which is identified as the City's Urban Growth Centre. The Downtown Core he stated is intended to have the highest density, tallest buildings and greatest mix of uses. Developing the Proposed Development with mixed use apartment and commercial built form adjacent to this growth area promotes an

appropriate form of development and land use pattern that supports the planned urban form and function of the Downtown Core.

[75] He further directed the Tribunal to Sections 1.1.3.3 and 1.1.3.4 of the PPS, stating the Proposed Development facilitates transit-supportive intensification, compact form, and the provision of a range of housing options, while avoiding or mitigating risks to public health and safety.

[76] He opined the analysis conducted by Novus Environmental concludes that noise and air quality impacts from surrounding industries will not have adverse effects at the Proposed Development. Pointing out further, Mr. Broll informed the Tribunal, based on the analysis prepared by Mr. Sulley as presented in his Accidental Release Hazard Modelling Report, concluded that the typical worst-case release scenarios from the Fielding facility would not pose a hazard to residential occupants in the event of a spill or fire. He suggested that the above hazard modelling determined that potentially hazardous conditions would not extend closer than 124 metres from the Proposed Development. The City Fire Department has also confirmed that it has no concerns with the Proposed Development from a fire safety perspective.

[77] The Tribunal heard evidence presented by Messrs. Hare and Gardner expressing concerns that the worst-case scenario was not considered in reviewing the potential impacts of a chemical spill or pool fire at the Fielding facility.

[78] Messrs. Hare and Gardner relied on the use of a Transport Canada regulation for first responders, as well as ALOHA software for initial input. This software is clearly to be used for a quick analysis of what is on site upon first arrival at an incident, and not for land use planning purposes. If this evidence were to be relied upon, most of the Fairview Neighbourhood and areas beyond up to the Downtown Core, would be considered in a hazard area.

[79] However, as is mentioned early in this Decision, the Tribunal prefers the evidence presented by Messrs. Penton and Sulley in their detailed analysis reports.

1.2.6 Land Use Compatibility

[80] There was agreement among the parties that Fielding is considered a *major facility* and that the Proposed Development is considered a *sensitive land use* in accordance with the PPS definitions, and qualified by the D-Series guidelines.

[81] The evidence provided by Messrs. Penton and Sulley took the Tribunal in detail through a scientific and technical analysis and concluded that adverse effects from surrounding industrial uses to the proposed residential building are not anticipated. Mr. Sulley's analysis with respect to fire safety also supports these conclusions.

[82] It was identified by Mr. Penton with respect to the Fielding operation, that they currently operate under an Environmental Certificate of Approval ("ECA"), allowing them to process up to 40 million litres of solvents and 400,000 kg of refrigerants annually. Mr. Penton opined that at present, Fielding has not reached their full operating capacity in terms of volumes as allowed in their ECAs. As such, potential impacts to Fielding's continued operations are not anticipated. In his professional opinion, Fielding would still have the ability to expand their operation within their site without negative effects on either the Proposed Development or Fielding itself.

[83] Based on the above technical analysis, Mr. Broll opined that Policy 1.2.6.1 of the PPS was satisfied, in that adverse effects were avoided. Mr. Broll furthered this by stating that Issue No.13 of the Issues List had been removed on consent of all Parties and that Fielding could continue to operate in a compatible manner with the surrounding area and the proposed development thereby co-existing as Fielding is operating currently with the surrounding residential areas.

[84] The thrust of the evidence presented by Messrs. Bechard and Riley centres around the concern that the Proposed Development will impact Fielding's ability to expand or modify their current operations. As this has been identified as a key issue

during this hearing, the analysis and discussion on this matter will merit its own section later in the body of this Decision.

1.3 Employment

[85] The Economic Benefits Study prepared by Mr. Norman outlines the anticipated economic benefits the Proposed Development will entail. There seems to be no major disagreement that the Proposed Development will assist with the economic development and competitiveness of the Neighbourhood, City and Region.

[86] Mr. Broll opined that although the block bounded by Burnhamthorpe Road West to the north, Mavis Road to the west, Central Park Drive to the south and Grand Park Drive to the east is currently designated mixed use in the MOP, the existing industrial uses including Fielding enjoy the protection under existing zoning to continue their operations with some limited expansion flexibility. As there are currently sensitive land uses closer to Fielding Environmental than the Proposed Development, and Fielding's ECAs would be contingent on meeting criteria for these existing sensitive land uses, the Proposed Development would not have a direct impact on employment opportunities at Fielding.

[87] The Tribunal accepts the evidence of Messrs. Norman and Broll in that the Proposed Development will have no adverse impact on Fielding.

1.4 Housing

[88] In accordance with Section 1.4.3 of the PPS, Mr. Broll provided evidence that the development of the Subject Lands would provide an appropriate range and mix of housing options and densities to meet projected market-based housing needs, in that it would provide a mix of unit sizes and would provide housing in a location where appropriate levels of infrastructure and public service facilities are available. It proposes housing at a density that efficiently uses land, resources and infrastructure and supports active transportation. The proposed compact form minimizes land consumption.

[89] With reference to Policies 1.6.4, 1.6.10.1 and 1.7.1 of the PPS, the Tribunal agrees with the evidence submitted by Mr. Broll. The issues raised by the City and Fielding regarding infrastructure and public service facilities, waste management and long-term economic prosperity are not considered relevant to a review of the merits in this Hearing.

[90] The Tribunal is satisfied that the Proposed Development meets the policy objectives of the PPS 2020.

GROWTH PLAN FOR THE GREATER GOLDEN HORSESHOE

[91] The Growth Plan builds on the policy directions contained in the PPS and in this regard, is intended to function as a policy framework for achieving healthy, strong and complete communities by managing growth in the Greater Golden Horseshoe (“GGH”) Region.

[92] The Growth Plan defines “complete communities” 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.

[93] Mr. Broll provided evidence that the Proposed Development reflects the guiding principles that are established in Section 1.2.1 of the Growth Plan. Most notably, the Proposed Development will support the achievement of a complete community by providing additional residential and commercial space in a community already well served by transit, services and public facilities.

[94] Mr. Broll opined that the proposal seeks to develop land at a high density in an area well served by transit and in close proximity to goods, services, and public facilities, and will efficiently make use of existing servicing infrastructure.

[95] Mr. Broll further opined that the proposal will provide a mix of residential unit sizes to support residents at different stages of life.

[96] Finally, by providing housing in a form and density that minimizes land consumption and supports use of transit, the Proposed Development will allow for population growth while minimizing the impacts of a changing climate.

[97] Messrs. Bechard and Riley opined that the Proposed Development compromises the long-term viability of Fielding. However, the extensive analysis undertaken by Messrs. Penton and Sulley clearly indicates that Fielding's operational viability is not compromised, and in fact, there are sensitive land uses currently existing, which are closer to the Fielding site and will act as a control if a revised ECA is undertaken.

[98] In reviewing the relevant policies in the Growth Plan, 2.2.1.4, 2.2.2.3, 2.2.5.1 and 2.2.5.8, the Tribunal agrees with the evidence put forth by Mr. Broll on this matter.

[99] With respect to Policy 2.2.1.4, Mr. Broll demonstrated that the Proposed Development will support the achievement of complete communities by providing a diverse range and mix of housing options through a compact form of mixed-use development, located near employment uses and services, including in the Downtown Core.

[100] With respect to Policy 2.2.2.3, Mr. Broll also provided evidence that the proposed development will result in the intensification of an underutilized parcel located within the City's Built-Up Area.

[101] With respect to Policy 2.2.5.1, the Tribunal accepts the Altus Group's Economic Benefits Study, which demonstrates that the Proposed Development will provide overall economic benefits to the province and the City.

[102] With respect to Policy 2.2.5.8 of the Growth Plan, the expert testimony from Messrs. Penton and Sulley provide evidence that adverse effects on sensitive land uses will be avoided.

[103] Based on the above, the Tribunal is satisfied that the Proposed Development conforms with the provisions put forth in the Growth Plan.

THE REGION OF PEEL OFFICIAL PLAN

[104] Without going into detail on this matter, the Tribunal finds that the requirements of the ROP have been met with this Proposed Development. Regional staff were in support of the progressive applications put forth by the developer, as is evident in the City's Recommendation report dated February 22, 2019, to the Planning and Development Committee.

MISSISSAUGA OFFICIAL PLAN

[105] Under MOP, the Proposed Development is located immediately west of the City's Downtown Core, which is a designated Urban Growth Centre, a vibrant mixed-use destination and major regional centre.

[106] The Proposed Development is currently designated mixed-use and is located along a designated Corridor, being Burnhamthorpe Road West. The Proposed Development, as well as the surrounding commercial and industrial uses within the entire block, are located within the Fairview Neighbourhood of the MOP.

[107] Policy 5.3.5.1 of the MOP states that "Neighbourhoods will not be the focus for intensification and should be regarded as stable residential areas where the existing character is to be preserved." However, through Policy 5.3.5.2, "residential intensification within Neighbourhoods will generally occur through infilling and the development of existing commercial sites as mixed-use areas."

[108] Policy 5.3.5.3 also adds that, “where higher density uses are proposed, they should be located on sites identified by a local area review, along Corridors or in conjunction with existing apartment sites or commercial centres.”

[109] In keeping with the policy framework, the Proposed Development is located along an existing Corridor, as defined by the MOP. Higher density developments within a Neighbourhood urban structure are encouraged to be located along Corridors, or in conjunction with existing apartment sites or commercial areas. As previously described in the site context, this surrounding neighbourhood context includes several apartment/condominium buildings with heights ranging from 23 to 81 storeys.

[110] With regards to intensification and compatibility, Policy 5.3.5.5 of the MOP states that

Intensification within Neighbourhoods may be considered where the Proposed Development is compatible in, built form and scale to surrounding development, enhances the existing or planned development and is consistent with the policies of this Plan”.

Policy 5.3.5.6 of the Official Plan states that:

Development will be sensitive to the existing and planned context and will include appropriate transitions in use, built form, density and scale.

[111] Mr. Broll opined that the Proposed Development provides an appropriate transition from the hard edge of the Downtown Core to the lands west of Grand Park Drive and south of Burnhamthorpe Road West. The tower height of 25-storeys transitions down from the 48 and 28-storey Pinnacle Towers to the east, and the podium height of four storeys is lower than the Pinnacle podium height.

[112] The Proposed Development is situated along the Burnhamthorpe Road West Corridor, and as per Section 5.4.4 of the MOP, “development on Corridors should be compact, mixed use and transit friendly.”

[113] Section 5.4.5 speaks to appropriate transitions in height, built form and density. It was agreed by the planning witnesses that there was no specific issue raised regarding the proposed built form, step backs, podium heights and transition.

[114] Policy 5.4.8 of the MOP states that:

Corridors will be subject to a minimum building height of two storeys and the maximum building height specified in the City Structure element in which it is located, unless Character Area policies specify alternative building height requirements or until such time as alternative building heights are determined through planning studies.

[115] The Tribunal prefers the planning evidence provided by Mr. Broll and agrees that the Proposed Development is compatible in built form and scale to the surrounding context and will not bring any unacceptable adverse impacts.

FAIRVIEW NEIGHBOURHOOD

[116] The Subject Lands are located within a Neighbourhood, and more particularly, within the Fairview Neighbourhood Character Area.

[117] Section 16.1 contains general policies applying to MOP's Neighbourhoods. Policy 16.1.1.1, states that the maximum height for buildings within a Neighbourhood is four storeys,

unless Character Area policies specify alternative building height requirements or until such time as alternative building heights are determined through the review of Character Area policies.

[118] However, Mr. Broll opined that Policy 16.1.1.2 provides parameters under which proposals for more than four storeys can be considered. For such a proposal to be considered, it must be demonstrated to the City's satisfaction that:

(a) an appropriate transition in heights that respects the surrounding context will be achieved; (b) the development proposal enhances the existing or planned development; (c) the City Structure hierarchy is maintained; and (d) the development proposal is consistent with the policies of this Plan.

LAND USE COMPATIBILITY

[119] The issue of land use compatibility has been a major focus during the Hearing. Sections 6.1.8, 6.1.9 and 6.1.10 of the MOP speaks to the location of sensitive land uses adjacent to major facilities.

[120] As well, Section 16.11.1.1 states that no new residential development will be permitted within the 300-metre influence area of a chemical plant, namely Fielding, until the closure of the plant or suitable clean-up of emissions has occurred.

[121] The studies undertaken by both Messrs. Penton and Sulley clearly indicate that there will be no adverse effects on the Proposed Development resulting from operations at Fielding.

[122] It was demonstrated by Ms. Cassin that the 300-metre influence area was first introduced by the province in 1996 into the Fairview District plan, clearly indicating that the measurement was taken from the centroid of the chemical plant.

[123] Ms. Cassin took the Tribunal through a historical progression from 1996 to 2020 where this 300-metre influence area was consistently shown as a circle measured from the centroid of the plant. Although, the most recent version of the MOP is silent on the methodology for measuring the 300 metres, the Tribunal is satisfied that the intent of the policy has always been to measure from the centroid.

[124] City staff applied this policy when recommending approval of the Proposed Development.

PUBLIC HEALTH AND SAFETY

[125] There is no dispute among the Parties or the expert witnesses that Fielding is an excellent operator, with a strong safety record and extensive fire safety procedures and protocols in place. It also has an extensive Fire Safety Plan, including a Spill

Management Plan and a Spill Contingency Plan, all reviewed and approved by the City Fire Department.

[126] Messrs. Beckett and Hare agreed that, while it is impossible to eliminate all risks, these are the procedures of an excellent organization that is committed to fire prevention and safety.

[127] Mr. Sulley's comprehensive analysis demonstrates that, in a worst-case scenario as identified in applicable regulations and guidance, the Proposed Development is over 124 metres away from the largest extent of the hazardous area. Mr. Sulley went further and analyzed what he called "knock-on effects," which goes well beyond the worst-case scenario and, even with multiple simultaneous failures, the Proposed Development is still well outside the greatest extent of the hazardous area, located over 83 metres away.

[128] In consideration of the expert evidence presented by Messrs. Penton and Sulley, the Tribunal is of the opinion that Public Health and Safety has been demonstrably dealt with.

EMERGENCY RESPONSE DISCUSSION

[129] Mr. Hare, in his oral testimony and expert witness statement, referred to ERG. This ERG is normally used by first responders upon arrival at an incident.

[130] The ERG is primarily used for transportation related emergencies; however, it could be of limited use upon first arrival at a facility.

[131] Mr. Gardner took a similar approach with his emergency management background. He used the ALOHA software to model a potential evacuation zone. This model is used to provide quick results with minimal inputs, unlike the PHAST software employed by Mr. Sulley.

[132] Mr. Gardner also made references to the potential for BLEVEs. However, on cross-examination, it became evident to the Tribunal that Mr. Gardner did not have a fulsome appreciation of materials on site, as there are no pressurized containers of sufficient volume to create a BLEVE.

[133] Mr. Sulley opined that the ERG is not a planning document. He quoted from the ERG as follows:

This guidebook will assist responders in making initial decisions upon arriving at the scene of a dangerous goods incident.Be mindful that there may be limited value in its application at fixed facility locations.

[134] Both Messrs. Hare and Gardner believe their examples show what the extreme nature of an emergency event could look like.

[135] It was noted by Mr. Sulley that such an event, with all the risk mitigation measures in place on the Fielding site and the type of containers used is not as extreme as transport vehicles and rail corridors in the likelihood of an emergency.

[136] Mr. Sulley provided evidence that the security and fire response procedures outlined in the Fielding's Fire Safety Plan indicate that the likelihood of a fire event at Fielding is low.

[137] Based on the evidence presented by Mr. Sulley, the Tribunal is satisfied that the Proposed Development is not at risk, any more than most other areas of Mississauga.

IMPACT ON FIELDING OPERATIONS

[138] The Fielding Facility is a solvent and refrigerant waste recovery facility that handles, stores and processes hazardous, flammable, and volatile materials. During daily operations, there are 1.2 million litres of hazardous waste materials and 150,000 litres of finished flammable liquids stored in atmospheric tanks and drums and 200,000 kilograms of refrigerants stored in pressurized cylinders and intermodal tanks.

[139] Residential uses have co-existed alongside Fielding for many years. These include single family homes on Italia Crescent and Gandhi Way, and high-density residential towers, including Pinnacle 1, Pinnacle 2 and 550 Webb Drive.

[140] Fielding's operations are carried out in the open, except for some office and laboratory space. Under their existing site-specific zoning, they can only expand their building footprint to a maximum of 5% Gross Floor Area.

[141] Under Fielding's current ECA, which was recently updated in December 2020, they can process up to 40 million litres of solvents and 400,000 kilograms of refrigerants per year. At the present time, Fielding is not operating at their full authorized potential. The undisputed evidence is that Fielding's ECA authorizes it to produce more emissions than it is currently producing.

[142] The current ECA demonstrates that the Ministry of the Environment is satisfied that applicable regulatory limits were met at existing sensitive receptors even based on a more intense or expanded Fielding operation that produces more emissions. If these limits designed to allow for compatibility are met at existing receptors, they will therefore also be met at the Proposed Development.

[143] On this basis, the Tribunal is of the opinion that the Proposed Development will not impact on Fielding's ability to expand or change their operations in relation to their certifications.

D SERIES COMPATIBILITY GUIDELINES

[144] The D-Series Compatibility Guidelines ("D-1 or D-6 Guidelines") serve as a guide for planning authorities on land use compatibility.

[145] Section 2.4 of the D-1 Guidelines addresses adverse effects and lists the following: *(1) noise and vibration; (2) visual impact (only for landfills); (3) odours and other air emissions; (4) litter, dust and other particulates; and (5) other contaminants.*

[146] The expert report prepared by Mr. Penton assessed potential noise, dust, and air quality impacts, and concluded that there are no anticipated adverse effects on the Proposed Development from nearby industrial operations.

[147] Whereas the D-1 Guidelines regard general compatibility, the D-6 Guidelines specifically regard compatibility between industrial uses and sensitive land uses. The D-6 Guideline is a direct application of the D-1 Guidelines. Fielding is considered a Class III facility under the guideline, and the minimum separation distance is stated as 300 meters from the nearest property line.

[148] However, Section 4.10 of the D-6 Guideline states that *“it may not be possible to achieve the recommended minimum separation distances as set out”* and specifically allows for development within the minimum separation distance when detailed studies show that the applicable air quality and noise guidelines are met.

[149] This work was not only undertaken on behalf of RioTrin, but was peer reviewed and found acceptable by City staff. A number of developments with sensitive uses have been approved and constructed within the 300 metre influence area. These include several residences fronting onto Italia Crescent and Gandhi Way, the Westside Presbyterian Church, the 550 Webb Drive condominium tower, Pinnacle 2, and a portion of Pinnacle 1. The approvals include permits issued between 1988 and 2015, well after the Fielding facility was established.

[150] It is noteworthy that these developments are outside of the 300-metre influence area prescribed in the MOP.

PARTICIPANT STATEMENTS

[151] The Tribunal had received two requests for Participant status at the prior CMC and their Statements were weighed accordingly in the findings on this matter.

Mississauga Board of Trade

[152] The first Participant Statement was submitted by Brad Butt on behalf of the Mississauga Board of Trade. Mr. Butt's statement centred around a concern that infringing residential development is impinging on the ability of long-standing industrial uses to continue to operate.

[153] In response to this concern, Mr. Broll noted that the proposal will have no effect on the ability of Fielding, Nye or any other industrial uses to continue with their operation. He noted that the block is already designated mixed-use, and the ultimate intention through the MOP is to discourage industrial uses through future redevelopment.

Helene Bahsous

[154] Ms. Bahsous expressed her concerns regarding the potential loss of the convenient retail amenities such as Shoppers Drug Mart, the medical clinic, multi-cultural stores and restaurants. Mr. Broll explained that the proposal will have a slightly larger retail floor space and these same amenities will continue to be provided to the community.

[155] With respect to the traffic concerns expressed in her statement, City staff have reviewed and are in support of the required improvements.

[156] Ms. Bahsous also expressed concern regarding the 300-metre influence area, which has been dealt with in sufficient detail during this Hearing.

HAVING REGARD FOR COUNCIL DECISION

[157] In deciding on land use planning matters, the Tribunal must ensure that land use planning in the province is based on a top-down approach, from the PPS and Growth Plan, through to the ROP and MOP.

[158] The Tribunal must also have regard for the decisions of Council with respect to land use planning.

[159] In the case of the Proposed Development, Mississauga Council chose to deny the application by RioTrin, even though the City staff recommendation was in support of the Proposed Development.

[160] Based on the evidence provided the Tribunal is satisfied that the proposed OPA and ZBLA is appropriate for this location.

ORDER OF THE TRIBUNAL

[161] The Tribunal Orders that the appeal by RioTrin Properties (Burnhamthorpe) Inc. regarding its proposed Official Plan Amendment and its proposed Zoning By-Law Amendment be allowed.

[162] That the Tribunal's final Order is withheld until the City Solicitor, with the consent of RioTrin Properties (Burnhamthorpe) Inc. has filed with the Tribunal the final form of the Official Plan Amendment and Zoning By-Law Amendment.

[163] That the City of Mississauga further amends the Official Plan to remove the residential permissions for the remainder of the plaza lands to minimize further potential conflicts.

[164] That an "H" Holding symbol be placed on the Proposed Development until such time as outstanding technical requirements are met and a suitable Section 37 Agreement has been agreed upon.

[165] If difficulties arise, the Tribunal may be spoken to.

"T. Prevedel"

T. PREVEDEL
MEMBER

"D. Chipman"

D. CHIPMAN
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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