

LOCAL PLANNING APPEAL TRIBUNAL
Tribunal d'appel de l'aménagement local

PROCEEDING COMMENCED UNDER subsection 17(24) of the Planning Act, R.S.O. 1990, c. P. 13, as amended

Appellant: 386823 Ontario Limited
Appellant: CAMPP Windsor Essex Residents Association
Appellant: Fanelli Real Estate (South Airport Lands) LP
Applicant: Windsor Regional Hospital
Municipality: City of Windsor
LPAT Case No.: PL180842
LPAT File No.: PL180842

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

Appellant: CAMPP Windsor Essex Residents Association
Subject: By-law No. 132-2018
Municipality: City of Windsor
LPAT Case No.: PL180842
LPAT File No.: PL180843

CAMPP Windsor Essex Residents Association

Written Summary of Oral Submissions

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OPA 120

Issue 1 – Not a Cost-effective development pattern

OPA 120 is inconsistent with policy 1.1.1(a) of the Provincial Policy Statement, 2014 (PPS). This policy states “Healthy, liveable and safe communities are sustained by: promoting efficient development and land use patterns which sustain the financial well-being of the Province and municipalities over the long term”.

The decision to expand the footprint of the City of Windsor by 400 hectares and to locate the new hospital within that development, coupled with the prevalence of brownfield land in the city, will create inefficient and fiscally irresponsible land use patterns. Such expansion is unnecessary: Jennifer Keesmaat indicates in her expert affidavit that “sufficient land exists to accommodate population and employment growth in existing areas of the city of Windsor over the next 20 years.”¹

Significant municipal infrastructure (roads, sewers, power, etc.) will need to be built, both within the proposed development as well as leading from the established footprint of the City of Windsor to it.

As former City of Windsor Transportation Planner Mr. Stephen Kapusta notes, “The shift in traffic generated by the two existing hospitals to other Arterial Roadways will be noticeable and the impact of that additional traffic will need to be mitigated in the form of significant road widenings.”²

By contrast, brownfield development capitalizes on existing infrastructure. It is, therefore, far more cost-effective, as it comes with few additional infrastructure costs, and increases the tax base of the existing footprint of the city, without significantly increasing infrastructure costs.

This is particularly important given that even prior to this proposed new build, Windsor has an infrastructure deficit exceeding \$400 million per year.³

Further, no consideration was given to either the initial or the ongoing infrastructure costs when the site selection was made by WRH, nor was an analysis of these costs done by the City of Windsor prior to its adopting OPA 120.

OPA 120 is, therefore, clearly inconsistent with policy 1.1.1(a) of the PPS.

¹ Affidavit of Jennifer Keesmaat, at para. 7.

² *Municipal Record*, PL180842, Official Plan (hereinafter “OP”), Tab 9, *Building for the Past*, at p.1532 (Appendix A of report).

³ *Appeal Record*, PL180842, OP: G(p) City of Windsor Asset Management Plan & Strategy, at p.1-6.

Issue 2 – Not an Efficient development pattern

OPA 120 is inconsistent with policies 1.1.3, 1.1.3.2(a) and 4.7 of the PPS. This policy states in part:

“It is in the interest of all communities to use land and resources wisely, to promote efficient development patterns, protect resources, promote green spaces, ensure effective use of infrastructure and public service facilities and minimize unnecessary public expenditures.”

PPS policy 1.1.3.2 (a) states:

“Land use patterns within settlement areas shall be based on:

a) densities and a mix of land uses which:

1. efficiently use land and resources;
2. 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;
3. minimize negative impacts to air quality and climate change, and promote energy efficiency;
4. support active transportation;
5. are transit-supportive, where transit is planned, exists or may be developed; and
6. are freight-supportive.”

Constructing the proposed development in an agricultural area 13km from the city center is not an efficient use of municipal and provincial resources.

Public expenditure is unnecessarily increased to provide services and utilities to this distant location away from existing municipal services.

Public transportation was contemplated, however, no formal plan nor costings have been done. It is unreasonable to expect that public transit to the proposed development will be substantially better than existing transit services. PPS Policy 1.1.3.2 (a) (5) is not satisfied.

Additionally, although active transportation within the proposed development is contemplated, there is no thorough active transportation plan to link the established footprint of the city to the new development. This contravenes PPS Policy 1.1.3.2.(a) (4) as OPA 120 clearly does not support active transportation as a viable method of transportation to and from the proposed new development.

In Ms. Keesmaat’s opinion, “OPA 120 creates a fundamental divergence from the objectives of the Official Plan to create a sustainable city over time. Given an expected on-going slow growth scenario, releasing agricultural land for development will likely result in more vacant properties in the core, add more vehicular traffic, resulting in the inefficient use of existing land and infrastructure.”⁴

OPA 120 thus fails to satisfy the standards mandated by 1.1.3 and 1.1.3.2(a) of the PPS.

⁴ Affidavit of Jennifer Keesmaat, at para. 19.

Policy 4.7 of the PPS states:

“The official plan is the most important vehicle for implementation of this Provincial Policy Statement. Comprehensive, integrated and long-term planning is best achieved through official plans.

Official plans shall identify provincial interests and set out appropriate land use designations and policies. To determine the significance of some natural heritage features and other resources, evaluation may be required.

Official plans should also coordinate cross-boundary matters to complement the actions of other planning authorities and promote mutually beneficial solutions. Official plans shall provide clear, reasonable and attainable policies to protect provincial interests and direct development to suitable areas.

In order to protect provincial interests, planning authorities shall keep their official plans up-to-date with this Provincial Policy Statement. The policies of this Provincial Policy Statement continue to apply after adoption and approval of an official plan.

This policy requires the Official Plan to be kept up-to-date with the PPS, and that the PPS must continue to apply to Official Plans even after adoption and approval. Any amendments to the official plan must therefore comply with the PPS.”

The failure of the OPA to comply with PPS policies 1.1.3 and 1.1.3.2(a) is, therefore, fatal to the OPA 120.

Issue 3 - Premature development

OPA 120 is inconsistent with policies 1.7.1 and 4.7 of the PPS by promoting the premature development of agricultural resources. Policy 1.7.1 of the PPS states in part:

“Long-term economic prosperity should be supported by:

- e) promoting the redevelopment of brownfield sites;
- h) providing opportunities to support local food, and promoting the sustainability of agri-food and agri-product businesses by protecting agricultural resources, and minimizing land use conflicts;

OPA 120 contravenes PPS 1.7.1(e) by failing to prioritize development of brownfield and vacant sites in the City of Windsor before choosing to construct a new development on agricultural lands, thus prematurely developing greenfield land.

The employment land needs calculation on which the OPA 120 was based, projected a need for land to help accommodate 21,140 new jobs in Windsor by 2031⁵. That data, however, is directly contradicted by OPA120’s own population projections, which predict population growth of no

⁵ *Municipal Record*, PL180842, OP: Tab 8, Planning Report, at p.1199.

more than 7,751 persons through 2031, and “as a result of an aging demographic” a slight potential decline in population between 2031 and 2036.⁶

Issue 4 – The proposal develops farmland

OPA is 120 inconsistent with PPS policy 1.1.3, as it fails to minimize unnecessary public expenditures and protect resources and green spaces. Policy 1.1.3 of the PPS states in part: “It is in the interest of all communities to use land and resources wisely, to promote efficient development patterns, protect resources, promote green spaces, ensure effective use of infrastructure and public service facilities and minimize unnecessary public expenditures.”

As a straightforward example of concern, Ms. Krysta Glovasky-Ridsdale states in her participant statement that “Ontario is losing farmland and green space at an alarming rate... If we continue to build on greenfield and leave the brownfield and infill areas to sit and blight our neighbourhoods, we are cheating future generations as well as ourselves.”⁷

New ancillary costs of delivering and maintaining services and utilities will be imposed on the taxpayers of the municipality and province. These include roads and road widening, utilities, parks, public transit service, libraries, fire stations, street lighting, garbage service, and schools.

These costs would be significantly minimized if the hospital site and the other residential and employment development provided for in OPA 120 were located on brownfield or infill locations within the existing footprint of the city. Developing the footprint of the City under these circumstances amounts to urban sprawl and will cause financial stress to the City of Windsor. As Ms. Keesmaat states, “The emphasis on the revival of city centres, as opposed to design of business parks on the periphery of a city, is a response to the risks and costs associated with sprawl.”⁸ By contrast, OPA 120 contains all the risks and costs of sprawl.

OPA 120 is, therefore, inconsistent with the PPS policy 1.1.3.

Issue 5 - Unjustified, uneconomical expansion

OPA 120 is inconsistent with PPS policies 1.1.3.2(a), 1.6.3(a) and (b), 1.6.4, 1.6.7.1, 1.6.7.4, 1.6.7.5 and 2.0. PPS policy 1.1.3.2 (a) states:

“Land use patterns within settlement areas shall be based on:

a) densities and a mix of land uses which:

1. efficiently use land and resources;
2. 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;
3. minimize negative impacts to air quality and climate change, and promote energy efficiency;
4. support active transportation;

⁶ *Ibid* at p.1193.

⁷ Krysta Glovasky-Ridsdale, *Participant Statement*.

⁸ Jennifer Keesmaat, expert affidavit, at para. 7.

5. are transit-supportive, where transit is planned, exists or may be developed; and
6. are freight-supportive.”

PPS policies 1.6.3(a) and (b) state:

“Before consideration is given to developing new infrastructure and public service facilities:

- a) the use of existing infrastructure and public service facilities should be optimized; and
- b) opportunities for adaptive re-use should be considered, wherever feasible.”

Policy 1.6.7.4 of the PPS states “A land use pattern, density and mix of uses should be promoted that minimize the length and number of vehicle trips and support current and future use of transit and active transportation.”

Policy 1.6.7.5 of the PPS states “Transportation and land use considerations shall be integrated at all stages of the planning process.”

Policy 2.0 of the PPS states:

“Ontario's long-term prosperity, environmental health, and social well-being depend on conserving biodiversity, protecting the health of the Great Lakes, and protecting natural heritage, water, agricultural, mineral and cultural heritage and archaeological resources for their economic, environmental and social benefits.”

In addition to the submissions made above concerning additional infrastructure cost burdens associated with the sprawl development contemplated by OPA 120, the environmental costs are also high.

Dr. Rita Haase notes in her participant statement that bringing construction, development, land intensification, and the ongoing costs of maintaining infrastructure in the future in a former agricultural area will likely worsen air quality and increase pollution.⁹

Air quality will also be negatively affected by the increase in motorists travelling to and from the new development by car, rather than walking, cycling or taking public transportation. The Windsor Region Society of Architects (WRSA) report indicates greenhouse gas emissions (GhG) will increase as a result of expanding the established footprint of the City of Windsor, in particular, coupled with the limited availability of transit to and from the new subdivision.¹⁰

By contrast, the City of Windsor’s Community Energy Plan (CEP), passed by Council in 2017, calls for a “modal shift towards Public Transit” and for the City to “Integrate Energy Solutions into Land Use Policies”.¹¹ The CEP also commits to a reduction in GhG emissions and per capita primary energy use of 40% by the Windsor community by 2041.

⁹ Rita Haase, Ph.D., MEd, *Participant Statement*.

¹⁰ *Municipal Record*, PL180842, OP, Tab 9, “Windsor’s Proposed Mega-Hospital Site Review Report, Windsor Region Society of Architects” at p.1391.

¹¹ *Municipal Record*, PL180842, OP, Tab 9, “Windsor’s Proposed Mega-Hospital Site Review Report, Windsor Region Society of Architects” at p.1387.

By creating a new subdivision in a location separated by an airport from the established footprint of the City, the OPA will increase rather than minimize the number and length of vehicle trips made in the City of Windsor. Residents travelling to and from the proposed subdivision will have to rely heavily on vehicle travel. Further, with no existing neighbourhoods to the proposed subdivision, a very limited number of destinations will be accessible by bicycle or on foot.

As Ms. Keesmaat writes:¹²

As proposed, OPA 120 creates a fundamental divergence from the objectives of the Official Plan to create a sustainable city over time. Given an expected on-going slow growth scenario, releasing agricultural land for development will likely result in more vacant properties in the core, add more vehicular traffic, resulting in the inefficient use of existing land and infrastructure. All of these outcomes, which are easily established through precedent, are contrary to the fundamental objectives of the Provincial Policy Statement and the Official Plan.

OPA 120 is, therefore, inconsistent with PPS policies 1.1.3.2(a), 1.6.3(a) and (b), 1.6.7.1, 1.6.7.4, 1.6.7.5 and 2.0 in failing to promote efficient, economical and environmentally-responsible planning.

Issue 6 – OP does not protect Provincial Interests

OPA 120 fails to protect provincial interests.

PPS policy 4.7 (quoted above in the Efficient Development Pattern section) requires that Official Plans comply with provincial planning policy as stated in the PPS at the point of drafting but also throughout their periods of validity.

In the preceding paragraphs, several examples were referenced of how OPA 120, as an amendment to Windsor's Official Plan, fails to implement policies mandated by the PPS.

OPA 120 therefore fails to protect provincial interests as expressed in PPS policy 4.7.

Issue 7 - Land use barriers for seniors & those with impaired mobility

OPA 120 is inconsistent with PPS policies 1.1.1(f) and 4.7. Policy 1.1.1(f) of the PPS states: "Healthy, liveable and safe communities are sustained by improving accessibility for persons with disabilities and older persons by identifying, preventing and removing land use barriers which restrict their full participation in society".

As one of many examples from the community, Ms. Anne Beer indicates the proposed development is inconsistent with policy 1.1.1(f) of the PPS because the hospital location not only

¹² Jennifer Keesmaat, expert affidavit, at para.19.

does not improve accessibility for persons with disabilities and older persons, but in fact creates further barriers for these persons. “Right now, travelling to the hospital in the city core is not easy for me but it is possible. If I had to travel all the way to the airport to get to the hospital, I would not be able to do it, both physically and financially.”¹³

The only mention of planning for accessibility for persons with disabilities and older persons contained in OPA 120 is a reference to encouraging the design and provision of drop-off areas within the development in places which do not interfere with pedestrian movements, and the creation of community focal points within the proposed subdivision.¹⁴

Persons with disabilities and seniors are among the most likely to need public transit to travel in the City. However, no coordinated plan for regular and reliable transit service between the proposed development and the existing footprint of the City of Windsor has been created.

Further, in the absence of reliable transit service, taxi service is also not a real possibility given its cost.¹⁵ This too, disproportionately affects persons with disabilities and seniors as they are among adults least likely to own a car. Expanding the footprint of the City as proposed in the OPA 120 will create more land use barriers to full participation in society by persons with disabilities and older persons.

OPA 120, therefore, fails to comply with PPS 1.1.1(f) and 4.7 by failing to improve, or even maintain, accessibility for those with disabilities and seniors.

Issue 8 – Residents’ concerns are not addressed

OPA 120 fails to address resident concerns for the reasons referenced in the “Addressing Public Concerns” section of the ZBLA portion of this Summary (please see Issue 22 below).

Issue 9 - Failure to consult with Indigenous communities

OPA 120 is inconsistent with policy 1.2.2 for the same reasons referenced in the “Indigenous Communities” section of the ZBLA portion of this Summary (please see Issue 23 below).

¹³ Anne Beer, *Participant Statement*; see also Elizabeth Menear, *Participant Statement*.

¹⁴ *Municipal Record*, PL180842, OP: Tab 8, Planning Report, at p.1027.

¹⁵ Mary Elizabeth Menear, *Participant Statement*.

ZBLA 132-2018

Issue 17 - Public health and flooding

Zoning By-law 132-2018 (ZBLA 132-2018) is inconsistent with policies 1.1.1(c), 1.1.5.5 and Part IV of the Provincial Planning Statement, 2014 (PPS, 2014). Policy 1.1.1(c) of the PPS states: “Healthy, liveable and safe communities are sustained by: avoiding development and land use patterns which may cause environmental or public health and safety concerns”. Policy 1.1.5.5 states that “development shall be appropriate to the infrastructure which is planned or available, and avoid the need for the unjustified and/or uneconomical expansion of this infrastructure.”

Significant public health concerns are raised by the proposed hospital site given the increased transit time to access the hospital from the City Centre. Dr. Albert Kadri indicates in his participant statement: “Study after study shows that when you increase distance, time, or create transportation issues in accessing a fully supported hospital emergency room for an acutely ill patient, death rates and poor health outcomes rise. Using multiple indicators that have been studied, this proposed system will likely increase annual preventable deaths in our community in both a direct and indirect fashion, not to mention the associated reduction in quality of life that will result from increased morbidity for city residents.”¹⁶

Further, locating the new hospital (and surrounding subdivision) on greenfield land will place Windsor at greater risk of flooding. Windsor’s Climate Change Adaptation Plan identifies intense rainfall events as a key risk of Climate Change, with Windsor having a heightened vulnerability to the effects of extreme and unpredictable flooding.¹⁷

ZBLA 132-2018 is, therefore, inconsistent with policies 1.1.1(c), 1.1.5.5 and Part IV of the PPS.

Issue 18 - Brownfield land, premature development

Policy 1.7.1 of the PPS states in part:

“Long-term economic prosperity should be supported by:

- (e) Promoting the redevelopment of brownfield sites;
- (h) providing opportunities to support local food, and promoting the sustainability of agri-food and agri-product businesses by protecting agricultural resources, and minimizing land use conflicts.”

Policy 2.0 of the PPS states: “Ontario’s long-term prosperity, environmental health, and social well-being depend on conserving biodiversity, protecting the health of the Great Lakes, and protecting natural heritage, water, agricultural, mineral and cultural heritage and archaeological resources for their economic, environmental and social benefits.”

¹⁶ Dr. Albert Kadri, *Participant Statement*.

¹⁷ *Municipal Record*, PL180842, OP, Tab 9, *Building for the Past*, at p. 1521 (p.27 of report).

Many brownfield sites exist in Windsor, representing “over 221 ha. (546 acres) of land potentially available for adaptive reuse and redevelopment”.¹⁸ However, no priority was given to developing and repurposing a brownfield site for the proposed hospital. In fact, the parameters of the site selection process undertaken by a committee struck by Windsor Regional Hospital awarded no points to infill or brownfield land.

In accepting the site selected through the above process, the City of Windsor opted for undeveloped agricultural lands. The statement found in the Planning Justification Report that “other growth opportunities will be met through infill and intensification in other built up areas of the City”¹⁹ is an insufficient response given the amount of brownfield available in the City and the slow pace of development in recent decades in Windsor’s inner central neighbourhoods.²⁰ It further seeks to undermine extensive efforts made by the City of Windsor in recent years to encourage brownfield and infill development through incentives such as Community Improvement Plans (CIPs).²¹

Selecting agricultural (greenfield) land as opposed to redeveloping an infill or brownfield site also deprives the land of numerous economic and environmental benefits. These include removing the flood management potential of the greenfield land, mentioned above, which has both economic and environmental impacts.

ZBLA 132-2018 is, therefore, inconsistent with PPS policies 1.7.1 and 2.0. It fails to promote the re-use of brownfield lands and encourages premature development of agricultural land.

Issue 19 - Delivery of healthcare services, efficient & resilient communities

The proposed location for the new acute care hospital, along with the corresponding planned closure of the two existing hospitals in the City of Windsor, will lead to a decrease in the efficiency and resilience of Windsor’s healthcare service delivery and of the City’s communities in general. ZBLA 132-2018 fails to comply with PPS policies 1.2.3, 1.6.4 and 3.1.5 and section 4.2.7.3 of Windsor’s OP.

Policy 1.2.3 of the PPS states: “Planning authorities should coordinate emergency management and other economic, environmental and social planning considerations to support efficient and resilient communities. PPS Policy 1.6.4 states: “Infrastructure and public service facilities should be strategically located to support the effective and efficient delivery of emergency management services.”

ZBLA 132-2018 contravenes both PPS 1.2.3 and 1.6.4. Removing two hospitals from the downtown core of the municipality and replacing them with a single location at a significant distance will affect the efficiency and resilience of the community overall, and the efficient and

¹⁸ *Appeal Record, G(f)* City of Windsor Brownfield Redevelopment Strategy, 2010 at p.1.

¹⁹ *Municipal Record, Zoning, PL180843: “Planning Justification Report”, Tab 11 at p.161.*

²⁰ *Appeal Record, G(f)* City of Windsor Brownfield Redevelopment Strategy, 2010 at p.9.

²¹ *Appeal Record, G(j)* City of Windsor Downtown Windsor Enhancement Strategy & Community Improvement Plan, 2017, at p.1.

effective delivery of emergency management services specifically. It removes the single most important institution for public health and emergency management services from the center of the City of Windsor. Ambulatory care clinics and operative care, MRI services, and the Region's only Emergency Department would all be located only at the proposed new hospital.

Health care service delivery

When considering emergency management in the context of social planning, the relocation of the hospital from Windsor's most densely populated central neighbourhoods to a site 15 km away from the existing hospital is a poor planning decision. Residents in these low income neighbourhoods experience disproportionately higher hospital admission rates as a result of higher rates of chronic disease, mental health crisis,²² as well as drug overdoses and interpersonal trauma.

The submission of the WRSA to Windsor City Council's August 13, 2018 meeting states in part: "The epicenter of densest populated residential areas within the region should be used to measure appropriate travel distances which has not occurred for this proposed green field farmland site."²³

Windsor's Wards 3 (Downtown) and 4 (Walkerville) have the Region's greatest population density (both >3,000 people per sq. km).²⁴ Because these Wards surround the existing hospitals, residents, on average, live no more than one or two km from one of these campuses. Residents of Ward 2 (Windsor West) have the Region's greatest number of people living in low income, and highest transit dependency. Commuting to the proposed site, many thousands of residents will face a commute exceeding 10 km and up to 18 km each way. As indicated in *Building for the Past: Sandwich South Secondary Plan Amendment & Hospital Zoning*, this will reduce options for walking and cycling, forcing people to drive instead, significantly reducing efficient delivery of medical services.²⁵

Urban planning and hospital development consultant Ken Greenberg states: "In my view [the proposed hospital plan] is a bad idea from both a medical and public health standpoint (access to care) as well as a city building perspective and these two perspectives are inextricably intertwined."²⁶

Ms. Jacquie Krause states: "The hospital accounts for almost 4,000 jobs in the city and numerous medical practices and clinics that will be expected to move to support the new hospital."²⁷

²² *Municipal Record*, PL180842, OP, Tab 9, *Building for the Past*, at p.1504 (p.17 of report).

²³ *Municipal Record*, PL180842, OP, Tab 9, *Windsor's Proposed Mega-Hospital Site Review Report*, Windsor Region Society of Architects, at p.1408.

²⁴ *Municipal Record*, PL180842, OP, Tab 9, *Building for the Past*, at p.1503 (p.16 of report).

²⁵ *Ibid.*

²⁶ *Municipal Record*, PL180842, OP, Tab 9, Ken Greenberg at p.1550.

²⁷ Jackie Krause, *Participant Statement*.

Further, hospital planning documents explicitly indicate the Urgent Care Centre to be located in or near Downtown Windsor, as currently proposed, will close its doors to the public at 10 p.m. It will also have no overnight beds, no ambulance arrivals, and no treatment for life-threatening conditions.²⁸ It can, therefore, clearly not be considered an Emergency Department.

Patients with referrals to specialists and clinics will also need to travel for care. There is no analysis of the extent of further referrals for patients visiting the emergency department who do not need to be admitted.

Financial efficiency

Efficiency considerations as laid out in the PPS must also include financial efficiency. The proposed location would lead to a highly inefficient use of City resources.

Richard Spencer, a consulting engineer for the proposed hospital site, states in his letter: "There was one other property available, the GEM property, which unlike the County Road 42 site, is already fully serviced (sewer, water, hydro, natural gas, drainage) and provides adequate redundancy required for a major health care institution."²⁹

"Had our analyses been used as originally submitted by our firm, and if the significant cost of road improvements had been taken into account as outlined in our attached letter, it is my opinion that the County Road 42 property would not have been selected as the most efficient and cost-effective site for the proposed acute care hospital facility."³⁰

This property was ranked first in the initial site selection process, with the current proposed location ranking second. The GEM property was subsequently rejected in favour of the proposed location on the basis of a slightly lower cost. However, these costings did not consider initial and ongoing infrastructure costs to be borne by the City of Windsor, giving a misleading understanding of the relative total costs of the top two locations. The proposed site will come with a far higher cost than a site in the existing footprint of the City. Efficient use of the City's financial resources required a full costing of all potential properties.

Environmental and resiliency considerations

Policies 1.2.3 and 3.1.5 both address environmental aspects of selecting an appropriate hospital site. Policy 1.2.3 speaks to the environmental planning considerations which will lead to efficient and resilient communities. Policy 3.1.5 of the PPS states in part: "Development shall not be permitted to locate in hazardous lands and hazardous sites where the use is: a) an institutional use including hospitals, long-term care homes, retirement homes, pre-schools, school nurseries."

In its written submission to Windsor City Council on 13 August 2018, WRSA notes several reasons why building the mega-hospital in the proposed location would prevent it receiving

²⁸ *Municipal Record*, PL180842, OP, Tab 9, *Building for the Past*, at p.1498 (p.12 of the report).

²⁹ Richard Spencer, *Participant Statement*.

³⁰ *Ibid*.

Leadership in Energy and Environment Design (LEED) points. These include: the greenfield site, the proposed site's contribution to sprawl, failure to contribute to development density or redevelopment of contaminated sites (brownfield), contribution to increased car-based transport, destruction of farmland, creation of further heat islands rather than current absorption and cooling, creating further lighted areas, and failure to consider building reuse.³¹ While LEED certification is not a requirement of the site selection process, this list gives a strong indication of the failure of the proposed site to contribute to environmental planning considerations as required by the PPS policies 1.2.3.

An analysis of aggregate population-weighted return trip distances from each ward and municipality primarily served by Windsor Regional Hospital also shows that the County Road 42 location will increase overall trip distances by 27%.³² Further refining the calculation to include the weighted impact of the 3,000-4,000 health care workers' multiple visits over the span of a year demonstrates an even greater increase in trip distances.

The proposed hospital site will also limit potential for more efficient energy provision for the City. The WRSA submission notes: ³³

The most critical aspect of the proposed Mega-Hospital location is the hope for a cityscale District Energy System to supply a network of heating and cooling to replace individual furnaces, boilers and chillers in buildings. These networks allow all sources to be mixed together creating lower cost, lower emissions and added reliability which recover waste heat while creating a larger economy of scale for these assets. There are a few district energy systems currently in place in the city now, one of which is in the urban core. If the Mega-Hospital was included these efficiencies could be increased and further developed much more economically and effectively for more facilities giving Windsor that energy competitive edge it so desires. The proposed Mega-Hospital site is actually working contrary to the district energy initiative.

Very limited utilities or services exist at the proposed location of the development and this would require significant investment in infrastructural development, as opposed to selecting a site that is already very well served by utilities and services. The ongoing delivery of utilities and services to what is now an agricultural area will also be an extra cost to the Municipality.

Further, the proposed site fails to comply with PPS policy 3.1.5. The proposed site is in a designated Floodplain Development Control Area³⁴. As such, development on this land constitutes a hazard, in particular given the importance of the health care services to be located there. The hazard is even greater if the development contemplated in OPA 120 is permitted to proceed, as it will reduce the amount of wetlands available for water absorption near the

³¹ *Municipal Record*, PL180842, OP, Tab 9, "Windsor's Proposed Mega-Hospital Site Review Report, Windsor Region Society of Architects", at p.1406.

³² *Municipal Record*, PL180842, OP, Tab 9, *Building for the Past*, at p.1503 and p.1539 (p.16 and Appendix D of the report).

³³ *Municipal Record*, PL180842, OP, Tab 9, "Windsor's Proposed Mega-Hospital Site Review Report, Windsor Region Society of Architects", at p.1368.

³⁴ *Municipal Record*, PL180842, OP, Tab 8, Planning Report at p.1177.

hospital. It will further contribute to the City of Windsor's vulnerability to flooding given that more greenfield i.e. rain-absorbing land will be paved over (please also see Issue 17 - Public Health and Flooding, above).

Proposed mitigation measures include stormwater retention ponds. These ponds would need specialized engineering to lower the risk of attracting birds, which would in turn increase risks to aircraft in view of the proximity of the ponds to Windsor Airport.

ZBLA 132-2018 is, therefore, inconsistent with policies 1.2.3, 1.6.4 and 3.1.5 of the PPS and section 4.2.7.3 of Windsor's OP in failing to promote healthy, efficient, and resilient communities.

Issue 20 - Transit & Active Transportation Issues

ZBLA 132-2018 is inconsistent with the PPS, 2014 policies 1.6.3(a)(b), 1.6.7.1, 1.6.7.4, 1.6.7.5, 1.8.1(e), and also fails to conform to policies 3.2.3.1, 4.2.1.6, 4.2.3.2, 6.1.6, 6.6.1.2, 6.6.2.5(d)(e), 7.2.2.21(c), 7.2.2.25(e), 7.2.5.2, and 8.4.1.1 of Windsor's OP, as:

- (a) access to the proposed hospital site is neither transit-supportive nor supports active transportation, and
- (b) it does not sufficiently integrate transportation planning into the planning process.

Policy 1.6.7.1 of the PPS states: "Transportation systems should be provided which are safe, energy efficient, facilitate the movement of people and goods, and are appropriate to address projected needs." Policy 1.6.7.4 of the PPS states: "A land use pattern, density and mix of uses should be promoted that minimize the length and number of vehicle trips and support current and future use of transit and active transportation."

Policy 1.6.7.5 of the PPS states: "Transportation and land use considerations shall be integrated at all stages of the planning process."

Policy 1.8.1(e) of the PPS states: "Planning authorities shall support energy conservation and efficiency, improved air quality, reduced greenhouse gas emissions, and climate change adaptation through land use and development patterns which: improve the mix of employment and housing uses to shorten commute journeys and decrease transportation congestion."

Section 3.2.3.1 of Windsor's OP states: "Windsor will work toward achieving a sustainable transportation system where all modes of transportation can play a more balanced role. The creation of mixed use and employment centres will allow businesses and services to be closer to homes and allow greater opportunities for walking, cycling and transit."

Sections 6.6.2.5 (d) and (e) of Windsor's OP state:

"the following guidelines shall be considered when evaluating the proposed design of a Major Institutional development:

- (d) pedestrian and cycling access is accommodated in a manner that is distinguishable from the access provided to motorized vehicles and is safe and convenient;
- (e) the development design facilitates access via public transportation."

Section 7.2.2.21 of Windsor's OP states:

"Council shall implement land use patterns that promote sustainable travel by locating land uses within reasonable walking or cycling distance by:

- (a) Encouraging development that include an appropriate mix of residential, commercial and employment lands within reasonable walking distance of each other;
- (b) Planning higher density developments in areas along major transportation corridors and nodes;
- (c) Integrating land use and transportation planning decisions by ensuring each fit the context of each other's specific needs."

Section 7.2.2.25 (e) of Windsor's OP states:

"Council shall support transit friendly design by: promoting urban design that encourages walking and cycling. Council shall require that the design of development proposals and infrastructure undertakings facilitate easy access to public transportation. In this regard, Council shall:

- (a) Ensure that all new development patterns are supportive of public transportation in accordance with the land use and transportation policies in this Plan;
- (b) Require that the street pattern in new developments allows for the extension of public transportation services;
- (c) Require that sidewalks and other pedestrian facilities connect major traffic generators to public transportation services."

As Ms. Cheryl Golden states in her participant statement, "the logistics surrounding transportation [to the proposed hospital site are] a nightmare."³⁵

Transportation to the proposed site will not be energy efficient, will not facilitate the movement of people and goods, nor address projected needs in any comprehensive way. Realistically, for many years to come, the only reliable and safe travel options between much of the established footprint of the City of Windsor and the proposed new hospital will be private vehicle or taxi. This will cause more transportation congestion and will increase greenhouse gas emissions from additional travel incurred.

As Mr. David Hanna in his participation statement notes, "The plan will cause more unnecessary vehicular trips due to its distance from the city core and the homes of existing employees and patients. The plan will promote more sprawl and automobile ownership."³⁶

As expressed in the City of Windsor's Community Energy Plan (CEP), passed by Windsor City Council in 2017, Windsorites spend the most on transportation and transportation based energy (46% at \$383.5 M for transportation) and on Gasoline (42% at 348.7M for Gasoline). The

³⁵ Cheryl Golden, *Participant Statement*.

³⁶ David Hanna, *Participant Statement*.

proposed hospital site would see these figures and costs rise as it would demand more driving by Windsorites.³⁷

The length and number of vehicle trips to the proposed will be far longer for Windsorites living in the City's central neighbourhoods when compared to the two existing hospital campuses, increasing costs for citizens and making carbon-reduction goals far more difficult to achieve. It will increase traffic congestion, and will increase energy use and greenhouse gas emissions, contributing to, rather than mitigating, climate change.

In proposing a hospital location which will require increased car use, the plan also contravenes provisions specific to both public and active transportation.

Public transportation

Section 7.2.5.2 (g) of Windsor's OP states in part: "Council shall require that the design of development proposals and infrastructure undertakings facilitate easy access to public transportation."

Policy 1.6.3 of the PPS states:

"Before consideration is given to developing new infrastructure and public service facilities: (a) the use of existing infrastructure and public service facilities should be optimized; and (b) opportunities for adaptive re-use should be considered, wherever feasible."

The proposed hospital site does not use existing public transit infrastructure, because there is currently no public transit service to the proposed hospital location. New transit routes will have to be created.

The Ministry of Transportation's Transit Supportive Guidelines indicate that "When towns and cities grow outward at lower densities and land uses are not coordinated alongside planned transit investments, distances between locations get longer. This makes provision of transit difficult. Routes become longer and because users are spread out around a larger area, the ridership per kilometre of service decreases. This can make transit systems less cost effective to operate, resulting in service cuts and loss of ridership."³⁸ This is a likely outcome in the present case, with already limited transit service in Windsor suffering as a result of the expanded service area.

Active transportation

The proposed location's distance from established neighbourhoods will force hospital and other workers who currently live within walking or cycling distance to drive to work.

³⁷ *Municipal Record*, PL180842, Official Plan, Tab 9, "Windsor's Proposed Mega-Hospital Site Review Report, Windsor Region Society of Architects", at p.1390.

³⁸ *Appeal Record*, PL180842, OP: G(g) "Transit Supportive Guidelines-Ontario Ministry of Transportation 2012", at p.3.

Bike Windsor Essex states:³⁹

The 4000+ staff and countless volunteers and visitors who currently commute to Windsor Regional Hospital, will not be able to choose active transportation to the new hospital site 13 kilometres from Windsor's downtown core — where the vast majority of cyclists reside.

Access routes to Sandwich South along Walker Road and Lauzon Parkway have no safe bicycle or pedestrian infrastructure. E.C. Row Expressway is inaccessible to cyclists and pedestrians. Further, integrated cycling infrastructure to the proposed hospital and new subdivision have not been incorporated into the Active Transportation Master Plan.

The proposed hospital site is likewise not transit supportive: the lengths and number of vehicle trips are not minimized due to the population density of Windsor's central neighbourhoods, especially for those with chronic medical conditions who live within walking distance of one of the existing hospital campuses.

Section 8.4.1.1 of Windsor's OP further calls on the City: "to integrate barrier-free pedestrian routes in the design of urban spaces." The proposed hospital site creates barriers for those located in and around the densely populated City Centre because it will be difficult for them to get to the new hospital, especially for those with mobility issues. Ms. Mary Elizabeth Menear in her participant statement stresses that "many people [in Windsor] prefer to be able to get ourselves to and from the hospital, by walking, riding our power chair".⁴⁰

Section 4.2.1.6 of Windsor's OP similarly states the City is "to provide for pedestrian scale neighbourhood centres that serve the day-to-day needs of the local residents." Section 4.2.3.2 of Windsor's OP states that the City should work "to encourage the location of basic goods and services close to where people live and work." Section 6.1.6 of Windsor's OP states in part: "In keeping with the Strategic Directions, Council's land use goals are to achieve: An integration of institutions within Windsor's neighbourhoods." Section 6.6.1.2 of Windsor's OP states that the City is: "to ensure that all institutional uses are strategically located within Windsor to be both accessible and act as neighbourhood focal points."

The proposed site is not close to existing businesses and homes, and employees, patients and their families will not have access to the city center's many options for food, clothing and other needs when receiving services at the current site selected for the new hospital.

In his letter to Windsor City Council, urban affairs journalist, Windsor native and University of Toronto lecturer Mr. Shawn Micallef states:

Instead of injecting many hundreds of well-paid workers into a dense part of the city where they might shop before or after their shifts, or go for lunch at nearby restaurants,

³⁹ Bike Windsor Essex, *Participant Statement*.

⁴⁰ Mary Elizabeth Menear, *Participant Statement*.

they would be sent off to a self contained campus. On top of those workers, all the visitors to the hospital may linger in the neighbourhoods before and after visiting loved ones.⁴¹

The day to day to-day needs of local residents will not be met because the proposed hospital site will be beyond reasonable walking distance from Windsor's central neighbourhoods and the housing, services and retail available in them. The hospital will not be integrated into any of Windsor's existing neighbourhoods.

The proposed hospital site is beyond Windsor's established neighbourhoods and, therefore, will not be integrated as envisioned by Section 6.1.6. Keeping a major employer downtown, and the significant provincial investment which will accompany this project, is clearly better for downtown businesses and the revitalization of the City center. Removing the two existing hospitals from the established footprint of the City will also see, at minimum, some employees relocate their residences to be closer to the proposed site.

Pedestrian and cycling access to the proposed hospital site would not be easily accommodated for those citizens living in or near the present City centre. Access to Sandwich South by bicycle or on foot from neighbourhoods north of E.C. Row Expressway is bisected by airport land which lies between. Access routes leading to Sandwich South are not engineered for safe active transportation. Bike Windsor Essex notes that "The current roads from almost all neighbourhoods to the proposed hospital site would be dangerous for anyone not driving a car, including travelling across the E.C. Row Expressway which effectively blocks off all the available routes for safe passage."⁴²

The proposed hospital site will not be easily accessible to vulnerable residents in central neighbourhoods who do not drive. Wards 2,3 4 and 5 are also Windsor's lowest income wards. Income is well-established to be inversely correlated to health outcomes, as corroborated by the Erie St. Clair LHIN in this illustration of what they describe as a Social Deprivation Index: Key areas with a high concentration of social deprivation include Windsor West and Windsor City Centre.⁴³ Residents of these Wards, also the farthest from the proposed location, will be the most affected by the lack of active and public transit access to the hospital.

Ms. Keesmaat indicates in her affidavit that "to support walking, cycling and transit, the hospital must be sited in a location that readily provides excellent mobility choice related to these options. Integration with the existing urban fabric of the city would be the most strategic, effective, and cost-effective way to do so."⁴⁴

Therefore, ZBLA-132 2018 is inconsistent with the PPS, 2014 policies 1.6.3(a)(b), 1.6.7.1, 1.6.7.4, 1.6.7.5, 1.8.1(e) and fails to conform to policies 3.2.3.1, 4.2.1.6, 4.2.3.2, 6.1.6, 6.6.1.2,

⁴¹ *Appeal Record*, PL180842: G(a) "Written Submissions not included in Enhanced Municipal Record-Shawn Micallef" in "Other Relevant Documents and Materials".

⁴² Bike Windsor Essex, *Participant Statement*.

⁴³ *Municipal Record*, PL180842, OP, Tab 9, *Building for the Past*, at p.1504 (p.17 of the report).

⁴⁴ Affidavit of Jennifer Keesmaat, at para. 25.

6.6.2.5(d)(e), 7.2.2.21(c), 7.2.2.25(e), 7.2.5.2, and 8.4.1.1 of Windsor's OP. It fails to satisfy the requirements of both PPS and OP with respect to active transportation and public transit.

Issue 21 - Accessibility for vulnerable residents

ZBLA 132-2018 is inconsistent with the PPS, 2014 policies 1.1.1(f) and 4.7 and/or does not conform to Windsor Official Plan section 4.2.4.2 by:

- (a) inordinately impacting vulnerable populations and people with disabilities;
- (b) favouring or rewarding Windsor citizens who own cars; and
- (c) failing to foster the integration of all residents into the community.

Policy 1.1.1(f) of the PPS states: "Healthy, liveable and safe communities are sustained by: improving accessibility for persons with disabilities and older persons by identifying, preventing and removing land use barriers which restrict their full participation in society." Section 4.2.4.2 of Windsor's Official Plan sets out the community goal: "To encourage development that fosters the integration of all residents into the community."

In the WRSA report, it is indicated that persons with disabilities and older persons residing in Windsor will face the barrier of commuting a further distance to the new location of the Windsor Regional Hospital. The proposed hospital location at the extreme south-east of the city, south of the Airport Land, is farthest from the lowest income wards with high public transit dependency located Downtown and west of Downtown.⁴⁵

Land use barriers for persons with disabilities and older persons have not been identified, prevented or removed in ZBLA 132-2018.

Ms. Lorena Shepley states that "by moving the hospital to such a remote location where there currently is not a neighbourhood to speak of, the City is neglecting the needs of a vulnerable population: the elderly and persons with disabilities who are often of low-income, a population which the OP expressly sets out to protect."⁴⁶

Low-income seniors and persons with disabilities will be particularly affected by locating the hospital at the proposed location. Without access to a car to drive to the new location, transportation will have to be purchased, placing a new cost on individuals who are already marginalized. Ms. Beer indicates in her participant statement that taxi fares to and from the planned County Road 42 hospital location for residents of the city's lowest income wards will be cost-prohibitive for those with limited incomes.⁴⁷

Canada's 2016 census shows that: 39% of Windsor seniors live in Wards 2, 3, 4 & 5; 32% of the city's total senior population lives in 12 of the region's most densely populated census tracts,

⁴⁵ *Municipal Record*, PL180842, OP, Tab 9, "Windsor's Proposed Mega-Hospital Site Review Report, Windsor Region Society of Architects", at p.1404.

⁴⁶ Lorena Shepley, *Participant Statement*.

⁴⁷ Anne Beer, *Participant Statement*.

concentrated in the Downtown core and along the City's northern boundary. Travel to the planned location of the acute care hospital exceeds 8 km in each instance.⁴⁸

Many of the elderly have purposely chosen to live near necessities, including hospitals, in established Windsor neighbourhoods.

Ms. Michelle Oncea writes in her participant statement that, "In the 1970's, my parents made a strategic choice to live in Walkerville to be close to the things we needed. The bus stop, doctors, dentists, the church, our schools; almost everything we needed was within walking distance, including both hospitals. Walkerville has always been my comfort zone and I have chosen to live here for the same reasons as my parents."⁴⁹

For senior citizens who do not own cars and commute by walking, cycling, or public transportation, the new location fails to foster integration and creates a barrier through its distance from the City centre. Replacing two anchor institutions with one beyond Windsor Airport creates a physical barrier that negatively and disproportionately impacts low income and vulnerable residents, especially those without access to cars.

ZBLA 132-2018 fails to meet the goal established in PPS 1.1.1 (f) and OP policy 4.2.4.2 by placing barriers to accessing healthcare to individuals with mobility constraints and seniors who do not have access to cars, and who cannot afford transportation to the proposed new hospital site.

Issue 22 - Addressing Public concerns

The Council of the City of Windsor failed to conform with Windsor OP policies 3.2.4.1, 3.2.4.2, and 4.2.5.3 by failing to build community consensus, not responding to clearly articulated public concerns, and failing to be fiscally responsible by foregoing or inadequately conducting a cost-benefit analysis of the impact of the proposed zoning.

Section 3.2.4.1 of Windsor's OP states: "People will be involved in the municipal processes that shape Windsor and its neighbourhoods. Residents will be encouraged to work with municipal staff to identify and resolve city-wide and neighbourhood issues. New ways will be found to build consensus within the community to ensure that Windsor advances toward its desired future."

Section 3.2.4.2 of Windsor's OP sets out the ethos of the planning process: "Windsorites want a planning process that is responsive, effective and fiscally responsible. Planning services will be efficiently delivered and carefully targeted to achieve the community vision".

Section 4.2.5.3 of Windsor's Official Plan states that Council is: "To ensure effective public information and communication on planning and development initiatives".

⁴⁸ *Municipal Record*, PL180842, OP, Tab 9, *Building for the Past*, at p. 1497 (p.11 of the report).

⁴⁹ Michelle Oncea, *Participant Statement*.

Lack of public consultation and consensus-building

Not only was community consensus on the proposed hospital site not achieved, there was no proper process in place to attempt to reach such consensus. This is particularly serious given the contentious nature of the hospital site selection issue and the multiple community groups and members concerned with this issue.

Lack of cost-benefit analysis

As the site selection process did not seriously consider all proposed site locations and perform sufficient cost-benefit analyses on each, it cannot be concluded that locating the new Windsor Regional Hospital in the proposed site under ZBLA 132-2018 is the most fiscally responsible option.

Mr. Richard Spencer, the engineer who conducted the infrastructure costs assessment of both the proposed location and the other highly ranked property, states: “Neither the initial road upgrades for each site, nor the ongoing maintenance of these roads, was part of the evaluation criteria in the site selection process by the Committee. However, the City of Windsor was obliged to consider these significant initial and ongoing costs to be borne by their taxpayers, if and when they became aware of these total cost differences.”⁵⁰

ZBLA 132-2018 is, therefore, inconsistent with policies 3.2.4.1, 3.2.4.2 and 4.2.5.3 of Windsor’s Official Plan, in failing to conduct sufficient public consultation and conduct cost-benefit analyses of the properties under consideration.

Issue 23 - Failure to consult with Indigenous communities

ZBLA 132-2018 further failed to fulfil its obligations under PPS policy 1.2.2 and section 10.2.1.14 of Windsor’s OP, to consult with affected indigenous communities in the hospital site selection process.

Policy 1.2.2 of the PPS indicates “Planning authorities are encouraged to coordinate planning matters with Aboriginal communities.” Policy 10.2.1.14 of Windsor’s Official Plan states “Consultation with First Nations will take place as part of a development application or detailed planning study.”

No substantive consultation occurred at all with Indigenous communities affected by the decision-making process leading to ZBLA 132-2018.

Indigenous communities affected by ZBLA 132-2018 include Walpole Island First Nation and Caldwell Island First Nation, their members living both on reserve and in Windsor and elsewhere in Essex County, as well as other indigenous peoples living in the City of Windsor.

⁵⁰ Richard Spencer, *Participant Statement*.

One email was sent to J. Macbeth at Walpole Island First Nation.⁵¹ It has not been explained why the email was addressed to that recipient. The body of the email provided limited detail as to the nature of the consultation to which WIFN was being invited. No response was received.

There is no evidence of any attempt to communicate directly with the Chief of Walpole Island First Nation.

Likewise, an email was sent to the reception mailbox for Caldwell First Nation,⁵² with no response. No follow-up action was taken and no attempt was made to contact directly the Chief of Caldwell First Nation.

According to Statistics Canada, 5565 persons of Aboriginal identity lived in Windsor during the 2016 Census. Yet no attempt was made to contact the Can-Am Friendship Centre or any other group representing the interests of Indigenous persons living in Windsor. This, despite the fact that the City of Windsor has consulted with the Can-Am Friendship Centre in the past on community-based initiatives.

Ms. Beth Ann Cook states “To my knowledge, the only attempt to consult with indigenous peoples about the proposed megahospital plan was in the form of single emails to Walpole First Nation and Caldwell First Nation. Not only was this not adequate consultation; it was no consultation at all.”⁵³

The acts taken by the City of Windsor to consult with indigenous communities must also be read in light of the requirements of the Truth and Reconciliation commission’s Calls to Action (TRC), quoted by Cook in her participant statement.⁵⁴ These include Call #47, which require municipal governments to repudiate concepts justifying European sovereignty and to reform laws, policies and litigation strategies that continue to rely on these concepts. A consultation process which consists only of sending an email to someone at a First Nation (and not even to the Chief of that First Nation) is inconsistent with a municipal government’s obligation under the TRC.

ZBLA 132-2018 is, therefore, inconsistent with policies 1.1.2 of the PPS and section 10.2.1.14 of Windsor’s OP in its failure to consult with Indigenous communities.

⁵¹ *Municipal Record*, PL180842, OP, Tab 9, *Building for the Past: Sandwich South Secondary Plan Amendment & Hospital Zoning*, at p. 1524 (p.30 of the report).

⁵² *Ibid.*

⁵³ Beth Ann Cook, *Participant Statement*.

⁵⁴ *Ibid.*