

## Report to Planning and Environment Committee

**To:** Chair and Members  
Planning & Environment Committee  
**From:** Gregg Barrett  
Director, City Planning and City Planner  
**Subject:** London Plan – Appeals and LPAT Hearing Update  
**Meeting on:** November 30, 2020

## Recommendation

That, on the recommendation of the Director, City Planning and City Planner, the following report **BE RECEIVED** for information.

## Executive Summary

The London Plan was adopted by Municipal Council on June 23, 2016 and was approved by the Province on December 28, 2016. The Plan was appealed to the Local Planning Appeal Tribunal (LPAT).

The first phase of appeal hearings was held before the LPAT from September 23 to October 8, 2020. A motion was heard on the first day of hearing that resulted in a Tribunal Order bringing numerous policies into force and effect, and a Decision has since been released dealing with policies that were litigated in this first hearing phase.

## London Plan Status Update

### London Plan Status Update

Since the time of last reporting to Council on the status of the London Plan, Staff have continued to work with appellants to scope the policies and issues under appeal and to resolve appeals.

Several pre-hearing conferences have also been held by the Local Planning Appeal Tribunal (LPAT). The LPAT determined that the hearings are to be phased, with separate hearings blocks by subject matter. Pre-hearing conferences also directed that issues lists be identified for each phase of hearing. The issues lists are the policies, maps and figures that are to be argued at each phase of the hearing. The phasing of the hearing, as directed by the LPAT, is as follows:

- Phase 1A: Growth Management and Implementation;
- Phase 1B: Intensity, Bonusing and High Density Residential;
- Phase 2: Natural Heritage; and
- Phase 3: Design and Mobility.

Two blocks of hearings dates were scheduled for 2020 to address Phases 1A and 1B, respectively. The first block of hearings was to be held in April-May 2020 and the second was to be held in September-October 2020.

As a result of the COVID-19 pandemic and the Province's state of emergency declaration, the April 2020 block of hearings was postponed. The second block of hearings was held as a "virtual" hearing, and generally combined the issues from Phases 1A and 1B. This first phase of hearings was held from September 23, 2020 to October 8, 2020.

This first block of hearings resulted in two Decisions by the LPAT. The first Order by the LPAT recognized the matters that the City and appellants had resolved prior to the start of the hearing, subject to the Tribunal's approval. This first Order was issued by the LPAT, orally, on September 23, 2020 (See Appendix B for written memorandum of

that decision). Following the hearing on the merits, the Tribunal reserved its Decision, which was subsequently released on October 23, 2020 and is attached hereto as Appendix C.

The following are some of the London Plan policies, maps and figures that have been directed by the LPAT to come into force and effect as a result of this phase of hearings:

- Maps and City Structure Plan Figures
  - Partial approval of London Plan Map 1 – Place Types. The partial approval of Map 1 recognizes the Rapid Transit Corridor alignment consistent with the results of the Rapid Transit Environmental Assessment.
  - Full approval of Map 3, including a modification to show the final Rapid Transit EA alignment.
  - Several Figures that are the “frameworks” for growth, mobility and the economy, which contribute to the composite City Structure Plan.
- Growth Management, including Growth Finance and Growth Servicing
  - Approval of the definition of comprehensive review for land needs studies and the Built Area Boundary shown in Figure 2.
  - Growth servicing and infrastructure policies, noting planning proposals that will not have access to necessary infrastructure within five years will be considered premature and approvals will be discouraged. Previously, in the Ministry-approved London Plan, access to infrastructure was expected within three years or an application would be considered premature.
  - Growth Financing section in the Our Tools part of the plan.
- Place Types
  - Recognition that the full range of uses permitted by policy may not be allowed on all sites in all Place Types, and that site-specific regulations will be determined in the Zoning By-law.
- Neighbourhoods Place Types
  - The “Form” policies of the Neighbourhoods Place Type.
  - Table 10 – Range of Permitted Uses in the Neighbourhoods Place Type
  - The “Near Campus Neighbourhood” policies, which are area-specific use, intensity, and form policies of the Neighbourhoods Place Type.
  - Secondary Dwelling Unit policies.
- Rapid Transit Corridor Place Type:
  - The Old North Richmond Street Preservation policies, which are specific-segment policies of the Rapid Transit Corridor Place Type.
  - Recognition of the RTC on Maps 1 and 3, as noted above.
- Extension of Subdivision Draft Plan Approval
  - Draft Plan approval of subdivisions will only be extended where the plan conforms to current policies of the London Plan, current legislation, and is consistent with the Provincial Policy Statement.

Appendix A to this report also shows all policy, map and figure changes resulting from this phase of hearing, including where there was no change and the existing, Ministry-approved London Plan policy was upheld.

In addition to the results of the first hearing, several site-specific appeals and numerous policies have been resolved throughout the pre-hearing conference process and continued discussions between City Staff and the Appellants.

## **Conclusion: Next Steps**

The first phase of London Plan hearings concluded on October 8, 2020. A decision was

issued by the LPAT on October 23, 2020. In general, the decision maintained the approved London Plan language, or made modifications to clarify policy intent, policy implementation, or requirements of Provincial legislation.

The decision issued on October 23, 2020, combined with previous LPAT decisions, results in 89% of London Plan policies now being in force and effect.

The City of London has recently updated its website. The London Plan page on the City’s website is being updated to include a new consolidated version of the Plan that shows which policies are still subject to appeal and which are now in effect. London Plan Maps will also be updated to identify the areas where decisions have brought portions of the maps into effect. A status table, including the dates policies, maps and figures are brought in force, is also being updated as a companion to the new consolidated version of the Plan.

City Staff will continue to engage with appellants and counsel in accordance with existing procedural orders that require confirmation of the “Issues List” (policies, figures, and map features) for subsequent phases of hearings. The next block of hearing dates has not yet been scheduled by the LPAT. Future reports will be brought to the Planning and Environment Committee to provide updates on subsequent London Plan hearings phases and processes as appropriate.

<b>Prepared by:</b>	<b>Travis Macbeth, MCIP, RPP Planning Policy</b>
<b>Submitted by:</b>	<b>Justin Adema, MCIP, RPP Manager, Planning Policy</b>
<b>Recommended by:</b>	<b>Gregg Barrett, AICP Director, City Planning and City Planner</b>
<b>Concurred by:</b>	<b>Aynsley Anderson Solicitor II, City Solicitor’s Office</b>
Note: The opinions contained herein are offered by a person or persons qualified to provide expert opinion. Further detail with respect to qualifications can be obtained from Planning Services	

November 13, 2020  
TM/tm

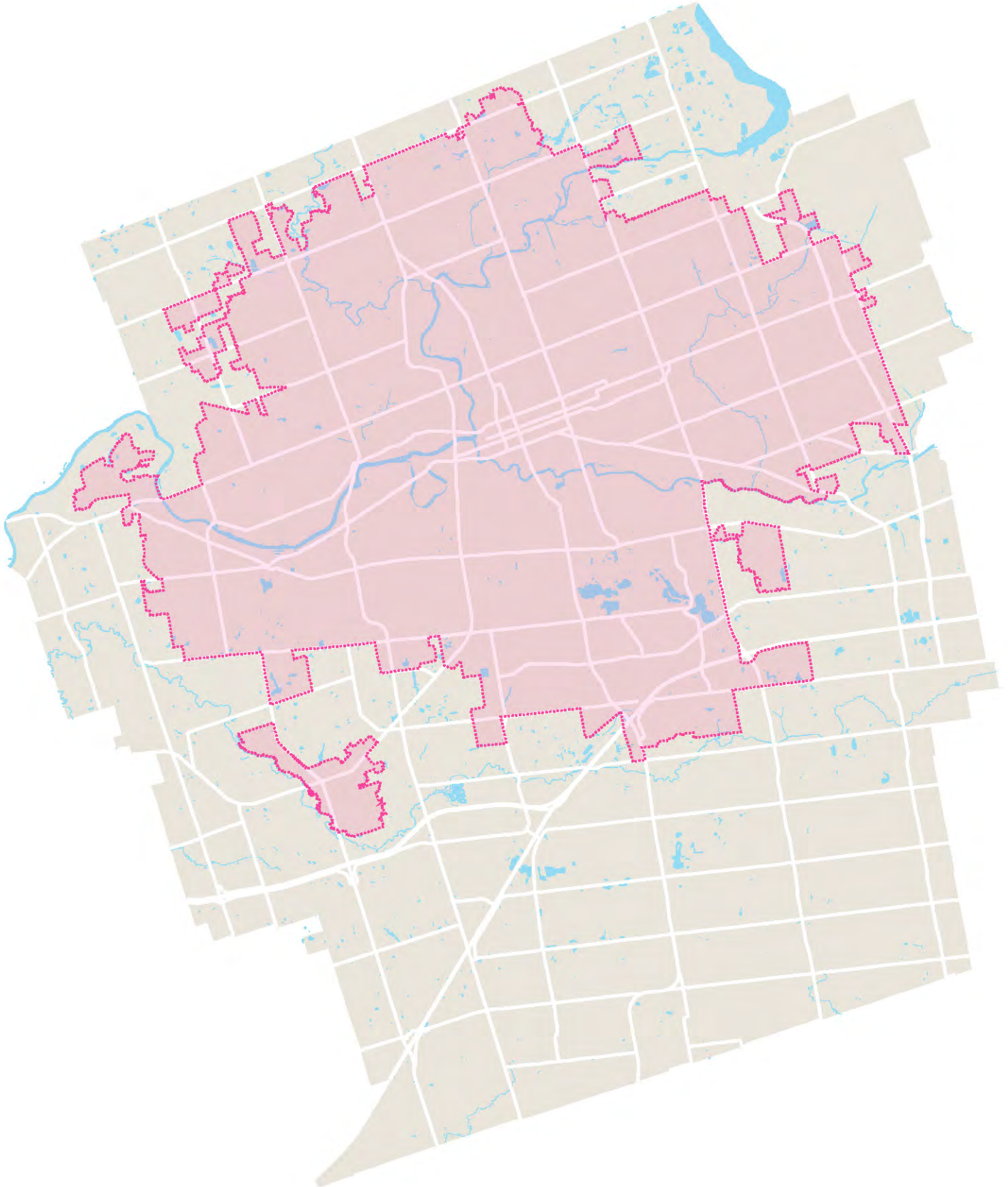
## **Appendix A – Summary of September 23 and October 23 Decisions**

Policy	In-force by Order below	Original language or modified language
73	September 23, 2020	<p data-bbox="750 323 1386 688">During every comprehensive review of this Plan, <u>which will be conducted consistent with the Provincial Policy Statement</u>, the need for expansion of the Urban Growth Boundary will be evaluated to ensure there is sufficient land available, through intensification, redevelopment, and on vacant lands, to accommodate an appropriate range and mix of employment opportunities, housing, and other land uses to meet projected needs <u>and to satisfy market demands</u> for up to 20 years.</p> <p data-bbox="750 726 1406 789"><i>Amend Policy 1795_ , “Glossary of Terms”, to add the following:</i></p> <p data-bbox="750 793 1403 1087"><b>Comprehensive Review</b> means a review of the <u>London Plan to ensure that the Plan has regard to the matters of provincial interest identified in the Planning Act and is consistent with the Provincial Policy Statement. Any comprehensive review of the London Plan will be conducted consistent with the definition of a “comprehensive review” in the Provincial Policy Statement.</u></p>
173	October 23, 2020	<p data-bbox="750 1094 1409 1220">Planning and development <u>approvals</u> will be discouraged where planned servicing capacity to accommodate the proposed use is not expected to become available within a <u>five</u> year time frame.</p>
373	September 23, 2020	<p data-bbox="750 1232 1170 1262">No change to adopted language</p>
375	October 23, 2020	<p data-bbox="750 1268 1170 1297">No change to adopted language</p>
378	September 23, 2020	<p data-bbox="750 1304 1170 1333">No change to adopted language</p>
460	October 23, 2020	<p data-bbox="750 1339 1409 1667">Planning and development <u>approvals</u> that will not have access to the necessary civic infrastructure within a <u>five</u> year period will be considered premature. The acceleration of infrastructure through a municipal servicing and financing agreement may be considered in conformity with the Our Tools policies of this Plan. Such agreements may merit the consideration of proposals that would otherwise be as much as five years away from necessary access to servicing.</p>
754	October 23, 2020	<p data-bbox="750 1673 1170 1703">No change to adopted language</p>
799	October 23, 2020	<p data-bbox="750 1709 1170 1738">No change to adopted language</p>
834	September 23, 2020	<p data-bbox="750 1745 1419 1904">Such an interpretation may allow for the consolidation of lots to create a viable development parcel, such that a property may be developed in accordance with the vision for the Corridor, while managing and mitigating</p>

		potential impacts on the adjacent neighbourhood. Such consolidation may also be important to allow for the appropriate setback between the proposed development and adjacent properties. In general, lot depths <del>in the range of 50 metres to 150 metres</del> <u>up to 150m</u> along these corridors may be appropriate where they meet the evaluation criteria of this section and the Planning and Development Applications section in the Our Tools part of this Plan.
849-852	October 23, 2020	No change to adopted language
921	October 23, 2020	No change to adopted language
922	October 23, 2020	No change to adopted language
936	September 23, 2020	No change to adopted language
941	September 23, 2020	No change to adopted language
942_2	September 23, 2020	Delete
944	September 23, 2020	Planning and development applications to allow for converted dwellings will be reviewed based on the Planning and Development Applications section in the Our Tools part of this Plan. Through this review, the number of units proposed in the converted dwelling will be evaluated to ensure that this intensity is appropriate in its neighbourhood context and given the size of the lot. The existing building will not be substantively altered or added to, and the site will be capable of accommodating the additional use. <del>Converted dwellings will be subject site plan approval.</del>
948	October 23, 2020	No change to adopted language
949	September 23, 2020	Residential intensification proposals will require site plan approval, except for the creation of secondary dwelling units within existing structures, and converted dwelling units. <del>that will result in a maximum of two units.</del>
952	September 23, 2020	<u>Where a site plan approval is required in accordance with this Plan and any applicable by-laws</u> , a public site plan approval process <del>will</del> <u>should</u> be required for intensification proposals where a proposal has not been the subject of another planning application process, such as a zoning by-law amendment, minor variance, consent or heritage alteration permit application process, or where City Council has directed that a public site plan approval process be undertaken.
960	September 23, 2020	No change to adopted language
961	September 23, 2020	No change to adopted language
962-964	October 23, 2020	No change to adopted language
965	October 23, 2020	No change to adopted language, except:

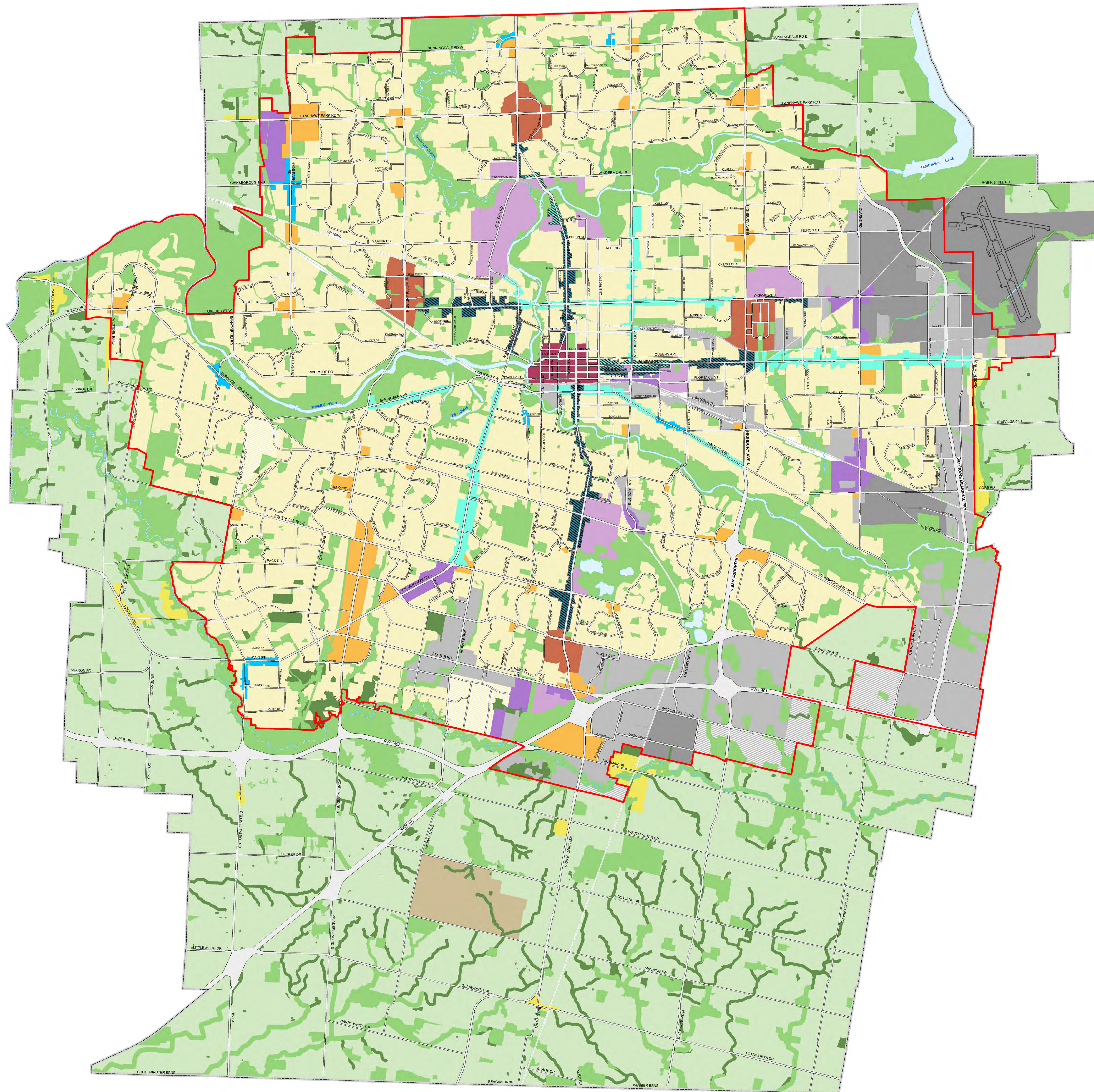
		965_3 do not allow for incremental changes in use, density, intensity, and lot size through <del>that</del> zoning amendments, minor variances and consents to sever that <del>are</del> cumulatively leading to undesirable changes in the character and amenity of streetscapes and neighbourhoods.
966	October 23, 2020	966_ Residential intensification is defined within the Neighbourhoods Place Type policies of this Plan, and in general refers to an increase in the number of dwelling units on a site. Residential intensity is <del>different than</del> <u>a different type of intensification</u> and <del>as it</del> refers to the increase in the usability of an existing dwelling, building, or site to accommodate additional occupancy. It includes, but is not limited to, building construction or additions, increasing the number of bedrooms in a building, and expanding parking areas, but does not include the development of a property, site, or area at a higher density than currently exists.
967-974	October 23, 2020	No change to adopted language
1573	October 23, 2020	No change to adopted language
1693	October 23, 2020	In accordance with the Planning Act, draft plan approval will only be extended where the plan of subdivision conforms with the current policies of The London Plan, all current legislation, and <u>is consistent with</u> the Provincial Policy Statement.
1781	September 23, 2020	No change to adopted language
Figure 2	September 23, 2020	Revised and attached hereto
Figures 8-10, 14-18, 20	September 23, 2020	No change to adopted figures
Table 10	October 23, 2020	No change to adopted Table or Notes.
Map 1	October 23, 2020	Map 1 is NOT approved entirely, it is ONLY in force as attached, shown in hatched: <ul style="list-style-type: none"> <li>- Rapid Transit Place Types;</li> <li>- Two areas of Urban Corridor Place Type which were formerly shown as Rapid Transit Corridor Place Type;</li> <li>- Removal of “Note” indicating that the BRT is subject to final approval.</li> </ul>
Map 3	October 23, 2020	Map 3 approved entirely with the following changes, and attached in final form: <ul style="list-style-type: none"> <li>- Amend BRT Route to reflect finalized EA;</li> <li>- Removal of “Note” indicating that the BRT is subject to final EA approval.</li> </ul>

FIGURE 2





# PARTIALLY APPROVED MAP 1 - PLACE TYPES



## LEGEND

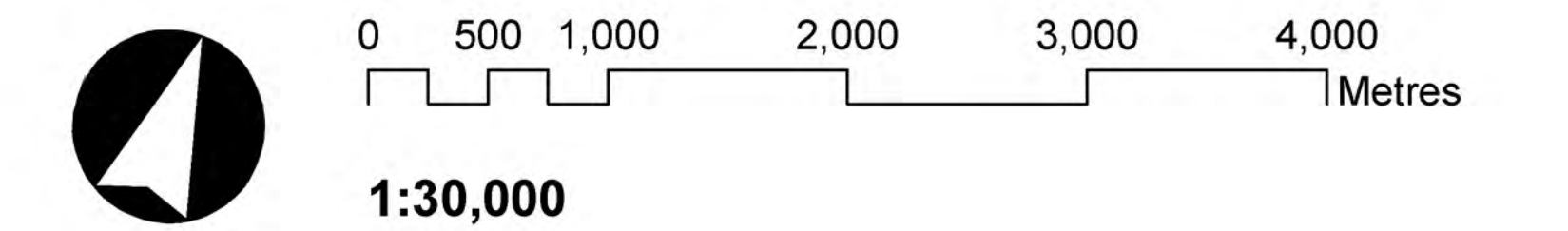
### PLACE TYPES

- |  |                        |  |   |
|--|------------------------|--|---|
|  | Green Space            |  | Heavy Industrial                        |
|  | Environmental Review   |  | Light Industrial                        |
|  | Downtown               |  | Commercial Industrial                   |
|  | Transit Village        |  | Future Community Growth                 |
|  | Rapid Transit Corridor |  | Future Industrial Growth                |
|  | Urban Corridor         |  | Farmland                                |
|  | Shopping Area          |  | Rural Neighbourhoods                    |
|  | Main Street            |  | Waste Management Resource Recovery Area |
|  | Neighbourhoods         |  | Urban Growth Boundary                   |
|  | Institutional          |  |   |

### BASE MAP FEATURES

- Streets (See Map 3)
- Railways
- Water Courses/Ponds

APPROVED BY ORDER OF THE LPAT



ADOPTED BY COUNCIL ON JUNE 23, 2016

APPROVED BY THE MINISTRY OF  
MUNICIPAL AFFAIRS ON DECEMBER 28, 2016

APPROVED BY ORDER OF THE LPAT,  
DATED [LPAT TO INSERT DATE]

THIS MAP MUST BE READ IN CONJUNCTION  
WITH THE TEXT OF THE LONDON PLAN

While every effort has been made to ensure that the mapping is accurate, a reader should verify all information contained in this map before acting upon it by contacting the City Clerk's Office, Suite 308, 300 Dufferin Avenue, London, Ontario, N6B 1Z2 or by calling (519) 661-2500 extension 4939

# PARTIALLY APPROVED MAP 1 - PLACE TYPES

Exhibit \_\_\_ PL70100



### LEGEND

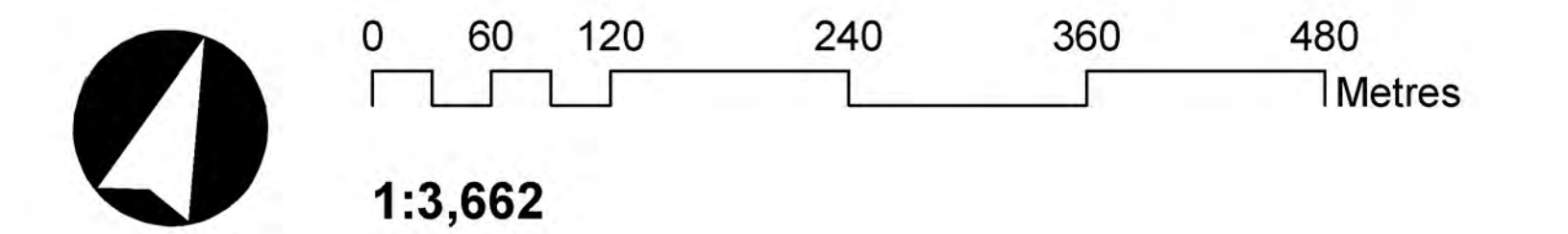
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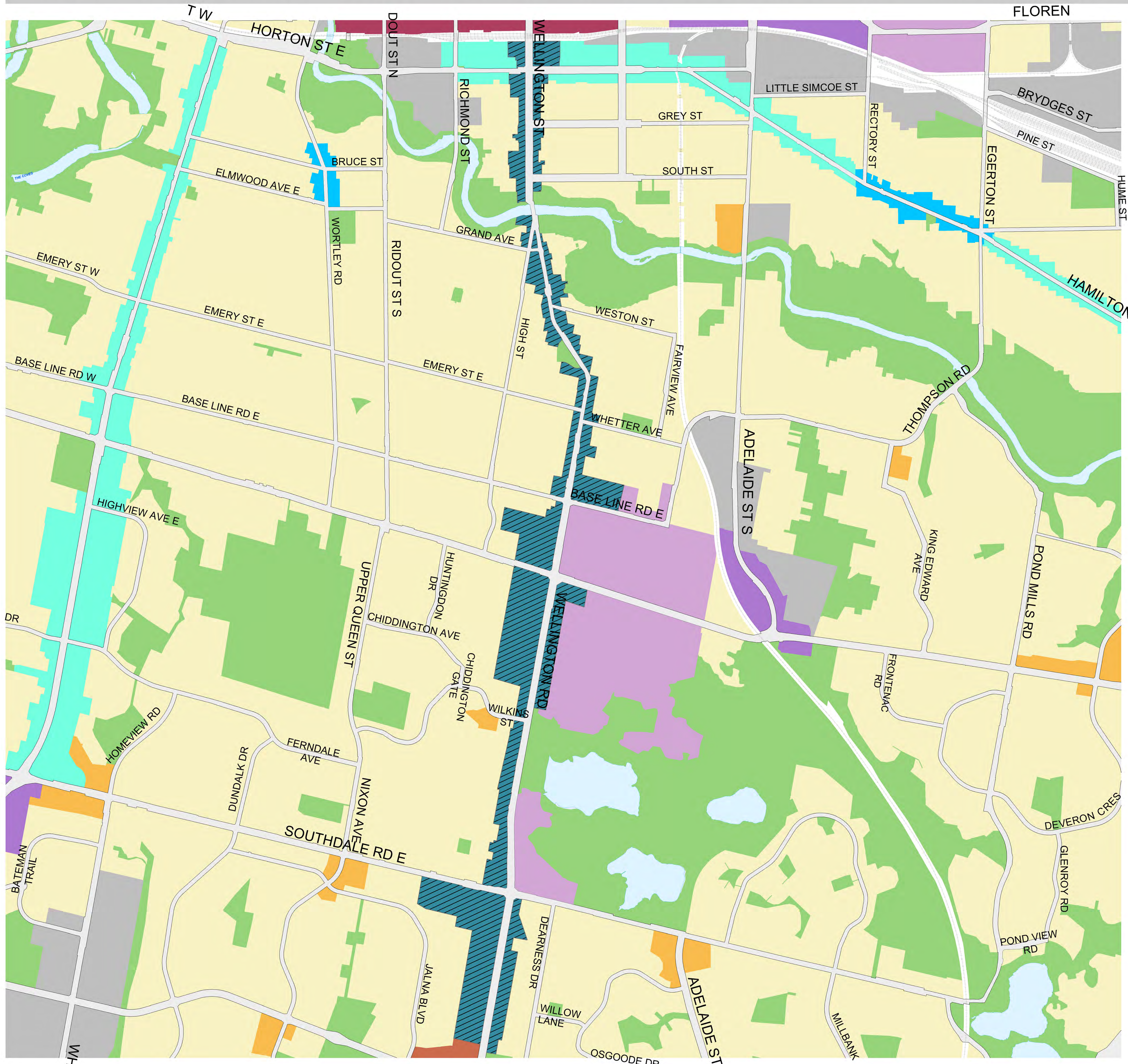
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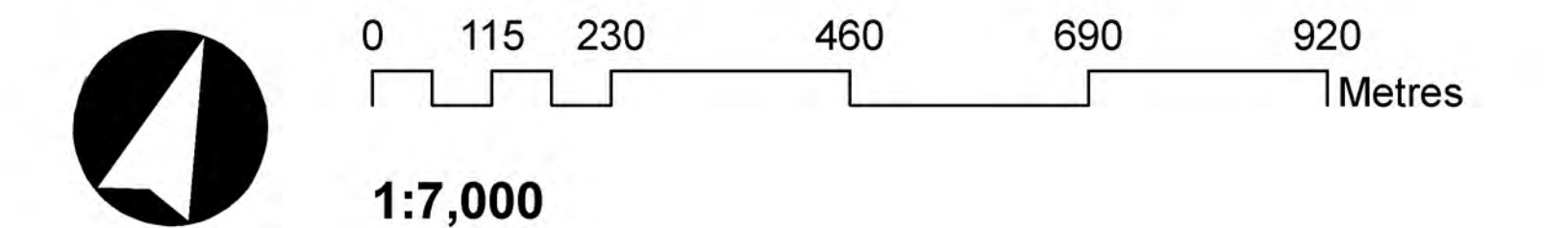
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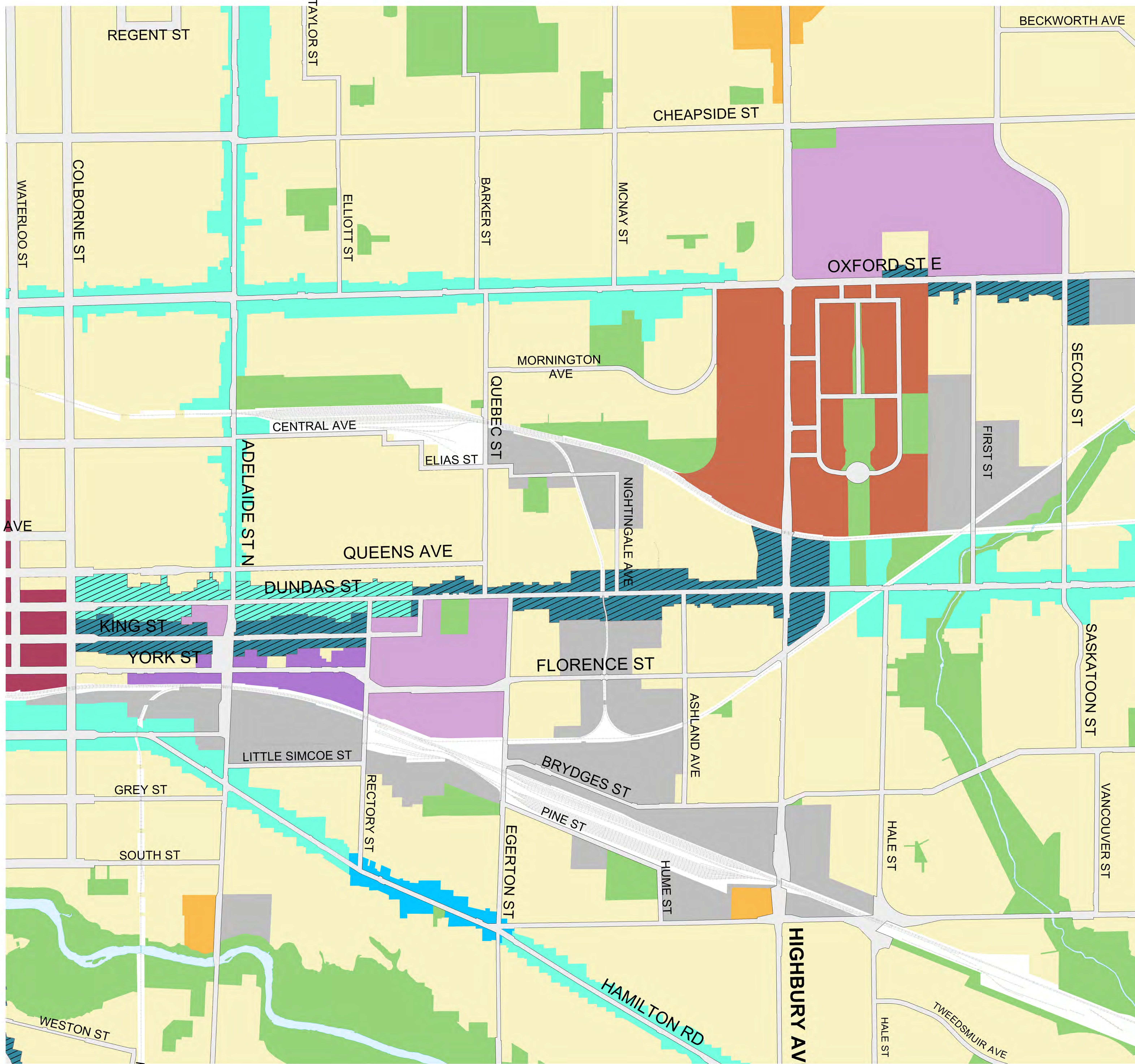
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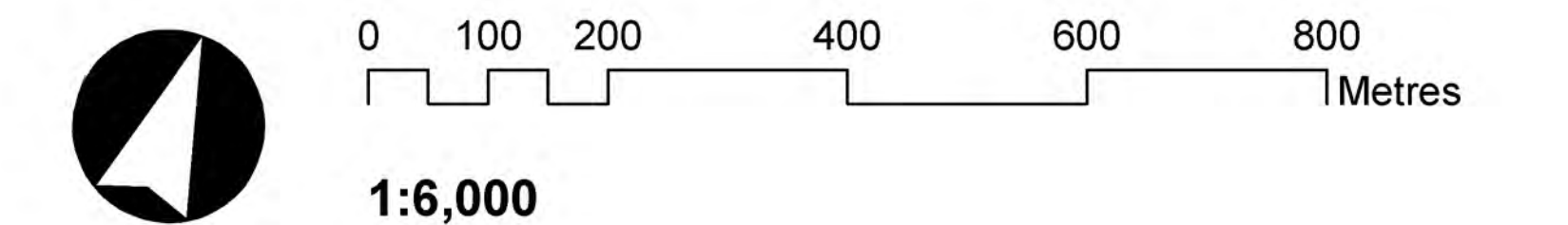
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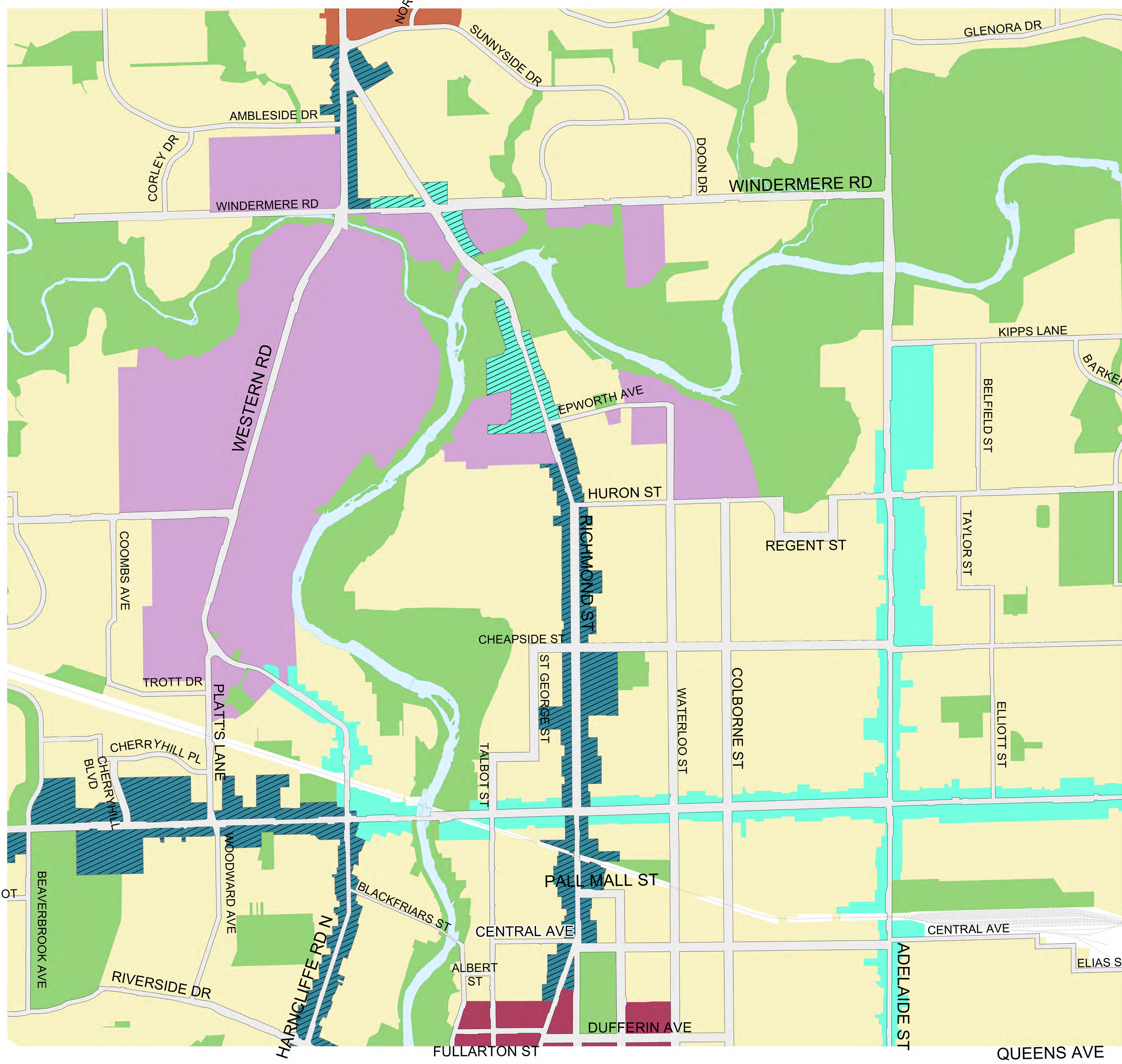
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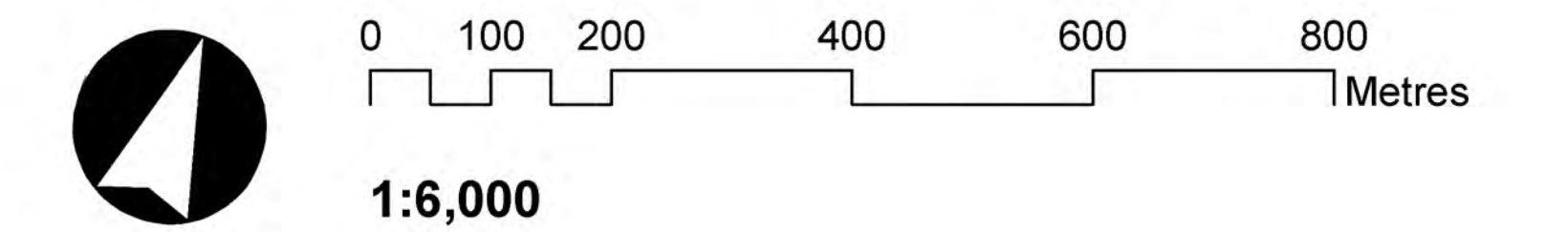
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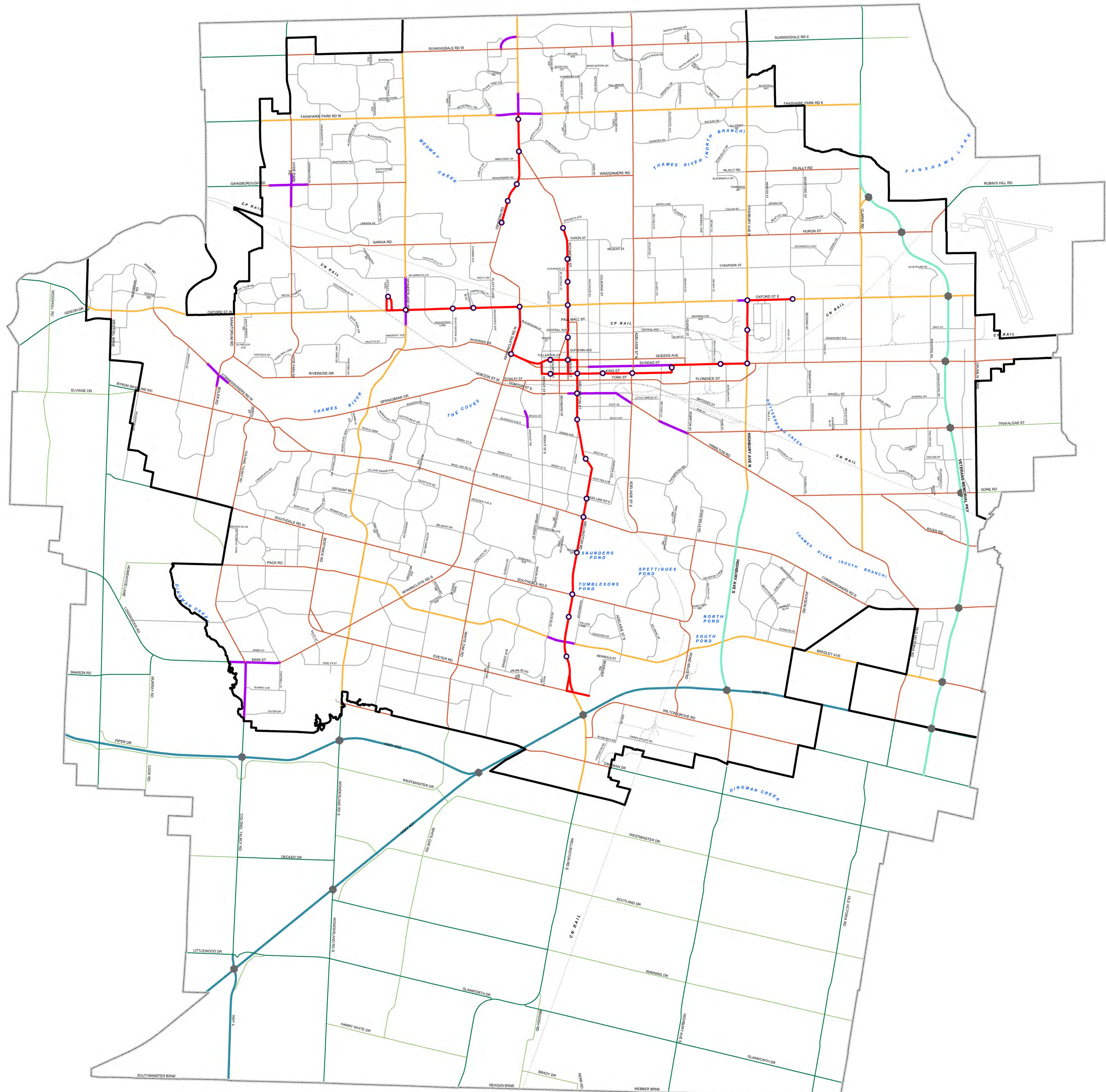
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# MAP 3 - STREET CLASSIFICATIONS

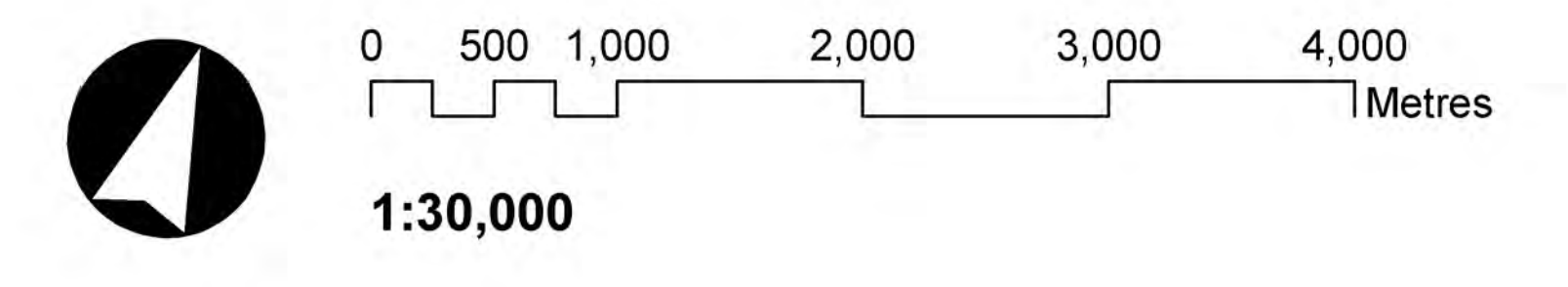


## LEGEND

- STREET CLASSIFICATIONS**
- Provincial Highway
  - Expressway
  - Urban Thoroughfare
  - Rapid Transit Boulevard
  - Civic Boulevard
  - Main Street
  - Neighbourhood Connector
  - Rural Thoroughfare
  - Rural Connector
  - Interchanges
  - Rapid Transit Stations

## BASE MAP FEATURES

- Railways
- Urban Growth Boundary
- Water Courses/Ponds



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**Appendix B – Memorandum of Oral Decision, Oct. 13, 2020**

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

**ISSUE DATE:** October 13, 2020

**CASE NO(S):** PL170100

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

**PROCEEDING COMMENCED UNDER** subsection 17(36) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	1390226 Ontario Inc.
Appellant:	1610341 Ontario Inc.
Appellant:	1705823 Ontario Ltd. (c/o York Developments)
Appellant:	1739626 Ontario Ltd. (c/o York Developments); and others
Subject:	The London Plan
Municipality:	City of London
OMB Case No.:	PL170100
OMB File No.:	PL170100
OMB Case Name:	Lansink v. London (City)

**Heard:** September 23, 2020 by video hearing

**APPEARANCES:**

**Parties**

**Counsel**

City of London ("City")

A. Anderson, S. Tatavarti

Ministry of Municipal Affairs and  
Housing

J. Page, A. Beamish

23, 8, 4 and the Participants  
Auburn Developments Inc. and  
Crich Holdings and Buildings  
Limited (Appellant 4)

Analee J.M. Baroudi



Kapland Inc. and Kap Holdings Inc. (Appellant 8)	Analee J.M. Baroudi
London Land Developers Association (Appellant 23)	Analee J.M. Baroudi
Sifton Properties Limited	Andrea Skinner
York Developments (“Appellants”)	J. Cheng
Michael Cattrysse and Sari Belzycki	L. English

**MEMORANDUM OF ORAL DECISION DELIVERED BY R.A. BECCAREA ON  
SEPTEMBER 23, 2020 AND ORDER OF THE TRIBUNAL**

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[1] There have been a number of pre-hearing conferences and Procedural Orders respecting the appeals of the City of London’s new Official Plan, called the London Plan.

[2] By oral decision on September 10, 2020, the first phase of contested policies (referred to as Phase 1A and part of Phase 1B) was scheduled to commence September 23, 2020 for 12 days.

[3] On September 16, 2020, the City served a Notice of Motion with Affidavit and Exhibits, seeking the approval of a series of policies, on consent of all parties.

[4] The approval would have the effect of further scoping the first phase of contested policies.

[5] No responses to the motion were received and the Tribunal was advised that the relief being sought in the motion was on the consent of the interested parties.

[6] On September 23, 2020 , the Tribunal heard the motion and provided an oral decision that the relief sought was granted. An Order to this effect is appended as Attachment 1.

[7] By virtue of the Tribunal's oral disposition, the following policies are in effect as of September 23, 2020, having been modified and approved as modified:

- i. Figure 2 – The City's Built-Area Boundary was previously shown as reflecting built lands as of 2006, and now shows built lands as of 2016;
- ii. Policy 73 – a policy directing that “comprehensive reviews” of the Plan will be conducted in accordance with the Provincial Policy Statement, 2020, and the addition of a definition for “Comprehensive Review” in the Glossary;
- iii. 834 – a policy relating to consolidation of lots in Corridor Place Types;
- iv. 942 – a policy describing the criteria for location of secondary dwelling units, and the modification deletes the prohibition against secondary dwelling units in the Near-Campus Neighbourhood;
- v. 944 and 949 – clarification relating to converted dwellings as a form of intensification;
- vi. 952 – clarity regarding the public site plan process for intensification proposals.

[8] In addition, the following policies are now in effect, the appeals of which have been withdrawn:

- i. 373 – a policy identifying what is shown on Map 3 – Street Classifications;
- ii. 378 – reference to the Complete Streets Design Manual;
- iii. 936 – form policies of the Neighbourhoods Place Type;
- iv. 941 – definition of Secondary Dwelling Unit;
- v. 960 – the direction on how to evaluate planning applications;
- vi. 961 – introduction to specific policy areas within the Neighbourhoods Place Type;
- vii. 1781 – description of Map 3;
- viii. Figures 8 – Rail Network and Airport, 9 – Street Network, 10 – Regional Mobility Connections, 14 – Downtown, Transit Corridors and Shopping

Areas, 15 – Main Streets, 16 - Institutions, 17 – Employment Lands,  
18 – Rural London, 20 – City Structure Composite

[9] The Tribunal’s decision also finally disposes of the appeal of Appellant No. 40, Westfield Village Estates Inc. in care of York Developments, relating specifically to lands at 3047 Tillman Road, by adding 3047 Tillman Road to Map 2, the HDR Overlay. This has the effect of recognizing previously planned high density residential development at this location.

[10] The Tribunal further confirms a minor modification to the Decision issued on September 22, 2020. Paragraph 2 of that Decision should read: “This Telephone Conference Call (“TCC”) relates to the appeals of Phase 1A and part of Phase 1B, the hearing of which is scheduled for Wednesday, September 23, 2020 for 12 days.”

[11] The Tribunal so orders.

*“R.A. Beccarea”*

R.A. BECCAREA  
MEMBER

If there is an attachment referred to in this document,  
please visit [www.olt.gov.on.ca](http://www.olt.gov.on.ca) to view the attachment in PDF format.

**Local Planning Appeal Tribunal**

A constituent tribunal of Ontario Land Tribunals

Website: [www.olt.gov.on.ca](http://www.olt.gov.on.ca) Telephone: 416-212-6349 Toll Free: 1-866-448-2248

**LOCAL PLANNING APPEAL TRIBUNAL**

**PROCEEDING COMMENCED UNDER** subsection 17(36) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellant:	560 Wellington Holdings Inc.
Appellant:	1390226 Ontario Inc.
Appellant:	A&W Food Services
Appellant:	Auburn Developments Inc. & Crich Holdings and Buildings Limited
Appellant:	Corlon Properties Inc.
Appellant:	Kapland Inc. & Kap Holdings Inc.
Appellant:	McDonald's Restaurants
Appellant:	Ontario Restaurant Hotel & Motel Association
Appellant:	The TDL Group
Appellant:	1610341 Ontario Inc.
Appellant:	1705823 Ontario Ltd. (TKG-Storagemart Partners Canada III, ULC)
Appellant:	Chazim
Appellant:	College Avenue Lofts Inc.(c/o York Developments)
Appellant:	ESAM Construction Limited
Appellant:	Farhi Holdings Corporation
Appellant:	Grosvenor Development Corp
Appellant:	Highbury North Centre Inc. (York Developments)
Appellant:	John D. Ross
Appellant:	Jug Manocha
Appellant:	London Dairy
Appellant:	London Land Developers Association
Appellant:	Margaret Ross & Darvic
Appellant:	Norquay Developments Ltd. and Norquay Property Management Limited
Appellant:	Old Oak Properties Inc.
Appellant:	Oxbury Centre Inc.
Appellant:	Paramount
Appellant:	Richmond North & MCC 675
Appellant:	Rygar
Appellant:	Sam Katz Holdings Limited
Appellant:	Schlegel Villages Inc.
Appellant:	Sifton Properties Limited
Appellant:	Textbook
Appellant:	York Developments
Appellant:	Ridout and Kent Block Inc. (c/o York Developments)
Appellant:	1767306 Ontario Ltd. (TKG-Storagemart Partners Canada III, ULC)
Appellant:	1739626 Ontario Ltd. (c/o Westdell Development Corporation)
Appellant:	Westfield Village Estates Inc. (c/o York Developments)

Appellant: 731675 Ontario Ltd. (c/o York Developments)  
 Appellant: York Developments (TKG – Storamart Partners Canada III, ULC)  
 Subject: City of London New Official Plan  
 Municipality: City of London  
 LPAT Case No.: PL170100  
 LPAT File No.: PL170100

**ORDER**

**B E F O R E:** R.A. BECCAREA )  
 )  
 ) on the 23 day of September, 2020  
 )

**THESE MATTERS** having come on for a public hearing;

**AND THE TRIBUNAL** having heard the submissions of counsel for the City of London (the “City”) related to the approval of certain policies (on a City-wide basis) in the City of London Official Plan (the “London Plan”) pertaining to appeals by Auburn Developments Inc., Crich Holdings and Buildings Limited, Kapland Inc., Kap Holdings Inc., London Land Developers Association, Norquay Developments Ltd., and Norquay Property Management Limited, Sifton Properties Limited, and York Developments; and related to the approval of a site-specific amendment to Map 2 regarding the lands at 3047 Tillman Road pertaining to the appeal of Westfield Village Estates Inc. (c/o York Developments);

**AND THE TRIBUNAL** having heard the submissions of counsel for the Ministry of Municipal Affairs and Housing with respect to their interest in this proceeding;

**AND THE TRIBUNAL** having received the affidavit evidence of Travis Macbeth, Planner for the City of London, pertaining to the approval of certain policies and maps in the London Plan;

**THE TRIBUNAL ORDERS** that, in accordance with subsection 20(2) of O. Reg. 174/16 and subsection 17(50) of the Planning Act, R.S.O. 1990, c. P. 13, as it read on April 2, 2018,

- (a) those policies within the London Plan identified in Schedule A are modified and approved as modified;
- (b) the appeals over those policies which are identified in Schedule B are withdrawn and are in effect in accordance with s. 17(39) of the Act as it read on April 2, 2018;
- (c) Figure 2 is modified and approved as modified in accordance with Schedule C;
- (d) Map 2 is modified and approved as modified in accordance with Schedule D; and
- (e) all policies approved as modified are in effect as of September 23, 2020.

**AND THE TRIBUNAL FURTHER ORDERS** that the partial approval of the Plan shall be strictly without prejudice to, and shall not have the effect of limiting:

- (a) The right of Appellants to continue site-specific appeals;
- (b) The rights of a party to seek to modify, delete or add to the unapproved policies, schedules, maps, figures, definitions, tables and associated text in the Plan; or
- (c) The jurisdiction of the Tribunal to consider and approve modifications, deletions or additions to the unapproved policies, schedules, maps, figures, definitions, tables and associated text in the Plan on a general, area-specific or site-specific basis, as the case may be, provided that the parties shall be bound by the commitments made by them to scope their issues to a site-specific or area-specific basis as identified in this proceeding.

**AND THE TRIBUNAL FURTHER ORDERS** that notwithstanding the above, the appeal of Westfield Village Estates Inc. (c/o York Developments) is granted, in part, in accordance with the modification attached hereto as Schedule D, and otherwise dismissed.

**AND THE TRIBUNAL FURTHER ORDERS** that for any *Planning Act* application made after the date of this Order, to the extent that any policy brought into force by this Order conflicts with any policy in the 1989 City of London Official Plan, the policies brought into force by this Order shall prevail.

**AND THE TRIBUNAL FURTHER ORDERS** that it may be spoken to in the event any matter or matters should arise in connection with the implementation of this Order.

SECRETARY

**SCHEDULE A**

<b>Policy</b>	<b>Original Language</b>	<b>Revised Language</b>
<b>Figure 2</b>	BAB as in 2006	BAB as attached as Schedule C.
<b>73</b>	During every comprehensive review of this Plan, the need for expansion of the Urban Growth Boundary will be evaluated to ensure there is sufficient land available, through intensification, redevelopment, and on vacant lands, to accommodate an appropriate range and mix of employment opportunities, housing, and other land uses to meet projected needs for up to 20 years.	<p>During every comprehensive review of this Plan, <u>which will be conducted consistent with the Provincial Policy Statement</u>, the need for expansion of the Urban Growth Boundary will be evaluated to ensure there is sufficient land available, through intensification, redevelopment, and on vacant lands, to accommodate an appropriate range and mix of employment opportunities, housing, and other land uses to meet projected needs <u>and to satisfy market demands</u> for up to 20 years.</p> <p><i>Amend Policy 1795_ , “Glossary of Terms”, to add the following:</i></p> <p><b><u>Comprehensive Review</u></b> means a review of the London Plan to ensure that the Plan has regard to the matters of provincial interest identified in the <u>Planning Act</u> and is consistent with the Provincial Policy Statement. Any comprehensive review of the London Plan will be conducted consistent with the definition of a “comprehensive review” in the Provincial Policy Statement.</p>
<b>834</b>	Such an interpretation may allow for the consolidation of lots to create a viable development parcel, such that a property may be developed in accordance with the vision for the Corridor, while managing and mitigating potential impacts on the adjacent neighbourhood. Such	Such an interpretation may allow for the consolidation of lots to create a viable development parcel, such that a property may be developed in accordance with the vision for the Corridor, while managing and mitigating potential impacts on the adjacent neighbourhood. Such consolidation may

	consolidation may also be important to allow for the appropriate setback between the proposed development and adjacent properties. In general, lot depths in the range of 50 metres to 150 metres along these corridors may be appropriate where they meet the evaluation criteria of this section and the Planning and Development Applications section in the Our Tools part of this Plan.	also be important to allow for the appropriate setback between the proposed development and adjacent properties. In general, lot depths <del>in the range of 50 metres to 150 metres</del> <u>up to 150m</u> along these corridors may be appropriate where they meet the evaluation criteria of this section and the Planning and Development Applications section in the Our Tools part of this Plan.
<b>942_2</b>	<p>Secondary dwelling units are permitted as-of-right within single detached dwellings, semi-detached dwellings or a street townhouse dwelling where all of the following criteria are met:</p> <p>POLICIES FOLLOW</p> <p>2. Secondary dwelling units will not be permitted within the Near-Campus Neighbourhood area as defined in the Specific Policies in this chapter.</p>	Delete Policy
<b>944</b>	<p>Planning and development applications to allow for converted dwellings will be reviewed based on the Planning and Development Applications section in the Our Tools part of this Plan. Through this review, the number of units proposed in the converted dwelling will be evaluated to ensure that this intensity is appropriate in its neighbourhood context and given the size of the lot. The existing building will not be substantively altered or added to, and the site will be capable of accommodating the additional use. Converted dwellings will be subject site plan approval.</p>	<p>Planning and development applications to allow for converted dwellings will be reviewed based on the Planning and Development Applications section in the Our Tools part of this Plan. Through this review, the number of units proposed in the converted dwelling will be evaluated to ensure that this intensity is appropriate in its neighbourhood context and given the size of the lot. The existing building will not be substantively altered or added to, and the site will be capable of accommodating the additional use. <del>Converted dwellings will be subject site plan approval.</del></p>



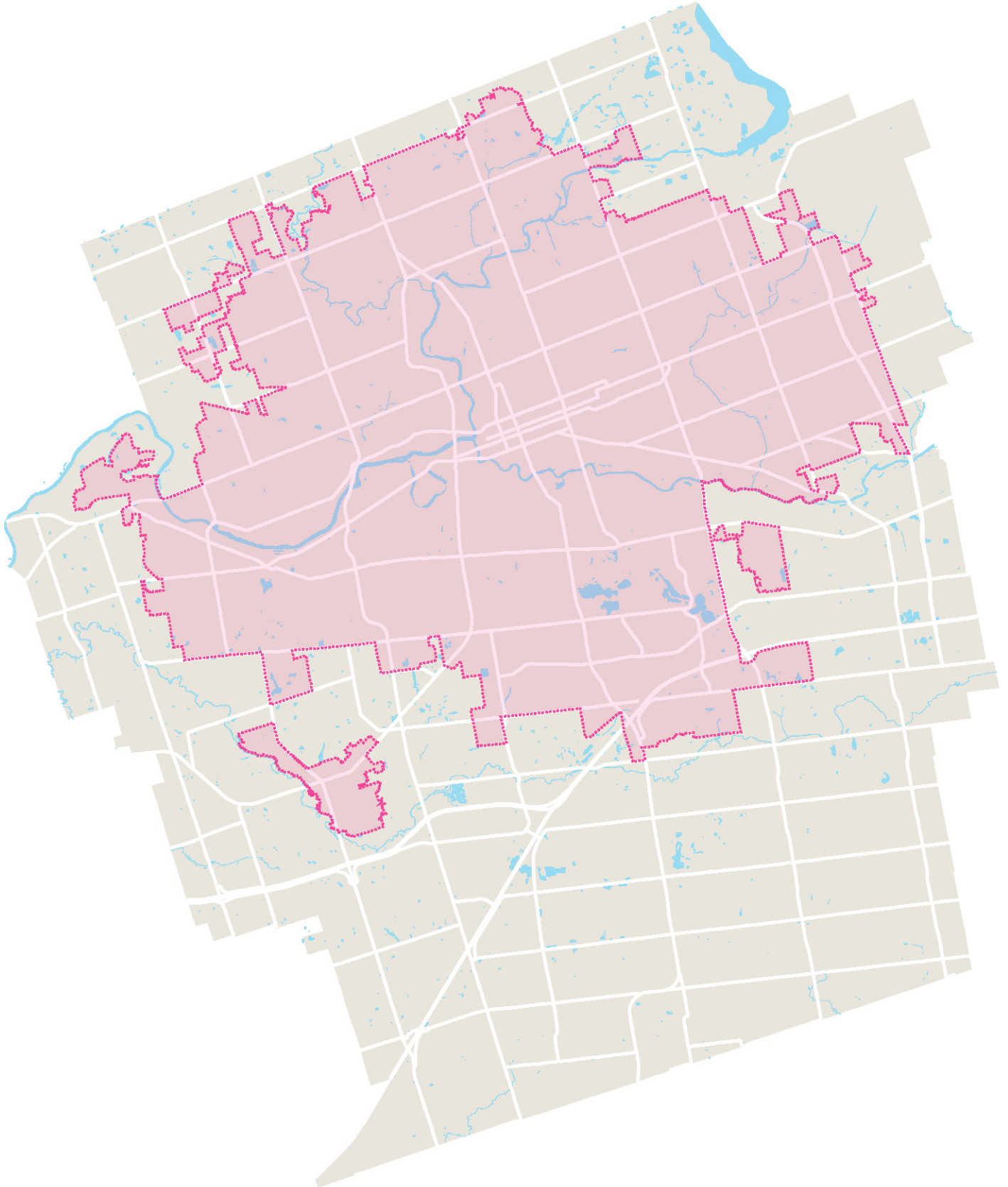
949	Residential intensification proposals will require site plan approval, except for the creation of secondary dwelling units within existing structures, and converted dwelling units that will result in a maximum of two units.	Residential intensification proposals will require site plan approval, except for the creation of secondary dwelling units within existing structures, and converted dwelling units <del>that will result in a maximum of two units.</del>
952	A public site plan approval process will be required for intensification proposals where a proposal has not been the subject of another planning application process, such as a zoning by-law amendment, minor variance, consent or heritage alteration permit application process, or where City Council has directed that a public site plan approval process be undertaken.	<u>Where a site plan approval is required in accordance with this Plan and any applicable by-laws, a public site plan approval process will</u> <u>should</u> be required for intensification proposals where a proposal has not been the subject of another planning application process, such as a zoning by-law amendment, minor variance, consent or heritage alteration permit application process, or where City Council has directed that a public site plan approval process be undertaken.

## SCHEDULE B

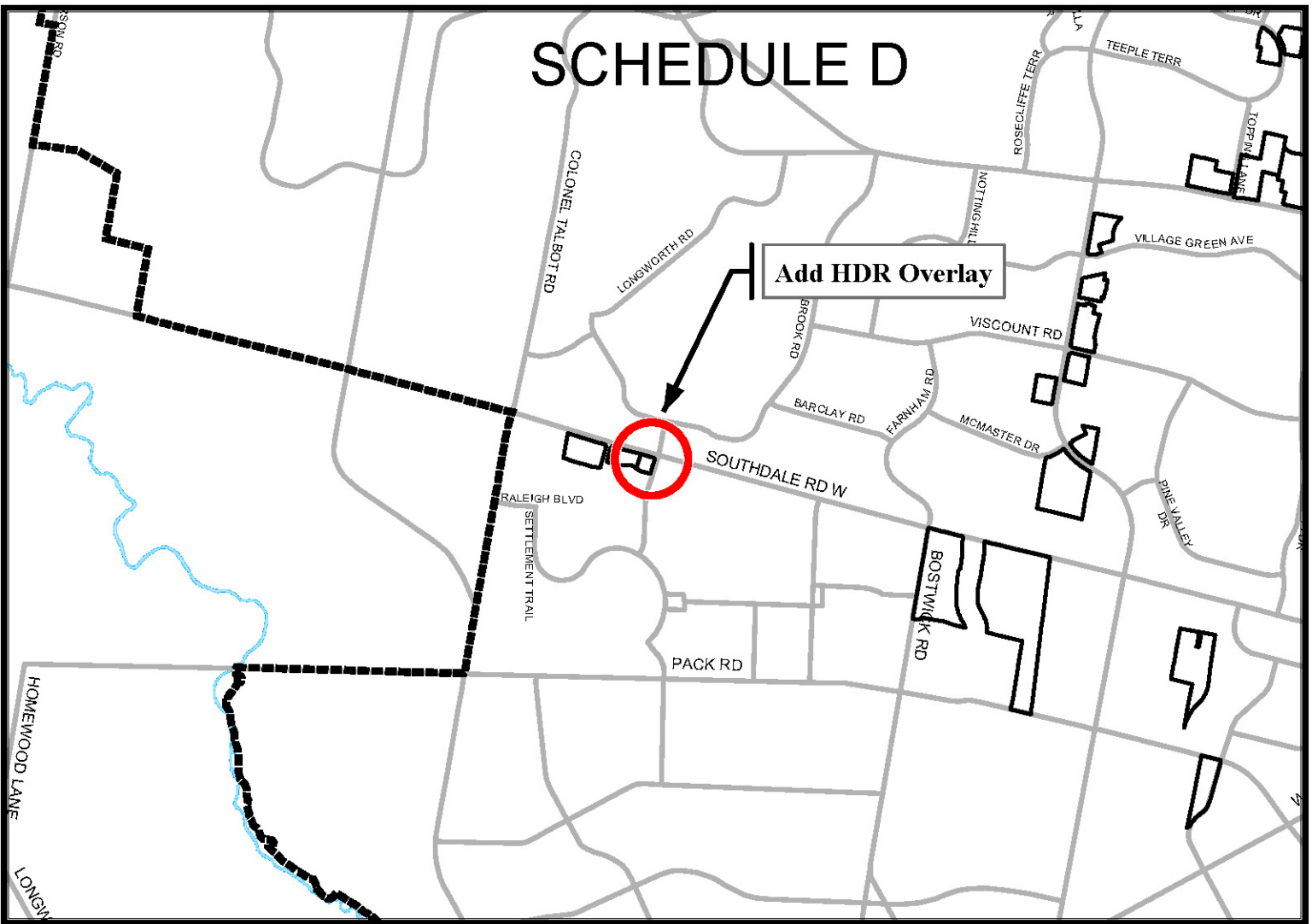
APPEALS WITHDRAWN / POLICY IN FORCE	
Policy	Appellant
373	4
378	4
936	4
941	4
960	4
961	4
1781	4
Figures 8,9,10,14,15,16,17,18,20	4

# SCHEDULE C



**Proposed Figure 2: Built Area Boundary**



# SCHEDULE D



## Legend

-  High Density Residential Overlay (from 1989 Official Plan)
-  Urban Growth Boundary

*This is an excerpt from the Planning Division's working consolidation of Map 2 - High Density Residential Overlay (From the 1989 Official Plan) of the London Plan, with added notations.*

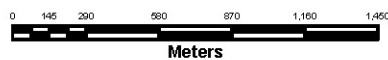
**SCHEDULE #  
TO  
THE LONDON PLAN**

AMENDMENT NO. \_\_\_\_\_

PREPARED BY: Planning Services



Scale 1:30,000



FILE NUMBER OMB PL170100

PLANNER TM

TECHNICIAN MB

DATE: 8/7/2020



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



**ISSUE DATE:** October 23, 2020

**CASE NO(S):** PL170100

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

**PROCEEDING COMMENCED UNDER** subsection 17(36) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	1390226 Ontario Inc.
Appellant:	1610341 Ontario Inc.
Appellant:	1705823 Ontario Ltd. (c/o York Developments)
Appellant:	1739626 Ontario Ltd. (c/o York Developments); and others
Subject:	The London Plan
Municipality:	City of London
OMB Case No.:	PL170100
OMB File No.:	PL170100
OMB Case Name:	Lansink v. London (City)

**Heard:** September 23, 2020 by video hearing

**APPEARANCES:**

**Parties**

**Counsel**

City of London (“City”)

Aynsley Anderson and Sachit Tatavarti

Ministry of Municipal Affairs and  
Housing

Janice Page and Anna-Lee Beamish

23, 8, 4 and the Participants  
Auburn Developments Inc. and  
Crich Holdings and Buildings  
Limited (Appellant 4)

Analee Baroudi

Kapland Inc. and Kap Holdings Inc. (Appellant 8)	Analee Baroudi
London Land Developers Association (Appellant 23)	Analee Baroudi
Norquay Developments and Property Management Ltd.	Analee Baroudi
Sifton Properties Limited	Andrea Skinner
York Developments (“Appellants”)	Jonathan Cheng
Michael Cattrysse and Sari Belzycki	Lee English

## **DECISION DELIVERED BY R.A. BECCAREA AND ORDER OF THE TRIBUNAL.**

### **INTRODUCTION – THE LONDON PLAN**

[1] This is the First Phase of the Tribunal’s determination of the appeals respecting the City of London’s new Official Plan that has been called “The London Plan”.

[2] The Tribunal has ordered that the appeals proceed in four Phases. The wording of the issues pertaining to those appeals are itemized in the Schedules of the Tribunal’s Decision and Order that was issued on December 19, 2019.

[3] The Phases are as follows:

- (i) Phase 1 A – Growth Management/Implementation (9 issues remaining)
- (ii) Phase 1 B – Intensity/Bonus/HDR Overlay (31 issues)
- (iii) Phase 2 – Natural Heritage contains 36 issues
- (iv) Phase 3 – Design and Mobility contains 45 issues

[4] The City of London's new Official Plan called "The London Plan" was consolidated on February 7, 2020, adopted by City Council on June 23, 2016 and received Ministerial approval on December 28, 2016. The London Plan ("the Plan") is 477 pages long and contains 1794 Policies and 9 maps.

[5] The Plan as provided to the Tribunal at Tab 95 of the Joint Document Book has the policies and maps currently under appeal and are outlined in red boxes. As each policy is determined by the Tribunal, those red boxes will be removed, and a new text of the Plan will be provided at the next phase of the Tribunal's hearing.

[6] This Decision pertains only to "Phases 1A and Part of 1B". The Tribunal is to determine the approved wording, or suggested modification to, or the suggested deletions of 30 of the Plan policies (including Map 1 and Map 3).

[7] Those policies are set out in the Revised Alternative Language Chart (Exhibit 16) The issues relating to those policies are enumerated in the Revised Issues List (Exhibit 23).

[8] The primary concern of the Appellants and Participants respecting the Growth and Implementation policies of the Plan related to whether it is appropriate to use a three-year planning horizon to provide direction to development planning and is that approach consistent with the 2020 PPS?

[9] Further the Appellants are concerned that several policies overstate the role of non-official Plan documents that could lead to public expectations that those documents have policy status and then require conformity.

[10] The other primary concern of the Appellants and Participants is that the intensification policies and development standards which promote opportunities for intensification and redevelopment throughout other areas of the City, when applied to the New Campus Neighbourhood ("NCN") areas and the Rapid Transit Corridor



segment of Old North Richmond Street unnecessarily constrain development including intensification.

### **THE PARTIES – TO PHASE 1A AND FOR 1B AND PARTICIPANTS**

[11] Ms. Anderson and Mr. Tatavarti represented the City of London;

[12] Ms. Baroudi represented Appellants and called evidence on behalf of London Land Developers Association, Auburn Development (“Auburn”), Kapland Inc. and Kap Holdings Inc. (“Kap”), and Norquay Developments and Property Management Ltd. (“Norquay”) Participant statements were filed by Ayerswood Development Corporation, Southside Group and Drewlo Holdings Inc.

[13] Mr. Cheng represented York Developments, but did not call evidence on their behalf. Through Ms. Page, the Ministry of Municipal Affairs and Housing only made opening comments to indicate it was supportive of the City’s position. Ms. Skinner and Mr. English advised that their clients would be participating in the next hearing phases.

[14] At the commencement of this hearing on September 23, 2020, this Tribunal heard a motion that on consent and by a separate order allowed and approved certain modifications to the Plan and ordered that certain appeals to a number of policies be withdrawn thereby making all of them and Map 2, Figure 2, approved as modified, come into effect as of September 23, 2020.

### **THE PLAN - OVERVIEW**

[15] John Fleming, who served for over 20 years in various senior planning positions with the City of London including the Director of Planning, provided a detailed overview of the events leading up to and including City council’s adoption of the Plan and its approval by the Province.

[16] The London Plan is themed “Exciting, Exceptional, Connected”. The City’s Official Plan that had been in place since its adoption in 1989, was amended over 500 times as of June 2011 when City Council explored the need for an update.

[17] Mr. Fleming detailed the extensive high-level overview that was undertaken. That overview which is listed in Figure 2 of Mr. Fleming’s Witness Statement involved 30 key milestones beginning in June 2011 and ending in December 2016.

[18] Mr. Fleming advised that the Plan was grounded in a rigorous engagement program branded “Rethink London”. The program included the general public, the development industry, property owners, institutions, interest groups, the Province, neighbourhood groups, and various other interested parties and stakeholders.

[19] The Plan, Mr. Fleming advised was aimed to curb urban sprawl and instead grow “inward and upward”. Mr. Fleming stated that the City’s goal, as contained in the Plan was to provide development that is “future focused for the London of 2035”.

[20] During the Plan development review process, 650 changes were made that accommodated stakeholders’ input and concerns.

[21] More than 42 appeals were filed over the course of the Plan’s adoption. During the course of the active case management by the Tribunal, including at least nine pre-hearing conferences since the Tribunal file was opened on February 3, 2017, a number of them have been disposed of.

[22] A number of appeals respecting the remaining policies of the Plan, await the next three phases of the Tribunal’s hearing process.

[23] In that this phase of review relates to the policies relating to Growth Management/Implementation and Intensity, Mr. Fleming provided a general overview of the Plan’s Place Type Policies.

[24] The Place Type Policies in the Plan are headed: City-Wide Place Types, Urban Place Types, and Rural Place Types. Within each Place Type chapter, the Plan establishes the range of permitted uses allowed, the expected intensity of development and the envisioned built form that is intended within it.

[25] This Place Type approach respecting the degree of intensity, the degree of flexibility, the specialized treatment given to certain areas and the three-year limit of development approvals formed the majority of what the Appellants were opposed to.

### **THE EVIDENCE OF THE APPELLANTS**

[26] The Appellants evidence was advanced by Ms. Baroudi, who called two expert and qualified land use planners. Richard Zelinka was called on behalf of the Appellants Auburn and Kap. Jason McGuffin was called on behalf of the London Land Development Association (“LDI”) and Norquay.

### **THE EVIDENCE OF RICHARD ZELINKA**

[27] Mr. Zelinka in his March 20, 2020 Witness Statement provided his suggestions on 19 of the Plan policies. In a number of them, he was of the opinion that they should be deleted, and in a few of them he proposed alternative language.

[28] Mr. Zelinka agreed with the Plan’s key directions on providing for intensification within the City to curb urban sprawl and using existing services and infrastructure.

[29] Mr. Zelinka did however, in his opening remarks, say that in his opinion those policies, while they “appear” to support intensification, actually create bureaucratic hurdles and prevent intensification.

[30] In his opinion, when one examines the details of the policies its language does not follow the stated purpose of the Plan and that failure works against the 2020 Provincial Policy Statement (“PPS”), which the Plan must conform with.

[31] The alternative language that the Appellants proposed throughout provide according to Mr. Zelinka, a more accurate and realistic statement of the Plan's purpose.

[32] With respect to Mr. Fleming's evidence that the intent of the Plan is to grow inward and upward and provide a flexible plan that removes unnecessary bureaucratic processes, Mr. Zelinka said his clients believe those were "excellent directions".

[33] Despite that praise, both Mr. Zelinka and Mr. McGuffin, on behalf of their clients support the deletion of 19 of the 30 Plan policies before this Tribunal which they say are too rigid, provide no room for exceptions, and in some cases its absences fail to address certain situations.

#### **THE EVIDENCE OF JAYSON MCGUFFIN**

[34] Mr. McGuffin was involved on behalf of LDI in the Plan review process since 2013 and on behalf of Norquay since November 2018.

[35] Mr. McGuffin in his March 20, 2020 Witness Statement provided his opinion and suggestions respecting eight of the Plan policies

[36] Mr. McGuffin proposed the deletion of Policy 173 and 1693 of the Plan and provided alternative language for Policy 73, 460, 1573, Table 10 and Map 1.

[37] The developer's opposition to the policies before this Tribunal can best be gleaned from their positions on Policies 962-974 termed the Near Campus Neighborhood ("NCN") Policies and their position respecting Policy 460 that provides that planning and development proposals that do not have access to the necessary civic infrastructure within a three-year period will be considered premature, except an acceleration through a municipal servicing and financing agreement five years away from servicing.

[38] To summarize, the Appellants do not support the special treatment given with respect to intensification within the NCN area. They support providing for the wider intensification provisions that the Plan proposes for the rest of the City. With respect to Policy 460, they find the three-year provision to be too rigid a time frame and instead propose a five or 10-year period.

### **THE EVIDENCE OF THE CITY**

[39] The City's evidence was advanced by Ms. Anderson, who in addition to calling Mr. Fleming, called Kevin Edwards, a planner and Manager of Development Services who was qualified to provide opinion evidence on growth management. Justin Adema, a qualified planner and Manager of Planning Policy was also called.

[40] The City's planning witnesses urged the Tribunal to retain the original language of the appealed policies of the Plan except for seven City requests for improvements to language changes in wording.

[41] All three planners were of the opinion that the City Plan policies before the Tribunal in this phase, with the suggested modifications are consistent with the 2020 PPS and reflect a more balanced approach and are in the public interest and ought to be approved. The modifications are later enumerated and discussed.

### **NEAR – CAMPUS NEIGHBORHOOD POLICIES 962-964**

[42] The Appellants Auburn, Kap, and number 4 and 8 requested that Policies 962 to 964 be deleted. The City requests that those policies be approved with no change in their original language except for modifications to the words of Policy 965 and 966.

[43] The City maintains that those policies do not create barriers to intensification, nor do they undermine the intensification policies of the 2020 PPS including Policies 1.1.1, 1.1.3, 1.4.1 and 1.4.3 as well as the related policies of the Plan.

[44] There is a long history of planning initiatives for the planning of neighbourhoods surrounding universities and colleges.

[45] In Volume 1 of the Joint Document Book, the Tribunal was provided with the 1985 St. George/Grosvenor Study, the 1994 Richmond Street Corridor Study, the 2007 Closing the Gap Staff Report, the 2008 Council Resolution – New Partnerships for Great Neighbourhoods Surrounding our Universities and Colleges and two 2006 Strategy Implementation Plans

[46] Mr. Zelinka's opinion that there are other policies like zoning regulations that could be utilized to encourage appropriate residential intensification, and in effect supporting the deletion of the NCN policies, was firmly disputed by the data accumulated in the foregoing studies and reports and that of the evidence of Mr. Adema referenced below.

[47] The Tribunal agrees with the position of the City and approves the wording of these policies, and with the modifications proposed in Policies 965 and 966.

[48] The Tribunal further dismisses the appeal with respect to those policies.

[49] The essential difference in the opinion of Mr. Zelinka and Mr. Adema was over the particular treatment given to those areas respecting intensification, as opposed to the intensification policies proposed for the other areas of the City, which should govern the NCN.

[50] The Appellants submit that these areas should not be given special treatment submitting that those policies are effectively legacy policies. Despite that, no issue was taken that, in particular, the area near Western University has had a long history of planning initiatives designed to protect the character of the established neighbourhood surrounding it and further that the Fanshawe College area has been exposed to threats to its residential integrity.

[51] Mr. Zelinka pointed out that the NCN policies had their origins prior to the 2020 PPS, the 2014 PPS, and even to a time before the first PPS. However, Mr. Zelinka was of the opinion that the proposed policies are the antithesis of what the PPS requires and promotes. Within Policy 965 in particular, the goals prevent consideration of individual application for intensification and redevelopment and permit the City to deny intensification over large areas. Policy 968 for instance continues what he termed the anti-intensification tone of the NCN policy.

[52] Mr. Zelinka also pointed out that the NCN area contains some of the largest City institutions and employers, including two acute care hospitals, Western University and Fanshawe College and is adjacent to the City's downtown. He said few other areas in the City have such a combination of attributes which make them desirable and appropriate for intensification.

[53] Mr. Adema supports the policies that seek to control intensification or particularly within of the NCN area. He pointed out that the intensification along the higher order streets, corridors and nodes is promoted but did say that not all locations are appropriate, particularly in the internal streets of those neighbourhoods.

[54] To treat all neighbourhoods in the City equally, the City submits is to completely undermine that the neighbourhoods in particular fought hard in developing the NCN framework for their areas.

[55] The proposed policies were as a result of high-level community consultation including a May 2015 public participation meeting, three community meetings in April 2015, November 2015 and April 2016, as well as phone calls and written feedback.

[56] The Tribunal finds that supporting a deletion of these policies would be turning its back on the significant public engagement that the City through its process and adoption of the Plan engaged in.

[57] The Tribunal prefers the evidence of Mr. Adema that the policies are consistent with the 2020 PPS Policy 1.1.3.3 which provides direction to the City to identify appropriate locations and promote opportunities for intensification. The Tribunal finds that the NCN framework does that and at the same time protects the residential character of the existing neighbourhoods within the NCN, which has been a concern of the residents within it, since as early as the May 1985 St. George/Grosvenor Area Study.

[58] The Tribunal is satisfied that the areas defined in the corridors are sufficient to achieve the Provincial directions in the PPS while preserving a mix of housing supply to achieve complete communities. The Tribunal finds that the Policy framework supports orderly development and growth management.

[59] The Tribunal agrees with the City's submission that intensification is not appropriate in all locations, and the 2020 PPS requires that existing building stock be taken into account. When taking into account the existing building stock on Richmond Street between Oxford Street and Huron Street, it is clear that the prevailing condition is one of heritage significance that warrants protection in particular, provided for in Section 2.6.1 of the 2020 PPS.

### **POLICIES 460 AND 173**

[60] The Tribunal heard from the Appellants' planner, Jason McGuffin. Policy 173 proposes to discourage development application where planned servicing capacity to accommodate their proposed uses is not expected to be available within three years.

[61] Policy 460 provides that those development proposals which will not have infrastructure access "to the necessary civic infrastructure" within three years will be considered premature.

[62] Infrastructure is defined in part at page 461 of the Plan and means "physical structures, facilities and corridors that form the foundation of development".



[63] Mr. McGuffin said turning development applications away in those instances is not practical, not efficient and not consistent with the 2020 PPS.

[64] He is of the opinion that each development application should be considered on its own merits and not be prejudiced by a “random limiting time frame for servicing”.

[65] The Participants, (who are experienced developers) in their statements point out that the timelines for development application and subdivision approvals typically take longer than three years to complete depending on the supporting documentation requested, and the time required to address conditions of draft plan approval.

[66] The Participants, in their statements (Exhibit 34, 35 and 36) support the planning opinion of Mr. McGuffin, and the alternate language provided by the Appellants..

[67] In Policy 173, Mr. McGuffin proposed its deletion. In Policy 460, he proposed language that essentially permits the acceleration of infrastructure through agreements up to 10 years away, as opposed to the City language which puts the consideration of accelerating proposals that are as much as five years away from necessary access to servicing.

[68] The City called Kevin Edwards who addressed planning matters as they relate to growth management and development finance. Prior to specifically addressing Policy 173 and 460 which he held firm to the Plan’s original language, with a modification; Mr. Edwards spoke about the purpose and intent of the City’s Growth Management Implementation Strategy (“GMIS”), which was first initiated in 2008 and is updated annually.

[69] The GMIS is incorporated as a Section of the Plan and is referred as a sub-heading “Growth Management/Growth Financing Section”. Also under the Main Heading are Sub-Headings titled “Growth Financing” and “Municipal Services” and “Financing Agreements” (“MSFA”).

[70] The GMIS policies are Policies 1567 to 1572 and are in force as are the MSFA policies 1574-1575.

[71] Policy 1573 contains the Growth Financing provisions, which is under appeal.

[72] The GMIS is the City's plan to stage growth and financing with the objective of insuring the orderly progression of development and the timely provision of infrastructure required to support the City's current and projected needs. It was not disputed that the GMIS policies are consistent with the requirements of Section 1.1.3.7 of the 2020 PPS.

[73] Policy 1570 of the GMIS Section of the Plan sets out its objectives. Mr. Edwards emphasized the objectives contained in its items 9,10,11 and 12 of the Policy 1570. Those objectives seek to maintain at all times a three year supply of residential units, to avoid scattered or "leap frog" development patterns; to not allow development patterns that are overly expensive and financially disadvantageous; and through the GMIS defer or accelerate infrastructure projects to respond to development charge fund balances, forecasted development charge revenues, market-take up and growth rates.

[74] In Mr. Edwards opinion, the GMIS is an important tool to inform decision making when considering a deferral or acceleration of infrastructure projects and provides a framework for the City to coordinate approvals, respond to the pace of growth, while maintaining an acceptable financial position.

[75] The provision of the three-year time frame in Policy 173 responds to the GMIS and is, according to Mr. Edwards an important phasing policy that is consistent with requirements of policies 1.1.3.7, 1.4.1,.1.5,1.6.1 and 1.67 of the 2020 PPS and represents sound land use planning.

[76] Mr. Edwards, while indicating that the three-year planning horizon was appropriate, suggested wording to provide clarity and provide consistency with draft

plan “approval” periods. He suggested that the word “proposals” be deleted and the word “approvals” be substituted in both Policy 173 and Policy 460.

[77] Accelerating project construction involves an increased risk to the City in that no new net revenues accrue to the development charges reserve funds, but new liabilities arise from the accelerated infrastructure.

[78] Mr. McGuffin, in commenting on the GMIS process that annually adjusts the timing of infrastructure projects to reflect the demands and funding for new development, said it creates a moving target by creating a three year deterrent on development applications., the system creates a moving target of infrastructure timing and provides no assurances to developers that projects can be brought to market in a meaningful way.

[79] He suggested that the City’s current housing shortage is evidence that the policy should be deleted.

[80] Mr. Edwards, in his Witness Statement referenced a July 29, 2013 Committee of Adjustment meeting in which the development industry participated. The former Urban Works Reserve Fund was to be retired and the GMIS enhanced, noting further that the report of that meeting and the recommendation contained in it reflects a collaborative effort between multiple stakeholders.

[81] Mr. Adema was not shaken in cross examination when he stressed the importance that development approvals not get ahead of services. Mr. Edwards stressed the importance of the GMIS use to determine prematurity.

[82] While Mr. Edwards was strongly of the opinion that a three-year horizon was appropriate, Mr. McGuffin and the Participants in their statements did convince the Tribunal that extending it to a five-year one, would provide a more flexible implementation strategy.

[83] Mr. McGuffin pointed out that even the GMIS makes no reference to three years and breaks out projects into five-year, 6-10 year and beyond 10-year timelines.

[84] The Tribunal has carefully considered the opinions expressed by the City witnesses and those of the Appellants. The Tribunal orders that no changes occur with the Original Language contained in the Plan Policy 173 and 460 except for the modification of the wording proposed by Mr. Edwards. The Tribunal does agree with the submissions of Mr. Cheng and orders that the three-year window be moved to a five-year window. The Tribunal is supportive of the concerns expressed in the Participants' Statements, made by three developers in the City.

[85] The five-year represents an appropriate balance that takes into account the issues relating to the timing of development approvals and it represents a more appropriate time frame to recognize the concerns of the City to avoid leap-frogging and its associated financial costs. The practicalities of the land development process in most instances requires planning and projections over a longer period than three years. The 10-year period along with the three-year period is rejected. One being too short, the other being too long.

#### **POLICY 849/852**

[86] Policy 849 provides that the Plan's Preservation policy apply to the rapid transit corridor from Old North Richmond Street to Oxford Street to Huron Street.

[87] Mr. Zelinka proposed that those policies be deleted. He advised the Tribunal that the effected segment of Richmond Street has and is planned to have some of the best transit service in the City. The Preservation policy does not promote densities which effectively use land and infrastructure or support the use of active transportation and transit and is contrary to Section 1.1.3 of the 2020 PPS.

[88] His evidence was somewhat similar to the position he took with respect to the Near Campus Network.

[89] Mr. Adema pointed out that the Preservation Corridor within that stretch of Richmond Street has 107 separate parcels of land of which 90 are heritage listed properties and five are heritage designated.

[90] The policies provide for intensification, but they encourage the conservation of existing buildings to ensure the heritage resources along Richmond Street are protected for the long term. He was of the opinion that the policies are consistent with the 2020 PPS.

[91] The Tribunal prefers the opinion of Mr. Adema and orders that the Original Language of Policies 849-852 be maintained. Mr. Adema highlighted that consideration must be given to the 2020 PPS language of the “appropriateness” used throughout the PPS. The Preservation Segment of the Plans policy ask whether due consideration is to be given to the existing context, the community value associated with the corridor and the cultural heritage associated with the built forms and the street scape of the area.

[92] The Tribunal is convinced that the positions taken by the Appellants throughout this hearing respecting this policy could threaten the areas protection and preservation. The need for those preservation policies, the Tribunal finds far outweigh the need for higher density development, especially when there are plenty of other areas where it can be accommodated.

### **THE REMAINING POLICIES UNDER APPEAL**

[93] The remaining policies under appeal were left to be determined based largely on the opinions of Mr. Adema for the City and Mr. Zelinka for the Appellants who both filed Reply Witness Statements.

[94] During the course of the Tribunal’s hearing both Mr. Adema and Mr. Zelinka proposed alternative languages in the hopes that an accommodation of the Parties differences could be resolved. They were not.

[95] The two planners essentially maintained their disagreement as to each other's planning opinions respecting the policies under appeal and their suggested revisions.

[96] Just prior to the close of the Tribunal's evidence, Mr. Zelinka in reply proposed revisions to the language of Policy 948A (Exhibit 27), Policy 460 (Exhibit 28), Policy 1693 (Exhibit 30) and further revised Policy 948A (Exhibit 33) for the Tribunal's consideration.

[97] Because of the sheer volume of the material filed prior to and during the Tribunal's hearing, the Tribunal ordered the Parties' Counsel to provide written summaries of their closing statements.

[98] Ms. Anderson and Ms. Baroudi also got together and prepared for the Tribunal a written Position and Evidence Compilation that sets out under each of the policies appealed, the policies' Original Language, the City's request, the Appellants' request, with Additional Options based on the witness evidence of Richard Zelinka, Jayson McGuffin, Kevin Edwards and Justin Adema ("the Compilation") (Exhibit 37).

## **DIRECT EVIDENCE OF THE DEVELOPERS**

[99] There was no direct evidence given by any member of the development community-in-chief or by way of examination for discovery.

[100] Hearing directly from a member of the development community as to the specific applications of their concerns with the proposed policies would have been helpful to this Tribunal in its deliberations. It is not the role or the duty of the Tribunal however to speculate as to what might have been said.

[101] Mr. Zelinka said that one of his developer clients felt their ideas were not heard during the Plan's Official Plan process. It is accordingly puzzling why they were not called and given the opportunity to be heard by the Tribunal.

[102] The Appellants and Participants are and have been major contributors to the land development of the City for many years, some spanning second generations.

### **SUBMISSIONS - YORK DEVELOPMENTS**

[103] Mr. Cheng, on behalf of York Developments, addressed Policies 173, 460 and 1573. He submitted that the three-year window proposed in Policies 173 and 460 is the first time London has prescribed it in an Official Plan. Prescribing it eliminates the existing flexibility under the 1989 Official Plan and requires that any proposal with servicing beyond three years would require an Official Plan Amendment (“OPA”).

[104] He submitted that the Tribunal should either revert back to the “reasonable time frame” of the 1989 plan or extend the policy to a five-year servicing window.

[105] Mr. Cheng proposed a sentence addition to Policy 1573 that essentially would state that a proposal would conform to the GMIS if it will be fully serviced by a project listed in the GMIS. He submitted that the suggested wording is consistent with Mr. Edward’s oral evidence and is reflected in Exhibit 18 and ought to be adopted.

### **APPELLANTS 23, 8, 4 AND 25 AND THE PARTICIPANTS**

[106] The Appellants request that the Tribunal prefer the evidence of Mr. Zelinka and Mr. McGuffin over that of the City’s witnesses and modify the Plan in accordance with the requests in the Compilation. They submit their 2020 position is consistent with the 2020 PPS and would better further the stated goals of the Plan.

[107] The policies being litigated before this Tribunal, they submit not only fail to fulfill the stated goals of creating a flexible plan, streamlining development approvals, avoid multiple OPA’s, promoting intensification in the right locations, link planning to transit and create a readable plan, but actually work against them.

[108] Rather than creating more flexibility in the plan, the Plan creates special policies through OPAs, the very thing the plan is supposed to avoid.

[109] The Appellants submit that the three-year time frame for prematurity is unreasonable and is an overly rigid request for prematurity particularly in draft plan extensions.

[110] The Appellants' outline of its Closing Submissions provides detailed analysis of each policy under appeal, with the four planning witnesses positions respecting them.

[111] The position of those witnesses is summarized in the Compilation.

[112] The Appellants emphasize in their submissions what their planners have stated are the problem issues with the appealed policies namely:

- i. The three versus five-year window;
- ii. The needed changes to Policy 1573;
- iii. The plan gives lower order documents policy status;
- iv. Poses a higher standard test for draft plan extensions;
- v. The policies are too rigid and may prevent market demands to accommodate the current housing crisis;
- vi. The policies do not permit the City's ability to maintain its discretion by tying the hands of the City;
- vii. Table 10 which sets out a table of permitted use based on street classifications, reduces the opportunity for intensification;
- viii. The policies trigger unnecessary OPAs; and



ix. Notations on Map 1 and 3 are confusing.

[113] They submit that the Plan's Official Plan process should not be a battle between developers and the City, rather it should be an exercise that successfully balances those interests. The Plan they submit however defies logic in the face of the concerns that many of the development industry have indicated, in this phase of the Tribunal's hearing process.

## **THE CITY**

[114] The City requests the Tribunal dismiss the Appellants' appeals with respect to the policies before this Tribunal in this phase, unless specifically requested by the City for a modification. The City's requested policies are consistent with the 2020 PPS and reflect a more balanced approval and are in the public interest.

[115] The City submits that no direct evidence or concrete examples were provided to support the Appellants' position that while the adopted policies sounded good, they have the opposite effect on what was intended.

[116] As noted earlier, the Tribunal did not hear direct evidence from the development community or the Appellants or Participants.

[117] The City further submits that there is no quantitative or qualitative analysis or comparison of what the areas would look like with or without the policies in place.

[118] The City submits that an analysis could have been done by the Appellants comparing potential units per hectare, densities or heights, which could have been provided to the Tribunal as direct and concrete support to buttress their positions.

[119] The City submits that it has never undertaken a public engagement program of this scope, and while the Appellants and Participants may not be satisfied, the outcome

is a reflection of how far reaching it was and how much effort went into tracking the feedback and responding to all comments was.

[120] Like the Appellants, the City submitted its position on each of the policies under appeal before this Tribunal in the Compilation.

[121] The City took serious issue with the suggestions that the Plan in established areas prevents intensification and redevelopment.

[122] A City planner pointed to the twin towers high-rise residential redevelopment project in a former heritage multi-use block of buildings along Talbot Street, just north of the court house, in the Downtown by a major City developer.

[123] The City however reiterated that it is not always appropriate for intensification everywhere in the City, especially in the Near Campus Area and the Richmond Street Corridor where the protection of heritage resources is more important.

### **APPELLANTS' PROPOSED POLICY MODIFICATION**

[124] The City provided its reasons and analysis as to why it does not support the Appellants proposed changes in language to Policies 948a (Exhibit 27 and 33), Policy 1693, Policy 460 (Exhibit 28) and Policy 1573 (Exhibit 18 and Mr. Cheng's wording).

[125] With respect to the proposed addition to 1573-2, the Tribunal accepts the evidence of Mr. Edwards that in order to "conform" with the GMIS, one only needs to be shown that the project is on it. The Tribunal finds that the proposed addition is unnecessary and may not reflect the original Council adopted language.

[126] With respect to the proposed Appellants addition of Policy 948 (A) (Exhibits 27 and 33), the purpose according to Mr. Zelinka is to recognize areas of existing development whose character does not match the use and or intensities set out in Tables 10-12 of the Plan. He submitted that these areas often have potential for

additional redevelopment or infill development consistent with their established character. Limiting intensification to the Table 10-12 formulae, could constitute an inefficient use of service land contrary to the PPS policy.

[127] The Tribunal does not support the Appellants addition of 948(A). The Tribunal agrees with the City's position that infill and redevelopment are typically the most controversial forms of development in established neighbourhoods. It would be counterintuitive to consider relaxing the standard type of permitted uses that already exist there.

[128] Furthermore, the "end of the day" submission of the alternate language suggestions was difficult for the Tribunal to carefully consider especially since the witnesses supporting those changes were not subjected to a detailed examination as to their opinions as to how the changes benefit the overall provisions of the Plan process. The City witnesses were not given sufficient time to consider the policy consequences and reply as to which ones they agreed with or not.

### **THE CITY'S REQUEST AND PROPOSED MODIFICATIONS**

[129] The City requests the Tribunal order that the Original Language of the London Plan appealed policies be approved and further requests that it also order the Modifications to the language in Policies 948(A) (Exhibit 27), Policy 173, Policy 460, 1693, 965, 966, Map 3, (Exhibit 26 (f) and Map 1 (Exhibit 26 (a))).

[130] The particular wording of the City's requested policy approvals is listed in the Compilation (Exhibit 37).

[131] The intent would be subsequent to this Tribunal's order that the Plan would be amended and the red boxes surrounding the appeal policies in this phase would, upon the issuance of this order, be removed. A new revised Plan would then become in force. The newly amended Plan would as soon as practical be provided to LPAT and form part of its file for the next scheduled phases of appeals.

[132] The Tribunal has reviewed the volumes of material and exhibits filed and has carefully considered the experts' opinions along with Counsel's submissions.

[133] The City's proposed modifications are an effort to improve the language of the policies that are contained in the Plan's initial approval by Council and the Ministry's subsequent approval.

[134] The positions taken by the Appellants before the Tribunal were that those policies either be deleted or modified with the language they have proposed.

[135] Having already dealt with the Tribunal's findings respecting the Appellants' positions on the policies and their proposed modifications, the Tribunal orders that the City's modifications be adopted.

[136] The Tribunal finds that the City's modifications provide additional clarity and additional support for the Plan's policies that it has been asked to determine.

[137] The modifications are consistent with the 2020 PPS and constitute good land use planning

## **DISCUSSION, ANALYSIS AND FINDINGS**

[138] The Tribunal finds that the Original Language together with the City's modifications enumerated earlier, ought to be adopted.

[139] The Tribunal finds that those policies that are before this Tribunal as amended constitute good land use planning and are consistent with the 2020 PPS.

[140] The Tribunal does not find the provisions of the Plan that are part of this phased hearing to be either pro-development or anti-development. The subject policies have allowed for developers to build significant intensified projects in areas of the City as evidenced by the Talbot Street development. The Plan has at the same time also

accommodated the submissions of the Urban League which has never been shy about making their concerns known.

[141] The Issues List provided for in the Procedural Order for this Phase of the hearing was revised and marked as Exhibit 23. There were 18 questions posed for those issues. The Tribunal has directed itself to those questions and answers them in the affirmative.

## **ORDER**

[142] Therefore, the Tribunal Orders that the appeals before this Phase of the London Plan are dismissed.

[143] The Tribunal Orders that the Policy 173 and 460 be amended to provide for a five-year servicing window.

[144] The Tribunal orders that Original Language with the City's requested language modifications contained in Policies 948 (A), 173, 460, 1693, 965, 966, Map 3 and Map 1 be approved.

[145] The Tribunal Orders that the London Plan be revised accordingly upon the issuance of this Decision.

[146] This Member is not seized either with Case Management or the Hearings of the subsequent Phases Part 1(B), 2, or 3 of those appeals of the London Plan.

[147] This is the Order of the Tribunal.

*"R.A. Beccarea"*

R. A. BECCAREA  
MEMBER

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please visit [www.olt.gov.on.ca](http://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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## **Appendix D – Relevant Background**

### **Additional Report**

October 9, 2018 “London Plan Status Update,” Planning and Environment Committee.