OLT-22-003603
OLT-23-000494

ONTARIO LAND TRIBUNAL

Appeals by Solmar (Niagara 2) Inc. of Official Plan Amendment, Zoning By-law Amendment, Plan of Subdivision and Heritage Permit Applications

200 John Street East and 588 Charlotte Street, Town of Niagara-on-the-Lake

OLT Lead Case Nos.: OLT-22-003603 and OLT-23-000494

WRITTEN SUBMISSIONS OF SOLMAR (NIAGARA 2) INC.

AUGUST 21, 2024

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Written Submissions of Solmar (Niagara 2) Inc.

200 John Street East and 588 Charlotte Street, Niagara-on-the-Lake

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I N D E X

I Overview

1. Solmar (Niagara 2) Inc. (**"Solmar"**) seeks approval of applications under the *Planning Act* and the *Ontario Heritage Act* (the **"*OHA*"**) to facilitate the redevelopment of residentially designated and zoned lands within the urban area of the "Old Town" area of the Town of Niagara-on-the-Lake (the **"Town"**), known municipally as 200 John Street East and 588 Charlotte Street (the **"Subject Lands"**).

2. The proposed redevelopment would result in the creation of up to 196 new residential dwelling units in the Town, together with a generous amount of publicly-accessible open space and the conservation of cultural heritage resources.

3. The Subject Lands form part of the former Rand Estate. The former Rand Estate lands have evolved considerably in the last hundred years and now consist of a succession of landscapes that continue to evolve. The former estate has been severed into multiple parcels under different ownerships, with more modern residential developments on Christoper Street and Weatherstone Court. Certain features, such as the Axial Walkway between the Mound Garden and the Whistle Stop have not existed for decades, and other features, such as the former pergola in the Pool Garden area, were removed as a result of deliberate actions of members of the Rand family itself. This is no longer the estate as it existed in the 1920's and 1930's, notwithstanding the Town's opening comment that the 2022 heritage designation by-laws were framed based on this period.

4. The Subject Lands are located behind 144 and 176 John Street East, the core of the estate, known as Randwood. While the Subject Lands form an important property in

the Town from a cultural heritage perspective, their significance has been inflated by the other parties. Unlike Randwood, the Subject Lands do not constitute a "landmark", which is one of the criteria for determining cultural heritage value or interest, nor are the elements of the landscape designed by Dunington-Grubb "nationally important", as suggested by Ms. Anderson. In determining that the Subject Lands were not a "landmark", ERA characterized each property comprising the Subject Lands as "a private property which has seen limited use in recent years, is sited in the interior of a larger estate, and does not contain built elements visible from the public realm." Neither the Subject Lands, nor Randwood, are included on the federal register of historic places, nor are they designated as of provincial significance under the *OHA*.

5. This is not a case where the owner purchased the properties subject to existing heritage designations; rather, the notices of intention to designate were issued in August 2018, after Solmar had already acquired the properties earlier that year.[1]

6. As indicated above, the developable portion of the Subject Lands are already designated and zoned for residential development, so the land use is not at issue – rather, what is to be determined is the form that the residential development will take, properly balancing the various policy objectives and regulatory requirements. That balancing exercise must occur within the context of the site constraints within the Subject Lands, some of which were created by the former owner, Calvin Rand.

7. There is only one plan before the Tribunal for approval in this proceeding – the current Solmar plan. Both the Town, through its Demonstration Plan, and SORE, through

[1] Exhibit 1.9, Title documents, Tab 317, p. 267; Tab 320, p. 282

its Concept Plan, have identified alternative approaches to how the Subject Lands might be redeveloped, but both the Town and SORE have confirmed that these alternative plans are not being presented for approval and both parties have acknowledged that their respective alternative plans, being conceptual only, would require far more study. Although there certainly are some important differences between the various plans, particularly as between the Solmar plan and the SORE plan, there is also a significant amount of commonality.

8. As is set out in more detail below, it is evident that:

a. Solmar has demonstrated that its proposed subdivision plan is feasible, and that several matters that the Town and SORE seek to front end in this proceeding are appropriately dealt with as conditions of approval or through separate permit processes;

b. Solmar has demonstrated that its development proposal conserves cultural heritage resources and appropriately balances various planning policy objectives in the Provincial Policy Statement (**"PPS"**) and applicable provincial plans and municipal official plans; and

c. The proposed access through the "Panhandle" is appropriate and feasible.

II The Tribunal's Decision-Making Framework

The *Planning Act* Applications

9. The *Planning Act* contains four key sections that the Tribunal must consider: s.2 - matters of provincial interest, to which the Tribunal must have regard; s.3(5) – consistency with the current provincial policy statement and conformity with applicable provincial

plans, including the Growth Plan and Greenbelt Plan; s.24 – conformity with applicable official plans; and s.51(24) and (25) dealing with the criteria for draft plan approval and conditions.

10. The applicable official plans are the Region's 2014 Official Plan and the Town's 2017 Official Plan. While the Region's 2022 Official Plan has been approved, it was not in force at the time of the applications and, importantly, it contains an explicit transition policy confirming that development applications submitted prior to November 2022 shall be permitted to be processed and a decision made under the local and Regional Official Plan policies that were in effect when the application was deemed complete (Policy 7.12.2.5).[2]

11. The Town's 2019 Official Plan was adopted by Town Council but is not yet approved by the Region and therefore not in effect.

12. The Town has recently adopted OPA 92, which arose from the Character Study undertaken by the Town for the lands comprising the former Rand Estate and 210 John Street. That OPA is currently under appeal at the Tribunal, and not before this Panel in this proceeding.

13. Some of the witnesses in opposition placed significant reliance on the Character Study or other documents that are outside of the required policy documents against which the Tribunal must evaluate the applications, including the previous Estate Lots Study

[2] Exhibit 1.14, Niagara Region Official Plan 2022, Tab 38, p. 806

undertaken by Mr. Bray – but those are simply studies undertaken by consultants and do not have the force of approved policy.

14. It is often understood, and has been acknowledged by various witnesses in this hearing, that the test on a draft plan of subdivision is generally one of "feasibility", with an understanding that there will be many items, including numerous technical matters and/or further studies, to be addressed as conditions of approval, usually subject to further review and approval by various public bodies and agencies other than the Tribunal. This is a key consideration in this case where the parties opposite are attempting to bring into issue items that are properly addressed at the detailed design stage and may be subject to draft plan conditions and/or separate approvals.

15. The Tribunal is not being asked by Solmar to approve the following matters:

- The proposed wetland relocation – it is subject to a separate process and approval by the Niagara Peninsula Conservation Authority (the **"NPCA"**).
- On-site tree removal – Solmar is proposing a Tree Management Plan to be required as a draft plan condition which would be implemented/secured through a Subdivision Agreement and invoke subsection 135(12) of the *Municipal Act*.
- Engineering design of access roads – to be determined by the Town (with Municipal Engineering Standards subject to potential variation at the Subdivision Agreement stage).
- Details of subdivision engineering design such as grading, drainage and stormwater management ("**SWM**") – to be reviewed by Niagara Region, NPCA and the Town.

- Removal of potential endangered species habitat – to be determined by the Ministry of Environment, Conservation and Parks (**"MECP"**).

16. The matter of the draft plan approval process was considered by Vice-Chair Sills in *1278804 Ontario Inc. v Frontenac*:[3]

> [173] … It is of importance to understand that Draft Plan Approval is not the end of the approvals process. …Final Approval is not provided until such time that the requisite Conditions of Draft Plan Approval are fulfilled and the necessary regulatory approvals and/or permits have been secured. It is also of significance that if the Conditions of Draft Plan Approval are not or cannot be fulfilled the plan of subdivision as currently proposed will not advance.
>
> [174] Moreover, the mechanics of water and sewer servicing, stormwater management facilities and drainage, and the lot grading plan are not within the jurisdiction of the Tribunal.
>
> [175] … The Tribunal further finds that the recommended Conditions of Draft Plan Approval appropriately respond to matters of provincial interest and are sufficient to safeguard the public interest.
>
> [186] Mr. Chard's concerns were focused on what he perceives to be deficiencies in the supporting technical analysis, and the lack of engineering detail, grading, drainage, and stormwater management that has been provided. These details will be provided in the Final Stormwater Management Report required as a condition of Draft Plan Approval. The Final Report must be approved by the Township and the QCA, and will be reviewed by the MOECC in consideration of the required ECA.

17. The need for other or subsequent approvals was addressed in the *Kimvar* decisions. In *Kimvar v Simcoe* at Tab 15 of Solmar's Book of Authorities, the Board found:

> [47] The Opponents argued that Kimvar's project should not be approved on the basis that the proposal is premature and does not accordingly represent good planning. … Specifically, the Opponents argued that:
>
> • the need for additional approvals, including a provincial class environmental assessment and permits under federal legislation, including an environmental assessment under the CEAA is evidence that the project is premature.
>
> ….

[3] Solmar Book of Authorities, Tab 3, p. 128, 129, 131, 132

> [58] … The necessity for approvals under legislation other than the Planning Act, which guides the Board, is not a basis upon which to find the project is pre-mature. The Board is statutorily required to deal with any appeals that are made and come to a determination as to whether, among other things, the instruments represent good planning. The Board has indicated on numerous occasions that it has an obligation to hear an appeal and the fact that a different, but related, approval might be required should not deter the Board from proceeding with its mandate ...
>
> [59] OPA 17, the proposed zoning By-law and the Draft Plan include significant conditions that are intended to ensure that all required approvals beyond those necessary under the Planning Act are secured. If Kimvar is deficient in any area, the development simply cannot proceed. In that sense, approval from the Board is, in effect, conditional on other permits being secured. … The necessity for further work and study is not, as submitted by the Opponents, a reason to delay planning approval. Rather, it reinforces the careful scrutiny of the project undertaken by all levels of government, and with the benefit of detailed evidence, by the Board.[4]

18. In summary, it is not uncommon for the Tribunal to address *Planning Act* applications that can only be implemented by pursuing subsequent approvals under different legislation – and those separate processes can either be reflected in draft plan conditions, or simply stand on their own, as reflected in the *Kimvar* decision noted above.

The *Ontario Heritage Act* Applications

19. The description of heritage attributes in the designation by-laws and the effect of those designation by-laws in the context of these appeals is a key heritage-related issue. It was the evidence of Dr. Letourneau that because heritage designation by-laws have been enacted and the by-laws themselves are not under appeal in this proceeding, the heritage attributes are final and must be accepted.

20. The description of heritage attributes form part of the designation by-laws and would therefore trigger a heritage permit application to either alter the properties if the attributes are likely to be affected, or to demolish or remove. However, that does not mean

[4] Solmar Book of Authorities, Tab 15, p.394, 396

that either Solmar, or this Tribunal, has to accept the reasonableness of those attributes when considered in the context of appeals of the heritage permit applications.

21. This is confirmed in *Re Neufer*, which we understand to be the first decision on an appeal of a demolition application under the *OHA* following the legislative amendments in 2005:

> [2] The Tremblay case deals with the designation process, but the Board is satisfied it applies equally to the case of demolition. Based on the reading of the Act and the Tremblay case the Board finds that the role of this Board on an appeal from a refusal to issue a demolition permit by the City is a balancing of the public and community interests against those private property rights of the owner. It is not as submitted by Mr. Longo an issue of whether there are greater public interest goals in favour of demolition than the public interest goal of preservation in deciding whether to permit demolition or not.
>
> [3] The City and Mr. Longo argued that the Notice of Intention to Designate this property decided the issue of designation and the cultural heritage value or interest of the property could not now be challenged on S. 30(2) of the Act.
>
> [4] … The appeal, provided to the owner, to this Board under s. 34 is available and this Board must hear the appeal. It is clear from the submissions of Counsel for the owner and from the City staff report supporting the refusal of the demolition permit that it is the cultural heritage value or interest of the property that caused Council to refuse the permit. Why it was considered for designation are the very reasons that would support refusing the demolition permit and the owner must have the right to challenge those reasons.
>
> [8] … While Council has the authority to determine designation, the Board has the authority to direct the issuance of a demolition permit. The applicant/appellant in this instance has raised issues that go to both designation and demolition and they are, of necessity, interrelated. …
>
> [9] Mr. Longo's issues are based on the premise that the only matter for the hearing is whether the demolition of the resource furthers any public interest. The Board has dealt with this and found this is not the test nor the issue to be decided. Issues relevant to demolition will, by their very nature, overlap with issues that go to designation.[5]

22. More recently, in *Toronto v 445 Adelaide Street West Inc.*, the Divisional Court recognized that where there is an appeal of a heritage permit application, together with a

[5] Solmar Book of Authorities, Tab 4, p. 136, 137, 138

Planning Act appeal, the Tribunal is able to comment on all heritage matters, including the appropriateness of the designation.[6]

23. The second issue relating to the heritage permit appeals is the relevant policies that the Tribunal needs to consider. In this regard, Ms. Horne's recommendation report to Town Council on the heritage permit applications identified what she regarded as the relevant policy framework, including the PPS and Growth Plan – however, despite the fact that those documents expressly tell the reader to consider all relevant policies, Ms. Horne only identified cultural heritage policies within those policy documents, and not the multitude of other relevant policy considerations, such as housing, intensification, and efficient use of land and infrastructure, among others. This is a fundamental flaw in Ms. Horne's analysis, which formed the basis of the recommendations to Council and ultimately to this Tribunal, and which has had a cascading impact on this proceeding in terms of the position of the parties opposite.

24. Notwithstanding that the applications Ms. Horne was considering were made under the *OHA*, it was critical that they be evaluated in the context of all other relevant planning policy objectives, consistent with the approach adopted by the former OMB in *Birchgrove Estates Inc. v Oakville*. In determining whether an *OHA* application, which has been consolidated with planning applications, affects a "planning matter" and is subject to the requirements under section 3 of the *Planning Act*, the Board provided as follows:

> [4] The parties have been unable to agree on the appropriate issues to be addressed at the 1st phase hearing dealing with the Ontario Heritage Act appeals and related matters.

[6] Solmar Book of Authorities, Tab 5, p. 151, 152, 159, 161

> [13] Clearly in this case, the appeals under the Heritage Act are matters consolidated with the overall planning applications leading to the final disposition of the land use of this area within the village of Bronte. In that regard, the Board finds that the heritage appeals affect a planning matter pursuant to Section 3 of the Planning Act so as to make provincial, regional and local planning policies applicable.[7]

25. Thus, all applicable planning policies must be appropriately considered and balanced when evaluating the *OHA* applications. This was not done by the cultural heritage witnesses for the Town and SORE.

26. The Tribunal may consider but is not bound by and does not otherwise need to evaluate the applications against various cultural heritage guidance documents, including the *Standards & Guidelines*, which the Town and SORE's witnesses placed heavy reliance upon. Although the Standards & Guidelines have been incorporated by reference into the Town's 2019 OP, they are not even mentioned in the current, in-force Town OP.

Sufficiency of Information

27. Throughout the hearing the Tribunal heard from the other parties that the applications lack sufficient information. We strongly disagree.

28. Sufficiency of information to evaluate the applications is a matter that is addressed at the complete application stage, under both the *Planning Act* and the *OHA*. Notably, in this case, the Town did not simply accept the applications as submitted without any review. On the contrary, for both the *Planning Act* and *OHA* applications, the Town initially deemed the applications to be incomplete – in the case of the *Planning Act* applications, specifically requiring additional information in relation to trees.[8]

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[7] Solmar Book of Authorities, Tab 6, p. 179, 180
[8] Exhibit 1.1, Tab 2, p.27, 29; Tab 3, p. 31

29. Solmar provided the additional information requested by the Town, and the Town subsequently confirmed that the applications were complete, under both the *Planning Act* and the *OHA*. What is noteworthy about this is the language that is used in both Acts in relation to complete applications.

30. In addition to various prescribed information required for complete applications, and subject to the municipality having applicable Official Plan provisions, the municipality can require "any other information or material that [it] considers it may need". We submit that "need" is for the purpose of being able to properly evaluate the application and make an informed decision (see subsections 34(10.2) and 51(18)).[9]

31. Likewise, under subsections 33(3) and 34(3) of the *OHA*, in addition to certain prescribed information, "A council may require that an applicant provide any other information or material that the council considers it may need".[10]

32. Thus, by confirming all applications to be complete, the Town was apparently satisfied that Solmar had provided all information and materials that the Town determined it needed to properly evaluate the applications and make an informed decision. Even after the applications were determined to be complete, no additional information was sought through the processing of the applications.

Comments Regarding Solmar's Conduct

33. Comments made by the other parties regarding Solmar's conduct should have no bearing on the Tribunal's decision on the merits of the applications. Notwithstanding,

[9] Exhibit 1.11, Tab 9, p. 395, 470
[10] Exhibit 1.11, Tab 4, p. 52, 55

Solmar disputes and takes issue with all such comments, and as such wishes to briefly respond.

34. We heard from the other parties about the deteriorated condition of various heritage features on the Subject Lands, but the evidence is that no property standards enforcement actions have been taken by the Town in relation to these properties. We heard about tree removals in or about 2017, in response to which Mr. Boucher produced a permit that had been issued by the NPCA. We heard extensive evidence from the other parties regarding tree removals in 2018; however, Ms. Wallace confirmed that the Town had been advised in advance of the tree cutting and Mr. Richard confirmed that the Town did not even have a private-tree by-law in effect at the time of those tree removals.

35. We also heard that the Town initiated prosecutions under the *OHA* against Solmar in relation to the 2018 tree removals, but there were no convictions and the charges were ultimately stayed by Order of the Provincial Court – and although the Town initially appealed that ruling, it subsequently abandoned its appeal.[11]

36. Lastly, Solmar has been criticized during this hearing for its withdrawal of the Conservation Review Board (**"CRB"**) objections, suggesting that it was at the scheduled CRB hearing where Solmar's concerns regarding the heritage attributes in the designation by-laws for the Subject Lands should have been addressed.[12]

37. In response to this last criticism, we note the decision of the Divisional Court in *Richmond Hill Naturalists v Corsica Developments Inc.*, which confirms that the Tribunal

[11] Exhibit 1.8, Decision of Justice Chernish, Tab 169, p. 244
[12] Exhibit 1.9, Letter to CRB of Nov. 2, 2021 re withdrawal of objections, Tab 355, p. 664

would not have been bound by any findings of the CRB, nor obligated to give deference to the CRB in any event.[13]

38. In *Oakville v. ClubLink*, the Town of Oakville had issued a notice of intention to designate the Glen Abbey lands under the *OHA* as a significant cultural heritage landscape, which triggered ClubLink's right to object and have the matter referred to the CRB; however, ClubLink advised the Town that it would not be filing a formal objection to the NOID, but not because it agreed with the proposed designation, but because it would instead be proceeding with an application for demolition that could be appealed to the Tribunal if refused, and considered with related *Planning Act* applications. The Ontario Court of Appeal found this approach made "practical sense", noting that "[t]he legislature has chosen to provide a property-owner multiple avenues by which it may seek to deal with property subject to a designation".[14]

39. Lastly, Solmar's withdrawal of its objection to the CRB and related matters triggered a substantial costs request by the Town and SORE, collectively seeking an award of costs of more than $600,000 from Solmar and Two Sisters Resorts. In *Two Sisters Resorts Corp. v Niagara-on-the-Lake*, the Tribunal made the following findings:

> [78] As the Tribunal has considered the whole of the evidence provided by the Town and [SORE], it must objectively conclude that both have been errant in their characterization of the Owners, and themselves, within the proceeding. … The Town's evidence and submissions belie an authoritative assertion that ultimately their Notices of Intent to Designate the heritage features were absolute and correct. This is misplaced as the Owners had the legislated right to exercise their objections to the intended designations. [SORE], as noted in their materials, and, in particular, their public webpage pronouncements following the withdrawal, demonstrate the clear

[13] Solmar Book of Authorities, Tab 7, p.190, 192, 193
[14] Solmar Book of Authorities, Tab 9, p. 257, 271

attitude: “we won”. This adversarial approach, and winner vs loser, is at odds with the Tribunal’s approach to costs.

[85] The Tribunal has considered the Owners’ explanations for the withdrawal and the timing of the Withdrawal Letter. The evidence and submissions presented by the Owners on these Motions identify a “convergence of several genuine factors” in late October of 2021 which led the Owners to decide to reconsider the merits of continuing with their Objections and to withdraw.

[86] The Tribunal finds that the circumstances giving rise to the Owners’ decision to withdraw, within the context of the overall chronology of events and the concurrent conduct of the Town and [SORE], as set out in the Withdrawal Letter, are not unreasonable.

[90] The fact that the Owners were doubtful that the Town would do anything other than proceed with its intended designation, regardless of the Tribunal’s recommendations is not objectionable, unreasonable, or reflective of an abuse of process. When viewed through an objective lens, the steadfast positions of the Town and [SORE], as revealed in all of the Motions material, certainly demonstrates that the Owners’ perception was not unfounded.[15]

III Matters Not in Dispute in these Appeals

40. All parties agree that the Subject Lands constitute an intensification site that should be redeveloped for residential use. The planners came to a fair number of other agreements and were able to significantly shorten the number of policies in dispute.[16]

41. There is consensus that the proposed OPA is largely technical in nature, appropriate and should be approved regardless of the Tribunal’s decision regarding the zoning by-law amendment and draft plan of subdivision.

42. All parties agree that the Subject Lands have cultural heritage value, and while they differ on the identification of heritage attributes and overall approach to conservation, all agree on the approach to heritage conservation in respect of the following:

[15] Solmar Book of Authorities, Tab 8, p. 229, 233, 235
[16] Exhibit 1.8, Agreed Statement of Facts – Planners, Tab 184, p. 1021

- The proposal to restore the Tea House *in situ* and the Pool Garden at least in part, with removal of the existing pool structure
- The proposal to restore the Whistle Stop structure
- The proposal to restore the Bath House (the disputed issue is the proposed relocation)
- The proposal to reestablish the Whistle Stop Walk from the Whistle Stop to the Mound Garden (the disputed issue is the location or alignment)
- The proposal to restore the Mound Garden *in situ* (the disputed issue is what the restoration should entail)
- The proposal to restore and re-use the hipped roof shed

43. There is no dispute in this proceeding with respect to Archaeology – the Town presented proposed conditions and Solmar has agreed to them. Solmar has also agreed to conditions of approval to minimize potential noise and odour impacts from the proposed pump station. Finally, the parties have also agreed on two transportation conditions of approval – first, to improve the sidewalk on the south side of John Street between 200 John and Charlotte Street and, second, the implementation of pedestrian crossing facilities on John Street in this area.[17]

IV Matters Not in Dispute in these Appeals *as between the Town and Solmar*

44. The Town prepared a "constraints-based" demonstration plan – however, many of the "constraints" identified on this plan can be overcome. Also of note is that no

[17] Exhibit 2.4, Exhibit 2.9A, p. 2, Exhibit 3.7

constraints were identified on 144/176 John. However, Mr. Palmer agrees that constraints exist on 144/176 John, and that different ownership, in itself, is a constraint.[18]

45. There are many similarities between the Town's demonstration plan and the Solmar plan including: road/lane widths and the general configuration of the internal road pattern, the potential for emergency access to Charlotte Street, the park at the west end, the lots backing onto that park, the general size and location of the SWM pond and pump station, lots backing onto the Greenbelt, and the mix of residential unit types. In speaking to the Solmar plan, Mr. Palmer provided the following opinion:

> "the development regulations/standards within the Proposed Zoning By-law Amendment are appropriate. They facilitate a more intensified form of development than is typical within the adjacent and surrounding community. In this regard, the Proposed Development on the Subject Property supports a more compact form of development, and is a more efficient use of the land and of infrastructure than is typical within the adjacent and surrounding community".[19]

46. The Town and Solmar are also in agreement on certain components of the heritage permit applications in respect of, among others: (a) demolition of the Calvin Rand Summer Home; and (b) demolition of the Stables / Main Residence at 588 Charlotte. In respect of the Stables, Ms. Horne recommended demolition subject to conditions in her April 2023 report and the December 15, 2023 Town Council resolution supports the recommendations in her report.[20]

47. The Town and Solmar are also in agreement on the appropriate treatment for the Urban/Agricultural interface. According to Mr. Palmer, "the Proposed Development on the Subject Property will not cause any undue, adverse impacts on the existing Two Sisters

[18] Exhibit 3.1, Town's Demonstration Plan, Tab 18, p. 327
[19] Exhibit 3.1, Palmer Witness Statement, Tab 2, p. 21, para. 21
[20] Exhibit 1.1, Horne report, Tab 17, p. 113; Exhibit 1.8, Town's Dec. 15, 2023 Council resolution, Tab 163, p. 224

Winery operation, or its potential expansion onto the lands within the Subject Property that are currently designated Agricultural in the Niagara-on-the-Lake Official Plan (2017)."[21]

V Matters in Dispute in these Appeals

ACCESS

Primary Access - Overview

48. A fundamental issue in dispute in this proceeding is the location of primary access for the proposed development. It really should not be, given that the Subject Lands have an existing public road access to John Street through the "Panhandle" – the 20 m wide access to John Street East which is the width of a typical right-of-way for a local public road.

49. Solmar is not proposing to create this access location through these applications. It was created by way of a severance application that was approved by the Town in the 1990s, initiated by a member of the Rand family itself – Calvin Rand, to create 200 John Street and establish public road access at John Street to the balance of the property. The only other public road frontage for the Subject Lands is to Charlotte Street, but that is only about 6 m wide, which is sufficient for emergency access but not for two-way traffic, a sidewalk, appropriate daylight triangles, etc.

50. It simply defies logic that so much of this hearing has been spent dealing with the location of primary access when the site already has an existing access to John Street

[21] Exhibit 3.1, Palmer Witness Statement, Tab 2, p. 41, para. 68

and there is simply no other location on the Subject Lands to accommodate a primary access to the adjacent public road network.

51. While the other parties assert that the existing access from John Street was created to simply serve a limited number of buildings on 200 John Street and not a residential subdivision of this scale, it is critical to note that the Subject Lands are designated for residential development with a minimum density of 14 units per hectare – already a substantial number of units.

52. Through the course of this hearing, the Tribunal has heard from various witnesses about four potential primary access options, in no particular order: 1. Charlotte Street; 2. Through the Greenbelt to East-West Line; 3. Through adjacent lands at 144/176 John (SORE proposal); and 4. The Panhandle.

53. There is insufficient width to accommodate a primary road for the proposed subdivision to Charlotte Street on the Subject Lands. However, at one point, it looked as though a modified Charlotte Street access was a viable option. On December 15, 2023, Town Council passed a resolution containing the following:

> "WHEREAS the Town is willing to grant an easement over a portion of its lands at Charlotte Street to facilitate an appropriate road access, if requested by Solmar;
>
> WHEREAS the Town sees the Charlotte Street access, if requested by Solmar, as an opportunity to celebrate and improve the existing Heritage Trail at this location ("Gateway Feature");
>
> WHEREAS the Town commits to a public process to determine the design for this Gateway Feature;".[22]

[22] Exhibit 1.8, Town's Dec. 15, 2023 Council resolution, Tab 163, p.221, at 223, 224

54. In response to Council's resolution, Mr. Flowers wrote to Ms. Smith on January 8, 2024, on behalf of Solmar, to formally request the granting of the easement.[23]

55. Following receipt of this letter confirming Solmar's request and position, Council convened a Special Council meeting for January 12, 2024, during which the Town withdrew its consent for access by Solmar over Town-owned lands at Charlotte Street.[24]

56. As such, absent a further reconsideration by the Town, the Charlotte Street option for primary access is no longer feasible.

57. In terms of an access through the Greenbelt, Mr. Lowes and Mr. Palmer agreed that it is not a viable option from a policy perspective. The Greenbelt Plan has a policy that prohibits new infrastructure unless there are no reasonable alternatives. In this case, there is clearly a reasonable alternative, as the Subject Lands already enjoy an access to John Street with a 20 m width.

58. Aside from this policy, there has been no study of the viability of this alternative access through the Greenbelt from a transportation perspective, no indication that the adjacent owner would be prepared to permit this, and the access would cut through an existing operating commercial vineyard on prime agricultural and tender fruit agricultural lands. It was the evidence of Solmar's agrologist that development in the form of a road through this area would have a direct adverse impact on a specialty crop area which has the highest level of protection among lands within a prime agricultural area and result in

[23] Exhibit 1.8, Flowers' letter dated Jan. 8, 2024 to Smith, Tab 164, p. 228, at 229
[24] Exhibit 1.8, Council resolution Jan. 12, 2024, Tab 165, p. 232

the loss of productive agricultural lands and investment in rootstocks (grape vines). Accordingly, this alternative makes no sense whatsoever.[25]

59. SORE shows a shared access through 144/176 John in its Concept Plan. 144/176 John has been identified as a "landmark" site within with Town across multiple cultural heritage evaluations. In 2011, Randwood was redesignated to a site specific General Commercial and site-specific Open Space designation through OPA 51. OPA 51 includes as a basis for the amendment that the proposal will "ensure that the significant heritage and cultural landscape features are maintained or minimally impacted while keeping the large estate lot as one property…."[26]

60. Solmar's proposed draft plan of subdivision contemplates that 144 John be considered for a stormwater outfall and re-created wetland to accommodate the partial removal of the wetland on 200 John Street. Both would require the consent of the owner of 144 John, together with any required easements and permits. However, those potential uses of 144/176 John are on the western edge of the property, in an area where a hotel would not be permitted in any event, presumably having little or no impact on hotel operations.

61. That is very different from what SORE is proposing – having a permanent shared access road through the middle of the property, in circumstances where carriageways currently exist that meander through the trees, including the area where a hotel and related uses are otherwise permitted. While a hotel would require some driveway access

[25] Exhibit 2.1, Colville Reply, Tab 22, p. 772, at 785, para.119
[26] Exhibit 1.17, OPA 51, Tab 52, p. 455, at 457

through the front of the property from John Street, a shared access for the Subject Lands would, by necessity, require a road that extends to the southern boundary of 144/176.

62. In addition to all future hotel-related traffic, a shared access road in this location would need to accommodate all of the traffic generated by the proposed residential subdivision, together with all related deliveries and service vehicles such as garbage trucks, travelling through the middle of 144/176 John on a “24/7” basis, all on what would need to be a permanent basis.

63. As Mr. Lowes noted, having this type of permanent intrusion through the middle of the property would be contrary to the concept of an exclusive hotel in an estate- and park-like setting. Mr. Lowes also indicated that in order to avoid pedestrians who are travelling to and from the subdivision along the proposed shared access road wandering onto the balance of the hotel property, there may need to be fencing along both sides, which would effectively split the property in half. This is not what OPA 51 intended for Randwood.

64. There is also potential for significant logistical problems with a shared access road in the southern portion of 144/176 John, which is where an underground parking garage could be located, as contemplated on previous plans.

65. Several SORE witnesses confirmed that no detailed analysis of their proposed shared access road through 144/176 John had been undertaken from an engineering, cultural heritage or tree impact perspective, and Mr. Bumstead also agreed with Mr. Elkins’ assessment that from a traffic impact perspective the proposed shared access road would be marginally worse than Solmar’s proposed access through the Panhandle.

66. Also notable is that although Ms. McIlroy identified a width of 7.5 m on the SORE plan for the access to John Street through the "historic access" on 144/176 John, or 7.63 m on Exhibit 4.20, both Mr. Bumstead and Mr. Arnott agreed with Mr. Elkins that to ensure that there are proper sight lines for safety, any primary access along John Street should have 5 m on either side of the road and a minimum sidewalk width of 1.5 m – thus, with a 7.5 m wide road for two-way traffic, a minimum opening of 19 m would be required, not 7.63 m as Ms. McIlroy was suggesting.

67. Given this complete lack of analysis for SORE's proposed shared access road and a significant error in judgment as to the width of the required opening, it is apparent that the evidence of any of the SORE witnesses, including Ms. Anderson, who asserted that the SORE access would be less impactful than the Panhandle access, is clearly not credible. We make the same comment in terms of Dr. Letourneau's statement in his reply witness statement – that an access through 144\176 John would have less impact than the Panhandle.[27] There is simply no evidentiary basis for such opinion.

Primary Access - The Panhandle

- Intersection with John Street

68. There is no credible safety issue at the intersection of the proposed access road through the Panhandle with John Street.

[27] Exhibit 3.1, Letourneau Reply, Tab 5, p. 130, at para. 17

69. This is confirmed by Mr. Elkins, particularly given the suggested design of a widening to accommodate 5 m daylight triangles on both sides, which the other transportation consultants agree is proper to achieve appropriate sightlines.

70. The only alleged safety issue raised by the other parties is in relation to the proximity of the western driveway on the McArthur property and related curb radius, but this is not a legitimate issue of concern. The other parties point to the proposed curb radius of 4.5 m on the eastbound side, as proposed in the preliminary road design, and claim that is substandard, particularly relative to the 9 m minimum identified in the Town's municipal engineering standards.

71. However, the Town's engineering standards can be varied and, in any event, the suggested 4.5 m curb radius is not deficient relative to other standards. For example, the OPSD drawings referenced in the Town's engineering standards identify a minimum 4.5 m curb radius for light industrial, commercial and residential apartment driveways.[28]

72. Although the other parties' transportation consultants assert that the access proposed through the Panhandle is not a "driveway", that is largely irrelevant and misses the point. That same diagram identifies a minimum 9 m radius for heavy industrial uses, which contemplates significant use of large truck traffic.

73. The type of traffic to be generated by the proposed development is clearly more in keeping with the first group of land uses than heavy industrial, and there is no difference from a safety perspective if the same number of vehicles were to exit the property onto

[28] Exhibit 1.19, OPSD drawing 350.010, Tab 58, p. 175; as referenced in Exhibit 1.17, Town's municipal engineering standards, Tab 44, p. 25

John Street from an apartment building with a 4.5 m corner radius versus the same traffic originating from a mix of singles, semis and townhouses.

74. Further, a more recent document is the Ontario Traffic Council Protected Intersection Guide, which was co-authored by Mr. Bumstead's firm, and in Table 2 recommends a curb radius of between 4-6 m for local streets. Although Mr. Bumstead initially thought that this document only applied to signalized intersections, he subsequently acknowledged that this is not the case, and that there is nothing in the document that says that Table 2 is only applicable to signalized intersections.[29]

75. The other parties also raised concern that the proposed design would result in certain larger vehicles having to enter the opposing lane of travel to make a right-hand turn. However, as Mr. Elkins noted, and as is confirmed in the Ontario Traffic Council document, that is not an uncommon circumstance, and is generally acceptable for emergency vehicles and other large vehicles that will be infrequent. Further, Mr. Arnott acknowledged in evidence that even with a 9 m corner radius, larger vehicles making eastbound turns would still be required to cross over into the westbound travel lane.

76. The Tribunal is not being asked to approve the curb radius or the engineering design of the intersection – perhaps with the involvement of the Town's engineer it will be determined that something between 4.5 and 9 m may be the best option, but that can be determined later – feasibility has clearly been demonstrated.

77. The other issue raised by the opposite parties is the separation distance between the proposed access and westerly driveway on the McArthur property – but this is an

[29] Exhibit 2.7, Protected Intersection Guide, p. 53

existing situation. Also, according to Mr. Elkins, in a peak hour there might be about 40 vehicles turning east out of the Subject Lands, or about one every minute and a half. According to Mr. Argue, the McArthur driveway might generate about 1-2 vehicles in a peak hour, or about 1 car every 30-60 minutes. Mr. Argue also indicated that the westerly driveway is generally intended more for inbound movements, which he acknowledged would be less likely to result in conflicts.

78. Given these very low volumes, the chances that a vehicle would be exiting the McArthur westerly driveway and turning westbound at the very same time that a vehicle is exiting the Panhandle access and turning eastbound is highly remote, but even if it did happen from time to time, there is no real safety concern. Recognizing that both vehicles would have to stop before entering John Street, they would essentially be starting their turns from a stopped position, and there is also about one car length of distance from the perimeter wall to the southern limit of the eastbound travel lane on John Street, ensuring that there is adequate opportunity for each driver to see the other.

79. Mr. Argue also raised concerns about potential for trespassing by pedestrians on the Panhandle onto the McArthur property, similar to the concern Mr. Lowes raised in relation to a shared access through the hotel lands at 144/176 John, though we note that the SORE plan contemplates a pedestrian pathway through the Panhandle – regardless, if this is a real concern, Mr. Argue acknowledged that this could be addressed with fencing or tight vegetation along the mutual property boundary.

80. The proposed primary access through the Panhandle is clearly feasible from a transportation perspective.

- Impacts of Access on Cultural Heritage Resources
    - Impacts within the Subject Lands

81. The eastern portion of the Dunington-Grubb designed Pool Garden has already been significantly impacted by the creation of the existing vehicular access through the Panhandle, which was deliberate and initiated by the Rand family, putting it directly through the area of the former pergola.[30]

82. The primary impacts to the Subject Lands as a result of the proposed access road through the Panhandle occur at what has been referred to as the "pinch point" at the Pool Garden. The access road would result in removal of a portion of the Pool Garden, and the existing brick steps leading to the pool on the east side of the garden.

83. To mitigate these impacts by keeping the road as far east as possible, Solmar has sought but not obtained consent from the McArthurs to impact Tree 34B. Therefore, Solmar prepared alternative offsets at 4 and 6 metres to ensure the tree is protected. The eastern portion of the Pool Garden will be impacted at the 2, 4 or 6 m offset options – it is a question of degree, and balancing impacts on the Pool Garden with potential impacts on Tree 34B.[31]

84. Where there are further setbacks from the east side of the property, there will be greater impacts to the pool area. Based on the evidence of Solmar's witnesses, the 4 m offset option seems to be best option of the three, having regard to both cultural heritage

[30] Exhibit 1.4, Letourneau CHER, Tab 85, p. 1508, at 1594 (Figure 33)
[31] Exhibit 2.2, Solmar Landscape Plan, Tab 21, p. 176

conservation and tree protection, but recognizing that through more detailed design and final engineering drawings there could be some slight variation.

85. The primary form of mitigation to impacts resulting from the Panhandle access road is to maintain as much of the original Pool Garden as possible and to establish a heritage parkette to be located around the Pool Garden, with commemoration and interpretive elements proposed within the parkette. The proposed parkette will provide an understanding of the surviving elements of the Dunington-Grubb design of the tea house and Pool Garden area and proposes the retention, restoration or rehabilitation of heritage attributes to the extent feasible.[32]

86. Solmar has identified a further option whereby the Panhandle access would swing west around the Pool Garden area and have no impact whatsoever on the eastern portion of the Pool Garden or Tree 34B. This option would allow for full restoration of the Pool Garden *in-situ*, and will be addressed later in these submissions.

87. Any access option will result in tree removals, and Mr. Buchanan and Mr. McCormick addressed that in their evidence.[33] Trees will be removed in the Panhandle, where necessary, and succession planting is recommended in the Commemoration Plan.

88. From a cultural heritage perspective, there is simply no credible evidence that any of the trees in the Panhandle are part of a Dunington-Grubb designed landscape – there is nothing more than speculation and inuendo from various witnesses called by SORE and the Town on this issue.

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[32] Exhibit 2.1, Rivard Statement, Tab 16, p. 639, at 648, paras. 47, 48, 49
[33] Exhibit 2.1, Buchanan Reply Statement, Tab 9, pp. 340-344 and 373-377

89. It is clear that there is no comprehensive landscape plan prepared by Dunington-Grubb for the former estate; meanwhile, there is evidence that many other landscape firms and gardeners worked on the property and that the species of vegetation planted on the property was not unique to Dunington-Grubb.

90. It is also noteworthy that in the list of heritage attributes in the designation by-law for 144 John there is specific reference to “mature trees and plantings”, but there is no similar attribute for either 200 John or 588 Charlotte.[34]

91. There is reference in the designation by-law for 200 John Street to “surviving elements of the Dunington-Grubb landscape”, but no credible evidence that any of the trees within the Panhandle would fall within that vague description – one that the Town could have clarified either at the time of designation or through an amendment to the designation by-law, but failed to do so. Instead, the Town relies on a map produced by Dr. Letourneau for a CRB hearing that never happened, one that was not appended to the by-law, and one which Dr. Letourneau says, to his knowledge, was not even endorsed by Town Council as an accurate reflection of the designation by-laws Council enacted.

92. Further, even if one were to consider the trees in the Panhandle as forming part of a Dunington-Grubb landscape, the same would equally apply to any access through 144/176 John, which is all part of what Mr. Stewart characterized as the “shady open grove”. In that circumstance, it was Mr. McCormick’s and Ms. Rivard’s opinion that it would be preferable to limit the impacts to the eastern edge of that area, rather than through the middle of the two “landmark” properties of 144/176 John.

[34] Exhibit 1.1, Designation By-law 144 John Street East, Tab 29, p. 1033

- Potential Impacts to Adjacent Properties

93. The impacts of the proposed subdivision were considered in the context of the heritage attributes of 144/176 John: The adjacent properties were considered in the Wallace Heritage Impact Assessments; impacts on adjacent properties were considered in the witness statements of Leah Wallace, Tim McCormick and at Appendix C to Ms. Rivard's witness statement.[35] Impacts on adjacent properties were considered in the oral evidence of Leah Wallace, Tim McCormick and Meaghan Rivard.

94. There are two key heritage attributes at 176 John to be considered, the Sunken Garden and the Rand Mansion. In terms of the Sunken Garden (including the elliptical driveway) – we heard from Mr. Stewart that the elliptical driveway has been there in some form since the mid-19th century – certainly pre-dating Dunington-Grubb's involvement. The function of the original elliptical driveway in front of 176 John no longer exists and has been subject to many alterations from the original, including new surface parking areas at 176 John. The full extent of the elliptical driveway was not even maintained through the severance initiated by the Rand family that created the Panhandle driveway, and although the current driveway utilized the creek crossing there was no evidence that this was a deliberate attempt at 'sympathetically' incorporating the feature for heritage conservation purposes.

[35] Exhibit 1.4, Wallace 2020 HIA, Tab 78, p. 534, at 602, 603; Exhibit 1.4, Wallace 2022 Addendum HIA, Tab 80, p. 812, at 828, 829; Exhibit 2.1, Wallace Witness Statement, Tab 10, p. 381, at paras. 160, 177, 228, 229, 233; Exhibit 2.1, Wallace Reply, Tab 11,p. 479, at paras. 5, 30, 31, 111; Exhibit 2.1, McCormick Witness Statement, Tab 14, p. 560, at paras. 90, 91; Exhibit 2.1, McCormick Reply, Tab 15, p.607, at 608, paras. 7, 8, 9; Exhibit 2.1, Rivard Witness Statement, Tab 16, p. 639, Appendix C, p. 667, 668

95. The proposed access road through the Panhandle also has no apparent impact on the Rand Mansion, the exterior of which was extensively modified to accommodate the conversion of the facility into a residential training centre.[36] The issue of potential impact on the Rand Mansion from vibration has been raised by some witnesses, including Dr. Letourneau. A vibration assessment was not required by the Town as a complete application requirement and the construction of a new shared access road through 144/176 John between the Rand Mansion and the Sheets House and Coach House could, likewise, potentially have some vibration impact on the buildings. Regardless, if necessary, a vibration assessment could be prepared as a condition of approval.

96. 210 John is not designated under the *OHA* and is not otherwise a "*protected heritage property*" and therefore does not engage any policies that require an evaluation of impacts on adjacent heritage properties. Meanwhile, there is no reference to views either to or from the Panhandle in the designation by-law for 200 John Street, nor in the Town's Official Plan and, in any event, there is a significant hedge separating the properties near to John Street. Also, the existing house on 210 John Street is located a substantial distance of about 60 m from the mutual property line. Notwithstanding, potential impacts to this property were reviewed within the Wallace Heritage Impact Assessment and statement.[37]

[36] Exhibit 1.4, Letourneau CHER, Tab 82, p.1355, at 1386

[37] Exhibit 1.4 Wallace 2020 CHER, Tab 78, p. 534, at 590, 591, 602; Exhibit 2.1, Wallace Witness Statement, Tab 10, p. 381, at 444, para. 229

- Potential Impacts to Boundary and Border Trees

97. Solmar provided the Town with what it asked for to obtain complete application status – a tree inventory and arborist report – specifically to the Town's criteria and which included the identification of boundary and border (or "off-property") trees and trees to be removed to accommodate the proposed redevelopment. That information was updated in March 2022 with the new plan.

98. To ensure accuracy, Solmar had station surveys completed and identified Tree Protection Zones (**"TPZs"**) in key areas, including in relation to the Panhandle boundary and border trees. With those station surveys and the application of ISA TPZs, potential impacts to trees can and have been assessed at this stage.

99. The approach of generally using the ISA standards for determining TPZ, but dripline in some locations, was also in accordance with the agreed statement of facts among the arborists.[38] Along the 200/210 John Street East boundary to the pinch point, the evidence of both Mr. Kuntz and Mr. Buchanan is that there would be no impact on boundary and border trees on the McArthur property.[39] Within the pinch point and around the southwest corner of the McArthur property, there would be no impact to Trees 36A, 33B, 32B, 28B and 29B based on the TPZs.[40]

100. For Tree 34B, Solmar asked for McArthur's consent to injure Tree 34B, but consent was denied, so alternative alignments for the Panhandle access were considered – and, as mentioned, it was determined by Mr. Buchanan that the 4m offset would be appropriate

[38] Exhibit 1.8, Agreed Statement of Facts – Arborists, Tab 181, p. 1011
[39] Exhibit 5.1, Kuntz report, Figure 1, Tab 3, p.32, at 48
[40] Exhibit 4.2, SORE Visual Evidence, Map 2, Tab 17, p. 333

to protect that tree, recognizing that by applying ISA standards he determined the TPZ for that tree to be 3.6 m.

101. Mr. Kuntz, who used a different approach, calculated the exact same TPZ for Tree 34B; namely 3.6m – which he identified as a “minimum”. Admittedly, the other arborists identified a larger TPZ for Tree 34B, but greater weight should be given to the evidence of Mr. Buchanan, recognizing that he is most familiar with the Subject Lands and 210 John Street, including Tree 34B, being the arborist for both Solmar and the McArthurs; recognizing that Mr. Kuntz as the arborist witness for the McArthurs identified the same TPZ based on a different approach; and given that Mr. Ormston-Holloway was unable to participate in the hearing and be subject to cross-examination, so his untested written evidence should not be given the same weight.

102. For all of the above reasons, having considered the matter from a number of disciplines and perspectives, the proposed Panhandle access has clearly been demonstrated to be feasible, but would of course be subject to more detailed design.

103. Notably, despite the Town’s submission that “there can be no road in the Panhandle”, after having heard all of the evidence that preceded him, Mr. Palmer advised that he had not ruled out Solmar’s proposed Panhandle access.

Access - Emergency Access

104. The Charlotte Street access is shown on all three plans as a potential option for emergency access. The Tribunal heard that a 6m width is generally required for emergency access, but also heard from Mr. Arnott about the potential to seek relief from the Town’s Fire Chief for any minor deficiency.

105. With respect to trees 79 and 80, there may be a small encroachment of an emergency access into the dripline,[41] but the evidence of Mr. Buchanan is that no adverse impacts are anticipated, particularly recognizing the prior use of this area for a driveway access for 588 Charlotte as a residential use and the prior construction activities and existing development a short distance to the north on the south side of Weatherstone Court. Tree 81, the horsechestnut, may need to be removed to accommodate the access, but there is no particular significance to that tree and recognizing that, at least as of December 2023, Town Council was prepared to allow a full primary access to be constructed at that location.

106. Thus, a Charlotte Street emergency access is clearly feasible.

CULTURAL HERITAGE CONSERVATION

Requirement for a Balanced Approach

107. According to Mr. Stewart, “redevelopment is the vehicle to conserve this important site”. He also agreed that “a viable long-term use is required for the sustainable conservation of any heritage resource” and that “conservation needs to be approached in a holistic and balanced manner, considering (but not limited to) heritage, planning and economic factors”.

108. The principles that heritage conservation needs to be approached in a balanced manner and that the financial implications on the landowner is a relevant and appropriate consideration are ones that permeate through the caselaw. In *St. Peter’s v Ottawa*, in

[41] Exhibit 2.1, Schaeffers Site Servicing Plan, Tab 26, p. 877

dealing with a demolition application made under the *OHA*, the Supreme Court of Canada held as follows:

> "The Ontario Heritage Act was enacted to provide for the conservation, protection and preservation of the heritage of Ontario. There is no doubt that the Act provides for and the Legislature intended that municipalities, acting under the provisions of the Act, should have wide powers to interfere with individual property rights. It is equally evident, however, that the Legislature recognized that the preservation of Ontario's heritage should be accomplished at the cost of the community at large, not at the cost of the individual property owner, and certainly not in total disregard of the property owner's rights." [emphasis added][42]

109. Similarly, in *Birchgrove Estates Inc. v Oakville*, the Board stated the following:

> [20] … Although the specific language varies a bit, the similarity of intention is clear: heritage conservation is a multi-disciplinary process and, where the heritage property or structure is intended to remain in private ownership, then the needs, challenges, and limitations of the owner form fair and legitimate consideration in the final decision. This comes into particularly sharp focus in instances where the public preference is for substantial investment in renovation, restoration and re-use and where most, if not all, of the financing for this work is expected to come from that private interest. [emphasis added]
>
> [30] While no one section of the PPS overrides others, the Board's decision must be consistent with the Provincial Policy Statement. Just as the Board cannot dismiss or disregard the direction to conserve significant heritage resources, the Board cannot dismiss or disregard the considerable emphasis and priority the Province has placed on intensification within built-up areas. The challenge before the Board is to determine if the provincial goal of intensification can be achieved while meeting the provincial goal of heritage conservation.[43]

110. More recently, in *Losani Homes v Grimsby*, the Tribunal emphasized the need for balance between heritage conservation and intensification, as follows:

> [4] This case underscores the necessary and appropriate balancing of planning issues related to preserving heritage while enabling intensification. One tempers the other, on a range of scale from full heritage protection, with no change and thus no development, to maximizing development and losing all heritage attributes. Here, the Tribunal finds

[42] Solmar Book of Authorities, Tab 11, p. 316
[43] Solmar Book of Authorities, Tab 10, p. 298, 300

> that a balanced solution is achievable that retains two heritage dwellings while also facilitating a desirable mixed-use building which helps meet today's needs.
>
> [5] … Such co-existence enables the Town to address the future without forgetting the past.
>
> [6] The Tribunal finds a "middle ground" here between the opposing views of the Applicant and the Town, not in an effort to compromise, but in accordance with heritage and intensification policies at every level: provincial, regional and local. Conserve heritage while intensifying development.[44]

111. With those principles in mind, and considering the three plans that have put before the Tribunal for consideration, it is abundantly clear that the Solmar plan represents an appropriately balanced plan between heritage conservation and other important planning policy objectives, including housing supply, intensification and efficient use of land and infrastructure.

112. By contrast, at the other end of the spectrum, the SORE plan is a completely unbalanced plan that, among other things, would require preservation and/or restoration of all heritage features *in situ* regardless of their current condition, re-creation of former heritage features that do not even currently exist, would necessitate obtaining a permanent primary road access easement through an adjacent property despite having an existing public road access, and shows no regard for the financial implications of the landowner. Regarding the latter, Mr. Stewart confirmed that, despite his statement that "a good plan for the site must be financially viable and profits must be sufficient to finance the costs of conservation and long-term management efforts", the SORE consulting team did not undertake any such financial analysis of its concept plan.

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[44] Solmar Book of Authorities, Tab 12, p. 330

Intersection of the OHA and PPS

113. Although certain heritage witnesses for the Town and SORE were of the view that demolition or relocation can or should only occur as a "last resort" and where there is "no other viable alternative", neither the *OHA*, nor the PPS, nor the Growth Plan, impose these restrictive criteria.

114. In fact, as the Tribunal heard, in another case Mr. McClelland supported the proposed demolition of the Glen Abbey clubhouse, a listed heritage attribute, where there was no obvious future use for the building, even though identified options for potential adaptive re-use had not been pursued.[45]

115. The PPS requires one to "conserve" significant built heritage resources and significant cultural heritage landscapes. The PPS definition of "conserve" speaks to actions that ensure the "cultural heritage value or interest is retained"[46] – not necessarily requiring a building or structure to be retained, but the property's cultural heritage value or interest, and that can be accomplished in various ways, including in appropriate cases through relocation or demolition and commemoration.

116. In *Hanson v Boehmer*, the Tribunal stated as follows:

> [77] That phrasing [PPS Policy 2.6.1] has given rise to two sources of confusion in Ontario. The first pertained to the verb "conserve", which led some observers to suppose that it precluded construction activity — or even that Provincial policy to "conserve heritage" involved the same hands-off, frozen-in-time approach as "conserving nature", or even "conserving food". Lawyers in another Board appeal equated it with the phrases "Saran-wrapped", and "pickled in formaldehyde".

[45] Exhibit 2.18, ERA Glen Abbey HIA Nov. 2018, p. 166; Exhibit 2.22, ERA Glen Abbey HIA Add. Nov. 2017
[46] Exhibit 1.12, Provincial Policy Statement, Tab 21, p. 1437

> [78] The second source of confusion was the assumption, by some observers, that "heritage planning" was a topic so divorced from "normal planning" that it bordered on the abstruse.
>
> [79] Those are both misperceptions. On the first point, the OHA reference to "conservation" does not mean the same as either "protection" or "preservation". The OHA refers more than once to the phrase "conservation, protection and preservation"; the statute does not define those terms, but if those three words were synonymous, there would be no need for all three to be listed in the OHA. Different words are presumed to have different meanings.[47]

117. One also needs to consider the PPS definitions for "significant" and "cultural heritage landscape" to understand the requirement in policy 2.6.1:

> "Cultural heritage landscape":
> means a defined geographical area that may have been modified by human activity and is identified as having cultural heritage value or interest by a community, including an Indigenous community. The area may include features such as buildings, structures, spaces, views, archaeological sites or natural elements that are valued together for their interrelationship, meaning or association. Cultural heritage landscapes may be properties that have been determined to have cultural heritage value or interest under the Ontario Heritage Act, or have been included on federal and/or international registers, and/or protected through official plan, zoning by-law, or other land use planning mechanisms. [emphasis added][48]

Dr. Letourneau suggested that "land use planning mechanism" may include a municipal study, but that is not credible given the word "protected" – on its own, a study does not provide any level of protection for a heritage property or landscape.

118. Meanwhile, the PPS defines "significant" in relation to cultural heritage as follows: "resources that have been determined to have cultural heritage value or interest. Processes and criteria for determining cultural heritage value or interest are established by the Province under the authority of the Ontario Heritage Act".

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[47] Solmar Book of Authorities, Tab 13, p. 361, 362
[48] Exhibit 1.12, Provincial Policy Statement, Tab 21, p. 1438

119. Thus, it is not sufficient to determine significance simply by applying criteria under O.Reg. 9/06, a regulation made under the *OHA*, but it must be determined to be significant through a "process" established under the *OHA* – that would include, for example, a municipal designation for an individual property under Part IV, a Heritage Conservation District under Part V, or a provincial designation, for example.

120. In this case, the only process under the *OHA* in relation to the Subject Lands was a designation by-law under Part IV for each property, and the designation by-laws refer to the grounds of the original estate constituting a significant cultural heritage landscape, which would include the lands that have been developed for residential development on Christopher Street and Weatherstone Court. The only identified heritage attributes for that "significant cultural heritage landscape" in relation to the Subject Lands are the heritage attributes set out in the designation by-laws.

Solmar's Balanced Conservation Approach

121. Solmar's plan appropriately conserves cultural heritage resources. It does so by striving to encourage a "sense of place" that is defined by heritage attributes and elements of the Subject Lands, by retaining, relocating, restoring and rehabilitating heritage resources where appropriate, and by mitigating impacts through commemoration where there are site constraints. Solmar's plan appropriately transitions the landscape elements of the site from a privately owned former estate to a publicly-accessible landscape. The proposed plan conserves heritage attributes through a combination of preservation, restoration, rehabilitation and commemoration.

Landscape

122. The Tribunal heard through the evidence of Mr. Stewart and Dr. Letourneau that there was extensive research in relation to Dunington-Grubb's involvement with the former Rand Estate, including the Subject Lands; this included archival research, interviews with family members, and discussion with Larry Sherk, retired archivist for Sheridan Gardens, who confirmed that all drawings had been provided to the University of Guelph and recommended review of the Royal Botanical Archives – all of which was investigated. The result of all of that research is that we have Dunington-Grubb drawings for the Pool Garden on 200 John and the Sunken Garden at 176 John, but no other plans, and no indication that any other plans ever existed. If one is going to claim that a particular feature is a "surviving element of the Dunington-Grubb landscape", that person ought to be able to prove it with solid evidence, not speculation.

123. Solmar's heritage experts are of the opinion that the "surviving elements of the Dunington-Grubb landscape" can only be considered to be those for which there is documented evidence.

124. Solmar is proposing to conserve the Dunington-Grubb designed Pool Garden landscape with restored tea house *in situ*, recognizing that at the time of the NOID and designation by-law for 200 John Street, various elements of the original design were no longer "surviving".

125. While Solmar's position is that the Axial Walkway is not extant, and further that it is not a "surviving element of the Dunington-Grubb landscape", it was a significant landscape element of the property in connecting the Rand Mansion to the Whistle Stop.

As Ms. Rivard indicated in her evidence, the connection along the Axial Walkway between the Whistle Stop, the Mound and the Pool Garden anchors the subdivision and forms a large portion of green space that presents a number of opportunities for commemoration.

126. The original function of the Axial Walkway from the Whistle Stop to the rear of 176 John is no longer viable as train service long since ended and with the severance of 200 John from 176 John in the 1990's. Also, the portion between the Mound Garden and Whistle Stop was no longer evident by the 1960's. Nonetheless, the Solmar plan proposes the Whistle Stop Walk as a key design and landscape feature of the proposed development to reflect the former Axial Walkway between the Whistle Stop and Mound Garden.

127. Mr. Lowes noted that placing the walkway in its original alignment would adversely impact the layout of the subdivision roads/lanes and blocks that would result in one residential block only having frontage on a 6 m wide lane, which Mr. Palmer acknowledged was not preferred. To address this challenge, the proposal is to place the walkway just 11 m from its original alignment. This is extremely close in the context of the site size and recognizing that the walkway is already creating something that does not currently exist and has not existed for decades; this is a clear case of balancing the objectives of cultural heritage conservation and achieving good urban design and appropriate built form relationships, which is also supported by Solmar's heritage witnesses, including Mr. McCormick.

128. Like the Axial Walkway, there is no evidence that the Mound Garden was part of the Dunington-Grubb design. Nonetheless, it is recognized as part of the landscape of

the former Rand Estate and Solmar is proposing to conserve the feature and incorporate it into the overall landscape design for the site, albeit not in its original size.

129. In restoring the Mound Garden that was once within a private estate, it is important to be cognizant of the transition to a publicly-accessible space, the details and concerns of which are set out in the Stantec Mound Memo.[49] Solmar's proposal is as illustrated in its landscape plans.

130. A long-term Landscape Management Plan and a Conservation Plan is proposed to be part of the conditions of draft plan approval to provide the necessary stewardship of the heritage attributes of the Subject Lands.[50]

Buildings

131. All cultural heritage witnesses support demolition of the Calvin Rand Summer Home except the ERA witnesses, even though their research acknowledges that the building underwent significant alterations, that Calvin Rand did not live in the house at the time that he founded the Shaw Festival, and given the evidence of significant deterioration in the physical condition of the building.

132. The Calvin Rand Summer Home has undergone alterations that impact the heritage integrity of the structure.[51] Further, significant costs and effort would have to be expended to upgrade a building of dubious merit to simply be safe.

[49] Exhibit 1.4, Stantec Mound Memo, Tab 101, p. 224
[50] Exhibit 2.1, McCormick Witness Statement, Tab 14, p. 587, para. 112, Exhibit 2.9A, Item 21
[51] Exhibit 2.1, Rivard Witness Statement, Tab 16, p. 639, at 652, para. 69; Exhibit 2.1, Shoalts Reply, Tab 13, p. 551, at para. 7

133. As part of the former estate, the Carriage House was an accessory building to the main house on 176 John. 200 John has since been severed from 176 John, and the surrounding context has and will continue to change significantly.

134. Ms. Wallace's evidence was that the building is not worthy of retention – she does not believe it has cultural heritage value or interest for its design or physical value and its historical association with the main house at 176 John ceased at the time of the severance. Ms. Rivard also supports demolition. In her oral evidence, she indicated that the Carriage House has a story to tell, but its physical form is not necessary to tell its story. The retention of the Carriage House *in situ* surrounded by modern development with its connection to hobby farm or country estate buildings having been lost does not provide a fulsome understanding of the building's former use, context and connection.[52]

135. Both the Town and SORE plans contemplate retention and adaptive reuse of the Carriage House for residential purposes, but neither had considered the cost of doing so, and are proposing to have the building back onto, rather than front onto, an internal road.

136. Meanwhile, consider the evidence of Mark Shoalts – the building is too large to relocate off site without dismantling, as that was considered; and the cost to update the building for residential purposes would exceed $1 million.[53] Mr. Shoalts indicated that the work required to restore the Carriage House, the size of the building and the ongoing maintenance that it will require makes it imperative that there be a productive end use for the building.[54]

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[52] Exhibit 2.1, Rivard Witness Statement, Tab 16, p. 639, at 652, para. 70
[53] Exhibit 2.1, Shoalts Reply, Tab 13, p. 551, at 554, para. 12
[54] Exhibit 2.1, Shoalts Witness Statement, Tab 12, p. 517, at 521, para. 31

137. Vice-Chair Tousaw asked some witnesses whether they thought that use of the Carriage House for a community use might be appropriate. Most of the witnesses agreed that, in principle, that could be a potential use; however, there would still be a significant cost for restoring the building for that purpose, not to mention ongoing maintenance costs.

138. As confirmed by the Supreme Court of Canada in *St. Peter's*: "the preservation of Ontario's heritage should be accomplished at the cost of the community at large, not at the cost of the individual property owner". In this case, the Town wishes to ensure public access to the open space and key heritage features of the Subject Lands; thus, if the Carriage House were to be retained for a community use with public access, that would clearly be for the benefit of the community at large, but solely at the expense of the landowner.

139. It would be different if the Town was prepared to accept the park as public parkland; in that case, the Carriage House could potentially be relocated to a public park, in which case the cost of restoration could be eligible for development charge credits in favour of the landowner, and ongoing maintenance costs would be the responsibility of the Town.

140. The location or setting of the Bath House is not noted as a heritage attribute or a significant part of the property within the statement of significance in the designation by-law for 200 John.[55] Further, the physical setting for the Bath House has significantly changed, and will significantly change further with the proposed redevelopment, further losing its sense of "seclusion". Mr. Stewart acknowledged that the former landscape

[55] Exhibit 1.1, Designation By-law 200 John Street East, Tab 31, p. 1045

setting and views for the Bath House had been degraded as a result of site alterations over the last several years.

141. That sense of seclusion and the location of the Bath House set among the trees could be better achieved through relocation, and still located in close proximity to the Pool Garden area, which is appropriate given its former use as a change house for pool users. Through relocation, the restored Bath House would support the commemorative approach to the Pool Garden and anchor the connection to the pool area. Relocation of buildings within the Subject Lands to a setting that enhances an understanding of their history and provides a functional use is an appropriate conservation measure.[56]

142. *Birchgrove Estates Inc. v Oakville* is a case involving appeals of heritage permit applications for relocation of heritage buildings. In that decision, then Vice-Chair Schiller found that key heritage attributes would be conserved through the relocation of a building to another site "around the corner" and that in evaluating the appropriateness of the relocation of a heritage building the following were relevant considerations: 1) the original context of the building location had significantly changed; and 2) the proposed relocation was a short distance away from the original location.[57]

143. All of Solmar's heritage witnesses support demolition of the Stables, as did Ms. Horne in her April 2023 report and Dr. Letourneau in his written evidence, subject to conditions.

[56] Exhibit 2.1, Rivard Witness Statement, Tab 16, p. 639, at 651, para. 67
[57] Solmar Book of Authorities, Tab 10, p. 303, 304

144. Mr. Shoalts estimated the cost to conserve and upgrade the building for modern residential development would be in the order of $2.5 million.[58]

145. Notwithstanding what he said in response to questions from Ms. Lyons, Dr. Letourneau did not rely on potential contamination under the Stables as a reason for recommending demolition – his original CHER and addendum for 588 Charlotte did not identify the Stables as a heritage attribute. In his addendum he said that the additional research "supports the original finding that the stables and barns have been heavily modified and are no longer legible or representative example of a farming building in a condition which would have been recognizable during the period of the Rand ownership".[59]

146. In her April 2023 report, Ms. Horne recommended demolition of the Stables due to the substantial alterations that had occurred over time, which diminished its relationship to the former estate. In Ms. Horne's report, potential challenges associated with environmental remediation was only one of multiple factors supporting her recommendation for demolition, in which she stated as follows: "the setting and context for the farm complex has been diminished over the years. … In addition, the visible evidence of farming practices on 588 Charlotte Street has been lost."[60]

147. In its December 15, 2023 resolution, Town Council indicated that it would support development that "Conserves cultural heritage as per Ms. Horne's report" – thus, given that the report recommended demolition of the Stables, subject to conditions, Town

[58] Exhibit 2.1, Shoalts Reply, Tab 13, p. 551, at 553, 554, para. 10
[59] Exhibit 1.4, Letourneau 2019 Add., Tab 83, p. 1439, at 1467
[60] Exhibit 1.1, Horne report, Tab 17, p. 111, at 194

Council's position at this hearing is to support demolition subject to the conditions identified in Ms. Horne's report.[61]

148. Solmar's heritage witnesses support demolition of the two sheds, and recognize that there is no obvious use for these structures – also, they originally formed part of a farm complex for which the setting and context has, by all accounts, been significantly altered.

149. Dr. Letourneau's original CHER and subsequent addendum did not identify either of the two sheds as a heritage attribute. In his subsequent CHER prepared for the CRB, he identified only one of the two small sheds as a heritage attribute based on design; however, he had already considered the design of all buildings on 588 Charlotte initially and determined as follows: "The property has been heavily modified and the form and function of the original stable, horse barn, chicken coop, and granary [the latter two being the two small sheds] is no longer legible. The property is not rare or unique example of significant construction method."[62]

TRANSPORTATON

External Road Network

150. It is agreed among Mr. Elkins, Mr. Arnott and Mr. Bumstead that capacity constraints at the John Street / Niagara River Parkway intersection are limited to summer weekends and Mr. Bumstead confirmed that it is typical for traffic impact assessments for

[61] Exhibit 1.8, Council Resolution of Dec. 15, 2023, Tab 163, p. 221, at 224
[62] Exhibit 1.4, Letourneau 2018 CHER, Tab 82, p. 1315, at Table 4, p. 1427

residential developments to look at peak hours through the entire year, rather than in specific peak seasons.

151. Based on WSP's intersection analysis undertaken by Mr. Bumstead, even without proposed site traffic, the Saturday weekend peak at that intersection has a poor level of service (F), lengthy delay and a volume to capacity ratio exceeding capacity. Notwithstanding this existing condition, there is no moratorium on development elsewhere until potential improvements are undertaken at this intersection, and Mr. Bumstead agreed that if improvements were made at that intersection it would certainly benefit others beyond simply the Subject Lands.

152. Mr. Arnott stated the following in his witness statement:

> "Objectively, the responsibility to implement any improvement measures identified [at that intersection] would be shared between the two agencies [being the Town and Niagara Parks Commission] since a broad array of sources of traffic volumes are contributing to any identified mitigating measures." [emphasis added] [63]

> "BA Group's review of the trip generation conditions (accounting for a range in unit count) and our understanding of traffic distribution / assignments in the general area (including the review of existing traffic patterns and local experience of traffic patterns) indicates that the relative impact of the 50 to 70 peak hour, peak direction trips distributed across the municipal / regional and Niagara Parks Commission street network would be modest, and readily accommodated by the general street network without undue impact." [64]

153. It is clear that any improvements that may be made at the intersection of John Street / Niagara River Parkway are not triggered by the proposed development and any benefit from such improvements would certainly go well beyond the Subject Lands; on

[63] Exhibit 3.1, Arnott Witness Statement, Tab 10, p. 203, at 220
[64] Exhibit 3.1, Arnott Witness Statement, Tab 10, p.203, at 253 (Attachment C)

that basis, any improvements at that intersection would clearly not constitute a "local service" relative to the Subject Lands.

154. That is important given the restriction in subsection 59(1) of the *Development Charges Act*, which stipulates that "a municipality shall not, but way of a condition or agreement under section 51 or 53 of the Planning Act, impose directly or indirectly a charge related to a development … except as allowed in subsection (2)", which pertains to "local services".[65]

155. Condition 1 of the Town's proposed draft plan conditions for transportation matters (Exhibit 3.7) would require that Solmar "pay the full cost" of a transportation study of the John Street / Niagara River Parkway intersection to confirm required/recommended improvements. This proposed condition would therefore impose a charge for what is clearly not a local service and, consequently, would contravene subsection 59(1) of the *Development Charges Act*. Accordingly, the Tribunal must reject this proposed condition, consistent with the evidence of Mr. Elkins, as well as the related proposed Condition 2.

156. The Town also proposes Condition 3: "That the Owner shall agree in the subdivision agreement that all required improvements in accordance with the conclusions of the study shall be completed in full to the satisfaction of the Town and NPC prior to the occupancy of any residential unit."

157. There is no legitimate transportation rationale for this proposed condition, particularly given that capacity constraints at the intersection are limited to summer weekends, given that there is no indication that the agencies responsible for the

[65] Solmar Book of Authorities, Tab 1, p. 6

intersection are doing anything to address the existing condition, and given that there is no evidence that any other developments that would generate traffic that would use this intersection are being delayed until any potential improvements are undertaken.

158. Although Mr. Arnott said in oral evidence that he supported Condition 3, nowhere in either his witness statement or his reply witness statement did he recommend that the proposed development not proceed in advance of improvements to this intersection.

159. Also, Mr. Arnott advised that he lives on the Niagara River Parkway close to this intersection and acknowledged that he would be within the pool of road users who would benefit from improvements at this intersection – thus, given his acknowledged personal interest in seeing these improvements made, Mr. Arnott's opinion in relation to Condition 3 should be given no weight.

Internal Road Network

160. Mr. Arnott advised that the proposed widths of private roads and laneways on the Solmar plan are generally acceptable, but recommends some flaring at certain corners that could be addressed through a draft plan condition / redlining of the plan and believes that the proposed revisions would not significantly affect Solmar's plan.

161. Mr. Arnott also suggests a 7m setback is required from rear laneways to accommodate a 6 m parking space length and 1m setback for "parking areas" in section 6.40(i) of Town ZBL. The Tribunal heard from Mr. Lowes in reply that he does not share Mr. Arnott's interpretation of this section of the Town's Zoning By-law; however, neither of these witnesses have consulted with the Town's zoning/building staff. If Mr. Arnott's interpretation is correct, rather than unnecessarily identifying a further 1 metre setback,

which would essentially make the rear parking space 7 m in length, the zoning by-law amendment (**"ZBA"**) should exempt section 6.40(i), as recommended by Mr. Lowes.

TREE PROTECTION

162. Outside of the Pool Garden area, which is recognized as a Dunington-Grubb designed landscape, the on-site trees do not constitute heritage attributes for the reasons stated. Notwithstanding, there are various trees that Solmar is proposing to retain – including the two mature oaks near Charlotte Street and, depending on impacts to the southern heritage wall, the trees adjacent to the wall, with the exception of the hazard tree.

163. The balance of any tree removal would be expected to proceed in the normal course in accordance with section 6.33 of the Town's OP[66] and be reflected in a Tree Management Plan to be prepared as a draft plan condition, once final grading details are available. This timing is not unlike what was approved for 144/176 John through OPA 51 in 2011, when it was identified that a tree preservation plan would be addressed at the site plan approval stage.[67]

SERVICING

164. As confirmed by Mr. Tchourkine, it is feasible to connect the proposed development to the existing municipal sewage and water services within the adjacent public roads.

165. As confirmed by Ms. Kurtz, several engineering issues that the Town originally had were resolved through additional information provided by Schaeffers, and several

[66] Exhibit 1.17, Town OP (2017), Tab 45, p. 148, at 333
[67] Exhibit 1.17, OPA 51, Tab 52, p. 455, at 459, 460

outstanding engineering items are referenced in proposed draft plan conditions, which Ms. Kurtz confirmed are standard.

166. Regarding stormwater management and drainage matters, the Tribunal has the evidence of Mr. Tchourkine and Mr. Shahbikian based on the design and analysis completed to date. Meanwhile, both NPCA and the Region have provided draft plan conditions regarding SWM and drainage, and restoration of on-site watercourses and buffers, and NPCA is requiring a revised floodplain study to their satisfaction.

167. Mr. Scheckenberger expressed concerns regarding potential downstream impacts, particularly given existing conditions in the John Street ditch west of the Subject Lands; however, improvements to that drainage ditch are the responsibility of the Town/NPCA and, in any event, he confirmed that the final design of the SWM pond and any related stormwater infrastructure will be subject to review and approval by the Town.

NATURAL HERITAGE

168. Each of the public agencies have a role to play in the protection of natural heritage; in this case, the Region advised that it had no objection to the proposed development and provided a set of draft plan conditions. As a participant in the proceeding, the Region was provided with copies of all witness statements and revised plans. The Region was given an opportunity to provide an updated participant statement, which could have included updated comments and/or draft plan conditions, but it did not do so.

169. Likewise, the NPCA was a party to the proceeding, but shortly before the hearing it withdrew its issues and party status and provided a series of proposed draft plan conditions that have been accepted by Solmar – which includes, among other things,

conditions related to the proposed removal of a portion of the existing wetland and compensation in the form of a re-created wetland that would represent a benefit to the One Mile Creek watershed. Meanwhile, the Town retained a natural heritage witness who attended the meeting of the ecology experts, but then never filed a witness statement or appeared at the hearing.

170. Thus, the only evidence in opposition on ecology issues was from SORE. Among the concerns identified by Mr. Stephenson was whether the natural heritage studies prepared by Mr. Boucher had complied with the Region's EIS guidelines; however, the Region received the Savanta / GEI reports and Regional environmental planning staff advised of no objections. Meanwhile, Ms. Bannon asserted in her witness statement that the wetland constituted a KNHF/KHF in the Greenbelt Plan, but acknowledged that the criteria in the Greenbelt Technical Paper to assess non-provincially significant wetlands smaller than 0.5 ha requires input from a hydrogeologist (or equivalent) and she did not consult with one in forming her opinion. Meanwhile, Mr. Boucher and Mr. Davies did undertake this analysis and determined that the wetland does not meet the criteria.

171. Also, only that portion of the wetland that is within the Greenbelt NHS is subject to the requirement of a 30 m buffer; and the Technical Guide specifically states as follows: "if a KNHF straddles the boundary of the NHS, the portion of the KNHF that is located within the NHS is subject to the natural features policies of the Plan while the portion that is located outside the NHS is not". Thus, the 30 m buffer requirement in the NHS clearly does not apply in the urban area and Mr. Boucher has provided evidence in support of a 5 m buffer in this location, which is reflected by NPCA in their proposed draft plan conditions.

172. If any trees or structures are determined to be habitat of endangered bat species, any removal of such habitat will be subject to a permit from the MECP, outside of this proceeding. We heard from Mr. Stephenson that this process can be very time-consuming – thus, it makes sense to determine whether the proposed development can proceed first and, if so, in what general form before embarking on that permitting process.

URBAN DESIGN

173. The Tribunal has expert evidence from Ms. Jay that the proposed development was supported by an urban design brief, which considered the Region's urban design guidelines, and that the resulting development represents good urban design.

174. All planners agree with the proposed front yard setbacks, including for garages to be setback further than the main front wall, and Mr. Palmer specifically indicated general support for the proposed development standards in Solmar's proposed ZBA.

URBAN / AGRICULTURAL INTERFACE

175. An outstanding issue between Solmar and SORE is whether there should be lots backing onto the agricultural area as proposed by Solmar (and accepted by the Town), or separated by a publicly accessible walkway, as proposed in the SORE concept plan.

176. The Tribunal should accept Mr. Colville's evidence that an intervening trail is not necessary and would simply bring more people adjacent to the vineyard with less control; he also noted that the interface condition proposed by Solmar is one that already exists in the immediate area and elsewhere in the Town at the urban/agricultural edge, which has not resulted in adverse impacts on the existing vineyard. We also note that it was

the Region of Niagara that initially requested the assessment report prepared by Mr. Colville and the Region is not asking for an intervening publicly accessible trail.

LAND USE PLANNING

177. There are two key planning issues in dispute – density and the notion of "comprehensive planning".

178. Mr. Palmer commented in his witness statement as follows: "It is my opinion that 'optimization' is to be interpreted to mean that the development opportunity on any given site should be designed to "maximize development yield" to promote the efficient use of land and infrastructure and establish a more compact built form. Importantly, however, the concept of optimization must also be understood and balanced against other critical elements established within the Growth Plan (2020) and all of the other relevant planning policy frameworks".[68]

179. There are two key density policies in the Town's Official Plan – policies 6A.4.4(k) and 9.4(4); and those policies are to be considered in the context of Policy 9.3.1.[69] Policy 9.4(4) is a policy of general application with flexibility; with Policy 6A.4.4(k) more specific to intensification area/sites, which applies to the Subject Lands – with a maximum density of 30 uph, independent of unit type.

180. Mr. Lowes' evidence in reply was that there is no minimum percentage of townhouses that are permitted in a Low Density Residential designation and that a residential development could consist of a majority or even all townhouses without

[68] Exhibit 3.1, Palmer Witness Statement, Tab 2, p. 31, para. 47
[69] Exhibit 1.17, Town OP (2017), Tab 45, p. 148, at 352 (6A.4.4(k)); at 394 (9.4(4)); at 380 (9.3.1)

requiring an OPA – that interpretation is supported by other residential developments in the Town in Low Density Residential or Established Residential designations, which have a majority of townhouses and did not require any site-specific OPA.

181. Although the proposed development consists of a mix of unit types, with the majority being single and semi-detached units, Mr. Lowes' reply evidence is particularly relevant in that it speaks to the appropriate density and addressed what Mr. Palmer referred to as expectations about the density of development within Low Density Residential areas.

182. If a medium density residential type of development, such as townhouses, can be the majority or sole use within a Low Density Residential designation, with a general maximum density of 30 uph (or possibly more) under Policy 9.4(4), and if it is recognized that development on an intensification site can have a density of 30 uph under policy 6A.4.4(k), it is reasonable to expect that a residential development on a site such as the Subject Lands can accommodate a density equivalent to 30 uph. That density translates to 196 units, and that is exactly what Mr. Lowes is recommending as the maximum number of units to be permitted on the Subject Lands in the draft ZBA at Exhibit 2.8A.

183. Notably, this is not a case where achieving the maximum density is proposed at the expense of open space or amenity area; on the contrary, even according to Ms. Anderson's calculations, the proposed Solmar development would achieve a generous 21% open space, which is significantly greater than the maximum 5% of land to be set aside for park or other public recreational purposes under policy 6.22 of the Town's Official

Plan,[70] or even the maximum 15% of land to be set aside for park or other public recreational purposes that could be required with the alternate rate for residential development under sections 42 or 51.1 of the *Planning Act.*[71]

184. The other key planning issue raised, largely by SORE, is one of "comprehensive planning". However, there is no policy in the in-force Town OP that requires a comprehensive plan for the Subject Lands together with the adjacent properties at 144/176 John. Meanwhile, the Town's OP does have a requirement for a comprehensive plan for adjacent properties that applies elsewhere in the Town, in Queenston.[72]

185. Similarly, there's no requirement in OPA 51 for a hotel development on 144/176 John to be "comprehensively planned" in terms of shared access/infrastructure with 200 John / 588 Charlotte – simply that impacts on adjacent properties be considered and minimized.

186. Mr. Palmer agrees that the Solmar plan represents a "comprehensively planned neighbourhood", and that compatibility is achieved with surrounding lands, stating as follows: "the proposed development has carefully considered issues of interface and transition with existing development in proximity. It includes an array of appropriate distance separations, open spaces, landscaping and buffering which maximizes privacy and minimizes the impact on existing lower density residential uses".[73]

[70] Exhibit 1.17, Town OP, Tab 45, p.148, at 188
[71] Exhibit 1.11, Planning Act, Tab 9, p. 433, at 482
[72] Exhibit 1.17, Town OP (2017), Tab 45, p. 148, at Policy 6.32.1 p. 195
[73] Exhibit 3.1, Palmer Witness Statement, Tab 2, p.14, at 42, para. 72

VI Relief Requested

In respect of the *Planning Act* applications, Solmar requests:

187. That the Tribunal approve the OPA,[74] as proposed, regardless of its decisions on the ZBA and draft plan of subdivision.

188. That the Tribunal approve the ZBA, in principle, and withhold its final Order for 30 days to enable Solmar and the Town to prepare a final ZBA, subject to the Town/Solmar requesting an extension of time should that be necessary.

189. That the Tribunal grant draft plan approval based on the latest plan subject to the conditions generally as set out in Exhibit 2.9A, but withhold its final Order for 30 days to enable Solmar and the Town to prepare a final set of draft plan conditions, again subject to a potential extension of time should that be necessary. For clarity, this period of time is not intended to provide an opportunity for the Town to identify entirely new draft plan conditions.

190. If the Tribunal is not prepared to approve the applications in their current form as a result of a concern about cultural heritage impacts from the proposed Panhandle access road alignment at the “pinch point”, rather than issuing a final Order dismissing the appeals, we would respectfully request that the Tribunal give direction and time for the Applicant to pursue any necessary applications to facilitate access to the subdivision generally in accordance with the westerly alignment of the Panhandle access as presented by Solmar. Further, in that circumstance, we would request that if Solmar were

[74] Exhibit 1.1, Draft Official Plan Amendment, Tab 13, p. 77

to proceed with those applications that this Panel of the Tribunal would be seized of any appeals arising from such applications.

In respect of the *OHA* Applications, Solmar requests:

191. That the Tribunal Order that the Town consent to the requested alterations and demolitions/removals for 200 John Street and 588 Charlotte Street, subject to conditions where appropriate, and make certain findings, as set out more specifically below.

200 John Street East

192. That the Tribunal determines that the following landscape features are not part of the "surviving elements of the Dunington-Grubb landscape" and that consent is not required under the *Ontario Heritage Act* to alter or remove such landscape features:

a. The trees and plantings within the panhandle on 200 John Street East;
b. The trees along the boundary wall on 200 John Street;
c. The Axial Walkway;
d. The circular mound garden;
e. The trees adjacent to the Bath Pavilion; and
f. The trees within the naturalized area surrounding the whistle stop.

193. In the event the Tribunal determines the attributes above to be part of the "surviving elements of the Dunington-Grubb landscape", that the Tribunal order that the Town consent to:

a. The proposal to remove trees and plantings and construct a road and pedestrian pathway through the panhandle on 200 John Street East;

b. The proposal to construct a new Axial Walkway on 200 John Street East with a new alignment;
c. The proposal to restore the mound *in situ*;
d. The proposal to remove the trees adjacent to the Bath Pavilion; and
e. The proposal to remove the trees within the naturalized area surrounding the whistle stop.

194. That the Tribunal order that the Town consent to:

a. The proposal to remove portions of the swimming pool garden to accommodate the access road;
b. The proposal to remove the concrete swimming pool; and
c. The proposal to remove the footings from the original pergola in the swimming pool garden.

195. That the Tribunal order the Town to consent to the proposal to remove a portion of and widen the boundary wall opening and deconstruct and reconstruct the brick pillars at the entrance of 200 John Street.

196. That the Tribunal order that the Town consent to the demolition of the Calvin Rand Summer House, subject to conditions relating to documentation, and where appropriate, salvage and reuse.

197. That the Tribunal order the Town to consent to the relocation of the Bath Pavilion generally in accordance with in the Solmar Landscape Plan dated February 28, 2024.[75]

[75] Exhibit 2.2, Solmar Landscape Plan, Tab 21, p. 174

198. That the Tribunal order the Town to consent to the demolition of the Carriage House subject to conditions relating to documentation, and where appropriate, salvage and reuse.

588 Charlotte Street

199. That the Tribunal order that the Town consent to the demolition of the Stables/Main Residence, subject to the conditions set out in the April 2023 Horne report relating to documentation and salvage.

200. That the Tribunal order that the Town consent to the demolition of the two small sheds.

201. That the Tribunal order that the Town consent to the relocation of the hipped roof shed to be adaptively reused to house equipment for the proposed pump station generally in accordance with in the Solmar Plan dated February 28, 2024.[76]

202. That the Tribunal order the Town to consent to the proposal to remove a portion of and widen the boundary wall opening and deconstruct and reconstruct the brick pillars at the entrance of 588 Charlotte Street.

[76] Exhibit 2.2, Solmar Landscape Plan, Tab 21, p. 172