

# Undelineated Built-Up Areas

A gap that could undermine the Growth Plan

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*This policy report is not legal advice.*

## Executive Summary: The Growth Plan at Risk

In Ontario's Greater Golden Horseshoe (GGH), the province has enacted policies in the Growth Plan for the Greater Golden Horseshoe (**Growth Plan**)<sup>1</sup> and the Greenbelt Plan<sup>2</sup> to curb sprawl and encourage the development of a mix of affordable housing options in appropriate locations. One of the most important policies in the 2016 proposed revision of the Growth Plan requires upper- and single-tier municipalities to direct 60 percent of new annual residential development to their "Built-up Areas" (BUA), which are areas designated by the province and intended to cover the "developed urban area" for the purpose of measuring the achievement of the minimum intensification target.

When it first defined the BUA in 2008, the then-Ministry of Public Infrastructure Renewal created both "delineated" and "undelineated" categories, arguing that the undelineated BUA (UBUA) was not expected to be a focus for intensification, and therefore did not require a delineated built boundary for future monitoring purposes. Importantly, however, no provision in the old or proposed new Growth Plan expressly prevented municipalities from developing large-scale subdivision-style development in the UBUA, although many Growth Plan provisions should be read as restraining such development.

Likewise, while the Provincial Policy Statement (PPS)<sup>3</sup> provides valuable guidance to municipalities in the GGH, its provisions discourage, but do not expressly prevent inappropriate subdivision-style development in the UBUA, arguably even where it is unserved by existing sewage and wastewater infrastructure. By contrast, the Greenbelt Plan contains strong prohibitions against subdivision-style development within rural lands, although even it leaves some vagueness around development within or expansion of "hamlets," which are likely to be within the UBUA.

This gap, between the rationale for leaving some portions of the BUA undelineated and the reality of incomplete restraints on inappropriate development in the Growth Plan, could undermine the Growth Plan's policies and purpose. Specifically, some municipalities may approve subdivision-style development within the UBUA, counting it toward the achievement of their intensification targets, even though the development is actually traditional greenfield development outside the areas the province is targeting for intensification.

## Building Complete Communities and Terminology

At the heart of Ontario's Growth Plan and Greenbelt policies are the objectives of managing growth, building complete communities, curbing sprawl, and protecting the natural environment.<sup>4</sup> Other objectives include providing a mix of affordable and appropriate housing options,<sup>5</sup> optimizing existing infrastructure assets, and making the best use of limited resources.<sup>6</sup> The policies are premised on the idea that some guidance and oversight is needed from the province to achieve the types of growth we need, where it is best suited.

If effectively implemented, the Growth Plan and Greenbelt Plan should change the mix of development in the GGH. There should be less of what has historically been a ubiquitous form of housing, the traditional, ground-related, single-detached home, built in a previously unserved or under-served greenfield in large numbers at low densities that cannot be effectively served by transit. For lack of a less polarizing term, we use the term "**subdivision-style**" housing to refer to

this type of development. By contrast, there is a need for more compact, complete communities, with a range of housing types, from single detached, to townhouses, to midrise units, including mixed-use development. Even in areas with single detached housing, average lot sizes should be smaller. Ideally, communities will be designed in a way that supports active transportation (including walking and cycling) and meaningful opportunities to take transit.

#### “Subdivision-style Development”

When used in this paper, refers to development that is:

- primarily or exclusively residential with no mix of uses
- built in areas that were previously unserved by municipal water and wastewater services
- ground-related, meaning that only one household occupies a single land parcel
- constructed in relatively large numbers at a time (compared with a small lot severance or with building three or four infill units where only one or none existed before)

While the development of subdivision-style housing is not expressly prohibited in the Growth Plan, numerous policies, such as intensification and density targets, encourage municipalities to require more efficient use of land, whether that involves building units closer together, or accommodating more residents and jobs within a given area through a mix of detached houses and multi-unit development. The Growth Plan also encourages the containment of major development within areas where growth is deemed desirable, rather than allowing for the widespread conversion of greenfields in an un-planned manner, often referred to as “checkerboard” or “leapfrog” development, because of its tendency to lead to the expansion of developed areas in a non-contiguous fashion that requires large capital expenditures to provide infrastructure, including roads, water and wastewater to multiple subdivisions, and reduces the connectivity and viability of agricultural and natural areas.

## Land Classifications and the Built-up Area

### **Built-up Area, Designated Greenfield Area, Rural Lands**

Ontario’s *Growth Plan for the Greater Golden Horseshoe, 2006*<sup>7</sup> (**GP 2006**) created a number of land classifications to support the “[b]etter use of land and infrastructure...by directing growth to existing urban areas.”<sup>8</sup> These classifications include the BUA, the Designated Greenfield Area (**DGA**) and Rural Areas.<sup>9</sup> Each land classification is subject to different rules in terms of the type and scale of growth permitted under the Growth Plan.

Under GP 2006, the BUA included the area within the Built Boundary, which was defined by the then-Ministry of Public Infrastructure Renewal.<sup>10</sup> GP 2006 required municipalities to direct “a significant portion of new growth to the *built-up areas* of the community through *intensification*”<sup>11</sup> and specifically required that, after 2015, 40 percent of all residential development must occur in the BUAs of upper- and single-tier municipalities.<sup>12</sup>

The DGA was defined as “[t]he area within a settlement area that is not built-up area. Where a settlement area does not have a built boundary, the entire settlement area is considered designated greenfield area.”<sup>13</sup> In the DGA, GP 2006 required the achievement of minimum density targets, typically 50 residents and jobs per hectare, unless an alternative minimum was granted.<sup>14</sup>

Generally, GP 2006 required that population and employment growth be accommodated through “directing development to settlement areas...,”<sup>15</sup> which includes both the BUA and the DGA. The plan makes some provision for development outside settlement areas within Rural Areas, however, which include “[l]ands which are located *outside* settlement areas and that are not prime agricultural areas.”<sup>16</sup> With some exceptions (notably Simcoe County, which is the subject of a special chapter in the Growth Plan), development is permitted only “...where necessary for development related to the management or use of resources, resource-based recreational activities, and rural land uses that cannot be located in settlement areas.”<sup>17</sup>

The plan also provided a grandfathering exception, allowing [n]ew multiple lots and units for residential development “in rural areas in site-specific locations with approved zoning or designation that permits this type of development in a municipal official plan, as of the effective date of this Plan.”<sup>18</sup> New multiple lots mean “[t]he creation of more than three units or lots through either plan of subdivision, consent, or plan of condominium.”<sup>19</sup> The effective date of GP 2006 was June 16, 2006. This latter requirement means that, under the Growth Plan, Rural Lands that were not designated for subdivisions as of June 16, 2006, should not be designated for new multiple lots and units for residential development.

The most significant difference between the BUA and the DGA is the minimum required density of 50 residents and jobs per hectare in the DGA under GP 2006.<sup>20</sup> By contrast, neither the BUA nor Rural Lands have a minimum density.

In the Ministry of Municipal Affairs' 2016 proposed Growth Plan Amendments contained in the Proposed Growth Plan, 2016 (**GP 2016**),<sup>21</sup> both intensification and density targets were increased, with the intention of encouraging the transition to more compact, complete communities and incorporating climate change considerations more fully into the Growth Plan. Under GP 2016, upper- and single-tier municipalities would be required at the time of their next municipal comprehensive review to increase their minimum intensification target such that a minimum of 60 percent of all residential development occurring annually occurs within the BUA.<sup>22</sup> Within their DGAs, upper- and single-tier municipalities would be required to plan to achieve a minimum density target that is not less than 80 residents and jobs combined per hectare within the horizon of this Plan.<sup>23</sup>

TABLE 1 COMPARISON OF TYPICAL LAND CLASSIFICATIONS, GP 2006 / GP 2016

| <b>Policy</b>          | <b>DGA (Designated Greenfield Area: the area within a settlement area that is required to accommodate forecasted growth and is not a BUA)</b>   | <b>BUA (Built-up Area: all the land within the built boundary; where the built boundary is undelineated, the entire settlement area is considered BUA)</b>   |
|------------------------|---|--|
| Intensification target | <p><b>GP 2006</b></p> <p>Most residential development (typically 60%) occurring annually within each upper- and single-tier that does not occur in the BUA (post 2015)<sup>24</sup></p> <p><b>GP 2016</b></p> <p>A minority of residential development (roughly 40%) occurring annually within each upper- and single-tier that does not occur in the BUA (after proposed changes)<sup>25</sup></p>   | <p><b>GP 2006</b></p> <p>40% of all residential development occurring annually within each upper- and single-tier (post 2015)<sup>26</sup></p> <p><b>GP 2016</b></p> <p>60% of all residential development occurring annually within each upper- and single-tier (at time of next municipal comprehensive review)<sup>27</sup></p> |
| Density target         | <p><b>GP 2006</b></p> <p>Upper- and single-tier municipalities will be planned to achieve a density target of not less than 50 residents and jobs per hectare within their DGA<sup>28</sup></p> <p><b>GP 2016</b></p> <p>Upper- and single-tier municipalities <i>will be planned to achieve</i> a minimum density target that is not less than 80 residents and jobs combined per hectare, within the horizon of the plan<sup>29</sup></p> | <p><b>GP 2006</b></p> <p>None</p> <p><b>GP 2016</b></p> <p>None</p>  |

### **Delineated and Undelineated Built-up Areas**

While it is often referred to simply as the “Built-up Area” or “BUA,” under the current Growth Plan and the proposed amendments in GP 2016, there exist two types of BUA, namely, delineated and undelineated. While driving growth to the delineated BUA supports provincial policy objectives, driving growth to the UBUA may undermine provincial objectives.

The rationale for directing development into the BUA under GP 2006 was clearly stated as follows:

To ensure the development of healthy, safe and balanced communities, choices about where and how growth occurs in the GGH need to be carefully made. Better use of land and infrastructure can be made by directing growth to existing urban areas. This Plan envisages increasing intensification of the existing built-up area, with a focus on urban growth centres, intensification corridors, major transit station areas, brownfield sites and greyfields. Concentrating new development in these areas also provides a focus for transit and infrastructure investments to support future growth.<sup>30</sup>

Under GP 2006, the then-Ministry of Public Infrastructure Renewal was tasked with “verifying and delineating” the Built Boundary with affected municipalities.<sup>31</sup> The results are contained in a 2008 report called the “Built Boundary for the Growth Plan for the Greater Golden Horseshoe, 2006”<sup>32</sup> (**Built Boundary Paper**). In this document, the Ministry created two types of BUA, delineated and undelineated. Arguably this was not, on its face, compliant with the requirement under GP 2006 s.2.2.3.5 that the Ministry “verify and delineate” the Built Boundary under the Growth Plan, because the UBUA is, by its very nature and name, “undelineated.”

The Built Boundary Report explained that the delineated BUA includes “those settlement areas, identified in consultation with municipalities, that have full municipal services, will be a focus for intensification, or will accommodate significant future growth.”<sup>33</sup> By contrast, the UBUA is made up of “smaller, unserviced or partially serviced settlement areas, which have limited capacity to accommodate significant future growth. These settlement areas are typically small towns and hamlets.” The Ministry represented UBUs on the map as dots, on the stated rationale that “[s]ince they are not expected to be a focus for intensification, they do not require a delineated built boundary for future monitoring purposes.”<sup>34</sup>

Despite this rationale, the Built Boundary Paper states that “The built boundary consists of delineated built-up areas and undelineated built-up areas.”<sup>35</sup> Since Growth Plan intensification targets refer to development within the BUA (as opposed to just the delineated BUA) this has left a gap through which development in UBUs can arguably be counted toward a municipality’s achievement of its intensification targets.

TABLE 2 RATIONALE FOR DELINEATED AND UNDELINEATED BUA FROM BUILT BOUNDARY DESIGNATION

| <i><b>Delineated BUA</b></i>  | <i><b>Undelineated BUA</b></i>   |
|---|--|
| <ul style="list-style-type: none"> <li>• full municipal services<sup>36</sup></li> <li>• will be a focus for intensification,<sup>37</sup> or</li> <li>• will accommodate significant future growth<sup>38</sup></li> <li>• <u>part of the built boundary</u><sup>39</sup></li> </ul> | <ul style="list-style-type: none"> <li>• typically small towns and hamlets <sup>40</sup></li> <li>• not expected to be a focus for intensification<sup>41</sup></li> <li>• do not require a delineated built boundary for future monitoring purposes<sup>42</sup></li> <li>• <u>part of the built boundary</u><sup>43</sup></li> </ul> |

GP 2016 contains two definitional changes importing the delineated/undelineated nomenclature from the Built Boundary Paper, but does not mention the rationale for leaving some areas “undelineated.” The definitions from the revised plan are as follows [emphasis added]:

### **Built Boundary**

The limits of the developed urban area as defined by the Minister in consultation with affected municipalities for the purpose of measuring the minimum intensification target in this Plan. The built boundary consists of delineated and undelineated built-up areas.<sup>44</sup>

### **Built-up Area**

All land within the built boundary. Where the built boundary is undelineated, the entire settlement area is considered built-up area.<sup>45</sup>

These definitions can be contrasted with that for the DGA, which, under GP 2016 includes “[t]he area within a settlement area that is required to accommodate forecasted growth to the horizon of this Plan and is not built-up area. Designated greenfield areas do not include excess lands.”<sup>46</sup>

The rationale for leaving some of the BUA “undelineated” is missing from the rest of GP 2016; namely, that since such areas are “not expected to be a focus for intensification, they do not require a delineated built boundary for future monitoring purposes.”<sup>47</sup> While the Built Boundary Paper is still posted on the Ministry of Municipal Affairs website as of the drafting of this report, the commentary discussed above probably could not be characterized as a “policy” of GP 2016, since it was created under GP 2006 and is not included in the revised GP 2016. Perhaps more importantly, even the Built Boundary Paper does not expressly state that development in the UBUA cannot be counted as intensification, but rather that such development is “not expected to be a focus of intensification.” As a result, it risks being considered only an indication of ministerial intent and/or understanding of location and scope of intensification within the BUA.

## **The Impact**

Not all municipalities have taken steps necessary to achieve the intensification targets set out under GP 2006 (40 percent), let alone the revised GP 2016 targets (60 percent). The new target is likely to create increased pressure to find developable areas within the BUA, either through intensification or, where greenfields are available, through the development of more traditional subdivision-style development. A major risk to the achievement of the Growth Plan’s objectives is that this will encourage municipalities to direct subdivision-style development to the UBUA.

While aspects of the Growth Plan can be read as limiting the ability of municipalities to achieve their intensification targets in this way, there is no clear prohibition on their doing so, leaving a potentially significant gap in the Growth Plan’s policies. This gap may lead to additional implementation challenges and delays, because the official plan conformity exercise required through municipal comprehensive reviews under the Growth Plan applies to upper- and single-tier municipalities.<sup>48</sup> The risk is that lower-tier municipalities may enact or maintain official plan provisions that conflict with intensification-oriented Growth Plan provisions, notwithstanding their obligation to conform their official plans to those of the responsible upper-tier municipality.<sup>49</sup>



GP 2016 contains a policy “directing the vast majority of growth to settlement areas that offer municipal water and wastewater systems, and limiting growth in settlement areas that are serviced by other forms of water and wastewater systems.”<sup>50</sup> This wording can be contrasted with that in GP 2006, which read: “directing major growth to settlement areas that offer municipal water and wastewater systems and limiting growth in settlement areas that are serviced by other forms of water and wastewater services.”<sup>51</sup> On a plain reading, “vast majority” implies that growth will still be directed toward the DGA, which is expected, but could also be directed to UBUs without existing municipal water and wastewater systems, which is not consistent with the intent of the Growth Plan.

Several Growth Plan provisions can be read as restraining inappropriate subdivision-style development in UBUs, but none expressly prohibit it. For example, under GP 2016 s.2.2.1, municipalities are required to accommodate population and employment growth by:

- a) directing a significant portion of forecasted growth to built-up areas through intensification and focusing growth in strategic growth areas;
- b) building complete communities with compact built form in settlement areas;
- ...
- d) directing growth to locations within settlement areas with existing and planned public service facilities;
- e) focusing growth in areas with existing or planned transit, with a priority on higher order transit;
- f) planning and investing for a balance of jobs and housing in communities across the GGH to reduce the need for long distance commuting and to increase the modal share for transit and active transportation;
- g) providing convenient, multimodal access to intra- and inter-municipal transit, giving priority to connections between residents and jobs;
- h) directing development to settlement areas, except where permitted in accordance with policy 2.2.9.3;
- i) directing the vast majority of growth to settlement areas that offer municipal water and wastewater systems, and limiting growth in settlement areas that are serviced by other forms of water and wastewater systems;
- ...
- k) prohibiting the establishment of new settlement areas.<sup>52</sup>

Municipalities are also subject to requirements when planning for the intensification of BUAs to:

- a) identify the appropriate type and scale of development in *strategic growth areas* to support achievement of the minimum intensification target in this Plan;
- b) provide for an appropriate transition of built form to adjacent areas; and
- c) ensure the development of high quality urban form and public open spaces.<sup>53</sup>

Most UBUs would not constitute “Strategic Growth Areas,” which are areas “Within settlement areas, nodes, corridors and other areas that have been identified by municipalities or the Province

to be the focus for accommodating intensification and higher-density mixed uses in a more compact built form. Strategic growth areas include urban growth centres, major transit station areas, mobility hubs and other major opportunities that may include infill, redevelopment, brownfield sites, the expansion or conversion of existing buildings, or greyfields. Lands along major roads, arterials or other areas with existing or planned frequent transit service or higher order transit corridors may also be identified as strategic growth areas.”<sup>54</sup>

Numerous other provisions of the GP 2016 can be read as limiting or being intended to limit development in unserviced or partially serviced areas. For example, upper and single-tier municipalities are required to identify a hierarchy of settlement areas based on, among other factors “integrated planning for infrastructure and public service facilities that considers the full life cycle costs of these assets and identifies options to pay for these costs over the long-term.”<sup>55</sup>

GP 2016 also contains an entire section of policies requiring municipalities to undertake an “integrated approach to land use planning, infrastructure investments and environmental protection to achieve the outcomes of the Plan...” allowing them to “identify the most cost-effective options for sustainably accommodating forecasted growth to the horizon of this Plan in support of complete communities.” As a rationale, the Plan notes that “It is estimated that up to 30 percent of infrastructure capital costs, and 15 percent of operating costs, could be saved by moving from lower density development to more efficient and compact built form.”<sup>56</sup>

While these requirements can be read as restraining inappropriate subdivision-style development and requiring some consideration of integrated planning objectives when extending water and wastewater services based on both projected growth and financial considerations, they do not expressly prohibit subdivision-style developments within the UBUA.

### **Simcoe County: A Special Case**

Municipalities in the Simcoe Sub-Area are subject to special employment and population forecasts for planning purposes until 2031,<sup>57</sup> with the intention that they will follow the system used by the rest of the area covered by the Growth Plan: namely, allocation of population forecasts in accordance with s.5.2.3.2(d)) and that they will allocate growth so that a “significant portion of population and employment growth is directed to lower-tier municipalities that contain primary settlement areas after 2031.”<sup>58</sup> A review of the special GP 2016 provisions governing this area indicates no express prohibitions on the development of subdivision-style development and an express requirement to direct growth to “Settlement Areas” (which include UBUs) to achieve provincial intensification objectives.

#### **Primary Settlement Areas** are defined as:

Locations set out in Schedule 8. Primary settlement areas are the settlement areas of the City of Barrie, the City of Orillia, the Town of Collingwood, the Town of Midland together with the Town of Penetanguishene, and the settlement areas of the communities of Alcona in the Town of Innisfil, Alliston in the Town of New Tecumseth and Bradford in the Town of Bradford West Gwillimbury.<sup>59</sup>

**Settlement Areas** are defined as:

Urban areas and rural settlement areas within municipalities (such as cities, towns, villages and hamlets) that are:

- a) built up areas where development is concentrated and which have a mix of land uses; and
- b) lands which have been designated in an official plan for development.

(Based on PPS, 2014 and modified for this Plan)<sup>60</sup>

Simcoe municipalities are subject to some restraints under GP 2016, including requirements that they “plan to create complete communities within primary settlement areas”<sup>61</sup> and “ensure the development of high quality urban form and public open spaces within primary settlement areas through site design and urban design standards that create attractive and vibrant places that support walking and cycling for everyday activities and are transit-supportive.”<sup>62</sup> But these are unlikely to be read as a complete prohibition on the development of subdivision-style development in the UBUA.

The plan also allows Simcoe municipalities to approve development in settlement areas<sup>63</sup> in excess of that which is needed to accommodate the development set out in Simcoe’s special forecasts if the following conditions are met:

- a) contributes to the achievement of the minimum intensification and density targets that have been identified by the Minister, subject to policy 6.5.5 [alternative minimum densities and intensification targets granted to Simcoe municipalities];

...

- c) can be serviced in accordance with applicable provincial plans and provincial policies; and
- d) is in accordance with the requirements of the Lake Simcoe Protection Plan, 2009, if applicable.<sup>64</sup>

The first part of this requirement could be read as expressly *encouraging* the development of UBUs, such as hamlets, which are included in the definition of “Settlement Areas.” While the requirement that the area “can be serviced in accordance with applicable provincial plans and provincial policies” may create some restraint, it is not an express prohibition and is subject to interpretation, particularly because GP 2016 does not contain an outright prohibition on the expansion of water and sewage to the UBUs.

## Provincial Policy Statement

Relevant rules can be found in the Provincial Policy Statement, 2014 (**PPS**).<sup>65</sup> The policies of the PPS represent the provincial minimum standards with which all decisions affecting planning matters must be consistent.<sup>66</sup> Provincial plans, including the Growth Plan, build upon the policy foundation provided by the PPS. At the same time, the Growth Plan takes precedence over the policies of the PPS to the extent of any conflict, except where relevant legislation provides otherwise.<sup>67</sup> As with the Growth Plan, an optimistic reader of the PPS can point to provisions that should restrain inappropriate subdivision-style development in the UBUs, but there is no express prohibition.

## Settlement Areas

The PPS category of settlement areas covers most or all undelineated built-up areas. Settlement areas are defined as urban areas and rural settlement areas within municipalities (such as cities, towns, villages and hamlets) that are built-up areas where development is concentrated and that have a mix of land uses, and lands that have been designated in an official plan for development over the long-term planning horizon as defined in the PPS.<sup>68</sup> Under the PPS, settlement areas are required to be the “focus of growth and development.”<sup>69</sup> Land use patterns within settlement areas must be based on densities and a mix of land uses that are appropriate for, and efficiently use, the infrastructure and public services facilities that are planned or available, and avoid the need for their unjustified and/or uneconomical expansion.<sup>70</sup>

### **Rural Areas in Municipalities**

By contrast, “rural areas” are defined as a system of lands within municipalities that may include rural settlement areas, rural lands, prime agricultural areas, natural heritage features and areas, and resource areas.<sup>71</sup> Rural lands are defined as lands that are located outside settlement areas and outside prime agricultural areas.<sup>72</sup> According to the PPS, healthy, integrated, and viable rural areas should be supported by accommodating an appropriate range and mix of housing in rural settlement areas and using rural infrastructure and public service facilities efficiently.<sup>73</sup> In addition, within rural areas, rural settlement areas must be the focus of growth and development and their vitality and regeneration must be promoted.<sup>74</sup> When development is proposed for rural settlement areas (under policy 1.1.3), planning authorities must give consideration to rural characteristics, the scale of development and the provision of appropriate service levels.<sup>75</sup> Optionally, including situations in which a municipality does not have a settlement area, growth and development may be directed to rural lands (in accordance with policy 1.1.5, discussed below).

### **Infrastructure and Public Service Facilities**

Various aspects of the PPS specify that that *municipal* sewage services and *municipal* water services are the preferred form of servicing for settlement areas. Intensification and redevelopment within settlement areas on existing municipal sewage and water services should be promoted and are preferred over the use of private communal sewage and water services.<sup>76</sup> In settlement areas, if municipal or private sewage and water services are not available, individual on-site sewage and water services are permitted only for infilling and minor rounding out of existing development.<sup>77</sup>

Under the PPS, infrastructure and public service facilities must be provided in a coordinated, efficient, and cost-effective manner that considers impacts from climate change while accommodating projected needs.<sup>78</sup> Furthermore, planning for infrastructure and public service facilities must be coordinated and integrated with land use planning so that they are financially viable over their life cycle and available to meet current and projected needs.<sup>79</sup> Before consideration is given to developing new infrastructure and public service facilities, two criteria must be fulfilled. First, the use of existing infrastructure and public service facilities should be optimized, and second, opportunities for adaptive re-use should be considered, wherever feasible.<sup>80</sup>

Generally, planning for sewage and water services must (a) direct and accommodate expected growth or development in a manner that promotes the efficient use and optimization of existing sewage and water services, (b) ensure that these systems are provided in a manner that can be sustained by local water resources, is feasible, financially viable, and compliant with regulatory

requirements, and protects human health and the natural environment, (c) promote water conservation and water use efficiency, (d) integrate servicing and land use considerations at all stages of the planning process, and (e) be in accordance with a number of additional PPS policies concerning the hierarchy of municipal and private water infrastructure.<sup>81</sup>

Subject to the above-described order of preference for sewage and water systems, planning authorities may allow lot creation **only if** there is confirmation of sufficient reserve sewage system capacity and reserve water system capacity (i.e., design or planned capacity not yet committed to existing or approved development) within municipal or private sewage and water services. The determination of *sufficient* reserve sewage capacity must include treatment capacity for hauled sewage from private and individual on-site sewage services.<sup>82</sup>

While the PPS provides important signals in terms of coordinating land use with infrastructure and restricting the development of unnecessary infrastructure, its provisions do not, on their own, expressly prohibit inappropriate subdivision-style development in the UBUA.

## The Greenbelt Plan

The policies of the Greenbelt Plan, 2005, represent the province's framework for growth and land use planning in the provincially designated Greenbelt area. The Greenbelt Plan must be read in conjunction with all other applicable land use planning policy, regulations and/or standards. Where more specific provincial plans or regulations apply to lands within the Greenbelt, the more specific plan or regulation prevails.<sup>83</sup> The Greenbelt Plan derives its authority from the *Greenbelt Act, 2005*, applies to lands delineated in Ontario Regulation 59/05,<sup>84</sup> and builds upon the policy framework of the PPS.<sup>85</sup>

Proposed amendments to the Greenbelt Plan were also released in 2016. The Greenbelt Plan, 2016 contains a number of relevant land categorizations:

**Settlement areas** are urban and rural settlements within municipalities (such as cities, towns, villages and hamlets) that are (a) built up areas where development is concentrated and that have a mix of land uses, and (b) lands that have been designated in an official plan for development over the long-term planning horizon provided for in the Growth Plan, if applicable.<sup>86</sup> Settlement areas comprise Towns/Villages and Hamlets. Schedule 1 of the Greenbelt Plan shows boundaries for Towns/Villages and symbols (dots) for Hamlets.<sup>87</sup>

**Rural lands** are those that are located outside settlement areas and outside prime agricultural areas.<sup>88</sup>

**Specialty crop areas** are designated using provincial guidelines, as lands where specialty crops (e.g., peaches, cherries, plums, grapes, greenhouse crops, etc.) are grown.<sup>89</sup>

**Prime agricultural lands** consist of specialty crop areas and/or Canada Land Inventory Class 1, 2 or 3 lands.<sup>90</sup>

## Prohibitions on Subdivision-Style Development

Subdivision-style development is not permitted in rural lands under the Greenbelt Plan, 2016 because of a broad prohibition on new multiple lots or units for residential development (such as estate residential subdivisions and adult lifestyle or retirement communities), whether created by plan of subdivision, condominium or severance.<sup>91</sup> Official plans must provide guidance for the creation of lots within rural lands not addressed in the Greenbelt Plan, 2016. Nevertheless, new lots for any use must not be created if the creation would extend or promote strip development (an undefined term).<sup>92</sup> These prohibitions appear to be the strongest limitation on subdivision- and strip-style development found in any of the plans reviewed.

## Settlement Areas

The same clear prohibition on subdivision-style development is not present for settlement areas within the Greenbelt. UBUs covered by the Greenbelt Plan, 2016 are likely to be considered “Hamlets.” Hamlets are identified as substantially smaller than Towns/Villages and playing a significantly lesser role in accommodating concentrations of residential, commercial, industrial, and institutional development.<sup>93</sup> Unlike Towns/Villages, which are delineated in schedules to the Greenbelt Plan, Hamlets are shown as “symbols.”<sup>94</sup> The Greenbelt Plan, 2016 defers to municipal official plans for the specific delineation of the settlement area boundaries of Towns/Villages and Hamlets.<sup>95</sup>

Unlike the Growth Plan definition that describes UBUs, the Greenbelt Plan, 2016 explains that Hamlets are typically serviced with individual on-site sewage and water services and “thus are not locations to which growth should be directed.”<sup>96</sup> This wording suggests that subdivision-style development should not be permitted in UBUs falling within the “Hamlet” designation under the Greenbelt Plan, 2016. However, settlement areas within the Greenbelt, including Hamlets<sup>97</sup> and Towns/Villages,<sup>98</sup> are subject to the policies of the Growth Plan and continue to be governed by official plans and related programs or initiatives. As a result, they are generally not subject to the policies of the Greenbelt Plan, 2016,<sup>99</sup> save for certain policies affecting the agricultural support network, external connections and parkland, open space, and trails.

Thus, while the Growth Plan and Greenbelt Plan, 2016 suggest that Hamlets should play a lesser role in accommodating development, an argument can still be made that if development is allowed in UBUs *outside* the Greenbelt, it may also be permitted *within* the Greenbelt. For Hamlets in particular, the Greenbelt Plan, 2016 permits limited growth through infill and intensification, subject to the availability of appropriate water and sewage services.<sup>100</sup> This latter permissive policy may not permit the most problematic suburban-style development within the UBU, because it contains an implicit infrastructure requirement. However, policies governing the level and type of water and sewage found in the PPS and the Growth Plan may be too broad to expressly prohibit the type of infrastructure required to service subdivision-style development in all cases.

While settlement areas outside the Greenbelt are not permitted to expand into the Greenbelt under the Greenbelt Plan, 2016,<sup>101</sup> in some cases and subject to certain conditions, settlement areas within the Greenbelt are permitted to expand onto rural lands.<sup>102</sup> For example, the Greenbelt Plan, 2016 indicates that with respect to Towns/Villages, upper- and single-tier municipalities may, as part of a municipal comprehensive review under the Growth Plan, allow expansions of settlement area boundaries in accordance with the Growth Plan’s policies on settlement area boundary

expansions.<sup>103</sup> By contrast, there is no such language in the Greenbelt Plan, 2016 regarding Hamlets, although there is also no prohibition, which may mean that the official plan of the applicable municipality governs.<sup>104</sup>

### Prohibition on expansion into agricultural lands

Settlement area boundary expansions are limited by the explicit prohibition on the expansion of Towns/Villages and Hamlets into specialty crop areas.<sup>105</sup> Additionally, prime agricultural areas must not be redesignated in official plans for non-agricultural uses except for (a) refinements to the prime agricultural area and rural lands designations, subject to certain criteria, or (b) settlement area expansions subject to the policies in section 3.4 of the Greenbelt Plan, 2016 which covers settlement areas.<sup>106</sup>

In addition to its explicit policies limiting development, the Greenbelt Plan, 2016 sets out a number of goals applicable to the Protected Countryside.<sup>107</sup> In particular, it seeks to protect prime agricultural areas by preventing further fragmentation and loss of the agricultural land base caused by lot creation and the redesignation of prime agricultural areas.<sup>108</sup> It should be noted, however, that only certain lands within the Greenbelt would fall within the definition of specialty crop areas or prime agricultural areas or would be subject to fragmentation.

### Infrastructure and service requirements

Leapfrog development risks are likely somewhat mitigated within the Greenbelt by a number of important restraints on the expansion of infrastructure into the Protected Countryside<sup>109</sup> and an express prohibition on the extension of municipal or private communal sewage or water services outside a settlement area boundary.<sup>110</sup> However, this latter prohibition is subject to an exception in the case of “health issues” as well as the expansion of legally established uses in existence when the Greenbelt Plan came into effect.<sup>111</sup> Notwithstanding this restriction, where municipal water services exist outside a settlement area, existing uses within the service area boundary as defined by the environmental assessment may be connected to such a service.<sup>112</sup> The term “health issues” is not, however, defined in the Greenbelt Plan, 2016, raising questions about whether these exemptions could be used to justify service expansions where none were intended.

## Conclusion

The decision to create two types of BUA, delineated and undelineated, was made on the premise that areas within the UBUA were not intended to be a focus for intensification. While numerous policies under GP 2016 should be read as constraining subdivision-style development in these unserved areas, the text of the Growth Plan contains no express prohibitions. Likewise, while the Greenbelt Plan, 2016 prohibits subdivision-style development within rural areas, it does not appear to contain an express ban on such development within UBUs. As municipalities seek to identify intensification opportunities in response to higher intensification targets contained within GP 2016, the ability to count greenfield development within an UBUA as intensification could seriously undermine both the province’s broad Growth Plan objectives and the incentives created by increasing the intensification target in the first place.

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<sup>1</sup> Growth Plan for the Greater Golden Horseshoe, 2006 (Office Consolidation, June 2013) [GP 2006] and Proposed Growth Plan for the Greater Golden Horseshoe (May 2016), released for public input and feedback under the Co-ordinated Land Use Planning Review [GP 2016].

<sup>2</sup> Proposed Greenbelt Plan (May 2016), 1.4.1 [Greenbelt Plan, 2016].

<sup>3</sup> Provincial Policy Statement (2014), under the *Planning Act*, p. 1 (Part II.) [PPS].

<sup>4</sup> GP 2016, preface.

<sup>5</sup> GP 2016, s.1.1

<sup>6</sup> GP 2016, s.1.1

<sup>7</sup> GP 2006.

<sup>8</sup> GP 2006, p.12.

<sup>9</sup> See GP 2006, p. 47, 48 and 54 for definitions.

<sup>10</sup> GP 2006, p. 47.

<sup>11</sup> GP 2006, 2.2.2.1.

<sup>12</sup> GP 2006, 2.2.3.1.

<sup>13</sup> GP 2006, p. 48.

<sup>14</sup> GP 2006, 2.2.7.2.

<sup>15</sup> GP 2006, 2.2.2.1.(i).

<sup>16</sup> GP 2006, p. 54.

<sup>17</sup> GP 2006, 2.2.2.1.(i).

<sup>18</sup> GP 2006, 2.2.9.3.

<sup>19</sup> GP 2006, p. 52.

<sup>20</sup> GP 2006, 2.2.7.2.

<sup>21</sup> GP 2016.

<sup>22</sup> GP 2016, 2.2.2.3.

<sup>23</sup> GP 2016, 2.2.7.2.

<sup>24</sup> By reference to GP 2006, 2.2.3.1. Note that some residential development is permitted outside of the DGA and BUA, so this figure is approximate. See e.g., GP 2006, 2.2.9 (rural settlements).

<sup>25</sup> GP 2016, 2.2.2.3.

<sup>26</sup> GP 2006, 2.2.3.1.

<sup>27</sup> GP 2016, 2.2.2.3.

<sup>28</sup> GP 2006, 2.2.7.2.

<sup>29</sup> GP 2016, 2.2.7.2.

<sup>30</sup> GP 2006, 2.1.

<sup>31</sup> GP 2006, 2.2.3.5.

<sup>32</sup> "Built Boundary for the Growth Plan for the Greater Golden Horseshoe, 2006" (2008), available online at: [https://www.placestogrow.ca/index.php?option=com\\_content&task=view&id=373&Itemid=15](https://www.placestogrow.ca/index.php?option=com_content&task=view&id=373&Itemid=15) [Built Boundary Paper] (confirmed March 6, 2017).

<sup>33</sup> Built Boundary Paper, Step 4 rule i.

<sup>34</sup> Built Boundary Paper, Step 4 rule i [emphasis added].

<sup>35</sup> Built Boundary Paper, Section 3.

<sup>36</sup> Built Boundary Paper, Step 4 rule i.

<sup>37</sup> Built Boundary Paper, Step 4 rule i.

<sup>38</sup> Built Boundary Paper, Step 4 rule i.

<sup>39</sup> Built Boundary Paper, Section 3.

<sup>40</sup> Built Boundary Paper, Step 4 rule i.

<sup>41</sup> Built Boundary Paper, Step 4 rule i.

<sup>42</sup> Built Boundary Paper, Step 4 rule i.

<sup>43</sup> Built Boundary Paper, Section 3.

<sup>44</sup> GP 2016, p. 67.

<sup>45</sup> GP 2016, p. 68.

<sup>46</sup> GP 2016, p. 69.

<sup>47</sup> Built Boundary Paper, Step 4 rule i.

<sup>48</sup> GP 2016, 2.2.1.4.

<sup>49</sup> See *Planning Act*, R.S.O. 1990, c. P.13, ss. 17(2) and 17(34.1).



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- 50 GP 2016, 2.2.1.2(i).
- 51 GP 2006, 2.2.2.1(j).
- 52 GP 2016, 2.2.1.2.
- 53 GP 2016, 2.2.2.5(a)-(c).
- 54 GP 2016, p. 82.
- 55 GP 2016, 2.2.1.4(c)(iii).
- 56 GP 2016, p. 27.
- 57 GP 2016, 6.2.1. See also GP 2016, Schedule 7.
- 58 GP 2016, 6.1. See also GP 2016, 6.2.2.
- 59 GP 2016, p. 77.
- 60 GP 2016, p. 80.
- 61 GP 2016 6.3.1.2(c).
- 62 GP, 2016 6.3.1.2(d).
- 63 See definition, above, which is based on PPS, 2014 and modified for this GP, 2016).
- 64 GP 2016 6.3.2.1(a-d).
- 65 The PPS is issued under the authority of section 3 of the *Planning Act* and in its most current form came into effect on April 30, 2014.
- 66 PPS, p. 3.
- 67 PPS, p. 3.
- 68 PPS, p. 48.
- 69 PPS, 1.1.3.1.
- 70 PPS, 1.1.3.2(a)(2).
- 71 PPS, p. 48.
- 72 PPS, p. 48.
- 73 PPS, 1.1.4.1(c).
- 74 PPS, 1.1.4.2.
- 75 PPS, 1.1.4.3.
- 76 PPS, 1.6.6.2 and 1.6.6.3.
- 77 PPS, 1.6.6.4.
- 78 PPS, 1.6.1.
- 79 PPS, 1.6.1.
- 80 PPS, 1.6.3.
- 81 PPS, 1.6.6.1.
- 82 PPS, 1.6.6.7.
- 83 Greenbelt Plan, 2006, 1.4.1.
- 84 Greenbelt Plan, 2006, 1.3.
- 85 Greenbelt Plan, 2006, 1.4.1.
- 86 Greenbelt Plan, 2016, p. 75.
- 87 Greenbelt Plan, 2016, 1.4.2.
- 88 Greenbelt Plan, 2016, p. 74.
- 89 Greenbelt Plan, 2016, p. 76.
- 90 Greenbelt Plan, 2016, p. 73.
- 91 Greenbelt Plan, 2016, 3.1.4.5.
- 92 Greenbelt Plan, 2016, 3.1.4.5.
- 93 Greenbelt Plan, 2016, 3.4.1 (para 4).
- 94 Greenbelt Plan, 2016, 5.5.2.
- 95 Greenbelt Plan, 2016, 3.4.1 (para 2).
- 96 Greenbelt Plan, 2016, 3.4.1 (para 4).
- 97 Greenbelt Plan, 2016, 3.4.4.1.
- 98 Greenbelt Plan, 2016, 3.4.3.1.
- 99 Greenbelt Plan, 2016, 3.4.3.1 and 3.4.4.1.
- 100 Greenbelt Plan, 2016, 3.4.4.1.
- 101 Greenbelt Plan, 2016, 3.4.2.1.
- 102 Greenbelt Plan, 2016, 3.1.4.3.

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<sup>103</sup> Greenbelt Plan, 2016, 3.4.3.3. This can be compared with the prior Greenbelt Plan, 2005, which predated the Growth Plan, 2006 and included specific requirements for any settlement area expansion including that the expansion "is on municipal sewage and water services". See Greenbelt Plan, 2005, 3.4.2.5(a).

<sup>104</sup> Greenbelt Plan, 2016, 3.4.1 (para 2).

<sup>105</sup> Greenbelt Plan, 2016, 3.1.2.3.

<sup>106</sup> Greenbelt Plan, 2016, 3.1.3.2.

<sup>107</sup> The Protected Countryside is shown in Schedule 1 of the Greenbelt Plan, 2016 and is made up of an agricultural system (the agricultural and base and its supporting infrastructure) and a natural system, together with a series of settlement areas.

<sup>108</sup> Greenbelt Plan, 2016, 1.2.2.1(c).

<sup>109</sup> Greenbelt Plan, 2016, 4.2.1.

<sup>110</sup> Greenbelt Plan, 2016, 4.2.2.2. Readers interested in these elements may also wish to consult GP 2016, 3.2.6 which governs planning, design and construction of sewage and water infrastructure.

<sup>111</sup> Greenbelt Plan, 2016, 4.2.2.2. In the Greenbelt Plan, 2016, "existing uses" is defined as "...uses legally established prior to the date that the Greenbelt Plan came into force on December 16, 2004."

<sup>112</sup> Greenbelt Plan, 2016, 4.2.2.2.