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

ISSUE DATE: December 23, 2020 **CASE NO(S).:** PL180494

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

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

Appellant:	Christopher Duncanson-Hales
Appellant:	Sudbury Business Improvement Area
Appellant:	Tom Fortin
Subject:	Proposed Official Plan Amendment No. OPA 92
Municipality:	City of Greater Sudbury
OMB Case No.:	PL180494
OMB File No.:	PL180494
OMB Case Name:	Duncanson-Hales v. Greater Sudbury (City)

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

Appellant:	Christopher Duncanson-Hales
Appellant:	Sudbury Business Improvement Area
Appellant:	Tom Fortin
Subject:	By-law No. 2018-61Z (Casino)
Municipality:	City of Greater Sudbury
OMB Case No.:	PL180494
OMB File No.:	PL180495

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

Appellant:	Sudbury Business Improvement Area
Appellant:	Tom Fortin
Appellant:	Minnow Lake Restoration Group Inc.
Subject:	By-law No. 2018-62Z (Parking)
Municipality:	City of Greater Sudbury
LPAT Case No.:	PL180494
LPAT File No.:	PL180496

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

Appellant:	Sudbury Business Improvement Area
Appellant:	Tom Fortin
Appellant:	Steve May
Subject:	By-law No. 2018-72Z (Arena)
Municipality:	City of Greater Sudbury
LPAT Case No.:	PL180494
LPAT File No.:	PL180497

Heard:	September 17, 2020 by telephone hearing and October 19, 2020, with additional written submissions

APPEARANCES:

Parties	**Counsel/Representative***
City of Greater Sudbury ("City")	Stephen Watt
Christopher Duncanson-Hales ("Duncanson-Hales")	Gordon Petch
Tom Fortin ("Fortin")	Gordon Petch
Sudbury Business Improvement Area (the "BIA")	Gordon Petch
Steve May ("May")	Self-Represented
Gateway Casinos and Entertainment Limited ("Gateway")	Andrew Jeanrie
1916596 Ontario Limited ("Applicant")	Daniel Artenosi, Michael Cara

DECISION DELIVERED BY DAVID L. LANTHIER AND ORDER OF THE TRIBUNAL

INTRODUCTION AND BACKGROUND

[1] This final decision now issues in the hearing of the Appeals before the Tribunal brought pursuant to s. 17(24) and 34(19) of the *Planning Act* ("*Act*"). The Applicant applied to the City for a site-specific amendment to the City's Official Plan (the "OPA"), and certain site-specific amendments to the City's comprehensive Zoning By-law No.

2010-100Z (the “ZBLAs”) to permit a development that would include a place of amusement in the form of a casino, as well as an arena and a parking facility. Appeals were filed by Duncanson-Hales against the approval of the casino, by Fortin and the BIA against the entire proposal, and by May against the approval of the arena. Minnow Lake also appealed against the approval of the parking facility but following a motion to dismiss pursuant to s. 34(25) of the *Act* that Appeal was dismissed by the Tribunal in its Decision issued on March 18, 2020.

[2] The proposed development on a site described in the record (“Site”), currently within an industrial plan of subdivision results in the creation of an entertainment district development in the area of the City known as the Kingsway, and hence the Site is often referred to as the Kingsway Entertainment District, or the “KED”. This “entertainment district”, as it describes the development proposal, does not constitute a formal planning designation in the City of Sudbury.

[3] As the Applications were decided by the City, and the planning instruments approved, the KED development (“Development”) will include two components. First, the KED would see the development of a 5,800-seat public arena and events centre, which would host the City’s Ontario Hockey League team, thus relocating the arena event location from Downtown Sudbury where it is currently located. The second component includes a new casino, hotel, restaurants and other related retail and commercial opportunities. The KED Development also necessitates accommodation of substantial parking and thus the need to address parking within the planning instruments.

[4] The planning instruments approved by the City (collectively the “Approved Instruments”) can be grouped into four parts for the purposes of this Decision:

(a) The proposed OPA would permit the development of a place of amusement in an area designated as General Industrial.

(b) The ZBLA for the casino (“Casino ZBLA”) would rezone the location of the casino from M1-1, Business Industrial to M1-1(16), Business Industrial

Special, to permit the casino and associated facilities.

(c) The ZBLA for the arena ("Arena ZBLA") changes the zoning of the location of the arena from M1-1 Business Industrial and M2 Light Industrial, which would permit a private arena, to M1-1(17), Business Industrial Special which adds permission for a public arena.

(d) The ZBLA for the parking facility ("Parking ZBLA") would rezone lands from M2, Light Industrial to M2(15), Light Industrial Special and from M3, Heavy Industrial to M3(15), Heavy Industrial Special to permit the parking area.

[5] The Development is to occur on the Site owned by the Applicant, and developed by Gateway. The OPA was adopted by City Council on April 10, 2018 and the ZBLAs were passed on April 24, 2018. The Appellants then appealed those decisions as indicated above. The City, and the Applicant and Gateway as added joint parties, are referred to collectively as the "Respondents" to the Appeal

[6] These Appeals are to be determined under the *Act* and the *Local Planning Appeal Tribunal Act* as they were amended by Bill 139. Although there is a lack of precision in doing so, for efficiencies of reference, such appeals are sometimes, and will occasionally in this decision be, referred to as "Bill 139 Appeals"

EVIDENTIARY RECORD AND MATERIALS BEFORE THE TRIBUNAL

[7] The evidentiary and advocacy elements of the written and oral hearing of these Bill 139 Appeals, under the legislation, the Tribunal's *Rules of Practice and Procedure*, and the directives of the Tribunal in the case management and the hearing of the Appeals, are comprised of the following:

(a) The evidentiary record that was before Council, as collected and filed with the Tribunal, referred to the Enhanced Municipal Record, as it was organized and provided to the Tribunal for the purposes of the hearing;

(b) The Case Synopsis, Appeal Record and Book of Authorities collectively filed on behalf of Duncanson-Hales, Fortin and the BIA and the Case Synopsis and Appeal Record filed by May. The Appeal Record of Duncanson-Hales, Fortin and the BIA includes the affidavit evidence of a qualified land use planning expert, Mr. Robert Dragicevic, and of a qualified land use planning expert and land economist, Mr. Rowan Faludi;

(c) The Case Synopses and Appeal Books filed by the City to each of the two sets of materials from the Appellants. The City's Appeal Books includes the affidavit evidence of a number of qualified expert witnesses on the subjects of water and wastewater management, hydrogeological impact assessments, traffic and transportation engineering, and a land use planning expert, Mr. Alex Singbush;

(d) The Joint Case Synopses and Appeal Books filed by Gateway and the Applicant to each of the two sets of materials from the Appellants. This includes the affidavit evidence of a qualified land use planning expert, Mr. Karl Tanner;

(e) The additional authorities received from the City and from Gateway and the Applicant;

(f) The written responses received to The Tribunal's Questions issued on August 12, 2020 and directed to the identified expert witnesses. Specifically: the Affidavit of Karl Tanner sworn September 1, 2020; the Affidavit of Alex Singbush sworn September 1, 2020; and the Affidavit of Robert E. Dragicevic sworn September 1, 2020;

(g) The additional clarification received from counsel for the collective Appellants dated September 21, 2020, on the consent of the parties, with respect to the wording of the draft of OPA 88 that was presented to the Planning Committee. Although this OPA was adopted after the evidentiary record was compiled, the draft was within the record and as a result of the

inquiry of the Tribunal, the parties agreed that the final form of OPA 88, inclusive of the changes made from the initial draft, represented relevant evidence for the Tribunal's consideration.

[8] As a final background matter to the hearing of these Appeals, the receipt of oral argument was preceded by a separate Application before the Ontario Superior Court of Justice to quash the OPA and the ZBLAs on the basis that there was a statutory breach and a denial of common law procedural fairness leading to the passage of the by-laws, and that the City acted in bad faith. That Application to the Court, brought by Fortin under the *Municipal Act*, with the Applicant and Gateway appearing as Intervenors, was argued on June 29 and 30, 2020, and the decision of His Honour Justice Ellies was released on September 4, 2020. A copy of the Decision was made available to the Tribunal by the Court staff on that day. The Application was dismissed, and in his decision, His Honour made reference to certain aspects of the these Appeals before the Tribunal, which were addressed in the course of oral argument.

[9] The Tribunal was advised, on the day of the hearing, that counsel for the Applicant in the Court Application had received instructions to appeal the decision of the Ontario Superior Court of Justice, and subsequently the Tribunal received formal confirmation in that regard. As a result of the Appeal the Appellants raised an issue as to the ability of the Tribunal to render its decision prior to the determination of the Appeal as a result of s. 18 of the *Local Planning Appeal Tribunal Act*.

[10] The Tribunal requested, and received, supplementary written submissions from the Parties on October 19, 2020, on the issue of how, and if, the pending appeal before Ontario Court of Appeal impacted the Tribunal's ability to issue its decision in these Appeals. Ultimately, before this decision was issued, the Tribunal was subsequently advised that the Appellants had withdrawn the appeal of the Decision of Justice Ellies as a result of a resolution reached with the City and there was accordingly no longer any objection to the issuance of the Tribunal's Decision and Order.

THE BILL 139 LEGAL FRAMEWORK

[11] Given that these Appeals are within the Tribunal's group of proceedings governed by Bill 139, before undertaking the analysis of the evidence, and the determination of the issues before the Tribunal, it is important to set out the legislative framework and legal construct that must be considered. As discussed herein, the amendments to the legislation under Bill 139 represented a significant change in the way the Tribunal determines appeals of municipal planning decisions.

The Appeals of the Official Plan Amendment – s. 17(24.0.1)

[12] The Appeals of the decision of Council adopting the OPA, are brought under s. 17(24) and thus s. 17(24.0.1) of the *Act* sets out the narrowed basis for an appeal under this section is as follows:

> **Basis for appeal**
>
> 17(24.0.1) An appeal under subsection (24) may only be made on the basis that the part of the decision to which the notice of appeal relates is inconsistent with a policy statement issued under subsection 3(1), fails to conform with or conflicts with a provincial plan or, in the case of the official plan of a lower-tier municipality, fails to conform with the upper-tier municipality's official plan.

As the City is not a lower-tier municipality, the latter of the three bases for the Appeal does not apply.

[13] As previously indicated by this Panel Member in the decision of *Corbett v. Town of Arnprior* (PL180501), under s. 17(47) of the *Act*, the Appellants bear the onus of establishing to the Tribunal that the OPA does not meet the consistency and conformity tests. It is important to emphasize that this onus on an appellant does not, however, obviate the continuing responsibility of the Tribunal to be satisfied that Council's approval of the OPA meets the requirements for consistency with the Provincial Policy Statement ("PPS") and conformity with the Growth Plan for Northern Ontario ("GPNO") under s. 3(5) of the *Act* or to have regard to those matters of provincial interest set out in s. 2 of the *Act*.

[14] The City, in its submissions, asserted that the legal framework does not require the City to demonstrate that there is consistency and conformity, but that the Respondents have nevertheless demonstrated that the decisions do satisfy the requirements of consistency and conformity. Given the importance of s. 3(5) and s. 2 of the *Act*, it is the Tribunal's view that under the Bill 139 regime, the necessity of conversely establishing to the Tribunal that the decisions are consistent to the PPS and conform to the GPNO is not voluntary, but rather, a crucial determination to be made by the Tribunal under its legislative mandate.

[15] If the Tribunal finds that the Appellants have not met their onus and also finds, concurrently, that the requirements of s. 3(5) of the *Act* have also been satisfied, having regard for the matters of provincial interest in s. 2, then the Tribunal must dismiss the Appeals and Council's decision approving the OPA is determined to be final and comes into force and effect.

The Appeals of the Zoning By-law Amendments – s. 34(19.0.1)

[16] With respect to the Appeals relating to the ZBLAs under s. 34(19) the basis for these Appeals under the *Act*, as it was amended by Bill 139, is set out in s. 34(19.0.1)

> **Basis for appeal**
>
> (19.0.1) An appeal under subsection (19) may only be made on the basis that the by-law is inconsistent with a policy statement issued under subsection 3(1), fails to conform with or conflicts with a provincial plan or fails to conform with an applicable official plan.

[17] Similarly, as with the onus of the Appellants, and the mandate of the Tribunal, under s. 17(24.0.1) pursuant to s. 34(26) of the *Act* if the Appellants fail to establish to the Tribunal that each of the ZBLAs fail to meet the consistency and conformity requirements set out in the legislation, and if the Tribunal is also conversely satisfied that the decision of Council is consistent with the PPS and conforms to the GPNO, and has regard to matters of provincial interest under s. 2, then the Tribunal must dismiss the Appeals and the decisions of Council enacting the ZBLAs are then in force and effect.

The Substantive and Procedural Context

[18] The fundamental underpinning of any Bill 139 appeal is that the appeal is, under the mandatory directive of each of the bases sections giving rise to the right of appeal, strictly limited “only” (as that term of exclusivity is found in each right-of-appeal section) to an issue of inconsistency with Provincial Policy or non-conformity with a provincial plan or, in the case of a zoning by-law amendment, an applicable official plan. (Other sections set out additional matters that must also be established by the Appellant to succeed but they do not apply in this case). Gone are the broader considerations of “good planning” and matters of general public interest that were, and again are, within the scope of the Tribunal’s adjudicative jurisdiction, before and after the Bill 139 planning regime.

[19] As the substantive grounds for the appeal have been fundamentally changed for Bill 139 appeals, such as these now before the Tribunal, so too have the processes and procedures of the Tribunal been significantly altered. Rather than a new hearing on the merits, based on a full breadth of relevant evidence including expert opinion evidence, the Tribunal instead assumes a more “appellate-like” function looking only to the body of evidence that was before Council and the assembled case synopses and appeal records submitted by the parties to support their argument. To the extent directed by the legislation, the Tribunal is also permitted to seek out additional documents or request answers to directed questions it determines are necessary, and in accordance with the decision of the Divisional Court in *Craft Acquisitions Corp. v. Toronto (City)*, [2019] O.J. No. 3085 (the “*Craft Decision*”) that too is constrained as it excludes any intrusion by the parties into such investigative powers granted to the Tribunal.

[20] Finally, as the legislation now applies to these Bill 139 Appeals, the Tribunal recognizes the duality of the stringent obligations that are imposed by the *Act*. First, the obligation is placed upon the Appellant to satisfy the onus under both s. 17(24.0.1) and s. 34(19.0.1) of the *Act*, to establish the required inconsistency and/or non-conformity under the limited grounds enumerated in the sections. If that onus is not met by the Appellant, and the Tribunal is satisfied that the consistency and conformity requirements of s. 3(5) are met, and having regard to matters of provincial interest under s. 2, it is

then obligated, under the mandatory language of sections 17(47) and 34(26), to dismiss the Appeals. There is no discretion otherwise granted to the Tribunal.

The Higher Order Planning Policy

[21] As this Panel Member has previously indicated, and as set out above, the changes to the legislative framework under Bill 139 have strictly limited the circumstances in which planning instruments adopted and enacted by a municipal Council will be set aside under appeal and focuses upon the question of whether there is clear conflict with higher order planning policies.

[22] The three fundamental planning determinations to be made by the Tribunal in these Appeals are therefore whether, as a matter of fact and law, the adoption or approval of the planning instruments: (1) are consistent, or inconsistent with the 2020 PPS; (2) conform or fail to conform, or conflict with, the applicable GPNO; and (3) in the case of the ZBLAs conform, or fail to conform, with the City's Official Plan (the "City OP").

Inconsistency with the PPS

[23] As to consistency, or inconsistency, within the hierarchy of planning legislation, the test of consistency imports a high standard and has an ordinary and well-understood meaning. This issue of consistency under Bill 139 is being examined in isolation from the previous (and current) "qualitatively different" standard of good planning and is thus a strict and narrow test, as noted by the Divisional Court.

[24] In its plain meaning, to be consistent the planning instrument must be clearly "in agreement with", and "not contradictory to, or varying from", the policies of the PPS. Notwithstanding the fact that this high threshold of inconsistency must be established by the Appellant the high-level character of planning policy under the PPS is practically of importance in the determination of consistency. What the appealed instruments must be consistent *with* is the consolidated statement of the Province's broad and over-arching land use policies which address identified high-order land use planning issues

that must, of necessity, prevail in a comprehensive fashion across the Province. The provincially mandated planning policies in the PPS thus govern the primary local decision-makers in each individual community who then adopt official plans and make planning-related decisions at the local level. In the hierarchy of the planning policy "pyramid", this means that consistency with the PPS must be understood to mean that the more focused, community-specific and site-specific policies and fact-specific planning instruments, at the local level, are achieving consistency with the broader province-wide policy "above it".

[25] The result is that while the requirement of consistency may itself be rigid and unequivocal, the higher-order provincial policies to which the official plan amendment or zoning by-law amendment must be consistent, do nevertheless allow for a measure of flexibility and fact-specific, community-specific, and site-specific implementation of those broad province-wide polices. Two different municipalities may, for example, have entirely different approaches to a planning matter relating to promoting intensification and infrastructure planning under the policies in s. 1.1.3 of the PPS, but the two different approaches used to adopt policy or approve a planning instrument by each municipality may nevertheless still be *consistent* with those provincial policies, despite their differences.

[26] It is the Tribunal's view that the focus upon consistency with the PPS must thus be seen to occur in the context of the Province's planning policy hierarchy and as such, recognizes that there may be different paths to achieve consistency. And when the consideration of "good planning" is no longer "part of the equation" in a Bill 139 Appeal, and there is no consideration of new and fresh evidence, the focus upon consistency alone as a ground for the Appeals may result in a more striking deference to the *means*, by which a municipal Council has, in making its decision, achieved consistency to broadly applied provincial policy. To be clear, as indicated above, this analysis does not amount to full deference to the *decision* of Council, as the requirements of s. 3(5) of the *Act* do not permit the Tribunal to defer absolutely to Council's final decision, but as indicated, the Tribunal will be mindful that the local application of the broader planning policies, and consistency with those policies, may be achieved by different paths.

Non-Conformity, or Conflict with, the Growth Plan for Northern Ontario

[27] The approach to the issue of non-conformity with a provincial plan such as the GPNO is similar to the contextual approach for inconsistency. Once again, the approvals made by Council are community-specific, site specific, and fact-specific local decisions that require conformity with the higher-level provincial plan that contains broad regional policies applicable to all of northern Ontario. Again, the parameters within which the municipal Council may achieve conformity with the broad higher-order Provincial plan are not constrained to one means or form, and the Appellant is tasked with establishing clear non-conformity, or a conflict with, a regional-based growth plan and not a disagreement with the manner of achieving conformity.

[28] Within the hierarchy of planning legislation, the test of conformity is, like that of consistency, also a high standard requirement that demands that the planning instrument be in harmony with the provincial plans such that it has been drafted, and will be effective, in a compliant fashion with the higher order policies that prevail above it. As well, the instrument cannot be in obvious conflict with those policies. As a conformity determination is generally undertaken, the examined planning instrument, to conform, cannot be selective and conform to only some, but ignore other, aspects of the plan's policies. But for the reasons indicated, because the issue is conformity with higher order provincial policy, at the same time neither is the means by which Council has achieved conformity to the broader Provincial plan fixed to a single path since there may be many ways to achieve adherence to the higher order policies in the GPNO.

Non-Conformity with the City's Official Plan

[29] Given the grounds asserted by the Appellants with respect to the ZBLAs, the Tribunal must also be convinced that they do not conform with the City's OP. Generally the determination of non-conformity with the OP will be a process similar to that of determining whether there is non-conformity with respect to a provincial plan, save and except, of course, that in the hierarchy of planning legislation, the test demands that the proposed development and the approved ZBLA planning instruments be in harmony with the OP of the municipality (as it will, in this case, have been modified by the OPA)

such that it exists in a compliant fashion with City's own higher order in-force policies that prevail above the ZBLAs, but "below" the provincial policies and plans. In determining non-conformity, or conformity, of the ZBLAs, the policies of the City's OP may be somewhat less broad than the provincial policies that govern, and more defined and specific in their form. This would practically narrow the focus of the Tribunal to the issue of conformity with the specific and relevant cited policies of the OP as they exist at the time the Applications are complete.

The Qualitatively Different Proceeding

[30] Finally, it is helpful, before turning to the issues, and the analysis of the evidentiary record and submissions, to return to the fundamental differences between a Bill 139 appeal, and those appeals preceding, and now following, the Bill 139 Regime. In the analysis of the Appellants' grounds, this difference is of significance.

[31] Justices Linhares de Sousa, and Wilton-Siegel, speaking for the majority of the panel of the Divisional Court, in the *Craft Decision*, indicated (in paragraph 114) that in the new contextual framework, a Bill 139 appeal is a "qualitatively different proceeding" from the *de novo* appeals, which were, and now are again with Bill 108, actions "between the parties that [are] determined on the basis of 'good planning'". The Divisional Court confirmed that Bill 139 Appeals are (a) not an action between the parties or between two competing development proposals; (b) are not hearings *de novo*; and (c) are not decided on the planning merits of a proposed development.

[32] The Tribunal would add that neither are the Appeals decided on the merits of alternative development options. Instead, the issues relate to whether the municipal decision is *non-compliant*, as the tests of consistency and conformity are narrowly identified in each of the sections of the *Act*.

THE ISSUES

[33] The Tribunal previously ruled on the ability of the Tribunal to adjudicate a number of the issues raised by the Appellants, Fortin, Duncanson-Hales and the BIA, and as a

result, a number of the issues were struck from the Appeals. The Tribunal has reviewed all of the written materials, and considered the oral submissions, of all of the Appellants and as the issues are before the Tribunal, they are focused on three primary matters with two secondary issues:

1. Whether the OPA and the ZBLA that enable the Casino Development are (a) inconsistent with the PPS (specifically sections 1.0, 1.1.1 and 3.0 and the "social factors" referred to in Part III of the PPS); and (b) in the case of the Casino ZBLA fail to conform to the City OP (specifically sections 16.0, 16.2.7.5, 17.5.1 and 20.0) as modified by the OPA;

   because:

   Council failed to consider socio-economic issues relating to gambling as legitimate land use issues, and, the Appellants assert that this failure to consider such socio-economic issues stemmed from the determination of City planning staff that such issues were not legitimate land use issues.

2. Whether the approvals of Council (a) were inconsistent with the PPS (specifically 1.7.1(d); (b) did not conform with, or were in conflict with, the GPNO (specifically s. 4.1, 4.3.3.d); and (c) in the case of the ZBLA did not conform to the City OP (specifically s. 1.2, Fifth Vision Statement, Part II, s. 4.1(c), s. 4.2.1(i),(ii), and (iii), s. 4.2.1.1(i), s. 4.2.1.2(s), 16.2.3.1 and 2 and 2. 19.1);

   because:

   community plans, specifically the Downtown Master Plan (2012) ("2012 DMP") and the "Community Economic Development Strategic Plan from the Ground UP 2015" (the "Ground Up EDSP") (collectively the "The 2012/2015 Studies" or the "Studies") were given no weight and not considered when approving the OPA and the ZBLAs. This issue focuses primarily on the

failure of Council to consider the 2012 DMP and the Ground Up EDSP as the arena facility was to be located at the KED and not in the Downtown. The May appeal generally raises this same issue, asserting generally that the decisions fail to consider impacts upon the City's Downtown.

3. Whether the approvals of Council (a) were inconsistent with the PPS (specifically s. 1.11.a (sic) and 1.7.1.(d)); and (b) in the case of the ZBLA did not conform to the City OP (specifically s. 1.2, 1.3.2, 1.3.4, Part II Managing Growth, s. 4.1(c), s. 4.2.1. (i)(ii) and (iii), s. 4.2.1.1(i), s. 4.2.1.2, s. 16.2.3.1 and 2 and s.19.1);

   because:

   Council failed to consider the economic impact study prepared by the Appellants' consultant, urbanMetrics and failed to undertake and produce its own independent expert economic impact study before approving the Appealed Instruments.

4. Whether the entire proposed Development, as the Appellants assert, creates a "new regional entertainment district", should be assessed and approved as a single official plan amendment, and not limited as it is. If so, is the limited OPA, as adopted, failing to conform to the City OP as modified by the OPA?

5. Whether either the (a) approval of the OPA, permitting a casino with associated restaurants and other retail commercial uses, or (b) the proposed Development of the KED as an "Entertainment District", or (c) the rezoning of fields for parking lot use, represents a conversion of employment lands for which no "comprehensive review" has been undertaken, contrary to 1.3.2.2 of the PPS, and therefore inconsistent with the PPS.

[34] As indicated in the overview of the legal framework, concurrent with these five specific issues the Tribunal must be satisfied that the decisions of Council are

consistent with the 2020 PPS and conform to the GPNO as required by s. 3(5) of the *Act*, and have regard to the Provincial interests outlined in s. 2 of the *Act*.

[35] To complete the matter of the issues, the May Appeal also raised the additional issue of whether the City fully considered the impacts of the decisions on the water quality of Ramsay Lake. The Tribunal has considered all of the evidence and submissions of May, and the Respondents, and finds that there is an absence of any persuasive evidence from May that would represent a qualitative analysis sufficient to challenge the pre-consultation and initial assessment processes that were undertaken prior to the approvals such as would give rise to an issue of inconsistency or non-conformity. The Tribunal has considered the submissions of Mr. May, and of the Respondents, and in its view, this issue is a non-issue. Mr. May's conjecture on a number of points, his criticisms of a Risk Management Plan which is not properly before the Tribunal in this Appeal, and his general apprehensions regarding potential risks to water quality, are wholly unsubstantiated and without any discernible supporting evidence that would give rise to a real issue of inconsistency or non-conformity under the *Act*.

THE PLANNING INSTRUMENTS – EFFECTIVE PURPOSE AND THE ISSUES

[36] In the course of the written and oral submissions the Tribunal determined that an understanding of what the four subject Approved Instruments were effectively and practically doing, from a planning perspective, is important as it informs the precise issues arising from the grounds advanced by the Appellants. This has conversely been addressed by the City as also understanding what these instruments do <u>not</u> do, and thus what is not relevant to the issues of consistency and conformity in the Appeals. Determinations on this subject may be helpful in the analysis of the issues raised by the Appellants and the Tribunal makes the following findings as to the nature of the subject instruments.

[37] The OPA and Casino ZBLA do not decide the question of whether a newer, larger and relocated gaming facility should, at the community level, be located in Sudbury, as a willing host. As explained herein, that decision-making process was

completed at another time (in 2012 and 2013) in the context of the Provincial gaming regulatory processes, and resulted in the unanimous endorsement of the hosted relocation of a Casino to one of four locations in the City. The OPA and the Casino ZBLA instead more precisely decide whether the presence of the Casino on a portion of *this* Site, as an additional permitted commercial land use, is appropriate and thus gives rise only to the narrow planning issue of whether a Casino on *this* Site meets the consistency and conformity tests identified in relation to the PPS, the GPNO and the City OP.

[38] The Arena ZBLA, as it adds the permitted use of a public arena on the designation portion of the Site, decides only whether a public arena (where a private facility is already permitted) is appropriate at this location and thus gives rise to the narrow planning issue of whether the introduction of this additional public institutional land use on *this* subject Site, meets the consistency and conformity tests with respect to the PPS, GPNO and the City OP. The Arena ZBLA does not address the quite-different determination of whether this Site, in the KED, is the preferred location of the arena rather than some other location in the City, such as the Downtown.

[39] That decision, as to where the Arena should be located, (i.e. – not in the Downtown) was previously made by Council on June 27, 2017, when it considered the results of the PricewaterhouseCoopers Reports (“PwC”), undertook a the site evaluation process, considered the weighting of the criteria and made the decision as to where the Arena should be located. Accordingly, where the Arena should be located was not determined by the Arena ZBLA in April of 2018 when, in the context of the Applications, Council determined whether the Arena would be located on the subject Site as part of the Development. The relative nature of the two resolutions – deciding where the Arena *should* be located in June of 2017, and deciding where the Arena *would* be located in April of 2018 – was a finding of the Court in paragraphs 99 and 127 (the Application to Quash) and the Tribunal makes a similar finding upon the evidentiary record in these Appeals.

[40] The Arena ZBLA *might*, in the Tribunal’s view, indirectly give rise to possible questions of conformity with the City OP, *only* if the Tribunal determines that the City

OP expressly addresses the matter of the location of the Arena and provides policy direction in regards to the choosing of one site, over another, for an arena. If that decision-making process has not been undertaken, or improperly undertaken such that there is non-conformity with the policies in the City OP, then this might be relevant to the issues in these Appeals. This is addressed below, and the Tribunal has determined that the in-force City OP provided no such direction at the time that the decisions of Council were made.

[41] The Parking ZBLA decides that rezoning the portions of the Site to special Industrial zones is appropriate to allow for adequate parking for the Arena, Casino and KED land uses and thus gives rise to the narrow planning issue of whether the addition of parking as a permitted land use on the Site meets the consistency and conformity tests.

ISSUE 1 – FAILURE TO CONSIDER THE SOCIO-ECONOMIC IMPACTS OF THE CASINO

[42] Having reviewed the evidentiary record, the planning evidence, and the submissions of the Parties, the Tribunal has determined that the analysis and determination of the first issue can be undertaken under the following framework:

1. The Tribunal must first determine whether the policies of the PPS require that the City consider socio-economic issues relating to gaming as part of the necessary land use planning considerations and approval of the OPA and the Casino ZBLA.

2. Similarly, the Tribunal must examine whether the GPNO and the City OP require that the City examine the socio-economic impacts of the casino and gambling operations as necessary land use planning considerations before approving the Casino instruments.

3. If the result of the first two determinations lead the Tribunal to conclude that the examination of socio-economic impacts of approving the location of the

Casino at this Site was a pre-requisite to approval, it must then determine if the City sufficiently and appropriately considered such socio-economic impacts before approving the OPA and the Casino ZBLA.

4. Upon that analysis the Tribunal can then determine whether the Appellants have established that the approval of these two instruments, that would permit the Casino operations, is inconsistent with the PPS, and/or fails to conform to the GPNO or, in the case of the Casino ZBLA, fails to conform with the OP (or conflicts with).

1. The PPS Policies and the Socio-Economic Impacts of Gambling

[43] The Appellants have identified the specific policies of the PPS which they submit, have been abrogated by the approval of the subject Instruments and result in inconsistency. The enumerated sections of the PPS identified by Mr. Dragicevic in support of his planning opinions, and relied upon by the Appellants, are addressed in the order listed in the Case Synopses.

[44] Before addressing the various sections identified by the Appellants with respect to these grounds, some general findings and determinations can be made by the Tribunal.

[45] Decisions as to the inclusion or exclusion of casinos within a community are dealt with at a community level and are aligned with the Provincial regulatory framework that governs lotteries and gaming and exists separate and apart from the *Act*, the PPS and Provincial growth plans. Accordingly, if matters relating to gaming are not otherwise somehow incorporated into the PPS, the lack of consideration of socio-economic issues by Council relating to gambling as a policy issue, cannot therefore represent inconsistency with the PPS.

[46] The Appellants have attempted to tether their concerns as to whether Sudbury needs, or wants, a casino of this form, size and location to general references to social well-being and health and safety in the PPS. In the Tribunal's view this is an ill-

conceived attachment. As addressed below in the analysis of those sections, considerations of health and safety are not to be confused with considerations of societal mores, social preferences and personal pastimes and preferences. For the reasons that follow below, it is the finding of the Tribunal that the PPS, and the Provincial growth plans, do not address, as planning matters, matters of personal, recreational or social preferences and pastimes, or societal tolerance or encouragement of gaming any more than they address societal tolerance of such personal preferences as the consumption of alcohol, the use of cannabis products, or tobacco habits.

[47] Provincial planning (and local planning) may involve the determination of locations where such activities may be located, and there may be provincial and local regulation of such activities, but at the highest level, provincial planning policies do not govern community standards, tolerance or preferences for such activities. Gaming, alcohol, cannabis and tobacco uses are clearly provincially and federally regulated, and the legislation is obviously permissive of such activities in our society. In examining the Appellants' submissions and grounds in relation to this issue, the Tribunal must conclude that the Appellants are attempting to extract and apply, as planning issues, the examination of such socio-cultural issues in a judgmental manner. This is not supported by the nature of the planning framework and regulatory framework in place, in Ontario, as it relates to gaming.

[48] The Tribunal agrees with the submissions of the City, and the Applicant and Gateway, that on the record, the presence of gaming in the City has been long established as there is already an existing Casino in Chelmsford, albeit in a much more moderate form. The evidence before the Tribunal is clear that in 2012 the Ontario government, through the Ontario Lottery Gaming Corporation initiated a modernized approach to Ontario's lottery and gaming industry, at which time Greater Sudbury was identified as a site for expanded gaming opportunities. The processes initiated in 2012 by Council, to acknowledge the City's willingness to host a new and larger Casino, as indicated, led to the resolution in 2013 reaffirming Council's commitment to develop a Casino somewhere in Sudbury. This, again, long pre-dated the OPA and the Casino ZBLA that decided the subject Site would be approved as the site for the Casino, thus leading to the Tribunal's conclusion that in April of 2018 the Approved Instruments were

not dealing with that issue at all, let alone as a planning issue.

[49] These earlier processes highlight the fact that the Appellant's attempts to now cloak the social issues relating to the ills and negative consequences of embracing gaming as planning issues, fails to acknowledge that such matters are, and were, addressed through the *Ontario Lottery and Gaming Corporation Act* and prior decisions made in relation to Provincial regulation of gaming. The Tribunal agrees with the Respondents' position that there is a comprehensive regulatory regime established by the Province that reviews and deals with all aspects of gaming, including the responsibilities and choices of individual communities to promote gaming in their communities. These regulatory matters are not within the jurisdiction of the Tribunal.

[50] The Tribunal accordingly agrees with the City's submission that the OPA and the ZBLAs which are the subject of the Appeals, do not deal with whether or not a casino should, or should not, be within the City of Sudbury – that was already determined through non-planning processes.

[51] If the presence of gaming and a casino in the City were matters that *could* be identified as related to the PPS, it is the Tribunal's view that they would, if anything, arise only in the context of s. 1.0 of the PPS which, in addressing the building of "Strong Healthy Communities", identifies, as one fact, to the importance of "facilitating economic growth". Economic growth is something which the City Council addressed squarely when it previously adopted the by-law that expressly stated the municipality's receptive position on potential casino development and encouraged gaming facility investment proponents to consider proposals to maximize benefits to the community.

[52] With this general overview, it remains to be determined if the PPS otherwise addresses the subject of gaming, as a planning issue and the sections of the PPS identified by the Appellants as supporting a finding of inconsistency under the PPS, can be examined.

Part III – The Reference to "social factors" in "How to Interpret the PPS"

[53] First, The Appellant identifies the Part III statement that the provincial policy-led planning system recognizes and addresses the complex interrelationships among environmental, economic and "social" factors in land use planning.

[54] The Tribunal's view is that this very broad introductory statement in the section of the PPS entitled "How to Read the Provincial Policy Statement" leads to the second sentence which provides that the PPS supports a comprehensive, integrated and long-term approach to planning, and recognizes linkages between the policy areas. In the Tribunal's view the context in which this instructive statement is made regarding the interpretation of the PPS using an integrated approach to land use planning is greatly distanced from, and inapplicable to, the finally nuanced application of the word "social" that the Appellants would like to have the Tribunal utilize and apply. The Appellants urge the Tribunal to conclude that because of this reference to a "social" factor in this context, the passage of the OPA and the ZBLA demanded a full assessment of the social impacts of gaming on the community and a detailed economic analysis and micro business plan as to the financial benefits of a Casino at this new location.

[55] Although the Tribunal recognizes that social factors must be considered amongst the complexities of many factors considered in land use planning, the Tribunal cannot agree that this section of the PPS attains the directional force given to it by the Appellants, as referenced by Mr. Dragicevic.

s. 1.0 and 3.0 – References to "social well being" in Policy Introductory Paragraphs

[56] The Appellant also refers the Tribunal to the wording in s. 1.0 of Part IV, that speaks to "social well-being", along with "Ontario's long-term prosperity", and "environmental health" (therein consistent with the references to "environmental, economic and "social factors in land use planning" in Part III) as being dependent upon the wise management of change and the promotion of efficient land use and development patterns. The same reference is made within the first line of the

introductory paragraph to s. 3.0 “Protecting Public Health and Safety” that “social well-being” is dependent upon wise management and efficient land use.

[57] It is the Tribunal’s view that, as with the reference to social factors in the introduction to Part III, the likewise broad references in the PPS to “social well-being” in the context of these two introductory paragraphs, state the obvious and over-arching proposition that land use planning impacts the Provinces trifecta of “long-term prosperity, environmental health and social well-being”. Such broad policy tenets of the PPS cannot be reasonably, or even sensibly, applied in the literal manner suggested by the Appellants.

[58] The Appellants’ submission in this regard would mean that Council was required to utilize a very broad social consideration in the PPS to then initiate a micro-analysis of whether gaming has adverse social effects on nearby neighbourhoods, or on the residents and visitors to the City of Sudbury or whether, on a balance sheet approach, the casino will result in economic gains or benefits to the City relative to such adverse social impacts. To interpret the presence of the words “social well-being” in the Province’s high-order planning system, in this context, as a means to arguing that the PPS directs that the socio-economic impacts of gaming must first undergo a high scrutiny before a micro-level decision is made approving a casino use on a particular site in the City is not, in the Tribunal’s view, a tenable approach to the application of the test of consistency.

[59] Further, the reference in s. 3.0 “Protecting Public Health and Safety” to the important point that Ontario’s “social well-being”, as well as long-term prosperity and environmental health, depend upon reducing risks to “natural or human-made hazards” further illustrates that in this context, social well-being is being considered with a view to planning appropriately to protect against both Natural Hazards and Human-Made Hazards. The policies in s. 3.0 address the policy goals of reducing risks to the social well being of Ontario’s residents from such things as floods, dynamic beach hazards, erosion, hazardous substances, or mine hazards which give rise to public health and safety concerns.

[60] Both types of Hazards are addressed in the PPS. Natural hazards related to defined "*hazardous lands*" associated with such things as flooding, erosion, dynamic beach hazards, or risk of forest fires - the types of situations that are obviously not remotely connected to gambling. There is little doubt that gaming does not fall into the category of natural hazards. In the whole of the PPS, neither is it reasonable to consider that "*Human-Made Hazards*" that deal with hazards arising from mining or petroleum resource operations encompass gaming. To make not too fine a point of it, it is not reasonable for the Tribunal to consider that betting one's money in a casino falls within the meaning of "*hazardous*" as that term is defined in the PPS and as it applies to forest types susceptible to wildland fire, or to lands, sites or contaminants from mines. Such planning concerns, for the Tribunal, are properly identified concerns of "public health".

[61] While there are arguments to be made that the social impacts of gambling might possibly affect the public health of the Province's citizens, this does not mean that the use of the term "public health" in the PPS planning policies necessarily creates an imperative that such social concerns be considered. Accordingly, it is the view of the Tribunal that the Appellants' submission that these policies of the PPS governing health and safety relate to the potential social ills of gambling, and create a clear imperative of consistency of two planning instruments that permit the use of a Casino on the Site, is strained and unreasonable.

s. 1.1.1(c) – "public health and safety concerns"

[62] Under s. 1.1 of the PPS entitled "Managing and Directing Land Use to Achieve Efficient and Resilient Development and Land Use Patterns, s. 1.1.1 identifies those things that sustain "healthy, liveable and safe communities, one of which is item (c), "avoiding development and land use patterns which may cause environmental or public health and safety concerns". This is identified by the Appellants as relevant to the issue of the OPA and the Casino ZBLA being inconsistent with the PPS.

[63] The Tribunal has unfortunately received no explanation within the opinions provided by Mr. Dragicevic, or Mr. Faludi, that would compel the Tribunal to consider

that the potential detrimental social effects of Provincial-sanctioned gaming are encompassed within these policies of the PPS that relate to public health and safety concerns. For the reasons indicated above, gaming is not something covered by the public health and safety policy umbrella.

[64] The Tribunal prefers the more reasonable opinion expressed by Mr. Tanner, and by Mr. Singbush, that the policies of the PPS protecting public health and safety address development within natural and human-made hazards. They conclude that the site-specific planning instruments, as they do permit a casino use, have already thoroughly considered any such concerns as to real hazards and municipal emergency services and there is no evidence of such concerns raised in these appeals.

[65] Mr. Tanner has indicated that much of the social and economic planning considerations arising from the creation of a new regional entertainment district at the KED, addressed in the PwC Feasibility and Business Case Assessment for the Proposed Sports and Entertainment Centre, and City of Greater Sudbury Event Centre Site Evaluation, were considered then, and also previously in 2012 and 2013, when Sudbury studied and decided whether to host an enhanced casino facility within the context of the Provincial regulatory system. All such considerations were undertaken well before the planning approval of the instruments, but even so, again considered on March 26, 2018, as noted by Mr. Ferrigan as he discussed the input received on this subject at the first Public Hearing. Accordingly, Mr. Tanner opined that such socio-related impacts of gambling were adequately considered were, and are, not planning matters relating to the PPS that are now to be addressed. The Tribunal agrees with this view and specifically, considers Mr. Tanner's summary overview and opinion set out in paragraphs 25 to 41 of his Affidavit sworn September 1, 2020, responding to the questions of the Tribunal, to be wholly supported by the evidentiary record before it in these Appeals.

s. 1.2.3 – "social planning considerations"

[66] Finally, s. 1.2.3 of the PPS, the section on "Coordination", provides that "emergency management" should be coordinated with "social planning" as well as

(consistently) with economic and environmental consideration. Planning authorities are directed to "..coordinate emergency management and other economic, environmental and social planning considerations to support efficient and resilient communities".

[67] Upon the same basis outlined above, the Tribunal prefers the approach of the City, and the Applicant and Gateway, that such references to coordinating emergency management and the trifecta of planning considerations, to support efficient and resilient communities, are not reasonably applicable to the subject of gambling. Neither do they give rise to a requirement for the kind of socio-economic impact studies the Appellants believe were required by Council, and not completed, before approving the subject instruments.

Conclusion – Socio-economic impacts of gambling are not in the PPS

[68] The Tribunal has considered the specific policies of the PPS referred to by the Appellants and for the reasons indicated above cannot conclude that the PPS's broad policies give rise to any type of obligation on the part of the City to consider socio-economic issues relating to gaming as part of the necessary land use planning considerations for approved instruments relating to the Casino. As the City submits, there is nothing in these sections which are engaged by the OPA or the Casino ZBLA applications.

[69] Moreover, the Tribunal accepts the planning opinions of Mr. Tanner and Mr. Singbush, and the submissions of the City, and the Applicant and Gateway, that no part of the PPS contains anything that would require a study of the socio-economics of gambling as a pre-requisite to the approval of the OPA or the Casino ZBLA, nor does it contain any reference to gaming or gambling.

[70] It is the finding of the Tribunal that the PPS does not address the propriety of gaming tables and slot machines in the City of Sudbury, nor any community in Ontario. There are no references to gaming, gambling or casinos anywhere in the PPS, or the Growth Plan for Northern Ontario.

[71] The Tribunal has considered the extensive planning evidence of Mr. Singbush and Mr. Tanner as they reviewed the various other policies of the PPS, including those that touch upon economic growth, and addressed the subject of the Approved Instruments' consistency with the PPS. The Tribunal finds that the OPA and the Casino ZBLA, (and the Arena and Parking ZBLAs) are otherwise consistent with the PPS.

2. The Growth Plan for Northern Ontario and City Official Plan and the Socio-Economic Impacts of Gambling

[72] As to the City OP the Tribunal has considered the written and oral submissions of the Appellants in relation to the alleged non-conformity with the City OP, and the opinion evidence provided by Mr. Faludi and Mr. Dragicevic in their Affidavits. Despite the grounds asserted and the submissions of the Appellants, it is the Tribunal's findings that there is no persuasive planning evidence of any kind before it to indicate that the City OP requires any such examination of socio-economic consequences of gambling or economic benefits accruing from the presence of a casino at the KED location as a prerequisite to the approval of the subject planning instruments.

[73] Mr. Dragicevic was asked, in further questioning by the Tribunal, to assist in explaining the planning opinion basis for such grounds of non-conformity with the City OP. Reference was made to a number of sections relating to long-term economic strategies, growth management and to the Downtown Master Plan. The Tribunal's analysis of the Appellants' arguments in regards to these matters is addressed below. It is otherwise the finding of the Tribunal that that none of the sections of the City OP referenced by Mr. Dragicevic in his responses call for such independent study of the socio-economic consequences of gambling. Neither do the sections require separate studies relating to pure economic benefits accruing from the presence of a casino in the manner suggested by the Appellants beyond what has been considered by Council. The Tribunal accepts the opinions of Mr. Tanner in this regard that there is nothing within the City OP that would require an economic feasibility study or examination of social impacts of gambling upon the City of Sudbury to be undertaken prior to the passage of the subject By-laws with their focused and limited nature and purpose of the instruments as determined by the Tribunal in this Decision.

[74] The Tribunal also agrees with the opinion of Mr. Singbush, that is consistent with the advice to Council, that such socio-economic issues related to gambling were, and are, not legitimate land use planning issues when considering the Applications that led to the Approved Instruments. The municipal record amply confirms the extent to which Council for the City did undertake a lengthy process of consultation, study and deliberations regarding the location of an enhanced Casino operation in substitution for the City's existing gaming facility at the Sudbury Downs. Having undertaken prior processes begun in 2012 to decide whether Sudbury would be a host community, and through a lengthy and ample consultation process, City Council had already endorsed the relocation and expansion of gaming in the City from its current limited location at Sudbury Downs. There is accordingly nothing that could possibly lead the Tribunal to conclude that the subject Instruments do not conform with the City OP in relation to this asserted requirement for additional consideration of gaming-impacts upon the Sudbury community.

[75] On the evidence before the Tribunal, to summarize, it finds that socio-economic issues relating to gambling were not, and are not, legitimate land use issues when determining the applications for the Approved Instruments relating to the Casino. Neither the PPS, the City OP (nor the GPNO) require that the socio-economic impacts of gaming be determined through studies before the adopting and enactment of the OPA and the Casino ZBLA.

3. Were the Socio-economic Impacts of Gaming Considered by the City?

[76] Having concluded that the PPS does not include any high level policy that addresses gaming as a societal matter for consideration in a planning context and having concluded that the City OP does not specifically require the examination of socio-economic impacts of approving the location of the Casino at this Site as a pre-requisite planning consideration before approving the OPA and the Casino ZBLA, it is unnecessary to determine if the City sufficiently and appropriately considered such socio-economic impacts before approving the OPA and the Casino ZBLA.

[77] Nevertheless, the fact that such socio-economic impacts were indeed

investigated, subjected to public consultation and considered by the City, but in an entirely different context, and years earlier. This further underscores the fact that such considerations were, by distinction, not properly land use planning issues that needed to *again* be examined when Council was later considering the applications for the Casino which dealt only with the issue of permitting the Casino use at the subject Site.

[78] The municipal record amply confirms to the Tribunal the extent to which Council for the City undertook a lengthy process of considering and making a decision regarding the presence of gaming in the City of Sudbury in 2012 and 2013 when it resolved to continue to support gaming and would continue to be a willing host. The Staff Planning Report of March 12, 2018 relating to the OPA and the casino, presented at the meeting on March 26, 2018, includes full detail as to the background to casino gaming. The consultations and deliberations as to the location of an enhanced Casino operation in substitution for the City's existing gaming facility at the Sudbury Downs followed thereafter and in 2018 the location of the Casino at the KED was given consideration based on extensive input. Those considerations included the Appellants' urbanMetrics Report and, according to the municipal record, included hearing from a number of opponents to the location of the casino at the KED, but also opposed to the presence of gaming in the City. The Superior Court has made findings in this regard as well, in relation to the issues it had before it. The Tribunal's findings are the same.

[79] The evidence before the Tribunal confirms that at the later point in time, on March 26, 2018, Planning Staff confirmed to the Planning Committee and Council, that matters relating to the socio-economic impacts of gaming were not proper land-use issues for Council to consider in its deliberations on the Approved Instruments. The basis for this advice was evident from the record, and in the Tribunal's view, quite correct. Such matters of socio-economic impacts, which led to the decision of Council to support the continued presence of gaming in Sudbury, had already been considered and determined years before the meetings in March and April 2018. Sudbury Council had by then, on the record, long-since determined that responding to the Ontario Lottery and Gaming Corporation's new modernized gaming regime was appropriate and would result in economic benefits to the community. Council had thus passed, well-before considering the Applications for the Approved Instruments, what has been referred to as

the “Willing Host” resolution.

[80] No aspect of those prior decision-making processes were therefore before Council when it passed the Approved Instruments relating to the casino at the KED, and hence the Tribunal makes the finding that planning staff was correct when it advised Council in March 2018 that the socio-economic impacts of gambling fell outside the scope of the land use planning matters relating to the subject Applications.

[81] The Ontario Superior Court of Justice has determined that aside from the merit-based issues to be determined by this Tribunal with respect to consistency and conformity, the Appellants have otherwise failed to satisfy the Court that there was any breach of the *Planning Act* that rendered Council’s decisions relating to the Approved Instruments, without a study of the social and economic effects of its decisions, illegal under section 273 of the *Municipal Act*. The Court also found that there was no evidence to support the submission that the Director of Planning acted in bad faith when he advised Council that the socio-economic impacts of gambling fell outside of the land-use issues that were to be considered, since they had already been considered at the time the Willing Host resolution was passed and because Council had already fully and appropriately considered issues relating to the social and economic appropriateness of gaming in the community years previous to the approval of the subject planning instruments that are the subject of these Appeals.

[82] These findings of the Court are separate and apart from the issues before the Tribunal, but the evidentiary record before the Tribunal in these Appeals is consistent with the background reviewed by the Court. This evidence leads to the finding of the Tribunal that as a matter of planning, the socio-economic impacts of gambling fell outside the scope of the land use planning matters relating to the subject Applications, as they were before Council.

4. Conclusion – The Appellants have Failed to Satisfy the Tests

[83] Accordingly for these reasons, and upon these findings, the Appellants have failed to establish that the approval of the OPA and the Casino ZBLA, that would permit

the Casino operations, are inconsistent with the PPS, or in the case of the Casino ZBLA, fails to conform with, or conflicts with, the City OP.

[84] These grounds for Appeal in relation to Issue 2 accordingly fail and the Appellants have not satisfied the onus under the legislation in regard to these grounds.

ISSUE 2 – FAILURE TO GIVE ANY WEIGHT OR CONSIDERATION TO THE 2012 DOWNTOWN MASTER PLAN AND THE GROUND UP ECONOMIC DEVELOPMENT STRATEGIC PLAN

[85] The second issue is whether Council's decisions approving the Approved Instruments is inconsistent with the PPS, the GPNO and the City OP because the 2012 DMP and the City's economic development strategy contained within the Ground Up EDSP (collectively the "2012/2015 Studies") were given no weight and consideration when considering all of the Applications. As noted, the focus of this issue primarily revolves around whether the Tribunal ignored aspects of each of these two 2012/2015 Studies that addressed the City's arena facility remaining in the Downtown.

[86] A similar, but more abbreviated analysis framework, can be utilized for Issue 2, but this issue requires that the Tribunal first consider and determine the status of the two 2012/2015 Studies that are the focus of the Appeals in this issue and accordingly the analysis is as follows:

1. First, what is the status and character of each of the 2012 DMP and the Ground UP EDSP as planning policy, impacting planning decisions in the City of Sudbury.

2. Do the policies of the PPS require that the City give weight or consideration to either of the 2012 DMP and/or the Ground UP EDSP in considering the Applications.

3. Do the GPNO and the City OP also require the City to give weight or consideration to either the 2012 DMP and/or the Ground UP EDSP in

considering the Applications.

4. If the Tribunal determines Council was required to give weight or consideration to the two Studies, did the City give sufficient weight or consideration to them before approving the Approved Instruments. (This analysis will, to avoid duplication, also address whether the City gave sufficient weight or consideration to the urbanMetrics Report).

5. Upon that analysis the Tribunal can determine whether the Appellants have established that Council's approval of the Instruments, that would permit the Development, is inconsistent with the PPS, and/or fails to conform to the GPNO and/or to conform with the City OP (or conflicts with the City OP)

1. The Status of the 2012 Downtown Master Plan and the Ground Up Economic Development Strategic Plan

[87] The starting point for the Tribunal, in this case, is to first determine whether the 2012/2015 Studies constitute planning policy or alternatively are merely studies or guidelines which may provide assistance in planning and development decisions but are not part of the City's planning policy framework.

[88] It is the finding of the Tribunal that the 2012 DMP and the Ground Up EDSP do not form part of the existing policy framework of the City's policy instruments, for the following reasons:

(a) Neither of these studies or plans were, as of the time that the Applications were complete, or as Council's decisions were rendered, formally adopted as policy within the City's OP, any Secondary Plan or other policy document that would have undergone the scrutiny of public consultation or formal adoption or enactment under the *Act*.

(b) The Ground UP EDSP, as examined, is a background study that examines economic development through the entirety of Sudbury and not the Downtown exclusively. The document is identified as a community

economic development strategic plan, that: speaks to an action plan and possible strategies to meet identified goals and objectives; deals with a wide breadth of matters, focused as it is on economic development, some of which are separate and apart from planning; identifies possible “next steps” for the implementation of identified strategies that may (or may not) be adopted by Council; and addresses the use of reporting and performance indicators to achieve identified goals and objectives for economic development, some of which, again, do involve planning decisions.

(c) Although the 2012/2015 Studies might be given some consideration in a variety of decision-making processes, the Ground UP EDSP document is, in the Tribunal’s view, clearly not an in-force planning policy document. As the document was prepared, matters that do relate to land use planning within the Ground UP EDSP *could* be considered by Council, and certain aspects of the study *could* ultimately be proposed for inclusion within the City OP, and thus eventually reviewed through public consultation processes, possibly revised in accordance with the *Act*, and possibly approved by the Ministry of Municipal Affairs and Housing. None of these things had occurred at the time the Applications were before Council. In the Tribunal’s view the Ground UP EDSP is not a document that contains accepted planning policy, nor is it even an approved guideline in final form that governs the location of the arena facility.

(d) In the case of the 2012 DMP, this document is similarly a study undertaken for the stated purpose of presenting a series of recommendations to reinforce the Downtown’s role in the City, outlining possible strategies for improving such things as the downtown’s level of economic, cultural and retail activity, and suggesting ways in which “the City of Greater Sudbury can position itself as the “Capital of the North”. The study included a number of recommended amendments to the City’s OP and to the Zoning By-law recognizing that City Staff might identify additional suitable updates to implement certain elements of the 2012 DMP.

(e) Aspects of the 2012 DMP study and plan were eventually adopted by Council as in-force planning policy when Official Plan Amendment 88 ("OPA 88") was adopted on April 26, 2019. This was after the subject Instruments were approved. Of consequence, and illustrative of the fact that studies, guidelines and policies cannot be considered authoritative in-force planning policy requiring conformity until adopted as such through an instrument such as OPA 88, is that OPA 88, as it eventually was drafted, expressly excluded any policy that would require the arena to be located in downtown Sudbury. As OPA 88 directs the City to continue to work to implement the 2012 DMP it sets out a list of projects to advance in the Downtown in accordance with the 2012 DMP which notably does not include the arena.

(f) Upon initial review it was the Tribunal's view that Mr. Dragicevic's affidavit in the Appellants' Appeal Record was rather limited in specifics as to what portion of these detailed studies or the City OP supported his opinion that the 2012/2015 Studies represented a policy imperative as to the importance or necessity of the arena remaining in the Downtown, which was referred to as a "preferred location" for the arena. In an effort to ensure that the Tribunal understood the exact content of the Plans that supported this opinion Mr. Dragicevic was specifically questioned by the Tribunal on this point.

(g) Mr. Dragicevic's planning opinions as to the effective status of the 2012/2015 Studies rely in part upon s. 19.3 of the City OP which addresses "Detailed Development Plans" and provides that the City may undertake small area studies and prepared Detailed Development Plans to provide guidance for the City and the Public. Mr. Dragicevic, in response, has concluded that "removing a significant and proven amenity" such as the Arena to the KED represents the removal of a cornerstone of the Downtown "as a matter of policy, detailed planning, and related fiscal review". It is the Tribunal's view that Mr. Dragicevic's reference to the 2012/2015 Studies, which recognize the arena facility as having significance in the Downtown, as "policy" and as "detailed planning" unfortunately do not make them so.

For the reasons indicated, if the 2012/2015 Studies have not been adopted as in-force adopted planning policy, they are not, in the Tribunal's view, either "policy" or "detailed planning".

(h) As Mr. Dragicevic points out in his affidavit evidence, s. 19.3 expressly provides that such studies or plans do not require Ministerial Approval "as they will not have the status of Official Plan Amendments". The studies do indeed "provide guidance" and the Tribunal would conclude that, without question, they contain details, strategies and options regarding economic development in the Downtown, and elsewhere in the City, *but* – and this is a crucial qualification for the Tribunal – they are a malleable collection of studied and informed options, potential strategies, ideas, and possibilities which are not yet binding policy until embodied in an Official Plan Amendment. Council's prerogative is to weigh all such options and guidance and move forward with the adoption and approval of planning policy under the *Planning Act*. Until then it is a misstatement to subsume the 2012-2015 Studies within actual detailed planning policy and are to be accorded a status that requires conformity under planning law. As a matter of process, this approach works both ways and the Tribunal has in the past also refused to accord a municipal council's studies-based directives to planning staff the status of planning policy, even if "endorsed by Council" through resolution only, since such directives have not undergone the rigours of formal consultation, adoption and approval.

(i) Having carefully reviewed both the 2012 DMP and the Ground Up EDSP, and for the reasons indicated, the Tribunal prefers, and would agree with, the opinion of Mr. Tanner and the position taken by City Planning Staff, and finds that neither of the 2012/2015 Studies have status as planning policy.

[89] Having determined that the 2012/2015 Studies do not represent planning policy, it is the Tribunal's view that the Appellants' assertion that Council's approval of the Approved Instruments is inconsistent with the PPS and fails to conform with the City OP and the GPNO because these studies and working plans were given no weight and

consideration, is first grounded upon a weakened premise. The Appellants' arguments are premised upon a planning assertion that the 2012/2015 Studies are elevated to planning policy. If Council has instead failed to give adequate weight to studies, strategic plans intended as guidelines and go-forward strategic community goals and objectives, that are not planning policy, can this possibly constitute inconsistency with the Province's highest-order planning policy?

[90] To answer this question, the Tribunal must consider the PPS section which the Appellants argue has been ignored as a result of Council's failure to give weight and consideration to the 2012/2015 Studies.

2. The PPS and the 2012/2015 Studies

[91] The Appellants refer the Tribunal to s. 1.7.1(d) of the PPS (previously 1.7.1(c)) which provides that, among the twelve enumerated items, long-term economic prosperity should be supported by "(d) maintaining and, where possible, enhancing the vitality and viability of downtowns and mainstreets". In support of this submission the Appellants rely upon the planning opinions of Mr. Dragicevic and additionally the evidence of Mr. Faludi, the author of the urbanMetrics Report.

[92] The Appellants' approach starts with the fact that the existing Arena is in the Downtown. From that, the Appellants' grounds for this part of the Appeal are that the 2012 DMP, and as well, the 2015 Ground Up EDSP, include within their guidelines, strategies and recommendations that the Arena in the Downtown be upgraded, and initiatives pursued, to develop a multi-purpose facility or facilities in the Downtown which includes, amongst the five elements, an arena/sports complex, in addition to conference facilities, a performing arts centre, an art gallery and accommodations. The Appellants thus submit that because s. 1.7.1(d), speaks to the vitality and viability of downtowns, and because of their importance as "a matter of Official Plan policy" (based upon s. 19.3 of the City OP and Mr. Dragicevic's opinions as to the status of the 2012/2015 Studies) the lack of weight or consideration given to them by Council thus offends this specific PPS policy.

[93] The Tribunal is unable to accept this analysis and cannot conclude that s. 1.7.1(d) of the PPS operates to demand that a municipal authority give weight and consideration to what is contained in these two studies and guidelines, or that a failure to do so would constitute inconsistency with the PPS.

[94] First, as indicated above, the 2012 DMP and the 2015 Ground Up EDSP do not have the status of planning policy that the Appellants would assign to these two Studies.

[95] Second, as set out in the initial analysis of the Bill 139 legislation, the test to be determined is whether the decision to which the notice of appeal relates, is inconsistent with a policy statement in the PPS. The Tribunal, upon the evidence, finds that the Appellants' basis for asserting that there has been inconsistency relates to a failing of Council to consider one very specific and very limited detail – that the arena should be in the Downton and not out at the Kingsway – forms a very small part of two extensive studies, one of which applied to the whole of the City of Sudbury. The Tribunal agrees with the City and the Applicant that there is nothing in the PPS, or the specific policy identified by the Appellants, that requires each and every development application to consider and accept the content (and thus conform with) studies prepared by or for a municipality. There can therefore be no inconsistency. The Appellants acknowledge that s. 1.7.1(d) of the PPS does not obligate the City to undertake such an economic assessment, but neither does it say you do nothing. In the Tribunal's view, as it has found, Council did not "do nothing" and did consider a multitude of information, input, and economic strategic planning options and recommendations, a portion of which was clearly not in-force planning policy.

[96] Third, to connect a failure to consider the discussions, strategies, options and recommendations relating to a single public facility in the Downtown, contained in the 2012/2015 Studies, to one isolated policy consideration in the PPS, in s. 1.7.1(d) intended to achieve long-term economic prosperity, represents a tenuous connection that is insufficient to establish inconsistency.

[97] Returning to the nature of the test, the Tribunal does not find that the failure of Council to consider the discussions/recommendations regarding the arena, within the

context of the entirety of the 2012/2015 Studies, represents inconsistency with s. 1.7.1(d) of the PPS merely because it includes a reference, as one means of supporting long-term economic prosperity, to maintaining or enhancing the vitality and viability of downtowns and mainstreets. There are many other policy considerations relating to long-term economic prosperity to be considered and the fact that City Council has considered many other aspects of long-term economic prosperity for the whole of the City, some relating to the hosting of an enhanced casino facility, and the synergies achieved from its proximity to the arena and other elements proposed for the KED, are but some examples of considerations.

[98] As Mr. Dragicevic indicates, the content of the 2012/2015 Studies that are referred to in support of the Appellants' planning opinion, do indeed recognize the importance of upgrading the arena to accommodate larger scale concerts and conventions and does identify an "arena/sports complex" of one of a number of facilities warranting development. However, the documents also refer to much more. The Tribunal is inclined to prefer Mr. Singbush's characterization of the 2012/2015 Studies as a "series of recommendations" that contained a great many economic development strategies that related to the whole of Greater Sudbury and not just the Downtown. The 2012 DMP did not require that all identified facilities remain in the Downtown, but rather, identified a number of different facilities for consideration, some of which are clearly identified in OPA 88.

[99] The Tribunal must agree that when read as a whole, in the context of the Community Economic Development Strategy, the reports indicated that a new arena/entertainment complex could help with continued growth and economic prosperity but they do *not* state that the arena must be in the Downtown. Ultimately, the Appealed Arena ZBLA obviously provides otherwise as Council went in another direction. The 2012/2015 Studies did not fetter the discretion of Council to make such decisions, including the prior decision not to locate the arena in the Downtown.

[100] Since the Approved Instruments were passed by Council, and based upon the 2012/2015 Studies, City Council has instead focused on a number of other strategies and recommendations for facilities in the Downtown, in addition to the decisions now

appealed by the Appellants. When taken together this speaks to the ability of a Council to make focused, community-specific and site-specific decisions planning decisions but still achieve consistency with the broad Provincial planning policies. There are many elements to consider, and many paths to choose from, for City Council to achieve the long-term economic prosperity addressed in s. 1.7.1 of the PPS. The fact that the Appellants may disagree with the priorities assigned to strategies and options contained in the 2012/2015 Studies, or the plans chosen by Council to achieve long-term economic property at the local level does not, in the Tribunal's view, mean that Council failed to consider the 2012/2015 Studies.

[101] Furthermore the decisions made by Council, as they considered a great many considerations, including the 2012/2015 Studies, do not, in the Tribunal's view, require Council to given weight and consideration to those Studies in a manner which would give absolute paramountcy to the single option of keeping the Arena in the Downtown.

[102] In the Tribunal's view, for the reasons indicated, the decision of Council which approved the Arena ZBLA cannot amount to inconsistency with the broad policies of the PPS that encourage long-term economic prosperity, or general inconsistency with the PPS policies when considered in the manner directed by the PPS.

3. The Growth Plan for Northern Ontario, the City Official Plan and the 2012/2015 Studies

[103] The Appellants, again primarily upon Mr. Dragicevic's opinion evidence, assert that the lack of consideration of the 2012/2015 Studies also represented non-conformity with the GPNO. The Tribunal will not repeat the analysis outlined above as it relates to the question of whether the PPS requires that the City give weight or consideration to the 2012/2015 Studies but upon the same analysis the Tribunal determines that the higher order policies in the GPNO do not, as the Appellants submit, and as Mr. Dragicevic opines, impose such obligation.

[104] Mr. Dragicevic has referred the Tribunal to sections 4.1 and 4.3.3.d of the GPNO. In the Tribunal's view, the Preamble in s. 4.1 of the GPNO, while referencing "economic

plans" as effective tools and approaches to determining the views of residents and business owners to future economic and long term sustainability, along with official plans and participation in community planning efforts, does not vault the multitude of content contained in such studies and strategic plans to the level of binding directive policies. This is again, at the broad northern Ontario regional level, recognition that planning for growth, and balancing the same three over-arching priorities of human, economic and environmental health, includes a variety of elements. The Tribunal accepts the Respondents' position as reasonable that such studies are, at their core, only recommendations and suggestions for how Council may choose to allocate its resources and make economic development strategy Section 4.1 does not constitute a policy that requires each application for development to conform with studies prepared by or for a municipality.

[105] Applying the same analysis relating to the PPS, the Tribunal does not agree that s. 4.3.3.(d), which encourages a significant portion of future employment development to locate in existing downtown areas (as well as intensification corridors and strategic core areas) as one of a number of strategies to be included in planning, amounts to a requirement that all elements of studies and plans such as the 2012/2015 Studies must be considered, in their entirety, as binding. Council's prerogative includes the ability to consider the manner in which economic and service hubs are to be supported and developed and there again may be a variety of options which may be different, and yet all may conform to the broad policies of the GPNO.

[106] The decisions to approve the Approved Instruments that permitted the components of the KED, including the Arena, in the context of the broader economic, growth and development planning in the City, did not, as the Appellants argue, set aside and ignore the substance and recommendations of the 2012/2015 Studies just because the Arena was not to be in the Downtown. Such an application of the GPNO imposes a subjective and selective approach to the Studies which amounts to nothing more or less than a difference of opinion with Council's decision. The GPNO, as regional planning policies for Northern Ontario, does not, in this case, require that the Appellants' approach be followed.

[107] With respect to the City OP, the Tribunal does not find that there is anything contained therein which requires an application, including the applications giving rise to the Approved Instruments, to conform to strategic economic development studies, such as the 2012/2015 Studies. More specifically, as with the PPS and the GPNO, there is nothing in the City OP which gives rise to an obligation on the part of Council to follow-through and adopt and implement each and every aspect of such strategic planning studies until, and unless, they become adopted planning policy through an OPA. As has been determined by the Tribunal, that is not the case.

4. Was Sufficient Weight or Consideration Given to the 2012/2015 Studies

[108] Given the above analysis, the concise determination of this issue is that: (a) Council was required to give little weight, and ultimately had the discretion to accord no weight, to the referenced recommendations in the 2012 DMP relating to the benefits of retaining the arena in the Downtown, if indeed that was a penultimate recommendation within the Studies, and (b) Council did nevertheless give consideration to the 2012/2015 Studies, but such consideration was not a necessity giving rise to obligations of consistency and conformity.

[109] The analysis that follows, for convenience and ease of organization, will also address the extent to which Council gave weight or consideration to the urbanMetrics Report, as this same question is addressed in Issue 3 below.

[110] As has been determined above, the Tribunal is unable to conclude that the 2012/2015 Studies have the status as planning policy that is attributed by the Appellants and neither does the Tribunal agree, as the grounds have been advanced by the Appellants, that each of the PPS, the GPNO or the City OP required that Council accept, as binding and determinative. Council was not required to give weighted consideration to the 2012/2015 Studies in considering the Applications and approving the Approved Instruments.

[111] However, notwithstanding this conclusion the Tribunal finds that Council did give more than sufficient *consideration* to the 2012/2015 Studies. What is clear is that

Council ultimately assigned little weight to the discussion within the Studies that addressed the option of keeping the arena in the Downtown, and determined the Arena should go elsewhere.

[112] Weight and consideration are two different things. The Tribunal has found that Council did not err when it chose not to give weight to the singular aspect of the 2012/2015 Studies that recommended the continued presence of the Arena in the Downtown, and instead preferred the information and advice received elsewhere, including the PwC Reports. Council was free to accord no weight to this recommendation/option since this aspect of the Studies was not in-force binding planning policy. It is however ultimately the Tribunal's finding that Council did give more than sufficient *consideration* to such a recommended, but nevertheless optional, strategy within the entirety of Council's economic development and strategic planning. *If* the decision approving the Arena ZBLA involved a consideration of whether the Arena should be Downtown or elsewhere, it *was* considered to the extent that this issue had already been determined by Council.

[113] This Appellants' submission that Council failed to listen to the Appellants, and in particular the BIA and the Downtown business interests, is made clear from the submissions of the Appellants. In oral submissions, counsel for the Appellants, noting that they represented a broad cross-section of the community that genuinely wanted to be heard, submitted: "It is one thing to invite them to a meeting and another to genuinely listen to them." After considering the evidentiary record, the content of the Appeals and the submissions of the parties, it is the Tribunal's view that the Appellants were, in the process, genuinely heard. As the Appellants have pointed out, Council also had before them reports from City Planning Staff also addressing potential impacts of the KED on the Downtown. However, as they are capable of doing, after listening and considering the Appellants' voiced opinions, including those through their experts Mr. Faludi and Mr. Dragicevic, and all of the information and advice from all sources, the majority of Council members disagreed with what they heard from the Appellants. This is not a unique occurrence in the public consultation process in planning and development. In the Tribunal's view, having carefully considered the Appellants' submissions, as indicated herein, that disagreement does not result in the decisions of Council

necessarily being inconsistent or in non-conformity under the legislation.

[114] The Tribunal has read the Decision of the Ontario Superior Court of Justice as it determined the Applications to quash. While that decision is not determinative of the planning issues that are before this Tribunal, there are findings made there which are consistent with the findings of this Tribunal as it relates to the history of Council deliberations on the matter of what site would ultimately be preferential for the arena. At paragraph 93 of the Decision, the Court determined that on the record before it, the social and economic issues relating to the establishment of an entertainment outside of the Downtown, inclusive of the arena, “were both studied and considered”. Council opted for the Kingsway site over the Downtown site and, as Mr. Faludi conceded, Council is free to do that. At paragraph 127, the Court distinguished between the decisions made by Council with respect to the location of the arena/event centre.

[115] Upon the evidentiary record before it, the Tribunal arrives at the same conclusions. Council had previously, and thoroughly, considered social and economic issues and impacts including the question of the location of the Arena, as well as the hosting of a Casino and the development of the KED – in addition to the later deliberations relating to the Approved Instruments. At various times, in the well-summarized history of public meetings, deliberations, reports, and decision making, City Council had: considered the urbanMetrics Report; considered the PwC Reports; received submissions from the Appellants and heard from counsel for the Appellants which included the 2012 DMP and the Ground Up EDSP; received input from the experts retained by the Appellants; considered the substantial collective public input; and considered the advice and recommendations provided by City Planning Staff. The Planning Staff report to Council of March 14, 2018 (relating to the Arena ZBLA) demonstrates the extent to which staff provided the overview of the background to the Arena/Event Centre. In January and March of 2018, Council considered where the Arena should be located – not whether it would be located at the KED. That decision as to where the Arena should be located decided that it would not be in the Downtown.

[116] On April 10, 2018 Council then decided whether the Arena would be located at the KED sight, as the Arena ZBLA then approved the introduction of the additional

institutional land use for an arena was appropriate on the Site.

[117] The Tribunal has, in determining these Appeals, reviewed the entirety of the evidentiary record which has included the video/audio recording of meetings held before the Planning Committee. This does not include the April 20, 2018 meeting but does include the March 26, 2018 meeting where the Appellants assert that Council and the public were improperly advised by Planning Staff that the 2012/2015 Studies, which had recommended locating the arena/event centre downtown, were irrelevant to the issues before Council because they were not approved through official plan amendments.

[118] As indicated in the analysis above, as that was communicated to Council, the Tribunal has found that this was indeed the correct status of these strategic studies and thus such advice from Planning Staff was correct.

[119] The Tribunal has watched and listened carefully to the audio-recording of the conduct of the hearings held on March 26, 2018 before the Planning Committee, and reviewed the transcript of that portion of the meeting provided by the Appellants at Tab 20 of the Appellants' Appeal Record. Mr. Ferrigan, the Director of Planning Services for the City, whose comments regarding the non-application of the master plan or economic strategic planning studies have been criticized by the Appellants, indicated the following at the meeting of March 26, 2018 in response to the Chair's question regarding the opinion provided by planning staff (emphasis added):

> In the creation of that opinion we look to several policy documents to guide our work. The first is the Act itself, the Ontario Planning Act. The second is the Provincial Policy Statement of Ontario in effect as of 2014, for the purposes of these applications. The third would be the Growth Plan for Northern Ontario which has been effect since the mid-2000's. And lastly, is the City's own Official Plan, and that is the in-effect version of the Official Plan and so if I understand your question correctly Madam Chair, we review this Application in accordance with the policies that are in effect at the time of the Application itself. **So policies which may be under consideration by City Council but which have not yet been approved or which have not yet come into effect do not form part of the analysis**. Also as part of our analysis, we consider laws or policies which are engaged as a result of either the Site itself, or the proposal. And a good example of that in the Staff Report this evening is the discussion around the *Clean Water Act* and the *Source Water Protection Plan*. That is an example of policies that have been engaged because of the location of this Development and the Proposal itself. **We do not look**

> **at other policies that the City has created and have not found their way into the Official Plan yet. And a good example of that would be the City's new economic development strategy and the other example would be the Downtown Master Plan.**

[120] The record indicates that Councillor Cormier, seeking clarification as to why the 2012/2015 Studies were not being considered as part of the City OP, expressed concern that the City's "very expensive" and "time-consuming" master plans developed through countless hours of development and crafting, should be given "credibility" and carry weight in decisions such as this. In oral argument the Appellants have directed the Tribunal to Mr. Ferrigan's response, which again reiterated that the 2012 DMP and the economic development strategy did not form part of the planning framework that was used to evaluate these applications and explained that changes were eventually made. Mr. Ferrigan correctly explained that the City OP adopted by Council in 2006, which had then been approved by the Minister of Municipal Affairs and Housing with modifications in 2007, appealed to the Ontario Municipal Board in its entirety and upheld by the Board as being consistent with the PPS, was in effect at that time in a series of decisions beginning in 2008. He also correctly confirmed that the master plans are eventually brought into the planning documents. The evidence before the Tribunal is that OPA 88 eventually was adopted incorporating some, but not all, aspects of the 2012 DMP, pointedly excluding the arena as a facility in the Downtown.

[121] In the Tribunal's view, this advice to Planning Committee, and eventually to Council, was thus correct and accurate as it recognized the important distinctions to be drawn between studies, recommendations or guidelines arising from investigative and consultation processes on the one hand, and the eventual in-force planning policy that is adopted by a municipal council.

[122] For that reason, and those outlined above, the Tribunal is unfortunately unable to agree with Mr. Dragicevic's, nor Mr. Faludi's opinions, that the two Studies were highly relevant, important and should have been given "significant weight in the evaluation of the subject Applications as required by the GPNO".

[123] The Tribunal concludes that Council, during the chronology of Council business during the months and years preceding the approval of the Approved Instruments, gave

adequate consideration to all aspects of the Appellants' concerns, as advanced, in particular, by Mr. Faludi through the urbanMetrics report, and by Mr. Dragicevic and their counsel, inclusive of the 2012/2015 Studies, to the extent that they contained recommendations and options for Council to adopt or not, as it related to the location of the Arena (and the decision to host the Casino).

[124] There is little doubt, on the evidentiary record before the Tribunal that there is some basis for the view of the Appellants that the content of the 2012/2015 Studies, and the urbanMetrics report, provided an argued basis to support the views of the Appellants. There was nothing disingenuous about the advocated position of the Appellants on the issues, including the value of retaining the Arena in the Downtown. Much of Mr. May's expressed concerns relate to the difference of opinion as to the adequacy of consideration of impact of relocating the Arena, or options for renovation or reuse of the existing arena, which are again, genuine and in the Tribunal's view, grounded in the 2012 DMP.

[125] Equally genuine, upon the evidentiary record, is that City Council was making its decisions with respect to the economic and planning issues to, and including April, 2018, based upon all of the information and data before them, including the 2012/2015 Studies, and the urbanMetrics Report, but obviously giving weight instead to other information and considerations supporting the placement of the arena in the KED, and the benefits arising from that option. These polarized differences in views, despite the arguments of the Appellants, nevertheless do not give rise to facts which satisfy the required onus of establishing inconsistency with the PPS, or non-conformity with the GPNO or the City OP. As the Tribunal has indicated in the discussion of the legal framework, there may be many different paths to achieve consistency or conformity with the higher-order planning policies, and the fact that Council may have chosen one means, over another, speaks to the process followed. The Appellants' disagreement with the means by which consistency and conformity were achieved is only that – a disagreement, and in the Tribunal's view, consistency and conformity nevertheless exist.

5. No Inconsistency or Non-conformity Arising from Lack of Weight/Consideration to the 2012/2015 Studies

[126] In summary, the Tribunal finds that no aspect of Council's approval of the Approved Instruments was inconsistent with the PPS or failed to conform with the GPNO or the City OP by reason of a failure on the part of Council to give any weight or consideration to the 2012/2015 Studies. The Appellants have failed to meet the onus with respect to these grounds relating to the 2012/2015 Studies.

ISSUE 3 – FAILURE TO CONSIDER THE URBANMETRICS REPORT OR TO DIRECT FURTHER STUDY

[127] The third issue arising from the Appellants grounds for the Appeals, like Issue 2, is based upon Council's purported failure to consider information before making its decisions on the Approved Instruments. Specifically, the Appellants assert that the economic impact study prepared by the Appellants' consultant urbanMetrics and Mr. Faludi was not considered and also, a further independent expert economic impact study which the Appellants argue, should have been obtained. They refer to s. 3(5)(a) of the *Act* and the policy section identified in the PPS as the basis for inconsistency is the same as Issue 2, (being s. 1.7.1(d)). Section 1.11.a is also referred to which is not a section in the PPS. The policy sections of the City OP identified to argue non-conformity are also substantially the same as those addressed in Issue 2.

[128] Given the nature of the analysis set out with respect to Issue 2, and the findings made by the Tribunal, it is unnecessary to undertake a similarly detailed analysis here, as the conclusions and findings of the Tribunal, on the evidentiary record, essentially follow the same analytical approach.

[129] With respect to the argument that Council was required to secure a further independent expert economic impact study, the Tribunal agrees with the City's submission, and Mr. Tanner's and Mr. Singbush's planning opinions, and finds, that there is nothing within the PPS that requires economic impact studies to weigh the possible impacts of development within a municipality or between designated

employment areas to be completed before considering and approving a development proposal. If no such policy requirement exists, then on a preliminary basis there is no specific inconsistency relating to policy 1.7.1(d) or any other identified policy in the PPS.

[130] Similarly, the Tribunal also concurs with the Respondents, and Mr. Singbush and Mr. Tanner's evidence, and finds, that there is nothing in the City OP that requires the City to first obtain economic impact studies before making the planning decisions that were made by Council approving the Development. If there is no such requirement in the City OP then the decision by Council to proceed on the information and input received from the staff review and the consultation process, cannot be found to be in non-conformity with the City OP.

[131] The sections of the City OP relating to the Downtown, relied upon again by the Appellants, have been addressed fully in considering Issue 2. The sections requiring that Council have regard for the City's economic development strategic planning are noted but they do not require the City to require an independent economic impact study for each development application in the City.

[132] In the absence of any clear policy at either the Provincial or municipal level, requiring Council to initiate and consider an economic impact study or requisition an independent study before making planning decisions such as the ones made by Council in relation to the KED, there cannot therefore be non-compliance if Council fails to requisition a further study. If there can be no such non-compliance, then there is no technical basis to establish inconsistency with the PPS or non-conformity with the OP.

[133] This leaves the Appellants' assertion that Council failed to consider the urbanMetrics Report. In the Tribunal's view, this ground for the Appeals really amounts, again, to a criticism of the process followed by Council and, in its barest form, an objection to the fact that Council considered other information, ignored information provided by the Appellants or failed to seek additional information to address the kinds of concerns raised in the urbanMetrics Report, and ultimately made a decision that did not align with the contrary information, opinions and economic analysis undertaken by their experts. Again, for the reasons indicated by it, in the analysis of Issue 2, and on

the facts before it, the Tribunal finds that these criticisms of the process, or the sufficiency of the process, and the weight accorded to the Appellants' expert's input, do not give rise to valid bases for inconsistency or non-conformity.

[134] The Tribunal has provided the overview of the law and made its findings as to the manner in which the PPS, as broad over-arching Provincial policy, addresses a great many facets of planning policy relating to environmental, economic and societal considerations. Policy 4.2 of the PPS provides that the PPS is to be read in its entirety and all relevant policies are to be applied to each situation. As has already been indicated by the Tribunal in this Decision, the Appellants, supported by Mr. Dragicevic's opinions, have drilled down to narrowly focus upon one sub-paragraph, s. 1.7.1(d), relating to downtown areas of communities which, although certainly not to be ignored, does not require absolute adherence to achieve consistency, and must be read in conjunction with the whole of the PPS.

[135] With respect to the City OP, it too provides a number of general and specific policies which address a variety of planning considerations relating to economic development and the management of growth and change across the entirety of the City, employment areas, community improvement, the Downtown, and the interrelationship of the varied aspects of City planning. The City OP, as it states, is based on four broad principles: a healthy community, economic development, sustainable development and a focus on opportunities that improve the community. Decision making by Council must consider all these policies based upon those broad underlying principles.

[136] The fact that the urbanMetrics Report and Mr. Faludi's opinions focus upon the Downtown, and provides a critical analysis of the decisions of Council as they might have economic impacts upon the Downtown, or fail to reap the economic benefits expected for Greater Sudbury, does not itself represent evidence of inconsistency of Council's decision with the PPS. Neither does the failure of Council, in the opinion of the Appellants, to give satisfactory consideration to the urbanMetrics Report and Mr. Faludi's opinions, amount to non-conformity with the City OP. The existence of reports, or the possible availability of other information from economic studies, which provide, or might provide, an opinion different from that of Council, which led to the approval of the

Development and the Approved Instruments, does not constitute a matter of inconsistency with the PPS or non-conformity with the City OP. Council had before it other planning opinions and advice from experts to rely upon in their decision. Under the approach of Bill 139 Appeals, this is again Council exercising its decision-making prerogative.

[137] To return to the Bill 139 Framework discussed in this Decision, it is the Tribunal's view that the Appellants' grounds in this issue (and in Issue 2) fail to recognize the fundamental shift to a "qualitatively different proceeding" under a Bill 139 Appeal referred to by the Divisional Court in the *Craft Decision*. The issue is limited to whether Council's decisions, resulting in the KED Development, are non-compliant. Were the issues to involve the examination of alternative development locations, the relative merits of development in the Downtown or in the KED, and generally involve a fresh and fulsome examination of all the evidence to determine whether each of the decisions of Council represents "good planning" then perhaps some examination of the relative strengths or weaknesses of the opinions expressed by Mr. Faludi in the urbanMetrics Report might be undertaken by the Tribunal.

[138] But that is not the legal and procedural framework that applies to these Appeals. Since these Appeals are instead governed by Bill 139, the weight given by Council to the urbanMetrics Report, and the absence of a further economic study, are not relevant considerations for the Tribunal as they are not, as indicated, of relevance to the narrow issues of consistency and conformity.

[139] In any event, on the evidentiary record, the Tribunal finds that Council *did* in fact, in the public consultation process, have the opportunity to consider the urbanMetrics Report, and with it, the opportunity to give it the consideration or weight it wished, or to decide if further study was required. Council clearly did not agree with the approach or concerns voiced by Mr. Faludi, or that there was a need for further study. Of significance to the Tribunal is the fact that Mr. Faludi, the author of the urbanMetrics Report, clearly made a presentation before the Planning Committee in March of 2018 to support the Report.

[140] The Tribunal also makes a finding consistent with the finding of the Ontario Superior Court of Justice in paragraph 93 of the Decision, that in addition to considering input from Mr. Faludi and the urbanMetrics Report, City Council studied and considered both the social *and* economic issues arising from the proposed Development through the chronology of consultations and meetings outlined in the evidentiary Record before the Tribunal. As a planning decision, in June of 2017, Council had previously considered all the options for the location of the arena and decided where the arena should go as a matter of Site selection – which was not the Downtown.

[141] Council then considered the Development applications before it and confirmed the KED as the site for the arena – based upon the cumulative extended review and investigative processes relating to the economic impacts of the arena's location (and the casino). It is the finding of the Tribunal that by the time Council approved the Approved Instruments and made its planning decisions in April of 2018 it had fully considered the long term economic impacts of the KED on the Downtown, which included the location of the arena and the presence of an enhanced gaming operation. This consideration of economic impacts included the urbanMetrics Report. The considerations of Council also determined that the inquiries to that date were sufficient without the need for any further independent expert economic impact study.

[142] Accordingly, although the Tribunal has found that the sufficiency of Council's consideration of the urbanMetrics Report, and the absence of a further independent experts economic study, do not constitute inconsistency with the PPS or non-conformity with the City OP, it is the Tribunal's further finding that Council did sufficiently consider the Appellants' relied-upon economic study as part of the overall consideration of economic and social impacts of the planning decisions made in April 2018.

ISSUE 4 – WAS A MORE EXTENSIVE OPA REQUIRED FOR THE DEVELOPMENT

[143] The Appellants assert an additional ground for the Appeals that because the Development creates a "new regional entertainment district", it should be assessed and approved as a single official plan amendment. The Appellants argue that the too-limited OPA, as adopted, thus fails to conform to the City OP.

[144] The whole of the evidentiary record before the Tribunal confirms that there is no official plan designation or zoning which relates to an “entertainment district” in the City’s planning instruments. It is the view of the Tribunal that the Approved OPA which is before the Tribunal has, on the evidence, been appropriately drafted to address the limited required amendments to the City OP.

[145] The fact that the consideration of the Development by Council recognized the synergies and planning benefits achieved by the shared location of the different components of the KED does not, in the Tribunal’s view, require an OPA applicable to all those components, since the Tribunal has not been persuaded that the City OP requires all of the Development Applications to be considered under one amendment to the OP, or that any other aspect of the proposed Development requires an amendment to the City OP other than what is contained in the OPA.

[146] The Tribunal has considered Mr. Dragicevic’s opinion that the failure to approve one comprehensive City OP amendment for the KED is contrary to the overall intent and requirements of the City OP and that the Arena, Casino and Parking ZBLAs are thus contrary to the City OP. This opinion is also based on the critical view that the KED Development was a single “integrated” entertainment complex and instead of being considered as one entire “Entertainment District” the different Applications were considered and approved separately. On this basis, Mr. Dragicevic considers the failure of the City to consider the Development as a significant “package” ignored the creation of a “new and potentially significant land use with the synergies of these uses” and was not good planning as it failed to consider the “cumulative effect” rather than its separate individual components.

[147] The Tribunal does not find Mr. Dragicevic’s criticisms and conclusions to be supportable or sufficient to support this opinion for a number of reasons.

[148] First, the Tribunal is unable to conclude that there is any such “overall intent and requirements” within the City OP to support this opinion or that the limited amendments approved under the OPA represent any such significant departure from the policy goals and objectives of the City OP. Although that general opinion has been provided by Mr.

Dragicevic, in response to the Tribunal's inquiries, he has not provided the Tribunal with specific policy, goals or objectives that are offended by the limited and pointed form of the OPA as it was approved by Council and is now before the Tribunal.

[149] Second, for the reasons set out below, the Tribunal is unable to accept Mr. Dragicevic's opinion that the Approved Instruments represent a conversion of employment lands under s. 1.3.2.5 of the 2020 PPS and therefore cannot conclude that Council's approval of the OPA relating to the Casino use is deficient because the "cumulative considerations for the introduction of non-employment uses as defined in that section of the 2020 PPS" have not been adequately addressed.

[150] As well, municipal councils, and the Tribunal, often deal with multiple applications relating to a multi-faceted development on a Site, and in doing so, undertake a comprehensive planning review of each of the individual components both separately and holistically. Council did so in this case, and the Tribunal is now similarly reviewing and considering the decisions of Council for all the Approved Instruments collectively. The efficiencies and realities of this process do not then practically require that the whole of the Development be governed by one comprehensive OPA where the amendment that is required relates only to the one use – i.e. the development of a gaming casino. Neither is there any legislative requirement for such an expansive OPA just because a Development contains multiple components, all of which are permitted uses under the Designations, save and except for one.

[151] To this point, the Tribunal agrees with the City's submission, supported by the evidence, that s. 4.4, and 4.5.1.2 of the City OP confirms that institutional uses, which include community facilities intended for public use, are permitted throughout Greater Sudbury, and that the hotel, restaurant, banquet hall, parking lot and commercial recreation centers are permitted as-of-right in the designations and thus no OPA is required for the presence of the proposed Arena facility or the hotel, and related uses, or the parking lot. The OPA is required only for the casino use. The Tribunal considers Mr. Tanner's conclusions in this regard to be correct and supported by the evidence. The Tribunal fails to understand how the "synergies" of the Development's components changes these planning conclusions, as suggested by Mr. Dragicevic.

[152] Finally, the Tribunal accepts Mr. Tanner's planning evidence that with these conclusions, the Tribunal finds that the proposed OPA amends the City OPA and is not a stand-alone official plan for the purposes of s. 16(1) and (2) of the *Act* and, as well, that the use of the notwithstanding language in the OP does not, as it is utilized, exempt the Site and its development from all other policies of the City OP.

[153] Upon these findings, and these reasons, the Tribunal finds that the Appellants have failed to demonstrate that there is any lack of conformity of the Approved Instruments with the City OP in relation to this assertion of inadequacy with respect to the OPA as drafted and approved by Council.

ISSUE 5 – DO THE APPROVALS RESULT IN A CONVERSION OF EMPLOYMENT LANDS

[154] The Appellants assert that either the (a) approval of the OPA, permitting a casino with associated restaurants and other retail commercial uses, or (b) the proposed Development of the KED as an "Entertainment District", or (c) the rezoning of fields for parking lot use, represent a conversion of employment lands for which no "comprehensive review" has been undertaken, contrary to s. 1.3.2.2 of the PPS, and therefore inconsistent with the PPS

[155] The Tribunal has reviewed the entirety of the evidentiary record, and considering the planning opinions and responses to the Tribunal's questions provided by Mr. Tanner, Mr. Singbush and Mr. Dragicevic, and the Tribunal finds that the Development, as it is permitted by the Approved Instruments does not represent a conversion to non-employment uses for the purposes of s. 1.3.2.5 of the 2020 PPS.

[156] It is clear to the Tribunal, as the Respondents' planning witnesses indicate, that the KED will contain no residential uses and will remain as an employment generator with the combined uses of the casino, the arena, the hotel, all associated restaurant and retail components, as well as the necessary parking areas required to accommodate attendance, as proposed on the Site. In the Tribunal's view the entirety of the KED will constitute a new employment area in the City.

[157] In the Tribunal's view, the evidence demonstrates overwhelmingly that the driving impetus of Council to endorse the presence of an enhanced gaming facility in Sudbury, and to support the KED as it will represent an economic development to benefit the community, itself establishes that the objective is to facilitate employment opportunities arising from the Development on this Site. Generally, it is therefore difficult to understand the Appellants' contention that the Site, as approved for the Development, will be used for non-employment uses.

[158] An "employment area" is defined in the PPS; an "employment use" is not. When examining the PPS, the Tribunal prefers the opinion of Mr. Tanner over that of Mr. Dragicevic, when considering the Appellants' assertions of an improper conversion to "non-employment use".

[159] The definition of "employment area" in the PPS refers to those areas "designated in an official plan for clusters of business and economic activities including, but not limited to, manufacturing, warehousing, offices, and associated retail and ancillary facilities" (emphasis added). Mr. Tanner concludes that the casino, hotel, restaurant, retail and other activities of the KED clearly constitute an employment area as provided for in the PPS and the Tribunal must agree.

[160] Conversely, when examined against the PPS definition of employment area, the Tribunal does not consider Mr. Dragicevic's opinion that a casino and entertainment complex or the associated retail and ancillary facilities are not employment uses is supported by the whole of the evidentiary record. Mr. Dragicevic's analysis ignores (a) the plain meaning of a "cluster" of "business and economic activities"; (b) the expansive inclusionary wording of "including, but not limited to" contained in the definition; and (c) the plain meaning of "associated retail and ancillary facilities" as the PPS identifies an employment area.

[161] As well, the Tribunal does not consider the Appellants' focus on the "conversion" of "employment uses" under the PPS to be precisely correct since s. 1.3.2 of the PPS addresses the policy concerns relating to the conversion of lands within "employment areas" to non-employment uses. The lands in the KED Site are, as indicated, found to

be lands within an employment area, and the Tribunal finds that the Approved Instruments do not effect any change to the uses that will occur on the Site to non-employment uses. The uses of the lands in the Development will, in fact, represent and remain employment uses.

[162] Upon these findings the Tribunal is unable to conclude that there is any inconsistency with the PPS 2020 arising as a result of any conversion of any lands in the KED, as an employment area, to a designation that permits non-employment uses. If no such conversion has occurred then the Appellant's submission that the City has failed to undertake the assessment, clearly now, required under the revisions to the 2020 PPS in sections 1.3.2.4 and 1.3.2.5, has no basis as there is no need for the comprehensive review or update referred to in those sections.

CONSISTENCY WITH THE PPS AND CONFORMITY WITH THE GROWTH PLAN FOR NORTHERN ONTARIO

[163] In undertaking the review of the evidence and the above-outlined analysis of the evidentiary record, and the submissions of the parties, the Tribunal has determined that the decisions of Council approving all of the Approved Instruments are consistent with the PPS.

[164] The Tribunal prefers and accepts the totality of the planning evidence provided by Messrs. Tanner and Singbush, and those opinions and recommendations that were originally set out by Planning Staff and Mr. Ferrigan and concludes that when considering the PPS as a whole, the proposed Development is consistent with the policies that are contained therein. For the reasons set out in this Decision the Tribunal has been unable to accept the approach adopted by Mr. Dragicevic or Mr. Faludi in relation to many of the issues relating to consistency and conformity under the Bill 139 Regime. Due to the qualitatively different proceeding that occurs under these Appeals, and the absence of any examination of good planning or specific merits of competing or alternative development proposals, as a hearing *de novo*, Mr. Dragicevic's and Mr. Faludi's critical opinions as to the sufficiency of Council's process of receiving and agreeing with the Appellants' views does not constitute inconsistency and non-

conformity. To the contrary, the Tribunal finds that the processes and paths by which Council achieved consistency with the higher order policies of the PPS, has successfully resulted in consistency with those policies.

[165] The Tribunal also finds that the Approved Instruments, as they will permit the Development, also conform to the GPNO, agrees with the submissions of the Respondents, and accepts the planning evidence provided by Mr. Tanner, Mr. Singbush and the City Planning Staff, as they have reviewed and opined on the issue of conformity with the GPNO. The Tribunal agrees with the Respondents' submissions and finds that the proposed Development will generate and foster development, through a public and private partnership that is intended to take advantage to the synergies and benefits achieved by the various components in the KED as the "sum will be greater than its parts". The Development is intended to promote long-term economic benefits and growth for the Greater Sudbury area and as such, and upon review of the GPNO policies, will achieve conformity with those policies. The Tribunal accepts Mr. Tanner's focused opinion that as s. 1.3.1 of the PPS has been amended in 2020, the Approved Instruments are consistent with the policies directing that the City promote economic development and competitiveness by facilitating the conditions for economic investment by identifying strategic sites. Mr. Tanner indicates that the integrated nature of the KED's components and symbiotic relationship between the casino and the arena is consistent with this policy as the KED has been identified as a strategic site for investment and removes barriers to investment "by combining land uses and synergies between public and private investment".

[166] The evidentiary record before the Tribunal further indicates that the decisions of Council with respect to the KED, as they conform to the GPNO have occurred concurrently with those planning consultation and policy implementation processes and strategies now approved by Council for the Downtown. This observation is not essential to the determination of the issues in this hearing but further demonstrates that the PPS consistency and GPNO conformity of the Decisions approving the Approved Instruments for the KED Development has occurred in tandem with the decisions of Council as they later led to the adoption of OPA 88 as that planning policy addressed the Downtown, which also were found to be consistent with the PPS and in conformity

with the GPNO.

SUMMARY OF FINDINGS AND CONCLUSIONS

[167] With respect to the grounds of Appeal asserted by the Appellants, and the issues arising from those grounds as set out in this decision, upon all of the evidentiary record, and upon the various findings made herein, the Tribunal concludes as follows:

1. As to Issue 1, the Tribunal finds that Council did not fail to consider socio-economic issues relating to gambling as neither the PPS, nor the City OP, require such considerations as legitimate land use planning issues. In the Tribunal's view the Appellants have applied an untenable approach to references to public health and safety in the PPS, that have no application to the merits or detriments of gaming. The PPS does not address matters of societal tolerance or encouragement of gaming, just as they similarly do not address personal preferences or lifestyle choices relating to the consumption of alcohol, cannabis or tobacco, all of which are elsewhere regulated and approved by government. That being said, the Tribunal concludes that Council, before making its decisions approving the Development and the Approved Instruments as they will result in a Casino on the Site, had already undergone an extensive consultation process regarding gaming, and the hosting of an enhanced casino facility in Greater Sudbury in 2012 and 2013. Upon these grounds, the Tribunal finds that the Appellants have failed to establish that the Approved Instruments are inconsistent with the PPS, or fail to conform to the City OP.

2. As to Issue 2, the Tribunal finds that Council did not fail to give weight or consideration to the 2012/2015 Studies, primarily because, as Planning Staff correctly indicated, these Studies were not in-force planning policy for the purposes of the Applications when the decisions of Council were made and are, and were, studies providing options, recommendations, and strategies which, ultimately became partially incorporated into the City's planning policies through OPA 88, adopted in 2019. Neither the PPS (including s.

1.7.1(d)), the GPNO, nor the City OP require that such economic assessments be carried out as a pre-requisite to considering or approving the Approved Instruments. Ultimately, and notwithstanding the absence of any basis for the Appellants' assertion that the 2012/2015 Studies had to be considered or given weight, the Tribunal finds that Council, in making its decision, did give consideration to these Studies and did listen to, and consider the opinions and input provided by the Appellants based upon the 2012/2015 Studies, and which urged the retention of the Arena in the Downtown. After listening and considering, City Council made a different decision which, in relation to the Approved Instruments, including the Arena ZBLA, does not represent inconsistency with the PPS, or non-conformity with either the GPNO or the City OP. Upon these grounds, the Tribunal finds that the Appellants have failed to establish that the Approved Instruments are inconsistent with the PPS, fail to conform with, or are in conflict with, the GPNO or fail to conform to the City OP.

3. With respect to Issue 3, upon a similar, or the same, analysis applied to Issue 2, the Tribunal finds that the Appellants have failed to establish that the Approved Instruments are inconsistent with the PPS or fail to conform to the City OP, because Council failed to consider the economic impact study prepared by the Appellants' consultant Mr. Faludi, of urbanMetrics or failed to initiate further independent assessment of the economic impacts of the decisions. The Tribunal finds that there is nothing within the PPS or the City OP which require such independent study and assessment and to the contrary the Tribunal finds that Council did consider the urbanMetrics Report

4. In regards to Issue 4, the Tribunal finds that there was no error with respect to the OPA that was adopted by Council as asserted by the Appellants such that there was non-conformity with the City OP. The Tribunal finds that the OPA that was adopted was all that was required and the Appellants' focus on the "synergies" and multi-component nature of the Development, combining a number of different land use elements, does not support a requirement for a comprehensive OPA for an entertainment district (a designation that does not

exist in the City's planning policies). Further, the Tribunal does not find that the language utilized in the OPA results in an exemption of the Site or the Development from all other policies in the City OP.

5. Finally, as to Issue 5, the Tribunal finds that the proposed uses that will occur within the employment area of the KED do not represent a conversion of lands from employment uses to non-employment uses. To the contrary, the Tribunal finds that the employment area (as that term is defined in the PPS) of the Development will result in continued use of the Site for employment, and accordingly the requirements for a full comprehensive review or update in policy is not triggered. As such, the Appellants have failed to demonstrate that the decisions approving the Approved Instruments are inconsistent with the PPS.

[168] Having found that the Appellants have failed to meet the onus of establishing inconsistency and non-conformity, it remains for the Tribunal to determine that the Approved Instruments are consistent with the 2020 PPS and are in conformity with the GPNO pursuant to s. 3(5) of the *Act*. The Respondents have sufficiently established, and the Tribunal finds as follows:

1. The Tribunal, in undertaking the review of the evidence and the above-outlined analysis of the evidentiary record, and the submissions of the parties, has determined that the decisions of Council approving all of the Approved Instruments is consistent with the PPS. The Tribunal agrees with the submissions of the Respondents to the Appeal and prefers and accepts the totality of the planning evidence provided by Messrs. Tanner and Singbush, and those opinions and recommendations that were originally set out by Planning Staff and Mr. Ferrigan and concludes that when considering the PPS as a whole, the proposed Development as it will be permitted by the Approved Instruments, is consistent with the policies that are contained therein.

2. For the reasons set out in this decision the Tribunal finds that the processes

and paths by which Council achieved consistency with the higher order policies of the PPS, and the decisions, have resulted in consistency with the policies in the PPS.

3. The Tribunal also finds that the Approved Instruments, as they will permit the Development, also conform to the GPNO and agrees with the submissions of the Respondents and accepts the planning evidence provided by Mr. Tanner, Mr. Singbush and the City Planning Staff as they have reviewed and opined on the issue of conformity of the Approved Instruments with the GPNO.

[169] In making these findings, and in considering the Approved Instruments as approved by Council, the Tribunal has also had regard to those matters of Provincial interest set out in s. 2 of the *Act*.

ORDER

[170] The Tribunal Orders that all of the Appeals under s. 17(24) and 34(19) of the *Planning Act* are dismissed.

"David L. Lanthier"

DAVID L. LANTHIER
VICE-CHAIR