

**Ontario Land Tribunal**

655 Bay Street, Suite 1500  
Toronto ON M5G 1E5  
Telephone: (416) 212-6349  
Toll Free: 1-866-448-2248  
Website: <https://olt.gov.on.ca/>

**Tribunal ontarien de l'aménagement  
du territoire**

655 rue Bay, suite 1500  
Toronto ON M5G 1E5  
Téléphone: (416) 212-6349  
Sans Frais: 1-866-448-2248  
Site Web: <https://olt.gov.on.ca/>

**VIA EMAIL**

May 14, 2025

**Ms. Katarzyna Sliwa**  
Dentons Canada LLP  
Email: [kat.sliwa@dentons.com](mailto:kat.sliwa@dentons.com)

**Mr. Isaiah Banach**  
Dentons Canada LLP  
Email: [isaiah.banach@dentons.com](mailto:isaiah.banach@dentons.com)

**Ms. Jessica Jakubowski**  
Email: [jessica.jakubowski@dentons.com](mailto:jessica.jakubowski@dentons.com)

*Counsel for Mistral Development Inc.*

**Ontario Land Tribunal**  
Email: [olt.registrar@ontario.ca](mailto:olt.registrar@ontario.ca)

*Registrar*

**Ms. Tamara Zwarycz**  
Email: [tamara.zwarycz@ontario.ca](mailto:tamara.zwarycz@ontario.ca)

*Case Coordinator/Planner*

**Templeman LLP**  
Barristers & Solicitors  
200-205 Dundas Street East  
Belleville, ON K8N 5A2

**Ms. Jennifer Savini**  
Email: [jsavini@tmlega.ca](mailto:jsavini@tmlega.ca)

*Counsel for the Municipality of Port Hope*

**Ontario Land Tribunal**  
***Tribunal ontarien de l'aménagement du territoire***

**PROCEEDING COMMENCED UNDER** subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

<b>Applicant and Appellant:</b>	Mistral Development Inc.
<b>Subject:</b>	Application to amend the Zoning by-law – Refusal or neglect to make a decision
<b>Municipality:</b>	Port Hope/Northumberland
<b>Municipality:</b>	Port Hope/Northumberland
<b>OLT Case No.:</b>	OLT-23-000360
<b>OLT Case Name:</b>	Snowy Owl Woods Holdings Inc. v. Port Hope (Municipality)

**PROCEEDING COMMENCED UNDER** subsection 51(34) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

<b>Applicant and Appellant:</b>	Mistral Development Inc.
<b>Subject:</b>	Application to amend the Zoning by-law – Refusal or neglect to make a decision
<b>Municipality:</b>	Port Hope/Northumberland
<b>Municipality:</b>	Port Hope/Northumberland
<b>OLT Case No.:</b>	OLT-23-000360
<b>OLT Case Name:</b>	Snowy Owl Woods Holdings Inc. v. Port Hope (Municipality)

---

**MISTRAL DEVELOPMENT INC. REQUEST FOR REVIEW OF TRIBUNAL DECISION  
OF MEMBER AARON SAUVE ISSUED APRIL 14, 2025**

---

## INDEX

Tab	Document
1.	Request for Review
2.	Decision of Member Aaron Sauve, issued April 14, 2025
3.	Affidavit of Dr. Carolyn Eyles, commissioned May 14, 2025
4.	Affidavit of Kent Randall, commissioned May 14, 2025
5.	Affidavit of Dr. Paul Villard, commissioned May 14, 2025

**MISTRAL DEVELOPMENT INC. REQUEST FOR REVIEW OF TRIBUNAL DECISION  
OF MEMBER AARON SAUVE ISSUED APRIL 14, 2025**

**A. REQUESTORS' NAME AND CONTACT INFORMATION**

**Mistral Development Inc.**  
5905 Earls court Crescent  
Ottawa ON K4M 1K2

**B. REQUESTOR'S REPRESENTATIVE NAME AND CONTACT INFORMATION**

**Katarzyna Sliwa**  
Dentons Canada LLP  
400 - 77 King St W  
Toronto, ON M5J 2W4  
Tel: 416-863-4628  
Email: [kat.sliwa@dentons.com](mailto:kat.sliwa@dentons.com)

**Isaiah Banach**  
Dentons Canada LLP  
400 - 77 King St W  
Toronto, ON M5J 2W4  
Tel: 416 863-4501  
Email: [isaiah.banach@dentons.com](mailto:isaiah.banach@dentons.com)

**Jessica Jakubowski**  
Dentons Canada LLP  
400 - 77 King St W  
Toronto, ON M5J 2W4  
Tel: 416 863-4501  
Email: [jessica.jakubowski@dentons.com](mailto:jessica.jakubowski@dentons.com)

**C. REQUESTOR'S REPRESENTATIVE SIGNATURES**



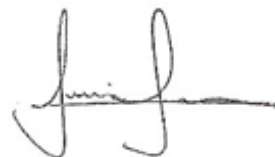
---

**Katarzyna Sliwa**



---

**Isaiah Banach**



---

**Jessica Jakubowski**

#### D. REASONS FOR THE REQUEST

1. On behalf of Mistral Development Inc. (the “**Appellant**”), Dentons LLP (“**Dentons**”) makes this request for review (the “**Request**”) to the Ontario Land Tribunal (“**Tribunal**”) regarding the Decision of Member Aaron Sauve issued on April 14, 2025 (OLT-23-000260) (the “**Decision**”).
2. The Appellant also filed a Notice of Motion for Leave to Appeal to Divisional Court on May 6, 2025 with respect to the Decision.
3. The lands that are the subject matter of the Decision are a portion of the lands municipally known as 3852 Ganaraska Road, in the Municipality of Port Hope (“**Subject Lands**”). The Subject Lands are included within an area mapped by the Ministry of Natural Resources as an earth science area of natural and scientific interest (“**ANSI**”).
4. The Member made material errors of law, and mixed fact and law, such that the Tribunal would have made a different decision had it not made these errors.
5. The Decision lacks procedural fairness and violates the Tribunal’s mandate for fair, just and expeditious resolution of a proceeding.<sup>1</sup>
6. In accordance with Section 23 of the *Ontario Land Tribunal Act, 2021* (“**OLT Act**”) and Rule 25 of the Tribunal’s Rules of Practice and Procedure (the “**Rules**”), we request that the Tribunal render a new Decision approving the zoning by-law amendment (“**ZBA**”) and draft plan of subdivision (“**DPS**”) (the “**Instruments**”).
7. In the alternative, if the Tribunal deems it necessary, we request that the Tribunal order a rehearing on the scoped question the Member appears to have misunderstood “whether the proposed development will have *no negative impacts* on the natural features or their ecological functions of the ANSI” outside of the Subject Lands or “if any other features may exist”. In the further alternative, we request that the Tribunal set aside the Decision and schedule a re-hearing of the Appeal. Of these two alternatives, we respectfully submit that a scoped re-hearing is most efficient.
8. The Tribunal dismissed the Appeal because the Tribunal found that the Tribunal did not have enough evidence to conclude whether the proposed development will have *no negative impacts* on the natural features or their ecological functions of the earth science ANSI because,

[A]part from the features on the Subject Lands the Tribunal received insufficient evidence regarding if any other features may exist. A detailed study regarding the significant features, if any, in the entire ANSI would have been helpful.<sup>2</sup>

---

<sup>1</sup> *Ontario Land Tribunal Act, 2021*, Practices and Procedures, section 12(2).

<sup>2</sup> Tab 2, *Snowy Owl Woods Holdings Inc. v. Port Hope (Municipality)* (“Decision”), at para 53.

9. The Member fundamentally misunderstood that the ecology and natural heritage issues had been resolved between the Appellant and Municipality and misapplied the *no negative impacts* test as a result.
10. The Appellant and the Municipality (collectively, the “**Parties**”) scoped issues leading up to the Hearing and agreed that only one substantial issue remained for the Tribunal to determine: whether it could be demonstrated that the residential development would have *no negative impacts* on the natural features in the earth science ANSI. The Member accepted this as the only issue in the Hearing at paragraph 22 of the Decision which states,

At the commencement of the Hearing the Parties expressed to the Tribunal that only one substantive issue remained; Whether it can be demonstrated that the development will have no negative impact on the significant natural features or their ecological functions within the ANSI. While the exact wording may be slightly different, this requirement is found in the s. 4.1.5(e) of the PPS, s. D1.5 (b) (v) the County of Northumberland Official Plan (“COP”), and s. C5.2.2 OF THE Port Hope Official Plan (“PHOP”).<sup>3</sup>

11. Despite this, the Member failed to properly apply the test.
12. The appeal before the Tribunal was about development on lands in an earth science ANSI. The appeal was not about a life sciences ANSI. In other words, the appeal was about rocks, rock formations, geomorphic features and glacial formations rather than biological or ecological significance, habitats, ecosystems and their communities.
13. The ecological functions part of the *no negative impacts* test was not the issue for the hearing, as this is an earth sciences ANSI. Regardless, matters of natural heritage and ecology were resolved, and ecologists were not called in the Hearing. However, the evidence was presented in brief to the Tribunal, including the reports which were in evidence as part of the joint document book and are found in Mr. Kent Randall, the Appellant’s land use planner’s, Affidavit at Tab 4 of this Request.
14. Although the Appellant’s evidence focused on the Subject Lands, the Tribunal did receive evidence regarding other features within the ANSI. The Tribunal received testimony on the ecology considerations, which were settled. The Tribunal also received evidence on the larger ANSI area and the earth science features observed within it. Dr. Carolyn Eyles, the Appellant’s glacial geomorphologist, concluded and testified that the features were De Geer moraines and not pitted outwash.
15. The Tribunal did not raise questions or ask about a “detailed study regarding the significant features, if any, in the entire ANSI”. Such a request would have been addressed and explained. We understood that the Tribunal understood the test and followed the evidence based on the questions asked by the Member.

---

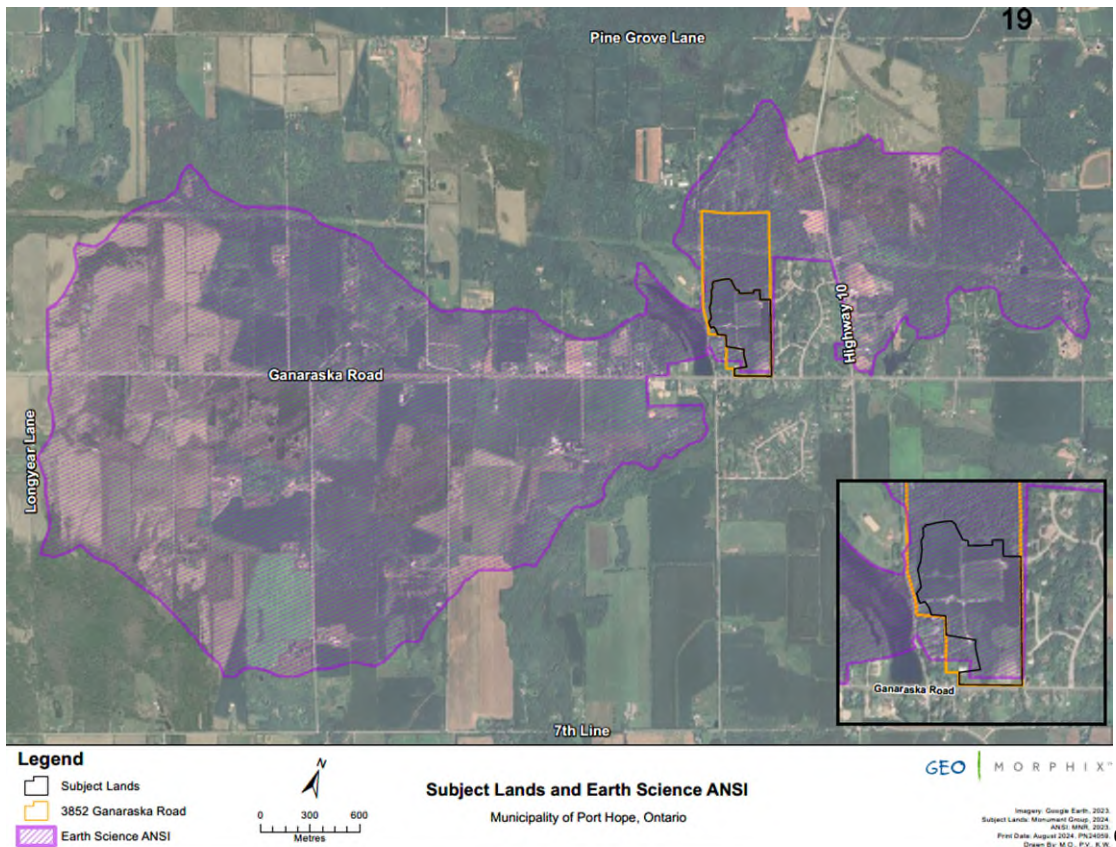
<sup>3</sup> Tab 2, Decision, at para 22.

16. Dr. Eyles, the Appellant's glacial geomorphology and glacial sedimentology expert, and Dr. Paul Villard, the Appellant's geomorphology and process sedimentology expert, studied the ANSI and presented evidence related to it. Additional study and testing would have required them to enter lands not owned by the Appellant.
17. In Dr. Eyles' written and oral evidence, she testified that the features in the broader earth science ANSI are characteristic of De Geer moraines and not pitted outwash and that De Geer moraine can be found in many areas in Ontario including both north and south of the Oak Ridges Moraine. She testified that these types of landforms are not unique and have no specific scientific importance.<sup>4</sup>
18. The Decision appears to misunderstand that the lands to the east of the Subject Lands are not included within the ANSI and the Tribunal said that the Appellant did not bring evidence on lands east and west of the Subject Lands. This is not correct.
19. Mr. Randall reviewed the lands east and west of the Subject Lands, including site and area photographs of existing residential to the east and west of the Subject Lands which were filed in the Compendium as visual evidence. At the Hearing, Mr. Randall also took the Tribunal to the mapping of the earth science ANSI several times throughout the Hearing. The mapping (reproduced below for ease of reference) plainly shows the earth science ANSI does not exist east of the Subject Lands.<sup>5</sup>
20. In the map below, the ANSI is shown in purple, the Subject Lands are shown in black, with the balance of the Appellant's landholding shown in yellow. The area between the Subject Lands and Highway 10 (also referred to as County 10 Road) is not included within the ANSI at all.

---

<sup>4</sup> Tab 3, Affidavit of Dr. Carolyn Eyles ("Affidavit of Dr. Eyles"), at para 19.

<sup>5</sup> Tab 4, Affidavit of Mr. Kent Randall ("Affidavit of Mr. Kent Randall"), at paras 24 and 25 .



21. The Member made several fundamental errors of fact that impacted how the evidence was applied to the test and ultimately led to the erroneous conclusion that the proposed development did not meet the *no negative impacts* test.

### THE APPELLANT'S EVIDENCE

22. Dr. Carolyn Eyles was retained to study the earth science ANSI and determine the significance of earth science ANSI.

23. Dr. Eyles' written and oral evidence was that the natural features in the earth science ANSI are physical landform features indicative of De Geer moraines, not lifeforms with ecological functions.<sup>7</sup>

24. As stated by Dr. Eyles in her Affidavit at Tab 3, paragraph 7, her written and oral evidence at the Hearing was that,

...the Subject Lands and surrounding area included in the ANSI are De Geer moraines, which are geological landforms, physical elements of a landscape. These physical features are components of earth science ANSIs, not life science ANSIs.<sup>8</sup> [emphasis added]

<sup>6</sup> Tab 4, Affidavit of Mr. Randall, at para 21 and Attachment 7 of the Affidavit.

<sup>7</sup> Tab 3, Affidavit of Dr. Eyles, at para 8.

<sup>8</sup> Tab 3, Affidavit of Dr. Eyles, at para 7.



25. Section 4.1.5 (e) of the Provincial Planning Statement, 2024 (“**PPS**”) sets out the *no negative impacts* test:

*Development and site alteration* shall not be permitted in:

- a) significant wetlands in the Canadian Shield north of Ecoregions 5E, 6E and 7E1;
- b) significant woodlands in Ecoregions 6E and 7E (excluding islands in Lake Huron and the St. Marys River)<sup>1</sup>;
- c) significant valleylands in Ecoregions 6E and 7E (excluding islands in Lake Huron and the St. Marys River)<sup>1</sup>;
- d) significant wildlife habitat;
- e) **significant areas of natural and scientific interest**; and
- f) coastal wetlands in Ecoregions 5E, 6E and 7E1 that are not subject to policy 2.1.4(b)

unless it has been demonstrated that there will be *no negative impacts* on the **natural features or their ecological functions.** [emphasis added]

26. The focus of the issue in the Hearing was on the natural features of the earth science ANSI. This is an earth science ANSI, not a life science ANSI.

27. Regardless, any ecological functions considerations were settled as a result of the ecology and natural heritage experts’ meetings of like experts, which included Mr. Ken Thajer, the ecology and natural heritage expert for the Ganaraska Region Conservation Authority, Sal Spitale, the ecology and natural heritage expert for the Municipality, and Robin LeCraw, the Appellant’s ecology and natural heritage expert.<sup>9</sup>

28. The Appellant, Municipality, and Ganaraska Region Conservation Authority’s ecology and natural heritage experts’ meeting resulted in the agreed statement of fact (“**Ecology ASF**”). It says that,

[17] It is agreed that the Experts will not comment on issues pertaining to the Earth Science Area of Natural and Scientific Interest. These issues are to be addressed by other subject matter experts.<sup>10</sup>

...

---

<sup>9</sup> Tab 4, Affidavit of Mr. Randall, at para 7.

<sup>10</sup> Ibid, at para 9 and Attachment 1 to the Affidavit.

[38] It is agreed that Phase 1 [the proposed development on the Subject Lands] will have no direct impacts on aquatic habitat in watercourses, wetlands, and the pond, and indirect impacts can be mitigated provided that ground water infiltration and surface water quality is maintained, as confirmed through a hydrogeological and water balance study or equivalent, found acceptable to the Municipality and the Ganaraska Region Conservation Authority.<sup>11</sup>

...

[41] It is agreed that the proposed Phase 1 development [Subject Lands], which does not propose development within natural features and habitats and includes mitigation including buffers around natural features, satisfies the requirement of 'no negative impacts' as stated in the Provincial Policy Statement for the following Natural Heritage Features:

a. Significant Woodlands

b. Significant Wildlife Habitat

c. Fish Habitat.<sup>12</sup>

29. The ecology and natural heritage experts identified one natural heritage feature and two habitats which were, significant woodlands, significant wildlife habitat, and fish habitat, respectively. At the meeting of like experts, the ecology experts agreed that the proposed development met the *no negative impacts* test respecting these natural heritage features and habitats.<sup>13</sup> The Ecology ASF confirmed this.

30. The natural heritage and ecology issues were settled as a result of the ecology experts' discussions and the Ecology ASF. The Municipality did not call its ecologist as a witness in the Hearing. In response the Appellant did not call its ecologist either.

31. The Ganaraska Region Conservation Authority did not participate in the Hearing or indicate opposition to the proposed development.

32. This is because there was no issue relating to ecological functions.

33. In his oral evidence, Mr. Randall took the Tribunal through the Ecology ASF as well as the Appellant's Cambium Environmental Impact Study: 3852 Ganaraska Road dated December 12, 2022, authored by Andrea Coppins, Danielle Langlois, Keegan McKitterick, and Kristina Domsic, and an updated report of the same title and prepared by the same authors, dated April 14, 2022 (the "**Cambium Reports**").<sup>14</sup>

---

<sup>11</sup> Tab 4, Affidavit of Mr. Randall, at para 9 and Attachment 1 to the Affidavit.

<sup>12</sup> Ibid.

<sup>13</sup> Ibid, at para 9 and 10.

<sup>14</sup> Ibid, at para 17.

34. The Cambium Reports provide a detailed inventory of field and life science considerations on the Subject Lands and the surrounding areas.<sup>15</sup>
35. At no point during the Hearing were the ecology and natural heritage considerations in the Ecology ASF disputed by the Municipality nor did the Tribunal seek clarification on the ASF or the life science considerations in the Cambium Reports.<sup>16</sup>
36. The authors of the Cambium Reports, Ms. Coppins, Ms. Langlois, Mr. McKitterick, and Ms. Domsic did not file witness statements and did not provide oral evidence at the Hearing because the issue at the Hearing was scoped to whether it could be demonstrated that there would be *no negative impacts* on the natural features in the earth science ANSI.<sup>17</sup>
37. If the Member had concerns respecting the ecology or natural heritage considerations, it would have been appropriate and fair for the Member to seek clarification at the Hearing or asked that the Parties to return to address these concerns or respond to any questions. This did not happen.
38. The earth science ANSI and the *no negative impacts* test on the natural features (i.e. landforms and rocks) was the only remaining issue for the Hearing.
39. Dr. Eyles' evidence included extensive analysis of the earth science ANSI. She examined 2,471 acres of LiDAR imagery, being the entire ANSI. She also examined well water records on lands within and outside of the Subject Lands, including 125 well water records for lands within the broader ANSI. She also examined deep test pitting within the Subject Lands.<sup>18</sup> Dr. Eyles did all the study she could have done to understand the complete earth science ANSI at issue.
40. The LiDAR imagery and well water data confirmed that the natural features in the earth Science ANSI were De Geer moraines, a landform feature different from the pitted outwash feature that it was initially believed to be, based on aerial photographs and the Earth Science Inventory Checklist, Cordiner Report, 1980.<sup>19</sup>
41. Although the *type* of landform feature was disputed by the Municipality's geomorphology expert, Mr. Daryl Cowell, the earth science component was not.<sup>20</sup> Dr. Eyles and Mr. Cowell's ANSI agreed statement of facts ("**ANSI ASF**") sets this out at paragraph 11. They agreed that what they were looking at was an earth science ANSI.<sup>21</sup>
42. The Decision also fails to apply Dr. Villard's written and oral evidence that the landform features on the Subject Lands have been significantly degraded due to agricultural practices

---

<sup>15</sup> Ibid, at para 18.

<sup>16</sup> Ibid, at para 21.

<sup>17</sup> Tab 4, Affidavit of Mr. Randall, at para 20.

<sup>18</sup> Tab 3, Affidavit of Dr. Eyles, at paras 15 and 16.

<sup>19</sup> Ibid, at para 17.

<sup>20</sup> Ibid, at para 11.

<sup>21</sup> Ibid, at para 11.

for almost a century which impacts how *negative impacts* are assessed in an earth science ANSI.<sup>22</sup>

43. In his written and oral evidence, Dr. Villard detailed the agricultural practices that took place on the Subject Lands and surrounding area for at least 100 years, including cultivated tilling, which caused erosion that led to the degradation of the landform feature rocks on the Subject Lands. The study of the degradation of the landform feature rocks informed his application of the no *negative impacts* test.<sup>23</sup>

44. The PPS defines *negative impacts* as,

Negative impacts: means

c) in regard to other *natural heritage features and areas*, degradation that threatens the health and integrity of the natural features or *ecological functions* for which an area is identified due to single, multiple or successive *development or site alteration activities*;<sup>24</sup>

45. Subsection c) of the *negative impacts* definition applied to the one issue at the Hearing, which required the Tribunal to consider the degradation of the landform rocks in the earth science ANSI, which it failed to do.

46. The evidence is that the degradation on the natural feature had occurred over the 100 or so years of farming activity and that the proposed development would have no negative impacts on the feature on the lands or within the broader ANSI.

## FUNDAMENTAL ERRORS OF LAW AND MIXED FACT AND LAW

### Misunderstanding the remaining earth science ANSI issue contrary to fair, just and expeditious resolution of the matter

47. At paragraph 53 of the Decision, the Member said that,

[53] The Tribunal is not satisfied that it has enough evidence to conclude whether the proposed development will have no negative impact on the **natural features or their ecological functions** of the ANSI because, apart from the features on the Subject Lands the Tribunal received insufficient evidence regarding if any other features may exist. A detailed study regarding the significant features, if any, in the entire ANSI would have been helpful.<sup>25</sup> (emphasis added)

48. As stated in paragraph 15 of this Request, the ecological functions portion of the *no negative impacts* test was resolved by the ecology and natural heritage experts before the Hearing.

---

<sup>22</sup> Tab 5, Affidavit of Dr. Paul Villard, at para 18.

<sup>23</sup> Ibid, at para 14.

<sup>24</sup> Provincial Planning Statement, 2024, *negative impacts* definition.

<sup>25</sup> Decision at para 53.

49. The remaining issue at the Hearing was the determination of the *no negative impacts* test as it relates to the natural features in the earth science ANSI, those being De Geer moraines or in simpler terms, rocks, rock formation and landforms.
50. The ecology and life science evidence was filed in written evidence at the Hearing and provided in oral evidence in summary at the Hearing because matters of natural heritage features, ecology and life science were resolved, and the Hearing was scoped to address the earth science ANSI natural features portion of the *no negative impacts* test, not the life science requirement of ecological functions.
51. By requiring the Appellant to bring forward additional evidence on resolved issues of ecology and natural heritage, is not only a misunderstanding of the remaining issue on appeal but also contrary to the Tribunal's mandate to fairly, justly and expeditiously resolve matters.
52. As it relates to the fair, just and expeditious resolution, section 12(2) of the OLT Act says,
- The Tribunal shall, in respect of each proceeding, adopt any practices and procedures provided for in the rules or that are otherwise available to the Tribunal that, in its opinion, offer the best opportunity for a fair, just and expeditious resolution of the merits of the proceeding.
53. The Member's Decision necessitates reopening a settled issue that the Appellant and the Municipality's experts carefully worked to resolve. This goes against the Tribunal's mandate for fair, just and expeditious resolution of matters.
54. The Decision also sets a negative precedent that would lead future appellants to bring forward detailed evidence on all issues originally raised, including issues that were resolved and included in agreed statements of facts.

### **Misapplication of the no negative impacts test: earth science ANSI natural features**

55. The ordinary reading of section 4.1.5(e) requires the Appellant to demonstrate that the proposed development will not negatively impact the natural features or their ecological functions in order for development to occur.
56. The separation of natural features or ecological functions in Section 4.1.5 of the PPS is purposeful because ANSIs can be earth science or life science ANSIs, or both. This means that depending on the type of ANSI, the Appellant's experts may be required to bring forward evidence on both.
57. The Appellant retained Dr. Eyles as the subject matter expert respecting glacial geomorphology landform rocks in order to determine the natural features portion of the *no negative impacts* test.

58. This is not a life sciences ANSI, and regardless, the natural heritage or ecological function matters identified by the ecologists included significant woodlands, significant wildlife habitat, and fish habitat. These matters were resolved in advance of the Hearing and the evidence at the Hearing included an overview of the Ecology ASF and resolution of the natural heritage matters.

59. The ecology and natural heritage experts agreed that the earth science ANSI issue would be addressed by other subject matter experts in earth sciences. At paragraph 17 of the Ecology ASF it states,

It is agreed that the Experts will not comment on issues pertaining to the Earth Science Area of Natural and Scientific Interest. These issues are to be addressed by other subject matter experts.<sup>26</sup>

60. The type of ANSI here is an earth science ANSI. The test requires that it is demonstrated that there is not negative impact to the natural features. In her Affidavit, Dr. Eyles explains that her evidence of the earth science ANSI was specific to its earth science qualification, which is a designation based on the physical aspects of a landscape, not the biodiversity of an area.<sup>27</sup>

61. As already described, Dr. Eyles studied the larger ANSi and concluded that the characteristics of the landform within it were consistent with a De Geer moraine. She also concluded that there was no negative impact from the proposed development on the ANSI. In short, developing on a land formation on the Subject Lands would not impact land formation next door or within the surrounding lands.

62. It is undisputed evidence that the ANSI subject to the appeal is an earth science ANSI which requires the natural features portion of the test to be met. The Decision errs in addressing the two types of ANSIs and not drawing a distinction between earth science ANSI and life science ANSI, and applying the respective consideration to each, being considerations of natural features or ecological functions respectively. The Decision conflates both requirements to the earth science ANSI.

### **Forging a new unachievable threshold standard of the no negative impacts test that does not exist in the PPS**

63. In the Decision, the Member states that, “A detailed study regarding the significant features, if any, in the entire ANSI would have been helpful.”<sup>28</sup>

64. Dr. Eyles conducted extensive analysis of the earth science ANSI by examining approximately 2,471 acres of LiDAR imagery of the entire ANSI. The LiDAR imagery also studied lands outside of the ANSI.

---

<sup>26</sup> Affidavit of Kent Randall, at para 9.

<sup>27</sup> Ibid at para 10.

<sup>28</sup> Tab 2, Decision, at para 53.

65. Dr. Eyles also analyzed well water data for 125 wells on lands within the ANSI and outside of the Subject Lands.<sup>29</sup>

66. Dr. Eyles' examination of the entire ANSI is detailed and itemized in her witness statement and supporting reports.<sup>30</sup>

67. At the request of the Municipality, Dr. Eyles and Dr. Villard also conducted detailed deep test pitting of the Subject Lands.

68. As stated by Dr. Eyles in her Affidavit at Tab 3, paragraph 25,

As a professional geoscientist I determined that detailed study of the landforms and sediments on the Subject Lands through on site investigations and deep test pitting, together with examination of landforms within and outside of the earth science ANSI using LiDAR data, was sufficient to demonstrate that the proposed development would have *no negative impacts* on the ANSI as a whole.<sup>31</sup>

69. As a qualified glacial geomorphologist, Dr. Eyles determined the appropriate form of study of the entire ANSI, which was determined to be LiDAR and water well data, as well as the appropriate form of study of the Subject Lands which was determined to be deep test pitting.

70. At no point in the Hearing did the Member ask or seek clarity from Dr. Eyles on her determination to use LiDAR and water well data on the entire ANSI versus deep test pitting on the Subject Lands.<sup>32</sup>

71. The Decision states that "detailed study" of the entire ANSI should have been conducted. Dr. Eyles and Dr. Villard opine in the respective Affidavits that there are no additional tests that they could have carried out as it relates to the ANSI lands, outside of the Subject Lands, without trespassing onto lands not owned by the Appellant.

72. The detailed borehole testing conducted on the Subject Lands could not have been carried out on the 2,471 acres of land within the ANSI, nor is it required by any policy. This standard is unachievable.

73. The impact of the Tribunal's Decision is to require that landowners study lands not owned by them, with a level of detail and process that is not reasonable or capable of being applied, in meeting the no negative impacts test.

### **The Tribunal misses a key fact about the location of the earth science ANSI**

---

<sup>29</sup> Tab 3, Affidavit of Dr. Eyles, at para 15.

<sup>30</sup> Ibid, at paras 21 and 22.

<sup>31</sup> Ibid, at para 24.

<sup>32</sup> Ibid, at para 25.

74. The Decision concludes that, “There is no mention of the **ANSI lands to the east and west** of the Subject Lands.”<sup>33</sup> (emphasis added). This is wrong.
75. As explained in the preceding section, Dr. Eyles’ LiDAR data spans 2, 471 acres of the entire ANSI.
76. Mr. Randall also took the Tribunal through site and area photographs of surrounding residential development located east and west of the Subject Lands.<sup>34</sup>
77. Several times throughout the Hearing, Ms. Jessica Jakubowski, counsel for the Appellant, shared screen at Mr. Randall’s direction, to show the mapping of the entire ANSI and the Subject Lands found in Compendium Tab 11 and Mr. Randall’s Affidavit at Tab 4, Attachment 7 to the Affidavit.
78. What is most concerning with the Member’s statement that, “there is no mention of the ANSI lands to the east of the Subject Lands” is that it was mentioned several times at the Hearing, and in fact, the ANSI does not exist east of the Subject Lands.
79. As stated by Mr. Randall in his Affidavit at Tab 4, paragraph 27, Mr. MacDonald, the land use planner for the Municipality even opined in his direct examination, that the mapping east of the Subject Lands may have been removed when residential homes were built there.
80. The Member’s failure to acknowledge that the ANSI does not exist to the east of the Subject Lands is a concerning error of fact. The ANSI mapping stops immediately east of the Subject Lands and does not reoccur again for half a kilometer to the east of County 10 Road. How could development on the Subject Lands, approximately half a kilometer away impact land formations on the other side of County Road 10?
81. The Member’s suggestion that the Appellant did not study or mention something that does not exist is an impossible and incoherent requirement that flows throughout the entire Decision.

## **OTHER CONCERNING ERRORS RAISING CONCERNS OF LACK OF ATTENTION TO DETAIL**

82. The Member heavily relies on and refers to the experts’ affidavits in making his decision instead of witness statement. Those affidavits were filed in response to a jurisdiction motion, brought by the Municipality, which was heard at the commencement of the Hearing, not the Hearing of the merits. The affidavits should have been referenced in a limited manner as it relates to the Motion only.<sup>35</sup>
83. There was also a general lack of attention to detail throughout the Decision, including mixing up who was counsel for the Municipality and who was counsel for the Appellant; incorrect

---

<sup>33</sup> Decision at para 36.

<sup>34</sup> Tab 4, Affidavit of Mr. Randall, at para 24.

<sup>35</sup> Decision, paragraphs referring to Affidavits: 34, 35, 39, 40, 41, 43, and 46.



spelling of the names of lawyers; and incorrect reference to the Appellant as “Chris Donegan” instead of “Mistral Development Inc.”

## CONCLUSION

84. The ANSI is an earth science ANSI. It is not a life science ANSI. Earth science ANSIs have to do with rocks, rock formations, geomorphic features and glacial formations. Life science ANSI are of biological or ecological significance, and involve things such as habitats, ecosystems and their communities. Regardless, of this being an earth science ANSI, the ecologists studied the natural heritage and ecological related matters. They were identified as significant woodlands, significant wildlife habitat, and fish habitat. The ecologists agreed that these matters were addressed and were not at issue in the Hearing. Dr. Eyles and Dr. Villard studied the earth science matters and features in the ANSI, both on the Subject Lands and in the broader ANSI. Dr. Eyles testified to her analysis of the broader ANSI which included LiDAR and analysis of 125 well water logs from lands within the ANSI but outside of the Subject Lands. Dr. Eyles and Dr. Villard concluded and opined that there was no negative impact from the proposed development on the ANSI and its features. The features were identified as characteristic of De Geer moraine and not pitted outwash.
85. The uncontradicted evidence in the Hearing was that there is no negative impact on the ANSI. As addressed in the affidavit of Mr. Randall, the Tribunal did not rely on the Municipality's witnesses. It did not give any weight to the evidence of Mr. Cowell as he was found to be argumentative, not cooperative and did not review all of the reports that were produced by the Appellant. The Tribunal found that Mr. Cowell did not sufficiently inform himself of the matter. The Tribunal found Mr. MacDonald's evidence to be of little help as he relied on Mr. Cowell.
86. The Chair of the Tribunal should exercise its discretion and grant this Request because the Tribunal:
- a. violated the rules of natural justice and procedural fairness in keeping a threshold issue to itself being evidence on the broader earth science ANSI, rather than raising this concern before counsel before or during the Hearing;
  - b. violated the rules of natural justice and procedural fairness and made errors of law and fact, in particular, as it relates to a threshold issue that was settled, being the natural heritage and ecological functions issues addressed; and
  - c. made errors of law and fact such that the Tribunal would have reached a decision to approve the proposed development, had it not misunderstood the application of the *no negative impacts* test, the scope and nature of evidence received, and key facts that lead to the erroneous Decision.

**Filing Fee pursuant to Rule 25.3 of the  
Ontario Land Tribunal Rules**

**DENTONS CANADA LLP**

**BMO LLP Digital Cheque - TO**

DATE: May 14, 2025

PAYEE: Minister of Finance

VENDOR #: F009236

CHEQUE #

1007259

VOUCHER	INVOICE	FILE #	DESCRIPTION	AMOUNT
1674622	51425JM	595160-000001		400.00
TOTAL				\$400.00

**DENTONS CANADA LLP**

DATE: May 14, 2025

PAYEE: Minister of Finance

VENDOR #: F009236

CHEQUE #

1007259

VOUCHER	INVOICE	FILE #	DESCRIPTION	AMOUNT
1674622	51425JM	595160-000001		400.00
TOTAL				\$400.00

THE FACE OF THIS DOCUMENT HAS A COLOURED BACKGROUND. THE BACK OF THIS DOCUMENT CONTAINS A WATERMARK.

**DENTONS CANADA LLP**

77 King St West, Suite 400, TD Centre  
Toronto, ON M5K 0A1

Bank of Montreal  
11th Floor, 100 King St West  
Toronto, Ontario M5X 1A3

**1007259**

**14-05-2025**

DATE DD MM YYYY

PAY \$ 400.00  
FOUR HUNDRED AND 00/100 Dollars

TO THE ORDER OF

**Minister of Finance**

General Account Canadian Funds

PER

PER

1007259 000022001 1664 148

Printer ID # / NI d'imprimeur 1014

PAPER CHARACTERISTICS	- CHARCOAL WATERMARK
- CHEMICAL SENSITIVITY	- INVISIBLE FLUORESCENT FIBRES
PRINT CHARACTERISTIC	- PRINT LOCK COATING
- COLOR RED BACKGROUND	
CARACTERISTIQUES DU PAPIER	- FILIGRANE INVISIBLE
- SENSIBILITE CHIMIQUE	- FIBRES FLUORESCENTES
COUCHE PRINT LOCK	- INVISIBLES
CARACTERISTIQUE DE L'IMPRIME	- FOND COLORE

Endorsement - Signature or Stamp  
Endossement - Signature ou timbre

BACK/VERSO