Staff Report

To	Council
Department	Corporate Services, Strategy and Innovation Department
Meeting Date	Council and Committee of the Whole Meetings - 13 Jan 2026
Subject	Ward Boundary Review OLT Decision and Next Steps
Report Number	SR- 3093
Prepared by	Gillian DeMille

Recommendation

1. That the report from the Clerk's Division re: Ward Boundary Review OLT Decision and Next Steps dated January 13, 2026 be received; and
2. That the 2025 budget for the Ward Boundary Review be increased by $40,000 to be funded from the Working Fund Reserve.

Executive Summary

Purpose of Report

The purpose of this report is to inform Council and the public of the OLT Order in relation to the Ward Boundary Review and provide next steps available for Council's consideration.

Report Highlights

- In May 2025 Council passed By-law 2025-39 to establish a new ward boundary configuration.
- A notice of appeal was filed with the Ontario Land Tribunal and the Tribunal heard the appeal from October 15-17, 2025.
- On December 18, 2025, the Tribunal issued an Order that repealed By-law 2025-39.
- Based on the requirements of the Municipal Act, this means there are no changes to the existing Council composition and ward boundaries for 2026 Municipal Election as the status quo still applies.
- Staff have communicated the decision to the public.

- Council may desire to consider possible next steps described in this report.

Report Details

Background and Analysis

On May 13, 2025 Council passed By-law 2025-39 to establish a new ward boundary configuration in Loyalist Township in accordance with Section 222 of the Municipal Act.

A notice of appeal was filed with the Ontario Land Tribunal (OLT) in relation to By-law 2025-39. The Tribunal conducted a hearing from October 15-17, 2025 to hear from both the appellant and municipality.

On December 18, 2025, the OLT provided its Order. The Order repealed By-law 2025-39, the by-law to establish the new ward configuration and Council composition. The reasoning for this Order is detailed in the OLT Decision.

Any decision by Council to change ward boundaries is subject to the Municipal Act Section 222, including public notice provisions and appeal to the OLT. This includes a 45-day appeal period, and any appeals need to be either withdrawn or a decision of the Tribunal rendered before January 1, 2026 for the by-law to be in force for the 2026 Municipal Election. Given the OLT Order was received on December 18, 2025, it was not possible for Council to pass a by-law that would have the effect of altering the ward system and allow for the right to appeal by the January 1st deadline.

Staff will begin preparing for the 2026 Municipal Election using the existing ward boundary configuration and Council composition as described in Attachment 2.

At this time, there is no obligation to take further action. If Council wishes to take further action, any changes regarding ward configuration or Council composition would only be effective for the 2030 Municipal Election given that the January 1, 2026 deadline has passed.

Council has the option to direct staff to re-engage with Watson & Associates to develop new ward boundary configuration options based on the OLT's Decision. A public consultation period would be conducted and the options would be brought to a Committee of the Whole meeting for consideration. There is a risk in undertaking this work during an election year as this will cause elector confusion and will strain staff resources during an election year. The additional work was also not approved in the 2026 Budget. Therefore, if this is Council's desire, staff recommend referring the matter to the 2026-2030 term of Council for decision and direct staff to add costs to the 2027 Operating Budget.

In this case, Council may consider the following recommended motion:

"That staff be directed to seek budget approval during the 2027 Operating Budget deliberations; and
If approved, that staff be directed to re-engage with Watson & Associates and conduct public consultation to develop new options for ward boundary configuration based on the OLT Decision."

Financial Implications

$75,000 was the approved 2025 budget for the completion of the Ward Boundary and Council Composition Review. To date, the actual cost is $115,309.37 of which $53,523.47 is related to the Appeal. The additional budget requirement of approximately $40,000 can be funded through the Working Fund Reserve.

The total expense by category is:

Advertising	$	6,191.59
Consultant	$	81,741.73
Legal	$	27,009.94
Miscellaneous	$	366.12
Grand Total	$	115,309.37

Risks or Stakeholder Implications

There is a risk of confusion among electors if public engagement regarding new ward boundaries are conducted as the same time as communications regarding the 2026 election and the wards applicable to that. To mitigate this risk, staff will continue to communicate to electors that the existing ward structure and council composition apply to the 2026 election.

Section 223(2) of the Municipal Act allows electors in a municipality to present a petition to Council asking Council to pass a by-law dividing or redividing the municipality into wards or dissolving the existing wards. The petition requires the signatures of 1 per cent of the electors in the municipality or 500 of the electors in the municipality, whichever is less, but, in any event, a minimum of 50 signatures of the electors in the municipality is required.
If a sufficient petition is received, the Municipal Act requires Council to pass a by-law within 90 days. Staff would engage Watson & Associates to develop new ward boundary configuration options based on their existing work and the OLT's Decision. A public consultation period would be conducted and the options would be brought to Council for consideration. Any decision on a new by-law would be subject to an appeal to the OLT. If Council fails to pass a by-law within 90 days of receiving the petition, then any elector who signed the petition may appeal to the OLT.

Communication and Consultation Plan

The OLT Decision has been communicated to the public via the following methods:

- Loyalist Engage Platform and email to those who subscribe to the project;
- Social Media
- Township Website
- Council Members

Attachments

Attachment 1 - OLT-25-000512 Decision
Attachment 2 - Ward Boundary Map
Attachment 3 - Municipal Act Sections 222 and 223

Approved by

Approved by	Status:
Anne Kantharajah, Township Clerk	Approved - 05 Jan 2026
Trevor Cornelius, Corporate Communications Manager	Approved - 05 Jan 2026
Jenna Campbell, Director of Corporate Services	Approved - 06 Jan 2026
David Clazie, Director of Finance/Treasurer	Approved - 06 Jan 2026
Rebecca Murphy, Chief Administrative Officer	Approved - 08 Jan 2026

Ontario Land Tribunal
Tribunal ontarien de l'aménagement du territoire

Ontario

ISSUE DATE: December 18, 2025 **CASE NO(S).:** OLT-25-000512

PROCEEDING COMMENCED UNDER subsection 222(4) of the *Municipal Act*, S.O. 2001, c. 25, as amended

Appellant:	George Grant Amyot
Subject:	By-law No. 2025-39 (Ward Boundary)
Description:	New boundary configuration to be divided into five wards. Council would be comprised of seven members, including the mayor (elected at-large), deputy mayor (elected at-large), and five councillors elected by Ward (one from each of the five wards).
Reference Number:	By-law 2025-39
Property Address:	Township-wide
Municipality/Upper Tier:	Loyalist/Lennox and Addington
OLT Case Number:	OLT-25-000512
OLT Lead Case Number:	OLT-25-000512
OLT Case Name:	Amyot v. Loyalist Township (Town)

Heard: October 15-17, 2025 by video hearing

APPEARANCES:

Parties	**Counsel/Representative***
George Grant Amyot	(self-represented)*
Township of Loyalist	Spencer Putnam

DECISION DELIVERED BY A. MASON AND ORDER OF THE TRIBUNAL

Link to the Order

INTRODUCTION

[1] This is the decision arising from a three-day Merit Hearing of an appeal by George Amyot ("Appellant") pursuant to s. 222(4) of the *Municipal Act* S.O. 2001, c. 25, as amended ("Act") concerning the passing of Loyalist Township By-law 2025-39 ("By-law"), which revises the municipal ward boundaries in the Township of Loyalist ("Township") to five wards each represented by one councillor, and establishes a seven-member council comprised of a mayor, deputy mayor and the respective ward councillors.

[2] The Appellant primarily takes issue with the By-law because it maintains Amherst Island as an individual ward despite its small permanent and seasonal population, which results in a deviation from the average ward population of 77%. The Appellant submits that a deviation of 77% is contrary to the principle of representation by population, or voter parity. The Appellant disputes Council's rationale that Amherst Island constitutes a "community of interest", and that if it is a community of interest, it is not unique enough to justify its recognition as a separate ward and the resulting deviation from voter parity. The Appellant also disputes the fairness of the process leading to adopting the By-law and the quality of the consulting work that informed the decision of Council. The Appellant seeks that the Tribunal repeal the By-law and substitute an alternative ward boundary configuration where Amherst Island is joined with part of the mainland in a single ward with relative voter parity between each ward.

[3] The Township submitted that the deviation from voter parity in the By-law is justified because of Amherst Island's unique features as a community of interest, such as its physical separation from the mainland and that the only means of transportation to it is by ferry. The Township takes the position that the By-law is reasonable, was

borne out of a fair and thorough process and that the Tribunal should defer to the decision of Council to redraw the wards as set out in the By-law.

[4] Having considered the submissions and sworn written and *vive voce* evidence presented by the Parties, the Tribunal finds that Amherst Island is a distinct community of interest; however, the Tribunal does not find that the deviation from population parity of 77% to provide it with its own ward is reasonable and that, to do so, undermines the principle of effective representation. For these reasons, the Appeal is allowed and the By-law is repealed.

AFFIDAVIT OF SERVICE

[5] An affidavit of service attesting to giving notice for the Merit Hearing, sworn by the municipal clerk in accordance with the Act, and is marked as **Exhibit 8.**

PARTICIPANTS

[6] In advance of the Merit Hearing, the Tribunal received twenty-seven requests for Participant status. All of the requests were from individuals who are full-time or seasonal residents of Amherst Island. The Participant Statements are unanimous in supporting the By-law and Amherst Island remaining a separate ward, citing the unique circumstances of island life as justification. The Tribunal granted Participant status to the list of individuals attached to this Decision as **Schedule 1**.

APPLICABLE LEGISLATION AND JURISPRUDENCE, ONUS AND STANDARD OF DEFERENCE

Municipal Act

[7] The Act at s. 222(1) authorizes a municipality to “divide or re-divide the municipality in wards or dissolve the existing wards” with some parameters. Where a

by-law redrawing ward boundaries is appealed under s. 222(4) of the Act, the Tribunal is charged with hearing the appeal under s. 222(7) and may make an order affirming, amending or repealing the by-law.

[8] The Act, under ss. 217(1)1 and (1)3 establishes the minimum size for the council of a local municipality in Ontario as five, “one of whom shall be the head of council” who must be elected by general vote. There are no references to a maximum or to an “appropriate” size associated with, for example, the population of the municipality.

[9] By operation of s. 223(6)(b) of the Act in the case at hand, an Order of the Tribunal made before January 1, 2026, will take effect for the 2026 election; however, an Order made on or after that date would not take effect until the 2030 election.

The “*Carter*” Case and the Principles of Effective Representation

[10] The *Canadian Charter of Rights and Freedoms* at s. 3 provides a protected right to vote. The majority decision in the seminal case *Reference Re Provincial Electoral Boundaries (Sask).* 1991 CanLII 61 (SCC), [1991] 2 S.C.R. 158 (known as “*Carter*”) clarifies that the right to vote enshrined in the Charter is not equality of voting power, but the right to “effective representation”.

[11] The conditions of effective representation are further articulated in *Carter,* where the majority decision states that relative parity of voting power is the first condition of effective representation, but not the only factor to take into account. The “countervailing factors” of geography, community history, community interests and minority representation are noted as possible examples that may justify a departure from absolute voter party in the pursuit of more effective representation.

Onus and Deference to Council's Decision

[12] Although the Appellant takes the position in their factum that the burden of proof to demonstrate the By-law is reasonable and should be affirmed rests with the Township, the jurisprudence from the Tribunal and its predecessors provided by the Parties in fact establishes that the burden rests with the Appellant. As such, in the case at hand, the Tribunal considers that the burden of proof lies with the Appellant to demonstrate why the By-law should be amended, appealed or affirmed.

[13] The majority decision in *Carter* indicates that a decision to redraw ward boundaries should be given deference, and accordingly the Tribunal should not intervene unless it finds the boundaries are unreasonable. However, as the Supreme Court went on to say that in determining the reasonableness of the boundaries in that case, "The question is whether the deviations from voter parity [in southern ridings] can be justified on the basis of valid considerations." This principle, and the Court's analysis, make clear that justification is the central inquiry when determining reasonableness.

ADDITIONAL BACKGROUND

Self-Represented Appellant and Witnesses at the Merit Hearing

[14] The Appellant was self-represented at the Merit Hearing and presented Andrew Sancton to the Tribunal on his behalf to provide *vive voce* and written opinion evidence in the area of ward boundary reviews. Dr. Sancton is a retired professor of political science with expertise in local government issues and prior experience in electoral boundary review processes. The Tribunal qualified Dr. Sancton to provide opinion evidence in the area of ward boundary reviews.

[15] Since opinion evidence would be presented by Dr. Sancton, the Tribunal clarified that the Appellant is acting as "Agent" at the Merit Hearing and would not be permitted to lead his own fact evidence.

[16] The Township presented Jack Ammendolla and Robert J. Williams to give *viva voce* evidence and written opinion evidence to the Tribunal. Mr. Ammendola is a professional Land Economist with related professional designations and has experience managing council composition and ward boundary reviews as a consultant. Dr. Williams is a retired academic with expertise in municipal government, provincial politics and electoral systems and provides advisory services on ward boundary and electoral system reviews. Both witnesses were contributing members of the consulting team retained by the Township to undertake the ward boundary and composition review that informed the adoption of the By-law. The Tribunal qualified both witnesses to provide opinion evidence in the area of ward boundary review in the matter before the Tribunal.

[17] The Township also presented Diane Pearce, a resident of Amherst Island, former Township Clerk and CAO of the (former) Township of Amherst Island. Ms. Pearce was put forward to provide fact evidence about the geography of Amherst Island, local features, the ferry service, emergency services, road maintenance and the background to amalgamation.

The Township and Existing Council Configuration

[18] The Township is a lower-tier municipality in the County of Lennox and Addington and was formed in 1998 when Amherst Island Township, Ernestown Township, and the Village of Bath were amalgamated by the Province. According to data consolidated by the Consulting Team, the Township population was 20,425 residents in 2025. Despite population growth of approximately 23% since amalgamation, primarily in the Amherstview settlement area, no redistricting has taken place in the Township. Future population growth projected over the 2025-2035 period is projected to reach 21,924 and is also expected to be concentrated in the Amherstview area.

[19] Prior to the passing of the By-law, Township Council was made up of seven members corresponding to the pre-amalgamation municipalities as follows:

1. A mayor and deputy mayor, each elected at large.

2. Five councillors elected in three wards:

    a. one councillor representing Amherst Island (Ward 1),

    b. one councillor representing Bath (Ward 2); and

    c. three councillors representing Ernestown (Ward 3).

[20] The historic ward configuration has certain unique features:

1. Amherst Island (Ward 1) is geographically limited to an island;

2. The number of councillors in each ward is not the same (i.e., asymmetrical representation with three councillors elected in Ward 3), and

3. Significant population imbalance across three wards, where the comparative population per ward using 2025 data is:

    a. Amherst Island – 919 residents

    b. Bath – 2,994 residents

    c. Ernestown – 16,512 residents

4. One ward (Ernestown/Ward 3) covers approximately two-thirds of the municipality and includes both settlements and rural areas, while the other two wards are more compact and heterogeneous in terms of the types of communities contained within them.

The Ward Boundary Review Process

[21] A petition was submitted to the Township in March 2022 under s. 223 of the Act requesting a ward boundary review. The Act does not prescribe how a municipality must conduct a ward boundary or council composition review; however, the Township duly moved to establish a scope of work to retain an independent consultant to conduct the review and provide informed options to the community and Council.

[22] Ultimately, the professional consultant team under Watson & Associates Economists Ltd., including Dr. Williams ("Consultant Team") was retained to conduct the ward boundary review ("Review Process").

[23] The Review Process included a project web page with background papers, in-person public engagement sessions across the Township, presentations to Council, online surveys, along with meetings with current councillors and senior municipal staff.

[24] Following the first round of engagement, a preliminary report was provided to Council by the Consultant Team in February 2025 ("Preliminary Report"). The Preliminary Report explains a set of principles informing the Review Process to contribute to achieving the over-arching principle of effective representation, being:

1. Representation by population;

2. Considering municipal growth trends and projections to balance the present and future population distribution among the wards for a minimum of three municipal elections (i.e., time horizon to 2035);

3. Considering traditional neighbourhoods, settlement patterns and community grouping in specific geographic locations where possible and not fragment communities (i.e., "communities of interest");

4. Respecting geographical features and the defining natural and infrastructure boundaries for establishing wards.

5. Effective representation as an overarching principle.

[25] With respect to representation by population, the Preliminary Report sets out that *Carter* establishes that some degree of variation from full voter parity may be justified, and at times, even necessary, “on the grounds of practical impossibility or the provision of more effective representation”. The Preliminary Report noted that because of variations in densities and character of communities, equitable or fair representation is not necessarily equal representation.

[26] The Preliminary Report explains that a population of a ward is considered “optimal” if it is within +/-5% of the number where the total population in the municipality is divided by the number of wards (“Optimal Parity”). A ward population is considered with the acceptable range if it is between 5% to 25% of the optimal population (“Acceptable Parity”). The range of Acceptable Parity of +/-25% from Optimal Parity is considered acceptable and characterized as a “rather generous range of tolerance from parity”, but that it is based on long-standing parameters of the federal redistricting process. The Consulting Team states that the goal is to “reduce the range of variation among the wards as much as possible”.

[27] Informed by the guiding principles, the Preliminary Report proposed seven examples as alternatives to the existing asymmetrical ward structure for consideration. The alternative ward examples are said to “attempt to respect and integrate identifiable communities of interest into more coherent, single-member wards to enhance accessibility, accountability and equality while blending that perspective with the other guiding principles”. The Preliminary Report cautions that the geography and uneven population distribution across the Township were challenges for the Consultant Team to proposing new configurations that kept identifiable communities of interest intact, created wards with roughly equal populations and provided effective representation.

[28] Following the Preliminary Report, the Consultant Team continued community engagement, gathering feedback on the alternative ward examples, cumulating in a final recommendation report to Council in April 2025 (“Final Report”). The Final Report modified options from the Preliminary Report and made a recommendation to Council of two final ward configuration options:

1. Final Option 1: “Population Parity – Four Mainland Wards” (adjusted Example 2 in Preliminary Report)

    - Maintains five councillors by establishing five wards with new boundaries.
    - Amherst Island is maintained as a separate ward and is outside the Acceptable Parity of +/-25% (at -77% voter parity).
    - In 2025, Wards 2-5 are within Acceptable Parity.
    - By 2035, Wards 1, 2 and 4 are outside of the Acceptable Parity range because of predicted growth in the main settlement areas.
    - This option is characterized as being largely successful in delivering effective representation by “maintaining most communities of interest and, outside of the island ward, the present population distribution in very good but worsens with projected growth. This option has some limitations but is largely successful in providing effective representation.”

- Table of Final Option 1 population parity:[1]

Table 7-1
Loyalist Township
Final Option 1 – Population by Ward

Ward	Number of Councillors	2025 Population	2025 Population Variance by Ward	2025 Optimal Range	2035 Total Population	2035 Population Variance by Ward	2035 Optimal Range
Ward 1	1	919	0.23	OR-	1,091	0.25	OR-
Ward 2	1	5,040	1.23	O+	5,883	1.34	OR+
Ward 3	1	4,766	1.17	O+	4,487	1.02	O
Ward 4	1	5,026	1.23	O+	5,878	1.34	OR+
Ward 5	1	4,674	1.14	O+	4,585	1.05	O
Total/ Average	**5**	**20,425**	**4,085**	**-**	**21,924**	**4,385**	**-**

Total Population includes permanent and seasonal population. Seasonal population is estimated at 450 persons.
Source: Watson & Associates Economists Ltd., 2025.

2. Final Option 2: "Ward System" (adjusted Example 7 in Preliminary Report)

- Reduces the number of local councillors from five to four, thereby increasing the number of residents in each ward and corresponding optimum population per ward.

- Amherst Island is grouped with Bath and the area around the Ferry terminal on the mainland to create one ward.

- In 2025, two wards are within Optimal Parity (+/-5%) and two wards are within Acceptable Parity (+/-25%)

[1] Council Composition and Ward Boundary Review Final Report at 37 in Document Book of the Township of Loyalist at 238.

- By 2035, all wards remain within the Acceptable Parity range (+/- 25%).

- Most of the ward boundaries lines are clear and identifiable using significant features.

- This option is characterized as largely successful in achieving effective representation because of existing and future parity.

- Table of Final Option 2 population parity:2

Table 7-3
Loyalist Township
Final Option 2 – Population by Ward

Ward	Number of Councillors	2025 Population	2025 Population Variance by Ward	2025 Optimal Range	2035 Total Population	2035 Population Variance by Ward	2035 Optimal Range
Ward 1	1	5,514	1.08	O+	6,551	1.20	O+
Ward 2	1	5,026	0.98	O	5,878	1.07	O+
Ward 3	1	4,656	0.91	O-	4,382	0.80	O-
Ward 4	1	5,230	1.02	O	5,114	0.93	O-
Total/ Average	**4**	**20,425**	**5,106**	**-**	**21,924**	**5,481**	**-**

Total Population includes permanent and seasonal population. Seasonal populations are estimated at 450 persons.
Source: Watson & Associates Economists Ltd., 2025.

[29] Council ultimately endorsed Final Option 1, which was then codified in the By-law.

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[2] Council Composition and Ward Boundary Review Final Report at 41 in Document Book of the Township of Loyalist at 242

WAS THE WARD BOUNDARY REVIEW PROCESS FAIR AND REASONABLE?

[30] The Tribunal first considers the Appellant's submission that the boundary review process conducted by the Township that arrived at the adoption of the By-law was not reasonable for the following general reasons:

1. Township Council was in a conflict of interest by voting on rules for its own election:

2. The Consultant Team predetermined that Amherst Island should remain a separate ward;

3. The Consultant Team predetermined that asymmetrical wards were not desirable and that an even-numbered council was a reasonable option.

Conflict of Interest

[31] The Appellant submitted that, where a council makes a decision about its own constitution, it is inherently acting in a conflict of interest. In their factum provided to the Tribunal, the Appellant alleges that the councillor from Amherst Island cast a deciding vote in favour of the By-law, presumably evidencing a conflict of interest. From this, the Appellant submits that the Tribunal should not defer to Council's decision to redraw the wards and composition of council with Amherst Island as a separate ward as codified in the By-law.

[32] Dr. Sancton did not provide evidence demonstrating a conflict of interest or self-dealing on the part of Council or individual councillors, despite the Appellant's allegation. The witness in fact, acknowledged in cross-examination that his position on this submission rested entirely on the Appellant's factum and that he did not have any direct evidence or knowledge of a conflict of interest. Nevertheless, Dr. Sancton opined broadly that, where there is an elected body that changes it own rules, there is always

the potential for conflict. To counter inherent conflict, Dr. Sancton opined that at the provincial and federal level, other methods of redrawing ward boundaries by independent commissions are more fair and not subject to the same conflict of interest where a municipal council votes to redraw ward boundaries.

[33] Counsel for the Township submitted that the allegation of conflict of interest was unfounded and merely designed to undermine the credibility of the Review Process and Consulting Team.

[34] The Tribunal makes no finding on Dr. Sancton's opinion that the independent electoral boundary commission process for redistricting at the provincial and federal levels is inherently more fair since the Province specifically granted municipalities the power to pass by-laws under s. 222 of the Act in response to petitions filed under s. 223. This is the process designed by the legislature and the municipality is "a creature of the Province".

[35] The Tribunal agrees with the Township and finds the Appellant's submission that the Tribunal should consider the adoption of the By-law by Council's as the product of a conflict of interest or self dealing to be without merit or basis. No evidence was presented to indicate Council operated outside the authority in s. 222 to pass the By-law redrawing the ward boundaries or that any self-dealing or conflict of interest went into the process or final decision to adopt the By-law. The Tribunal looks poorly on such unfounded insinuations.

Predetermination of Amherst Island as a Separate Ward

[36] The Appellant alleged that the Consultant Team prejudged that Amherst Island should remain a separate ward and that, as a result, the value of the Review Process and ultimately the ward boundary options in the Final Report, is suspect. To this point, Dr. Sancton testified that the language in the Preliminary Report demonstrates that the Consultant Team started the Review Process predisposed to Amherst Island remaining

its own ward. Dr. Sancton specifically drew the Tribunal to a passage from the Preliminary Report that states “although the nature of the municipality unquestionably requires protecting, for example, a voice on council for Amherst Island and the extensive rural area of the Township” as evidence that the Consulting Team presupposed Amherst Island would stay its own ward.

[37] Dr. Sancton also critiqued the value of the data used by the Consulting Team from the Review Process, since over 30% of the respondents were residents of Amherst Island, while the island only accounts for approximately 4.5% of the Township’s total population

[38] Dr. Sancton further opined that the Consultant Team failed to provide the level of extensive documentation required to justify that Amherst Island was a community of interest that should have its own ward.

[39] In response, the witnesses for the Township testified that the Consultant Team did not predetermine that Amherst Island should be maintained as a separate ward, as evidenced by the seven ward boundary options in the Preliminary Report, where only one option shows the island as a separate ward. The witnesses both testified that they were only able to recommend an option with Amherst Island as a separate ward because of the consultation process, their deepening understanding of the operation and shortcoming of the current asymmetrical system and by applying the principles in *Carter*.

[40] Having considered the testimony of the Township’s witnesses, the Tribunal is satisfied that that the Consultant Team engaged with the community and Council a number of times in person and virtually, and that the Review Process was documented in a reasonable manner. The Preliminary Report, the Final Report and the various background papers filed electronically demonstrate that the Consultant Team engaged in a process that was open to incorporating the various perspectives they learned from the community and applied the principles in *Carter* to suggest variable ward boundary

options. The testimony of Mr. Ammendola was helpful in understanding the mechanics of the iterative process that the Consultant Team went through to arrive at the two options recommended in the Final Report, which the Tribunal is satisfied were not predetermined.

[41] Contrary to this, the witness for the Appellant acknowledged that he was retained a few weeks before the Merit Hearing, did not participate in or follow the Review Process, and in fact has never been to the Township.

[42] While the ward boundary option with Amherst Island as a separate ward was called “Final Option 1”, there is no commentary in the Final Report that indicates it is the preferred option or in any way superior to “Final Option 2”. The Final Report presents the two options in neutral language without favouring one over the other. The Appellant and Dr. Sancton also provided no evidence that the Consulting Team endorsed the Amherst Island ward concept over any other ward boundary configuration to Council.

[43] For these reasons, the Tribunal concludes that the Consultant Team did not predetermine that Amherst Island would remain its own ward and that the Final Report was reasonable in its recommendations.

Asymmetrical Wards and Even Numbered Council

[44] Related to the previous issue, the Appellant alleged that the Consultant Team prejudged that an asymmetrical ward system was not a viable option for Council to consider and, therefore, the ward configuration options provided were not comprehensive. Dr. Sancton testified that sufficient justification to dismiss the asymmetrical option was not provided in the reports, particularly since the Township has operated with an asymmetrical ward structure since amalgamation. Dr. Sancton testified that, in his opinion, the Consultant Team misled Council by not thoroughly discussing and highlighting other municipalities that have asymmetrical ward structures that were

adopted after amalgamation, and instead only focused on municipalities with asymmetrical structures that are the result of amalgamation.

[45] Related to this, Dr. Sancton testified that, by proposing an even number of councillors in Final Option 2, the credibility of the Consultant Team and the value of their work is questionable because, in his opinion, such a ward configuration is sub-optimal and prone to an inherent possibility of tied votes.

[46] Counsel for the Township submitted that the Consultant Team's recommendations of an even number of councillors in Final Option 2 and not providing an asymmetrical ward structure was reasonable. Counsel characterized the Appellant's position that the presentation of these ward boundary solutions was prejudicial was not based on evidence and merely a distraction designed to undermine the Consultant Team's credibility. The Township witnesses testified that consideration of asymmetrical wards did not feature prominently in their reports because the mandate from Council was mainly a ward boundary review not a council composition retainer.

[47] Mr. Ammendola testified that the recommendation of Final Option 2 with an even number of council was made reflecting the knowledge the Consulting Team gathered through the Review Process and by talking to Council and the Township clerk about the history of tie votes. Mr. Ammendola also testified that Preliminary Report and Final Report do not comment on the possibility of tie votes in an even numbered Council because the Consultant Team did not see it as a defect given what they had learned about the history of voting in the Township.

[48] On cross-examination, Dr. Sancton acknowledged that he did not watch the Council meetings discussing the reports and options produced by the Consultant Team and did not participate in any of the consultation or discussion. Dr. Sancton also acknowledged that he has not recommended an asymmetrical ward in his own consulting work on ward boundary reviews. From these admissions, Counsel for the

Township submitted that Mr. Sancton's opinion should be considered purely academic and of limited value to the Tribunal in the case at hand.

[49] Having considered the submissions and evidence presented by the Parties on these related issues, the Tribunal finds that the Consultant Team conducted the Review Process in a reasonable and professional manner. The Tribunal is satisfied with the explanation by the Township witnesses of the iterative consultation process and their deepening understanding of the municipality through the Review Process, and that their recommendation for the ward boundary options organically modified and changed as a result.

[50] The Tribunal finds that not suggesting an asymmetrical ward option but recommending a ward boundary configuration with an even number of councillors was not a defect in the Consulting Team's work. The Tribunal accepts Mr. Ammendola's explanation that by decreasing the number of wards and thereby increasing the population in each one, it was mathematically possible to achieve better voter parity across the wards and provide another option to Council that achieved effective representation. The Tribunal finds that the recommendation of the even number of council in Final Option 2 was reasonable and reflected the Consultant Team's approach and community and Council engagement.

IS AMHERST ISLAND A "COMMUNITY OF INTEREST"?

[51] Having determined that the Consultant Team did not predetermine that Amherst Island should remain a separate ward and that the Review Process was reasonable, the Tribunal now considers the Appellant's claim that Amherst Island does not constitute a distinct "community of interest". Secondarily, the Tribunal also considers the Appellant's submission that the Consultant Team did not duly assess other possible communities of interest in the Township.

[52] For framing, the Preliminary Report comments that when considering communities of interest and achieving effective representation, ideally communities should not be divided internally so that ward boundaries lines are drawn around communities rather than through them. Further, the report notes that that wards should be cohesive units composed of areas with common interests related to representation not merely arithmetical divisions. Natural internal communication and transportation linkages and boundaries should be taken into consideration so that a ward has a "natural" feel to those who live within them so that communities with similar interests are combined.

[53] The Appellant takes the position that the factors identified by the Consultant Team, following from the principles in *Carter*, which they claim make Amherst Island a distinct "community of interest" are not unique or distinct, for the following reasons:

1. Geographic isolation: While Amherst Island is physically isolated from the mainland and can only be reached by a twenty-minute ferry ride, this does not constitute "isolated".

2. Ferry service: The ferry to Amherst Island is owned and maintained by the Province and the Township is only responsible for ferry service staffing, schedule and fairs. Even without an Amherst Island ward and direct advocacy on ferry issues by a ward councillor, operation and maintenance of the ferry would continue under the Province, therefore, separate ward status is not necessary to ensure continuation of this transportation service connection.

3. Service levels: The lack of municipal water, sewage, public transit, or garbage/recycling pick-up on Amherst Island is not unique and is found in other rural areas of the Township. While the island lacks amenities like shops or public offices, it does have a school with a community hall and a

fire station, general store and a restaurant, also similar to many small rural municipalities in the Province.

4. Small population and seasonal population: The rural nature of the island with a small full-time population and relatively large seasonal population is seen in many other municipalities in the Province, particularly cottage areas, but is not considered a unique feature justifying separate ward status.

5. Historic ward configuration: Before amalgamation Amherst Island was a separate township and, subsequently, has been represented on Council as its own ward. However, if the island population wished to retain separate municipal representation in perpetuity, they should have resisted amalgamation by the Province.

[54] The Township set out the position that it is not the lack of individual amenities or geographic isolation itself that make Amherst Island unique, rather it is the confluence of the sparse population, rural nature and unusually limited amenities all located on an island that is only connected to the mainland by a single ferry.

[55] Ms. Pearse testified that, although the ferry is operated by the Province, Township Council plays a role in setting fares, scheduling and staffing to operate it. Additionally, the Amherst Island councillor historically sits on a ferry committee with the Province. Ms. Pearse testified to the particularities of rural life on the island and the dependence of the community on the ferry link to the mainland.

[56] Mr. Ammendola opined that the ferry is the critical characteristic of Amherst Island that makes it unique because the residents are totally reliant on it compared to other rural areas in the Township connected by roads with multiple access points.

[57] With respect to the Appellant's sub-issue that the Consultant Team did not adequately address other communities of interest in the Township in their ward

boundary recommendations, Dr. Sancton opined that the Preliminary Report or Final Report did not document that the interests of other groups had been considered to the same degree as Amherst Island and that this indicated an inadequate Review Process informing the options presented to Council informing the By-law.

[58] On behalf of the Township, Mr. Ammendola testified that the Consultant Team spoke to other identified communities of interest during the engagement process and gave them the same degree of consideration. He testified that the ward boundary options presented in the Preliminary Report which group rural and urban communities together, rather than blending them as in the current asymmetrical system, evidenced their consideration. Additionally, he testified that in Final Option 1 and Final Option 2, the existing blended rural and urban communities of interest have now been given boundaries grouping them together appropriately by interest in their own wards.

Analysis

[59] To grapple with the narrow question of whether Amherst Island is a unique community of interest, the Tribunal first approaches the issue from the supposition that the By-law is reasonable and that the Appellant must demonstrate otherwise. This approach is demonstrated in the jurisprudence provided by both Parties, such as in *Carter* and *Teno v. Lakeshore (Town),* 2005 CarswellOnt 6386 ("*Teno").* The Tribunal rejects the Appellant's claim that the Township has the onus of justifying that Amherst Island is a significant community of interest. That is not to say that the Township's redrawing of the ward boundaries is free from scrutiny, only that the Appellant bears the burden of demonstrating that it is unreasonable.

[60] In *Carter*, the court gave examples of communities of interest such as rural, northern or remote communities, ethnic, linguistic or cultural groups, and economic communities such as agricultural regions. The court noted that geography can create shared interests and also practical limits on representation, particularly in the provincial or federal context where vast distances may be covered by one representative.

[61] Considering the evidence before it from both Parties, the Tribunal finds that Amherst Island is a distinct community of interest as conceptualized under *Carter*. Although the island has shared characteristics with the rural mainland in terms of lack of amenities and rural life, it is different from the rural mainland because of its island geography and reliance on the single ferry connection for transportation. Its small population with relatively large seasonal population along with its history as a separate ward since amalgamation also contribute to its difference. Other than the island geography and ferry transportation link, these individual elements are not unique in themselves, however, the combination of them in comparison to the other populations in the Township are distinct.

[62] The Tribunal is satisfied on the evidence provided that Amherst Island is distinct from other communities in the Township such as the urban mainland populations and rural areas lacking amenities but with multiple road connections to the broader community.

[63] While the Tribunal finds that Amherst Island is a distinct community of interest, it agrees with the Appellant's critique that there is limited discussion about the other possible communities of interest in the Preliminary Report, Final Report and the background papers that informed Council's decision. The Tribunal notes what it considers the most substantial reference to other communities of interest in the Township in Discussion Paper F, "Ward Boundary Review", as follows

> …in terms of community of interest in Loyalist Township there are two wards that unequivocally meet this principle. Ward 1 is based on the former separate municipality of Amherst Island. Ward 2 consists of the well-defined Bath settlement area. Within Ward 3 there are communities (such as Odessa and Amherstview) that are well-defined and growing population centres but are not recognized as communities of interest distinct form the large rural inland area[3]

[3] Watson & Associates Economists Ltd at 5 in Document Book of the Township at 318

[64] The Tribunal, like the Appellant, would have expected a more fulsome explanation of what are the defining characteristics of the other communities of interest beyond merely a rural/urban comment. Nevertheless, a finding that Amherst Island is a distinct community of interest does not turn on the thoroughness of the Consultant Team's discussion of other communities of interest.

[65] In conclusion, having considered the evidence and submissions of the Parties, the Tribunal finds that Amherst Island is a distinct community of interest in the Township.

IS THE DEVIATION FROM PARITY IN THE BY-LAW JUSTIFIED?

[66] Having found that Amherst Island constitutes a unique community of interest, the Tribunal then turns to whether such finding justifies a departure from voter parity of 77% by structuring the island as its own ward in the By-law. The Tribunal first lays out the analysis of the concept of voter parity by the Consultant Team to understand how the concept was framed for the community and Council leading to adoption of the By-law. The Tribunal then turns to the submissions of the Appellant and Township on the deviation from voter parity in the By-law and whether it is justified to achieve better effective representation.

[67] Discussion Paper E, "Guiding Principles to Design Wards", explains that voter parity is normally a primary but not exclusive goal of electoral review such that residents should have reasonably equal population totals. The paper goes on to comment that wards should be designed to keep populations in reasonable parity over the stated time frame using census data and other methods for estimating population growth. The paper summarizes that existing case law provides that deviations from the specific principles can be justified by other criteria drawn from the *Carter* decision in a manner that is more supportive of effective representation.

[68] As noted earlier in paragraphs [26-27], the Preliminary Report reinforces the Consultant Team's position on voter parity in Discussion Paper E and states that "a range of variation of 25% above or below the optimal (average) ward population is considered acceptable". It goes on to elaborate that "this is a rather generous range of tolerance from parity, but in the absence of any guidance in the [Act] or provincial regulations, it is based on long-standing parameters for the federal distribution process." The Preliminary Report notes that its goal is to reduce the range of variation among the wards as much as possible but cautions that a narrower range of population variation would make the successful achievement of the other recognized guiding principles difficult.

[69] The Final Report states that the goal of Final Option 1 is to maintain the community of interest focus while balancing the population principles among the four mainland wards achieved within the +/-25% variation according to 2025 populations figures. It goes on to say that if Amherst Island is excluded from the calculation of an optimal ward, then the four mainland wards are within +/-5% of each other in 2025. If Amherst Island is excluded from the calculation in 2035, then the four mainland wards would also be within acceptable variation of +/-25%. With the inclusion of Amherst Island in 2035, then three wards are outside optimal.[4]

[70] The Consulting Team comments that Final Option 1 is unique because it comes "nowhere near meeting the population principle" because of the Amherst Island ward. The Consulting Team judge that Amherst Island is unique and isolated enough from the rest of the municipality that the deviation from the population principle can be justified where the other principles are met to provide effective representation. Option 1 is stated

[4] See Table at paragraph [28]

to be plausible despite not meeting the population principle because the attributes of Amherst Island are not shared with neighbouring constituents.

[71] Having set out the guidance and parameters from the Consulting Team to the community and Council, the Tribunal moves on to the Appellant's position. The Appellant submitted that the Supreme Court in *Carter* established that relative parity of voting power is the first condition of effective representation and considered of prime importance. The Appellant submitted that deviations from absolute parity are permissible to achieve effective representation but that the Supreme Court in *Carte*r made it clear that there are definite limits to the size of the justifiable deviation from parity. The Appellant took the position that *Carter* and the jurisprudence of the Tribunal and its predecessors, allows a deviation of +/- 25% from absolute parity if there are justifying factors, particularly due to large geographic areas that are sparsely populated or representing distinct communities of interest like Indigenous Peoples.

[72] The Appellant put a series of cases to the Tribunal to stand for a proposition that, even if Amherst Island is found to be a unique community of interest, the By-law is outside the allowable range for deviation from population parity to provide a community of interest with its own ward:

1. *Teno* was provided as an example where the Ontario Municipal Board ("OMB") held that a decision of council to maintain a ward system that included a deviation of over 40% from voter parity was unjustified.

2. *Dobrucki v. Hamilton Dobrucki v Hamilton (City), 2017 CanLII 85763 (ON LPAT)* was held out as another case where the Local Planning Appeals Tribunal held that deviation of 40% from absolute parity on the basis of representing rural populations was also overturned, and for the critique that rural wards were prioritized while failing to consider other communities of interest.

3. *Ottawa (City) v. Osgoode Rural Community Assn*., 2003 CarswellOnt 1887 (O.M.B.) ("*Ottawa*") was held out as a case where the OMB overturned a decision of council and ordered a ward boundary redrawing that provided greater representation of rural populations and allowed average ward deviations of up to 33% to protect communities of interest; however, the Appellant submitted that that subsequent jurisprudence like *Dubrucki* find that *Ottawa* is too great a deviation from parity.

4. *Mushing v. Nation (Municipality)* 2021 CanLII 94912 (ON LT) was held out as a case where the OLT rejected a ward boundary deviation of 42% from voter parity and for the critique of the lack of rigorous assessment of all communities of interest in the municipality.

[73] Relying on these cases, the Appellant submitted that an Amherst Island ward is not justifiable and results in the residents of the island having an outsized voting power on Council disproportionate to the few issues on which they may have a distinct interest, such as the ferry operation. Further, the Appellant submitted that the island population was also not linguistically or ethnically distinct to require its own representation reflecting the community to justify the voter disparity. The Appellant concluded that the small population of Amherst Island relative to the other wards makes it impossible to grant the residents their own ward without doing "unjustifiable harm" to the principle of effective representation which, they submit, is governed by the prime factor of voter parity. In other words, the primacy of the principle of voter parity means that even if the island community is distinct, which they dispute, it is too small to qualify for separate representation.

[74] In response, Counsel for the Township submitted that if Amherst Island is joined with a rural mainland ward, its small size will result it in having a super-minority voice with the risk that "island issues" will take a back seat to mainland issues. Counsel emphasised the importance of a ward councillor who lives on the island to act as an

advocate and representative for the community to focus the attention of council on island issues. The Township asserts that effective representation is not impeded for the other residents in the Township if Amherst Island is its own ward because it is only one vote on Council and, therefore, its councillor must have support from at least one other councillor (assuming support from the at-large mayor and deputy mayor).

[75] Counsel for the Township also drew the Tribunal's attention to *Dobrucki*, for the Board's comment that "the final establishment of ward boundaries is an exercise in trade-offs and judgement and not arithmetic". Township Counsel relied on *Ottawa* to demonstrate where the OMB found that too much emphasis was placed on the principle of representation by population and not enough on the principle of effective representation when redrawing ward boundaries. While pointing out that it was loath to interfere in the decision of Council, the OMB in *Ottawa* overturned a decision of council and ordered a ward boundary redrawing that provided greater representation of rural wards which incorporated up to 33% disparity in voter parity.

[76] Counsel also highlighted *Stone Mills (Township) By-law No 2013-691*, Re 2013 CarswellOnt 14209, 16 M.P.L.R. (5th) 167, *("Stone Mills")* where the OMB rejected a ward option with disparity for one ward above 25% because the principle of community of interest was not demonstrated to have been met, not because of the percentage in the voter parity. From *Stone Mills*, Counsel concluded that the Township's evidence proved that Amherst Island was truly a distinct community of interest and that, as such, the percentage of voter disparity in the By-law can be justified. Counsel further looked to the decision of the Federal Court in *Raiche v. Canada (Attorney General) (F.C.),* 2004 FC 679 (CanLII), to support the proposition that redrawing ward boundaries is intrinsically complex and requires the balancing of conflicting policies such that deference should be given to the decision of council.

[77] From these cases, Counsel submitted that the Amherst Island ward was a trade-off between the principles of voter parity and maintaining a distinct community of

interest unique in the province as its own ward. Counsel concluded that the Tribunal should not be distracted by specific percentages of voter parity and rather look to achieve the principles in *Carter* understanding that there will always be a trade-off between them. Relying on the testimony of Mr. Ammendola and Dr. Williams, Counsel submitted that the Tribunal should consider the 77% voter parity as a “one-off” that would not be repeated elsewhere in the Province since the Consulting Team was unable to find another municipality with the same conditions of a geographically isolated island with a small population only accessible by ferry and a large mainland population (other than possibly Toronto Islands).

[78] With respect to Dr. Sancton’s evidence critiquing the Review Process and quality of the Consulting Team’s work product and recommendations, Counsel for the Township submitted that it was of limited value and demonstrated an academic bias in favour of voter parity to the exclusion of the other principles in *Carter*. Dr. Sancton’s unfamiliarity with the Township and his admission on cross-examination that there was no circumstance regardless of the countervailing conditions affecting a community of interest in which he would recommend the percentage of voter disparity in the By-law was held up as evidence of the limited value of his testimony.

[79] In summary, Counsel for the Township concluded that the By-law upholds the principles in *Carter*, the witnesses provided appropriate and thorough evidence to support the distinct and unique nature of the island, and that the Tribunal should defer to the decision of the Council since there is no clear or compelling reason to overturn the By-law.

Analysis

[80] It is evident in the reports that the Consultant Team considered a deviation from parity of +/- 25% to be the generally accepted range of Acceptable Parity from Optimal Parity of +/-5% following from *Carter* and subsequent jurisprudence. Nevertheless, Option 1 in the Final Report, set out the recommendation for the island ward with a -77% deviation from voter parity, contrary to their guidance in the Preliminary Report as to what is considered to be the acceptable range. In the Final Report they reconcile this by explaining that the strict application of one principle to the exclusion of others is unlikely to result in a workable electoral system; conversely, wards that deviate from the population principle can be justified where they are successful in meeting other principles in such as way as to provide effective representation. The Consultant Team judges that Final Option 1 "could" be consistent with this approach.

[81] In considering the testimony of Dr. Williams and Mr. Ammendola, the Tribunal accepts that the Review Process was iterative and organically blended empirical work with observations from the consultation process. From their evidence, it is clear that Final Option 1 and Final Option 2 grew out of the process. However, the Tribunal is left to wonder how Final Option 1, which does not adhere to the Consulting Team's guidance of Acceptable Parity of +/-25% deviation or a reasonable and justifiable range outside of that, can be proposed by them without a detailed explanation to rationalize the deviation so far beyond the range they lay out. While Dr. Sancton's testimony demonstrated a lack of familiarity with the Township and the Review Process, it did demonstrate that such a dramatic deviation ought to have received further justification.

[82] The Tribunal is puzzled that the explanation for Final Option 1 is that Amherst Island is distinct enough and isolated enough from the rest of the municipality that the population principle can be set aside in favour of a proposed ward that only includes the island. No further explanation of how such deviation beyond the common guidelines can be reconciled is provided by the Consultant Team, other than because Amherst Island

is identified as a unique community of interest. This strikes the Tribunal as circular logic and it is left wondering how 77% deviation accords with the principle of effective representation, when the background work of the Consultant Team specifically sets out a deviation of +/-25% is considered generous but within an acceptable range. The Tribunal finds that the variance is far beyond Acceptable Parity and is without a satisfactory explanation.

[83] The Tribunal accepts that the range of Acceptable Parity of +/-25% is not a hard line and that the *Carter* principles may justify exceeding that range to achieve effective representation. The jurisprudence provided by the Parties supports this flexibility beyond +/-25% as a trade-off of the countervailing principles to achieve more effective representation. However, in the case at hand, the variation in voter parity is far beyond what has been recognized and the Tribunal finds it is without sufficient explanation to support such extreme variation.

[84] Considering the evidence and reports provided by the Township, it is clear that the history of Amherst Island as its own municipality, and then its own ward in the Township, is part of the identity of the residents as separate and different from the mainland. *Carter* alerts us to history as a potentially countervailing factor to absolute voter parity. However, *Carter* also goes on to caution that inequities in voting systems are not to be accepted merely because they have historic precedent. The OMB in *Teno* also commented that keeping an existing ward structure reflecting historic pre-amalgamation boundaries may please residents but, in that case, was found to be unfair and dilute the rights of citizens in other wards. Taking these cases into account, the Tribunal concludes it must seek a balance between voter parity and the countervailing principle of communities of interest, history and geography, so that deviations in voter parity are reasonable and effective representation is achieved.

[85] The evidence of Ms. Pearce demonstrated the strong identity among the residents of Amherst Island. The disproportionate participation of the island residents in

the surveys gathered through the Review Process compared to the mainland populations also speaks to their high engagement in municipal matters. The Participant Statements received by the Tribunal demonstrate a strong and separate identity to the residents on Amherst Island, and a collective understanding of the particular challenges of living on the island that are different than the mainland.

[86] The Tribunal acknowledges that the socio-geography of the island is an important marker of identity for its residents and that, to them, the idea of blending with the mainland population in the municipal sphere may feel threatening to their interests and appear to potentially erode their distinct identity. The Tribunal acknowledges that the ferry is critical to life on the island and is the primary transportation link to the mainland for the residents, framing their rural life differently than mainland rural constituents. However, the evidence demonstrating that the ferry operation is not dependant on the municipality means that it is more analogous to a highway operated by the Province than a local road under the jurisdiction of the Township. The input and advocacy of a councillor from the Township is, no doubt, necessary on a ferry committee and to ensure the island residents have appropriate service levels. Nevertheless, the Tribunal was not convinced by the evidence presented by the witnesses for the Township, and through the Participant Statements, that the island population cannot be effectively represented if combined with appropriate mainland constituents or that the operation of the ferry would be jeopardized. A councillor representing the island, as well as an appropriate mainland constituency, will need to advocate for the ferry and island issues, in the same way they will address other particulars for the constituents in their ward.

[87] Beyond the problem of voter parity for the island ward in Final Option 1, the Tribunal is struck by the fact that over the time horizon to 2035, voter parity will continue to deteriorate for two other wards under this model as the urban mainland population continues to grow. As a result, by the end of the time horizon in 2035, three wards are outside of Acceptable Parity of +/-25% from Optimal Parity when Amherst Island is its

own ward. The Tribunal understands this was the trade-off between principles that the Consultant Team, and ultimately Council, faced in making this decision. The choice of Option 1 is to favour the principle of community of interest over voter parity and the other principles in *Carter* to the tune of 77%.

[88] In contrast, Option 2 in the Final Report where Amherst Island is grouped with part of the mainland with a reduced number of wards for an even numbered council, is considered to provide good voter parity within the range of +/-25% across all wards. Over the time horizon to 2035, Final Option 2 continues to demonstrate good voter parity across all wards. As Mr. Ammendola testified, decreasing the number of wards and increasing the population in each ward was mathematically advantageous to achieve parity.

[89] In considering the jurisprudence regarding deviation from parity, both Parties put *Dobrucki* before the Tribunal but for different reasons. The Appellant held it out as an example where the Board ruled that a deviation from parity at 40% for a rural community of interest was unreasonable. The Township put the case forward for the premise that the balancing of the principles in *Carter* is a trade-off between competing factors and that there is no fixed percentage adherence to parity required. The Tribunal accepts the proposition that voter parity is a strong but not absolute principle, and also the consideration of whether the interests of one group are privileged over another are key considerations to the case at hand.

[90] Considering the cases put before it, the trade-off between the population principle and communities of interest has challenged councils and adjudicators numerous times. The proposition in *Dubrucki* that ward boundaries should not be based just on arithmetic is borne out in other cases where deviation in voter parity beyond +/-25% has been found to be reasonable where other countervailing principles are weighed to provide more effective representation.

[91] In this case, although Amherst Island is found to be a distinct community of interest, the Tribunal finds that (1) it does not require its own ward to effectively represent its interests in the municipality; and (2) that a 77% deviation from voter parity is not reasonable. The Tribunal agrees with the Appellant's proposition that the population of the island is mathematically too small for it to be constituted as its own ward without unreasonably diluting the principle of voter parity for the rest of constituents in the Township. While the case law warns against a slavish adherence to arithmetic when constituting ward boundaries, the Tribunal also must not dispel of the population parity principle. In this case, the By-law codifies a choice to heavily prioritize the principle of community of interest over the balancing of the other principles.

[92] Identifying a community of interest in a ward boundary exercise does not then, by itself, necessarily justify deviating from voter parity to create its own ward. The principles in *Carter* establish that deviations must be proportional, justified and grounded in evidence demonstrating that the community needs unified or special representation. Counsel for the Township characterized the By-law as a trade-off between these principles; however, the Tribunal is not convinced that a Councillor representing a larger ward with similarly constituted rural mainland population could not effectively advocate for the island residents in its constituency. The high public engagement of the island population in the Review Process, and as Participants in this Tribunal proceeding, evidences the strong identity and advocacy of the community and involvement in the larger municipal sphere. The Tribunal was not swayed that Amherst Island would be overlooked or become a super minority without a voice if it were not represented as its own ward.

[93] Both Parties also put *Teno* before the Tribunal in support of their respective positions. In *Teno*, the Board commented that there must be a clear and compelling reason for the Board to interfere in the decision of municipal council and that it may have to be demonstrated that council acted unfairly or unreasonably in making its decision. It goes on to stay that "if the evidence demonstrates that the decision of

municipal council operates to diverge from the overriding principle of voter equity and effective representation, then the Board can only conclude that the Council has acted unreasonably."[5] While not binding on the Tribunal in this case, *Teno* is instructive in articulating a discretionary framework to the decision of a Council on redrawing ward boundaries. If the issues are not clear cut, then the Board in *Teno* concluded that deference to the decision of council may be afforded.

[94] Given the principles in *Carter* and the jurisprudence provided to the Tribunal demonstrating the general application of the guardrails to disparities in voter parity, along with being unconvinced that the island residents cannot be effectively represented in combination with some appropriately constituted mainland population, the Tribunal finds that the 77% disparity in voter parity in the By-law is not reasonable. The Tribunal exercises its discretion as to whether to afford deference to the decision of Council to enact the By-law and finds that it cannot stand.

SUMMARY AND CONCLUSIONS

[95] The Tribunal summarizes its findings to this point as follows:

1. The ward boundary review process conducted by the Consulting Team was fair and reasonable.

2. Council did not act in a conflict of interest in voting on the By-law.

3. The Consulting Team did not predetermine that Amherst Island would remain a separate ward.

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[5] See *Teno at para 36*

4. The proposed Final Option 2 with an even number of Council was reasonable.

5. The Consultant Team was reasonable to not suggestion an option of an asymmetrical ward structure despite that being the current scenario in the Township.

6. Amherst Island is a unique community of interest.

7. The Consulting Team did not provide a thorough discussion of the other communities of interest in the Township; however, other findings in this Decision do not turn on this.

8. A -77% deviation from voter parity for the Amherst Island ward in the By-law is not reasonable.

9. The Tribunal exercises it discretion and finds that the By-law is not reasonable and may not stand.

The Appellant's Desired Remedy: Modified Final Option 2

[96] The Appellant sought to have the Tribunal overturn the By-law and substitute Final Option 2 with specific boundary line changes from what was proposed in the Final Report. Under s. 222(7) of the Act, the Tribunal is empowered to make such amendments. However, the Tribunal was not provided with evidence with respect to the Appellant's modifications to the boundary line changes, or to the strength of Final Option 2.

[97] In the absence of such evidence, the Tribunal is unable to conclude that amending the By-law would be proper in the circumstances by replacing Final Option 1 with Final Option 2, or the Appellant's modified Final Option 2. To do so would

effectively bypass the consultative process that underpins the By-law and undermine the legitimate expectations of the Parties regarding notice and participation. Moreover, altering the By-law without a proper evidentiary foundation would compromise transparency and erode confidence in the Tribunal's decision-making process.

[98] Therefore, the Tribunal is satisfied that the By-Law ought to be repealed, but cannot, in good conscience, order the By-Law to be amended.

ORDER

[99] **THE TRIBUNAL ORDERS THAT**:

1. The appeal is allowed.

2. By-law 2025-39 is repealed.

A. Mason

A. MASON
MEMBER

Schedule 1

Participants

1. Jacob Murray
2. Daniel Showalter
3. Donna Ellis
4. Jack Ellis
5. Andrew Leyzack
6. Dan & Joan Simpson
7. Ida Gavlas
8. Stephen Perry
9. Keith Miller
10. Diane Pearce
11. Mary Pat Moore
12. Michèle Le Lay
13. Mary Gordon
14. Kirk Corkery
15. Terry McGinn
16. Dayle Gowan
17. Amy Elgersma
18. Sandra King
19. Keith Mercer
20. Julie Leeder
21. Maryanne Mercer
22. Eloise Gowan
23. Deborah Barrett
24. Amy Caughey
25. Robert Mackenzie
26. Andrea Cross
27. Ann Adams

LOYALIST TOWNSHIP - WARD MAP

GIS Services - IT Division
P.O. Box 70, 263 Main Street
Odessa, Ontario
K0H 2H0
613-386-7351

Production Date: May 30, 2022

Datum/Projection: NAD 83, UTM 18

Data Sources: Loyalist Township Database
Land Information Ontario

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ELECTION WARDS

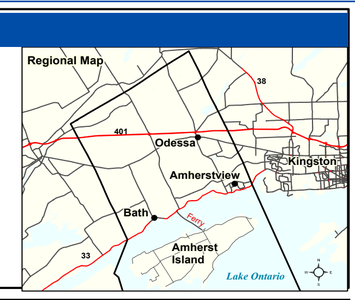
WARD 1

WARD 2

WARD 3

N W E S

0 1 2 3 4 Km



WARD 3

WARD 2

WARD 1

Odessa

Bath

Amherstview

Kingston

Amherst Island

Lake Ontario
(Bay of Quinte - North Channel)

Wards

Establishment of wards

222 (1) Without limiting sections 9, 10 and 11, those sections authorize a municipality to divide or redivide the municipality into wards or to dissolve the existing wards. 2006, c. 32, Sched. A, s. 96 (1).

Conflict

(2) In the event of a conflict between a by-law described in subsection (1) and any provision of this Act, other than this section or section 223, any provision of any other Act or a regulation made under any other Act, the by-law prevails. 2006, c. 32, Sched. A, s. 96 (1).

Notice

(3) Within 15 days after a by-law described in subsection (1) is passed, the municipality shall give notice of the passing of the by-law to the public specifying the last date for filing a notice of appeal under subsection (4). 2006, c. 32, Sched. A, s. 96 (1).

Appeal

(4) Within 45 days after a by-law described in subsection (1) is passed, the Minister or any other person or agency may appeal to the Ontario Land Tribunal by filing a notice of appeal with the municipality setting out the objections to the by-law and the reasons in support of the objections. 2006, c. 32, Sched. A, s. 96 (1); 2017, c. 23, Sched. 5, s. 49 (1); 2021, c. 4, Sched. 6, s. 64 (1).

Notices forwarded to Board

(5) Within 15 days after the last day for filing a notice of appeal under subsection (4), the municipality shall forward any notices of appeal to the Tribunal. 2001, c. 25, s. 222 (5); 2017, c. 23, Sched. 5, s. 49 (2).

Other material

(6) The municipality shall provide any other information or material that the Tribunal requires in connection with the appeal. 2001, c. 25, s. 222 (6); 2017, c. 23, Sched. 5, s. 49 (3).

Tribunal decision

(7) The Tribunal shall hear the appeal and may, despite any Act, make an order affirming, amending or repealing the by-law. 2001, c. 25, s. 222 (7); 2017, c. 23, Sched. 5, s. 49 (4).

Coming into force of by-law

(8) A by-law of a municipality described in this section comes into force on the day the new council of the municipality is organized following,

(a) the first regular election after the by-law is passed if the by-law is passed before January 1 in the year of the regular election and,

(i) no notices of appeal are filed,

(ii) notices of appeal are filed and are all withdrawn before January 1 in the year of the election, or

(iii) notices of appeal are filed and the Tribunal issues an order to affirm or amend the by-law before January 1 in the year of the election; or

(b) the second regular election after the by-law is passed, in all other cases except where the by-law is repealed by the Tribunal. 2001, c. 25, s. 222 (8); 2006, c. 32, Sched. A, s. 96 (2); 2017, c. 23, Sched. 5, s. 49 (5).

Election

(9) Despite subsection (8), where a by-law comes into force on the day the new council of a municipality is organized following a regular election, that election shall be conducted as if the by-law was already in force. 2001, c. 25, s. 222 (9).

Notice to assessment corporation

(9.1) When a by-law described in this section is passed, the clerk of the municipality shall notify the assessment corporation and the Chief Electoral Officer,

(a) before January 1 in the year of the first regular election after the by-law is passed, if clause (8) (a) applies;

(b) before January 1 in the year of the second regular election after the by-law is passed, if clause (8) (b) applies. 2009, c. 33, Sched. 21, s. 6 (10); 2020, c. 23, Sched. 4, s. 16.

(10) Repealed: 2017, c. 10, Sched. 1, s. 17.

Section Amendments with date in force (d/m/y)

Petition re: wards

223 (1) Electors in a municipality may present a petition to the council asking the council to pass a by-law dividing or redividing the municipality into wards or dissolving the existing wards. 2001, c. 25, s. 223 (1); 2006, c. 32, Sched. A, s. 97 (1).

Number of electors required

(2) The petition requires the signatures of 1 per cent of the electors in the municipality or 500 of the electors in the municipality, whichever is less, but, in any event, a minimum of 50 signatures of the electors in the municipality is required. 2001, c. 25, s. 223 (2).

Definition

(3) In this section,

"elector" means a person whose name appears on the voters' list, as amended up until the close of voting on voting day, for the last regular election preceding a petition being presented to council under subsection (1). 2001, c. 25, s. 223 (3).

Failure to act

(4) If the council does not pass a by-law in accordance with the petition within 90 days after receiving the petition, any of the electors who signed the petition may apply to the Ontario Land Tribunal to have the municipality divided or redivided into wards or to have the existing wards dissolved. 2001, c. 25, s. 223 (4); 2006, c. 32, Sched. A, s. 97 (2); 2017, c. 23, Sched. 5, s. 50 (1); 2021, c. 4, Sched. 6, s. 64 (1).

Order

(5) The Tribunal shall hear the application and may, despite any Act, make an order dividing or redividing the municipality into wards or dissolving the existing wards and subsection 222 (6) applies with necessary modifications in respect to the hearing. 2001, c. 25, s. 223 (5); 2017, c. 23, Sched. 5, s. 50 (2).

Coming into force

(6) An order of the Tribunal under this section comes into force on the day the new council of the municipality is organized following,

(a) the first regular election after the order is made, if the order is made before January 1 in the year of the regular election; or

(b) the second regular election after the order is made, if the order is made on or after January 1 in the year of a regular election but before voting day. 2001, c. 25, s. 223 (6); 2017, c. 23, Sched. 5, s. 50 (3).

Election

(7) Despite subsection (6), if an order comes into force on the day the new council of a municipality is organized following a regular election, that election shall be conducted as if the order was already in force. 2001, c. 25, s. 223 (7).

Deemed by-law

(8) Once an order of the Tribunal is in force, the order shall be deemed to be a by-law of the municipality and may be amended or repealed by the municipality by by-law described in section 222. 2001, c. 25, s. 223 (8); 2006, c. 32, Sched. A, s. 97 (3); 2017, c. 23, Sched. 5, s. 50 (4).