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February 26, 2018

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Dear Ms. Smith and Ms. Bustamante:

RE: Comments on the City of Burlington New Official Plan (February 2018 Proposed Draft)
431-439 Brant Street, Burlington
OUR FILE: 1583F

MHBC is retained by Emily Shih with respect to the lands located as 431-439 Brant Street in the City of Burlington (the "Subject Lands"). The Subject Lands are located on the east side of Brant Street, at the intersection of Brant Street and Ontario Street. The Subject Lands are currently developed with one-storey commercial businesses and an outdoor garden centre. The lands at 439 Brant Street were used for a 2 storey commercial building with a restaurant for over 60 years until a fire approximately 20 years ago. Additionally, the Subject Lands are located immediately adjacent to the Council-approved 421 Brant Street redevelopment, which consists of a 23 storey mixed-use development.

We have previously provided comments with respect to the proposed new Official Plan on November 28, 2017 and again on January 22, 2018. Our comments at that time outlined the following concerns:

- The application of the parks and promenades precinct designation on the Subject Lands;
- Restrictive and detailed policy language related to design and regulatory controls for development along Brant Street; and,
- The extent of the boundary for the Brant Main Street Special Planning Area.

Following the release of the February 7, 2018 draft Official Plan, we met with staff from the Mobility Hub Team on February 16, 2018, to discuss our concerns. Based on our review of the most recent draft policies and our discussions with staff, our client still has significant concerns as noted herein.

Park Requirements

We note that the most recent draft of the new Official Plan has removed the Parks and Promenades Precinct designation from the Subject Lands. The policies in Section 8.1.1 (3.3) note that while the schedule has been removed from the Plan, the City will continue to develop a parks and promenades plan as part of the ongoing development of the Area Specific Plan for the Downtown. While the designation schedule has been removed, general policies remain in Section 8.1.1 (3.2) requiring parkland dedication considerations and the following site specific policy has now been added to the most recent draft that is directly applicable to the Subject Lands:

"8.1.1 (3.7.2) SITE SPECIFIC POLICIES

- a) 433 and 439 Brant Street: As part of any comprehensive development of the properties located at 433 and 439 Brant Street, a public pedestrian walkway between Brant Street and John Street shall be provided which may be in the form of a Privately-Owned Publicly Accessible Space (POPS)."*

Firstly, we question why a site-specific requirement of this nature has been imposed on the Subject Lands through the comprehensive Official Plan process when the details of the Downtown Plan are still under development? We are not aware of any analysis of such a walkway through a development review process, nor are we aware of any evidence-based justification of the need for such a walkway.

Subject to further review by our client's legal counsel, we are also not aware of the jurisdiction under the *Planning Act* to require the mandatory dedication of park space (private or public) through the imposition of a site specific policy in an Official Plan. Staff acknowledged that they were not aware that the City's legal department had reviewed this matter in any detail.

Secondly, we don't believe a mid-block connection is required or appropriate on the Subject Lands based on general design principles. Staff noted during our recent meeting that the basis for the requirement was from a 2005 study of the Downtown. The Downtown Mobility Hub workbooks had identified a green connection on the Subject Lands. As noted in our earlier submissions, there is no existing public or publically accessible pedestrian walkway on the Subject Lands. The exiting outdoor area is a private retail space.

Based on general urban design principles, mid-block connections should generally be considered every 100 to 130 metres and adjacent buildings should be designed to facilitate a comfortable, safe and lively public realm within a mid-block connection that includes the provision of sufficient lighting, signage and pavement treatment to contribute to a continuous public realm. The entire length of Brant Street, between James Street and Maria Street is approximately 150 metres and the Subject Lands are located approximately 65 metres from the intersection of James Street and Brant Street. The adjacent redevelopment of 421 Brant Street proposes a height of 23 storeys. The Subject Lands are currently designated to provide for an 11 storey redevelopment.

Given the proximity of the Subject Lands to the primary block intersection of James Street and Brant Street, as well as the existing connection at Maria Street and Brant Street, there is no evidence-based need for a mid-block pedestrian connection through the Subject Lands. This is further rationalized by the smaller size of our client's lands and the neighbouring approval.

The site specific policy, 8.1.1 (3.7.2.a) should therefore be removed from the draft Official Plan. Any policies and mapping related to parks and open spaces in the Downtown should also be properly implemented through the refinement of the Area Specific Plan for the Downtown.

Restrictive Urban Design Metrics

Restrictive urban design metrics continue to be included in the Downtown policies of the draft Official Plan. The urban design guidelines have been implemented as required policy without consideration for the locational context and without flexibility. The design guidelines are imposed through mandatory requirements using the term "shall". Most notably, we have concerns with the following:

- Mandatory requirement that a 45 degree angular plan from the centreline of Brant Street;
- Mandatory requirement that all podiums along Brant street be a minimum height of three storeys; and ,
- Mandatory requirement that all tall buildings have maximum floor plates (750 square metres) and provide a separation distance of 30 metres.

The physical character along Brant Street can be maintained through good urban design without the inclusion of such restrictive policies in an Official Plan. The policies provided for in the February 2018 draft would in fact **impede development** that still meets the intent of the guidelines since it would trigger the need for an Official Plan Amendment application should a two storey podium be proposed that still meets the 45 degree angular plane or should a slight encroachment be proposed into the angular plane with a 3 storey podium.

Including such rigid requirements in policy creates significant constraints to development and in some cases makes feasible redevelopment almost impossible on some sites, especially in a mid-rise form. Such may be the case for the Subject Lands should a seniors housing development be considered which would not generally provide for a 3 storey podium. Requiring an Amendment to the Official Plan for design related matters is unduly onerous and in fact, as now required under the Planning Act, Official Plan Amendments are not permitted within two years following the Plan's approval. Staff advised that the two year restriction would be a good time period to see how things work or don't work and would allow time for consideration of changes. This constraint and time lag could also restrict the very objective of providing well designed buildings that meet the City's objectives.

With respect to the new mandatory requirement of a 30 metre separation distance between tall buildings, we understand that this has been included as a result of Council direction. The City previously went through an extensive public process to develop tall building guidelines which established 25 metres as the appropriate separation distance between towers of tall buildings. These guidelines were approved in May 2017 and previous drafts of the OP included this separation distance. Again, it is our opinion that these urban design matters should not be included as mandatory policy in the Official Plan and should remain as guidelines within the approved guideline documents. Moreover, we note that the existing conditions in the Downtown would make it impossible for many new developments to meet a 30 metre separation distance. There does not appear to have been any further analysis or public consultation to revise what was otherwise accepted and approved by Council.

The mandatory urban design guidelines should be discretionary and we would recommend the language be amended to "should" where "shall" is currently provided.

Special Planning Area

We have previously requested that **the entirety of Subject Lands should be included within the Brant Main Street Special Planning Area**, which would allow for the opportunity to explore broader redevelopment options for the site above the current 11-storey height requirement to a maximum of 17 storeys. It continues to be our opinion that the Special Planning Area should extend to these lands and request that the Downtown Mobility Hub Land Use Schedule be revised to include the Subject Lands.

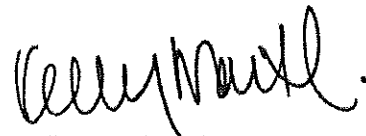
We appreciate the opportunity to comment on the proposed updated draft Official Plan and Downtown Mobility Hub plan and are available to discuss our comments further with staff. We look forward to working with the City moving forward to facilitate the redevelopment of the Subject Lands in an appropriate, fair and reasonable policy framework.

Yours truly,

MHBC



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Partner



Kelly Martel, M.Pl
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Cc: Dr. Michael Shih, Emshih Developments
Ms. Nancy Smith, Turkstra Mazza Law