

From: Cameron, Ian
Sent: Tuesday, March 06, 2018 2:07 PM
To: McInnes, Suzanne
Subject: File: 505-01/18 & 520-01/18

Dear Suzanne,

Please be advised that although BEDC has no comments regarding the residential component of this project, we would like to point out that it is anticipated that there would be at least 13 jobs generated in the 597 m2 of ground floor commercial space. The “new” commercial space would replace existing retail in the block.

If you would like to discuss please do not hesitate to contact me.

Ian

Ian Cameron | Manager of Business Retention and Growth
Burlington Economic Development Corporation | 414 Locust St., Suite 203, Burlington, ON L7S 1T7
Phone: 905-332-9415 ext 7254
E-mail: ian.cameron@burlington.ca | <http://www.bedc.ca/>



Burlingtonhydro_{inc.}

February 21, 2018

ATTENTION: SUZANNE MCINNES

SUBJECT: Request for Comments

Location: 401 to 413 Brant St, 444 to 450 John St, 2002 to 2012 James St.

File #: 505-01/18 & 520-01/18

In response to your correspondence(s), a member of our Engineering Department has reviewed the information and has the following comments:

Specific Comments:

The hydro service shall be supplied from BHI's 27.6kV distribution system. The required civil infrastructure to service the site shall be supplied and installed by the Developer in accordance with BHI approved design and standards.

Based upon the current developments underway in the downtown core, Burlington Hydro will be installing underground infrastructure to service several developments along John Street. Burlington Hydro will incorporate, although we are limited at this point, any civil structure to facilitate the eventual hydro supply to this site. Ultimately the Developer will be responsible for all servicing costs and modifications to the existing infrastructure.

This site will be benefiting from the existing infrastructure being installed for development preceding this development and therefore the Developer is required to pay a capital contribution towards the existing infrastructure should this development proceed within a 5 year horizon the infrastructure being put into service. Burlington Hydro will provide clarification on this item once communication between the Developer and Burlington Hydro is initiated.

The Developer shall incur all costs associated with site servicing in accordance with BHI's conditions of service.

Transformer location(s) and ownership are to be approved by BHI at the design stage. Location and access of the transformer will determine the ownership of the transformer(s).

Early discussions for the revenue metering and electrical room requirements should be arranged between the Developer and BHI before the building plans are finalized to ensure clearances and access satisfies BHI requirements.

General Comments:

- ☒ Service is available under BHI's latest Standard Service Conditions
<http://www.burlingtonhydro.com/images/PDFs/bhi-conditionsofservice.pdf>
- ☒ Relocation, modification or removal of existing hydro facilities, if required, shall be at the customer's expense. BHI will refer to Burlington Hydro standards if issues with clearances arise between existing hydro facilities and existing/proposed building structures.
- ☒ Hydro easement (if any) is to remain clear of heavy vehicle traffic and customer is responsible to keep the easement lands free and clear of any trees, fences, buildings, structures or obstructions unless any of forgoing are approved in writing by Burlington Hydro Inc. Further the Customer shall remove the same upon request of Burlington Hydro Inc.
- ☒ Easements is to remain clear of heavy vehicle traffic and clear of any trees, fences, structures and any obstructions unless any of forgoing are approved in writing by BHI.
- ☒ Customer is to ensure that BHI has access to hydro equipment to operate, maintain and replace as required.
- ☒ Planting shrubs, trees or flowers, or build fences or walls in the obstruction free zone is not permitted; also the obstruction free zone cannot be used for storage at any time. (see attached standard dwg showing clearance zone)
- ☒ Metering the services shall be in accordance with BHI's metering standards and requirements.



Burlington**hydro**_{inc.}

- ☒ Customer to acquire any easements for Burlington Hydro, if required.
- ☒ Project must meet City of Burlington Standards.
- ☒ Burlington Hydro will apply for Municipal Consent and must perform all work within the City right of Way. The D
- ☒
- ☒ Developer is not eligible for alternative bid option under these conditions.
- ☒ Machine excavation within one metre of underground plant is not permitted.
- ☒ Do not excavate within two metres of hydro poles and anchors with the exception of the termination pole where the duct structure shall be terminated by the customer under the supervision of BHI inspector.
- ☒ Please arrange for underground hydro cable locate(s), prior to beginning construction, by contacting Ontario One Call @ (800) 400-2255.
- ☒ **Please refer to the latest edition of the Occupational Health and Safety Act ("OHSA") and Regulations for Construction Projects when a work is planned to be performed in the proximity of hydro distribution system.**
- ☒ Arrange for disconnect and isolation of the power supply if a person or an equipment is to encroach on the minimum distance permitted under the OHSA and OESC.

Sincerely,

Peter German, CET, B.A.Sc.
Director of Engineering

From: Peachey, Rob

Sent: Tuesday, March 13, 2018 2:26 PM

To: McInnes, Suzanne

Cc: Magi, Allan; Glenn, Chris

Subject: South East corner of Brant and James Street(401, 403, 405,409, 411 Brant St. , 444, 448,& 450 John Street., 2002 & 2012 James St.) File: 505-01/18 & 520-01/18. Application to Amend the Official plan and Zoning By-law

Hi Suzanne,

The following are the Capital Works - Parks & Open Space section comments to the above noted application for Official Plan & Zoning By-law amendments.

Adequate parkland is available to accommodate this development as Lions Park, Apeldoorn Park & Centennial Multi Use Trail, are located within a 0.8km distance from the site for neighborhood parks and Spencer Smith Waterfront Park and Central Park are located within the 0.8km – 2.4km distance for a city/community park. As such we recommend cash-in-lieu of parkland dedication be applied for this development.

The Elgin Street promenade is located immediately to the south of the proposed development. Commercial uses that face the Elgin Street Promenade at grade should be considered to help animate the building and adjacent public uses.

The Brant St. setbacks should align with the proposed development to the north (6 meters) to maintain a more accessible, viable public realm and streetscape.

Robert Peachey, OALA

Manager Parks & Open Space

Capital Works Department

P. (905) 335-7600 #7722 | **E.** rob.peachey@burlington.ca

Address 426 Brant Street P.O. Box 5013, Burlington, Ontario, L7R 3Z6

City of Burlington | www.burlington.ca

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www.hcdsb.org

February 15, 2018

Suzanne McInnes
Senior Planner
City of Burlington
426 Brant Street
PO Box 5013
Burlington, ON L7R 3Z6

Dear Suzanne:

**Re: Application for Official Plan Amendment and Zoning By-law Amendment
Reserve Properties Ltd. (Brant and James)
401, 403, 405, 409, 411, 413 Brant Street; 444, 448 John Street;
2012 James Street
Your File No. 505-01/18 & 520-01/18**

In response to the aforementioned application to permit the development of 227 apartment units, the Halton Catholic District School Board ("HCDSB") has no objections.

In terms of school accommodation, if the development was to proceed today, elementary students generated from this proposal would be accommodated at St. John (Burlington) Catholic Elementary School located at 653 Brant Street. Secondary school students would be directed to Assumption Catholic Secondary School located at 3230 Woodward Avenue.

Should you proceed with the approval of a future plan (e.g. Condominium, Site Plan, or Subdivision), we require that the following conditions be placed in the future agreement. The conditions are to be fulfilled prior to final approval:

1. The owner agrees to place the following notification in all offers of purchase and sale for all lots/units and in the City's future agreement, to be registered on title:
 - a. Prospective purchasers are advised Catholic school accommodation may not be available for students residing in this area, and that you are notified that students may be accommodated in temporary facilities and/or bused to existing facilities outside the area.
 - b. Prospective purchasers are advised that the HCDSB will designate pick up points for the children to meet the bus on roads presently in existence or other pick up areas convenient to the Board, and that you are notified that school buses will not enter cul-de-sacs.
2. In cases where offers of purchase and sale have already been executed, the owner is to send a letter to all purchasers which include the above statements.

PB-67-18 APPENDIX E – Technical Comments

3. That the owner agrees in the future agreement to the satisfaction of the HCDSB, to erect and maintain signs at all major entrances into the new development advising prospective purchasers that if a permanent school is not available alternative accommodation and/or busing will be provided. The owner will make these signs to the specifications of the HCDSB and erect them prior to the issuance of building permits.

It should be noted that Education Development Charges are payable in accordance with the applicable Education Development Charge By-law and are required at the issuance of a building permit. Any building permits that are additional to the maximum unit yield that is specified by the Subdivision Agreement are subject to Education Development Charges prior to the issuance of a building permit, at the rate in effect at the date of issuance.

If you have any questions regarding the aforementioned, please contact the undersigned.

Yours truly,



Frederick Thibeault, M. Pl.
Administrator of Planning Services

cc: R. Negoi, Superintendent of Business Services and Treasurer of the Board
D. Gunasekara, Planning Officer, Planning Services
E. Emery, Planning Clerk, Planning Services
C. Benson, Director of Planning Services, Region of Halton



Halton District School Board

Planning Department

February 20, 2018

Planning and Building
City of Burlington
426 Brant St., PO Box 5013
Burlington ON L7R 3Z6

Dear Ms. Suzanne McInnes:

Subject: **Reserve Properties**
Zoning By-law Amendment Application
HDSB File No.: 505-01/18 & 520-01/18 /B
City of Burlington File Nos.: 505-01/18 & 520-01/18

Thank you for the opportunity to review the proposed zoning application. Students from this area are currently within the Lakeshore PS, Burlington Central Elem, Tom Thomson PS catchment and Burlington Central High School catchments. According to the Board's projections Lakeshore PS, Burlington Central Elem and high school are projected to be at or under building capacity. As a result students generated from this development are expected to be accommodated in the respective schools with minimum impact to the facility. Tom Thomson is projected to be over building capacity. As a result students generated from this development are expected to be accommodated at that school with the addition of portables.

Please be advised that the Halton District School Board has no objection to the proposed application as submitted. Please notify us of the adoption of the proposed amendment and include us in the circulation of any future applications, including *site plans*, related to this development. The Halton District School Board will provide comments and conditions on each proposed development application received.

For your convenience, below are our standard conditions of development that may be applied to the development proposal:

1. The owner agrees to place the following notification in all offers of purchase and sale for all lots/units and in the City's subdivision agreement, to be registered on title:
 - Prospective purchasers are advised that schools on sites designated for the Halton District School Board in the community are not guaranteed. Attendance at schools in the area yet to be constructed is also not guaranteed. Pupils may be accommodated in temporary facilities and/or be directed to schools outside of the area.
 - Prospective purchasers are advised that school busses will not enter cul-de-sacs and pick up points will be generally located on through streets convenient to the Halton District School Board. Additional pick up points will not be located within the subdivision until major construction activity has been completed.

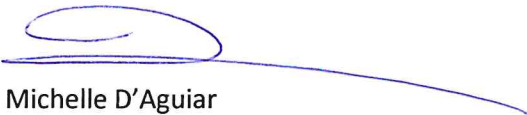
-
- 2. That in cases where offers of purchase and sale have already been executed, the owner sends a letter to all purchasers which include the above statement.
- 3. That the developer agrees that, should the development be phased, a copy of the phasing plan must be submitted prior to final approval to the Halton District School Board. The phasing plan will indicate the sequence of development, the land area, the number of lots and blocks and units for each phase.
- 4. That the Owner shall supply, erect and maintain signs at all major entrances into the new development advising prospective purchasers that pupils may be directed to schools outside of the area. The Owner will make these signs to the specifications of the Halton District School Board and erect them prior to the issuance of building permits.
- 5. That a copy of the approved sidewalk plan, prepared to the satisfaction of the City of Burlington be submitted to the Halton District School Board.
- 6. The Owner shall provide Halton District School Board a geo-referenced AutoCAD file of the Draft M-plan once all Lot and Block numbering has been finalized. Should any changes occur after the initial submission to Lot and Block configuration or numbering on the draft M-plan the Owner shall provide a new AutoCAD file and a memo outlining the changes.

In addition the following note should be included in the conditions:

Educational Development Charges are payable in accordance with the applicable Education Development Charge By-law and are required at the issuance of a building permit. Any building permits which are additional to the maximum unit yield which is specified by the Subdivision Agreement are subject to Education Development Charges prior to the issuance of a building permit, at the rate in effect at the date of issuance.

Should you have any questions regarding our comments, please contact the undersigned.

Sincerely,



Michelle D'Aguiar
Senior Planner

From: Plas, Kyle
Sent: Friday, March 09, 2018 4:22 PM
To: McInnes, Suzanne
Subject: Brant & James - Files 505-01/18 & 520-01/18

Hi Suzanne,

On behalf of the Mobility Hubs team, I have reviewed the attached material for the proposed development at the south-east corner of Brant St and James St and can offer you the following:

The creation of Area Specific Plans (ASPs) for each of Burlington's four Mobility Hubs was identified as a key priority for City Council through the development of Burlington's 2015-2040 Strategic Plan. The subject properties are located within the Downtown Mobility Hub Boundary. In the City's proposed New Official Plan, the Downtown Mobility Hub is identified as an area of strategic importance to accommodate the City's future growth. Through this strategy the City is also protecting the stable residential neighbourhoods.

The subject properties contain the Brant Main Street Precinct Special Planning Area designation. According to the proposed New Official Plan:

"New development within the Brant Main Street Precinct Special Planning Area will contribute towards the enhancement of a civic node at the intersection of Brant Street and James Street. Development will provide new public squares immediately adjacent to the intersection to complement and expand the existing Civic Square and achieve a built form which will establish view corridors to Civic Square, the City Hall tower and the Burlington War Memorial from James Street. Development providing such public amenities will be permitted additional height and/or density in exchange for these amenities.

The intent and policies of the Brant Main Street Precinct contained in Subsections 8.1.1(3.7) and 8.1.1(3.7.1) of this Plan shall continue to apply, except where identified as follows:

a) Notwithstanding Subsection 8.1.1(3.7.1) c) of this Plan, development immediately adjacent to the intersection of Brant and James Streets shall contribute to the creation of an enhanced civic node and may be permitted a maximum height of seventeen (17) storeys, provided that:

- (i) views from James Street to the Civic Square, the City Hall tower and the Burlington War Memorial are maintained and enhanced to the satisfaction of the City; and
- (ii) an at-grade public plaza is provided immediately adjacent to the intersection of Brant and James Streets to the satisfaction of the City. Development may cantilever over a portion of the public plaza above a minimum height of twenty (20) m, provided that the provisions of Subsection 8.1.1(3.7.2) a) (i) of this Plan continue to be achieved."

The Downtown Precinct Plan has been included in the new Official Plan, which will be going to the Planning and Development Committee on April 24, 2018 and Council on April 25, 2018 for adoption. Subsequent to adoption, the New Official Plan will be sent to Halton Region for approval.

Please continue to follow the Mobility Hubs project as the Downtown Precinct Plan moves forward and the subsequent Area-Specific Plans are developed.

If you have any questions, please let me know.

Regards,

Kyle Plas MCIP, RPP

Senior Planner - Mobility Hubs

Department of City Building – Planning

City of Burlington

426 Brant Street, Burlington, ON L7R 3Z6

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e kyle.plas@burlington.ca

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☒ 905-335-7880 (FAX)
✉ Tania.Dowhaniuk@burlington.ca

CITY OF BURLINGTON
“SERVICE ... AN ATTITUDE, A COMMITMENT”

INTEROFFICE MEMORANDUM

Capital Works Department
Development and Infrastructure Group

Date: May 25, 2018

TO: Lisa Stern
Development Review

CC: Rosalind Minaji
Coordinator of Development Review




Barbara Rabicki
Manager of Forestry Operations

FROM: Tania Dowhaniuk, OALA, CSLA
Intermediate Technician - Landscaping
Capital Works
Development and Infrastructure Division

Re: **Rezoning**
Official Plan Amendment (OPA)
Brant and James (Elizabeth Interiors)

File: **505-01/18 & 520-01/18**



 905-335-7600 ext. 7428
 905-335-7880 (FAX)
 Tania.Dowhaniuk@burlington.ca

Summary

This review is of a submission made by Reserve Properties Ltd., and circulated on February 8, 2018. The following documents for this Rezoning/OPA have been reviewed:

- Planning Justification Report, (Prepared by Wellings Planning Consultants Inc, January, 2018)
- Site Plan Drawings, (Prepared by Graziani & Corazza Architects Inc, January, 2018)
- Urban Design Brief, (Prepared by Bousfields Inc, January, 2018)
- Shadow Studies, (Prepared by Graziani & Corazza Architects Inc, January, 2018)
- Preliminary Grading and Servicing Plans (Prepared by S. Llewellyn & Associates Ltd., December 2017)
- Heritage Impact Statement, (Prepared by Goldsmith Borgal & Company Ltd. Architects, January, 2018)
- Arborist Letter, (Prepared by Strybos Barron King Landscape Architecture, January, 2018)
- Landscape & Terrace Plan, (Prepared by Strybos Barron King Landscape Architecture, January, 2018)
- Pedestrian Level Wind Study, (Prepared by Gradient Wind engineering Inc, December 2017)

In the following memo, the impacts to urban forestry by the development of this site will be considered through a review of pertinent policy and an analysis of the information provided.




Please be advised that the Urban Forestry and Landscaping review of this application is considered preliminary at this time. Urban Forestry and Landscaping may provide additional comments, raise additional concerns, or request additional information upon receiving any outstanding or revised information, and upon further comprehensive review of its contents.

Urban Forestry Policy

The City of Burlington has approved long-term and medium-term policy documents that identify the urban forest as key to the City's Strategic Plan goal of a "Healthy and Greener City". The Strategic Plan (2015-2040) identifies the growth of our urban forest as an indicator of environmental health. The current Official Plan also addresses the growth and preservation of our urban forest through specific direction for different planning areas. The Urban Forest Management Plan (2010-2030) identifies best practices and makes further recommendations to ensure the health and longevity of our urban forest.

The Strategic Plan envisions that the "City's urban forest and tree canopy increases and continues to thrive" through ensuring that "streetscape plans and private development will increase the City's tree canopy". As the majority of our urban forest canopy is composed of



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privately owned trees, the onus is on both the public *and* private sector to care for the preservation and enhancement of our urban forest.

In the Urban Forest Management Plan, the management of both public and private trees is addressed through five initiatives. Of these, two initiatives directly relate to this rezoning application: 'Protection and Preservation', and 'Replenishment and Enhancement'. These initiatives in relation to the application are discussed below.

The City recognizes the importance of balancing tree protection with the need for greater infill development and infrastructure renewal as the City's population and businesses grow. However, the protection of existing tree resources and replacement of resources that are removed are integral to achieving urban forest sustainability.

Preservation and Replenishment of Trees

City Trees:

There are 4 trees currently owned by the City adjacent to this property. Three are Honey Locust, approximately 40-50 years old in fair to good condition, and one is Chanticleer Pear, in fair condition. Three of the 4 trees are proposed to be removed as a result of overhead and underground conflicts with proposed buildings, servicing (sanitary, water, storm, gas, hydro, etc.) and access points for the project. These trees were evaluated by Matthew Gehres, ISA Certified Arborist (ON-1114-A) in December, 2017. His assessments of the health and structural condition are in agreement with the City's inventory records.

The trees proposed for removal include two Honey Locust with one-sided canopies (caused by clearance pruning for adjacent buildings) and calipers of 27 and 29 cm respectively, as well as one Chanticleer Pear with a 15 cm caliper. These trees are rated to be in fair to good condition and display minor issues related to trunk integrity and crown structure, and extremely limited soil volume. The aggregate replacement caliper totals 40 cm (8 x 5 cm trees).




There is ample opportunity to replace these trees in the right of way along Brant, John, and James Street frontages, and the replanting of greater caliper trees than those removed is expected, in line with our proposed Downtown Streetscape Guidelines. The opportunity for healthier tree plantings is expected due to the forthcoming requirement for minimum soil volumes for trees in Burlington through a proposed Tree Planting Guideline.

As per the City's Public Tree Bylaw 68-2013, all city trees, with the exception of those trees listed in Schedule "A", that are proposed to be removed adjacent a site for which a development application has been submitted require council approval. Please see the recommendation for removal for Council at the end of these comments.

Private Trees:

There are three 'Tree of Heaven' growing out of asphalt on site. These trees were probably naturally self-seeded. Tree of Heaven is an extremely invasive, non-native species, and their removal is ecologically beneficial. Replacement caliper is not required.



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Landscape

A conceptual Landscape Plan was submitted with the application. No landscaping is provided on the site due to the layout of the building.

City tree replacement has been provided on site, with a total of 10 deciduous trees proposed in continuous soil trenches. These may or may not require structural soil cells to meet minimum soil volume requirements, depending on the installation required in the space available. This will be determined at the detailed technical review stage.

More detailed landscape plans are expected at the site plan stage. In addition to landscape best practices and site plan requirements, the following should be included:

1. Address compensatory tree planting on both public and private property, with a plan to meet or exceed replacement targets on site or proposed alternatives.
2. Ensure all municipal tree planting provides minimum soil volumes per species. An updated Tree Planting Standard will likely be in effect within the next few months requiring minimum soil volumes. At the site plan stage, minimum soil volume areas must be shown on plan. Please contact me directly if you have any questions.
3. The urban forest's capacity to adapt to climate change, pests, and disease is connected to its diversity. The following guidelines should be applied when considering tree planting in any location. When choosing trees for a site or streetscape, it is important to consider trees planted in the immediate surrounding area, and apply the following ratios:
 - a. No species should make up more than 10% of the inventory
 - b. No genus should make up more than 20% of the inventory
 - c. No family should make up more than 30% of the inventory

Report Recommendations for Tree Removal

1. Approve the request by Reserve Properties Ltd. to remove 3 city trees adjacent to 409 Brant St;
2. Instruct Reserve Properties Ltd. to obtain a permit to remove said trees and to provide compensation for the tree removal by providing replanting in the municipal right of way with a total value of \$4100.00* (via replanting or cash-in-lieu) at the time of Site Plan Approval (SPA); and
3. Direct that all associated costs with respect to the removal of the trees will be the responsibility of Reserve Properties Ltd., and that the contractor hired to remove trees will be approved by the City via the Public Tree Permit process.

*Final amount for securities to be determined at the time of SPA submission.



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Report Recommendations for Tree Protection and Preservation

1. Instruct Reserve Properties Ltd. to provide securities at the time of SPA for the protection and preservation of the 39 cm caliper Honeylocust (Tree 1) with a total value of \$600.00*. Securities will be released to the applicant in accordance with the City's Tree Protection and Preservation Specification SS12A (SPEC NO. SS12A).
2. Direct that responsibility for correct installation and maintenance and all associated costs with respect to the protection of the tree (in accordance with (SPEC NO. SS12A) be the responsibility of Reserve Properties Ltd.

*Final amount for securities to be determined at the time of SPA submission.

Conclusion

At this time, Urban Forestry and Landscaping staff has no objection to this application.

Regards,

Tania Dowhaniuk OALA, CSLA
Intermediate Technician - Landscaping
Capital Works

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Address 426 Brant Street P.O. Box 5013, Burlington, Ontario, L7R 3Z6

February 14th, 2018

Ms. Suzanne McInnes, MCIP, RPP, Senior Planner
City of Burlington – Department of City Building
426 Brant Street, P.O. Box 5013,
Burlington, ON L7R 3Z6

Via Email to suzanne.mcinnnes@burlington.ca

RE: Application to amend the Official Plan and Zoning By-law
File: 505-01/18 & 520-01/18
Property Address: 401, 403, 405, 409, 411 & 413 Brant St., 444, 448 & 450 John St.,
2002 & 2012 James St.
TNPI Ref.: MP-73.1, R/W-19, Adj.

Dear Ms. McInnes:

Thank you for the notice of the subject application. I confirm that Trans Northern's petroleum products transmission pipeline occupies a 25 ft wide right of way in the City parking lot (PIN 07065-0077) which is located southeast of the subject lands.

As the new development appears to have no direct interaction with Trans-Northern facilities, and therefore, Trans-Northern does not object to the proposed application. Nevertheless, excavation or construction on the subject lands, for example, installing drainage or fencing close to the southeast limit of the property line may fall within the 30-metre prescribed area mentioned in s. 112 of the National Energy Board Act and the Damage Prevention Regulations. Were that the case, Trans-Northern should be contacted prior to commencement of any such works (via Ontario 1-Call, 1-800-400-2255) so that the pipeline location can be marked and safe work practices confirmed. Pamphlets and other related document are enclosed for the Applicant's information.

Thank you for including Trans-Northern in your consultation.

Yours very truly,



Alison Tong

Land and Right of Way Administrator

Trans-Northern Pipelines Inc. | 45 Vogell Road, Suite 310, Richmond Hill, ON L4B 3P6 |

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National Energy
Board



Office national
de l'énergie

Pipeline Damage Prevention

Ground Disturbance, Construction and Vehicle Crossings

June 2016



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WARNING NOTE

Each ground disturbance, construction activity or vehicle crossing is unique and this guide cannot deal with all cases. Its purpose is to help you determine whether you must obtain consent, where to obtain it and how to obtain it. This document should be regarded as a guide and the *National Energy Board Act*, and the *National Energy Board Pipeline Damage Prevention Regulations – Authorizations and National Energy Board Pipeline Damage Prevention Regulations – Obligations of Pipeline Companies*, the Act and the Regulations shall take precedence.

This booklet also contains a consolidation of the:

National Energy Board Pipeline Damage Prevention Regulations – Authorizations, SOR/2016-124
National Energy Board Pipeline Damage Prevention Regulations – Obligations of Pipeline Companies, SOR/2016-133

Users of this office consolidation are reminded that it is prepared for convenience of reference only.

www.neb-one.gc.ca

1-800-899-1265





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1. NATIONAL ENERGY BOARD REGULATIONS

The National Energy Board (NEB or the Board) takes all available actions to protect Canadians and the environment. As a result of on-going regulatory efforts and continued monitoring, pipelines continue to be a safe method to transport products, such as natural gas, oil or other commodities, across the country.

Preventing damage to pipelines is a shared responsibility. Pipeline companies and anyone living or working near pipelines have an important role to ensure that activities near pipelines are conducted safely. The *National Energy Board Act* (the NEB Act) and its regulations define the responsibilities of both pipeline companies and anyone planning to conduct an activity near a pipeline. It is often human error that causes damage to pipelines that may put your safety, your community and the environment at risk. Please be aware of pipelines and always click or call before you dig!



The purpose of the NEB's regulations for pipeline damage prevention is to ensure the safety of all persons living or working near pipelines. The regulations provide a framework to allow activities near pipelines to occur if they can be conducted safely.

The NEB is committed to continual improvement of the regulatory framework for pipeline damage prevention. Should you have any questions or feedback on this guidance, please send them to DPinfo@neb-one.gc.ca.

One-Call Centres

National web portal for one-call notification centres in Canada: www.clickbeforeyoudig.com

This portal will also tell you where you have to contact the pipeline companies directly.

Call or click before you dig! Contact your one-call centre.

British Columbia

www.bconecall.bc.ca

BC One Call: 1-800-474-6886

Alberta

<http://albertaonecall.com>

Alberta One Call Corporation: 1-800-242-3447

Saskatchewan

www.sask1stcall.com

Sask First Call: 1-866-828-4888

Manitoba

<http://www.clickbeforeyoudigmb.com/>

Click Before You Dig MB: 1-800-940-3447

Ontario

www.on1call.com

Ontario One Call: 1-800-400-2255

Québec

www.info-ex.com

Info-Excavation: 1-800-663-9228

Atlantic Canada

www.info-ex.com

**Info-Excavation: 1-866-344-5463
1-800-663-9228**

Contact the pipeline company directly in the Northwest Territories.

The National Energy Board Regulations for Pipeline Damage Prevention

Experience has shown that many pipeline incidents are caused by contractors or others working near the pipeline. Unsafe construction and ground disturbance practices can damage a pipeline and the environment, sometimes resulting in injury or death to construction company workers and bystanders. In addition to the dangers to people and the environment, such damage can lead to expensive repairs as well as a loss of revenue and essential services.

The NEB is focused on the safety of pipelines under its jurisdiction. Under section 112 and section 48(2) of the NEB Act, the NEB developed the *National Energy Board Pipeline Damage Prevention Regulations – Authorizations* (DPR – Authorizations) and *National Energy Board Pipeline Damage Prevention Regulations – Obligations of Pipeline Companies* (DPR – Obligations of Pipeline Companies) (the Regulations). Following these regulations will reduce the likelihood of damage to pipeline company facilities and enable you to complete your project safely and legally.

“Pipeline” in section 2 of the NEB Act is defined as follows: “pipeline” means a line that is used or to be used for the transmission of oil, gas or any other commodity and that connects a province with any other province or provinces or extends beyond the limits of a province or the offshore area as defined in section 123, and includes all branches, extensions, tanks, reservoirs, storage facilities, pumps, racks, compressors, loading facilities, interstation systems of communication by telephone, telegraph or radio and real and personal property, or immovable and movable, and works connected to them, but does not include a sewer or water pipeline that is used or proposed to be used solely for municipal purposes.

“Pipe” in section 2 of the *National Energy Board Pipeline Damage Prevention Regulations – Authorizations* means a pipe that is part of a pipeline and that is used or is to be used for the transmission of hydrocarbons or any other commodity.

Who is Affected by the Regulations?

Under section 112 of the NEB Act, the following are prohibited unless authorized through the Regulations or a Board order: ground disturbance activities within the prescribed area; facility construction across, on, along or under a pipeline; and vehicle crossings of a pipeline

The *DPR – Authorizations* applies to anyone who will be: undertaking an activity that causes a ground disturbance in the prescribed area, which extends 30 metres perpendicularly on either side from the centerline of the pipe (*DPR – Authorizations*, section 2); constructing a facility across, on, along, or under a pipeline; or crossing a pipeline (which includes the right-of-way) with a vehicle or mobile equipment. Activities to a depth less than 30 cm that do not reduce the total cover over the pipe at the time of construction and cultivation to less than 45 cm are not considered ground disturbance (NEB Act, section 2).

The *DPR – Obligations of Pipeline Companies* sets out responsibilities of pipeline companies concerning proposed ground disturbance activities, construction near pipelines and vehicle crossings. The NEB requires companies to anticipate, prevent, manage and mitigate potentially dangerous conditions associated with their pipelines.

What is a Ground Disturbance Activity?

Under section 2 of the NEB Act, ground disturbance does not include:

- cultivation to a depth of less than 45 cm below the surface of the ground
- any activity to a depth of less than 30 cm and that does not result in reduction of the depth of earth cover over the pipeline less than that approved at time of construction

Activities causing ground disturbance can include, but are not limited to, the following:

- | | |
|--|---|
| <ul style="list-style-type: none"> ▪ digging ▪ excavation ▪ trenching ▪ ditching ▪ tunnelling ▪ boring/drilling/pushing ▪ augering ▪ topsoil stripping ▪ land levelling/grading ▪ plowing to install underground infrastructure ▪ tree planting | <ul style="list-style-type: none"> ▪ clearing and stump removal ▪ subsoiling ▪ blasting/use of explosives ▪ quarrying ▪ grinding and milling of asphalt/concrete ▪ seismic exploration ▪ driving fence posts, bars, rods, pins, anchors, or pilings ▪ crossing of buried pipelines or other underground infrastructure by heavy loads off the travelled portion of a public roadway¹ |
|--|---|



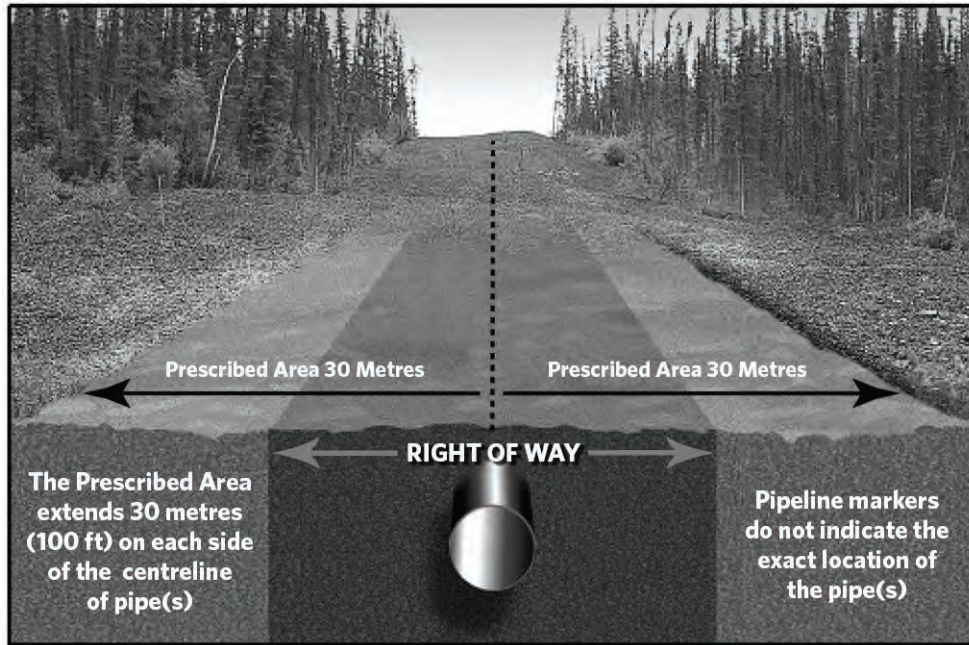
¹ Ref. CSA Z247 *Damage Prevention for the Protection of Underground Infrastructure*

What is the Prescribed Area?

The *DPR – Authorizations* provides that the prescribed area extends 30 metres perpendicularly in both directions from the centreline of a pipe. The intent of the prescribed area is to ensure:

- the protection of pipelines from damage that may result from activities causing ground disturbance; and
- the safety of all persons living or working near the pipeline.

Prescribed Area



What is a Facility?

In general, a facility includes but is not limited to:

- a structure (anything built or installed), for example: a fence, a concrete conduit structure, a swimming pool, a retaining wall, a shed;
- a highway, private road, lane, parking lot, walkway;
- a railway;
- a drainage or irrigation system, including dykes, ditches and culverts;
- a telecommunication line or power line; and
- a pipe, for example: a water main, a sewer, a gas line, an oil line.

Which Pipelines are under National Energy Board Jurisdiction?

In general, the NEB regulates natural gas, oil, and commodity pipelines that extend beyond provincial, territorial or national boundaries.

What Do the Regulations Provide?

The *DPR – Authorizations* explains the legal conditions under which ground disturbance in the prescribed area and construction of facilities near the pipeline (including the right of way) can be conducted safely. It also provides the requirements for authorization to cross a pipeline (including the right of way) with a vehicle or mobile equipment. The *DPR – Obligations of Pipeline Companies* outlines responsibilities of the pipeline company to you and the NEB.

If you cannot meet all the requirements of the Regulations, including obtaining the pipeline company's consent, you can apply to the Board for an order authorizing the ground disturbance activity.

If you have any questions about the Regulations, contact the NEB. Contact information is included in Appendix 1 of this guide.

It is illegal to proceed with: unauthorized construction of a facility across, on, along or under a right of way; unauthorized ground disturbance activity within the 30 metre (100 foot) prescribed area; or unauthorized vehicle or mobile equipment crossings.



2. OBTAINING CONSENT

What Activities Require Consent from the Pipeline Company?

Consent from the pipeline company is required for:

- Construction of a facility across, on, along, or under a pipeline (including the right of way);
- Ground disturbance activities in the prescribed area, which extends 30 metres (100 feet) from each side of the centreline of the pipe; and
- Operation of a vehicle or mobile equipment across a right of way, outside the travelled portion of a highway or public road.

What Activities Do Not Require Consent?

Overhead Lines

- While consent of the pipeline company is not required to construct an overhead line across a pipeline (assuming that ground disturbances do not occur in the prescribed area or that the construction does not involve vehicle or mobile equipment crossing), a person constructing an overhead line across the pipeline ROW must, prior to construction: obtain from the pipeline company the safety practices to be followed while working in the vicinity of its pipes; make a locate request; and wait for the pipeline company to mark their pipeline and explain the significance of those markings.
- Any person undertaking the construction of an overhead line across a pipeline must also comply with the applicable federal and provincial laws for the construction of the overhead lines. Ground to wire clearances are determined by a number of factors addressed in applicable codes and standards for the construction of overhead lines.
- Aerial warning devices must be installed and maintained by the person constructing the overhead line where it crosses the pipeline, if the pipeline is patrolled by aircraft, for the safety of pipeline company employees, the public and the pipeline.
- Poles, pylons, towers, guys, anchors or supporting structures must not be constructed or placed across, on, along or under the pipeline. If a third party proposes to place such structures on the pipeline ROW, separate authorization must be obtained in accordance with the procedures outlined in the other sections of the *DPR – Authorizations*, including section 7 and section 10.

Maintenance of an Existing Facility

- If maintenance of an existing facility in the prescribed area causes a ground disturbance, the person engaged in the maintenance must make a locate request in accordance with section 3 of *DPR – Authorizations* and obtain the necessary information from the pipeline company, including written safety practices, and an explanation of the markings made as a result of the locate request. If performing mechanical excavation within 3 metres of the pipe, the person engaged in the maintenance must follow the requirements for such excavation outlined in paragraph 10(3)(c) of *DPR – Authorizations*.
- The person engaged in the maintenance must also comply with the instructions of the pipeline company's authorized field representative regarding the procedures that are to be followed during the activity and that relate to the pipeline's safety and security.

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- If interference with or alteration of a pipe becomes necessary, the person engaged in the maintenance must obtain the pipeline company's written consent to interfere with or alter the pipe.
- The person engaged in the maintenance must carry out any activity that involves the interference with or alteration of a pipe under the pipeline company's supervision. As well, the person engaged in the maintenance must immediately notify the pipeline company of any contact with a pipe or its coating during the activity.
- Unless otherwise agreed on by the pipeline company and the person that is engaged in the activity, the facility owner must notify the pipeline company at least 24 hours before backfilling over a pipe.
- See "Your Field Responsibilities" in this guidance for further information.

Crossing a Pipeline with an Agricultural Vehicle or Mobile Equipment

The *DPR – Authorizations* provides that persons operating agricultural vehicles or mobile equipment across pipelines may do so in low-risk areas, under certain conditions.

The operation across the pipeline of a vehicle or mobile equipment that is used for an agricultural activity is authorized if the following conditions are met:

- the loaded axle weight and tire pressures of the vehicle or mobile equipment are within the manufacturer's approved limits and operating guidelines; and
- the point of crossing has not been the subject of a notification from the pipeline company that crossing at that location could impair the pipeline's safety or security.

This applies to vehicles or mobile equipment used for agricultural activities in the production of crops and the raising of animals and includes pasturing and cultivation activities such as tillage, plowing, disking and harrowing.

If you have any doubts, please contact the applicable pipeline company or the NEB (see Appendix 1 for NEB contact information).

How to Obtain Consent from the Pipeline Company

1. Contact the pipeline company for a copy of their technical guidelines. These guidelines set out the information you need to include in your application to the pipeline company.
2. Prepare your request for consent following the pipeline company's guidelines.
3. If you have any questions pertaining to your project, contact the pipeline company **before** you submit your request for consent. They will discuss your project with you and, if necessary, provide assistance.
4. Submit your request for consent to the pipeline company.

Within ten working days of receiving your request, the pipeline company must either give you its consent or provide reasons for denying it. **If consent is denied, you may apply to the NEB for a review of your request under the NEB Act (section 112) and the *DPR – Authorizations* (section 14).**

If you decide to change the design, location, or type of facilities to be constructed **after** the pipeline company gives its consent, the pipeline company must agree to the changes **before** you start your work.

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Is There a Time Limit?

In general, the pipeline company's consent will lapse if all work is not completed within two years of the date that consent was given. However, this time limit may be changed if you and the pipeline company agree.

The pipeline company may suspend the consent given if technical details and conditions are not followed or unsafe construction practices are used (*DPR – Obligations of Pipeline Companies*, section 10). The NEB may order work to stop if the Board considers it necessary for the safety and security of the pipeline.

When Do You Require Approval from the National Energy Board?

If you cannot obtain the pipeline company's consent or you cannot comply with all the requirements in the Regulations, you must obtain the NEB's approval before starting: construction of a facility across, on, along, or under pipeline (including the right of way); any ground disturbance activity in the prescribed area (30 metres from either side of the centreline of the pipe); or the operation of a vehicle or mobile equipment across the pipeline (including the right of way).

You will also have to ask the NEB for its approval if:

- You cannot meet the conditions required by the pipeline company
- The pipeline company has suspended and not reinstated its consent for your proposed activity

Mining activities within 40 metres of a pipeline right of way require consent from the NEB (see NEB Act, section 81).

How to Apply to the National Energy Board for Authorization

An application to the Board for authorization is a letter or document that should include the location and full details of the proposed activity. The Board's Filing Manual provides guidance regarding the type of information the Board would typically need for a section 112 application, including information on the purpose and location of the activity, and the rationale for seeking approval from the Board. The applicant is requested to provide as much information as possible about the efforts made to obtain the pipeline company's consent for the activity prior to making the application to the Board, including the reasons given by the pipeline company for withholding its consent.

The Filing Manual can be accessed online at www.neb-one.gc.ca. The Filing Manual is also available from the Board's Library by calling 1-800-899-1265.

Applications should be addressed to:

Secretary of the Board
National Energy Board
517 Tenth Avenue S.W.
Calgary, AB T2R 0A8

Have Questions? Don't hesitate to contact us. Pipeline damage prevention staff are available by phone at 1-800-899-1265 or by email at DPinfo@neb-one.gc.ca.

Applications may be filed with the Board by mail, courier or by facsimile by calling the toll free number at 1-877-288-8803. Applications can also be uploaded through the NEB's Applications and Filings Portal on the NEB website at Home / Applications and Filings / Submit Applications and Regulatory Documents / File under the NEB Act / OPR: NEB Act – Guide C (<http://www.neb-one.gc.ca/pplctnflng/sbmt/nbpr-eng.html>).

A copy of the application must be forwarded to the pipeline company so that it can review the information and forward any comments it may have to the NEB.

3. YOUR RESPONSIBILITIES

Your Field Responsibilities

Please refer to the *DPR – Authorizations* for all third party responsibilities (see Appendix 4).

Once the pipeline company has given its written consent, you must follow these steps to comply with the Regulations.

1. For the construction of a facility or ground disturbance activity, contact a one-call centre

You must contact a one-call centre, or the pipeline company directly if one call services are not available in your area, to submit a locate request at least three working days before starting any work (except in the case of emergencies). The company must locate the pipe within three working days after the date of the request. This period of time may be extended if both you and the pipeline company agree.

Confirmation must be received from the pipeline company that all of the pipeline company's pipes in the vicinity of the construction or ground disturbance have been marked and the pipeline company must have clearly explained the significance of the markings to you. You must also receive written information from the pipeline company regarding the safety practices to be followed while working in the vicinity of its pipe or in the prescribed area. A misunderstanding could cause you to damage a pipe, endangering your own life and that of others.

2. Follow the instructions of the pipeline company

After written consent is obtained, and work is to start, you must comply with the safety measures in the company's consent, the regulations, and the instructions of the pipeline company's authorized field representative regarding the procedures that are to be followed while carrying out the ground disturbance activity in the prescribed area. This includes stopping the work if it may impair the pipeline's safety or security.

3. Duty to inform

If you are planning to conduct a ground disturbance or construction activity, or to operate a vehicle across a pipeline, you must inform anyone working on your behalf, including employees, contractors and subcontractors, of their obligations under the *DPR – Authorizations*.

If you are renting out your land, you will want to talk to your tenants about the *DPR – Authorizations* as they will also be expected to abide by them.

4. Provide notice for backfilling and report any damage immediately

You must provide the pipeline company with 24 hours' notice before backfilling over the pipe. **Any contact with the pipe or its coating must be reported to the pipeline company immediately as well as any other damage that may have occurred.** Even incidents which seem minor at the time – small dents and scratches on the pipe or any damage to the coating – could lead to serious problems such as corrosion which could eventually cause the pipe to rupture.

At no time are you allowed to move or alter the pipe or its fittings, or in any other way interfere with the pipe without the written consent of the pipeline company, and then only if the work is done under its direct supervision. (See *DPR – Authorizations*, paragraphs 10 (3)(e) and (f))

5. Observe the temporary prohibition area

The temporary prohibition area differs from and should not be confused with the 30 metre (100 feet) prescribed area. When a pipeline company receives a locate request for a ground disturbance activity, they may designate a temporary prohibition area in the vicinity of the pipeline which may extend beyond the 30 metre prescribed area. This may occur when there are situations where a ground disturbance activity outside of the prescribed area may pose a potential hazard to the pipe. When a temporary prohibition area is designated, no ground disturbance activity may be performed in this area until:

- the end of the third working day after the day on which the request is made; or
- at any later time that is agreed to between the pipeline company and the person making the request.

6. Follow the rules for mechanical excavation within three metres of the pipe

(See *DPR – Authorizations*, paragraph 10(3)(c))

Ground disturbance using mechanical equipment is not permitted within three metres (10 feet) of the pipe unless:

- i. if the excavation runs parallel to the pipe, the pipe has been exposed by hand at sufficient intervals to confirm the pipe's location or the pipeline company has used a method that would permit it to confirm the pipe's exact location and has informed the person of that location,
- ii. if the excavation crosses the pipe, the pipe has been exposed by hand at the point of crossing or the pipeline company has used a method that would permit it to confirm the pipe's exact location, has informed the person of that location and has confirmed that the pipe is at least 60 cm deeper than the proposed excavation, and
- iii. if ground conditions render it impractical to locate the pipe using any of the methods set out in (i) and (ii), the pipeline company directly supervises any excavation.

When boring directionally or using explosives, you must meet the pipeline company's conditions.

7. Comply with the pipeline company's conditions/instructions or the conditions of a Board approval

The pipeline company may have made its consent conditional on meeting certain requirements. You must comply with the company's conditions, as well as with the instructions of any authorized pipeline company field representative regarding procedures when working near the pipeline.

If the Board has approved the activity, you must comply with the conditions outlined in the Board's order.

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Your Responsibilities After Construction

(See *DPR – Authorizations*, sections 8 and 11)

If you are the owner of the facility that is constructed across, on, along or under a pipeline, you must maintain the facility in good condition so that it will not impact the safety of the pipeline. This remains your responsibility until you can show that someone else has taken over the ownership of the facility, or until it has been removed or abandoned in a manner that does not adversely affect the pipeline's safety and security or jeopardize property and the environment and the safety and security of the public and of the pipeline company's employees.

Facility owners must contact the one-call centre or the pipeline company directly prior to any maintenance activities that could cause a ground disturbance in the prescribed area; for further information regarding requirements for maintenance activities, see section 11 of *DPR – Authorizations*.

If you decide to remove or abandon the facility, you must notify the pipeline company in writing before doing so. You must also remove or alter your facility if it is determined that it could adversely affect the safe and efficient operation of the pipeline. The NEB may require you to remove or alter your facility if it determines that it is necessary. When removing your facility, any ground disturbance required would have to be authorized. If you are abandoning your facility, the pipeline company may require that you take precautions to ensure that deterioration of the facility does not become a hazard to the safety of the pipe.

4. UNAUTHORIZED ACTIVITIES

The following are examples of unauthorized activities:

- a ground disturbance within the prescribed area, the construction of a facility near the pipeline or a non-agricultural crossing for which consent was not obtained;
- a ground disturbance within the prescribed area or the construction of a facility near the pipeline for which a locate request was not obtained;
- a ground disturbance within the prescribed area or construction of a facility in a manner that does not meet the conditions outlined in the consent or does not accord with the instructions of an authorized field representative;
- a crossing in the absence of consent for the purposes of an agricultural activity in an area that has been identified by the pipeline company as a location where such crossings could impair the pipeline's safety and security.

A failure to follow the requirements in the Regulations (e.g. obtaining consent, complying with conditions of consent, performing a locate request) must be immediately reported by the pipeline company to the Board.

If the Regulations are not followed when conducting an activity that causes a ground disturbance in the prescribed area, constructing a facility near a pipeline, or crossing a pipeline, it is unauthorized, and illegal, unless otherwise authorized by the Board.

The NEB may enforce against unauthorized activities for environmental protection and the safety of all involved. Contravention of section 112 of the NEB Act or the Regulations is an offence and could be subject to prosecution. Such contraventions are also designated violations subject to a monetary penalty under the NEB's *Administrative Monetary Penalties Regulations* (AMPs). For more information on AMPs, please go to the NEB's website at www.neb-one.gc.ca.

For more information on the NEB's enforcement framework, please refer to the Board's website under Safety and the Environment at www.neb-one.gc.ca, or contact damage prevention staff using the contact information below.

Contact us

If you have any questions about this guide or the Regulations, please do not hesitate to contact the NEB by email at DPinfo@neb-one.gc.ca or by phone at 1-800-899-1265.

You can find a copy of this document on the NEB website: www.neb-one.gc.ca.

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5. SAFETY CHECKLIST

The safety and security of Canadians and protection of the environment is the NEB's top priority. We recognize that anyone who lives and works near pipelines plays a key role in pipeline safety. You can help create a safe and secure environment for you, your family and community and the environment by following this checklist.

Please note that this checklist is a guide. Refer to the *DPR – Authorizations* to ensure that your project follows safety and legal requirements.

1. **Plan your activity.** Identify the precise location of your work; check records for evidence of pipeline easements or other buried facilities.
2. **Go to the site** and look for pipeline warning signs or pipeline marker posts.
3. **Contact the pipeline company** and obtain a copy of the pipeline company's guidelines for constructing a facility, conducting activities causing a ground disturbance, or crossings in the vicinity of a pipeline.
4. **Obtain the pipeline company's written consent** for the construction of facilities across, on, along or under a pipeline, conducting activities causing a ground disturbance in the prescribed area, or crossing a pipeline with a vehicle or mobile equipment.
5. **Make a locate request** at least three working days before the day on which the construction or ground disturbance activity is started, by calling the one-call centre, or by calling the pipeline company where there is no one-call centre, to have the pipe located and marked.
6. **Be on site** when the pipeline is located, and **know the meaning of the pipeline markings.**
7. **Review NEB requirements** with all persons working on your behalf, including employees, contractors and subcontractors, to ensure they are aware of their obligations. Keep documents with safety requirements and guidance on site.
8. **Expose the pipe by hand digging or other acceptable excavation techniques accepted by the pipeline company** prior to any mechanical excavation within three metres of the pipe. **Follow the instructions of the pipeline company's authorized field representative.**
9. **Notify the pipeline company** prior to backfilling over the pipe or facilities, where the pipe or facilities have been exposed. **Follow the instructions of the pipeline company's authorized field representative.**
10. **IMMEDIATELY NOTIFY THE PIPELINE COMPANY IF YOU COME INTO CONTACT WITH THE PIPE!**
A small scratch or dent in the pipe's coating can impact the long term safety of the pipe and must be assessed by the pipeline company.

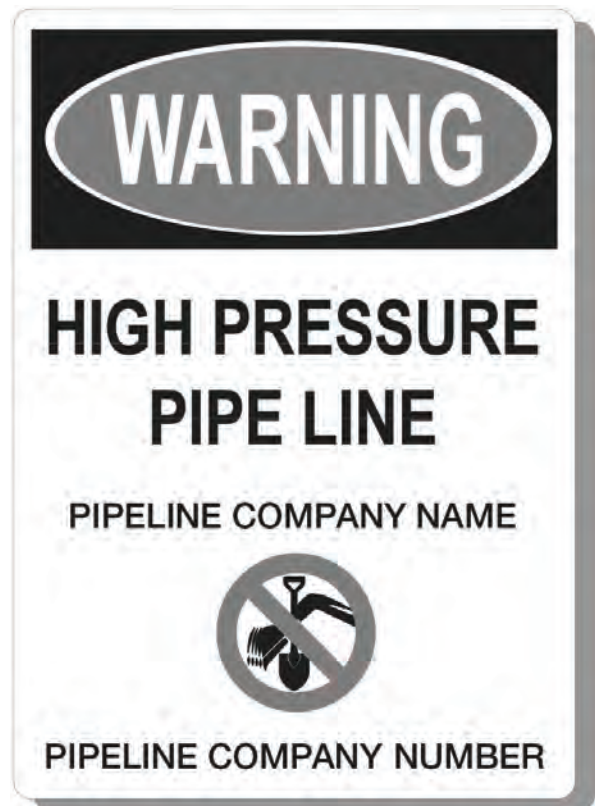
APPENDIX 1 – NATIONAL ENERGY BOARD CONTACT

For information concerning ground disturbance or construction near pipelines, and pipeline crossings:

DPinfo@neb-one.gc.ca
1-800-899-1265

Mailing Address

National Energy Board
517 Tenth Avenue SW
Calgary, Alberta T2R 0A8
Facsimile: (403) 292-5503
Facsimile (toll free): 1-877-288-8803
www.neb-one.gc.ca



APPENDIX 2 – ONE-CALL CENTRES

There may be buried utilities in the ground such as: electrical cables high pressure gas lines, television cables, water lines, oil lines, etc. It is important to know what is in the ground before you dig to protect you, the public and the environment.

If you plan a ground disturbance or construction activity, you must contact a One-Call centre. The One-Call centre will advise you of its member companies buried utilities in the area of your proposed activity. The One-Call centre will notify its member companies about your proposed activity and the pipeline company will mark the exact location of its facility(s).

National web portal for one-call notification centres in Canada: www.clickbeforeyoudig.com

This portal will also tell you where you have to contact the pipeline companies directly.

Call or click before you dig! Contact your one-call centre.

British Columbia

www.bconecall.bc.ca

BC One Call: 1-800-474-6886

Alberta

<http://albertaonecall.com>

Alberta One Call Corporation: 1-800-242-3447

Saskatchewan

www.sask1stcall.com

Sask First Call: 1-866-828-4888

Manitoba

<http://www.clickbeforeyoudigmb.com/>

Click Before You Dig MB: 1-800-940-3447

Ontario

www.on1call.com

Ontario One Call: 1-800-400-2255

Québec

www.info-ex.com

Info-Excavation: 1-800-663-9228

Atlantic Canada

www.info-ex.com

Info-Excavation: 1-866-344-5463

1-800-663-9228

Contact the pipeline company directly in the Northwest Territories.

APPENDIX 3 – DAMAGE PREVENTION IN THE NATIONAL ENERGY BOARD ACT

Construction and ground disturbance

112 (1) It is prohibited for any person to construct a facility across, on, along or under a pipeline or engage in an activity that causes a ground disturbance within the prescribed area unless the construction or activity is authorized by the orders or regulations made under subsection (5) and done in accordance with them.

Use of vehicles and mobile equipment

112 (2) It is prohibited for any person to operate a vehicle or mobile equipment across a pipeline unless

- (a) that operation is authorized by the orders or regulations made under subsection (5) and done in accordance with them; or
- (b) the vehicle or mobile equipment is operated within the travelled portion of a highway or public road.

Terms and conditions

(3) Repealed.

Directions

(4) The Board may direct the owner of a facility constructed across, on, along or under a pipeline in contravention of this Act or the Board's orders or regulations to do such things as the Board considers necessary for the safety or security of the pipeline and may, if the Board considers that the facility may impair the safety or security of the operation of the pipeline, direct the owner to reconstruct, alter or remove the facility.

Regulations and orders

(5) The Board may make orders or regulations

- (a) governing the design, construction, operation and abandonment of facilities constructed across, on, along or under pipelines;
 - (a.1) prescribing the area for the purposes of subsection (1);
 - (a.2) authorizing the construction of facilities across, on, along or under pipelines;
 - (a.3) authorizing ground disturbances within the prescribed area;
- (b) governing the measures to be taken in relation to
 - (i) the construction of facilities across, on, along or under pipelines,

- (ii) the construction of pipelines across, on, along or under facilities, other than railways, and
- (iii) ground disturbances within the prescribed area;
- (c) authorizing the operation of vehicles or mobile equipment across a pipeline and governing the measures to be taken in relation to that operation; and
- (d) specifying activities for the purposes of paragraph (a) of the definition “ground disturbance” in section 2.

Temporary prohibition on ground disturbance

- (5.1) Orders or regulations made under subsection (5) may provide for the prohibition of ground disturbances in an area that is situated in the vicinity of a pipeline and that may extend beyond the prescribed area during the period that starts when a request is made to a pipeline company to locate its pipeline and ends
- (a) at the end of the third working day after the day on which the request is made; or
 - (b) at any later time that is agreed to between the pipeline company and the person making the request.

Exemptions

- (6) The Board may, by order made on any terms and conditions that the Board considers appropriate, exempt any person from the application of an order or regulation made under subsection (5).

Inspection Officers

- (7) The provisions of sections 49 to 51.3 relating to inspection officers apply for the purpose of ensuring compliance with orders and regulations made under subsection (5).

Offence

- (8) Every person who contravenes subsection (1) or (2), a direction made under subsection (4) or an order or regulation made under subsection (5) is guilty of an offence and liable
- (a) on summary conviction, to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding one year or to both; or
 - (b) on conviction on indictment, to a fine not exceeding one million dollars or to imprisonment for a term not exceeding five years or to both.

Application of subsections 121(2) to (5)

- (9) Subsections 121(2) to (5) apply, with any modifications that the circumstances require, to an offence under subsection (8).

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Definitions

“pipeline” in section 2 of the NEB Act:

“pipeline” means a line that is used or to be used for the transmission of oil, gas or any other commodity and that connects a province with any other province or provinces or extends beyond the limits of a province or the offshore area as defined in section 123, and includes all branches, extensions, tanks, reservoirs, storage facilities, pumps, racks, compressors, loading facilities, interstation systems of communication by telephone, telegraph or radio and real and personal property, or immovable and movable, and works connected to them, but does not include a sewer or water pipeline that is used or proposed to be used solely for municipal purposes.

“ground disturbance” in section 2 of the NEB Act:

“ground disturbance” does not include a ground disturbance caused by

- a) any activity that is specified in the orders or regulations made under section 112(5),
- b) cultivation to a depth of less than 45 cm below the surface of the ground, or
- c) any activity to a depth of less than 30 cm and that does not result in reduction of the depth of earth cover over the pipeline to a depth that is less than the cover provided when the pipeline was constructed.



APPENDIX 4 – REGULATIONS AND RELATED GUIDANCE

National Energy Board Pipeline Damage Prevention Regulations – Authorizations

Interpretation

Definitions

1 The following definitions apply in these Regulations.

Act means the *National Energy Board Act*. (*Loi*)

facility means any structure, highway, private road, railway, irrigation ditch, drain, drainage system, sewer, dike, telephone line, telegraph line, telecommunication line, line for the transmission of electricity or pipe for the transmission of hydrocarbons or any other substance. (*installation*)

offshore area means the submarine areas adjacent to the coast of Canada. (*zone extracôtière*)

overhead line means a facility that is an above-ground telephone, telegraph, telecommunication or electric power line or any combination of those lines. (*ligne aérienne*)

pipe means a pipe that is part of a pipeline and that is used or is to be used for the transmission of hydrocarbons or any other commodity. (*conduite*)

working day means any day that is not a Saturday or a Sunday or other holiday. (*jour ouvrable*)

General Provisions

Prescribed area

2 For the purposes of subsection 112(1) of the Act, the prescribed area means a strip of land measured 30 m perpendicularly on each side from the centreline of a pipe.

Locate request — person

3 (1) Subject to subsection (2), any person that intends to construct a facility across, on, along or under a pipeline or engage in an activity that would cause a ground disturbance within a prescribed area must make a locate request in the following manner at least three working days before the day on which the construction or activity is to start:

- (a) to a one-call centre if the intended construction or activity is within an area where a one-call centre exists; or
- (b) to the pipeline company directly if the intended construction or activity is not within an area where a one-call centre exists.

Locate request — pipeline company

- (2) Any pipeline company that intends to construct a facility across, on, along or under its pipeline or engage in an activity that would cause a ground disturbance within a prescribed area must make a locate request to a one-call centre at least three working days before the day on which the construction or activity is to start if the intended construction or activity is within an area where a one-call centre exists.

Emergency

- (3) In the case of an unexpected situation that could endanger life or cause substantial property or environmental damage that requires immediate action, the three-day period set out in subsections (1) and (2) does not apply and the locate request must be made as soon as possible before the construction or activity starts.

One-call centre

- (4) A one-call centre is an organization that, for the purposes of protecting the underground infrastructures of its members from damage and ensuring public safety,
- (a) receives locate requests from within a defined geographical area; and
 - (b) notifies its members that may be affected by any proposed construction or any proposed activity that would cause a ground disturbance and that are the subject of a locate request of that construction or activity.

Duty to inform

- 4 Any person that intends to construct a facility across, on, along or under a pipeline, engage in an activity that would cause a ground disturbance within a prescribed area or operate a vehicle or mobile equipment across a pipeline must, before the construction, activity or operation is to start, inform all persons working on their behalf, including employees, contractors and subcontractors, of their obligations under these Regulations.

Designation of temporary prohibition area

- 5 If a pipeline company, after having received a locate request from a person that intends to engage in an activity that would cause a ground disturbance within a prescribed area, designates an area that is situated in the vicinity of a pipeline and that may extend beyond the prescribed area as a prohibition area, the ground disturbance is prohibited within the area during the period referred to in subsection 112(5.1) of the Act.

Authorization Under the Act**Pipeline company**

- 6 For the purposes of subsection 112(1) and paragraph 112(2)(a) of the Act and despite sections 7 and 9 to 13 of these Regulations, the construction of a facility — in an area other than an offshore area — across, on, along or under a pipeline, an activity — in an area other than an offshore area — that would cause a ground disturbance within a prescribed area and the operation of a vehicle or mobile equipment across a pipeline is authorized if the pipeline company that intends to carry out the construction, activity or operation
- (a) is authorized to carry out the construction, activity or operation under the Act;
 - (b) makes a locate request in accordance with section 3; and

- (c) if another pipeline company receives the locate request, the pipeline company that made the locate request obtains from the other pipeline company the information that is referred to in paragraphs 6(1)(a) and (c) of the National Energy Board Pipeline Damage Prevention Regulations – Obligations of Pipeline Companies.

Facility

Authorization – of construction

7 (1) For the purposes of subsection 112(1) of the Act, the construction of a facility — in an area other than an offshore area — across, on, along or under a pipeline, other than the construction of an overhead line referred to in section 9, is authorized if the person that intends to construct the facility

- (a) obtains the pipeline company's written consent;
- (b) makes a locate request in accordance with section 3; and
- (c) obtains from the pipeline company the information that is referred to in paragraphs 6(1)(a) and (c) of the National Energy Board Pipeline Damage Prevention Regulations – Obligations of Pipeline Companies.

Suspension

(2) If the consent is suspended by the Board, or by the pipeline company in accordance with subsection 10(1) of the National Energy Board Pipeline Damage Prevention Regulations – Obligations of Pipeline Companies, the authorization is suspended and the construction must cease for the duration of the suspension of the consent.

Measures

- (3)** Any person that is undertaking the construction of a facility must comply with the following measures:
- (a) ensure that the construction is carried out in accordance with the technical details that are set out in the person's request for consent and that have been accepted by the pipeline company, as well as with the conditions set out in the pipeline company's consent;
 - (b) ensure that the construction is completed within two years after the day on which the consent was obtained, unless the pipeline company and the person agree on another time period that is set out in the consent;
 - (c) comply with the instructions of the pipeline company's authorized field representative regarding the procedures that are to be followed while carrying out the construction in the vicinity of a pipe and that relate to the pipeline's safety and security;
 - (d) if interference with or alteration of a pipe becomes necessary, obtain the pipeline company's written consent to interfere with or alter the pipe;
 - (e) carry out any construction that involves the interference with or alteration of a pipe under the pipeline company's supervision; and
 - (f) immediately notify the pipeline company of any contact with a pipe or its coating during the construction.

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Obligations — existing facilities

8 The owner of a facility that is constructed — in an area other than an offshore area — across, on, along or under a pipeline must

- (a) maintain the facility in a state of good repair compatible with the pipeline’s safety and security;
- (b) immediately correct any deterioration in the facility on being so notified in writing by the pipeline company under subsection 9(1) of the *National Energy Board Pipeline Damage Prevention Regulations – Obligations of Pipeline Companies*;
- (c) notify the pipeline company, in writing, of any proposed abandonment or removal of the facility; and
- (d) remove or alter the facility or part of the facility that could adversely affect the pipeline’s safe and efficient operation or that could jeopardize property and the environment and the safety and security of the public and of the pipeline company’s employees.

Authorization for construction of overhead line

9 (1) For the purposes of subsection 112(1) of the Act, the construction of an overhead line across a pipeline — in an area other than an offshore area — is authorized if the person that intends to construct the overhead line

- (a) makes a locate request in accordance with section 3;
- (b) confirms with the pipeline company that all of the pipeline company’s pipes in the vicinity of the construction have been marked; and
- (c) obtains from the pipeline company the information that is referred to in paragraphs 6(1)(a) and (c) of the *National Energy Board Pipeline Damage Prevention Regulations – Obligations of Pipeline Companies*.

Measures

(2) Any person that is undertaking the construction of an overhead line across a pipeline must comply with the following measures:

- (a) construct the overhead line in accordance with any applicable provincial and federal law;
- (b) if the pipeline is patrolled by aircraft and if the overhead line poses a risk to the aircraft, install and maintain aerial warning devices; and
- (c) not construct or place any kind of pole, pylon, tower, guy, anchor or supporting structure across, on, along or under the pipeline.

Activity that Causes a Ground Disturbance

Authorization – ground disturbance activity

10 (1) For the purposes of subsection 112(1) of the Act, any activity — in an area other than an offshore area — that would cause a ground disturbance within the prescribed area, other than an activity referred to in section 11, is authorized if the person that intends to engage in the activity

- (a) obtains the pipeline company's written consent;
- (b) makes a locate request in accordance with section 3; and
- (c) obtains from the pipeline company the information that is referred to in paragraphs 6(1)(a) and (c) of the *National Energy Board Pipeline Damage Prevention Regulations – Obligations of Pipeline Companies*.

Suspension

(2) If the consent is suspended by the Board, or by the pipeline company in accordance with subsection 10(1) of the *National Energy Board Pipeline Damage Prevention Regulations – Obligations of Pipeline Companies*, the authorization is suspended and the activity must cease for the duration of the suspension of the consent.

Measures

- (3)** Any person that is engaged in an activity that causes a ground disturbance within the prescribed area must comply with the following measures:
- (a) ensure that the activity is carried out in accordance with the technical details that are set out in the person's request for consent and that have been accepted by the pipeline company, as well as with the conditions set out in the pipeline company's consent, including the conditions respecting directional drilling or the use of explosives;
 - (b) ensure that the activity is completed within two years after the day on which the consent was obtained, unless the pipeline company and the person agree on another time period that is set out in the consent;
 - (c) not undertake mechanical excavation that would cause a ground disturbance within the prescribed area within 3 m of a pipe, unless
 - (i) if the excavation runs parallel to the pipe, the pipe has been exposed by hand at sufficient intervals to confirm the pipe's location or the pipeline company has used a method that would permit it to confirm the pipe's exact location and has informed the person of that location,
 - (ii) if the excavation crosses the pipe, the pipe has been exposed by hand at the point of crossing or the pipeline company has used a method that would permit it to confirm the pipe's exact location, has informed the person of that location and has confirmed that the pipe is at least 60 cm deeper than the proposed excavation, and
 - (iii) if ground conditions render it impractical to locate the pipe using any of the methods set out in subparagraphs (i) and (ii), the pipeline company directly supervises any excavation;
 - (d) comply with the instructions of the pipeline company's authorized field representative regarding the procedures that are to be followed during the activity and that relate to the pipeline's safety and security;

.....

- (e) if interference with or alteration of a pipe becomes necessary, obtain the pipeline company's written consent to interfere with or alter the pipe;
- (f) carry out any activity that involves the interference with or alteration of a pipe under the pipeline company's supervision;
- (g) immediately notify the pipeline company of any contact with a pipe or its coating during the activity; and
- (h) unless otherwise agreed on by the pipeline company and the person that is engaged in the activity, notify the pipeline company at least 24 hours before backfilling over a pipe.

Authorization — activity required for maintenance of facility

- 11** For the purposes of subsection 112(1) of the Act, any maintenance of an existing facility — in an area other than an offshore area — that causes a ground disturbance within the prescribed area is authorized if the person engaged in the maintenance complies with paragraphs 10(1)(b) and (c) and the measures set out in paragraphs 10(3)(c) to (h).

Operation of Vehicles or Mobile Equipment Across a Pipeline

Authorization – operation across pipeline

- 12** Subject to section 13 and for the purposes of paragraph 112(2)(a) of the Act, the operation of a vehicle or mobile equipment across a pipeline is authorized if the person that intends to operate the vehicle or mobile equipment across the pipeline obtains the pipeline company's written consent.

Authorization — agricultural activity

- 13 (1)** For the purposes of paragraph 112(2)(a) of the Act, the operation across the pipeline of a vehicle or mobile equipment that is used to perform an agricultural activity is authorized if the following conditions are met:
- (a) the loaded axle weight and tire pressures of the vehicle or mobile equipment are within the manufacturer's approved limits and operating guidelines; and
 - (b) the point of crossing has not been the subject of a notification under section 7 of the *National Energy Board Pipeline Damage Prevention Regulations – Obligations of Pipeline Companies*.

Definition of *agricultural activity*

- (2)** In this section, *agricultural activity* means the production of crops and the raising of animals and includes tillage, plowing, disking, harrowing and pasturing, but does not include the construction of new buildings or impervious areas or the placement of footings, foundations, pilings or posts, including fence posts.

Application for Authorization

File application with Board

14 (1) A person that intends to construct a facility across, on, along or under a pipeline, engage in an activity that would cause a ground disturbance within the prescribed area of a pipeline or operate a vehicle or mobile equipment across a pipeline may file an application for authorization with the Board if

(a) the construction, activity or operation is not authorized under subsection 7(1), 9(1) or 10(1) or section 11 or 12; or

(b) the person is unable to comply with the applicable measures set out in subsection 7(3), 9(2) or 10(3)

Service

(2) If a person files an application under subsection (1), that person must serve a copy of the application on the pipeline company that operates the pipeline in question.

Transitional Provisions

Construction or excavation

15 (1) Any leave granted by the Board prior to June 19, 2016 to construct a facility across, on, along or under a pipeline or to excavate using power-operated equipment or explosives within 30 m of a pipeline under subsection 112(1) of the Act, as it read immediately prior to that date, expires on the date set out in the leave, but if there is no date set out in the leave it expires two years after the day on which the leave was granted.

Crossing

(2) Any leave granted by the pipeline company prior to June 19, 2016 to operate a vehicle or mobile equipment across a pipeline under subsection 112(2) of the Act, as it read prior to that date, expires on the date set out in the leave granted by the pipeline company.

Construction or installation of facility

16 The construction or installation of a facility in respect of which a person has obtained written permission under paragraph 4(b) of the *National Energy Board Pipeline Crossing Regulations, Part I* prior to June 19, 2016 is authorized under subsection 112(1) of the Act, as it reads on June 19, 2016, and the measures to be taken in relation to that construction or installation are those set out in paragraphs 4(a) to (m) of those Regulations as they read immediately before the day on which these Regulations come into force.

Excavation

17 An excavation in respect of which a person has obtained the pipeline company's written permission under paragraph 6(b) of the *National Energy Board Pipeline Crossing Regulations, Part I* prior to June 19, 2016 is an authorized ground disturbance under subsection 112(1) of the Act, as it reads on June 19, 2016, and the measures to be taken in relation to the excavation are those set out in section 6 of those Regulations as it read immediately before the day on which these Regulations come into force.

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Application Prior to Publication

Statutory Instruments Act

18 For the purposes of paragraph 11(2)(a) of the *Statutory Instruments Act*, these Regulations apply before they are published in the *Canada Gazette*.

Repeal

19 The *National Energy Board Pipeline Crossing Regulations, Part I* are repealed.

Coming into Force

S.C. 2015, c. 21

20 These Regulations come into force on the day on which section 34 of the *Pipeline Safety Act* comes into force, but if they are registered after that day, they come into force on the day on which they are registered.



National Energy Board Pipeline Damage Prevention Regulations - Obligations of Pipeline Companies

Interpretation

Definitions

1 The following definitions apply in these Regulations.

authorization means the authorization referred to in subsection 112(1) or paragraph 112(2)(a) of the *National Energy Board Act*. (*autorisation*)

facility means any structure, highway, private road, railway, irrigation ditch, drain, drainage system, sewer, dike, telephone line, telegraph line, telecommunication line, line for the transmission of electricity or pipe for the transmission of hydrocarbons or any other substance. (*installation*)

pipe means a pipe that is part of a pipeline and that is used or is to be used for the transmission of hydrocarbons or any other commodity. (*conduite*)

prescribed area has the meaning assigned by section 2 of the *National Energy Board Pipeline Damage Prevention Regulations - Authorizations*. (*zone réglementaire*)

working day means any day that is not a Saturday or a Sunday or other holiday. (*jour ouvrable*)

One-call Centre

Obligation to be a member

2 (1) If a pipeline company operates a pipeline within a geographical area where a one-call centre exists, the pipeline company must be a member of that centre.

One-call centre

(2) A one-call centre is an organization that, for the purposes of protecting the underground infrastructures of its members from damage and ensuring public safety,

(a) receives locate requests from within a defined geographical area; and

(b) notifies its members that may be affected by any proposed construction or any proposed activity that would cause a ground disturbance and that are the subject of a locate request of that construction or activity.

Consent

Inform person of decision

3 (1) If a pipeline company receives a request for the written consent referred to in paragraph 7(1)(a) or 10(1)(a) or section 12 of the *National Energy Board Pipeline Damage Prevention Regulations - Authorizations*, the pipeline company must, within 10 working days after receiving the request, inform the person that made the request whether the consent has been granted or refused and, in the case of a refusal, the reasons for the refusal.

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Contents of consent

- (2) When a person makes a request to the pipeline company for the written consent referred to in paragraph 7(1)(a) or 10(1)(a) of the *National Energy Board Pipeline Damage Prevention Regulations – Authorizations* that contains the technical and other information that enable the pipeline company to determine whether the construction or activity would impair the pipeline's safety and security, the pipeline company may grant its consent subject to any conditions necessary for the protection of property and the environment, the safety and security of the public and of the company's employees or the pipeline's safety and security.

Amendment or addition of conditions

- (3) At any time during the construction of a facility or the activity that causes a ground disturbance, the pipeline company may add conditions or amend the conditions referred to in subsection (2) if it determines that additions or amendments are necessary to ensure the pipeline's safety and security.

Obligation to Provide Information

Information – application for authorization

- 4 If a person that intends to construct a facility across, on, along or under a pipeline, engage in an activity that would cause a ground disturbance within the prescribed area of a pipeline or operate a vehicle or mobile equipment across a pipeline has made a request to the pipeline company for the information that is necessary to make an application to the Board for authorization, the pipeline company must, within 10 working days after receiving the request, give the person all the information, and provide all reasonable assistance, that is necessary to prepare the application.

Comments by pipeline company

- 5 If a pipeline company receives a copy of an application for authorization that has been filed with the Board, the pipeline company must, within 10 working days after receiving the copy of the application, send to the Board its comments on the application.

Obligations Following Request to Locate

Timeline

- 6 (1) Subject to subsection (2), if a pipeline company receives a request to locate its pipes from a person that intends to construct a facility across, on, along or under a pipeline or engage in an activity that would cause a ground disturbance within the prescribed area, the pipeline company must, within three working days after the day on which the request is made, or any longer period agreed to by the pipeline company and that person,
- (a) inform the person, in writing, of safety practices to be followed while working in the vicinity of its pipes and, in case of a ground disturbance, within the prescribed area;
 - (b) mark the location of its pipes in the vicinity of the proposed facility or the prescribed area at maximum intervals of 10 m along each pipe using markings that are clearly visible and distinct from any other markings that may be in the vicinity of the proposed facility or the prescribed area; and
 - (c) provide information to the person that clearly explains the significance of the markings.

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Markings

- (2) The markings must be consistent with the standards for locating a pipeline that are set out in the pipeline company's damage prevention program.

Obligations Respecting Certain Locations

Agricultural activity

7 Even if the condition set out in paragraph 13(1)(a) of the *National Energy Board Pipeline Damage Prevention Regulations – Authorizations* is met, when the operation of vehicles or mobile equipment across a pipeline at specific locations for the purposes of performing an agricultural activity could impair the pipeline's safety or security, the pipeline company must identify those locations and notify the following persons in writing of those locations:

- (a) landowners of the specific locations in question; and
- (b) persons that are engaged in agricultural activities, rent or lease the land or work as service providers or employees at the specific locations in question.

Inspections

Inspections and field observations

8 The pipeline company must

- (a) carry out any inspections that are necessary to ensure the pipeline's continued safety and security during an activity that causes a ground disturbance within the prescribed area;
- (b) inspect all exposed pipe prior to any backfilling over a pipe to ensure that no damage to the pipe has occurred; and
- (c) in respect of any inspection carried out under paragraphs (a) and (b), make field observations relating to
 - (i) if a pipe was exposed, the clearance between the pipe and the facility and the condition of the pipe at the time of backfilling over the pipe,
 - (ii) the compliance with the measures set out in the *National Energy Board Pipeline Damage Prevention Regulations – Authorizations*,
 - (iii) the method used to engage in the activity that caused a ground disturbance, and
 - (iv) the occurrence of any unusual events that are related to the construction or activity and that may have had an effect on the pipeline's safety or security.

Deterioration — notify facility owner

9 (1) If the pipeline company detects any deterioration of a facility that might adversely affect a pipe, the pipeline company must notify the facility's owner in writing.

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Deterioration — notify Board

- (2) If the pipeline company detects any deterioration of a facility that would so impair the safety or security of the pipe as to warrant removal of the facility, the pipeline company must notify the Board in writing.

Suspension

Grounds

- 10 (1)** The pipeline company may suspend the consent that it granted to construct a facility or to engage in an activity that causes a ground disturbance within the prescribed area if
- (a) the person carrying out the construction of a facility does not comply with the technical details and the conditions referred to in paragraph 7(3)(a) of the *National Energy Board Pipeline Damage Prevention Regulations – Authorizations* or the instructions referred to in paragraph 7(3)(c) of those Regulations;
 - (b) the person engaging in an activity that causes the ground disturbance does not comply with the technical details and the conditions referred to in paragraph 10(3)(a) of the *National Energy Board Pipeline Damage Prevention Regulations – Authorizations* or the instructions referred to in paragraph 10(3)(d) of those Regulations; or
 - (c) work practices might impair the pipeline’s safety or security.

Notify Board

- (2) If a pipeline company suspends its consent pursuant to subsection (1), it must immediately notify the Board in writing of the suspension and give its reasons for the suspension.

Obligation to Report

Report to Board

- 11 (1)** The pipeline company must immediately report to the Board
- (a) every contravention of the *National Energy Board Pipeline Damage Prevention Regulations – Authorizations*;
 - (b) all damage to its pipe caused or identified during the construction of a facility across, on, along or under a pipeline, the operation, maintenance or removal of a facility, an activity that caused a ground disturbance within the prescribed area or the operation of vehicles or mobile equipment across the pipeline; and
 - (c) any activity related to the construction of a facility across, on, along or under a pipeline, an activity that caused a ground disturbance within the prescribed area or the operation of vehicles or mobile equipment across a pipeline that the pipeline company considers could impair the safety or security of the pipe.

Contents of report

(2) The report must include the following information:

- (a) details of any contravention or of any damage, including, in the case of damage, the cause and nature of the damage;
- (b) any concerns that the pipeline company may have regarding the pipeline's safety or security as a result of the construction of the facility, the activity that caused a ground disturbance or the operation of vehicles or mobile equipment across the pipeline; and
- (c) any action the pipeline company intends to take or request.

Records

Facilities and ground disturbances

12 (1) The pipeline company must keep a record of all construction of facilities across, on, along or under a pipeline and of all activities that cause a ground disturbance within the prescribed area for the life of the pipeline.

Contents of records

- (2) The records must include, for each facility or each activity that causes a ground disturbance, as the case may be,
- (a) the name and address of the person that carries out the construction or engages in an activity that causes a ground disturbance;
 - (b) the nature and location of the facility or the activity that causes a ground disturbance;
 - (c) the dates of commencement and termination of the construction of the facility or the activity that causes a ground disturbance;
 - (d) a description of the proposed facility, submitted with the request for the consent;
 - (e) a copy of the pipeline company's written consent;
 - (f) in respect of the inspections referred to in paragraphs 8(a) and (b), all findings and observations, including
 - (i) the name of the person that conducted the inspection,
 - (ii) the date and time of the inspection, and
 - (iii) any field observations referred to in paragraph 8(c);
 - (g) a statement of whether the person that carried out the construction or the person that engaged in an activity that caused a ground disturbance has complied with the measures set out in the *National Energy Board Pipeline Damage Prevention Regulations – Authorizations*; and
 - (h) the details of any abandonment, removal or alteration of the facility.
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Consent — crossings

- (3) The pipeline company must keep a record that contains a copy of the written consents granted by the pipeline company for the purposes of section 12 of the *National Energy Board Pipeline Damage Prevention Regulations – Authorizations* for the life of the pipeline or, if there is an expiry date set out in the consent, for a period of 12 months from the day on which the consent expires.

Locations

- (4) The pipeline company must keep a record of the locations that are identified under section 7.

Duty to make records available

- 13 Every pipeline company that is required by these Regulations to keep records must make the records, and all other materials necessary to verify the information in those records, available to officers of the Board and other persons authorized by the Board for that purpose and must give the Board and other authorized persons any assistance necessary to inspect the records.

Lists

- 14 On the request of the Board, the pipeline company must provide the Board with
- (a) a list of every written consent granted for the purposes of section 12 of the *National Energy Board Pipeline Damage Prevention Regulations – Authorizations*;
 - (b) a list of every written consent granted by the pipeline company with respect to the construction of a facility or an activity that causes a ground disturbance and the information referred to in paragraphs 12(2)(a) to (c) with respect to the consent; and
 - (c) a list of every permission granted by the pipeline company for the purposes of the *National Energy Board Pipeline Crossing Regulations, Part I* and the information referred to in paragraphs 11(2)(a) to (c) of the *National Energy Board Pipeline Crossing Regulations, Part II* with respect to the permission.

Guidelines**Request for consent**

- 15 Every pipeline company must develop and maintain detailed guidelines setting out the technical and other information to be included in the requests for the written consent referred to in paragraph 7(1)(a) or 10(1)(a) of the *National Energy Board Pipeline Damage Prevention Regulations – Authorizations* and must make those guidelines public.

Damage Prevention Program

Minimum content

16 The damage prevention program that a pipeline company is required to develop, implement and maintain under section 47.2 of the *National Energy Board Onshore Pipeline Regulations* must include

- (a) an ongoing public awareness program to inform the public
 - (i) of the presence of a pipeline,
 - (ii) on how to work safely near a pipeline,
 - (iii) on how to report an unexpected situation related to a pipeline that could endanger life or cause substantial property or environmental damage that requires immediate action,
 - (iv) on how to report any contact with a pipe or its coating, whether or not the pipe was damaged,
 - (v) on how to report any damage to a pipe,
 - (vi) of the services of a one-call centre if one exists within the relevant geographical area,
 - (vii) on the necessity for authorization when constructing a facility across, on, along or under a pipeline, engaging in an activity that causes a ground disturbance within the prescribed area or operating vehicles or mobile equipment across a pipeline,
 - (viii) of the information to be provided in a request for the consent to construct a facility across, on, along or under a pipeline, to engage in an activity that causes a ground disturbance within the prescribed area or to operate a vehicle or mobile equipment across a pipeline, and
 - (ix) on the requirement to make a locate request and how to make a locate request in the relevant geographical area;
- (b) ongoing monitoring of any changes in the use of the land on which a pipeline is located and the land that is adjacent to that land;
- (c) ongoing monitoring of any change in the landowner of the land on which a pipeline is located;
- (d) a process to ensure a timely response to locate requests;
- (e) standards for locating a pipeline; and
- (f) a process for managing requests for the consent to construct a facility across, on, along or under a pipeline, to engage in an activity that causes a ground disturbance within the prescribed area or to operate a vehicle or mobile equipment across the pipeline.

Transitional Provisions

Section 11 – former Regulations

17 Section 11 of the *National Energy Board Pipeline Crossing Regulations, Part II*, as it read immediately before the day on which these Regulations come into force, continues to apply to any person to which that section applied.

Section 14 – former Regulations

18 Section 14 of the *National Energy Board Pipeline Crossing Regulations, Part II*, as it read immediately before the day on which these Regulations come into force, continues to apply with respect to the permissions referred to in sections 15 and 16 of *National Energy Board Pipeline Damage Prevention Regulations – Authorizations*.

Application Prior to Publication

Statutory Instruments Act

19 For the purposes of paragraph 11(2)(a) of the *Statutory Instruments Act*, these Regulations apply before they are published in the *Canada Gazette*.

Repeal

20 The *National Energy Board Pipeline Crossing Regulations, Part II* are repealed.

Coming into Force

S.C. 2015, c. 21

21 These Regulations come into force on the first day on which both sections 15 and 34 of the *Pipeline Safety Act* are in force, but if they are registered after that day, they come into force on the day on which they are registered.

Related guidance:

- Guidance Notes - NEB Regulations for Pipeline Damage Prevention
- Guidance for Safe Crossings of NEB-Regulated Pipelines Using Agricultural Vehicles and Mobile Equipment



APPENDIX 5 – MAILING LIST REQUEST FORM

If you are interested in receiving updates directly from the NEB by mail, please send a complete copy of the form below (Appendix 5) and mail or fax it to the NEB.

Request to Be Included on Mailing List for Updated Information:

National Energy Board
Regulatory Support Office
517 Tenth Avenue SW
Calgary, Alberta T2R 0A8
Facsimile: 403-292-5503

Please add me to mailing list L19 to receive updated information.

Name:

Title:

Organization:

Mailing Address:

City:

Province/Territory:

Postal Code:

Telephone:

.....



Thank you for taking the time to learn about the NEB's regulations for pipeline damage prevention. We hope this guide has answered many of your questions.

Publications may be ordered by:

- Mailing a request to NEB Library at the mailing address below
- Visiting the NEB Library located on the second floor
- Telephone: 403-299-3561 or 1-800-899-1265
- Fax: 403-292-5503 or 1-877-288-8803
- E-mail: publications@neb-one.gc.ca

For general information about the NEB and the energy sector:

- Mail: General Inquiries at the above address
- Telephone: 403-292-4800 or 1-800-899-1265
- Fax: 403-292-5503 or 1-877-288-8803
- E-mail: info@neb-one.gc.ca or for damage prevention specific information: DPinfo@neb-one.gc.ca

For settling compensation matters, please contact:

Natural Resources Canada (NRCan)

Pipeline Arbitration Secretariat

580 Booth Street, 17th Floor

Ottawa, Ontario K1A 0E4

Phone: 613-947-5664

Fax: 613-995-1913

E-mail: pas-sap@nrcan.gc.ca

Website: www.nrcan.gc.ca/energy/infrastructure/natural-gas/pipeline-arbitration-secretariat/5907

The NEB's mailing address is:

National Energy Board

517 Tenth Avenue SW

Calgary, Alberta T2R 0A8

Telephone: 403-292-4800 or

Toll Free: 1-800-899-1265

Fax: 403-292-5503

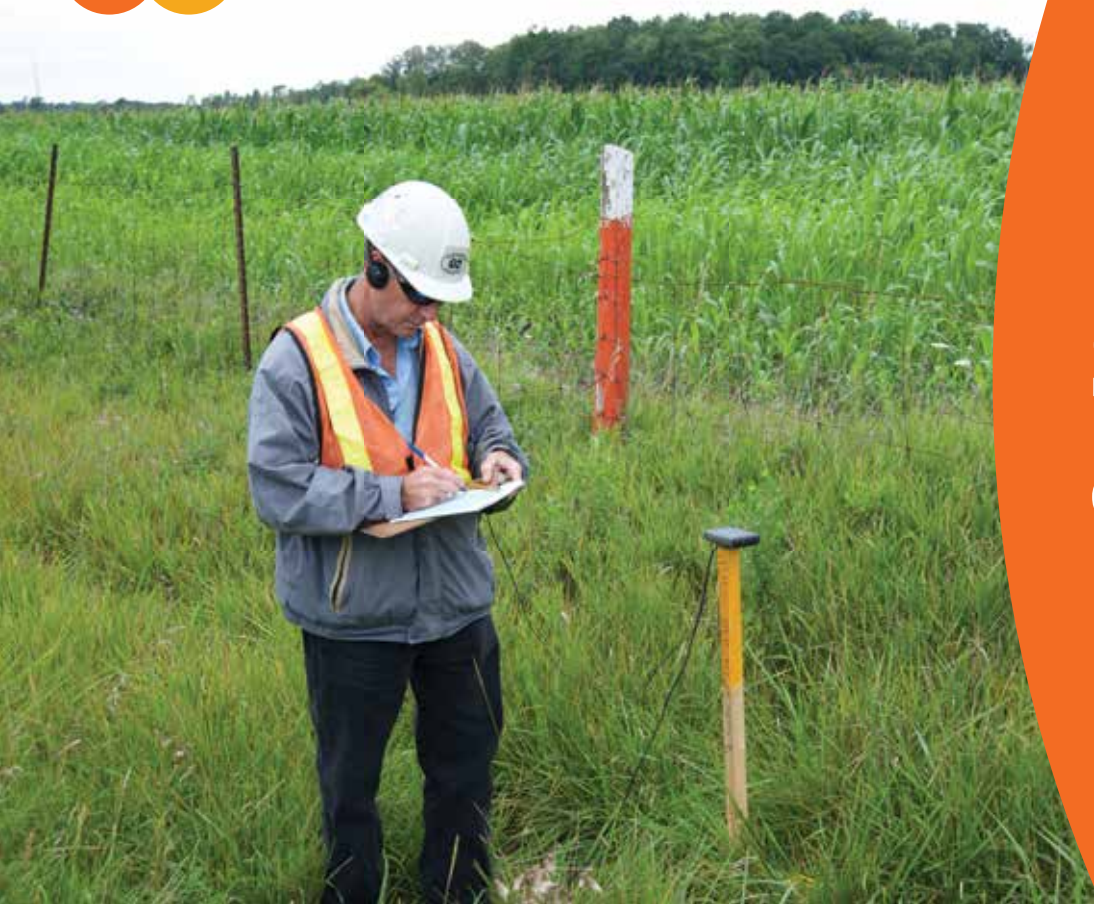
Toll Free Fax: 1-877-288-8803

TTY (teletype): 1-800-632-1663

E-mail: DPinfo@neb-one.gc.ca



Trans-Northern



PIPELINE
SAFETY
IN YOUR
COMMUNITY

For more than 60 years, Trans-Northern Pipelines Inc. (TNPI) has moved petroleum products. Our highest priority is to operate in a safe and environmentally responsible manner. We are guided by our core values: to be safe, respectful, professional, trustworthy, decisive, and results-focused.

Since you live or work near the pipeline, we want you to know how TNPI protects the pipeline in your community. This brochure is one of the ways we share information about our procedures and activities so that you can learn more about how we keep you, your family and your community safe.

About Trans-Northern Pipelines:

We were founded in **1949**

We have
850 km

of National Energy Board (NEB) regulated
pipeline in Ontario and Quebec.




We transport only refined petroleum products
including gasoline, diesel, aviation and heating fuel
used by businesses and consumers.



canadian | association
energy | canadienne
pipeline | de pipelines
association | d'énergie

We are a member of the Canadian Energy Pipeline Association (CEPA), which means we must demonstrate the highest level of operational excellence, safety, and community responsibility.



NEVER SEEN
OUR PIPELINE BEFORE?
That is because it's underground.

While it may look like a straight
line on this map, the pipeline
underground bends and curves.
It is built that way to accommodate
changes in the landscape
and terrain.

PB-67-18 APPENDIX E – Technical Comments



This pipeline flows east to west linking Montreal and Toronto and west to east from Nanticoke to Toronto. Branch lines supply Toronto Pearson International Airport, Montreal Pierre Elliott Trudeau International Airport, Mississauga and Ottawa. The National Energy Board (NEB) regulates the pipeline in the interests of the Canadian public.

WHAT DO WE TRANSPORT?

Trans-Northern Pipelines transports refined petroleum products such as gasoline, diesel fuel, and fuel for aviation which are ready for use by consumers and businesses.

Refined products account for about 25 per cent of the petroleum shipped in Canada.

Our products are used to fuel everything from airplanes to trucks, cars, tractors and lawnmowers, helping people and goods get where they need to go.

OUR PRIORITY: KEEPING YOUR COMMUNITY SAFE

According to Natural Resources Canada, pipelines are the safest method of transporting large quantities of petroleum products over long distances.

We are committed to operating in a safe and environmentally responsible manner to protect the public, the environment, and the pipeline. We want communities such as yours to be assured of the safety precautions, plans and protocols in place to ensure security and peace of mind.

Here are some ways we ensure the safety of our underground pipelines every day.

1. Monitoring the pipeline inside and out

Continuous monitoring is paramount to ensuring pipeline safety. Trained Line Controllers remotely operate and monitor the pipeline 24 hours a day, seven days a week from our control room. We look for changes that may suggest a leak or other disturbance. If we find something, we investigate immediately.



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We also inspect the pipeline from the inside, running specialized inspection tools through the pipeline. When further investigation is required, an integrity dig is performed by excavating around the underground pipeline to examine it. If we find a flaw or defect, we repair it or replace a section of the pipeline and then recoat the pipeline and backfill the excavation, ensuring the area is returned to pre-excavation conditions.

Since nothing beats the experience of the trained human eye, we also check our pipeline using aerial surveillance, vehicle patrols and by walking the pipeline route. Experienced operators look for potential hazards such as unauthorized digging or construction, inadequate soil coverage, signs of leaks, vandalism or other disturbances.



2. Alerting the public using marker signs

You will know our pipeline is nearby if you see one of these signs. They appear along our pipeline to provide contact details for more information.

There are three types of pipeline markers: caution sign, right of way (ROW), and roadway marker. While these markers show you there is a pipeline in the area, they do not tell the exact location, path, or depth of the pipeline.





3. Pumps and meters

Along the line are facilities that help to move the product to its final destination. Our pipeline is 850 kilometers and safely transports an average of 172,900 barrels of refined fuel products daily. Seventeen pump stations ensure that the fuel continues to flow through the pipeline and five meter stations continuously analyze the quality and the quantity of refined fuel as it is transported. Since we transport different types of refined fuel products, there are special sensors in the pipeline to detect the type of fuel being transported.

4. Constantly preparing for pipeline incidents

While pipeline incidents are rare, we are prepared. Our employees are trained to manage emergency situations. We have an Emergency Response Plan which is approved by the regulator and we test our protocols regularly with employees, third-party contractors, regulators, local emergency responders and others.

We share our Emergency Response Plan with emergency responders and municipalities in your community and collaborate with them to ensure they are familiar with our team of people and our protocols. Our Emergency Response Plan is available at tnpi.ca/emergency-services/



5. Working with your community

Our pipeline is part of many communities and it is important that we get to know those who live and work near our pipeline. We participate in community events, host seminars and provide materials about pipeline safety.

Our pipeline often crosses private property. We follow the Canadian Energy Pipeline Association Code of Conduct, ensuring we talk with property owners and tenants to remind them that the pipeline is there and to provide information about what to do and who to contact if they need to dig near the pipeline. When working on the property, we explain our activities and timelines in advance and return the area to pre-work conditions when we are finished.

Where our pipeline crosses farm land, we work with the farmers so that they can go about their daily activities, contacting us only if they make a significant change in the type of equipment they use or need to do something out of the ordinary so that we can review it together in keeping with our safety protocols.



PIPELINE SAFETY IS A SHARED RESPONSIBILITY

We share responsibility for pipeline safety with our neighbours, including other pipelines and utilities, residents and those working near our pipelines.

HOW CAN YOU HELP TO PROTECT THE PIPELINE EVERY DAY?

Protecting the pipeline protects the community. If you notice any of the following, call **1-800-361-0608** immediately so we can investigate:

- Vandalism, suspicious behavior, digging, excavating, tunneling or tree-planting in the area near the pipeline
- Unusual or unsafe activity within 30 metres from the right of way
- Damage to the marker signs or test post
- Marker signs that are bent or low to the ground
- Tall grasses, fallen trees, dirt or debris piles, or other matter near the pipeline or in the right of way which limits visibility along the right of way or would impede access.
- Anything that looks out of the ordinary

We are also checking the area around the pipeline from above and on the ground to look for activities that could damage the pipeline. You can help by avoiding or getting approval in advance for activities such as:

- Driving heavy equipment including backhoes, graders, tractors, or dump trucks in the right of way or over the pipeline
- Dumping soil, yard waste, or other materials in the right of way
- Removing marker sign posts
- Digging without approval



CALL US AT
289-475-5366
**BEFORE WORK
BEGINS.**



CONTACT US BEFORE YOU WORK:

Damage from third-party activities including unauthorized construction, development, encroachment, and digging are leading causes of pipeline incidents. Are you planning any digging/ excavation, trenching, ditching, tunneling, boring, drilling, augering, stripping topsoil, grading or levelling, plowing, tree planting or removal, blasting, quarrying, grinding, driving fence posts, rods, pins, anchors or driving heavy loads off public roads? Contact us first and make sure you or your contractor have approval in advance.

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BEFORE YOU WORK

If you're digging with a shovel, back hoe or other equipment in the ground, you and your contractor are responsible for making sure you have permission before you dig. Our pipeline is not the only utility underground. Before you dig, contact **on1call.com (Ontario)** or **info-ex.com (Quebec)** for a FREE locate – available 24 hours a day, seven days a week.



You are required by law to secure approval before:

- Installing underground utility cabling/piping
- Putting up a fence, poles, or posts
- Building above or in-ground swimming pools
- Installing drainage or irrigation systems
- Landscaping activities including planting or removing trees, shrubs, or other landscaping activities
- Paving, blasting or digging of any kind

OneCall will contact all of the utilities in the area of your work. If our pipeline is in the area of your work OneCall will notify us and we will contact you. We will also let you know if any further permits are required.

ARE YOU PLANNING ANY WORK OVER OR WITHIN 30 METRES (100 FEET) OF TNPI'S RIGHT OF WAY?

Crossing and encroachment can pose a threat to the pipeline. If you need to dig or create a temporary or permanent structure across, on, along or under the pipeline, **contact us at 289-475-5366.**

To ensure the safety of your project we will:

- Verify the pipeline location within 5 business days
- Discuss permit requirements
- Within 10 working days, either issue a permit or explain why a permit cannot be issued and visit the dig site to mark the pipeline and right-of-way limits on the ground, so everyone knows where the pipeline is located before work begins
- Send an inspector, if needed, to confirm the work is done safely

IF YOU SUSPECT A LEAK, TAKE IMMEDIATE ACTION.

Signs of a leak include:

- Visible flow or pooling of petroleum product
- An unusual oily stain on land or sheen in water
- Petroleum, gasoline, or diesel smell
- Discoloured or dead vegetation in the right of way

IF YOU HAVE QUESTIONS ABOUT OUR PIPELINE, CONTACT US.

Planning a project or need to obtain a permit/crossing agreement?

Ontario: 289-475-5366

Quebec: 514-645-3701

Interested in knowing more about our operations?

Visit us online at tnpi.ca, email us at info@tnpi.ca or call 289-475-5369.

IF YOU SUSPECT A LEAK OR IF YOU STRIKE THE PIPELINE:

1



Stop all work, shut off all machinery, and move to a safe location.

2

911

Call 911

3



Call our 24 hour emergency hotline
1-800-361-0608

4



Do not attempt to repair the pipe or operate any valves



Trans-Northern Pipelines Inc.

tnpi.ca

info@tnpi.ca

In case of emergency: 1-800-361-0608

For permit/crossing agreements in Ontario:
289-475-5366 and in Quebec: 514-645-3701

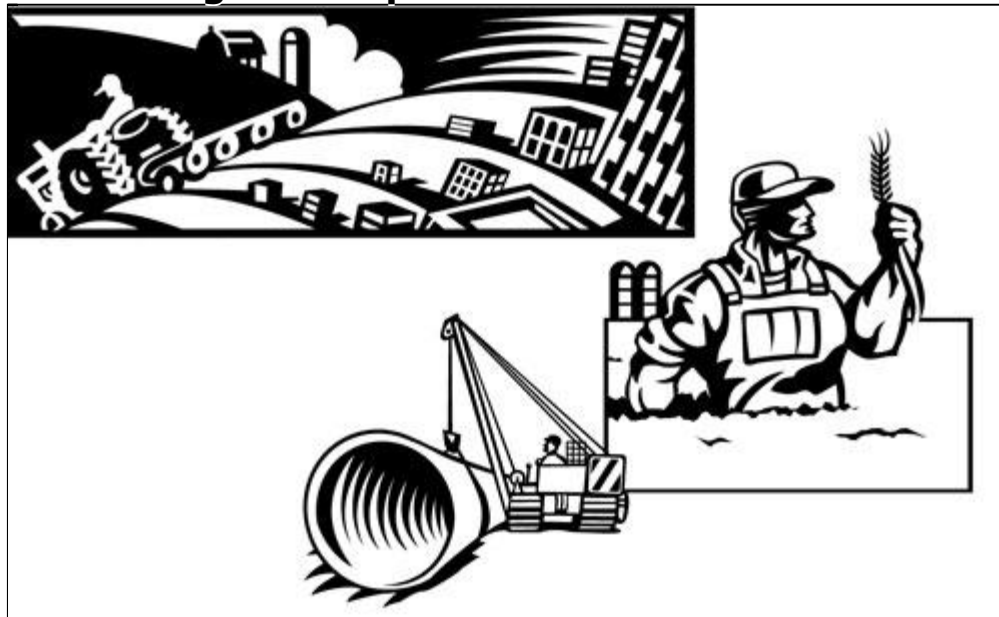
Government
of CanadaGouvernement
du Canada

Canada

National Energy Board

[Home](#) > [Safety & Environment](#) > [Damage Prevention](#) > Living and Working Near Pipelines

Living and Working Near Pipelines



Pipelines are the safest method to transport products, such as natural gas, oil or other commodities, across the country. If these pipelines are damaged the results could be very serious. You have an important role to play to ensure safety. Please, click or call before you dig.

Click or Call Before You Dig

Contacting the one-call notification centre is the first step in the damage prevention process for all buried infrastructure. All NEB regulated pipelines are required to register their buried infrastructure with one-call notification centres. The national web portal at www.clickbeforeyoudig.com provides links and information for one-call notification centres across Canada.

Before undertaking a ground disturbance, you must click or call the one-call centre serving your area to contact the pipeline company and obtain written consent for the ground disturbance within the prescribed area (safety zone) 30 metres (100 feet) perpendicularly on either side of the pipe. You must also obtain written consent from the pipeline company if you want to construct a facility near the pipeline. If you are unable to reach an agreement with the pipeline company, contact the National Energy Board at 1-800-899-1265.

Did you know?

- Unauthorized construction, installation of a facility or ground disturbance over or near a pipeline is illegal.
- The pipeline company must inform you within 10-business days whether consent for your project has been granted or refused. If consent has been refused, the pipeline company must inform you of the reasons.
- The pipeline company has three business days to respond to a request to locate its pipeline.



Pipeline signs
and marker posts
do not indicate
the exact location
of a pipeline
or right of way.
ALWAYS call before you dig.

The Pipeline Right of Way

A pipeline is installed within a strip of land referred to as a right of way. The pipeline company has acquired rights to use this land for the construction, operation and maintenance of its pipelines, however, ownership of the land remains with the landowner.

Activities within the right of way are governed by the NEB Act, the *NEB Pipeline Damage Prevention Regulations – Authorizations* and *NEB Pipeline Damage Prevention Regulations – Obligations of Pipeline Companies*, and easement agreements negotiated between the landowner and the pipeline company.

To ensure safety, you will need to contact the company to get written consent for a number of different activities on the right of way. These activities include, but are not limited to.

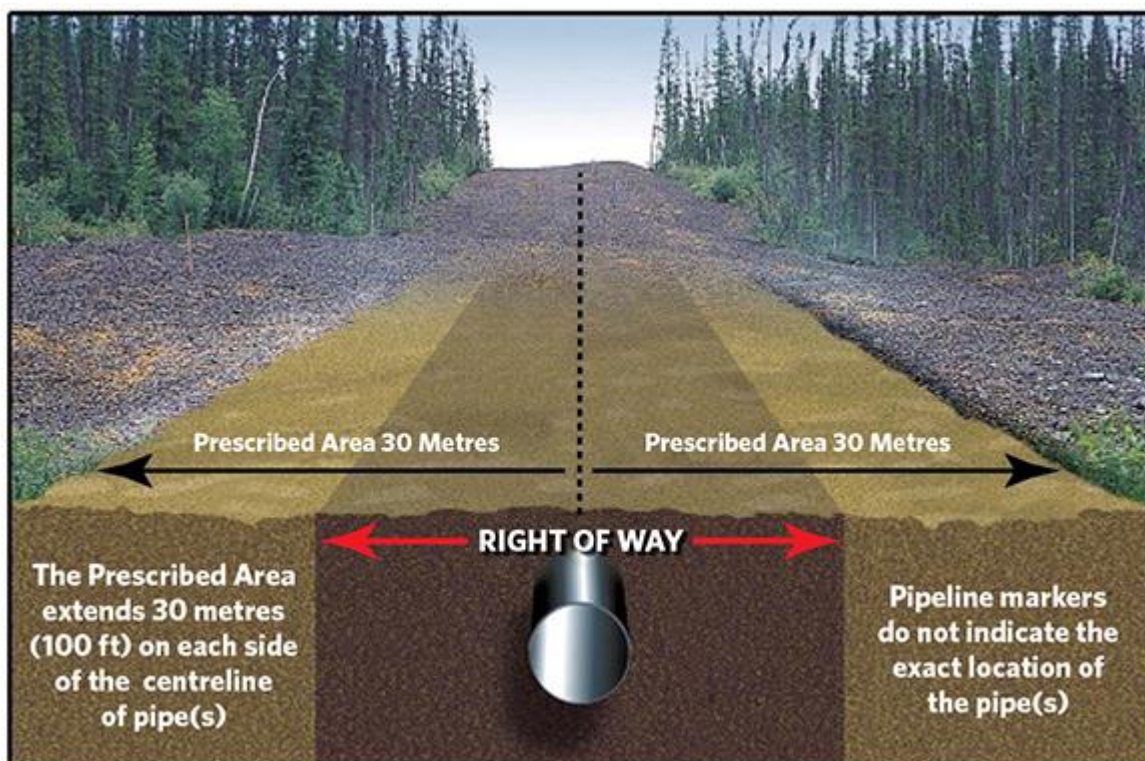
- operating vehicles or mobile equipment over the right of way where a roadway does not exist
- Reducing the depth of soil covering the pipeline
- Agricultural Ploughing or Tilling 45 cm and below
- Ground levelling
- Installing drainage systems

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- Augering
- Fencing

The Prescribed Area

The prescribed area, also known as the safety zone extends 30 metres (100 feet) on either side of the centreline of the pipe. To ensure safety, ground disturbance activities within this zone require approval from the pipeline company. If you are unable to obtain consent, you may apply to the Board for approval of the activity.



Temporary Prohibition

There may be situations where a ground disturbance activity outside of the prescribed area may pose a potential hazard to the pipe. When a temporary prohibition area is designated, no ground disturbance activity may be performed in this area until

- the end of the third working day after the day on which the request is made; or
- at any later time that is agreed to between the pipeline company and the person making the request.

Confirm with the company representative that the company's pipeline in the area has been marked by the locator and that you understand the meaning of the various stakes and markings. A misunderstanding could cause you to damage a pipe, endangering your own life and that of others.

Safety Checklist

SAFETY CHECKLIST when planning activities near a pipeline:

1. **Plan your activity.** Identify the precise location of your work, check records for evidence of pipeline easements or other buried facilities.
2. **Go to the site** and look for pipeline warning signs or pipeline marker posts.

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3. **Contact the pipeline company** and obtain a copy of the pipeline company's guidelines for constructing a facility, conducting activities causing a ground disturbance, or crossings in the vicinity of a pipeline.
4. **Obtain the pipeline company's written consent** for the construction of facilities across, on, along or under a pipeline, conducting activities causing a ground disturbance in the prescribed area, or crossing a pipeline with a vehicle or mobile equipment.
5. **Make a locate request** at least three working days before the day on which the construction or ground disturbance activity is started, by calling the one-call centre, or by calling the pipeline company where there is no one-call centre, to have the pipe located and marked.
6. **Be on site** when the pipeline is located, and **know the meaning of the pipeline markings**.
7. **Review NEB requirements** with all persons working on your behalf, including employees, contractors and subcontractors, to ensure they are aware of their obligations. Keep documents with safety requirements and guidance on site.
8. **Expose the pipe by hand digging or other acceptable excavation techniques accepted by the pipeline company** prior to any mechanical excavation within three metres of the pipe. **Follow the instructions of the pipeline company's authorized field representative.**
9. **Notify the pipeline company** prior to backfilling over the pipe or facilities, where the pipe or facilities have been exposed. **Follow the instructions of the pipeline company's authorized field representative.**
10. **IMMEDIATELY NOTIFY THE PIPELINE COMPANY IF YOU COME INTO CONTACT WITH THE PIPE!** A small scratch or dent in the pipe's coating can impact the long term safety of the pipe and must be assessed by the pipeline company.

NEB Regulated Pipelines

The main pipelines regulated by the NEB are operated by:

Alliance Pipeline Ltd.
Enbridge Pipelines Inc.
Enbridge Pipelines (NW) Inc.
Foothills Pipe Lines Ltd.
Gazoduc Trans Québec & Maritimes Inc.
Kinder Morgan Cochin ULC
Maritimes & Northeast Pipeline Management Ltd.
NOVA Gas Transmission Ltd.
Trans Mountain Pipeline Inc.
Trans-Northern Pipelines Inc.
TransCanada PipeLines Limited
Westcoast Energy Inc., carrying on business as Spectra Energy Transmission

Many smaller pipelines are also regulated by the NEB. If you have a question about the NEB's jurisdiction over a particular pipeline, please call us at 1-800-899-1265 or visit our Web site at www.neb-one.gc.ca.

Working together for pipeline safety.

The following provides information on one-call centres within Canada:

National web portal for one-call notification centres in Canada: www.clickbeforeyoudig.com

This portal will also tell you where you have to contact the pipeline companies directly.

<p>Call or click before you dig! Contact your one-call centre.</p>

PB-67-18 APPENDIX E – Technical Comments

British Columbia www.bconecall.bc.ca BC One Call: 1-800-474-6886	Ontario www.on1call.com Ontario One Call: 1-800-400-2255
Alberta albertaonecall.com Alberta One Call Corporation: 1-800-242-3447	Québec www.info-ex.com Info-Excavation: 1-800-663-9228
Saskatchewan www.sask1stcall.com Sask First Call: 1-866-828-4888	Atlantic Canada www.info-ex.com Info-Excavation: 1-866-344-5463 1-800-663-9228
Manitoba www.clickbeforeyoudigmb.com Click Before You Dig MB: 1-800-940-3447	
Contact the pipeline company directly in the Northwest Territories.	

About the National Energy Board

The National Energy Board regulates pipelines, energy development and trade in the Canadian public interest.

The NEB regulates activities on or adjacent to rights of way under Board jurisdiction in the interests of the protection of property, the environment, and the safety of the public and of the pipeline company's employees. NEB staff regularly perform audits and inspections of pipeline companies to ensure their compliance.

Contact the NEB

Each ground disturbance or construction activity is unique, and this guide cannot deal with all cases. If you need further assistance with any ground disturbance or construction activity near a federally regulated pipeline, please call us at 1-800-899-1265 and ask for an Operations Inspector responsible for damage prevention or email dpinfo@neb-one.gc.ca

The *National Energy Board Act*; the *National Energy Board Pipeline Damage Prevention Regulations* and other NEB publications are available from:

The Publications Office

National Energy Board

517 Tenth Avenue SW

Calgary, Alberta

T2R 0A8

E-mail: publications@neb-one.gc.ca

Telephone: 403-299-3561

Telephone (toll free): 1-800-899-1265

Facsimile: 403-292-5503

Facsimile (toll free): 1-877-288-8803

TTY (teletype): 1-800-632-1663

Our publications are also available on our Website: www.neb-one.gc.ca

Date modified: 2016-08-12



. . . Memo

To: Lisa Stern
Senior Planner

From: Dan Ozimkovic
Transportation Planning Technologist

Cc: File 505/01/18 & 520-01/18

Date: May 25, 2018

Re: OPA & Rezoning Application
Southeast corner of Brant Street and James Street
409 Brant Street
TIS, Parking Study & TDM Options Report – January 2018

BACKGROUND

Staff are in receipt of the *409 Brant Street Transportation Impact Study, Parking Study & TDM Options Report* (dated January 2018) for the above-noted OPA and Rezoning application. This memorandum is intended to provide background information and technical analyses of the proposed recommendation to amend the Official Plan and Zoning By-law to permit a 24-storey Mixed Use building with ground floor commercial, 227 residential units and 5 levels of underground parking.

DEVELOPMENT PROPOSAL

The OPA & Rezoning application proposes 227 residential units and 597 square metres of ground floor retail space, as summarized below:

- 123 one-bedroom units
- 76 two-bedroom units
- 28 three-bedroom units

Parking supply for the subject site consists of 212 parking spaces (accommodated via five levels of underground parking). Vehicular access to the site is proposed via John Street by way of a single driveway. The site driveway is located approximately 45 metres south of John Street and has been designed to operate with a single inbound and outbound travel lane. Access to the single loading space and underground parking structure will be provided via the proposed driveway.

TRAFFIC IMPACT STUDY COMMENTSExisting Traffic Conditions

For the purposes of assessing traffic impacts, the following intersections were reviewed:

- Brant Street at James Street
- Brant Street at Lakeshore Road
- Brant Street at Elgin Street
- Brant Street at Ontario Street
- Brant Street at Caroline Street
- Hames Street at John Street
- James Street at Elizabeth Street

Analysis of existing traffic conditions confirmed that existing level of service conditions are deemed acceptable. No geometric improvements are required in order to accommodate existing traffic demands.

Trip Generation

Staff note that the assumptions used to generate the trip estimates are acceptable. The projected trip generation was based on standardized ITE trip generation data and included a 20% mode share reduction based upon a review of the 2011 Transportation Tomorrow Survey data for Downtown Burlington. Additionally, a minimal reduction (4%) was applied to account for internal trip capture. For the purposes of this analyses, trip generation estimates are summarized as follows:

Proposed Use	Trip Generation	AM Peak Hour			PM Peak Hour		
		In	Out	Total	In	Out	Total
Multi-Family Residential	Auto	18	58	79	52	34	86
	Internal	0	0	0	-1	-1	-2
	Mode Split	-4	-12	-16	-10	-7	-17
	Net NEW	14	46	60	41	26	67
Shopping Centre	Auto	4	2	6	12	12	24
	Internal	0	0	0	-1	-1	-2
	Mode Split	0	0	0	0	0	0
	Net NEW	4	2	6	11	11	22
Total Trip Generation (NEW)		18	48	66	52	37	89

At full build-out, the proposed development is anticipated to generate approximately 66 net new trips during the weekday AM peak hour and 89 net new trips during the PM peak hour. Staff note that the traffic impact study has not considered traffic generated by the current uses. It is expected that a further reduction, although minimal, could be considered to take into account the current commercial retail use of the site.

Future Background Traffic Conditions

Future background conditions included traffic contributions from the future build-out of adjacent developments anticipated to be completed and/or occupied by the 2026 horizon year. Analysis of future background traffic conditions confirmed that the study area intersections are anticipated to operate at acceptable levels of service under the 2026 horizon.

Total Traffic Conditions

Analyses of total traffic conditions (future background traffic combined with the net new traffic anticipated because of this development) indicated that the development of the subject site is anticipated to have negligible effect on traffic operations at the study area intersections. Some minor street movements are forecast to operate with increased levels of delay, but this is deemed acceptable within an urban environment.

Several remedial measures were identified that would improve overall traffic operations including optimization of traffic signal timing plans and restriction of eastbound left-turn movements at the intersection of Brant Street and Elgin Street. These recommendations are deemed minor in nature and would be included in future monitoring of downtown traffic operations.

Staff have reviewed the methodology, analyses and recommendations made as part of the Traffic Impact Study and conclude that the analyses is satisfactory and support the findings and recommendations of this study.

PARKING ANALYSIS AND STAFF POSITION

As per section 2.25.4 – *Off Street Parking and Loading Requirements*, Zoning By-Law 2020 stipulates the quantity of off-street vehicle parking spaces. The calculated required parking for the proposed development is 284 parking spaces. This is based on the parking requirement of 1.25 spaces per apartment unit (irrespective of number of bedrooms). As the subject site is located within the Defined Parking Area, all non-residential uses are exempt from providing on-street parking.

The City has recently undertaken the City-Wide Parking Standards Review (2017) which developed context-sensitive standards and introduced minimum and maximum parking requirements to help promote more sustainable forms of development. The study provided both the public and local development community with numerous opportunities to shape the study and comment on findings and proposed parking rates. Through stakeholder workshops it was identified that the lack of required visitor parking within multi-family residential units in the downtown was a key issue, as was an emerging need for service vehicle parking as it pertains to personal care service providers, housekeepers, building maintenance worker vehicles etc.

Staff support the findings of the City-Wide Parking Standards Review and will be recommending adoption of the recommended rates. As a result, the following parking rates are required for the proposed development:

- Occupant – 1 space per unit
- Visitor – 0.25 space per unit
- Maintenance / Service – 1 space per 75 residential units
- Commercial / Retail – no requirement for off-street parking

Application of the above-noted parking rates results in a parking requirement of 287 parking spaces – a deficiency of 75 parking spaces based on the proposed supply of 212 spaces.

Staff note that the Parking Study identified a number of supplementary data sources and methodologies for supporting a lower parking standard than what is currently required. It is the position of Transportation Planning staff that the requirement of 287 parking spaces (as per the recommendations of the City-Wide Parking Standard Review) is appropriate for the proposed development given its location within the Urban Growth Centre and Mobility Hub designation.

The parking study refers to the City-Wide Parking Standards Review (Section 6.8.3) but incorrectly applies the recommended rate as the requirement for 0.25 visitor parking spaces / unit and 1 service/maintenance space / 75 units has not been contemplated. The parking study incorrectly states that “applying the recommended rate to the development, 227 parking spaces would be required” when in fact, 287 parking spaces are required.

It is the position of staff that the required parking for the proposed development is 287 parking spaces. No further reduction in required parking will be contemplated for this site. As such, staff do not support the development, as proposed, due to the deficiency of parking (75 spaces).

TRANSPORTATION DEMAND MANAGEMENT

The report cites several potential TDM measures which have been described at a high-level. However, a detailed TDM strategy has not been included as part of this report. Staff support the incorporation of TDM into the overall site design (as described above in relation to the required parking requirements), but more details are required in order to provide wholesome comment as to the appropriateness and feasibility of a proposed TDM strategy. Staff intend to provide additional comment at the Site Plan Review stage once more detail is available.

OTHER COMMENTS

Bicycle Parking

As per the City-Wide Parking Standards Review, the requirement for bicycle parking at Residential Apartments is as follows:

- 0.5 long-term bicycle spaces per unit (secure storage / bike lockers, etc.)
- 0.05 short term bicycle spaces per unit (at-grade bike racks, etc.)

Preliminary Site Plan Comments

The following are preliminary in nature and are not to be considered exhaustive site plan comments. Staff reserve the right to provide additional comments through the Site Plan Review process:

- Underground Parking – Structural columns are to be set back 0.5m on both sides of the driving aisle to provide 7m clearance (face of column to face of column);
- Parking spaces are required to be a minimum of 6m by 2.75m;
- A flat landing pad area of 6m in length is required at the ground level;

- Ramp grades of 12% are acceptable. Appropriate transition grades are required throughout the parking structure;
- Truck turning templates are required to demonstrate functionality of the loading bay;
- Reduce the width of the proposed driveway entrance and radius in order to improve pedestrian environment and enhance safety;
- Further discussion is required regarding loss of on-street parking and transit impacts on John Street due to the location of the proposed driveway;
- Transportation Planning staff will be requiring a 16m by 16m visibility triangle for the intersection of Brant Street and James Street, 5m by 5m visibility triangle for the intersection of James Street and John Street and 3m by 3m visibility triangle for the south-west and south-east corners of the property.

NEXT STEPS

These comments are submitted for informational purposes only. If you require further information or would like to discuss in greater detail, please contact the undersigned at extension 7485.

Dan Ozimkovic, C.E.T.
Transportation Planning Technologist
905-335-7600 ext. 7485

. . . Memo**To: Lisa Stern****From: Carol Gulak****Date: May 24, 2018****Re: 401-413 Brant Street & 444-450 John & 2012 James****File: 520-01/18 & 505-01/18**

Site Engineering is unable to provide a recommendation at this time due to required revisions to the Environmental Site Assessment. Below are our preliminary comments on the material submitted.

Right of Way

Brant, James and John Streets are at the deemed Right of Way width, however visibility triangles are required at all four intersections. (Brant and James and James and John and adjacent to City owned parking lot), we defer to Transportation to confirm.

As per the City's Hydro Services Policy, any new 27.6 kV hydro service or other utility which is required for the multi-storey development shall be buried. The costs associated with the hydro service works shall be borne by the Developer.

The City currently has in the Capital Budget and Forecast James Street reconstruction in 2020 and John Street in 2024. This is subject to change due to proposed developments on both corners of Brant and James. Please be advised that all frontages of this development (Brant, James and John) shall be completed in accordance with the City's Downtown Streetscape Guidelines, as amended, and the limits of road allowance restoration shall be to the satisfaction of the Executive Director of Capital Works.

Environmental Site Condition

The applicant submitted an Environmental Phase 1 and Phase 2 report prepared by Golder Associates dated November, 2017. Golder's assessment was carried out in general accordance with Canadian Standards Association (CSA). The report was not prepared in accordance with O. Reg. 153/04. We (and the Region) ask that all environmental reports are prepared in accordance with O. Reg. 153/04.

At a later date, the applicant submitted a Phase One report prepared by Golder Associates dated February 20, 2018. The Phase One ESA was completed in accordance with O. Reg. 153/04. Golder stated they did not perform a complete assessment of all possible conditions or circumstances that may exist at the site referenced in the report. The Phase One did identify potentially contaminating activities on both the property and surrounding area. A Phase Two report is required in accordance with O. Reg. 153/04 as per the Phase One recommendation.

A Record of Site Condition will also be required for the property. The site will need to be remediated and Record of Site Condition filed prior to building permit issuance. A Letter of Reliance for Phase One and Phase Two ESA will be required. The report shall not contain any limitations that may prevent reliance upon its finding by the City or its Consultants. A site remediation report will be required prior to Site Plan approval which shall address off site contamination as well as on site.

Holding provision is recommended until potential contamination has been addressed in a Phase Two report in accordance with O. Reg. 153/04.

Functional Servicing

With this application we received a Functional Servicing Report (FSR) dated December, 2017 prepared by S. Llewellyn & Associates Limited. The report provides preliminary framework for how the development can be serviced.

The report speaks to permanent dewatering control for the site. It is required to provide a permanent subfloor drainage system, as it is proposed to construct five stories of underground parking. The dewatering discharge will likely require a Permit To Take Water (PTTW) from the Ministry of the Environment and Climate Change (MOECC). If temporary and/or permanent groundwater control is required, any groundwater which is pumped into the storm sewer is required to satisfy the City's storm sewer discharge criteria for water quality. Furthermore, if permanent groundwater control is required, any groundwater which is to be pumped into the storm sewer is to be quantified and considered in the stormwater quantity control calculations.

At the Rezoning stage stormwater will have to be quantified to ensure adequate storage and storm water quality as per the City's storm sewer discharge criteria.

At the Site Plan stage proposed servicing will be reviewed thoroughly to make sure servicing complies with applicable laws and standards.

Noise Assessment

A noise report has been prepared by Valcoustics Canada Ltd. dated, December 21, 2017. There are no significant "stationary" industrial or commercial sources of sound in the area. Therefore, a detailed stationary noise assessment of the surroundings on the development was not completed. Transportation noise is the primary source of noise. A detailed noise assessment will be required at site plan stage with respect to HVAC equipment. A revised noise report will be required taking into account the development proposal at 421 Brant Street of 23 storey's. Precondition surveys of surrounding buildings along with vibration monitoring during construction will be required.

Conditions

Prior to the enactment of the By-law, the applicant shall enter into a Residential Development Agreement with the City, which shall include, but not be limited to, the following:

The following Warning Clauses should be registered on Title and/or included in all agreements of purchase and sale and/or leases and/or disclosure statements and declarations for the development:

Type A:

“Purchaser/tenants are advised that sound levels due to increasing road traffic may occasionally interfere with some activities of the dwelling occupants as the sound levels exceed the sound level limits of the Municipality and the Ministry of the Environment and Climate Change.”

Type B:

“This dwelling has been supplied with an air conditioning system which will allow windows and exterior doors to remain closed, thereby ensuring that the indoor sound levels are within the sound level limits of the Municipality and the Ministry of the Environment.”

Type C:

“Purchasers/tenants are advised that due to the proximity of the existing commercial developments, sound levels from these facilities may at times be audible.”

Underground Parking Structure

The engineering details of the underground parking structure (i.e. excavation shoring wall design, shoring pile locations, tie-back extents, exterior drainage system design etc.) have not been provided as part of the Official Plan Amendment and the Zoning By-Law Amendments Applications. All elements of the underground parking structure are required to be within the limits of the subject property. As such, engineering details of the underground parking structure will be required prior to approval of the Official Plan Amendment and the Zoning By-Law Amendment Applications.

Requirements for Official Plan Amendment and Rezoning By-Law Amendment Applications:

1. Further environmental investigation i.e. A Phase Two report is required in accordance with O. Reg. 153/04.
2. A Letter of Reliance from the Geotechnical Consultant.
3. An updated Functional Servicing Report, which includes the confirmation that the storm sewer discharge is contaminant free.

Please note that notwithstanding the above a detailed review of all documents and drawings will be completed during review of the Site Plan Application and that Site Engineering may provide additional comments, raise additional concerns or request additional information at that time.

Regards,

Carol Gulak
Senior Engineering Technician
Capital Works Department



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To: Lisa Stern, Senior Planner, Department of City Building – Planning Division

From: Thomas Douglas, Heritage Planner, Department of City Building – Planning Division

Date: June 5, 2018

Re: Cultural Heritage comments on applications to amend the Official Plan and Zoning By-law to permit a 24-storey mixed-use building at 401-413 Brant Street, 444-450 John Street, and 2002-2012 James Street.
File Numbers: 505-01/18, 520-01/18

Introduction

This memo is in response to a Request for Comments circulated by Suzanne McInnes on February 8, 2018, and provides comments on cultural heritage resource matters related to the above-cited development applications.

Description of Subject Properties

The subject lands comprise 11 municipal addresses. The cultural heritage status of these properties is as follows:

- None of the subject properties is designated under the Ontario Heritage Act.
- Two properties are listed on the Municipal Register but not designated: 401 Brant Street and 444 John Street.
- 448-450 John Street, 409 Brant Street, 413 Brant Street, 2002 James Street, and 2012 James Street are neither designated nor listed on the Register. They have no regulated heritage status; however, they appear on the City's Heritage Inventory, a list that recognizes potential heritage interest.
- 403, 405, and 411 Brant Street have no heritage status of any kind and do not appear on any municipal heritage list.

The implications of these statuses are discussed under Discussion below.

The subject lands are situated within the Downtown Mixed Use Centre in a prominent location opposite City Hall. The surrounding environment is as follows:

To the west, the site is bounded by Brant Street, the main north-south street in downtown Burlington. Across Brant Street is a three-and-a-half storey building municipally addressed as 400 Brant Street,

which contains the Queen's Head pub on the main level. 400 Brant Street is listed on the Municipal Register as a non-designated heritage property. Directly north of 400 Brant is 426 Brant Street which comprises Civic Square, City Hall, and the Burlington cenotaph. 426 Brant Street is not listed on the Municipal Register or the subject of any Heritage Act regulations but is recognized on the City's Heritage Inventory as a property of some heritage interest due to the presence of the King Edward Fountain. The cenotaph may also be of heritage value. Both the cenotaph and fountain are located at the north end of the property near the intersection of Brant Street and Ontario Street.

400 Brant and the Civic Square are directly opposite the western frontage of the subject property, while City Hall, the cenotaph, and the King Edward fountain are located further north along Brant Street.

To the north, the site is bounded by James Street. Across James Street are one- and two-storey existing retail and office uses. These uses are expected to be discontinued as a 23-storey mixed-use development with a 4-storey podium has been approved.

To the east, the site is bounded by John Street. Across John Street are surface parking lots and a six-storey office building. Further to the east, at the intersection of James Street and Elizabeth Street, are three properties listed on the Municipal Register: the Former Methodist Episcopal Church at 451 Elizabeth Street, Knox Presbyterian Church at 461 Elizabeth Street, and the John Taylor house at 2031 James Street/458 Elizabeth Street.

To the south, the property is bounded by a City-owned surface parking lot and pedestrian plaza that functions as a mid-block connection known as the Elgin Promenade.

Description of Applications

The subject applications propose a 24-storey mixed-use development with commercial uses at grade and residential above, and five storeys of underground parking. The development concept proposes the retention and incorporation of the facades of 401 Brant Street and 444 John Street, and the demolition of all other buildings and structures currently on the subject lands. The podium of the proposed tower makes use of step-backs to create a transition from the existing one-and-a-half storey building facades to the main four-storey mass of the podium.

The subject applications request amendments to the Official Plan and Zoning By-law to permit the proposed development.

Technical Review

Documents Reviewed

Heritage staff have reviewed the following circulated materials:

- Architectural Drawings A101-A103, A201-A202 (Underground Plans), A301-A311 (Floor Plans), A401-A402 (Elevations), and A501-A502 (Sections), prepared by Graziani + Corazza Architects Inc., dated January 17, 2018;

- Boundary and Topographic Survey of All of Lots 1 and 2, Block I, Registered Plan 92, City of Burlington, prepared by Piratheepan Ramachandran, dated December 8, 2017;
- Heritage Impact Statement for 401-413 Brant Street, 2002 & 2012 James Street, 444-450 John Street, prepared by Goldsmith Borgal & Company Ltd. Architects, dated January 17, 2018;
- Renderings of proposed building, prepared by Graziani + Corazza Architects Inc., dated January 15, 2018; and
- Urban Design Brief, prepared by Bousfields Inc., dated January 2018.

Policy Framework

Heritage staff have reviewed the subject applications with consideration for the following legislation and best practices relevant to cultural heritage resource conservation:

- Ontario Heritage Act
- Eight Guiding Principles in the Conservation of Historic Properties
- Standards and Guidelines for the Conservation of Historic Places in Canada, 2nd ed.

Heritage staff have also reviewed the subject applications with consideration of the following Planning Act documents:

- The Provincial Policy Statement 2014 (PPS)
- The Growth Plan for the Greater Golden Horseshoe 2017 (GGHP)
- The Halton Region Official Plan (ROP)
- The City of Burlington Official Plan (OP)
- The City of Burlington's new Official Plan, approved by City Council on April 26, 2018 (new OP)
- The City of Burlington Downtown Urban Design Guidelines (2006)

Discussion

Cultural Heritage Value of Subject Lands

The Heritage Impact Statement (HIS) prepared by Goldsmith Borgal & Company Limited Architects (GBCA) and submitted with the subject applications evaluates the heritage value of the subject lands. It identifies the presence of cultural heritage resources on site: specifically, two built heritage resources, located at 401 Brant Street and 444 John Street. The HIS does not identify any cultural heritage landscape. The built heritage resources are evaluated as follows:

401 Brant Street: “The Confectionery”

The building at 401 Brant Street, currently occupied by Kelly’s Bake Shop, is identified as the “Cline/Dickenson/Johnstone/Watson Store”, located on Part Lot 2, Block 1 of Plan 92. Prior to 1887 the property was owned by Absalom Bell Cline, a horticulturalist and member of Town Council. The current building does not appear on the 1893 Goad’s insurance plan but was certainly constructed before 1922, and likely before 1914. Further research is needed to confirm the exact date of construction. In the first half of the 20th century the building functioned as a candy store (Dickenson’s confectionery and ice cream parlour, and then Johnston’s Candy Store after 1924). In 1948 it was sold to William Watson, a jeweller. For simplicity, this built heritage resource will be referred to as “the Confectionery” for the purposes of this memo.

The submitted HIS finds that the confectionery does not have significant cultural heritage value but is of some heritage value. The HIS states that “regardless of its limited value, preservation of this building’s significant attributes in the new development represents a reasonable retention of an historical component of downtown Burlington which will enrich the context of the community” (GBCA 18). The HIS finds that the confectionery meets the following four of the nine eligibility criteria for designation under Part IV of the Ontario Heritage Act, as defined by Ontario Regulation 9/06:

- “The property has historical or associative value because it
 - has direct associations with a theme, event, belief, person, activity, organization, or institution that is significant to a community”
 - yields, or has the potential to yield, information that contributes to an understanding of a community or culture”
- “The property has contextual value because it
 - is important in defining, maintaining, or supporting the character of an area”
 - is physically, functionally, visually or historically linked to its surroundings”.

In 2014, the City of Burlington retained Archaeological Research Associates, Ltd. (ARA) to evaluate a number of properties listed on the Municipal Register, including the Confectionery. Similar to GBCA, ARA found that the Confectionery has historical or associative value as well as contextual value and is therefore eligible for designation (ARA 2014).

444 John Street: “The Ice House”

The building at 444 John Street (Part Lot 2, Block 1 of Plan 92), currently occupied by a business identified as Albert L. Schmid Jeweller, Watch and Clock Maker, was originally the Dickenson Ice House, and will be referred to as “the Ice House” for the purposes of this memo. It was likely constructed in the second decade of the 20th century as a support building for the Confectionery at 401 Brant Street. The two buildings are located back-to-back with a modern addition connecting their respective rear elevations at the present time.

The HIS states that the Ice House's windows and shop front are not original and have no heritage value, but that the south-facing dormer should be investigated as it may have been an old access to an upper level storage area. Further research is required to confirm original finishes and details for restoration purposes (GBCA 19).

The HIS finds that the Ice House is of “modest heritage value... regardless of its limited value, preservation of this building's significant attributes in the new development represents a reasonable retention of an historical component of downtown Burlington which will enrich the community” (GBCA 20). The HIS finds that the Ice House meets the following four of the nine eligibility criteria for designation under Part IV of the Ontario Heritage Act, as defined by Ontario Regulation 9/06:

- “The property has design value or physical value because it
 - is a rare, unique, representative or early example of a style, type, expression, material or construction method”
- “The property has historical value or associative value because it
 - yields, or has the potential to yield, information that contributes to an understanding of a community or culture”
- “The property has contextual value because it
 - is important in defining, maintaining, or supporting the character of an area”
 - is physically, functionally, visually or historically linked to its surroundings”.

The Ice House, like the Confectionery, was previously evaluated by ARA in 2014. ARA's findings are consistent with those of GBCA: that the Ice House has design/physical value, historical/associative value, and contextual value, and is therefore eligible for designation (ARA 2014).

Other Buildings on the Subject Lands

Section 3.3 of the HIS describe the other buildings located on the subject lands, including those listed on the City's Heritage Inventory. Listing on the Inventory does not confer any regulatory protections on the properties; it merely serves to recognize potential cultural heritage value or interest. The buildings described in 3.3 of the HIS have all been heavily altered, including extensive alterations circa 1999 that occurred after the listing of the properties on the Inventory. GBCA does not identify any as having cultural heritage value.

Heritage staff agree with the findings of GBCA and ARA that the Confectionery (401 Brant Street) and Ice House (444 John Street) are both of cultural heritage value and warrant designation under Part IV of the Heritage Act and an appropriate level of conservation. Staff do not object to the demolition or removal of the other buildings on the subject lands, but would request the provision of a photographic record of the buildings' exteriors prior to their removal, in keeping with the intent of Official Plan Part II, policy 8.4.1 (d).

Policy Analysis of Proposed Development

Heritage Act

The submitted Heritage Impact Statement (HIS) by GBCA states on page 25 that “the development site is not subject to the Ontario Heritage Act as none of the properties on the site are designated under the OHA”. While it is correct that none of the subject properties are designated, this statement overlooks the fact that two of the properties are listed on the Municipal Register, which is subject to some regulation under section 27 of the Act. Because 401 Brant Street and 444 John Street are listed on the Municipal Register as undesignated properties, the owner must provide the City with 60 days’ written notice of any intention to demolish or remove any building or structure from these two properties. This would include temporary or permanent relocation of any building to another property within the assembled development parcel or elsewhere. If such activity is to occur, the applicant is encouraged to contact the heritage planner well in advance to discuss the type of information that must be submitted with such notice, and the ideal time to provide notice within the processing timeline of the associated development applications.

As none of the subject properties are designated heritage properties, the Heritage Act does not require the owner to obtain the City’s permission to make alterations to the properties.

Eight Guiding Principles in the Conservation of Historic Properties

These guiding principles are recognized best practices in heritage conservation that were prepared by the Ministry of Tourism, Culture, and Sport, and are endorsed by the Ontario Heritage Trust. As many of these principles deal with building materials and detailed restoration techniques, it is too early to assess whether these guiding principles have been adhered to in the proposed development. Further analysis of the proposed development in accordance with the Eight Guiding Principles will occur at the Site Plan review stage.

Standards and Guidelines for the Conservation of Historic Places in Canada, 2nd ed.

This document, prepared by Parks Canada in collaboration with the federal, provincial, and territorial governments, comprises recognized best practices in cultural heritage conservation. Consistency with these Standards and Guidelines is required by the City of Burlington’s New Official Plan, policy 3.5.2.1 (e). The conservation strategy required to integrate the Confectionery and Ice House into the proposed development consists primarily of Rehabilitation, with some Restoration, as described in Part 2 of the Standards and Guidelines.

Further analysis of the proposed development’s consistency with the Standards and Guidelines will occur at the Site Plan review stage. For the purposes of the subject applications, however, heritage staff do not believe that the proposal to retain only the facades of the Ice House and Confectionery represents a minimal intervention in accordance with standard 3. Furthermore, heritage staff opine that the proposal to give the Ice House no use, other than as cladding on the exterior corner of the interior driveway, is inconsistent with standard 5, which promotes finding a use for an historic place that requires minimal or no change to its character-defining elements.

Provincial Policy Statement 2014

The Provincial Policy Statement 2014 (PPS) requires the conservation of significant built heritage resources and significant cultural heritage landscapes (2.6.1). Significant resources are those that have been determined to have cultural heritage value or interest for the important contribution they make to our understanding of the history of a place, an event, or a people (6.0). The submitted Heritage Impact Statement qualifies the significance of the Confectionery and Ice House as limited, but concludes that they are of sufficient value to warrant retention. The HIS also finds these resources to be significant enough to meet eligibility criteria for designation in accordance with Regulation 9/06. Heritage staff agree that these resources are worthy of designation, and furthermore, that they are worthy of conservation.

The PPS states that “Planning authorities shall not permit development and site alteration on adjacent lands to protected heritage property except where the proposed development and site alteration has been evaluated and it has been demonstrated that the heritage attributes of the protected heritage property will be conserved” (2.6.3). The subject properties do not meet the definition of “protected heritage property” in the PPS (6.0), as none are designated under the Heritage Act or the subject of a heritage conservation easement. However, staff note that the Ice House and Confectionery do have some protections under the Heritage Act by virtue of their listing on the Municipal Register, and that through the processing of this application, staff intend for these buildings to become protected by both a conservation easement agreement and a subsequent designation under Part IV of the Heritage Act. So while these resources do not meet the definition of “protected heritage properties” at the current time, they have value nonetheless and their character-defining attributes should be conserved in consideration that they are expected to become protected heritage properties.

Furthermore, staff note that, as stated in Part III of the PPS, the policies of the PPS represent minimum standards, and policy-makers may go beyond these minimum standards to address matters of importance to a specific community, unless doing so would conflict with any policy of the PPS. The proposal to conserve only the exteriors of the Ice House and Confectionery is consistent with the minimum standards of the PPS (2014); however, the City’s Official Plan policies are discussed below and require the conservation of cultural heritage resources on the subject property despite their current undesignated status.

Growth Plan for the Greater Golden Horseshoe (2017)

The Growth Plan for the Greater Golden Horseshoe 2017 (GGHP) requires the conservation of cultural heritage resources in order to foster a sense of place and benefit communities, particularly in strategic growth areas (4.2.7.1). The subject property is located within the Downtown Burlington Urban Growth Centre, which is considered a strategic growth area in accordance with the GGHP. This GGHP policy requires the City of Burlington to consider the conservation of the cultural heritage resources on the subject property in the context of their contribution to defining and supporting the “sense of place” of downtown Burlington, and more particularly the Brant Street and John Street streetscapes. In order to conserve this sense of place in accordance with the GGHP, it will be necessary to conserve the sense of scale of the buildings and fine-grained commercial character of Brant Street and John Street; this is discussed in greater detail under “City of Burlington Official Plan” below.

Halton Region Official Plan

Halton Region's Official Plan (ROP) requires "that development proposals on adjacent lands to protected cultural heritage resources:

- a) study and consider the preservation, relocation, and/or adaptive re-use of historic buildings and structures based on both social and economic costs and benefits;
- b) incorporate in any reconstruction or alterations, design features that are in harmony with the area's character and existing buildings in mass, height, setback, and architectural details; and
- c) express the cultural heritage resources in some way, including: display of building fragments, marking the traces of former locations, exhibiting descriptions of former uses, and reflecting the former architecture and uses." (167.3)

"Adjacent lands" for the purposes of ROP policy 167(3) in the Burlington context are those lands that are contiguous to a protected heritage resource. The subject applications proposed development on land adjacent to and including two properties containing cultural heritage resources that are currently protected by the Municipal Register but not by a designation or easement (401 Brant and 444 John St). The proposed development has studied and considered the partial preservation of the Confectionery and Ice House, although few details have been provided about their proposed adaptive re-use. The subject applications propose to incorporate design features of these two resources, and express them through facade retention and commemoration. The proposed development satisfies policy 167(3) of the ROP.

City of Burlington Official Plan

Burlington's Official Plan (OP) addresses cultural heritage resources in Part II, section 8. Policy 8.3.3(d) in this section states "the City shall encourage, where appropriate, the adaptive re-use of a built heritage resource in a manner that is not destructive to the character-defining elements of the resource." The subject applications propose the retention of the character-defining exteriors of the Confectionery and Ice House; however, only facades are retained and no information about adaptive re-use has been provided. Based on the submitted plans, the proposal appears to conserve the Ice House only as an ornamental cladding on a corner of the interior driveway. Heritage staff are not satisfied with this approach to conserving the Ice House and require the revision of the development proposal to accommodate an appropriate adaptive reuse for this built heritage resource. In accordance with the Standards and Guidelines for the Conservation of Historic Places in Canada, a new use should be chosen that requires minimal or no change to its character-defining elements.

GBCA finds both the Ice House and Confectionery to have contextual value based on their importance in supporting the fine-grained commercial character of downtown Burlington (GBCA 18, 20). This "fine-grained" character depends on the buildings retaining their current proportions. Staff would therefore consider the scale and massing of the buildings, including their interior dimensions, to be character-defining elements. Retaining only the facades of these buildings, and merging their interior spaces into larger spaces, would disrupt the sense of scale and impair the resources' ability to support the fine-grained character of downtown Burlington. Staff therefore do not support conserving only the facades of these two resources.

In the case of the Confectionery, only the facade is proposed to be retained, on a portion of the one-storey retail space fronting on Brant Street. No information is provided about the interior divisions of this retail space. A new retail area is proposed to be adjacent to the Confectionery. The large windows typical of main street retail facilities mean that interior building divisions will be apparent from the street right-of-way. Should the applicant propose no internal division between the Confectionery interior and the adjacent new retail area, this will create a remarkable visual incongruity: passersby will see a distinction between old and new on the exterior of the building that disappears when they enter the building or look through the window from outside. This would draw attention to the “merely skin-deep” conservation effort and severely detract from its effectiveness.

The Official Plan requires the conservation of the Ice House and Confectionery, and their integration into the proposed development. Satisfactory conservation and integration of these built heritage resources will require the conservation of the entire building envelopes, or a substantial part thereof, to preserve the fine-grained scale and massing that supports the historic Brant Street and John Street commercial context. As the interior walls of these buildings do not have design or physical value, staff would be willing to consider a proposal to create new openings in these interior walls that would connect the retail space to adjacent spaces while satisfying the intent of keeping the interior spaces enclosed with their original proportion/dimensions.

Part II, section 8.3.3 (e) of the OP states that “pursuant to the provisions of the Ontario Heritage Act, the City may enter into heritage conservation easement agreements with private property owners to ensure the long-term maintenance and conservation of cultural heritage resources”. In accordance with this policy, the City will require the applicant to enter into a conservation easement agreement as a condition of approval. Such conservation easement agreement shall be customized to facilitate any development approvals while establishing a strategy to conserve the built heritage resources prior to, during, and after construction activities. The applicant will be required to provide a Conservation Plan, prepared by a qualified heritage professional, on which the conservation easement agreement will be based. The conservation plan may be provided as an independent document or as an addendum to the submitted Heritage Impact Statement and should provide the following information, in accordance with the Ontario Heritage Toolkit, Info Sheet 5:

- Identification of the conservation principles appropriate for the type of cultural heritage resource being conserved;
- Analysis of the cultural heritage resource, including documentation of the resource, descriptions of cultural heritage value or interest, assessment of resource conditions and deficiencies, discussion of historical, current, and proposed use;
- Recommendations for conservation measures and interventions, short or long term maintenance programs, implementation, and the qualifications for anyone responsible for the conservation work;
- Schedule for conservation work, inspection, maintenance, costing, and phases of rehabilitation and restoration work;
- Monitoring of the cultural heritage resource and the development of a long term reporting structure.

Within the above framework, the Conservation Plan should in particular answer the following questions:

- how the Ice House and Confectionery are to be protected prior to their final occupation;
- how the affected portions of the buildings are to be demolished or altered;
- how the buildings will be attached/interface with the new building;
- how the character-defining elements of the buildings are to be rehabilitated and restored;
- details of proposed alterations;
- conceptual site plan; and
- estimate for full cost of work related to alterations and restoration of the building (to inform the calculation of securities to be provided).

The OP further states that “the designation of individual cultural heritage properties and cultural heritage landscapes under the provisions of the Ontario Heritage Act shall be pursued to implement the cultural heritage conservation objectives and policies of this Plan” (OP Part II, 8.3.4a). Heritage staff believe that the Confectionery and Ice House are worthy of designation under Part IV of the Heritage Act; however, staff propose that at the current time a heritage conservation easement agreement is sufficient to ensure the long-term conservation of the subject properties. Designation should occur after draft site plan approval has been issued and the final form of the proposed development has been established; this will allow the designation by-law to be developed and structured in such a way as to accurately reflect the built form of the subject lands. Staff may support the designation of only the portions of the subject lands that are to contain the built heritage resources, rather than the entire property, based on a reference plan completed and registered at the expense of the applicant to the satisfaction of the City of Burlington.

Part II, section 8.4 of the OP specifically addresses development affecting cultural heritage resources, and includes the following policies:

- “All development shall consider cultural heritage resources and wherever feasible, incorporate these resources into any development plans in a way that conserves the character-defining elements of the cultural heritage resource” (Part II 8.4.1a).
 - Heritage staff require the design of the proposed development to consider and be sensitive to cultural heritage resources, and to incorporate the on-site resources (Ice House and Confectionery) into the development in a way that conserves their character-defining elements. As described above, the retention of facades only does not suffice to conserve the character-defining scale of the subject resources.
- “Approval of development on lands with significant cultural heritage resources may be subject to conservation of the cultural heritage resources. Should Council, in consultation with its municipal heritage committee (Heritage Burlington), determine that the proposal to alter, demolish or erect a structure that would detract from, or indirectly impair the character, quality, heritage attributes or stability of a cultural heritage resource, the proposal shall be subject to the recommendations of a heritage impact statement” (Part II 8.4.1c).
 - The proposed development would significantly alter the Ice House and Confectionery. The current proposal to retain only the facades of the Confectionery and Ice House would impair their character, heritage attributes, and stability. Heritage staff recommend that

approval of the proposed development be conditional on satisfactory conservation of the built heritage resources at 444 John Street and 401 Brant Street.

- “Cultural heritage resources that are to be significantly altered, removed, or demolished shall be recorded for archival purposes with a history, photographic record, and measured drawings before alteration, removal, or demolition” (Part II 8.4.1d).
 - The proposed development will significantly alter the Ice House and Confectionery. Heritage staff will therefore require the submission of a photographic record and measured drawings of the Ice House and Confectionery prior to alteration. This record must be submitted to the City for archival purposes, and may be deposited with the Burlington Public Library for public reference. Heritage staff additionally request a photographic record of the exteriors of 448-450 John Street, 409 Brant Street, 413 Brant Street, 2002 James Street, and 2012 James Street.

Part III, section 5 of the OP contains policies applying only to the Downtown Mixed Use Centre, within which the subject lands are situated. The following policies from Part III are applicable to the subject applications:

- “As a Mixed Use Centre the Downtown shall take advantage of the unique qualities that set it apart from all other areas of the City and contribute to a distinct identity. These qualities include... historic buildings, streetscapes, and development pattern, cultural activities, pedestrian orientation, and recognition as a centre of business and civic activity” (Part III 5.5.1 b).
 - This principle promotes not only the conservation of historic buildings but their incorporation as a unique and featured component of the proposed development, to anchor the subject lands in their unique neighbourhood context (as supported by the GGHP sense of place).
- “New development shall be of high quality design to maintain and enhance the Downtown’s image as an enjoyable, safe, pedestrian-oriented place, and designed and built to complement pedestrian activity and historical attributes as outlined in the Downtown Urban Design Guidelines...” (Part III 5.5.1 g).
 - This principle requires the design of the proposed development to complement the historical attributes of the cultural heritage resources identified in the Downtown Urban Design Guidelines. The Design Guidelines identify the Confectionery and Ice House, as well as 413 Brant Street, as having historical attributes (Downtown Urban Design Guidelines 7.11.3). Staff recognize that the more recent evaluation of the subject lands by GBCA did not find 413 Brant Street to have any cultural heritage value; therefore, the design of the proposed development need only complement the historical attributes of the Confectionery and Ice House to satisfy this policy.
- “The Downtown’s cultural heritage resources shall be preserved and integrated into new development, where possible, and any development close to cultural heritage resources shall be

sensitive to the historic context of the street and not just of the immediately adjacent buildings, to maintain the character of established areas” (Part III 5.5.3 g).

- This policy requires the preservation and integration of the cultural heritage resources on site (Confectionery and Ice House) but also requires the development to be sensitive to the historic context of the street and not just the immediately surrounding buildings, to maintain the character of established areas. This policy therefore requires the proposed development to be sensitive to nearby cultural heritage resources on Brant, James, and John Street, including 400 Brant Street (the Queen’s Head Pub), 426 Brant Street (Cenotaph and King Edward Fountain), and Knox Presbyterian Church (461 Elizabeth Street). The podium of the proposed development should be designed to complement rather than overwhelm the scale of 400 Brant Street (Queen’s Head Pub) directly across the street. Staff request clarification of the submitted Context Plan (drawing A102) to show the height of 400 Brant Street in metres rather than just in storeys, to allow comparison to the height of the proposed podium. This information should be provided in a revision or addendum to the HIS, and may also be shown on a revised Context Plan.

City of Burlington NEW Official Plan (2018)

The City of Burlington adopted a new Official Plan (new OP) on April 26, 2018. As of the time of heritage staff’s review of the subject applications, the new OP has not yet been approved by Halton Region, and the previous Official Plan (OP) is still in effect. However, the policies of the new OP are instructive for the subject applications.

The new OP addresses cultural heritage resources in section 3.5.

- “Cultural heritage resources shall be protected and conserved, in accordance with the Standards and Guidelines for the Conservation of Historic Places in Canada and other recognized heritage protocols and standards” (3.5.2.1 e).
 - The Standards and Guidelines are discussed above.
- “The City will encourage, where appropriate, the adaptive re-use of a built heritage resource in a manner that is not destructive to the character-defining attributes of the resource” (3.5.2.3 e).
 - This policy aligns with current OP Part II, policy 8.3.3 (d), discussed above.
- “Pursuant to the provisions of the Ontario Heritage Act, the City may enter into heritage conservation easement agreements with private property owners to ensure the long-term maintenance and conservation of cultural heritage resources” (3.5.2.3 f).
 - This policy aligns with current OP Part II, policy 8.3.3 (e), discussed above.
- “The designation of cultural heritage resources under the provisions of the Ontario Heritage Act will be pursued to implement the objectives and policies of this Plan” (3.5.2.4 a).
 - This policy aligns with current OP Part II, policy 8.3.4 (a), discussed above.

- “All development shall consider cultural heritage resources and, wherever feasible, incorporate these resources into any development plans in a way that conserves the character-defining attributes of the cultural heritage resource” (3.5.2.5 a).
 - This policy aligns with current OP Part II, policy 8.4.1 (a), discussed above
- “If development is proposed on any property listed on the Municipal Register, the property, or portions of the property, may be considered for heritage designation or the entering into of a heritage conservation easement agreement, to secure the conservation of cultural heritage resources” (3.5.2.5 b).
 - This policy aligns with current OP Part II, sections 8.3.3 (e) and 8.3.4 (a), discussed above.
- “All options for the retention of cultural heritage resources in their original location should be exhausted before resorting to re-location. The following alternatives shall be given due consideration in order of priority:
 - (i) on-site retention in the original use and location and integration with the surrounding or new development;
 - (ii) on-site retention in an adaptive re-use;
 - (iii) relocation to another site within the same development; and
 - (iv) relocation to a sympathetic site within the City.The City will consider other conservation solutions as appropriate” (3.5.2.5 c).
 - The subject applications propose to retain both the Ice House and Confectionery in their original location, which is supported by this policy. The subject applications propose a retail use for the Confectionery, which is consistent with its original use; this is supported by the new OP, although staff request further information about the scale of retail proposed for this resource to ensure it adequately maintains the scale of the existing building.

The subject applications also propose an inappropriate new use for the Ice House; in accordance with this policy staff request the revision of the proposal to provide a more appropriate new use for this resource.
- “If a development proposal substantially changes in scope and/or design from that described in the Heritage Impact Statement, the City shall require that the applicant submit additional information, including a revised Heritage Impact Statement” (3.5.2.5 e).
 - In accordance with this policy, staff will require a revised Heritage Impact Statement to be submitted to reflect any changes to the development proposal, including those changes requested by heritage staff in these comments.

- “Approval of development on lands containing cultural heritage resources and/or within a cultural heritage landscape may be subject to conservation of the cultural heritage resource. Should the City, in consultation with its municipal heritage committee, determine that the proposal to alter, demolish or erect a structure that would detract from, or indirectly impair the character, quality, heritage attributes, or stability of a significant cultural heritage resource, the proposal shall be subject to the recommendations of a Heritage Impact Statement” (3.5.2.5 f).
 - This policy aligns with current OP Part II, section 8.4.1 (c), discussed above.
- “Cultural heritage resources that are to be removed, demolished, or significantly altered with the appropriate approvals from the City, shall be recorded for archival purposes with a history, photographic record and measured drawings, as appropriate, before alteration, removal or demolition. Such documentation shall be made available to the City for archival purposes” (3.5.2.5 g).
 - This policy aligns with current OP Part II, section 8.4.1 (d), discussed above.
- “The City may require a letter of credit or other financial security satisfactory to the City, from the owner of property containing a cultural heritage resource or of property within a cultural heritage landscape, to secure:
 - (i) protection of the resource during development and/or relocation, and/or:
 - (ii) implementation of measures to conserve the cultural heritage resource approved by the City” (3.5.2.5 j).
 - This policy in the new OP formalizes a current City practice. The City will require the owner to provide securities to secure the protection of the Confectionery and Ice House during development and the implementation of City-approved measures to conserve these resources. The amount of securities to be provided shall be based on a cost estimate for the proposed rehabilitation and restoration works provided by the applicant in a Conservation Plan, as discussed above.

Chapter 8.1.1(3) of the New OP specifically addresses the Downtown Urban Centre, within which the subject lands are situated. This chapter contains the following policies of relevance to cultural heritage conservation:

- “The Downtown’s cultural heritage resources should be conserved by being integrated into new development, where possible. Any development located in close proximity to cultural heritage resources shall be sensitive to the cultural heritage context of the street and not just of the immediately adjacent buildings, to maintain the character of those areas” (8.1.1.3.2k).
 - This policy prioritizes integration with new development as the preferred conservation strategy for cultural heritage resources located within the downtown.
The latter part of this policy aligns with current OP Part III, section 5.5.3 (g), discussed above.

This policy also emphasizes the importance of catering the design of developments to be sensitive to the street context and surrounding cultural heritage resources, including those that are not immediately adjacent, such as 400 Brant Street and 426 Brant Street. The scale and massing of the proposed podium should not overwhelm the Queen's Head Pub building across the street at 400 Brant Street. The proposed podium and tower should also be designed in such a way as to avoid shadow or wind impacts on the Cenotaph parkette (426 Brant Street), particularly at 11:00am on November 11th, when Remembrance Day ceremonies occur at this location. Furthermore, the proposed development should not obstruct views to the Knox Presbyterian Church to the east.

- “The full extent of maximum development permissions stated within all Downtown Urban Centre precincts may not be achievable on every site within a precinct, due to site-specific factors including, but not limited to... cultural heritage resources” (8.1.1.3.2 n).
 - This policy anticipates that the measures required to conserve the existing cultural heritage resources on the subject lands by integrating them into the proposed development and maintaining a sensitive design that does not overwhelm or impair the heritage value of the resources may have an impact on the site's development capacity, without contravening the new Official Plan.

City of Burlington Downtown Urban Design Guidelines (2006)

The City of Burlington Downtown Urban Design Guidelines are a Council-approved document intended to supplement the Official Plan and Zoning By-law by providing additional detail on what constitutes desirable built form in the Downtown.

Section 5.5 of the Burlington Downtown Design Guidelines addresses cultural heritage resources in the downtown and includes the statement, “In general, buildings should be retained or removed. Retaining the facade is not an acceptable substitute to the retention of the whole structure”. The subject applications propose to retain only the facades of the Ice House and Confectionery; this type of conservation is not supported by staff or the applicable Council-approved Design Guidelines. Staff require the revision of the proposed development to more meaningfully conserve the Ice House and Confectionery by incorporating the entirety, or a more substantial component, of the buildings into the proposed development.

Section 5.5 provides further guidance on the restoration of the Confectionery and Ice House as well as the detailed design of the new development around them. This includes guidance on building materials, massing, height, fenestration, roofline, location of entrances, treatment of the ground floor, and signage. These guidelines will be applied to the proposed development at the Site Plan review stage.

Section 7.11 provides specific guidance on the redevelopment of the subject property and neighbouring lands to the south. This section promotes use of stepbacks to preserve views to the east, including views of Knox Presbyterian Church at the northeast corner of James Street and Elizabeth Street, as well as of views to the west, including views of City Hall.

Section 7.11 recommends 8 storeys as the maximum building height; however, from a cultural heritage conservation perspective, it is not critical that height be limited to 8 storeys so long as new development is designed in such a way as to be sensitive to the on-site and surrounding cultural heritage resources and area character.

Other Notes

Heritage Impacts

Section 5.3 of the submitted HIS discusses impacts on cultural heritage resources as follows:

With respect to the possibility of destruction of any, or part of any, significant heritage attributes or features, the HIS states that the development proposes to retain portions of the Ice House and Confectionery. Heritage staff consider the current proposal to retain only the facades of these buildings to be an excessive level of destruction of their character-defining scale.

With respect to the possibility of alteration that is not sympathetic, or is incompatible with the historic fabric and appearance, the HIS states that the podium of the proposed new building has incorporated stepbacks and setbacks to provide a transition from the Confectionery and Ice House to the new building. Staff generally support the use of setbacks and stepbacks to protect the character-defining fine-grained commercial character of the subject resources by providing a visual separation between the larger new building and smaller heritage buildings. This is discussed further under Proposed Mitigation Strategy below.

With respect to the possible direct or indirect obstruction of views or vistas within, from or of built and natural features, the HIS states that no obstructions of significant views or vistas will occur as a result of the proposed development; however, the submitted materials do not demonstrate that this is the case. The HIS should be revised to demonstrate that views of Knox Presbyterian Church and City Hall are protected, as required by the Downtown Urban Design Guidelines (7.11.3).

With respect to the possibility of land disturbances such as a change in grade that alters soils and drainage patterns, the HIS states that “there will be no land disturbances as a result of this development” (GBCA 30). The proposed development calls for the excavation of the entire site and the construction of a five-storey underground parking garage directly beneath the Ice House and Confectionery; this represents a substantial land disturbance. The HIS should be revised to address the impacts on the heritage resources of removing the soil beneath them and replacing it with a parking garage; specifically addressing impacts on stability of the buildings and any visual impact such as a change in elevation perceptible from the public right-of-way.

Proposed Mitigation Strategy

The strategy for mitigating impacts on cultural heritage resources depends largely on the differentiation of the Confectionery and Ice House from the proposed podium and tower through the use of setbacks and stepbacks. While staff see the potential merits of this approach, the submitted HIS does not provide the requested discussion of alternative concepts, evaluation of their advantages and disadvantages, and rationale for selecting the preferred concept. Consequently it is not possible to provide detailed comments on the preferred concept.

Passing reference is made to the permanent relocation of the Ice House to a location further north within the development site, but this alternative concept is not discussed in detail, nor is it made clear whether this would be preferable to the *in situ* conservation concept presented in the submitted renderings and architectural drawings. Staff will require the submission of a revised HIS to provide this analysis. Specifically, any proposal to relocate either the Confectionery or Ice House must address the historic relationship of these buildings and the impact of disrupting their original back-to-back configuration.

Conservation Strategy

The HIS proposes to rehabilitate the buildings while restoring the retained portions of the building. Staff support a Rehabilitate and Restore approach in accordance with the Standards and Guidelines for the Conservation of Historic Places in Canada, with the degree of restoration to be confirmed through a Conservation Plan to be approved by the City.

Staff support the site recording recommendations described in section 7.1 of the HIS. The photographic record and architectural drawings will be required in a Conservation Plan, in accordance with the applicable Official Plan policies described above.

As discussed above, the City will require the submission of a Conservation Plan.

The HIS proposes three possible approaches to the demolition, excavation, and construction work for the proposed development. The first option, to dismantle the Ice House and Confectionery and rebuild them with salvaged materials, is not preferred or recommended by GBCA and will not be supported by staff. The second option is to temporarily relocate the Ice House and Confectionery during excavation, while the third option is to retain the exterior facades of the buildings *in situ* during excavation work. Due to the aforementioned objection of staff to retaining only the facades of the buildings, the third option is not feasible as currently proposed. The second option, or an as-yet unidentified fourth option, is the likely preference – to be confirmed through review of a Conservation Plan.

Building Conservation

Staff have no objections to the building conservation strategy proposed in section 7.4 of the HIS. A more detailed description of the conservation strategy shall be provided in the subsequent Conservation Plan.

Pedestrian Views

The rendering of View 1 shows the proposed one-storey retail area covered by a grey mass that extends from the building wall down across the sidewalk, making it difficult to comprehend the visual impact of this portion of the building adjacent to the Confectionery. Heritage staff request the revision of this rendering to aid in interpretation.

Consultation with Municipal Heritage Committee

Heritage staff have consulted with Heritage Burlington (HB), the City's municipal heritage committee, in accordance with the OP (Part II, section 8.3.1b) and the new OP (3.5.2.2). Heritage Burlington reviewed the subject applications at its meeting of March 13, 2018. The committee has submitted its

comments under separate cover in a letter addressed to Suzanne McInnes and dated March 19, 2018. This letter included the following comments:

- “Heritage Burlington supports the retention of the two registered properties within the development and would prefer that they remain in place. If there is any intention of moving either property, Heritage Burlington should be consulted and party to the decision process.
- We appreciate the scale of the podium and the use of a brick facade.
- The development does not leverage the existence of the two registered properties and the planned public space on the south side of the development. We strongly encourage the developer to reconsider the orientation of the internal parking access ramp so that south facing retail could be incorporated, integrated with the two registered properties, and therefore leverage the new public space.
- We would prefer that the two properties retain their retail function.
- Heritage Burlington requires more information about the retail frontage on John, James and especially Brant Streets. What will the plane of the new retail on Brant Street be in relation to Kelly’s? How will the set back entrance to the condo work with the adjacent retail? What material will be used for the retail facades? How will the corner of John & James Streets be treated?”

These comments have informed heritage staff’s review of the subject applications. Heritage staff agree with Heritage Burlington that the two buildings listed on the Register (Ice House and Confectionery) should be conserved *in situ*. Both heritage staff and Heritage Burlington should have the opportunity to comment on any revised proposal, in particular any proposal to relocate one of these resources, such as the potential move of the Ice House referenced in the HIS.

Heritage staff note Heritage Burlington’s support for the use of vernacular cladding materials, in particular brick. Heritage staff will comment on cladding materials in the review of a future site plan application.

Heritage staff agree with Heritage Burlington that the proposed development should take advantage of (“leverage”) the cultural heritage value of the Confectionery and Ice House, making them key features of the proposed development and highlighting their contribution to the sense of place of downtown Burlington, in accordance with provincial and municipal policies.

Heritage staff agree with Heritage Burlington that the Ice House and Confectionery should retain their current and/or original uses, in accordance with new OP policy 3.5.2.5 (c). Failing this, an appropriate adaptive re-use for each building should be determined. The current proposal for the Ice House to be conserved only as ornamental cladding on a portion of the exterior of the new driveway enclosure is not acceptable.

Heritage staff echo Heritage Burlington’s request for further information regarding the proposed new retail areas, including type of use and proposed internal divisions. This information is necessary to evaluate suitability of the proposed adaptive reuse of the Confectionery and Ice House.

Conclusion

Heritage staff have no objection in principle to the development of a tall, mixed-use building on the subject property that adequately conserves and integrates the existing cultural heritage resources described above as the Confectionery and the Ice House, and that is sensitively designed to avoid adverse impacts on nearby cultural heritage resources, in accordance with municipal and provincial policies.

Staff do not support the following elements of the subject applications:

- the proposal to conserve only the facades of the Ice House and Confectionery; and
- the apparent proposal for the Ice House to have no use other than as ornamental cladding on a portion of the driveway enclosure.

A more substantial and meaningful level of conservation is required to conserve the fine-grained scale and commercial use of these built heritage resources. A successful redevelopment proposal must support the historic commercial character of Brant Street and John Streets, contributing to a sense of place in downtown Burlington in accordance with provincial and municipal policies.

Summary of Requirements:

- Conditions of Zoning approval (required through a Residential Development Agreement)
 - Revised drawings and Heritage Impact Statement showing conservation of more than just the building facades and to address other comments above, along with a response matrix outlining each of the heritage staff comments from this memo and providing a response or a reference to where in the revised HIS the response may be found;
 - Conservation Plan for the Confectionery (401 Brant Street) and Ice House (444 John Street), containing the information prescribed in these comments, prepared by a qualified heritage professional to the satisfaction of the City of Burlington;
 - Enter into heritage conservation easement agreements with the City of Burlington, to be registered on title of 401 Brant and 444 John Street, prior to enactment of the subject Zoning By-law amendments (include provisions for the easements to run with the buildings if they are relocated to another property temporarily or permanently);
 - Agreement not to object to a possible future designation of the Ice House and Confectionery (currently addressed 444 John Street and 401 Brant Street, respectively), should Council state an intention to designate these properties in future.
 - Photographic record of buildings to be removed or significantly altered.
- Required at Site Plan Approval stage

- Preparation and implementation of a Commemoration Plan to the satisfaction of the City of Burlington (may be provided as part of Conservation Plan prior to zoning enactment if desired).

Reminder: if owner intends to demolish or remove/relocate the heritage buildings from 401 Brant Street and/or 444 John Street, they must contact the heritage planner to discuss submission requirements for the provision of 60 days' written notice as required by section 27(3) of the Ontario Heritage Act.

March 19, 2018

Suzanne McInnes, Senior Planner
Department of City Building
City of Burlington

Dear Suzanne,

Heritage Burlington has reviewed the developer's submission for the redevelopment of 409 Brant St and environs. Our comments are as follows:

- Heritage Burlington supports the retention of the two registered properties within the development and would prefer that they remain in place. If there is any intention of moving either property, Heritage Burlington should be consulted and party to the decision process.
- We appreciate the scale of the podium and the use of a brick facade.
- The development does not leverage the existence of the two registered properties and the planned public space on the south side of the development. We strongly encourage the developer to reconsider the orientation of the internal parking access ramp so that south facing retail could be incorporated, integrated with the two registered properties, and therefor leverage the new public space.
- We would prefer that the two properties retain their retail function.
- Heritage Burlington requires more information about the retail frontage on John, James and especially Brant Streets. What will the plane of the new retail on Brant Street be in relation to Kelly's? How will the set back entrance to the condo work with the adjacent retail? What material will be used for the retail facades? How will the corner of John & James Streets be treated?

Heritage Burlington has significant concerns about the design of the podia and streetscapes associated with new development along Brant Street and its environs. Because there were no heritage resources involved in the 421 Brant Street development, Heritage Burlington was not consulted in the design review. It is the opinion of the Committee that the street frontage associated with the 421 Brant Street development is completely alien to Brant Street and will disrupt and effectively compromise Brant Street's downtown feel. We ask that Heritage Burlington be afforded the opportunity to comment on any current and future developments along Brant Street or its environs whether heritage resources are involved or not. It is our position that Brant Street's streetscape is a historical resource and its cultural heritage landscape should be preserved as much as possible.

Sincerely,



Howard Bohan
Vice-Chair, Heritage Burlington

June 22, 2018

Ms. Lisa Stern
City of Burlington Planning Department
426 Brant Street, P.O. Box 5013
Burlington, ON
L7R 3Z6

Legislative & Planning Services
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1151 Bronte Road
Oakville ON L6M 3L1
Fax: (905) 825-0267

Dear Lisa:

RE: Regional Comments: Local Official Plan Amendment & Zoning By-law Amendment
Address: 409 Brant St.
Owner: Reserve Properties Ltd.
City of Burlington
Files: 505-01/18 & 520-01/18

Reserve Properties Ltd. has submitted a Local Official Plan Amendment (LOPA) application and a Zoning By-law Amendment (ZBA) application to permit the construction of a 24-storey mixed use building with a total of 227 residential units and ground floor commercial. The proposal also includes 1 storey of rooftop amenity space and 5 levels of underground parking with access from John Street.

The subject lands comprise a total area of 0.232 hectares (0.5 acres); the lands are currently occupied by several commercial/retail buildings and operations, as well as paved driveway area. The following amendments are proposed to facilitate the development proposal:

The purpose of this Local Official Plan Amendment (LOPA) is site specific to:

- Amend the current Downtown Mixed Use Centre designation to include modifications to permit the proposed development.

The purpose of this Zoning By-law Amendment (ZBA) is to:

- Amend the City of Burlington's Zoning By-law Downtown Core zone, to a site specific provision (DC-Special) to apply to 401-413 Brant, 444-450 John and 2002 and 2012 James St, to permit this development.

Regional Planning Staff have reviewed the subject applications within the context of Provincial planning documents and Regional Official Plan (ROP) and offer the following comments.

Matters of Provincial Interest:

Provincial Policy Statement, 2014 (PPS) and Places to Grow Plan, 2017 (PTG)

Regional Staff have reviewed the proposal in the context of the PPS and offer the following observations. One major theme in the PPS is to build strong and diverse communities that will ensure that the province's long term prosperity, environmental health and well-being for its residents through efficient land use and development patterns. The PPS also includes policies that state that settlement areas shall be the focus of growth, and that their vitality and regeneration shall be promoted. The PPS goes on to state that to sustain healthy, liveable and safe communities, an appropriate range and mix of uses must be accommodated to meet the long term needs of the community. Furthermore, that uses on lands where infrastructure is planned or available shall be promoted. However Regional

Regional Municipality of Halton

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staff notes that due to contamination on site, PPS policy 3.2.2 –Human Made Hazards cannot be complied with until site contamination remediation measures to the satisfaction of Regional staff has occurred (see site contamination section below).

Planning staff have also reviewed this proposal within the context of the policies of the PTG Plan. The Plan directs growth to the built up areas of the community through intensification and the identification of the appropriate type and scale of development in these areas. Municipalities shall also make efforts to efficiently use existing and planned transportation and servicing infrastructure. The proposal in this regard is consistent with this policy direction.

Subject to the following comments being addressed, Regional Staff are of the opinion that the proposed Local Official Plan and Zoning By-law amendments are consistent with the objectives and policy direction of the Provincial Growth Plan and the Provincial Policy Statement, subject to the occurrence of site contamination remediation.

Matters of Regional Interest:

Regional Official Plan, ROPA 38

The subject lands are designated as ‘Urban Area’ in the 2009 ROP. The Urban Area policies of the ROP provide that the range of permitted uses and the creation of new lots within the Urban Area will be in accordance with Local Official Plans and Zoning By-laws. All development, however, shall be subject to all other relevant the policies of the Regional Plan.

As part of the Urban Area, the subject lands also form part of a Regional *Intensification Area* and are part of an *Urban Growth Centre* in the ROP and Places to Grow Plan. The policies of Urban Area designation support residential intensification and the development of vibrant and healthy communities. Sections 77, 78 and 81 of the ROP further supports providing opportunities for live/ work relationships, and achieving densities higher than the surrounding areas and as high as permissible under the Local Official Plan policies. The proposed Official Plan Amendment and corresponding Zoning By-Law Amendment are, in our opinion, in keeping with the general intent and objectives of the Urban Area policies of the ROP as the proposal is transit supportive, provides increased density within the Built Boundary, and provides for intensification where it can be reasonably accommodated.

However it should also be noted, this site is within the Downtown Mobility Hub Secondary Plan, which is in its initial stages. The Region is undertaking an initial review of a Functional Servicing Report from the City for the Downtown Mobility Hub. Regard should be given to the impact of this application on the City’s new Official Plan-Grow Bold, which is still unapproved.

Regional Servicing

There is a 400 mm diameter trunk watermain located within Brant Street adjacent to the property. There is a 400 mm / 600 mm trunk watermain and a 300mm diameter watermain located within James Street adjacent to the property. There is a 200 mm watermain located within John Street adjacent to part of the proposed development, but not across the entire frontage of the proposed development. No trunk watermain service connection laterals will be permitted.

There is a 600 mm diameter trunk wastewater main located within Brant Street adjacent to the property. There is no wastewater main located within James Street, except for a wastewater (sanitary) sewer connection lateral servicing one of the developer’s buildings. There is a Halton Region local wastewater main (sanitary sewer) within John Street adjacent to the part of the proposed development, but not across the entire frontage of the proposed development. There is a Halton Region trunk wastewater main (sanitary sewer) located within the City of Burlington Brant Street Parking Lot, 391 Brant Street, adjacent to the proposed development.

The Region forecasts a future capital works project for the replacement of the watermain within John Street tentatively for 2018/2019. This may or may not include a section of watermain within James Street further to the east.

An oil pipeline, from one of the large Utility companies, exists within Elgin Street, and within the City of Burlington Brant Street Parking Lot property, 391 Brant Street, adjacent to the proposed development

A Functional Servicing Report, prepared by S. Llewellyn & Associates Limited, dated December 2017, was received with the rezoning and LOPA applications. The submitted FSR is satisfactory for the purpose of the Local Official Plan Amendment and rezoning. The Owner's professional Engineer should generally be aware that water and wastewater connections cannot cross lot lines. Any existing water or wastewater services that are substandard or in the wrong location, that must be abandoned, will be required to be disconnected at the main by the developer. Please note that servicing capacity will be reassessed at the Servicing Permit stage, and that formal allocation of capacity by Halton Region occurs with the issuance of a Regional Servicing Permit or a Development (Servicing) Agreement (if required).

The Region is currently undertaking a Burlington Water Servicing Strategy Review for the Region's water distribution system. The developer's property is within the Strategy Review area. Being that the Review is in its early stages, information related to the impact to the developer's property is not known at this time. The Region has in its plans the forecast replacement of infrastructure within John Street adjacent to the property in the near future. The developer should be aware of the Region's project and work to coordinate any works if necessary.

Site Contamination

Section 147(17) of the ROP requires that, prior to the Region or Local Municipality considering any development application proposal, the proponent undertake a process to determine whether there is any potential contamination on site, and the steps necessary to bring the site to a condition suitable for its intended use. Regional Staff offer the following comments and conditions in review of a Phase 1 ESA (February 2018) and Phase 2 ESA (November 2017) prepared by Golder Associates:

Based on results presented in the above-noted Phase 2 ESA, additional environmental investigation is required to delineate the source of contamination, and from a remediation/risk assessment perspective, before filing for an RSC.

- The Phase II ESA report (referenced above) is only a preliminary investigation; it was not done to satisfy the requirements for RSC. It was not done in accordance with O.Reg 153/04 because of limited access given the fact that the site is fully built up. Under current conditions, a proper Phase II ESA cannot be completed. Full or near full demolition of the buildings on site is required for the appropriate equipment (drill rigs) to be able to access the site.
- With regards to permit requirements, from the perspective of contaminated sites only, we have the following observation: the Building Code Act Section 8.1 and 8.2 require that building permit be issued before construction can commence and that the proposed building/construction complies with Applicable Law. Under Section 1.4.1.3 Building Code, applicable law includes Section 168.3.1 of the EPA which prohibits construction of a building to be used in connection with a specified change of use of a property unless an RSC has been filed. However, a building permit can be issued if the only construction authorized is limited to excavation and shoring, and activities necessary for purpose of filing an RSC (Section 12 - O. Reg. 153/04). Under Section 8 (3) Ontario Building Code Act a conditional building permit can be issued by the chief building official of the municipality under certain conditions. The text of most relevant regulation is quoted at the bottom of this email for your reference.

In correspondence with the site contamination QP, Regional Staff and the QP agree on the mandatory RSC requirement for the subject lands. Furthermore, some demolition and excavation is necessary for the completion of a Phase 2 ESA and filing of an RSC. Regional Staff recommends that a Holding 'H' symbol and any other appropriate safeguard provisions be placed on the zoning of these lands to restrict development until such time as a Record of Site Condition (RSC) has been submitted, and until such time as all environmental site conditions have been met for the intended use. A condition speaking to this requirement is included below.

Regional Waste

Regional Staff note that a Waste Management Report was not submitted with the application. It appears from the Site Plan (Graziani & Corazza Architects, Jan. 17/18) that there is a loading and underground entry area which may permit Regional waste collection vehicles to enter the site. At the site plan stage, a Waste Management Report will be required to demonstrate how waste will move within and off the site. Please reference the Region's Development Design Guidelines for Source Separation of Solid Waste when preparing the Waste Management Report. As a note, site-specific zoning may be affected by Regional waste management requirements for overhead clearance, truck turnaround radii etc.

Finance

As a note, the Owner will be required to pay all applicable Regional development charges in accordance with the Region of Halton Development Charges By-law(s), as amended. In addition, commencing January 1, 2017 every owner of land located in Halton Region intended for residential development will be subject to the Front-ending Recovery payment. Residential developments on lands located in Halton Region that prior to January 1, 2017 are part of a Regional allocation program, or have an executed Regional/Local Subdivision or consent agreement, or have an executed site plan agreement with the Local Municipality, or received a notice in writing from the Local Municipality that all requirements under the Planning Act have been met, or obtained a building permit, are not subject to the Front-ending Recovery Payment.

The above note is for information purposes only. All residential development applicants and every owner of land located in Halton Region assume all of the responsibilities and risks related to the use of the information provided herein. Please visit our website at www.halton.ca/developmentcharges to obtain the most current development charge and Front-ending Recovery Payment information, which is subject to change.

Conclusion

As noted above, Regional Staff are of the opinion that the proposed Local Official Plan Amendment and Zoning By-law amendment will conform to the PPS and Places to Grow Plan. Staff are also of the opinion that from a land use planning perspective, the proposal appears to be appropriate for the subject property and in the area in question, once contamination issues have been resolved. Regional Staff therefore recommend that the approval of the Zoning By-law Amendment application should be subject to a Holding 'H' provision until such time as the Region of Halton's Contaminated and Potentially Contaminated Sites requirements are addressed. The following Holding provisions should be included in the Holding 'H' Zoning for these lands:

1. That prior to the Holding 'H' Symbol being lifted, the Owner satisfies the Region of Halton's Protocol for Review Contaminated and Potential Contaminated sites by submitting a Letter of Reliance for the Phase 1 and Phased 2 ESA, and a Record of Site Condition or a MOECC approved Risk Assessment, to demonstrate that the lands are suitable for the intended use, to the satisfaction of Halton Region.

In accordance with Halton Region By-law 17-99 and the above noted review of the proposed official plan amendment application, it appears that this application will not be exempt from Halton Region approval until a Phase II ESA is provided and a RSC submitted, both of which are to be to the satisfaction of the Region. Please forward the draft report and proposed amendment with recommendations to Halton Region at least 12 days prior to the presentation of the

report to City Council, as per the requirements of the by-law. A position on the LOPA will be provided when Regional Staff is in receipt of the draft City staff recommendation report and Notice of Public Meeting.

I trust these comments will assist you. Should you require additional information, please do not hesitate to call me.

Sincerely,



Brian Hudson, MCIP, RPP

Senior Planner

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