

September 23, 2019

City of Burlington
426 Brant Street
PO Box 5013
Burlington, Ontario L7R 3Z6

Attn: Mayor Meed Ward & Members of Burlington Council

Re: Construction and Mobility Management Policy (CW-27-19)

HHHBA is aware that the City of Burlington has recently released the Construction and Mobility Management Policy, which dictates the requirements for developers in submitting a site's Construction and Mobility Management Plan (CMMP). The Policy, which was presented to the Committee of the Whole on September 9, 2019 and will be before Council on September 23, 2019, requires that developers provide a CMMP for approval with *every development application*, in the hopes of regulating the construction and mobility impacts that result from land development. The intent of the plan is to minimize the impacts of land development on sidewalks and roads; however, in doing so, it imposes strict controls on developers when it comes to the closure of public roads and sidewalks for their projects.

The CMMP is already a typical requirement of the Site Plan approval process. The City has indicated that the new guidelines will now require far more detailed information at the initial planning stage, be applicable to every development application, and includes a fee. A CMMP identifies how construction activity will be planned so that any disruptions to surrounding communities in terms of sidewalks, cycling, parking, streets, etc. can be effectively mitigated pre-development, covering the project from demolition, to excavation and construction stages.

According to Staff Report CW-27-19, the goal of the Construction and Mobility Management Policy is to:

- Minimize impacts to sidewalks, cycling facilities, parking and streets during development projects;
- Create a level of consistency in the review and approval of proposed developments;
- More effectively manage multiple developments, especially those near one another, while maintaining an active community for those residents and businesses nearby; and,
- Coordinate private development and planned construction by the City, Region of Halton, and Utility companies in the road allowances.



The Policy requires that developers submit a CMMP for approval with *every development application*. Concerns that have been identified by City staff that will need to be incorporated in a CMMP include:

- Public safety, amenity and site security;
- Operating hours;
- Noise control;
- Air and dust management;
- Stormwater and sediment control;
- Waste management;
- Traffic management;
- Loss of parking;
- Site-generated parking demands; and,
- Construction schedule.

The Association is appreciative of the fact that City staff recognize that on any development in the City, impacts will occur, and we understand the need to effectively manage and mitigate those impacts. This said, HHHBA has some concerns about several items within the Policy outlined in CW-27-19, and request that Council will consider and address these concerns prior to approval of the proposed document.

After the review of the staff report, HHHBA comments are as follows:

Policies or Guidelines?

The title of report CW-27-19 and the Staff Recommendation identifies a new policy for the City; however, the purpose section of the report contradicts this by calling them guidelines. City staff state that they are trying to establish a standard process for review and approval of developments, however this is problematic as no two developments are the same and each project is unique in their own rights. By definition, guidelines are general, non-mandatory recommendations. Guidelines usually provide a general overview and may be used in situations where no specific policy or standard applies. Comparatively, policies are formalized statements and unlike guidelines, policies are enforceable and mandatory.

In the Strategy/Process section of the staff report, we would like to bring attention to the first paragraph, which states: “the primary purpose is to establish **guidelines** for the approval and management of construction activities associated with land development,...This **policy** will enable Capital Works and Transportation Services to regulate construction activities...”. Further, Appendix A then states “the intent of the Construction and Mobility Management **Policy**” is to establish new **guidelines** for the approval and regulation of construction activities...”. Again, there is no clarity as to whether this report and Appendix A will constitute a policy or guideline. Schedule A to Appendix A then proceeds to provide the Construction and Mobility Management **Policy**, however the title of the document being “Construction and Mobility Management **Guidelines**”. There is a significant difference between a policy and a guideline, and City staff must clarify which the document is purported to be.

Fees

The recommendation of report CW-27-19 requests that the Director of Transportation include the applicable fees in the City’s Rates and Fees By-law to support the CMMP Policy proposed in the report. This is problematic, as fee amounts are not included in the report. The types of fees and amount of the fees are not identified. The association recognizes that a new fee structure may need to be developed to charge developers for the activities

included within the submitted CMMPs, however it is unreasonable that Council be asked to approve a fee for these plans without any indication of what that fee may be. In addition, there is also no clarification as to whether the fee is to be cash or letter of credit.

Under Financial Matters, it is explained that the fees will be based on the type of temporary occupancy required, the duration of the occupancy, and cost recovery for lost revenue due to the loss of City parking spaces. It also suggests that developers may be required to compensate local businesses in relation to the Downtown Parking Levy. If that suggestion is in fact going to be an aspect of the fee schedule for a CMMP, it will undoubtedly have a negative impact on the affordability of new housing and put further pressure on the development industry to keep the costs of new housing at an affordable level. Finally, the report indicates that more staff may be required to administer the review, approval and inspection of CMMPs; the need for any additional staff should not be at the burden of developers and taxpayers when a CMMP is already a regulatory aspect of the site plan approval process.

Timing & Requirements

The report indicates that CMMPs will be required to be submitted with *every development application*, suggesting they are no longer solely for a site plan application. HHHBA is of the opinion that limiting these to the site plan approval process is a far more reasonable approach and its submission should not be inclusive of Official Plan or Zoning By-law amendment applications. OP and ZBA's relate specifically to the use of the land, and not the specifics of a development. It is impossible to have knowledge as to the construction requirements of a potential project when a land use has not yet been established and approved for a site. The City is also requiring that a CMMP be coordinated by the applicant with all utilities, the City and the Region of Halton, from the outset of the project. As City staff are surely aware, obtaining comment and coordination from external agencies is an onerous and often inhibiting task. This will severely impact the timing and movement of a potential project, before a definitive development has even been established. Comment from external agencies is an integral aspect of any development application approval, and therefore requiring this at the outset of a project is unreasonable and a duplication of efforts. A submission often changes multiple times throughout the approval process, and therefore the timing of the submission of a CMMP (that being at the first submission of any development application) will be an inefficient use of the already limited staff resources at the City, Region and utility companies prior to the principle of a development being established.

Under Schedule A, the General Requirements indicate that a pre-submission consultation is required to be undertaken by the applicant, in which City staff will identify constraints and restrictions including emergency access and sidewalks or road closures that may not be permitted. It is unclear whether this pre-consultation is separate from or inclusive of the standard pre-consultation necessary for standard development applications. This could potentially form an additional layer of consultation and plan/study preparation before an application is even considered complete. Again, this is premature, as a development is modified throughout the planning approval process.

The Construction Management section lists several items of information that are necessary to be provided in the CMMP. While many of these requirements are standard, there are some requests that are significantly onerous and include information that cannot feasibly be confirmed during the initial pre-development stage. It is not reasonable to ask for some of these items as they cannot be accurately provided until the principle of the development has been established. The wording of the report gives reason to believe that should the CMMP not

be deemed sufficient or approved at pre-submission stage, that a development application will not be deemed complete. As mentioned, several of the items requested are not able to be provided at the requested point in the development process and it is expected this will incur significant hindrances to the development process rather than efficiencies. HHHBA requests clarification as to whether the submission of a CMMP and its required contents at the first submission point will have the ability to prevent an application from being deemed “complete”.

Developers will be required to obtain clearance letters from adjacent landowners for any encroachments, which must be submitted at the time of first submission. This requirement puts developers in a potentially unfavourable position from the outset of a project, as typically a developer would not require an adjacent landowner to co-operate this early in the process and allows the opportunity for controversy and community pressure before the specifics of a development have even been established. A road occupancy permit is also required to be obtained from Transportation Services prior to construction beginning; this creates yet another duplication in the process as these could be obtained at the point of an encroachment agreement.

Several of the Additional Requirements go beyond what are typical requirements of a standard development application process and are over the top and unnecessary, such as a construction website being created prior to a project being approved. The timelines for the ‘additional requirements’ are also not explicitly identified. Some of the information requested cannot possibly be predicted prior to the approval process getting underway.

Other matters

The report states that the City engaged with HHHBA and a copy of the “guidelines” had been provided for comment. HHHBA Staff were not consulted on the items included within this report. Appendix A states that the Executive Director of Capital Works and the Director of Transportation Services are responsible for the administration of the policy/guidelines, and both the Executive Director and Director are authorized to amend or revise the policy requirements and/or guidelines from time to time, provided that the policy amendments or revisions are in a form satisfactory to the City Solicitor. This is concerning, as this tells us that at any time City staff at their discretion can change the policy/guidelines without notice. Again, clarification is necessary as to whether these are policies or guidelines. The report identifies that the current City practice which considers construction plans at site plan approval stage is inadequate as the City should know from the start whether a project can be constructed or not. This leads us to believe that there may be projects that could be deemed incomplete or un-constructible prior to the process for planning approvals being undertaken, which removes the opportunity for proper discussion and cooperation to be had between staff and developers.

Thank you for taking the time to consider our comments and requests. We hope that the information in this letter can be contemplated prior to making an approval decision on staff report CW-27-19. We look forward to receiving further updates on this matter as more information becomes available.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Suzanne', with a stylized flourish at the end.

Suzanne Mammel, MBA CET
CEO, Hamilton-Halton Home Builders' Association