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Delivered by Email

City of Burlington
426 Brant Street
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Attention: Kevin Arjoon, City Clerk

Dear Mr. Arjoon, Mayor Meed Ward, Members of Council and City Planning Staff:

**Subject: Taking a Closer Look at the Downtown
PL-16-20 & Proposed New Official Plan Policies for Downtown
Burlington Urban Growth Centre
535 – 551 Brant Street**

Renimmo Properties Limited is the owner of property including 535 - 551 Brant Street, within the City's Urban Growth Centre. Thank you for providing us an opportunity to respond to and comment on the revised official plan policies being recommended by City staff through Report PL-16-20 and the planning process.

While the City of Burlington has been reviewing its Official Plan for many years, the review commenced in earnest in January 2016 with the terms of reference/work plan being approved by City Council in August 2016. City staff clearly indicated to Council that this planning effort is focused on not only satisfying existing well-established Provincial planning policies but to implement the City's Strategic Plan. The existing Urban Growth Centre is recognized as the City's primary intensification area.

The recommended policies fail to recognize and implement the existing policy framework established by the Province of Ontario as contained in the Provincial Policy Statement, the Growth Plan, the Housing Action Plan and the Region of Halton Official Plan. The City of Burlington cannot ignore the potent and binding nature of the Provincial Plans and policy. Compliance with Provincial policy and the Growth Plan is mandatory. Municipal Councils are bound by Provincial policies and plans that are both "omnipotent and omnipresent".

Therefore, as the policies being proposed for the downtown and the City as a whole fail to satisfy the test noted above, we are unable to support the policies as currently constituted and proposed. These policies fail to implement Provincial and Regional policy and do not represent good planning.

General Overview:

The following provides a general overview of the ongoing, complicated and orchestrated process that the City has specifically and intentionally undertaken to frustrate and delay the redevelopment of the City's only Urban Growth Centre.

Further to the commencement of the work plan for a new OP in 2016, a number of open houses and community engagement efforts were undertaken by the City although consultation with the building industry was limited. At no time during this public process was the public advised that the City's OP must satisfy and implement well-established Provincial policies and plans. Consequently, and with all due respect for City staff (many of whom are no longer with the City), the public had a dramatic and undue influence on this planning initiative. The City's failure to embrace and implement Provincial policy and plans comes with great risk. Notwithstanding the ongoing controversy inherent in the process, we provided correspondence and brought forward our concerns at HDLC meetings and through additional meetings and discussions with City Planning staff.

In March 2017, City Council considered PB-01-17 in conjunction with the first draft of the new official plan. This original draft did not contain specific land use policies for the downtown and it was indicated that the detailed policies would be developed through a subsequent Area Specific Plan project for all of the "mobility hubs" – including the downtown.

The new Official Plan was considered by City Council in April 2018. Further to a number of amendments that were made on the Council floor at the last minute and in the absence of analysis by City staff and public consultation regarding the proposed modifications, the Plan was adopted at that time and was forwarded to the Region of Halton for approval.

Further to the submission of the adopted OP to the Region, on December 18, 2018, the Region of Halton identified four specific areas of concern that would be required to be addressed prior to Regional approval being considered. None of the Region's concerns related to the proposed

policies for the downtown. However, in February 2019, the new City Council added a new consideration to the list – re-examine the policies for the downtown, the City's only Urban Growth Centre. This was a conscious, deliberate and discretionary decision that this Council made based on what we believe to be a fundamental and serious misunderstanding of Provincial and Regional policy and plans.

Three months later in March 2019 and with no warning or communication with the building industry, City Council passed an interim control by-law ("ICBL") to freeze development within the Urban Growth Centre (the City's primary intensification area) and the area in the vicinity of the Burlington GO Station lands. Council rationalized the freeze by indicating that it needed time to:

- Assess the role and function of the downtown bus terminal and the Burlington GO Station as Major Transit Station Areas, including assessing the existing and long range planned transit service for the Study Area and the connections between the two respective MTSAs;
- Examine the planning structure, land use mix, and intensity for the lands identified on Schedule 'A' of Appendix A; and,
- Update the Official Plan and Zoning By-law regulations, as needed, for the lands identified on Schedule 'A' of Appendix A.

City Planning was requested to immediately initiate and complete a land use study for various lands including significant portions of the downtown, the Brant Street spine from Lakeshore Road up to the Burlington GO Station lands and the areas in the vicinity of the Burlington GO Station lands. While the City's primary intensification areas were included in this freeze, the analysis to be completed excluded the preparation of new planning policies for certain areas such as the "Old Lakeshore Precinct", located to the east of Brant Street and Lakeshore Road. It was indicated that an analysis of this area would be undertaken separately in the future. Notwithstanding this, the City has indicated that no planning comments will be provided on applications within the Old Lakeshore Precinct due to the freeze.

City Council rationalized its decision to implement a freeze based on an erroneous perception that there is extreme development and redevelopment pressures within these areas and that areas like the Old Lakeshore Precinct would be subject to further and separate analysis.

As a result of the ICBL, City staff were directed not to provide any planning comments on any applications within the ICBL study area until

such time as the ICBL has been lifted. Although planning applications could be processed up to and including the point of the statutory public meeting, planning comments or recommendations are restricted until such time as the ICBL has been lifted. The freeze also impacted the Committee of Adjustment as minor variance and severance applications cannot be considered without an exemption being granted by Council. In this regard, City Council indicated that it would not grant any exceptions beyond a handful applying to projects that had been previously approved in principle.

To assist City Planning staff with the work related to the ICBL and the review of the policies for the Urban Growth Centre, the City of Burlington hired a team of consultants to prepare a number of studies that relate to future growth requirements in the downtown including traffic, the environment, planning, urban design and economics. We understand that the consultant costs for this work amounted to more than \$600,000.

In June 2019, a "Growth Analysis Study" was completed by Dillon Consulting for the City of Burlington and was made available to the public in August 2019. While we may disagree with a number of the findings in this report, there is one thing that we all agree on - *"the downtown will continue to play a significant role in accommodating future residential and employment development opportunities"*.

As the City's work related to the ICBL continued, in December 2019, Dillon Consulting prepared an additional report – "Interim Control By-law Land Use Study". This report focused on providing the City with policy and zoning recommendations to be applied to the ICBL planning area and focused on the appropriateness of the MTSA/Mobility Hub designation applied in the Region's OP to the Downtown Mobility Hub/MTSA planning area, including the role and function of the downtown bus terminal and other related matters. While the findings of this report have been interpreted in many different ways, insofar as the downtown is concerned, the existing downtown bus station was identified as underperforming not because of its location or lack of connectivity with "higher order transit" but rather based on a long history of neglect and the City's inability to plan for, advance and promote a convenient, reliable and affordable City transit system that not only connects the downtown to the Burlington GO Station but all parts of the City.

As noted above, Dillon indicated that it expects *"the downtown will continue to play a significant role in accommodating future residential and employment development opportunities"*. Notwithstanding this recognition, there are no policy or zoning recommendations included in

the report that apply to land use or density in the downtown, as the report is focused on land supply, growth trends and in some ways future growth potential. The consultant did not recommend the removal of the MTSA designation from the bus station and the surrounding lands, but rather provided options. The easiest of those options being the removal of the Mobility Hub/MTSA designation – a designation that is intended to support and help implement the Urban Growth Centre policies established by the Province of Ontario.

On December 5, 2019, the City's planning and urban design consultants hired to assist the City develop "updated" policies to the adopted OP presented at the City's Planning and Development Committee. Through the presentation and the questions and answers, several serious planning matters were identified. These matters include: a proposed reduction to the size of the Urban Growth Centre (11%) that results in an artificial density increase, a number of very contentious urban design policy concepts, reduced density for many properties and an acknowledgement that more growth is required to be accommodated within the Urban Growth Centre to satisfy minimum Provincial requirements by 2031. The City's consultant was asked if meeting a minimum population and employment density target is enough to satisfy Provincial policy. In response, the consultant indicated that if you play a numbers game, you will lose every time and that such an approach is not appropriate. Through the question and answer period, it appeared to be evident that members of the Committee were of the impression that newly approved policies could also be retroactively applied to existing applications.

On January 14, 2020, the Committee considered staff report PL-01-20 and proposed an Official Plan Amendment (OPA 119) and zoning by-law 2020.418 to implement the results of the ICBL studies. Amongst other things, City staff recommended a reduction in the size of the existing Urban Growth Centre (11% - as noted above). City staff presented OPA 119 (a proposed amendment to the existing Official Plan) and zoning amendment 2020.418 to Council for approval. To be clear, OPA 119 and by-law 2020.418 were intended to address land use planning policy within the downtown. The curious result of the City's ICBL work is that neither OPA 119 nor by-law 2020.418 provide land use policies for the Urban Growth Centre. The ICBL was intended to give the City time to review the land uses downtown and respond accordingly. However, rather than receiving recommendations from City Planning staff regarding land uses, the proposed policies attempt to rationalize only an urban structure that is focused on an urban structure that includes a smaller UGC and a downtown MTSA.

For numerous reasons, both OPA 119 and by-law 2020.418 were appealed by various interested parties and affected landowners – over 30 appeals were received in February 2020.

In April of this year, the Minister of Municipal Affairs, the Honourable Steve Clark, advised that City of Burlington and the Region of Halton that there are no Provincial requirements for the designation of the downtown MTSA and that it's designation in the Region's Official Plan could be removed, if so desired. Please note that the Minister did not recommend the removal of the downtown MTSA but left the door open for the City and Region to act as they may see fit. To the best of our knowledge, until August 2020 through Council's consideration of PL-33-20, there has never been a City of Burlington Council motion requesting the Region of Halton to remove or consider removing the downtown MTSA designation.

In July 2020, staff report PL-16-20 and a series of new reports related to the reconsideration of the new planning policies being proposed for the downtown were released to the public for review. It must be noted that for the most part, the new OP policies that have been provided are focused primarily on built form and not land use. In addition, at the time of writing this letter, the information that has been made available does not include the financial analysis and draft urban design policies for the downtown as originally expected. We have been advised that the financial analysis and the draft urban design guidelines will be released very shortly. As such studies are very specialized and detailed, we will not be able to comment on these matters during the timeline established by the City of Burlington.

We have reviewed much of the available material and have several significant preliminary concerns, including the following:

- While the Final Report from SGL Planning & Design Inc. recognizes that "the Downtown is identified in the Region of Halton Official Plan as a Major Transit Station Area (MTSA) due to the location of the Burlington bus terminal within an Urban Growth Centre (UGC), the UGC is not identified as being the City's primary intensification area.
- Many of the urban design policies are arbitrary and unjustified. For example, the City is proposing policies that require the tower component of high-rise buildings to be setback a minimum of 20m from the front façade of the podium.
- The proposed policies do not accommodate the redevelopment and intensification of 535-551 Brant Street.

- New City park requirements have been identified but have not been justified.
- Block Plan policies need to be further refined. Although Block Plans are considered by the City to be non-statutory planning documents, the proposed Block Plan policies and their implementation over-reach the City's planning approval authority.
- A new height schedule (D-2) proposes maximum height limits for individual properties within the UGC that have not been justified.
- The tallest buildings are being proposed primarily in the Upper Brant Precinct based on an assumption that tall buildings are most appropriately located within or closer to the Burlington GO Station.
- The planned significance and the role and function of the UGC is diminished.
- We disagree with the minimum separation distance policy requiring a minimum of 30m between tall buildings is appropriate. The 30m minimum is arbitrary and fails to reflect the urban context of the UGC which further diminishes the optimization of land and infrastructure.
- Planning policies fail to encourage an enhanced role and function for the Downtown bus terminal that has been ignored, regardless of whether a MTSA designation applies or not.
- The amount of growth and redevelopment that the UGC will need to accommodate by 2031 to reach the minimum population and employment density target (200/pj/ha) has been incorrectly determined.
- The City of Burlington and the Region of Halton do not have the planning authority to reduce the size of the UGC (11%) to eliminate Spencer Smith Park and related lands. The proposed removal of Spencer Smith Park and related lands artificially increases the density within the UGC such that the amount of new growth that is required to satisfy the minimum Provincial requirement is incorrectly calculated.
- The economic feasibility of projects has been disregarded by many of the proposed policies.
- The requirement that all new buildings be mixed-use and include non-residential uses will over-saturate the market.
- The demand for increased demand for new retail and office space in the Downtown Core area has not been demonstrated.
- Policies requiring second floor office development might discourage reinvestment.
- Mixed-use requirements in mid and Highrise buildings appear to adversely impact housing affordability.

Based on the discussion the Committee had at the August 11, 2020 meeting with both Heather MacDonald and Curt Benson from the Region of Halton, it appears that the City of Burlington has engaged in unspecified discussions with the Region of Halton and the Ministry of Municipal Affairs and Housing regarding the existing Urban Growth Centre designation and potential adjustments to its boundaries and a phased Regional OP approval schedule with the Province. At no time has the public or any stakeholder been advised or provided with any information or mapping to indicate what is being considered or proposed. We understand that no mapping is available from the City of Burlington.

During the consideration of staff report PL-33-20 at Committee on August 11, 2020 and Council on August 24, 2020 and based on comments from the Region of Halton leading up to August 24, 2020, it was abundantly clear that the Region of Halton had already commenced a review of the UGC and MTSA designations that apply to the downtown. The Executive Director of Planning indicates in PL-33-20 and through discussion with Committee and Council that the UGC (as currently constituted) has served its original role and purpose and it is time to "move on". The Region of Halton has indicated that the removal of the MTSA designation from the downtown and a potential "adjustment" to the boundary of the UGC would be considered through the Region's ongoing IGMS process.

Through PL-33-20, staff have suggested that the existing Urban Growth Centre designation for the downtown has "served its original intended purpose". City staff have been directed by Council to provide the Region of Halton with all related planning studies and background information that supports an adjustment to the Downtown Burlington Urban Growth Centre boundary. During the many years of ongoing planning studies that formed the basis for the preparation of the new Official Plan, we are not aware of any reports or analysis that has been completed by the City of Burlington or its consultants that recommends or rationalizes an "adjustment" to the boundaries of the Urban Growth Centre. Discussions have occurred regarding the potential removal of Spencer Smith Park from the UGC but this has not been supported or rationalized by any analysis completed by the City of Burlington and the Region of Halton.

Notwithstanding the requests included in our letter of August 10, 2020, the recommendations included in PL-33-20 were referred to and approved by Council on August 24, 2020. Through the motion that City Council approved on August 24, 2020, a conscious decision has been made to pursue an unidentified "adjustment" to the boundary of the existing UGC in the absence of any public engagement and without supporting planning analysis.

In addition, even though there are no new land use policies being proposed for the UGC through OPA 119, the City has yet to repeal this official plan amendment and the redevelopment and intensification within the UGC remains frozen.

Conclusion:

As demonstrated above, the City of Burlington appears to have purposely and willingly orchestrated a planning process that not only ignores fundamental and mandatory Provincial policy requirements but also ignores the long-term investment that has been made in the community. These investments have not only been made by the private sector. Through the approval of ROPA 38, the Region of Halton has confirmed that adequate services and facilities are available in the downtown Burlington to accommodate and encourage cost-effective, transit support and climate sensitive intensification within the UGC in accordance with omnipotent and omnipresent Provincial policy.

Therefore, we oppose the planning policies being brought forward and request that OPA 119 be repealed insofar as it relates to lands outside of the Burlington GO Station lands.

Please notify us of any future Committee and Council actions regarding this matter.

Yours truly,

Renimmob Properties Limited



Gerald Asa

c.c. Mayor, Marianne Meed Ward
Members of City Council
Tim Commisso
Heather MacDonald
Jamie Tellier
Scott Snider