



November 25, 2020

Members of City Council
City of Burlington
426 Brant Street
Burlington, ON
VIA EMAIL ONLY

Dear Mayor Meed Ward and Members of Burlington City Council:

RE: TAKING A CLOSER LOOK AT THE DOWNTOWN AND BURLINGTON OFFICIAL PLAN

Niagara Planning Group (NPG) Inc. (NPG) has been retained to provide independent professional planning advice regarding the Burlington Downtown Plan, the Burlington Official Plan and the forthcoming report on the Region of Halton's proposed modifications as they related to properties known as 789 and 795 Brant Street in the City of Burlington. The current owners of 789 and 795 Brant Street have a binding offer of purchase and sale on the two properties. We have previously corresponded with the City and the Region on behalf of the current owners. Please be advised that we have been retained by Brant Investment Holdings Inc. (Ontario Corporation 002794457) – the prospective purchasers of these properties. This submission is provided on their behalf and the commentary in this letter reflects the outstanding concerns on the City's plans with regard to Brant Investment Holdings Inc.

There are unresolved issues related to the City's report, proposed changes to the Official Plan and our client's property. We reiterate these issues and concerns on behalf of the purchasers of 789 and 795 Brant Street.

Issue 1: Upper Brant is a Focus for Higher Density Growth.

We are supportive of the recommended density and height provisions for the Upper Brant Precinct. The Upper Brant Precinct is within 800m of the Burlington GO MTSA making it a key area for higher density development; the width of Brant Street in this location supports higher density and height; and the area is walkable to the Burlington GO MTSA. The pre-ambles to the Upper Brant Policies implies this approach by the City; however, the policies themselves do not incorporate wording that reflects the City's approach to growth. Consequently, we request the following be added as new Policy a):

a) The Upper Brant Precinct is a transit-oriented development mixed use community.

Issue 2: Permitted Uses

The policy outlining the list of permitted uses the word “may” in its text. This wording should be changed to state what the permitted uses are within the precinct. The “may” wording implies that there are policy tests or approaches that will determine what will be permitted at some future state or point in time. Land uses should be permitted and listed. It is not clear how conformity to the permitted uses will be determined.

Issue 3: Flexibility in Design Standards – Setback from Brant Street

In both the Upper Brant Precinct policies and the Placemaking Guidelines, some flexibility has been provided in the setbacks from Brant Street. This was included at the request of Council after a previous submission by our clients in January of this year. The wording, however, is insufficient to address the concerns we identified. We undertook a detailed analysis of the City’s setback policies in the downtown plan. We can advise:

- The site can implement all elements of the City’s Tall Building Guidelines. This results in a tower floor plate of just over 700 m².
- With the proposed policies for the setback from Brant Street (3 storeys for the first 20m), the tower floor plate is reduced to just over 400m², reducing the housing units in the building.
- The impact of this reduction based on the setback requirements also pushes the tower closer to the 8-storey apartment building to the east on Prospect Street.

We believe revisions to the policies generally and as they specifically apply to our client’s lands are required. We note:

- The Upper Brant precinct is described as a transit oriented walkable community close to the Burlington GO MTSA (and potentially Urban Growth Centre). This is where the City is planning for both height and density to occur.
- Within the Upper Brant Precinct, the City’s policies reference protection of adjoining low-density residential areas and the focus for land use compatibility. Our client’s lands are not adjacent to low density residential areas; our client’s lands are adjacent to lands designated Medium and High Density Residential on Schedule C of the adopted Land Use Plan in the City’s new Official Plan. The lands between Ghent and Prospect, on both sides Brant Street, all are adjacent to Medium and High-Density Residential lands. Within the Upper Brant Precinct, these blocks between Ghent and Prospect are the only lands that are not adjacent to low-density residential areas.
- The City’s goals are clearly to place the tallest buildings with significant density in the Upper Brant Precinct because it is walkable and transit oriented to higher order transit.

This is balanced with goals of protecting low-density residential areas. Yet the setback policy effectively reduces what can be achieved in terms of housing in an area where there is no low-density residential areas adjoining the higher density designated lands in the Downtown Plan.

- The wording the City is using in the description of flexibility is an improvement however still insufficient. The response in Appendix 21 to the previous submission indicates that the flexibility “may be considered through the review of development applications that could provide the considerations that could be relevant in determining the contextually appropriate setback”. The only consideration in the downtown plan is the width of Brant Street as a potential for reducing the setback. What is not clear is what other considerations will be assessed in how the “flexibility” will be determined. We believe the following reasons substantiate a reduced setback to be provided for our client’s lands in the current plan:
 - The width of Brant Street;
 - The size of the two properties (0.5 acres combined);
 - The location of the properties as they are within 800 m of the Burlington GO MTSA;
 - The adjoining land use designations as Medium and High-Density Residential;
 - The Urban Corridor designation in Schedule C of the adopted Official Plan (north of our client’s lands) is also compatible with higher density development on our client’s lands;
 - The lands are on an existing Burlington Transit route that provides service to downtown Burlington and Burlington GO.

We therefore request the following:

- i. The reference to “flexibility” in the added preamble paragraph (2nd paragraph in Upper Brant Precinct) be changed from “flexibility may be considered” to “flexibility shall be considered ...”.
- ii. The following wording revisions be made to Policy f) recognizing that our client’s lands are not adjacent to low-density residential areas and recognizing that greater flexibility is required (please see strike throughs and bolded text for additions).

Buildings *abutting* Brant Street *shall* incorporate a setback above the third storey to provide a low-rise feel for pedestrians along Brant Street. The setback ~~should~~ **may** be similar to the 20 m setback in the Brant Main Street and Mid Brant Precincts, but flexibility **reductions** in the setback ~~may shall be considered~~ **required** through the review of *development applications* due to the wider Brant Street right-of-way in this precinct, **to achieve the goals of height and density on Brant Street between Ghent and Prospect**, and in order to provide a transition to the adjacent Residential-Low Density designations, shown on Schedule C: Land Use –

Urban Area, of this Plan, as required in 8.1.1(3.8.1) g). Direction on the form of the step-back will be provided in the Downtown Placemaking and Urban *Design Guidelines*. **It is recognized that the lands on Brant Street between Ghent and Prospect are adjacent to lands designated Medium Density and High Density Residential on Schedule C: Land Use-Urban Area.**

- iii. The setback be reduced to 5 m for the 3-storey height from Brant Street for our client's properties as a site-specific policy.

Issue 4: Tower Separation

We note that the City is proposing to increase the setback between tall buildings from 25m to 30m. The proposed 30m setback between towers does push the building placement further north on this site. Given the property ownership, property configuration, and our general comment above, the 15m setback could be adjusted to align with the City's Tall Building Guidelines of 12.5 m setback.

It is important to recognize that whether the separation is 25m or 30m, there will only be two redevelopment projects in this section of Brant Street because of the property configuration and ownership patterns. There is simply not enough property to add a 3rd tall building with the tower separation requirements. While the SGL Report recommends reductions in the 30m separation if there is a road intervening between towers, given the property, ownership and site circumstances, a reduction to 25m is appropriate.

It is our request that the tower separation be 25m for our client's properties as a site-specific policy.

Issue 5: Residential Lobby Access

Policy d) in the Upper Brant Precinct stipulates that the residential lobby in mixed use buildings will be accessed from a side street or from the rear of the building. Our client's lands do have frontage on Prospect Street so lobby access could be provided from Prospect. However, access from the rear of the property is not appropriate and this wording should be removed. Principles of "eyes on the street" and Crime Prevention Through Environmental Design (natural surveillance) are very important. For our client's lands, rear access to the residential lobbies to one future building would put this access in between two higher density buildings and off of a parking area. There will be few eyes on the street and very little natural surveillance. This policy should be deleted for the safety of future residents and the community.

Issue 6: Transition Policies

We note that the transition guidelines introduce new requirements not found in the Upper Brant Precinct (Policies 8.1.1 (3.19.4)). The Upper Brant Precinct only requires transition to the low-density areas/designated areas. As a reminder, the subject properties are adjacent to Medium Density and High-Density designations in Schedule C. These policies should not apply to the subject properties.

Issue 7: Placemaking Guidelines

The Placemaking Guidelines carry forward the principles in the proposed downtown plan. Our comments on the Placemaking Guidelines are as above in this letter. One issue we want to stress is that the Placemaking Guidelines reference spatial relationships to low-density residential areas (e.g. Guidelines 3.4.3 and 3.4.4). Our client's lands are not adjacent to low-density residential areas – the adjoining areas are Medium and High-Density Residential areas with these designations on Schedule C of the City's adopted Official Plan. The two specific guidelines appear not to apply to our client's lands. The drawings as shown in the Placemaking Guidelines are adjoining low-density residential areas south of Ghent Avenue. Neither the guidelines nor the drawings reflect the planned function and built form of our client's properties so it is our conclusion that these specific guidelines do not apply to our client's lands. We would appreciate confirmation of the City's concurrence with our conclusion.

We can further advise of the following relative to the Tall Building portion of the Placemaking Guidelines:

- There appears to be an inherent conflict between the Placemaking Guidelines for Tall Buildings and the Upper Brant Precinct policies. This is found in the following:
 - Guideline 6.1.1 which speaks to buildings having active frontages at the street yet the policies stipulate residential lobbies to be on side streets or at the rear of the building
 - Guidelines 6.1.3 and 6.1.3 which speak to eyes on the street and entrances focused on the public street yet the policies place residential lobbies at the rear of the building
- Guideline 6.2.3 speaks to transition between existing and planned low-rise and mid-rise buildings. Our client's lands adjoin an 8-storey residential building. The policies in the downtown plan only speak to transition between low-rise precincts and low-density residential land uses. While the policy does not require a specific standard of transition, it is unclear how this will be assessed when the properties are redeveloped in accordance with the Upper Brant Precinct land use designation.
- Guideline 6.2.5 speaks to the 45° angular plane for building however there is no policy on this angular plane in the tall building portion of the Guidelines. It is unclear how or if this will be applied to our client's lands. Yet when reviewed with a plain reading of the

transition policies as outlined in Issue 6, it appears that the City's policies/guidelines may (or may not) apply to our client's lands. To be clear, it is our submission that this provision and the transition policies as identified in Issue 6 should not apply to our client's lands.

- The Mid-Rise Buildings Section contains the following policy:

6.9.2.10 Distances between 15.0-20.0 metres should be maintained between buildings with a height more than 11 **storeys** and buildings that face each other.

This is the circumstance for our client's properties where the adjoining property to the rear is a mid-rise building. We are of the view that this policy applies to our client's properties and the requirement in Subsection 6.9.3.4 of the Tall Building Section (requiring a 15m separation from the property line) is not applicable.

- Guidelines in Section 6.9.3 are significantly problematic for our client's property:
 - Subsection 4 introduces a requirement of a 15m setback from the property line. Our analysis of this requirement, together with the setback requirement from Brant Street, is as follows:
 - The property is 40.6 m in depth from Brant Street. The 20 m setback for the first three storeys together with the 15m setback from the rear property line means there is approximately 5m in depth of property to construct a tall building. The width of the tall building would be approximately 23m creating a tower floor plate of 115 m² or approximately 15% of the maximum floor plate in the City's Tall Building Guidelines.
 - The cumulative impact of the policies and guidelines is such that no flexibility is available. A context sensitive design of a tall building can be achieved for these properties but not with the policies and guidelines the City has drafted. It is not possible to meet all of these policies/guidelines on these properties. The City is increasingly relying on policies and standards with significant reluctance for flexibility. We must advise that this 15m setback cannot be applied with the setback requirements – both cannot be achieved.
 - Subsection 5 stipulates that not all sites may be appropriate for tall buildings. It is our submission that this site is appropriate for a tall building which is the planned function identified by the City in its downtown plan. Yet the City's multiple and, at times, conflicting policies, render these properties undevelopable for a tall building. To be clear, our analysis shows that a context sensitive tall building can be developed on these properties. We need to remind Council that these properties are within 800 m of the Burlington GO Station and are appropriate for more height and density. The City cannot and should not stipulate this provision with policy and then through policy and guidelines eliminate the developability of these properties. This guideline must be deleted

– it reads as the City’s exit strategy from tall buildings in the Upper Brant Precinct.

Consequently, we must advise that the Placemaking Guidelines should not be adopted as currently written given the inherent conflicts in policy, guidelines, and the analysis that shows that the guidelines negate the developability of these lands. Our comments on Issues 2, 3, 4 5, and 6 as identified in this letter also need to be applied to the Placemaking Guidelines. The guidelines are premature.

Conclusion:

The cumulative impact of the City’s policies and guidelines is such that the City is rendering the properties undevelopable in accordance with the land use policy approach for the Upper Brant Precinct – transit-oriented development within 800 m of the Burlington GO MTSA (which is also Council’s preferred Urban Growth Centre). The City cannot identify areas for growth and then render than growth completely unachievable through policy, guidelines, and conflicts between policies and guidelines. We have provided wording changes to the overall policies in this letter which we request the City make prior to adoption.

Consequently, as a result of our analysis, we request that the City implement the transit-oriented density and height of the Upper Brant Precinct through a Site-Specific policy for these two properties, as follows:

- i) The Placemaking Guidelines shall not apply to these properties with regard to Tall Buildings and the 45^o angular plane.
- ii) A maximum 3-storey height of the podium from Brant Street shall be permitted.
- iii) A maximum height of 3 storeys for 5m from Brant Street shall be permitted.
- iv) The separation distance between towers with the adjoining properties to the south shall be 25m consistent with the Tall Building guidelines.
- v) Distances between 15.0-20.0 metres should be maintained between the building to the east on Prospect Street.
- vi) A setback of 3 m to the adjoining property to the rear shall be provided.
- vii) Transition policies in Section 8.1.1 (3.19.4) shall not apply.

Our client’s lands are currently impacted by the City’s Interim Control By-law, which remains in effect. As part of this process, given the City’s zoning by-law 2020.418, we request that Council remove our client’s lands from the Interim Control By-law.

We would be pleased to meet with the City regarding this letter. We request notification of all reports/public meetings/open houses under the *Planning Act* as well as notices of decision by City Council under the *Planning Act*.

Sincerely,



John Henricks, MCIP, RPP
President, Niagara Planning Group (NPG) Inc.



Mary Lou Tanner, FCIP, RPP
Principal Planner, Niagara Planning Group (NPG) Inc.

Copies: Clerk, City of Burlington (for distribution to members of City Council)
Thomas Douglas, MCIP, RPP, City of Burlington
Curt Benson, MCIP, RPP, Region of Halton