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**Delivered Via Email**

Planning, Regulation and Mobility Committee  
City of Burlington  
426 Brant Street  
Burlington, ON L7R 3Z6

**Attention: City Clerk (clerks@burlington.ca)**

Dear Sirs/Mesdames:

**Re: Report Number PL-24-22 – 2020 Lakeshore Road  
File Numbers 505-10/21, 520-11/21**

We are solicitors for Burlington 2020 Lakeshore Inc. in respect of the property known municipally in the City of Burlington (the “**City**”) as 2020 Lakeshore Road (the “**Lands**”). We are writing to provide high level comments regarding the staff report dated April 12, 2020 (the “**Staff Report**”) in respect of the official plan amendment and rezoning applications filed for the Lands (the “**Applications**”).

**Introduction**

It is clear that significant intensification of the Lands is appropriate. City staff recognize that the Lands can and should be developed with two tall buildings. The critical flaw in the Staff Report, however, is the failure to recognize the mandatory direction in Provincial policies to optimize the use of land and infrastructure, compounded by a misapplication of Regional Official Plan policies and a misunderstanding of the surrounding context. Based on the materials submitted in support of the Applications, including the Planning Justification Report, the proposed redevelopment of the Properties with two tall buildings of 35 storeys and 30 storeys appropriately implements the applicable policy framework.

The flaws in the Staff Report suggest that City Council will not have a complete and fair record before it as part of making a decision regarding the Applications. As an example, while the Staff Report quotes policies regarding optimization, the staff analysis does not once use this important policy language, let alone apply it to the Applications. Further, our client is concerned that significant information has been omitted from the Staff Report. While hyperlinks are provided to the materials submitted in support of the Applications, these materials are not before the Community Planning, Regulation and Mobility Committee (the “**Committee**”) or adequately

reviewed in the Staff Report. It is clear that the Committee, and eventually City Council, cannot make a fair, transparent and informed decision regarding the Applications based on the incomplete analysis and record in the Staff Report.

### **Brief Review of Applicable Policy Framework**

The above-noted Planning Justification Report provided a detailed analysis of the Applications and their consistency with the Provincial Policy Statement (2020) (the “**PPS**”), conformity with the Growth Plan for the Greater Golden Horseshoe (2019) (the “**Growth Plan**”) and conformity with the Region of Halton Official Plan. The response in the Staff Report is simply deficient when it comes to addressing this detailed analysis.

#### *(a) The PPS and the Growth Plan*

The Staff Report generally provides that the Applications are not consistent with the PPS and lack conformity with the Growth Plan because of concerns related to the new City of Burlington Official Plan (the “**New OP**”). There are at least three critical flaws in this approach:

1. The New OP is under appeal and not in effect. It cannot be relied upon as a policy framework to guide the appropriate intensity and form of development for the Properties. Certainly, there is no requirement for the Applications to conform with the New OP.
2. The Applications include an official plan amendment. Case law is clear that official plan policies proposed to be amended cannot be used to defeat an official plan amendment application.
3. The test is consistency with the PPS and conformity with the Growth Plan, not conformity with an official plan document let alone one that is under appeal. The approach in the Staff Report relegates the importance of provincial policies to a question of conformity with an unapproved policy document.

The Staff Report compounds these flaws by importing a test of “need” when considering consistency with the PPS and conformity with the Growth Plan. City staff should be well aware that there is no test of need because this argument was previously presented by the City to the Ontario Land Tribunal and plainly rejected.

Strikingly, the Staff Report acknowledges that the intensity of development proposed by the Applications is well-suited to an Urban Growth Centre. However, and as outlined below, the Staff Report errs in its application of Regional Official Plan Amendment No. 48 (“**ROPA 48**”) because the Lands are within an Urban Growth Centre for the purposes of the Applications. By staff’s own logic, therefore, the level of intensity proposed is appropriate and should be approved.

## 2. Regional Official Plan

The Lands are within an Urban Growth Centre for the purposes of the Applications. City staff are simply incorrect when they suggest that the transition provisions in ROPA 48 do not apply to the Applications. The error is that City staff have conflated submission of the Applications with the City's obligation in the Planning Act to notify if the Applications are complete. There is no dispute that the Applications were made prior to the approval of ROPA 48 by the Minister of Municipal Affairs and Housing, meaning that the Lands are within an Urban Growth Centre for the purposes of the Applications.

This approach is also inconsistent with the amount of time taken by the City to undertake the Waterfront Hotel Planning Study (the "**Study**"). Launched in 2017 and funded by our client, the City put the Study on hold in mid-2018. Our client had participated in the Study and waited for the City to re-engage and conclude the Study. Only after it became clear that the City was not proceeding with the Study, our client initiated pre-application consultation rather than incur additional prejudice from the City's delay. It cannot be a coincidence that the City then re-initiated the Study, with a staff report regarding the Study coming forward at the same time. Given that the City is seeking to apply the Study to the Applications despite clear case law to the contrary, and given that the Study was initiated by the City when the Lands formed part of an Urban Growth Centre, the City's interpretation of ROPA 48 seems not only incorrect but inequitable.

## 3. City Official Plan

The analysis in the Staff Report regarding City Official Plan policies, in particular scale, massing, height and transition, ignores significant development activity within the immediate context. The Staff Report fails to identify existing, approved and proposed tall buildings within the context. City staff also, yet again, place inordinate weight on Section 2.5 of the Official Plan, despite City staff having acknowledged in a staff report dated July 18, 2016 and under oath before the Ontario Municipal Board that these policies do not adequately address mid-rise or high-rise proposals and require updating.

From an urban design perspective, the Staff Report is also misleading. The shadow impacts generated from the Applications are approximately 10 square metres of incremental shadowing, which are so minor as to be inconsequential especially in this context. Further, the Staff Report inappropriately relies on inaccurate minutes from the UDP meeting, which our client's consultant previously corrected by email on September 10, 2021.

## Conclusion

These comments are only a high level review of the Staff Report and its inadequacies. Our client is under no illusion that our client's concerns will cause either the Committee or City Council to defer the item or reconsider the recommendation of City staff. However, and especially since the City stalled the Study for so long, it would have been more appropriate for City staff to provide a

recommendation in accordance with the purposes of the *Planning Act* to “encourage co-operation and co-ordination among various interests” having regard for “the resolution of planning conflicts involving public and private interests”, rather than forcing the Applications to the Ontario Land Tribunal.

We would appreciate receiving notice of any decision made by City Council regarding this matter.

Yours truly,

**Goodmans LLP**



David Bronskill

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