

January 31, 2023

Mayor Marianne Meed Ward and Members of Council
City of Burlington
426 Brant St.
Burlington, ON L7R 3Z6



Planning & Watershed Management

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2596 Britannia Road West
Burlington, Ontario L7P 0G3
conservationhalton.ca

BY E-MAIL ONLY TO CLERKS (lisa.palermo@burlington.ca)

**Re: Update on Official Plan amendment and Zoning By-law amendment applications
Brant Street and Ghent Avenue (Files 505-06/21 & 520-07/21)**

Conservation Halton (CH) staff would like to provide some additional background on the above-referenced applications and related Council Information Package (CIP) memo (dated January 19, 2023) for Council's information. CH reviewed the above-noted applications as per our regulatory responsibilities under Ontario Regulation 162/06 and as per our provincially delegated responsibilities under Ontario Regulation 686/21 (i.e., represent provincial interests for the natural hazard policies of the Provincial Policy Statement (PPS)). CH staff provided a response to the applicant's November 2022 submission on December 13, 2022 (see attached).

The subject properties are regulated by CH as they are located within a flood hazard (spill) associated with the Hager-Rambo Diversion Channel (watercourse), and a portion of Parcel C contains the flooding hazard (riverine flood plain) associated with Rambo Creek. As noted in our correspondence, CH staff will be in a position to provide detailed feedback on the proposed development once we receive a detailed analysis of the flood hazards on the subject properties, either through the City's Phase 2 Flood Hazard and Stormwater Assessment, or through an independent study completed by the applicant. This information is critical for CH staff to assess any risks associated with the flooding hazards and confirm there is no risk to life or property. We would be pleased to work with the applicant and City to review and confirm the flooding hazards on the site once this information is available.

We trust the above is of assistance. Please contact the undersigned with any questions.

Sincerely,

Leah Smith
Manager, Environmental Planning

CC: Kyle Plas, City of Burlington (kyle.plas@burlington.ca)

Encl.: CH Correspondence

December 13, 2022

Kyle Plas, MCIP, RPP
Manager of Development & Design
Community Planning, City of Burlington
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BY E-MAIL ONLY (kyle.plas@burlington.ca)

To Kyle Plas:

Re: Proposed Official Plan and Zoning By-law Amendment – Submission 2
File Numbers: 505-06/21 and 520-07/21
774, 778, 780 and 782 Brant Street (Parcel A); 769, 783 Brant Street and 2023, 2027,
2031-2033 Ghent Avenue (Parcel B); and 747 and 761 Brant Street (Parcel C), City
of Burlington
Molinaro Group – Owner

Conservation Halton (CH) staff has reviewed the above-noted application as per our responsibilities under Ontario Regulation 162/06; provincially delegated responsibilities under Ontario Regulation 686/21 (i.e., represent provincial interests for Sections 3.1.1-3.1.7 of the Provincial Policy Statement (PPS)); the Memoranda of Understanding (MOU, 1999 and 2018) and Interim Ecological Services Agreement (IESA, 2021) with Halton Region; and as a public body under the *Planning Act*. These responsibilities are not mutually exclusive. Comments that pertain to items contained in the MOU and IESA may also apply to areas regulated under Ontario Regulation 162/06. Comments under Ontario Regulation 162/06 are clearly identified and are requirements. Other comments are advisory.

Proposal

The purpose of the above-noted applications is to amend the Official Plan and Zoning By-law to permit a development comprised of a 25 storey tower and a 14 storey tower (with ground floor commercial area) and 425 residential units (Parcel A); a 25 storey tower (with ground floor commercial area) and 328 residential units (Parcel B); and, 8 storey mid-rise building with 128 residential units (Parcel C). A 3 storey podium along the building frontages is also included. Proposed parking for the redevelopment includes underground structured and limited surface parking spaces.

CH staff provided a comment letter on the first submission of these applications on January 7, 2022, which should be referenced for further background.

Flood Hazard and Scoped Stormwater Management Assessment

The subject properties are located within an area recently studied by the City of Burlington through a Flood Hazard and Scoped Stormwater Management Assessment (Phase 1). This Assessment was endorsed by the City in October 2020, as part of a Downtown Re-examination

Study. The Flood Hazard and Scoped Stormwater Management Assessment identifies flood hazards within the Rambo Creek watershed that impact these properties. Phase 2 of the Assessment, which will refine initial findings of the study, has now been initiated by the City, and is currently in progress.

Ontario Regulation 162/06

CH regulates all watercourses, valleylands, wetlands, Lake Ontario and Hamilton Harbour shoreline and hazardous lands, as well as lands adjacent to these features. Not all regulated areas are mapped, but natural hazards, whether mapped or not, are considered regulated. When a flood hazard is identified and/or mapped through technical studies, CH assesses risk and advises landowners of CH's regulatory requirements when development is contemplated in hazardous areas. The subject properties are regulated by CH as they are located within a flood hazard (spill) associated with the Hager-Rambo Diversion Channel (watercourse), and a portion of Parcel C contains the flooding hazard (riverine flood plain) associated with Rambo Creek. CH regulates a distance of 7.5 metres from the limit of the flooding hazard.

Spills are flood hazard/hazard lands under the *Conservation Authorities Act* and *Ontario Regulation 162/06*. A spill occurs when floodwater leave a watercourse and its valley and spills overland, rejoining the same watercourse at a distance downstream or moving into another watershed. *Ontario Regulation 162/06* requires that a permit be obtained from CH prior to development, interference with wetlands or alterations to shorelines and watercourses. Please note, development within CH's regulated area can be restricted and, in some cases, not permitted. Development is defined in the *Conservation Authorities Act*, a copy of which can be found at www.elaw.gov.on.ca. Please visit www.conservationhalton.ca for a copy of Ontario Regulation 162/06 and the related policy document.

Spill Flooding Hazard Policy

An interim policy to describe how CH will address defined spill areas was approved by the Board on March 26, 2020 (CHBD Report 04 20 17). CH's spill policy states:

Development and redevelopment in spill areas will be considered on a case-by-case basis. Permission may only be granted where the site is subject to low risk and, where appropriate, mitigation measures can be implemented to reduce potential impacts to the satisfaction of Conservation Halton (e.g., flood proofing).

This is an interim policy until such time that the spill is mitigated, new provincial regulations or direction on spills is issued, or new CH spill policies are approved by the CH Board of Directors, after consultation with municipalities and the public.

Any development proposed within an identified low-risk flood hazard would require technical studies to demonstrate that:

1. There is no increased risk to existing development;
2. The proposed development is not exposed to greater risk than existing development;
3. Neighboring properties are not negatively impacted by the proposed development (i.e., flood conveyance is not impacted);

4. The building is floodproofed to the extent practical and feasible and there is no risk of structural failure due to potential flood hazards;
5. Access and egress within the flooding hazard, appropriate for the nature of the development proposed, will be provided; and
6. There are no feasible alternatives for the proposed development to be directed to areas outside of the hazard or to a lower risk area on the property. [Note: Where no alternative existing, development proposals that would be permitted under CH's current floodplain policies will be permitted in spill areas.]

Riverine Floodplain Policy

The proposed development for Parcel C must meet the floodplain policies within CH's *Policies and Guidelines for the Administration of Ontario Regulation 162/06*

(<https://conservationhalton.ca/policies-and-guidelines>). As noted above, Phase 2 of the City of Burlington's Flood Hazard and Scoped Stormwater Management Assessment is underway, which will refine initial findings of the study (Phase 1).

Preliminary Feedback

As part of a previous pre-consultation meeting for the proposed development (June 17, 2020), CH and City staff advised that based on the findings from the Phase 1 Study, the subject properties are susceptible to flood hazards (spill & floodplain) associated with Rambo Creek during the regulatory storm. At that time, staff outlined two options to assess the flooding hazards on the properties:

1. The proponent may wish to consider the advantages of waiting until the City has completed the Phase 2 of the Flood Hazard and Stormwater Assessment, which is expected to refine flood hazard limits and provide detailed mapping of spills areas, as well as discuss policy and mitigation measures in this area, or;
2. If the proponent wishes to proceed prior to completion of the Phase 2 Study, the proponent can complete an independent study. Further consultation with CH and City staff is required to develop an agreed upon terms of reference for works required to understand and address potential flood risks understood to affect this area.

A subsequent meeting was held on October 23, 2020 with CH and City staff and the proponent to discuss flood hazard mapping and study requirements should the proponent proceed prior to completion of the Phase 2 Study.

The first submission of these applications did not include the analyses required to delineate regulatory flood hazards limits, and did not evaluate the impacts the proposed development may have on flood hazard limits in this area. Based on Section 3.4 of the Functional Servicing and Stormwater Management Report dated June 2021, prepared by S. Llewellyn & Associated Ltd. provided with the first submission, it was CH staff's understanding that the applicant did not intend to undertake their own study and would wait for the City to complete the Phase 2 Study.

This second submission also does not include the required information, and based on the provided Comment Tracking Chart dated November 15, 2022, the applicant's approach regarding the required flood study has not changed.

As flood hazards and associated regulation limits have yet to be verified, CH staff have not completed a detailed review of the reporting included within the current submission and are unable to assess the proposed development at this time.

Recommendation

Staff are unable to comment on the feasibility or details of the proposed development until the limits and characteristics of the flood hazard are understood. Additional comment will be provided once flood hazards and associated regulation limits have been verified.

Please note that a resubmission fee will apply on third and subsequent submissions (of which CH staff complete a detailed review).

Please note that CH has not circulated these comments to the applicant, and we trust that you will provide them as part of your report.

We trust the above is of assistance. Please contact the undersigned with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Colleen B.', with a stylized flourish at the end.

Colleen Bain (she/her), MES (Planning)
Environmental Planner
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