

To: Blake Hurley, Deputy Corporation Counsel

From: Alison Enns, Manager of Policy and Community

Cc: Brynn Nheiley, Executive Director of Community Planning, Regulation and Mobility
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Date: April 26, 2023

Re: Revised Approach – Addressing required changes to the new OP

Purpose

To propose a revised approach to address conformity with ROPA 48 and ROPA 49 and to address the existing and emerging changes to the fundamentals of the planning framework in Ontario.

Executive Summary

Staff considered the nature of modifications required to address ROPA 48 and 49 and recognized a wide range of existing and forthcoming changes to the provincial planning framework. It was determined that while some changes required to the BOP, 2020 may continue through modifications there are a number of future changes that are best addressed through amendments to the Burlington Official Plan, 2020 in order to:

- adjust the planning horizon from 2031 to 2051, including consideration of the Housing Pledge, ROPA 49 and the Regional Official Plan as a whole, and broader changes to the Provincial planning system;
- establish any required changes to the urban structure and its policies and to develop policy frameworks for the new Community Areas introduced through the Minister's modifications to ROPA 49 in accordance with the policies of the Regional Official Plan;
- establish the protected Major Transit Station Area policies;
- inherit the Regional Official Plan, as it applies to the City of Burlington;
- ensure consistency with the proposed Provincial Planning Statement, to the extent possible.

Given the wide ranging and interconnected nature of changes that have been made, and continue to be proposed, it is necessary to modify the approach to advancing the City's new Official Plan.

Background and Discussion

Burlington Official Plan, 2020

On January 4, 2023, the OLT issued a Decision following a Case Management Conference held on October 28, 2022. That Decision confirmed which parts of the City's new Official Plan are subject to broad appeal (i.e., not site-specific), and which parts are in effect (either due to lack of broad appeal or due to *Planning Act* protections). Please see Appendix A to this memo which presents *Exhibit C: Burlington Official Plan, 2020 - Policies in Full or Partial Effect* for more details.

As of the date of that Decision, the majority of the Plan remains subject to broad appeal. Where new policies remain appealed, the policies of the Burlington Official Plan, 1997 continue to apply, along with the current Zoning By-law. The OLT Decision also confirmed that no portion of the new Official Plan, except for the policies where the *Planning Act* limits appeal rights (i.e., planning horizon and additional residential unit policies) is in force or effect upon lands that are subject to site-specific appeals. Please see Appendix B to this memo which presents Exhibit D: Burlington Official Plan, 2020 – Site Specific Appeals.

At the time of preparation of the modifications recommended to address conformity with ROPA 48, staff noted:

On Dec 22, 2020 some policies and schedules of the Official Plan came into effect as a result of those policies and schedules not being appealed. At time of writing, staff note that on May 6, 2022 the City will be seeking an order from the OLT confirming the policies and schedules that were not appealed and which are therefore in effect. A review of the policies that the City intends to indicate will be in effect as of December 22, 2020 has confirmed that all of those policies conform to or are not impacted by ROPA 48.

In contrast, staff note that there are policies that are now in effect within the BOP, 2020 as of December 2020, that do not conform with ROPA 49. These policies, since they are no longer before the OLT, cannot be addressed by way of a modification and will require future study and possibly future amendments to address conformity.

Recent Changes and a Revised Approach

As outlined in report [PL-05-23 ROPA 48, 49 and Bill 23 - Approach to achieve conformity and compliance](#), the Regional Official Plan Review (ROPR) was advanced through several official plan amendments, with ROPAs 48 and 49 being the first and second amendments approved by the Province.

ROPA 49, like ROPA 48, came into full effect on the day it was approved by the Minister. This means that all policies, to be approved, must conform with ROPA 48 and ROPA 49. The requirement to conform applies to development applications, decisions of Council, and Decisions of the Ontario Land Tribunal (“OLT”).

Policies must also comply with legislative changes such as those being enacted through Bill 23 “More Homes Built Faster Act, 2022”, through Bill 97 “Helping Homebuyers, Protecting Tenants Act, 2023” and other legislative or regulatory changes that come into effect.

Although only released in draft at this time, once the proposed new Provincial Planning Statement (released alongside Bill 97) is in effect, the policies of the Official Plan must also be consistent with that statement. Engagement on this new planning document is currently under way. It is expected that the new Provincial Planning Statement will come into effect sometime in Fall 2023.

Additional information was made available regarding the implementation of the new Provincial Planning Statement that clarified the following in relation to timing for changes to Upper-tier Planning Responsibilities (which is to occur by way of Royal Proclamation under Bill 23):

Bill 23, the More Homes Built Faster Act, 2022 made changes to the Planning Act that, upon proclamation, will remove statutory approval authorities under the Planning Act from 7 upper-tier

municipalities. The timing for proclamation of these changes is a government decision. It is anticipated that the changes would not take effect until winter 2024 at the earliest.

One of the key shifts of that planning responsibility is having the local municipalities inherit the Regional Official Plan. Although not immediate, this clarity from a timing perspective crystallized the importance of understanding how the City would take ownership of the Regional Official Plan and undertake any changes that may be required, as well as how the City would consider that Plan in decision-making processes.

At the time of the development of the recommended modifications to address ROPA 48, the approach represented an opportunity to streamline the process and to ensure that the City's position was clearly established and communicated in advance. At the time, despite significant changes to the Regional Official Plan, the Regional Urban Structure was largely reflective of Local Plans and priorities, and the broader policy framework was largely the same. Neither of these constants will remain at the end of 2023.

The Proposed Revised Approach

Given that parts of the BOP, 2020 are now in effect, Staff propose a revised approach that identifies a role for both modifications and amendments to the BOP, 2020 to address the whole range of changes to the planning framework that was in place at the time of Regional approval of the Official Plan.

The terms "modifications" and "amendments" have a specific meaning in this context. "Modifications" refer to changes to policies of the BOP, 2020 that remain before the OLT. Said another way, changes to the policies that are currently under appeal.

As the Decision issued by the OLT on January 4, 2023 confirmed that portions of the BOP, 2020 are in effect, the Plan now has formal status and may be amended in accordance with the *Planning Act*. Changes to policies that are in effect must be proposed via "Amendments". In some limited and specific circumstances, amendments may also be brought forward to replace policies that are not yet in effect, such as the Major Transit Station Area policies. In this context, the City would effectively be 'withdrawing' the appealed policies and proposing new policies that are in alignment with the updated Regional and Provincial planning framework. "Amendments" follow the standard process more familiar to Council and the public, in accordance with the *Planning Act* and any appeals to the new policies would be expected to be consolidated with the existing appeals to the Burlington Official Plan, 2020, where appropriate.

The *Planning Act* requires that any decisions made regarding a local Official Plan must conform with the upper-tier Official plan that is in force at the time of the decision. This includes decisions made by the OLT regarding appeals to a new Official Plan or an Official Plan amendment. Therefore, in making any decision regarding the subject appeals to the City's new Official Plan, the OLT will need to ensure the plan and its policies conform with the Regional Official Plan, as amended by ROPAs 48 and 49.

Rather than continuing with the 9 phases established within the BOP, 2020 hearing, an opportunity exists to reset in response to the policy and legislative changes that the City, appellants, the public and the OLT must now consider. As a result, City staff have initiated a review of the appeals and the policies of the BOP, 2020. Instead of being grounded only in the changes to the Regional Official Plan that impact the policies of the BOP, 2020 staff will widen the scope of the analysis focusing on:

- (i) which appealed policies require no modifications to be presented to the Tribunal for approval;
- (ii) which policies could best be presented to the Tribunal for approval with modifications; and,
- (iii) which policies are best changed or created by way of amendments to the OP.

Whether a change occurs by modification or amendment staff are proposing to act now in a way that responds to the changes for which relative certainty exists. This approach proposes that staff will seek to develop modifications or amendments that result in consistency with the current Provincial Policy Statement. Similarly, when developing modifications or amendments staff will consider the opportunity to assess Regional policy in light of the fact that, likely some time in 2024, the Regional Official Plan will become another Official Plan of the City of Burlington.

Modifications

There are a range of policy sets (or elements thereof) within the BOP, 2020 that should continue to be advanced through the OLT process.

While not exhaustive, the following examples are potential opportunities to consider through modification. Please note that these examples are presented for discussion purposes only and will need to be assessed.

Some policies may not require modification (e.g. may be inadvertently captured in chapter wide appeals, but without specific issues relating to those policies), and may present an opportunity to move forward to support the creation of opportunities for new housing and jobs. For example, these policies may potentially include:

- Elements of the policies for Uptown;
- Elements of the employment land use policies;
- Elements of the Mixed Used Nodes and Corridor land use policies (with the exception of areas within the delineated boundary of the Major Transit Station Areas), and
- Elements of the Residential Neighbourhoods policies.

Some policies may only require minor modifications to resolve appeals. These policies may potentially include:

- Modifications that recognize existing site-specific approvals already in effect (1997 Official Plan); or
- Modifications that implement in force policy or definitions to address Regional and Provincial conformity (Definitions such as Higher Order Transit; Schedule changes reflecting Regional Urban Boundary).

Amendments

In the initial approach presented at the time of the ROPA 48 modifications, staff identified category 4B which at the time was described as including:

Policies and schedules where modifications are not possible at this time because local study and interpretation is required to confirm implementation requirements.

At the time of Council's consideration of the ROPA 48, modifications that category was limited to the protected Major Transit Station Area policies. In that case, it was specifically to address the requirement to prepare area-specific plans for the areas delineated in the Regional Official Plan, and to respond to the *Planning Act* requirements related to protected Major Transit Station Areas. Given the changes highlighted above there are a number of elements of the Official Plan that may need to be assessed to determine whether an amendment is appropriate or required. A number of examples of potential amendments are discussed below.

MTSA

The Major Transit Station Area area-specific planning process is nearing its conclusion. Implementing the policy framework for these key areas is the team's highest priority action. An amendment, or series of amendments, must be brought forward to implement the outcome of ROPA 48, the findings of the area-specific planning process, and the findings of the technical studies as soon as possible. While some elements of the implementing policies for these protected MTSA's will be protected from appeal in accordance with the *Planning Act* (e.g. delineated boundaries, density targets, maximum heights, among others) some elements of the policies may still be appealed.

Policies in effect

While many of the policies and schedules that came into effect as of December 2020 may not be affected by current and future changes, some of these policies are impacted. One example is the Additional Residential Units policies. These policies came into effect as a result of the protections within the *Planning Act*. These policies will need to be amended in the future to comply with recent changes to the Planning Act as a result of Bill 23. Another example is the population and employment distribution to 2031. This policy also came into effect as a result of the protections within the *Planning Act*. This policy will need to be amended in the future to conform with ROPA 49 and will connect to the need to undertake the development of new policies, discussed below, to complete a revised vision for growth to 2051 for the City of Burlington.

New policies

Future processes are required to define the local vision in response to the wide-ranging changes highlighted in this memo. The City must move beyond simply reflecting the Minister's modifications to ROPA 49 and more deeply consider how to adjust the City's Urban Structure and, alongside that, consider the potential scope and role of the new community areas introduced through the approval of ROPA 49, particularly those new community areas that are within the former ROPA 38 urban area. This category considers the approach for:

- Those areas that were not contemplated as new community areas within the BOP, 2020 and require an updated planning framework in accordance with the policies of the Regional Official Plan; and
- considering the wide range of issues to be addressed in order to bring the plan forward to the 2051 time horizon.

Whether by amendment or modifications, the changes proposed by staff will ensure policies of the Burlington Official Plan, 2020 conform to and/or are consistent with, currently in-force policies and, to the extent possible, policies that are anticipated to come into force later this year (such as the Provincial Planning Statement).

Planning in Ontario is in a time of great change. The prospect of future changes related to the Upper Tier planning authority, the draft proposed Provincial Planning Statement, or some future unknown changes, introduce significant new considerations in this process. That new reality has driven the need to consider a revised approach for advancing the BOP, 2020.

It is the intention of staff to report regularly, as directed by Council, on progress or new information that may inform changes to the overall approach.

Next Steps

As outlined in this report, staff are proposing the consideration of a revised approach that will result in undertaking a targeted realignment exercise for the purpose of ensuring that the policies of the BOP, 2020 conform to and/or consistent with applicable policy.

Staff will undertake the assessment to determine which policies could come into effect without modification, which should be modified and which should be amended. An overall work plan recognizing key inputs, opportunities and uncertainties outside of the control of the City, a listing of required studies, proposed budget and timeline will be developed for Council consideration. A wide range of studies and supporting work will be required to support future amendments including:

- an update to the 2019 Growth Analysis and associated policy directions,
- community area planning including consideration of the potential identification of new Strategic Growth Areas and the development of area specific policies,
- assessing the policies of the plan against legislative and other changes
- assessing the policies of the Regional Official Plan to determine which policies must be maintained, which policies may no longer be required, and importantly, which policies might the City want or need to change.

Staff note that Council has provided sufficient direction to move forward with the highest priority amendment to the BOP, 2020 composed of the policies required to guide development within the City's protected MTSAs. In June an update and approach will be presented.

Conclusion

Staff considered the nature of the modifications that would be required to address ROPA 48, ROPA 49 and the recent changes to Provincial policy and concluded that a wide range of modifications and future amendments to the Burlington Official Plan (BOP) are required.

This, combined with future changes related to Upper Tier planning authority, the draft proposed Provincial Planning Statement and possible future unknown changes has driven the need to consider a revised approach for achieving conformity. The proposed revised approach considers the changing policy landscape comprehensively, identifying opportunities to define a local vision in support the shared objective of more homes, built faster, while providing opportunities for *Planning Act* process to ensure enhanced public, agency and stakeholder engagement on key changes to the policy framework.

Appendix A: Exhibit C: Burlington Official Plan, 2020 - Policies in Full or Partial Effect
Appendix B: Exhibit D: Burlington Official Plan, 2020 – Site Specific Appeals

APPENDIX C: BURLINGTON OFFICIAL PLAN, 2020 - POLICIES IN FULL OR PARTIAL EFFECT**Modified: October 12, 2022**

This table summarizes the policies of the Burlington Official Plan, 2020 that were confirmed as in effect by operation of the Planning Act, as per the January 4, 2023 Order issued by the Ontario Land Tribunal for case number OLT-22-00221.

Section	Title	Notes
1.0	INTRODUCTION	
1.1	PURPOSE OF THE PLAN	No appeals – in full effect
1.2	CONTEXT	No appeals – in full effect
1.3	JURISDICTION	No appeals – in full effect
1.4.1	PRINCIPLES	No appeals – in full effect
1.4.2	A CITY THAT GROWS	No appeals – in full effect
1.4.3	A CITY THAT MOVES	No appeals – in full effect
1.4.5	AN ENGAGING CITY	No appeals – in full effect
1.5	PLANNING HORIZON	Planning Act protection – in full effect
1.6	LEGAL STATUS	No appeals – in full effect
1.7	ORGANIZATION OF THE OFFICIAL PLAN	No appeals – in full effect
1.8	A GENERAL GUIDE TO THIS PLAN	No appeals – in full effect
2.0	SUSTAINABLE GROWTH	
2.2.4	POPULATION AND EMPLOYMENT DISTRIBUTION	Planning Act protection – in full effect
4.0	ENVIRONMENT AND SUSTAINABILITY	
4.5.1	NATURAL ENVIRONMENT	No appeals – in full effect
4.5.2(1)	OBJECTIVES	No appeals – in full effect
4.8	FORMER WASTE DISPOSAL SITES	No appeals – in full effect
4.9	COMMUNITY GARDENS AND URBAN AGRICULTURE	No appeals – in full effect
8.0	LAND USE POLICIES – URBAN AREA	
8.7.2	ADDITIONAL RESIDENTIAL UNITS	Planning Act protection – in full effect
9.0	LAND USE POLICIES - RURAL AREA	
9.1.2 g)	GENERAL POLICIES (ADDITIONAL RESIDENTIAL UNITS)	Planning Act protection – in full effect
9.1.2 h)	GENERAL POLICIES (ADDITIONAL RESIDENTIAL UNITS)	Planning Act protection – in full effect

EXHIBIT C: BURLINGTON OFFICIAL PLAN, 2020 - POLICIES IN FULL OR PARTIAL EFFECT

Modified: October 12, 2022

Section	Title	Notes
10.0	LAND USE POLICIES – NORTH ALDERSHOT	
10.1.2	EAST SECTOR	No appeals – in full effect
10.1.3	WEST SECTOR	Site-specific appeal – in partial effect
10.5.2	SUB-AREA POLICIES – EAST SECTOR	No appeals – in full effect
10.5.3	SUB-AREA POLICIES – WEST SECTOR	Site-specific appeal – in partial effect
13.0	DEFINITIONS	
	Additional Residential Unit(s)	Planning Act protection – in full effect
14.0	SCHEDULES & TABLES	
I-1	LAND USE - KILBRIDE SETTLEMENT AREA	No appeals – in full effect
I-2	LAND USE - LOWVILLE SETTLEMENT AREA	No appeals – in full effect
I-3	LAND USE - MOUNT NEMO SETTLEMENT AREA	Site-specific appeal – in partial effect
N	IDENTIFIED MINERAL RESOURCES	No appeals – in full effect
O-1	CLASSIFICATION OF TRANSPORTATION FACILITIES - URBAN AREA	Site-specific appeal – in partial effect
O-2	CLASSIFICATION OF TRANSPORTATION FACILITIES - RURAL AREA AND NORTH ALDERSHOT	Site-specific appeal – in partial effect
O-4	CLASSIFICATION OF TRANSPORTATION FACILITIES - UPTOWN URBAN CENTRE	No appeals – in full effect
P	LONG TERM CYCLING MASTER PLAN	No appeals – in full effect
Q	TRAILS STRATEGY	No appeals – in full effect
R	TREMAINE-DUNDAS COMMUNITY	No appeals – in full effect

EXHIBIT D: BURLINGTON OFFICIAL PLAN, 2020 – SITE SPECIFIC APPEALS

Modified: November 3, 2022

APPEAL #	APPELLANT(S)	SUBJECT LANDS
1	Ontario Stone, Sand & Gravel Association	5235 Cedar Springs Road Property on Schedule I-3 between the Nelson Quarry and the Mount Nemo Settlement Area
2	United Burlington	5353 Lakeshore Road (Lakeside Village Plaza)
3	Crystal Homes	South portion of block bounded by James Street, Elizabeth Street, Maria Street and John Street
5	Clearview Limited Partnership 1085 Clearview GP Inc.	1085 Clearview Avenue 1082, 1086 and 1090 St. Matthews Avenue
9	Emshih Developments Inc.	800 Burloak Drive
12	Carriage Gate	383-385 Pearl Street and 2069-2079 Lakeshore Road; 2119 Lakeshore Road and 2107 Old Lakeshore Road
13	Molinaro Group of Companies 1820473 Ontario Inc.	<p>Block 1</p> <ul style="list-style-type: none"> - 357 Brant - 361 Brant/2004 Pine (Residential tenant) Same building, different address - 2003 Lakeshore - 2009 Lakeshore - 2007 Lakeshore - 2011 Lakeshore - 2015 Lakeshore - 2017 Lakeshore - 392 John - 404 John (Commercial) A-404 John (Residential tenant) - 408 John/ (Commercial) A-408 John (Residential tenant) <p>Block 2</p> <ul style="list-style-type: none"> - 2021-2025 Lakeshore - 2027 Lakeshore - 399 John - 389 John - 391 John - 393 John - 395 John - 397 John <p>1134 & 1167 Plains Road</p> <p>Brant & Ghent</p> <ul style="list-style-type: none"> - 0, 774, 778, 780, 782 Brant St - 769, 779, 783 Brant St - 2023, 2027, 2031 Ghent Ave - 747 & 761 Brant St.
14	Brant Plaza	2016, 2018, 2022 Victoria Avenue and 559-615 Brant Street
15	Renimmob	535-551 Brant Street
16	Penta Properties Inc., Paletta International Corporation P&L Livestock Limited "Penta"	<p>4450 Paletta Court</p> <p>4480 Paletta Court</p> <p>4500 Paletta Court</p> <p>4415 Fairview Street</p> <p>4445 Fairview Street</p> <p>750 Appleby Line</p> <p>5164 Upper Middle Road</p> <p>5366 Upper Middle Road</p> <p>5470 Upper Middle Road</p> <p>5900 Upper Middle Road</p> <p>5201 Mainway</p> <p>3309 Harrison Crescent</p> <p>1200 King Road</p> <p>3151 Dundas Street</p> <p>3095 Dundas Street</p> <p>3075 Dundas Street</p> <p>1155 Dundas Street</p> <p>1041 Dundas Street</p> <p>3415 Cedar Springs Road</p> <p>2260 No. 1 Side Road</p>

APPEAL #	APPELLANT(S)	SUBJECT LANDS
		2161 No. 1 Side Road 4335 No. 1 Side Road 4267 Walkers Line 4353 Walkers Line 4300 Cedar Springs Road 2800 No. 2 Side Road 48 Flatt Road 1664 Waterdown Road 1751 Flatt Road Extension 1640 Flatt Road Extension 66 Horning Road
19	New Horizon Development	Bridgeview Junction Precinct (lands east & west of Plains Road West, bounded by Highway 6 to the west & Highway 403 to the south)
20	Brad Wilson	2070 & 2078 Queensway Drive
21	Wal-Mart Canada Corp.	2065 Fairview Street
23	RK (Burlington Mall) Inc.	777 Guelph Line
25	Pine Street Burlington Corp.	2085 Pine Street
26	Adi Developments (Masonry) Inc.	101 Masonry Court 1120 Cooke Boulevard
29	RioCan Holdings Inc.	507-533 Brant Street
36 37 38	Branthaven Development Corp. S&G Consulting Inc. 735 Oval Inc. 5135 Fairview Holdings Inc.	720, 735 & 740 Oval Court 5135 & 5155 Fairview Street
39	William R Love	488 Locust Street
40	Nelson Aggregate Co. "Nelson"	Part Lot 1 & 2, Concession 2 "Quarry" Part Lot 17 & 18, Concession 2 "Quarry Expansion" 5235 Cedar Springs Road Property on Schedule I-3 between the Nelson Quarry and the Mount Nemo Settlement Area
41	Mac's Convenience Stores Inc.	1447 Lakeshore Road
43	Vrancor Group	2020 Lakeshore Road
44	Reserve Properties Ltd.	410 - 413 Brant Street 444 - 450 John Street 2002 - 2012 James Street
45	2584979 Ontario Inc.	1393 Grahams Lane
47	Emshih	901 Guelph Line
48	Mattamy James Street Limited Partnership	2080, 2086 & 2090 James Street