



# Memo

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**Subject:** Innovative tools to implement the Area Specific Plans

**Our File:** 212562

The City of Burlington is in the next phase of city-building as we approach full build-out of our urban area. The expectation is that the areas surrounding the City's three GO stations, referred to as Major Transit Station Areas (MTSAs), will be a major focus for growth, intensification and redevelopment over the long term. Significant effort has been undertaken to prepare Area Specific Plans to define a vision and guide growth to 2051. Core to the vision and objectives for each of Burlington's MTSAs is the need to secure complete community elements with a priority for providing affordable housing, rental housing, sufficient employment opportunities and essential community parks, amenities and facilities. The Area Specific Plans define complete communities as those designed to provide convenient access to a diverse and appropriate mix of jobs, local services, housing, public services and facilities, affordable housing, schools, parks, recreation and open spaces.

## 1.1 Purpose of the Memo

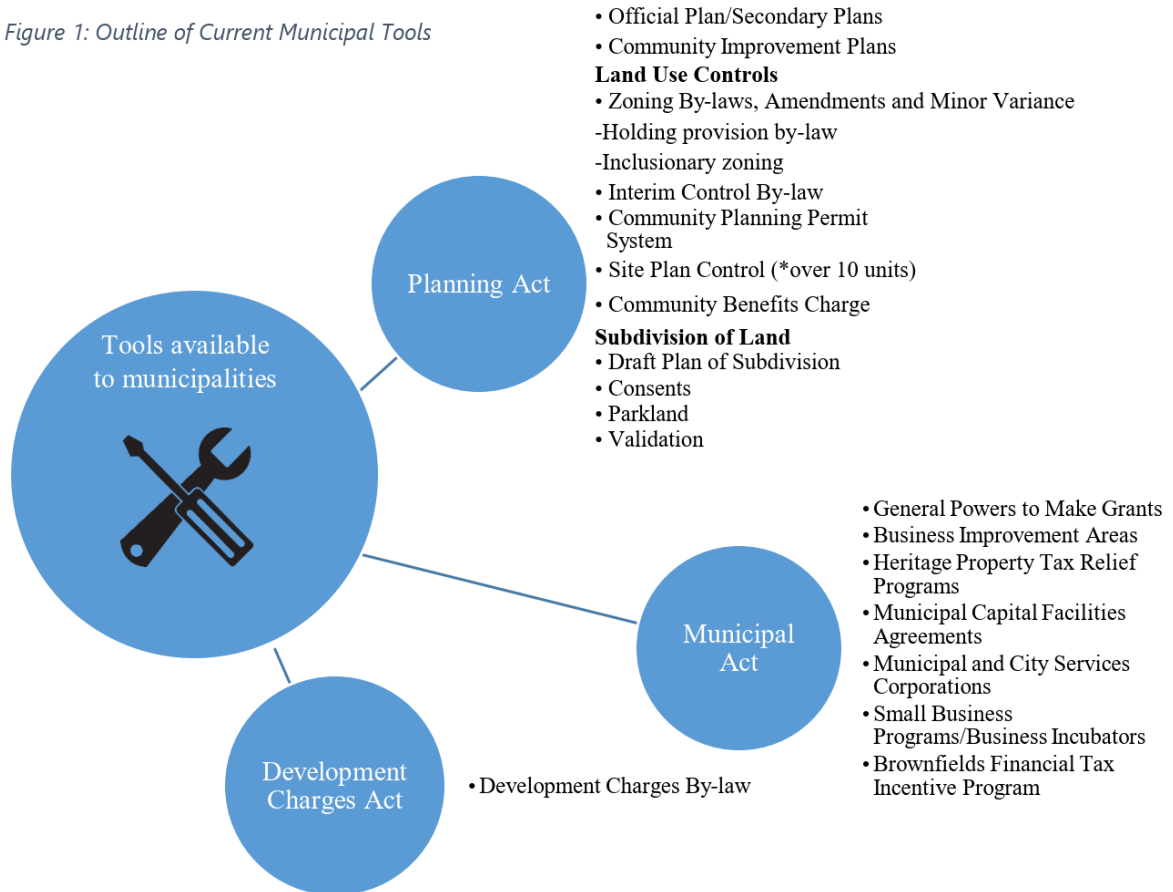
The purpose of this memo is to provide a brief exploration of the tools available to the City of Burlington to implement the Area Specific Plans with a focus on securing the essential elements needed to achieve the complete communities objectives.

## 2.0 Overview of Municipal Tools and Limitations

The tools available to municipalities to manage growth in Ontario continue to evolve as new and proposed legislation is enacted. The City of Burlington is at a critical point in planning its MTSAs, and needs to explore new and innovative ways to implement the vision, secure community priorities and establish a framework to capture value to support sustainable long term growth.

**Figure 1** presents an overview of the current tools available to municipalities to support growth. Several of these tools are impacted by proposed and ongoing legislative changes, where corresponding regulations are yet to be established and are subject to change.

Figure 1: Outline of Current Municipal Tools



The Area Specific Plans will be implemented through an Official Plan Amendment to the Burlington Official Plan, to establish the vision, objectives, and policies associated with land use, community services and facilities, public realm, transportation and infrastructure needed to guide growth. In addition, the City is exploring whether to update the City’s Zoning By-law to implement the policies for the MTSA, or utilize an alternative framework by establishing a Community Planning Permit System to better address the City’s needs.

### 3.0 What is a Community Planning Permit System?

The Community Planning Permit System (CPPS), formerly known as the Development Permit System (DPS), is a land use planning tool, available to municipalities to use when planning for

the future of their communities. Municipalities can apply a CPPS to all of their municipality or only to select areas, and can tailor the CPPS to their local context and needs. The result of the implementation of a CPPS is a Community Planning Permit By-law (CPP By-law). A CPP By-law is a land use planning tool that combines Zoning By-law Amendments (ZBA), Minor Variances (MV), and Site Plan Approval (SPA), into a single application and approval process.

### 3.1 How does a CPP By-law differ from a Zoning By-law?

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Both by-laws establish requirements, such as setbacks for buildings, height of buildings, number of residential units, setbacks from the water, and parking requirements. However, since the CPP By-law streamlines Minor Variances, Zoning Amendments and Site Plan Agreements, it can also identify development rules and requirements that are usually covered under separate processes.

The CPP By-law may include details on site alteration, grading, tree removal, natural feature protection, shoreline controls, and floodplain and natural hazard limitations, due to its broader definition of “development”. A CPP By-law may also provide directions on aspects of development that are typically not included as part of a Zoning By-law, such as landscaping requirements, urban design criteria, heritage character, and community benefits.

Depending on the development rules, standards and criteria set out in the CPP By-law, a development application may either be approved by staff, a Planning Advisory Committee, or Council. Development applications submitted under a CPP By-law must be reviewed within 45 days. Decisions on a development application may only be appealed by the applicant to the Ontario Land Tribunal (OLT).

## 4.0 Ability to Meet the Growth Objectives for Burlington’s MTSAs

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A CPPS provides a number of benefits to the City compared to updating the municipal zoning by-law to implement the objectives of the ASPs for managing growth within the MTSAs, including:

- **Can streamline the process:** Combines zoning, site plan and minor variance into one application and approval process with shorter approval timelines (45 days).
- **Utilizes the significant upfront community engagement undertaken as part of the Area Specific Plans:** The CPPS relies on upfront engagement as part of the development of

the Community Planning Permit By-law. There are no legislated public notification/consultation requirements once a CPP by-law is in place (though many municipalities decide to incorporate some public notification as part of the CPP By-law planning permitting process). In addition, by undertaking it now, it reduced the amount of time and effort needed to implement as it will leverage the significant community engagement undertaken since 2017. If this was a standalone process to implement a CPPS, significant additional effort would be needed.

- **More certainty in implementation and reduced likelihood of appeals:** Given that a CPP By-law clearly specifies the rule for development and any variations or discretionary uses that may be permitted, there is more certainty from the community, applicant and stakeholders on the type of development that will ultimately be approved. In addition, at the permit stage, only the applicant has the right to appeal a decision, there are no third-party appeals for CPP By-law applications (unlike a zoning by-law which can be held up in lengthy third party appeals). In addition, there are no requests for amendments for the first 5 years after a CPP By-law is passed, providing further certainty to the community that the vision and rule will be maintained<sup>1</sup>.
- **Broader catchment of projects:** Broader definition of “development” than Site Plan Control, which adds site alteration and vegetation removal. Everything requires a permit unless otherwise exempt. The CPPS tool could capture these developments and provide a framework to guide permit requirements.
- **Provides a framework for delegation of approvals:** Delegation is based on classes of approvals, such as: Class 1: Standard – staff approval, Class 2: Variation – staff approval, Class 3: Variation requiring Committee or Council approval (above established thresholds). This could reduce staff effort for council reporting for applications that meet the requirements of the By-law or are within the identified staff variation. This provides a broader framework than a zoning by-law, site plan and minor variance which each have different approval bodies<sup>2</sup>.
- **Ability to obtain community benefits for additional height and density:** Under a CPPS, a municipality may identify criteria where increased height and density would be considered and tie this to community benefits. Given the framework, the City could tie

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<sup>1</sup> As per O.Reg 173/16 Sec. 17 once a CPP By-law has been passed, no person or public body shall request an amendment to the relevant official plan with respect to policies referred to in section 3 before the fifth anniversary of the day of the by-law was passed. An amendment would refer to a request to permit development not contemplated by the CPP By-law, outside of any prescribed permitted and discretionary uses and variations.

<sup>2</sup> Based on existing provincial legislation, minor zoning by-law amendments and minor variances may be delegated to staff, while site plan control shall be delegated to staff.

increased height and density to other community objectives, such as affordable housing. This tool is not available under a zoning by-law.

- **Ability to conditionally ‘zone’:** Under Zoning you may establish permitted uses only, any variations require a Zoning By-law Amendment or Minor Variance. Under a CPPS precincts/districts include permitted uses, discretionary uses and variations that will be considered (by staff and council). This allows the municipality to establish conditions in which additional permitted uses will be considered. Conditional zoning is still awaiting regulations and at this time is still not available to municipalities through a zoning by-law.

In addition, recent legislation modifies a number of elements of the Zoning By-law and Site Plan Control tools, including excluding Site Plan Control for residential buildings where the parcel will contain no more than 10 residential units, limiting the scope of Site Plan Control regarding matters related to exterior design and introducing the need to refund application fees for applications that go beyond the Planning Act timelines. We understand these changes do not apply to development applications under a CPPS.

The following sections describe the benefits compared to a more traditional zoning tool as they relate to i) the need for affordable and rental housing, ii) the need for community services, facilities and parks and iii) the need for employment in mixed use areas of the MTSAs.

#### 4.1

### Need for Affordable and Rental Housing

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Through the Area Specific Plans, the City has identified the need to plan for a diverse mix of uses, including a variety of housing options, such as additional residential units and affordable housing, where appropriate. In June of 2022, the City of Burlington’s Housing Strategy was approved by Council. The City’s Housing Strategy establishes a road map and acts as a guiding document for the City to use in order to take action and work towards meeting the housing needs of the community and move the city closer to the Vision for housing in Burlington. As the Region is the housing provider for subsidized affordable housing, the Housing Strategy highlights the importance of partnering with all levels of government and the development industry to work together to deliver affordable housing. The Housing Strategy identifies a number of Actions to be implemented within the MTSAs, to support a healthy rental stock (through supporting the creation of new rental units) and a broad variety of housing types and forms.

Inclusionary zoning, also known as “IZ”, is a planning tool that enables municipalities to secure affordable housing units (i.e. housing units that are sold or leased at an affordable price or rent) to be provided as part of certain developments, and is available to municipalities for use in

protected MTSAs. The City was undertaking a formal assessment (Municipal Assessment Report) of the potential to introduce inclusionary zoning, which was being considered through the MTSA project and the Housing Strategy project, however recent legislative changes which establish an upper limit on the total number of affordable units and prescribing the approach to determine the lowest price/rent, as well as unstable market conditions has put this initiative on hold.

As part of implementing the Area Specific Plans, it is essential that the City establish a framework to maximize the creation of a broad range of housing types and tenures. Given that a CPP By-law may establish criteria where increased height and density would be considered tied to community benefits, the municipality may tie additional density provisions to the provision for affordable housing or rental housing, as defined in the by-law.

This community benefit framework is something not available through a Zoning By-law. In order to achieve similar objectives, a municipality may be able to use a 'Holding' provision with criteria for lifting (such as confirmation from the City that affordable housing objectives have been achieved), however this method provides uncertainty, adds other administrative tasks to the process and may not yield the same outcomes.

## 4.2

### **Need for Community Services, Facilities and Parks**

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The Area Specific Plans require development to deliver community service facilities identified through City studies and identifies a Public Realm Plan for each MTSA, which includes potential locations of new parks, public plazas, active transportation connections and new complete streets. It establishes the need for new park space through parkland dedication as well as privately owned publically accessible open spaces (POPS). It also establishes the need for a Community Benefit Charge to include the height, density and intensity permissions stated within the MTSAs and precincts.

Given the legislative framework for CBC and parkland dedication (which provides limits on how much can be recovered and how it gets used), and the significant amount of growth and need for a full range of community service facilities within the MTSAs, additional tools need to be explored. The recent City Parks Provisioning Master Plan identified CPPS as a tool to secure community services, facilities and parks and Council directed the further exploration of this tool. Given the single process (combining ZBA, MV and SPC), agreements can still be registered on title (similar to a Site Plan Agreement) and the ability to establish a community benefit framework, there are several elements of the CPPS tool that positions the City better for implementing the necessary parks, services and facilities needed within the MTSAs.

## Need for Employment in Mixed Use Precincts

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The Area Specific Plans have identified an objective of supporting the retention and expansion of existing employment functions and encouraging new employment functions and employment uses which are compatible with other uses and serve to make each MTSA an employment destination within the city. One concern in implementing the MTSA land use plan is the mechanism the municipality can use to ensure that within the mixed use precincts sufficient opportunity for non-residential uses is provided for to meet the overall ratio of people and jobs established and support complete community objectives.

A zoning by-law has limited tools available for the City to secure office and other non-residential uses within the mixed use precincts. Some creative methods might include Zoning the first floor for non-residential uses, or creatively using a 'Holding' provision, but given the dynamic nature of site development, there is a significant risk that the non-residential and office uses do not get realized once residential uses are permitted 'as of right', given market pressures.

Since a CPP By-law may outline discretionary uses and variances that might be acceptable with associated criteria, the permission for residential can be tied to specific criteria/conditions for non-residential uses and only be provided if those established conditions have been met.

## Conclusion and Next Steps

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Given the recent and ongoing legislative changes, cities across the Province are exploring new and innovative ways to provide land use controls that best support growth management objectives while securing the necessary community services, facilities and parks to support complete communities.

While there may be some creative methods to establish a framework through a variety of well-crafted by-laws (zoning, site alteration, capital facilities, etc.) that can achieve several elements of the ASP objectives, there is a significant potential for conflict, misinterpretation and appeals in a piecemeal approach. In addition, there are several limitations of a zoning by-law, as described above. A single, comprehensive CPP by-law that builds on the significant community and stakeholder engagement through the ASPs, establishes a framework to guide growth with clear expectations for all parties involved would best support the City's community building objectives.

In order to use a CPPS to regulate growth within the MTSAs, the City must:

1. Adopt enabling policies through an OPA;

2. Pass a Community Planning Permit By-law; and,
3. Issue community planning permits once the system is in place.

The following provides the legislative requirements associated with Task 1 and 2 above.

### 5.1.1 Enabling Policies

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In accordance with O.Reg. 173/16, Section 3, the Official Plan enabling policies must:

- Identify the proposed community planning permit area;
- Set out the scope of any delegated authority and any limitations;
- Describe the municipality's goals, objectives and policies in proposing a CPPS for each area; and,
- Set out types of conditions that may be included in a CPP By-law, which may include:
  - criteria for evaluating discretionary uses and variations;
  - additional information and material requirements for a CPP By-law application;
  - exemptions for any class of development or use of land from the complete information and material requirements; and,
  - policies related to the provision of specified facilities, services or matters in exchange for a specified density or height of development or increases in density or height.

The new Burlington Official Plan begins to establish the enabling policies in Section 12.1.14 where it outlines the objectives and policies for a Community Planning Permit System, including the need to amend the Plan to meet the O.Reg. 173/16 Section 3 requirements above prior to adopting a CPP By-law.

### 5.1.2 Community Planning Permit System By-law

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In accordance with O.Reg. 173/16, Section 4(2), a CPP By-law shall:

- Contain a description of the area to which the by-law applies, which must be within the boundaries of the area identified in the Official Plan;
- Set out and define permitted and discretionary uses;
- Set out development standards with specified minimum and maximum standards;
- Set out any internal review for permit decisions;
- Describe notification procedures for decisions;
- Set out criteria for determining whether a proposed use or development is permitted;
- Describe the process for amending planning permits, planning permit agreements and pre-existing site plan agreements;
- Outline any conditions of approval that may be imposed;
- Set out the scope of delegated authority, including any limitations; and,



- Include a statement exempting placement of a portable classroom on a school site existing on January 1, 2007, from the requirement for a permit.