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October 30, 2023

By Email (clerks@burlington.ca) (jo-anne.rudy@burlington.ca)City of Burlington
426 Brant Street, PO Box 5013
Burlington, ON L7R 3Z6**Attention: Jo-Anne Rudy, Committee Clerk**
Attention: City Council c/o City Clerk

Dear Jo-Anne Rudy:

Re: Draft Official Plan Amendment No. 2 to the Official Plan of the Burlington Planning Area (the “OPA”) and the Burlington Major Transit Station Areas: Community Planning Permit By-law (the “CPP”)

We are lawyers for Brant-Plains Holdings Inc. (“**Brant-Plains**”), which owns properties located at 2021, 2051 and 2081 Plains Road East and 1035 Brant Street in Burlington, Ontario (collectively, the “**Properties**”). The Properties are located within the precinct identified as the Leighland Node (LL) in the CPP and within the Burlington Urban Growth Centre/Burlington GO MTSA in the OPA.

Please accept this letter as Brant-Plains’ formal written submission to the City of Burlington in respect of the proposed OPA and CPP, as contemplated by the *Planning Act*.

Process Clarity

The CPP seeks to create a streamlined process for development applications in a Major Transit Station Areas (“**MTSA**”), which is a goal that Brant-Plains supports. However, the CPP includes references to vague requirements that a proposal may need to meet. For example, section 3.9.3 of the “[p]re-consultation” section of the CPP states that: “[w]here a technical study or report is



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required to support a Community Planning Permit Application, the extent of the issues to be addressed will be identified by applicable agencies and/or City staff, based on the Burlington Official Plan and *any terms of reference* during the pre-consultation meeting.” [Emphasis added.] However, the content of such “terms of reference” is not specified. While pre-consultation is an important tool to help a proponent refine its development proposal prior to submission, it should not add material requirements or permit the approval authority to deem an otherwise complete application, incomplete. Provisions that refer to opaque concepts like “terms of reference” add uncertainty to the process. To address this, references to “any terms of reference” should be removed from the CPP, or the content of such terms of reference should be described in the CPP.

Section 3.12 (Decision) currently provides unfettered discretion to the “Approval Authority” by stating that such authority “may” approve an application with or without conditions. This runs contrary to the apparent goal of the CPP to provide a streamlined application process. To address this, section 3.12 should provide that the “Approval Authority” *will* approve an application, provided that it meets all of the “Class 1” or “Class 2” development standards (as the case may be) set out in the CPP, as well as all other laws/regulations that govern at the time of the application.

Finally, the development standards required for a “Class 3” Community Planning Permit should be specified in the CPP. Foundational criteria, such as maximum building height and setbacks, should be specified for all permit classes described in the CPP.

Height and Density

The OPA recognizes that MTSA’s are priority locations for the accommodation of transit supportive, mixed use intensification. This is an important tool to help alleviate the shortage of housing stock that is contributing to the affordability crisis in the province. Brant-Plains supports the overarching goals of supporting intensification around MTSA’s.

That said, the height and density identified in the CPP are not sufficient to meet these goals. In particular, the building height maximum(s) for a “Class 1” or “Class 2” Community Planning Permit for the Properties are insufficient to: (a) meet Burlington’s housing needs; (b) make a material change in the housing stock available around MTSA’s; and (c) encourage investment in MTSA’s by experienced developers. To meet these goals, the relevant maximum building height for “Class 1” and “Class 2” Community Planning Permits should be increased by a minimum of 100% of the current identified limits.

Further, there is a disconnect between the policy goals described in the OPA and the development standards described in the CPP. For example, the OPA provides that the Burlington Go MTSA will “...allow for *intensification* at the major intersection of Brant Street and Plains Road East” yet the maximum building height for a Class 1 permit application ranges from 6 to 12 storeys in the area of our client’s Properties. Again, this is wholly insufficient to permit high density residential development of the kind contemplated by the OPA, and mandated by the Province. Accordingly, it is Brant-Plains’ position that the limited height and density contemplated by the CPP does not conform with the OPA (as currently proposed).



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Further, the policies of the OPA encouraging high density residential and mixed-use development around MTSAs (and the related development standards in the CPP) should be strengthened to be consistent with the policy objectives announced by the province as of the date of this letter, including requiring municipalities to provide a range and mix of housing options to include multi-unit types and to implement intensification policies.

Conservation Review

Conservation authorities can play an important role in providing meaningful comments on development proposals. However, it is important that the ultimate decision-making power remains with the democratically elected City Council. This should be clarified in the OPA. For example, proposed policy 8.1.1 (7.1) (c) should be revised to read as follows:

Development adjacent to valleyland and watercourse features, as well as development within or in proximity to hazardous lands may be required to be supported by detailed slope stability, stream erosion and/or flooding studies, where appropriate. The studies and resulting limits of the hazardous lands shall be to the satisfaction of the City in consultation with Conservation Halton. [Changes have been underlined.]

Similarly, proposed policy 8.1.1 (7.1) (e) should be revised to read as follows:

Adverse effects of development on the downstream aquatic environment including watercourse erosion, shall be avoided or mitigated to the satisfaction of the City in consultation with Conservation Halton. [Changes have been underlined.]

Kindly ensure that we are notified of the recommendation made by staff in respect of the OPA and CPP, and the ultimate decision of City Council regarding these items.

Yours truly,

FASKEN MARTINEAU DuMOULIN LLP

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Sarah J. Turney

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