



ADRO INVESTIGATION REPORT

Complainant:	Complainant
Complaint Reference Number:	MUN-28167-1223
Complaint Commenced:	February 5, 2024
Date Complaint Assigned to Investigator:	May 24, 2024
Date All Required Information Received:	August 14, 2024
Report Date:	December 11, 2024
Investigator:	Ben Drory

Terms of Reference

This report has been prepared pursuant to the ADR Chambers Ombuds Office (ADRO) Terms of Reference, which describe the scope of ADRO's mandate, its process upon receiving Complaints, and the authority and responsibilities of an ADRO Investigator. Defined terms used below have the same meaning as in the Terms of Reference.

Complaint – History of Proceedings

Complainant is a journalist for a local news publication (the “Publication”), and argued that the City of Burlington (the “City”) insufficiently communicated with the public in 2022 respecting its project at the former Robert Bateman School. He submitted the following in his Complaint Submission Form (“CSF”), with diverse supplemental information:

My complaint relates to the genesis of the Bateman project, specifically the failure by council to provide the public with any sense of the size and scope of a plan to spend tens of millions of dollars on renovations to the former Robert Bateman School for use as a community centre as they were conducting public consultation throughout 2022. In fact, I submit that the city engaged in deliberate obfuscation of the financial scope of the project, as they engaged in public consultation. Indeed, those members of the public who participated in surveys and town halls had no idea for what they were actually providing buy-in, making the public consultation piece a sham. The project was essentially presented to the public as a simple land swap, with the end goal providing space for a Brock University satellite campus, a city economic division known as Tech Place and the Library. The community centre aspect was only alluded to in the most vague terms throughout the public consultation period, when in fact every member of council had known it was a major capital project costing at least \$50 million (December 2021). As soon as the election was over the price was announced at \$80 Million and has now grown to \$100 Million. A decision to embark on a project of this magnitude while giving the public at least a ballpark sense of the cost would not have frustrated subsequent tendering. The fact that this communications process was followed in an election year is particularly concerning as it

was a legitimate item for public discussion. Large municipal projects are frequently presented to the public for comment with an approximate price tag attached, in fact plebiscites are often framed with this information.

... I attach a story I published in Publication, along with a series of notes, to give you a general sense of how I view the issue.

The project was presented to the public in late 2022 was essentially a fait accompli. I don't see a remedy, as the real nature and cost of the project were already settled upon by the time the public had any awareness. What I am looking for is a ruling or opinion on the propriety of the manner in which the public communications was handled throughout the election year 2022 and depending on the outcome an explanation and if, warranted, expression of regret to the residents of Burlington.

...

... The public has a right to know whether the city's public engagement policy during 2021-22 was appropriate.

Complainant also provided the following opinion article that he published in Publication on December 11, 2022:¹

Opinion: Public kept in dark about magnitude of Bateman project

Burlington Councillors have given the green light to a plan to renovate the former Robert Bateman School at a cost, including land, of approximately \$80 Million. It's a project that has been in the works for well over a year, but the public only got a clear sense of what was involved after Burlington Council was safely re-elected in October. An examination by Publication of relevant staff reports and city news releases, suggests the public was deliberately kept in the dark about the magnitude and cost of the project until a point of no return (and the 2022 Municipal Election) had passed.

Council likely informed of mega project in December 2021

Until the city released its detailed plans for the property a month after the recent municipal election, the public had no idea of the magnitude of the project being contemplated, however it now appears council were likely given significant details, including a ballpark cost estimate, at an in-camera meeting in December 2021. It was the December 2021 meeting that led to an integrity commissioner report that found Councillor One had breached the code of conduct by stating in an open meeting the Bateman project "could cost in excess of \$50 Million." In light of what transpired in the ensuing year Councillor One's comment takes on additional significance. The fact that the integrity commissioner made a finding that Councillor One had revealed information that was discussed in Camera is also an acknowledgement that the \$50 million figure was

¹ "Opinion: Public kept in dark about magnitude of Bateman project", Publication (December 11, 2022) https://bayobserver.ca/opinion-public-kept-in-dark-about-magnitude-of-bateman-project/#google_vignette

presented at that meeting. Two Councillors, Councillor Two and Councillor Three moved quickly to launch a complaint to the IC which released its report in April confirming Councillor One's breach of the code. At that time the councillor pushed back against what she termed excessive secrecy by Burlington Council writing, "I chose to share as much information as possible on issues where I strongly believed that important information was being inappropriately withheld from the public." Councillor One has not responded to questions from Publication about what she meant when she made her \$50 million statement.

In the ensuing months following the Dec 6 2021 council meeting, as the project proceeded through its various stages, the public was never informed of the size or scope of what was being contemplated. Staff were allotted \$3 million for what a report termed "ongoing due diligence, environmental, preliminary design, architectural, engineering and project management services for the phased adaptive re-use of the Robert Bateman High School Site." There was no mention of what the adaptive re-use would entail, and indeed later in the report it was suggested that the work was being done in partnership with Brock University and would support the move of Brock's satellite campus to Burlington which had been previously announced.

Public not given full picture of project

In January 2022 Council voted to formally authorize staff to pursue the purchase of the school. A City news release read, "In addition to the partnership with the HDSB and Brock University, the City also plans to partner with other institutions, ensuring that there is an adaptive reuse strategy for the site and to create a sustainable community hub. This includes the Burlington Library relocating its Appleby Line branch to this location to develop a place for learning and education and the relocation of TechPlace, a hub led by Burlington Economic Development, where the tech community can connect, develop and grow their business." Arguably, the impression created was that Brock, HDSB, the Library and Tech Place would be the only components of the hub. A public consultation on the property was undertaken. 120 persons participated in an online poll that confined itself to asking if respondents were in favour of the acquisition of the school, not mentioning the contemplated massive re-build. To the question, "Do you agree with the proposed land exchange where the city will transfer the Central high school football field to the HDSB and the HDSB will transfer Bateman High School to the city," more than 80 percent were in favour. The question implied a straight swap, but as it turned out the "exchange" actually would cost the city nearly \$8 million.

A slide deck made available to the public in June continued to make no reference to the magnitude or cost of the project. It showed the relocation of the Library, Brock, Tech Place and the leaseback of the shop portion of the school to the HDSB. The only bullets that gave a hint of the future plans were two that, under the heading "City of Burlington Needs," were worded, "Provide flexible programming area (i.e. expanded community center" and another that read "create a sustainable signature community hub-focus on learning and active living." There was no reference to the multi-million dollar construction that was actually being planned.

Around that time a list of frequently asked questions about the project on the mayor's website. One question asked about the \$50 million figure referred to by Councillor One asking if the figure was accurate. The Mayor's answer read, "This does not reflect the actual dollar figure. Per the Integrity Commissioner's report Council received in April 2022 concerning the Council-approved sanction of the Council member who inappropriately released a dollar figure related to this deal, that number released "does not reflect the specific actual dollar figure" and further, "risks misleading the public." Indeed the \$50 million figure did not reflect the actual dollar figure – it was short by \$30 Million. Another questioner asked. "What has the public been told by the City of Burlington or Mayor's Office?" The answer: "the Mayor and the City have been releasing every bit of information available to be released publicly when they have been able to ... other pieces of information have been kept confidential in order to protect the public's interest in the process. As soon as any details can be released the publicly, they'll be done so by the City."

Deal finalized

Later that month Council gave the go-ahead to complete the purchase of the school. Again, the city news release confined itself to talking about the land swap with the Board of Education, the Brock relocation, the relocation of the Library, Tech Place, and the leaseback to HDSB.

A week after the Municipal election the city announced the completion of the purchase of the school and land swap, again without mentioning the re-build and further promising there would be a public consultation in 2023 to determine uses for the parts of the building not occupied by the tenants.

Finally on the 25th of November, the city finally announced the full scale of the project and the nearly \$80 Million price tag.

Conclusions

There are several conclusions that can be drawn from the handling of this project:

- *Burlington council knew there was a big ticket construction project in the works throughout 2022 and made a decision not to share the plan with the public.*
- *Staff reports and news releases on the Bateman project throughout 2022 deliberately obfuscated the actual plan which was to create a state-of-the-art community centre costing tens of millions of dollars. The justifiable requirement to keep the sale price of the school confidential until the deal was done, was expanded to also shield the existence and magnitude of the community hub project from the public. The public had a right to know about the real nature of the hub plan. Knowing the cost of the renovations should not have had any bearing on the negotiations to purchase the building.*

- *The public consultation process was misleading, in that it confined itself to the acquisition of the school building only, which ended up being a small percentage of the overall cost of the proposed project.*
- *Arguably the Integrity Commissioner was weaponized to ensure that Councillor One would not say anything further that would reveal the actual size and scope of the project. It would be interesting to see what the Integrity Commissioner might have to say about the lack of transparency that has accompanied this project.*
- *It was reasonable to expect that there would be some costs related to making the Bateman building suitable for its tenants – indeed the tenants are contributing \$7 million of their own money for retrofitting – but a project of the size that it has now been announced was a major strategic decision for a city the size of Burlington and there should have been much more fulsome disclosure. The public has now been presented with a fait-accompli that regardless of its merit and justification, shows a lack of trust in the taxpayers of Burlington.*

Next Steps

Staff are proposing an ambitious construction schedule that would see the building ready for occupancy in the fall of 2024, which means the project needs to go to tender as quickly as possible. The staff timetable calls for the contractor to be prequalified next month and the project tendered by next March.

In the presentation to council this week, staff acknowledged that the city's borrowing power will be strained at times to flow the necessary funds and that it might be necessary for council to raise its self-imposed ceiling on debt.

Complainant relied upon a variety of additional materials, which are presented in chronological order over the next several pages.

A January 2, 2022 article from a competing local news publication (“Competing Publication”)² included the following:

Challenges, concerns and hopes: Burlington looks ahead at what's to come in 2022

...

There are also some significant reasons to be excited for 2022, according to the Mayor. Notably, an opportunity has come forward that would see a major new public asset in the city.

“We have put in an offer to buy Robert Bateman High School. That is a very exciting project for the community because it will become the biggest community centre in the city, plus a university, plus have some adult education in it, plus likely a Techplace, and

² https://www.insidehalton.com/news/challenges-concerns-and-hopes-burlington-looks-ahead-at-what-s-to-come-in-2022/article_90ee7683-d184-5826-a61c-3f388c1f19a5.html

still have some pieces for community facilities, meeting rooms and things of that nature,” said Mayor.

A February 9, 2022 Competing Publication article read:³

Burlington moves ahead with potential purchase of Robert Bateman High School

Another hurdle has been passed.

On Feb. 3, the City of Burlington endorsed the next steps for a potential acquisition of the Robert Bateman High School site from the Halton District School Board (HDSB). City staff now have direction to submit a formal offer of purchase for the property and will report back in the coming months.

On June 23 of last year the HDSB announced it had declared Robert Bateman High School surplus. The next day, the city expressed interest in purchasing the property through a partnership with Brock University.

The city has made public a number of plans for the property including intentions to bring university programming to the site and relocating a branch of the Burlington library.

An April 19, 2022 Competing Publication article⁴ described a Report from the City’s Integrity Commissioner:

Burlington Coun. One breached code of conduct, pay suspended for five days

A Burlington councillor has been found in violation of the city’s code of conduct.

Councillor One has had her pay suspended for five days following a report from the integrity commissioner. The penalty was approved at the April 19 Burlington council meeting and followed complaints made back in January against Councillor One by fellow councillors Councillor Three and Councillor Two.

Councillor One was found to have contravened the code of conduct in two of the four complaints brought against her.

She characterized her actions as being the result of long-running concerns over transparency at the municipality.

“I’m not prepared to apologize. I have been open and transparent throughout this whole year about my concerns about us going into closed session and not giving appropriate transparent information to the public,” said Councillor One.

³ https://www.insidehalton.com/news/burlington-moves-ahead-with-potential-purchase-of-robert-bateman-high-school/article_bc57afb6-e84f-514d-b7a4-98735a4156da.html

⁴ https://www.insidehalton.com/news/burlington-coun-shawna-stolte-breached-code-of-conduct-pay-suspended-for-five-days/article_1d56249e-3f95-5ced-ad5f-20d63c349bbe.html

In the first complaint, the integrity commissioner found that Councillor One revealed confidential information at the Dec. 6, 2021 Corporate Services, Strategy, Risk and Accountability Committee. In public comments on the potential sale of the Robert Bateman High School Site, she stated, "The reality is that the final cost will be well above \$50 million dollars to see that vision realized."

Specific dollar amounts for that project had only been discussed in private, and as a result, that statement was found to be breaching confidentiality.

...

Mayor said that the actions of Councillor Two and Councillor Three to come forward with the complaint showed courage. She said by violating the code of conduct, Councillor One could have done everything from misleading the public to compromising the city's ongoing negotiations.

...

The City's "Get Involved Burlington" page sought public feedback in May 2022:⁵

Resident feedback wanted on Robert Bateman High School proposals

17 May 2022

The City of Burlington is looking for residents' feedback on a proposed land transaction with the Halton District School Board (HDSB) and leasing arrangements with the HDSB and Brock University for the City's planned acquisition of the Robert Bateman High School building and property.

The proposed transaction with the HDSB would see the City transfer ownership of approximately five acres of City owned land to the HDSB as a component of a land exchange for the Robert Bateman site. The City owned land in question is located near Burlington Central High School and includes the high school football field and running track.

Securing the lands near Burlington Central High School in HDSB ownership has been consistent with the HDSB's long term intention to continue operating Burlington Central as a school. This land exchange component will advance the City's efforts to secure the Robert Bateman site in continued public ownership, ensuring that the Robert Bateman site is available for continued educational and community-oriented uses.

Feedback will also be sought on securing leases with the HDSB and Brock University for portions of the Bateman Site. The HDSB intends on leasing space back at Bateman for

⁵ https://www.getinvolvedburlington.ca/bateman-highschool/news_feed/resident-feedback-wanted-on-robert-bateman-high-school-proposals

educational purposes. Brock University also seeks to lease space at Bateman for their long-term educational needs.

Both leases at Bateman are expected to be long term leases not to exceed 25 years.

Burlington City Council directed staff to gather feedback from the public on these proposals. Public feedback can be provided at the City's online engagement portal, Get Involved Burlington.

This engagement opportunity will be open to Burlington residents until June 13, 2022.

Following public input, staff will report back to Burlington Council with a final report and recommendations at the June 21, 2022 Council meeting.

The City issued a news release two days later (May 19, 2022), temporarily pausing the survey:⁶

The City of Burlington's intention to purchase Robert Bateman is a significant and long-term strategic matter that requires the City continue to share as much information as we can, and to make certain that the public is informed enough to provide feedback. A survey had been made available to seek input into the proposed land transaction and lease arrangements, however, we believe more background information should be shared with residents on the City's interest in purchasing Robert Bateman.

We will therefore pause the survey while a public meeting can be arranged where City and the Halton District School Board staff will share information about the proposed land transaction. Meeting details will be shared on this page and communicated to the public once confirmed.

Once the public meeting has been held, we will seek additional feedback from the public.

...

The City conducted the public information session on May 31, 2022. Complainant directed me to the City's slides from it.⁷

The City issued a news release on June 24, 2022 following Council's approval of the purchase:⁸

Burlington City Council Gives Go Ahead to Purchase Robert Bateman High School Site

Burlington, Ont. – June 24, 2022 – At the June 21 Burlington City Council meeting,

⁶ <https://www.burlington.ca/en/news/survey-paused-resident-feedback-wanted-on-robert-bateman-high-school-proposals.aspx>

⁷ https://mariannemeedward.ca/wp-content/uploads/2022/06/Robert-Bateman-Public-Meeting-Presentation_May-31-2022_FINAL.pdf

⁸ <https://www.burlington.ca/en/news/burlington-city-council-gives-go-ahead-to-purchase-robert-bateman-high-school-site.aspx>

Council authorized City staff to take steps to complete the purchase of the Robert Bateman High School site. In addition to the direction to purchase the site, City staff were also authorized to:

- *Transfer ownership of approximately five acres of City owned-land to the Halton District School Board (HDSB) as a component of the land exchange for the Robert Bateman site. The City owned-land in question is located near Burlington Central High School and includes the high school football field and running track*
- *Proceed with a long-term lease of a portion of the Bateman site to the HDSB*
- *Proceed with the long-term lease of a portion of the Bateman site to Brock University*

All matters related to the land transactions and lease arrangements are expected to be closed and completed this fall. Once all components are finalized at that time, the purchase prices will be publicly registered and released.

This acquisition would push forward key objectives laid out in the City of Burlington 25-year strategic plan. Key pillars of this Plan include making Burlington a City that grows through attracting talent, good jobs and economic opportunity to the community.

In addition to the partnership with the HDSB and Brock University, the City also plans to partner with other institutions, ensuring that there is an adaptive reuse strategy for the site and to create a sustainable community hub. This includes the Burlington Library relocating its Appleby Line branch to this location to develop a place for learning and education and the relocation of TechPlace, a hub led by Burlington Economic Development, where the tech community can connect, develop and grow their business.

Public engagement will take place in early 2023 to seek community feedback on possible uses for the remaining space.

Quick Facts

- *In June 2021, HDSB announced that it has declared Robert Bateman High School surplus to its needs.*
- *In December 2021, Council provided direction to staff to submit a formal offer to purchase the Robert Bateman High School site*
- *On Feb. 3, 2022, Burlington City Council endorsed next steps to advance the potential acquisition of the Robert Bateman High School site from the HDSB.*
- *Shortly after, also in June 2021, the City of Burlington announced that an expression of interest would be submitted to the HDSB to purchase the Robert Bateman site through a partnership with Brock University.*

A municipal election was held on October 24, 2022; all seven members of City Council were re-elected.⁹

⁹ “Burlington mayor re-elected in landslide victory, along with all 6 city councillors” (CBC News, October 25, 2022) <https://www.cbc.ca/news/canada/hamilton/burlington-municipal-election-2022-1.6628380>

The City completed the purchase of the former Bateman High School on November 1, 2022, and issued a news release:¹⁰

City of Burlington completes deal to purchase Robert Bateman High School

Burlington, Ont. – Nov. 1, 2022 – *The City has completed a purchase agreement and land exchange transaction with the Halton District School Board (HDSB) involving the Robert Bateman High School property. In the agreement, the City purchased the Bateman property for \$29.6 million, while the HDSB purchased a City owned property near Burlington Central High School, which includes the high school football field and running track, for \$21.7 million. The difference in price of \$7.9 million will be debt financed, with annual debt payments recovered from the City’s capital reserve funds.*

This acquisition would push forward key objectives laid out in the City of Burlington’s 25-year strategic plan. Key pillars of this Plan include making Burlington a City that grows through attracting talent, good jobs and economic opportunity to the community.

Within the Bateman space, the HDSB will retain a long-term interest at the school to accommodate the Gary Allan Learning Centre. And as previously announced, Brock University will offer their Teachers Education and Applied Disabilities Studies Programs and will be developing professional and continuing studies specifically to the needs of Burlington.

In addition to the partnership with the HDSB and Brock University, the City has partnered with other institutions, ensuring that there is an adaptive reuse strategy for the Bateman site and to create a sustainable community hub which will include community rooms, a triple gym and the existing City pool. The Burlington Public Library will relocate its Appleby Line branch to this location to develop a place for learning and education and the relocation of TechPlace, a hub led by Burlington Economic Development, where the tech community can connect, develop and grow their business.

Public engagement will take place in early 2023 to seek community feedback on possible uses for the remaining space.

...

Mayor published an opinion piece in Competing Publication nine days later (November 10, 2022):¹¹

Deal closes for purchase of Bateman high school

¹⁰ “City of Burlington completes deal to purchase Robert Bateman High School” (November 1, 2022) <https://www.burlington.ca/en/news/city-of-burlington-completes-deal-to-purchase-robert-bateman-high-school.aspx>

¹¹ https://www.insidehalton.com/opinion/deal-closes-for-purchase-of-bateman-high-school/article_3c6cc0a0-0270-50d4-88d6-48d5cd6ed8dd.html?

Thank you to everyone who put their trust in me once again during the municipal election. I'm honoured to be back serving as your mayor.

I continue being committed to working together with our whole community and council to make this city the best it can be. ...

Recently, the city closed the purchase agreement and land transaction with the Halton District School Board for Robert Bateman High School – preserving and protecting it as the largest community centre in Burlington.

In the agreement, the city purchased the property for \$29.6 million, while the HDSB purchased a city-owned property near Burlington Central High School that includes the football field and running track, for \$21.7 million.

The difference in price of \$7.9 million will be debt-financed, with annual debt payments recovered from the city's capital reserve funds.

The decision to direct city staff to take all the necessary steps to complete this deal was a unanimous one at council and I thank my council colleagues for their support.

The support from residents for the city working to retain this site as a community hub and park space has also been overwhelmingly positive.

Our partnerships with the HDSB, Brock University, Burlington Public Library, and Burlington Economic Development ensures multiple uses and offerings on this site, including a university satellite campus, the Appleby library branch and a relocated TechPlace where the tech community can connect, develop, and grow their businesses.

I look forward to the next steps in this new community centre coming to life, including engaging the public for their feedback in 2023 on possible uses for the remaining available spaces left on the site.

Finally, Complainant provided a December 2022 Report (“EICS-20-22”) from the City’s Environment, Infrastructure, and Community Services (“EICS”) Committee,¹² which recommended approving the proposed Phase 1 budget with an estimated gross construction cost of \$72.75 million.

Administrative Note Respecting Limitation Period

ADRO and I accepted that this matter was appropriately brought to our attention within the applicable limitation period pursuant to our Terms of Reference. The Terms of Reference state:

17. The Ombudsman may refuse to investigate a complaint or to continue an investigation of a complaint when the Ombudsman believes on reasonable grounds that:

¹² “Bateman High School Adaptive Re-use Project”, EICS-20-22 (submitted to Council December 13, 2022) <https://burlingtonpublishing.escribemeetings.com/filestream.ashx?DocumentId=64637>

...

(f) at the time the complaint is received, more than one year has elapsed since the Complainant learned of the facts on which the Complaint is based, unless the Complainant establishes exceptional circumstances that justify the delay to the satisfaction of the Ombudsman.

Complainant first reached out to ADRO seeking to initiate this complaint on November 30, 2023. He previously attempted to initiate this complaint through Ombudsman Ontario, who directed him to our Office, as appropriate. On our Office's advice, Complainant then attempted to formally submit his complaint through the former City Clerk – but that individual was no longer employed by the City at that time. Complainant then reached out to us again in February 2024 after, as he described it, not receiving a response from the Acting City Clerk over a four-week period. We believe it is fair to consider Complainant as having initiated the Complaint on November 30, 2023.

Complainant relied on, among other things, Report EICS-20-22 – which was considered at the December 8, 2022 EICS meeting and the December 13, 2022 City Council meeting. Accordingly, Complainant's November 30, 2023 submission was within a year of EICS-20-22 being publicly considered.

ADRO Investigation

I spoke with:

- Complainant
- For the City: Director, Corporate Communications & Engagement, and Manager, Engagement & Volunteers

Before we spoke, the City referred to its 'Get Involved Burlington' webpage respecting the Robert Bateman Community Centre¹³ – which they said has all relevant documentation, and provides the most comprehensive overview, including a document library with Council and similar Reports. I observed that the site includes news releases, a project history, Frequently Asked Questions, staff reports, presentation slides, City policies, tender awards, and updates.

The webpage describes:

The City of Burlington has purchased the former Robert Bateman Highschool building and greenspace.

With sustainability and community-building in mind, the City of Burlington is repurposing the existing Robert Bateman High School into a City-owned multi-purpose community-focused asset that will align with the City's objective of being net-zero carbon by 2040. The reuse and conversion of the former secondary school will have interior

¹³ <https://www.getinvolvedburlington.ca/bateman-highschool>

renovations, exterior building changes and minor site plan modifications as part of Phase 1.

When the renovation is complete, tenants such as Brock University, Burlington Public Library, Halton District School Board, Tech Place and City of Burlington will move into the building and begin offering services.

Subscribe to this project page to be notified of important news updates and opportunities to provide input.

Interviews

City of Burlington

I spoke with the City’s Director of Corporate Communications & Engagement (“Director”) and Manager of Engagement & Volunteers (“Manager”). Director said the *Municipal Act, 2001* doesn’t explicitly regulate public engagement, but the City follows a Public Engagement Charter, which regulates how it engages with the public, and how City staff can engage with candidates during an election year.

Manager said the Community Engagement Charter¹⁴ is the City’s foundational engagement document, and the City also developed a specific communication plan for the Bateman project. She said the City utilized the IAP2 (International Association for Public Participation) engagement spectrum,¹⁵ which helps all stakeholders understand the City’s promises to consult or empower the public – with the Bateman project being at the “inform/consult” level of the Spectrum. She said the City also has an engagement portal,¹⁶ and that the City’s Bateman webpage¹⁷ has been public since May 2022, including the Engagement & Communication Plan, key dates, news, surveys, public meeting information, Council reports, and FAQs.

Manager said the City’s goal for the Bateman project was to inform and engage residents and community partners on uses for the high school and green space. She said the City adheres to its Public Notice Policy,¹⁸ and its Corporate Policy for Council, Boards, and Committees on Use of Corporate Resources during an Election¹⁹ – which requires City staff to abstain from work that could influence the outcomes of a political campaign during an election year, and which the City complied with in 2022.

¹⁴ <https://www.getinvolvedburlington.ca/burlington-community-engagement-charter>

¹⁵ https://www.getinvolvedburlington.ca/IAP2_Spectrum

¹⁶ <https://www.getinvolvedburlington.ca/>

¹⁷ <https://www.getinvolvedburlington.ca/bateman-highschool?page=2>

¹⁸ <https://www.burlington.ca/en/council-and-city-administration/resources/Corporate-Policies/Public-Notice-Policy.pdf>

¹⁹ <https://www.burlington.ca/en/council-and-city-administration/resources/Corporate-Policies/Use%20of%20Corporate%20Resources%20during%20an%20Election%20-%20Under%20Review.pdf>

Manager noted that a number of media releases were issued between 2021 to 2023. Among them, a June 2021 media release²⁰ signaled that the City was going to submit an Expression of Interest with Brock University. She said in 2022 there were media releases regarding the purchase approval,²¹ the final transaction,²² and a breakdown of the project's costs,²³ and a February 2023 media release²⁴ addressed the budget approval. Director noted that Complainant was on the City's media list, and would have received those news releases then. Manager continued that a public kick-off meeting with the City, Brock University, and the Halton District School Board was held on May 31, 2022, and the Q&A included financing questions. She said the actual costing had to be kept confidential, but the City had a financing plan in place, as outlined in the Legal Department's May 2022 Report to Council L-22-22.²⁵ She said the City completed the deal to purchase Robert Bateman High School on November 14, 2022, and 30 newsletters have been sent out with information about the Bateman project, with the November 25 and 28, 2022 newsletters being very specific about its costing – including a link to the staff report (EICS-20-22) that broke down what was known about the \$72.75 million cost.²⁶

Director said the City shared reports and figures with the public as they became available to staff. She noted that section 239 of the *Municipal Act, 2001* allows certain information about land acquisition deals to be kept confidential, and that City policies address the notice requirement from section 270(1)5 of the Act. But she said it isn't the Communications team's place to make those decisions – City Council and administration shares information with them, which they then share with the public. Director didn't believe anything was untoward, from ethical or integrity standpoints, in the City not releasing the November 2022 information prior to the October 2022 election – she said the City's Election Corporate Resources Policy is fairly specific about how candidates can engage with City staff and property, and the City followed it. She added that Communications followed the City's policies and Engagement Charter, and best practices for communications on projects like Bateman, as well as professional standards in their sector, including the IAP2 spectrum.

Complainant

²⁰ “City of Burlington to submit expression of interest to purchase surplus Bateman High School site; partner with Brock University” (June 24, 2021) <https://www.burlington.ca/en/news/city-of-burlington-to-submit-expression-of-interest-to-purchase-surplus-bateman-high-school-site-par.aspx>

²¹ “Burlington City Council gives go ahead to purchase Robert Bateman High School site” (June 24, 2022) <https://www.burlington.ca/en/news/burlington-city-council-gives-go-ahead-to-purchase-robert-bateman-high-school-site.aspx>

²² “City of Burlington completes deal to purchase Robert Bateman High School” (November 1, 2022) <https://www.burlington.ca/en/news/city-of-burlington-completes-deal-to-purchase-robert-bateman-high-school.aspx>

²³ “Redesign, adaptive re-use and costing plan proposed for former Robert Bateman High School building” (November 25, 2022) <https://www.burlington.ca/en/news/redesign-adaptive-re-use-and-costing-plan-proposed-for-former-robert-bateman-high-school-building.aspx>

²⁴ “Council approves 2023 budget focused on improving and protecting the future of our growing city” (February 14, 2023) <https://www.burlington.ca/en/news/council-approves-2023-budget-focused-on-improving-and-protecting-the-future-of-our-growing-city.aspx>

²⁵ “Update on a Real Estate Matter – Robert Bateman High School Property Acquisition – Direct to Council” (May 17, 2022) <https://burlingtonpublishing.escrimemeetings.com/filestream.ashx?DocumentId=59349>

²⁶ “Bateman High School Adaptive Re-use Project” (EICS-20-22 – to Committee December 8, 2022) https://burlingtonpublishing.escrimemeetings.com/filestream.ashx?utm_source=ehq_newsletter&utm_medium=email&utm_campaign=ehq-Newsletter-for-the-week-of-Nov-28&DocumentId=64637

I spoke with Complainant. He said he has been a journalist for almost 50 years, and understands the business pretty well and the need for Council to consider certain matters in-camera. However, he opined that the City not only grossly concealed their intentions for the Bateman project from the public, but almost misrepresented them – by only really focusing on aspects that involved third-parties like Brock University and the library setting up there. He said staff laid out the real purpose of acquiring the school during an in-camera City Council meeting in December 2021 – i.e., that it would require spending roughly \$50 million to turn the Bateman School into a community centre. He acknowledged that the cost would be heavily supported by the moves of Brock University and the library, but the project was presented to the public throughout 2022 as predominantly a land swap, with only the vaguest references to the community centre aspect, and no reference to the fact it would involve a significant capital expenditure.

Complainant said he wasn't aware of another major project whose major purpose was fundamentally concealed to the public until after the documents were signed, and the 2022 election was concluded – he said the obfuscation and low-balling of the project's purpose and financial magnitude were completely concealed until two weeks after the election, when all of Council was re-elected, and what was presented as \$50 million at the December 2021 closed meeting was revealed as \$70 million shortly after the election, and then ballooned to \$100 million a few months after that. So he said his complaint was that the City basically deceived the community – usually the public is at least given some sense of the magnitude of a project that size.

Complainant said the City's public consultation was basically about what the public thought about the land swap – which only cost the City about \$9 million, and wouldn't be an eyebrow-raising transaction, but the ballooning of the costs from \$50 million to \$70 million and then \$100 million wasn't shared, and was almost deliberately obscured. He thought the public was taken through a consultation exercise that didn't reflect what was really contemplated, and that it was Council-directed – i.e., that Mayor and the former City Manager developed that policy.

Complainant added that the City's former head of Communications (“Former Communications Head”) left the City at the end of 2022 – but the public only knew he was gone because his replacement was announced. Complainant speculated (with no supporting evidence) that Former Communications Head might have left the City because he was uncomfortable with how the communications rollout for the Bateman project was handled. I told Complainant I'd be willing to speak with Former Communications Head if Former Communications Head reached out through him confirming that he was willing to speak with me about the circumstances.

Complainant also told me that two Members of Council opposed the Bateman project in the December 2021 in-camera meeting – one of whom subsequently blurted out the \$50 million number publicly – which led to a Code of Conduct investigation by the Integrity Commissioner that he speculated was probably a humiliating experience for her. He provided me the name and contact information for one of the two councillors he named, who apparently told him they were interested in speaking with me. However, I subsequently reached out to that councillor twice – a month apart in August and September 2024 – offering an opportunity to discuss this matter, but I received no response back either time. Complainant also never subsequently provided me

contact information for either Former Communications Head or the other of the two councillors he referenced, which would have indicated (based on our understanding) that they were interested in speaking with me.

Complainant concluded that his issue wasn't an absence of information – rather, it was the distortion and manipulation of information, to make the project appear like something other than it was, with its purpose having been concealed throughout 2022. But he thought City staff were simply following orders from Former City Manager and Mayor in the execution of the program. He said Staff Report L-22-22²⁷ (May 17, 2022) completely obfuscated the purchase's actual purpose – it never mentioned the project's real magnitude or scope, which he speculated councillors knew at the time, and focused entirely on the land swap, which he felt was a minor piece of a \$100 million project.

The following were portions of Staff Report L-22-22:

Recommendation:

...

Direct the City Manager to proceed with a process of public consultation regarding: (1) the proposed disposition to the Halton District School Board of approximately 4.92 acres of City owned land ... by way of land exchange and; (2) the proposed long-term leaseback and lease of portions of the Robert Bateman High School site to the Halton District School Board and Brock University, all of which are proposed in connection with the planned acquisition of the Robert Bateman High School site by the City of Burlington; and

Direct that the City Manager report back on status of public consultation at the Corporate Services, Strategy, Risk and Accountability meeting of June 6, 2022, with a further detailed report and recommendations to Council at the Regular Meeting of Council on June 21, 2022.

...

Background and Discussion:

...

This report is being brought forward in relation to the planned acquisition of the Robert Bateman High School site (the "Bateman Campus") from the Halton District School Board ("HDSB"). In connection with that planned acquisition, the City proposes to convey, by way of land exchange, certain City owned lands to the HDSB as furthermore described in this report. The City also proposes to enter into a long-term leaseback and lease of portions of the Bateman Campus to HDSB and Brock University.

²⁷ "Update on a Real Estate Matter – Robert Bateman High School Property Acquisition – Direct to Council" (May 17, 2022) <https://burlingtonpublishing.escribemeetings.com/filestream.ashx?DocumentId=59349>

Approval of the recommendations in this report will allow staff to initiate a formal process of public consultation, inviting public input and comments on the proposed disposition of City land through land exchange and leaseback of a portion of the Bateman Campus. Staff would report back with a status update on public consultation ...

Bateman Campus and Land Exchange Proposal

As previously reported to Committee and Council, the Bateman Campus is an approximately 12.79 acre site ... Until 2020, the site was the location of Robert Bateman High School. The site is also the location of Centennial Pool, a City operated facility. The school was declared surplus by the HDSB in June 2021. The City of Burlington subsequently submitted a conditional offer to purchase the Bateman Campus, which has been accepted by HDSB subject to ongoing efforts by both parties to satisfy conditions ...

... The portion of the City owned Central Field that is subject of this proposed land exchange is currently improved with facilities supporting the Central High School property including a football field, running track, driveway and a small portion of the school buildings. ...

With regard to the future of the Burlington Central High School, the Board has assured the City that it has no plans to cease operating the facility for the foreseeable future. ...

Upon completion of a transaction to acquire the Bateman Campus, the City would lease back a portion of the Bateman Campus to the HDSB, for an initial duration not to exceed 25 years, with opportunity for future renewals. Additionally, the City proposes to lease a portion of the Bateman Campus to Brock University to support its post-secondary educational use planned for the site.

The acquisition of the Bateman Campus and long term leaseback and lease of a portion of that facility will secure this valued community asset in City ownership, ensuring continued opportunities for community and educational uses at the Bateman Campus. ...

Financial Matters:

Financial matters related to this real property transaction have been previously reported to Council through separate earlier confidential reports.

Engagement Matters:

This matter has been the subject of previous public process including the following:

- June 23, 2021: HDSB announcement declaring Robert Bateman High School facility surplus to its need and to circulate it for purchase;*
- June 24, 2021: City of Burlington announcement regarding intention to submit expression of interest for purchase of the Bateman Campus;*

- November 15, 2021 – Report CM-26-21 providing an update on the proposed acquisition of the Bateman Campus;
- December 14, 2021 – Report EICS 20-21: Robert Bateman Building – Preliminary Design, Environmental, Architectural and Engineering Services
- February 7, 2022 – City of Burlington announcement regarding Council approval of next steps for the potential purchase of the Robert Bateman High School site.

Following approval of the recommendations in L-22-22, community engagement will be invited through formal written public notice of this proposed land exchange and leaseback transaction. ...

Conclusion:

Approval of the recommendations contained in this report will endorse next steps to advance the proposed acquisition of the Bateman Campus, including notice of intention to convey City owned lands to the HDSB as a land exchange component, and intention to enter into long-term lease arrangements for the Bateman Campus.

Approval of these recommendations will also initiate a formal process of public input and consultation with a reporting back to Committee and Council during the upcoming cycle of meetings in June 2022.

The Integrity Commissioner Report Complainant referred to was germane to the history. That Report (April 8, 2022) stated:²⁸

...

[6] On January 30, 2022 we received a complaint filed by Councillors Three and Two alleging that Councillor One ... breached the confidentiality obligations under the City's Code of Good Governance.

[7] In particular, it was alleged that:

- *On December 6, 2021, at the Corporate Services, Strategy, Risk and Accountability Committee (CSSRA), the Councillor publicly stated “the reality is that the final cost will be well above \$50M...”, referencing an actual dollar figure for the purchase and redevelopment of Robert Bateman High School, whereas all discussion of costs were confidential; ...*

Three of the four matters ... related to a major initiative of the City of Burlington related to the Robert Bateman High School surplus school site.

...

²⁸ “Code of Conduct Complaint Against Councillor One – Recommendation Report” (April 8, 2022) <https://burlingtonpublishing.escribemeetings.com/filestream.ashx?DocumentId=57220>

[12] The provision of the Code which is most relevant to the conduct alleged ... is found in paragraph 14...:

14. We will hold in strict confidence all information concerning matters dealt with in Closed Council meetings, matters subject to solicitor client privilege, personal information, or information that is otherwise determined to be confidential.

[13] Highly relevant to our review are the provisions set out in section 239 of the Municipal Act, which requires that Council's meetings be held in public, except in certain restricted circumstances.

Meetings open to public

239 (1) Except as provided in this section, all meetings shall be open to the public.

Exceptions

(2) A meeting or part of a meeting may be closed to the public if the subject matter being considered is,

...

(c) a proposed or pending acquisition of land by the municipality or local board; ...

...

[15] Councillor One ... wants to see a less frequent utilization of closed session, particularly for matters she believes ought to be publicly deliberated.

[16] She perceives that, on occasion, closed session meetings are used to inappropriately obscure or block public knowledge and awareness of matters being considered.

[17] The Councillor asserts that she has attempted unsuccessfully to move the administration and her Council colleagues towards what she believes is a better standard for greater transparency.

[18] She challenged what she perceived as a paucity of information provided on the City's Agendas regarding confidential/closed meetings, as lacking in appropriate transparency and falling short of established standards.

[19] ... [S]he has taken it upon herself to review and compare the public meeting agendas of other municipalities.

...

[21] Her survey of municipal practices and her understanding of the Ombudsman's conclusions on best practices only served to reinforce her concern that the City's practices were falling short.

...

[23] She has conceded, during the course of this investigation, that in attempting to highlight this issue, and in an effort to force a discussion of the issue, she may have run afoul of the 'confidentiality' provisions of the Code.

...

[25] ... [W]e find that for two of the four complaints the Councillor has contravened the Code provision regarding confidentiality. Whether or not justification exists for greater transparency, it is not the case that one member of Council can determine that information should be publicly disclosed before Council as a whole has taken a stance on the issue. Maintaining confidentiality around confidential information and closed session deliberations is a cardinal rule for members of council.

...

[34] At its meeting of December 6, 2021, the City's Corporate Services, Strategy, Risk and Accountability Committee had on its agenda a confidential item described as follows:

5.4 Confidential real estate matter – Robert Bateman High School (L-32-21)

...

[35] Following the in-camera session a public motion was presented on the item ...

[36] In comments to the motion Councillor One said as follows:

Certainly in keeping in very good consideration that there was a long discussion held in confidential session, I would just like to comment that the only way that I can in good conscience justify this very large price tag to purchase Robert Bateman High School is to commit to developing the property in the manner in which the community expects us to as a fully developed community centre for the residents of the city.

To purchase Bateman and not develop it as a community centre just does not make sense to me. The reality is that the final cost will be well above 50 million dollars to see that realized. A lot of information has not been shared with the

community, including how this purchase may impact the acquisition of other lands. I believe that information is critical to be able to have in open conversations as much as possible so that each and every one of us is genuinely able to represent the interests of our constituents.

The only way that I can support this motion in regards to exploring conditions of an offer is after having great assurances that there will be much more information coming forward before a final decision will be made in March of 2022.

...

[39] The Councillor readily admitted to publicly stating that the “final cost [for the Bateman project] will be well above \$50 million dollars...”

[40] She states that the dollar figure of 50 million does not reflect any dollar amount ever discussed in closed session with respect to the purchase negotiations.

[41] Nevertheless, it is recognized that reference to a specific dollar amount, where all negotiations and related costs have only ever been discussed in closed session, would reasonably be understood by the public to reflect the actual costs discussed. This has the affect of leaving the public with an erroneous or mistaken impression that other members of Council would feel must be corrected.

[42] Those other members are however prevented from contradicting or correcting her statements without themselves breaching the confidentiality provisions of the Code. The misstating of information, purportedly discussed in closed session, therefore can be as inappropriate as stating actual factual information.

[43] We find that the Councillor’s statement, although not actually disclosing real dollar amounts discussed in closed session, is fairly perceived as revealing confidential information, risks misleading the public, and compromises the ability of any other member of Council to contradict or correct the information.

...

[45] Accordingly we find that the Councillor’s reference to an actual dollar figure, where by implication the only source of that information is in closed session, constitutes a contravention of the confidentiality provisions of the Code.

...

[76] Disclosure of confidential information is the kind of transgression that attracts a monetary sanction because the act fundamentally undermines the trust required for Councils to function properly and for the public to maintain respect for Council’s adherence to ethical standards.

...

[78] ... [W]hether or not justification exists for greater transparency, it is not the case that one member of Council can determine that information should be publicly disclosed before Council as a whole has taken a stance on the issue.

...

[81] In light of the Councillor's acknowledgement, in the course of our investigation, we do not believe a significant penalty is warranted.

[82] ... Taking into account all of the circumstances, we believe that a 5-day suspension of pay is warranted.

...

Finally, I asked Complainant if any City staff reports corroborated that the Bateman project's cost had risen to the \$100 million range. He directed me to page 13 of EICS-20-22,²⁹ which stated:

Asset Management: ... The acquisition of Bateman is a new asset to the City of Burlington. Phase 1 will increase the replacement value of the City's asset inventory, by approximately \$72.75 million, thereby increasing the overall annual need. ...

Phase 2: Subject to further design and community consultation timelines, cost for phase 2 construction of a City community centre is not yet determined. The range for phase 2 is tentatively estimated at \$15 to \$20 million. ... In total, Phases 1 and 2 combined will result in the investment of approximately \$100 Million in the adaptive re-use of the Robert Bateman High School into a new City-owned community hub.

ADRO Analysis

Broadly speaking, there are two sets of 'actors' in this case – (1) City staff, in communicating material aspects of the Bateman project, and (2) City Council, in the methods of its pursuit and oversight of the Bateman project throughout its life. The former's actions fit well within our Office's jurisdiction, but the latter's actions do not; unfortunately, though, the latter strikes me as the bulk of Complainant's concerns on this topic.

I consider the actions of City staff straight-forward. Manager said the City utilized the International Association for Public Participation (IAP2) engagement spectrum, and the City's goal was to inform and engage residents and community partners on uses for the high school and green space, while adhering to the City's Public Notice Policy. The City has an "engagement portal," and its Bateman webpage has a variety of diverse information. Director said any published reports the City released to staff were shared with the public as they received them, but section

²⁹ "Bateman High School Adaptive Re-use Project", EICS-20-22 (submitted to Council December 13, 2022) <https://burlingtonpublishing.escribemeetings.com/filestream.ashx?DocumentId=64637>

239 of the *Municipal Act, 2001* allows some information about land acquisitions to be kept confidential – which isn't the Communications team's role to decide. She said Communications followed City policies and the Engagement Charter, and best practices for communications on projects like Bateman. Members of the public can develop their own opinions about whether the information the City shared was sufficient, but it can clearly at least be concluded that that some meaningful information was provided. I take no issue with how the City's Communications staff performed their jobs.

Complainant's larger issue in this case seems to concern City Council's overall approach to the Bateman project. But that is a political question – which is inappropriate for our Office to interject into. In a previous Report,³⁰ I noted that I am also an Integrity Commissioner for some Ontario municipalities – which is a different “accountability and transparency” office under Part V.1 of the *Municipal Act, 2001*. However, while its specific focus is different, I believe there are some similarities respecting the intervention by similar offices into political debates that should be appropriately left to politicians. I have frequently cited, in the Integrity Commissioner context, the following from the Integrity Commissioner for Centre Wellington:³¹

68. ... *I wish to comment briefly on the role of municipal councillors.*

69. *Centre Wellington is a democracy. Council Members are elected to office. The democratic nature of the office means that Council Members have political and representational roles in addition to their legislative (law-making) role. ... The Municipal Act confirms that a role of the Council is “to represent the public”.*

70. ... *As part of the political process, a Council Member is entitled to form views, to hold views, to express views and, once in office, to give effect to those views.³² ... Provided that a Council Member proceeds lawfully and in a manner consistent with the Municipal Act, the Code and other legislation and by-laws, nothing prevents a Council Member from taking, defending and seeking to implement a position would alter the status quo. Indeed, the Courts have clearly stated that as an elected representative of the public a municipal councillor is entitled to take “an open leadership role” on an issue.³³*

71. ... *I adopt the following observation from Farr v. Murphy, 2017 ONMIC 19 (at para. 39):*

³⁰ MUN-26078-0823 (April 1, 2024)

³¹ *Linton v. Kitras*, 2020 ONMIC 1 (Township of Centre Wellington)

<https://www.canlii.org/en/on/onmic/doc/2020/2020onmic1/2020onmic1.html>

³² *Re Cadillac Development Corp. Ltd. And City of Toronto* (1973), 1 O.R. (2d) 20 at 43, cited with approval by *Old St. Boniface Residents Assn. Inc. v. Winnipeg (City)*, [1990] 3 S.C.R. 1170 at 1193-4

³³ *Old St. Boniface Residents Assn. v. Winnipeg (City)* (1989), 58 Man. R. (2d) 255 9C.A.) at 264, affirmed [1990] 3 S.C.R. 1170.

... As long as the conduct is lawful and inside the ethical boundaries of the Code of Conduct, individual political judgements are beyond the purview of an Integrity Commissioner. Subject to the law and rules of ethics, accountability for the exercise of political judgment resides in the political process, not in an Integrity Commissioner investigation.

...

87. In my view, utilizing the tools of political debate to respond to unfairness and inaccuracy in political debate is far more appropriate than having Integrity Commissioners police the truth and fairness of political speech: Re Maika, 2018 ONMIC 11, at para. 139.

I believe the same philosophy applies to the Ombudsman’s role. Questions like whether the City should have undertaken the Bateman project to begin with, and whether it is “going well,” are political questions for the City’s decision-makers (i.e., City Council.) Our Office’s role isn’t to question their substantive decisions. Any City stakeholder can question City Council about the effectiveness of the project, or the City’s stewardship of public funds – that is fairly part of the political process, too. But the decision-making must be left to the elected officials, without asking an accountability office to substitute an outside judgment in their place. This Office is intended to be politically neutral. I accept that it is indisputable that transparency is desirable where possible, and that effective stewardship of public funds should be strived for – nobody would probably question that – but the pragmatic achievement of such goals is left to City Council itself to make decisions about case by case.

Conclusion and Recommendation

I am satisfied from the evidence that the City’s Communications staff followed City policies, and professional practices in the communications field. I further accept that City staff can only publish information they are authorized to share. I interpret that the remainder (and bulk, frankly) of Complainant’s concerns are directed to the City’s political processes or decision-making – which isn’t appropriately within this Office’s jurisdiction to address. Such questions must be addressed within the political process itself.

Respectfully submitted,

Ben Drory
ADRO Investigator