

October 4, 2024

Electronic Submission only

ATTENTION:

Honourable Paul Calandra
Minister of Municipal Affairs and Housing
777 Bay Street, 17th floor
Toronto, ON M7A 2J3
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ERO Posting No. 019-9065: Consideration of transition of land use planning matters to facilitate the introduction of a new policy statement issued under the Planning Act

Comment Period: August 20, 2024 to October 4, 2024

Background:

On August 20, 2024, the Ontario Government released the final version of the Provincial Planning Statement, 2024 (PPS, 2024) and a regulation that revokes “A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2019” (Growth Plan) in its entirety, as of October 20, 2024. The Ministry of Municipal Affairs and Housing (MMAH) is seeking feedback on transition.

Feedback:

In September City of Burlington Committee of the Whole and Council considered [PL-76-24](#) titled Provincial Planning Statement, 2024. Council directed staff to prepare and submit comments on the PPS, 2024 transition. The following represents City comments to support the Province in making a decision on transition matters.

A. Exempt certain OLT matters from the PPS, 2024:

1. Matters that have been referred to the Ontario Land Tribunal (City-Initiated)

Case Title: OP - New Official Plan – City of Burlington

Case Number: [OLT-22-002219](#) (legacy case number: PL210040)

- This OLT case pertains to the new Official Plan of the City of Burlington.

Case Title: OPA 119, ICBL land use study

Case Number: [OLT-22-002483](#) (legacy case no. PL200150) This OLT case pertains to OPA 119 to the Burlington Official Plan, 1997. This case is being heard alongside Case No. OLT-22-002219 as the Council-adopted policies were modified into the Burlington Official Plan, 2020 by the Region of Halton through its approval process.

Status:

On Nov. 30, 2020, the Burlington Official Plan, 2020 (BOP 2020) was approved by Halton Region. In December of 2020, the BOP, 2020 was referred to the Ontario Land Tribunal (OLT) because the Region of Halton's decision was appealed by 48 appellants.

Rationale:

In combination with the downloading of the Regional Official Plan to the City as of July 1, 2024, the introduction of the new Provincial Planning Statement on October 20, 2024 will significantly increase the complexity of the ongoing appeal process for the BOP, 2020. The *Planning Act* requires that all decisions of the OLT be consistent with any provincial policy statements and conform/not conflict with any provincial plans that are in effect on the date of the decision. The BOP, 2020 was developed in accordance with the Regional and Provincial planning frameworks that were in place prior to 2020. Though the Regional Official Plan has undergone substantial changes through a Municipal Comprehensive Review process (ROPAs 48 and 49), since this time, these changes were based on the 2019 Growth Plan and 2020 Provincial Policy Statement which were both in effect at the time of approval of the BOP, 2020 and therefore already contemplated within its policies.

The forthcoming elimination of the Growth Plan and the introduction of the new PPS will add to the already complex provincial consistency and conformity analysis that must be undertaken each time modifications to the BOP, 2020 are proposed for Tribunal approval. This introduces a serious risk of "case by case" planning analysis that would equate to piecemeal implementation of the new PPS- meaning without the benefit of a comprehensive process underpinned by statutory public engagement and applicable technical studies to ensure alignment with the local planning context and community priorities.

Exempting these OLT files from the PPS 2024 would not impair Provincial objectives as the City intends to pursue changes to bring its Official Plan into consistency with the PPS, 2024 through future processes including, but not limited to, the City's ongoing "Burlington Official Plan, 2020 Targeted Realignment Exercise". The Targeted Realignment Exercise will advance the policies of the BOP, 2020 by identifying where changes may be required to ensure that that the Plan:

- responds to recent changes to the Regional Official Plan and Provincial legislation, policies and plans;
- represents the City's vision for growth; and
- supports the objectives of the City's Strategic Plan, Housing Strategy, Integrated Mobility Plan and other master plans.

The exemption would allow the City to undertake the appropriate technical studies and public consultation to ensure that the BOP, 2020 implements the Minister's urban structure modifications to the Regional Official Plan, is consistent with the PPS, 2024 and has regard for matters of provincial interest, through a comprehensive and integrated process.

Proposed Request: Exempt City-initiated Council-adopted Official Plan Amendments and new Official Plans awaiting Tribunal approval as October 20, 2024 from the PPS, 2024, until after approval. After approval, these policies will be included in the Burlington Official Plan, 2020 Targeted Realignment Exercise to ensure consistency, as needed.

2. Matters that have been referred to the Ontario Land Tribunal (Privately-Initiated)

Case No.	Case Title	Official Plan Amended
OLT-22-002483 (legacy case no. PL200150)	OPA - to permit the extraction of aggregate materials (Burlington Official Plan, 1997)	Burlington Official Plan, 1997
OLT-22-004372 (legacy case no. PL020959-O040223)	Paletta/Taylor	Burlington Official Plan, 1997
OLT-22-003151 (legacy case no. PL170728)	Subdivision - Penta Properties Inc., employment uses	Burlington Official Plan, 1997
OLT-22-003866	Burlington 2020 Lakeshore Inc, mixed-use 35-storey building	Burlington Official Plan, 1997

Rationale

The files listed above have been the subject on ongoing OLT proceedings and introducing a requirement to comply with PPS, 2024 has the potential to delay resolution and prevent approvals from proceeding as quickly as possible.

Proposed Request: Exempt privately-initiated Official Plan Amendments awaiting Tribunal approval as October 20, 2024 from the PPS, 2024.

3. Official Plan Amendments Awaiting Minister's Approval (City-Initiated)

OPA Title: City of Burlington Official Plan Amendment No. 2

ERO Posting Number: 019-8978

MMAH File Number: 24-OP-24995

Status:

On June 18, 2024 City Council adopted "Official Plan Amendment No. 2 to the Official Plan of the Burlington Planning Area" (OPA 2 to the BOP, 2020). This amendment is intended to establish a Community Planning Permit System (CPPS) for Burlington's three Protected Major Transit Station Areas (PMTSAs) by addressing the legislative requirements for CPPS Official Plan policies. It also

contains the Provincially required municipal policies for PMTSAs. Significant supporting studies were carried out over several years, and the final version implements the PPS, 2020. OPA 2 is an integral part of Burlington's plan to support the creation of new homes in these PMTSAs.

Rationale

Exemption from PPS, 2024 in this case would support the City in expeditiously implementing a novel *Planning Act* tool for Major Transit Station Areas. Transition would acknowledge the time of great change for the Province, Region and City and would avoid delays in the implementation of this new tool. The MTSA policies and the subsequent CPPS By-law are generally consistent with the direction of the PPS, 2024, in particular with respect to policy direction on settlement areas, strategic growth areas and Major Transit Station Areas, including the Ministerially approved alternative density target for Appleby GO MTSA, approved through ROPA 49. The City has committed to reviewing the effectiveness of the CPP By-law and any such review will consider any future opportunities to enhance consistency with the PPS, 2024. Expeditiously implementing this new system will play a critical role in supporting Burlington's efforts to achieve the housing pledge, built on years of public engagement, and in support of both Provincial and local growth objectives. This tool will support the provincial expectation of delivering housing faster.

Proposed Request: Exempt Council-adopted Official Plan Amendments awaiting Minister approval as of October 20, 2024 from the PPS, 2024, until after approval. After approval, consistency with the PPS, 2024 will be enhanced as needed through the regular review cycle of the CPP By-law.

B. Eighteen-month Transition for certain PPS, 2024 policies:

As of July 1, 2024 the City of Burlington has three Official Plans: BOP, 1997, BOP, 2020 (partially in effect) and the Regional Official Plan (to the extent that it applies to the City of Burlington). On October 20, 2024 development applications would need to be assessed against the *Planning Act*, Provincial Planning Statement, 2024, Regional Official Plan, BOP, 1997 to the extent it applies, and BOP, 2020 to the extent it applies or is informative. While this is similar to the situation that staff have been in over the course of the implementation BOP, 2020, there are specific alignment issues between the City's Official Plans and the Provincial Planning Statement, 2024. For example, in the case of a new, privately-initiated Official Plan amendment for a Settlement Area Boundary Expansion, without an established local vision and policy framework in place for assessing urban structure changes, staff will be challenged to comprehensively implement the PPS, 2024 direction.

Outside of City-initiated Council-adopted policies pending approval by the Minister of Municipal Affairs and Housing or the Ontario Land Tribunal, the City is generally supportive of the immediate applicability of the PPS as a whole. However, in relation to new planning applications, a time-limited pause on the applicability of certain policies of the PPS, 2024 would allow municipalities to update the relevant portions of their Official Plan, including direction for updating Zoning By-

laws, to ensure appropriate consideration of all matters of Provincial interest. The pause on implementation could be as brief as 18 months, or upon the approval of the updated local policy framework, whichever comes first.

The City requests that this pause apply to the following sections of the PPS, 2024:

- **‘Employment Area’ Definition**
- **2.3.2 New Settlement Areas and Settlement Area Boundary Expansions**
- **2.8.2 Employment Areas**

Rationale

For example, with respect to the revised Employment Area definition, to implement the transition provisions under subsections 1(1.1) and (1.2) of the *Planning Act*, there are several immediate challenges:

- With the Minister as its approval authority, the City of Burlington would need to pre-consult with MMAH at least 90 days in advance to determine if a proposed amendment would be subject to Provincial approval or exempt. This could further delay the implementation of any OPA to protect existing ‘lawfully established’ businesses and would extend decision-making past the October 20th PPS, 2024 implementation date (e.g. even if a pre-consultation request had been submitted on the August 20, 2024 PPS announcement date, the 90-day pre-consultation period would have gone 30 days past the implementation date to November 18, 2024).
- If the amendment was exempt from Provincial approval, it would be subject to appeal which could potentially compromise the protection of key areas that were defined areas of ‘employment’ per the *Planning Act*, PPS, 2020 and the Growth Plan, 2019. This may impact the ability to protect existing ‘lawfully established’ businesses and avoid significant disruption.
- Zoning will continue to permit excluded uses as-of-right until a more comprehensive review of the Employment Area policies can be undertaken, which will take time.

With respect to the revised Settlement Area Boundary Expansion and Employment Conversion Policies both the BOP and ROP have policies to guide decision-making in this regard. A comprehensive understanding of the City-wide opportunities and constraints as well as the local considerations relevant to these Urban Structure level changes, such as an understanding of the various considerations set out in the PPS, 2024 and all matters of provincial interest will produce better results.

Transition in this case would support the City in rapidly pursuing changes to bring the BOP, 2020 into consistency with the PPS, 2024 through a comprehensive process. In the case of Burlington, this comes in the form of the City’s Targeted Realignment Exercise. Through this initiative, the City is well positioned to move forward expeditiously to implement the PPS, 2024 based on an updated local vision. As demonstrated through the first three amendments to the BOP, 2020 the

City is committed to establishing frameworks to support the creation of housing. Namely, Official Plan Amendment No. 3, is focused on increasing housing options and is implementing changes to the recently approved Residential Neighbourhood Policies of the BOP, 2020. This work is also aligned with the new Zoning By-law project as it will provide updated Official Plan policies that can be studied and translated through new zoning regulations. The City will continue to work proactively to implement the PPS, 2024 which stresses:

“More than anything, a prosperous Ontario will see the building of more homes for all Ontarians.”

The Targeted Realignment Exercise would allow the City to implement the Minister’s urban structure modifications to the Regional Official Plan, address consistency with the PPS, 2024 and ensure that the BOP, 2020 has regard for all matters of Provincial interest, in an integrated manner. The wholesale completion of this work would also enable the City to complete its critically important comprehensive Zoning By-law review, which is the ultimate vehicle for implementing the updated Provincial policy framework.

With respect to Employment Area definition the City request that the province consider the following:

- Make a regulation under the *Planning Act* for prescribed business and economic uses under subparagraph vi of subsection 1 (1) that permits institutional and commercial uses that are permitted by official plan policies and zoning by-law provisions that were in-effect as of October 19, 2024, for at least 18 months.

OR

- Make a regulation under subsection 3 (6.1) of the *Planning Act* that pauses the new definition for “employment areas” from coming into effect for at least 18 months, until April 20, 2026 OR revise the date that the “area of employment” definition and related transition provision come into effect so that it is paused for at least 18 months, until April 20, 2026.
- If the Province does not pursue either of the above:

Restrict appeals to the Ontario Land Tribunal on a Council decision to implement the transition provision under subsections 1 (1.1) and (1.2) of the *Planning Act*.

With respect to Employment Conversions and Settlement Area Boundary Expansions, in light of the requirements of the PPS, 2024, the City respectfully requests additional time to comprehensively implement the PPS. The City requests that the Province:

Make a regulation under subsection 3 (6.1) of the *Planning Act* that delays the implementation of the following sections for 18 months, or upon the approval of the updated local policy framework- whichever comes first, to bring the Official Plan into consistency with the PPS, 2024:

- a. 2.3.2 New Settlement Areas and Settlement Area Boundary Expansions
- b. 2.8.2 Employment Areas

This phased approach to implementation would provide an opportunity for the City to complete the following initiatives which are currently underway as part of its Targeted Realignment Exercise:

- Population and Employment forecasting, supporting a local growth management update including Growth Expectations to 2051;
- Urban Structure and Growth Framework update informed by the Growth Expectations work
- Policy Analysis and Recommendations to respond to changes to Legislation, Provincial and Regional plans and policies;
- Completing any outstanding elements of the former Regional MCR; and
- Determining the new vision for added Urban Areas (ROPA 49) and converted employment areas.

You can learn more about the [Targeted Realignment Exercise](#) on the City's Get Involved Burlington page or by contacting staff.

The ultimate efficacy of this work to rapidly implement the PPS, 2024 is subject to the speed of the approval process for any revised portions of the BOP, 2020. The opportunity to streamline into one comprehensive Section 26 Official Plan Amendment, subject to Minister's Approval, will make best use of Provincial and local resources to expeditiously bring local frameworks into consistency with the PPS, 2024 and to conform to or not conflict with relevant Provincial Plans. If these implementing amendments are not deemed to be Section 26 approvals, or are otherwise deemed to be exempt from Ministerial approval and therefore subject to appeal, there is significant risk that the City may find itself in a similar position to its current situation. That is, with the majority of its new Official Plan stranded in a lengthy appeal process which drastically delays the updating of the implementing Zoning By-law which will enable more housing as of right.

Proposed Request:

Enact a time-limited pause on the implementation of PPS, 2024 policies relating to settlement boundary expansions, the definition of employment areas, and employment conversions as set out above.

Next Steps:

Please accept this letter as the City of Burlington's submission on ERO posting No. 019-9065. Should Council determine any additional comments or refinements are required for this submission, the Province will be advised at the earliest opportunity.

Sincerely,



Jamie Tellier, MCIP, RPP
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City of Burlington