Ontario Land Tribunal
Tribunal ontarien de l'aménagement du territoire

ISSUE DATE: July 19, 2023 **CASE NO(S).:** OLT-21-001442

PROCEEDING COMMENCED UNDER subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	Renimmob Properties Limited
Subject:	Request to amend the Official Plan - Failure of the City of Burlington to adopt the requested amendment
Existing Designation:	Mixed Use Centre (Downtown Core Precinct) Urban Centres (Mid Brant Precinct)
Proposed Designated:	Site Specific (To be determined)
Purpose:	To permit the construction of a 25-storey mix-use residential building
Property Address/Description:	535-551 Brant Street
Municipality:	Burlington
Approval Authority File No.:	505-04/21
OLT Case No.:	OLT-21-001442
OLT Lead Case No.:	OLT-21-001442
OLT Case Name:	Renimmob Properties Limited v. Burlington (City)

PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	Renimmob Properties Limited
Subject:	Application to amend Zoning By-law No. 2020 - Refusal or neglect of the City of Burlington to make a decision
Existing Zoning:	DC (Downtown Core Zone)
Proposed Zoning:	Site Specific DC Zone
Purpose:	To permit the construction of a 25-storey mix-use residential building
Property Address/Description:	535-551 Brant Street
Municipality:	Burlington
Municipality File No.:	520-05/21
OLT Case No.:	OLT-21-001443

OLT Lead Case No.: OLT-21-001442

PROCEEDING COMMENCED UNDER subsection 41(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	Renimmob Properties Limited
Subject:	Site Plan
Description:	To permit the construction of a 26-storey mix-use building
Reference Number:	535-12/22
Property Address:	535-551 Brant Street
Municipality/UT:	Burlington
OLT Case No.:	OLT-23-000148
OLT Lead Case No.:	OLT-21-001442

Heard: April 18 to May 5, 2023 by Video Hearing

APPEARANCES:

Parties	**Counsel**
Renimmob Properties Limited ("Applicant")	Scott Snider Anna Toumanians
City of Burlington ("City")	Chris Barnett
Regional Municipality of Halton ("Region")	Kelly Yerxa

DECISION DELIVERED BY T.F. NG AND S. DIXON AND ORDER OF THE TRIBUNAL

Link to Final Order

INTRODUCTION

[1] The appeals in this matter arise from the City of Burlington's ("City") failure to make decisions within the statutory timelines of the *Planning Act*, R.S.O. 1990, c. P.13 ("Act"), with respect to three applications (together, "Applications"):

a. An application to amend the City Official Plan ("OPA");
b. An application to amend the City Zoning By-law ("ZBA"); and
c. An application for Site Plan Approval ("SPA").

[2] The Applications were submitted by Renimmob Properties Limited ("Applicant") and subsequently revised to facilitate the development of a 26-storey residential apartment with retail on the ground floor on lands municipally known as 535-551 Brant Street ("Subject Property").

HEARING

[3] The appeals were due to be heard from April 18, 2023 to May 5, 2023. Upon counsels' requests, the Tribunal did not sit on April 18, 27 and 28 or May 2, 3 and 4, 2023. On the third day of hearing, Kelly Yerxa, counsel for the Regional Municipality of Halton ("Region"), requested to be excused for the remainder of the proceedings without the need to call any witnesses, as the Applicant and the Region had resolved their issues. The Tribunal granted the request on consent of all Parties.

[4] As the Parties had agreed on certain facts and had scoped the issues in advance of the hearing, only the relevant and required experts were tasked to testify. Expert witnesses were duly qualified to provide opinion evidence in their respective disciplines throughout the course of the hearing.

[5] The Applicant called five expert witnesses, as follows:

a. David Falletta – Land Use Planner
b. Tom Kasprzak and Michael Hannay (as a panel) – Land Use Planners and Urban Designers
c. Daryl Keleher – Land Economist
d. Scott Penton – Noise Engineer

[6] The City called two expert witnesses:

a. Paul Lowes – Land Use Planner
b. Catherine Jay – Land Use Planner and Urban Designer

[7] The Tribunal received 23 exhibits, which were marked in the List of Exhibits appended as **Attachment 1** to this Decision.

PROPOSED DEVELOPMENT

[8] The proposal before the Tribunal is for a 26-storey (85.7 metres ("m") in height, including the mechanical penthouse) residential/mixed-use building containing 259 residential units with 226 parking spaces and 88 bicycle parking spaces ("Proposed Development"). A total gross floor area of 21,290.4 square metres ("m^2") is proposed (19,985.5 m^2 of residential gross floor area, 1,191 m^2 of non-residential gross floor area, and 113.9 m^2 of indoor amenity), resulting in a Floor Area Ratio ("FAR") density of 8.68:1.

[9] The Applicant advised the Tribunal that the Applications were modified in December 2022 to address comments resulting from a peer review of the Applications conducted by Mr. Hannay. The revisions include:

a. A relocated vehicular access from Brant Street to John Street that allows for a continuous active frontage along Brant Street;

b. Road widenings of 3.55 m and 2.50 m provided along Brant Street and John Street, respectively;
c. A reduced tower floorplate from 797 m^2 to 749.4 m^2;
d. An increased tower stepback from the podium to a minimum of 4.28 m along John Street and 5.57 m along Brant Street;
e. A 12.73 m tower setback from the west property line and 13.18 m tower setback from the east property line;
f. A reduced underground parking footprint to accommodate the proposed road widenings;
g. An overall reduction in vehicular parking from 253 spaces to 226 spaces; and
h. An overall increase in bicycle parking from 36 spaces to 88 spaces.

[10] The proposed OPA, attached as **Attachment 2**, will permit *inter-alia* the maximum height of 26 storeys and maximum FAR of 8.68:1.

[11] The proposed ZBA, attached as **Attachment 3**, is proposed to add a new exception to the existing zoning of the Subject Property on a site-specific basis to permit the Proposed Development.

[12] The City and the Applicant did not proffer evidence for the SPA and instead advised the Panel that the Parties were engaged in earnest and continuing discussions to propose a set of Site Plan conditions for the Panel's consideration. At the conclusion of the proceedings, the Panel was advised that the Parties could not agree on all conditions stipulated for the SPA and that the Parties would continue further negotiations. The Tribunal has taken note and will not rule on the SPA at this time.

SITE AND AREA CONTEXT

[13] The Subject Property comprises one land parcel located on the east side of Brant Street, approximately mid-block between Victoria Street to the north and Caroline Street

to the south, and is bounded by a commercial building to the south, a large-scale retail plaza to the north, and John Street to the east.

[14] The Subject Property is generally rectangular in shape, with a total land area of approximately 2,779 m^2 (0.69 acres), a frontage of 54.3 m along Brant Street and 54.0 m along John Street, and a depth of 51.3 m.

[15] The Subject Property is currently occupied by a one- and two-storey multi-tenant commercial plaza with surface parking provided along the rear of the property.

[16] To the immediate south of the Subject Property is a two-storey commercial building, currently occupied by a restaurant. Between the two-storey restaurant and Caroline Street to the south are an additional one storey restaurant, a one-storey bank, and a two-storey telecommunications company building at the northeast corner of Brant Street and Caroline Street.

[17] Further south along Brant Street, southwest of the Subject Property, is a three-storey commercial building located at 390 Brant Street. To the southeast of the Subject Property is a cluster of tall buildings, including the recently built 17-storey mixed use building at 2025 Maria Street, also known as “The Berkeley Condominiums”. Further south, at the intersection of Brant Street and James Street, is Burlington City Hall (seven storeys), a 23-storey mixed-use building at 421 Brant Street, which is currently under construction, and an approved 18-storey mixed use building at 409 Brant Street.

[18] To the immediate north of the Subject Property is a multi-tenant large-scale retail plaza currently anchored by a grocery store. The surface parking associated with the retail plaza is located between the building and Brant Street, setting the building back from the street frontage.

[19] North of the retail parking, at the southeast corner of Brant and Baldwin, is a one-storey restaurant. Further north, at the intersection of Ghent Avenue and Brant Street, is

a cluster of existing and planned higher density developments, which include an existing 15-storey building at the southwest corner, proposed buildings of 25- and 14-storeys at the northwest corner, 25-storeys at the northeast corner, and eight-storeys at the southeast corner. North of the proposed 25-storey mixed use building is a proposed 31-storey mixed use building. Further north along Brant Street, to Prospect Street/Grahams Lane, are commercial uses, some of which occur in house form buildings that were converted to commercial uses.

[20] To the immediate east of the Subject Property is John Street. On the east side of John Street, directly opposite the Subject Property, is a municipal surface parking lot known as John Street North Lot #3. Further east is Rambo Creek, and to the east of Rambo Creek is a low-rise residential neighbourhood predominantly made up of one- and two-storey single detached dwellings (the Emerald Neighbourhood Precinct).

[21] To the immediate west of the Subject Property is Brant Street. On the west side of Brant Street, directly opposite the Subject Property, are 1 ½ and 2 ½ storey converted single family dwellings that are occupied by commercial uses. To the north of those buildings is a two-storey office building at the corner of Birch Avenue and Brant Street.

[22] Further west, beyond the low-rise commercial properties, is a low-rise residential neighbourhood that extends further west to a hydro corridor (the St. Luke's Neighbourhood Precinct).

Downtown Burlington

[23] The Subject Property is located within Downtown Burlington, as delineated on Schedules B and E of the City's Official Plan, 1997 (Office Consolidation December 2019) ("COP"), within a mixed-use area centered on the intersection of Brant Street and Lakeshore Road and oriented to the Lake Ontario shoreline. According to Mr. Falletta, the Downtown mixed-use area accommodates the City's core office employment,

specialty commercial, cultural, personal service, entertainment, parks, community services and facilities, and hospital destinations. There are a number of key services and amenities in the Downtown within a reasonable walking and cycling distance from the Subject Property, including: City Hall; the Brant Street Pier; many parks, including Spencer Smith Park and Apeldoorn Park; several churches; the Central Recreation Centre; several recreational clubs; Joseph Brant Memorial Hospital; a few schools; and a variety of restaurants, retail stores and services.

[24] Within the Downtown, Brant Street serves as the “major spine” that travels through its centre and terminates at the Spencer Smith waterfront park. Brant Street is a mixed-use street with primarily commercial uses at the street-level and other uses above in a variety of forms. The built form character of Brant Street is varied throughout the downtown and includes a mix of main-street type, mid-rise, emerging tall, and house-form buildings, all of which illustrate a change in the built form character of the street over time.

[25] Over the past 15 years, the Downtown area has seen a steady increase in development activity, as mixed-use buildings, including residential, office and retail uses, have begun to fill in vacant and underutilized sites and rejuvenate the streetscapes across much of the Downtown. According to Mr. Falletta, the majority of recent development within the Downtown has been in the form of residential condominiums and grade-related retail uses. In the vicinity of the Subject Property, there is a mix of building types, both modern and historic, with varying heights, though large surface parking areas remain as well.

[26] Since the initial application was filed in December 2020, the pattern of heights in the Downtown area, particularly along Brant Street, has continued to transition, including many existing, approved, and proposed developments. Some examples are:

- an 18-storey mixed use development, with ground floor commercial uses and residential uses above, at 409 Brant Street (approved by the Tribunal);

- a 23-storey mixed use building, with ground floor commercial uses, office uses on the second floor and residential uses above, at 421-431 Brant Street (approved by City Council);
- a mixed-use development, with two towers of 18 and 25 storeys with ground floor commercial uses and residential uses above, at 774-782 Brant Street (under City review);
- a 31-storey mixed use development, with ground floor commercial uses and residential uses above, at 789-795 Brant Street (under City review);
- an existing mixed-use development of 22 storeys, with ground floor commercial uses, and residential uses and hotel suites above, at 2042-2054 Lakeshore Road;
- a 26-storey mixed use building under construction at 374 Martha Street (approved by the Ontario Municipal Board); and
- a 29-storey mixed use building, with ground floor commercial uses and residential uses above, at 2069-2079 Lakeshore Road and 383-385 Pearl Street (approved by the Tribunal).

Transportation Context

[27] Brant Street is classified as a Minor Arterial Road in the City's Road Classification System. It runs two-ways, north-south, from Lakeshore Road in the south to Dundas Street in the north. Immediately adjacent to the Subject Property, Brant Street has an existing right-of-way width of approximately 19 m with a three-lane cross section (one lane in each direction and a centre turn lane) and dedicated bicycle lanes on both the east and west sides of the right-of-way. A widening of 3.55 m is provided by the Proposed Development to contribute to the total planned right-of-way width of 26 m.

[28] John Street is classified as a Local Street and is a two-way, north-south, two-lane street with a 14.6 m right-of-way adjacent to the Subject Property. John Street was originally a north-south street that ran from Lakeshore Road to Caroline Street with a right-of-way width of 20 m that included two travel lanes (one in each direction) and on-

street parking on both sides of the street. On February 1, 2021, John Street was extended north from Caroline Street to the north boundary of the Subject Property. John Street does not have a boulevard or curb on the west side, immediately adjacent to the Subject Property, but has a curb, street tree boulevard, and a sidewalk on the east side, adjacent to the municipal parking lot. The Proposed Development includes a 2.5 m widening along the west side of John Street to accommodate a curb, street tree boulevard and sidewalk, as requested by the City.

[29] The Subject Property is well serviced with public transit and is approximately 450 m (five-minute walk) to the Downtown John Street Bus Terminal. Several Burlington Transit bus routes have bus stops at the John Street Bus Terminal, collectively providing daily service and connections to multiple GO Transit Stations, including Aldershot, Burlington, and Appleby stations, as well as the 407 GO carpool parking lot. The closest Burlington Transit stop to the Subject Property is approximately 50 m to the north, on the east side of Brant Street along Route 2, which connects to the John Street Bus Terminal to the south and both the Burlington GO Station and 407 GO carpool lot to the north.

[30] The Burlington GO Station, located approximately 1.8 kilometres (about a 20-minute walk) from the Subject Property, offers regional train and bus services south to Niagara Falls and east to Toronto's Union Station.

ISSUES, ANALYSIS AND FINDINGS

[31] In respect of these Appeals, the Tribunal must determine whether the Proposed Development:

- has regard for matters of provincial Interest as set out in s. 2 of the *Act*;
- is consistent with the Provincial Policy Statement 2020 ("PPS") pursuant to s. 3(5) of the *Act*;

- conforms with any applicable Provincial Plans pursuant to s. 3(5) of the *Act*, and specifically *A Place to Grow, Growth Plan for the Greater Golden Horseshoe 2020* ("Growth Plan"); and
- conforms to the Region Official Plan (Interim Office Consolidation November 2022) ("ROP") and the COP.

Provincial Planning Framework

[32] Mr. Lowes proffered that the relevant matters of provincial interest in s. 2 of the Act are: s. 2(p) pertaining to the appropriate location of growth and development; and s. 2(r) pertaining to the promotion of built form that is well designed, encourages a sense of place, and provides for public spaces that are of high quality, safe, accessible, attractive and vibrant.

[33] In Mr. Lowes' opinion, while the Subject Property is an appropriate location for growth and development, the proposed height of 26 storeys should more appropriately be located elsewhere within the Downtown. He further opined that while the Proposed Development provides for an appropriate relationship of the podium to the sidewalk, it does not encourage a sense of place for Brant Street as envisioned by the City.

[34] In Mr. Falletta's opinion, the Proposed Development is an appropriate location for growth and development given its location in Downtown Burlington within convenient walking distance to numerous public, commercial, employment, and parks and open space amenities, its proximity to transit, and its pedestrian orientation.

[35] Messrs. Kasprzak and Hannay opined that the Applications have regard to s. 2(r) of the Act as the Proposed Development will redevelop an underutilized site with a well-designed building that will encourage a sense of place and significantly improve the pedestrian experience along both street frontages with active uses.

[36] Mr. Falletta and Mr. Lowes each reviewed the relevant policies of the PPS and the Growth Plan and agreed that both documents support intensification on the Subject Property.

[37] Among the PPS policies that the Tribunal was directed to, Policy 1.1.3.2 requires that land use patterns within settlement areas shall be based on a range of uses and opportunities for intensification and redevelopment in accordance with Policy 1.1.3.3, which states:

> Planning authorities shall identify appropriate locations and promote opportunities for *transit-supportive* development, accommodating a significant supply and range of *housing options* through *intensification* and *redevelopment* where this can be accommodated taking into account existing building stock or areas […] and the availability of suitable existing or planned infrastructure and public service facilities required to accommodate projected needs.

[38] In the Growth Plan, the Guiding Principles of Section 1.2.1 provide direction to:

> - Prioritize intensification and higher densities in strategic growth areas to make efficient use of land and infrastructure and support transit viability.
> - Support a range and mix of housing options, including additional residential units and *affordable* housing, to serve all sizes, incomes, and ages of households.

[39] Both Messrs. Falletta and Lowes concluded that a tall mixed-use building on the Subject Property, with commercial uses at grade and high-density residential units above, can be consistent with the PPS and conform to the policies of the Growth Plan. However, their opinions differ with respect to the appropriate height of the building and tower setback from Brant Street. Mr. Falletta opined that the Proposed Development, at 26 storeys with the articulated tower setbacks from Brant Street ranging from 11.58 m to 20.15 m, is consistent with the PPS and conforms to the Growth Plan. For Mr. Lowes, the Proposed Development is not appropriate for the Subject Property. Rather, Mr. Lowes opined, a 17-storey building with a consistent 17.32 m tower setback from Brant street will result in the consistency and conformity required.

Region Official Plan

[40] The Subject Property is within the Urban Area as delineated on Map 1 – Regional Structure of the ROP. At the time the Applications were filed with the City, the Subject Property was also within the Urban Growth Centre (“UGC”) of the City and within the Mobility Hub area of the John Street Bus Terminal. Urban Areas are intended to facilitate and promote intensification and increased densities. Similarly, UGCs and Mobility Hubs are among the areas intended to be the focus for accommodating intensification.

[41] The ROP was amended in November 2021 and again in November 2022, after the Applications were filed with the City, by ROP Amendment Nos. 48 (“ROPA 48”) and 49 (“ROPA 49”), respectively. ROPA 48 introduced several new policies pertaining to intensification and established a hierarchy of Strategic Growth Areas (“SGAs”), beginning with UGCs and ending with Regional Intensification Corridors (the latter introduced through ROPA 49). Included in the hierarchy of SGAs are Secondary Regional Nodes.

[42] ROPA 48 also relocated the UGC boundary north from Downtown Burlington to the area around the Burlington GO Station (to coincide with the Major Transit Station Area boundary) and removed the Mobility Hub designation from the John Street Bus Terminal. The lands within Downtown Burlington, including the Subject Property, were designated as a Secondary Regional Node.

[43] Policy 79.3(1) of the amended ROP directs development with higher densities and mixed uses to SGAs in accordance with the SGA hierarchy. Policy 82.1(2) establishes Secondary Regional Nodes as historic downtown areas or villages intended to be a focus for growth through mixed-use intensification at a scale appropriate to their context.

[44] Notwithstanding the reclassification of Downtown Burlington from a UGC to a Secondary Regional Node, the ROP includes transition Policy 80.3, which states that the UGC policies continue to apply to lands that were within a UGC if applications for development on those lands were made prior to the approval of ROPA 48. Accordingly, the Applications are to be evaluated as if the Subject Property is within a UGC. As per Policy 80(4) of the ROP, one of the objectives of UGCs is, “To function as the primary *Strategic Growth Areas* of the Regional Urban Structure hierarchy where a significant share of population and employment growth will be accommodated.”

City Official Plan

The COP

[45] The in-effect COP places the Subject Property in a Mixed Use Activity Area on Schedule A: Settlement Pattern, and within the Downtown Mixed Use Centre designation on Schedule B: Comprehensive Land Use Plan – Urban Planning Area. Policy 5.5.3 c) of the COP states that higher densities and intensities will be encouraged within certain precincts of the Downtown Mixed Use Centre.

[46] Within the Downtown Mixed Use Centre, the Subject Property is located in the Downtown Core Precinct (“DCP”). The DCP policies permit high-density residential apartment uses, including the residential use of upper storeys of commercial buildings. Retail or service commercial uses are required continuously at grade along public streets in residential buildings.

[47] The DCP policies further provide for a minimum building height of two storeys and a maximum building height of eight storeys, subject to achieving compatibility with surrounding land uses and a sense of pedestrian scale using terracing above the second floor. The maximum FAR in the DCP is 4.0:1.

The 2020 OP

[48] Central to the submissions by the City was City Council's adoption of a new official plan in 2018 that was modified by the City in September 2020 and approved by the Region in November 2020 ("2020 OP"). The 2020 OP was subsequently appealed to the Tribunal by 48 appellants and is not currently in effect. Nevertheless, it is the City's position, and the opinion of their witnesses, that the Tribunal ought to give significant weight to the 2020 OP in evaluating the Proposed Development given the considerable public input and studies that led to its adoption.

[49] The 2020 OP establishes a new vision for the Downtown based on a refined urban structure that places the Subject Property in the newly defined Mid Brant Precinct. The Mid Brant Precinct permits intensification on the Subject Property up to a maximum of 11 storeys with a required tower setback from Brant Street of 20 m. The greatest heights and densities are directed to the area surrounding the Burlington GO Station, to the north of the Subject Property.

[50] Notwithstanding the 2020 OP provisions for the Subject Property requiring a maximum height of 11 storeys and a tower setback of 20 m from Brant Street, both Mr. Lowes and Ms. Jay proffered that a 17-storey building with a 17.32 m tower setback from Brant Street would be appropriate for the Subject Property. The Tribunal finds this position conflicting. On the one hand, the City's witnesses urged the Tribunal to rely on the provisions of the 2020 OP given the significant efforts that led to its adoption and the risk of setting a precedent for the area that was not consistent with the new policies. On the other hand, they also opined that deviating from the 2020 OP policies on the Subject Property was appropriate.

[51] The Tribunal finds that it would be an inexcusable error to evaluate and base its decision on the Applications using the policies or vision of the ineffectual and non-operative 2020 OP. The Applications are subject to, and must be evaluated against, the policies of the in-force COP. While the 2020 OP may assist the Tribunal in

understanding the City's vision for the Downtown, it is not a determinative policy document. This is supported by the opinions provided by the City's witnesses suggesting that certain policies of the 2020 OP need not be adhered to in this instance. Further, it should also be noted that the appeals of the 2020 OP may lead to modifications of the prescribed policies or revocation of the stated provisions for development.

Primary Issues

[52] The Panel, having regard for the evidence and submissions presented by the Parties, notes that there is no real dispute that intensification and development of the underutilized Subject Property are appropriate. The main issues at hand relate to the appropriate height and built form of development on the Subject Property, and specifically:

1. What height is appropriate for the Subject Property?
2. Is the proposed tower setback from Brant Street appropriate?
3. Is the Proposed Development compatible with adjacent properties and the surrounding context?

Issue 1 – Height

[53] In considering the appropriate height of development on the Subject Property, the Tribunal was directed to the PPS, Part IV: Vision for Ontario's Land Use Planning System. It states, in part:

> Efficient development patterns optimize the use of land, resources and public investment in infrastructure and public service facilities. These land use patterns promote a mix of housing, including affordable housing, employment, recreation, parks and open spaces, and transportation choices that increase the use of active transportation and transit before other modes of travel.

[54] The Tribunal was further directed to the Growth Plan, Section 2: Where and How to Grow. It states, in part:

> It is important to optimize the use of the existing urban land supply as well as the existing building and housing stock to avoid over-designating land for future urban development while also providing flexibility for local decision-makers to respond to housing need and market demand. This Plan's emphasis on optimizing the use of the existing urban land supply represents an *intensification* first approach to development and city-building, one which focuses on making better use of our existing *infrastructure* and *public service facilities*, and less on continuously expanding the urban area.

[55] Both Mr. Falletta and Mr. Lowes agree that the PPS and Growth Plan directives to *optimize the use of land* mean making the best use of a development site and the infrastructure that serves it, while considering the local context and other planning considerations.

[56] Mr. Falletta proffered that the 26-storey Proposed Development provides for approximately 82 more units than the 17-storey building proposed by Mr. Lowes. He further proffered that the additional nine storeys of height between the two proposals can be achieved without any unacceptable land use planning impacts and without the need to expand existing infrastructure. In Mr. Falletta's opinion, accommodating an additional 82 dwelling units without creating any unacceptable land use planning impacts optimizes the use of the Subject Property.

[57] For Mr. Lowes, optimizing the use of land requires balancing various directives to determine the appropriate location, type, and scale of development, which should be left to municipalities as part of their strategies for achieving the intensification objectives of the PPS and Growth Plan. In his opinion, even in the absence of any identifiable land use planning impact, the additional height of the Proposed Development (regardless of the 82 extra units) should be refused on the basis of respecting the City's vision for Downtown, as articulated in the 2020 OP.

[58] Mr. Lowes directed the Tribunal to proposed Policy 8.1.1(3.1) (r) in the 2020 OP, which directs the tallest developments in the Downtown to those parts of the UGC that have the greatest proximity to higher order transit. In his opinion, that objective is achieved by limiting building heights exceeding 17 storeys to precincts that are in closer proximity to the Burlington GO Station. However, Mr. Lowes also acknowledged that approving a 26-storey building on the Subject Property will not prevent the City from approving taller buildings closer to higher order transit. He confirmed that there have already been approvals for buildings up to 39 storeys in the Burlington GO Station area, and that the City's own planning for that area proposes building heights as tall as 45 storeys.

[59] Mr. Falletta opined that the Proposed Development will maintain the various policy objectives of the COP without sacrificing the development potential of the Subject Property. He noted that there is no policy basis to limit buildings with height ranges of 26 storeys only to areas within walking distance of higher order transit. There are existing and approved tall buildings in this height range throughout the Downtown area.

[60] Mr. Kasprzak submitted that, in his opinion, 17 storeys is an arbitrary number (regardless of it being identified as the maximum building height for lands to the north of the Subject Property in the 2020 OP) that is not based on a detailed site analysis. In his opinion, a taller building that is compatible with the existing and planned context can be accommodated on the Subject Property without adverse impacts on the surrounding area.

[61] Mr. Keleher, the Applicant's land economist, testified to the importance of every dwelling unit to contribute to the provincial and municipal housing objectives and the optimization of land. He explained that in December 2021, the Office of the Auditor General of Ontario released the results of its value-for-money audit of Land Use Planning in the Greater Golden Horseshoe ("Auditor's Report"). The Auditor's Report found that as of 2016, the Downtown Burlington UGC had grown from a density of 75 residents and jobs per hectare in 2001 to 114 residents and jobs per hectare in 2016,

representing an increase of 39 residents and jobs per hectare. However, the 2016 density equates to only 57% of the target density of 200 residents and jobs per hectare.

[62] Mr. Keleher emphasized that the City will need to increase the density of Downtown Burlington by another 86 residents and jobs per hectare by 2031 to meet the provincial density target. In other words, the City will need to add density at a pace that is 120% higher than the amount seen over the 2001-2016 period. In his opinion, every unit that can reasonably be accommodated is essential to achieve the population allocations for the City.

Issue 2 – Tower Setback

[63] Ms. Jay directed the Tribunal to Policy 8.1.1(3.7) of the 2020 OP, which sets out the proposed vision for the Mid Brant Precinct and requires that mid-rise or tall building heights are set back from Brant Street by 20 m. She proffered that the intent of this proposed policy is to provide a low-rise main street character along Brant Street.

[64] Mr. Lowes proffered that the proposed 20 m setback reflects the City's attempt to balance the need for housing in Downtown with the public's desire to preserve the low-rise character of Brant Street, as determined through the City's engagement on the 2020 OP. He directed the Tribunal to Section 8.1.1(3.1) of the 2020 OP, which contains general objectives for Downtown. Objective (o) permits building heights and intensities that support the designation of the Downtown as a UGC, "while protecting the predominant low-rise character of Brant Street and providing a transition to adjacent low-rise neighbourhoods." He advised the Tribunal that his support for a reduced 17.32 m tower setback from Brant Street was his attempt to be pragmatic in achieving the intent of the 2020 OP while also accommodating a tower with a 750 m^2 floorplate on the Subject Property.

[65] The Proposed Development provides for an articulated tower setback from Brant Street that ranges from 11.58 m at the north end of the Subject Property to 20.15 m at

the south end of the Subject Property. Mr. Kasprzak opined that the tower and podium configuration of the Proposed Development allows for an appropriate response to the existing and emerging mix of tall buildings along Brant Street, while at the same time enhancing its low-rise streetwall condition.

[66] In Mr. Kasprzak's opinion, a 20 m tower setback is not necessary to achieve a main street look and feel along Brant Street (nor is the 17.32 m setback proposed by Mr. Lowes). To demonstrate this, he modelled both the Proposed Development and the alternative built form proposed by Mr. Lowes and prepared a series of perspective drawings showing the effect of each scenario from various pedestrian-level vantage points. In his opinion, the visual impacts between the two scenarios are, "minimal from all angles." He further opined that the tower setback of the Proposed Development is adequate to ensure that the podium reads as the primary streetwall condition, maintaining the intent of the 2020 OP to create a continuous main street feel along the east side of Brant Street.

[67] Mr. Kasprzak directed the Tribunal to the City's recent Tall Building Design Guidelines, 2017 ("TBG") as an appropriate point of reference and guideline framework for the design of contemporary tall buildings in the City. Guideline 3.1 d) of the TBG states that, "The tower should be stepped back at least 3 metres from the podium to differentiate between the building podium and tower, and to ensure usable outdoor amenity space." The Proposed Development exceeds this standard by providing a minimum tower setback from the podium of 5.57 m along Brant Street and 4.28 m along John Street. Both setbacks increase from the north end of the Proposed Development to the south end of the Proposed Development.

Issue 3 – Compatibility

[68] "Compatible" is defined in Part VIII of the COP as follows:

> *Development* or *re-development* that is capable of co-existing in harmony with, and that will not have an undue physical (including form)

> or functional adverse impact on, existing or proposed *development* in the area or pose an unacceptable risk to environmental and/or human health. Compatibility *should* be evaluated in accordance with measurable/objective standards where they exist, based on criteria such as aesthetics, noise, vibration, dust, odours, traffic, safety and sun-shadowing and the potential for serious adverse health impacts on humans or animals.

[69] The 2020 OP definition of "Compatible or Compatibility" in Chapter 13 is as follows:

> *Development* which *may* not necessarily be the same as or similar to existing or planned development in the vicinity, but nonetheless can co-exist without causing adverse impacts to the surrounding area.

Built Form Compatibility

[70] The City's position is that the Proposed Development represents excessive intensification of the Subject Property, asserting that the proposed design creates adverse impacts on adjacent properties arising from the height, massing, setbacks and step-backs of the Proposed Development.

[71] In Mr. Lowes' opinion, the Proposed Development does not provide for an appropriate interface with Brant Street, nor achieve a low-rise built form character along Brant Street, nor provide for an appropriate transition to the low-rise commercial house form buildings in the Mixed Use Neighbourhood Precinct on the west side of Brant Street.

[72] Ms. Jay opined that the matter at hand was about placing the right building in the right location to implement the 2020 OP vision for the Mid Brant Precinct. This vision, she said, includes appropriate building heights, character and design excellence. She directed the Tribunal to Section 3.3 of the Draft Downtown Burlington Placemaking Guidelines, which contains the following design vision for the Mid Brant Precinct:

> The Mid Brant Precinct will evolve over time into a mixed-use neighbourhood containing a substantial amount of retail space including a food store facility. This precinct will be designed as a pedestrian friendly, major retail centre that serves the day-to-day and weekly

> shopping needs of Downtown residents. Although the rhythm and design of this precinct shall have regard for the adjacent Brant Main Street Precinct, this precinct is encouraged to have its own unique design and character.

[73] In Ms. Jay's opinion, the vision for the Mid Brant Precinct relies, in part, on transition and character. She opined that the Proposed Development does not adequately address transition as part of the tower stepback or building height, nor respond to the low-rise commercial properties along the west side of Brant Street.

[74] Notwithstanding the above, Ms. Jay conceded that transitions are required to reduce the potential for shadowing, pedestrian-level wind impacts, and overlook on neighbouring properties, and that she has no concerns with any of the Proposed Development's impacts related to same. She further conceded that there are no policies in the COP requiring a transition between the Subject Property and the west side of Brant Street, and that it would be fair to have a mix of low-rise, mid-rise, and tall buildings in a Downtown.

[75] Mr. Kasprzak opined that the proposed built form, setbacks and height of the Proposed Development appropriately conform to the policies of the COP and address the relevant Council-approved guidelines with respect to tall building development. In his opinion, the proposed form, setbacks and height of the Proposed Development are appropriate and compatible with the existing and planned physical context of the surrounding area. At grade, the proposed development will animate the public realm with active grade related uses. Parking, loading and other service functions are appropriately located away from the public realm to minimize any potential visual impact and pedestrian conflicts.

[76] Mr. Kasprzak directed the Tribunal to Policy 5.5.8.2 j) of the COP, which states that applications for increased building heights for mid- to high-rise buildings in the DCP may be required to provide an angular plane study, identifying visual, sun shadowing and wind impacts, and demonstrating how such impacts can be mitigated to acceptable levels. He advised the Tribunal that the Proposed Development was assessed against

an angular plane study which demonstrates that the tower would sit well within a 45-degree angular plane from the existing residential neighbourhood on the east side of Rambo Creek and that there would be a minor projection of the top of the building into the angular plane from the closest residential properties to the west of Brant Street. In his opinion, a minor projection is acceptable and is reflective of a condition where low rise residential neighbourhoods co-exist with tall buildings within the City's Downtown.

[77] In Mr. Kasprzak's opinion, the Proposed Development allows for an appropriate transition in scale towards the low-rise residential uses to the east and west, mitigating any potential visual and/or shadowing impacts from the Proposed Development. The Applicant's shadow analysis, prepared by R. Bouwmeester & Associates, demonstrates that the Proposed Development will satisfy the applicable policy tests and guideline recommendations. Shadow impacts related to the proposed 26-storey tower will not be unacceptable at the equinoxes and are not anticipated to prevent five hours of sunlight onto public sidewalks, parks, recreational or open space areas, or the adjacent low-rise uses to the east and west, as described in Guideline 2.3.1 of the TBG.

[78] Mr. Kasprzak also directed the Tribunal to a block context plan prepared under his direction to demonstrate the potential redevelopment of adjacent lands around the Subject Property. In his opinion, the block context plan demonstrates that development at a compatible scale could be accommodated on adjacent lands based on the proposed tower setbacks and podium design of the Proposed Development. The block context plan also illustrates the potential configuration of public roads and open spaces that can help urbanize the larger block by creating access and frontage for future buildings.

[79] Mr. Hannay agreed with the opinions of Mr. Kasprzak, adding that the distance and buffering between the Subject Property and the closest low-rise precincts of the St. Luke's and Emerald Neighbourhoods is such that, in his opinion, there would be no adverse or unacceptable impacts on privacy.

[80] In Mr. Hannay's opinion, the Proposed Development introduces an infill development with a complementary design that is compatible with the existing and planned context of the neighbourhood. The Proposed Development conforms to the principles and objectives of the City's design policies by introducing a compact, attractive, and efficient mixed-use development that contributes to a sense of place within Downtown Burlington.

Noise Compatibility

[81] In support of the Applications, the Tribunal heard from Mr. Penton, who advised the Tribunal that both a transportation noise impact assessment and a stationary noise assessment were completed to assess potential noise impacts on the Proposed Development from nearby sources. He proffered that, based on the transportation and stationary noise levels predicted at the Proposed Development, adverse noise impacts are not anticipated and complaints related to noise are highly unlikely.

[82] Mr. Penton explained that for transportation noise sources, neither wall and window acoustical upgrades nor noise barriers are required as transportation noise impacts are not predicted.

[83] For stationary noise sources, Mr. Penton advised the Tribunal that air conditioning and "Type D" noise warning clauses, to be included in documents registered on Title, would be required. He explained to the Tribunal that the only stationary noise sources with the potential to affect the Proposed Development are from heating, ventilation, and cooling ("HVAC") and exhaust fan units of nearby commercial facilities.

[84] Mr. Penton further explained that, using the Ministry of Environment, Conservation and Parks ("MECP") NPC-300 Class 1 Area Noise Guidelines publication, noise limits would be met for all but 13 units in the Proposed Development. For those units to meet the Class 1 Area Noise Guidelines, mitigation would be required at the grocery store plaza to the north of the Subject Property and the restaurant to the immediate south. However, he

further explained that the owners of those two commercial facilities have refused the Applicant's offer to install mitigation measures on their properties. Therefore, the required mitigation for the Proposed Development to fully comply with the Class 1 Area Noise Guidelines is not feasible.

[85] As an alternative to installing mitigation measures at the two commercial facilities, Mr. Penton proffered that the Subject Property could be designated with a Class 4 Area classification by the Tribunal (see *Viridis Development Group Inc. v. Kitchener (City)*, PL190267 December 3, 2020, LPAT). With a Class 4 classification, no additional mitigation measures would be required other than the aforementioned warning clauses and mandatory air conditioning in each unit.

[86] Mr. Penton opined that Class 4 classifications have been used for similar developments across the Greater Toronto Area and within the City for similar reasons. In his opinion, a Class 4 classification is appropriate for the Subject Property as it is in an urban environment that experiences similar or better sound levels than other urban environments with Class 4 classifications. Of note, Mr. Penton advised the Tribunal that the nearby commercial facilities are exempt from the MECP permitting requirements and as such, neither a Class 1 nor Class 4 classification on the Subject Property will affect the commercial facilities' ability to obtain or maintain permits to continue their operations.

[87] The City, having heard the evidence of Mr. Penton, did not call evidence to counter his sole expert testimony.

Findings

[88] The Tribunal accepts and prefers the evidence of the Applicant's expert witnesses and finds that the Subject Property is suitable for the proposed intensification and density, and that the Proposed Development is consistent with the policies of the PPS, conforms to the policies of the Growth Plan and the ROP, and conforms to the intent of the COP.

[89] The Tribunal finds that the Applications have regard for matters of provincial interest as set out in s. 2 of the *Act*, and in particular: s. 2(h) on the orderly development of safe and healthy communities; s. 2(f) on the adequate provision and efficient use of communication, transportation, sewage and water services and waste management systems; s. 2(h) on the orderly development of safe and healthy communities; s. 2(j) on the adequate provision of a full range of housing; s. 2(p) on the appropriate location of growth and development; s. 2(q) on the promotion of development that is designed to be sustainable, to support public transit and to be oriented to pedestrians; and s. 2(r) on the promotion of built form that is well-designed, encourages a sense of place, and provides for public spaces that are of high quality, safe, accessible, attractive and vibrant.

[90] Regarding intensification of the Subject Property, the Tribunal subscribes to the principle that intensification of a site, where supported by provincial policy, should occur in conformity with municipal planning policies on intensification, compatibility, and urban design.

[91] The Growth Plan principles in s. 1.2.1 prioritize intensification and higher densities in SGAs to make efficient use of land and infrastructure and support transit viability, complete communities, and a range and mix of housing options. Policy 2.2.1.2 of the Growth Plan directs that growth within settlement areas will be focused in delineated built up areas, SGAs, and locations with existing or planned transit and public service facilities. Policy 2.2.3.2 b) of the Growth Plan directs that UGCs will be planned to achieve a minimum density target of 200 residents and jobs combined per hectare in Downtown Burlington.

[92] The ROP locates the Subject Property in an SGA and specifically within the UGC. Provincial directions require optimization of this opportunity for intensification. The COP locates the Subject Property in the DCP, where higher density developments are appropriate as demonstrated by past Tribunal approvals. The Proposed Development of

a high-density mixed-use building meets the provincial policy objectives of targeted growth in the Downtown Burlington UGC, as well as the housing needs of the City. With respect to the appropriate height of the building, the Tribunal notes that there are existing public facilities and infrastructure to accommodate the Proposed Development of 259 residential units in 26 storeys. A reduction in height to 17 storeys will reduce the provision of housing by a loss of 82 residential units, which is contrary to provincial directives.

[93] The Proposed Development, in the Panel's view, promotes intensification at an underutilized site while being compatible with the Brant Street streetscape character. It respects the existing built form and landscape, contributes to the area's planned and existing character through appropriate podium height and tower design, and is compatible with the area without creating adverse impacts on nearby low-rise residential neighbourhoods.

[94] The Panel looked at the relationship of the Proposed Development's podium height, tower height, massing, scale, and transitions to the nearby Emerald Neighbourhood to the east and the St. Luke's Neighbourhood and house form commercial buildings to the west, and the streetscape character, setback, stepback and building separations.

[95] The Panel notes that there is no allegation of any land use impact from a 26-storey tower at the Subject Property. All of the technical studies satisfied the City's criteria. The angular plane studies demonstrate that there will be no unacceptable overlook impacts into the nearby low-rise residential areas. The tower will be set back sufficiently to ensure adequate tower separation distances so that adjacent sites will not be prevented from developing tall buildings.

[96] The Panel agrees with Mr. Kasprzak that it is not necessary to have a tower setback of 20 m nor 17.32 m from the west property line along Brant Street to achieve a main street character. He demonstrated through his perspective drawings that there

was minimal impact on the pedestrian perspective from all angles. The Tribunal finds that the proposed articulated tower setback from the west property line along Brant Street, ranging from 11.58 m to 20.15 m, is adequate to cast the three-storey podium as the street wall and create a continuous main street feel on the east side of Brant Street.

[97] The Panel agrees with Messrs. Kasprzak and Hannay that the proposed three-storey podium, fronting onto Brant Street, provides active at-grade uses, high quality design, and streetscape improvements that contribute to the creation of a high-quality public realm, consistent with the policy objectives for this area and the existing main street character to the south of the Subject Property. The use of the podium for ground level commercial uses will be compatible with the commercial house form buildings on the west side of Brant Street, across from the Subject Property.

[98] The Proposed Development utilizes materials and articulation within the podium to create a compatible design with that of the existing low-rise buildings while the proposed tower provides a contemporary design that creates a distinct, harmonious built form that positively contributes to the skyline with no evidence of shadow, wind or overlook impacts.

[99] With respect to noise impacts, the Tribunal relies on the uncontroverted evidence of Mr. Penton to manage the acceptable noise impacts emanating from the existing adjacent commercial uses. The Tribunal will classify the Subject Property as a Class 4 Area as defined by the NPC 300 Guidelines.

SUMMARY

[100] To summarize, the Tribunal finds that:

a. The Proposed Development has appropriate regard for matters of provincial interest as set out in s.2 of the *Act*.

b. The Proposed Development is consistent with the PPS, conforms to the Growth Plan and the ROP, and meets the provincial objectives of creating complete communities and increasing the housing supply.

c. The Subject Property is located within a UGC and the DCP of the City, where intensification and higher density development is directed to occur.

d. The Proposed Development provides appropriate intensification on the Subject Property, resulting in the addition of 259 residential apartment units to the City's housing stock.

e. The Proposed Development is in conformity with policies of the COP pertaining to precinct redevelopment and urban design.

f. The Proposed Development respects the existing Brant Street character, the surrounding built form, and uses. The proposal is compatible with the neighbourhood area without any unacceptable impacts on existing or future development.

g. The Proposed Development efficiently utilizes existing infrastructure, will result in a range and mix of housing, and is transit supportive with access and proximity to existing and planned transit facilities.

h. The Proposed Development represents good planning and is in the public interest.

[101] Given the above, the OPA and ZBA are approved by the Tribunal.

ORDER

[102] **THE TRIBUNAL ORDERS** that the Appeal under s. 22(7) of the *Planning Act* pertaining to the proposed Official Plan Amendment is allowed in part and the Official Plan for the City of Burlington is amended as set out in **Attachment 2** to this Order. The Tribunal authorizes the municipal clerk of the City of Burlington to assign a number to this amendment for record keeping purposes.

[103] **THE TRIBUNAL ORDERS** that the Appeal under s. 34(11) of the *Planning Act* pertaining to the proposed Zoning By-law Amendment is allowed in part and Zoning By-law No. 2020 for the City of Burlington is amended as set out in **Attachment 3** to this Order. The Tribunal authorizes the municipal clerk of the City of Burlington to assign a number to this by-law for record keeping purposes.

"T.F. Ng"

T.F. NG
MEMBER

"S. Dixon"

S. DIXON
MEMBER

Attachment 1

ONTARIO LAND TRIBUNAL
655 Bay Street, Suite 1500
Toronto, ON M5G 1E5
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olt.gov.on.ca

EXHIBITS LIST

OLT CASE NO(S): **OLT-21-001442**

HEARING EVENT DATE: **April 18, 2023 – May 5, 2023**

EXHIBIT NO.	NAME/DESCRIPTION OF EXHIBIT	FILED BY (Party Name)	DATE (Marked as exhibit at hearing)
1	Joint Document Book	All Parties	April 18, 2023
2	Government of Ontario Size and Location of UGC in GGH	All Parties	April 18, 2023
3	Office of Auditor General of Ontario, Value-for-Money	All Parties	April 18, 2023
4	Ontario Growth Secretariat Proposed Size and Location of UGCs in GGH	All Parties	April 18, 2023
5	Ontario MMAH, Performance Indicators in the GGH	All Parties	April 18, 2023
6	TO File 535 – Brant BUD Meeting Minutes June 23, 2020	All Parties	April 18, 2023
7	TO File 535 Brant – Pre-consultation November 2020	All Parties	April 18, 2023
8	City of Burlington Visual Evidence	City	April 18, 2023
9	Applicant's Visual Evidence Book	Applicant	April 18, 2023
10	Applicant's Photo Book	Applicant	April 18, 2023
11	Environmental Noise Assessment Version 2, March 2021	City	April 19, 2023
12	Google Street View of John Street Bus Terminal	City	April 20, 2023
13	Burlington Housing Pledge March 2023	City	April 20, 2023

14	City's Proposed Floorplate Overlay with Appellant Dimensions	Applicant	April 21, 2023
15	Planning Justification Report, November 2020	City	April 24, 2023
16	Updated Angular Plane Drawings	City	April 25, 2023
17	Corrected Photos (Page 9 of Exhibit 8)	City	April 25, 2023
18	Height Map from Urban Design Brief	City	April 25, 2023
19	Email from counsel to City of Burlington attaching Burlington Official Plan with Highlighted Sections Under Appeal	Applicant	May 1, 2023
20	Burlington Interim Working Version of OP 2020 with Highlighted Sections Under Appeal	Applicant	May 1, 2023
21	Order of the Tribunal dated April 22, 2022 - OLT-22-002219 (Appeals to Burlington 2020 OP)	Applicant	May 1, 2023
22	Burlington Community Planning Staff Report – February 28, 2023 Re: Achieving Conformity with ROPA 48 and 49	Applicant	May 1, 2023
23	Updated SLR Environmental Noise Assessment Report – May 2023	Applicant	May 5, 2023

Attachment 2

AMENDMENT NO.XXX TO THE OFFICIAL PLAN OF THE BURLINGTON PLANNING AREA

CONSTITUTIONAL STATEMENT

The details of the Amendment, as contained in Part B of this text, constitute Amendment No. XXX to the Official Plan of the Burlington Planning Area, as amended.

PART A – PREAMBLE

1. PURPOSE OF THE AMENDMENT

The purpose of this Amendment is to amend the existing *Downtown Core* designation of 535-551 Brant Street to facilitate the development of a 27 storey, plus a partially occupied mechanical penthouse level, mixed use building consisting of 259 residential units with underground parking and a maximum floor area ratio of 11.5:1.

2. SITE AND LOCATION

For the purposes of this amendment, Brant Street will be used to orient the subject site in a north-south direction. The site is a through-lot on the east side of Brant Street mid-block between Victoria Street to the north and Caroline Street to the south. The site is generally rectangular in shape with an overall area of approximately 0.27 hectares (0.69 acres) and has frontage of 54.2 metres (177.8 feet) along Brant Street and 54.0 metres (177.1 feet) along John Street and a depth of 51.2 metres (167.9 feet).

Surrounding land uses consist of commercial / retail uses to the north, a municipal parking lot and residential uses to the east, and commercial uses to the south and west.

3. BASIS FOR THE AMENDMENT

a) The City's Urban Growth Centre plays an important role in accommodating population and job growth. Mixed use development within the Urban Growth Centre with access to transit contributes to intensification and supports the long-term sustainability of the city.

b) The subject application proposes intensification that is consistent with the Provincial Policy Statement (PPS). The PPS promotes densities for new housing which efficiently use land, resources, infrastructure and public service facilities, and supports the use of public transit.

c) Directing intensification to areas in proximity to transit and within a strategic growth area and providing policies that identify the appropriate type and scale of development assists the City in achieving its intensification and housing supply targets and meet the intent of the Provincial "A Place to Grow" Growth Plan and the Region of Halton Official Plan.

d) The redesignation of the property to permit a higher density tall building form supports the City's objective to broaden the range of housing forms and supply to meet City needs in a manner that is compatible with surrounding properties and uses.

e) The applicant submitted technical studies and reports that provide adequate and appropriate information to support the development.

PART B – THE AMENDMENT

1. DETAILS OF THE AMENDMENT

Map Change: None Proposed

Text Change:

The text of the Official Plan of the Burlington Planning Area, as amended, is hereby amended as follows:

By adding policy 136) to Part III, Land Use Policies – Urban Planning Area, Section 5.0, Mixed-Use Activity Area, Subsection 5.5.8, Downtown Core Precinct, as follows:

535-551 Brant Street	136) Notwithstanding Part III, Policies 5.5.8.2 b), c) and d) of this Plan, for the lands described as 535-551 Brant Street, the maximum height of buildings shall be 27 storeys, plus mechanical penthouse. The maximum *floor area ratio* shall be 11.5:1. Retail, *service commercial,* office, and residential lobbies are required continuously at grade along public streets in residential, mixed-use or office buildings.

2. INTERPRETATION

This Official Plan Amendment shall be interpreted in accordance with the “Interpretation” policies of Part VI, Implementation, Section 3.0, Interpretation, of the Official Plan of the Burlington Planning Area.

3. IMPLEMENTATION

This Official Plan Amendment will be implemented in accordance with the appropriate “Implementation” policies of Part VI of the Official Plan of the Burlington Planning Area.

Attachment 3

THE CORPORATION OF THE CITY OF BURLINGTON

BY-LAW NUMBER 2020.XXX
A By-law to amend By-law 2020, as amended; for 535 – 551 Brant Street, File No.: 505-04/21 & 520-05/21

WHEREAS Section 34(1) of the Planning Act, R.S.O. 1990, c. P. 13, as amended, states that Zoning By-laws may be passed by the councils of local municipalities; and

WHEREAS the Ontario Land Tribunal issued a decision on XXX, 2023, to amend the City's existing Zoning By-law 2020, as amended, to permit a 27-storey building with 259 residential units, and commercial uses on the street level for lands located at 535-551 Brant Street, Burlington.

THE ONTARIO LAND TRIBUNAL AMENDS ZONING BY-LAW 2020 AS FOLLOWS:

1. Zoning Map Number 9a to By-law 2020, as amended, is hereby amended as shown on Schedule "A" attached to this By-law.

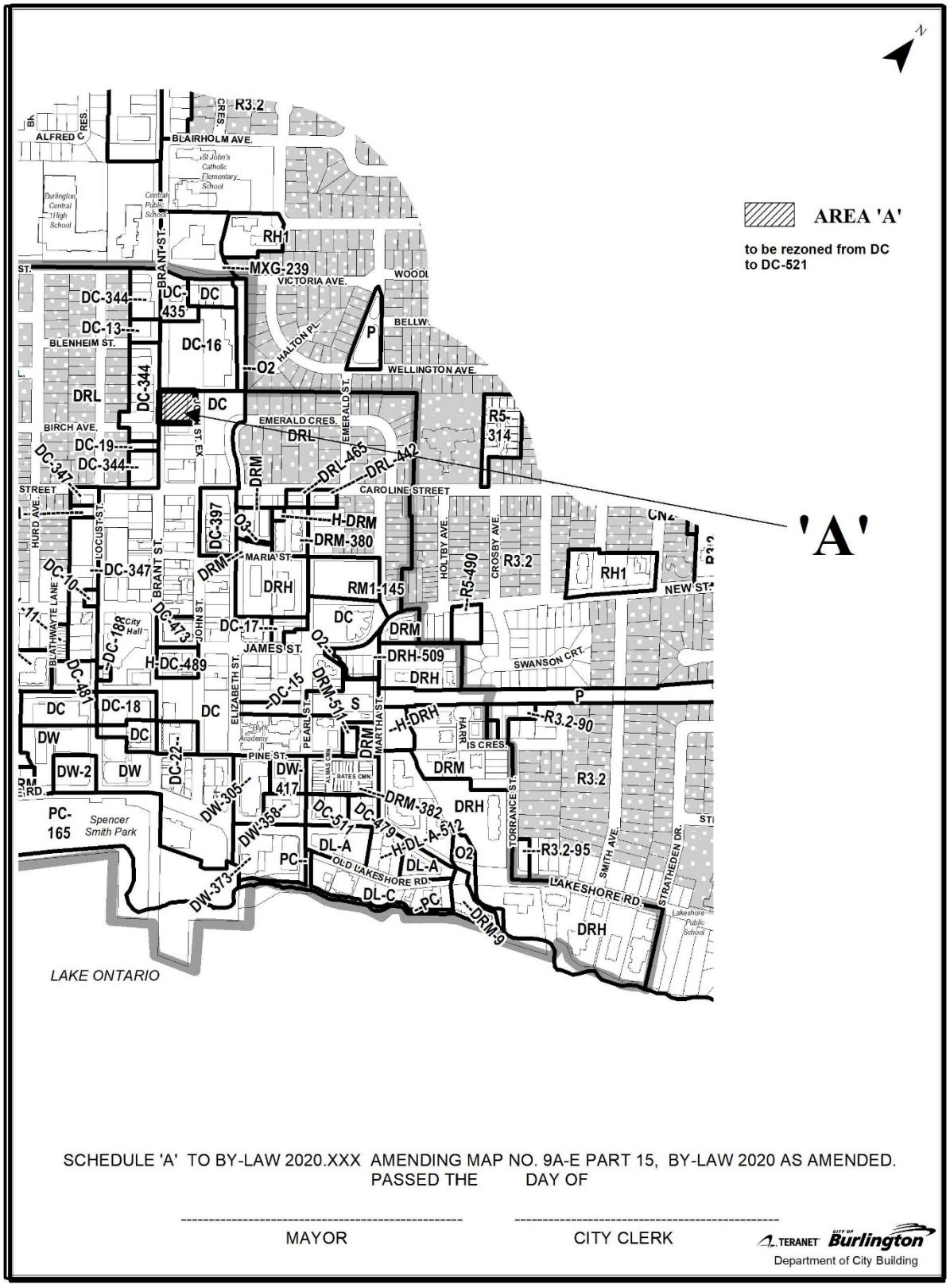
2. The lands designated as "A" on Schedule "A" attached hereto are hereby rezoned from "DC" to "DC-521".

3. Part 14 of By-law 2020, as amended, Exceptions to Zone Designations, is amended by adding a new Exception #521 as follows:

Exception 521	Zone DC	Map 9a	Amendment 2020.XXX	Enacted (Date)
1. Regulations for an Apartment Building a) Notwithstanding Part 6, Section 2A, Table 6.2.1, footnote (g), permitted uses on the ground floor of an apartment building shall include retail, service commercial, all office uses and a residential lobby.				
b) Notwithstanding Part 6, Section 4.1, Table 6.4.1, no maximum yard shall apply.				
c) Yard Abutting Brant Street: i) Floors 1 to 3: ii) Rooftop terrace access stairwell on 4th floor: iii) Floors 4 to 27: iv) Balconies or terraces:				 2.4 m 8.0 m 7.9 m 2.4 m

c) Yard Abutting John Street: i) Floors 1 to 3: ii) Rooftop terrace access stairwell on 4th floor: iii) Floors 4 to 27: iv) Balconies or terraces:	 2.5 m 6.5 m 6.7 m 2.5 m
d) Yard Abutting DC Zone (south-east side yard): i) Floors 1 to 3: ii) Rooftop terrace access stairwell on 4th floor: iii) Floors 4 to 27:	 0 m 0 m 13.0 m

Exception 521	Zone DC	Map 9a	Amendment 2020.XXX	Enacted (Date)
iv) Balconies or terraces on floors 1-4: v) Balconies or terraces on floors 5 to 27:				0 m 10 m
e) Yard Abutting DC-16 Zone (north-west side yard): i) Floors 1 to 3: ii) Floors 4 to 27: iii) Balconies or terraces on floors 1-4: iv) Balconies or terraces on Floors 5-27				 0 m 12.5 0 m 9.5 m
f) Below-Grade Parking Structure:				0 m
g) Maximum Building Height: i) Podium: ii) Tower – 26th floor: iii) Tower – 27th floor (including mechanical penthouse and elevator machine room): iv) For the purposes of calculating building height, grade is to be measured from a geodetic datum of 87.8 m.				 13.5m/3 storeys 85 m 90 m
h) Rooftop terrace access stairwell enclosures on the 4th floor may project beyond the podium building height up to a maximum of 3m.				
i) Building Height: i) Height of second storey:				 3.5m
i) Maximum Number of Residential Units:				259
j) Maximum Floor Area Ratio:				11.5:1
k) Parking for Apartment Dwelling Units: i) 1.07 spaces per unit, comprised of 1.04 occupant spaces and 0.03 visitor spaces per unit				
l) Required Bicycle Parking: i) 0.05 short term bicycle parking spaces per residential unit ii) 0.5 long term bicycle parking spaces per residential unit iii) 3 commercial bicycle parking spaces				
m) The lands are classified as a Class 4 Area as defined by the Ontario Ministry of Environment, Conservation and Parks NPC-300 Environmental Noise Guidelines				



SCHEDULE 'A' TO BY-LAW 2020.XXX AMENDING MAP NO. 9A-E PART 15, BY-LAW 2020 AS AMENDED.
PASSED THE DAY OF

MAYOR

CITY CLERK

TERANET City of Burlington
Department of City Building