

October 29, 2024

**Via Email to TownClerk@Oakville.ca**

Clerks Department  
Oakville Town Hall  
1225 Trafalgar Rd  
Oakville, ON  
L6H 0H3

***Re: Item 5.1 Town initiated Draft Official Plan Amendment – Midtown Oakville and Community Planning Permit System - Update  
Special Council Meeting – October 29, 2024***

---

We are the planning consultants for First Capital REIT (“First Capital”), which through its subsidiaries FCHT Holdings (Oakville) Corporation and Shops of Oakville South Inc. owns the lands municipally addressed as 485 Trafalgar Road and 271-361 Cornwall Road (known as the “Olde Oakville Market Place”) and 461-399 Cornwall Road (known as the “Shops of Oakville South”) (both properties collectively referred to as the “Properties”). These lands are located in the Midtown Growth Area Review area and we have been participating in the preparation of the study on behalf of First Capital throughout 2024 but continue to have concerns, as discussed below with the proposed approach, and more specifically with respect to parts of the draft Official Plan Amendment (“draft OPA”). In short, our concerns which are discussed in more detail below are:

- The Town’s draft OPA reduces height and density permissions, capping them in an important area for intensification, a Major Transit Station area, which does not align with policy direction and in fact would down-designation permissions on a portion of the First Capital lands.
- The draft OPA does not provide for site-specific policies for the First Capital lands that will permit them to continue with retail and commercial uses as an interim use that could be altered and modified as needed, allowing for changes to the sites before intensification of the sites occurs. This is of great importance because the existing uses provide important retail and service uses for the existing community.
- The prescriptive nature of including a requirement for retail uses based on percentage of gross floor area.
- We have concerns about the implementation of a policy requiring that landowners enter into an agreement, given that this is not a policy that can be implemented by the Town. Further, we are concerned that the plan area is very large and the timing or phasing of development across such a large area with multiple landowners may disproportionately saddle landowners with costs that do not benefit them.
- Given the unique nature of the First Capital lands, there should be a site-specific exception in the OPA for these lands. We request that the draft OPA incorporate a new Draft Schedule

and associated policies to recognize existing site-specific approvals, particularly the site-specific Zoning By-law 2022-052 for Olde Oakville Market Place.

- The draft OPA provides several policies that include highly prescriptive numerical standards, particularly in Sections 20.5.1(g) (Tall Buildings), 20.5.1(h) (Mid-Rise Buildings), and 20.5.1(b) (Public Realm), among others.

### **First Capital's Participation in the Process to Date**

We would like to thank the Town for their continued commitment and work on the Midtown Growth Area Review process that has taken place over several years. We have appreciated the opportunities to participate in this process, through meetings with staff and their consultant team, attendance at Open Houses, Developer Meetings, and Statutory Public Meetings, as well as opportunities to submit written comments on the draft(s) of the Midtown Oakville Official Plan Amendment policies. In particular, we valued staff's willingness to meet with the First Capital team on February 26<sup>th</sup>, 2024 and again on May 15<sup>th</sup>, 2024, to discuss our clients' key concerns and comments respecting the implications of the Midtown Oakville Growth Area Review on the Properties. In this regard, we look forward to continuing to work together with the Town in a collaborative manner, however, we continue to have concerns with the Town's approach to planning the Midtown area, as discussed below.

Further to the letters submitted to the Town in respect of the Midtown Oakville Growth Area Review and associated draft Official Plan Amendments on February 1, 2024 by Weirfoulds LLP, and on February 27<sup>th</sup>, 2024, April 22<sup>nd</sup>, 2024, and May 13<sup>th</sup>, 2024 by Bousfields Inc., we are writing to provide comments regarding the Draft Midtown Oakville Official Plan Amendment released for comment on September 26<sup>th</sup>, 2024. While we are pleased to see that some of our previous comments have been incorporated into the draft OPA, we note that there remain some key areas of concern that we need to be addressed prior to approval of the Midtown Oakville Official Plan Amendment.

### **DETAILED COMMENTS ON THE DRAFT OFFICIAL PLAN AMENDMENT**

Our comments respecting the draft OPA are provided below, following the brief description of the Properties, which is relevant to our comments on the draft OPA.

#### **The Properties**

Olde Oakville Market Place is located at the northeast corner of Trafalgar Road and Cornwall Road, south of the CN Railway and is approximately 5.01 ha in size with frontage on both Trafalgar Road and Cornwall Road. In 2022, Town Council approved an application for the western part of this site, adjacent to Trafalgar Road, to permit 14 and 19-storey mixed use towers with a resulting density of 3.76 FSI. This approval should be reflected in the Midtown plan.

The Shops of Oakville South is located further west, at the southwest corner of Cornwall Road and Chartwell Road, also located on the south side of the CN Railway and has an area of approximately 3.79 ha. Several commercial and retail stores are currently located on the Properties including Whole Foods Market, LCBO, Longo's, Shoppers Drug Mart, Indigo, and a number of other restaurants, banks, and personal service shops.

The Properties are both located within the Midtown Oakville Growth Area Boundary and make up most of the area of the southeast portion of the plan area. This southeast district is physically separated from the other parts of the Midtown area by the CN Railway and Trafalgar Road. It is also distinct from the other areas of the plan in that it is primarily built out with thriving commercial/retail businesses.

## Comments on the OPA

### 1. Building Heights and Density

In comparison to earlier iterations of the Midtown Oakville Official Plan Amendment provided by the Town, the draft OPA has significantly reduced the permitted maximum heights and overall densities for lands within the Midtown area, resulting in a decrease in the estimated residents and jobs combined through the 2051 planning horizon and a decrease in the development potential on the First Capital lands. Importantly, these changes down designate the permissions for a portion of First Capital's lands provided through a Council decision in 2022.

The draft OPA assigns the following minimum and maximum heights and densities to the Properties:

Property	Schedule L2 – Minimum Density	Schedule L3 – Maximum Density	Schedule L4 – Height Range
Olde Oakville Market Place	1.25 FSI	4.0 FSI	5 – 10 storeys
Shops of Oakville South	0.5 / 1.25 FSI	3.0 FSI	5 – 10 storeys

Policy 20.5.1(f)(i) of the draft OPA permits increases to the height limits provided on Schedule L4 through a development permit or through a rezoning application, **provided the maximum density for the site is not exceeded**, and community benefits (or cash-in-lieu thereof) are provided in accordance with 'town by-laws', which we understand is a reference to a forthcoming Community Planning Permit System by-law.

As noted, these heights and densities are significantly reduced from the April 2, 2024 draft Midtown Oakville Official Plan Amendment which assigned **minimum** densities across the Midtown area, in accordance with Provincial policy direction, and permitted heights ranging from 10 to 35 storeys on the Properties. Further, the proposed heights and densities in the draft OPA are, in many cases, the same as those provided by the in-force policies of the Livable Oakville Plan as they apply to Midtown Oakville (Part E of the Livable Oakville Plan).

We are aware that the Town initiated a Growth Analysis Study by Watson & Associates to update the Joint Best Planning Estimates that were previously established in conjunction with Halton Region. Although it is our understanding that the Watson Growth Analysis Study has not yet been made public, we understand from the Town's 'Midtown Growth Area Review' website that it established a 'conservative estimate' of 29,900 residents and jobs combined by 2051, based on more current preliminary data. Previously, the Livable Oakville Plan provided a target of 20,000 residents and jobs by 2031.

Fundamentally, we are concerned that the proposed building heights and densities are not reflective of Midtown Oakville as a *strategic growth area* and Protected Major Transit Station Area. As drafted, it is our opinion that the draft OPA will not realize the provincial direction for MTSA's which emphasizes the creation of complete communities that will develop at transit-supportive densities. Across the GTA, appropriate heights of development are established based on individual site context and built form impact criteria. This can be through the provision of angular planes, setbacks and setbacks, landscape buffers, and other design elements that assist in integration of buildings into the urban context, while optimizing density and creating transit-supportive communities.

Further, generally maintaining the existing heights as permitted by the in-force policies of the Livable Oakville Plan do not reflect the purpose of this Growth Area Review to prepare a policy framework that responds to Midtown Oakville as an area slated to accommodate significant intensification in the Town of Oakville.

With respect to the new 'conservative estimate' of 29,900 residents and jobs combined by 2051, we note that should Midtown develop at the proposed minimum densities, the resulting population and job estimate is in the range of 25,325 as outlined by Town staff at the October 10, 2024 Committee of the Whole meeting. This is contrary to Provincial direction to plan for strategic growth areas to and beyond the time horizon of the plan, to secure the swift provision of a wide range and mix of housing types to assist in achieving the Housing Target for the Town of Oakville as a whole of 33,000 homes by 2031.

Also of importance to note is that the proposed building height and density for Olde Oakville Market Place does not align with Zoning By-law 2022-052, a site-specific Zoning By-law Amendment approved by Council in May 2022 for the site, which sets out permissions for a mixed-use development with 14 and 19-storey towers and an FSI of approximately 3.76. Based on this, the proposed maximum height of 10 storeys for Olde Oakville Market Place does not align with a maximum FSI of 4.0 while still allowing for the efficient use of land.

**Requests:** We request the OPA be updated to provide heights and densities both across the Midtown area, and for the Properties, in a manner that recognizes their important position as a *strategic growth area* and a Major Transit Station Area, supports the creation of a transit-supportive, complete community, and makes efficient use of land and infrastructure.

We further request that existing approvals, including the approved Zoning By-law Amendment 2022-052 for Olde Oakville Market Place, be reflected in the draft OPA schedules.

## **2. Permission for the Existing Commercial Uses**

First Capital requires the ability to respond to tenant needs and changing market demands for these commercial areas which may result in existing buildings being altered or expanded, or the addition of new commercial uses. Given the importance of these commercial centres to the existing community, the Midtown plan should include site-specific policies for these sites that will permit them to continue as an interim use, allowing for changes to the sites before the intensification of the sites occurs.

To that end, we are supportive of the new Policy 20.5.1(e)(v) which allows for building additions, alterations and/or replacements to existing developments, where they can be demonstrated not to preclude the long-term redevelopment of the lands as set out in the draft OPA.

However, we note that Policy 20.5.1(f)(iii) states that the minimum heights shown on Schedule L4 do not apply to lands required for public parks and open spaces, educational facilities, and public service facilities operated by a public authority, including transit facilities. Further, Policy 20.5.1(g)(ii) permits large format retail, such as grocery stores, where they are integrated with development (ideally within the podium of mixed-use buildings).

We encourage the Town to clearly define an exemption to these policies to allow for additions, alterations and/or replacements to existing large-format retail uses such that they are not required or encouraged to be within the podium of mixed-use buildings. As drafted, these policies could be problematic in enacting Policy 20.5.1(e)(v), and therefore should be revised to acknowledge exemption to any additions, alterations and/or replacements of existing uses.

**Request:** Revise Policy 20.5.1(f)(iii) to acknowledge that minimum heights shown on Schedule L4 do not apply to additions, alterations and/or replacements of existing uses. Revise Policy 20.5.1(g)(ii) to allow exemption for additions, alterations and/or replacements.

## **3. Commercial Needs**

Policy 20.5.1(b)(i) requires that new development provide a minimum of 18 percent of the total proposed gross floor area for non-residential uses, such as cultural, community, retail, commercial and/or office uses. Based on the staff presentation given at the October 10, 2024 Committee of the Whole meeting, we understand that the need for 18% of gross floor area being earmarked for non-residential uses is driven by a mathematical calculation based on the anticipated gross floor area across the entirety of the Midtown area, less the anticipated percentage of gross floor area for residential uses (67%) and for common areas (15%).

In our opinion, it is more appropriate to establish residential and non-residential needs based on commercial and market analyses that define the specific needs of the market area. Requiring 18%

of all non-residential gross floor area to be allocated to non-residential use could result in the inclusion of meaningless non-residential space for the sake of achieving this policy, resulting in portions of a building that may remain vacant. Specific non-residential gross floor area for new development should be established on a contextually appropriate basis.

**Request:** We request that rather than the percentage requirement, that the Town include a policy that states the intent for retail and commercial uses rather than a prescriptive required amount of non-residential gross floor area.

#### **4. Landowner Agreement and Requirement for Cost-Sharing**

The draft OPA continues included a draft Policy 20.6.3 that would only permit development to proceed after a landowner's group has been established and after each landowner has become party to the landowners' cost sharing agreement.

First Capital continues to be concerned about a mandatory requirement to enter into a cost-sharing agreement given their ability to proceed with development independently of other landowners in the area. The quadrant that their lands are in is physically separated from the other quadrants and would not rely on other owners to create new infrastructure and facilities. We also understand that the Town expects most roads and services to be covered through Development Charges, thereby reducing the number of matters to be coordinated with other landowners.

Further, as mentioned above, First Capital requires the ability to respond to tenant needs and changing market demands. This may result in existing buildings being altered or expanded, without the need to enter into a cost-sharing agreement. Further, a portion of the Properties are subject to approved Official Plan Amendment No. 44 and site-specific Zoning By-law 2022-052 permitting the development of 14 and 19-storey towers and that development should be able to proceed without the need for cost sharing or entering into a landowners group.

**Requests:** We request that the draft OPA provide no requirement for cost sharing as a condition of proceeding with development. Should the Town's team determine that cost sharing is appropriate, we request that flexibility be provided in the draft OPA to provide for interim conditions (i.e., expansion of existing uses) without owners being required to enter into a landowner agreement. We also request that the Town's team explore opportunities to acknowledge existing development approvals and the ability for such development to proceed without the need to enter into a cost-sharing agreement. Lastly, we would also like to request that the Town explore opportunities to consider requirements for landowners groups on a geographic basis (possibly based on the quadrants of the plan), such that certain developers are not disproportionality saddled with costs that do not benefit them.

#### **5. Site-Specific Exemptions**

The May 2024 draft of the Midtown Oakville Official Plan Amendment included Draft Schedule L8 - Midtown Exceptions, which identified and acknowledged lands subject to site-specific development

application approvals. This Schedule and the associated policies were not carried forward into the draft OPA.

**Request:** We request that the draft OPA incorporate a new Draft Schedule and associated policies to recognize existing site-specific approvals, particularly the site-specific Zoning By-law 2022-052 for Olde Oakville Market Place.

#### **6. General Comment - Overly Prescriptive Policies**

The draft OPA provides a number of policies that include highly prescriptive numerical standards, particularly in Sections 20.5.1(g) (Tall Buildings), 20.5.1(h) (Mid-Rise Buildings), and 20.5.1(b) (Public Realm), among others.

Our concerns are two-fold. First, in many cases, the policies are written in such a prescriptive manner than an Official Plan Amendment would be required for even a minor reduction or increase to a specified parameter, including the provision of a certain percentage of new dwellings having 2 or more bedrooms, the provision of a certain percentage of non-residential gross floor area, tower separation distances, base building and podium heights, and setbacks / step backs. Second, it is our opinion that such policies mix up policy with regulation. Official Plan policies should speak to desired planning outcomes, while zoning regulations and guidelines should speak to how those outcomes are to be achieved.

**Request:** We request that the City review the draft OPA and introduce policy intent into a number of policies that currently provide overly prescriptive numerical standards, to limit the need for amendments to the draft OPA in the future.

#### **Conclusion**

We thank you for the opportunity to provide these written comments and participate in the Midtown Oakville Growth Area Review process. We commend Town staff on their hard work in advancing this policy document.

We are fundamentally concerned that the heights and densities within the draft OPA do not accurately reflect the context of Midtown Oakville as a *strategic growth area*, Urban Growth Centre and Protected Major Transit Station Area, and will not provide the necessary support to assist the Town in achieving their housing targets, particularly in proximity to transit where significant investment has been secured.

We respectfully request a meeting with Town staff to discuss our comments prior to the draft OPA advancing to Council for approval in early 2025. Please do not hesitate to contact the undersigned or Sara Gregory of our office should you have any questions.



Sincerely,  
**Bousfields Inc.**



Emma West, MCIP, RPP



Sara Gregory, MCIP, RPP

cc. *Gabe Charles, Director, Planning Services Department, Town of Oakville*  
*Joshua Butcher, FCHT Holdings (Oakville) Corporation*  
*Joshua Butcher, Shops of Oakville South Inc.*  
*Denise Baker, WeirFoulds LLP*