

January 20, 2024

Via Email to TownClerk@Oakville.ca

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

**Re: Item 6.2 Proposed Midtown Oakville and Community Planning Permit System Official Plan Amendment
Planning and Development Council – January 20, 2024 Meeting**

1.0 INTRODUCTION

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 are subject to the Proposed Midtown Oakville Official Plan Amendment (“**Proposed OPA**”). On behalf of First Capital, we have been participating in the preparation of the Proposed OPA throughout 2024 and continue to have concerns with the process that has led to the current iteration of the Proposed OPA as well with its policies.

First Capital has submitted multiple letters in respect of the Midtown Oakville Growth Area Review and associated draft Official Plan Amendments either through their planning consultants or legal representatives on February 1st, 2024, February 27th, 2024, April 22nd, 2024, May 13th, 2024 and October 29th, 2024, and are writing again to provide comments regarding the Proposed OPA, dated December 2024.

In short, our key concerns include:

- The Proposed OPA does not permit an appropriate level of intensification that is reflective of the Midtown Oakville’s identification as a *strategic growth area* and Protected *Major Transit Station Area*;
- The Proposed OPA does not provide site specific exceptions for the First Capital lands that acknowledge the ability to continue or alter, expand or modify existing uses on site, nor acknowledge First Capital’s recently obtained site-specific development approvals for a portion of their Olde Oakville Market Place site;



- The Proposed OPA inappropriately requires a landowner to enter into a landowners group prior to any development application being deemed complete, should the Town determine that a landowners group is required through a pre-submission meeting;
- The Proposed OPA does not clearly define how density is calculated. The density-related policies of the Proposed OPA exclude 'non-developable lands' from the calculation of density and as such, overall permitted density does not appear to take into account any lands to be conveyed to the municipality (i.e. roads, parks, infrastructure etc.);
- The Proposed OPA includes many overly prescriptive policies that do not allow flexibility to respond to the site-specific nature of future development applications and may result in needless amendments to the plan to permit development, thus providing needless delays in securing development;
- The Proposed OP includes modifications to the Livable Oakville Plan to limit development within or adjacent to hazard lands based on updated flood hazard mapping from Conservation Halton that is not yet available. This is premature as it does not allow the public to understand the implications of policy on lands that may be subject to future flood hazard regulations; and,
- The proposed policies permitting the Community Planning Permit System eliminate certainty in the development process, and are contradictory in nature, and thus should be revised prior to approval of the Proposed OPA.

Our concerns are described in more detail in **Attachment A** to this letter.

2.0 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.



3.0 HISTORY OF MIDTOWN OAKVILLE GROWTH AREA REVIEW AND PROPOSED OFFICIAL PLAN AMENDMENT

We would like to thank the Town for their continued commitment and work on the Midtown Growth Area Review process that has taken place since 2018. 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 value staff's willingness to meet with the First Capital team on February 26th, 2024 and again on May 15th, 2024, to discuss our clients' key concerns and comments respecting the implications of the Midtown Oakville Growth Area Review on the Properties. Further, we have scheduled a meeting with staff on January 21st, 2025 to discuss the policies of the Proposed OPA. In this regard, we look forward to continuing to work together with the Town in a collaborative manner prior to approval of the Proposed OPA.

While we are pleased to see that some of our previous comments have been incorporated into the Proposed OPA, there remain some key areas of concern that we need to be addressed prior to approval of an OPA for this important strategic growth area and summarized above and described more particularly in **Attachment A** to this letter.

In particular, we are highly concerned with the downward progression of development permissions for the Midtown area that have evolved over time, most dramatically from the heights and densities established in the April 2024 version of the Midtown Oakville OPA. The overall trajectory of this review significantly thwarts development opportunities on lands that serve an important opportunity in the Town of Oakville to contribute to their housing pledge of 33,000 homes by 2031, particularly in light of their identification as a *strategic growth area* and a *Protected Major Transit Station Area* and, in our opinion, the Proposed OPA is not consistent with Provincial policies.

4.0 CONCLUSION

We thank you for the opportunity to provide these written comments on the Proposed OPA and to participate in the Midtown Oakville Growth Area Review process. We commend Town staff on their hard work in advancing this policy document. However, we are fundamentally concerned that the heights and densities within the Proposed OPA do not accurately reflect the context of Midtown Oakville as a *strategic growth area* 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.

In addition, we have concerns with other key policies of the Proposed OPA as outlined in **Attachment A** to this letter.

We respectfully request that Planning and Development Council direct staff to undertake further review of the policies of the Proposed OPA in coordination with the public and development industry, prior to advancing the amendment to Council for approval.

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

Encl.

ATTACHMENT A

DETAILED COMMENTS ON PROPOSED OPA

The following provides a detailed summary of our key concerns with the Proposed OPA dated December 2024.

1.0 Transit-supportive Intensification

The Town's Proposed OPA reduces height and density permissions for the Midtown area, capping them in a Protected *Major Transit Station area* and *strategic growth area*, which does not align with Provincial policy direction. It is not clear how the proposed densities will support the achievement of the overall density across the entirety of the Protected *Major Transit Station area*, as well as how the Properties will contribute to this overall density based on the height and density currently established for the site by the Proposed OPA.

In that respect, the Proposed OPA assigns the following minimum and maximum heights and densities to the Properties:

Property	Schedule L2 – Minimum Density	Schedule L3 – Maximum Density	Schedule L4 – Building Height Thresholds
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 (minimum 2 storeys)

Policy 20.5.1(f)(i) of the Proposed 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 the emerging 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 Proposed 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. The November 2024 Watson & Associates Growth Analysis Study has been posted on the

Planning and Development Council and establishes 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 not clear whether the Proposed OPA will realize the provincial direction for *strategic growth areas* and MTSA's which emphasizes the creation of complete communities that will develop at transit-supportive densities, nor the Regional direction to achieve a minimum of 200 residents and jobs per hectare by 2031 as prescribed by the Halton Region Official Plan which is now under ownership by the Town. Further, this appears contrary direction 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.

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, stepbacks 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 does 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.

Also of importance 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 Protected *Major Transit Station Area*, supports the creation of a transit-supportive, complete community, and makes efficient use of land and infrastructure. Specifically, we ask that the heights and densities in the April 2, 2024 of the OPA be reinstated.

We further request that existing site-specific approvals, including the approved Zoning By-law Amendment 2022-052 for Olde Oakville Market Place, be reflected in the Proposed OPA schedules, as described in more detail below.

2.0 Continuing the Commercial and Retail 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.

Although the Proposed OPA has incorporated revisions to certain policies that would permit a measure of flexibility, it is not sufficient to allow for the continued successful operation of the Properties. 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 Proposed OPA. Similarly, Policy 20.5.1(f)(iii) establishes that minimum building heights of the plan do not apply to expansions of existing uses in accordance with Policy 20.5.1(e)(v).

Further, Policy 20.4.1 d) ii) provides permissions for new large format retail (such as grocery stores), where they are integrated with development, although they are ideally located in the podium of mixed-use buildings. This would preclude First Capital from introducing any additions to their retail centres without being 'integrated into development'; which would not be possible unless the overall subject site is to be redeveloped.

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.

As previously noted, Zoning By-law 2022-052, a site-specific Zoning By-law Amendment for the site, was approved by Council in May 2022. 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 Proposed OPA.

The approved building heights of 14 and 19-storeys and density of 3.76 FSI should be reflected in a site specific exception to the density and height permissions for that portion of the Property.

Request: Given the unique nature of the First Capital lands, there should be a site-specific exception in the Proposed OPA for the Properties. We recommend that the Proposed 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.

3.0 Requirement for Landowners Group / Cost Sharing Agreement:

We are supportive of the direction in the Proposed OPA that is more flexible in requiring landowners to enter into a landowners group (Policy 20.6.4(b)) than earlier drafts of this plan. However, we are concerned that this flexibility is tied to a 'pre submission meeting' with the Town, particularly given that pre-consulting prior to submission of an application is not mandatory under the *Planning Act*.

First Capital continues to be concerned about the possible 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.

Lastly, it is unusual to tie the completeness of a development application to an applicant participating in a landowners group. The early stages of development may be significantly delayed following approval of the Proposed OPA, as it can be time consuming and costly to start a landowners group. We recommend that the language regarding the completeness of an application be removed.

Requests: We request that the policies of the Proposed OPA be modified to 'encourage' landowners entering into a landowners group rather than require cost sharing as a condition of proceeding with development, regardless of whether an applicant engages in a pre-submission meeting. Should the Town's team determine that this policy language is appropriate, we request that further flexibility be provided in the Proposed OPA to provide for interim conditions (i.e., expansion of existing uses) without owners being required to enter into a landowner agreement, and further request that the Town do not tie completeness of a development application to an applicant entering into a landowners group.

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.

4.0 Density Transfer:

The Proposed OPA is not clear in how density is calculated. Notwithstanding that maximum *gross density* is expressed as a floor space index shown on Schedules L3 (Policy 20.5.1(e)(ii)), Policy 20.5.1(e)(vi) describes that the maximum permitted gross floor area on a development block shall be determined by multiplying the site area excluding non-developable lands within each block by the allocated FSI on Schedule L3.

In addition to the fact that the plan is not clear on what constitutes ‘non-developable lands’, we note that this calculation precludes the ability to achieve the overall *gross density* as the calculation is based on *net* site area. This is prejudicial to landowners who are conveying land for parks, open space, roads, infrastructure, or other ‘non-developable’ purposes as it prevents them from achieving their maximum permitted gross density.

Request: Previous iterations of the Midtown OPA included policies that allows ‘transfer’ of density from these types of non-developable lands. It is our recommendation that these policies be reinstated.

5.0 Specific Numerical Standards

The Proposed OPA includes several prescriptive policies that are of concern. These policies should instead speak to policy ‘intent’ or outcomes, while zoning regulations and implementing guidelines should speak to how these outcomes are achieved. This includes:

- Policy 20.4.1(c)(iii) which requires a minimum of 35% of units in the form of 2 or more bedrooms;
- Policies 20.5.1(g)(iii), (vi) and (vii), 20.5.1(h)(i) and (ii) provide specific numerical standards relating to maximum building heights, tower and podium separation, and building setbacks.
- Policies 20.5.1 (b) (i) – (vii) provide specific policies for the public realm that in most cases are mandatory through the use of ‘shall’.

Our concerns are two-fold. First, in many cases, the policies are written in a manner that would mean 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 policy language in the Proposed OPA establish a policy intent or outcome rather than a specific numerical requirement. Flexible language will allow the design of

developments to respond to site-specific considerations without amendments to the plan, resulting in needless delays in development process and in some cases, the provision of housing.

6.0 Commercial Needs and Non-Residential GFA Requirements

Policy 20.4.2(b)(i) requires new development within the Urban Core area to provide a minimum of 12 percent of the total proposed gross floor area for non-residential uses, such as cultural, community, retail, commercial and/or office uses. While this represents a reduction from the October 2024 OPA which required a minimum of 18 percent of the total proposed gross floor area for non-residential uses, in our opinion, when considering this logistically, 12 percent of the overall gross floor area of a building equates to the provision of non-residential gross floor area of at least two floors of a building, particularly given the ground floor of buildings generally include up to 50 percent of gross floor area earmarked for the functional portions of residential buildings (i.e. lobby space, mail room, garbage room and staging area, amenity space, etc.). When considering that the maximum building heights in certain areas of Urban Area designation not exceeding 10-storeys, such as a portion of the subject site, this is an overly onerous requirement.

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 12 percent 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.

7.0 Conformity to Guidelines

Policy 8.11.6 establishes that any development within 300 metres of the Metrolinx Rail Corridor shall (a) demonstrate that it. Conforms with the 'Metrolinx Adjacent Development Guidelines – GO Transit Heavy Rail Corridors' and 'Metrolinx Overbuild Development Guidelines – GO Transit Heavy Rail Corridors'. While we do not object to the need for Metrolinx to oversee and review development applications within the vicinity of their rail lines and yards, we recommend that the policy language be revised to state that development must 'align' with these guidelines. Requiring conformity elevates the guidelines to the status of policy, which is inappropriate in a Secondary Plan document.

Request: Reword the policy to state that development should 'align' with these Metrolinx Guidelines.

8.0 Hazard Lands

The Proposed OPA incorporates modifications to the policies of Section 10.13, Hazard Lands, of the Livable Oakville Plan (the "**Official Plan**") that limit new development within or adjacent to hazard

lands, conceptually shown on the existing Schedule B of the Official Plan. A new Appendix, Appendix 6, will be incorporated into the Official Plan to show the approximate Conservation Authority Regulatory limit. However, Conservation Halton, in partnership with the Town of Oakville and Halton Region, is currently undertaking a study to update the regulatory flood hazard mapping for the Midtown Oakville Growth Area and the ultimate limits of flood hazard in the area are presently unknown. Therefore, the impact of these policies and schedules is similarly unknown.

Request: We suggest that incorporating the policies that regulate flood hazards in the Midtown Oakville Growth Area is premature given that the regulation limits of the hazard lands have not been finalized by Conservation Halton and therefore, recommend their removal.

9.0 Development Permit / Community Planning Permit System

Section 28.15 of the Proposed OPA provides policies that allow the Town to identify Community Planning Permit areas in Midtown and further, to establish Community Planning Permit By-laws for these areas. In addition, Policy 28.15.8 sets out conditions to be included in a Community Planning Permit By-law.

The proposed conditions, particularly conditions d) (which allows for established lapsing periods for development approvals), e) (which establishes a set time within which the development permit is in effect) and f) (which allows for conditions that can put a development permit issuance on hold until a specified time or until a specified matter has been addressed), collectively eliminate all certainty to the planning process and have the ability to halt development. Such conditions are not reasonable and defeat the purpose of providing certainty in the development process.

In addition, Policy 28.15.10 of the Proposed OPA is contradictory in nature in comparison to the balance of the plan. The Community Planning Permit By-law is intended to allow for increases in height of density that exceed those permitted by the Proposed OPA, in exchange for community benefits. However, Policy 28.15.10(b) states that threshold rates in the Community Planning Permit By-law must be lower than the permitted maximum height or density of the Proposed OPA.

Request: If the Community Planning Permit By-law is intended to streamline development including the provision of community benefits in exchange for increases in height or density beyond the threshold of the Proposed OPA, the policies in the Proposed OPA must be revised to enable these processes to occur.