

# Cassels

February 18, 2022

Via E-Mail: [minister.mah@ontario.ca](mailto:minister.mah@ontario.ca)  
[damien.schaefer@ontario.ca](mailto:damien.schaefer@ontario.ca)

[sleisk@cassels.com](mailto:sleisk@cassels.com)  
Tel: +1 416 869 5411  
Fax: +1 416 640 3218  
File #56822-1

The Honourable Steve Clark, MPP  
Minister of Municipal Affairs & Housing  
777 Bay Street, 17<sup>th</sup> Floor  
Toronto, ON M5G 2E5

Damien Schaefer  
Municipal Services Office – Eastern Region  
8 Estate Lane  
Rockwood House  
Kingston, ON K7M 9A8

Dear Messrs.:

**Re: City of Peterborough Official Plan  
Clear Global Capital Limited  
ERO number: 019-4969  
Ministry Reference number: 15-OP-165376**

We are the solicitors for Clear Global Capital Limited (“Clear Global”), the owner of lands municipally known as 220 Simcoe Street and the beneficial owner of lands municipally known as 470 Water Street in the City of Peterborough.

We are writing to advise you of our client’s concerns regarding the City of Peterborough draft Official Plan (the “Official Plan”), which was adopted by Council on November 29, 2021 and forwarded to the Ministry for approval. Our client’s concerns are further detailed in the attached submissions of Ecovue Consulting Services Inc., our client’s expert planning consultants.

By way of background, Clear Global submitted a zoning by-law amendment application to permit the development of a residential apartment and mixed-use complex at 470 Water Street (the “Subject Lands”) prior to the adoption of the Official Plan. While the Official Plan provides a number of policy improvements, it is our opinion that the policies specifically related to the Central Area designation do not provide the flexibility needed to accommodate intensification and higher densities that are necessary to address the Province’s goal of increased housing supply, which is required under A Place to Grow: Growth Plan for the Greater Golden Horseshoe (the “Growth Plan”) and encouraged throughout the balance of the Official Plan.

Rather, despite the significant need for housing supply, the Official Plan imposes new restrictions on building heights in the Central Area, which severely limits densities within the Downtown, where growth should be directed, and significantly impacts the ability to develop the Subject Lands. Clear Global raised its concerns during the City's consultation process and the City has failed to address same.

It is clear from the policy direction from the Province, and reiterated in much of the Official Plan, that the highest densities in the City of Peterborough are expected to occur within the Central Area, and in particular, the Urban Growth Centre.

Despite this clear policy direction, the Official Plan imposes a maximum building height within the Downtown Core Area sub-designation, which comprises nearly the entirety of the Urban Growth Centre, of only 8 storeys, subject to the application of step backs and/or a 45 degree angular plane. This is in stark contrast to the current Official Plan policies which encourage High Rise development with the Urban Growth Centre without any height limitations or restrictions.

It is our opinion that limiting height within the Central Area in this manner will only serve to restrict intensification and potentially prevent the City from achieving conformity with the policies and density targets provided in the Growth Plan. In addition, restricting intensification opportunities within the Urban Growth Centre runs contrary to one of the Province's most pressing priorities: addressing Ontario's housing supply crisis.

In addition, the Official Plan has failed to include any policies related to development within a Major Transit Station Area ("MTSA"). Policies related to density, land uses and reduced parking standards should be included in the Official Plan in order to fulfill the directions of the Growth Plan. The requirements for development within MTSA's and the direction in the Growth Plan that growth occur within MTSA's and other strategic growth areas, further reinforces the need to remove the height restrictions within the Urban Growth Centre.

Lastly, the Official Plan has failed to include appropriate transition provisions to address existing applications. We respectfully request that the Official Plan be revised to include the following transition provision to provide clear direction that the new Official Plan cannot be used to frustrate existing applications:

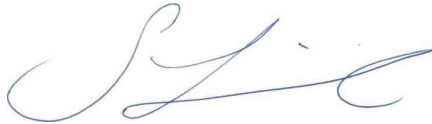
"The City of Peterborough Official Plan, adopted by Council on December 7, 1981 and approved by the former Ontario Municipal Board on February 23, 1987, as it read the day before approval of this Plan, continues to apply to applications for official plan amendments, zoning by-law amendments and draft plans of subdivision or condominium approvals made prior to the approval by the Minister of Municipal Affairs and Housing of this Plan."

Based on the foregoing, should the Minister proceed with the approval of the Official Plan, we request that the Official Plan be revised to remove the height limitations within the Central Area, and in particular, the Downtown Core, include additional policies related to MTSA's and add appropriate transition provisions to address existing applications.

We are grateful for the opportunity to provide you with our comments and would be pleased to discuss in more detail.

Yours truly,

Cassels Brock & Blackwell LLP

A handwritten signature in blue ink, appearing to read 'Signe Leisk', written in a cursive style.

Signe Leisk  
Partner

SL/MK/cm  
Enclosures

LEGAL\*55293289.2



February 18, 2022

Via e-mail: [minister.mah@ontario.ca](mailto:minister.mah@ontario.ca)  
[damien.schaefer@ontario.ca](mailto:damien.schaefer@ontario.ca)

The Honourable Steve Clark, MPP  
Minister of Municipal Affairs & Housing  
777 Bay Street, 17th Floor  
Toronto, ON M5G 2E5

Damien Schaefer  
Municipal Services Office- Eastern Region  
8 Estate Lane  
Rockwood House  
Kingston, ON K7M 9A8

**Re: City of Peterborough Official Plan Update – Central Area Designation**  
**Clear Global Capital Limited**  
**ERO number: 019-4969**  
**Ministry Reference number: 15-OP-165376**  
**EcoVue Reference 21-2255**

---

Dear Messrs:

We are the planning consultants for Kevin J. MacDonald, President of Clear Global Capital Limited (“Clear Global”). Clear Global is the owner of 220 Simcoe Street in the City of Peterborough, a prominent corner property in the City’s Urban Growth Centre (“UGC”). In addition, Clear Global has applied for a zoning by-law amendment (“ZBA”) to facilitate the development of a 3 Hectare property located at 470 Water Street in the City of Peterborough, also in the UGC and in close proximity to the Major Transit Station Area (MTSA) – City Bus Terminal and Intercity Go Bus stop. The existing City of Peterborough Official Plan (“OP”) allows for High Rise and up to 250 units per hectare for up to 750 units in total on this property with no specified height restriction. EcoVue is Planner for the ZBA submitted for this property.

On behalf of our client, we are writing to provide the following comments related to the proposed OP, which was adopted by Council on November 29, 2021 and forwarded to the Ministry for approval. By way of background, Clear Global participated in the City’s consultation process and the City has failed to address its concerns, as further set out in the attached submissions.

While the proposed OP provides a number of much needed policy improvements to the current Official Plan, it is our opinion that the policies specifically related to the Central Area designation do not provide the flexibility needed to accommodate the intensification and higher densities that are necessary to address the Province’s goal of increased housing supply, and required under A Place

to Grow: Growth Plan for the Greater Golden Horseshoe (the “Growth Plan”) and encouraged throughout the balance of the new Official Plan.

In particular, the proposed OP imposes new restrictions on building heights in the Central Area, which severely limits densities within the downtown, does not provide any policies related to development within MTSAs, and has failed to include appropriate transition provisions to address existing development applications.

As noted herein, the above-noted issues with the proposed OP will have implications for future development of Peterborough’s Downtown/Central Area, including the potential development of our client’s site at 470 Water Street. The proposal includes a large-scale mixed-use complex that will accommodate up to 700 new residential units. In order to accommodate the proposed density on the site, the complex will include a maximum 31 storey tower. Based on the height restrictions in the proposed OP, a tower of this height could not be developed on the site. As result, the number of units that could be developed on the site is substantially reduced. This approach to planning in the Urban Growth Centre will interfere with the City achieving conformity with the policies and density targets provided in the Growth Plan, as discussed below.

### **Building Heights in the Urban Growth Centre**

Similar to the Central Area Master Plan in the current Official Plan, Schedule C to the proposed OP identifies a number of sub-designations within the Central Area. Section 4.3.1 of the proposed OP provides overarching policies for the entirety of the Central Area, while Sections 4.3.2-4.3.8 provide specific policies for those sub-designations.

It is clear from the policy direction from the Province, and reiterated in much of the proposed OP, that the highest densities in the City of Peterborough are expected to occur within the Central Area, and in particular, the Urban Growth Centre.

According to Section 4.3.1, it is the objective of the proposed OP to “*increase the amount and intensity of residential uses within the Central Area by supporting multi-unit residential...developments*”. Furthermore, it is stated in the General Policies of the Central Area that “*the City will prioritize development [that provides for]...a mix of higher density housing options*”.

It is further stated in the Central Area General Policies that the Urban Growth Centre, which is identified on Schedule C, “*will be planned to achieve a gross density of 150 residents and jobs combined per hectare by 2031 or earlier*”. This echoes the direction of the Growth Plan, which has identified a portion of Peterborough’s Central Area as one of 22 Urban Growth Centres within the Greater Golden Horseshoe region.

Despite this clear policy direction, Section 4.3.2 e) of the proposed OP states that the maximum building height within the Downtown Core Area sub-designation, which comprises nearly the entirety

of the Urban Growth Centre, shall be only 8 storeys. In addition, Section 4.3.1 p) states that the maximum building height for each designation in the Central Area “*shall only be achieved subject to...the application of...step backs and/or generally a 45 degree angular plane*”, which further limits the height and density of buildings. This is in stark contrast to the current OP policies which encourage High Rise development with the Urban Growth Centre without any height limitations or restrictions, as further described below.

It is our opinion that limiting height within the Central Area in this manner – and in particular, eight storeys within the Downtown Core Area sub-designation – will only serve to restrict intensification and potentially prevent the City from achieving conformity with the policies and density targets provided in the Growth Plan. In addition, restricting intensification opportunities within the Urban Growth Centre runs contrary to one of the Province’s most pressing priorities: addressing Ontario’s housing supply crisis. Therefore, we believe that the height limitations in Section 4.3.2 are not appropriate for the Downtown Core.

Our reasons are as follows:

1. As noted above, Peterborough’s Urban Growth Centre must accommodate 150 jobs/units per hectare. This represents the highest density within the City, and is in keeping with Growth Plan policies and good planning. Building heights and development are (rightfully) restricted within the traditional downtown core bounded by George, Water, Hunter, Simcoe and Charlotte Streets, in order to maintain the overall character of those streetscapes. Given the limited availability of land within the Urban Growth Centre beyond the traditional core area, combined with the current and future development limitations of the Jackson Creek floodplain, and the need to accommodate an adequate mixture of land uses, limiting the height of buildings to eight storeys will severely restrict residential intensification opportunities within the areas where new development/redevelopment is possible.
2. Beyond the traditional downtown noted above, there is no consistent or established character or building height within the Downtown Core Area. For example, the following buildings are located within the Downtown Core Area designation:
  - a) Citi Centre Courtyard (north tower) – 14 storeys
  - b) Brock Towers – 9 storeys
  - c) Churchill Manor (Sheridan Street) – 10 storeys
  - d) Quaker Oats Tower – 14 storeys (plus water tower (approx. 2 additional storeys))

Building heights and architectural styles within the Downtown Core Area vary greatly. Therefore, it is not necessary to limit heights in order to protect an established built form.



3. Although the proposed OP allows for heights up to eight storeys, the additional design restrictions noted in Section 4.3.1 p) will further reduce opportunities for density. As discussed above, the proposed buildings must be “stepped back” at a 45 degree plane from the opposite side of the street. Given the limited space available for placing buildings back from the street, the total gross floor area of new apartment buildings will be severely restricted on upper floors (based on the width of many streets within the Downtown Core, the stepping back will occur at the 3rd or 4<sup>th</sup> floor).
4. According to Section 4.2.2 of the proposed OP, a maximum building height of 12 storeys is permitted at major intersections within the Mixed-Use Corridor Area designation. While intensification within these Mixed-Use Corridors is welcome and encouraged, the highest level of intensification must occur with the Urban Growth Centre. In our opinion, a stricter height limitation within the Urban Growth Centre runs counter to the goals and objectives of the Growth Plan and the proposed OP.
5. The current OP encourages High Rise development within the Urban Growth Centre without any height limitations or restrictions. High Rise development is commonly understood to be over 10 storeys. In addition to the High Rise/high density policies, the current OP includes policies that encourage increased height and density for projects that preserve historic buildings, incorporate major regional facilities, provide underground parking, promote housing intensification and/or affordable housing, and provide on-site amenity space. The existing policies appear to recognize the additional fixed costs associated with high density, mixed-use developments in an urban setting (as well as the desirability of these attributes) by providing opportunities for increased number of units. It is our opinion that these existing policies adequately provide the flexibility needed to encourage additional density within the core, without compromising the character of the downtown built form.
6. The City has not provided any justification to support an eight storey height limit and has failed to demonstrate where and how growth can be accommodated within the Downtown Core. As such, we are concerned that the eight storey height limit has not been factored into the maximum number of jobs/persons per hectare, as required by the Growth Plan (and echoed in the proposed OP). As noted above, an eight storey height limitation will impact the capacity of the Downtown Core to accommodate the higher densities. Section 3.4.1 of the City’s Land Needs Assessment states that there is an estimated 110 jobs/persons per hectare currently in the Downtown Urban Growth Centre. In order to achieve the required 150 jobs/persons per hectare, the Assessment estimates that an **additional 1,200 units must be added to the Urban Growth Centre by 2031**. It is not clear where or how these units will be accommodated within the core, and the City and Land Needs Assessment has failed to provide any further direction in this regard.

It is our understanding that the eight storey height limit has been driven by “extensive public consultation” and based on aesthetics and consideration of the existing built form. Although public consultation is an important consideration when determining planning policy, goals, and objectives, it is equally important to balance such consultation with the requirements of Provincial policy and good planning. It is our opinion that adequate justification related to the latter has not been provided as part of this OP update process. Given the aforementioned existing constraints in the Downtown Core (e.g. historic corridors, Jackson Creek floodplain, etc.), in our view, a height limit of eight storeys may drastically impede the City accommodating 1,200 new residential units within this area over the next 9 years.

### **Major Transit Station Areas**

The definition of a major transit station area (“MTSA”) in the Growth Plan is “...*the area including and around a major bus depot in an urban core. Major transit station areas generally are defined as the area with an approximate 500 to 800 metre radius of a transit station, representing about a 10-minute walk*”. The City of Peterborough Bus Terminal and surrounding area, which is located within the City’s Central Area, meets the definition provided in the Growth Plan.

Although the proposed OP provides the above definition for a “Major Transit Station Area”, it **does not include any policies related to development within an MTSA**. This is problematic, as s. 2.2.4.9 of Growth Plan requires that development within MTSA’s be supported, where appropriate, by “a) *planning for a diverse mix of uses, including second units and affordable housing, to support existing and planned transit service levels [and] c) providing alternative development standards, such as reduced parking standards*”.

Therefore, the proposed OP must include policies related to development of the existing bus terminal MTSA within the Central Area. Policies related to density, land uses, and, in particular, reduced parking standards, should be included in the OP in order to fulfill the directives of the Growth Plan. Also, **the requirements for development within MTSA’s, and the direction in the Growth Plan that growth occur within the Major Transit Station Areas and other strategic growth areas, further reinforces the need to remove the height restrictions within the Urban Growth Centre.**

It is imperative that the City recognize the importance of the existing bus terminal MTSA, and provide policies related to growth within that area, in keeping with the policies provided for in the Growth Plan. Without the inclusion of MTSA policies, the proposed OP does not appear to conform with the requirements of the Growth Plan.





### **Transition**

The proposed OP has failed to include appropriate transition provisions to address existing applications. We respectfully request that the proposed OP be revised to include the following provision:

*The City of Peterborough Official Plan, adopted by Council on December 7, 1981 and approved by the former Ontario Municipal Board on February 23, 1987, as it read the day before approval of this Plan, continues to apply to applications for official plan amendments, zoning by-law amendments and draft plans of subdivision or condominium approvals made prior to the approval by the Minister of Municipal Affairs and Housing of this Plan.*

### **Summary**

Given the above comments, we respectfully request that the Minister reconsider these proposed height limitations within the Central Area, and in particular, the Downtown Core Area. In our opinion, the lack of flexibility related to height restricts the amount of growth through intensification that may be achieved within the Urban Growth Centre

It is imperative that the proposed Official Plan include the necessary policy direction and flexibility to implement the requirements of the Growth Plan and ensure that the City's Urban Growth Centre will be a complete community over the 30-year planning horizon. It is our opinion that that a maximum height of eight storeys within Urban Growth Centre does not provide this flexibility. The proposed height restriction within the Urban Growth Centre is also directly at odds with the Province's commitment to addressing Ontario's housing supply crisis.

We also ask that MMAH consider additional policies related to MTSA's in the proposed OP. In particular, the proposed OP should speak to the current location of the bus terminal, and the area surrounding it, as the focus for MTSA-related development.

Lastly, we request that the proposed OP be revised to include appropriate transition provisions to address existing applications.

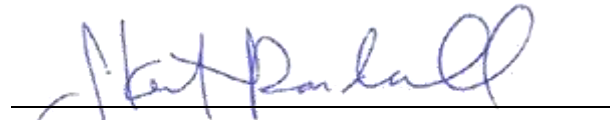
We are grateful for the opportunity to provide you with our comments and would be pleased to discuss in more detail.



If you have any questions, please do not hesitate to contact the undersigned.

Yours sincerely,

**ECOVUE CONSULTING SERVICES INC.**

  
\_\_\_\_\_  
J. Kent Randall B.E.S. MCIP RPP  
Principal Planner

