

September 28, 2022

Hon. Steve Clark
Minister of Municipal Affairs and Housing
777 Bay Street - 17th Floor
Toronto, Ontario
M7A 2J3

Dear Minister Clark;

**Re: Halton Region Official Plan Amendment 49
Environmental Registry Posting Number 019-5684
Ministry Reference 21-OP-215006
Eagle Heights - North Aldershot - Halton Region Official Plan
Regional Plan Mapping Should Be Modified to Reflect Legal Status of
Lands as Settlement Area**

We act for Penta Properties Inc., the owners of the lands known informally as Eagle Heights, in the North Aldershot area of the City of Burlington. The subject lands are generally located on the west side of Waterdown Road, in the area north of the Highway 403.

We are enclosing with this letter, a planning report prepared by Corbett Land Strategies providing planning support for the request to have the Regional Official Plan mapping modified to reflect the legal status of the Eagle Heights lands as settlement area.

The lands known as Eagle Heights are in the Central Area of North Aldershot, and have enjoyed OMB approval in the form of Official Plan, Zoning and detailed Plan of Subdivision approval since October 8, 1996. This followed a lengthy, provincially-led process called the “North Aldershot Interagency Review”. The appeals were supported by Halton Region and Burlington and implemented the conclusions of that review.

Subsequently adopted and approved Halton and Burlington Official Plans have incorporated these approvals for Eagle Heights. As a result, regardless of the mapping adopted by Halton Region, the subject lands satisfy the words of the Growth Plan definition of “settlement area”. This means the lands are, in law, settlement area, even if they have not been mapped as such.

The province, in considering Halton Region’s Official Plan, should modify the mapping to reflect that the Eagle Heights lands are settlement area.

Of note, the Region of Halton has released a discussion paper proposing to designate a large amount of land in North Aldershot (Burlington) as Rural, and part of the Natural Heritage System - and in the process removing the existing development rights that permit landowners to build hundreds of homes.

The Region’s initiative is based on an argument that the Province is compelling them to take this step.

If this happens, existing Official Plan designations, zoning, and sub-division approvals granted by the Ontario Municipal Board will be wiped out. It will also override a settlement agreement with the Burlington in which the City agreed, in principle, to higher densities on the lands to reflect good planning, and make the use of infrastructure and services more efficient.

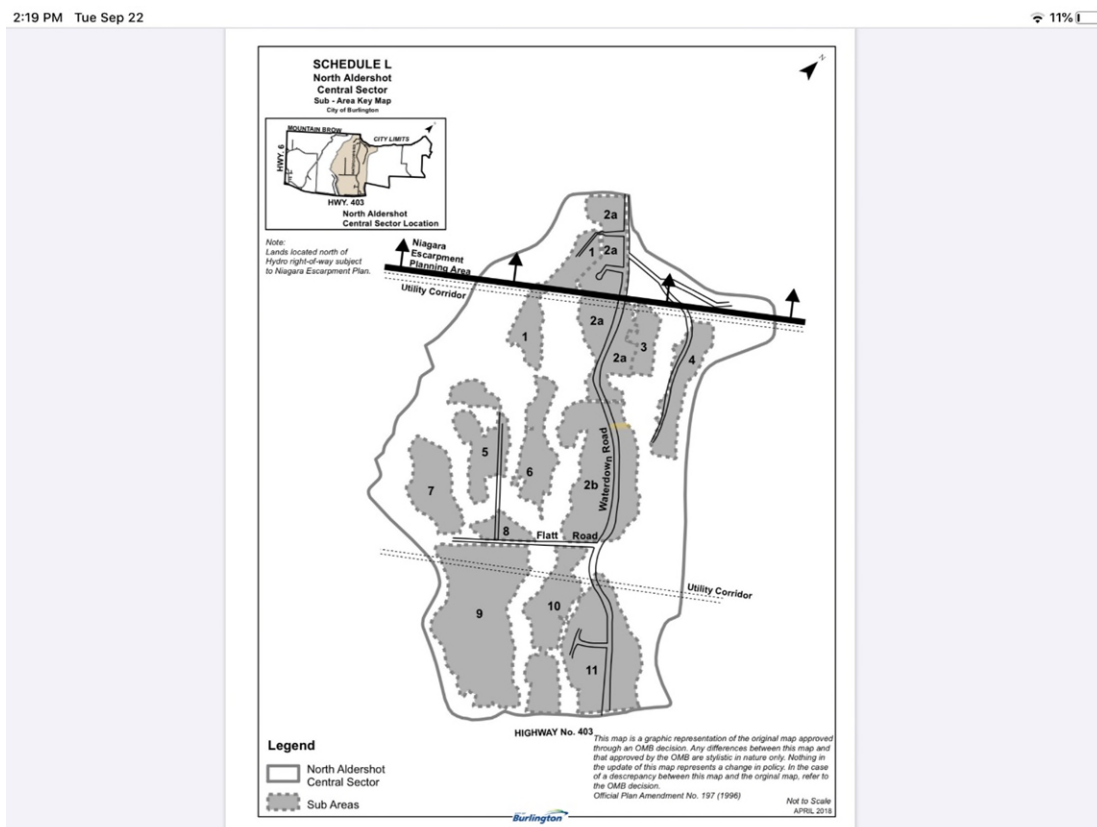
This possible retrospective removal of development rights is highly offensive to the principle in Canada that such rights cannot be removed by the state without providing compensation to the property owners.

It is important to observe that the Government of the Province of Ontario has been directly involved in the processes that led to the establishment of these development rights, which are now at risk. The Province should modify Halton ROPA 49 to ensure the mapping of the Eagle Heights lands reflects its legal status as settlement area.

The North Aldershot Lands have been Identified for Some Level of Development Since 1963

The principle that some level of development is permitted in North Aldershot has been established, on a continuous basis, through a range of planning documents, since 1963. At that time, the Ontario Municipal Board approved the Burlington comprehensive Official Plan by way of Official Plan Amendment 17. This identified a development potential population of 3000 in the central sector of North Aldershot. This would have to await the availability of municipal sewer and water services.

The image below (from the current Burlington Official Plan) illustrates both the Central Sector of North Aldershot in a context map, and the sub-areas that would be ultimately identified for development.



The principle of development was reconfirmed through OMB approval of Burlington's zoning by-law in 1970.

It was also confirmed directly by the Province of Ontario through the Parkway Belt West Plan in 1978. (The Parkway Belt West Plan would eventually cease to be applicable to all but the utility corridor lands at a later date).

The specific policy in the Parkway Belt West Plan in section 6.2.3.o) identified the central sector as a “Special Complementary Use Area”, permitting some further development. The policy called for “*A comprehensive study setting out the appropriate conditions for the preparation of a comprehensive restricted area by-law [an older term for a zoning by-law] and development agreements under section 35a of the Planning Act [this is an old provision permitting site plan agreements] shall be prepared in consultation with municipal authorities, Provincial ministries, and other concerned persons and agencies.*” The policy also set out certain criteria for the study to consider, focused on protecting the environmental features of the area.

Province Leads North Aldershot Interagency Review of North Aldershot Area, Which Recommends Development of 550 Units in Central Sector

In response to the policy in the Parkway Belt West Plan, a comprehensive study was initiated in 1989 by local landowners comprising the Grindstone Settlement Area Landowners Group. Based upon that work, they filed applications for approval of 2000 residential units in the Central Sector of North Aldershot. These applications were refused, and the matter appealed to the Ontario Municipal Board.

With a Board hearing on the horizon, and the Parkway Belt West Plan calling for a comprehensive study, the Province initiated and funded the North Aldershot Interagency Review to develop planning principles to guide the development of the area. This work was undertaken with the participation of the City of Burlington, Halton Region, the Conservation Authority and other agencies.

The North Aldershot Interagency Review produced a Report in May 1994, and a Master Site Plan Report in December 1994. The main report was endorsed by both Burlington and Halton Councils. It produced a land use concept for the Central Sector of North Aldershot which was quite detailed, and recommended a potential 550 residential units. This report formed key input into the Ontario Municipal Board hearing process.

Ontario Municipal Board Approves OPA 197 for 501 New Units, and Detailed Zoning By-law, and Sub-division Plans on October 8, 1996

The appeals of the Grindstone Creek Settlement Area Landowners were finally decided by the Ontario Municipal Board in a decision issued on October 8, 1996. The approvals ultimately were based upon a settlement negotiated after much evidence had been heard. This settlement leaned heavily on the principles in the North Aldershot Interagency Review.

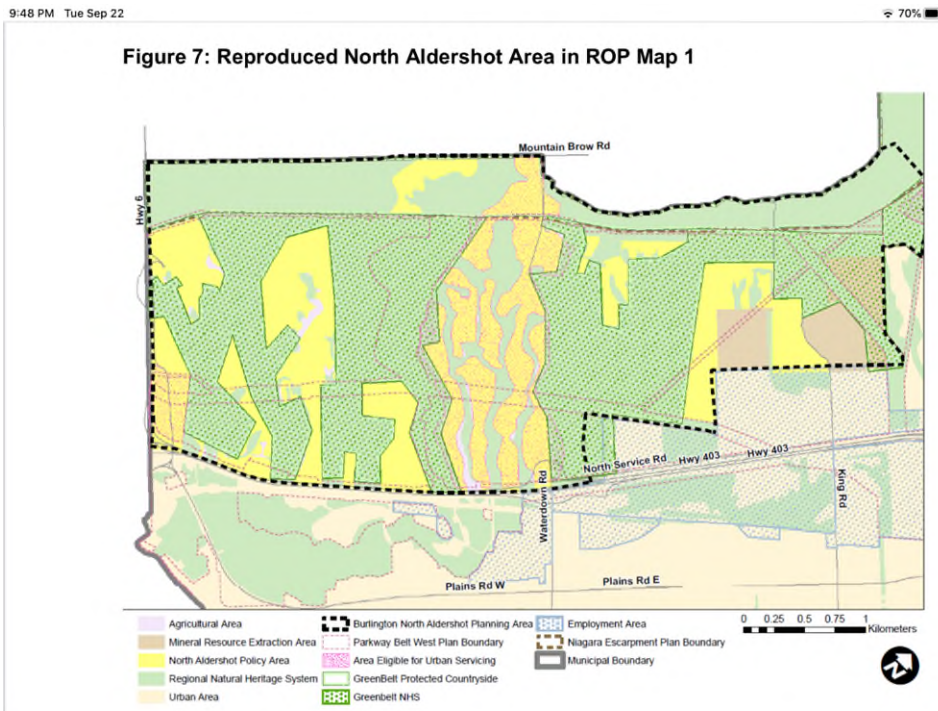
The OMB approved Burlington Official Plan Amendment 197 and detailed zoning by-law, which established the basis for 501 new residential units in the Central Sector. Detailed plans of sub-division were also approved for the lands known as the Paletta and Taylor lands. The Parkway Belt West Plan was also amended to reflect these approvals.

Region Planning Policies adopted by Halton to Reflect Planning Approvals in North Aldershot are approved by Ministry of Municipal Affairs on November 17, 1998.

In their adoption of Halton Region Official Plan Amendment 2, the Region designated the lands as part of the North Aldershot Policy Area. This designation permits development, provided that it follows the principles of the North Aldershot Interagency Review, as reflected in the OMB decision approving Burlington OPA 197. These lands generally correspond to the lands approved for development in the Central Sector by the OMB.

In addition, sections 137 through to 139 of the Region's Official Plan set out policies for the North Aldershot Policy Area. Section 138(14) expressly permitted the uses that were established in the local official plan and by-laws as a result of the North Aldershot Interagency Review Final Report (May, 1994). Policy 139(1) required Burlington to incorporate the policies from the North Aldershot Interagency Review into the local official plan.

Policy 139(3) identified the Eagle Heights lands, as identified on Map 1 below, as “eligible for urban services”.



Halton Region Official Plan Amendment 38, Approved Under the Growth Plan in 2011, Designates Lands for Development

The specific policies noted above in the Halton Region Official Plan, which permit the development of the Eagle Heights lands, were continued through the next Official Plan Review, and the resulting Halton ROPA 38, which was approved by the Ministry of Municipal Affairs on November 24, 2011.

It is important to note that this rendered the Halton Region Official Plan policies to be approved “in accordance with the the policies of” the Growth Plan for the Greater Golden Horseshoe.

In the preamble to Halton ROPA 38, the section setting out “The Purpose” of the amendment, the following is stated as its purpose:

“To incorporate the results of a statutory five-year review of the Regional Plan (2006) under section 26 of the planning act, including bringing the Regional Plan (2006) into conformity with the Provincial Policy Statement (2005), the Greenbelt Plan (2005), the Growth Plan for the Greater Golden Horseshoe (2006) and other pertinent provincial plans and policies”

Thus, the Halton Region Official Plan as of November 23, 2011, constituted an official plan in accordance with the policies of the Growth Plan.

Legal Opinion - Under the Growth Plan Definition of “Settlement Area”, Eagle Heights Lands Are Settlement Area, Notwithstanding Any Mapping in the Regional Official Plan

The Growth Plan for the Greater Golden Horseshoe defines “Settlement Areas” as follows:

Settlement Areas

Urban areas and rural settlements within municipalities (such as cities, towns, villages and hamlets) that are:

- a) built up areas where development is concentrated and which have a mix of land uses; and*
- b) lands which have been designated in an official plan for development in accordance with the policies of this Plan. Where there are no lands that have been designated for development, the settlement area may be no larger than the area where development is concentrated.*

The Eagle Heights lands are designated in the Halton Region Official Plan for development. The Regional Official Plan specifically approves the development of the lands that were approved for development by the North Aldershot Interagency Review (i.e. Eagle Heights).

When the Region adopted ROPA 38, it took the position that the Regional Official Plan policies were brought into conformity with the Growth Plan. The Minister approved ROPA 38 on November 23, 2011 - which the Minister could only do if

the Halton Official Plan was now in conformity with the Growth Plan, by virtue of section 3 of the Planning Act. Section 3 requires that the Minister, in exercising decision-making authority under the Planning Act, can only act in conformity with provincial plans, including the Growth Plan.

As a result, those aspects of the Region Official Plan (including item 57 in RPA 38 which amended section 71, and included a specific 71.8 that the North Aldershot Policy Area was one of several “mutually exclusive land use designations” in the Official Plan) are now official plan policies adopted “in accordance with the Growth Plan”.

Thus, in legal terms, the Eagle Heights lands satisfy the Growth Plan definition of “Settlement Areas”, based upon the wording of the definition.

Since the lands legally are “Settlement Area” under the definition in the Growth Plan, they enjoy that status in law, regardless of whether or not the Regional mapping shows them as settlement area. The mapping is not definitive and exhaustive - land can also enjoy the status of settlement area based upon the words in the definition, even if not mapped as such.

Halton Region Official Plan Mapping Should be Modified to Reflect the Legal Status of Eagle Heights as Settlement Area, With Existing Development Approvals

While a straightforward interpretation of the definition in the Growth Plan leads one to the conclusion that the Eagle Heights lands are Settlement Area, there is some potential for confusion. Some may choose to conclude that the settlement area mapping in the Official Plan is both definitive and exhaustive - and right now, despite the policies of the plan, this mapping does not yet include Eagle Heights.

The Province should remove the potential for confusion, and revise the mapping in the Regional Official Plan to show Eagle Heights reflecting its legal status as Settlement Area.

The past conduct of both the Region and Burlington reflects the expectation of the municipalities that the lands approved for development in Eagle Heights, will be developed.

Settlement with Burlington in 2009 Endorses Development on Approved Paletta Lands of Increased Density - Up to 870 Units

The City of Burlington adopted comprehensive Official Plan changes by way of OPA 55 in 2006, which was appealed to the Ontario Municipal Board.

As part of a partial resolution of the appeal, minutes of settlement endorsed, in principle, an increase in density on the Paletta lands. The minutes acknowledged the application by Paletta for 870 units, and provided that all development of increased density must respect the development areas approved by the OMB in 1996. The need for the higher densities was acknowledged to be good planning policy, and to make servicing of the lands more efficient, consistent with Provincial Policy direction. This settlement was endorsed by Council for the City of Burlington.

Halton has Continued to Work with the Owners Respecting Servicing of the Lands

Throughout the years, Halton Region has continued to work with the owners on an ongoing basis respecting servicing of the lands via Waterdown Road. Meetings between engineers for the landowners and the Region have been ongoing.

In 2009, in order to take the opportunity existing with the construction of the new Highway 403 interchange at Waterdown Road (and to avoid future disruption), Halton and the landowners entered into an agreement to provide early construction of the services on North Service Road and the south end of Waterdown Road. The landowners paid the cost of the works in full, totalling \$1.5 million. Of course, all these infrastructure works were intended to support future development in the Central Sector of North Aldershot.

Clearly, there has been acceptance and reliance by all parties, including Halton Region, that development would proceed at some point in the Central Sector, in the making of these arrangements.

The Province has Amended the Niagara Escarpment Plan in 2020 to Facilitate Development of the Lands

In order to facilitate the servicing of the development of the lands at the north end of the Central Sector, an amendment to the Niagara Escarpment Plan was required.

This amendment was made by the current Provincial Government recently, in March of 2020. This was implemented by Order-in-Council 228/2020

Halton Region Discussion Paper Released in June 2020 Proposes to Amend Halton Region Official Plan to Remove Development Rights in North Aldershot - Region Staff Suggest this is Compelled by Provincial Policy

As part of the current Municipal Comprehensive Review process being undertaken by Halton Region, the Region has released a “discussion paper” dealing with the North Aldershot Planning Area. In summary, it suggests that provincial policy requires changes to the Regional Official Plan that will eliminate development permissions in the Central Sector of North Aldershot.

There are two arguments mustered for why the Region must take the step of rendering the lands permanently unavailable for development. Both are said to be based upon Provincial Policy.

The first argument is that, under the Provincial Policy Statement, all lands must be designated either “settlement area” or “rural area”.

The Growth Plan is then relied upon to arrive at following conclusion:

“Given that North Aldershot is not included within any type of settlement area, this means that the current policies that permit development potentially on urban services outside of the urban area in the ROP would not conform to the Growth Plan, 2019.”

The provincial policy framework is said to “require the preparation of a substantially different policy framework for the area where North Aldershot will no longer be identified as having a distinct land use designation”.

In summary, they argue that the existing approvals cannot be continued because of Provincial Policy on land use designation.

The second argument relates to the Natural Heritage System. Notwithstanding that there are detailed approvals on the lands that were based upon environmental considerations and key natural features, the Region takes the position that these approvals must be revisited.

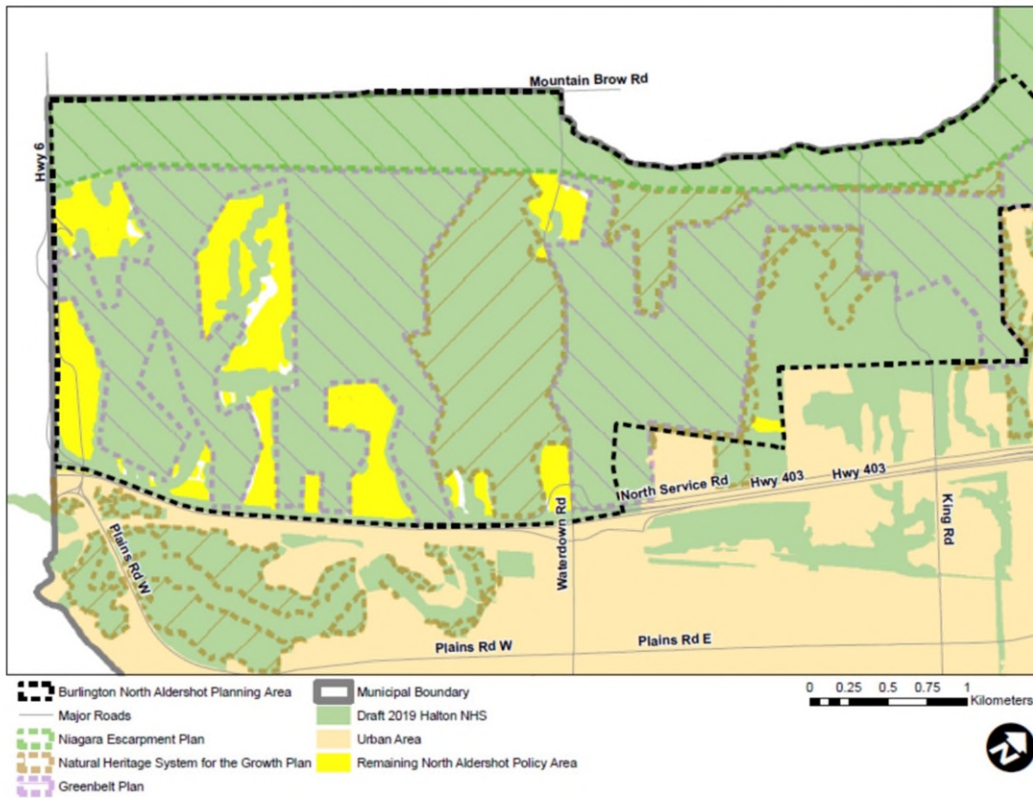
The Regional Natural Heritage System must be refined, they argue, to reflect current provincial policies. This starts with the Natural Heritage System for the Growth Plan, which mapping is shown to include almost the entirety of the lands previously identified for development, as “Components” of the Natural Heritage System.

Then, in addition to relying upon the provincial mapping (despite the province acknowledging its flaws and asking of them to be corrected at the local level), the Region relies on policy provisions of the Growth Plan.

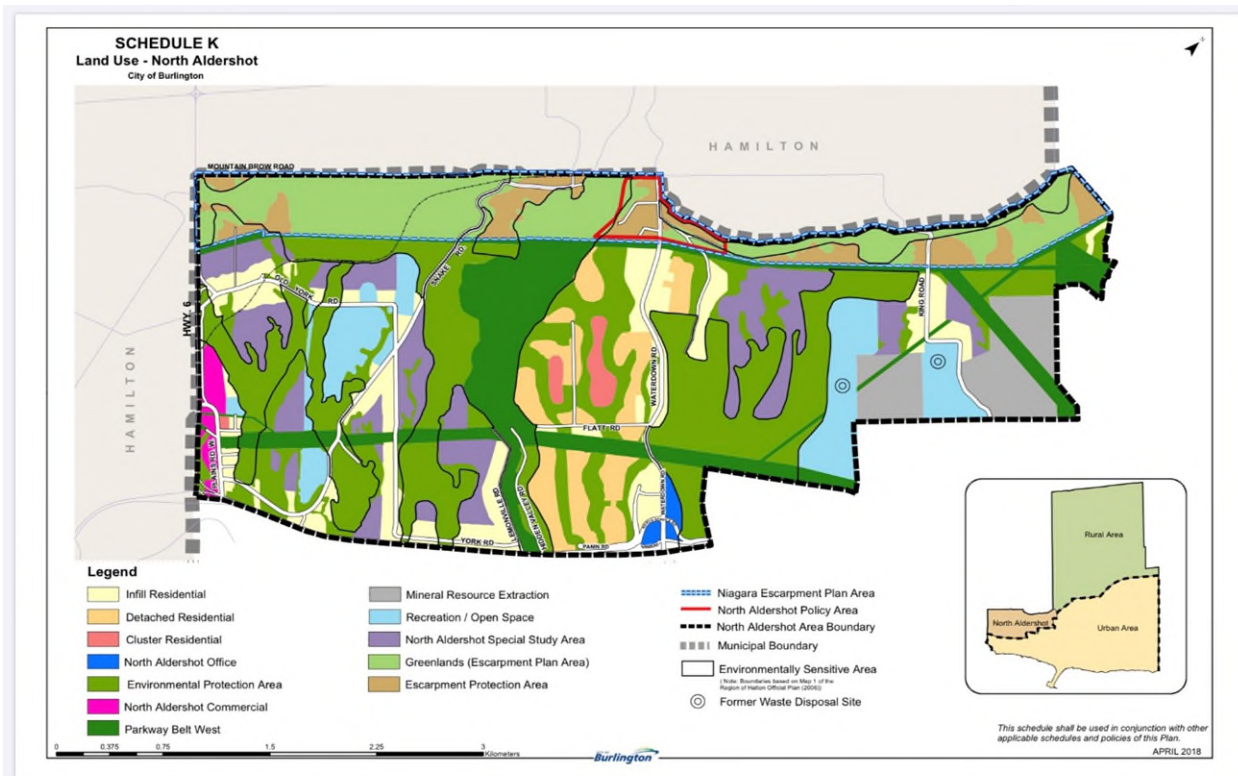
Those policies include “*additional linkages and enhancement areas*” including vegetation protection zones of 30 metres as provided for in section 4.2.4.2 of the Growth Plan.

Ultimately the resulting mapping of the proposed Natural Heritage System eliminates all previously existing approvals - and this elimination of those approvals is compelled by provincial policy.

Figure 16: Draft 2019 Halton NHS and remaining lands within the NHSGP



Here is the proposed mapping:
It is a stark contrast with the mapping in the current Regional Official Plan.



Lands South of Flatt Road Not Owned by Penta

There are lands in this part of North Aldershot, located south of Flatt Road, also identified as eligible for servicing. Those lands are not owned by Penta, and are thus not the subject of this submission. However, much of the analysis in this submission would apply equally to those lands.

Conclusion: The Province Should Amend the Mapping in Halton Region Official Plan to Show Eagle Heights as Settlement Area, to Reflect Their Legal Status, and Avoid the Removal of Existing Development Rights

The Province has played a significant role in funding and guiding the process that led to the Eagle Heights Lands being identified in detail for development. As a result of those approvals, reflected in subsequent Halton Region Official Plans, the lands are now legally Settlement Area according to the definition in the Growth Plan.

To avoid confusion, and clearly ensure those rights continue, the Eagle Heights lands should be identified as Settlement Area in the mapping in the Regional Official Plan. The Province can do so through modification to Halton Region Official Plan Amendment 49.

Sincerely,

AIRD & BERLIS LLP



Hon. Peter Van Loan
Partner

HV