



April 9, 2026

Delivered by Email: clerks@guelph.ca

City of Guelph
1 Carden Street
Guelph, ON N1H 3A1
ATTN: Mayor Guthrie and Council

Dear Mayor Guthrie and Members of Council:

**Re: Downtown Community Planning Permit Decision – Agenda Item 7.1 (2026-124);
Our client: 185 Woolwich Holdings Inc.;
Property: 36 Cardigan Street, Guelph**

SmithValeriotte Law Firm LLP represents 185 Woolwich Holdings Inc., the owner of 36 Cardigan Street, Guelph (the “Property”). We previously wrote to Council on behalf of our client on April 3, 2025, prior to the adoption of Official Plan Amendment No. 106 (“OPA 106” – being the amendment to the Downtown Secondary Plan to permit increased building heights).

Our client successfully argued that the proposed 6-storey height permissions in the draft OPA were inappropriate, especially as the abutting properties (which could theoretically form part of a broader land assembly) were proposed to have permissions for 12 storeys. Staff agreed with our client’s request to increase the maximum height to 12 storeys and put a revised ‘Schedule D’ before Council.

On April 8, 2025, Council accepted this staff recommendation, such that our client’s property was specifically amended to have official plan permissions for 12 storeys. See the comparison below of the draft and final OPA 106 schedule D:

Reply to Guelph Office:

Reply to Fergus/Elora Office:

ADDRESS
245 Hanlon Creek Boulevard, Unit 102, Guelph, ON N1C 0A1
T 519 837 2100 TF 800 746 0685 F 519 837 1617

MAILING ADDRESS
P.O. Box 128, Fergus, ON N1M 2W7
ADDRESS
294 East Mill Street, Unit 108, Elora, ON N0B 1S0
T 519 843 1960 F 519 843 6888

Draft Version (prior to April 2025 Council meeting):

Attachment 2 – Schedule D Comparison – Recommended (March 2025)



Final, Council-adopted OPA 106:

Figure 2: Proposed Schedule D: Downtown Secondary Plan Maximum Building Heights



The increase in heights in the Downtown was approved through OPA 106. The purpose of OPA 106 was to implement the Downtown Building Heights Study to meet the density target of 200 people and jobs per hectare by 2051.

There was no discussion or mention in the study, or the resulting staff report that recommended adoption of OPA 106, that the increased heights would be subject to caveats, limitations or other conditions. These maximum heights were and are intended to be as-of-right built form permissions (subject to meeting all other performance standards in the implementing zoning). OPA 106 itself contains only a generic policy 11.1.7.2.7 which states that: 'In the Downtown, the Community Planning Permit System may establish a framework for implementing the maximum building heights of the Official Plan and required facilities, services and matters.'. This policy inclusion was unsurprising, as it was well-known at that time that the City intended to

move forward with a Community Planning Permit (CPP) system for downtown, and such policy language made it clear that it would be the CPP By-law, rather than a standard zoning by-law, that would implement (or would be permitted to implement) the new maximum heights per Schedule D of the Secondary Plan.

Policy 11.1.7.2.7 does not provide any jurisdiction for maximum heights to be revisited or restricted, other than through normal zoning regulations (setbacks, stepbacks, FSI restrictions, etc.), provided that such heights conform to the official plan maximums per Schedule D of the Downtown Secondary Plan.

However, the draft CPP By-law being presented to Council seeks to impose significant restrictions on the maximum height. Rather than treating the official plan-approved height as the permissive and presumptive built-form, Staff are proposing that the increased height (the 'uplift') be conditional upon 'facilities, services and matters' which principally would include a mandatory minimum amount of affordable housing units. This approach not only fails to conform to OPA 106 but is also in our opinion contrary to the *Planning Act* and O.Reg. 173/16, being the Community Planning Permit regulation, which is discussed further below. Ultimately, given the breadth of the concerns with the CPP By-law, we request that Council defer making a decision at this time and remit the matter back to staff for further consultation and revision.

1. Non-conformity with OPA 106

The draft CPP By-law fails to conform to Guelph's Official Plan, inclusive of unconsolidated amendments 105 and 106. As with traditional zoning by-laws, CPP by-laws must conform with any in-force official plan. Both types of instruments implement the broad policy directives of the OP. For Guelph to establish new maximum building heights (without limitation) in the OP, and to then 'backtrack' on those permissions through conditions in the CPP By-law, it is advancing a proposal that would cause significant non-conformity. In contrast, the Town of Innisfil (which was heavily relied upon as a precedent for Staff in developing the draft CPP By-law) sets its Class 1 permit maximum heights to match the maximums in its official plan. No 'facilities, services or matters' ("FSM") are required as a condition simply to achieve otherwise-permitted OP height maximums. Class 2 permits allow for minor staff variations (increases) in height and density in exchange for certain FSM, and Class 3 permits allow for even greater variances by Council in exchange for enhanced FSM. The City of Waterloo's draft CPP By-law is similarly structured, such that Class 1 permits (with height and density up to the OP-approved maximums) are truly 'as of right', and only Class 2 or 3 variations bring FSM into play.

Guelph has elected to make even Class 1 permits on select Downtown properties (including 36 Cardigan) conditional upon FSM (affordable housing) simply to achieve the height permissions previously granted through OPA 106. That is a significant OP non-conformity issue.

In addition, OPA 105 (policy 10.11.23) notes that the Community Planning Permit By-law will prioritize using [FSM] to incentivize the creation of affordable housing units. However, the draft CPP By-law does not merely 'incentivize' affordable housing. It makes affordable housing a mandatory precondition (with a fixed percentage) of achieving OP-permitted heights, rather than a trade-off for additional (bonused) height that could truly incentivize such units.

Further, in accordance with O.Reg. 173/16, being the *Planning Act* regulation governing CPPs, a community planning permit shall set out a list of minimum and maximum standards for development¹ and may set out the range of possible variations from those standards that may be authorized in connection with the issuing of a CPP². Provided there are official plan policies in place, as a condition of a CPP permit, a municipality may require the provision of specified FSM in exchange for a specified height or density of development,

¹ O.Reg. 173/16, c. 4(2)(c).

² O.Reg. 173/16, c.4(3)(f).

which may be within the ranges in 2(c) or outside those ranges as set out in clause 3(f). Guelph has not provided for any specified FSM in its official plan. Rather, OP policy 10.11.22 largely parrots the generic language of the regulation and notes that the CPP by-law may establish a condition that requires FSM in exchange for height. Policy 11.1.7.2.7 doesn't assist, as it merely notes that the CPP System 'may establish a framework' for implementing maximum buildings heights and required FSM.

As such, there is no OP policy basis established at this time to implement any specific FSM measures, as the combination of clause 4(6)(a) and paragraph 4(5)5 of O.Reg. 173/16 require that the underlying OP contain policies relating to the application of specific FSM. In short, the CPP cannot contain specific FSM provisions in the absence of specificity with the enabling official plan.

2. Planning Act concerns

In addition to OP conformity concerns, the manner in which the draft CPP By-law seeks to impose mandatory percentages of affordable housing is *ultra vires* of O.Reg. 173/16 and the *Planning Act*. The province has established an inclusionary zoning ("IZ") regime and, contrary to the staff report accompanying the draft CPP by-law, a community planning permit system is not an alternative track to implement affordable housing unconstrained by the IZ requirements of the Act and its regulations. When the Province first introduced the Community Planning Permit system (previously known as a development permit system), the provision of affordable housing units through a CPP system was certainly contemplated³. However, when IZ became formalized through 2018 amendments to the Planning Act, in our opinion, it created a single 'stream' to impose affordable housing. Notably, on the same day that the implementing IZ regulation (O.Reg. 232/18) came into force, a companion regulation (O.Reg. 234/18) made amendments to the then-existing CPP regulation (O.Reg. 173/16). O.Reg. 234/18 is enclosed with this letter.

Not only did O.Reg. 234/18 explicitly incorporate IZ into the CPP regime and explicitly allow CPP by-laws to implement IZ in the same manner as traditional zoning by-laws, it went a step further and made it abundantly clear that a) you must first have the necessary OP policies regarding IZ in place and b) all of the substantive and procedural requirements and limitations of IZ as set out in the Planning Act apply (with necessary modifications) if a municipality is seeking to impose IZ through a CPP by-law rather than through a traditional zoning by-law. In short, the Legislature recognized the confusion that might arise as CPP by-laws permissibly allow 'facilities, services and matters', which could conceivably allow for affordable housing as a condition with few limitations, whereas the IZ regime is highly constrained. To avoid any uncertainty, O.Reg. 234/18 amended O.Reg. 173/16 to explicitly incorporate IZ by reference into the CPP regime, ensuring that CPP by-laws could not be used as an 'alternate track' to impose affordable housing outside the scope of the constrained IZ regime. While the undefined 'facilities, services and matters' is certainly extremely open-ended in terms of what it can include, rules of statutory interpretation mean that it must necessarily exclude mandatory affordable housing that is akin to IZ.

An interpretation of O.Reg. 173/16 that would allow affordable housing to be imposed as FSM through a CPP by-law unconstrained by the IZ requirements of the Act would render the O.Reg. 234/18 amendments to O.Reg. 173/16 meaningless. The regulations under the *Planning Act* must be read harmoniously, and every provision must be given meaning. That would not be the case if there were dual tracks for complementary affordable housing, and therefore Staff's interpretation as detailed in the staff report would likely be rejected by the OLT or the courts.

³ <https://www.ontario.ca/page/community-planning-permit-system> (although this page has a warning that it is out of date due to more recent legislative and regulatory amendments)

3. Prematurity

In late March 2026, the Ontario government introduced Bill 98, *Building Homes and Improving Transportation Infrastructure Act, 2026*, which has now been ordered for second reading. There are myriad proposed amendments and over 15 ERO postings open for comment, many of which could have significant impacts on the ability to implement the CPP as drafted. Proposed changes and consultations include:

1. Standardized official plans
2. Consultation on possibly eliminating site plan control (which would bring into question whether the province would eliminate CPP systems altogether)
3. Proposed elimination of the ability of municipalities to require owners to provide electric vehicle supply equipment (i.e., EV charges) in connection with parking facilities (which would negate section 5.8 of the draft CPP By-law)

Given the breadth of the possible impending changes, we recommend on behalf of our client that Council defer making a decision on the CPPS By-law at this time, given the prematurity issues noted above. Council should also direct staff to revisit the nature in which FSM is sought and consider applying it only where height and/or density is increased through a Class 2 or 3 permit above the OPA 106 approved limits. Such an approach would be more consistent with comparable municipalities.

Should you have any questions either before or after the April 15th Council meeting, please contact the undersigned.

Yours Very Truly,
SMITHVALERIOTE LAW FIRM LLP

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encl. O.Reg. 234/18

ONTARIO REGULATION 234/18

made under the

PLANNING ACT

Made: April 11, 2018

Filed: April 11, 2018

Published on e-Laws: April 12, 2018

Printed in *The Ontario Gazette*: April 28, 2018

Amending O. Reg. 173/16

(COMMUNITY PLANNING PERMITS)

1. (1) Subsection 4 (2) of Ontario Regulation 173/16 is amended by adding the following clause:

(c.1) give effect to the policies described in subsection 16 (4) of the Act, if the municipality is prescribed for the purposes of that subsection;

(2) Subsection 4 (3) of the Regulation is amended by adding the following clause:

(d.1) give effect to the policies described in subsection 16 (4) of the Act, if the municipality is not prescribed for the purposes of that subsection;

(3) Section 4 of the Regulation is amended by adding the following subsections:

(3.1) Before the parts of a community planning permit by-law referred to in clauses (2) (c.1) and (3) (d.1) are passed, the official plan in effect in the municipality must contain the policies described in subsection 16 (4) of the Act.

(3.2) Subsections 35.2 (2) to (9) of the Act, except clause 35.2 (2) (e), apply with necessary modifications if a community planning permit by-law gives effect to the policies described in subsection 16 (4) of the Act.

Commencement

2. This Regulation comes into force on the later of the following:

1. The day subsection 10 (1) of Schedule 4 to the *Promoting Affordable Housing Act, 2016* comes into force.

2. The day this Regulation is filed.