

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: September 02, 2022

CASE NO(S):

OLT-22-002451
(Formerly PL200557)

PROCEEDING COMMENCED UNDER section 22(7) of the *Planning Act, R.S.O. 1990, c. P. 13, as amended.*

Applicant/Appellant: Old Lakeshore (Burlington) Inc.
Subject: Request to amend the Official Plan – Failure to
adopt the requested amendment
Description: To permit a 27-storey apartment building with
retail/commercial at grade
Reference Number: 505-02/20
Property Address: 2107 Old Lakeshore Road & 2119 Lakeshore
Road
Municipality/UT: Burlington/Halton
OLT Case No: OLT-22-002451
Legacy Case No: PL200557
OLT Lead Case No: OLT-22-002451
Legacy Lead Case No: PL200557
OLT Case Name: Old Lakeshore (Burlington) Inc. v. Burlington
(City.)

PROCEEDING COMMENCED UNDER section 34(11) of the *Planning Act, R.S.O. 1990, c. P. 13, as amended.*

Subject: Application to amend the Zoning By-law –
Refusal or neglect to make a decision
Description: To permit a 27-storey apartment building with
retail/commercial at grade
Reference Number: 520-03/20
Property Address: 2107 Old Lakeshore Road & 2119 Lakeshore
Road
Municipality/UT: Burlington/Halton
OLT Case No: OLT-22-002452
Legacy Case No: PL200558
OLT Lead Case No: OLT-22-002451
Legacy Lead Case No: PL200557

Heard: June 14, 2022 to June 30, 2022 by video hearing

APPEARANCES:

Parties

Counsel

Old Lakeshore (Burlington) Inc.
("Applicant/Appellant")

Scott Snider
Anna Toumanians

City of Burlington ("City")

Andrew Biggart

Regional Municipality of Halton
("Region")

Kelly Yerxa

DECISION DELIVERED BY T.F. NG AND ORDER OF THE TRIBUNAL

INTRODUCTION

[1] This was the Hearing in the matter of appeals by Old Lakeshore (Burlington) Inc. (the "Applicant/Appellant") pursuant to s. 22(7) and s. 34(11) of the *Planning Act* (the "Act") from the failure of the City of Burlington ("City") to make a decision with respect to an application for an Official Plan Amendment ("OPA") and a Zoning By-law Amendment ("ZBA") within the statutory time periods, with respect to the Applicant's lands comprising 0.2 hectares ("ha") municipally known as 2107 Old Lakeshore Road and 2119 Lakeshore Road in the City ("subject lands/subject property/subject site").

[2] The proposed OPA and ZBA were requested to facilitate the redevelopment of the subject lands with a 27 Storey Mixed Use Building that consists of retail/service commercial uses on the ground floor and residential uses above. A total of 196 residential units are proposed in the redevelopment.

[3] Core FSC Lakeshore LP has withdrawn and was no longer a party to the proceedings. Halton Condominium Corporation 160 ("HCC") requested in writing to be downgraded from party to participant. This was granted without objections. HCC's participant statement has been considered. It generally stated that the proposed

building design, massing, its construction and traffic effects will adversely affect the privacy and quality of life of its residents.

[4] The Region's Counsel, Ms. Yerxa requested that she be excused from attending the hearing, as the Region and the Appellant had conditionally agreed that there was just one issue of site rehabilitation between them. In the event that the Tribunal finds for the Applicant/Appellant, the Region is content if the order is withheld until Site Plan Approval is addressed. Ms. Yerxa was accordingly excused for the duration of the hearing. The Region's expert witness statement was disregarded for the purpose of these proceedings.

HEARING

[5] The City listed twenty-three issues for determination. Wind and noise are not live issues. The parking rate has been agreed at 1.07 per unit and there is no lay-by parking in the revised concept plan. The original concept plan enclosed with the original applications has been revised and placed before this Tribunal. The Tribunal did not sit on June 20, 2022 as an Applicant's witness was unavailable.

Issues

[6] The issues, in the Tribunal's view are:

1. Is the proposed development at an appropriate level of intensification and density?
2. Does the proposal address the matters required in an appropriate Urban Design?
3. Does the OPA and ZBA meet the requirements of the policy and legislative framework?

4. Is the proposed development compatible with the existing and planned neighbourhood context, good land use planning and in the public interest?

[7] The proposed OPA and ZBA are evaluated against the Provincial Policies and Legislative Framework that apply to these applications.

Witnesses

[8] The Applicant called a total of ten expert witnesses, and the City called five experts:

Applicant

1. Michael Goldberg – Land use planning
2. Enzo Corazza – Architectural
3. Scott Llewellyn – Municipal and land development Engineering
4. Ralph Bouwmeester– Sun and Shadow analysis
5. Stewart Elkins – Transportation planning
6. Matt Bielaski– Geotechnical, Hydrogeological Environmental Engineering
7. Jeanette Gillezeau – Land use economics and demographics
8. Tom Kasprzak – Urban Design and Land use
9. Michael Hannay – Urban Design and Land use
10. Paul Ferris – Landscape Architecture

City

11. Franco Romano – Land use planning
12. Todd Evershed – Land use and urban design
13. Zelaikha Shareqi – Landscape architecture
14. Kaylan Edgcumbe – Transportation planning and Traffic engineering
15. Joshua Medeiros – Municipal Engineering and servicing

[9] The above witnesses were affirmed/sworn and qualified by the Tribunal to give expert opinions in their respective disciplines.

[10] The City is strongly opposed to the redevelopment. The contrary position is firmly

held by the Applicant's expert witnesses.

[11] The Tribunal prefers and is persuaded by the opinion evidence of the Applicant's expert witnesses that the applications should be approved.

[12] Franco Romano, the Land Use Planner called by the City, opined that the appeals should be dismissed. However, he stated that the appropriate s. 37 *Planning Act* benefits may be imposed by the City in the event the Tribunal finds in favour of the proposed development.

[13] Subject to the specific conditions that will be imposed, and after careful consideration of the evidence and policies, the Tribunal finds that the proposal represents good land use planning, and that it is in the public interest.

Site Context

[14] The subject site is located at the eastern confluence of Old Lakeshore Road and Lakeshore Road, between Torrance Street and Martha Street. Old Lakeshore Road loops to/from Lakeshore Road from the extension of Pearl Street in the west to the approximate mid-point between Martha Street and Torrance Street in the east. The subject site forms part of this island-like condition with low-rise lakefront commercial properties to the south and a variety of residential built forms to the east, north, northeast and northwest.

[15] The subject site has an area of approximately 2,029 square metres ("m²") (0.2 hectares, or 0.5 acres), is a roughly triangular configured parcel, with frontages on both Lakeshore Road and Old Lakeshore Road. The frontage on Old Lakeshore Road is 69.0 metres ("m") and the frontage on Lakeshore Road is 74.2 m. The west lot line that stretches between Old Lakeshore Road in the south to Lakeshore Road in the north is approximately 51.8 m long. The east lot line, at the confluence of Old Lakeshore Road and Lakeshore Road, has a length of 9.2 m.

[16] The lands are currently occupied by a one (1)-storey condominium sales centre for Carriage Gate Homes, and a one (1)-storey medical office building. The subject site also contains two surface parking lots that are associated with each of the existing buildings. Vehicular access to the site is currently provided by driveways to/from both Lakeshore Road and Old Lakeshore Road.

[17] The subject site has generally flat topography, with moderate sloping land down from west to east.

[18] Beyond the south lot line of the subject site, there is a public sidewalk within the Old Lakeshore Road right-of-way whereas there is no public sidewalk adjacent to the subject site along the Lakeshore Road right-of-way.

South of the Subject Site

[19] To the south of the subject site, on the south side of Old Lakeshore Road, are a number of low-rise, house-form commercial buildings with frontages on Old Lakeshore Road and rear lot lines abutting Lake Ontario. The uses in these buildings include restaurants, a spa, a one (1)-storey hotel, and surface parking lots that back directly on to the lake shore. There is a two (2)-storey designated heritage building at 2084 Old Lakeshore Road, and a two (2)-storey listed heritage building at 2100 Old Lakeshore Road.

East of the Subject Site

[20] Immediately southeast of the subject site, across Old Lakeshore Road and backing onto the lake shore, is a two (2)-storey, residential townhouse complex known as 'Pier 21' (2136 Old Lakeshore Road). Further east are five (5) residential apartment buildings backing onto the Lake Ontario shoreline. These buildings include: 18 storeys (2160 Lakeshore Road), eight (8) storeys (2170 Lakeshore Road), 12 storeys (2190 Lakeshore Road), four (4) storeys (2196 Lakeshore Road), and nine (9) storeys (2210 Lakeshore Road).

[21] All of the above-mentioned apartment buildings are shown in Schedule E – Downtown Mixed Use Centre (“DMUC”), Land Use Plan, as being within the DMUC and designated Downtown Residential – Medium and/or High Density Precinct.

[22] On the west side of Torrance Avenue, east of the subject site at 360 Torrance Street is a long, slab styled 15-storey residential apartment building, the Rambo Creek to the west of it, and what appears to be a vacant single detached dwelling at 2137 Lakeshore Road, west of the Rambo Creek. This area is also within the DMUC and designated Downtown Residential – Medium and/or High Density. North of Lakeshore Road, Torrance Avenue is the eastern boundary of the DMUC, east of which, are single detached dwellings designated Residential – Low Density on Schedule B, Comprehensive Land Use Plan – Urban Planning Area of the City OP.

West of the Subject Site

[23] The properties to the immediate west of the subject site, at 2093-2101 Old Lakeshore Road and 2096-2100 Lakeshore Road, are proposed to be developed with a 27-storey, 88.4 m (including the mechanical penthouse), mixed use residential and commercial building. This proposed development includes 310 residential units and 426.4 m² of commercial Gross Floor Area (“GFA”). The proposed applications for that site have been appealed to the Ontario Land Tribunal (“OLT”) and the OLT has approved this development on May 4, 2022 (CORE decision/Core Development/Core Building).

[24] To the immediate west of the foregoing development proposal, there is a two (2)-storey commercial building at the southeast corner of Lakeshore Road and Pearl Street that is listed on the City’s Heritage Registry. This commercial building has surface parking to its east and west.

[25] On the south side of Lakeshore Road, occupying the block from Old Lakeshore Road in the east to Elizabeth Street in the west is the Bridgewater development, the construction and occupancy of which are substantially complete. This development

consists of a 22-storey building with 100 dwelling units on the east portion of the site, and two buildings of seven (7) and eight (8) storeys on the west portion of the site, which are occupied by a hotel, office and residential uses.

[26] To the west of the Bridgewater development, on the south side of Lakeshore Road from Elizabeth Street to Brant Street is 2020 Lakeshore Road, a proposed OPA and ZBA submitted in December 2021 seeking approval for a development of 30 and 35 storey buildings containing commercial, hotel and residential uses. This application remains in process.

North of the Subject Site

[27] Immediately north of the subject site is a five (5)-storey building at 2109 Lakeshore Road operated as Chartwell Martha's Landing Retirement Residence ("Chartwell"), and a seven (7)-storey residential building at 2121 Lakeshore Road. To the north of the Chartwell facility, on the east side of Martha Street is a 12-storey apartment building, north of which are single detached dwellings which are under OPA and ZBA applications for a 12-storey residential building.

[28] On the northwest corner of Martha Street and Lakeshore Road, at 374-380 Martha Street, is the Nautique condominium project by ADI Developments ("ADI"), which is currently under construction. This OPA and ZBA application was approved by the Ontario Municipal Board ("OMB") on February 13, 2018. This under construction project is a 26-storey residential building with 240 dwelling units.

[29] Located immediately west of the ADI site is an October 27, 2021, Local Planning Appeal Tribunal approved OPA and ZBA application on 2069-2079 Lakeshore Road and 383-385 Pearl Street., by Lakeshore (Burlington) Inc., for a 29-storey mixed use building with 320 residential units.

Proposed Development and Applications

[30] The proposal is to demolish the existing buildings on the subject site and construct a 27-storey (excluding the rooftop amenity space and mechanical units), mixed use building, with 462 m² of retail and service commercial GFA in a one (1)-storey podium level, with residential units above. The proposed residential GFA is 17,933 m² for a total GFA of 18,395 m². This will provide an overall residential density of 980 units per hectare and a Floor Area Ratio ("FAR") of 10.4 times the lot area.

[31] By contrast, the existing City OP permissions for the Old Lakeshore Mixed Use Precinct and the subject site, permit a minimum density of 51 units per net ha, a minimum building height of two (2) storeys, and a maximum building height of six (6) storeys or 19.5 m. Section 5.5.7.2d permits an increased height of up to a maximum of eight (8) storeys and 29 m, subject to conditions. Section 5.5.7.2k permits an increased height of up to a maximum of 12 storeys and 37 m, subject to similar conditions. It is due to these City OP restrictions and prescriptions that an OPA application has been filed.

[32] The one (1)-storey podium will contain the lobby, retail space, back of the house service areas, loading, and the entrance ramp to the underground parking. The retail space is included along all three (3) public street frontages, with the predominant depth and breadth of the retail space being focused toward the east portion of the site at the corner of Lakeshore Road and Old Lakeshore Road.

[33] The residential lobby entrance is located on the south side of the building, fronting Old Lakeshore Road.

[34] Site access includes a controlled one-way southbound, 4.5 m wide service vehicle through-driveway, entering from Lakeshore Road and exiting onto Old Lakeshore Road. Site access for passenger vehicles enters the 6.9 m wide underground garage ramp, shown toward the southwest portion of the site, to/from Lakeshore Road. There are seven (7) levels of parking in the underground garage,

providing 210 parking spaces.

[35] The overall height of the 27-storey building is 92.5 m from established grade to the top of the roof, plus a 7.0 m mechanical penthouse above, for a total height of 99.5 m.

[36] The building is proposed to have 196 dwelling units, with the following mix of unit types:

1-Bedroom	96	49.0%
2-Bedroom	72	36.7%
3-Bedroom	28	14.3%
Total	196	100.0%

[37] The building is proposed to have indoor and outdoor amenity space of 524 m² and 4,593 m², respectively, for a total amenity area of 5117 m². This amount of amenity space exceeds the minimum requirement in the Zoning By-law No. 2020 by 3,920 m².

[38] A 0.40 m wide road widening is proposed along Lakeshore Road. The City is seeking a road widening of 2.0 m. The purpose for this road widening is to enable cycling lanes to be constructed along Lakeshore Road within the public right-of-way. The reasoning behind the proposed 0.40 m proposed road widening compared to the City requested 2.0 m is that all the required on-road facilities envisioned for Lakeshore Road can be accommodated with the smaller road widening dimension, without the need to reconfigure, and add levels to the proposed parking garage.

[39] The project includes public realm enhancements surrounding the building, including landscaping and design features and cycling facilities within the expanded public right-of-way, described in detail by the Applicant's Urban Design, Landscape Architectural and Transportation experts at this hearing.

Issue. 1: Is the proposed development at an appropriate level of intensification and density?

[40] According to Mr. Romano, City's planning witness, the level of density and intensification that is proposed exceeds the existing, planned and emerging context for the subject site. A more moderate form of high density development that maintains the intent of the City's Intensification Strategy as implemented through the City's OP is appropriate. This generally means that the proposal of 27 storeys and 196 residential units, in his view, is too tall and too intense, representing an overdevelopment of the site.

[41] Mr. Romano stated that the proposal conflicts with the in-force land use planning framework. The proposed amendments do not properly implement the planning framework at the Provincial, Regional or Local levels.

[42] The proposal, he opined, conflicts with the emerging land use planning framework. The applicable land use planning framework permits a significant intensification opportunity for the site, one that is "optimal" for the site. The planned context intensification opportunity reflects a moderate high density development. The proposal thus conflicts with that because it is an excessively high intensity development.

[43] According to the Applicant's planning witness Mr. Goldberg, land use planning is not static, and the OP specifically contemplates applications to amend.

[44] The subject site is located within an area that is undergoing significant change and growth through intensification application approvals, resulting in an evolving built form context of higher densities and heights, reflective of its Downtown Burlington location and Urban Growth Centre designation.

[45] Mr. Goldberg explained that while there is a broad range of existing and approved building heights in the neighbourhood, there is an evolving trend of taller and denser developments being proposed and approved in recent years. The area is clearly evolving to accommodate much needed housing to meet population growth needs. The

immediate area contains some of the tallest buildings in the Downtown area.

[46] He testified that there are many development applications at various stages of the planning process, in close proximity to the subject site. These developments contribute to the evolving built form context within the Downtown area.

[47] Mr. Goldberg stressed that approvals for new buildings within this part of Burlington takes place through OPA and ZBA applications, seeking among other things, greater levels of height and density permissions from the City OP and ZBL permissions at the time of the application.

[48] The Tribunal concurs with Mr. Goldberg that this part of the City has seen and is experiencing changes. Major developments and approved applications have resulted in taller buildings and density increases. Consistent with the evolving context around this part of the City, the Tribunal finds that the subject property is suited for a development at an appropriate level of intensification and density.

Issue No. 2: Does the proposal address the matters required in an appropriate Urban Design?

CITY

[49] The City's Urban Designer, Mr. Evershed, stated that from an urban perspective, the proposed development does not conform to the policies and design directions of the applicable Official Plan policies and urban design guidelines, will not fit appropriately into its existing and planned context, fails to provide an appropriate transition in height to neighbouring residential areas, and fails to demonstrate how the potential shadowing impacts will not result in any unacceptable adverse impacts.

[50] In his opinion, the proposed development does not represent appropriate urban design in addressing matters including height, density, form, massing, bulk, scale, siting, transitions, building articulation, setbacks and spacing having regard for the site and the character of the surrounding lands.

Height, Density and Transitions

[51] The City Official Plan 2008 (in-force OP) and Zoning By-law No. 2020 (“ZBL 2020”) set out the building height and density expectations for the precinct and site. Further, area-specific design guidelines have been prepared for the subject precinct, reflecting the vision and characteristics expressed through these policy documents, and creating guidelines to guide how height and density should land within this area of the Downtown.

[52] Policy 5.5.7.2 b) establishes that the appropriate height in this location is a range of two (2)-storeys and ten (10)-storeys, or up to 15-storeys if certain conditions are met. The Zoning By-law establishes a maximum building height of ten (10)-storeys (31.5 metres) and a maximum floor area ratio of 4.5:1 within this precinct.

[53] Policy 5.5.7.1 a), states that the objectives of the Old Lakeshore Road Mixed Use Precinct (“OLRMUP”) is to provide an area in the Downtown for high intensity, mixed use development that is pedestrian-oriented and transit-supportive, which helps meet Provincial Growth objectives and provides for a transition from the highest density mixed-use area (Wellington Square Mixed Use Precinct) to the more residential areas to the east.

[54] In Mr. Evershed’s opinion, the proposed development is too tall and represents an overdevelopment of the site. The proposed development would represent the tallest building in the downtown, at the eastern edge of the downtown. The proposed development ignores the policies of the Official Plan and design directions of both the Official Plans (the in-force OP and the new 2020 OP (new OP) (under appeal)) and the Old Lakeshore Road Precinct Urban Design Guidelines (“OLRPUDG”) and would result in a building that far exceeds the expressed height and density maximums and fails to provide an appropriate transition in height to the adjacent low- and mid-rise residential context.

Form, Massing, Bulk and Scale

[55] Mr. Evershed opined that, the proposed development is too tall within the context of the existing built environment, and would result in a form, massing and scale of development that is not in keeping with the policies of, and vision as expressed in the in-force OP and ZBL 2020.

[56] In his opinion, the proposed development is not in conformity with the evaluation criteria set out in OP Part III, Section 2.5.2 and does not conform with the intended height, density, massing, scale and form of intensification set out within this area of the Downtown.

Siting, Building Articulation, Setbacks and Spacing

[57] Mr. Evershed stated that the proposed development would result in a building that is too tall for the site and therefore does not represent an appropriate urban design response in addressing matters of height, density, form, massing, bulk, scale, and transitions.

[58] In Mr. Evershed's opinion, the proposed development has not demonstrated conformity with Part II, Subsections 6.2 b) and c) and Part III, Subsection 5.5.12 q) of the Official Plan as it relates to the adjacent heritage building at 2101 Old Lakeshore Road, for example, in addressing matters of siting, building articulation and scale.

[59] He reiterated that the proposed 27-storey development does not represent an appropriate building height.

[60] In consideration of the policy and built form context, including the immediate block scale and surrounding area, the importance of providing a transition in the height and scale of buildings from the center of a growth area down to a lower-scale area cannot be understated as a fundamental urban design principle to ensure an appropriate fit and compatible development. In Mr. Evershed's opinion, the proposed

27-storey development does not provide an appropriate transition in height from the existing, planned or emerging built form context in the downtown, which includes the existing 22-storey building on the south side of Lakeshore to the southwest of the subject site (2060 Lakeshore Road) and the recent OLT/OMB decisions to approve a 29-storey and 26-storey building on the north side of Lakeshore Road to the west of the subject site (2069-2079 Lakeshore Road and 383-385 Pearl Street and 374 Martha Street, respectively).

[61] Mr. Evershed stated that the height and massing of the proposed podium is not appropriate given the existing and planned surrounding development context.

[62] While the proposed podium is of a low-rise character it does not adhere to the minimum height set out in Section 2.2 b) of the Tall Building Guidelines nor does it reflect the existing and planned surrounding context.

[63] In his opinion, the Proposed Development would not comply with Guidelines 2.2 b), 3.2 a), 3.3 a), and 3.3 b) of the Tall Building Guidelines.

[64] Further, a wider public right-of-way along Lakeshore Road is preferred from an urban design perspective to contribute to an enhanced public realm including the provision of active transportation, pedestrian-friendly streets, comfortable pedestrian environments through wider sidewalks, the provision of street trees and active at-grade uses with enough space for spill-out uses.

[65] Mr. Evershed's view is that an appropriate public right-of-way width also helps to establish an appropriate streetwall – podium location, height and massing – in accordance with Guidelines 2.1 and 2.2 of the Tall Building Guidelines, for example.

[66] With respect to shadowing, Mr. Evershed opined that the Applicant's sun shadow study does not demonstrate that the proposed development will not result in adverse impacts, nor does it provide sufficient information to demonstrate how the proposed development seeks to adequately limit shadowing on the adjacent public realm

(boulevards, sidewalks and streets) or nearby residential properties and open spaces with respect to the excess height and mass being proposed. If there are shadow impacts, they can be mitigated by reducing the building height for instance.

[67] He concluded that the proposed development does not represent good urban design and would result in an overdevelopment of the subject site, located at the edge of the downtown in close proximity to lower-scale residential housing, with excessive height and mass; fails to provide appropriate transitions in height; and does not fit appropriately into its existing and planned context.

[68] Mr. Evershed emphasized that the Official Plan provides for differing precincts that contemplate differing scales of redevelopment and intensification. The Old Lakeshore Road Precinct (“OLRP”), in which the subject site is located, does not provide for the tallest or highest densities in the Downtown. Rather, it functions as a transitional designation between the taller and higher permitted densities in the Wellington Square Mixed Use Precinct and the lower- scale residential areas to the east of the site.

Streetscaping

[69] The City’s landscape architecture witness, Ms. Shareqi opined that appropriate streetscaping has not yet been sufficiently demonstrated for the following reasons. A 2 m land conveyance along Lakeshore Road is required by the City of Burlington’s Transportation department and is not represented on the plans. If the land conveyance is not provided, then the streetscape design would have to be revised to meet the City’s guidelines for the City of Burlington’s Downtown. The streetscape proposed along Lakeshore Road and Old Lakeshore Road do not propose a running bond pattern as per the Recommendations for Lakeshore Road outlined in the Downtown Streetscape Guidelines. Additionally, the streetscapes proposed along Old Lakeshore Road fail to include the 4 zones identified in the Downtown Streetscape Guidelines Section 3.1: Streetscape Anatomy: The Marketing Zone, The Clear Path Zone, The Furnishing Zone, The Edge Zone. (Applicant’s witnesses spent a significant amount of time explaining

that the four zones are illustrated in cross-section which the Tribunal acknowledges).

[70] The proposed development would remove city trees in the right-of-way. In Ms. Shareqi's opinion, this removal is not supported by the materials that have been submitted with the application. She stated that an Arborist Report and Tree Preservation Plan, should be provided so that the City can review in its consideration of whether the City's trees in the City's right-of-way should be removed. (The Applicant countered that this, and other related tree planting, tree growth, tree health or landscaping matters could be considered and provided at the detailed Site Plan approval stage which the Tribunal agrees with).

APPLICANT

[71] Mr. Kasprzak and Mr. Hannay testified as a panel on urban design. Their opinions are encapsulated in the following. The proposed amendments to the Official Plan and Burlington ZBL 2020, are appropriate and desirable in urban design terms and should be approved. The proposed development at the easterly entrance to the downtown, is compatible with the existing and planned built form context and would enhance the area by intensifying an underutilized site with an appropriately scaled high-rise, mixed-use development that will contribute to the ongoing regeneration and enhanced vibrancy of Burlington's Downtown Core as a complete community.

[72] From an urban design perspective, it is Mr. Kasprzak's opinion that the proposed development represents an appropriate response to the location of the subject site at a prominent location which demarcates an important gateway and view terminus within the City's Downtown and Old Lakeshore Road Mixed Use Precinct ("OLRMUP"). The design consists of two distinct building elements: a one (1)-storey podium designed to have an expression of a two (2)-storey element and a slender tower totalling 27 storeys. The proposed building height will fit harmoniously within the range of existing and approved building heights in the surrounding context.

[73] In his opinion, the built form impacts of the proposed building are acceptable,

given its location within an area identified for intensification and the surrounding context of existing and approved tall buildings. In particular, the shadow analysis undertaken by R. Bouwmeester and Associates (Mr. Bouwmeester testified at the hearing) demonstrates that the incremental shadows created by the proposed 27-storey tower will satisfy the applicable policy tests and recommendations.

[74] The proposed built form, setbacks and height of development appropriately conform to the policies of the Official Plan and address the relevant Council-approved guidelines with respect to tall building development in an area characterized by tall buildings. The proposed form, setbacks and height of development are appropriate and compatible from an urban design perspective with the physical (both existing and planned) context of the surrounding area. At grade, the proposed development will animate the public realm with active grade related uses. Parking, loading and other service functions of the development will be located away from the public realm to minimize any potential visual impact.

[75] The proposal conforms with the urban design policies of the Mixed Use Activity Areas (“MUAA”) and Mixed Use Centre (“MUC”) designations that apply to the subject site. The proposal requires amendments to the Official Plan policy 5.5.7.2(d) in order to permit the proposed height of 27 storeys. In Mr. Kasprzak’s opinion, the requested amendment is appropriate and desirable and would permit a contextually appropriate building design that responds both to the existing and planned built form context and the overarching policy directions promoting intensification on the subject site. Furthermore, the proposed height is within the range of existing and approved heights in the area, many of which exceed the current policy framework.

[76] In his opinion the proposed development represents appropriate urban design with respect to height, form, massing, scale, siting, transition, building articulation, setbacks and spacing. The proposed height has to be considered with respect to its context, potential impacts and appropriate transition. In that regard, the proposed height of 27 storeys is within the range of the existing and emerging pattern of development in

the City's Downtown which includes building approvals of up to 29 storeys. The proposed building is also situated over 127 m from lower scaled residential areas ensuring it meets a 45 degree angular plane which is often applied to establish an appropriate transition between different scales of development. Based on the shadow impact analysis there are no adverse impacts. Furthermore, Mr. Kasprzak opined that the subject site is situated in a prominent location which demarcates a gateway condition for the Downtown and a view terminus for Lakeshore Road, one of the City's principal east-west corridors.

[77] Mr. Kasprzak stated that the proposed siting of the tower and podium is appropriate with respect to the building's interface with the public realm at grade and its relationship to the lower scaled buildings on the south side of Lakeshore Road on lower levels and the building's relationship with potential redevelopment to the west. In that regard, the proposed tower maintains a setback of 12.5 m from the west property line, in accordance with the City's Tall Building Design Guidelines.

[78] In terms of building articulation, the proposal consists of two distinct elements: a podium and a tower. The podium provides for an appropriate framing of the streets and is reflective of the scale of some of the existing low scale buildings situated in the OLRP. The tower is representative of a slender point tower design with a floorplate size of 750 m² in accordance with the City's Tall Building Design Guidelines. The design of both, the podium and tower are influenced by the configuration of the site and accentuate its prominence with a high quality architecture. Furthermore, the proposed podium height reflects the recommendations of the OLRPUDG.

[79] The proposal provides for appropriate streetscapes with an appropriately scaled podium element and adequate setbacks. The previously proposed lay-by parking has been removed along Old Lakeshore Road.

[80] Mr. Kasprzak opined that the development proposal represents good urban design and will make a positive contribution to the area in general. The development proposal provides an excellent opportunity to achieve residential intensification on an

underutilized site in close proximity to transit and a higher intensity mix of built forms, and in a manner that reinforces the existing and planned built context in the area. He recommended the approval of the proposed OPA and ZBA.

[81] Mr. Hannay said that the revised design of the proposed development fully and appropriately meets both the specifics of the Tall Building Guidelines as well as the general intent of the Downtown Urban Design Guidelines. The revised design of the proposed development also appropriately addresses those recommendations of the OLRPUDG that continue to be relevant to the design of new developments in Areas 'A' and 'B' under the OLRPUDG.

[82] It is his opinion that density is not of itself an urban design matter and only relates to urban design in terms of building typologies and site design. Further, his view is that the design of the proposed development responds appropriately to the design guidelines and does not produce potentially unacceptable impacts relating to built form such as shadow, while the density of the proposed development is appropriate.

[83] In reference to the relevant urban design related policies of the Official Plan, the planned and built context of the subject site has continued to evolve and the pattern of building heights that has been approved no longer reflects the pattern of building heights envisioned in the City of Burlington Downtown Urban Design Guidelines. The height and massing of the proposed development including the proposed height of its podium is appropriate to its location and context.

[84] The design of the proposed podium at one storey with a two storey expression with vertical architectural "fins", will provide a sense of pedestrian scale along both the Lakeshore Road and Old Lakeshore streetscapes through its height, massing articulation, landscaping and streetscaping at grade, and the proposed uses at grade.

[85] In Mr. Hannay's opinion the height and massing of the revised podium design is appropriate to the existing and planned development context.

[86] Within the area of the subject site and along Lakeshore Road from Pearl Street east, there is no common podium height for tall buildings. From Pearl Street east along Lakeshore Road the range of built and approved podium heights include two (2) storey, three (3) storey, four (4) storey, and six (6) storey podiums with no over-riding consistent pattern of podium heights. This is a condition that will provide an element of visual variety along the streetscape. Older apartment buildings to the east of the subject site, on or close to Lakeshore Road, do not provide podiums.

[87] Section 2.1 Podium Location of the Tall Building Guidelines recommends a distance of 6.0 m from the face of the podium at grade to the curb of a street. The distance from the face of the podium on the ground floor to the curb on Lakeshore Road is now 6.8 m and 8.0 m to 9.3 m on Old Lakeshore Road.

[88] Mr. Hannay stated that from the perspective of urban design, the proposed redevelopment represents a well-designed redevelopment proposal for the subject site that will fit appropriately into its existing and planned context.

[89] The Tribunal is persuaded by the opinion evidence of Messrs. Kasprzak, Hannay and Bouwmeester (who was the only expert providing shadow studies that demonstrated minimal shadow impacts on the opposite side of Lakeshore Road with the proposed development's Sun Access Factor ("SAF") of 0.45 as compared to the required SAF 0.5). The urban design elements of the building meet the policy requirements and City approved guidelines. The building is well-designed to be specifically and appropriately sited on this triangular shaped site. As one drives from east to west on Lakeshore Road, this future architectural landmark will be a standout view terminus at this Downtown gateway. Although not defined as a gateway in the OP, in reality, this confluence triangular patch of the Old Lakeshore Road and the Lakeshore Road forks right at the "nose of the subject property" leading to the downtown.

[90] The redevelopment incorporates the tall building guidelines requirements on built form and typology. The two (2)-storey podium expression through architectural "fins", from the pedestrian perspective, will not be at odds with the existing and approved

context where there are buildings without podiums, and building podiums in the vicinity ranging from two (2) to six (6) storeys high. The tower portion is of a height that is generally prevalent in the neighbourhood.

[91] The redevelopment will be in line with the provincial goal of creating healthy and complete communities. Present and future residents will benefit from the increased housing supply, the landscaping, and the creation of open space amenities that will revitalize this underutilized subject property. The Tribunal acknowledges the requirement of an appropriate width for a right of way for a comfortable and safe pathway in the public realm.

[92] New residents in this proposed development will benefit from the varied types of apartments. The Province's and the City's objectives of providing more affordable housing will be realized. The appropriately designed proposal is a sustainable development maximizing efficient use of municipal infrastructure and services.

[93] The Tribunal finds that this intensification of the subject lands, through the provision of a total of 196 units of well-designed residential apartments and ground floor retail is beneficial to this area.

Issue No. 3: Does the OPA and ZBA meet the requirements of the policy and legislative framework?

City

[94] Mr. Romano testified and provided evidence on matters of Provincial interest including Provincial, Regional and City Policies and the Zoning By-law.

[95] He opined that the proposed amendments do not have regard for the following matters of Provincial interest identified in s. 2 of the *Planning Act*: 2(h); 2(n); 2(p); and 2(r)(i) (ii) (iii).

[96] The proposed amendments, he added, will result in a site development that is out

of keeping with the existing, planned and emerging context. These currently afford a significant, yet much more moderate, form of development intensity for the site than is currently proposed. The proposal represents a significant departure, representing one of the tallest, most intense development, for example, within an existing, planned and emerging context where shorter, less intense development is called for.

[97] Mr. Romano stated that the site is subject to the Settlement Areas policies of the Provincial Policy Statement 2020 (“PPS”). Settlement Areas are the focus for growth and development within land use patterns which are based on a range of uses and opportunities for intensification and redevelopment. The applicable policy sections of 1.0 Building Strong Healthy Communities (1.1.1, 1.1.2, 1.1.3, 1.3, 1.4, 1.6) are guided by the Implementation and Interpretation policies of 4.0 and the Definitions of 6.0.

[98] Mr. Romano stressed that the PPS and the existing in-force land use planning framework permit a context suitable intensification and redevelopment opportunity for the site.

[99] He said that the PPS and the new OP permit a context suitable intensification and redevelopment opportunity for the site. This planned and emerging context is consistent with the PPS. The Tribunal notes that the new OP is under appeal and is informative and not determinative with respect to the applications.

[100] Mr. Romano’s view is that the proposed OPA and ZBA would elevate the level of intensification and redevelopment for the site in a manner that remains consistent with the PPS but is not context suitable. The appropriate implementation of the PPS, read as a whole, would achieve a significant development on the site which is more moderate than proposed. The proposed amendments do not have the effect of bringing the site into a position of consistency with the PPS, he opined.

[101] The 2020 Growth Plan (“Growth Plan”) is in-force and is part of the planned context. It provides for a high level of policy which is to be implemented at the local level based on context suitable considerations. Mr. Romano stated that the Growth Plan is to

be read as a whole and the municipal land use planning framework is to be read such that the policies are implemented appropriately.

[102] The site is located within the Growth Plan's Delineated Built-Up Area component of the Settlement Area and within the Urban Growth Centre. The policies of the Growth Plan are intended to achieve complete communities by facilitating contextually appropriate development that is compact, transit supportive and makes efficient use of existing infrastructure. The policy direction is to optimize the use of existing urban land supply in a context suitable manner. Mr. Romano's opinion is that the policies are clear that they do not confer any new land use designations and rely upon the local land use planning framework for implementation.

[103] Mr. Romano stated that the site is located within an area that is described in the Managing Growth section 2.2.1, except that it is not in a higher order transit location. It can contribute appropriately to the Section 2.2.1-related matters under the existing, planned and emerging land use planning framework utilizing existing significant intensification permissions. The proposal, he said, does not establish conformity with these policies.

[104] Section 2.2.3 – Urban Growth Centres states that these areas will be planned as focal areas for investment, accommodate and support the transit network at the regional scale, serve as high density major employment centres and accommodate significant population and employment growth. Section 2.2.3 provides for minimum density targets of 200 residents and jobs combined per hectare for Downtown Burlington.

[105] The aforementioned density target is described within the in-force OP. According to Mr. Romano, the City is meeting its minimum density target (City report September 2020 Taking a Closer Look at the Downtown: Recommended Modifications to the adopted Official Plan).

[106] Section 5 of the in force OP deals with the Implementation and Interpretation of the Growth Plan. Section 5.1 states that all planning-related decisions will conform with

the Growth Plan.

[107] Section 5.2.5.6 interrelates the achievement of the minimum targets with a municipality's development and implementation of urban design and site design Official Plan policies and other supporting documents that direct the development of a high quality public realm and compact built form.

[108] It is Mr. Romano's opinion that the achievement of the Growth Plan policy direction in a manner that conforms with the Growth Plan is a land use planning condition which currently exists under the in-force land use planning framework. The in-force land use planning framework conforms with the Growth Plan. It contains policies, including density targets, which conform with the Growth Plan.

[109] Mr. Romano's view is that the proposed OPA and ZBA would elevate the level of intensification and redevelopment for the site in a manner that is in conformity with the Growth Plan but is not context suitable. The appropriate implementation of the Growth Plan, read as a whole, would achieve a significant development on the site which is more moderate than proposed.

[110] The in force OP and ZBL 2020 can facilitate a maximum ten (10) storey mixed use development with a floor area ratio up to 4.5:1. This 'as of right' permission affords a significant intensification opportunity for the site. A site development in this regard will contribute to the City's achievement of the Growth Plan conformity targets under the Growth Plan, as described within the in force OP.

[111] Mr. Romano stressed that an increase beyond the 'as of right' zoning permission and beyond Official Plan designation development standards is not required for the site, in order for the City to achieve its Growth Plan conformity targets.

[112] He stated that the Regional Municipality of Halton Official Plan Amendment 48 ("ROPA 48") was approved by the Minister on November 10, 2021. It is consistent with the PPS and conforms with the Growth Plan. It is in force and forms the land use

planning framework planned context.

[113] ROPA 48 is informative, instructive but not determinative because it was adopted and approved after the applications were deemed complete by the City.

[114] ROPA 48 provides an updated regional structure to conform with the Growth Plan. ROPA 48 identifies on Maps 1h and 6b that the Burlington Major Transit Station Areas (“MTSA”) is centred around the Burlington GO Station, a Priority Transit Corridor. The Burlington MTSA is at the top of the Regional Urban Structure hierarchy.

[115] While ROPA 48 moves the Burlington MTSA to the Burlington GO Station, it also contains transitional policies for applications made prior to the Minister’s decision for lands originally within an Urban Growth Centre (“UGC”) to continue to be subject to UGC policies. ROPA 48 maintains the same UGC minimum density targets as those contained within the in-force OP and the Growth Plan.

[116] ROPA 48 (and the Halton Region Official Plan (“ROP”) as a whole) provides for a high level policy framework, at the Regional level, which is to be implemented at the local level through such means as local Official Plans. The in force OP is the local Official Plan that implements the ROP.

[117] In Mr. Romano’s opinion, the proper implementation of ROPA 48 achieves a significant development on the site which is more moderate than the Proposed Development.

[118] The ROP, June 2018 Consolidation, includes all amendments from the initial adoption in March 1994. The ROP planning horizon is to 2031.

[119] The site is located within the Settlement Area which includes the Urban Area (Policies 50.2 and 72). The Urban Area and Intensification Areas (Policies 77, 78 to 81) sections provide direction for complete community diversity and relies upon the local municipality for context suitable implementation. This includes implementation at the

Official Plan and Zoning By-law framework.

New Official Plan (City Official Plan 2020)

[120] Mr. Romano stated that considerable weight should be given to the City's new OP. Nevertheless, the Tribunal notes that the new OP (currently under appeal) is informative but not determinative of the applications.

[121] Mr. Romano opined that the proposal is in conflict with the new OP which clearly identifies a more moderate, yet significant, form of intensification on the site. Any approval of an OPA for the site should better align with the new OP framework and achieve a more moderate development for the site.

[122] The new OP, Chapter 6, Infrastructure, Transportation and Utilities, recognizes the Downtown and Uptown Urban Centres as priority areas for improvements. The Sections within this Chapter provide the policy basis and direction for right-of-way widths, active transportation requirements and transportation demand management integration and efficiencies. The subject site is located in an area where the Lakeshore Road right-of-way is planned to be widened. The City proposes to take less of a road widening than the planned right-of-way width. The applications propose to permit an even lesser road widening to be provided (0.4 m, as shown in the April 2022 revised plans). In Mr. Romano's opinion, the proposal does not implement the new OP appropriately and the proposed OPA does not represent good planning.

[123] Chapter 8 (Section 8.1 et al) provides the new OP objectives and policies relating to the Urban Area, Mixed Use Intensification Areas, and Urban Centres. It is within this Chapter that the site's Downtown Urban Centre and OLRP underlying land use designation policies are found.

[124] Section 8.1.1, Urban Centres, elaborates upon the policy description. Section 8.1.1(3.1) General Objectives, for example, states:

- b) To establish minimum density targets for the Urban Growth Centre contained within the Downtown in terms of residents and jobs, in accordance with the Provincial Growth Plan;
- c) To establish a precinct system that recognizes areas with distinct character and sets policies for differences in land uses, height and built form, informed by historical development patterns and the planned function of each precinct.
- d) To ensure development incorporates effective transitions with adjacent development and surrounding areas.
- h) Development will respect and be compatible with the existing built form character of adjacent development and provide appropriate built form transition.
- i) Development will support the achievement of the vision and function of the precinct within which it is located.

[125] Mr. Romano explained that the OLRP policies contained in Section 8.1.1(3.6) further describes the underlying land use designation. It states:

The Old Lakeshore Road Precinct will provide for mixed-use mid-rise buildings consisting primarily of residential uses which are pedestrian-oriented and transit supportive while also achieving a high standard of design. Modest tall buildings which transition downward from the adjacent Lakeshore Precinct towards the waterfront may be accommodated where such development achieves strategic public and city building objectives, including the provision of public waterfront access and the creation of new uninterrupted view corridors to Lake Ontario, among others.

[126] The accompanying policies provide for a mix of uses which may be permitted, a minimum required building height of two (2) storeys and a maximum height of ten (10) storeys and 31.5 m within the East Sector of the OLRP where the site is located. The maximum permitted building height may be permitted up to a maximum of 12 storeys and 37.0 m, subject to the provision of the following to the satisfaction of the City:

- a. Old Lakeshore Road is retained in the East Sector and realigned to form an

intersection at Martha Street and Lakeshore Road;

b. conservation or re-location of significant cultural heritage resources within the precinct;

c. submission of an angular plane study, identifying visual, sun shadowing and wind impacts, and demonstrating how any adverse impacts can be mitigated to acceptable levels; and

d. community benefits.

[127] The proposal is to permit a building height that is essentially triple the new OP permission. In Mr. Romano's opinion, the proposal is not a modest tall building, nor does it transition downward from the adjacent Lakeshore Precinct towards the waterfront, nor are the other substantive provisions being implemented.

[128] With respect to community benefits, he comments that it would be appropriate for the Tribunal to withhold any approval Order pending receipt of confirmation from the City Solicitor that a satisfactory execution and registration of a Section 37 agreement has been obtained.

City Official Plan 2008 (in-force OP/OP)

[129] In Mr. Romano's opinion, the proposed amendments are not in conformity with the in-force OP and do not maintain the intent of the policies of the OP.

[130] The OP was initially adopted by City Council in 1994, approved by Halton Region in 1997 and updated through to 2008 when it was approved by the OMB in 2008.

[131] The in force OP contains policies which incorporate the 2006 Growth Plan, including the associated densities for the Downtown Urban Growth Centre. Section 5.5 – Downtown Mixed Use Centre, states that the minimum density target is established at

200 residents and jobs per ha. It also states that higher densities and intensities will be encouraged within certain precincts of the Downtown Mixed Use Centre, informing the reader that the intent is not homogeneity.

[132] The site is located within the City's settlement pattern Urban Planning Area Boundary. The site is located within the MUAA which is further refined into land use designations (the site is within the Downtown Mixed Use Centre) and precincts (the subject site is within the Old Lakeshore Road Mixed Use Precinct ("OLRMUP")).

[133] The OLRMUP objectives state the following:

To provide an area in the Downtown for high intensity, mixed use development that is pedestrian- oriented and transit-supportive, which helps meet Provincial Growth objectives and provides for a transition from the highest density mixed-use area (Wellington Square Mixed Use Precinct) to the more residential areas to the east.

[134] Mr. Romano stated that the Wellington Square Mixed Use precinct permits the maximum height of buildings shall be eight storeys and up to 29 m with terracing required above the second floor. Taller buildings up to a maximum of fourteen storeys may be permitted where they provide compatibility with surrounding land uses and a sense of pedestrian scale by the use of terracing above the second floor, and subject to the community benefits provisions of Part VI, Subsection 2.3 of this Plan.

[135] The OLRMUP, unlike other precincts such as Wellington Square and Downtown Core, has specific policies which refer to matters of transition, a gradation of intensity as well as specific built form related parameters.

[136] The subject site is located within the East Sector of the OLRMUP. Section 5.5.7.2.b permits a building height of minimum two (2) storeys and maximum six (6) storeys and 19.5 m. Taller buildings up to a maximum of eight (8) storeys and 29 m may be permitted, subject to specific criteria. Upon the site, there is a site specific policy which states, the maximum height of buildings shall be ten (10) storeys and 31.5 m. Taller buildings may be permitted, up to a maximum height of 12 storeys and 37 m,

where they provide compatibility with surrounding land uses and a sense of pedestrian scale by use of building design incorporating a ground level, street-oriented podium, and subject to the community benefits provisions of Part VI, Subsection 2.3 of this Plan and details to the satisfaction of City Council.

[137] Mr. Romano stated that the proposal is for a development intensity that is not intended, nor permitted, to be located on the site. The proposal conflicts with the community plan and growth strategy. The proposal does not conform with, nor maintain the intent of, the Official Plan as it relates to Part I – 3.0 of the Official Plan.

[138] Section 3.2 contains Transportation objectives and policies to achieve the optimal benefit from the transportation system, including major public right-of-way widths.

[139] Section 3.3 more specifically includes objectives such as protecting adequate public road rights-of-way to meet future needs and to maximize the use of existing roads. In this instance, the planned Lakeshore Road right-of-way width is 30.0 m (Section 3.3.2.c Table 2 Road Allowance Widths). The right-of-way requirements shall take into consideration the needs of vehicular traffic, pedestrians, cyclists, transit, emergency response and urban design considerations including streetscape design and the provision of public vistas.

[140] Mr. Romano stated that based on the existing Lakeshore Road right-of-way width of 20.0 m, a 5.0 m road widening on either side would achieve the planned 30.0 m right-of-way width. The City has accepted a smaller road widening of 2.0 m for other nearby development applications along Lakeshore Road. The City seeks a 2.0 m road widening from the subject property.

[141] The Proposed Development does not provide the 2.0 m road widening.

[142] In Mr. Romano's opinion, the Proposed Development does not conform with, and does not meet the intent of, the Transportation Official Plan sections.

[143] Sections 2.2 and 2.5 of the OP refer to encouraging residential development and residential intensification of underutilized land within the Urban Planning Area in accordance with Provincial growth management objectives and recognizing that the amount and form of intensification must be balanced with other planning objectives. This section continues the Official Plan direction for development that is context suitable.

[144] Mr. Romano explained the policies in section 5 of the OP as follow:

- 5.4.2.f) The zoning of individual sites may not allow for the full range of permitted uses or the full extent of development intensity at every location based on site specific factors that may include, but are not limited to, traffic, land use compatibility, market impact, natural hazards and features, and environmental factors such as soil contamination.
- 5.4.2.h) The design and development of Mixed Use Centres shall encourage the use of public transit, pedestrian and bicycle travel as an alternative to the car and shall maximize personal safety.
- 5.5.2.g) To increase the resident population and provide a variety of housing types mainly at medium and high densities that will strengthen the live/work relationship, ensure the Downtown is used after business hours, and create a local market for convenience and service goods.
- 5.5.3.b) Within the Urban Growth Centre Boundary as delineated on Schedule B, Comprehensive Land Use Plan – Urban Planning Area, and Schedule E, Downtown Mixed Use Centre, the target is established of a minimum gross density of 200 residents and jobs per hectare, in accordance with the “Places to Grow” Growth Plan for the Greater Golden Horseshoe, 2006.
- The OLRMUP policies contained in Section 5.5.7 describe a planning

framework which is consistent with its southeast periphery location within the Downtown. The general policy thrust provides for a transition from the highest density mixed use area to the more residential areas to the east. Given the location of the OLRMUP next to Lake Ontario and its shoreline hazard character, the precinct contains policies that ensure these lands are at a lower intensity of development. This OLRMUP planning framework strengthens and reinforces this policy intent as it is articulated throughout the OP from the general to the specific.

[145] In Mr. Romano's opinion, the Proposed Development represents an over-intensification of the site. The Proposed Development does not conform to, nor implement the intent of, the existing, planned and emerging policy context. It also conflicts with the existing, planned and emerging physical context. The Proposed Development represents an overdevelopment. He opined that the appeals should be dismissed, the proposed amendments should not be authorized as they do not represent good planning.

Applicant

PPS

[146] Mr. Goldberg for the Applicant testified that the PPS and the Growth Plan direct municipalities to implement within their planning instruments the principles, goals and objectives expressed in these two important Provincial documents. For example, Section 4.6 of the PPS indicates that "the official plan is the most important vehicle for implementation of the PPS." Section 4.6 of the PPS also indicates that the "policies of this Provincial Policy Statement continue to apply after adoption and approval of an official plan." This is very important since the most current direction of growth expressed in the PPS and the Growth Plan must be considered and implemented, notwithstanding there being an approved official plan in effect. Therefore, this PPS policy directs that the PPS and the Growth Plan are considered in a planning evaluation of a planning application, independent of an approved municipal official plan.

[147] Since official plans and zoning by-laws are not static and evolve by way of amendment, each municipality must ensure that the official plan and zoning, and the related amendments, are up to date, and “consistent with” the PPS, and “conform to” the Growth Plan.

[148] The PPS provides a policy framework that promotes and encourages intensification in locations well served by municipal infrastructure i.e. the following PPS policies:

- Part V, Section 1.1.1 (a), (c), and (e) relating to healthy, livable and integrated communities;
- Part V, Section 1.1.2, relating to appropriate range and mix of land uses within settlement areas.
- Part V, Section 1.1.3.3, relating to planning authorities identifying appropriate locations and promoting opportunities for intensification and redevelopment.
- Part V, Section 1.1.3.4, relating to appropriate development standards to facilitate intensification.
- Part V, Section 1.1.3.5 indicating that planning authorities shall establish and implement minimum targets for intensification and redevelopment within built-up areas.
- Part V, Section 1.4.1(a) relating to providing an appropriate range and mix of housing options and densities.

[149] In Mr. Goldberg’s opinion, the proposed development, as revised since the subject applications were filed, is consistent with these policy directions. The proposed development is located in Downtown Burlington, which has been identified as an appropriate location for high density, mixed use residential and commercial

intensification and growth.

[150] He testified that the development of the subject site with a tall, mixed use building and a street related retail component will be an efficient use of land, with a denser urban form that will cost-effectively and more optimally utilize existing infrastructure and community facilities. The subject site is located in close walking proximity to a major transit facility in Downtown Burlington, where higher levels of height and densities are anticipated and expected by Provincial policy.

[151] The PPS housing policies of Section 1.4 identify the need for municipalities to provide for an appropriate range of housing types and densities, directing new development towards appropriate locations where the levels of infrastructure and public service are available. The PPS also promotes densities for new housing that efficiently use land, resources, infrastructure, and public service facilities, and supports the use of alternative transportation modes, such as walking, bicycling, and public transit.

[152] The proposed development will increase the residential population in this part of the Downtown Burlington Urban Growth Centre by population equivalent of 196 residential units. This additional concentration of people contributes to maintaining and enhancing the vitality and vibrancy of Downtown Burlington as a potential place to work, supporting the shops and services in the area, and the 24/7 pedestrian activity and presence on the street. The commercial space will also create some opportunity for employment uses within this part of Downtown Burlington, as well as enhancing the animation of the sidewalk frontages and the public realm. All of this contributes to the vitality and long-term success of this Downtown area.

[153] It is Mr. Goldberg's opinion that the existing City OP permissions are outdated, would lead to an under-utilization of the subject site, and are not consistent with the current PPS. Conversely, the revised plans for the subject site supports, advances, and is consistent with, the PPS policy direction to optimize the use of the land, resources, and the existing and planned infrastructure. In his opinion, the proposed 27-storey building, at a Floor Space Index ("FSI") of 10.4 is, from a PPS perspective, appropriate

and suitable for this site and its surrounding existing and planned context.

Growth Plan

[154] The Growth Plan generally aims to, among other things, revitalize downtowns to become vibrant and convenient centers; create complete communities that offer more options for living, working, shopping, and playing; provide greater choice in housing types to meet the needs of people at all stages of life; curb urban sprawl; protect farmland and green spaces; and reduce traffic gridlock by improving access to a greater range of transportation choices. The Growth Plan encourages compact, vibrant, complete communities, optimizing the use of land and infrastructure in order to support growth in a compact, efficient form.

[155] The Growth Plan promotes compact urban form through the intensification of existing urban areas and provides for an “intensification first” approach to development, focusing on making better use of existing infrastructure. The intent is to better use land and infrastructure to avoid the unnecessary urban sprawl.

[156] The subject site is located within the area identified in the Growth Plan as “built-up area”, which encompasses the whole of Downtown Burlington and beyond.

[157] By definition according to the Growth Plan, the subject site is located within a Strategic Growth Area, an UGC and is within the defined distance of a MTSA to the John Street Bus Terminal, all of which are areas where the Growth Plan policies direct intensification and the most intensive forms of growth.

[158] The use of the subject site for a mixed use development, at the density proposed will assist in meeting the minimum population growth targets, if not exceed them, for this UGC. The policies in the Growth Plan regarding intensification and density targets are minimum standards and municipalities are encouraged to exceed these targets, where appropriate. The subject site is well suited for a high-density mixed use building that contributes to meeting or exceeding the minimum intensification and density targets.

[159] The subject site is very accessible to the existing John Street Bus Terminal which functions as the confluence for many inner-municipal and intra-municipal transit routes and transit providers. The proposal is intended to better utilize and optimize the subject site with respect to public transit access.

[160] Although Halton Region, by virtue of ROPA 48 (not determinative), no longer considers the John Street Bus Terminal to be a major bus depot (which is not a provincially defined term), it was identified as a provincially designated Mobility Hub and an MTSA at the time the Applicant filed the subject applications. It also continues to be the central bus terminal for Downtown Burlington, providing bus connections to higher order transit at Aldershot GO Station, Appleby GO Station, and Burlington GO Station, as well as a number of other destinations within and beyond Burlington.

[161] Mr. Goldberg opined that maximizing intensification in proximity of the John Street Bus Terminal will increase transit ridership near a station that is an important bus terminal in Downtown Burlington. It assists in supporting the level of transit that currently exists and assists in facilitating increases in ridership to strengthen the Terminal's role and function, as a key transit facility in the City and Region-wide public transit network.

[162] In addition, by introducing a variety of housing units, the housing policies relating to providing a mix of housing options and densities are satisfied and advanced. This will contribute to achieving a more complete community, which will complement the existing and approved mixed use buildings in the area and will contribute to the evolution and maturation of this part of Downtown Burlington.

[163] It is Mr. Goldberg's opinion that the subject applications are consistent with the PPS and in conformity with the policies of the Growth Plan.

Halton Region Official Plan ("ROP")

[164] Mr. Goldberg explained that the Halton Region Official Plan, 1995 (the "ROP"), provides a planning policy framework to manage and guide growth, development, and

physical change within Halton Region, as well as the social, economic, and natural environment of Halton Region.

[165] ROPA 48 included two important amendments to the Regional OP policy regime that apply to the subject site. First, ROPA 48 amended/moved the boundaries of the Burlington Urban Growth Centre from Downtown Burlington to the area surrounding the Burlington GO station. Second, the Major Transit Station Area designation of the John Street Bus Terminal was removed.

[166] With respect to the Urban Growth Centre boundary modification, ROPA 48, includes a Ministerial modification which added to the Regional Council adopted version of ROPA 48, a transition provision in Section 80.3, as follows:

Sections 80 to 80.2 continue 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 Amendment 48 to this Plan if the lands that are the subject of the application were within an Urban Growth Centre prior to the Minister's approval of Amendment 48.

[167] Pursuant to Section 80.3 of ROPA 48, the subject applications are transitioned and remain a part of an UGC.

[168] Although ROPA 48 does not contain a transition provision regarding the designation of the John Street Bus Terminal under ROPA 38 as a MTSA, that transit facility continues to serve the important transit function as a central transit hub and confluence of many City-wide and regional-wide transit routes, served by a variety of transit providers. As such, the subject site remains subject to, and serviced by, enhanced public transit within close walking proximity to it.

Applicable Planning Policies in ROP

[169] The ROP defines Intensification Areas as "lands identified by the Region or its Local Municipalities within the Urban Area that are to be the focus for accommodating intensification" and include UGCs, MTSAs, Intensification Corridors, and Mixed Use

Nodes. The subject site is located within the Urban Area and is designated as an UGC and meets the Growth Plan definition of being within a MTSA.

[170] In Mr. Goldberg's opinion, the proposed development conforms with the ROP by intensifying an underutilized site in an Urban Area, Built Up Area, and Urban Growth Centre that is targeted for significant population and employment growth. (Policy 81.1 and 81.3(1)).

[171] The proposed development will contribute to achieving the minimum growth targets, set out by the Region, by providing new housing units in a compact and high-density urban form.

[172] The proposed 27-storey building is an appropriate form of development in an Intensification Area, as it is well designed and responds appropriately to the existing, approved and planned high density built form context. This, in Mr. Goldberg's opinion, achieves an appropriate and compatible built form within the Intensification Areas. The site and building have been carefully designed and massed to respond to its current and emerging mixed height and mixed density built environment and context.

[173] The proposed development will conform with the policy directive in the ROP regarding housing supply. The proposed intensification of the subject site will provide many new residential units in the form of one, two and three-bedroom units, contributing to the achievement of Halton's housing supply targets, as well as improving the range of housing choice for the community.

City of Burlington Official Plan, 2008

[174] The 2008 City OP (in-force OP) was in force at the time the subject applications were filed in December of 2019.

[175] The 2020 City OP is under appeal and not currently in-force.

[176] Mr. Goldberg explained that the sections of the in force OP that are applicable to the subject applications are Part I - Policy Framework, Part II - Functional Policies, and Part III - Land Use Policies.

[177] On Schedule A - Settlement Pattern of the OP, the subject site is located within Urban Planning Area and is designated as Mixed Use Activity Areas.

[178] On Schedule B, Comprehensive Land Use Plan – Urban Planning Area of the OP, the subject site is within the Downtown Urban Growth Centre boundary and is designated as a Mixed Use Centre.

[179] On Schedule E – Downtown Mixed Use Centre Land Use Plan of the OP, the subject site is designated as Old Lakeshore Road Mixed Use Precinct (Area B).

- Schedule E of the OP illustrates that the Downtown Urban Growth Centre Boundary in the vicinity of the subject site: extends to the waterfront to the south; extends easterly to Stratheden Drive within which, are the 5 apartment buildings of 4-18 storeys, east of the subject site; includes the 15 storey, long, slab styled apartment building, just north of Lakeshore Road, on the west side of Torrance Street; Includes the February 13, 2018, Adi Development Group Inc. OPA and ZBA, OMB approval at 374 Martha Street, for a 26 storey building containing 240 residential units, that is currently under construction; Includes the October 27, 2021, Lakeshore (Burlington) Inc. OPA and ZBA, OLT approval at 2069-2079 Lakeshore Road and 383-385 Pearl Street, for a 29 storey building containing 320 residential units; and includes the proposed 27 storey building of 310 residential units by Core Development Group, OPA and ZBA approval on the adjacent property to the west of the subject site (2093-2101 Old Lakeshore Road & 2096 – 2100 Lakeshore Road).

Mixed Use Activity Area Designation

[180] Section 5.2.2 regarding policies for development in the Mixed Use Activity Area

provides the following:

- The design and development of Mixed Use Activity Areas shall promote these areas as focal points for community activities that are characterized by a compact form of development, pedestrian-orientation, greater accessibility to public transit and higher intensity development (5.2.2d).
- The City may ensure the proper integration of Mixed Use Activity Areas with surrounding neighbourhoods through measures such as pedestrian walkways, cycling paths and transit routes, and the protection of the physical character of these neighbourhoods through urban design (5.2.2k).
- The City may consider the use of reduced parking standards in Mixed Use Activity Areas in order to encourage greater reliance on non-automobile forms of transportation (5.2.2l).

Old Lakeshore Road Mixed Use Precinct (Area B) Designation

[181] This is the precinct within which the subject site is located. Section 5.5.7.1 sets out the objectives for development in the OLRMUP that include:

- To provide an area in the Downtown for high intensity, mixed use development that is pedestrian-oriented and transit-supportive, which helps meet Provincial Growth objectives and provides for a transition from the highest density mixed-use area (Wellington Square Mixed Use Precinct) to the more residential areas to the east (5.5.7.1a).
- To require a high standard of design that has a sense of pedestrian scale and comfort that is compatible with existing development and reflects the unique history and character of the precinct (5.5.7.1c).
- To establish East, West & South Sectors that will be subject to specific land use policies. Schedule E identifies the general limits of the Sectors with Area 'A' being the West Sector, Area 'B' being the East Sector and Area 'C' being the South Sector (5.5.7.1d).

[182] Section 5.5.7.2a sets out the land uses permitted in the Old Lakeshore Road Mixed Use Precinct, which are:

high-density apartment residential uses, including the residential use of upper storeys of commercial buildings (5.5.7.2a(i));

[183] Section 5.5.7.2b sets out the density and height of development permitted in the

“East Sector (Area 'B', Schedule E)” of the Old Lakeshore Road Mixed Use Precinct.
This section provides that:

Development will be subject to the following criteria:
The minimum density of residential buildings shall be 51 units per net ha.
The minimum height of buildings shall be two (2) storeys and the
maximum height of buildings shall be six (6) storeys and 19.5 m.

[184] Section 5.5.7.2d sets out special consideration for taller buildings in the East Sector as follows:

Taller buildings may be permitted in the East Sector, up to a maximum height of 8 storeys and 29 m, where they provide compatibility with surrounding land uses and a sense of pedestrian scale by the use of building design incorporating ground level, street-oriented podium, and subject to the community benefits provisions of Part VI, Subsection 2.3 of this Plan and the following details to the satisfaction of City Council:

[185] Mr. Goldberg notes that for all of the Downtown Burlington land use designations and precincts, the applicable policy sections of the City OP contain site-specific exception policies for specified properties, which generally permit greater levels of heights and densities compared to those otherwise permitted in that land use designation and precinct.

[186] The OPA and ZBA approvals in the vicinity of the subject site authorize much taller and denser developments when compared to the permissions for each designation and precinct in this part of Downtown Burlington.

City of Burlington Zoning By-law No. 2020

[187] Mr. Goldberg stated that the in-force City of Burlington Zoning By-law that is applicable to the subject site is ZBL 2020. The ZBL 2020 was adopted to ensure that the City's zoning provisions were consistent with the 2008 City OP. The as-of-right permissions in the ZBL 2020 are consistent with the maximum permitted height and density in the in force OP.

[188] The subject site is zoned “Downtown Old Lakeshore Road A” (“DL- A”), which permits a variety of uses, including retail, service commercial, community, office, hospitality, entertainment, and recreation. Dwelling units are also permitted, but the ground floor of any building within 15 m of a public street is required to provide only retail or service commercial uses.

[189] The Maximum Permitted Height for the DL- A zone is ten (10) storeys up to 31.5 m. A ZBA is required to implement this proposal.

[190] The proposed ZBA will be site-specific, aimed at implementing the proposal. The proposed development will require site-specific exceptions regarding height, parking, setbacks, balcony projections, and FAR.

[191] With respect to height, FAR, and parking, the amendments are required to achieve consistency and conformity with the PPS, Growth Plan, and ROP policies for UGCs.

[192] The proposed development will support the achievement of complete communities by integrating a mix of residential and commercial uses in a form that is well designed and consistent with the planned and emerging built-form context of the area. It will add a significant number and varied mix of new residential units on an underutilized, site in Downtown Burlington. Mr. Goldberg stressed that the subject proposal plugs into the existing and emerging built form context of this area in a complementary and compatible manner.

[193] The proposal is located on a site that is in the interior of, and not at the edge of, the UGC. In Growth Plan terms, the subject site is amongst a mixed density and mixed height UGC which does not interface directly with the area outside of the centre, including the Residential – Low Density area to the east. In Mr. Goldberg’s opinion, the proposal sufficiently addresses transition from a Growth Plan perspective.

[194] With respect to the removal of Downtown Burlington as a MTSA, the John Street

Bus Terminal is no longer an identified MTSA, yet it continues to satisfy the Growth Plan definition as an MTSA, and it continues to be an important component of Downtown Burlington's public transit network. This network includes many public transit routes, converging at the John Street Bus Terminal located within close walking proximity to the subject site, and where such routes service many locations and directions in Burlington and beyond, including linking with rapid transit Go stations.

[195] Mr. Goldberg opined that the proposed development is consistent with the overarching policy objectives of the new OP (not in-force), which is to direct growth to appropriate locations as required by Provincial planning policy, and promote development that is well designed to fit within the existing and planned context of the area. While many of the general objectives of the City in-force OP are satisfied by the proposal, the specific prescriptions of the City OP require amendment. That is the purpose of this OPA.

[196] The intent of the policies of the in-force OP, Mr. Goldberg opined, is to permit development that is compatible with the existing built form context of the area. Compatibility is context specific, and the context of the subject site is an eclectic mix of land uses, built forms, scales and heights, including tall towers, that comfortably and compatibly co-exist together, without adverse planning impacts.

[197] Mr. Goldberg testified that the in-force OP policies applicable to the subject site regarding height and density are out of date in relation to current intensification policies of the PPS, the Growth Plan and the ROP. They also prevent the optimization of this subject site within Burlington Downtown. The subject applications will permit development at a scale that is in keeping with its Downtown setting in accordance with the Provincial and Regional policy direction. He emphasized that the subject OPA application is a site specific *Planning Act* means of keeping the City OP up to date with the Provincial policy direction as set out in Section 4.6 of the PPS.

[198] Mr. Goldberg opines that the subject applications are in the public interest, that the appeals, the OPA and ZBA applications be allowed, subject to the City and

Applicant reviewing and agreeing on the final form and content of the OPA and ZBA instruments.

[199] The Tribunal prefers the opinion evidence of the Applicant's witnesses in particular Messrs. Goldberg, Corazza, Kasprzak, Hannay, Bouwmeester, and Ms. Gillezeau, and other Applicant's witnesses over those contrary opinions of Messrs. Romano, Evershed, Medeiros and Milles. Shareqi and Edgcumbe (save for their opinions on the 2 m road widening) on the City's side. The Tribunal finds that the Applicant's witnesses opinion evidence persuasive for the redevelopment's approval.

[200] The Applicant has undertaken relevant specific studies (which can be updated for the subsequent site plan approval) through specialized experts and the several well qualified experts had accordingly testified at the hearing.

[201] The Tribunal agrees with Mr. Goldberg that the subject applications promote the efficient use and optimization of the underutilized subject property by intensifying development at a transit supportive density in a location that is well served by public transit and municipal services and facilities. This is despite the fact that the John Street Bus Terminal is no longer a MTSA. It continues to service this area and will continue to do so as a *de facto* transportation hub with connected bus routes and stations.

[202] The Tribunal finds that the development is consistent with the PPS on a subject site identified for growth and intensification. The proposed development is at a density that is appropriate and suitable for the surrounding built form and planned context.

[203] The Tribunal agrees with Mr. Goldberg that the subject applications conform to the Growth Plan. The proposed development is on a subject site within the UGC that will optimize the use of the lands and the available infrastructure and municipal services. The Proposal is transit supportive, promotes the continued use of the existing bus depot, and contributes to a healthy complete community in accordance with the Province's growth objectives.

[204] The subject property transitions under the transition policy of the ROPA 48, and remains in the UGC. The proposal conforms to the ROP.

[205] The existing and emerging built form context in the area supports mixed use, high density, tall, and transit supportive development. The site is in a mixed use UGC where intensification is permitted. The Tribunal finds that the Proposal conforms to the in-force OP.

[206] The Tribunal accepts Mr. Goldberg's overview and opinion that accords with the Policy framework's consideration and evaluation of provincial and municipal developments. The Tribunal is satisfied that the OPA and ZBA meet the requirements of the Policy and legislative framework.

Issue No. 4: Is the proposed development compatible with the existing and planned neighbourhood context, represents good land use planning and in the public interest?

[207] This redevelopment represents good land use planning and is in the public interest. The Tribunal finds that the redevelopment is compatible with the existing character of the neighbourhood. The conclusions are arrived at upon evidence presented by the Applicant's expert witnesses.

[208] City Planner, Mr. Romano questioned whether the proposal is compatible with the existing and planned context. He opined that the redevelopment is not compatible. In particular, the site is not optimally utilized for the intensification and density that the subject site is intended for. According to him, the height and density proposed for the site is not compatible nor well designed. New development is required to be compatible with the surrounding built context and the proposal represents overdevelopment for this site as it is triangular in nature and not suited for this over intensification.

[209] He stated that the objectives of Section 2.5 of the OP relate to increasing the housing stock and encouraging intensification in a context suitable manner. Section 2.5 notes that this is encouraged provided the additional housing is compatible with the

scale, urban design and community features of the neighbourhood. The policies in 2.5.2 address adequacy of municipal services, off-street parking supply, the capacity of the transportation network, proximity to transit facilities, accessibility to community services, natural and cultural heritage feature protection and the following:

- 2.5.2(v) compatibility is achieved with the existing neighbourhood character in terms of scale, massing, height, siting, setbacks, coverage, parking and amenity area so that a transition between existing and proposed buildings is provided.

[210] Section 5.5, the Downtown Mixed Use Centre component of the Official Plan provides the next layer of objectives and policies. These policies reference and include the more specific policies found within the Precincts such as the OLRMUP. Section 5.5 describes that subsequent policy framework to achieve the following:

- 5.5.2.m) To establish planning precincts within the Downtown, each with their own distinct character and specific planning policies.
- 5.5.2.o) To ensure that the density, form, bulk, height and spacing of development is compatible with the surrounding area.

[211] Mr. Romano opined that the proposal is not in keeping with the character of neighbourhood area since the proposal does not comply with the maximum height restrictions in the OLRMUP nor the other requirements.

[212] He further opined that the new development is impactful to the surrounding existing buildings and the public realm. He emphasized that minimizing undesirable impacts on existing adjacent buildings is a paramount consideration, specifically the requirement of appropriate transition.

[213] His opinion is that the proposed 0.4 m right-of-way widening is not reflective of the 2.0 m widening required by the City. He stressed that the 2.0 m setback will assist in

creating a compatible public realm to built form relationship with the abutting Lakeshore Road while providing for a wider clear pathway for pedestrian comfort and safety. The built environment and features such as setbacks and building structures from the property line and the 2.0 m right of way of the zoning is the character of the recently approved developments in the area.

[214] Mr. Goldberg, the Applicant's planner, disagreed with the City's planner. There is an existing, and an emerging/evolving pattern of development in this part of the Downtown Burlington where taller buildings, as high as 29 storeys, in very close proximity to lower built forms of residential and non-residential development co-exist to create a compatible mixed height and mixed density character and fabric for this part of the Downtown.

[215] In the vicinity, 29, 26, and 22 storey tall buildings have been approved to the northwest and west. To the immediate west is a 27 storey building. Across the street to the north and northeast are nearby mid-rise buildings of five (5) and seven (7) storeys, east of which is a large, slab styled, 15 storey apartment building on the west side of Torrance Street.

[216] To the east of the subject site on the south side of Lakeshore Road, at 2114 Lakeshore Road, is an 18 storey apartment building.

[217] This existing and emerging context and pattern, arising from existing longer-term development and recent approvals, demonstrate that within this part of the Downtown Mixed Use Centre, there is a mixed height and mixed density pattern, from site to site, and across land use designations and precincts.

[218] In Mr. Goldberg's opinion, the subject proposal fits compatibly into this pattern and is an appropriate and well-considered addition to this area.

[219] The concept of 'transition' as stated in Policy 5.5.7.1 of the in-force OP has been canvassed during prior applications and reported on in prior tribunal cases for sites in

this immediate vicinity of the subject site. It is his opinion that transition has been achieved by the subject application in conformity with this OP policy.

[220] The OLRMUP policies call for high density, mixed use, that is pedestrian friendly, and helps meet Provincial objectives. It is within this context and the existing and planned context of this area that the word 'transition' must be considered, Mr. Goldberg reiterated.

[221] The mixed heights of existing and approved buildings in the area to the north, west and east of the subject site demonstrates that the existing and approved context within the Downtown Mixed Use Centre are varied where high rise co-exists with low rise and there is no particular consistency from site to site.

[222] Policy 5.5.7.1 also speaks of transition from the highest density mixed use area (Wellington Square Mixed Use Precinct) to the more residential areas to east. The subject site is within a mixed use area within the Mixed Use Centre and is not a residential area to the east, which would be the Residential – Low Density area to the east, as shown on Schedule B, Comprehensive Land Use Plan of the City OP. The subject site is surrounded by lands within the Mixed Use Centre in all directions and is not abutting, nor contiguous with Residential – Low Density lands.

[223] The concept of transition is not intended to be at the expense of optimization within the Mixed Use Centre. In Mr. Goldberg's opinion, there is no implied, nor required 'transition down' in the policy and certainly not within the Mixed Use Centre area itself. In his opinion the policy does not direct to 'transition down' and if that was an intended purpose of the policy, then the policy could have been clearly and specifically drafted, which it is not. In the circumstance, the policy is generally worded. He opined that this generally worded policy, lacking in clear and specific direction, needs to be balanced with the clear Provincial direction to optimize the use of lands and infrastructure, particularly in Urban Growth Centres.

[224] Section 5.5.7.1(c) of the Old Lakeshore Road Mixed Use Precinct policies,

requires:

a high standard of design that has a sense of pedestrian scale and comfort that is compatible with existing development and reflects unique history and character of the precinct.

[225] In reference to the high quality of design that has a sense of pedestrian scale and comfort, he relies on, and adopts, the evidence of the Applicant's Architect, Mr. Corazza, Urban Designers, Messrs. Kasprzak, Hannay, and Ferris (Landscape Architect), all of whom testified at the hearing.

[226] Mr. Goldberg stated that the intent of these and many other policies of the OP is to achieve a compatible development with the existing developments in the area. As has been demonstrated through the evolving approvals in the area, compatibility is context specific, and the context of the subject site is an existing, designated and evolving Downtown context, where an eclectic mix of land uses, built forms, scales and heights, and architectural and urban design expressions/solutions comfortably and compatibly co-exist together, without adverse planning impacts. In other words, there is a much greater level of tolerance for differences in a Downtown environment and context, and this is clearly no different in the case of Downtown Burlington.

[227] In view of the above, Mr. Goldberg concludes that the proposal will be compatible with the context of the subject site.

[228] The Tribunal finds that the existing and emerging context already contains examples of high-rise buildings. There are a number of approved high-rise developments of equivalent heights in the vicinity. The abutting property (Core Development) for example, is 27 storeys high. As such, the proposed development is not out of character in this area. The proposal is thus compatible with the existing neighbourhood as defined in the OP. The Tribunal is satisfied that the proposed development is compatible with the existing and planned neighbourhood context, represents good land use planning and in the public interest.

[229] The Tribunal finds that the Planning Applications represent good planning, are in the public interest and should be approved.

Submissions

Applicant's Submissions

[230] Counsel for the Applicant submits that the CORE decision is significant as the broad planning issues are the same as with the subject property. The City's witnesses Mr. Romano and Mr. Evershed canvassed the same opposing opinion evidence in that matter as in the instant case. The applicable planning policy regime was virtually identical in the Core and subject property case.

[231] In the Core case, Mr. Evershed offered that 2069 Lakeshore Road, an approved building of 29 storeys in the northwest, would be a transition point to the Core 27 storeys which is situated more eastwards in the OLRMUP east sector. However, for Mr. Evershed, in the instant case, the subject property's building is 12 m higher (translates to 4 storeys) than the Core building, so there is no transition here.

[232] The Tribunal accepts that the Core decision that approved a 27 storey building was approved in the same precinct that the subject property is situated, in fact just 25 m to the west of the subject property proposed building. In this Precinct, the permitted height difference of the west side from the east side is four (4) storeys. Mr. Romano did not explain this height difference by way of transition in the instant case. The in force OP contemplates this four (4) storey difference between the Core building and the subject property.

[233] In the new OP, the precinct, now designated Old Lakeshore Road Precinct ("OLRP"), the four (4) storeys difference is maintained while the focus of transition is to the waterfront where the concept of "height" is first introduced.

[234] Counsel for the Applicant submits that Ms. Gillezeau provided, by far, the most

comprehensive assessment of the implications of the proposed development to meeting provincial policy for accommodating growth and optimizing the use of urban land, intensification sites and municipal services. Ms. Gillezeau concluded:

A very substantial amount of new housing is needed in the built-up area of the City of Burlington to achieve the intensification targets and phasing policies of the Region. The proposed development will provide new housing through intensification to help meet the projected housing needs of the City in a strategic growth area (the Downtown Burlington Urban Growth Centre) where infrastructure, public service facilities, transit and active transportation options are available.

[235] Ms. Gillezeau rejected Mr. Romano's proposition that the in-force OP framework provides for an "optimal" intensification opportunity while the proposal is an "excessively high intensity development". Ms. Gillezeau noted that the density of the proposed development is appropriate for and will efficiently use the existing infrastructure and public service facilities in the area around the subject site. Further, the "as of right" permissions would provide approximately 120 fewer housing units. This is a significant and consequential difference in terms of optimizing the use of this important intensification opportunity.

City's Submissions

[236] Counsel for the City submits in general that the Applicant did not complete the necessary studies for the revised proposal. There is a failure to update the previous studies as such there is insufficient information as to whether the development can be undertaken without negative impacts from the geotechnical, the hydrogeological and municipal engineering perspectives. The City complained that the Applicant relegates these and landscape/trees matters to the Site Plan process whenever it was convenient for it to do so. The Tribunal notes that what is under consideration is the OPA and ZBA, and several matters of the site plan are more appropriately dealt with in the Site Plan approval process.

2.0 m Road Widening

[237] The City's compelling submissions on the required 2.0 m road widening are persuasive. The Applicant's experts have adamantly held that the 2.0 m requirement need not be fulfilled, as, for them, the 0.4 m provision is sufficient for the provision of the respective zones as per the Guidelines.

[238] Speaking of street level, the urban designers for the Applicant, Messrs. Kasprzak and Hannay, supported the dedication of 0.4 m rather than the 2.0 m required by the City. The urban designers, when speaking of the Clear Path Zone, the Furnishing Zone and the Marketing Zone, advised the Tribunal that the proposed development was appropriate because the streetscape will not be perceived as comprising different elements. They advised the Tribunal that it will be viewed as a unified space. City Counsel contends, and the Tribunal concurs, that such an approach ignores the practical and legal realities that arise between land that is privately owned and land that is publicly owned.

[239] The Marketing Zone space (proposed to be 3.6 m in width by the Applicant) will be privately owned. The Marketing Zone, by definition, is to be used by commercial entities for marketing or benefiting its customers (e.g., placing sandwich board ads, or setting up tables and chairs for customers). Counsel submits that the urban designers' views that the distinction between zones will be viewed as a unified space is unrealistic. The Tribunal agrees that it is imperative that public spaces be obtained for the benefit of the public (pedestrians and persons who may need assistance). If the sidewalk (Clear Path Zone) is increased through the road widening by 1.6 m (in addition to the 0.4 m already offered by the Applicant), the Clear Path Zone can be developed in accordance with the City's needs, together with the land in front of the CORE site. The Marketing Zone at the subject property can still meet the 2.0 m standard.

[240] Mr. Elkins, Applicant's transportation witness, supported a development that provided the minimum sidewalk width of 1.8 m, when the City's policies call for an enhanced public realm and active transportation within the Downtown. In presenting his

opinion to the Tribunal, Mr. Elkins also questioned why the latest multi-model transportation standards, the Multi-Modal Level of Service Guidelines (“MMLOSG”), should be utilized. He took this position notwithstanding the fact that the MMLOSG specifically state that they are consistent with Provincial policy [Exhibit 1 Joint Document Book pg. 2952] and should be utilized when assessing an application such as the present one.

[241] Mr. Elkins supported the proposed development, which does not provide the required 2.0 m dedication as required by the City for the purpose of achieving an enhanced pedestrian realm and an improved sidewalk condition. He went so far as to state that a Level of Service “D”, as measured in the MMLOSG, is appropriate for this Downtown location. When questioned during cross-examination if he truly supported a Level of Service “D”, which is described as a condition in which “pedestrians occasionally have sufficient space in which to walk or roll in a social manner that is removed from traffic nuisance [Exhibit 1 pg. 2959], Mr. Elkins remained steadfast and said that this was appropriate.

[242] The Tribunal finds that Mr. Elkins’s view is unnecessarily partisan and not of assistance. It is apparent that a 2.0 m road widening will improve the transportation condition (especially active transportation) within the City’s Downtown. A sidewalk of the width sought by the City will result in a Level of Service “A”, which is defined as a condition in which “pedestrians always have sufficient space in which to walk or roll in a social manner that is removed from traffic nuisance” [Exhibit 1 pg. 2959].

[243] The Tribunal notes that the Core property adjacent to the subject site, dedicated 2.0 m to the City to allow it to achieve its mobility and active transportation goals and objectives along this portion of Lakeshore Road.

[244] Mr. Llewellyn, the Applicant’s municipal engineering witness, refused to support a dedication of 2.0 m because, as he put it, requiring a dedication of 2.0 m will affect the floorplate (which is non-existent at present and is just a proposed structure) of the underground parking. He testified that it will make it inconvenient for the people who use

the parking and may affect the number of parking spaces.

[245] Mr. Llewellyn, (not a lawyer and not legally qualified), testified that the issue of the parking could be solved if a stratified arrangement could be achieved with the City. This may result in the City controlling the top portion of the 2.0 m it seeks, with the Applicant retaining title (or having an easement) to the ground below the portion controlled by the City. Mr. Llewellyn provided no evidence as to how this would function or whether it has ever occurred in Burlington. He also provided no evidence to demonstrate that the City is in any way interested in pursuing or accepting a stratified dedication of lands that should comprise the public right-of-way.

[246] With respect to the dedication of 2.0 m to the City, it appeared that Mr. Goldberg, the Applicant's planner, clearly understood and supported the City's requirement to have 2.0 m dedicated to it as part of this proposal. However, he too suggested the concept of stratified ownership which has never been accepted in Burlington and in which Burlington has no interest. Mr. Goldberg admitted that there is Provincial and City policy in support of the demand for a 2.0 m dedication. He advised the Tribunal that this matter that should be addressed at the Site Plan stage.

[247] Mr. Goldberg's suggestion that the issue of the 2.0 m widening be put over to Site Plan is not appropriate. This is not a new issue. It was raised by the City after the applications were filed. The entirety of the concept plan and proposed development are based upon a 0.4 m widening. The Appellant has demonstrated nothing but resistance to dedicating the required 2.0 m. The City is not prepared to accept 0.4 m and has insisted, for appropriate infrastructure reasons, that 2.0 m must be dedicated. Furthermore, the Issues List, at Issue 15, states that a question to be answered in this hearing is, "Does the Proposed Development provide an appropriate right-of-way width for Lakeshore Road?". [Exhibit 1 pg. 71]. It would be a waste of the resources of the parties and of the Tribunal's time to have had this hearing, and all of the evidence tendered, only to have the issue of the dedication determined at the Site Plan stage. This will simply result in a second hearing in which the same question will be asked and

the same evidence will be determined. All parties agreed that Issue 15 was an issue to be determined as part of this hearing and the Tribunal ordered that this was an issue to be determined.

[248] The Tribunal notes that Mr. Goldberg did not identify a single policy reason as to why the Applicant should dedicate anything less than 2.0 m. When addressing the question of the 2.0 m dedication, Mr. Goldberg could only cite the potential costs to his client as to why the dedication was even an issue.

[249] When speaking to the benefits of having the 2.0 m dedication to the City, rather than the 0.4 m offered by the Applicant, Ms. Shareqi, City's landscape witness noted that an additional 1.6 m of City owned land will allow for greater flexibility to coordinate utilities without the landscaping or trees having to be sacrificed. It was Ms. Shareqi's opinion that if the full 2.0 m is not to be dedicated to the City, it is imperative that the full details of how utilities and landscaping can co-exist, be disclosed at this point in time. She noted that the Applicant had failed to provide such details.

[250] When addressing the need for a dedication of 2.0 m, Ms. Edgcumbe, City's Transportation Planner, confirmed that 2.0 m is the minimum that the City requires. In other words, the City is asking only for what is necessary to fulfill its transportation planning objectives.

[251] It was the opinion of Ms. Edgcumbe that the Applicant's design, which only provides for a Clear Path Zone (i.e., sidewalk) of 1.8 m, does not provide an "enhanced pedestrian realm" and nor does it meet the intent of the City's Integrated Mobility Plan. It was the evidence of Ms. Edgcumbe that providing a sidewalk of 1.8 m is the bare minimum of what is required to construct a sidewalk in Burlington.

[252] When addressing why it is appropriate to require a sidewalk that will be wider than 1.8 m as proposed by the Applicant, Ms. Edgcumbe, also relied upon the most recent standards that have been released to address Multi-modal transportation. Relying upon the newly released MMLOGS, Ms. Edgcumbe demonstrated that the

Applicant's proposal only provides a Level of Service "D" for pedestrians, while it is possible to provide a Level of Service "A" at this location. The Level of Service "A" can be achieved if the 2.0 m dedication is provided as demanded by the City. [Exhibit 1, pgs. 2959, 2960 and 2985]

[253] The MMLOGS expressly note that they are consistent with the PPS and the Growth Plan. The Guidelines also reflect the current best practices for transportation planning and engineering in the Province of Ontario.

[254] Mr. Medeiros, City's engineering technologist noted that the Applicant had responded to the City's road widening requirement by only providing a 0.4 m dedication to the City. This was in contrast to the previous drawings and plans prepared and submitted by the Applicant in which a 2.0 m dedication had been shown. He testified that, in reducing the dedication to 0.4 m, the Applicant's drawings had failed to ensure that there would be no permanent development or private infrastructure encroachments within the City's road allowance. This deficiency, according to Mr. Medeiros, was demonstrative of the fact that the Applicant had failed to show that there would be no negative impacts on the public right-of-way.

[255] In demonstrating this concern, Mr. Medeiros took the Tribunal through the Lakeshore Road cross section that had been prepared by the Applicant [Exhibit 1 pg. 430], which shows below grade utilities under the proposed bicycle lane. Mr. Medeiros testified that both the City and utility companies do not like to have their services located under the traveled portion of the road allowance (cars/bicycles) and that these would likely be moved to the boulevard or sidewalk area. He noted that the potential impacts of such a relocation had not been demonstrated.

[256] On the matter of stratifying the 2.0 m dedication, as had been suggested by the Applicant's witnesses, Mr. Medeiros was unequivocal in his testimony that the City has not accepted an encroachment of a private building's below grade structures within the City's public right-of-ways. He noted that road widenings are taken above grade, to the maximum level (the sky), and below grade, to the maximum level (the centre of the

earth).

[257] Mr. Medeiros explained that there would be significant concerns with maintenance issues and access if any form of stratified ownership or control were to occur. Mr. Medeiros noted that if the future condominium corporation needed to maintain its underground parking structure, it would have to excavate the public right-of-way, risking damage to utilities, sidewalks, trees and, at the same time, disrupting pedestrian access to the public realm. Mr. Medeiros also noted that the inverse situation may also occur. If the City were required to undertake work within the public road allowance, and if there is a parking structure under the road allowance, there is a risk that the City could damage the private underground parking garage. It was the evidence of Mr. Medeiros that it is best to simply avoid those potential risks by having the Applicant dedicate 2.0 m to the City without the Applicant retaining any interest in the dedicated lands.

[258] It was Mr. Medeiros' opinion that, to implement the City's current active transportation and streetscaping needs, which include below grade utilities, while also ensuring that there is sufficient space to maintain and upgrade and possibly relocate above grade and below grade utilities, it is necessary to have the full 2.0 m dedicated to the City.

[259] The Tribunal regards the 2.0 m dedication as a significant matter in this hearing. The Applicant's proposed development is based on the conceptual drawing accompanying the OPA and ZBA. It can be argued that the whole redevelopment stands on this significant matter. Parties have agreed to put this issue before the Tribunal and if this is not dealt with, after both parties had voluntarily and thoroughly canvassed it, the Tribunal will be abdicating its duty and obligations. At times an issue can be put off, however in this instance, this appeal will need to firmly place this dedication of 2.0 m road widening, as a matter and requirement, to be considered already predetermined at the ZBA for the Site Plan Approval process. The Tribunal is evaluating the development wholistically on provincial interest and provincial plans as

well as municipally. The Applicant may contend that the 2.0 m requirement is best left to the Site Plan process. The Tribunal disagrees. To be sure, the Site Plan application is not before the Tribunal. However, the Tribunal is deciding the 2.0 m road widening as being a necessary term and condition in the ZBA. The imposition of this condition is necessary to implement the instrument in order to permit a redevelopment to achieve the enhancement of the public realm for pedestrian and active modes of transportation as envisioned pursuant to the legislative framework and Policies. The actual Site Plan Approval process and the details required are left to the municipal approval authority, the City.

Policy Framework Findings

Matters of Provincial Interest – Section 2 of the *Planning Act*

[260] The Tribunal must have regard to section 2 of the Act that prescribes a list of non-exhaustive criteria in carrying out its responsibilities under the Act.

Applicable Planning Policy Documents

[261] The Tribunal agrees that the planning context for the proposed Development is established by the following: the PPS; the Growth Plan; the ROP; and the in force City OP.

PPS 2020

[262] Section 3(5) of the Act requires the decision on a planning matter of the Tribunal, shall be consistent with the provincial policy statements that are in effect.

[263] The PPS 2020 applies and the Tribunal finds that the proposed OPA and ZBA are consistent with the PPS.

[264] Specifically with respect to Policy 1.1.1(b), the proposed plan will provide

additional housing with a range of residential apartment units, which will help meet long-term needs, along with useable open amenity spaces.

[265] With respect to Policy 1.1.3.4, the proposed development promotes appropriate development standards that will facilitate intensification, redevelopment and compact form. Development standards in this case include the proposed podium design and the proposed height and the required public street widths, all of which will result in an appropriate balance between making efficient use of land and infrastructure and ensuring compatibility with the existing and planned built form context. The proposed development will provide a range of new apartment units in the high-rise residential building.

GROWTH PLAN

[266] The Growth Plan policies encourage intensification in appropriate locations. The site is located in Downtown Burlington, an Urban Growth Centre, where high-rise and high density mixed use developments exist and are approved, and conventionally co-exist comfortably and compatibly with lower forms of development. Downtown Burlington is also rich with available public services for health, education, recreation, employment, and entertainment uses and activities. (s. 2.2.3.1).

[267] The use of the subject site for a mixed use development, at the density proposed will assist in meeting the minimum population growth targets, if not exceed them, for this Urban Growth Centre. The policies in the Growth Plan regarding intensification and density targets are minimum standards and municipalities are encouraged to exceed these targets, where appropriate. The subject site is well suited for a high density mixed use building that contributes to meeting or exceeding the minimum intensification and density targets (s. 2.2.3.2 -minimum gross density targets 200 residents and jobs combined for the Downtown Burlington Urban Growth Centre).

HALTON REGION OFFICIAL PLAN (“ROP”)

[268] The proposed development conforms with the ROP by intensifying an underutilized site in an Urban Area, Built Up Area, and Urban Growth Centre that is targeted for significant population and employment growth.

[269] The proposed development is located within an Intensification Area by reason of its location within an Urban Growth Centre. The proposed intensification and increased density of the proposal, conforms with the policies that direct development within these areas with a mix of uses and higher densities (s. 81 of ROP).

[270] The proposed development will contribute to achieving the minimum growth targets, set out by the Region, by providing new housing units in a compact and high-density urban form.

[271] The proposed development supports the policies for Intensification Areas by providing a mix of uses near the John Street Bus Terminal, and provides residential density that will support both the existing and future viability of the transit service, as well as potentially enhanced transit service to the Downtown.

[272] The proposed intensified form of mixed use development will allow the efficient use of the subject site and be supportive of transit usage. The development will contribute to building a healthy community through encouraging the use of public transit and active modes of transportation, such as walking and cycling, to destinations throughout the City.

HALTON REGION OFFICIAL PLAN AMENDMENT 48 (“ROPA 48”)

[273] With respect to the Urban Growth Centre boundary modification, ROPA 48, added a transition provision in Section 80.3 which transitions the subject property. The subject property is regarded as being located in the UGC and appropriate for intensification and redevelopment.

[274] Although ROPA 48 does not contain a transition provision regarding the designation of the John Street Bus Terminal as a MTSA, that transit facility continues to serve as a central transit hub of many City-wide and regional-wide transit routes, served by a variety of transit providers. As such, the subject site remains subject to, and serviced by, enhanced public transit within close walking proximity to it.

CITY OF BURLINGTON OFFICIAL PLAN 2008 (“OP/in-force OP”)

[275] The in-force City OP policies pre-date the current PPS and Growth Plan, and some policies have yet to catch up with the planning realities in the City.

[276] The City has not brought into force updated, land use and built form policies for the Downtown Mixed Use Centre, including the OLRMUP designations, to reflect current PPS and Growth Plan policies. The current Provincial policy imperative is to ‘optimize’ land and infrastructure.

[277] The Tribunal acknowledges the approved developments in the area. Three developments in very close proximity to the subject site – 2069-2079 Lakeshore Road and 383-385 Pearl Street (29 Storeys and 320 residential units), owned by Lakeshore (Burlington) Inc. (OLT File No. PL200040) (“Lakeshore/Pearl”); 374 Martha Street (26 Storeys and 240 dwellings), owned by Adi Development Group Inc. (OMB File No. PL150274) (“374 Martha”); and the Core Property (27 Storeys and 310 residential units) 2096-2100 Lakeshore Road and 2093-2101 Old Lakeshore Road (OLT File No. PL200092) on the adjacent west property – were approved by OMB/OLT following contested hearings at heights very similar to the height of the proposed building (27 storeys and 196 residential units) on the subject site.

[278] Those projects range in similar height or taller and higher density when compared to the OP permissions for those sites. The current definition of high density residential uses of the OP (51 – 185 units per hectare) has been well exceeded by those approvals, as is also proposed in the subject case, to reflect a contemporary intensification project on this site, implementing Provincial policy.

[279] Section 5.5.7.1 relating to the Old Lakeshore Road Mixed Use Precinct directs that this is:

...an area in the Downtown for high density, mixed use, development that is pedestrian friendly and transit-supportive, which helps meet Provincial Growth objectives and provides for a transition from the highest density mixed-use area (Wellington Square Mixed Use Precinct) to the more residential area to the east.

[280] In relation to this policy, Mr. Goldberg concludes:

The subject proposal is a contemporary expression of a high density, mixed use development with transit stops at the site that connect with the nearby John Street Transit Terminal, which connects to GO stations and other areas within the City, and beyond.

[281] The proposal seeks to amend the City OP solely due to some of the prescriptive policies relating to height and density. These prescriptions are out of step and out of date with the current intensification policies of the PPS, the Growth Plan and the ROP. The OPA seeks to authorize a development that is in scale with, and in keeping with, this Downtown setting. It is Mr. Goldberg's opinion, that the proposal supports many important public policy objectives of the Province, the Region and the City.

[282] The Tribunal finds that while the other developments in the vicinity inform the Tribunal as regards the height and density of the neighbourhood development, those are decisions that are persuasive in nature. This Tribunal has regard for the particular facts and merits of this matter and has decided based upon the specific location, physical attributes and characteristics of the subject property and the proposal. The Tribunal finds that the proposed development satisfies the objectives of the OP for the Downtown Mixed Use Centre.

New Official Plan

[283] Mr. Goldberg opines and the Tribunal concurs that the proposed development conforms to the overarching policy objectives of the new OP, which is to direct growth to appropriate locations as required by Provincial planning policy, and promote

development that is well designed to fit within the existing and planned context of the area.

CITY OF BURLINGTON ZONING BY-LAW 2020 ("ZBL 2020")

[284] The proposed ZBA will be site-specific, aimed at implementing the proposal. The proposed development will require site-specific exceptions regarding height, parking, setbacks, balcony projections, and FAR.

[285] The in-force OP sets the policy framework within which development is to take place. The Tribunal finds that the proposed development conforms to the in-force OP and is compatible with adjacent property developments.

DECISION

[286] Mr. Romano's opinion can be summarised to reflect that transition, public realm, pedestrian scale and active transportation enhancements should triumph over routinely increasing heights, density and housing units increase. There must be strict adherence to the OP policies and Zoning requirements of the Precinct.

[287] Mr. Goldberg's view is that a development with additional housing units supply that meets minimum standards of policies and zoning should be sufficient for approval of the OPA and ZBA which merely seek height and density changes.

[288] The Tribunal as the arbiter of private and public interests is required to balance these conflicting interests. Public interest demands that the provincial interest of provincial minimum housing supply targets be met or exceeded and a healthy and liveable community be supported. The Tribunal accepts the planning evidence provided by Mr. Goldberg in support of the redevelopment proposal and will make the requisite interim orders for the planning instruments subject to contingent conditions imposed by the Tribunal.

[289] The proposed development has regard for the matters of provincial interests in s. 2 of the Act in particular: s. 2(h) the orderly development of safe and healthy communities; s. 2(j) the adequate provision of a full range of housing, including affordable housing; s. 2(p) the appropriate location of growth and development; s. 2(q) the promotion of development that is designed to be sustainable to support public transit and to be oriented to pedestrians; and s. 2(r) the promotion of built form that, (i) is well-designed, (ii) encourages a sense of place, and (iii) provides for public spaces that are of high quality, safe, accessible, attractive and vibrant.

[290] The Tribunal finds that the proposal meets the PPS and Growth Plan objectives, in particular the housing target goals of the Province.

[291] The Tribunal finds that transition in density, in a “general sense”, to the east from the subject property is apparent. Here transition, in the in-force OP, does not engender a downward “in height” element. What is mentioned is a transition to the east in terms of density. As the concept of transition is not clearly defined, the Tribunal needs to balance the need for optimization on this underutilized subject site which helps to meet Provincial Growth Objectives against the transition requirement. Strictly, the subject property is in a Mixed Use Centre which is not within the residential area to the east. It does not interface with the residential area to the east. The Downtown Mixed Use Centre has a varied mix of heights and densities from site to site. There is no uniformity of built form height and density. However, the 27 storey subject property will be taller and of higher density than the existing 18 storey building to the east and to the low rise in the residential east area.

[292] This proposal conforms to the intent of the new OP (not determinative of the applications currently under appeal) where the overarching policy objectives are to direct developments to locations that fit in to the existing and planned built context. The Core Building and the subject site’s proposed building are both at 27 storeys and fit into the existing built, planned and emerging context of this area.

[293] As regards character and compatibility with the existing and planned context, the

Tribunal finds that such compatibility exists. In the OLRMUP, the adjacent approved CORE property's 27 storeys (though 12 m lower) established the height context of this precinct. The subject property's 27 Storey is compatible with the height of the abutting west side property. It is enlightening that, in this precinct, regardless whether in the in force OP or the new OP, the height increase is from the west Core side (6 or 8 storeys as compared to 10 or 12 storeys towards the east side where the subject property is located) (see Exhibit 10 – East sector and OP Schedule E, Downtown Mixed Use Centre Plan). This is a height differential of four (4) Storeys between the Core building and subject proposed building.

[294] The Tribunal notes that the regulated maximum height in this precinct for the Core building is eight (8) storeys in the west, and 12 storeys in the east side for the subject property (a difference of four storeys i.e. 12 m). Nevertheless, events have overtaken the regulated heights. The Tribunal (a differently constituted panel) in the CORE decision had approved a 27 storey building to the immediate west of the subject property.

[295] The CORE property building will be just 25 m from the subject property's proposed building which is similarly 27 storeys and just 12 m higher. The proposed building in this precinct is four (4) storeys higher on the east side, generally meeting the intent of the difference in height permissions in this precinct.

[296] The Downtown Core Precinct to the north of the Old Lakeshore precinct contains developments of a 29 storey building (2069 Lakeshore Road) and a 26 storey building (ADI) fronting the Lakeshore Road. To the western side of these properties are developments of 22 storeys (Bridgewater). Thus, the neighbourhood character's existing and planned context are tall buildings. The surrounding built form and context are tall buildings. The proposed development, when compared to the surrounding area is compatible as defined in the OP.

[297] Compatibility does not mean the same nor even similar. As long as the property can co-exist in harmony with the existing properties without negative impacts, it is

deemed compatible. The proposed development is compatible with the existing and planned context of the area. Compatibility is defined in the Part VIII Official Plan as follows:

Compatible – Development or re-development that is capable of co-existing in harmony with, and that will not have an undue physical (including form) or functional adverse impact on, existing or proposed development in the area or pose an unacceptable risk to environmental and/or human health. Compatibility should be evaluated in accordance with measurable/objective standards where they exist, based on criteria such as aesthetics, noise, vibration, dust, odours, traffic, safety and sun-shadowing, and the potential for serious adverse health impacts on humans or animals.

[298] The Tribunal is persuaded by the Applicant's experts and finds that the reports, and testimonies by the Applicant's witnesses adequately addressed the opinions by the City's witnesses, save for the matter of the 2 m road widening. The Tribunal is persuaded by the City that the 2 m widening will enhance the public walkway, lead to comfort and safety for pedestrians and Ontarians (including those with disabilities) while walking, cycling or using wheelchairs on the public pathway portion that will be dedicated and conveyed to the City. The public interest of enhancement of the public realm for pedestrian and active transportation requires the right-of-way widening.

[299] The Tribunal is satisfied that the proposed development is compatible with the adjacent residential properties existing and planned context in built form, scale, architectural design and typology. The Tribunal accepts the Applicant's witness, Mr. Bouwmeester's shadow studies as demonstrating there is minimal impact on adjacent properties. There is no evidence of adverse impacts on the neighbourhood's existing or planned context and character by virtue of the compatibility.

[300] The Tribunal finds, upon the preferred planning evidence presented by Mr. Goldberg, that the proposed OPA and ZBA, have appropriate regard for the matters of provincial interest set out in s. 2 of the Act; are consistent with the PPS 2020; conform with the Growth Plan, the ROP and the OP.

[301] The Tribunal will add contingent conditions to the approval of the instruments in

principle (having considered parties' submissions). The Tribunal disagrees with the Applicant's counsel that it has no inherent authority to do so, as s. 2(n) of the Act, requires the Tribunal to have regard to the resolution of planning conflicts involving private and public interests. The Tribunal has authority to make orders or give directions as may be necessary or incidental to the exercise of the powers conferred on the Tribunal under the *Ontario Land Tribunal Act 2021* ("OLTA") or any other Act. (s.9(1) OLTA). Pursuant to s. 9(2) of the OLTA, the Tribunal may include in an order, conditions that it considers fair in the circumstances, including a condition that the order comes into force at a future fixed time or on the performance of terms imposed by the Tribunal.

[302] The Tribunal is satisfied by the totality of evidence that the proposed development with 196 residential units that contributes to the provincial target is in the public interest. Nevertheless, good planning requires that the 2 m road widening requested by the City to be part of the development that contributes to the public realm's active pedestrian and transportation enhancement.

INTERIM ORDER

[303] **THE TRIBUNAL ORDERS** that :

1. The appeal pursuant to s. 22(7) of the Act is allowed and the Draft Official Plan Amendment ("OPA") is approved in principle subject to a draft OPA with detailed policy provisions being received in a form satisfactory to the parties to be presented for confirmation.
2. The appeal pursuant to s. 34(11) of the Act is allowed and the Zoning By-law Amendment ("ZBA") is approved in principle subject to a draft ZBA with detailed zoning provisions and regulations being received in a form satisfactory to the parties to be presented for confirmation.
3. The Orders are withheld pending receipt by the Tribunal of the Draft OPA together with the Draft ZBA and the parties' written confirmation that the

Site Plan Approval has been finalized between the parties.

4. The Appellant shall ensure the 2.0 metre road widening required by the City of Burlington be provided in the form and manner determined by and to the satisfaction of the Municipality as the governing and approval Authority.
5. The Appellant shall provide written confirmation from the Region's Solicitor on the satisfactory status of the Site Condition of the subject property.
6. The Appellant shall provide written confirmation from the City Solicitor that a satisfactory execution and registration of a section 37 *Planning Act* Agreement has been obtained.
7. The written request for issuance of the Tribunal's final order after compliance of the above stated requirements and confirmations must be received by the Tribunal before the expiry of 180 days from the date of this Order, or in the alternative, a written status report on the reasons of failure to request issuance of final order, before the 180 days expiry.
8. If any of the above requirements and confirmations are not fulfilled in the time stipulated, the Appeals herein may be dismissed.
9. In the event that there are any difficulties implementing this order, the Tribunal may be spoken to.

“T.F. Ng”

T.F. NG
MEMBER

Ontario Land Tribunal

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The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal (“Tribunal”). Any reference to the preceding tribunals or the former Ontario Municipal Board is deemed to be a reference to the Tribunal.