

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: October 27, 2021

CASE NO(S): PL200040

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

Applicant and Appellant: Lakeshore (Burlington) Inc.
Subject: Request to amend the Official Plan - Failure of the City of Burlington to adopt the requested amendment

Existing Designation: Downtown Mixed-Use Centre – Downtown Core Precinct

Proposed Designated: Site specific amendment to permit increased height and density

Purpose: To permit a 29-storey mixed use building with 675 square metres of ground floor retail/commercial space, 280 residential units and the adaptive reuse of the heritage building located at 383-385 Pearl Street as live/work units.

Property Address/Description: 2069-2079 Lakeshore Road, 383-385 Pearl Street
Municipality: City of Burlington
Approval Authority File No.: 505-06/18
OLT Case No.: PL200040
OLT File No.: PL200040
OLT Case Name: Lakeshore (Burlington) Inc. v. Burlington (City)

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

Applicant and Appellant: Lakeshore (Burlington) Inc.
Subject: Application to amend Zoning By-law No. 2020 - Refusal or neglect of the City of Burlington to make a decision

Existing Zoning: DC - Downtown Core
Proposed Zoning: Modified 'DC' with site specific exception to increase height, density, parking, amenity area and setbacks.

Purpose: To permit a 29-storey mixed use building with 675 square metres of ground floor retail/commercial space, 280 residential units and the adaptive reuse

Property Address/Description: of the heritage building located at 383-385 Pearl Street as live/work units.
 Municipality: 2069-2079 Lakeshore Road, 383-385 Pearl Street
 Municipality File No.: City of Burlington
 OLT Case No.: 520-08/18
 OLT File No.: PL200040
 OLT File No.: PL200041

Heard: July 12- 16, inclusive; July 19 -23, inclusive; and July 30, 2021 by video hearing

APPEARANCES:

Parties

Counsel

Lakeshore (Burlington) Inc.

Scott Snider
Anna Toumanians

City of Burlington

Blake Hurley

Region of Halton

Kelly Yerxa

DECISION DELIVERED BY WILLIAM R. MIDDLETON AND ORDER OF THE TRIBUNAL

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1 Introduction

(a) General

[1] The Parties to this proceeding are the City of Burlington, ("City"), the upper tier municipality Region of Halton ("Region" or "Halton") and Lakeshore (Burlington) Inc. ("Appellant" or "Lakeshore"). The Appellant owns the lands located at the municipal address of 2069 Lakeshore Road, 383-385 Pearl Street in the City ("Subject Site") and has proposed a mixed-use development including a 29-storey residential tower on that site ("Development" or "Lakeshore Proposal"). As part of the Development, the Appellant also proposed the adaptive reuse of the heritage building located at the Subject Site ("Heritage Building") as live/work units.

[2] The Subject Site is a consolidation of 4 properties with a combined area of 2,482.1 square metres located at the northeast corner of Lakeshore Road and Pearl Street in the City's Downtown. With frontages of 61.15 metres along Lakeshore Road and 40.26 metres along Pearl Street the Subject Site occupies 60% of the Lakeshore Road frontage between Pearl Street and Martha Street. Directly adjacent to the Subject Site at 374-380 Martha Street is a similar mixed-use development to the Lakeshore Proposal which features a 26-storey residential tower now under construction known as the ADI Building, that was approved pursuant to a Decision of the former Ontario

Municipal Board in *Adi Development Group Inc. v. City of Burlington* 2018 CarswellOnt 2479 currently 4 more +20 storey tower buildings in the vicinity of the Subject Site in the City Downtown that are either under construction or completed.

[3] Lakeshore seeks a site-specific amendment of the City's Official Plan ("OPA") to permit the Development along with an amendment of the City's Zoning By-law No. 2020 to change the applicable zoning of the Subject Site from Downtown Core ("DC") to modified DC ("ZBA"). The Lakeshore Proposal tower will accommodate 309 residential units, with a gross floor area of approximately 23,000 square metre at a density of 9.38 FSI.

[4] The original OPA application was filed in October of 2018 with a set of architectural plans dated August 8, 2018. On December 21, 2018 the OPA application was deemed complete by the City. In June of 2019 the revised OPA and ZBA applications were filed with a revised set of architectural plans dated June 5, 2019 in order to address technical comments from City departments and commenting agencies as well as public comments.

[5] The City refused to grant the OPA and failed to make a decision on the ZBA. The Appellant therefore commenced this proceeding before the Ontario Land Tribunal ("OLT" or "Tribunal") pursuant to s. 22(7), 34(11) and 41(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended ("PA"). The hearing of these appeals was conducted by videoconference commencing on July 12, 2021 for a total of 11 hearing days ("Hearing"). At the outset of the Hearing, counsel for all Parties advised that they have had continuing negotiations concerning an outstanding site plan agreement in respect of the Development. They asked the Tribunal to defer any consideration of that site plan until after the Tribunal ruled upon the OPA and ZBA matters. The Tribunal agreed to do so and the Parties did not tender any evidence at the Hearing specifically directed to site plan issues.

[6] The City opposes the Development and formally requested that the Tribunal dismiss these appeals. However, despite that position, it became clear during the

proceedings that the real issue in dispute raised by the City was whether the Development ought to feature a more slender 22-storey residential tower instead of the 29-storey tower sought by the Appellant. Nonetheless, the Parties tendered a significant amount of documentary evidence and called numerous witnesses on a wide range of issues at the hearing of this case.

[7] The Region participated in only the aspect of the proceeding involving the motion discussed in **1 (b)** below. Following the Tribunal's oral ruling denying that motion, counsel for the Region advised that she had no further evidence to tender or submissions to make concerning the merits of Lakeshore's appeals. However, as noted in paragraph [5] above, the Region, the City and the Appellant indicated that there are unresolved site plan matters still under discussion that, depending on the outcome of this appeal, will require future resolution by the Parties or subsequent OLT proceedings.

(b) Tribunal Motion Ruling Against Adjournment Requests of the City and the Region

[8] At the outset of the Hearing, the City brought a motion to adjourn the Hearing or, in the alternative, for an Order directing that the examinations of the land use planning witnesses and the final argument and submissions of the Parties be deferred to a future date to be set by the Tribunal ("Motion"). The Motion was supported by the Region but was opposed by Lakeshore.

[9] The basis for the Motion as set out in the City's Notice of Motion was:

(i) The Subject Site has been within the limits of an Urban Growth Centre ("UGC"), as established through the policies of '*A Place to Grow – the Growth Plan for the Greater Golden Horseshoe*' ("GP");

(ii) The witness statements ("WS") filed in advance of the Hearing by land use planners Peter Smith, Dana Anderson and Paul Johnston; land economist Jeannette Gillezeau; and to a lesser extent urban designers Michael Hannay and Tom Kasprzak, all refer to and/or consider or rely upon the UGC policies in their

consideration of the Development and in the formulation of the expert opinion evidence that they intend to provide to at the Hearing;

(iii) The Minister of Municipal Affairs and Housing (“Minister”) orally announced on June 15, 2021 that he is moving the location of the ‘Downtown Burlington’ UGC from its current location to the area surrounding the Burlington GO Station and also stated that he is supportive of the adjustment of the UGC boundary through an amendment to the Region’s Official Plan (“ROPA 48”) as part of a five-year review of the Region’s Official Plan;

(iv) The mechanism by which the updated UGC boundary will be defined is through ROPA 48. The Region’s staff report recommending approval of ROPA 48 - including the adjustment of the UGC boundary – has now been approved by the Halton Council. As noted, the Minister has verbally confirmed that he is supportive of that component of the ROPA 48 amendment;

(v) The Minister’s apparent update to the location of the ‘Downtown Burlington’ UGC in the GP means that the Subject Site will no longer be located within the ‘Downtown Burlington’ UGC. As a result, the UGC policies within the GP will no longer apply to the Subject Site;

(vi) The WS’s that have been prepared for the Hearing by the expert witnesses were prepared in advance of the Minister’s update to the location of the ‘Downtown Burlington’ UGC in the GP. As a result, the WS’s conduct a policy analysis and proffer expert opinion based on the Subject Site being within the UGC boundary and subject to the Urban Growth Centre policies within the GP;

(vii) An adjournment of the Hearing would allow the Tribunal to consider supplementary WS’s from all Parties on the impact of the Subject Site no longer being located in an UGC area; and

(viii) Proceeding with the Hearing as scheduled would result in the Parties

completing examination and cross examination of witnesses and argument based on the Subject Site being located within an UGC area, and then having to prepare supplementary witness statements and further legal submissions – essentially re-litigating the case- at a future hearing date. Such an outcome would not be an efficient use of the Parties' or Tribunal's time and resources and would not be in the public interest.

[10] The Region added further grounds in support of the Motion as follows:

(i) ROPA 48 consists of policy and mapping changes across the Region, however related specifically to Burlington the UGC boundaries are refined and minor changes to the UGC policy framework to conform to the GP. These changes will be reflected a new Map 1h that establishes a Regional Urban Structure; a new Map 6 series that delineates the boundaries of MTSAs, and updates to Maps 1, 1C and 3 to reflect the Regional Urban Structure;

(ii) ROPA 48, once adopted and approved by the Province, will apply to the proposed Development;

(iii) ROPA 48 has now been adopted by the Halton Regional Council. The Minister of Municipal Affairs and Housing (the "Minister") reviewed ROPA 48 as part of the Region's consultation. The Minister provided input through consultation. Those comments were addressed in the report to Council for consideration on July 7, 2021;

(iv) With the Minister's concurrence on June 15, 2021, the proposed development will be removed from the UGC by ROPA 48, once adopted and approved. The UGC will be moved from its current location of the 'Downtown Burlington' Urban Growth Centre to the area surrounding the Burlington GO Station and that he is supportive of the adjustment of the Urban Growth Centre boundary through ROPA 48;

(v) The effect of the exercise of the Minister's policy mandate to update the location of the 'Downtown Burlington' UGC is that Schedule 4 of the GP could be interpreted as an approval of that part of ROPA 48 which relocated the UGC to the lands surrounding the Burlington GO Station;

(vi) The Province's decision on ROPA 48 and the implementing amendment to Region's Official Plan will not be subject to appeal and will further result in the Regional Official Plan prevailing with any conflict with the City's Official Plan; and

(vii) Although the Region's interest in the hearing is related to technical matters, the Region has an interest in the determination as to the application of ROPA 48 to the Development. Once a determination is made, as to the applicability of ROPA 48 to the Development; whether it is the existing policy framework or the policies as a result of ROPA 48 removing the Subject Site from the UGC, the analysis of the appropriate policies and the impact of those policies will be a matter for resolution through a hearing between the City and the Appellant

[11] As noted above in paragraph [8], the Appellant opposed the Motion arguing that:

(a) The City's motion is simply a late effort to alter the Issues List in this hearing '*in the sheep's clothing of an adjournment request*'. The City does not wish to "assess *the implications*" of anything. Rather, the City asserts unsupportable inferences from the Minister's verbal comments at a press conference; and

(b) To grant the City's request (in either alternative form) would be to accept a profound and unwarranted repudiation of the Clergy principle.

[12] The Tribunal delivered an oral ruling on July 13, 2021 dismissing the City's Motion and advised counsel for the Parties that its written reasons would be set out in this Decision. The Tribunal's reasons for that motion ruling are now contained in

paragraphs [13] to [25] below. The Motion materials filed by the City, the Region and Lakeshore were:

- (a) Motion Record of the City, including:
 - (i) City Notice of Motion;
 - (ii) Affidavit of Kyle Plas, sworn June 28, 2021, together with Exhibits A to Exhibit J, inclusive, comprising 210 pages;
- (b) Book of Authorities of the City, comprising 9 tabs;
- (c) City Submissions on Motion for Adjournment, comprising 25 pages;
- (d) Responding Motion Record of the Region, including:
 - (i) Notice of Response to Motion of City;
 - (ii) Affidavit of Karyn Poad, sworn July 5, 2021, together with Exhibits A to C, inclusive, comprising 11 pages;
 - (iii) Amendment No. 48 to the Regional Plan for the Regional Municipality of Halton, comprising 130 pages;
 - (iv) Adoption of Regional Official Plan Amendment (ROPA) 48 - "An Amendment to Define a Regional Urban Structure", comprising 16 pages;
 - (v) ROPA 48 Response Document for Discussion Paper Submissions related to ROPA 48, comprising 19 pages;
 - (vi) ROPA 48 – Public Submission Response Document, comprising 156 pages;

- (vii) ROPA 48 – Prescribed Agency Submission Response Document, comprising 111 pages;
 - (viii) Alternate Density Target Request – Supplemental Information re: Appleby GO MTSA, comprising 5 pages;
 - (ix) Employment Area Conversions – Supplemental Information, comprising 7 pages;
 - (x) Provincial Plan Policy Analysis, comprising 5 pages
- (e) Responding Motion Record of Lakeshore (Burlington) Inc., including:
- (i) Notice of Response to Motion, comprising 20 pages;
 - (f) Oral Submissions of Lakeshore, comprising 5 pages; and
 - (g) Book of Authorities of Lakeshore, comprising 7 tabs and 113 pages.

[13] The City has argued that on June 15, 2021, the Minister announced that he was moving the location of the Burlington UGC from its existing location to the area surrounding the Burlington GO Station. As a result, the City maintains that the Development is no longer within a UGC area.

[14] The City therefore submits that an adjournment “is required to allow the Parties to provide supplemental witness statements in order for the Tribunal to have the opinions of the expert witnesses on the effect of the subject lands no longer being within a UGC at the time of the Tribunal’s eventual decision in this matter. Absent this, the Tribunal will not have expert opinion evidence that reflects the policy regime that must be applied to consideration of the applications.

[15] The position taken by counsel for the City and for the Region therefore wholly

depends on the contention that a new policy regime was ushered in solely by the Minister's June 15th oral announcement. This alleged policy pronouncement is claimed to have been captured in an informal transcript filed with the Tribunal - prepared by an unidentified person - of the Minister's remarks made at the June 15th press conference. It appears conceded by the City that the 'unofficial' informal transcript that is attached as an exhibit to the sworn Affidavit of the City's planning witness Mr. Plas is not a complete record of the Minister's comments made on that occasion. An adequate explanation for this was not offered to the Tribunal.

[16] Despite the unusual evidentiary basis described in paragraph [15] above, there seems to be no controversy between the Parties about the main gist of the Minister's remarks made at this press conference. However, Lakeshore's counsel adamantly maintains that those verbal comments by the Minister did not and could not constitute the formal lawful introduction of new provincial planning policy.

[17] During the time period leading up to the Motion, the Region of Halton adopted ROPA 48 on July 7, 2021, which, among other things, reflects the noted change in location of Burlington UGC that was apparently mentioned orally by the Minister on June 15th (although Ms. Yerxa for the Region points out that the prior process leading up to ROPA 48 was of considerable duration and reflected much work and consultation along the way, much of which is contained in the supporting Affidavit of Ms. Poad). ROPA 48 is apparently now before the Ministry for approval. However, beyond the remarks of counsel for the City and the Region, there was no evidence to demonstrate that the Ministry will approve it beyond a statement to that effect from Mr. Plas in his Affidavit tendered before the Tribunal. In the Tribunal's view, this is not proper subject of opinion evidence – it is merely argument, which was repeated in more detail by counsel for the City and the Region at the Motion hearing.

[18] In response, the Appellant filed an Affidavit from Mr. Smith, an experienced Planner who challenges the conclusions expressed by Mr. Plas about the effect of the press conference announcement from the Minister and also the allegation that the

Minister's oral announcement was "supportive of ROPA 48". Again, in the Tribunal's view, Mr. Smith's statements are also not proper opinion evidence determinative of this particular issue.

[19] The Tribunal is unable to accept the contention that the oral remarks made by the Minister at the June 15th press conference, taken alone, constitute the promulgation of new Ontario planning policy by way of an 'update' or other 'revision' of the GP in terms of the location of the Burlington UGC. It is to be noted that the Minister's remarks do not specify the precise boundary of this apparent location change, nor do they indicate the effective date of the change. In any event, the Tribunal was not convinced by the City counsel's submission that no written statement or enactment of the change in the Burlington UGC location is required by law. Neither Counsel for the City or the Region could cite any jurisprudence specifically on this point to support this unique argument. Moreover, in the Tribunal's view this notion seems counter-intuitive in light of the very detailed provincial planning regime currently in force. The Tribunal specifically disagrees that the Minister's remarks described above can be treated as a lawful, formal issuance of Provincial policy within the meaning of s. 1, 2 and 3 of the PA.

[20] The Tribunal also agrees with Lakeshore's counsel that for the purposes of this appeal the relevant provincial policy provisions include those set out in the current PPS and the current GP. The Tribunal thus rejects the contention that the current GP has somehow been changed or 'updated' in relation to the location of the Downtown Burlington UGC by reason either of the June 15, 2021 oral comments of the Minister or the content of the draft ROPA 48 which has not been approved by the Province. The OLT further agrees with the Appellant that the positions taken by the City and the Region of Halton clearly invoke the "Clergy doctrine" set out in a long line of jurisprudence of both this Tribunal and the Divisional Court as cited by both counsel for the Appellant and for the City.

[21] The Tribunal is of the opinion that the City's proposition that a hearing should be adjourned to deal with anticipated possible future changes in provincial policy is:

- (a) without foundation and without caselaw authority;
- (b) amounts to a repudiation of long-established jurisprudence since it requires the evaluation of planning applications on the basis of alleged “emerging” policy intended to signal a new evolution of priorities for intensification in the City; and
- (c) is highly unusual given that the very notion of modifying the UGC boundary in the City was not introduced until nearly 2 years after the Appellant’s applications were deemed complete by the City.

[22] The Tribunal also agrees with the submission of counsel for the Appellant that:

“the press conference statement itself goes no further than suggesting the Minister “will be moving” the UGC, not that it already has been moved. This is a statement of possible future intention and nothing more. It provides no indication of how or when. It does not discuss implementation at all. There is no reference to ROPA 48 despite the statement of Mr. Plas. It refers to “long-term planning” as opposed to immediate effect”.

[23] As was the situation before the Tribunal a few years ago in the cited case of 1213763 Ontario Inc. v Toronto (City), [2019] CanLii 298 (ON LPAT), the OLT was not referred to any prior decision where the Tribunal has declined to apply the Clergy principle in favour of assessing a planning application against policies which were not yet in force when the application was submitted. The Tribunal reiterates Vice-Chair Jacobs’s ruling in 1213763 Ontario Inc. v Toronto (City), [2019] CanLii 298 (ON LPAT) that to do otherwise would run afoul of well-established principles of procedural fairness and natural justice.

[24] The Clergy Principle is not a legal doctrine but is instead a policy within the sole jurisdiction of the OLT, as stated by Lederer, J in the recent decision of the Divisional Court in Masters v Claremont Development Corporation, 2021 ONSC331 [↑](#)

“In asking for a judgment that the Clergy principle should not be applied to this situation the Appellant is asking the Court to engage in a

consideration of the appropriateness of the policy, a consideration which was within the exclusive jurisdiction of the Ontario Municipal Board and now is the responsibility of the Local Planning Appeal Tribunal...[now the OLT]...no question of law is raised in this appeal. Referring to the substance of the Clergy principle as “unfair” because it requires the application of policies from 30 years ago does not raise an issue of law.”

[25] For the reasons already expressed above in paragraphs [19] to [22] inclusive, this Tribunal has determined that it is appropriate to apply the Clergy principle in this case. It is unnecessary for the Tribunal to further discuss the principles set out in the additional supportive caselaw provided by Lakeshore’s counsel: *Clergy Properties Ltd. v. Mississauga (City) OMB*; *1213763 Ontario Inc. v Toronto (City)*; *Sun Life Assurance Co. of Canada v. Burlington (City)*; and *Toronto (City) v. Dunpar Developments Inc.*.

[26] As a final matter, the Tribunal further disagrees with the argument of the City’s counsel that the purposes and policies underlying the Tribunal’s *Rules of Practice and Procedure* in any way require the granting of the City’s adjournment motion in the unique circumstances of this case, and the Tribunal declines to exercise its discretion to do so.

(c) Materials before the Tribunal for the Hearing

[27] In light of the Motion ruling described above in **Part 1 (b)**, the Hearing on the merits of the appeals proceeded on July 13, 2021 and concluded with final argument on July 30th. The materials before the Tribunal, all in electronic format, by agreement of the counsel for the City and Lakeshore, were:

- (a) Landscape Architecture and Streetscape Agreed Statement of Facts dated April 23, 2021;
- (b) Agreed Statement of Facts and Remaining Issues – Cultural Heritage dated April 28th, 2021;
- (c) Agreed Statement of Facts concerning Engineering Matters, dated April 29, 2021;

- (d) Agreed Statement of Facts concerning Traffic Matters, dated April 29, 2021;
- (e) Agreed Statement of Facts concerning Design Matters, dated May 7, 2021;
- (f) Joint Book of Witness Statements (“WS”) of the Parties, of which, pursuant to the Parties’ agreement, only the following WS and Reply WS were tendered in evidence before the OLT:

Lakeshore Witnesses

- i) WS and Reply WS of Ralph Bouwmeester, comprising Tabs 1H and 1I respectively;
- ii) WS and Reply WS of Tahrana Lovlin, comprising Tabs 1J and 1K respectively;
- iii) WS and Reply WS of Dan Currie, comprising Tabs 1N and 1O respectively;
- iv) WS and Reply WS of Jeanette Gillezeau, comprising Tabs 1R and 1S respectively;
- v) WS and Reply WS of Tom Kasprzak, comprising Tabs 1T and 1U respectively;
- vi) WS and Reply WS of Michael Hannay, comprising Tabs 1V and 1W respectively; and
- vii) WS and Reply WS of Peter Smith, comprising Tabs 1Z and 1ZZ respectively.

City Witnesses

- (i) WS and Reply WS of Paul Johnston, comprising Tabs 2A and 2B respectively;
- (ii) WS and Reply WS of Todd Evershed, comprising Tabs 2C and 2D respectively; and

- (iii) WS and Reply WS of Danika Guppy, comprising Tabs 2G and 2H respectively;
- (g) Joint Policy / Guidelines Book of the Parties (“Policy Book”), comprising 25 tabs and 1355 pages in total;
 - (h) Joint Evidence Book on Behalf of the Parties (“Evidence Book”), comprising 15 tabs and 187 pages in total;
 - (i) Lakeshore Photo Book, comprising 26 pages;
 - (j) Lakeshore Visual Evidence Book, comprising 130 pages;
 - (k) Interactive 17 - 22 - 29 Storey Shadow Depiction prepared by Ralph Bouwmeester, comprising 22 pages;
 - (l) Bousfields Inc. Planning and Urban Design Rationale Report, dated August 2018, comprising 94 pages;
 - (m) Bousfields Inc. Planning Addendum, dated June 2019 comprising 68 pages;
 - (n) Sun / Shadow Study dated July 4, 2019 prepared by Ralph Bouwmeester, comprising 9 pages;
 - (o) Lakeshore Architectural Plans dated May 2020, comprising 33 pages;
 - (p) City of Burlington Tall Building Guidelines, dated May 2017, comprising 23 pages;
 - (q) 2069 Lakeshore Boulevard, visual depiction of amendments to proposed development, comprising 6 pages;
 - (r) Modifications to the tower design of the Proposed Development Differences between the May 20, 2020 and April 23, 2021 designs, comprising 4 pages;
 - (s) Paul Johnston Visual Evidence Photos, comprising 22 pages;
 - (t) Modifications to the tower design of the Proposed Development Differences between the May 20, 2020 and April 23, 2021 designs, comprising 4 pages; and

(u) Surrounding Built Form Heights – Visual Map

2. Key Issue: Does the Lakeshore Proposal for a 29-storey Tower design satisfy the prescribed tests or should the Tower be restricted to 22 stories in height with reduced massing?

[28] There is no dispute concerning the applicable tests that must be applied by the Tribunal in considering these OPA and ZBA applications.

[29] Counsel for the City in final submissions stated that:

“...it is the City's submission that the heritage issues have essentially been resolved through the appeal process and evidence. I don't propose to address the heritage policies within the planning policy documents as in my submission the evidence before the Tribunal is that regardless of whether the proposed amendments for a 29 storey development are approved or refused or modified in some manner, or whether amendments supporting a maximum height 22 storey building area, the heritage attributes of the Acland house will be preserved as proposed [by Lakeshore].”

[30] In light of the concession by the City's counsel summarized above in paragraph [29], the Tribunal need not consider the 'heritage issues' raised by the City's witness Danika Guppy in her WS, Reply WS and oral testimony – or the responding evidence by Lakeshore's expert witness Mr. Dan Curry in his viva voce evidence, WS and Reply WS.

[31] Additionally, neither Party disputes that the proposed Subject Site is:

- (a) located in the City's current UGC (in light of the Tribunal's motion ruling set out above in **Part 1 (b)** above);
- (b) is appropriate for a mixed use, high density commercial and residential development; and
- (c) is also an appropriate a 'tall building site' subject to the City's Tall Building Guidelines ("TBGs").

[32] The key dispute between the Parties is:

- (a) whether the Development ought to be limited to a 22-storey tower instead of the 29-storey height sought by Lakeshore, and, if so, on what basis; and
- (b) whether the form (massing and bulk) of the tower under the Lakeshore Proposal ought to be reduced in addition to other revised design changes proposed by the City, resulting in a smaller tower footprint with a reduced gross floor area.

[33] The Tribunal therefore must consider whether the OPA and ZBA sought by the Appellant to facilitate the Development with the proposed design of a 29-storey residential tower:

- (a) have appropriate regard for matters of Provincial interest as required by section 2 of the PA;
- (b) are consistent with the PPS as required by section 3(5)(a) of the PA;
- (c) conform with (or not conflict with) the GP for the Golden Horseshoe ("GP") as required by section 3(5)(b) of the PA;
- (d) complies with the current in-force Region of Halton Official Plan (i.e. not ROPA 48 which is not in force)
- (e) are compatible with the surrounding neighbourhood and otherwise comply with the intent and purpose of the City's OP and meet the requirements of the City's TBGs; and
- (f) respect and implement principles of good planning

[34] In final oral and written argument, counsel for the City position even further refined the City's position by conceding that the matters described in paragraph [33] (a), (b), (c) and (d) above have been satisfied by Lakeshore Proposal:

- (i) "Section 2 of the Planning Act identifies matters of Provincial interest to which the proposed amendments must have regard for...in the City's view, the proposed amendments do have regard for the identified matters of Provincial interest...";
- (ii) "There is no dispute that...the proposed amendments must be consistent with the PPS. It is the City's submission based on the evidence in the hearing that the proposed amendments to permit the 29-storey building being advanced, that the proposed amendments are generally consistent with the policies of the PPS...";
- (iii) "It is the City's submission based on the evidence in the hearing that the proposed amendments to permit the 29-storey building being advanced...generally conform with the policies of... [the GP] ..."
- (iv) "It is the City's submission based on the evidence in the hearing...[that]... the proposed amendments to permit the 29-storey building being advanced generally conform with the policies of the Region of Halton Official Plan..."

[35] The Tribunal acknowledges the admissions made by the City's counsel in final argument as outlined in paragraph [33] above. In addition, the Tribunal accepts the evidence set out in the WS, Reply WS and oral testimony of Peter Smith, a highly-experienced professional planner (whose qualifications are more fully described in paragraph [67] below) who opined that:

- (i) The proposed OPA and ZBA are consistent with the PPS, in particular Policies 1.1.1, 1.1.3.1, 1.1.3.2, 1.1.3.3, 1.1.3.4, 1.1.3.6, 1.3.1, 1.4.3, 1.6.3, 1.6.5, 1.6.7.2, 1.6.7.4, 1.7.1, 1.8.1, 2.6.1, 2.6.3 and 4.6;
- (ii) The Subject Site is included in the Downtown Burlington UGC and is within a "strategic growth area" and a "major transit station area" as

defined by the GP. The proposed OPA and ZBA conform with the GP (2019), and in particular Policies 1.2.1, 1.2.3, 2.1, 2.2.1(2)(c), 2.2.1(3)(c), 2.2.1(4), 2.2.2(1), 2.2.2(3), 2.2.3(1), 2.2.3(2), 2.2.4(8), 2.2.4(9), 2.2.4(10), 2.2.6(1), 2.2.6(2), 3.2.3(2), 4.2.7(1) and 5.2.4(5); and

- (iii) In terms of the Halton ROP, the Development is located within the *Urban Area* and the City's UGC. In addition, the City's Downtown Bus Terminal is identified as a *Mobility Hub*. The OPA and ZBA conform with the ROP, in particular: Policies 25, 26, 50, 51 and 56 of Part II; Policies 57, 58, 61, 72, 75, 76, 77, 78, 80, 81, 81.1, 81.2, 81.3, 84, 85, 86(6), 86(11), 86(21) and 89(3) of Part III; and Policies 141(2), 143(5), 143(12), 146(3), 146(11), 146(17), 146(18), 148, 165, 166, 167(3), 172 and 176(2)(c) of Part IV.

[36] However, the City's counsel in final argument submitted that the OPA and ZBA under the Lakeshore Proposal "...*fail at the City OP [level]...*". He further contended that:

"...the proposed amendments to permit the 29-storey building being advanced do not conform with the policies of the City's Official Plan. However, the City submits that a 22 storey building with reduced building mass and increased stepbacks that address the urban design issues that...would conform with the policies of the City's Official Plan..."

[37] Finally, purporting to rely on the 2020 decision of the former LPAT in the case of *K.P. Isberg Construction v. Toronto* 2020 CarswellOnt 7604 counsel for the City argued:

"a proposed development may achieve consistency with the PPS and conform to the higher order intensification, optimization and development policies in the GP, but fail to conform to the local planning policies which more specifically deal with the site specific development and design issues that are addressed in the OP... That in my submission is exactly the situation that Tribunal has before it in this matter".

[38] The City's arguments described in paragraphs [36] and [37] depend upon the success of: (i) the City's allegations related to shadow and wind impacts of the tower in the Lakeshore Proposal; (ii) the City's contention that Lakeshore is seeking approval for a proposed residential tower that is incompatible with the 'surrounding development

context' and (iii) the City's related argument that Lakeshore's aim is "maximization" of development on the Subject Site rather than consistency with the PPS and 'optimization' under the GP. The evidence related to these arguments of the City's counsel is analyzed in **Part 3** below.

3. Does the Lakeshore Proposal fail to conform to the City's Official Plan due to 'Negative Impacts' and Lack of 'Compatibility' stemming from the 29-storey tower design?

(a) Lack of Shadow Impact

[39] Ralph Bouwmeester testified on behalf of Lakeshore with respect to the shadow impact issues raised by the City. He is a professional engineer and the Principal of R. Bouwmeester and Associates and has over 40 years of experience in urban development and municipal servicing design. Mr. Bouwmeester has provided expert testimony regarding sun/shadow position modeling in numerous proceedings before the Tribunal and various Courts in both Canada and the USA. He was duly qualified before the Tribunal in this proceeding without objection to provide opinion evidence on the same matters.

[40] Mr. Bouwmeester's views as expressed in his WS, Reply WS and in oral testimony before the Tribunal were:

- (a) New net shadows from the proposed development on the surroundings are limited and do not result in unacceptable shadows within the context of a downtown urban environment;
- (b) The proposed Development meets the purpose and intent of the Shadow Impact Criteria of the City as set out in its *Shadow Study Guidelines and Terms of Reference (June 2020)*;
- (c) The resultant new net shadow resulting from the Development is limited and therefore the floorplate size of the proposed 29-storey residential

tower is appropriate from a shadowing perspective;

- (d) The City's shadow studies do not meet the requirements of the City's *Shadow Study Guidelines and Terms of Reference (June 2020)* ("Shadow Guidelines"). For example, these studies do not include the dates and hourly test times required by the Shadow Guidelines nor do they include the required sun/shade area calculations necessary to determine the Sun Access Factor targets stipulated in the Shadow Guidelines. The City's shadow studies are based on test dates and times (only 3 per day) that the City required prior to the adoption of the current Shadow Guidelines and are not supportable;
- (e) Despite there being a limited cumulative shadow on the townhouse garage roof deck and rooftop amenity areas adjacent to the Development, the degree of impact meets the purpose and intent of the Shadow Guidelines;
- (f) There is no additional morning shadow on the roof decks and rooftop amenity areas on March 21 caused by Lakeshore's 29-storey proposal as compared to the City-supported 22-storey alternative. There is minor additional shadowing on the roof decks and rooftop amenity areas at 12:00, 1:00 and 2:00 PM over small areas for short periods;
- (g) There is very little difference in the shadow impact of 22 storeys versus 29 stories on the townhouse development adjacent to the Development. In any event, the degree of impact meets the purpose and intent of the Shadow Guidelines; and
- (i) Therefore, the Proposal meets the City's goal "to promote high-quality development proposals that ensure adequate access to sunlight is maintained for the enjoyment of public and private spaces alike".

[41] Interestingly, the City chose not call testimony from an outside engineering expert to offer opinion evidence on shadow impacts. Instead, Mr. Todd Evershed, who is currently employed by the City as an urban designer, purported to provide such evidence. Mr. Evershed is not an engineer, nor does he have any experience in providing expert analysis concerning shadowing beyond his contributions to the development of the City's Shadow Study Guidelines and Terms of Reference (June 2020). He is a Registered Professional Planner and has worked in various roles as a City employee since 2013.

[42] Counsel for Lakeshore objected to the notion that Mr. Evershed could be qualified to provide opinion evidence on sun/shadow matters concerning the Development, and the City's counsel did not seek to achieve that. Instead, he requested that Mr. Evershed offer urban design opinion evidence only, and the Tribunal qualified him solely for that purpose.

[43] As pointed out by Lakeshore's counsel, the 'sun/shadow' issue initially raised by Mr. Evershed as a design issue was his contention that the proposed development would: *"...result in excessive and inappropriate shadow impacts on the adjacent public realm and nearby residential properties..."*.

[44] However, during his testimony, Mr. Evershed's concerns had narrowed to the question of the possible shadow impact on one block within the live-work townhouse project directly behind the Development – referred to as the "West Block". Mr. Evershed focused on the cumulative shadow impact on elevated decks above the at-grade parking spaces for each of the live-work units.

[45] Mr. Evershed insisted that because those decks did not meet the minimum Sun Access Factor ("SAF"), the Lakeshore Proposal fails to meet the City's Shadow Guidelines and, therefore should be rejected and redesigned to ensure that the SAF is met. Instead, the Tribunal accepts and agrees with the contrary analysis of sun/shadow matters provided by Mr. Bouwmeester as detailed in paragraph [39] above. As noted, his evidence was the only expert opinion available to the OLT.

[46] As noted in paragraph [39], Mr. Bouwmeester conducted a careful and detailed evaluation of the shadow impacts on these same private elevated decks and also completed a SAF analysis in accordance with the City's Shadow Guidelines. While his analysis does demonstrate that these elevated decks fail to receive the minimum SAF on March 21st, this does not mean that these decks never receive sun at other times of the year. In fact, Mr. Bouwmeester demonstrated that the townhouse decks received receive considerable amounts of sun during the summer months. Moreover, he concluded that the Lakeshore Proposal meets the purpose and intent of the shadow impact criteria of the City's Shadow Guidelines. The Tribunal reiterates that it accepts Mr. Bouwmeester's opinion evidence on this matter, which was not successfully challenged during cross-examination.

[47] Interestingly, when questioned about the need to balance his claimed shadow problems as against other planning objectives, Mr. Evershed stated that such a need was a matter for evaluation by the City's Planning Expert Mr. Paul Johnston. Yet, for his part, Mr. Johnston conceded during cross-examination that he no longer was of the view that the Lakeshore Proposal will cause unacceptable shadow impacts – or any negative impacts whatsoever.

[48] Based on the significant admissions of Mr. Johnston and Mr. Evershed as described above in paragraph [47], and in light of the expert opinion evidence of Mr. Bouwmeester all as described in this **Part 3 (a)**, the Tribunal found that the City has failed to demonstrate that the Development will cause any unacceptable sun/shadow impacts.

(b) No Unacceptable Wind Impact

[49] The manner in which the wind impact issue was presented to the Tribunal was similar to that of the sun/shadow matter: Lakeshore retained an experienced engineer who regularly focuses on the study of building wind impacts and who prepared a detailed expert report. The City again chose to rely on views expressed by Mr. Evershed which were incidental to his design commentary and admittedly beyond his

area of professional expertise and experience.

[50] Ms. Tahrana Lovlin testified on behalf of Lakeshore and is a professional engineer specializing in microclimate issues in Ontario with 18 years of experience in the field, specializing in pedestrian wind comfort issues related to land use planning. She has a degree in Civil Engineering from the University of Waterloo, with a focus on structural design and a Masters in Applied Environmental Studies from the University of Waterloo with a focus on planning. Ms. Lovlin is the Technical Discipline Manager of the CFD, Wind & Energy team and a Microclimate Specialist at SLR Consulting (Canada) Ltd. (“SLR”).

[51] The Tribunal accepted the expert evidence of Ms. Lovlin, who in her WS, Reply WS and oral testimony provided the following opinions:

- (a) SLR in-house criteria for pedestrian wind comfort (“the SLR Criteria”) were applied. The SLR criteria are based on the “Davenport Criteria” developed by Dr. Alan G. Davenport and the University of Western Ontario Boundary Layer Wind Tunnel Laboratory. These criteria are widely applied and have been used successfully on hundreds if not thousands of projects in Ontario and elsewhere. The SLR assessment utilized meteorological data from the Burlington Piers station which is the most appropriate wind data set for use in the area of the Subject Site;
- (b) In June 2020, the City of Burlington released a new *Pedestrian Level Wind Study Guidelines and Terms of Reference* (the “City of Burlington Criteria”). The release of these guidelines post-dated the submission of the Lakeshore OPA and ZBA and this OLT appeal. The new guidelines require the use of meteorological data from the John C. Munro International Airport in Hamilton, which is not representative of wind conditions at the Development. Regardless, wind conditions at the Development were also assessed using the City of Burlington Criteria;

- (c) Applying the SLR Criteria: (i) Pedestrian wind conditions at grade, both on-site and on the surrounding sidewalks, are comfortable for the intended usage year-round with the Development in place; and (ii) Pedestrian wind conditions in outdoor amenity spaces above-grade on the Development, are windier than desired for the intended usage. Recommendations for wind mitigation measures (e.g., landscaping, vertical wind screens, horizontal trellises);
- (d) Applying the City of Burlington's Criteria: (i) Pedestrian wind conditions at grade are comfortable for the intended usage on the surrounding sidewalks year-round; (ii) Pedestrian wind conditions at grade on-site are generally comfortable for the intended usage year-round with the Development in place. Relocation of the main entrance and outdoor amenity space away from the southwest corner at grade is recommended;
- (e) Pedestrian wind conditions in outdoor amenity spaces above grade on the Development are windier than desired for the intended usage. Recommendations for wind mitigation measures (e.g., landscaping, vertical wind screens, horizontal trellises) will ameliorate these effects;
- (f) The massing changes between 2018 and the current 2021 Lakeshore Proposal will have negligible influence on wind conditions around the Development;
- (g) Utilizing the SLR Criteria, pedestrian wind conditions at grade, both on-site and on the surrounding sidewalks, are suitable for the intended usage. In addition, if the City of Burlington Criteria are applied, pedestrian wind conditions at grade on the surrounding sidewalks are suitable for the intended usage. In the Development, pedestrian wind conditions at grade are generally appropriate for the intended usage, although similar

mitigation recommendations are provided for a few areas; and

- (h) The pedestrian wind comfort conditions surrounding the Development are appropriate for the intended usage based on SLR's in-house criterion, which was in place in 2018 and has previously been accepted by the City of Burlington. Adverse pedestrian wind comfort impacts are not anticipated. From the perspective of pedestrian wind comfort, there is no reason why the development cannot proceed.

[52] Based on the evidence of Ms. Lovlin, which was not successfully challenged during her cross-examination, the Tribunal concluded that the Development will not create any unacceptable wind impacts and that the proposed mitigation measures described in paragraph [51] (e) and (g) are sufficient to address them.

(c) Economic Analysis Supports the Lakeshore Proposal

[53] At least part of the dispute between the Parties with respect to the question of 'optimization' v. 'maximization' - or 'overdevelopment' of the Subject Site – in turn relates to an examination of the data concerning the history of the City's housing intensification patterns.

[54] Lakeshore tendered evidence from Ms. Jeanette Gillezeau of Altus Group Economic Consulting. Ms. Gillezeau has an undergraduate degree in urban and regional planning from the University of Waterloo and a M.A. in economics from York University and was qualified by the Tribunal to provide opinion evidence as an economist. She has extensive experience in municipal finance, economic, demographic and housing research and analysis related to land use planning issues in the Greater Golden Horseshoe including a range of assignments in the City of Burlington. Despite the apparent relevance of this issue to the arguments of the City concerning 'optimization', it offered little direct responding evidence beyond some of the planning testimony provided by Mr. Johnston

[55] The Tribunal agrees that the evidence of Ms. Gillezeau provides important context for the overall planning evidence of Mr. Peter Smith. Ms. Gillezeau testified that:

- (a) A minimum of 7,139 net new residential units are required in the Built-Up Area of Burlington over the 2019 to 2031 period to address the intensification phasing policies in section 77 of the ROP;
- (b) More than 33,458 new residential units will be required inside the Built-Up Area of Halton over the 2018 to 2031 period to achieve the Region-wide phasing set out in Table 2a of the ROP;
- (c) Over the 2012-2020 period, a total of 33,308 housing starts were recorded in Halton Region although the ROP provides for a net increase of 109,963 new over the 2012 to 2031 period. Although the Region generated just over 33,000 housing starts for that 8-year period, in the coming ten-year period it must generate 76,655 units to meet its own targets, and will need to better direct the minimum intensification target to the Built-Up Areas of the Region;
- (d) The 2020 GP allocates substantially more population growth to Halton Region (an additional 320,000 persons over and above the 780,000 persons accommodated by the phasing and allocation policies of the in-force ROP). In addition, a minimum of 2,908 new housing units per year will need to be built inside the Built-Up Area of the Region over the next 30 years under the GP;
- (e) The adequacy of the housing supply is one of the factors which affects housing prices and affordability. Between 2015 and 2019, the average annual change in the consumer price index for Canada was at 1.8%. Yet the average annual change in the average price of new and resale housing units in Halton Region was 8.2% - more than 4 times higher

[56] As noted, the City did not call expert evidence from an economist to respond to the opinions of Ms. Gillezeau as described in paragraph [55] above, although the City's expert planner Mr. Johnston did offer some general comments on this topic in his WS and his oral testimony. Nonetheless, the City's counsel argued that the City will meet or exceed its targets for intensification and housing supply by 2031.

[57] The OLT need not determine at this juncture whether the assertion of the City's counsel described in paragraph [56] seem more likely or whether Ms. Gillezeau's serious concerns are more credible. In any event, the City's counsel appeared to move on from on this aspect of the dispute and instead relied on certain excerpts from the reasons delivered by the Tribunal in the cases of *K.P. Isberg Construction* and in *64 Arthur Limited Partnership v. Toronto* 2021 CarswellOnt 1244 and insisted that:

“...regardless of whether or not the Burlington UGC may or may not eventually meet its 200 people and jobs per hectare target 10 years from now in 2031... it does not mean that a single development site ... should go beyond optimizing the redevelopment of the lands to maximizing the amount of residential units on the site at the expense of compatibility and existing and planned context... [there is a]... need to cap optimization up to the point where compatibility, transition, good design principles, along with existing and planned function, are compromised...”.

[58] Ultimately, however, the Tribunal discerned no major differences of opinion between Lakeshore's expert planner, Mr. Smith, and the City's planning expert, Mr. Johnston on the question of the need for the City to meet its housing and intensification targets. As pointed out by Lakeshore's counsel in final argument, both experts acknowledge the policy direction set out in the GP which states at section 2.1:

“It is important to optimize the use of the existing urban land supply as well as the existing building and housing stock to avoid over-designating land for future urban development while also providing flexibility for local decisionmakers to respond to housing need and market demand. This Plan's emphasis on optimizing the use of the existing urban land supply represents an intensification first approach to development and city-building, one which focuses on making better use of our existing infrastructure and public service facilities, and less on continuously expanding the urban area”

[59] Lakeshore's expert Mr. Smith maintained that the concept of optimization is a

“foundational principle” of the GP. Indeed, the word optimize (or optimization, optimized, optimizing) is used frequently in the GP. “Optimization” is also used in the PPS. (one e.g. is Policy 1.6.3). Lakeshore’s counsel points out that despite his initial reluctance to do so in his WS or during direct examination, the City’s expert Mr. Johnston agreed on cross-examination that the concept of optimization is a “central” theme of the GP and an “essential” component of conforming with its policy intent. Significantly, Mr. Johnston also readily agreed that if the Tribunal did not accept his caveats or concerns with the building height and “fit”, then the Tribunal should approve Lakeshore’s 29-storey tower option as it would represent better optimization of the opportunity on the Subject Site. In the Tribunal’s view, this was a significant admission by Mr. Johnston.

[60] The issues of alleged excessive height and ‘fit’ in relation to the Development are dealt with below in **Part 3 (d)** and **(e)**.

(d) No Negative Urban Design Impacts

[61] Much hearing time was spent on urban design matters which was dealt with in the WS’s and Reply WS’s of three witnesses qualified before the Tribunal: Mr. Tom Kasprzak and Mr. Michael Hannay for Lakeshore and Mr. Evershed for the City.

[62] Mr. Kasprzak is a Registered Professional Planner and Urban Designer with over 20 years of experience. He is also Associate Member of the Ontario Association of Architects and a full member of the Royal Architectural Institute of Canada. Mr. Hannay is also a Registered Professional Planner (RPP) in the Province of Ontario, and a member of the Royal Architecture Institute of Canada, with 30 years of professional urban design and planning experience

[63] As noted above in **Part 3**, Mr. Evershed is a City employee, professional planner and Urban Designer for the City since January 2018. He led the development of the City’s Mid-Rise Building Guidelines (March 2019), the Downtown Streetscape Guidelines (September 2019), the Shadow Study Guidelines and Terms of Reference (June 2020) and the Pedestrian Level Wind Study Guidelines and Terms of Reference

(June 2020). He also oversees the coordination of the City of Burlington's Urban Design Advisory Panel.

[64] Both Mr. Hannay and Mr. Kasprzak have been qualified before the OLT to provide opinion evidence on many prior occasions. This hearing was the first time Mr. Evershed had ever testified as an expert witness.

[65] The relative inexperience of Mr. Evershed became evident, particularly during his cross-examination. Although highly intelligent and articulate - and certainly passionate about adherence to the City's design goals - his tenacity also lead to some overstatements and a seeming unwillingness to consider the validity of contrary opinions. On balance, the Tribunal preferred the evidence of Mr. Kasprzak and Mr. Hannay to the extent of any conflicts with the evidence of Mr. Evershed.

[66] The Tribunal therefore accepts the opinions and findings of Mr. Hannay and Mr. Kasprzak that there are no negative design impacts stemming from the Lakeshore Proposal. The essential elements of their opinions are:

- (a) Following the original October 2018 Lakeshore Proposal submission, on June 11, 2019, a resubmission was made in response to the circulation of comments received from various City Departments and commenting agencies. These modifications included:
 - i. The FSI was reduced from 10.14 to 9.89.
 - ii. The height of the building was increased from 94.32 metres to 98.70 metres.
 - iii. The total number of units was reduced from 280 to 276.
 - iv. Indoor amenity space was added at the mechanical penthouse level.

- v. The residential units originally located on top of the heritage building were removed.
 - vi. The west-facing wall of the podium was pulled back to create a wider streetscape along Pearl Street and to provide a 7 metre by 7 metre visibility triangle at Pearl Street and Lakeshore Road, as requested by the City.
 - vii. Projecting balconies on the north facing wall of the podium were eliminated.
 - viii. The tower floor plate was reduced from 815.1 square metres to 796.3 square metres.
 - ix. An increased setback to the facade along Pearl Street next to heritage building was provided in order to accentuate the heritage building facade and allow a wider pedestrian sidewalk.
 - x. The ramp to the underground parking was enclosed.
 - xi. Bicycle parking was reduced.
 - xii. The garbage room was enlarged to increase bin storage capacity.
 - xiii. The loading area height clearance was increased to 9.0 metres minimum.
- (b) On December 9, 2019, Lakeshore made a further resubmission in response to the circulation comments received from various City Departments and commenting agencies and the Planning Peer Review. These modifications included:

- i. The total FSI was further reduced from 9.89 to 9.86.
- ii. The tower floorplate was revised to 804.1 square metres on the lower floors and 767.7 square metres on the upper floors.
- iii. The height of the building increased from 98.70 metres to 99.95 metres.
- iv. The unit count increased to 291 in response to a change to the mix of unit sizes.
- v. Modifications were made to the ground floor commercial space.
- iv. Parking level P6 was added.
- v. Bike parking supply was increased.
- vi. Projecting balconies were added to the north facing wall of the podium.
- vii. The 5th floor interior amenity space was modified.
- viii. Continuous balconies were added to the 6th floor.
- ix. Floorspace was removed from the southeast corner of Floors 23-29 and replaced with balconies.
- x. Balcony adjustments were made throughout the building.
- xi. Outdoor amenity space was added to the rooftop to complement the indoor amenity space provided on that same level.
- xii. The colour of the upper portion of the tower started to evolve (lighter colour on top).

- xiii. The roofline was modified.
- (c) On June 24th, 2020, Lakeshore then submitted a site plan application which included many further modifications to the Proposal (as noted in paragraph [5] and [7], the Parties have requested that the Tribunal defer consideration of site plan issues until after ruling on the OPA and ZBA).
- (d) The Burlington UDG's are intended to supplement the OP and ZB by providing property owners, developers, and City staff with additional detail on what constitutes desirable built form in the Downtown. As UDGs are not themselves part of the OP or ZB, they must be understood as a guiding document only without the force of policy. The Development meets the general intent of the UDGs by reinforcing existing views towards the lake, providing a public realm with ample sidewalk zones that are well animated, and creating a built form that responds well with respect to its immediate context and the larger urban structure of the City's core;
- (e) The proposed OPA and ZBA are appropriate and desirable in urban design terms and should be approved. The Development is compatible with the existing and planned built form context and will 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;
- (g) From an urban design perspective, the Development represents an appropriate response to the location of the Subject Site within the City's Downtown Core. The proposed building height will fit harmoniously within the range of existing and approved building heights in context;
- (h) The built form impacts of the Development are acceptable, given its

location within an area identified for intensification and the surrounding context of several other existing and approved tall buildings;

- (d) The proposed built form, setbacks and height of the Development appropriately conform to the policies of the OP 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 the 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 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;
- (e) The OPA and ZBA are 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;
- (f) The Development represents appropriate urban design with respect to height, built form, massing and siting. The design has been carefully considered with respect to other development on adjacent sites including tower separation from the ADI Tower;
- (h) Privacy and overlook impacts are generally dealt with through a combination of spatial separation, orientation and mitigating measures between buildings and sites. Such impacts will be minimal and acceptable in this case given the slender high-rise building typology, as well as appropriateness of the proposed building setbacks and the separation distance of the proposed building from the neighbouring site to the north;
- (i) The Development proposal represents good urban design and will make a

positive contribution to the area in general 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;

- (j) From the perspective of urban design, compatibility with surrounding land uses includes compatibility with the existing and planned context in terms of building typology, building massing and height. The actual pattern of existing and planned building heights shows that taller buildings are located closer to the intersection of Lakeshore Road and Pearl Street with the tallest at 26 storeys (the ADI Tower) now under construction on the abutting site to the east;
- (k) The Development provides a compatible relationship to the existing live/work townhouses to the north by providing a 12.5 metre tower setback which is in accordance with the recommendations included in the City's Tall Building Guidelines. The podium is within the maximum height recommended by the Section 2.2 of the TBG's; and
- (l) From the perspective of urban design, the Lakeshore Proposal represents a well-designed redevelopment for the Subject Site that will fit appropriately into its existing and planned context. The design of the Tower generally and appropriately conforms to the relevant urban design policies of the City OP and the intent of the applicable City's UDG's. The overall design accomplishes this without generating unacceptable wind, shadow or overlook impacts on parks, open spaces, streets, or adjacent properties.

(e) All Applicable Planning Principles Respected

[67] As noted above, both Parties retained seasoned, well-respected professional planners in support of their cases.

[68] The City retained Mr. Paul Johnston who has over forty years' experience as a land use planner in Ontario. He has been responsible for projects and assignments for many public and private sector clients, involving a wide range of land use policy, environmental, land development matters. He has consulted on many development proposals throughout Ontario, primarily in the Greater Toronto Area.

[69] Mr. Peter Smith acted for Lakeshore and he also has over 40 years' experience on a wide variety of complex planning matters. Mr. Smith has particular expertise with respect to high-rise redevelopment projects throughout the City of Toronto, Oakville, Mississauga, Ottawa, Niagara Falls and also Burlington.

[70] Mr. Johnston gave evidence to the effect that a 29-storey building would not provide for an appropriate "fit" with or "transition" to the surrounding area. His repeated suggestion was that the City's preferred 22 storey building would better "step down" or "transition" from the 26-storey building to the east and the existing 17 storey development on Pearl Street adjacent to the proposed Development.

[71] The Tribunal agrees with Lakeshore's counsel that as a proposition for good planning, the concept of "fit/transition" was forcefully advanced by Mr. Johnston who testified that this "principle" is distinct from any issue of negative impact. Mr. Johnston also claimed it was rooted in policy but beyond that, is simply a matter of his professional opinion. This was similarly tied to his opinion that a 29-storey building would provide for an "overly abrupt" transition from the live/work townhouses in comparison with a 22-storey building.

[72] The Tribunal noted that under cross-examination, Mr. Johnston conceded that he had overstated his case. In fact, where "transition" is addressed in the relevant policy documents, it relates exclusively to the transition between higher density development within intensification areas and lower density development beyond those areas. Mr. Johnston was unable to refer the Tribunal to any provision in any applicable policy document that described a need for 'transition' to projects within intensification areas.

[73] Lakeshore’s counsel argued that Mr. Johnston conceded that while the City’s OP has numerous policies requiring compatibility between existing and proposed development (including policies specific to the evaluation of developments proposed within the Downtown Mixed Use Centre and the Downtown Core Precinct), there is only one reference to Mr. Johnston’s concept of “fit/transition” in the entire OP. This reference is not found in the policy specific to the applicable land use designations for the Subject Site. It is instead part of the general policies that apply to housing intensification throughout the City. The specific policy is Policy 2.5.2 of the City’s OP which includes a long list of criteria to be considered when evaluating proposals for housing intensification within “established neighbourhoods”. It states:

“(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;”

[74] Mr. Johnston suggested that Policy 2.5.2 was directed not so much at compatibility but at his concept of “transition” between existing and proposed buildings. The Tribunal is of the view that Mr. Johnston’s interpretation is untenable and does not justify reducing the height of the Lakeshore Tower to 22 stories instead of 29 stories. Policy 2.5.2 reproduced in paragraph [73] above addresses intensification throughout the City, including in areas designated for low density residential uses and the Tribunal agrees that it does not apply to transition between tall buildings within the City’s Downtown. The Tribunal further concurs with Appellant’s counsel that if this concept of “fit/transition” been a core planning concern for the City, it would be expected to be more prominently set out in the policies applicable directly to the Subject Site designations. Finally, as noted by Mr. Smith, the Tribunal also finds that there is no demonstrated rationale for Mr. Johnston’s establishment of the somewhat lower ADI tower as the starting point for a “transition down”.

[75] Mr. Johnston further opined that greater height and density are planned within the Wellington Square Mixed-Use Precinct to the west than are planned within the Downtown Core Precinct applicable to the Subject Site. In Mr. Johnston’s view, a 29-

storey building would conflict with the allocation of height and density as between the Wellington Square Precinct and the Downtown Core Precinct, even though the former is merely one road allowance away from the latter. During cross-examination, Mr. Johnston conceded that the Subject Site is physically closer to the Wellington Square Precinct than it is to the rest of the Downtown Core Precinct.

[76] Mr. Johnston testified that the City's proposed 22 storey alternative would be no taller than the building heights "planned within the Wellington Square Mixed-Use precinct." Yet, as pointed out by Lakeshore's counsel, the ADI Tower at 26-stories is part of the Downtown Precinct in which the Subject Site is located, meaning that in essence that Precinct currently has a 'higher height context' than as asserted by Mr. Johnston.

[77] Mr. Smith on the other hand opined that the location of the site within the Downtown Core Precinct as opposed to the Wellington Square Precinct should not be determinative of the height or density for the Development from a policy perspective. The only distinct planning objective applicable to the Wellington Square Precinct is the prevention of "unlimited spread of higher density throughout the downtown".

[78] The Tribunal agrees with Mr. Smith's opinion about the problems with imposing limits on optimization by relying on vague notions of fit and context not squarely rooted in detailed policy. The Tribunal accepts his opinion and concurs with the final argument of Lakeshore's counsel that the City's policies and objectives to limit building height and density in its Downtown area would need to be clear and very specific in order to override the clear provincial direction to optimize intensification opportunities – and that the alleged height and density distinctions described by Mr. Johnston in paragraphs [75] and [76] are unconvincing.

[79] Finally, the Tribunal prefers and accepts the expert opinion of Mr. Smith on general land use planning matters related to the Lakeshore OPA and ZBA as follows:

- (a) From a land use perspective, the Development will contribute to the achievement of numerous policy directions promoting intensification and a

range of housing options on underutilized sites within built-up urban areas, particularly in locations that are well served by municipal infrastructure, including public transit. The Subject Site is located within Downtown Burlington, which is identified as an UGC in the GP. In this regard, the Lakeshore Proposal is consistent with Provincial and City policies, which provide strong support for intensification in UGC's;

- (b) The Development will produce a number of significant public benefits, including: (i) creation of new apartment housing in Downtown Burlington; (ii) intensification of residential development in the City's Downtown; (iii) provision of additional ridership to support the Burlington bus lines and GO Train and GO Bus lines; (iv) contribution to meeting the population forecasts and intensification targets in the GP, the Halton ROP and the Burlington OP; (v) the retention and adaptive reuse of a portion of the Acland Houses heritage building; (vi) improvements to grade-level conditions and pedestrian amenities along Pearl Street and Lakeshore Road; and (vii) the creation of an attractive new development within Downtown Burlington;
- (c) The proposed OPA and ZBA have regard for matters of Provincial interest in the PA and specifically in subsections 2(a), (d), (f), (h), (h.1), (j), (k), (o), (p), (q), and (r);
- (d) The OPA and ZBA are consistent with the PPS, including but not limited to Policies 1.1.1, 1.1.3.1, 1.1.3.2, 1.1.3.3, 1.1.3.4, 1.1.3.6, 1.3.1, 1.4.3, 1.6.3, 1.6.5, 1.6.7.2, 1.6.7.4, 1.7.1, 1.8.1, 2.6.1, 2.6.3, 4.2 and 4.6;
- (e) The Subject Site is included in the Downtown Burlington UGC and is within a "strategic growth area" and a "major transit station area" as defined by the GP;
- (f) The OPA and ZBA conform with the GP, and in particular Policies 1.2.1,

1.2.3, 2.1, 2.2.1(2)(c), 2.2.1(3)(c), 2.2.1(4), 2.2.2(1), 2.2.2(3), 2.2.3(1), 2.2.3(2), 2.2.4(8), 2.2.4(9), 2.2.4(10), 2.2.6(1), 2.2.6(2), 3.2.3(2), 4.2.7(1) and 5.2.4(5)

- (g) The OPA and ZBA conform with the ROP, in particular: Policies 25, 26, 50, 51 and 56 of Part II; Policies 57, 58, 61, 72, 75, 76, 77, 78, 80, 81, 81.1, 81.2, 81.3, 84, 85, 86(6), 86(11), 86(21) and 89(3) of Part III; and Policies 141(2), 143(5), 143(12), 146(3), 146(11), 146(17), 146(18), 148, 165, 166, 167(3), 172 and 176(2)(c) of Part IV;
- (h) The OPA and ZBA are in keeping with the overall policy directions set out in the Official Plan, and in particular: Policies 3.0 and 4.3 of Part I; Policies 2.1 a), 2.2 d), 2.3 a) and c), 2.7.1, 2.7.2, 2.7.3, 2.8, 2.8.1, 2.8.2, 2.11, 3.1, 3.2.1, 3.2.2, 3.3.2, 3.4.1, 3.4.2, 3.5.2, 3.6.2, 3.8.1 c), 3.8.2 c), 3.9.1, 3.9.2, 6.0, 6.1, 6.2, 6.3 e), 6.5, 6.6 f), 8.0, 8.1, 8.2, 8.3.2, 8.3.3 d), 8.4.1, 12.1, 12.2 and 12.3 of Part II; Policies 2.3.1 a), 2.3.2, 2.4.1 a), 2.4.2 a), d) and f), 5.1, 5.2.1, 5.2.2, 5.4.1, 5.5.1, 5.5.2, 5.5.3, 5.5.8.1, 5.5.8.2 a), e), f), and i), 5.5.12, 5.5.14 and 5.5.15 of Part III; and Policies 1.3 c), and e), 2.3.2 b), 2.5.2 c) and d), 2.7.2 a) and c, 3.2 a) and b), 3.2 g), 7.1 b) and 7.2 a) of Part VI;
- (i) The City's New OP, as approved by the Region on November 30, 2020, should not be given any weight in evaluating the proposed development. In this regard, the New OP was approved by the Region more than two years after the Application was submitted and approximately a year after the Application was appealed on December 17, 2019 due to the City's failure to make a decision. Furthermore, the Applicant has appealed the New OP as it relates to the Subject Site;
- (j) Given the increased emphasis on intensification within the existing urban areas of the Region to achieve GP population and intensification targets, it is appropriate and desirable from a planning policy perspective to optimize

the use of land and infrastructure within the existing built-up area through increased density, and particularly so within the Downtown Burlington UGC. Furthermore, the proposed density and intensification conform with the intent of the City's Intensification Strategy as implemented through the OP;

- (k) While the proposed mixed building use is permitted by the existing DC zoning, the requested ZBA would permit the proposed residential lobby within a small portion of the building frontage along Lakeshore Road and Pearl Street and allow office uses on the ground floor, increase the permitted height and floor area ratio, and revise other development regulations as necessary to accommodate the proposal.
- (l) Within a policy framework that promotes the optimization of land and infrastructure, as is the case for the subject site, heights should not be arbitrarily reduced in the absence of unacceptable built form or compatibility impacts. The appropriateness of height on a particular site should be the outcome of a site-specific analysis of built form impacts, compatibility and fit within the surrounding existing and planned context. Based on this analysis, the proposed 29-storey height on the Subject Site is appropriate; building heights should not be "benchmarked" to the heights of earlier buildings that are of a different era, especially within the Downtown Core Precinct and adjacent areas, where there is no specific existing or planned height structure. In this regard, existing heights in the surrounding area reflect, in large part, the ongoing evolution of tall building design that increasingly favours taller and slender towers; and
- (m) The proposed Development as represented by the current plans represents good land use planning and is in the public interest. It appropriately provides for the intensification of a significantly underutilized site within the Downtown Burlington UGC in a form that is desirable, while

conserving the Acland Houses heritage building and improving the streetscape condition with a well-designed building including a 4-storey podium pulled close to the street line. It also includes ground floor commercial and live/work units to add to the commercial amenities in the neighbourhood and the provision of additional ridership to support the Burlington Transit bus lines and nearby GO Train and bus lines.

(d) Conclusions: Decision and Orders of the Tribunal

[80] The Tribunal finds that there is no evidence of negative impact or any other justification for the modifications as advanced by the City to support a 22-storey tower instead of the 29-storey tower under the Lakeshore Proposal. Moreover, there is also no basis for the resultant substantial reduction in the number of residential units stemming from the City's proposed modifications. The height reduction alone would eliminate between 63 and 77 residential units. Reducing the tower floorplate to 690 m² as proposed by Mr. Evershed would eliminate a further 64 to 80 residential units. In the Tribunal's view, the City has not demonstrated a sound rationale to support the need for such significant changes.

[81] Specifically, the Tribunal agrees for the reasons set out in **Part 3 (a) to (c)** above, and based upon the expert opinion evidence provided by Mr. Smith, Mr. Kasprzak, Mr. Hannay, Mr. Bouwmeester, Ms. Gillezeau and Ms. Lovlin, that the OPA and the ZBA:

- (a) properly and appropriately address all relevant matters of provincial interest as set out in section 2 of the *Planning Act*, R.S.O 1990, c. P13, and conforms with all relevant matters of policy as required under Section 3 of that Act;
- (b) are consistent with all relevant matters of policy contained in the provisions of the *Provincial Policy Statement* (2020);

- (c) conform with all relevant aspects set out in the provisions of the Growth Plan for the Greater Golden Horseshoe (2019);
- (d) conform with all relevant and applicable provisions of the Region of Halton Official Plan and including all other applicable policies, guidelines and design guidelines duly promulgated under that Regional Official Plan;
- (e) conform with all relevant and applicable provisions of the City of Burlington Official Plan and including all other applicable policies, guidelines and design guidelines duly promulgated under that City's Official Plan; and
- (f) respect and are in accordance with principles of good planning.

ORDERS

[82] Based on the evidence, discussions, findings and reasons summarized above in paragraphs [80] and [81], and after due consideration for all of the arguments set forth in the opening statements and lengthy final written and oral submissions of counsel for the City and Lakeshore, the Tribunal allows the appeals of the Applicants and Appellants Lakeshore (Burlington) Inc. in respect of the OPA and the ZBA applications and Orders as follows:

1. The application by the Applicants/Appellants for an amendment of the City of Burlington Official Plan in accordance with the form and content set out in Addendum A attached hereto is hereby authorized; and
2. The application by the Applicants/Appellants for an amendment of the City of Burlington Zoning Bylaw 2020 substantially in accordance with the draft provisions set out in Addendum B attached hereto is hereby approved.

[83] It is the Tribunal's understanding that the Parties will need to engage in further discussions regarding the final form and content of the amendment of the City's Zoning

Bylaw 2020 set out in Addendum B hereto. Therefore, the Tribunal shall withhold its final Order on the final wording of that amendment pending further written submissions from the Parties on its form and content to be delivered within 30 days of the date of this Decision.

[84] In the event that the Parties are unable to agree on the final form and content of the amendment of the City's Zoning Bylaw 2020 Ordered in paragraph [82] 2. or have any other difficulties or disputes concerning the implementation of the Orders made in above, they may contact the Tribunal for assistance.

[85] Finally, again as noted in paragraphs [5] and [7] above, submissions were made by counsel for the Parties at the outset of this hearing with respect to the intention of Lakeshore (Burlington) Inc. to seek Tribunal approval of a site plan concerning the Development - in the event that the Parties were unable to reach a consensus on a site plan agreement. On consent, the Parties' counsel asked the OLT to defer consideration of the site plan pending its Decision on the OPA and ZBA, and also pending further site plan agreement negotiations between the Parties. The Tribunal agreed to do so. In the event that the Parties cannot reach a resolution on a site plan agreement, they may seek another hearing event in accordance with the OLT Rules of Practice and Procedure to determine all relevant issues.

"William R. Middleton"

WILLIAM R. MIDDLETON
MEMBER

Ontario Land Tribunal

Website: olt.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

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

ADDENDUM A

AMENDMENT NO. 105 TO THE OFFICIAL PLAN OF THE BURLINGTON PLANNING AREA

CONSTITUTIONAL STATEMENT

The details of the Amendment as contained in Part B of this text constitute Amendment No. 105 to the Official Plan of the Burlington Planning Area, as amended.

PART A - PREAMBLE

1. PURPOSE OF THE AMENDMENT

The purpose of the amendment is to amend the site specific policies for 383-385 Pearl Street, 2069 Lakeshore Road and 2079 Lakeshore Road. The redesignation of the property will facilitate the development of a 29 storey mixed use building consisting of at-grade retail and service commercial uses with 320 residential units above and the conservation of the heritage building at 383-385 Pearl Street to be use for live/work purposes.

2. SITE AND LOCATION

The subject lands are located at the north-east corner of Lakeshore Road Pearl Street in the City's Downtown Core Precinct within the Urban Growth Centre. The site has an area of 0.24 hectares (0.61 acres) and is currently occupied by the heritage building at 383-385 Pearl Street and two other low rise commercial buildings. The policies apply to 383-385 Pearl Street, 2069 Lakeshore Road and 2079 Lakeshore Road on a site-specific scale, as detailed in the respective policies. Surrounding land uses include a range of mixed use towers, commercial, live/work townhouse uses, a place of worship and residential apartment buildings.

3. BASIS FOR THE AMENDMENT

The City's Urban Growth Centre plays an important role in accommodating population and job growth. Mixed use development within the Urban Growth Centre with access to transit contributes to intensification and supports the long term sustainability of the city.

a) The subject application proposes intensification that is consistent with the Provincial Policy Statement (PPS). The PPS promotes densities for new housing which efficiently use land, resources, infrastructure and public service facilities, and supports the use of public transit.

b) Directing intensification to areas in proximity to transit and within a strategic growth area and providing policies that identify the appropriate type and scale of development assists the

City in achieving its intensification and housing supply targets and meet the intent of the Provincial "Places to Grow" Growth Plan and the Region of Halton Official Plan.

c) The redesignation of the property to permit a higher density tall building form supports the City's objective to broaden the range of housing forms and supply to meet City needs in a manner that is compatible with surrounding properties and uses.

d) The applicant submitted technical studies and reports that provide adequate and appropriate information to support the development.

PART B - THE AMENDMENT

1. DETAILS OF THE AMENDMENT

Map Change:

No map change is proposed.

TEXT CHANGE:

The text of the Official Plan of the Burlington Planning Area, as amended, is hereby amended as follows:

- 1.) To add the following policy o) to Part III, Land Use Policies - Urban Planning Area, Section 5.0, Mixed-Use Activity Area, 5.5.8.2, Downtown Core Precinct as follows:

North-east corner of Lakeshore Road and Pearl Street

o) Notwithstanding Part III, Subsection 5.5.8.2 b), c) and d) of this Plan, for the lands described as 383-385 Pearl Street, 2069 Lakeshore Road and 2079 Lakeshore Road, the maximum height of buildings *shall* be 30 storeys and 99.95 metres. The maximum *floor area ratio shall* be 9.5:1. Retail, *service commercial*, office, live/work, and residential lobby are required continuously at grade along public streets in residential, mixed-use or office buildings.

2. INTERPRETATION

This Official Plan amendment shall be interpreted in accordance with the "Interpretation" policies of Section 3.0, Interpretation, of Part VI, Implementation of the Official Plan of the Burlington Planning Area.

3. IMPLEMENTATION

This Official Plan amendment shall be implemented in accordance with the appropriate "Implementation" policies of Part VI of the Official Plan of the Burlington Planning Area.

ADDENDUM B

BY-LAW NUMBER 2020.XXX, SCHEDULE 'A' AND EXPLANATORY NOTE

THE CORPORATION OF THE CITY OF BURLINGTON

BY-LAW NUMBER 2020.XXX

A By-law to amend By-law 2020, as amended; for 383-385 Pearl Street, 2069 Lakeshore Road and 2079 Lakeshore Road,

File Nos.: 505-06/18 & 520-08/18 & 535-013/20

WHEREAS Section 34(1) of the Planning Act, R.S.O. 1990, c. P. 13, as amended, states that Zoning By-laws may be passed by the councils of local municipalities; and

WHEREAS the Local Planning Appeals Tribunal issued a decision on XXXXX, 2021, to amend the City's existing Zoning By-law 2020, as amended, to permit a 30-storey building 320 residential units, commercial uses on the street level and live/work uses within the heritage building at 383-385 Pearl Street;

THE LOCAL PLANNING APPEALS TRIBUNAL AMENDS ZONING BY-LAW 2020 AS FOLLOWS:

1. Zoning Map Number 9A of PART 15 to By-law 2020, as amended, is hereby amended as shown on Schedule "A" attached to this By-law.
2. The lands designated as "A" on Schedule "A" attached hereto are hereby rezoned from DC to DC-XXX.
3. PART 14 of By-law 2020, as amended, Exceptions to Zone Classifications, is amended by adding Exception XXX as follows:

Exception n XXX	Zone e	Map p	Amendment nt	Enacted
1.	<u>Regulations for an Apartment Building and the existing Heritage Building (383-385 Pearl Street)</u>			
a)	Notwithstanding, Part 1, Section 2.27 – Table 1.2.9, the deemed width of Lakeshore Road shall be 24 m.			

Exception XXX	Zone	Map	Amendment	Enacted
	DC	9A	2020.XXX	
	<p>b) Notwithstanding Part 1, Section 2.5.1, in-ground and above-ground pools shall be set back 3 m from a lot line or street line, measured from the inside wall of the pool.</p> <p>c) Notwithstanding Part 6, Section 2A, Table 6.2.1, footnote (g), permitted uses on the ground floor shall include retail, service commercial, office uses and a residential lobby.</p> <p>d) Notwithstanding, Part 16, Definitions – for those lands zoned DC-XXX, the front lot line shall be deemed to be Lakeshore Road.</p>			
	e) Yard Abutting Lakeshore Road:			
	i)	Minimum for storeys 1 to 4	0 m	
	ii)	Minimum for storeys 5 and above	2.5 m	
	iii) Balconies or terraces		0 m	
	f) Yard Abutting Pearl Street:			
	i)	Minimum for storeys 1 to 4	0 m	
	ii)	Minimum for storeys 5 and above	2.5 m	
	iii)	Minimum for heritage building (383-385 Pearl Street)	0 m	
	iv) Balconies or terraces		0 m	
	g) Rear Yard and Yard Abutting a DRM Zone			
	i)	Minimum for storeys 1 to 4 (excluding garage ramp enclosure)	12.5 m	
	ii)	Minimum for storeys 5 and above	12.5 m	
	iii)	Minimum for garage ramp enclosure	0 m	
	iv)	Minimum for heritage building (383-385 Pearl Street)	0 m	
	v) Balconies or terraces		9.5 m	
	h) Side Yard (East)			
	i)	Minimum for storeys 1 to 4	0 m	
	ii)	Minimum for storeys 5 and above (excluding mechanical equipment and stair enclosures)	22 m	
	iii)	Balconies or terraces	19.0 m	
	iv)	Trellises, pergolas, landscape features, windscreens, parapets and building maintenance equipment.	0 m	
	i) Minimum setback from the hypotenuse of a visibility triangle		0 m	

j) Parking Structure

Exception XXX	Zone	Map	Amendment	Enacted
k)	Minimum setback abutting Lakeshore Road		0 m	
ii)	Minimum setback abutting Pearl Street		0 m	
iii)	Minimum setback to all other property lines		0 m	
iv)	Entrance and exit ramps to loading/service bay on Pearl Street		2.7 m	
l)	Maximum Building Height (from established grade of 82.70)			
i)	podium		4 storeys to 18 m	
ii)	tower		30 storeys and 99.95m. The stair transfer and landing between ground and second floor shall not be counted as a floor.	
			Parapets, windscreens, guard rails, landscape features including but not limited to planters and trellis, building maintenance equipment and access stair ladder in addition to the elements listed on By-law 2020, shall be excluded from the height restriction.	
m)	Maximum Number of Residential Units		320	
n)	Floor Area Ratio		9.5:1	
o)	Minimum Ground Floor Retail, Service Commercial, and office uses		400 m ²	
p)	Maximum Floor Area:			
i)	5 th Storey		810 m ²	
ii)	Storeys 6 to 22		760 m ²	
iii)	Storeys 23 and above		735 m ²	

Exception n XXX	Zone e	Map p	Amendment nt	Enacted
q) 30 th storey				In addition to an outdoor amenity area, a maximum of 500 m ² of floor area may be used for an indoor amenity area, elevator lobby, stairs, mechanical and/or storage rooms.
r) Nothing shall prevent art and landscape features, cornices, light fixtures, ornamental elements, parapets, pergolas, trellis, guardrails and windscreens extending a maximum of 1.0m beyond the yard setback listed in section (e), (f), (g) and (h).				
s) Occupant parking				1 space per unit
t) Minimum parking for commercial areas/				Not required
u) Minimum Amenity Area				20 m ² per unit
v) Visibility Triangle				None Required

SCHEDULE "A" TO BY-LAW 2020.XXX

(To be provided by City of Burlington)

EXPLANATION OF PURPOSE AND EFFECT OF BY-LAW 2020.XXX

By-law 2020.XXX rezones lands on 383-385 Pearl Street, 2069 Lakeshore Road and 2079 Lakeshore Road to permit the development of a 30-storey building with 320 residential units, commercial units on the street level and live/work units within the heritage building at 383-385 Pearl Street.

For further information regarding By-law 2020.XXX, please contact the City of Burlington Department of City Building at (905) 335-7600.