Ontario Land Tribunal
Tribunal ontarien de l'aménagement du territoire

ISSUE DATE: May 04, 2022 **CASE NO(S).:** OLT-21-001792
(Formerly PL200092)

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

Applicant and Appellant:	Core FSC Lakeshore GP Incorporated
Subject:	Request to amend the Official Plan - Failure of the City of Burlington to adopt the requested amendment
Existing Designation:	Downtown Mixed Use Centre - Old Lakeshore Road Mixed Use Precinct
Proposed Designated:	Downtown Mixed Use Centre - Old Lakeshore Road Mixed Use Precinct with site specific policy
Purpose:	To permit a 27-storey residential building with ground floor commercial
Property Address/Description:	2093, 2097, 2101 Old Lakeshore Road and 2096, 2100 Lakeshore Road
Municipality:	City of Burlington
Approval Authority File No.:	505-04/19
OLT Case No.:	OLT-21-001792
Legacy Case No.:	PL200092
OLT Lead Case No.:	OLT-21-001792
Legacy Lead Case No.:	PL200092
OLT Case Name:	Core FSC Lakeshore GP Incorporated 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:	Core FSC Lakeshore GP Incorporated
Subject:	Application to amend the City of Burlington's Zoning By-law No. 2020 - Refusal or neglect of the City of Burlington to make a decision

Existing Zoning:	Downtown Old Lakeshore Road Zones (DL-A and DL-8)
Proposed Zoning:	Site Specific (To be determined)
Purpose:	To permit a 27-storey residential building with ground floor commercial
Property Address/Description:	2093, 2097, 2101 Old Lakeshore Road and 2096, 2100 Lakeshore Road
Municipality:	City of Burlington
Municipality File No.:	520-08/19
OLT Case No.:	OLT-21-001794
Legacy Case No.:	PL200093
OLT Lead Case No.:	OLT-21-001792
Legacy Lead Case No.	PL200092

Heard:	January 18 to 26 and 28, 2022 by video hearing and January 31 and February 1, 2022 in writing

APPEARANCES:

Parties	**Counsel**
Core FSC Lakeshore GP Incorporated	David Bronskill and Matthew Lakatos-Hayward
City of Burlington	Andrew Biggart
Old Lakeshore (Burlington) Inc.	Scott Snider and Shelley Kaufman
Regional Municipality of Halton	Kelly Yerxa (on January 18, 2022 only)

DECISION DELIVERED BY HUGH S. WILKINS AND ORDER OF THE TRIBUNAL

INTRODUCTION

[1] On January 28, 2020, Core FSC Lakeshore GP Incorporated (“Appellant”) appealed the failure of the City of Burlington (“City”) to make decisions within the statutory timeframes on applications for official plan and zoning by-law amendments to facilitate the development of a mixed-use building at 2093, 2097 and 2101 Old Lakeshore Road and 2096 and 2100 Lakeshore Road (“subject property”).

[2] The subject property is located at the foot of Martha Street in the City's Downtown. Lakeshore Road runs along the north side of the subject property and Old Lakeshore Road runs along the south. The subject property is 0.33 hectare ("ha") in area and presently has two surface parking lots and four low-rise buildings on it. Included on the subject property is the old Chrysler Carriage House. It is heritage building listed on the City's Municipal Register of Cultural Heritage Resources. It is not designated as a heritage building under the *Ontario Heritage Act*.

[3] The Appellant seeks to build a 27-storey mixed-use building with a six-storey podium. The proposed development would include 310 residential units, two at-grade commercial units, and a 1,030 square metre ("m^2") privately-owned publicly accessible space ("POPS"), or public gathering area, outside to the west of the proposed building.

[4] At the time that they were filed, the Appellant's applications were subject to the City's 2008 Official Plan. The subject property is designated under the City's 2008 Official Plan as "Downtown Mixed Use Centre - Old Lakeshore Road Mixed Use Precinct". It is zoned under the City's Zoning By-law No. 2020 ("Zoning By-law") as "Downtown Old Lakeshore Road Zones (DL-A and DL-8)". The proposed Official Plan Amendment would re-designate the subject property to "Downtown Mixed Use Centre - Old Lakeshore Road Mixed Use Precinct with site specific policy". The proposed Zoning By-law Amendment would re-zone the subject property to site-specific zoning.

[5] At a Case Management Conference ("CMC"), held on December 14, 2020, the Tribunal granted Party status to Old Lakeshore (Burlington) Inc. ("Old Lakeshore"), which owns lands that lie adjacent to the subject property to the east. At that CMC, the Tribunal also granted Party status to the Regional Municipality of Halton ("Region") and Condominium Corporation HCC-160 ("HCC No. 160"). HCC No. 160 subsequently changed its status to Participant.

[6] On January 18 to 26 and 28, 2022, the Tribunal held a hearing on the merits of the appeal by video hearing. It received final written submissions from the Parties on January 31 and February 1, 2022.

PROPOSED SETTLEMENT WITH THE REGION

[7] At the commencement of the hearing, the Parties informed the Tribunal that the Appellant had reached a proposed settlement with the Region.

[8] The issues raised by the Region in the appeals include:

1. Do the applications conform with the Region's Official Plan, in particular, policies 77, 78, 81, and 81.1?

2. What regard, if any, should be given to the Region's Notice of Decision on November 30, 2020 regarding the City's new Official Plan adopted in 2020 ("City's 2020 Official Plan")?

3. Will the issue around site contamination be addressed through a Record of Site Condition ("RSC")?

4. Is it appropriate to require a Holding Symbol in the proposed Zoning By-law Amendment on condition that the Holding Symbol can be lifted once the RSC is filed?

5. What impact, if any, does the April 2020 announcement by the Province, that the John Street Terminal is no longer required as a Downtown Mobility Hub on the conformity of the applications with the Region's Official Plan?

6. Have the applications adequately addressed Regional servicing matters such as water, wastewater, and waste management?

[9] The Appellant and Region presented proposed Minutes of Settlement. The substantive paragraphs of the Minutes of Settlement set out conditions that the Appellant must satisfy before the proposed Zoning By-law Amendment may be approved. The main aspects of these conditions are that a Holding Symbol would be placed on the proposed Zoning By-law Amendment specifying that the new uses set out in the proposed amendment shall not be permitted until the following requirements have been fulfilled:

> (i) prior to the removal of the Holding Symbol, the following must be completed to the satisfaction of the Region and the City:
>
> (A) an RSC has been filed with and acknowledged by the Ministry of Environment, Conservation and Parks, and
>
> (B) all environmental site condition requirements related to the RSC have been met.

[10] None of the Parties opposed the proposed settlement with the Region and all agreed that the other issues relating to the Region's Official Plan would not be pursued in the proceeding.

[11] The Tribunal approved the proposed settlement with the Region in principle (subject to its findings on the rest of the appeal) and excused the Region from the remainder of the hearing.

ISSUES TO BE ADJUDICATED

[12] The statutory requirements that the Tribunal must consider when making a decision on official plan and zoning by-law amendment appeals under s. 22(7) and s. 34(11) of the *Planning Act* include whether the proposed instruments are consistent with the Provincial Policy Statement, 2020 ("PPS"), conform with applicable provincial plans (in this case, A Place to Grow: Growth Plan for the Greater Golden Horseshoe (2019), as amended ("Growth Plan")), and represent good planning. The Tribunal will have regard to the matters of provincial interest set out in s. 2 of the *Planning Act*, applicable City guidelines, and relevant policies approved subsequent to the filing of the

applications. Also, it must have regard to the information and material that City Council received in relation to the matter (as required under s. 2.1(2) of the *Planning Act*).

[13] In addition, for the Zoning By-law Amendment appeal, the Tribunal must determine whether the proposed amendment conforms with applicable official plans as required under s. 24(1) of the *Planning Act*. In the present case, these are the Region's Official Plan and the applicable official plan of the City.

[14] The Appellant, Old Lakeshore, and the City identified specific issues to be adjudicated, including:

Transition, Intensification, and Related Planning Issues

1. Are the proposed Official Plan Amendment and Zoning By-law Amendment in conformity with, and do they maintain the intent of, the policies of the City's 2008 Official Plan?

2. Does the proposed development represent an appropriate level of density and intensification for the subject lands and does the proposed density and intensification conform with or maintain the intent of the City's intensification strategy as implemented through the City's 2008 Official Plan?

3. Will the proposed instruments provide for an appropriate built form and functional relationship with development on the adjacent lands to the east (2107 Old Lakeshore Road and 2119 Lakeshore Road)?

4. Are the proposed Official Plan Amendment and Zoning By-law Amendments consistent with the PPS given the location and context of the subject lands, and considering the level of intensification proposed?

5. Are the proposed Official Plan Amendment and Zoning By-law Amendment in conformity with the Growth Plan given the proposed scale of development and proposed transition of built form to adjacent areas?

6. Is an increase beyond “as-of-right” zoning permissions and beyond official plan designation development standards required for the site for the City to achieve its Growth Plan conformity targets?

Urban Design

7. Does the proposed development 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, particularly, considering the Council-approved City of Burlington Tall Building Design Guidelines, Sustainable Building and Development Guidelines, and Downtown Streetscape Guidelines?

8. Does the proposed 27-storey development represent an appropriate building height?

9. Does the proposed development provide an appropriate tower floorplate size that minimizes impacts on sky view and shadowing?

10. Is the height and massing of the proposed podium appropriate given the existing and planned surrounding development context?

Parking

11. Does the proposed development provide sufficient parking? Is there sufficient justification for the proposed reduced parking rates?

12. Does the proposed design of the ground floor and underground parking garage of the proposed development allow for appropriate width, size, and location of parking spaces?

Shadow Impacts

13. Would the Proposed Development result in excessive and/or inappropriate shadow impacts on the subject property, adjacent public realm or nearby residential properties, particularly considering the Council-approved City of Burlington Shadow Study Guidelines and Terms of Reference?

New Instruments

14. What regard, if any, should be given to the City's 2020 Official Plan as approved by the Region on November 30, 2020? If regard is to be given, what are the implications of the application of the policies to the proposed amendments?

15. What regard, if any, should be given to Official Plan Amendment No. 119? If regard is to be given, what are the implications of the application of the policies to the proposed amendments?

Other Issues

16. Do the proposed amendments have regard for matters of Provincial interest identified in the *Planning Act*?

17. Does the proposed development represent good land use planning?

[15] Engineering, cultural heritage, amenity area, traffic, sky view, and wind impact issues were also raised in the Procedural Order for this proceeding, but they were not

argued at the hearing. As noted above, conformity with the Region's Official Plan also was not contested. Evidence on the Region's Official Plan was produced and is addressed at the end of this Decision.

EVIDENCE, SUBMISSIONS, ANALYSIS AND FINDINGS

[16] The Appellant produced the following witnesses who provided opinion evidence at the hearing:

1. Cyndi Rottenberg-Walker - the Tribunal qualified her to provide opinion evidence in the area of land use planning;

2. Mark Reid - the Tribunal qualified him to provide opinion evidence in the area of urban design; and

3. Kelsey Waugh - the Tribunal qualified her to provide opinion evidence in the field of transportation engineering and transportation planning.

[17] Old Lakeshore produced the following witness, who provided opinion evidence:

1. Dana Anderson – the Tribunal qualified her to provide opinion evidence in the area of land use planning.

[18] The City produced the following witnesses, who provided opinion evidence:

1. Franco Romano - the Tribunal qualified him to provide opinion evidence in the area of land use planning;

2. Todd Evershed - the Tribunal qualified him to provide opinion evidence as an urban designer; and

3. Trevor Clark – the Tribunal qualified him to provide opinion evidence as a transportation planning technologist.

1. Transition, Intensification and Related Planning Issues

Appellant's Evidence and Submissions

[19] Ms. Rottenberg-Walker stated that the City's 2008 Official Plan was in force when the Appellant's applications were filed. She said the City and Region approved a new official plan for the City in 2020, but it is under appeal and not in force. She opined the City's 2008 Official Plan applies to this proceeding.

[20] Ms. Rottenberg-Walker stated that the proposed development would be compatible with the existing and planned built form context of the area. She stated that the existing built form context includes:

- a 26-storey tower on the north side of Lakeshore Avenue (Adi Development) in the Downtown Core Precinct to the north of the subject property;
- a 22-storey tower with a seven-storey podium (Bridgewater Development) in the Wellington Square Mixed-Use Precinct to the west of the subject property;
- a 17-storey tower on the northwest corner of Pearl Street in the Wellington Square Mixed-Use Precinct; and,
- 13-, 18-, and 15-storey towers to the east of the subject property.

[21] In addition to these existing buildings, she stated that there are several planned developments in the area that have been approved. Ms. Rottenberg-Walker stated that this planned built form context includes:

- a 29-storey tower on the land-assembly abutting the Adi Development in the Downtown Core Precinct;
- a 23-storey tower at 421-431 Brant Street in the Downtown Core Precinct; and,
- an 18-storey tower on a land assembly on Brant Street in the Downtown Core Precinct.

She stated that the proposed development is compatible with the existing and planned context and is in keeping with the emerging built form of the area.

[22] Ms. Rottenberg-Walker stated that the City's 2008 Official Plan has multiple layers of policy going from the more general to detailed provisions for specific local areas or precincts. In this regard, she said the property is subject to the more general Mixed Use Activity Area policies, the refined policies for the Downtown Mixed Use Centre, and the location-specific provisions for the Old Lakeshore Road Mixed Use Precinct ("OLRMUP"). The OLRMUP is divided into three sectors: west, east and south. She said the subject property straddles the east and west sectors and is subject to specific policies for each.

[23] She said the City's 2008 Official Plan's objectives for Mixed Use Activity Areas encourage a mix of uses, including retail, residential, community facilities, cultural facilities and open space. She said they encourage development in a compact form, which is compatible with surrounding land uses and a pedestrian- and transit-oriented urban form. She opined that the proposed instruments would facilitate these elements and the proposed development would help accommodate population and employment growth in the Mixed-Use Activity Area.

[24] Ms. Rottenberg-Walker opined that the proposed instruments also conform with the City's 2008 Official Plan objectives and policies for the area designated as Downtown Mixed Use Centre. She stated that the subject property is located within the

Urban Growth Centre, which is to accommodate a significant share of the City's population and employment growth. She said the proposed instruments would facilitate a high density mixed-use development that is transit supportive and supports active transportation through the provision of bicycle parking, enhanced sidewalks, and open space. She said high density residential and commercial uses are permitted within the Downtown Mixed-Use Centre and the design of the proposed development aims to provide compatibility with the surrounding area. She said the Downtown is to be re-developed through the infilling of existing surface parking lots and the intensification of under-utilized lands, which the proposed development would do. She also said it would include commercial uses that would add to the vibrancy of the area.

[25] Ms. Rottenberg-Walker stated that the proposed development would satisfy the Official Plan's OLRMUP objectives by providing high intensity, mixed-use development, which incorporates residential and ground floor commercial uses, a pedestrian-oriented and transit supportive environment, and streetscape and public realm enhancements. However, she noted that the proposed development would not conform with certain OLRMUP provisions, including those restricting building heights in the precinct. In this regard, she said the City's 2008 Official Plan's OLRMUP policies are unreasonable and out-of-date for the appropriate redevelopment of the area.

[26] As noted above, she said the subject property straddles the east and west sectors of the OLRMUP. Ms. Rottenberg-Walker said the OLRMUP requirements in Policy 5.5.7.2 of Part III of the City's 2008 Official Plan for development in the east sector are:

- a minimum density for residential buildings of 51 units per net ha;
- a minimum building height of two storeys; and,
- a maximum permitted height of six storeys and 19.5 metres ("m").

She said taller heights may be permitted up to maximum of eight storeys and 29 m, where the following conditions are satisfied:

- there is compatibility with surrounding land uses and a sense of pedestrian scale through the use of building design incorporating a ground level, street-oriented podium, and subject to community benefits provisions;
- Old Lakeshore Road is retained and realigned to form an intersection at Martha Street and Lakeshore Road;
- significant cultural heritage resources are preserved or relocated within the precinct; and,
- an angular plane study is submitted identifying visual, sun shadowing and wind impacts, and demonstrating how such impacts can be mitigated to acceptable levels.

[27] Ms. Rottenberg-Walker said the OLRMUP requirements for development in the west sector are similar, but permit a greater maximum height:

- a minimum density of residential buildings of 51 units per net ha;
- a minimum height of two storeys; and,
- a maximum height of ten storeys and 31.5 m.

She said yet taller building heights may be permitted in the west sector up to a maximum of 15 storeys and 47 m provided that the following conditions are satisfied:

- there is compatibility with surrounding land uses and a sense of pedestrian scale by the use of building design incorporating a ground level, street-oriented podium, and subject to community benefits provisions;

- the Martha Street alignment is continued to meet Old Lakeshore Road;
- public waterfront access is constructed and dedicated to a public authority;
- a view corridor from Martha Street to Lake Ontario is provided;
- enhanced public spaces are provided;
- significant cultural heritage resources are preserved or relocated within the precinct;
- an angular plane study is submitted identifying visual, sun shadowing and wind impacts, and demonstrating how such impacts can be mitigated to acceptable levels;
- a portion of Old Lakeshore Road is closed to achieve re-development and intensification; and,
- the lands are assembled from the Martha Street alignment to the waterfront.

[28] She said the proposed development conforms with many of these OLRMUP policies. For example, the proposed development would be compatible with the surrounding land uses, include ground floor commercial and retail units, create an enhanced public and pedestrian space and POPS, create a pedestrian connection to the waterfront and nearby parklands, create a view corridor from Martha Street, and preserve the Chrysler Carriage House. However, she said other OLRMUP requirements are not possible to meet. In particular, she said the assembly of lands is impossible given the unlikelihood of securing agreement among the owners on the north side of Old Lakeshore Road, who have established development rights, with the owners on the south side, who do not have such rights.

[29] Ms. Rottenberg-Walker stated that the OLRMUP policies also include provisions that the City believes require a transition from taller buildings to the west to lower ones to the east. She disagreed with the City in this regard. She said the provisions do not

require such a downward height transition. She said the west sector of the OLRMUP has higher height permissions than the neighbouring precincts to the north and west, and, therefore, a transition downward through the OLRMUP to the east is inconsistent with those policies. She also stated that such a height transition is not reflected in the existing and planned context where the tallest buildings are located in the immediate vicinity of the subject property. She emphasized that transition is not only about height. She said it is also about fit, compatibility, and other factors. In this regard, she stated that the proposed development's POPS and public realm improvements are aspects that provide transition in the area.

[30] Ms. Rottenberg-Walker opined that the proposed instruments are consistent with the intensification and other policies in the PPS. She stated that the subject property lies within a settlement area and the proposed development would provide new housing supply, a mix and range of housing options, and efficient development of an underutilized site. She said it would also conserve and integrate a building of heritage value and enhance the character of the area. She said the proposed instruments would facilitate compact development with a density and a mix of uses that optimizes the use of land, infrastructure, transit, and public service facilities. She opined that they would facilitate development representing an efficient use of land, promote active transportation, and support the use of public transit. She said the proposed development would promote a healthy and active community through an enhanced public realm and streetscapes, the widening of pedestrian and cycling areas, enlarged building setbacks, and additional trees and soft landscaping. She said it would enhance the livability and vitality of the area and provide for a built form that is compatible with the surrounding built form and contribute to a positive sense of place. She said it would help bring new residents and jobs within walking distance of public transit, daily amenities, jobs, retail and commercial uses, parks and open space, schools, cultural facilities, and public service facilities.

[31] Ms. Rottenberg-Walker also opined that the proposed instruments conform with the Growth Plan. She said the subject property lies within a settlement area, delineated

built-up area, and a strategic growth area under the Growth Plan. She stated that the proposed development would facilitate growth in areas supported by existing transit, infrastructure and public services and would support the achievement of a complete community by providing a mix of residential and commercial uses, a range of unit sizes, and access to transit, amenities, and services in the area. She said there are nearby bus services and the John Street bus terminal is close by. She reiterated that the subject property is within walking distance of a number of community services, amenities, institutions, and cultural facilities and the proposed instruments would provide for improvements to the public realm with sidewalks, street plantings, and the POPS. She noted that the subject property was located within a designated Major Transit Station Area ("MTSA") and an Urban Growth Centre when the Appellant's applications were filed in 2019. Those designations were removed in November 2021 with the Minister of Municipal Affairs and Housing's approval of the Region's Official Plan Amendment No. 48 ("ROPA No. 48"). She noted, however, that despite the removal of the MTSA designation, the nearby John Street Terminal remains the main downtown transit hub. She also said the Urban Growth Centre designation still applies based on the transition provisions in ROPA No. 48. She stated that the proposed development would help achieve the minimum density targets under the Growth Plan and allow for the optimization of land through appropriate intensification.

Old Lakeshore's Evidence and Submissions

[32] Ms. Anderson stated that the proposed instruments would provide for an appropriate built form and functional relationship with Old Lakeshore's development proposal for the adjacent property to the east. She said the proposed development is coordinated and integrated with that development proposal and would be appropriate and compatible. Regarding transition issues, she said a requirement for transition downwards is not required in the City's 2008 Official Plan. She said those provisions only refer to transition from the highest density mixed-use area to the more residential areas to the east. She stated that transition within an intensification area and within an Urban Growth Centre cannot be imposed to constrain optimization of land which

otherwise achieves compatibility and addresses impacts. She said to do so would conflict with the Province's intensification objectives. She further stated that transition refers to a change in state and does not solely involve height and density considerations. She said the focus of transition should be on variation in built form, design, and height to achieve optimization, compatibility, and good planning.

City's Evidence and Submissions

[33] Mr. Romano stated that context-driven intensification, rather than development maximization, is appropriate for the subject property. He stated that the objectives for the Mixed Use Activity Area include the encouragement of comprehensively planned and integrated mixed-use employment, shopping and residential areas. He agreed that the Downtown Mixed Use Centre is to accommodate a significant share of the City's population and employment growth, but said this is ensured through the City's 2008 Official Plan's minimum density targets for residents and jobs and specific planning policies for each precinct. He said the Downtown Mixed Use Centre designation permits medium and high density along with limited low density residential uses, which allows for a range of development intensity and building heights and applies intensity and use permissions that are suitable for the context. He stated that these policies refer to compatibility with nearby and adjacent land uses. He said that the subject property is planned for lower intensity and lower building height development than that proposed by the Appellant.

[34] Mr. Romano opined that the proposed development would neither be appropriate nor compatible with the scale, urban design and community features of the area, would not be well integrated with the existing area, and would not provide for proper transition. He said the height of the proposed development would be excessive and it would be an inappropriate fit with the existing and planned development context. He said it lacks appropriate transition with the prevailing low- to mid- rise development in the area in terms of scale, massing, height, siting, and setbacks. He stated that the OLRMUP is intended to be an area of transition that is different from other precincts. He said the

OLRMUP provisions provide a hierarchy of density and height requirements as well as specific built form-related requirements, which are not satisfied by the proposed development. He said the precinct is not intended to be developed in a manner that is the same or larger than development in the Downtown Core Precinct or the Wellington Square Mixed-Use Precinct. Rather, he said it is intended to provide transition to the residential areas to the east. Through the OLRMUP policies, he said the City's 2008 Official Plan provides an intensification strategy that implements Provincial and regional policy and provides for a form and extent of intensification that is appropriate. He reiterated that it includes transition and compatibility requirements that provide for a less intense and more comprehensive form of development. He said the proposed development would not conform with the OLRMUP policies and would set a poor precedent for the precinct.

[35] Regarding in the PPS's intensification-related policies, Mr. Romano said the City's Official Plan implements the PPS by requiring efficient development that optimizes land use. He said the PPS states that intensification is to be context-driven and should include a mix of housing options and densities. He opined that the proposed instruments would result in the over-intensification of the subject property in an area outside of those identified by the City for such development. He stated that the PPS does not require intensification at any cost and reiterated that the City's Official Plan provides for a hierarchy of intensification that balances the PPS's intensification objectives with the physical and local context of the area. He said it is in the public interest for a municipality to manage growth and development within its boundaries in accordance with Provincial policies. He stated that the PPS's policies can be satisfied with a development on the subject property that complies with the City's policies.

[36] Mr. Romano also opined that the proposed development does not conform with the Growth Plan. He stated that the Growth Plan is to be implemented through local planning instruments. He said the City's 2008 Official Plan provides for complete communities and a strategy on the extent and form of intensification that is appropriate based on the local context. He said the proposed instruments would inappropriately

increase the extent and form of intensification in the area. He said greater intensification is intended for areas to the west of the subject property. He said the aim is to prevent the unlimited spread of higher density to other areas such as the OLRMUP. He said there is no evidence that the City will not meet its Growth Plan targets and no planning justification for the level of intensification proposed for the subject property. He said an increase beyond as-of-right zoning permissions and the City's development standards is not required for the City to achieve its targets. He said the City is meeting its Growth Plan targets and the City's Official Plan permissions already allow for substantial intensification on the subject property. He said those standards are optimal in light of the physical and planned context. He said the proposed density is not needed.

Analysis and Findings

[37] It has long been the practice of the Tribunal on planning appeals to apply the official plan policies that were in effect when the applications in question were filed (see *Clergy Properties Ltd. v. Mississauga (City)* (1996), 34 O.M.B.R. 277 (O.M.B.)). By maintaining the same policy requirements from the time of application to the time of adjudication, certainty and a fair process are ensured.

[38] The City's 2008 Official Plan was in force at the time of the Appellant's applications and, as a result, the Tribunal finds that the policies in the City's 2008 Official Plan apply in this proceeding. The City's 2020 Official Plan is relevant and the Tribunal will have regard to it, but the test of conformity will be applied with respect to the City's 2008 Official Plan.

[39] With regard the City's 2008 Official Plan polices for the Mixed Use Activity Area, they focus on encouraging a mix of uses, compact development, compatibility, and pedestrian- and transit-oriented development. The proposed development includes residential and commercial uses along with publicly accessible open space. It is a high density development in a compact form and is both pedestrian- and transit-oriented. As discussed further below, the Tribunal finds that the proposed instruments facilitate

development that is compatible with surrounding land uses and they help accommodate population and employment growth in the area. The Tribunal finds that the proposed instruments conform with the Official Plan's Mixed Use Activity Areas policies.

[40] In regard the City's 2008 Official Plan polices for the Downtown Mixed Use Area, the Tribunal notes that the subject property is located within the Urban Growth Centre and the proposed instruments facilitate the development of an underutilized site. The proposed instruments provide for residential intensification and the efficient use of land providing for residential and mixed uses in a compact form. The proposed development maintains and preserves a building of cultural heritage value, provides a publicly accessible open space area and access to parks, and provides a view corridor to the lake. With the proposed POPS and enhanced public realm, the proposed development adds to the vibrancy of the area and facilitates public gatherings and social interaction. It is located close to multiple bus stops and the John Street Terminal, and, as determined below, provides adequate parking. It supports active transportation with bicycle parking facilities, enhanced sidewalks, open space, and access to the waterfront. The Tribunal finds that the proposed instruments facilitate a high density mixed-use development that will help accommodate population and employment growth in the area and they conform with the City's 2008 Official Plan polices for the Downtown Mixed Use Area.

[41] In regard to compatibility issues, they must be determined based on the surrounding building heights, massing, densities, uses, and character of the area, among other factors. The subject property is in the immediate vicinity of several tall buildings over 20 storeys in height to the north and west that are existing, under construction, or approved for development. To the south is low-rise development, which is restricted by constraints associated with the lake. Further to the east are residential uses comprised primarily of low-rise development, but also some higher density tall residential buildings, including an 18-storey apartment building. The existing buildings on the subject property are low-rise. Part VIII of the City's 2008 Official Plan defines the word "compatible" in the following manner:

> 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.

The character of the area is one of a downtown with a focus on mixed uses, vibrancy, and access to the waterfront, which would be complemented by the proposed development. The Tribunal finds that based on the evidence before it, the proposed development will co-exist in harmony with existing and planned development in the area and will not have any undue adverse impacts or cause any environmental or health risks. It will be a mixed-use development, which is similar to existing uses in the area and permitted under the City's 2008 Official Plan and Zoning By-law. The proposed height and massing are similar to several nearby existing or approved buildings. There is no evidence that the proposed development would have adverse impacts on adjacent properties to the north and west or the lower scale development to the south and east. In particular, as discussed below in terms of design, urban form, and sun-shadowing, the proposed development would have no undue adverse impacts. Concerns relating to vibration, dust, odours, traffic, and safety were not at issue in this proceeding. There was no evidence produced that the proposed development would cause undue adverse noise issues. Given these facts, the Tribunal finds that the proposed development will be compatible with the surrounding existing and planned context.

[42] In terms of maintaining the OLRMUP's distinctiveness, the Tribunal finds that with the preservation of cultural heritage features and the provision of publicly accessible open space, accessibility to the lake, and a view corridor, the proposed development will assist in ensuring that the OLRMUP is different from other precincts in the area in line with Policy 5.5.2 (m) of Part III of the City's 2008 Official Plan. It also finds that given the location of the proposed development in the immediate vicinity of other tall buildings in the Downtown area, it will help maintain a limited concentrated area of tall buildings and density and will not facilitate the spread of high density

development throughout the City's Downtown area in accordance with the related objectives in Policy 5.5.9.1(a).

[43] The City's 2008 Official Plan, Part III, Policy 5.5.7.1(a) states that the OLRMUP is intended to be an area for high intensity mixed-use development that transitions from the high density mixed-uses to the west to residential areas to the east. It states that the OLRMUP is:

> 5.5.7.1(a) 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.

Transition involves the gradual change in character from one area to another. The Tribunal agrees with Ms. Rottenberg-Walker and Ms. Anderson that transition addresses a change in state and is not restricted to height and density considerations. When addressing transition issues, one must focus on various aspects of the character of the area, including use, density, built form, fit, design, massing, and height, among others. Transition does not need to be linear in nature and should be considered from various viewpoints and perspectives (see *Empire Communities (Yorkville) LP v. Toronto (City)*, 2018 CarswellOnt 9827, at paragraphs 38 and 43; and *Burnac Enterprises Inc. v. Toronto (City)*, 2021 CarswellOnt 12826, at paragraph 5).

[44] As noted above, the existing and approved context of the area in the immediate vicinity of the subject property is high density with tall buildings, mixed uses, and a downtown atmosphere and vibrancy. This character gradually changes as one moves east and eventually transitions into a residential area that is predominantly low-rise with a quieter, less dense character. It more abruptly transitions to the south, which, as noted above, has low-rise development constrained by factors associated with the lake. Policy 5.5.7.1(a) sets out the objective that the OLRMUP be an area for transition, but given the precinct's small size and the associated height provisions in Policy 5.5.7.2, an immediate downward transition in height to the east cannot be required based on the height limits in the Official Plan. Policy 5.5.7.2 allows taller buildings (up to 15 storeys in

the OLRMUP's west sector with conditions) than those permitted to the west of the precinct in the Wellington Square Mixed-Use Precinct (up to 14 storeys) and to the north in the Downtown Core Precinct (up to 8 storeys). The adjacent property to the east of the subject property has a site-specific permission for a tall building height of 12 storeys. Based on the height limits in the Official Plan, a height reduction from west to east cannot be required if the conditions for increased heights in Policy 5.5.7.2 are met.

[45] The actual heights of the existing and approved buildings to the north and west of the subject property are taller than the height limits in the Official Plan. As a result, if the height limits set out in Policy 5.5.7.2 were applied, then a reduction in height to the east could occur. However, such a reduction in height would be unnecessarily dramatic rather than gradual. It would likely result in significant changes in density, massing, and built form within a small area. The proposed development is marginally shorter than the approved peak building height to the immediate northwest of the subject property and thus helps to commence a gradual height reduction to the east. Importantly, the proposed development provides for public access, open space, and a view corridor to the lake as well as a building orientation and structure that facilitates transition both to the south and the east. Given all of these factors, the Tribunal finds that the proposed instruments facilitate transition from high density mixed-use areas to the more residential areas to the east in accordance with Policy 5.5.7.2.

[46] The 27-storey proposed height of the development exceeds the height limits in Policy 5.5.7.2. On an official plan amendment appeal, the Tribunal will have regard for the objectives and provisions of the official plan being amended, but the policy that is proposed to be amended should not be used to defeat the proposed amendment itself (see *Chedoke Terrace Inc., Re*, 1993 CarswellOnt 5196, at page 28). In addressing the proposed Official Plan Amendment, as set out above, the Tribunal has had regard for and considered the objectives and provisions of the City's 2008 Official Plan requiring, among other things, compatibility, transition, and efficient compact development. Based on these findings and considerations, the Tribunal finds that the proposed height amendments are appropriate.

[47] The Tribunal finds that the proposed instruments are consistent with the PPS. It finds that the proposed instruments facilitate intensification in an appropriate area taking into account the local context, existing building stock, and available infrastructure and services. The subject property is located close to public transit and in an area where employment, shopping and residential uses are encouraged and are to be integrated in a compact urban form at higher development intensities and with a focus and orientation on pedestrian and public transit access and use. The proposed instruments facilitate a high density mixed-use development that is an alternative to low density, suburban development and encourages the efficient use of physical resources and municipal services. Through the proposed POPs and increased public realm, widened sidewalks, and access to the waterfront, the proposed development creates a community identity and a focal point for community functions. The Tribunal finds that the proposed instruments provide for the integration of uses in a compact urban form, while maintaining compatibility with nearby uses. It also adds to the public realm and provides linkages to the City's open space and provides for retail commercial uses at the street level. It is located in an area in which high density residential uses and a range of building heights are permitted and adds to the mix of available housing options and density in the area.

[48] The Tribunal also finds that the proposed instruments conform with the Growth Plan. The subject property is located close to public transit and lies in the Downtown area of the City close to amenities and public services. The Tribunal finds that through the provision of residential and commercial units in the City's Downtown, the proposed instruments will help to create a complete and vibrant community and will assist in ensuring that the Growth Plan targets are met. The proposed instruments support the achievement of a complete community, prioritize intensification and higher densities in a strategic growth area, make efficient use of land and infrastructure, support transit viability, support a range and mix of housing options, and help conserve cultural heritage resources. They direct growth to a settlement area and will facilitate a mix of residential and commercial uses providing convenient access to local stores, services, and public service facilities, provide a range of transportation options, provide for

publicly-accessible open space, and provide compact built form and a vibrant public realm.

2. Urban Design

Appellant's Evidence and Submissions

[49] Mr. Reid opined that the proposed development would provide a high quality of urban design and is consistent with the City's urban design related guidelines. He said the City's Urban Design Review Panel gave the proposed development a positive review. He said the proposed development would fit in with the existing, proposed, and evolving urban contexts and would positively impact the area. He opined that the proposed development represents an efficient, attractive and compact development that would help maintain the Downtown area as the centre of the City. He stated that the proposed tower element would have a unique design that is compatible with other nearby developments. He opined that the proposed building frontages would have a high quality of architectural resolution and design and would keep the area safe and pedestrian-oriented. He opined that the proposed height is appropriate given the downtown context. He said the subject property is well-served by existing infrastructure, services, and transit, and is in an established location for intensification and growth. He said the proposed development would add new residents to support the area's vibrancy and provide for economic activities, active commercial uses, and cultural and entertainment venues. He opined that the proposed development would provide high quality urban design in terms of architecture, landscaping, and site design and conforms with the City's 2008 Official Plan.

[50] Mr. Reid reviewed the City's 2017 Tall Building Guidelines and opined that the subject property is sufficiently sized and the proposed development generally satisfies the Guidelines' requirements. He opined that the height, massing, design, materials, and setbacks for the proposed podium generally satisfy the Tall Building Guidelines' requirements. He said the proposed podium would appropriately frame adjacent streets

and provide street-level transition and its height would be generally consistent with those of other buildings in the immediate area. He said it would have a similar massing to buildings nearby and would fit within the existing and planned context. He opined that the proposed tower would have an appropriate tower floorplate and the massing and positioning of the proposed development would create public spaces and a view corridor to the lake.

[51] In regard to the City's 2006 Downtown Urban Design Guidelines, Mr. Reid reviewed its provisions on walkable and permeable fabric, heritage buildings, views, parking lots, open spaces and the pedestrian network, and existing massing and built form. He also reviewed the Guidelines' public realm policies on façade renovations and restoration, walkways, open and civic spaces, landscape buffers, and linkages to the waterfront. He reviewed the Guidelines' built form policies addressing parking, loading and service areas, setbacks, street walls, entrances, design of the first floor, weather protection, heritage, shadowing impacts, massing and setbacks, roofs, separation between tall elements, and high-rise design and architectural quality, and high-rise building massing, articulation, and detailing.

[52] Mr. Reid also reviewed the City's 2009 Old Lakeshore Road Precinct Phase II Urban Design Guidelines, which set out development options for the precinct examining building heights, retention of heritage structures, road alignment, and other elements. He reviewed the Guidelines' provisions on pedestrian connections, open spaces, courtyards and mid-block connections, structure for below-grade parking, surface parking, servicing and loading, building setbacks and step-backs, building base design, high-rise building articulation, roof design, and building materials.

[53] Mr. Reid also reviewed the City's 2019 Downtown Streetscape Guidelines. He reviewed their vision and principles and provisions on character areas, streetscape anatomy, design priorities, and pedestrian crossings. He opined that the proposed development meets the intent of the Guidelines and is consistent with its vision of enhancing the public realm by creating high quality Downtown streetscapes that are attractive, pedestrian-friendly, and support vibrant destinations.

[54] Mr. Reid further reviewed the City's 2019 Sustainable Building and Development Guidelines. He opined that the proposed instruments are consistent with the Guidelines' provisions on bicycle storage, pedestrian and bicycle connections, use of permeable materials to reduce stormwater runoff, green roofs, and vegetated landscape areas.

[55] Mr. Reid reviewed the City's draft 2020 Downtown Burlington Placemaking and Urban Design Guidelines. He reviewed the Guidelines' vision and principles and provisions on retail and mixed-use streetscapes, building height, massing and transition, façade design, vehicular access, service and loading, POPS, cultural heritage resources, and tall buildings. He opined that the proposed development adequately meets or is compatible with the intention of these Guidelines.

City's Evidence and Submissions

[56] Mr. Evershed opined that the proposed development would not fit in appropriately with the existing and planned context. He opined that the proposed development does not represent appropriate urban design in addressing height, density, form, massing, bulk, scale, siting, transition, building articulation, setbacks, or spacing. Although he opined that the proposed instruments have appropriate regard for the City's Tall Building Design Guidelines, he expressed concerns regarding the height of the proposed podium. He opined that it would be too tall and dense for the subject property. Mr. Evershed opined that the proposed development would result in a form, massing and scale of development that is not in keeping with the vision and provisions of the City's planning policies or the existing character of the area. He also opined that the proposed development would not provide an appropriate tower floor plate size that minimizes sky view and shadowing impacts.

Analysis and Findings

[57] The Tribunal finds that the proposed instruments facilitate a development that represents appropriate urban design and conforms with the height, density, form, massing, bulk, scale, siting, transitions, building articulation, setbacks and spacing requirements in the City's 2008 Official Plan. The City's 2008 Official Plan states that urban form shall be designed in an efficient, attractive and compact manner to enhance the well-being of the residents of the community and contain compact forms of development that support higher densities, are pedestrian oriented and encourage increased use of public transit. Based on Mr. Reid's evidence and the findings above, the Tribunal finds that the proposed instruments facilitate a development that conforms with these policies and provides a high quality of urban design.

[58] The Tribunal has had regard for the City's Tall Building Design Guidelines. The Tribunal finds that the proposed development represents an appropriate building height, provides an appropriate tower floorplate size and will have an appropriately sized podium in terms of height and massing based on the existing and planned context. The Tribunal finds that the height of the proposed podium at 21.2 m generally reflects the existing and planned streetwall of the area. Although it would slightly exceed the recommended 20 m maximum set out in the Guidelines, the Tribunal finds that the exceedance is not excessive and will add to streetwall variation.

[59] Taking into account Mr. Reid's evidence, the Tribunal also has had regard for the Downtown Urban Design Guidelines, Old Lakeshore Road Precinct Phase II Urban Design Guidelines, Downtown Streetscape Guidelines, draft Downtown Burlington Placemaking and Urban Design Guidelines, and Sustainable Building and Development Guidelines. The proposed setbacks, improvements to the public realm and access to the waterfront and parks, preservation of the Chrysler Carriage House, built form, and massing of the development address the provisions in the applicable urban design and streetscape guidelines and provide for a development that is compatible with the surrounding area. The Tribunal also finds that the proposed bicycle storage, pedestrian

and bicycle connections, landscaping, and public realm features address the provisions in the City's Sustainable Building and Development Guidelines.

3. Parking

Appellant's Evidence and Submissions

[60] Ms. Waugh stated that the proposed development would have 310 residential units, 707.1 m^2 of retail gross floor area, and 316 underground parking spaces. She stated that these would consist of 286 parking spaces for residents and 30 spaces for visitors. She said six of the parking spots for residents would be used for car-sharing, which can be calculated to contribute the equivalent of 24 spaces under the provisions of the City's 2017 City-Wide Parking Standards Review. With the proposed car-sharing spaces, she said there would be the equivalent of 334 spaces in total. She said this would result in a parking rate of 1.08 spaces per residential unit. She stated that the Zoning By-law requires a minimum of 1.25 spaces per unit.

[61] Ms. Waugh stated that if parking spaces are not used for car-sharing, they would instead be used as resident parking spaces. This would result in a parking ratio of 1.02 spaces per unit (including visitor parking). She said there are seven bus routes with stops within a five-minute walk of the subject property and that the John Street Bus Terminal is roughly a five-minute walk or 350 m away. She stated that the proposed development would also include 179 bicycle parking spaces. She opined that based on the available access to public transit and active transportation and the walkability of the subject property, a parking rate of 1.02 is supportable and would encourage the use of sustainable travel alternatives.

[62] Ms. Waugh said the Zoning By-law requires an area of 16.5 m^2 for each parking stall. To meet this standard, she said the proposed configuration of the parking garage facilitates parking stalls generally with a minimum width of 2.75 m and length of 6 m. However, she stated that five of the proposed parking stalls would be 5.5 m in length

and not achieve the minimum required area. She said municipalities regularly allow smaller spaces in zoning by-law requirements up to a maximum of 10% to 15% of the total parking supply. She noted that the proposed number of smaller spaces represents 2% of the total supply in the present case. She opined that the proposed parking arrangements are appropriate.

City's Evidence and Submissions

[63] Mr. Clark said that the City-Wide Parking Standards Review states that a reduction in parking spaces to accommodate the inclusion of car-share spaces may be considered subject to conditions, including that the developer secure an agreement with a car-share provider for at least a three-year period and that the proposed car-share spaces be easily accessible to the public. He stated that these conditions have not been met in the present case. He said there is no evidence that the Appellant has secured an agreement with a car-share provider and, in fact, there are no car-share providers operating in the City. He also said the proposed spaces would be in an underground parking garage that is not easily accessible to the public. He opined that the six proposed car-sharing spaces, representing the proposed equivalent of 24 parking spaces, should not be included in the calculation of parking spaces for the proposed development.

[64] Mr. Clark stated that the Appellant's inclusion of five under-sized parking spaces is also inappropriate. He confirmed that the Zoning By-law and the City's Site Plan Application Guidelines require parking spaces to have a total area of no less than 16.5 m^2. He said the five spaces in question are not appropriately sized and should not be included as part of the required parking supply.

[65] Mr. Clark stated that without the car-share and five small spaces, the proposed development would have only 311 spaces (including visitor parking) representing a parking rate of 1.00 parking spaces per unit, which, he opined, is insufficient. Based on sampling completed by the City of parking at residential buildings in the vicinity of the

subject property, Mr. Clark opined that a combined parking rate of at least 1.07 parking spaces per unit would be appropriate. This would require a total of 333 parking spaces (including 10 visitor spaces). Under cross-examination, Mr. Clark acknowledged that his analysis did not take into account the proximity of the subject property to public transit or the use of active transportation. He also acknowledged that current Provincial policy mandates a reduced reliance on automobile use and lower parking rates and that such policies were not in place when the residential buildings that the City sampled were built. He also acknowledged that the proposed smaller spaces would be larger in size than regular spaces in several other municipalities and could accommodate various car sizes, including mini-vans. He could not identify undue adverse impacts that could arise from including such parking spaces.

Analysis and Findings

[66] The City-Wide Parking Standards Review states that a reduction in spaces in consideration of the inclusion of car-share spots may be considered subject to conditions, including the securing of an agreement with a car-share provider and the use of a location that is easily accessible to the public. The Tribunal finds that these requirements are reasonable and, in the present case, neither is satisfied. The evidence before the Tribunal is that there are no car-share providers operating in the City and the parking garage would be underground requiring access through the building. Based on the evidence before it and applying the criteria in the City-Wide Parking Standards Review, the Tribunal finds that the use of the proposed car-sharing spaces when calculating the required parking is not appropriate.

[67] Regarding the proposed use of five smaller spaces, the City provided no evidence that the inclusion of smaller spaces would have any negative impacts. Given the use of similarly sized spaces elsewhere, the limited number of proposed smaller spaces, and evidence from Mr. Clark that the proposed smaller spaces could accommodate many car sizes, the Tribunal finds that the proposed smaller parking

spaces are appropriate in the present case and may be used in calculating parking supply.

[68] In terms of whether the proposed development would have sufficient parking spaces if the six spaces that were proposed for car sharing are allocated to residents, the Tribunal finds that it does. The PPS and the Growth Plan encourage development that is transit supportive and facilitates active transportation. Policies 5.2.2(l) and 5.4.2(m) of Part III of the City's 2008 Official Plan emphasize that the City may consider the use of reduced parking standards in Mixed Use Activity Areas. Also, its Policy 5.4.2(h) encourages greater reliance on non-automobile forms of transportation. The subject property is close to public transit and within walking distance of local amenities and services. The proposed development facilitates the use of active transportation through the provision of bicycle storage facilities and improved sidewalks and access to the waterfront and trails. Given these facts, the Tribunal finds that there is alternative transportation available. Taking into account the above-noted policies and facts, the Tribunal finds that the Appellant's proposed parking arrangements, with the exclusion of the six car-sharing spaces, is appropriate.

4. Shadow Impacts

Appellant's Evidence and Submissions

[69] Mr. Reid stated that the Appellant had shadow studies prepared in 2019 and 2020 that found that shadow impacts from the proposed development would be minimal and acceptable. He said shadows on the public realm and sidewalks would have minimal impacts and there would be no shadow impacts on civic and cultural spaces or places where children play. He opined that the impacts would be acceptable for a downtown location within an Urban Growth Centre, such as the subject property. Based on these studies, he said as-of-right development on the subject property could in fact generate greater shadow impacts than the proposed development.

City's Evidence and Submissions

[70] Mr. Evershed reviewed the requirements in the City's 2020 Shadow Study Guidelines and Terms of Reference. He said they set out shadow impact criteria, which must be considered, including cumulative shadow impacts. He stated that if any of these criteria cannot be met, then mitigation through greater step-backs, changes in orientation, reduced height, and other changes should be required. He stated that further shadow studies should be done in the present case. Under cross-examination he agreed that based on the Appellant's shadow studies, shadow impacts would be essentially limited to slightly increased shadows on the sidewalk across the street.

Analysis and Findings

[71] The Tribunal has had regard to the City's 2020 Shadow Study Guidelines and Terms of Reference and, based on Mr. Reid's evidence, it finds that the shadow impacts of the proposed development would be acceptable. It finds that based on the downtown context in which the subject property is located and the minimal projected shadow impacts, the proposed development is appropriate from a shadow impacts perspective. The Tribunal notes that, based on the evidence before it, as-of-right development on the subject property could have similar, if not greater, shadow impacts than those from the proposed development.

5. New Instruments

Appellant's Evidence and Submissions

[72] Ms. Rottenberg-Walker noted that a number of relevant policies, including the City's 2020 Official Plan, came into force after the Appellant's applications were filed. She stated that the Tribunal should have regard to these new policies, but conformity is not required.

[73] Ms. Rottenberg-Walker opined that the proposed instruments address the general intent of the City's 2020 Official Plan and contribute to the realization of its goals, vision, and policies related to: support for public transit; intensification; the public realm; and built form. She also opined that the proposed instruments address the City's 2020 Official Plan policies on the Mixed Use Intensification Area, Downtown Urban Centre, Urban Growth Centre, and MTSA. She reiterated that the proposed instruments would facilitate a development that provides transit-supportive residential and commercial density, which is close to existing public service facilities and amenities. She reiterated that the proposed built form would be massed to achieve an appropriate transition to the surrounding context, create a view corridor to Lake Ontario, enlarge the public realm, and improve pedestrian routes. She stated that the City's 2020 Official Plan changes the name of the "Old Lakeshore Road Mixed Use Precinct" to "Old Lakeshore Road Precinct" ("OLRP") and focuses on transition in the OLRP from north to south toward the waterfront rather than toward the residential areas to the east. She said the previously defined Wellington Square Mixed-Use and Downtown Core Precincts are consolidated into a new precinct and the policies identifying the old Wellington Square Mixed-Use Precinct as a concentrated area for taller, high density development have been removed, which she opined is consistent with the taller emerging built form surrounding the subject property. She said the preamble to the OLRP's policies maintain the same maximum height and density requirements and conditions for increased heights as in the City's 2008 Official Plan.

[74] Ms. Rottenberg-Walker also referred to the City's Official Plan Amendment No. 119 ("OPA No. 119"), which was adopted in January 2020. She said it implements the recommendations arising from an Interim Control By-law land-use study that was initiated by the City in 2019. Among other things, she said OPA No. 119 reduces the importance given to the City's Downtown MTSA. She noted that OPA No. 119 is under appeal and is not in force.

[75] Regarding ROPA No. 48, Ms. Rottenberg-Walker said it removes the subject property from being in a MTSA and Urban Growth Area, but maintains it within a

secondary regional node and strategic growth area where population and employment growth are to be focused. She said the transition provisions in ROPA No. 48 Policy 80.3 allow the subject property to continue to be considered as within an Urban Growth Centre for the purposes of the present official plan and zoning by-law amendment applications and appeals. She opined that the proposed instruments conform with ROPA No. 48.

City's Evidence and Submissions

[76] Mr. Romano opined that the proposed instruments do not conform with the City's 2020 Official Plan. He stated that the City's 2020 Official Plan continues to identify the City's Downtown as a mixed-use intensification area, but, referring to Policy 8.1.1(3), he stated that not all areas are to be developed the same. He also referred to Policy 8.1.1(3.1)(c), which sets out the objective that each precinct is distinct and should have specific policies addressing differences in land uses, height, and built form. Mr. Romano emphasized that the OLRP policies continue to address transition and the distinctiveness of the precinct. He said they replace the OLRMUP's high intensity mixed-use objectives with an aim for mid-rise buildings and modest tall buildings that provide transition to the waterfront. He defined a "modest tall building" as being equivalent to a "tall mid-rise building". He said high-density apartment residential is no longer a permitted use and minimum densities are no longer required, demonstrating an emerging policy context of less intense development, which he said the proposed development does not reflect. He said the City's 2020 Official Plan provides an intensification strategy and land use pattern that implements the PPS, Growth Plan, and the Region's Official Plan and applies transition and compatibility requirements for less intense development.

Analysis and Findings

[77] The Tribunal has had regard to the policies in the City's 2020 Official Plan. The proposed instruments facilitate a development that provides transit-oriented residential

and commercial density supported by existing public service facilities and amenities and a built form and design that is compatible with the surrounding context. The City's 2020 Official Plan states that each precinct is to have a distinct character and that precincts in the Urban Growth Centre will not all develop in the same way. Development should be planned based on the context and character of each precinct. Specifically, Policy 8.1.1(3.1)(c) sets out the objective:

> 8.1.1(3.1)(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.

Policy 8.1.1(3) states, in part:

> 8.1.1(3) […] Although the Downtown Urban Growth Centre is an intensification area, not all sites within the Urban Growth Centre will develop or redevelop to the same extent. The amount of height and density on any site depends on the site' location and context within the Downtown as set out in each precinct.

[78] The Tribunal finds that the proposed instruments address these requirements. Based on the evidence before the Tribunal, the proposed instruments facilitate development that is compatible with its surrounding context and maintains and augments the distinct character of the OLRP. Through the creation of a view corridor to the lake, the improved public realm, widened sidewalks, improved pedestrian access to the waterfront and nearby parks, and preservation and integration of the Chrysler Carriage House, the OLRP will continue as a distinct precinct in the area that is developed in a distinct manner.

[79] The specific precinct-focused provisions in the Official Plan have been revised to require less intense development and a transition to the south rather than to the east. Policy 8.1.1(3.6) of the City's 2020 Official Plan states:

> 8.1.1(3.6) The OLRP 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.

A “mid-rise building” is defined in the City’s 2020 Official Plan as between five and eleven storeys in height, which is considerably less than the 27 storeys proposed here. Regarding whether the proposed development would be a “modest tall building”, Mr. Romano suggested that this term means a “tall mid-rise building”. Given that buildings are permitted in the OLRP’s west sector up to a height of 15 storeys (subject to conditions) and the term “modest tall buildings” refers to a type of “tall building”, the Tribunal finds that Mr. Romano’s interpretation is not persuasive.

[80] A “tall building” is defined in the City’s 2020 Official Plan as over 12 storeys in height. At 27 storeys, the proposed development would be a tall building. Regarding whether the proposed development would be a “modest tall building”, the Tribunal notes that the OLRP’s policies aim to ensure that development is compatible with the surrounding context and maintains the character of the area. To be modest, development in the OLRP should not be excessively large or outlandish in comparison to neighbouring structures. As noted above, the Tribunal finds that the proposed development is compatible and maintains the character of the area. It is not larger or considerably different from other neighbouring approved buildings. Therefore, it fulfills these aims of the OLRP’s policies. It also assists in achieving the objectives of a view corridor to Lake Ontario, an improved public realm, widened sidewalks, and improved pedestrian access to the waterfront and nearby parks. In this manner, the proposed development helps to provide transition from the buildings to the north and west of the subject property down toward the waterfront, is appropriate for the subject property, and is in accordance with the requirements in Policy 8.1.1(3.6).

[81] Regarding OPA No. 119 and ROPA No. 48, the subject property is removed from the MTSA, but the Tribunal notes that the area still remains easily accessible to transit and that the proposed development is transit-supportive. Given the transition provisions in ROPA No. 48, the subject property remains in an Urban Growth Area for the

purposes of this proceeding. The Tribunal has had regard to these policies and finds that the proposed instruments do not conflict with them.

6. Other Issues

Appellant's Evidence and Submissions

[82] Ms. Rottenberg-Walker opined that proposed development has appropriate regard to the matters of provincial interest set out in s. 2 of the *Planning Act*. She stated that the proposed built form, use and density, and improvements to the public realm would provide for a sense of place in the area. She said the proposed development would incorporate and preserve the Chrysler Carriage House, provide public realm improvements, provide housing and jobs close to public transit, and use existing public infrastructure. She said it would contribute to housing options and diversity in the area.

[83] Ms. Rottenberg-Walker also provided evidence that the proposed instruments conform with the Region's Official Plan. She stated that the subject property is in a designated Urban Area in which intensification and increased densities are encouraged and the proposed development would provide additional residential units, contribute to the achievement of the Region's housing targets, and increase housing options in the area. She stated that the subject property is located in an Intensification Area under the Region's Official Plan and the proposed development would add to the building of a healthy community by encouraging local active transportation and pedestrian activity.

[84] She opined that the proposed instruments represent good land use planning. She stated that they would facilitate a development with high quality architecture and urban design that responds to the existing and planned context with positive built form. She opined that the proposed instruments are in the public interest.

City's Evidence and Submissions

[85] Mr. Romano opined that the proposed instruments do not have regard to the matters of provincial interest in s. 2 of the *Planning Act*. He said they do not have regard to the orderly development of safe and healthy communities, the resolution of planning conflicts, the appropriate location of growth and development, or the promotion of appropriate built form. He also stated that the proposed instruments do not align with the existing and planned land-use planning framework for the area envisioning less intense development. He said the proposed instruments facilitate development and growth in an unintended location and undermine the City's planning framework and built form environment.

[86] Mr. Romano also opined that the proposed development does not represent good land use planning. He said the proposed development does not follow the City's established land use planning framework and diminishes the certainty, order, and viability of the applicable planning principles, goals and objectives. He said the proposed development reflects an inappropriate form and extent of intensification and does not represent the optimal development of the subject property. He said it fails to implement the appropriate principles of physical character context and planning instrument direction as set out in the City's policies, which prescribe less intense development in the area. He said the proposed instruments serve a private interest in place of the public interest. He said the proposed development constitutes over-development and is not in the public interest.

Analysis and Findings

[87] In making its Decision, the Tribunal has had regard to the matters of provincial interest set out in s. 2 of the *Planning Act*. Based on the evidence before it, the Tribunal finds that the proposed built form, use and density, and improvements to the public realm will provide for a sense of place in the area, the key heritage feature on the subject property will be preserved, the subject property is located in an appropriate

location close to public transit, and the proposed instruments will contribute to the range of housing options and diversity in the area.

[88] The Tribunal finds that the proposed instruments conform with the Region's Official Plan. They facilitate intensification in an appropriate area, contribute to the achievement of the Region's housing targets, improve housing local options, and contribute to the achievement of a healthy community with active transportation and pedestrian-oriented development.

[89] The Tribunal finds that the proposed instruments constitute good planning. It finds that they facilitate development that is compatible with the existing and planned context and will make a positive contribution to the area in terms of improvements to the public realm, access to the waterfront, and built form, while optimizing the use of under-utilized lands through appropriate intensification for the area. Taking these factors into account, the Tribunal finds that the proposed instruments are in the public interest.

ISSUES RAISED BY HCC NO. 160

[90] In its Participant Status Request Form, dated November 19, 2021, HCC No. 160 raised concerns relating to traffic, road capacity, and shadows. The Tribunal finds that these concerns were raised by the Parties at the hearing and are addressed in this Decision.

CONCLUSIONS

[91] The Tribunal finds that the proposed Official Plan and Zoning By-law Amendments are consistent with the PPS, conform with the Growth Plan, conform with the Region's Official Plan, represent good planning, and are in the public interest. The Tribunal also finds that the proposed Zoning By-law Amendment conforms with the City's 2008 Official Plan. In making these findings, the Tribunal has had regard to the City's 2020 Official Plan and other applicable policies as well as the matters of

provincial interest set out in s. 2 of the *Planning Act*. The Tribunal has also had regard to the information and material that City Council received in relation to this matter.

INTERIM ORDER

[92] The Tribunal orders that the appeal is allowed in principle, on an interim basis, contingent upon confirmation, satisfaction or receipt of the pre-requisite matters identified in paragraph [93] below.

[93] The Tribunal will withhold the issuance of its Final Order contingent upon the following conditions being satisfied:

1. the final form of the Official Plan and Zoning By-law Amendment are to the satisfaction of the Parties;

2. the Zoning By-law Amendment contains an "H" Symbol, pursuant to Section 36(1) of the *Planning Act*, and including the matters substantially in the form of Schedule "A" to the Executed Minutes of Settlement between the Appellant and the Region, entered as Exhibit 1, specifying that the uses set out in the Amending By-law (excluding existing uses) shall not be permitted, until the City enacts an amending zoning by-law to remove the "H" symbol upon receipt of a complete application from the Applicant that demonstrates the following conditions have been fulfilled, to the satisfaction of the Region (the "H Symbol"):

   (a) prior to the removal of the H Symbol, the following must be completed to the satisfaction of the Region and the City:

      i. a Record of Site Condition has been filed with and acknowledged by the Ministry of Environment, Conservation and Parks; and,
      ii. all environmental site condition requirements related to the Record of Site Condition have been met;
      iii. additional provisions may be inserted relating to the implementation of the H Symbol, and to ensure that remediation can be effected at the appropriate point during the development approval process;

3. The Zoning By-law Amendment shall include a provision that should any vehicular access or vehicular entrance onto Old Lakeshore Road from the Lands be required, the access or entrance shall be set back at 15 metres from the eastern property line of the Lands.

4. Subject to item 5 and any refinements made in the course of an application for site plan approval, the Proposal shall be constructed substantially in accordance with the Conceptual Architectural Drawings prepared by Studio

JCI, dated September 30, 2020, and included at Joint Document Book, Exhibit 4, Tab 44.

5. Subject to item 4 and any refinements made in the course of an application for site plan approval, the Proposal shall be constructed and serviced substantially in accordance with:

   (a) the Functional Servicing and Stormwater Management Report prepared by Lithos Group Inc., dated September 2020, Joint Document Book, Exhibit 4, Tab 47;

   (b) the Site Servicing Grading Plan, prepared by Lithos Group Inc., and dated March 21, 2019, Joint Document Book, Exhibit 4, Tab 49;

   (c) the Hydrogeological Investigation, prepared by Fisher Environmental Ltd., dated September 18, 2020, Joint Document Book, Exhibit 4, Tab 51; and

   (d) the revised Architectural Floor Plan for the fifth below-grade storey of the Proposal, prepared by Studio JCI, and appended to this Schedule, that shows a ground water filtration room.

[94] This Member will remain seized for the purposes of reviewing and approving the final drafts of the Official Plan Amendment and Zoning By-Law Amendment and the issuance of the Final Order.

[95] If the Parties do not submit the final drafts of the Zoning By-law Amendment, and provide confirmation that all other contingent pre-requisites to the issuance of the Final Order set out in paragraph [93] above have been satisfied, and do not request the issuance of the Final Order, by **Friday, November 4, 2022**, the Applicant and the City shall provide a written status report to the Tribunal by that date, as to the timing of the expected confirmation and submission of the final form of the draft Zoning By-law Amendment and issuance of the Final Order by the Tribunal. In the event the Tribunal fails to receive the required status report, and/or in the event the contingent pre-requisites are not satisfied by the date indicated above, or by such other deadline as the Tribunal may impose, the Tribunal may then dismiss the Appeal.

[96] The Tribunal may, as necessary, arrange the further attendance of the Parties by Telephone Conference Call to determine the additional timelines and deadline for the

submission of the final form of the instrument(s), the satisfaction of the contingent pre-requisites and the issuance of the Final Order.

"Hugh S. Wilkins"

HUGH S. WILKINS
MEMBER