

Local Planning Appeal Tribunal
Tribunal d'appel de l'aménagement
local



ISSUE DATE: June 19, 2020

CASE NO(S): PL180060
PL180809

The Ontario Municipal Board (the "OMB") is continued under the name Local Planning Appeal Tribunal (the "Tribunal"), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

PROCEEDING COMMENCED UNDER subsection 17(36) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: 291 Olmstead Corp.
Appellant: 3920305 Canada Inc. o/a Finnigan's Pub
Appellant: 6118887 Canada Inc.
Appellant: Brothers Real Estate Ltd.; and others
Subject: Proposed Official Plan Amendment No. OPA 199
Municipality: City of Ottawa
LPAT Case No.: PL180060
LPAT File No.: PL180060
LPAT Case Name: Brothers Real Estate Ltd. v. Ottawa (City)

PROCEEDING COMMENCED UNDER subsection 17(36) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: 291 Olmstead Corp.
Appellant: 3920305 Canada Inc. o/a Finnigan's Pub
Appellant: 6118887 Canada Inc.
Appellant: Brothers Real Estate Ltd.; and others
Subject: Proposed Official Plan Amendment No. OPA 200
Municipality: City of Ottawa
LPAT Case No.: PL180060
LPAT File No.: PL180061

PROCEEDING COMMENCED UNDER subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	1270349 Ontario Ltd. o/a McConville's Garage
Appellant:	3920305 Canada Inc. o/a Finnigan's Pub
Appellant:	6118887 Canada Inc.
Appellant:	Brothers Real Estate Ltd.; and others
Subject:	By-law No. 2018-301
Municipality:	City of Ottawa
LPAT Case No.:	PL180809
LPAT File No.:	PL180809

Heard: January 13-17, 20-24 and 27-29, 2020 in Ottawa, Ontario

APPEARANCES:

Parties

Counsel*/Representative

City of Ottawa	S. Waqué, E. Blanchard, G. Poliquin and C. Enta
The Governing Council of the Salvation Army of Canada	U. Melinz, M. Brodie and S. Lebrun
Brothers Real Estate Ltd., Claude Thivierge, McConville's Garage Ltd. and 1270349 Ontario Inc., Shelter Canadian Properties Ltd., 392035 Canada Inc., 6118887 Canada Inc. and The Wabano Centre for Aboriginal Health	M. Polowin, J. Polowin, A. Tardif and C. Campos

DECISION DELIVERED BY R.G.M. MAKUCH AND ORDER OF THE TRIBUNAL

Background

[1] The Salvation Army ("SA") is a not-for-profit organization, which provides services to the homeless and to the broader community across Canada as well as globally. In Ottawa, SA offers emergency shelter services, medical care services, life

skills programming, chaplain services and addictions treatment services, among others, out of its existing facility in the By-ward Market area of the City known as the “Booth Centre”, a former school site.

[2] It is generally agreed by all that despite the SA’s best efforts in its 50-year occupation of the Booth Centre, the building continues to leave much to be desired, including the fact that it has one entrance for all, regardless of what services are being accessed, and that there is very little interior and no exterior common space. It is also agreed by all that the interior is inflexible, is ill-suited to the variety of services offered and that the current situation in the By-ward Market requires remediation.

[3] It is also generally agreed that there is currently a high concentration of shelters, social services, bars and commercial parking garages in the Market, which, when combined with the poor design of the Booth Centre and other shelters, contributes to conflicts between residents of different facilities or members of the public.

[4] The SA decided some years ago that it needed to build a purpose-built facility at a new location to improve the delivery of its services and after reviewing several properties throughout the city, determined that the subject site known municipally as 325, 327 and 333 Montreal Road, 334 Montfort Street and 273 St. Anne Avenue (the “Site”) met its selection criteria and entered into an agreement of purchase and sale for the properties.

[5] The Site is an irregularly-shaped parcel with an area of approximately 1.8 acres in size (7,726 square metres (“m²”)) on the north side of Montreal Road. The Site is largely set back from the street with 14.95 metres of frontage along Montreal Road. This portion of Montreal Road, including the Site, is designated as a “Traditional Mainstreet” on Schedule “B” of the City of Ottawa (“City”) Official Plan.

[6] The Site rated favorably according to SA, because of its frontage on a Traditional Mainstreet and because it offered excellent pedestrian and vehicular access with Montreal Road being designated as a transit route by the City. The Site, according to

SA, offers multiple points of entry and is physically large enough to accommodate the various services in a well-designed building. Furthermore, the Site according to SA is easily accessible to those who will use the range of services at the facility, while also being proximate to other complementary services in the community. SA proceeded with the preparation of a conceptual design for a new facility.

[7] The majority of the Site is currently zoned “Traditional Mainstreet, Subzone 3, Maximum Height 42 metres” (TM3 H(42)) under the City’s Comprehensive Zoning By-law No. 2008-250 (the “ZBL”) and a small portion of the property is designated “Residential Fourth Density, Subzone E” under the ZBL. As stated above the Site has approximately 15 metres of frontage on Montreal Road but is surrounded on 3 sides by the R4E zone and has approximately 13 metres of frontage onto St. Anne Avenue and approximately 5 metres of frontage onto Montfort Street.

[8] Montreal Road, west of the Site, is characterized by one and two storey retail buildings and is generally reflective of a typical Traditional Mainstreet character. To the east, Montreal Road continues as the major commercial corridor for Vanier, with properties and buildings generally becoming larger and including a retail plaza, high-rise residential buildings and institutional uses as the road approaches St. Laurent Boulevard to the east. Finnigan’s Pub is located immediately to the east of the Site.

[9] On the south side of Montreal Road opposite the Site are three high-rise residential buildings ranging from 12-17 storeys housing hundreds of families, including two buildings managed by the Appellant Shelter Canadian Properties Ltd. The area to the south of Montreal Road is a low-rise residential community, similar in character to the area surrounding the subject property to the north, east and west.

THE APPLICATIONS

[10] In June of 2017, the SA submitted applications for:

1. Amendment to the City Official Plan to permit a “shelter” in an area

designated Traditional Mainstreet;

2. Amendment to the Montreal Road District Secondary Plan to permit surface parking between the Traditional Mainstreet, Montreal Road, and the front of the building; and
3. Zoning By-law Amendment application to permit a “shelter” on the site and grant relief from a number of performance standards.

[11] The amendments would permit the construction of what has been characterized by SA as a 6,159 m² mixed-use facility consisting of a 801 m² emergency shelter and a 5,358 m² Residential Care Facility.

[12] The amendments were approved by the City Council and appealed by a number of individuals and organizations in the area (Appellants).

[13] It is accurate to suggest that these applications generated a significant reaction in the community because of the proposed “shelter” use.

THE APPEALS

[14] The Appellants allege that shelters are not a permitted use on a Traditional Mainstreet under the City’s Official Plan or the City Consolidated Zoning By-law No. 2008-250. They maintain that the exclusion of shelters from these areas is justified and documented by a consistent line of City policy stretching from 2008 to 2019, which treat shelters as being inconsistent with City’s goals for Traditional Mainstreets in general, and City’s goals for Montreal Road in particular.

[15] The Appellants allege that by Council’s own evaluation, Montreal Road in particular lags behind the City’s other Traditional Mainstreets on a range of metrics including: commercial business investment; property maintenance; commercial vacancy rate; commercial and residential property values; commercial and residential rent; and

pedestrian traffic. This lack of success has, by Council's own evaluation, led to a general perception of economic decline according to the Appellants.

[16] The Appellants assert that Montreal Road forms the heart of Vanier's Francophone community, which the City recognizes as a uniquely vital, historic urban Francophone community in Ottawa. The Vanier area is also home to, according to the City, the greatest concentration of urban Indigenous peoples in the country. In its own policy documents, the City recognizes the vulnerability of both communities, and the corresponding responsibility of the City to ensure that they are properly consulted, and coordinated with, on matters that impact the communities' interest, including planning matters.

[17] The Appellants are critical of the application and consultation processes. The SA informed the City of its intention to construct the proposed facility on the Site in January 2015 and held regular meetings with the City on the subject for at least two and half years before the submission of the planning application for the Amendments. Throughout this time, the Appellants believe the City and the SA conducted absolutely no consultation, and in fact intentionally kept the applications secret until after it was submitted, contrary to the advice of Planning Staff, the SA's own consultants, acknowledged best practices and the principles of good planning. When community consultation finally occurred after submission of the applications, the SA did not alter any aspect of the proposed facility in response to that consultation, despite representing to City Council that it would do so.

[18] The Appellants allege that this process was intentionally kept secret from the Vanier community for two and half years, despite the fact that the majority of the proposed facility's funding will come from the ratepayers of Ottawa; and despite the fact that the City acknowledges the unique importance of Vanier's Francophone and Indigenous community and the corresponding duty to meaningfully involve them in policies that affect their interest.

[19] The Appellants take the position that justification for the amendments proffered

by the SA and the City has been that, at best, the proposed facility will not preclude the development of Montreal Road as a Traditional Mainstreet. The Appellants maintain that the justification for the proposed facility is not sufficient given that the SA seeks a site-specific exemption from clear policy that does not permit shelters on Traditional Mainstreets. Moreover, the weight of evidence before the Tribunal will be that the proposed facility will be actively detrimental to vision of the Provincial Planning Statement (“PPS”) and the Official Plan for Traditional Mainstreets as economically thriving, pedestrian-oriented and retail-driven centres of community. The Amendments are therefore not consistent with the PPS or the Official Plan, and do not represent good planning.

[20] Furthermore, the Appellants assert that the evidence before the Tribunal will show the proposed facility will, if constructed, violate the zoning by-law in any event. A proper classification of the zoning uses in the proposed facility demonstrates that the shelter use will far exceed the 801 m² maximum imposed by the zoning by-law amendment. Moreover, the proposed facility will, if constructed, violate the zoning by-law’s maximum of four shelters in Ward 12.

[21] Finally, in adopting the Amendments, the Appellants assert that the City did not discharge its acknowledged duty to meaningfully consult, engage and coordinate with Vanier’s Francophone and Indigenous communities. The failure to discharge this duty is, on its own, grounds for refusing the amendments according to the Appellants. They argue that the weight of evidence before the Tribunal shows that the proposed facility will have detrimental social impacts on the broader Vanier community in general, and on the vulnerable Francophone and Indigenous communities in particular. Social impact is an essential element of any analysis of good planning.

[22] The Appellants acknowledge that the provision of housing and support for the most vulnerable is a vital social good, and that the SA is an important and valuable leader in this field. They do not contest that the SA’s current facility (Booth Centre) is not purpose-built and is in need of replacement. These issues are not before the

Tribunal. Simply stated, the issue before the Tribunal is whether it is appropriate for this proposed facility to be built on the subject property. The Appellants submit that it is not.

THE EVIDENCE

Appellants' Witnesses

[23] The Appellants called the following individuals to proffer opinion evidence in their respective fields in support of their appeals:

[24] Sameer Patel was qualified respecting economic impact on the retail/commercial market on Montreal Road.

[25] Mr. Patel was of the opinion that Montreal Road is currently challenged from the perspective of economic opportunity and referred to the City's Community Improvement Plan for Montreal Road, and other recent initiatives, as evidence of its past failure as a Traditional Mainstreet. He characterized Montreal Road as having a lack of development and a perceived deterioration along Montreal Road which has resulted in reduced property values and low commercial and residential rents. He opined that based on his research, the Vanier area has the lowest residential property values of any of the Traditional Mainstreet areas in the City and that there is limited residential development in the area.

[26] The Site is a large land assembly and if developed as proposed, will be eliminated from the supply of potential redevelopment sites that could contribute to the attainment of the goals of the Official Plan and will impede the ability of Montreal Road to achieve its role as a Traditional Mainstreet.

[27] He was also of the opinion that retail was not doing well on Montreal Road because of a lack of customer demand in the area.

[28] He agreed under cross-examination that there would be positive impacts from

the development of the Site when compared to what currently exists. He also conceded that the proposed facility would provide additional employment and that this is a positive economic benefit for the area.

[29] Mr. Patel also proffered evidence that the high crime rate in the area around the Booth Centre was attributable to the presence of the Booth Centre and that crime would follow the move to the proposed facility. He was of the view that this, together with his view of Montreal Road as an unsuccessful Traditional Mainstreet, indicates that the proposed facility would only further hinder Montreal Road's retail market.

[30] Paul Hicks was qualified as a professional land use planner.

[31] Mr. Hicks was of the opinion that the proposed facility should not be permitted on a Traditional Mainstreet, that the Urban Design Guidelines for Development along Traditional Mainstreets were not respected, that the front yard parking was not "unavoidable," and that the zoning by-law amendment was in conflict with the 2008 Interim Control By-law Staff Report.

[32] Mr. Hicks pointed to PPS policies related to the vitality of a Traditional Mainstreet. His analysis included the assertion that a Mainstreet could only be considered "viable" as per 1.7.1(c) of the PPS if it did not require outside support to be successful; in other words, a viable Mainstreet did not need to rely on municipal initiatives such as Community Improvement Plans.

[33] Mr. Hicks also indicated that the applications met the direction of section 2.5.2 of the Official Plan on "Affordable Housing" and that the proposed facility is a form of intensification that is also an improvement over the existing site conditions. Intensification, he agreed under cross examination, would generate additional pedestrian traffic which Barry Nabatian and Messrs. Patel and Parsons, viewed as integral to a successful Traditional Mainstreet.

[34] His primary concern with the Official Plan was that a Traditional Mainstreet was

not listed in the “shelter accommodation” policy of section 3.1. It is noted that the SA somewhat acknowledged that this policy of the Official Plan was unclear by filing these official plan amendment application.

[35] Mr. Hicks also opined that the proposed facility did not respect the Urban Design Guidelines for Development along Traditional Mainstreets. Specifically, he opined that Guideline 1, which requires that new buildings be aligned along the street wall was not respected because the proposed facility is set back considerably from the street. Similarly, he argued that Guideline 19 was not respected because the front door of the proposed facility is not directly accessible from the public sidewalk. Furthermore, he pointed to the proposal’s lack of compliance with Guideline 23 since not all of the surface parking proposed was at the rear of the building.

[36] He also objected to the parking spaces located between Montreal Road and the front of the building. Under cross examination, he did admit however that he was more concerned with the eight proposed spaces along the woonerf and not those that are proposed behind the rear lot line of the adjacent building. He maintained that the front yard surface parking was a convenient “design choice” rather than an “unavoidable” circumstance and therefore the development did not conform to the Official Plan.

[37] He agreed that the proposed facility was considered intensification along a transit priority area and that the design and location of the proposed facility were well thought-out, appeared to be functional and had operational benefits.

[38] Professor Kenza Benali was qualified in the area of urban geography and urban conflict.

[39] Professor Benali is an Associate Professor in the Department of Geography, Environment and Geomatics at the University of Ottawa and holds a Masters degree in Architecture from Laval University and a Ph.D. in Urban Studies from the University of Quebec at Montreal.

[40] She reviewed what she perceived would be the social, economic and cultural impacts of the proposed facility on the Vanier francophone community, including its vitality, and to what extent those impacts should be considered by the Tribunal.

[41] Professor Benali provided the Tribunal with an overview of the history of Vanier, focusing on the development of the Vanier francophone community, which was divided into two distinct phases.

[42] In the first phase from the 19th to the mid-20th centuries, according to Professor Benali, Vanier became home to a francophone working class, and took on the key characteristics of a francophone neighborhood divided into parishes and characterized by the key role played by churches and French-language schools. She maintains, and it is not disputed, that Vanier played a central role in Franco-Ontarian history.

[43] The second phase, which begins post-World War II, brought new urban planning policies including the Greber Plan. This plan resulted in the expropriation of Lebreton Flats (an area to the west of the City's Downtown Core) as well as changes to the lower By-ward Market area that resulted in the exodus of, or otherwise disrupted, the local francophone communities. Vanier, according to Professor Benali, benefited from some of the francophone migration from these neighborhoods and by the 1960's, Vanier and Orleans were the primary remaining francophone hubs in Ottawa.

[44] She also reviewed the more recent history and status of Vanier's francophone community including the success of more recent policies such as the designation of Vanier as the "Francophone Quartier" of Ottawa, which will have the effect of focusing the development of Vanier as a "community port" for the Ottawa francophone community within the context of the "Anglophone sea" of Ottawa.

[45] It is noted that Professor Benali appeared under summons issued by the Tribunal at the request of the Appellants.

[46] Professor Sylvie Lamoureux was qualified in the area of language.

[47] She is a full professor at the Official Languages and Bilingualism Institute at the University of Ottawa and is the Vice-Dean of Governance and External Relations, Faculty of Arts. She holds a Masters degree of Education, and a Ph.D., Curriculum, Teaching and Learning both from the University of Toronto.

[48] Her academic and research and experience focuses on language policy and French-language education in a minority context in Ontario, including issues of linguistic representation, linguistic and cultural identity and cultural identity as well as the integration into linguistic communities.

[49] She also appeared under summons issued by the Tribunal at the request of the Appellants.

[50] Professor Lamoureux reviewed the linguistic, symbolic and cultural importance of Vanier within the wider Franco-Ontarian community referring to the concepts of “imagined communities” and “emblematic places.” She also reviewed the social and cultural impact of the proposed facility on the Vanier and broader francophone community and the risk that these may generate or reinforce negative representations of Vanier or the francophone community.

[51] Marc Maracle was qualified in urban indigenous community matters.

[52] Mr. Maracle, who also appeared under summons issued by the Tribunal at the request of the Appellants, is the Executive-Director of the Gignut Non-Profit Corporation, which provides approximately 30 housing units in the Vanier area catering to indigenous people since 2004. He has been the Executive-Director of the National Association of Friendship Centres and has worked as a Senior Policy Advisor with the National Aboriginal Management Board at Human Resources Development Canada.

[53] He provided the Tribunal with a basic overview of the Vanier indigenous community, including indigenous demographics for the area, and a description of cultural and organizational infrastructure of the Vanier indigenous community. This

includes the organizations that are run by and/or cater to the community and how these organizations came to be concentrated in Vanier. He reviewed the history of the Vanier indigenous community including challenges faced by the community and the organizational response to those challenges. He described the high proportion of vulnerable people including women, single parents, children and the elderly in Vanier.

[54] He expressed concerns about the proposed facility on behalf of the Indigenous community in Vanier, noting particularly the threat that it posed to the health and safety of Indigenous women and children. He was concerned that residents of the proposed facility will occupy the same public spaces as Indigenous people on the streets and in parks.

[55] His principal concern appeared to be the lack of consultation with the Indigenous community.

Salvation Army Witnesses

[56] The SA called the following individuals to proffer opinion evidence in support of its opposition to the appeals and in support of the applications:

[57] Miguel Tremblay, was qualified as a professional land use planner.

[58] On the ninth day of the hearing, January 23, 2020, counsel for the Appellants, without prior notice to opposing counsel, sought an order of the Tribunal disqualifying Mr. Tremblay from testifying on the grounds that he had, from an early stage, worked as a consultant lobbyist for the SA and that he is directly named on the Lobby Registry as having appeared in 20 lobbying activities with respect to the proposed development. It is alleged that he also submitted a private letter to members of the Planning Committee advocating on behalf of the proposed development during the course of the statutory hearing held by the Planning Committee while it was still in the process of deliberations on the applications.

[59] Counsel argues that an expert witness appearing before the Tribunal is under an obligation to provide opinion evidence that is fair, objective and non-partisan and that due to Mr. Tremblay's extensive lobbying and partisanship with respect to the proposed development he is unable to meet his expert's duty and should not be qualified as being capable of providing opinion evidence in this case.

[60] The Tribunal refused this request and found that Mr. Tremblay was capable of providing the Tribunal with fair, objective, non-partisan, independent and unbiased opinion evidence in this case. He was able to fully explain, in answer to questions put to him by counsel for the Appellants while he was being qualified as an expert, that his participation in all of the meetings with the City was as a resource person to answer questions and to provide his advice. With respect to the "private letter" he sent to members of the Planning Committee during the course of the statutory hearing held by the Planning Committee under the provisions of the *Planning Act*, he explained that the letter was sent in response to factual inquiries made of him by members of the Committee. The Tribunal is satisfied that he did not at any time step into the role of advocate in this matter and that his actions were consistently in accord with his duties to the Tribunal.

[61] The Tribunal must add that it is somewhat disturbed by Mr. Polowin's approach with respect to this issue, in waiting until the ninth day of the hearing to raise the issue. If he had any serious concerns, Mr. Polowin should have notified counsel well before the commencement of the hearing to express those concerns instead of springing this on opposing counsel when he did. Mr. Polowin as any able and competent counsel before this Tribunal, should not have to resort to "cheap stunts" as was described by Mr. Waqué, counsel for the City.

[62] Mr. Tremblay distilled the issues before the Tribunal as being two-fold: the addition of "shelter" as a permitted use at the Site and the permission to locate parking between the building and the street, as part of the transitional and well landscaped pedestrian woonerf.

[63] He reviewed the applicable PPS policies, noting that the PPS is a document to be read in its entirety, notwithstanding that not all policies apply in all situations and that a balancing exercise may be required to determine which policy takes priority in a given context. He noted that the proposed facility meets the PPS definitions of “public service facility” and “intensification.”

[64] Mr. Tremblay drew the Tribunal’s attention to PPS policies regarding the requirement to: provide housing, consider public health and safety, use existing infrastructure and the requirement to provide public services, as well as promoting economic prosperity. He relied in part on the evidence of Gord Lorimer and William Van Ryswyk, that the facility would provide a necessary housing option that had been designed to consider “Crime Prevention Through Environmental Design” (“CPTED”) principles, to address the notions of public health and safety, and to incorporate a sense of dignity and privacy for residents of the facility as well as the adjacent community.

[65] He described Montreal Road as multi-functional in nature and noted the presence of a mix of uses including large and small institutional uses, public service facilities, retail and commercial ventures. He identified the potential for redevelopment and intensification and opined that not all Mainstreets were created equal.

[66] With respect to the Official Plan, Mr. Tremblay relied on the strategic directions of the plan to outline Council’s intent to foster development that meets the intensification goals of the Province while maintaining compatibility and integration of new development. He referred to the design features that Mr. Lorimer had referred to, which integrate the building into the site and the Mainstreet setting, while creating a sense of separation and transition for the facility and neighbours.

[67] He also addressed the concept of adverse impact commenting that every development has an impact, as does every type of change. He opined that the facility has been designed to mitigate its impact on adjacent uses and residents, and to use the unique attributes of the Site to its advantage in this regard. He described the “H” shape of the building, the larger than required setbacks, and lower than permitted building

height. He referred to the Site as one small part of the potential re-development and revitalization efforts to bring Montreal Road more in line with some of the more commercially successful and vibrant mixed-use Traditional Mainstreets. The development of the proposed facility will not preclude the redevelopment of other sites and would not preclude the orderly development of Montreal Road or larger community in his opinion.

[68] He referred to the Official Plan, section 3.1, Generally Permitted Uses, specifically policy 4, and noted that in his professional opinion, the language in this section is permissive as it provides designations wherein the shelter use, a necessary social use in a city such as Ottawa, is permitted as of right, without the need for assessment or review, rather than prohibitive. The language used does not restrict the use from being established in other designations. His initial assessment of the use was that an Official Plan Amendment was not required to permit it, but he nevertheless continued to do a complete analysis of the appropriateness of the use in a Traditional Mainstreet designation and was satisfied, taking into consideration the unique characteristics of Montreal Road, as well as the unique attributes of the site itself.

[69] He also discussed the issue of parking being provided between the building and the street, within the woonerf, and referred to Policy 7 of section 3.6.3, which permits this condition only when it is “unavoidable.”

[70] With respect to OPA 200 to the Secondary Plan, Mr. Tremblay noted that the policies in the parent Official Plan support the amendment. He referred to the district-wide objectives of the Secondary Plan that are further broken down to apply to three specific districts with the subject Site being located in the Central sector.

[71] He explained that Policy 5 of section 1.1.2 is the subject of the amendment application. The policy provides that body shops, automobile dealerships, automobile rental establishments, automobile service stations, gas bars or surface parking lots are not to be permitted in the District. He explained that notwithstanding that the policy referred to surface parking lots, it was intended to refer to parking lots as a principle

use, and in this case the parking in question is parking associated with a principle use and that the Official Plan Amendment was filed as a precautionary exercise.

[72] He was of the opinion that having OPA 199 add “shelter” as a permitted use, and having OPA 200 specifically permit the ancillary parking in the front yard, is appropriate and represents good planning.

[73] Noting that the parking on site would be screened by a 13 metre, not 26 metre, landscape buffer, seating, and public art, his opinion was that the proposed amendment was in conformity with the goals of the district.

[74] With respect to the Zoning By-law, Mr. Tremblay was of the opinion that the purpose of the Traditional Mainstreet Zone was to have a mix of uses including a commercial component, but that institutional and residential are also permitted and that a mix of uses is required.

[75] He discussed the interpretation and application of the definitions in the Zoning By-law and that, with the benefit of preliminary building plans and direction from the SA regarding how the spaces within the facility would be used, it was his opinion that the 801 m² space, shown in red on the building plans, will meet the zoning by-law definition of shelter.

[76] Regarding the balance of the building, it was his opinion that it met the definition of “residential care facility” noting that residents are assigned to accommodations for a term that is measured in months rather than days, and that their primary purpose for being in the facility is to participate in programming, be it stabilization or sobriety, life skills, or to receive medical care.

[77] He advised the Tribunal that there would be no additional impacts from the shelter use that could not be assigned to other uses that are already permitted on the Site, including residential care facility. The additional use is appropriate in the context and at the specific site according to him.

[78] Mr. Tremblay's opinion was that ZBL No. 2018-301 is consistent with the policy direction of the Official Plan regarding the Traditional Mainstreet designation by providing institutional and residential uses, which includes shelters and that the shelter use is an appropriate addition to the TM3 subzone and on a Traditional Mainstreet at this particular site.

[79] Marc Provost, was qualified with respect to the SA's operations and the state of homelessness in the City of Ottawa.

[80] Mr. Provost is the Executive Director of the SA's Booth Centre. He proffered evidence on the existing state of homeless shelters in the By-ward Market neighbourhood. He noted that three shelters, the SA Booth Centre, the Shepherds of Good Hope and the Ottawa Mission, are all within approximately 800 metres walking distance of each other, with the Booth Centre in the middle thus allowing individuals to transfer from one shelter to another or to use each of the facilities' services. He also noted however that the parking lot adjacent to the Booth Centre and sidewalk in front of the centre, were points of confluence and congregation that has resulted in unsafe conditions.

[81] He indicated that the proposed facility will be the first purpose-built facility of its kind in Ottawa and would allow the SA to offer a range of programming in a built environment that reflects the respect and dignity that ought to be afforded to the homeless population. He outlined the variety of services currently offered at the Booth Centre and how such would be transferred to the proposed facility.

[82] He explained that the Booth Centre's emergency shelter component can currently receive up to 228 homeless men, including overflow beds in the basement. It also houses Community and Family Services, which offer food, clothing and household items, money management programs and access to summer camps. He explained that the SA's Anchorage program is a three-month treatment program for individuals suffering from addiction, and that the Working Men's Program allows working men experiencing homelessness to save enough money for a rental deposit for

accommodations they would ultimately move into. Such programs require residents to meet with case workers on a regular basis and to have certain obligations they must satisfy in order to remain in the Program. The residents are provided with a specific room and bed for the duration of their stay.

[83] He explained that the SA has a good working relationship with the other shelters and service providers in the city. They communicate regularly to make sure that no homeless person seeking shelter is left without a bed, and they each provide different services. Mr. Provost noted that some of the residents of the Booth Centre consume drugs and alcohol, but that Shepherd's of Good Hope have staff specifically trained to work with men whose behaviour has become more difficult to manage. Mr. Provost explained that the Booth Centre brings a holistic approach to helping vulnerable people, reaching out to people where they are located, and offering a range of services, and using "warm transfers", so as to provide the best care possible. This is part of the 'continuum of care' service model.

[84] Mr. Provost advised that SA keeps records of its demographics, but that since it is entirely based on self-identification, such records do not necessarily reflect reality. He referred to the example of Indigenous users identified in the collected data which indicates that approximately 15% of the people who attend the Booth Centre are Indigenous. He suspects however, based on his own observation as Executive Director, that the proportion is actually much higher. He explained that when an individual self-identifies as Indigenous, the SA staff offer the individual the opportunity to access a facility with expertise with Indigenous culture and responds accordingly.

[85] Similarly, Mr. Provost advised that the SA's data, based on self-identification by individuals, shows that 20 to 25% of the people who attend the Booth Centre are Francophone. He noted that a condition of receiving funding from the City, services must be available in French and that the SA has always respected this obligation and people who attend the Booth Centre are able to receive services in English or French.

[86] Mr. Provost explained that the Booth Centre location does not currently allow the

SA to operate its programming efficiently or to provide its residents with privacy and dignity. He explained that residents seek out the SA's services at the lowest point in their lives: many experience shame and humiliation and have even reported feeling like animals in a zoo when queued outside the building. He explained that the existing building is not conducive to serving people in a dignified way, and that while it routinely invests in the building with repair and maintenance, the SA is not able to make meaningful improvements due to its limitations and location.

[87] Regarding the Family and Community Services, Mr. Provost advised that approximately 50% of the people they serve reside in the Vanier area. This is another reason that the subject Site was an attractive candidate for a replacement facility, along with its size, proximity to complementary social services, and accessibility.

[88] He proffered that the proposed facility has been carefully designed over several iterations to address the issues faced at the Booth Centre, both interior and exterior, which will benefit the residents, programming providers and the larger community. He explained that the proposed facility will provide a more dignified environment providing more natural light, separation of uses and private spaces. He felt that this is the way that the SA can say "you are worth the effort" to the people that it serves.

[89] Gord Lorimer was qualified as a professional architect and designer.

[90] Mr. Lorimer worked closely with Mr. Provost and other representatives of the SA to identify relevant design principles. They conducted site visits to other similar purpose-built facilities for information as to what worked and did not work. They also met with staff and volunteers at the Booth Centre to learn about its shortcomings. The following Design Principles were identified:

1. Build for Dignity and Pride of Place;
2. Provide a Range of Program Options;

3. Create Spaces to Facilitate Community Interaction;
4. Integrate Supervised Access;
5. Provide Secure and Private Outdoor Spaces;
6. Design to Preserve Privacy for Surrounding Neighbours;
7. Plan Access points to Segregate Services and Staff Parking from the Main Pedestrian Entry; and
8. Design Streets for People.

[91] He explained that he also worked with Mr. Van Ryswyk to incorporate CPTED principles in the design as mentioned above.

[92] Mr. Lorimer highlighted the proposed Facility's flexible internal structure which would allow the SA to reallocate spaces and beds as needed to meet the evolving needs of the community over time. He explained that while an emergency shelter is currently needed in Ottawa and will likely always be needed, the hope is that it can be reduced in size to make room for more transitional housing. The size of the shelter will, in no instance, be greater than 801 m² as required by the Zoning By-law Amendment.

[93] Mr. Lorimer, along with William Van Ryswyk, also explained to the Tribunal, the importance of the two courtyards: unlike other facilities, the courtyards are not simply for socializing or recreation. The front courtyard contributes to the gradual transition from public space on the street, to a semi-public woonerf, to a semi-private courtyard. It was explained that the courtyard itself is accessible only from the inside of the building and is visible from multiple areas within the building. The set back from the street reduces the ability for non-residents to solicit or disrupt residents of the facility.

[94] The sunken rear internal courtyard creates a private outdoor space and was also

carefully designed to lie between the two wings of the building, giving reciprocal privacy to the residents and to the surrounding neighbourhood. It is sunken and landscaped so as to make it difficult to use as an illegitimate form of egress. It is at the rear to avoid interaction with the public, again to decrease concerns associated with illicit solicitation. Both courtyards are available for residents, guests and staff, which allows them to stay on the property and not congregate on the sidewalk.

[95] Mr. Lorimer explained how the proposed facility meets the Design Guidelines and that it would be wholly impractical to construct a building to the front lot line as this would result in a narrow and useless branch of a building.

[96] He noted that several Design Guidelines anticipate that buildings on traditional Mainstreets may not be constructed to the front lot line. He specifically referred to Guideline 25, which states that where drive lanes are adjacent to a street, the use of trees, shrubs and low walls operate to screen cars from view, while at the same time allowing eye level visibility into a site. He maintains that this is precisely what the design has done to shield the small amount of front yard parking proposed on this Site.

[97] Mr. Lorimer explained that it would not be easy to extend the building down to what he referred to as the “handle” of the Site, the sidewalk, and that architecturally, this was impractical. All of the SA’s experts agreed, that the proposed woonerf was more valuable as it created a buffer from the public space, and allowed residents waiting to enter the facility from private property rather than off the public sidewalk. One of the common concerns expressed concerning the Booth Centre was that residents would loiter on the sidewalk in front of the centre while waiting to enter the facility for food, shelter or other services. He explained that the entrance location, and the woonerf design on the subject Site, would eliminate this problem because the SA has the authority to enforce rules on its property, but not in the public realm. This outdoor space allows for queuing to occur on private property and creates a safer situation for all.

[98] William Van Ryswyk was qualified on matters of security generally as well as respecting the concept of CPTED.

[99] He is a former police officer and current CEO of Security Through Safe Design Inc. and was retained to act as a security lead and advisor to the SA. He worked with the architectural team to develop recommendations for the design of the proposed facility. He explained the principles of CPTED, which is a security program used internationally to increase the quality of life for facility users, the public and the community.

[100] Mr. Van Ryswyk proffered the opinion that the recommended design features help to mitigate, and in some cases eliminate, issues which have lead to negative impacts at the current Booth Centre site such as impacts that result when clients are forced to queue on the public sidewalk or issues and problems which arise because there is insufficient indoor and outdoor amenity space available on site to allow Clients to comfortably remain in the facility during the day.

[101] Barry Nabatian was qualified as land economist with expertise in urban economics.

[102] Mr. Nabatian was retained by the SA in 2017 to consider whether there would be an economic benefit from the SA's investment on Montreal Road. He defined "positive impacts" as job creation, increased sales, increased property values, renovations, redevelopments, new developments, and increased economic transactions. It was his professional opinion that Montreal Road and the Vanier area had recently seen, and would continue to see, such positive impacts, and that the proposed facility would in turn generate its own positive impacts on retail sales and possibly even the housing market.

[103] He reached these conclusions in 2017, when he carried out his study, and advised the Tribunal that his conclusions have not changed and that the proposed facility would have significant one-time, as well as ongoing, benefits. One-time benefits are defined by Mr. Nabatian as being those associated with the construction of the proposed facility, including job creation, local spending and supply acquisition. Ongoing benefits are defined as those associated with the proposed facility, including the

employees, clients accessing the services, volunteers, visitors and their local spending. His original report also found that the demand for rental housing in Vanier is going up, as are the rental rates.

[104] He updated his data to 2019, noting that if the community had a negative reaction to the proposed facility in 2017 and continuing to the present, then he would have expected to see a slowing down or even a decline in investment in the area but found that the opposite was the case.

City of Ottawa Witnesses

[105] The City also called the following individuals to proffer opinion evidence in support of its opposition to the appeals and in support of the applications:

[106] Erin O'Connell was qualified as a professional land use planner.

[107] Ms. O'Connell endorsed the planning opinion proffered by Mr. Tremblay. She also reaffirmed that the 2008 Report has no legal status as a policy document within the City and serves only as a historical record of the zoning by-law amendments, which resulted therefrom. She also opined that the City had more than an adequate regard for all possible impacts of the proposed facility after its Planning Committee sat for over three days hearing submissions from over 170 delegations in November 2017. Ms. O'Connell maintained that the concerns of the community were not ignored by Council, and to the contrary, she noted that the motions, carried by Council when it considered the applications, speak directly to those community concerns, which is not typical for this kind of application.

[108] She explained that the applications underwent considerable transformation over time: specifically noting that they were on the fifth version of the site plan application and that the site plan process was still open to accommodate additional changes adding that this process will provide additional opportunity for feedback in the future.

[109] With respect to the proposed facility's impact on the Traditional Mainstreet, Ms. O'Connell disagreed with Paul Hicks' opinion that section 1.7.1(c) of the PPS requires that all new development actively contribute to the Mainstreet, rather, it was her opinion that this policy does not preclude any particular use on Mainstreet and that it is a more general direction to municipalities to encourage the vitality and viability of Mainstreets through measures outside of development applications. She pointed to a number of City programs intended to enhance the vitality of Montreal Road.

[110] She explained that with respect to vitality, it was her opinion that not every application has to demonstrate how it will enhance the vitality of the traditional Mainstreet, but rather it must show that it will not preclude development of adjacent parcels. She opined that this test is being met by the subject development.

[111] Ms. O'Connell also specifically endorsed Mr. Tremblay's opinion that a Traditional Mainstreet's planned function is to permit a wide variety of uses, including institutional uses as well as contribute to an interesting pedestrian friendly environment. It is her opinion that the proposed facility meets this planned function.

[112] She also was of the view that a municipality must have policies that will assist in meeting all of its needs, including institutional uses as well as all forms of housing in accordance with section 1.4.3 of the PPS.

[113] Ms. O'Connell reviewed section 3.1 - Generally Permitted Uses and explained that the intention of this section was to indicate uses that are specifically required for the city to function even if these are not "popular" uses.

[114] It was her opinion that planning policy has evolved since the "2008 Report" and that there is no justifiable reason to exclude a shelter as a permitted use on a Traditional Mainstreet. Moreover, it was her evidence that the prohibitions stated in section 134 of the Zoning By-law are a barrier to providing required shelter services, hence the site-specific amendment is appropriate.

[115] It was her opinion that the proposed site-specific amendments are consistent with the PPS and the Official Plan, and that all of the necessary amendments were sought by the SA to permit the proposed development on the Site.

[116] Lee Parsons was qualified respecting urban economics and land use planning.

[117] Mr. Parsons was retained by the City to complete a case study of other areas with similar shelter or homeless service facilities, preferably newer ones, to better understand the economic and land use implications of those facilities. He concluded that when properly managed:

- Service facilities do not impact the local community;
- Such facilities do not have a discernable effect on the local residential and commercial land markets; and
- good neighbour agreements are effective at communicating and addressing neighbourhood concerns.

[118] He also endorsed Ms. O'Connell's optimism regarding the revitalization of Montreal Road.

[119] Mr. Parsons agreed with Mr. Nabatian that Vanier appeared to be in an active state of gentrification including considerable development activity and that Montreal Road being located very close to the downtown core made it a good location for employment and other types of developments. He testified that larger sites are attractive to developers and are being acquired at a rapid rate. It was his opinion that Montreal Road was in transition from a market point of view and anticipated that Montreal Road and Vanier will become a hub of development for new employment and residential uses based on recent land transaction. He maintained that recent land transactions, both residential and commercial, have occurred notwithstanding the public's knowledge about the proposed facility. Furthermore, he concluded that land values have increased

at the approximately same rate, or greater than, the rest of the city.

[120] He would not characterize Vanier as being derelict based on his observations that existing residents are demonstrating pride in ownership by making improvements to their homes.

[121] He was of the view that Montreal Road's infrastructure was not good, but that the mere existence of a Community Improvement Plan for the area demonstrates a commitment by the City to improve the area and attract more employment as well as residents. He opined that the City's commitment will support the mixed-use function and unique character of Montreal Road.

[122] Alain Miguelez was qualified as a professional land use planner.

[123] Mr. Miguelez is employed by the City as a land use planner in charge of the demographic and statistics group at the City. He presented census data relied on by the City to track population trends in the city. He advised that since census options have changed over the years, particularly in 2016, it can be difficult to compare data as was confirmed by Lee Parsons. His evidence indicated that while the east end of Ottawa contains a larger percentage of the Francophone population, there are Francophone people and services, including French language schools, located throughout the city.

[124] He advised the Tribunal that he did not believe that such institutional uses in Vanier would be impacted if the proposed development proceeded. He proffered the opinion that planning requires a consideration of everyone's rights in accordance with the Ontario *Human Rights Code* ("Code") and that the rights of one group cannot be advanced at the expense of another including a consideration of the obligation to provide a range of housing choices for everyone, including a person that is homeless.

[125] He also outlined the various improvement plans the City has implemented in the Vanier area, including along Montreal Road, and indicated how these are specifically directed to promoting the Francophone culture, such as art and design.

[126] Shelley Van Buskirk was qualified with respect to housing services and the state of homelessness in the City.

[127] Ms. Van Buskirk is the Director of Housing Services for the City. She testified that the demand for emergency homeless shelters is considerable and has risen in the City since 2014. The City's 2018 Progress Report on housing and homelessness also states that the largest population of people seeking shelter is single men. In her opinion, the need for shelters can be attributed to many reasons including a competitive rental market, low vacancy rate, rising rents, increased demand from new Ottawans, a growing population, and the fact that the purpose-built rental housing supply has simply not kept up with demand.

[128] Ms. Van Buskirk explained that housing falls on a spectrum continuum, and that emergency shelters are the first point on the spectrum. Individuals may attend a shelter as a first step before moving into a transitional or supportive housing program where they can receive more intensive services. She endorsed Messrs. Provost's and Lorimer's evidence regarding the range of accommodations to be provided at the proposed facility and its flexible design. Specifically, as an expert in homelessness and housing it is her opinion that the flexible design of the proposed facility is appealing, since there is currently a lack of supportive housing in the City and it would be beneficial for more parts of the proposed facility to evolve into this form of housing.

[129] She provided evidence respecting the City's interaction with shelter providers. Specifically, she advised the Tribunal that the City itself does not site emergency shelters: all of the shelters in the City are privately owned, except for one, so if an organization wants to relocate their services then they are permitted to do so. The lack of micro-managing is intentional, as these organizations are best equipped to know where in the City they should be located, based on the services offered and the people that they serve.

[130] She was of the view that it is not possible to have an over-concentration of services because services will generally locate where needed. Services are located in

order to contribute to the health and well being of individuals and the community. She advised that the City attempts to provide services that recognize the dignity and respect of the individuals using a holistic wrap-around approach.

[131] While she acknowledged that she was not a land use planner, she provided her views on other facilities in Ward 12, that were referred to in a memo from the Ward Councillor to Council. She considered factors such as:

- whether rooms were private;
- whether occupants lived as a household;
- the degree of independence afforded to residents;
- whether individuals are assigned a bed or if they must check in daily;
- is dining communal;
- whether participation in programs or services was required or offered;
- whether residents needed to be referred to the facility; and
- the primary function of the program and/or facility.

[132] She opined that these were essential factors that help her, as Director of Housing Services, distinguish and categorize the forms of housing available in the City.

[133] She shared Mr. Provost's regret that many of the community's concerns relate to the people who will use the proposed facility and noted that the underlying preconception of the public is that homeless people are a threat to others but nevertheless these individuals have an equal right to occupy public spaces as do others. She was of the view based on the evidence of Messrs. Van Ryswyk and

Lorimer, as well as her experience, that the proposed facility was being designed to mitigate concerns over safety and security.

Site Visit

[134] The Tribunal conducted a site visit of the existing SA Booth Centre located in the Byward Market, as well as the proposed site on Montreal Road and immediate area on the afternoon of January 15. The Tribunal was accompanied by Mr. Provost, the Executive Director of the SA's Booth Centre, Ms. Ursula Melinz, counsel for the SA as well as Jacob Polowin counsel for the Appellants.

ANALYSIS AND FINDINGS

The Official Plan Amendments – The Position of the Appellants

[135] As noted above, the Appellants argue that the amendments are not consistent with the PPS, and do not conform with the City's policy regime and therefore do not represent good land use planning.

[136] Policy 4 of section 3.1 of the Official Plan states as follows:

Shelter Accommodation

4. Where the zoning by-law permits a dwelling in areas designated General Urban Area, Developing Community, Central Area, Mixed Use Centre, and Village, the by-law will also permit shelter accommodation. Shelter accommodation shall be designed in a manner compatible with the general area. The zoning by-law may include provisions to regulate the size and location of this use. [Amendment #76, August 04, 2010]

[137] It is argued that this provision explicitly excludes Mainstreets from the list of designations where shelters are permitted.

[138] The implied exclusionary rule of statutory interpretation – *expressio unius est exclusio alterius* – holds that the express mention of one thing excludes all others:

An implied exclusion argument lies whenever there is reason to believe that if the legislature had meant to include a particular thing within its legislation, it would have referred to that thing expressly. Because of this expectation, the legislature's failure to mention the thing becomes grounds for inferring that it was deliberately excluded. Although there is no express exclusion, exclusion is implied.

[139] Counsel for the Appellants referred to the decision in *Re Fainer 1991 CarswellOnt. 4142 (OMB)*, where the Board found that where a use is listed as permitted in one zone and is not listed as a permitted use for another, it is logical to rely on the implied exclusion rule and conclude that the failure to list the use as permitted was intentional.

[140] The Appellants argue that it is logical in this instance to conclude that if the City had intended to include Mainstreets in the list of designations in which shelters are permitted, it would have done so explicitly. The City's failure to do so implies that the exclusion is intentional given that there is a clear and consistent history for the City's exclusion of shelters from Mainstreets.

[141] The Appellants rely on what has been referred to as the "ICBL Report" submitted to Planning Committee in May 2008 by the City's Planning Department detailing the conclusions of a study undertaken in support of Interim Control By-law No. 2006-452, which arose out of concerns over the impacts of the concentration of social services in Ward 12. This report included recommendations for amendments to the zoning by-law, which were adopted by City Council. The objective of the report was to attempt to find land use solutions to a social planning issue - the over-concentration of social services within Ward 12 and, more particularly, the current distribution of shelters, drop-in centres, known as community health and resource centres, and residential care facilities.

[142] The ICBL Study recommended, in part, that a zoning strategy for shelters be implemented as follows:

The new land use term "shelter" should be created in the former Ottawa and Vanier Zoning By-laws, reflecting the new Comprehensive Zoning By-law term.

This term permits ancillary health care, counselling and social support services within the principal shelter use;

The use is not to be permitted in the Mainstreets designation in keeping with the Official Plan. Therefore, the use will not be permitted in the Traditional Mainstreet and Arterial Mainstreet Zones under the existing former Ottawa and Vanier Zoning By-laws, those streets that are zoned the equivalent of the proposed TM or AM locations in the Comprehensive Zoning By-law will not be permitted to have a “special needs house” or shelter abutting Beechwood Avenue, Montreal Road and McArthur Avenue, Rideau and Dalhousie Streets.

[143] The ICBL Study indicates a clear intention to exclude shelters from Mainstreets as early as 2008, according to the Appellants.

[144] They refer to Montreal Road Community Improvement Plan adopted by Council on May 10, 2019. Section 10.3 of the Official Plan lists a number of uses that will not be eligible for incentive financing, as they “do not contribute to a desirable community fabric.” Emergency shelters are included in the list of excluded uses.

[145] The Appellants argue that the SA and the City have simply not provided sufficient evidence to justify a departure from the City’s longstanding policy of not permitting shelters on Traditional Mainstreets, and on Montreal Road in particular. Moreover, they have not demonstrated that the proposed facility will not have the deleterious effects on the Traditional Mainstreet identified by Staff as recently as 2019.

[146] As such, the amendments are not good planning and are inconsistent with the clear policy intention of the Official Plan, according to the Appellants.

[147] With respect to consistency with the PPS 2014, they argue that Montreal Road is a Mainstreet within the meaning of this policy document. Section 1.1.3 notes that “the vitality of settlement areas is critical to the long-term economic prosperity of our communities.” Furthermore section 1.1.3.1 states as follows: “Settlement areas shall be the focus of growth and development, and their vitality and regeneration shall be promoted.”

[148] A strong retail sector is critical to the success of a Traditional Mainstreet and it is

the position of the Appellants that the proposed facility is not consistent with the retail and commercial goals of the Official Plan or the economic goals of the PPS.

[149] The goals set out in the Official Plan echo the intention of various policies in the PPS, including section 1.7.1 (c), which reads as follow:

1.7.1 Long-term economic prosperity should be supported by:

c) maintaining and, where possible, enhancing the vitality and viability of downtowns and Mainstreets.

[150] In the context of the PPS, the terms vitality and regeneration require planning authorities to consider how planning decisions will promote helping areas “develop and grow strong again”, which speaks to socio-economic objectives. The requirement to promote “regeneration” is particularly critical in the context of Montreal Road, which the City recognizes has suffered from general economic decline, and the downsizing and/or closure of numerous businesses. The language of these provisions, including “supported,” “enhancing” “vitality” and “regeneration” underscore that consistency with the PPS is achieved when a development supports the policies outlined in the PPS, rather than merely not precluding them.

[151] The SA is seeking a site-specific exemption to construct the proposed facility on large land assembly, on a Traditional Mainstreet, where it would not otherwise be permitted. This, on a Traditional Mainstreet that by the City’s own evaluation is not achieving the goals set out in the PPS and Official Plan according to the Appellants.

[152] The Appellants argue that the analysis to be undertaken by the Tribunal is not whether the proposed facility will undermine the economic goals of the Traditional Mainstreet, but rather whether it will actively support these goals and whether the City and the SA have failed to meet this standard.

[153] The Appellants maintain that the strongest economic justification for the proposed facility put forth by the City and the SA is that it will not undermine the economic goals of the Traditional Mainstreet. The Appellants maintain that this d not

consider the impact on retail, which is critical to the economic health and success of Montreal Road and that therefore, the City and the SA have not demonstrated that the proposed facility will actively support the economic success of Montreal Road.

[154] The Appellants take issue with the fact that the building face of the proposed facility does not extend to the Montreal Road frontage and is instead constructed in the large interior portion of the property and accessed from Montreal Road.

[155] The Appellants contend that the impacts associated with the proposed facility risk further undermining the health of Montreal Road's already suffering retail sector and that there is no evidence before the Tribunal that it will assist this sector. Accordingly, a site-specific exemption from well-established Council policy is not appropriate.

Analysis and Findings – OP Amendments

[156] The Tribunal has considered all of the evidence on these issues as well as the submissions of counsel for the parties and finds that the amendments are consistent with the PPS 2014 and conform with the policies of the Official Plan.

[157] The Tribunal prefers the evidence of Messrs. Tremblay and Parsons as well as Ms. O'Connell over the evidence of Messrs. Hicks and Patel on these issues and is satisfied that the proposed facility will advance the planned function of the Traditional Mainstreet designation.

[158] The three defining objectives of the Traditional Mainstreet Designation are as follows:

- a) Significant opportunities for intensification;
- b) A lively mix of uses; and
- c) A pedestrian-friendly environment.

[159] The Tribunal is satisfied that the proposed facility will achieve all of these objectives as it:

- 1) It represents significant intensification, replacing a “notorious” and dilapidated single storey motel and surface parking with a well-designed three to six-storey building;
- 2) It will introduce a new mix of institutional and public service uses in a location well served by complementary services, transit and other amenities; and
- 3) The evidence shows that the project has been carefully designed to contribute to the pedestrian environment of Montreal Road.

[160] The Tribunal does not accept the Appellants’ narrow interpretation of the objectives of Mainstreets, that the focus should be limited on the promotion of mixed-use developments characterized by retail uses at grade with residential units above.

[161] While commercial uses at street level and residential uses on upper levels may be a common feature of traditional mainstreets, the Tribunal prefers Ms. O’Connell’s and Mr. Tremblay’s evidence that the character of Mainstreets vary across the City, each having its own character and defining features. Montreal Road is characterized by a mix of commercial and residential uses but also a significant number of institutional uses, all of which are contemplated by the designation.

[162] The Official Plan acknowledges that while Mainstreets developed before 1945 typically have a tightly knit urban fabric and small scale buildings set closer to the street, Mainstreets developed after 1945 often display varied setbacks, lower densities, and parking lots between buildings and the street.

[163] From the perspective of built form, the undisputed evidence is that, currently, Montreal Road does not display a consistently “tight-knit” built form consistent with pre-war construction. There is no consistent fabric and there are a significant number of

surface parking lots along the street. While the policies of the Official Plan promote a “tight-knit” built form, with buildings oriented close to the street, there is a recognition that on larger or unusually shaped lots, development may be situated at the rear. Section 3.6.3 Policy 2 of the Official Plan expressly provides that these developments “will not be considered non-conforming by virtue of not being located adjacent to the street.”

[164] This section further provides that “where development is initially unlikely to occupy the entire frontage immediately adjacent to the street”, the site should be planned in a coordinated fashion that will facilitate a number of desirable outcomes many of which have been considered and incorporated in the evaluation and development of the design of the proposed facility.

[165] The access from Montreal Road has been designed as a multi-modal (pedestrian, cycling, transit and vehicular) access between the Site and the public street. Both Messrs. Lorimer and Mr. Van Ryswyk testified that the access from Montreal Road provides a transition from the public realm, into semi-public, semi-private and finally private space which is a critical feature of the proposed facility significantly enhancing safety and privacy for both members of the public and residents of the facility by creating an actively used outdoor transition space which can be controlled and monitored by the SA and which will eliminate queuing on sidewalks.

[166] The introduction of a 13 metre landscaped buffer as well as the planned inclusion of public art along the Montreal Road frontage through the site plan process will screen the limited number of surface parking spaces located in front of the proposed facility and will serve to animate the pedestrian environment.

[167] The relationship between the proposed facility and properties immediately east and west of the subject Site has been examined in order to confirm that the proposal will not impede the future redevelopment of these properties, both of which have frontage on Montreal Road significantly greater than the 14.95 metres of frontage at the Site.

[168] It is not disputed that the proposed facility is well designed and constitutes compatible development although the Appellants take issue with the treatment of the Montreal Road frontage.

[169] Ms. O'Connell's and Mr. Tremblay's evidence with respect to the relationship between urban design and compatibility is uncontroverted. They rely on paragraph 2 in the Compatibility section of the Official Plan which reads as follows:

In general terms, compatible development means development that, although it is not necessarily the same as or similar to existing buildings in the vicinity, enhances an established community through good design and innovation and coexists with existing development without causing undue adverse impact on surrounding properties. It 'fits well' within its physical context and 'works well' with the existing and planned function.

[170] This policy establishes that a compatible development is one which "coexists...without causing undue adverse impact." This test is to be applied to both built form which must "fit well within its physical context", and to the use which must "work well within the existing and planned function" according to Ms. O'Connell and Mr. Tremblay.

[171] Section 4.11 of the Official Plan sets out objective criteria, which can be used to evaluate compatibility.

[172] Both Mr. Tremblay and Ms. O'Connell conducted an analysis of the proposed facility applying the criteria set out in the Official Plan and concluded that it represents compatible development both in terms of built form and function. They concluded that the proposed facility:

- a. provides appropriate building transitions to adjacent residential properties including through the use of setbacks, over and above those required in the zoning by-law, and by having portions of the building step back from the closest adjacent residential properties;
- b. The "H-shaped" building and interior courtyards provide privacy for both

the residents of the Proposed Facility and neighbors in a design which is also consistent with Guideline 9 of the “Urban Design Guidelines for Development Along Mainstreets”, which directs that new development should:

Ensure sufficient light and privacy for residential and institutional properties to the rear by ensuring that new development is compatible and sensitive with adjacent uses with regard to maintaining light and minimizing overlook.

- c. The design “defines and encloses spaces” and “encourages a continuity of street frontages” through the use of structures and landscaping included in the design of the shared access from Montreal Road, with only a 6 metre width proposed for the driveway and the balance of the 14.95 metre width dedicated to landscaping, public art and other features; and
- d. Significant outdoor amenity areas are provided for the use of residents, including sunken courtyards and a community garden.

[173] The planned surface parking area is necessary and designed in conformity with the Official Plan and relevant urban design guidelines.

[174] It is noted that the professional land use planning witnesses met in advance of the hearing to confirm the scope of land use planning matters in issue and signed an Agreed Statement of Facts. They agreed that the only parking element in issue is the limited number of parking stalls proposed to be provided in the area between the proposed facility and Montreal Road, and specifically the eight stalls which extend along the eastern edge of the shared entrance from Montreal Road.

[175] The proposed parking stalls located behind the property at 339 Montreal Road, which is currently occupied by a former fast food pizza outlet, are not in issue. This property is expected to be redeveloped with a larger building in future and that this will block the view of these stalls from Montreal Road.

[176] Mr. Tremblay opined that surface parking in the front of the proposed facility is

needed to support the continued operation of the SA Thrift Store located at 325 Montreal Road. This commercial enterprise relies on donated items which are dropped off by members of the public who require access to convenient parking. The Thrift Store is to be refaced as part of the development of the proposed facility and will be upgraded to include a social enterprise coffee shop and entrance for the SA's family programs at the corner of St. Anne Avenue and Montreal Road. The completion of these improvements will be addressed in conditions of site plan approval for the proposed facility.

[177] With respect to Official Plan Amendment No. 200, this amendment is to specifically permit surface parking on the subject property. The Plan prohibits the establishment of surface parking lots in the area subject to the Plan and it was Ms. O'Connell uncontroverted evidence that Official Plan Amendment No. 200 is not strictly necessary to permit the surface parking area proposed in this case given that it is ancillary to the proposed facility and not a standalone commercial parking lot. Both Ms. O'Connell and Mr. Tremblay also opined that given the need for parking to support the Thrift Store and given the 13 metres of landscaped screening provided at Montreal Road, the policies of the Traditional Mainstreet designation addressing surface parking are also satisfied in this case.

[178] With respect to the issue of the shelter use being permitted in a Traditional Mainstreet Designation, the Official Plan "Generally Permitted Uses", Section 3.1 provides as follows:

Certain land uses are considered to be characteristic and supportive of the daily life and functioning of the community. For convenience, these uses have been grouped as generally permitted uses. These uses will be permitted within all land-use designations, subject to the policies set out below and in other applicable sections of this Plan.

[179] The Tribunal agrees with the Sa's and City's witnesses that these Generally Permitted Uses are not always popular uses but nevertheless play a fundamental role in the life of the municipality and are critical to sustaining a healthy, livable and safe community. The identification of a use as a generally permitted use is meaningful in that

the review of a development application, which includes a generally permitted use is to be undertaken with the above principles in mind and the inclusion of “shelter accommodation” as a generally permitted use, flows from the identification of this use as one of the forms of housing needed to ensure that “affordable and appropriate housing” is available for all residents of the City in accordance with section 2.5.2 “Affordable Housing” according to Ms. O’Connell:

The need to accommodate social diversity is a cornerstone of a liveable community. Diversity in the housing supply is achieved through a mix of multiple and single-detached housing, provision of ownership and rental housing, housing affordable to low- and moderate-income groups, and housing appropriate to households with special needs. Policies in this Plan ensure that all forms of housing are permitted wherever residential uses are generally permitted, subject to regulations contained in the zoning by-law. These land uses are outlined in Section 3.1 [Generally Permitted Uses]. They include secondary dwelling units, rooming houses, group homes, shelter accommodation, retirement homes and garden suites.

[180] Ms. O’Connell provided a detailed analysis of this provision noting in particular that:

- a. Policies of the Official Plan require that all forms of housing be permitted wherever residential uses are generally permitted. This is intended to ensure that social diversity is accommodated throughout the City and that all areas of the City are available to all types of people;
- b. To the extent that additional regulation of different forms of housing is appropriate, this should not be done by excluding them wholesale from official plan designations but rather should occur at the level of the zoning by-law, where subzones and performance standards can be tailored to take into account the particular characteristics of specific areas of the City; and
- c. “Shelter Accommodation” is specifically included in the list of forms of affordable housing needed to accommodate social diversity.

[181] Policy 4 of section 3.1 identifies shelter accommodation as a generally permitted

use as follows:

Shelter Accommodation

Where the zoning by-law permits a dwelling in areas designated General Urban Area, Developing Community, Central Area, Mixed Use Centre, and Village, the by-law will also permit shelter accommodation. Shelter accommodation shall be designed in a manner compatible with the general area. The zoning by-law may include provisions to regulate the size and location of this use.

[182] The Tribunal does not accept Mr. Hicks' interpretation that the absence of the "Traditional Mainstreet" designation from the list of designations identified in the above policy equates to a prohibition on shelter accommodation in areas designated Traditional Mainstreet. The Tribunal, rather, agrees with Ms. O'Connell's opinion that a comprehensive review of the Official Plan demonstrates that where Council's intent was to prohibit a form of use, the prohibition is express and not implied. She referred to the introduction to section 3 of the Official Plan, which differentiates between "prescriptive" and "permissive" designations and provided a number of examples including section 4.8.1 which prohibits certain forms of development in the flood plain and Policy 3 of section 3.6.3, which provides that where a Mainstreet abuts an Employment Area, the zoning by-law may prohibit noise sensitive uses.

[183] Mr. Tremblay's evidence, which was adopted by Ms. O'Connell was that lands designated Traditional Mainstreet are often superior locations for shelter accommodation relative to lands designated General Urban Area, being one of the designations specifically listed in Policy 3.1(4). They both were of the view that Traditional Mainstreets can make excellent locations for shelters given their accessibility by pedestrians, their proximity to transit and the presence of complementary service uses.

[184] Furthermore, Council's approach to regulating day care centres (another Generally Permitted Use), demonstrates that it does not interpret silence as a prohibition. Similar to Policy 3.1 4 with respect to shelter accommodation, Policy 3.1 6 with respect to daycares also omits Traditional Mainstreets and Arterial Mainstreets from the list of designations. The evidence showed that Council has in the past enacted

a zoning by-law amendment, which expressly permits daycares in Traditional Mainstreet and Arterial Mainstreet Zones.

[185] Ms. O'Connell testified that notwithstanding her opinion that shelter accommodations are a permitted use in the Traditional Mainstreet designation and the Planning Department recommended the amendment in order to ensure full transparency in the suite of amendments which would be placed before Council for consideration and approval.

[186] The Tribunal is satisfied that the amendments are consistent with the Montreal Road Secondary Plan, whose main goals include:

- a. fostering development and redevelopment along Montreal Road;
- b. improving streetscaping along Montreal Road;
- c. improving pedestrian, cycling and transit facilities; and
- d. provide open spaces, landscaping and public art that reflect the history of the District.

[187] The evidence showed that the City has invested in a number of significant initiatives intended to advance these goals including a Community Improvement Plan, the Montreal Road Revitalization Project as well as the Montreal Road and Vanier Public Art Project.

[188] The proposed development will also contribute to the main goals articulated in the Secondary Plan as it represents compatible development on Montreal Road and will improve the streetscape including quality landscaping and the refurbishment of the Thrift Store building façade.

[189] Accordingly, the Tribunal is satisfied that the OP amendments are consistent with

the PPS 2014 and are in conformity with the policies of the Official Plan generally.

Zoning By-law – The Position of the Appellants

[190] In the case of an appeal of a site-specific zoning by-law amendment, the test which must be considered by the Tribunal is whether the proposal is consistent with provincial policy, conforms with the official plan and represents good planning.

[191] The SA classifies the various programs in the proposed facility as follows:

- a. Emergency shelter: providing short term accommodation for 140 individuals.
- b. Transitional housing suites: providing medium term accommodation for 100 individuals in four distinct special programs that are designed to assist resident participants through training and/or counseling that will equip them to live independently.
- c. Special care facility: providing longer term accommodation for 60 individuals with disabilities and/or health issues, administered by Ottawa Inner City Health.
- d. Addictions treatment facility (Stabilization and Anchorage): providing medium term accommodation for 50 individuals as they commit to a regimen of counseling and treatment for their addictions.
- e. Day program facilities and dining rooms to serve individuals accommodated in the facility as well as individuals from the community.
- f. Administration and building services.

[192] The ZBL amendment before the Tribunal permits a shelter use of no greater than

801 m² and it is the position of the SA and the City that only the 140-bed portion of the facility designated as an “Emergency Shelter” constitutes a shelter within the meaning of the ZBL amendment, and that the “transitional housing,” “special care facility” and “addictions treatment facility” are properly classified as a Residential Care Facility under the City’s zoning by-law.

[193] The Appellants agree that the Special Care Facility and Addictions Treatment facility are properly classified as residential care facilities. They argue, however, that the classification of the Transitional Housing program as a residential care facility, as opposed to a shelter, is not correct.

[194] The relevant definitions under the zoning by-law include:

Community Health and Resource Centre means a place where members of the public are provided with health services, social support services, cultural or recreational programs or life/work skills training programs and where neither overnight care nor living accommodation is available.

Place includes lands, buildings or structures

Residential care facility means an establishment providing supervised or supportive in-house care for those who need assistance with daily living, that may also provide on-going medical or nursing care or counselling and social support services and which may include services such as medical, counselling, and personal services.

Shelter means an establishment providing temporary accommodation to individuals who are in immediate need of emergency accommodation and food, and may include ancillary health care, counselling and social support services.

[195] The Appellants refer to the “ICBL Report” cited earlier in this decision as a useful interpretive aid in distinguishing between a shelter use and other uses that may bear some similarities as it contains recommendations distinguishing Shelters, and Residential Care Facilities.

[196] The following zoning strategy for shelters is recommended by the report:

Further, wherever any shelter beds are provided to serve the homeless, the use will be classified as a shelter and not as some other use, including a group home;

...

[197] The following zoning strategy for residential care facilities is recommended:

The new land use term “residential care facility” should be created in the former Ottawa and Vanier Zoning By-laws, reflecting the new Comprehensive Zoning By-law term. This term captures nursing homes, institutional homes for the mentally ill, as well as treatment centres. The use fell under the “special needs house, limited either to 30 residents” or no density limit under the former Ottawa Zoning By-law.

[198] The Appellants argue that it is clear from the report that where a facility offers temporary accommodation to persons who are homeless, it will be classified as a shelter. In contrast, residential care facilities are intended to refer to primarily treatment-based facilities, such as nursing homes or homes for persons who are developmentally disabled.

[199] The SA and the City sought to distinguish between the Emergency Shelter and Transitional Housing components of the proposed facility on the basis of length of stay. However, Mr. Provost stated that persons accessing the Transitional Housing program at the proposed facility will stay for a maximum of 3 months. A stay of 3 months is, by any reasonable interpretation, temporary.

[200] Mr. Provost also agreed that although some clients of the shelter at the Booth Centre will stay for a period of several weeks, the average length of stay for single men in an Ottawa shelter in 2018 was 61 days, and that some occupants of the shelter at the Proposed Facility will stay for even longer.

[201] Furthermore, Mr. Provost agreed that that the clients of the Transitional Housing program are homeless, and that their lack of housing prior to accessing the Transitional Housing constitutes an emergency. Finally, Mr. Provost stated that there is no requirement for a client to go through the Emergency Shelter prior to accessing the Transitional Housing component.

[202] The Transitional Housing program therefore provides temporary housing to

persons experiencing homelessness and therefore in need of emergency accommodation. The mere fact that the Transitional Housing component provides more intensive support programming than the Emergency Shelter does not qualify the Transitional Housing component as a residential care facility, as the definition of shelter permits ancillary health care, counselling and social support services according to the Appellants.

[203] They maintain that given the above, it is clear that Council's intention where a facility's primary purpose is to provide housing to those that are homeless, as opposed to a primary purpose of medical, mental health, or other similar treatment, the facility will be characterized as a shelter, and not a residential care facility. As the Transitional Housing program is properly classified as a shelter, the proposed facility, as currently designed, violates the zoning by-law amendment's limit for the shelter use of 801 m² according to the Appellants.

[204] With respect to the limitation on the number of shelters in Ward 12, section 134(5) of the ZBL limits the number of shelters in Ward 12 to four. The Appellants disagree with the City and the SA, who take the position that since the proposed facility is intended to replace the shelter currently operating at the Booth Centre, it will not violate this maximum.

[205] The 2017 Staff Report, referring to the ICBL Report states that the shelters in Ward 12 that were included in the 2008 limitation of four shelters referenced were: the Ottawa Mission at 35 Waller Street; the Shepherds of Good Hope at 233 Murray Street; the SA Booth Centre at 171 George Street; and Maison Sophia Reception House at 204 Boteler Street.

[206] The report stated that in addition, the four-shelter maximum will create non-compliance in the short-term, given the small fifth hybrid group home/shelter in Ward 12, which meant that over the long term, some shelters may need to redevelop and may relocate by looking elsewhere in the downtown or greater urban area, within the realm of the widened permission to locate in a variety of non-residential zones. It was

therefore clear in 2008 that five shelters existed in Ward 12, and that if any sought to relocate, they would have to do so outside of Ward 12. Under this interpretation, constructing the proposed facility on the subject Site would be an explicit violation of section 134(5) of the ZB and the SA has not sought an exemption from this provision.

[207] The Appellants argue that the City in its 2017 Staff Report sought to circumvent this reality by concluding, without any analysis, that:

Based on review of current facilities against the land use definitions in the Zoning By-law, the department has concluded that there are four shelters in Ward 12 including the Ottawa Mission at 35 Waller Street, the Shepherds of Good Hope at 233 Murray Street, the Salvation Army Booth Centre at 171 George Street and the “hybrid” shelter referenced above [*Evelyn Horne, location undisclosed*]. The Maison Sophia Reception House falls under the definition of a residential care facility in the Zoning By-law, as opposed to a shelter.

[208] The 2017 Staff Report miscounted the number of shelters in Ward 12, and neither the City or the SA have proffered any justification for departing from the maximum of four as set out in the ZBL.

[209] According to the Appellants, Vanier is plainly already overburdened, with a number of shelters in excess of the purported cap and permitting the proposed facility would further exacerbate this and escalate the potential for conflict.

[210] Finally, the Appellants argue that the Community and Family Services and Day Program proposed in the new facility are not a permitted use under the ZBL, since these portions of the facility referred to as the Day Program, will, according to the evidence of Mr. Provost, be used to serve clients not resident in the proposed facility. As such, these elements of the proposed facility qualify as a community health and resource centre under the zoning by-law and are not permitted.

[211] The definition of community health and resource centre explicitly states that it is a place (defined as land, buildings or structures) where “overnight care and living accommodation are not available.” Given that the proposed facility is integrated and multi-use, its overnight accommodations cannot be separated from the community

health and resource centre elements.

Analysis and Findings- Zoning By-Law Amendment - 2018-301

[212] The Tribunal is satisfied that the Zoning By-law No. 2018-301 is consistent with the PPS 2014 and conforms with the City's Official Plan as amended.

[213] The purpose section of the Traditional Mainstreet Zone expands on the direction set out in the Official Plan that these areas should accommodate a broad range of uses including retail, service commercial, office, residential and institutional uses as well as mixed-use buildings.

[214] The only uses excluded or prohibited in the Traditional Mainstreet Zone are auto-related uses. This exclusion or prohibition does not exist with respect to shelter accommodation.

[215] Ms. O'Connell and Mr. Tremblay opined that the absence of shelter accommodation in the list of permitted uses does not amount to a prohibition of the use, rather, the effect of the omission is that a site-specific zoning by-law amendment, such as the amendment sought by the SA and enacted by City Council in this case is required.

[216] The list of uses permitted in the Traditional Mainstreet Zone in Section 197 of the by-law is very broad and contains a range of uses which are either proposed to be included in the proposed facility or are similar to uses which will occur within the proposed facility. These include:

- community centre;
- community health and resource centre;
- instructional facility;

- place of assembly;
- place of worship;
- residential care facility; and
- training centre.

[217] Furthermore, the SA proposes to make improvements to the existing building at 325 Montreal Road, which houses the existing SA Thrift Store. Part of the improvements include the construction of a new social enterprise café and space for its family services programs. The changes result in an improved retail store, restaurant and community health and resource centre along Montreal Road at this location at the corner of St. Anne Avenue. These, together with the streetscape improvements to be undertaken as part of the proposed facility, will contribute to the compact, mixed-use, pedestrian-oriented built form which the Traditional Mainstreet zone aims to foster.

[218] It is noted that the Appellants do not take issue with the majority of the amendments to the performance standards required to permit the construction of the proposed facility, this is consistent with their acknowledgement that the proposed facility is well designed and that the subject property has an unusual configuration.

[219] Mr. Lorimer and Mr. Tremblay both provided evidence confirming how each amendment to performance standards will either improve the design of the proposed facility or address the unusual configuration of the lot and enhance the function of the site for its proposed use. referring to the changes to drive aisle or parking stall widths as examples of this.

[220] In order to ensure its compatibility with adjacent existing and future development, the scale and massing of the proposed facility is smaller than would be permitted “as of right” by the Zoning By-law. This is reflected in its building height of three to six-storeys (whereas 11 or 12 storeys would be permitted) and side yards of 4 and 4.5 metres,

whereas the Zoning By-law only requires three-metres side yards.

[221] Both Mr. Tremblay and Ms. O'Connell support the SA's characterization of the proposed facility as a mixed-use facility containing an emergency Shelter (801 m²) and a Residential Care Facility (5,358 m²). Mr. Hicks did not suggest any alternative characterization of the facility

[222] While programming for the Residential Care Facility component of the proposed facility continues to evolve and will be the subject of further review and consultation through the Site Plan Review and Programming Advisory Committee, it will include a variety of transitional housing, including a working men/life skills residence, special (medical) care facility, and stabilization and anchorage as well as a range of ancillary uses including offices, areas for day programming, meeting rooms, dining rooms, a chapel and a range of amenity spaces.

[223] Ms. O'Connell acknowledged that the definitions contained in the Zoning By-law may not always perfectly articulate the distinction between different uses; however, in her opinion it is nevertheless possible to distinguish between a "shelter" as defined by the Zoning By-law and a "residential care facility."

[224] At a high level, Ms. O'Connell characterized shelter accommodation as being a temporary and very basic form of accommodation with limited support and ancillary services directed at meeting immediate and short term needs, whereas the definition of Residential Care Facility accommodates a much broader range of uses which are generally characterized by more intensive support, programming or services and where residents generally reside for longer periods.

[225] Ms. Van Buskirk and Ms. O'Connell developed a table, which is set out in Ms. Van Buskirk's witness statement (Exhibit 40) at pages 4 to 6 to provide assistance in differentiating the emergency shelter component of the proposed facility from the Residential Care Facility components, including transitional housing and special (medical) care facilities.

[226] Mr. Provost also provided detailed evidence with respect to the distinction between the shelter accommodation provided by the SA and its various longer-term transitional housing programs, noting that the average number of nights spent by an individual in the shelter component was 18 (and not the 61 days identified by the Appellants in their written submissions).

[227] Ms. Van Buskirk's evidence was very clear that emergency shelters as a form of accommodation is fundamentally different from transitional housing from a housing perspective. In simple terms, she testified that in a shelter, clients don't know which bunk will be theirs from day to day while in Transitional Housing or in a Residential Care Facility, residents know their room and their bed and maintain their belongings there. They are there to participate in the specialized programs that they require to address their particular needs. In contrast to the above referenced comprehensive framework for characterizing shelter accommodation for zoning purposes, Mr. Hicks recommended an approach which focused exclusively on whether individuals accessing accommodation are "in immediate need of shelter." His approach necessarily requires consideration of the personal circumstances and characteristics of individuals and is therefore potentially discriminatory and contrary to the well-established principle that personal characteristics are not a proper basis for the determination of any issue relevant to land use or zoning.

[228] With respect to group homes for women fleeing domestic violence, while Ms. Van Buskirk did agree that these facilities provide temporary accommodation to persons in an emergency situation, she was clear that a group home is a very different form of housing from a shelter, operating as a single housing-keeping unit, generally with a shared kitchen where residents live and receive supports communally.

[229] It is uncontroverted that the 2008 ICBL Report has no legal status or standing and does not reflect current thinking with respect to the regulation of social services. Notwithstanding the Appellants' attempts to elevate the status of the 2008 ICBL Report, all of the land use planners, including Mr. Hicks, agreed that this report reflects the views and recommendations of members of the Planning Department some 12 years

ago and has no status in the land use planning process and is not binding on Council, on the Planning Department or on this Tribunal.

[230] The Planning Department provided City Council in 2017, with its reasons as to why this report has no bearing on the consideration of the proposed facility and associated Zoning By-law and OPA's, including a detailed memorandum dated November 2, 2017. The most significant of these include:

- a. Notwithstanding the staff recommended that shelters be prohibited on Traditional Mainstreets, Council as it was constituted in 2008 elected not to adopt such a prohibition in either the Official Plan or the Zoning By-law.
- b. Where Council intends to prohibit a use in either a designation or in a zone, it does so expressly and has done so in many instances in both policy and regulation, as demonstrated through the examples provided by Ms. O'Connell in her testimony; Council, as it was constituted in 2008, did not adopt amendments to its Zoning By-law providing any particular direction or guidance with respect to the characterization of social housing uses. In other words, the 2008 ICBL Report is of no assistance in characterizing uses as either shelters or as other uses such as group homes or residential care facilities; and
- c. Development applications submitted by the SA contemplate site-specific amendments to the Official Plan and Zoning By-law which are tied to the proposed facility and which must be assessed on their land use planning merits.

[231] Additionally, the fact that the dated ICBL Report was never incorporated into planning policy that was subjected to the rigours of policy implementation under the Planning Act, including public consultation, emphasizes the non-applicability of the content of the Report. The Tribunal accordingly finds that the 2008 ICBL Report is not relevant to the policy considerations. The Tribunal also finds that the Appellant's arguments that are based upon the ICBL Report must also fail for the same reasons.

[232] The Tribunal does not accept the Appellants' argument that the provisions of section 2.1 of the *Planning Act* which require the Tribunal to "have regard to any decision that is made under this Act by a municipal council or by an approval authority and relates to the same planning matter" obligates the Tribunal herein to "have regard" to the decision that Council made in 2008 to adopt amendments to the Zoning By-law including many which are of general application throughout the City.

[233] The Tribunal also does not accept the notion put forth by the Appellants that the approval of comprehensive Official Plan Amendment No. 76, 150 and 180 in 2009, 2017 and 2019 should interpret the failure of Council to introduce Traditional Mainstreets into the list of designations included in Policy 3.1 (4) of the Official plan as a "decision" to prohibit shelters on Traditional Mainstreets.

[234] Ms. O'Connell testified that the Planning Department did not recommend amendments to the Official Plan in 2008 precisely because, having reviewed policy 3.1 (4), it had concluded that it would not operate to prohibit shelters on Traditional Mainstreets.

[235] The appeals before the Tribunal for adjudication are with respect to site specific Official Plan and Zoning By-amendments that Council adopted with full knowledge of the relevant provisions of the Official Plan and Zoning By-law being amended. In fact, the evidence is that the only reason that the Planning Department recommended that the SA seek amendments to the Official Plan was precisely to ensure that Council had a complete understanding of the existing policy framework governing the development of shelters.

[236] The Tribunal agrees with counsel for the City's submission that if accepted by the Tribunal, the interpretation advanced by the Appellants would require the Tribunal, in every instance that it considers a site specific application, to "have regard" to every decision that a council has ever made with respect to a matter of general application applicable to a particular site. The Tribunal agrees that this would be both impractical and absurd.

[237] The Tribunal accepts the uncontroverted evidence of Ms. O’Connell, Mr. Tremblay, Ms. Van Buskirk and Mr. Lorimer that the transitional housing component of the proposed facility constitutes a residential care facility and is clearly distinguishable from the shelter component. Collectively, these individuals have extensive knowledge of the interpretation of zoning by-laws, the distinction between types of social housing and the design of the proposed facility. The Tribunal prefers their evidenced over the unsupported interpretation advanced by the Appellants.

[238] The Tribunal rejects Mr. Hicks’ theory that the definition of “Community Health and Resource Centre” contained in the Zoning By-law precludes this form of use from co-locating in a mixed use facility which also comprises any residential component. Rather, the Tribunal agrees with Ms. O’Connell and Mr. Tremblay, who both maintained that the proposed facility is appropriately characterized as a shelter and a residential care facility, they also noted that other than the definition of the use, there are no provisions in the Zoning By-law which would preclude a Community Health and Resource Centre from operating in the same building or on the same property as a residential use.

[239] Mr. Hicks was unable, under cross examination, to point to any good land use planning rationale for precluding a Community Health and Resource Centre from coexisting in a building which also contains overnight accommodation or residential units and agreed that, to the extent that his interpretation of the definition was accepted, the issue would appropriately be remedied through a further amendment to the Zoning Bylaw Amendment for the proposed facility.

[240] The Tribunal prefers the interpretation proffered by Ms. O’Connell and Mr. Tremblay on this issue and agrees that the amendment enacted by Council represents good land use planning and there is no need to make a further amendment to the by-law.

[241] Section 134 of the Zoning By-law contains a number of performance standards which apply only to shelters. These include a minimum separation distance of 500

metres between a shelter and any other shelter and a limit of 4 shelters in Ward 12. The Appellants' have not provided any relevant evidence to support their assertions that the 500 metre minimum separation distance and cap on the number shelters is necessary in order to avoid an "overconcentration" of shelters or social services.

[242] The Appellants rely on the testimony of Professor Benali with respect to the "maximum dose" of shelters in Ward 12, who was qualified as an "urban geographer with expertise on city conflicts." She was of the view, as articulated by the Appellants in their closing submissions, that municipalities should limit the "burden of care that marginalized groups ... placed on a community." In support of her opinion Professor Benali referenced "other case studies", which she had no involvement in preparing, and which she did not produce or identify during her testimony. This evidence is clearly not reliable and is irrelevant from a land use planning perspective.

[243] Mr. Provost and Ms. Van Buskirk were the only witnesses in this hearing with expertise relevant to the question of social service delivery and the provision of housing to the homeless. Ms. Van Buskirk testified that social services, including shelters, are located where they are needed and contribute to the wellbeing of adjacent communities. She opined that any concern about "overconcentration" stems from negative and unfounded perceptions about the individuals who access these services. Mr. Provost confirmed on behalf of the SA that one of the merits of the subject property is its proximity to many of the people that the proposed facility will serve.

[244] The uncontroverted evidence of Ms. O'Connell was that the minimum separation distances and shelter cap, enacted in 2008, no longer represent good land use planning. She was of the view that it was necessary to address the provisions of section 134 when developing the Zoning By-law Amendment given that both subsection 134(1) and subsection 134(5) require a consideration of other shelters in proximity to the proposed facility. She advised that she received a list of facilities, which should be reviewed as possibly constituting shelters in August of 2017. Ms. O'Connell consulted with the City's zoning interpretation branch, staff in the City's Community and Social

Services Department as well as the buildings branch in order to prepare reasoned characterization of each listed facility.

[245] This analysis was reproduced in Ms. Van Buskirk's witness statement and was reviewed and confirmed by both Ms. O'Connell and Ms. Van Buskirk in their oral testimony. They both concluded, based on information currently available, that there are currently four shelters in operation in Ward 12, one of which is the SA's existing Booth Centre on George Street in the by-ward market, the other three being the Mission and Shepherds of Good Hope, two other large shelters in the By-ward Market, and the Evelyn Horne Young Women's shelter, whose location is not disclosed to protect the safety of the residents.

[246] Having concluded that as of November 2017, there were only 4 shelters in existence in Ward 12, none of which appear to be located on Montreal Road, the Planning Department's report to Planning Committee and Council indicated that the proposed facility, which will replace the SA's existing facility on George Street, would appear to comply with section 134 of the Zoning By-law.

[247] Nevertheless, given the existence of competing characterizations of existing residential facilities serving marginalized or at-risk populations in Ward 12 and given the possibility that there could be other shelters in Ward 12 of which the City is currently not aware, the Zoning By-law Amendment recommended by the Planning Department to Council includes provisions which except the proposed facility from the application of the relevant provisions of section 134 of the Zoning By-law. Motion 61/8 adopted by City Council directing the removal of zoning permission for a shelter use at the SA's existing location in the By-ward Market (Booth Centre) clearly demonstrated the significance of the fact that the proposed facility represents a relocation of an existing shelter from an area where three large shelters currently exist in close proximity, to a new location which does not benefit from this service.

[248] It is also evident that Council was apprised of the existence of competing views with respect to the characterization of shelter uses, the number of existing shelters in

Ward 12 and the possibility that additional legal non-conforming shelters currently unidentified might exist. It nevertheless elected to adopt zoning by-law amendments excluding the proposed facility from the application of minimum separation distance requirements and the “shelter cap” contained in section 134 of the Zoning By-law.

Duty to Consult with the Francophone Community – The Appellant’s Position

[249] The Appellants argue that the City failed to consult with the Francophone community and to consider its specific interests in its approval of the amendments. Specifically, the Appellants are critical of the City for failing to live up to its own policies in matters of inclusion, such as the Human Services Plan, the Equity and Inclusion Lens and the Diversity Snapshot, all of which are applicable to planning applications. The Appellants contend that the City improperly failed to consider the interests of the Francophone community, when it adopted OPA Official Plan Amendments No. 199 and 200 as well as Zoning By-law No. 2018-301.

[250] The Appellants allege that the City failed to consider Vanier’s role in promoting and enhancing Francophone identity and preventing or pushing back against assimilation in two ways:

- 1) The City failed in its obligation, “under both the PPS and its own policies, to consider whether the proposed facility was consistent with the policy direction of promoting a healthy, livable and safe Vanier Francophone community and larger Francophone community, which failure is argued to have an impact on Vanier’s broader institutional role; and
- 2) The City failed to include the Francophone community in decision-making and consider its unique perspective.

[251] The Appellants refer to the preamble to the PPS, which states that it “recognizes the diversity of Ontario” and that this goal is complemented by section 1.1.1, which speaks to the need to build healthy, safe and livable communities.

[252] The term “communities” in this policy means something other than a municipality and can be on a different scale. In *Nabbout v. Tecumseh (Town)* 2018 CarswellOnt 750, the Board analyzed the meaning of the term “community” in section 1.1.1. of the PPS at paragraphs 27-29, and concluded as follows:

[27] The subjectivity of the term ‘community’ is no doubt why a definition of the term is not included within the PPS’ multitude of defined terms. It is also not surprising that the Board heard different ideas of community from the planners’ perspective versus that of the residents. For instance, it was Mr. Hillman’s opinion that ‘community’ for the purpose of the Board’s analysis should be the Town as a whole. If this were the case, the Board could certainly understand how the proposed development would benefit the Town on the whole, and perhaps achieve the healthy community objectives of the PPS. However, the Board cannot reconcile such an interpretation with the language of the PPS.

[28] A different panel of the Board has, on a previous occasion, considered the meaning of ‘community’ in the PPS, finding that it does not have the same meaning as ‘municipality.’ This panel must agree for the same reasons articulated by Vice-Chair Schiller, that is, that the PPS uses the terms ‘community’ and ‘municipality’ throughout the document; if ‘community’ were meant to encompass an entire municipality, it would have made sense for the drafters to have used one term: ‘municipality’. This panel further agrees that the term ‘community’ in the PPS is meant to convey something different from a municipality, something smaller.

[29] The definition of ‘community’ in a particular case is necessarily subjective and contextual...

[253] Just as the PPS recognizes the importance of planning authorities consulting on planning matters with Indigenous communities, communities can be defined on the scale of the Francophone community. The City’s Human Services Plan recognizes that:

The new Ottawa is above all a community of communities. The amalgamated City is made up of many smaller communities, each defined variously by geography, identity and common interest. Consequently, the theme of community building needs to be central to long-term planning and development.

...

A commitment to working collaboratively with communities of identity and interest recognizes the importance of working with social networks connecting these communities to achieve community directed planning and growth.

[254] The Human Services Plan continues:

Neighbourhoods are physical entities in the City – elements determined by patterns and boundaries of development, plus the distinctive features of the built

environment. Equally, neighbourhoods are networks – of people, of social capital. Healthy neighbourhoods add immeasurably to quality of life, providing rich opportunities for spontaneous interaction, safety and protection for citizens, and support.

Many factors determine the health and security of individuals and the communities in which they live. Sufficient income, affordable housing, adequate nutrition, responsive emergency services, steady employment, and the connection and support of a caring community – all contribute to physical health, a sense of well-being, and the capacity to participate in the life of the City`´`.

[255] The City also recognizes that Vanier, unique among all other neighborhoods in Ottawa, has historically been and remains defined by its Francophone identity.

[256] Furthermore, the City's Equity and Inclusion Lens Handbook explicitly lists Francophones as a group at risk of exclusion. The Diversity Snapshot for Francophones, published under the auspices of the Equity and Inclusion Lens, states that inclusion of Francophones means that:

Organizers of a public meeting or consultation think of how to include Francophones without being reminded to do so.

The Francophone perspective and consultation with the Francophone community are included automatically in the planning stage of every City policy.

[257] Mr. Miguelez readily admitted that the Human Services Plan, Equity and Inclusion Lens, and Diversity Snapshot remain in-force City policy with applicability to planning applications. He also agreed that at a minimum, the Equity and Inclusion Lens policies required that Francophones be consulted and be provided with French-language documentation, and as well that their unique perspective be considered by the City, such as was done with the Montreal Road Revitalization Program.

[258] In this case, the City had an obligation under both the PPS and its own policies to consider whether the proposed facility was consistent with the policy direction of promoting a healthy, livable and safe Vanier Francophone community and larger Francophone community. It has previously recognized the centrality of community identity to the goal of promoting healthy, livable and safe communities, as well as the importance of properly consulting the Francophone community as well as the risks of

not consulting.

[259] In addition, section 4.6 of PPS provides that the PPS shall be implemented in a manner that is consistent with the *Code* and the *Canadian Charter of Rights and Freedoms* (“*Charter*”).

[260] Mr. Miguelez explained that while he, as a land use planner, would not refer to the *Code* or the *Charter*, he was familiar with the principle requiring respect for and the protection of minorities, including but not limited to linguistic minorities, and explained that City Council had adopted policies reflective of this obligation, notably in the Human Services Plan and in the Equity and Inclusion Lens Handbook. Mr. Miguelez acknowledged that minority rights can be both individual and collective in nature.

[261] Thus, section 4.6 of the *Code* incorporates the unwritten constitutional principle requiring the respect and protection of minorities, including Canada’s linguistic minorities. That principle and its application to discretionary decision-making was considered by the Ontario Court of Appeal in *Lalonde v. Ontario (Commission de restructuration des services de santé)*, 2001 CarswellOnt 4275 (ONCA) (“*Lalonde*”), which involved a challenge to the respondent Commission’s decision to drastically reduce the services at Montfort Hospital, the only truly Francophone hospital in the province.

[262] In *Lalonde*, the Court of Appeal at paragraph 114 explained that:

The principle of respect for and protection of minorities is a fundamental structural feature of the Canadian Constitution that both explains and transcends the minority rights that are specifically guaranteed in the constitutional text. This is an area where, as the Supreme Court of Canada explained in the *Secession Reference* at p. 292, “[a] superficial reading of selected provisions of the written constitutional enactment, without more, may be misleading.” This structural feature of the Constitution is reflected not only in the specific guarantees in favour of minorities. It infuses the entire text and, as we have explained, plays a vital role in shaping the content and contours of the Constitution’s other structural features: federalism, constitutionalism and the rule of law, and democracy.

[263] Although the Court of Appeal held that the unwritten constitutional principles of

protection for minorities have a normative force, there is no need to invoke it independently in this case. Rather, as Mr. Miguelez admitted, the PPS promotes healthy, safe and livable communities, including Francophone communities, and the City has adopted policies consistent with that principle.

[264] Furthermore, the PPS must be implemented in manner consistent with the *Charter*, including the principle of respect for and protection of linguistic minorities. In this instance, this principle therefore operates as an aid to interpretation of the PPS and relevant City policies.

[265] The Court in *Lalonde* concluded that in exercising its discretion as to what is in the public interest, the Commission was required by the fundamental principles of the Constitution to give serious weight and consideration to the importance of Montfort as an institution to the survival of the Franco-Ontarian minority. The Commission had considered this beyond its mandate and its directions were therefore subject to judicial review.

[266] The Divisional Court in *Lalonde v. Ontario (Commission de restructuration des services de santé)*, 1999 CarswellOnt 4167 (Ontario Divisional Court) at paragraph 106), whose decision was upheld on appeal, held that given the constitutional principle of respect for and protection of minorities:

it was not open to the Commission to proceed on a 'restructured health services' mandate only, and to ignore the broader institution role played by ... Montfort as a truly Francophone centre, necessary to promote and enhance the Franco-Ontarian identity as a cultural/linguistic minority in Ontario, and to protect that culture from assimilation.

[267] Thus, the principle of respect for, and protection of, minority language rights is a useful tool not only in interpreting legislation but in assessing the validity of a government entity's implementation of that legislation. The Appellants submit that it is not open to the City, as a government entity, to evaluate solely the built form of the proposed facility, while entirely ignoring the broader institutional role played by Vanier and its institutions as a truly Francophone centre, necessary to promote and enhance

the Franco-Ontarian identity as a cultural/linguistic minority in Ontario, and to protect that culture from assimilation.

[268] In this case, the Appellants argue that the City erred by failing to consider the impact of the proposed facility on the vitality of the Francophone community, and by failing to consider Vanier's role in promoting and enhancing Francophone identity and preventing or pushing back against assimilation. According to the City's own expert, such considerations were in the City's view irrelevant and beyond the land use planning questions strictly at issue. Mr. Miguelez testified that there was no need to consider that Vanier is: emblematic for Francophones, constitutes a living heritage, is the only historic Francophone neighbourhood left in central Ottawa, and has the highest number of Francophone institutions of any Ottawa neighbourhood – institutions that he admits are vital to the Francophone community.

[269] In *Giroux v. Ontario (Minister of Consumer & Business Services)* 2005 CarswellOnt 2587 (Ontario Divisional Court), at paragraph 27, the Divisional Court emphasized that:

in *Lalonde*, the Court of Appeal emphasized the fact that Hôpital Montfort played a special, unique and significant role in the community. Apart from the services that were provided in French there to the community, Hôpital Montfort was an institution founded by the Francophone minority and a symbol of that community.

[270] The caselaw thus recognizes the importance of symbols to the Francophone minority community. In this case, Professor Lamoureux, and to a lesser extent Professor Benali, testified that Vanier is critical in the representations that Francophones have of their own community, and that such representations play a role in terms of linguistic identity and can impact behaviour, including language use. Moreover, the City has implemented a number of policies speaking to Vanier's identity as a unique bastion of Francophone culture and identity, and to the importance of honouring and celebrating that identity. As mentioned above, Mr. Miguelez admitted that Vanier is an emblematic place for Francophones and the City could not be taken to have been unaware of Vanier's Francophone heritage, or of the importance of Vanier to

the wider Francophone community.

[271] The City also enacted policies that Mr. Miguelez agreed required the City to include the Francophone community in decision-making and consider its unique perspective.

[272] This consultation and consideration simply did not occur in this case according to the Appellants. There is no evidence that the City considered the specific interests of the Francophone community in its approval of the amendments. The City and the SA according to the Appellants deliberately kept the applications secret until after it was submitted, and thereafter application materials were not even made available in French.

[273] In the eyes of the Appellants the City failed to live up to even the minimum requirements in the context of an application with the potential to massively disrupt a unique and critical bastion of Francophone culture in Ottawa according to the Appellants.

[274] Mr. Miguelez testified that there must be a “balance” between the interest of different minority groups – in this case, between the needs of the homeless population and those of the Francophone population. His testimony in this respect echoed that of Professor Benali. It is plain that no such balance exists or was even considered here according to the Appellants.

[275] The Appellants argue that a number of the conclusions he reached in his witness statement should be afforded no weight because he was unaware of the particulars of the applications as he had not reviewed these. He did not conduct any studies of his own other than looking at the demographic data available, did not consult the Francophone community, and did not consider the impact on linguistic representations and identity. He did not consider Vanier’s role in preventing or pushing back against assimilation.

[276] Not only did the City not consider the interests of, or impact on, Vanier’s unique

and vital Francophone community; it did not see fit to respond to the Appellants' extensive evidence on that front with qualified or reliable evidence of its own.

Analysis and Findings – Duty to Consult Francophone Community

[277] The Tribunal agrees with the City's submission that the Appellants' constitutional claims are predicated on: (1) the notion that an increase in crime due to the presence of the proposed facility will impact Francophones and Indigenous residents in Vanier; and (2) that perceptions of Vanier will be negatively impacted based on public attitudes about the existence of the proposed facility, which will be harmful to Francophones in Vanier. The Tribunal rejects those claims.

[278] Firstly, the Tribunal has jurisdiction to consider constitutional issues so long as they relate to legitimate land use planning concerns. The matters raised by the Appellants are not legitimate land use planning matters and evocation of the constitution does not change that.

[279] Secondly, constitutional claims cannot be raised in the abstract. They must be substantiated with facts. Hypothetical impacts are not the proper basis for a *Charter* claim and the Appellants have failed to provide any evidence that establishes the existence of the impacts they allege.

[280] The Appellants' witnesses agreed that their concerns about crime rates were based solely on perception and assumptions, rather than verifiable evidence showing that the existence of a shelter causes increased crime.

[281] Similarly, although Professor Benali and Professor Lamoureux both pointed to a presumed fear that Franco-Ontarians' perceptions of Vanier would be diminished if the SA proposal proceeded, there was no actual direct evidence of such perceptions from any Franco-Ontarians, including any of the Appellants. Neither Professor Benali or Professor Lamoureux professed to hold such a perception.

[282] The Tribunal recognizes that it is incumbent upon it to consider that the objective of the proposed facility is to provide necessary services to individuals suffering from physical and mental health conditions, the elderly who can no longer afford housing, and members of other protected groups seeking accommodation and food. The objective of serving the needs of such individuals must be proportionally balanced against the rights asserted by the Appellants. The Tribunal finds that given that it is uncontested that the proposed facility will serve important social functions and given that the Appellants' asserted constitutional rights are unformed and unfounded, a proportional balance of the interests at stake clearly lands in favor of the City and the Applicant.

[283] The Appellants' contention that the City has infringed the unwritten principle is without basis in law or fact.

[284] The City has acknowledged that the *Planning Act* and the PPS 2014 must be implemented, and interpreted, consistently with the *Charter*, which includes unwritten constitutional principles. Although the *Planning Act* and the PPS 2014 do not contain or refer to specific rights for Francophones, the City must implement these such that it does not breach the existing rights of Francophones. The Appellants have not identified which written constitutional right was breached by the City and as a result, their constitutional argument with respect to the Francophone community is erected upon a non-existent constitutional foundation.

[285] The City relies on a recent decision, the Court of Appeal for Ontario in *Toronto (City) v. Ontario (Attorney-General)*, 2019 ONCA 732, 2019 CarswellOnt 14847 at page 11, paragraph 87, which reiterates, citing the Supreme Court of Canada in *Reference re Secession of Quebec*, at paragraph 54 that there are "compelling reasons to insist on the primacy of our written constitution" because unwritten constitutional principles are "indeterminate, open-ended, and contested concepts." To invoke these as grounds to invalidate legislation would be to devolve into "judicial governance."

[286] The City argues that the Tribunal is empowered by the *Planning Act* to approve

or disapprove municipal legislation, such as zoning by-laws and amendments to official plans. By analogy with judicial courts, whose role is to assess the constitutionality of legislation, the Tribunal's administrative role is to review legislation and assess its compliance with the *Planning Act* and related instruments. The Tribunal agrees with counsel for the City that as courts must not invalidate legislation based on indeterminate, open-ended and contested concepts, so should this Tribunal refrain from repealing municipal planning instruments on such indeterminate grounds.

[287] The Tribunal also agrees with the City's argument that the evidence clearly shows that, far from ignoring Vanier's broader institutional role:

- a) the Site Plan will be responsive to Vanier's cultural heritage in compliance with the Official Plan; and
- b) the City has enacted many overarching policies and adopted many initiatives to celebrate Vanier's broader institutional role in the Francophone community.

[288] The Tribunal agrees with counsel for the City's submission that the Appellants' contention that Francophones were excluded from the consultation process is without merit whatsoever. The Appellants' allegations are largely predicated on the speculation that the proposed facility is inconsistent with a "healthy, safe and livable" environment for all communities according to the City. The Appellants' evidence, including the testimony of Professor Benali and Professor Lamoureux on that point, is insubstantial.

[289] With respect to the Appellants' allegations that the City has improperly failed to consider the interests of the Francophone community, and that the proposed facility will have detrimental social impacts on Vanier, including the Francophone and Indigenous communities, the Tribunal agrees with the City that these allegations are without merit.

[290] With respect to the Appellants' criticism of the City for failing to live up to its own policies in matters of inclusion, such as the Human Services Plan, the Equity and Inclusion Lens and the Diversity Snapshot, all of which are applicable to planning

applications, the City has acknowledged that these policies designate Francophones as a group at risk of exclusion and that specific measures must be taken to ensure that they are proactively included in public meetings and consultations. The Appellants, however, in advancing this argument, have ignored the evidence proffered by the City and SA, which clearly goes to show that Francophones were included in all stages and aspects of the consultation process relevant to the Official Plan and Zoning By-law Amendments.

[291] Ms. O'Connell testified that the City:

- Received submissions in both official languages and, where comments were received in French, provided a response in French;
- Published a website summarizing the application and all feedback received from the public in both English and French;
- Provided a summary of planning staff's recommendation;
- Ensured that bilingual staff and representatives of the SA were present at the public information session arranged in this case in advance of the statutory public meeting;
- Circulated the application summary included on the development application search tool and in both French and English;
- Ensured that bilingual staff were present at the Planning Committee meeting;
- Ensured that the staff presentation at the Planning Committee meeting was done partially in French and partially in English;
- Ensured that simultaneous translation was available at the Planning Committee meeting for members of the public that wished to address

Councilors in French; and

- Ensured that detailed report submitted by the Planning Department to Planning Committee and Council was translated in its entirety and available in either official language, a measure specifically taken when comments are received in French on applications.

[292] The Tribunal simply cannot accept the Appellants' contentions on this issue given the evidence outlined above.

[293] It is evident however, based on the Report to the Planning Committee that participants in the consultation process voiced concerns about, among other topics, the availability of French-language services at the proposed facility, as well as its impact on Vanier's Francophone identity. It is also evident from the Report that the City responded to all of those concerns. Accordingly, any contention that the City failed to meet these obligations in the application process has no merit whatsoever.

[294] With respect to the issue as to the emblematic importance of Vanier for the Franco-Ontarian community, this is not contested by anyone. The evidence showed that the City has made consistent, pro-active efforts to safeguard and promote that emblematic importance and it is agreed that the City's policies and initiatives regarding Vanier will have positive impacts on the community.

[295] The Appellants' claim that the proposed facility will have negative cultural impacts in the surrounding area is necessarily predicated on an assumption that providing assistance to homeless people is somehow inconsistent with Vanier, Francophone, or Indigenous values—a position that is clearly untrue as the evidence establishes that the proposed facility will reflect cultural considerations and that the SA's services will continue to be offered in French, as is required under funding arrangements with the City.

[296] Furthermore, the subject property is located within the target zone for the Vanier

and Montreal Road Public Art Plan, which is intended to guide the provision of culturally-relevant public art along Montreal Road. It is not disputed that the SA has made provision in the site plan for the inclusion of public art that recognizes the cultural heritage of Vanier to be developed in consultation with stakeholders. Professor Benali, Professor Lamoureux, and Mr. Maracle all agreed that the provision of culturally-relevant public art on Montreal Road would benefit Vanier.

[297] The Site Plan review process will continue if, and, when the proposed amendments are in force and will provide opportunities for stakeholder engagement including on the issue of the proposed public art component.

[298] The adoption of Motion 61/11 by Council as a corollary to its approval of the proposed Official Plan amendments on November 22, 2017, requires the establishment of an interdisciplinary and consultative Site Plan Review and Programming Advisory Committee, which planners for the City and the Appellants agreed would provide the appropriate forum to ensure community input into decisions concerning elements such as the provision of public art.

[299] The proposed facility will also be developed in the context of the City's overarching policies and initiatives that specifically aim to enhance Vanier's social, economic and cultural development. These policies flow from, or will be implemented in compliance with section 1.4.1 of the Secondary Plan, which, further provides that "public art, street furniture and infrastructure, and contemporary interpretation through building design are some elements that can be used to reflect the French Quarter's history." As a matter of policy, the Secondary Plan provides that "development and redevelopment will include building, site design and streetscaping elements which acknowledge the history of the French Quarter."

[300] Mr. Miguelez testified that the City is currently implementing a major infrastructure renewal plan referred to as the Montreal Road Revitalization Project, whose vision is "to construct a vibrant and welcoming main street with a well-balanced transportation network that will allow residents and businesses to thrive."

[301] The evidence also showed that the Vanier Cultural Revitalization Project is also underway. This is an initiative of the City's Cultural Services department and is based on similar initiatives in St-Germain-des-Prés (Paris) and Soho (New York) according to Mr. Miguelez. Programs to be included under the project aim to create incentives to attract artists to neighbourhoods like Vanier and improve the relationship between artists and other neighbourhood residents. In the context of this project, the City aims to collaborate with arts and heritage organizations, as well as with ethnocultural communities present in each arts and cultural district, including the Francophone community. The goal of this program according to Mr. Miguelez is to take advantage of the presence of artists in Vanier and leverage that as a catalyzer of land planning in a socio-economic fashion.

[302] In sum, the evidence before the Tribunal establishes that the proposed facility will be sensitive to Vanier's diverse culture and will be developed in the context of revitalization efforts that aim to enhance and promote Vanier's cultural heritage.

[303] Rather than posing negative impacts that undermine the cultural considerations that shape Montreal Road and Vanier, the evidence establishes that the proposed facility is aptly primed to be responsive to these considerations, and that both the SA and the City addressed their minds to this question.

[304] Mr. Miguelez provided evidence on the anticipated impact of the proposed facility on francophone rights and responses to concerns from the Vanier community. He provided a demographic description of the Vanier neighbourhood, the availability of services to the Francophone community throughout the Ottawa region, as well as a description of relevant City-led initiatives targeting the Vanier community.

[305] His statistical evidence on the distribution of the Francophone community in the eastern half of Ottawa was simply to provide contextual information on the distribution of Francophones in Ottawa and its main purpose was to show that there are concentrations of Francophones in parts of Ottawa other than Vanier. It was not disputed by the Appellants that the Francophone population in these parts has

decreased over the years.

[306] The City does not deny that Vanier retains an important concentration of Francophone institutions. This fact reflects its character as an historical Francophone neighbourhood that retains its importance for Francophones to this day. It is also a fact, however, that there are Francophone institutions elsewhere in the city and that Francophones do not necessarily depend on Vanier to receive services in French.

[307] The Montreal Road District Secondary Plan also contains specific direction with respect to the “Central Sector” of Montreal Road, where the subject property is located as follows:

1.4.1 Montreal Road

The area of the Central Sector along Montreal Road has historically been referred to as the French Quarter and its role has been to act as the focal point of the cultural identity of the former City of Vanier. Public art, street furniture and infrastructure, and contemporary interpretation through building design are some elements that can be used to reflect the French Quarter’s history.

[308] The following policy applies to those lots with frontage on Montreal Road Policy: “Development and redevelopment will include building, site design and streetscaping elements which acknowledge the history of the French Quarter.”

[309] This statement emphasizes the City’s commitment to reflect and honour the unique cultural history of Montreal Road and that the policy direction regarding building, site design and streetscaping elements which acknowledge the history of the French Quarter will be implemented through the site plan approvals process for the proposed facility following stakeholder consultation undertaken through the Site Plan Review and Programming Advisory Committee.

[310] Ms. O’Connell had indicated that the development of site plan features responsive to these provisions of the Secondary Plan could draw from the work and significant public consultation undertaken to develop the Vanier and Montreal Road Public Art Plan.

[311] It is clear to the Tribunal based on the evidence that the proposed facility, and the urban renewal context in which it will be developed, are responsive to Vanier's cultural context and is entirely consistent with the City's commitment to enhance Vanier's cultural heritage, which includes the Francophone community. It is abundantly clear to the Tribunal that the City and the SA have turned their minds to the interests and concerns of the Francophone community and satisfied any duty to consult.

Duty to Consult with the Indigenous People/Community – Appellants' Position

[312] The Appellants allege that the City improperly failed to consult and coordinate with the Indigenous community and that a duty to consult arises even where no specific constitutional right is engaged. They rely on the decision of the Divisional Court in *Saugeen First Nation v. Ontario (MNRF)*, 2017 ONSC 3456, 2017 CarswellOnt 10872 (Ontario Divisional Court) at paragraph 24, which states that:

[24] Not every case involving the duty to consult is constitutional; the source of the duty is s.35 of the Constitution Act, but there is a link between constitutional doctrine and administrative law principles. The nature of the consultation and the procedural fairness requirements must be "appropriate to the circumstances."

[313] Section 1.2.2 of the PPS states that: "planning authorities are encouraged to coordinate planning matters with Aboriginal communities." In addition, Part IV states that: "The Province recognizes the importance of consulting with Aboriginal communities on planning matters that may affect their rights and interests."

[314] This section according to the Appellants, reflects the application of the duty of consult to all planning matters and that this notion of coordinating with Aboriginal communities implies, according to the Merriam-Webster definition, the notion of being or becoming equal in rank or significance, so as to work together well. In this sense, it reflects the notion of reconciliation: two sovereign people, of equal rank and significance, working together in a relationship.

[315] The City's obligations under the PPS are further informed by policies that the City

itself has enacted. It made a clear commitment to reconciliation with the Indigenous community dating back to as early as 2007, when the City formed the Aboriginal Working Committee (“AWC”) in order to formalize the City’s relationship with the Coalition of Indigenous service providers.

[316] The Divisional Court relied on the Supreme Court’s earlier decision in *Beckman v. Little Salmon/Carmacks First Nation*, 2010 SCC 53, 2010 Carswell/Yukon 140 at paragraph 47. Paragraph 47 provides as follows:

... the impact of an administrative decision on the interest of an Aboriginal community, whether or not that interest is entrenched in a section 35 right, would be relevant as a matter of procedural fairness, just as the impact of a decision on any other community or individual (including Larry Paulsen) may be relevant.

[317] The Appellants argue that these decisions confirm that the impact of the proposed facility on Ottawa’s urban Indigenous community triggered a duty to consult in this case and that there is no need by the Appellants to identify a specific constitutional right protected by section 35 of the *Constitution Act*, 1982. The duty to consult imposes on a decision maker a duty to provide “full and fair consideration” of the Indigenous community’s “views.”

[318] The Appellants argue that the City’s obligations with respect to the Indigenous community are defined by:

- (i) the duty to consult;
- (ii) the PPS; and
- (iii) applicable City policies.

[319] They further argue that Mr. Maracle’s uncontradicted evidence was the only evidence before the Tribunal respecting urban Indigenous issues and should be accepted by the Tribunal and that it was his uncontested evidence that the “Missing and Murdered Indigenous Women Report” and the “TRC Calls to Action” are the drivers

behind the AWC, the Coalition's relationship with the City.

[320] In 2018, the City formalized its reconciliation commitments with the adoption of a "Reconciliation Statement and Action Plan." The staff report recommending adoption of this plan states that:

The TRC Call to Action 43 calls upon "federal, provincial, territorial, and municipal governments to fully adopt and implement the United Nations Declaration on the Rights of Indigenous Peoples [UNDRIP] as the framework for reconciliation." The Reconciliation Action Plan proposed in this report aligns to the framework for reconciliation identified in the United Nations Declaration on the Rights of Indigenous Peoples. Staff will continue to work with the community to explore deepening this alignment.

[321] The Tribunal heard from Mr. Maracle that the United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP") recognized Indigenous peoples' right to be heard and recognized, so that they have an opportunity to chart their own future. Article 18 states the following:

[i]ndigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own Indigenous decision-making institutions.

[322] In addition, article 21(2) on the UNDRIP provides that states shall take measures to ensure continuing improvement of Indigenous economic and social conditions, with particular attention to the rights and special needs of Indigenous women, youth and children. As set out below, these are precisely the constituents who stand to be most affected by the proposed facility.

[323] The City's Human Services Plan, which Mr. Miguelez agrees can be relied upon in the context of planning applications, directs City staff to: "[respect] Aboriginal traditions and culture in the development of City programs, services, policies and strategic directions including a "requirement to consult" with the Aboriginal community..."

[324] Mr. Miguelez's further agreed that the Indigenous community, like the

Francophone community and the homeless population, are groups at risk of exclusion.

[325] The Appellants argue that in the context of the above law and policies, it is clear that the City has a duty to meaningfully consult with the Indigenous community, and to provide it with an opportunity to meaningfully participate in the planning process beyond the rights granted to all stakeholders and that it did not discharge such duty in this case.

[326] The Appellants advance the pointed accusation that the City and the SA intentionally kept this project secret from the Vanier community, including the Indigenous community, until after the Application was submitted. Although Mr. Provost sent a letter to The Wabano Centre for Aboriginal Health (the “Wabano Centre”) in advance of submissions, he admitted that he did not reach out any of the other numerous Indigenous service organizations in Vanier, or to the Coalition.

[327] The Coalition, according to the Appellants, shared its concerns regarding the proposed facility with the SA and the City in August 2017 but never received a response. Mr. Maracle explained that it was the manner in which, the proposed facility was considered and approved by the City that is at odds with the working relationship established and committed to by the City, primarily through the Coalition and the AWC.

[328] He further explained that the City supported the SA project without proper community engagement, discussion or outreach to the people most impacted. This was all the more frustrating when one considers that the face of homelessness is Indigenous according to Mr. Maracle. He explained that the effect has been to disregard the interests and needs of Vanier’s concentration of Indigenous peoples and service organizations as well as the investments that the Indigenous community has made in Vanier specifically. Neither the City nor the SA conducted any meaningful consultation with the Indigenous community prior to submitting submission of the Application according to Mr. Maracle.

[329] The Appellants argue that the City has made a clear commitment to reconciliation with the Indigenous community dating back to at least as early as 2007,

when the City formed the AWC in order to formalize the City's relationship the Coalition of Indigenous service providers. This was driven by the Missing and Murdered Indigenous Women Report and the TRC Calls to Action, according to Mr. Maracle.

[330] The Appellants argue that just as the City ignored the concerns of Vanier's Francophone community, it is clear that the City did not discharge the duties imposed upon it by law and policy to meaningfully consult with Vanier's Indigenous community, or to allow it meaningful participation in the development of the proposed facility.

Analysis and Findings - Duty to Consult with the Indigenous People/Community

[331] The Tribunal has considered all of the evidence as well as the submissions of counsel and finds that there was no failure on the part of the City or SA with respect to a constitutional duty to consult with Vanier's Indigenous community in the circumstances.

[332] The City in this case consulted with, and involved the indigenous community as part of the "robust and inclusive" public consultation at large under the *Planning Act*. In this instance, the interests of the City's Indigenous residents, while clearly separate and distinct, are common with other non-Indigenous groups within the community and the public consultation process, as a whole need not be an absolute and separate consultation process distinct from this larger consultation process. The Appellants have suggested through the evidence of Mr. Maracle that due to the high proportion of Indigenous people residing in the Vanier area and the particular vulnerability of Indigenous women and children, the community's rights are impacted but have never confirmed what "right" is referred to in the context of s. 35 of the Constitution Act.

[333] The leading authority on the duty to consult is *Haida Nation v. British Columbia (Minister of Forests)* 2004 SCC 73, 2004 CSC 73, 2004 CarswellBC 2656 ("*Haida Nation*"), in which the Supreme Court of Canada determined in paragraph 35 that: "the duty arises when the Crown has knowledge, real or constructive, of the potential existence of the Aboriginal right or title and contemplates conduct that might adversely affect it."

[334] The application of the *Beckman* case relied on by the Appellants is a characterization of the case which, has no application to this matter. The case deals with a complicated Treaty agreement related to a land claim that had been negotiated for 11 years and not a planning application. The full context of the excerpt relied on by the Appellants reveals that the “lower end of the spectrum” was codified in the Treaty itself, where “consult” was defined as, among other things, “to provide full and fair consideration by the party obliged to consult of any views presented.” While the Supreme Court endorses the Treaty’s definition of consultation, this case is wholly inapplicable to the land use planning matter before this Tribunal.

[335] The Supreme Court of Canada in *Haida Nation* confirmed that the duties to consult, and to accommodate where necessary, are the responsibility of the Crown and cannot be delegated to third parties, such as the SA.

[336] The SA is under absolutely no duty to consult as the lands in this case are privately owned and have no specific cultural, historical or archaeological significance.

[337] This Tribunal has upheld the notion that in municipal planning, where the lands are privately owned, third parties are under no constitutional duty to consult. In *Burleigh Bay Corporation v. North Kawartha (Township)* 2017 CarswellOnt 15629 (OMB), the Tribunal confirmed that the duty to consult cannot be delegated to the developer or the Town. In that case, the Tribunal indicated that developers had an interest in facilitating the consultation process, where applicable, but that there was no constitutional obligation for a duty to consult. Moreover, the Tribunal’s process was recognized as forming part of the Indigenous consultation process, especially when the Indigenous community are represented at the hearing. More recently in *The Beaumont Trust v Innisfil (Town)*, 2019 CanLII. 42165 (ON LPAT), the Tribunal held that neither the applicant nor the municipality had a duty to consult, as no duty had been delegated by the Crown. In both of these cases, an Aboriginal right or interest was identified, which is not the case in the matter before the Tribunal herein.

[338] It was the uncontradicted evidence of Mr. Provost that the SA followed the

consultation process requested by the Ward Councillor. It is common practice to engage the Ward Councillor on proposals that may prove to be controversial. Mr. Provost outlined the repeated involvement of the Councillor prior to the application being submitted. Based on the SA's understanding in 2017, the Councillor was going to help present the project to the community after the application was submitted and the SA followed the Councillor's direction prior to the application. After the application was submitted, the SA conducted significant consultation and continues to do so.

[339] Mr. Provost's uncontradicted evidence regarding consultation with the Indigenous community was that he repeatedly attempted to contact the Wabano Centre, specifically Allison Fisher, the executive-director of the centre, to discuss the proposal both before it was submitted and after. This attempt included emails and telephone messages and was not limited to one letter as the Appellants have alleged. His attempts to consult with the indigenous community through the Wabano Centre were reasonable under the circumstances given Mr. Maracle's admission under cross-examination that the Wabano Centre is one of the higher-profile Indigenous service providers in the City and Vanier in particular. Mr. Maracle advised that while the Aboriginal Coalition was not consulted regarding the Montreal Road Community Improvement Plan, it was possible that individual indigenous organizations on Montreal Road could have been contacted directly. This is the same consultative action that Mr. Provost attempted. If the Wabano Centre had responded to Mr. Provost, other individuals or groups could have been identified to the SA for further consultation.

[340] The Tribunal is satisfied that the SA made honest and genuine attempts to consult with the Indigenous population in Vanier and that consultation, constitutional or otherwise, is not limited to pre-approval consultation. The evidence shows that many of the concerns respecting the shelter use relate to the conduct of shelter residents and that the SA remains committed to working with stakeholders in Vanier with respect to the proposed shelter.

[341] Mr. Provost testified that he met with Mr. Maracle in July 2019 to discuss the

proposed facility and his concerns. He indicated that while Mr. Maracle could not be said to have endorsed the proposed facility after the meeting, Mr. Provost nevertheless left the meeting believing that Mr. Maracle was left with a considerably more accurate understanding of what was proposed.

[342] With respect to the Appellants reliance on Policy 15 of section 4.11 “Urban Design and Compatibility” of the Official Plan to assert an additional need for consultation, the Algonquins of Ontario, as the First Nations People who first inhabited what is now the City and environs, have expressed an interest in streetscaping, landscaping, signage and public art that celebrates Algonquins history and culture.

[343] The Tribunal notes that the City has agreed to engage and work with the Algonquins where proposals on public lands, such as Chaudiere Island/Victoria Island, provide opportunities to incorporate aboriginal history and culture. The Tribunal finds that this policy does not in any way impose a greater burden on the City or a proponent to consult with the Indigenous community. It is clear that this policy applies only to “public lands”, and refers to “streetscaping, landscaping, signage and public art,” which are all details unrelated to the Zoning and Official Plan Amendment applications that are the subject of this appeal. These details and the opportunity to incorporate Aboriginal history and culture into design are best addressed at the site plan control stage in accordance with subsections 41(4) and (7) of the *Planning Act*, and through the other city initiatives such as Montreal Road Revitalization Plan. The subject lands are not public lands.

[344] The evidence showed that in August 2017, Mr. Maracle on behalf of the Ottawa Aboriginal Coalition, wrote to the City’s Mayor expressing concerns about the failure of the SA to contact Indigenous serving organizations prior to filing its application and the lack of public consultation associated with the site selection process undertaken by the SA. He also identified concerns relating to the potential for negative economic impacts, operational concerns potentially arising from possible interactions between clients of the proposed facility and concerns about the size of the proposed facility. He was advised

by the Mayor that the SA's application would be moving through Planning Committee and City Council and that this would provide an ongoing opportunity for debate and community engagement. The Mayor also forwarded the comments to the Planning Department for inclusion in the detailed report to be provided to Planning Committee for consideration in reviewing the applications.

[345] Ms. O'Connell's evidence is that she reviewed Mr. Maracle's letter and noted that the concerns expressed by Mr. Maracle were similar in nature to concerns expressed by other members of the community for example with respect to the size of the proposed facility, economic impacts and concerns about the behaviour of the SA's clients when they travel through the public domain. These concerns are all fully articulated in the Planning Department's report to Council.

[346] The evidence also shows that the Site Plan Review and Programming Advisory Committee will provide an opportunity for additional stakeholder consultation with respect to such matters, including the Indigenous community and organizations serving them.

[347] The Tribunal notes that the duty to consult was not referred to in the Notice of Appeal from Ms. Fisher, Executive Director of the Wabano Centre, dated September 25, 2018. The Notice of Appeal does not raise any concerns associated with the Indigenous community at all, but rather addresses only the vitality of the Montreal Road Traditional Mainstreet and the "overburdening" of Vanier. The Tribunal finds that this points to the lack of seriousness attached to this issue by Vanier's Indigenous community but is rather a weak attempt by the Appellants to litigate an issue that was not seriously put forth by the Indigenous community.

Public Consultations Generally – The Appellant's Position

[348] In their written submissions, and throughout these proceedings, the Appellants have argued that the SA and the City should have followed a different process in the context of the SA's applications for development approvals to permit the development of

the proposed facility.

[349] The evidence, as noted earlier in this decision, is that the SA began looking for a location to construct a new facility at least as early as 2010, when it retained a consultant to assist with the search. Throughout the search, the SA's intention was always to construct a facility on a scale comparable to the proposed facility with eight of the 11 properties considered being located in Ward 12.

[350] This strategy, according to the Appellants, was not in keeping with identified best practices by researchers from the Universities of Toronto, British Columbia-Okanagan and Calgary. It is suggested in these studies relied on by the Appellants, that service providers should avoid large monolithic structures, which stand apart from their surroundings as larger buildings tend to hold a dominating presence over both the street and pedestrians and that over-sized facilities are more difficult to blend in with the surrounding architecture, can become ghettoized, and are often avoided by the public. Large shelters are also more difficult to manage. The studies also suggest that a number of small shelters, on the other hand, can be more effectively integrated into the community.

[351] The evidence also showed that the City was aware of the SA's intention to construct a facility on the scale of the proposed facility on the subject property since at least January 2015 and that the public was not made aware of meetings between City staff and the Ward Councillor. These meetings continued throughout 2015 and 2016.

[352] It was recognized at the time by City staff that introducing a shelter use was controversial and was likely to result in a significant reaction from the Vanier community.

[353] Meetings with the City continued throughout 2017, and City staff were aware of the final design of the proposed facility in or around April 2017. The Application was submitted on June 16, 2017 and was deemed complete on June 22, 2017.

[354] As noted earlier in this decision the applications were before the City's Planning

Committee and City Council in November and December 2017.

Analysis and Findings – Public Consultation

[355] It is not in dispute that the City and the SA met the requirements of the *Planning Act* and associated regulations as these relate to public notification and consultation in respect of the Official Plan and Zoning By-law Amendments currently under appeal. Furthermore, the Appellants concede that the level of public consultation in this case was in accordance with standard process.

[356] This Tribunal's jurisdiction/responsibility under the *Planning Act*, as it pertains to the hearing and determination of these appeals is not to conduct a referendum on the City's process for siting social housing, including emergency shelter accommodation.

[357] The Tribunal finds that the level of public consultation undertaken by the City prior to Council's approval of the Official Plan and Zoning By-law amendments as well as the mechanisms for future public engagement in the design, programming and operation of the proposed facility went significantly above what would normally be required.

[358] The Tribunal, based on the evidence before it, rejects the Appellants' assertions that the SA intentionally kept secret their proposal for the subject property in advance of filing its applications for Official Plan and Zoning By-law Amendments in order to preclude meaningful consultation with the Vanier community, including its Francophone and Indigenous residents.

[359] It is a normal first step for proponents, when considering a significant development proposal, to consult the Ward Councillor as the elected representative of the residents of a Ward, who can articulate the interests and concerns of his/her constituents and assist potential applicants in understanding how best to develop a proposal with these interests and concerns in mind.

[360] Mr. Provost testified that he began discussing the possibility of acquiring and developing the subject property with the Ward Councillor as early as 2013. In October 2015, having searched for over two years for a suitable location for a new facility to serve the clients of the Booth Centre on George Street, Mr. Provost wrote to the Ward Councillor setting out in detail the site selection criteria which had been applied in the search and identifying the subject property as the selected location.

[361] He testified that he met and spoke to the Ward Councillors on a number of occasions in 2016 to discuss the proposal and that during those meetings and discussions the Councillor made suggestions which were incorporated into the SA's proposal. As an example, the Ward Councillor recommended improvements to the space beside the existing Thrift Store, which is now proposed to be developed as a combined social enterprise coffee shop and entrance to the SA's family service centre.

[362] Mr. Provost also testified that the SA also sought advice from the Ward Councillor concerning initiating more extensive public consultations in advance of formally submitting an application for development approvals. It was suggested by the Ward Counsellor that the SA should wait to commence the public consultation and assured it that he would assist with the consultation once the application was filed to ensure that the public understood what was proposed.

[363] In November 2016 the SA carried out a pre-consultation meeting with members of the City's Planning Department to discuss its proposal and according to Ms. O'Connell, this was the first time that the Planning Department became involved in the review and consideration of the proposed facility.

[364] The evidence was that it is the Planning Department's practice to conduct pre-consultation meetings on a confidential basis in order to protect commercially sensitive information and recognizing that many proposals put forward at a preliminary stage will quite often never come to fruition. In addition, the City's policy is to allow potential applicants, sometimes in consultation with the Ward Councillor, to make a determination about whether to publicize a development proposal in advance of filing applications for

development approvals.

[365] Ms. O'Connell explained that starting in 2014, the City began inviting Community Associations to participate in pre-consultation meetings in order to provide feedback on potential proposals from a community perspective and that such participation by community associations in these meetings was on a confidential basis and required measures such as the execution of non-disclosure agreements.

[366] The Planning Department contacted the Vanier Community Association following receipt of a request for a pre-consultation from the SA with respect to the proposed facility in November 2016. The City did not identify the specific proposal in its communication to the community association in light of the above referred confidentiality protocol. The correspondence advised that there were upcoming pre-application consultation meetings that it would be beneficial for the Vanier Community Association to attend and suggested that they make arrangements to undertake the required training to be able to attend such a meeting.

[367] Ms. O'Connell's evidence was that this training could have been accomplished very quickly and at the time would have consisted of a discussion between the Community Association members and her colleagues responsible for consultation and the execution of the City's standard form non-disclosure agreement. The Vanier Community association did not respond to the City's inquiry and was not present at the pre-consultation which took place in December 2016.

[368] The Tribunal is satisfied that the City went through significant lengths to provide for robust and inclusive opportunities for public engagement prior to presenting recommendations to Planning Committee and Council.

[369] It is quite evident based on the record before it that many aspects of the public consultation process conducted by the City and the SA with respect to the proposed facility far exceeded what is normally done in respect of development applications in the City. These extraordinary efforts are detailed in Ms. O'Connell's Reply Witness

Statement and include:

- The City creating a bilingual website to communicate the process for providing feedback;
- In September 2017, Ms. O’Connell authored an “As We Heard It” report summarizing and cataloguing all public comments received;
- A seven-hour Open House session took place on September 13, 2017. City staff together with representatives of the SA, consultants from all relevant disciplines contributing to the design of the proposed facility, and clients of the existing Booth Centre were in attendance and available to both answer questions from the public and receive input;
- A special three-day meeting of Planning Committee was convened in order to provide time for all public delegations to provide their feedback and input. The Planning Committee heard from 147 delegations; and
- The Planning Committee also received written submissions from 157 delegations, though some of the same delegations both provided written submissions and attended the meetings in person.

[370] Given that, as demonstrated above, there was no legal obligation to conduct public consultation other than the exhaustive process actually undertaken by the City and the SA in this case, the evidence about the City’s process in considering the applications is of limited relevance in this hearing given that the Tribunal responsibility is to evaluate the proposed amendments on their land use planning merits and on the evidence before it.

[371] The Appellants, having first filed appeals against the Official Plan Amendments in December of 2017, had over two years to marshal evidence and articulate any concerns that they wished to bring to bear in the adjudication of this matter.

[372] There was ample opportunity for individuals concerned with the proposed facility to seek party or participant status in the proceedings and no such requests were made.

[373] Given the foregoing, it is clear to the Tribunal that the only reasonable conclusion is that any issue or concern, which was not fully articulated and reviewed by Council through the above described public consultation process, has now been articulated and demonstrated to its fullest possible extent in these proceedings for review and consideration by the Tribunal in reaching a determination in this matter.

[374] As demonstrated by the summary of public submissions contained in the Planning Department's report to Planning Committee and Council, and as further demonstrated by the evidence in these proceedings, it is quite evident that there was no significant opposition to the design, scale or massing of the proposed facility.

[375] The evidence shows that concerns about the proposed facility were focussed on:

- Whether a different location for the proposed facility would be preferable;
- The size of the emergency shelter;
- Community Safety or potential "social impacts";
- Potential "cultural impacts";
- A desire for improved community engagement in decision making with respect to the proposed facility; and
- The economic health of Montreal Road and Vanier.

[376] The Tribunal is satisfied that each of these concerns were considered and addressed by Council in a thoughtful and robust manner through a number of motions brought before it as well as nine resolutions adopted to supplement the approval of the

Official Plan and Zoning By-law Amendments.

[377] Through these resolutions, Council created a framework for meaningful oversight of the proposed facility and ongoing consultation and dialogue with community stakeholders as the design of the proposed facility and the development and delivery of programming is advanced through the Site Plan Review and Programming Advisory Committee.

[378] These resolutions also articulate Council's commitment to addressing certain of the concerns expressed about the potential for negative impacts associated with the approval of the proposed facility through measures at Council's disposal outside of the land use planning context.

[379] The following motions were put to Council:

- 1) Motion to delay approval of the Official Plan and Zoning By-law amendments pending a review of alternative sites.

[380] On November 22, 2017, the Ward Councillor brought a motion which proposed to defer to consideration of the Official Plan and Zoning By-law Amendments until such time as an analysis of alternative sites was prepared and submitted to Council for review as follows:

[...]

WHEREAS there should be a study of alternative sites for such a facility, and Council should have a copy of such an analysis prior to decision;

THEREFORE BE IT RESOLVED that City Council defer consideration of this application until such time as the applicant provides an analysis of other available lands and potential sites to Planning Committee and Council.

LOST.

[381] Council considered and ultimately defeated the motion. By doing so, Council demonstrated that it was not prepared to impose a requirement for public consultation

with respect to site selection on the SA in this case. This decision is not one that is subject to appeal to the Tribunal and therefore the Tribunal finds that evidence and argument advanced with respect to the issue of public consultation regarding site selection is of no relevance these proceedings. Furthermore, there is currently no requirement for public consultation with respect to the selection of potential development sites by social housing providers in Ottawa and as a result, none was undertaken in this case prior to developing a design for the proposed facility and filing applications for the Official Plan and Zoning By-law Amendments.

- 2) Motions respecting the size of the proposed shelter size to 801m² and prohibiting an increase in shelter size via a minor variance application.

MOTION NO. 61/5

[...]

WHEREAS the proponent has identified that the size of the proposed shelter is 801 m² in gross floor area; and

WHEREAS the size of the use is an important consideration when considering the land use impacts of the proposed use;

THEREFORE BE IT RESOLVED that Document 3- Details of Recommended Zoning of Report ACS2017-PIE-PS-0126 be amended by replacing the number "900" with "801."

CARRIED

MOTION NO 61/6

[...]

AND WHEREAS there is a desire to have matters relating to any addition or expansion of the proposed shelter use at this location return to Planning Committee and Council for consideration, regardless of whether they are categorized as minor, or not;

THEREFORE BE IT RESOLVED that Planning Committee recommend Council direct staff to initiate a by-law under section 45 (1.0.3), to establish specific criteria in respect of any proposed expansion or addition relating to the shelter use at 325, 327, AND 333 Montreal Road, 334 Montfort Street and 273 Ste. Anne Avenue, so that any such proposal is to be heard by Planning Committee and Council of the City; and

BE IT FURTHER RESOLVED that the zoning by-law amendment adding "shelter" as a permitted use to this location, if approved, shall not be enacted until such a time as the by-law reference herein comes into force under section 45

(1.04); and

BE IT FURTHER RESOLVED that notwithstanding any resolutions made by Council in respect of section 45(1.4), section 45(1.3) shall apply to this site specific amendment, being a restriction on the ability to apply for a minor variance from the provisions of the by-law in respect of the land, building or structure before the second anniversary of the day on which the by-law was amended, should the amendment be approved by Council.

CARRIED.

[382] As part of the materials filed with the City in support of its application for development approvals for the proposed facility, the SA's architects prepared a drawing illustrating the distribution of uses through the premises.

[383] The emergency shelter component of the proposed facility has an area of 801 m². Recognizing that uncertainty surrounding the size of the proposed facility was a concern to many members of the community, City Council enacted two resolutions designed to restrict and clarify the size of the shelter and to ensure that any future increase in the size of the shelter component would come back to Council for approval as opposed to the Committee of Adjustment.

[384] The Zoning By-law Amendment recommended by the Planning Department would have permitted a shelter component up to 900 m². By reducing the area of the shelter use from 900 m² to 801 m², City Council limited the size of the shelter component of the Facility to the size of the shelter component identified on architectural drawings and elevations of the facility filed by the SA in support of its application. Ms. O'Connell testified that less prescriptive performance standards are generally recommended by City staff in order to provide a small measure of flexibility when plans are finalized.

[385] Ms. Van Buskirk testified that the shelter component of the proposed facility will actually be smaller than the shelter at the existing Booth Centre. Contrary to the statements about best practices for shelter size contained in the Appellant's written submissions, however, it was also Ms. Van Buskirk's opinion that a smaller shelter size is not always best noting that the article referenced by the Appellants with respect to

shelter size does not provide any particulars as to why the smaller scale shelters for 30 to 70 guests are preferred. According to Ms. Van Buskirk, shelters must be large enough to permit efficient operations. She also noted in her testimony that new shelters are being constructed in the City of Toronto, which are much larger than the proposed facility.

[386] This motion further strengthens the City's efforts to provide certainty around the shelter component of the proposed facility. The Criteria By-law as it has been referred to ensures that any future expansion of the proposed shelter use of the facility, should such an expansion be proposed, will require a further zoning by-law amendment and will trigger new public consultation requirements and fresh Council deliberation, regardless of whether it is categorized as minor, or not.

[387] Council insisted on tying the approved area of the shelter component to the plans filed by the SA in support of its application and adopted the resolutions.

- 3) Motion requiring that best practices be implemented for design and operation in response to concerns about potential social impacts associated with the facility.

MOTION NO. 61/7

" [...]

WHEREAS Section 4.8.8 of the Official Plan speaks to principles of Crime Prevention Through Environmental Design in its review of development applications;

THEREFORE BE IT RESOLVED that Council approve that a holding provision with two conditions be included in Document 3 – Details of Recommended Zoning, as follows:

1. That the holding provision not be lifted until the Site Plan Control Application for the proposal is approved containing conditions related to the Implementation of design measures proposed in the Report provided by Security Through Safe Design Inc. of May 1, 2017, to the satisfaction of the General Manager of Planning, Infrastructure and Economic Development; and
2. That the holding provision not be lifted until such time as the Applicant has implemented an Ambassador Program to the satisfaction of the General Manager of Planning, Infrastructure and Economic Development in consultation

with the General Manager of Community and Social Services.

BE IT FURTHER RESOLVED that there be no further notice pursuant to Subsection 34(17) of the *Planning Act*.

CARRIED.”

[388] A range of concerns were expressed throughout the public consultation process regarding the potential or perceived potential for increased rates of crime or other negative behaviour as a result of the operation of the proposed facility on Montreal Road. While these concerns are not matters which can properly be considered through the land use planning process, these were nevertheless matters which Ottawa City Council considered and took steps to address by other means.

[389] The resolution adopted by Council requires the implementation of two significant measures designed to ensure that both the design of the proposed facility and its future operations are completed in accordance with best practices before zoning permission for the Proposed Facility comes into force. The first requirement of the above resolution is that the SA be required, as a condition of site plan approval for the Proposed Facility, to implement the CPTED measures recommended by Mr. Van Ryswyk.

[390] These measures include:

- a) Allowing for ample space to transition from the public street to the main entrance of the facility in order to provide a buffer from the street which will act as open space for the Clients without having to leave the site.
- b) Incorporating a secure site perimeter – creating one formal access point for Clients from Montreal Road. This will reduce the ability for unauthorized access onto the site as well as reduce the opportunity for Clients to leave the Site using informal pathways that empty out into the surrounding community.
- c) Providing for multiple building access points that will allow separation of space creating a safer environment for all. This will support the various services provided by the SA and reduce conflict.

- d) Providing for a controlled vehicular and pedestrian access point at the rear of the facility for the numerous volunteers (many of whom are elderly) who support operational initiatives.
- e) Providing for a separate controlled vehicular and pedestrian access point at the rear of the facility for the staff – reducing vehicular traffic from Montreal Road.
- f) Providing a separate delivery lane and services area – separated from the main entrance.
- g) Providing for outdoor courts that will support daily activities for the Clients, inclusive of smoking, and which are separated from the public street.
- h) Ensuring that the landscape design will incorporate open sightlines increasing the ability for Natural Surveillance and reducing the opportunity for concealment.
- i) Incorporating electronic security systems to control access, monitor activity and improve response.
- j) Providing for Program Options including a coffee shop.

[391] As was outlined earlier in this decision, Mr. Van Ryswyck, a former police officer and current CEO of Security Through Safe Design Inc. was retained to act as a security lead and advisor to the SA and to work with the architectural team to develop the above recommendations.

[392] Both Mr. Van Ryswyck and Ms. Van Buskirk, the City's director of Housing, opined that the above referenced design features mitigate, and in some cases eliminate, issues which have lead to negative impacts at the current Booth Centre site. Some of these impacts are a result of clients of the centre being forced to queue on the public sidewalk or from insufficient indoor and outdoor amenity space available on site to allow clients of the centre to comfortably remain in the facility during the day.

[393] The condition for the lifting of the holding zone is intended to ensure that the proposed facility will incorporate within the boundaries of the subject Site, significant measures designed to prevent crime or other negative social impacts. The second condition is focused on addressing impacts to the extent that they may extend into the broader community.

[394] Council accomplished this objective by requiring the implementation of an “Ambassador Program” acceptable to both the General Manager of Planning, Infrastructure and Economic Development and the General Manager of Community and Social Services and Council also took steps to ensure that such impacts would be addressed off-site further away from the proposed facility both along Montreal Road and within the adjacent neighbourhood.

[395] The Ambassador Program will form part of a larger suite of operational requirements that will be applied as part of the SA’s operational agreements with the City.

[396] Ms. Van Buskirk testified that the City’s Housing Services Department is not only familiar with ongoing public engagement measures such as good neighbour agreements but is currently updating its policy standards to impose mandatory “good neighbour agreements” for all emergency shelter operators including the SA. Her opinion was that such agreements prevent, mitigate and respond to community concerns through engagement and dialogue.

[397] Mr. Parsons testified that, where measures such as “good neighbour agreements” and/or Ambassador Program are enacted, potential impacts on the local economy of the immediate area surrounding the proposed facility are appropriately and effectively managed and mitigated. His opinion was based on having conducted case studies on four other similar facilities located in different cities.

[398] Mr. Parsons also testified that the proposed facility would join the SA’s New Hope Leslieville facility in Toronto as the only facilities out of the five case studies, to

implement all five of the best practices which he identified through his work on the case studies.

[399] Following Council's adoption of Motion No. 61/7, the SA implemented the 'Market Ambassador Program' for the existing Booth Centre, as a pilot project to assist in the development of a similar program for the Proposed Facility.

[400] This program aims to:

- a. Increase communication and engagement with community members, partners and businesses through regular on-site visits and attendance at community meetings;
- b. Reduce concerns associated with safety and security by quickly attending to the issues that arise;
- c. Reduce the impact of harmful drug paraphernalia on the community by working closely with the Needle Hunter Program; and
- d. Increase reporting and information to support community police officers through regular contact with our community policing officers and the general patrol officers in the Marker area.

[401] Mr. Provost testified that the pilot program has been very successful, employing individuals who are trained to build relationships with both the SA's clients and local stakeholders and to intervene and provide assistance in the event conflicts arise.

[402] The administrators of the Market Ambassador Program have engaged with numerous community stakeholders including landlords and condo corporations, surrounding businesses, the local Business Improvement Area representatives, security experts from Ottawa Community Housing and police personnel.

[403] The Program also includes a direct telephone number operated by Ambassadors of the Program to further increase communication and engagement with community members and to increase reporting.

[404] Mr. Provost further testified that lessons learned through the pilot program would be used to develop the Ambassador Program for the proposed site and confirmed the SA's commitment to work with key stakeholders in the development and delivery of the Ambassador Program:

4) Motion to create a Site Plan Review and Programming Advisory Committee.

[405] Council recognized the need for productive and meaningful dialogue with community stakeholders in advancing the design of the proposed facility through the site plan approvals process as well as through the planning of programming for the facility by adopting the following resolution:

MOTION NO. 61/11

[...]

WHEREAS, although Council consideration of the zoning and Official Plan amendment application must be based on land use principles, Council recognizes the importance of examining the services that will be provided at the facility in the context of the neighborhood and the City's own Housing First strategy; and

[...]

WHEREAS the next phase of the development and approvals for this facility is expected to begin in the new year and take place over the next several years and there is time for productive and meaningful dialogue to take place to help shape the site plan review, drafting conditions and programming of the facility to help it promote the City's housing and homelessness goals and lessen any community impact;

THEREFORE BE IT RESOLVED that Council direct staff to work with the Ward Councillor, the Chair of Planning Committee, the Chair of Community and Protective Services Committee, the Mayor and the SA to establish a Site Plan Review and Programming Advisory Committee consisting of the above-named Members of Council, relevant City staff, and community stakeholders to provide input into the next phase of the SA Relocation development and

BE IT FURTHER RESOLVED that, where deemed appropriate by the General Manager of Planning, infrastructure and Economic Development in consultation

with Legal Services, specific recommendations from the Site Plan Review and Programming Advisory Committee be incorporated into the conditions of the Site Plan.

[406] This resolution will ensure appropriate stakeholder involvement in the site plan approval process and the design, implementation and delivery of programming at the proposed facility. The evidence showed that, and the Tribunal notes that there were more than seventeen attendees at the Advisory Committee's first meeting on April 17, 2018. These included City Councillors, Mayor's representatives, City staff (including the Chair of Planning Committee, the Director of Planning Services, the Manager of Development Review, the Director of Housing Services, the Manager of Community and Social Services), community stakeholders (including members of the Vanier Community Association, the Vanier Business Improvement Area as well as one of the appellants) and a representative from the SA.

[407] The initial meeting focused primarily on site design and site plan related matters. It was acknowledged that the Advisory Committee would not be in a position to discuss programming and operational matters until the design is further advanced.

[408] Ms. O'Connell testified that invitations to the next Advisory Committee meeting will be extended to members of the Indigenous community so that their input can be considered when the Advisory Committee begins its review of programming for the proposed facility.

[409] The Advisory Committee represents another step taken by City Council to ensure the successful operation of the proposed facility and the implementation of best practices for operations in consultation with stakeholders.

[410] Mr. Parson's evidence was that the implementation of the Advisory Committee aligns with successful practices undertaken by other similar facilities elsewhere.

- 5) Motion respecting implementing initiatives to enhance the vitality and economic viability of Montreal Road and Vanier.

[411] With respect to concerns about the economic health of Vanier, Council took steps to situate its approval of Official Plan and Zoning By-law amendments to permit the proposed facility in the broader context of the City's investment in initiatives and infrastructure to improve life in Vanier and on Montreal Road and foster economic development in the area by adopting the following resolution:

MOTION NO. 61/12

"WHEREAS, during the Planning Committee meeting, many residents of Vanier expressed concern that their community will see the positive growth that has begun in their neighborhoods and along Montreal Road stalled or reversed with the construction of the Salvation Army hub; and

WHEREAS the City is continuing to invest in initiatives and infrastructure to improve life for Vanier residents and businesses, including the redevelopment of Montreal and the establishment of a Community Improvement Program for Montreal Road to encourage economic development; and

WHEREAS the Building Better Revitalized Neighbourhoods Initiative (BBRN) is a Term of Council strategic priority that uses an innovative, collaborative and community-defined approach to the delivery of new and existing programs and infrastructure to improve the health, vibrancy and livability of priority neighbourhoods in Ottawa; and

[...]

THEREFORE BE IT RESOLVED that Council direct staff working on programs and infrastructure projects, including the upcoming Montreal Road Redevelopment project and the upcoming Community Improvement Plan, to work with the Building Better Revitalized Neighbourhoods Initiative (BBRN) Sponsors Group on how to incorporate BBRN community collaboration tools for those projects; and

[...]

CARRIED.

[412] The initiatives and investments which the City is undertaking in Vanier are now collectively referred to as "Vision Vanier." Its significant features include:

- The Community Improvement Plan for Vanier; and
- The Montreal Road Revitalization Project.

[413] The Building Better Revitalized Neighbourhoods initiative ("BBRN") is a proven

community collaboration approach intended to engage multiple departments of the City to improve the health, vibrancy and livability of priority neighbourhoods in Ottawa.

[414] City Council directed departments working on program and infrastructure projects, including the Montreal Road Revitalization Project and the Community Improvement Plan, to work with the BBRN Sponsors Group on how to incorporate BBRN community collaboration tools in those projects.

[415] The City adopted the Community Improvement Plan for Vanier in May of 2019, which has as a goal to attract new business investment to Vanier and to encourage rehabilitation, redevelopment, and revitalization of the existing built environment, while supporting the arts and the cultural character of the district. As a result, the City, in partnership with the Quartier Vanier Business Improvement Area, launched numerous grant programs and incentives to simulate the revitalization of a portion of Montreal Road. This represents up to \$5 Million in investment in economic development in Vanier.

[416] Erin O'Connell testified that that there has been significant interest in the grant program with 77 inquiries as of the date of the hearing.

[417] Furthermore, the evidence shows that the Montreal Road Revitalization Project is a \$49 Million project to construct a vibrant and welcoming main street with a well-balanced transportation network that will allow residents and businesses to thrive. The construction for this project began in 2019 and is scheduled for completion in 2022. Included in the Montreal Road Revitalization Project is the Vanier and Montreal Road and Public Art Plan, which received funding for the artistic revitalization of the Montreal Road Gateway, Montreal Road as a Main Street, Gathering Places, and Partnerships.

[418] Ms. O'Connell's testimony was that this initiative will greatly improve pedestrian, cyclist and automobile access and that it is expected to result in an increase in overall density.

[419] Mr. Parsons interprets these initiatives as a loud commitment by the City to invest into Montreal Road. He believes that the artistic aspects of the Montreal Road Revitalization Project will attract young entrepreneurs and foot traffic and that investors will be attracted to the combination of all of these investments. He also opined that due to Vanier's proximity to the downtown core of Ottawa, these investments may attract larger employers. And this has already occurred in the case of the Federal Office of Cybersecurity, which has recently relocated more than 750 of its employees to an office building located at 1625 Vanier Avenue.

[420] The Tribunal is satisfied that while there is no obligation in the PPS or the Official Plan requiring the SA or the City to go beyond the *Planning Act's* public consultation requirement, the evidence shows that they nevertheless did so.

Provincial Policy Statement 2020

[421] The Tribunal has reviewed the Provincial Policy Statement, 2020, which came into force on May 1, 2020 and applies to any decision by an approval authority issued on or after May 1, 2020. To the extent that the Tribunal has, in the course of this decision, considered various aspects and policies of the PPS 2014, and made findings relative to that Statement, the Tribunal has now considered the Provincial Policy Statement, 2020 and is satisfied that in all respects the Tribunal's analysis and findings in this decision are not altered by the changes effected by the Provincial Policy Statement, 2020. The Tribunal is accordingly satisfied that the applications before the Tribunal are also consistent with the policies set out in the Provincial Policy Statement, 2020.

CONCLUSION

[422] The Tribunal finds based on the evidence before it that the Appellants' have not proffered sufficient evidence to meet the burden imposed on them in these appeals to establish that the planning instruments before it did not represent good land use planning.

[423] The Tribunal is therefore satisfied based on the evidence before it and the reasons outlined above that:

- a) Official Plan Amendments No. 199 and 200 represent appropriate land use planning and should be approved, and
- b) Zoning By-law No. 2018-301 represents appropriate land use planning subject to the amendments thereto recommended by the City and should also be approved.

ORDER

[424] Accordingly, the appeals against and Official Plan Amendments No. 199 and 200 are dismissed and the amendments are hereby approved.

[425] The appeals against Zoning By-law No. 2018-301 are allowed in part in order for the Tribunal to amend the by-law as follows:

- a) Column V “Provisions” shall be revised to provide that parking is permitted in the provided front yard provided that it is a minimum of 13 metre from the front lot line; and
- b) The appeals against Zoning By-law No. 2018-301 are otherwise dismissed.

“R.G.M. Makuch”

R.G.M. MAKUCH
VICE-CHAIR

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Local Planning Appeal Tribunal

A constituent tribunal of Tribunals Ontario - Environment and Land Division
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