

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: September 17, 2025

CASE NO(S).:

OLT-22-002377
(Formerly PL210104)

PROCEEDING COMMENCED UNDER subsection 17(40) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant/Appellant: 30 Duke Street Limited
Subject: Failure of Approval Authority to announce a decision respecting a Proposed Official Plan Amendment
Reference Number: OPA 20/005W/JVW
Property Address: 22 Weber Street W
Municipality/UT: Kitchener/Waterloo
OLT Case No.: OLT-22-002377
Legacy Case No: PL210104
OLT Lead Case No.: OLT-22-002377
Legacy Lead Case No: PL210104
OLT Case Name: 30 Duke Street Limited v. Kitchener (City)

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

Applicant/Appellant: 30 Duke Street Limited
Subject: Application to amend the Zoning By-law – Refusal or neglect to make a decision
Reference Number: 20/013/W/JVW
Property Address: 22 Weber Street W
Municipality/UT: Kitchener/Waterloo
OLT Case No.: OLT-22-002378
Legacy Case No: PL210105
OLT Lead Case No.: OLT-22-002377
Legacy Lead Case No: PL210104

PROCEEDING COMMENCED UNDER subsection 46(6) of the *Ontario Heritage Act*, R.S.O. 1990, c. O.18

Applicant/Appellant: 30 Duke Street Limited
 Subject: Appeal of the Decision of Council to issue a permit with terms and conditions to (alter/erect/demolish/remove) a building or structure
 Reference Number: HPA-2022-V-015
 Property Address: 22 Weber Street W
 Municipality/UT: Kitchener/Waterloo
 OLT Case No.: OLT-22-004383
 OLT Lead Case No.: OLT-22-002377
 Legacy Lead Case No: PL210104

Heard: April 22, 2025 to May 8, 2025, by video hearing

APPEARANCES:

Parties

Counsel/Representative*

30 Duke Street Limited

Jennifer Meader
 Jessica De Marinis

City of Kitchener

Alex Ciccone
 Katherine Hughes

Regional Municipality of Waterloo

Andy Gazzola
 Fiona McCrea (*in absentia*)

Friends of Olde Berlin Town

Hal Jaeger*
 Neil Baarda*

DECISION DELIVERED BY YASNA FAGHANI AND GREGORY J. INGRAM AND ORDER OF THE TRIBUNAL

[Link to Order](#)

INTRODUCTION AND BACKGROUND

[1] The matter before the Tribunal is related to appeals filed by 30 Duke Street Limited (“Appellant”) pursuant to ss. 17(40) and 34(11) of the *Planning Act* (“Act”) with respect to the failure of the City of Kitchener (“City”) to make a decision within the statutory timeframes on Official Plan Amendment (“OPA”) and Zoning By-law Amendment (“ZBA”) applications (together “Applications”), for the property known municipally as 22 Weber Street West, in the City (“Property”).

[2] A Heritage Permit Application was submitted to the City, refused, and appealed to this Tribunal. Phase One of the Hearing addressed the Applications and Phase Two dealt with the Heritage Permit Application.

[3] Following the refusal of the Applications, the Appellant revised and resubmitted the Applications to the City. The proposal before the Tribunal includes the development of a 19-storey rental apartment building with 167 units with no parking spaces (“Revised Proposal”). As the Property is located within a Major Transit Station Area (“MTSA”) in the Regional Municipality of Waterloo (“Region”) Official Plan (“Region OP”) there is no requirement for parking spaces.

[4] For the reasons set out below in this Decision, the Tribunal finds in favour of the Appellant, allows the appeals, and approves the OPA and the ZBA.

THE PROPERTY AND SURROUNDING CONTEXT

[5] The Property is currently vacant and being used as a commercial parking lot. It has an area of approximately 1,392 square metres (“m²”) with approximately 27 metres (“m”) of frontage on Weber Street West (“Weber”).

[6] The Property is located within the Civic Centre Neighbourhood Heritage Conservation District (“Civic Centre Neighbourhood”) on an arterial road that directly faces the City’s downtown Urban Centre. The Property is at the southerly periphery of a mixed-use neighbourhood in the “Urban Area” and is designated as “High Density Commercial Residential” in the Civic Centre Secondary Plan (“Secondary Plan”), adopted as part of the 1994 City Official Plan (“City OP”). The interior of the Civic Centre Neighbourhood contains a consistent streetscape lined by mature trees, grassed boulevards, and laneways. Furthermore, buildings with consistent setbacks, linear streets, and private and public trees are located throughout the Civic Centre Neighbourhood. Hiber Park, the City’s second oldest park, is in the centre of the Civic Centre Neighbourhood, in close proximity to the Property. The Civic Centre Neighbourhood is roughly bounded by Weber, Victoria Street North, Ellen Street East, Lancaster Street East, and Queen Street North.

[7] Weber runs along the southern property limit, beyond which is the northern limit of the City’s Urban Growth Centre (“Downtown”). Buildings within the Downtown on the south side of Weber are primarily used for non-residential purposes. A 27-storey tower has been approved on the opposite side of Weber, across from the Property, at the intersection of Weber and Ontario Street. The commercial core of Downtown is located further to the south of the Property.

[8] Immediately north of the Property are properties that were designated and zoned to permit the conversion of residential to commercial and office uses. Two properties, 27 and 31 Roy Street, immediately abut the rear yard of the Property, one of which was previously converted to non-residential use and is now developed as a multiple-residential property with the built form of a single detached dwelling. The designated “Low Rise Residential Preservation Area” in the Secondary Plan is located further to the north on the north side of Roy Street.

[9] The property immediately to the south, at 21 Weber, is currently vacant.

[10] To the immediate east, at 18 Weber, is an office building (converted dwelling) which is a two-and-a-half-storey detached structure. St. Andrew's Presbyterian Church, the Region's offices and the Provincial Offences Court are all located further to the east.

[11] To the immediate west, at 28 Weber, is a three-storey commercial building (converted dwelling) with a church next to it. Further west along Weber are apartments with a proposed mid rise apartment building at the northeast corner of Weber and Young Street.

[12] At the time that the Applications were filed, the Property was identified as being within a MTSA (Map 2 – Urban Structure of the City OP (“Map 2”). Map 2 has since been amended to refine the limits of the MTSA to align with Region OP Amendment 6. The Property continues to be located within an MTSA and is now identified as “Protected Major Transit Station Area” on Map 2.

REQUIRED APPROVALS

[13] The Revised Proposal seeks to amend the City OP designation from “High Density Commercial Residential” to “High Density Commercial Residential with a Special Policy Area to increase the Maximum Floor Space Ratio” (“FSR”) from 4.0 to 8.0.

[14] The City's Zoning By-law No. 85-1 (“ZBL”) zones the Property “Commercial Residential Three” (CR-3). The Revised Proposal seeks to amend the ZBL to regulate the final built form with respect to: FSR (4.0 to 8.0); maximum building height (19 storeys); minimum front yard; side yard and rear yard setbacks (measured from portions of the building up to 5 m in height and over 5 m in height); minimum landscape area and ground floor height; permitted locations of dwellings within a mixed-use or multiple dwelling building; exclusive use patio areas not required for ground floor units; rear yard access requirements do not apply; minimum provision of Class A and Class B bicycle parking spaces; minimum residential and visitor parking requirements; and minimum amenity area provisions.

[15] The proposed ZBA includes a Holding Provision that, among other matters, requires the preparation and approval of a detailed transportation (road) and stationary noise study to the satisfaction of the Region and the City. This Holding Provision was agreed to by the City, Region, and Appellant.

[16] The proposed OPA is included as **Attachment 1** to this Decision. The proposed ZBA is included as **Attachment 2** to this Decision.

SETTLEMENT BETWEEN REGION AND APPELLANT

[17] The Tribunal acknowledges the Minutes of Settlement (“MOS”) received prior to the Hearing between the Region and the Appellant. Planner Andrea Sinclair provided evidence that addressed the Region’s issues: parking and visitor parking; main entrance configuration; road widening (which is to be conveyed to the Region at the Site Plan Approval stage); no landscaping structures to be located within the widening; and access width to the Property. Counsel for the Region advised that the proposed ZBA reflects the provisions and elements agreed to by the Parties.

LEGISLATIVE FRAMEWORK

[18] With respect to OPA and ZBA appeals, the Tribunal must have regard to the matters of provincial interest as set out in s. 2 of the Act, and to the decision, if any, of the City and the information considered in making the decision, as required by s. 2.1(1) of the Act. Although these appeals relate to a non-decision by the City, it is noted that the City does not support the Revised Proposal.

[19] Further, s. 3(5) of the Act requires decisions of the Tribunal affecting planning matters to be consistent with the policy statements and conform, or not conflict, with the provincial plans that are in effect on the date of a decision.

[20] As of October 20, 2024, the Provincial Policy Statement, 2020 and the A Place to Grow: Growth Plan for the Greater Golden Horseshoe are no longer in effect, and the

Provincial Planning Statement, 2024 (“PPS 2024”) is in effect. In this respect, the Tribunal must be satisfied that the Revised Proposal is consistent with the PPS 2024.

[21] The Tribunal must also be satisfied that the ZBA, as part of the Revised Proposal, conforms with the Region OP and the City OP, and that the Revised Proposal represents good land use planning and is in the public interest.

PARTIES AND PARTICIPANTS

[22] Friends of Olde Berlin Town (“FOBT”) is an incorporated neighbourhood association that was granted Party status by the Tribunal. It made submissions and presented a witness in support of its position.

[23] A number of Participants provided statements with concerns related to neighbourhood character and compatibility, height, massing and scale, FSR, adequacy of parking, privacy and overlook, public interest, consistency with the PPS 2024, and conformity with the City OP. Additional concerns related to mental health, impact to the Civic Centre Neighbourhood, compatibility with heritage attributes, not meeting the Civic Centre Neighbourhood policies and guidelines, concerns relating to vibration effects on historic buildings, wind and shadow impacts, and walkability for pedestrians.

WITNESSES

[24] The Tribunal qualified the following witnesses to provide expert opinion evidence in their respective areas of expertise, as noted:

For the Appellant:

- Andrea Sinclair – Land Use Planning and Urban Design; and
- Dan Currie – Cultural Heritage;

For the City:

- Eric Schneider – Land Use Planning;
- Pegah Fahimian – Urban Design; and
- Deeksha Choudhry – Cultural Heritage; and

For FOBT:

- Michael Barton – Land Use Planning.

AGREED FACTS AND ISSUES – LAND USE PLANNING AND URBAN DESIGN

[25] The witnesses agreed that the Property is an ideal candidate for intensification, but there is disagreement with respect to what the intensification looks like. The Property is located within a Settlement Area, Strategic Growth Area, and MTSA, as defined in the PPS.

[26] There is no dispute that parking is not required for the proposed building and there is no dispute that the required wind, vibration impact studies will be provided at the Site Plan Approval stage.

[27] The witnesses disagreed that the Revised Proposal has regard for matters of provincial interest as set out in s. 2 of the Act and is consistent with the PPS 2024.

[28] Furthermore, with respect to land use planning and urban design, the main issues related to the scale and height of the 19-storey building and whether the building meets the intent of the City's Urban Design Manual ("UDM") regarding tall buildings, separation/overlook, and outdoor amenity areas.

EVIDENCE / ANALYSIS / FINDINGS FOR LAND USE PLANNING ISSUES

Matters of Provincial Interest Under s. 2 of the Act

[29] According to Ms. Sinclair, the Revised Proposal has regard for the relevant matters of provincial interest as identified under s.2 of the Act. Specifically, when considering ss. 2(d), 2(n), 2(p), and 2(r), Ms. Sinclair opined that an architectural assessment was completed and no future assessment was required. As the Property is within the Civic Centre Neighbourhood, a Heritage Impact Assessment was conducted which found that the Revised Proposal was consistent with the objectives of the Secondary Plan and does not result in adverse impacts to cultural heritage resources located with the Civic Centre Neighbourhood. A more detailed review of the cultural heritage issues will be discussed later in this Decision.

[30] Furthermore, Ms. Sinclair found that the Revised Proposal will provide necessary rental housing on a vacant, underutilized area within a MTSA, and a Strategic Growth Area, as identified in the PPS 2024. Therefore, the Property is appropriately located for growth and development. Finally, Ms. Sinclair opined that the Revised Proposal is well designed, encourages a sense of place and will positively contribute to the Weber streetscape with the lobby and entrance facing Weber and by having the orientation of the tower designed to minimize overlook onto the residential neighbourhood to the north. In addition, according to Ms. Sinclair, the preliminary building design incorporates traditional building materials in a contemporary style.

[31] Mr. Schneider did not provide an analysis with respect to whether the Revised Proposal has regard for matters of provincial interest, while Mr. Barton disagreed that the Revised Proposal has regard for the relevant matters of provincial interest. Mr. Barton found that the Revised Proposal does not have appropriate regard for the existing and planned context. In his analysis, Mr. Barton placed great importance on the updated Strategic Growth Area policy under the City's policy regime. For example, identifying that there is now a distinction between Strategic Growth A and C, and what

those distinctions suggest. This new regime was not in place at the time the Applications were originally made.

[32] Mr. Barton further opined that the development is not sensitive to the existing and planned build form character of the properties located in the Civic Centre Neighbourhood, including height, transition to adjacent land uses, and surrounding low rise residential neighbourhood.

Finding

[33] At a prior Case Management Conference, the Tribunal ruled that the applicable policies would be those that were in place at the time of the original Applications. This was decided after hearing submissions from the Parties, and in particular, from the City, who expressly decided to exempt the Property from the conformity exercise regarding the new legislation because the Property was under appeal. Therefore, reference to the new policy regime in Mr. Barton's analysis was not helpful, nor persuasive. Mr. Barton also did not provide adequate detail when making assertions about height and transition.

[34] The Tribunal preferred the evidence of Ms. Sinclair as it relates to the Revised Proposal having regard to matters of provincial interest. She highlighted the fact that the Revised Proposal represents development in a Strategic Growth Area, in a MTSA, on a vacant, underutilized Property. Further, she advised that there would be no adverse impacts to cultural heritage resources, and the Revised Proposal has been designed in a way to minimize overlook and incorporate traditional materials in a contemporary style.

Consistency with the PPS 2024

[35] Ms. Sinclair opined that the Revised Proposal and planning instruments are consistent with the PPS 2024 and the applicable policies regarding planning for people and housing. Essentially, she found the Revised Proposal will contribute to a range of

residential types by introducing rental housing that is transit oriented within a priority intensification area (MTSA). According to Ms. Sinclair, the PPS 2024 contemplates broad policy objectives to ensure municipalities can accommodate growth through lands that are designated and available for residential development, and to maintain lands with servicing capacity. In her opinion, the applicable policies do not speak about context or lot size when considering the broad growth objectives, nor do they consider how a complete community is to be evaluated and where densities and heights should be allocated.

[36] Mr. Schneider opined that the Revised Proposal is not consistent with the applicable policies in the PPS 2024. While he agreed that the Revised Proposal is located within an MTSA, is transit supportive, and that the PPS 2024 encourages development in intensification areas, including redevelopment of surface parking lots, his evidence was that site context and local conditions are important considerations when determining whether a proposal is consistent with the policies in the PPS 2024. He found that the PPS 2024 should not be interpreted to mean that all lands in intensification areas can be developed to any density and scale without having regard to factors such as cultural heritage conservation and compatibility. Essentially, he concluded that the height, scale, and density of the Revised Proposal was not suitable for the site and that the adverse impacts onto the abutting lands would not meet the health and well being requirements of the current and future residents.

[37] Mr. Barton agreed that the PPS 2024 identifies Strategic Growth Areas, that there is no longer a reference to Urban Growth Centre, and that the reference to Strategic Growth Areas has a specific policy for MTSA's, which is a priority for intensification. The bulk of Mr. Barton's oral evidence suggested that, in 2019, the City had met its density growth targets and has since continued to exceed said targets in the MTSA. He opined that this was a relevant factor when considering requests for further development. He suggested that even if a proposal were to conform to all applicable policies in an official plan and zoning by-law, density targets should be considered. In this case, he opined that the building's height and scale was not compatible with the

surrounding context, that the Revised Proposal did not conform to the City OP, which the PPS 2024 identifies as “the most important vehicle for implementation” of the PPS 2024.

Finding

[38] The Tribunal prefers the evidence of Ms. Sinclair and finds that the Revised Proposal is consistent with the general policies within the PPS 2024. Indeed, the applicable policies are broad and intended to direct growth to specified locations where servicing is available. All witnesses agreed that the Property is located within a MTSA, and that intensification is directed within this area. The Tribunal finds that the analysis with respect to lot size and local conditions is not persuasive to determine if the Revised Proposal meets broad policy objectives of the PPS 2024 with respect to growth. Further, Mr. Barton agreed that the density growth targets are minimum targets, not maximum targets. It follows that if a proposal meets applicable regulatory test, including conformity with the relevant official plan and zoning by-law, which will be addressed later in this Decision, there should be encouragement, not discouragement, to go beyond said targets.

Height and Scale of Apartment Building

[39] The Property is designated “High Density Commercial Residential” with an FSR of 4.0. There is no maximum height restriction in the City OP or the ZBL. With respect to the height of the apartment building, Ms. Sinclair opined that the “High Density Commercial Residential” designation in the Secondary Plan contemplates higher storey buildings because it specifically states: “the aim of [this designation] is to recognize the proximity of the Civic Centre Neighbourhood to the higher intensity land uses of the Downtown, and the location of the properties on Primary Roads (such as Weber)”. She noted that the Secondary Plan specifies that properties located within the “Office Residential Conversion” serves as a “transition area between the higher intensity uses along Weber and the Low Rise Residential – Preservation designation of the interior

of the neighbourhood”. As such, there was recognition that high rise buildings could be developed on Weber.

[40] On cross examination, counsel for the City took Ms. Sinclair to the “Medium Density Multiple Residential” designation in the Secondary Plan and compared it to “High Density Multiple Residential”. Counsel put forth the assertion that the “High Density Multiple Residential” policy language was put in place to prevent additional tall buildings as it recognized the four existing tall buildings in the area. Ms. Sinclair disagreed, namely, because the “High Density Commercial Residential” designation, which applies to the Property, contemplates high density developments, otherwise there would be no need for this designation.

[41] Ms. Choudry testified that there are no other buildings within the Civic Centre Neighbourhood that contain similar massing or design. She stated that while there are other high rise buildings within the Civic Centre Neighbourhood, they were developed before the Secondary Plan came into effect. According to policy 13.1.2.5 of the Secondary Plan:

5. The aim of the High Density Multiple Residential designation is to recognize the existing high rise apartment buildings located at 119 College Street, 11 Margaret Avenue, 100 Queen Street North, and 175 Queen Street North, all which have been constructed in excess of 200 units per hectare.

Permitted uses are restricted to multiple dwellings in excess of 200 units per hectare, home businesses, private home day care, lodging houses, parks, and large and small residential care facilities. Day care facilities are permitted provided they are on the same lot as a large multiple dwelling. The maximum floor space ratio shall be 4.0, meaning the above grade gross floor area shall not exceed 4.0 times the lot area.

[42] She opined that the Secondary Plan provides clear direction that the high rise development is limited to those properties only, as these developments were not typical of the existing character in the Civic Centre Neighbourhood.

[43] Regarding FSR, Ms. Sinclair opined that FSR was a function of lot size, not determinative of how tall a building should be. On cross-examination, counsel for the

City advised that the City's position was that the height proposed on the Property was not appropriate because there was a request to double the FSR. Ms. Sinclair was specifically asked whether she thought the height proposed could be better suited on a larger lot. Ms. Sinclair found that height and FSR did not correlate and she did not believe that higher buildings could only be achieved on larger lots. Instead, Ms. Sinclair's analysis focused the potential of adverse impacts (shadow, overlook, privacy) of this high rise and how the adverse impacts would be mitigated. A more detailed discussion regarding adverse impacts is further below in the Decision.

[44] Furthermore, with respect to height, Ms. Sinclair disagreed with Mr. Schneider that the height was indirectly regulated by the combination of the maximum FSR in the City OP and rear yard setback regulation in the ZBL, which requires half the building height as building separation to the rear property line. Mr. Schneider elaborated that the ZBL regulates height by stating that the size of any given site would dictate how tall a building can be based on how much building separation can be provided to the rear lot line using the figure of half the building height. The ZBL states that setbacks should be "7.5 m or one half the building height, whichever is greater". He explained that, in this case, the proposed rear yard setback for the tower portion of the building of 14.1 m would facilitate a building height of 28.2 m, whereas 58.6 m is proposed. According to Mr. Schneider, the building height of 28.2 m would mean a tower height of approximately eight to nine storeys, whereas a tower height of 19 storeys is proposed. Ms. Sinclair disagreed with this approach, namely because she opined all zoning regulations were subject to amendments. She clarified that, since there was no height restriction in the ZBL in this case, seeking an amendment for height was not necessary.

[45] Regarding the rear yard setback and the combination of maximum FSR, on cross-examination Mr. Schneider agreed with counsel for the Appellant that there have been several examples in the City where an increase of the FSR and reduction in rear yard setbacks were granted in zones where there were no height restrictions. Specifically, counsel for the Appellant took Mr. Schneider to the R9 zone in the Civic Centre Neighbourhood where there is no height restriction with lots that are next to low

density residential properties. Counsel argued that the rear yard setback in this zone is 7.5 m, which means a high rise could be as close as 7.5 m to the property line of the residential lots. Mr. Schneider agreed. However, Mr. Schneider noted that most of the other examples counsel provided (aside from the one in R9 zone) included lands that were not within a Cultural Heritage District.

[46] Nevertheless, Mr. Schneider's most salient point was that when there is a request for an increase in FSR coupled with setback reductions, it is important to analyze the adverse impact to determine if the height of the tower is appropriate.

[47] Mr. Barton's evidence was that there was no height restriction identified in the applicable ZBL but that there was a "de facto height". He stated that there was effectively a height cap based on the rear yard setback, which is a function of how close a property is to the neighbour's property. He stated that the greater the setback provided in a proposal, the greater the height a building can be.

Finding

[48] The Tribunal prefers the evidence of Ms. Sinclair with respect to height. The Tribunal is not persuaded that height is regulated in the ZBL by the combination of FSR and setback regulation because the City could have regulated the height by directly imposing a cap in the ZBL. In fact, in the new City Official Plan, and corresponding Zoning By-law, which are not applicable to these Applications, the City quite clearly imposes a cap on height (eight storeys). Furthermore, the documentary evidence showed that in multiple other residential zones a height cap is directly imposed.

[49] Furthermore, the Tribunal accepts that the land designation of "High Density Commercial Residential" on a "primary road", as identified in the Secondary Plan, is a clear signal that the City anticipated high rise buildings as possibilities in this particular zone. The barrier to the high rise would be any adverse impacts as identified by both Ms. Sinclair and Mr. Schneider, which will be discussed below.

[50] Additionally, the Tribunal does not accept that the Secondary Plan provides clear direction that high rise development is limited to the four buildings within the Civic Centre Neighbourhood. If this was the case, policy makers would have clearly used prohibitive or restrictive language to prevent additional high rise buildings. Simply recognizing four tall buildings and calling out their locations does not prevent additional development.

Compatibility with the Neighbourhood Character

[51] One of the main issues (which also encompasses height) is the compatibility of the 19-storey tower in the Civic Centre Neighbourhood. Counsel for the Appellant submitted that policy 4.c.1.9 of the City OP applies, which states that “residential intensification within existing neighbourhoods be compatible with its surrounding context”. The City OP defines “compatibility” as follows:

Land uses and building forms that are mutually tolerant and capable of existing together in harmony within an area without causing unacceptable adverse effects, adverse environmental impacts or adverse impacts. Compatibility or compatible should not narrowly interpreted to mean “the same as” or even as “being similar to”.

[52] Ms. Sinclair’s evidence included analysis of potential “adverse impacts” (which is also defined in the City OP to include shadow, privacy, overlook, noise, vibration, amongst other things). She advised that a Shadow Impact Assessment (“Shadow Study”) was conducted, and the result found that there was no unacceptable duration of shadows cast over private amenity or buildings’ facades. With respect to privacy and overlook conditions to neighbouring properties along Weber, her evidence was that, above the second storey, overlook from the proposed building would be on the roof and lots of the adjacent buildings. She noted that as-of-right zoning permissions would allow a building that is taller than the adjacent buildings along Weber, and which could be located closer to the property line. Furthermore, the adjacent properties are commercial residential with their rear yards currently being used for parking. With respect to privacy and overlook conditions to properties to the north of the proposed building (where there are mainly residential properties), Ms. Sinclair testified that the proposed building’s

balconies and large windows would not be on the rear facade in order to minimize overlook onto said properties. She said other impacts (wind, noise, light) would be addressed at the Site Plan Approval stage, while she found there was no impact from heat, odour, or visual clutter.

[53] On cross-examination, Ms. Sinclair made a point that a shorter building could have larger shadows because of its footprint, and therefore unacceptable adverse impacts. She elaborated that there are “different ways to mitigate height, [it] does not mean if taller, it is less appropriate”.

[54] Mr. Schneider’s evidence regarding adverse impacts was brief. He simply listed what potential adverse impacts could be and did not provide sufficient detail. Mr. Barton testified, in the context of a policy analysis, that the “element of harmony” is a big piece of compatibility. He stated that “designing a building for no consideration for overlook, privacy ... and having this building stand out” would suggest that there is no harmony. He did not provide an analysis of potential adverse impacts.

[55] Of note, at the end of the Hearing, counsel for the Appellant advised that the Appellant was amenable to adding a provision that expressly prohibits balconies on the rear elevation and a provision that would limit glazing/fenestration to 15% of the total rear elevation. Counsel submitted that the evidence demonstrated that privacy concerns to the properties to north of the proposed building would be mitigated but left it to the Tribunal to decide if it would be prudent to include the provisions on the redline version of the proposed ZBA.

Finding

[56] The Tribunal preferred the evidence of Ms. Sinclair. Amongst the planning witnesses, she was the only one to provide sufficient detail with respect to any potential adverse impacts and how those were to be mitigated. In fact, the Appellant was the only Party who conducted a Shadow Study, which found no unacceptable results from shadow casts. Mr. Barton’s assertion that there was no consideration for overlook and

privacy is inaccurate since Ms. Sinclair took time to take the Tribunal through the adverse impacts and how the design of the building would mitigate any concerns. Furthermore, while the definition of “compatibility” includes “existing together in harmony”, the more important aspect of the definition is “without causing unacceptable adverse effects” because it is the impacts from those effects that need to be analyzed. In this case, absent sufficient detail regarding unacceptable adverse impacts, as listed in the definition of “adverse impacts”, the Tribunal finds that there are no unacceptable adverse impacts from the proposed building.

[57] The Tribunal notes that Mses. Fahimian and Choudhry touched on adverse impacts within the context of Urban Design and Cultural Heritage, which will be discussed further below.

[58] In order to ensure that the privacy concerns of the properties north of the Property are met, the Tribunal accepts the provisions in the redline version of the proposed ZBA, as attached to this Decision.

Meeting Intent of the UDM – Tall Building Guidelines

[59] As a starting point, the Urban Design witnesses agreed that the UDM contains several guidelines that provide guidance for development applications. The Tall Buildings Guidelines (“Guidelines”) apply to development proposals that are nine or more storeys in height. Ms. Sinclair testified that the Guidelines should be applied flexibly and that not all the Guidelines apply to every application. She further stated that it would be difficult to apply all the guidelines and that a number of applications within the MTSA and downtown area have been approved which did not fully comply with the Guidelines.

[60] Ms. Fahimian spoke about the importance of the Guidelines and that the ZBL cannot contain all the “standard of details”, such as “separation, overlook, design” that would apply to tall buildings. Therefore, the ZBL must be read in conjunction with the applicable Guidelines. Ms. Fahimian agreed with counsel for the Appellant that the test

with respect to the Guidelines is whether a development is “generally consistent with and meets the overall intent of the guidelines” rather than “conformity”, which the Tribunal has acknowledged, is a stricter test to meet.

[61] Ms. Sinclair opined that the Revised Proposal meets the intent of the Guidelines. It is a compact building with a small floor plate with vertical and horizontal articulation, and architectural features that break up the building mass. According to Ms. Sinclair, if step backs were added to the Revised Proposal, overall, the height would be maintained, “one would be able to see a tall tower”, and it would mean additional costs, such as implementation of stairwell and removal of rental units. She found that the step backs would not achieve anything additional in terms of design, for example, help with shadow impacts, because the tower was already compact. She also noted that a wind study would be conducted at the Site Plan Approval stage to account for any mitigation measures, and this was agreed to by the City.

[62] From an Urban Design perspective, Ms. Fahimian found the Revised Proposal represented an overdevelopment because of the specific site context. She found that the tower did not meet the requirement for “a 3 metre step back from the base to the 19-storey tower”, which would minimize scale, help with shadow and wind impact, and mitigate perceived massing and visual impacts on the public realm. She noted that only the second storey was recessed by 2 m. On cross-examination, Ms. Fahimian agreed that there is no requirement for a step back in the ZBL and that the Revised Proposal is requesting to amend the ZBL to add a requirement for the second storey to be stepped back a minimum of 2 m above the ground floor. She elaborated that the tower portion (floors three to 19) would not be stepped back, and therefore the intent of the Guidelines was not met. According to Ms. Fahimian, the sky views would be hindered, as in the amount of the sky one would see. During cross-examination, she agreed that according to the Appellant’s visual evidence of the proposed building, the tower had a clearly defined base, projecting balconies (which are encouraged), and visual interest.

[63] Ms. Fahimian also noted that the proposed building was incompatible with the existing built form as it was surrounded on three sides by residential buildings that are two-and-a-half storeys and would hinder the development of tall buildings at 18 and 28 Weber, as will be discussed further below. Therefore, based on the deficiencies in meeting the guidelines for tower separation, step back, rear yard setback and podium design, she found that there was insufficient transition to the low rise neighbourhood.

UDM Tall Buildings – Separation and Overlook

[64] Both Ms. Sinclair and Ms. Fahimian agree that the proposed building does not meet the tower separation guidelines for Tall Buildings. It was explained that the Guidelines include a formula for calculating physical separation between towers ((Tower Length X Tower Height) / 200). The Guidelines indicate that the City recognizes that Tall Buildings come in all shapes and sizes, and that a dynamic, scalable approach to separation is key to providing towers that are responsive to their specific contexts. For the proposed building, based on the formula, the physical separation is calculated at 9.8 m. According to Ms. Sinclair, the most important separation for the Property is the rear yard setback of 14 m, which exceeds the recommended 9.8 m. In addition, the tower face is separated from the side lot lines by 2.8 m and 5 m, respectively, which exceed the minimum ZBL requirement of 1.2 m side yard setback. With that said, the separation Guideline is not met.

[65] Looking at the site context, Ms. Sinclair explained that towers are unlikely to be permitted on the lands abutting the northern property line of the Property because properties on the south side of Roy Street are limited in height and density permissions. This area has previously been identified as the interior of the Civic Centre Neighbourhood. Weber separates future towers in the Urban Growth Centre, which means tower separation would be to the centre of the Weber right-of-way, exceeding the recommended tower separation.

[66] Finally, Ms. Sinclair detailed constraints on the sites next to the Property (18 and 28 Weber), including their small lot sizes which would require consolidation with the lots next to them before a tower development proposal could be brought forward. She also noted that there are cultural heritage resources on these properties which would either have to be integrated or demolished for any development proposal to occur.

[67] Overall, Ms. Sinclair believed the proposed building achieved an appropriate transition of built form because the proposed building height (19 storeys) allows for height transition from the greater building heights contemplated and approved on the opposite side of Weber, for example, a 27-storey building across the street in the urban Downtown core.

[68] Regarding overlook, it was Ms. Sinclair's evidence that the guideline did not apply to the proposed tower. The guideline specifically states "overlook is the overlap that exists between two neighbouring towers" with maximum overlook targets established between abutting towers. According to Ms. Sinclair, the Property does not abut any other towers, and therefore, the guideline does not apply.

[69] Ms. Fahimian spent a large portion of her testimony on the adverse impact of this development on the redevelopment of 18 and 28 Weber. One of her main concerns was the negative impact the proposed tower would have on potential future development on the sites abutting this proposed tower and the negative precedent it would establish. She testified that if another tower was to be built next to the Property on Weber, with the same typology, height, and balconies, only 2.4 m or 4 m apart, the towers, "would be too close".

[70] During cross-examination, when she was asked how it is possible to assess overlook when there are no adjacent towers, she responded that the City has to assess "future potential". She elaborated that the City needs to consider scenarios where the sites "could get consolidated" and there would be a request for the same relief as on this site, and what the impact would be. Furthermore, with respect to the cultural

heritage resources on the adjacent sites, Ms. Fahimian testified that those resources do not need to be demolished, and that they could “be integrated as part of the design of [a] Tower”.

[71] Finally, she testified that if the Applications were approved, other applicants will look for the same amendments to build along Weber, meaning similar towers with insufficient separation and overlook.

[72] In closing submissions, counsel for the Appellant argued that Ms. Fahimian’s testimony uncovered “an inherent, internal inconsistency in the City’s case”. She elaborated that Ms. Fahimian was interested in protecting the adjacent properties for their future hypothetical development with towers, while Mr. Schneider and Ms. Choudry are concerned that the Revised Proposal is too tall given the surrounding built form. She argued that these concerns are at odds with each other.

Finding

[73] As a starting point, the Tribunal accepts that the Guidelines should be applied with flexibility, that they are not policy and do not carry the same weight as policies under official plans. Regarding the intent of the UDM, as it relates to Tall Buildings, policy 9.1.1 states:

...the expectation is not for every project to meet every guideline in all cases. A project may fall short (within reason) of a guideline if it compensates by exceeding targets for other (related) guidelines, or if the project demonstrates justifiable design solutions to achieve a guideline’s intention through other means.

[74] The Tribunal accepts Ms. Sinclair’s evidence that the Revised Proposal is a compact building, with visual interest, and meets the intent of the UDM. Notably, the UDM states “compact point towers are preferred for intensification areas and smaller sites”. The Tribunal accepts Ms. Sinclair’s reasons that in this case step backs would not result in achieving more beneficial design outcomes (for example reduce shadow impacts or help with massing). No evidence was provided to the contrary. As previously

established, the proposed building will still appear tall and does not have unacceptable adverse impacts.

[75] Furthermore, much of Ms. Fahimian's evidence focused on the adverse impacts that the Revised Proposal would have on future proposals on the abutting properties, and the negative precedent it would set. These assertions are speculative. There is no evidence before the Tribunal that the abutting lots are being redeveloped or are intending to be developed within a certain timeframe. The evidence before the Tribunal suggests there are valid constraints on the abutting lots which will prevent tall towers from being built. Only if the abutting lots consolidate with properties next to them will tall development be possible. Even so, what that development will look like is unknown, and there is no intention of any proposal before the Tribunal. In addition, each development application is evaluated based on its own unique circumstances and applicable policies, and determined based on its own merits. Therefore, the argument of setting a bad precedent is not very persuasive.

[76] While Ms. Fahimian spoke mainly about the impact of the Revised Proposal on abutting lots, she failed to acknowledge that there would be adequate separation to the rear yard (14 m versus the 9.8 m recommendation in the UDM based on the formula). She did not discuss any adverse impacts from the rear yard separation as her main adverse impacts related to privacy and overlook issues regarding the abutting lots. She did mention that there would be hindrance of sky views because the tower would be perceived as too tall. However, as noted earlier, there is no height restriction in the ZBL. Simply because a building appears "too tall" does not mean the intent of the Guidelines is not met; especially since the Tribunal has found there is no unacceptable adverse impacts.

[77] Finally, the Tribunal accepts counsel for the Appellant's argument that there appears to be an inherent inconsistency in the City's case. Ms. Fahimian appears to be in favour of tall buildings, or at least acknowledges that tall buildings are a possibility on Weber, while Mr. Schneider and Ms. Choudry, as will be discussed further below,

believe tall buildings do not belong in the Civic Centre Neighbourhood. While there seems to be an inconsistency, the Tribunal finds that what the case boils down to is whether the Revised Proposal itself makes sense based on a complete analysis. This analysis includes the reasons, or justifications, as to why certain guidelines are not met, and whether there are any actual adverse impacts. If so, the analysis continues as to how can the adverse impacts be mitigated. In this case, as discussed previously, the Tribunal accepts the reasons why some guidelines in the UDM are not met, but finds overall that the Revised Proposal meets the intention of the UDM as it relates to Tall Buildings, including separation and overlook.

UDM Tall Buildings – Outdoor Amenity Area

[78] Both witnesses agreed that there is no requirement in the current ZBL for minimum amenity space.

[79] Under Part C of the UDM, section 11 (Outdoor Amenity Areas – Multiple Residential and Institutional Development), the following two sections are provided:

An outdoor amenity area shall be provided for all residential and institutional developments having a residential component that contains more than either 20 residents or 20 dwelling units and provide a minimum of 2.0 square metres of common outdoor amenity space at ground level for either each resident or each dwelling unit.

Notwithstanding the above, each residential or institutional development having a residential component shall have a minimum of 40.0 square metres of outdoor amenity area. [emphasis added]

[80] According to Ms. Sinclair, the proposed ZBA states “a minimum amenity area of 1,500 square metres shall be provided and shall include balconies and common amenity space.” Additionally, there would be a requirement that “the minimum amenity area shall include at least 130 square metres of common amenity space, including a minimum of 40 square metres of outdoor common amenity space.” Ms. Sinclair explained that Part C of the UDM was prepared 15 years ago and was intended for low density, multiple residential developments, such as townhouses, which would have larger pieces of land. This guideline speaks to outdoor common spaces at ground level.

According to Ms. Sinclair, most tower intensification projects cannot provide ground level outdoor amenity spaces, and therefore, amenity is provided through the rooftops and balconies. She explained that, as a result of the witness statements, one of the proposed residential units on the Site Plan has now changed and is intended to be a common amenity space. For example, the initially proposed 168 residential units has changed to 167 residential units. She further explained that if the calculation that is intended to be on the ground level is applied to all of the proposed building (including balconies and common amenity spaces), the proposed ZBA far exceeds the requirement in the UDM as it relates to outdoor amenity space.

[81] Ms. Fahimian testified that the Revised Proposal would not meet the requirement of outdoor amenity space when considering the formula in the guideline (which according to her calculation was over 500 m²). However, counsel for the Appellant argued that the second provision in section 11 of Part C of the UDM expressly supersedes the rate and requires a minimum of 40 m² for the “residential development”. Of note, Ms. Fahimian’s Witness Statement calculates outdoor amenity space using the stipulated formula, whereas the formula in the UDM is for common outdoor amenity area.

[82] Under cross-examination, Ms. Fahimian said that balconies are private, and not shared, although she did concede that a “small roof top” amenity area was added to the Site Plan. In closing submissions, counsel for the City stated that when Ms. Sinclair was asked to provide an example of the City allowing private balconies to be counted toward amenity space under the ZBL, she was unable to do so. He argued that private balconies are not permitted to be counted as outdoor amenity spaces in the ZBL. Counsel for the Appellant argued that the City did not take Ms. Sinclair to specific provisions in the ZBL that prohibit balconies to be included in outdoor amenity spaces.

Finding

[83] The Tribunal accepts Ms. Sinclair's evidence that the proposed ZBL meets the intention of the guideline regarding outdoor amenity space. The Tribunal finds that when reading both paragraphs of the guideline, the intention is to have an outdoor amenity space at a minimum of "40 square metres". By enshrining the minimum standard of "40 square metres", whereas the current ZBL has no requirement whatsoever, the Revised Proposal aims to meet the minimum guideline. It is also reasonable to assume residents of this dwelling (rental, one-bedroom units in a MTSA across the street from Downtown centre) are not expecting to have a great amount of outdoor facility with their building. Balconies are a viable, welcomed feature which will allow for outdoor amenities, and there is no evidence to suggest balconies are specifically excluded from the consideration of outdoor amenity space in the ZBL, or guideline itself. Ms. Fahimian suggested that balconies are private, rather than shared. Although she interprets this to mean they cannot be included in the calculation of "common amenity area at ground level", the Tribunal finds that there is no evidence that specifically excludes balconies and given the Revised Proposal itself (rental apartment building), it makes sense to include balconies as part of the outdoor amenity space in the calculation. In any event, the Tribunal finds the intention of "outdoor amenity" as well as "common amenity" has been met via the room and roof top amenity space, and indoor common amenity room.

AGREED FACTS AND ISSUES – CULTURAL HERITAGE

[84] The witnesses agree the Property is in the Civic Centre Neighbourhood, designated under Part V of the *Ontario Heritage Act*, R.S.O. 1990, c. O.18 ("Heritage Act"). The Civic Centre Neighbourhood was approved in 2007, and the associated Civic Centre Neighbourhood Heritage Conservation District Plan ("District Plan") was adopted thereafter. There is agreement that the purpose for the District Plan is to be a policy framework to ensure that heritage attributes and character of the neighbourhood can be conserved as the neighbourhood changes over time, and that Weber has area specific

policies which need to be considered when new development is proposed. The area specific policies are discussed below.

[85] The contested issues relate to adverse impacts on cultural heritage resources and the district itself meeting some of the Weber guidelines, including meeting the angular plane and the front and rear yard setback requirements.

Adverse Impacts to Cultural Heritage Resources and Civic Centre Neighbourhood

[86] Mr. Currie opined that the proposed building does not conflict with the objectives and principles of the District Plan and does not result in impacts to surrounding cultural heritage resources. When considering the Weber policies in the District Plan, Mr. Currie testified that there is recognition that Weber is designated as “High Density Commercial Residential”, and that according to policy 3.3.5.2(d) of the District Plan:

(d) Where redevelopment is proposed on vacant or underutilized sites, new development shall be sensitive to and compatible with adjacent heritage resources on the street with respect to height, massing, built form and materials. [emphasis added]

[87] He stated that there is no definition of “compatible” in the District Plan, and therefore the City OP definition of “compatible” was used in the Heritage Impact Assessment (“HIA”), which was provided to the City. As has been discussed earlier in the Decision, a key component of the “compatibility” definition is “adverse impacts”. Accordingly, Mr. Currie used the InfoSheet #5, which was prepared by the Ministry of Culture in 2005 to assist planners in cultural heritage matters. The InfoSheet #5 includes a list of what negative impacts on cultural heritage resources can include. Mr. Currie identified each criterion and testified that there is no adverse impact from the proposed building. For example, he testified that there is no risk of isolation of a property from its context and no adverse impacts with respect to shadows on heritage resources, including Hibner Park. Mr. Currie further testified that there would be no obstruction of significant views or vistas. In fact, he said the District Plan does not identify what significant views or vistas are (where some other district plans do).

Nevertheless, he noted that, from a pedestrian perspective, the oblique view of the side façade of the neighbouring property would be impacted, but that this view was not a significant view identified in the District Plan.

[88] Additionally, he stated that even a shorter building of two storeys would have the same result. As for the two neighbouring churches, which have been identified as landmarks, the proposed building would not obstruct their views. He reiterated that simply seeing a tall building in the Civic Centre Neighbourhood was not an obstruction. In his opinion, under the “obstruction” criteria, there would have to be obstruction of the view of something significant that needs to be maintained and therefore would result in a negative adverse impact. When asked specifically at what point does a development have an impact on cultural heritage resources, his short answer was “when any of the criteria was not met, or if the development was not on Weber and in the middle of the Civic Centre Neighbourhood ... therefore the impact would have to be assessed”. He testified that there may be potential impact to adjacent buildings as a result of construction activities and mitigation measures, such as motivation for vibration impacts are recommended in the HIA.

[89] Ms. Choudry’s evidence primarily related to the fact that the District Plan focuses on built heritage typologies and not land use. Her rationale was that the Civic Centre Neighbourhood recognizes architectural, streetscape, and historical character rather than use. She testified that, since the District Plan was put in place, not a single tall building was approved or built in the Civic Centre Neighbourhood, including on Weber. Ms. Choudry testified that the proposed building would impact the integrity of the Civic Centre Neighbourhood as a whole, adversely impacting its architectural, contextual, and streetscape character. She testified that a proposed building with deficient setbacks and no step back was not appropriate for the Civic Centre Neighbourhood. With that said, she did not provide a detailed analysis of adverse impacts from a cultural heritage perspective on the adjacent properties, nor a more general adverse impact analysis, such as Mr. Currie’s. She said that she had a different approach regarding “compatibility” and that there had to be consideration for the context, scale, massing of

the building, and the fact that it must be “in harmony” with its surroundings. Put simply, she testified that the height of the proposed building would be overpowering, and this was the main reason it was incompatible with the broader Civic Centre Neighbourhood.

Finding

[90] The Tribunal prefers the evidence of Mr. Currie. He was the only witness who did an in-depth analysis of potential negative impacts. Although FOBT asserted in its written closing submissions that InfoSheet #5 is invalid authority, as it is an educational pamphlet used alongside Provincial Policy Statement, 2005 to aid planners in evaluating applications, the Tribunal finds that it is a helpful tool. It outlines potential negative impacts and therefore allows proposals to be assessed against those criteria. Additionally, neither FOBT nor the City raised any concerns or objections to the use of the InfoSheet #5 during Mr. Currie’s cross-examination. Furthermore, the Tribunal does not accept Ms. Choudry’s assertions that, simply because the proposed building is tall, it will negatively impact the Civic Centre Neighbourhood. This proposed building will be situated along Weber, a location intentionally thought to be high density, not in the centre of the Civic Centre Neighbourhood, with no evidence of adverse impacts on any cultural heritage resources next to it or in proximity within the Civic Centre Neighbourhood.

[91] Counsel for the City argued that Mr. Currie’s evidence focused on adverse impacts to the immediately adjacent heritage properties but “lacked an analysis of impacts to on the District more broadly” and that Mr. Currie did not analyze cumulative impacts. The Tribunal finds that Mr. Currie had testified that, just because a building is tall, does not mean it has negative impacts to the Civic Centre Neighbourhood. His explanation was that the location of the proposed building, which is so close to Downtown and not within the center of the Civic Centre Neighbourhood, is a significant reason as to why the proposed build form is appropriate. The Tribunal accepts this as adequate rationale for the analysis of broader impacts for the Civic Centre Neighbourhood. As for cumulative impacts, counsel for the City did not take the Tribunal

to any guideline or policy which directs an assessment of cumulative impacts. In summary, the Tribunal finds that there are no adverse impacts from the Revised Proposal on the surrounding cultural heritage resources, nor the Civic Centre Neighbourhood as a whole.

Angular Plane Guideline

[92] According to policy 6.9.4 of the District Plan, there are nine design guidelines which apply to developments along Weber. Among the list, the angular plane guideline (“APG”) was the most contentious. The APG reads as follows:

Any buildings taller than 5 storeys abutting a residential property to the rear should be constructed within a 45 degree angular plane where feasible, starting from the rear property line, to minimize visual impacts on adjacent property owners.

[93] As a starting point, Mr. Currie discussed the intent of the APG, which according to him, is for the tall buildings to have less of an impact on residential properties and not jeopardize their continued residential use. As such, he looked at the land use designation in the Secondary Plan, which identifies properties on the south side of Roy Street as “Office Residential Conversion”, and properties on the north side of Roy Street as “Low Rise Residential” (in the centre of the Civic Centre Neighbourhood). He opined that, if the intent of the APG is to protect the low-rise residential buildings, the office conversion acts as a transition, or buffer, between the high density uses on Weber and the low-rise residential areas in the Civic Centre Neighbourhood. Therefore, he applied the starting point of the angular plane analysis at the edge of the low-rise residential buildings (north side of Roy Street rather than the south side of Roy Street). Using this logic, he concluded that the proposed building met the 45-degree angular plane. In addition, Mr. Currie said that, even if the proposed building did not meet the angular plane, the crucial point remained to be the impact from not meeting the angular plane. In this case, he was clear that there was no adverse impact from the proposed building and reiterated that tall buildings do not negate the heritage value of adjacent buildings.

[94] Furthermore, Mr. Schneider agreed with counsel for the Appellant that the proposed building was separated from the established low rise residential neighbourhood by approximately 58 m. This was so because the south side of Roy Street was a buffer for the north side of Roy Street (residential) area.

[95] Moreover, Mr. Currie noted that use of the word “where feasible” in the APG imports a level of flexibility. He explained that this qualifier allows one to consider the massing of the proposed building given the shape of the proposed lot, which is narrow and long. If what results as massing is not feasible, then the APG can be abandoned, or the APG can still apply and the need to analyze the adverse impacts resulting from the height comes into play. At that point, the conclusion of whether or not it should be built, given the impacts, will be determined. Under cross-examination, Mr. Currie agreed with counsel for the City that, based on the visual evidence provided, a building of about 35 units at eight storeys could be built on the Property, within the 45-degree angular plane. Mr. Currie explained that the visual evidence provided by the Appellant was a depiction of what a potential building could look like if it met all the Weber Heritage Guidelines (“WHGs”). Mr. Currie’s evidence was that a built form that met the strict WHGs was neither desirable nor good planning.

[96] Mr. Currie agreed with counsel for the City that something could be built, but he questioned whether it would be feasible. In fact, he said the visual depiction “sure looked like it was not feasible ... but maybe someone would disagree.” As for comparison purposes, counsel for the City submitted that a proposed building of eight storeys at 50 Weber has step backs, which meant that it met the intent of the angular plane, even when this proposed building exceeded the angular plan. Mr. Currie agreed that having step backs meets the intent of the APG, but he did not agree that it resulted in less negative impact. Specifically, he did not agree with counsel for the City that “if meeting the [angular plane] by a little would be better”. He testified that sometimes a small numerical exceedance has more of an adverse impact than a higher numerical exceedance. He stated that each site has to be evaluated on a site-by-site basis, and it boils down to the adverse impact.

[97] Ms. Choudry's evidence regarding the angular plane focused on the typology since, as she previously testified, typology was the focus of the District Plan. She stated that the houses on Roy Street are residential (they look like residential buildings), they are zoned residential in the ZBL and the City OP allows for residential uses. She confirmed that the angular plane should be measured from the "rear of the property line" because that was the wording of the APG. She did not agree with Mr. Currie that the angular plane should be measured from the edge of the low-rise residential buildings, nor did she agree with what counsel for the City termed "front lot line of a non-adjacent property across the street". Under cross-examination, she agreed with counsel for the Appellant that the District Plan does not define "residential property" and there is nothing in the District Plan which states how one should interpret "residential property". As such, she relied on the definition in the ZBL and the broader definition of "residential property". She testified that using the land use designation is not an acceptable approach in determining what constitutes "residential property" because future designations can change and "she cannot predict what will happen", but the intent of the APG is to protect the originally constructed residential build forms as part of the residential neighbourhood from potential adverse impacts.

[98] With respect to adverse impacts, her evidence was that a 19-storey building, with no step backs after the first floor, incompatible rear yard step back, and lack of design articulation and height, all contribute to the negative impact. While Ms. Choudry mentioned impacts in her Witness Statement, for example, introducing step backs may decrease shadow impact, she did not provide evidence of any adverse impacts from shadows. Further, she testified at the Hearing that she did not assess adverse impacts to the immediate adjacent properties.

[99] Regarding feasibility, Ms. Choudry agreed with Counsel for the Appellant that the language suggests flexibility, but she said it does not mean the angular plane needs to be applied "incorrectly". The intent should be to meet the angular plane and if going past it, there needs to be mitigative measures provided.

Finding

[100] The Tribunal understands Mr. Currie's explanation regarding his measurement of the angular plane from the edge of the low-rise residential buildings (north side of Roy Street rather than the south side of Roy Street). With that said, a plain reading of the APG suggests that the intent is to protect residential properties, and the starting point of measuring is the rear property line of said residential properties. Mr. Currie testified that the focus should be on land use, and therefore, the land designation of "Office Residential Conversion" acts as a buffer. The name "Office Residential Conversion" itself suggests that there is potential of people living in the build form, irrespective of whether the build form gets converted into an office.

[101] To Ms. Choudry's point, the land use may change in the future. Therefore, in this case, the Tribunal prefers Ms. Choudry's evidence and finds that the angular plane should be measured from the rear property line of the residential properties on the south side of Roy Street, and the proposed building does not meet the 45-degree angular plane when measured from the properties on the south side of Roy Street.

[102] With that said, even if the proposed building does not meet the 45-degree angular plane, the language of "feasible" and the suggestion to "minimize visual impacts" within the APG suggests that the key consideration is what impact will occur if the 45-degree angular plane is not met. In this case, Mr. Currie was quite clear that there is no adverse impact. No impact from shadows (as provided by the Shadow Study) and no impact on heritage resources, as discussed earlier. Ms. Choudry did not provide adequate evidence of adverse impacts. As such, the Tribunal finds the intent of the APG has been met as there are no adverse impacts from not meeting the APG.

Front Yard and Rear Yard Setback

[103] Both Mr. Currie and Ms. Choudry agreed that, according to s. 41.2(2) of the Heritage Act, in the event of a conflict between a district plan and a zoning by-law that affects a particular designated district, the district plan prevails. It was accepted that a

district plan has policies for high density development, and that these policies are more restrictive than the applicable zoning by-law. With that said, the WHGs' requirement of the rear yard setback in the Heritage District Plan is 15 m. The ZBL requirement for the rear yard setback is 7.5 m, or one half the building height, whichever is greater. In this case, the ZBL would require a rear yard set back of 28 m. The Applications request a rear yard setback of 14 m. Mr. Currie testified that the intent of the WHGs is met and that there is no impact by the 1 m difference in the WHGs. Ms. Choudry did not provide evidence or reasoning regarding the rear yard setback and how it may be inadequate, given the WHGs.

[104] The Tribunal accepts that, in this case, the rear yard setback requirement follows the District Plan, as per s. 41.2(2) of the Heritage Act, and accepts Mr. Currie's evidence regarding the rear year setback finding that the rear yard setback of 14 m is appropriate.

[105] Regarding the front yard setback, the WHGs in the Heritage District Plan require:

Setbacks of new development should be consistent with adjacent buildings. Where significantly different setbacks exist on either side, the new building should be aligned with the building that is most similar to the predominant setback on the street.

[106] The ZBL requirement for the front yard setback is 3 m. Mr. Currie testified that the intent of the WHGs is to have the front yard setback be consistent. In his analysis of the front yard setbacks on Weber, he concluded that there is much variability and not much consistency on Weber. Based on visual evidence submitted by the Appellant, the range of front yard setbacks are from 0 m to approximately 9.5 m. With respect to the adjacent properties, Mr. Currie testified that 18 Weber has a much deeper front yard setback at 12.88 m, and is an outlier, while 28 Weber has a front yard setback of 7.34 m. Of note, these measurements are from the existing property lines and do not consider the road widening required by the Region. Mr. Currie testified that the proposed building would have a front yard setback of 3 m (0 m with the road widening) and is within the range of setbacks. During cross-examination, Mr. Currie explained

that, in terms of the proposed building being aligned “with the building that is most similar to the predominant setback on the street”, the proposed building is not aligned. However, if the intent of the WHGs is considered, the key is to look at the impact that results if the proposed building is not aligned. In this case, he concluded that there is no significant impact. Therefore, the proposed building front yard setback is consistent and meets the intent of the WHGs.

[107] Ms. Choudry testified that the 0 m front yard setback is not appropriate because it “disrupts the established character” of Weber. With that said, during cross-examination, she agreed with counsel for the Appellant that the general intent of the WHGs is to attempt alignment along the street. She clarified that she would use “consistent” and she agreed that there is a range of frontages along Weber.

[108] The Tribunal finds that the Revised Proposal meets the intent of the WHGs with respect to the front yard setback. The Tribunal accepts that the 3 m front yard setback (0 m with the road widening) is within the range of front yard setbacks and is set back enough so that it does not result in any adverse impacts. The Tribunal preferred the evidence of Mr. Currie as it was thoughtful and provided adequate rationale, as compared to Ms. Choudry. No further rationale or analysis was provided by Ms. Choudry to support her assertion that a 3 m front yard setback (0 m with the road widening) disrupts the established character of Weber. What the Tribunal heard was that there is a range of front yard setbacks with no consistency. Therefore, the front yard setback proposed is acceptable.

SUMMARY FINDINGS

[109] The Property is located within a MTSA and Strategic Growth Area, as defined by the PPS 2024, and within the designated Built-Up Area, and in the Urban Area in the Region OP. The Revised Proposal will create a tall building at the edge of the Civic Centre Neighbourhood, across from the Downtown of the City.

[110] The evidence established that the Property is currently underutilized (parking lot) and does not represent a sustainable use of land. The Revised Proposal entails a compact urban development that will provide transit supportive density that is consistent with the PPS 2024, including the provisions of a full range of housing (rental units) and intensification in proximity to transit. The height of the proposed building is appropriate and provides a transition in height from the unlimited heights permitted on the south side of Weber to the lower density uses internal to the Civic Centre Neighbourhood. The building is compatible with the surrounding land uses with no unacceptable adverse impacts. Therefore, the Revised Proposal conforms with the policies in the City OP, which requires residential intensification to be designed to respect the existing character, with a high degree of sensitivity to surrounding context.

[111] Furthermore, the evidence demonstrated that the Revised Proposal met the intent of the UDM regarding Tall Buildings, especially as it relates to separation and overlook. With respect to the cultural heritage issues, the evidence showed that the Revised Proposal will have no impact on the surrounding cultural heritage resources identified in the District Plan and will not impact the heritage value and attributes of the Civic Centre Neighbourhood.

[112] The Tribunal finds that the Revised Proposal has sufficient regard for matters of provincial interest under s. 2 of the Act. It is consistent with the PPS 2024 and conforms to the City OP and Region OP, both of which promote intensification in underutilized sites within the Built-Up Urban Area. The Revised Proposal has sufficient regard for the UDM, is consistent with the objectives of the District Plan, represents good planning, and is in the public interest.

ORDER

[113] **THE TRIBUNAL ORDERS THAT** the appeals are allowed, and the City of Kitchener Official Plan and Zoning By-law No. 85-1 are amended, as set out in **Attachment 1** and **Attachment 2** to this Order.

[114] The Tribunal authorizes the municipal clerk of the City of Kitchener to assign numbers to the Official Plan Amendment and Zoning By-law for record keeping purposes.

“Yasna Faghani”

YASNA FAGHANI
MEMBER

“Gregory J. Ingram”

GREGORY J. INGRAM
MEMBER

Ontario Land Tribunal

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

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

ATTACHMENT 1

**AMENDMENT NO. TO THE OFFICIAL
PLAN OF THE CITY OF KITCHENER**

CITY OF KITCHENER

22 Weber Street West

INDEX

SECTION 1	TITLE AND COMPONENTS
SECTION 2	PURPOSE OF THE AMENDMENT
SECTION 3	BASIS OF THE AMENDMENT
SECTION 4	THE AMENDMENT

AMENDMENT NO. TO THE OFFICIAL PLAN

OF THE CITY OF KITCHENER

SECTION 1 – TITLE AND COMPONENTS

This amendment shall be referred to as Amendment No. XX to the Official Plan of the City of Kitchener. This amendment is comprised of Sections 1 to 4 inclusive and Schedule 'A'.

SECTION 2 – PURPOSE OF THE AMENDMENT

The purpose of this amendment is to add a Special Policy to the 1994 Official Plan to increase the maximum permitted density on the subject lands and to amend Map 9 to add a Special Policy Area.

SECTION 3 – BASIS OF THE AMENDMENT

The subject lands are located at 22 Weber Street West. The subject lands are designated High Density Commercial Residential in the Civic Centre Neighbourhood Secondary Plan, which forms part of the 1994 Official Plan. The High Density Commercial Residential designation in the Civic Centre Secondary Plan permits multiple dwellings and recognizes the proximity of the Civic Centre Neighbourhood to the higher intensity land uses of the Downtown and the location of the property on a primary road. The subject lands are also located within a Protected Major Transit Station Area (PMTSA) which is considered a primary intensification area.

An Official Plan Amendment is required to add a Special Policy to permit a maximum Floor Space Ratio (FSR) of 7.95 prior to any development occurring on the lands.

This will bring this site into conformity with the Regional Official Plan as well as the City of Kitchener Official Plan which directs intensification to Major Transit Station Areas.

The subject lands are located in close proximity to multiple LRT Stops and are identified in the Regional Official Plan and the City of Kitchener 2014 Official Plan as being within a Major Transit Station Area (MTSA). The proposed development includes multiple residential development at a density that supports both transit and active transportation.

The proposed development will implement the vision as set out in the Official Plan for lands within a MTSA as being a compact, dense and transit supportive site. The subject lands are a vacant parcel, strategically located at the periphery of the Civic Centre Neighbourhood, immediately adjacent to the downtown and is buffered from the stable residential area at the interior of the neighbourhood by the Office Residential Conversion designation. Its prominent location makes it ideal for the density proposed. The maximum floor space ratio, setbacks for the building, minimum amenity space, as well as bicycle parking will be regulated in the site-specific amending zoning by-law to ensure urban design elements are implemented and onsite constraints are addressed.

The proposal is consistent with the 2024 Provincial Planning Statement and conforms to the Regional Official Plan, as it promotes walkability, is transit-supportive, maximizes the use of existing and new infrastructure, and assists in development of this area as a compact and complete community through the broad range of uses. The proposed development implements the redevelopment vision for the Major Transit Station Area as prescribed in both the current and newly adopted Official Plan and is, therefore, good planning.

SECTION 4 – THE AMENDMENT

1. The 1994 City of Kitchener Official Plan is hereby amended as follows:
 - a) Part 3, Section 13.1.3 Special Policies is amended by adding new 13.1.3.XX thereto as follows:

“XX. Notwithstanding the High Density Commercial Residential land use designation and policies:

 - i. The maximum permitted Floor Space Ratio shall be 7.95.
 - c) Map 9– Civic Centre Neighbourhood Plan for Land Use is amended by adding a Special Policy Area to the lands municipally known as 22 Weber Street West.

ATTACHMENT 2

PROPOSED BY – LAW

XXXXX, 2025

BY-LAW NUMBER ____

OF THE

CORPORATION OF THE CITY OF KITCHENER

(Being a by-law to amend By-law 85-1, as amended, known as
the Zoning By-law for the City of Kitchener)
22 Weber Street West

WHEREAS it is deemed expedient to amend By-law 85-1 for the lands specified above;

NOW THEREFORE the Ontario Land Tribunal enacts as follows:

1. Schedule Number 121 of Appendix “A” to By-law Number 85-1 are hereby amended by changing the zoning applicable to 22 Weber Street West, in the City of Kitchener, from Commercial Residential Three Zone (CR-3) to Commercial Residential Three Zone (CR-3) with Special Regulation Provision XXXR and Holding Provision XXXH.
2. Appendix “D” to By-law 85-1 is hereby amended by adding Section XXXR thereto as follows:

XXXR

Notwithstanding Section 46.3, Section 6.1.2a), and 6.1.2b)vi) of this By-law, within the lands zoned Commercial Residential Three Zone (CR-3), shown as affected by this subsection, on Schedule 121 of Appendix "A", a Multiple Dwelling shall be permitted in accordance with the following:

Design Standards & Parking

- a. The maximum Floor Space Ratio shall be 7.95.
- b. The maximum Building Height shall be 19 storeys and 59 metres.
- c. The minimum Front Yard shall be 0.0 metres.
- d. For portions of the building up to 5.0 metres in height, the minimum Rear Yard shall be 8.0 metres.
- e. For portions of the building greater than 5.0 metres in height, the minimum Rear Yard shall be 14 metres.
- f. The minimum Side Yard shall be 2.5 metres.
- g. The minimum landscape area shall be 5%.
- h. Dwelling Units shall be permitted on the ground floor within either a mixed-use or multiple dwelling building.
- i. Exclusive use patio areas are not required for ground floor units.

- j. Rear Yard Access requirements do not apply.
- k. The minimum ground floor height shall be 4.5 metres.
- l. The second storey shall be stepped back a minimum of 2.0 metres above the ground floor.
- m. The minimum Class A Bicycle Parking Stall requirement shall be 1 per dwelling unit, located within the unit or within a secure bicycle storage room.
- n. The minimum Class B Bicycle Parking Stall requirement shall be 6.
- o. The minimum parking requirement shall be 0 spaces per unit.
- p. The minimum visitor parking requirement shall be 0 spaces per unit.
- q. A minimum amenity area of 1,500 square metres shall be provided and shall include balconies and common amenity space.
- r. The minimum amenity area shall include at least 130 square metres of common amenity space, including a minimum of 40 square metres of outdoor common amenity space.
- s. Geothermal Energy Systems shall be prohibited.
- t. Balconies shall not permitted on the rear building elevation.

- u. The maximum percentage of façade openings (windows or entrances) on the rear building elevation shall be limited to 15% of the total rear façade area.

- 3. Appendix "F" to By-law 85-1 is hereby amended by adding Section XXXH as follows:

XXXH

Notwithstanding Section 46.1 of this By-law, within the lands zoned CR-3 and shown as affected by this subsection on Schedule Numbers 84 and 121 of Appendix "A":

No residential use shall be permitted until a detailed transportation (road) and stationary noise study has been completed and implementation measures recommended to the satisfaction of the Regional Municipality of Waterloo or the City of Kitchener. The detailed stationary noise study shall review stationary noise sources in the vicinity of the site, the potential impacts of noise (e.g. HVAC systems) on the on-site sensitive points of reception and the impacts of the development on adjacent noise sensitive uses.

- 4. This By-law shall come into effect only upon approval of Official Plan Amendment No. XX, for 22 Weber Street West, but upon such approval, the provisions hereof affecting such lands shall be deemed to have come into force on the date of passing hereof.