

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: November 22, 2024

CASE NO(S).:

OLT-22-002401
(Formerly PL210085)
OLT-24-000533

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

Applicant and Appellant: Trimed Investments Inc., Turbo-Mac Ltd., Yonge & Gerrard Partners Inc.

Subject: Request to amend the Official Plan - Failure of the City of Toronto to adopt the requested amendment

Description: To permit an 85-storey mixed-use building

Property Address: 372, 374, 374A, 376 and 378 Yonge Street

Municipality: City of Toronto

Approval Authority File No.: 20 174053 STE 11 OZ

OLT Case No.: OLT-22-002401

Legacy Case No.: PL210085

OLT Lead Case No.: OLT-22-002401

Legacy Lead Case No.: PL210085

OLT Case Name: Trimed Investments Inc. vs. Toronto (City)

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

Applicant and Appellant: Trimed Investments Inc., Turbo-Mac Ltd., Yonge & Gerrard Partners Inc.

Subject: Application to amend Zoning By-law Nos. 438-86 and 569-2013 - Refusal or neglect of the City of Toronto to make a decision

Description: To permit an 85-storey mixed-use building

Property Address: 372, 374, 374A, 376 and 378 Yonge Street

Municipality: City of Toronto

Municipality File No.: 20 174053 STE 11 OZ
OLT Case No.: OLT-22-002402
Legacy Case No.: PL210086
OLT Lead Case No.: OLT-22-002401
Legacy Lead Case No.: PL210085

PROCEEDING COMMENCED UNDER subsection 33(9) of the *Ontario Heritage Act*,
R.S.O. 1990, c. O.18, as amended.

Applicant and Appellant: Trimed Investments Inc., Turbo-Mac Ltd.,
Yonge & Gerrard Partners Inc.
Subject: Refusal of Application for Alteration
Description: To permit an 85-storey mixed-use building
Property Address: 374, 374A, 376 and 378 Yonge Street
Municipality/UT: Toronto/Toronto
OLT Case No.: OLT-24-000533
OLT Lead Case No.: OLT Case Name: OLT-24-000533
Trimed Investments Inc. vs. Toronto (City)

Heard: May 27, 2024 to June 7, 2024
by Video Hearing

APPEARANCES:

Parties

Trimed Investments Inc.,
Yonge & Gerrard Partners Inc., and
Turbo-Mac Ltd.

City of Toronto

Great Eagle Hotels (Canada) Limited

2348398 Ontario Inc. and
Mang Investments Limited

Counsel

Eileen Costello
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Jonathan Cheng

DECISION DELIVERED BY DAVID BROWN AND ORDER OF THE TRIBUNAL

[Link to Final Order](#)

INTRODUCTION AND BACKGROUND

[1] The matter before the Tribunal concerns three Appeals by Trimed Investments Inc., Yonge & Gerrard Partners Inc., and Turbo-Mac Ltd. (“Appellant”). The first two Appeals were filed pursuant to s. 22(7) and s. 34(11) of the *Planning Act* (“Act”) against the failure of the City of Toronto (“City”) to make a decision related to Applications for an Official Plan Amendment (“OPA”) and a Zoning By-law Amendment (“ZBA”) within the prescribed timeline as set out in the Act. The third Appeal was filed pursuant to s. 33(9) of the *Ontario Heritage Act*, R.S.O. 1990, c. O.18 (“OHA”) against the City’s refusal of an Application to permit an alteration to a heritage structure.

[2] The properties subject to the Appeals are municipally addressed as 372, 374, 374A, 376, and 378 Yonge Street (together the “Subject Site”). The Subject Site is located at the southwest corner of Yonge Street and Gerrard Street West with 31.9 metres (“m”) of frontage along Yonge Street and 38.5 m of street frontage along Gerrard Street West and has an area of 961 square metres (“m²”). A municipal laneway, accessed from Walton Street along the south side of the Subject Site, provides service to the rear of the buildings located at 372, 374, 374A, and 376 Yonge Street and separates the Subject Site from the lands owned by Great Eagle Hotels (Canada) Limited (“Great Eagle”) to the west. The municipal laneway terminates at the south side of property known as 378 Yonge Street which is occupied by a former bank building designed by the Architect John M. Lyle and is a designated heritage structure (“Lyle Building”). The Lyle Building does not access the municipal laneway and, at its westerly end, abuts the Great Eagle site.

[3] The Great Eagle site is currently occupied by a hotel use ("Chelsea Hotel"). The east tower of the Chelsea Hotel abuts the west side of the municipal laneway. Walton Street terminates at the east side of the Great Eagle site.

[4] The City Official Plan ("OP") designates Yonge Street as a major Arterial Road with a width of 20 m south of Gerrard Street and a width of 26 m to 30 m north of Gerrard Street. The OP designates Gerrard Street, west of Yonge Street, as a Minor Arterial Road and a Collector Road east of Yonge Street. The Subject Site is well served by Toronto Transit Commission ("TTC") public transit with access to both bus and streetcar service and is located within 260 m of the College Station and within 300 m of the Dundas Station on the TTC Subway Line 1.

[5] The OP designates the Subject Site as Mixed Use Areas in the Downtown and Central Waterfront area. The Downtown Secondary Plan (OPA 406) ("DSP") designates the Subject Property Mixed Use Area 2 – Intermediate. Yonge Street is identified as a Great Street and a Priority Retail Street identifying the area for significant public realm improvements.

[6] Site and Area Specific Policy 174 ("SASP 174") extends from Queen Street north along Yonge Street to just north of Gerrard Street and encompasses the Subject Site. SASP 174 sets out that Downtown Yonge Street is recognized as a prominent area in the City and an important retail street and a major shopping focus within the Greater Toronto Area.

[7] The Subject Property is overlapped by four Protected Major Transit Station Areas ("PMTSA") as defined by Official Plan Amendment 524 ("OPA 524").

[8] The Applicant filed an OPA and ZBA in July 2020. The Applications were deemed complete by the City in August 2020. The Statutory Public Meeting was held in November 2020. The Applicant filed their Notice of Appeal in January 2021.

[9] The original Application submission proposed a 74-storey, mixed-use building including 406 residential units, 2,594 m² of commercial Gross Floor Area (“GFA”) incorporating the existing Lyle Building and the facades of the buildings located at 374, 374A, and 376 Yonge Street forming part of the structures on the Subject Site. No parking was proposed and the servicing area and loading space would be accessed from a new driveway proposed on Walton Street. An Application for Site Plan Approval was subsequently filed with the City.

[10] The Appellant and the Parties initiated settlement discussions resulting in a Settlement being negotiated with 2348398 Ontario Inc. and Mang Investments Limited (“Mang”) addressing their concerns. Mang attended the Hearing, however they did not participate in the proceedings. A Settlement in principle was arrived at with the City, however the terms of the Settlement were not satisfied, and the Settlement was never finalized.

[11] A Notice of Intention to Designate under the OHA was adopted by the City in March 2023 for the buildings located at 374, 374A, and 376 Yonge Street and on May 12, 2023, City Council enacted Zoning By-laws No. 443-2023 and 444-2023 designating 374, 374A, and 376 Yonge Street as being of cultural value and interest.

[12] Revised plans were filed in November 2023 revising the proposal with an 85-storey mixed-use building proposing a height of 278 m, including the mechanical penthouse, and containing 621 residential units and 850 m² of commercial GFA. No on-site vehicle parking is proposed, 630 bicycle parking spaces are proposed, and one Type G loading space, having a reduced length, and service area access is provided from Walton Street. The proposed tower includes a series of step-backs and “step-ups” in response to City Heritage Staff’s concerns with the tower that is cantilevered over the heritage structures that comprise the building base podium (“Proposed Development”).

[13] A Heritage Permit Application (“HPA”) was filed and through the processing of the HPA further revisions were made to the proposal securing the support of Heritage

Staff. Heritage Staff prepared a report dated March 28, 2024, for the Toronto Preservation Board (“TPB”) recommending approval of the HPA. The TPB adopted the Heritage Staff Report and recommended approval of the HPA to City Council. City Council at its meeting on April 18, 2024, refused the HPA. The Decision of Council was appealed by the Appellant on April 29, 2024.

SUBMISSIONS

[14] The Tribunal considered testimony from Experts presented by the Appellant, the City and Great Eagle. The Issues List prepared for the Hearing was comprehensive and addressed the relevant planning policy which the Tribunal is to have regard to when considering appeals of an OPA and a ZBA.

[15] Over the course of the hearing, it became apparent to the Tribunal that one issue is at the root of the opposition from the City and Great Eagle. That issue is, can the Subject Site, at 961 m² in area, accommodate the Proposed Development in the applicable planning policy context?

Transportation Planning

[16] Kenneth Chan, a Professional Engineer, provided Transportation Planning and Engineering evidence on behalf of the Appellant. Mr. Chan confirmed that no resident or visitor parking spaces are proposed on-site. He explained that a Traffic Impact Assessment was completed and identified available parking in the area that can accommodate the visitor parking demands. Further, Mr. Chan proffered that providing no pick-up/drop-off spaces (“PUDO”) on-site is acceptable in the context of the Subject Site.

[17] The yongeTOmorrow Environmental Study Report (“yongeTO”) was prepared with an objective being to improve the pedestrian experience on Yonge Street between Queen Street and College / Carlton Street. Mr. Chan proffered that yongeTO supports

“getting people out of their cars” and the Proposed Development supports that direction. The PUDO provision is not a Zoning By-law (“ZB”) requirement and he referred to yongeTO wherein it identifies curbside activity is contemplated. He noted Walton Street that does not include PUDO use.

[18] Mr. Chan described the function of the service area and the loading space accessed from Walton Street. He submitted that providing the widening requested for the municipal laneway along the westerly side of the Subject Site and requiring that access to the loading area be provided from the municipal laneway and not the street would reduce the building envelope available on the Subject Site. He reviewed the site plan and ground floor plan identifying the reduced length of the proposed loading space to be located on a turntable to facilitate access for loading and allow for vehicles to exit the Subject Site driving in a forward movement. He explained that large delivery vehicles will be scheduled for access to the loading area and when not in use the loading space can be used by smaller vehicles making deliveries to the Subject Site. Mr. Chan confirmed that it is proposed that waste collection will be undertaken by a private contractor.

[19] Mr. Chan reviewed studies that were undertaken of proxy sites to demonstrate the anticipated demand for loading and PUDO which he contends supports the Proposed Development.

[20] Should access be required from the municipal laneway, Mr. Chan advised that the turntable would not be required, and the service area could function providing a Type G and a Type C loading space. To facilitate access from the laneway, a widening on both sides of the laneway would be necessary. If the widening on the Great Eagle lands is not available, access would be impacted and require modification to the Proposed Development.

[21] Daniel Reynolds, the City’s Traffic Engineer, advised that the City requires the municipal laneway to have a minimum width of 6.0 m in this instance as set out in the

OP at Chapter 2.2. To achieve this ultimate width, the City requires the dedication of a widening of 1.17 m on the Subject Site and a 1.17 m widening on the Great Eagle lands on the west side of the laneway. Mr. Reynolds proffered that the function of municipal laneways is to provide vehicular access to a site and thereby minimizing impacts on the pedestrian realm and further, access from the municipal laneway is a requirement of the ZB.

[22] Mr. Reynolds submitted that the creation of a new driveway on Walton Street will reduce the opportunities for curbside PUDO. PUDO is not available on Gerrard Street West and is not desirable on Yonge Street as described in yongeTO. Walton Street is the appropriate location for curbside PUDO and the municipal laneway is required for vehicular and servicing access to the Subject Site.

[23] The proposed loading configuration with the substandard loading space length does not meet the City's requirements and Mr. Reynolds explained that the staging area within the building is restricted and this will impact the function of the area by prolonging loading and waste collection times.

[24] Stuart Anderson, a Professional Engineer engaged on behalf of Great Eagle, opined that the loading proposed can not support the Proposed Development. In his review of the floor plan, he noted that no buffer area is provided around the turntable area. Further Mr. Anderson proffered that it has not been demonstrated how the limited staging area will function and offered an example that there is insufficient room for the extension of the forks of the waste collection vehicle to load the garbage dumpsters. The operation would require multiple manoeuvres for a waste collection vehicle that can not be accommodated in the limited area provided.

[25] Access to a conceptual loading area from the municipal laneway was reviewed at length and Mr. Anderson opined that the restricted turning radii would restrict access and require revisions to the proposed building to achieve a functional access.

Land Use Planning and Urban Design Submissions

[26] Mark Sterling, a Registered Professional Planner (“RPP”) and retired Architect, was qualified to provide opinion evidence as an expert in Urban Design.

[27] Mr. Sterling described the Proposed Development explaining that the Lyle Building and the building facades of 374, 374A, and 376 Yonge Street will be preserved and incorporated into the Proposed Development. The heritage structure provides a three-storey, base building, and the tower is setback above the base building form. Through a series of reduced setbacks as the tower height increases, the tower achieves a full floor plate of 605 m² at the tenth floor. He described the tower as slender and being comprised of three stacked elements separated by recessed floors which contain indoor and outdoor amenity areas. The top portion of the tower has been designed to reduce shadow impacts. Mr. Sterling noted that no vehicle parking is provided on-site; however, 426 bicycle parking spaces are proposed to support the Proposed Development.

[28] In an area Mr. Sterling described as an emerging height peak, he proffered that the Subject Site is surrounded by similar approvals and is suitable for intensification. The Proposed Development represents an appropriate balance that will fit harmoniously with the surrounding planned development.

[29] Mr. Sterling explained that the Proposed Development was designed taking into consideration the 2018 Approved in Principle development on the Great Eagle site. The tower element achieves tower separations from the existing Chelsea Hotel located on the Great Eagle site that range between 6.85 m and 11.85 m in the centre portion of the tower. Great Eagle revised their development plans in 2023 to propose a taller tower adjacent to the Subject Site with a reduction in the tower setback resulting in tower separations between 15 m and 20 m to the Proposed Development.

[30] Paul Stagl, an RPP and qualified Land Use Planner on behalf of the Appellant, proffered that a recurring theme in the position of the City and Great Eagle is the size of the Subject Site, the proposed tower setbacks, and the proposed tower separation. He responded that there are many different sized parcels that support tall buildings. There are no size restrictions and so long as the parameters set out by the City can be met then a tall building can be constructed.

[31] Derek Waltho, a Senior Planner with the City, contends that the Subject Site is too small for a tall building as evidenced with the Proposed Development as it is not able to provide appropriate setbacks and step-backs and is unable to provide appropriate amenity areas on-site.

[32] Peter Smith, an RPP, testified on behalf of Great Eagle proffering that the reduced tower setbacks and tower separation impact the light, view and privacy of the future residents of the proposed tower on the Great Eagle site and the guests of the current Chelsea Hotel.

[33] Mr. Smith referred the Tribunal to Official Plan Amendment 480 ("OPA 480") noting that it was not in effect at the time of the Applications, however, it is indicative of the current direction of City Council. In consideration of light, view, and privacy, OPA 480 does not raise any new considerations that were not previously addressed in the OP and Policy 3.1.3 (3) which directs that development will protect privacy within adjacent buildings by providing setbacks and separation distances from neighbouring properties and adjacent building walls containing windows.

[34] Mr. Kasprzak, a qualified Land Use Planner and Urban Designer, opined that the thrust of the policy framework applying to the Proposed Development is focussed on fit and mitigation of impact. OPA 480 revised Section 3.1.3 Built Form of the OP, in the preamble, where it now states, "Future development will be built on infill and redevelopment sites and *will need to fit in...*" [emphasis added]. Section 3.1.4 Built Forms – Building Types of the OP was revised under the heading Tall Buildings where it

notes that, “Tall Buildings should only be considered where they can fit into the existing or planned context, and where the site’s size, configuration and context allows for the appropriate design criteria to be met.” Mr. Kasprzak proffered that a tall building of 85-stories in height, as proposed, has a greater obligation to respond to the policy direction and the guidelines approved to assist in the implementation of the policies.

[35] Mr. Stagl reviewed the area developments and approvals and submitted that there are a range of tower setbacks including a 0 m, 3 m, 5 m, and 7.5 m setback. He identified an existing tower separation of 17.8 m in one instance and 20 m in another advising that similar reduced tower separations do exist in the area. The issue of tower setbacks and separation are primarily related to the Great Eagle site.

[36] It was Mr. Waltho’s submission that the sites referred to by Mr. Stagl were larger in area and could achieve appropriate setbacks and step-backs in the context of those specific sites.

[37] Policy 3.1.4(10) of the OP provides design directions for the tower portion of tall buildings requiring designs that reduce the physical and visual impact of the tower on the public realm, limits shadow impacts on the surrounding properties, maximizes access to sunlight and open views of the sky from the public realm, and provides access to daylight and protect privacy in interior spaces within the tower. Policy 3.1.4(11) supports Policy 3.1.4(10) setting out that the design consideration can be achieved by limiting and shaping the size of tower floorplates above the base building and providing appropriate separation distances from side and rear lot lines as well as other towers.

[38] Mr. Smith opined that the proposed tower setbacks are not appropriate and do not allow for appropriate separation distance. The Proposed Development will provide a setback of 1.9 m at its closest point to the Chelsea Hotel. The east façade of the Chelsea Hotel includes windows and the proposed building separation will result in unacceptable light, view and privacy impacts.

[39] Mr. Stagl opined that the Great Eagle 2018 proposal represents the planned context for the Great Eagle site and his submissions are based in that assumption. He advised that the tower separation to the Great Eagle 2018 proposal is 22.5 m at the closest point with a 23 m separation at opposing windows. Mr. Stagl acknowledged that Great Eagle has submitted a revised proposal, however he contends that the Great Eagle 2018 proposal has an Approval in Principle from the City and the revised proposal could be revised further. The Approval in principle should be considered as the planned context for the purpose of the Proposed Development.

[40] Policies 9.22 through 9.27 of the DSP address transition between developments, and Mr. Stagl opined that the policies provide that other consideration beyond numerical equity are to be considered. The OP does not include policy direction that tower setbacks are to be equitable. The OP references appropriate relationships between towers and Mr. Stagl opined that this is not an exclusively geometric consideration.

[41] The DSP includes policies addressing built form in Section 9. Mr. Smith reviewed Policy 9.1 of the DSP which encourages development in the Downtown to contribute to liveability by providing access to sunlight, natural light, openness and sky view, and maintaining privacy.

[42] Mr. Kazprzak referred the Tribunal to Policies 9.25 of the DSP which states that, "Built form adjacencies ... may require a review to determine if any transition to the planned context is required to achieve compatibility. Policy 9.25.3 Tall to tall – through the application of a separation distance, orientation of the tower portions of the building, and, as appropriate, through stepping down in heights. These policies speak to compatibility and mitigation of impacts.

[43] Mr. Smith opined that the Proposed Development does not provide an adequate distance between tall buildings and the proposed tower setback from the Great Eagle site would result in tower separation distances that do not provide sufficient access to sunlight, natural light, openness and sky view and do not maintain adequate privacy.

[44] Official Plan Amendment 352 (“OPA 352”) created Site and Area Specific Policy 517, Downtown Tall Buildings Setback Area Specific Policy (“SASP 517”). Mr. Stagl reviewed SASP 517 policy iii) which states:

When reviewing ... rezoning applications, and in determining whether the policy objectives of (ii) are met, the existing and planned context of a site will be considered, including but not limited to the following considerations: ...

b) the physical relationship between tall buildings, including the extent to which the buildings can be located, oriented and designed to mitigate impacts...

[45] Mr. Stagl contends that these policies apply to new developments and the hotel use on the Great Eagle site is an interim use as a redevelopment proposal has been approved for those lands. The Proposed Development has been designed to mitigate impacts on the approved redevelopment plans for the Great Eagle site.

[46] Mr. Waltho advised that OPA 352 was not in effect at the time of the Applications and opined that it is not applicable in this instance.

[47] Mr. Smith testified that SASP 517 was introduced to address tall buildings in the Downtown and provide direction for the implementation of policy. SASP 517 included directions to ensure that individual tall buildings on a site and the cumulative effect of multiple tall buildings within a block will contribute to building strong healthy communities. Mr. Smith opined that the setbacks are a means to an end and not an end in themselves. Creating a liveable community is the end.

[48] Mr. Kasprzak testified that a focus of SASP 517 is mitigation of impacts the relationship between buildings which speaks to fit within the block. SASP directed that the City Zoning By-law should include setbacks for towers to achieve the policy objectives of addressing building relationships.

[49] SASP 517 states that not every site in the area governed by SASP 517 can accommodate a tall building.

[50] In consideration of the scale and massing, Mr. Stagl proffered that the Proposed Development would fit within the area context. Mr. Stagl advised that a Block Plan was prepared and considered the planned and approved area context and the public realm. He contends that the Block Plan is relevant but not determinant and that a Block Plan is not an obligatory requirement. Mr. Stagl opined that the base building fits the scale and context of the area and enhances the public realm and the tower fits within the area and is consistent with the area context.

[51] Mr. Waltho reviewed the Tall Building Design Guidelines (“TBDG”) and specifically the direction provided on the implementation of tower step-backs (Policy 3.2.2) and tower separation (Policy 3.2.3). Policy 3.2.2 b. recommends a 3 m or greater step-back from the face of the base building along the street. The Proposed Development proposes a step-back of 2 m along Yonge Street and 2 m along Gerrard Street West.

[52] Policy 3.2.3 c. states, “Sites that cannot provide the minimum tower setbacks and step-backs, as required ... in Policy 3.2.2 ..., may not be appropriate for tall buildings.” In the section of Policy 3.2.3 titled Rationale, it states, “Adequate tower separation distances from property lines and from other towers is a critical aspect of tall building design.” The minimum separation distances are established to ensure tall buildings achieve the objectives of: Sky View, being the ability to retain adequate sky view in between building masses; Privacy, being the objective to mitigate overlook between the windows or balconies of one building and those of another; and Daylighting, being access to natural light in the building interior. Mr. Waltho opined that the Proposed Development, proposing a deficient tower separation, will negatively impact sky view, privacy, and daylighting for the proposed tower and the adjacent proposed tower.

[53] Joanna Chludzinska, a Senior Planner in the Urban Design Section at the City, advised that the reduction of tower setbacks and separation will bring towers together creating a canyon typology experience and limiting sky view. The reduced tower

setback from Yonge Street impacts on the character of Yonge Street which Ms. Chludzinska describes as having a consistent step-back.

[54] Mr. Smith, in addressing the TBDG, noted that the guidelines do not have the same weight as policy and are considered informative and instructive but not determinative in development review. He noted that separation is a critical aspect of the TBDG. Section 3.2.3 of the TBDG notes that sites that cannot provide minimum tower setbacks and step-backs may not be appropriate for tall buildings. The TBDG offer suggestions of “creative solutions” to address sky-view impacts, adverse wind impacts and adverse shadow conditions. Mr. Smith opined that no creative solutions have been implemented and a blank wall, as proposed, is not a contemplated creative solution to address privacy.

[55] Policy 3.1.3.3 of the OP directs, “Development will protect privacy within adjacent buildings by providing setbacks and separation distances from neighbouring properties and adjacent building walls containing windows.”

[56] The Chelsea Hotel has two columns of windows along the east elevation with the north column being the primary windows to 19 rooms. Mr. Stagl proffered that these rooms will have a direct view of a blank wall that is setback 7 m from the Chelsea Hotel. He opined that the privacy policies of the OP do not apply between residential and non-residential uses and that the Chelsea Hotel is an interim use due to Great Eagle having an Approval in Principle for a redevelopment of the Great Eagle site.

[57] The Chelsea Hotel is an existing condition and Mr. Smith opined that the impact on the existing use must be considered.

[58] Mr. Kasprzak proffered that the TBDG sets out that, “Adequate tower separation from property lines and from other towers is a critical aspect of tall building design.” and “Sites that cannot provide the minimum tower setbacks and step-backs...may not be appropriate for tall buildings.”

[59] Mr. Waltho proffered that the Proposed Development will result in a tower separation to the Chelsea Hotel of 1.9 m at its closest point at the north end of the Subject Site and 8.7 m at the south end. The tower separation to the 2018 Great Eagle proposal will be approximately 19.5 m and to the 2023 Great Eagle proposal a separation of less than 15 m would be provided. Mr. Waltho acknowledged that while a separation of 25 m is recommended, the City has supported reductions to 20 m. The proposed separation is not appropriate and supports the position that the Subject Site is too small to support a tall building.

[60] Ms. Chludzinska advised that most developments in the area have appropriate tower setbacks and tower separations with the exceptions being those developments that were approved by the Tribunal as part of a negotiated resolution between the property owners involved and the City. The Proposed Development, with a reduced setback to the Great Eagle site, will create a privacy impact for the Chelsea Hotel and the future development of the Great Eagle site. A minimum 10 m setback to the Great Eagle site should be provided.

[61] Ms. Chludzinska opined that the lack of tower setbacks and appropriate step-backs negatively impacts the liveability of the public realm by limiting sky view.

[62] Mr. Waltho referred to Policy 6.22 of the OP which sets out Mixed Use Areas policies and specifically recognizes that not all sites can accommodate the maximum scale anticipated while other sites may be able to accommodate more than the anticipated scale. The policy notes that development will be required to address specific site characteristics.

[63] Mr. Stagl contends that shadow impact in the area is not a concern. The only shadow issue concern is with respect to the amenity areas proposed and he proffered that the impact is well within the range of acceptable.

[64] Mr. Kasprczak opined that the reduced building separation between the proposed tower and the existing Chelsea Hotel and the proposed redevelopment of the Great Eagle site negatively impacts sky view, privacy and daylighting for both sites.

[65] Mr. Stagl proffered that the amenity area proposed meets the requirements with respect to indoor and outdoor amounts. The outdoor amenity areas are adjacent to indoor amenity areas and where the indoor amenity area is located within the tower. The interior amenity area is two storeys in height thereby creating a very open and generous amenity space. He opined that the shadow impacts are acceptable, and the amenity areas proposed are good spaces.

[66] Ms. Chludzinska testified that the amenity space proposed is not of a good quality which will impact the comfort and liveability of the future residents of the Proposed Development.

Heritage Planning Submissions

[67] The Tribunal was advised at the outset of the hearing that the City would not be proffering evidence in respect to the HPA Appeal.

[68] No contrasting evidence was advanced with respect to the heritage matters and the Appeal of the HPA was not contested. Phillip Goldsmith, Architect, was qualified to provide expert opinion evidence in Heritage Planning matters. He opined that the Proposed Development, with its step-back and step-up approach to the tower overhang creating a 20 m vertical separation to the full tower floorplate and step-backs starting at 7.5 m from Yonge Street and 9.0 m from Gerrard Street reducing as the tower height increases to a 2 m setback at the tenth floor from both Yonge Street and Gerrard Street East above the heritage buildings, preserves the dominance of the heritage buildings at the street level. He concluded that the Proposed Development preserves the heritage attributes of the buildings on the Subject Site and should be approved.

Land Use Planning Summations

[69] Mr. Stagl opined that the Proposed Development as described in the Architectural Plans presented to the Tribunal (Exhibit 23) to be facilitated by the OPA and ZBA have appropriate regard for the matters of provincial interest set out in s. 2 of the Act, are consistent with the PPS, and conform with the Growth Plan. The Proposed Development conforms with and appropriately implements the OP and the DSP, fits within the area context, and represents good planning. Mr. Stagl recommended that the Tribunal allow the Appeals and approve the OPA and ZBA.

[70] Mr. Waltho summarized his objection to the Proposed Development setting out that the Subject Site is too small to accommodate a tall building. It is not possible to accommodate appropriate on-site tower step-backs and setbacks resulting in insufficient tower separation distances. The Proposed Development does not include the required laneway widening, lacks appropriate outdoor amenity space and does not address servicing issues around parking and loading. The Proposed Development does not conform to the OP and should be denied.

[71] Mr. Smith proffered that the Subject Site is not appropriate to support the Proposed Development given the impact on the Great Eagle site. The proposed setbacks result in a tower that is too close to the Great Eagle site and will require that any redevelopment provides a disproportionate share of the required tower separation. The Proposed Development will create a built form that impacts on the existing Chelsea Hotel and future development proposed. In the urban context of the Downtown designation of the OP, Mr. Smith opined the impacts on daylighting, sky views, and privacy resulting from the proposed setbacks and separation are not acceptable.

ANALYSIS AND FINDINGS

[72] The Expert Witnesses each tendered a Witness Statement and a Reply Witness Statement, marked as exhibits in these proceedings, which were considered by the Tribunal in addition to their *viva voce* evidence.

[73] As set out above, over the course of the hearing the issue of the lot size was a recurring theme. The issue was amplified when considering the proposed tower setbacks and the resultant tower separation between the Great Eagle site and the Subject Property, the loading space and service area function, and access to the Subject Site.

[74] The Guiding Principles of the TBDG state that, “The Tall Building Design Guidelines do not determine where tall buildings are permitted. Rather, the guidelines assist with the implementation of Official Plan policy to help ensure that tall buildings, where they are permitted, “fit within their context and minimize their local impacts... The Guidelines provide specific and often measurable directions related to the following guiding principles: ... consider relationships to other tall buildings, including the cumulative effect of multiple towers on sunlight, comfort, and quality in the public realm; ... minimize shadowing and wind impacts, and protect sunlight and sky view for neighboring properties;”

[75] The Tribunal acknowledges that the guidelines are not policy and, as was reiterated by more than one witness, the guidelines are instructive, but not determinative. Guidelines provide staff, applicants and the Tribunal with valuable direction and insight into the implementation and application of the policies within the OP.

[76] The Tribunal was advised that OPA 352 (SASP 517) was not in effect at the time of the submission of the Applications. OPA 352 made recommendations to guidelines, among other things, which build on existing guidelines providing further clarity as to their

intent that is relevant and helpful when considering the interpretation and direction of the OP policy.

[77] The evidence of the experts focussed on the OP. Matters of provincial interest set out in s. 2 of the Act were not at issue and the Tribunal is satisfied that the Proposed Development has appropriate regard to the relevant matters of provincial issue as required by s. 2 of the Act.

[78] Similarly, the Provincial Policy Statement, 2020 ("PPS 2020") and A Place to Grow: Growth Plan for the Greater Golden Horseshoe ("Growth Plan") were not the focus of the Experts. The Tribunal finds that the Proposed Development raises no issues of inconsistency with the PPS 2020 and no issues of non-conformity with the Growth Plan.

[79] The Provincial Planning Statement, 2024 ("PPS 2024") came into effect on October 20, 2024, after the conclusion of the Hearing and prior to the issuance of this Decision. The PPS 2024 requires that a Decision of the Tribunal issued after October 20, 2024, be consistent with the PPS 2024. The Parties provided written confirmation that no further submissions are required to address consistency with the PPS 2024. The Tribunal finds that the Proposed Development raises no issues of inconsistency with the PPS 2024.

[80] The Tribunal was asked to consider the proposal in the context of the planning policy framework in effect at the time of the submission of the Applications, notwithstanding that most of the Experts referred to policies approved after the submissions of the Applications. The Tribunal considered all the submissions in the context of their status as they applied to the Applications.

[81] The Tribunal finds the evolution of the policy framework informative as to the direction of City Council and notes that while there is some clarification and specific direction arising from the newer policy direction, the basic underlying premise of the OP

in effect at the time of the submission of the Applications has not substantially or significantly changed.

[82] The Tribunal reviewed the policies contained in Policy 3.1.2 Built Form and Policy 3.1.3 Built Form – Tall Buildings in its analysis.

[83] The following excerpts, in particular, were considered:

- Policy 3.1.2.1 states, “New Development will be located to fit with its existing and/or planned context.”
- Policy 3.1.2.2 states, “New development will locate and organize ... vehicular access, service areas to minimize their impact ... by: a) using shared service areas where possible within development blocks including ... public lanes ...; b) consolidating and minimizing the width of driveways and curb cuts across the public sidewalk;...”
- Policy 3.1.2.3 states, “New development will be massed ... to fit harmoniously into its existing and /or planned context... and will limit its impact on neighbouring ...properties ...by d) providing for adequate light and privacy; ...”
- Policy 3.1.2.4 states, “New development will be massed to define the edges of streets ... at good proportion. Taller buildings will be located to ensure adequate access to sky view for the proposed and future uses of these areas”.

[84] Policy 3.1.3 states, “Tall buildings are desirable in the right places but they don’t belong everywhere. ... When poorly located and designed tall buildings can physically and visually overwhelm adjacent streets...” The Policies continue setting out that, “tall buildings come with larger civic responsibilities and obligations than other buildings.” The Policy further requires that development is to “ensure that tall buildings fit within their existing and /or planned context...”

[85] Policy 3.1.3.2 requires that “Tall buildings will address key urban design consideration including demonstrating how the proposed building and site design relate to the existing and/or planned context.”

[86] The Tribunal finds that fit within the existing and/or planned context is a focus of these policies noting privacy, light and sky view. Policy 3.1.2.2 will be discussed further below.

[87] The TBDG sets out that fit can be achieved by applying minimum horizontal separation distances and building setbacks to maintain access to sunlight and sky view for surrounding properties and neighbouring properties. The Tribunal finds that the tower setbacks proposed along Yonge Street and Gerrard Street West will negatively impact the sky view experience from the public realm. The tower setback proposed on the west side of the Subject Site will create a privacy impact and significantly impact the sunlight experienced by the existing Chelsea Hotel and any future proposed development on the Great Eagle site.

[88] With regards to the planned context for the Great Eagle site, the Tribunal finds that until such time as the building permit for a development has been issued the planned context can, and often does, continue to evolve. The consideration of planned context should not be interpreted as a fixed date in the time as the Appellant has done in this matter. As evidenced in this matter, the planned context is an everchanging landscape. The Tribunal must consider what potentially could be developed at the time of a hearing and recognize that this context could change as the policy framework continues to evolve. This approach supports the requirement for a new development to fit within the existing and planned context. The reduced setbacks proposed along the westerly side of the Subject Site impact the development of the Great Eagle site.

[89] The Tribunal finds that the size and configuration of the Subject Site creates challenges in providing appropriate tower setbacks for a viable tower floor plate.

[90] Policy 9.14 of the DSP states the following:

Development will be located and massed to define and frame the edges of the public realm with good street proportion, providing for comfortable sun and wind conditions on the public realm and neighbouring properties by stepping back building mass and/or limiting building floor plates above the streetwall height to allow daylight and sunlight to penetrate to the street and lower building levels.

[91] Policy 9.25.3 states:

Built form adjacencies ... may require a review to determine if any transition to the planned context is required to achieve compatibility: Tall to tall – through the application of a separation distance, orientation of the tower portions of the building, and, as appropriate through stepping down of heights.

[92] The Tribunal finds again that the separation distance proposed to the Great Eagle site will impede the ability for daylight and sunlight to penetrate to the lower building levels and the tower setbacks proposed to Yonge Street and Gerrard Street will limit the daylight and sunlight penetrating to the street. The TBDG acknowledges that, “Sites that cannot provide the minimum tower setbacks and stepbacks, as required ... may not be appropriate for tall buildings.”

[93] The Proposed Development proposes a new driveway access on Walton Street and does not incorporate the public laneway. Policy 3.1.2.2 cited above requires new development to locate and organize loading and servicing areas to minimize their impact on the public realm. This directive is to be achieved in part by using public lanes and consolidating and minimizing the width of driveways and curb cuts across the public sidewalk.

[94] The Tribunal finds that the Proposed Development will impact the public realm safety and attractiveness with the creation of a new access to Walton Street effectively beside an existing municipal laneway. The reliance on Walton Street for servicing access and for PUDO activities will create an increased utilization of the Walton Street frontage and the introduction of the new driveway for servicing access along this relatively small frontage will negatively impact the ability to utilize Walton Street for

PUDO, short-term parking of delivery vehicles and result in congestion and conflict in this area.

[95] The Tribunal finds that the reduced loading space size and configuration requiring a turntable creates operational challenges that were not identified, nor resolved, by the Appellant's Traffic Engineer. The Tribunal was presented with multiple scenarios including access from the municipal laneway and it was suggested that these matters could be resolved during the processing of the Site Plan Application. The Tribunal agrees with Great Eagle and City Traffic Engineers where they proffered that the functionality of the loading area must be confirmed prior to the ZBA and not deferred to the Site Plan process as it will be too late in the process should the loading area ultimately not be able to function effectively.

[96] The Tribunal finds that the size and configuration of the Subject Site together with the requirements related to the HPA create challenges in the layout and function of the ground floor plate. The Appellant has not demonstrated that there is a viable and functional loading space and servicing area configuration that can be created to support the Proposed Development.

[97] The Tribunal finds that the Proposed Development does not conform to the policies of the OP and the DSP.

[98] Accordingly, the Tribunal dismisses the Appeals and the OPA and ZBA are refused.

[99] With the dismissal of the Appeals of the OPA and ZBA, the Tribunal dismisses the HPA Appeal as the proposal, as presented, is denied and the HPA was based on that proposal.

ORDER

[100] **THE TRIBUNAL ORDERS THAT** the Appeal filed pursuant to s. 22(7) of the *Planning Act* is dismissed and the requested amendment to the Official Plan for the City of Toronto is refused.

[101] **THE TRIBUNAL ORDERS THAT** the Appeal filed pursuant to s. 34(11) of the *Planning Act* is dismissed and the requested amendment to Zoning By-law No. 569-2013 is refused.

[102] **THE TRIBUNAL ORDERS THAT** the Appeal filed pursuant to s. 33(9) of the *Ontario Heritage Act* is dismissed and the City of Toronto's refusal of the Application to alter the structures at 374, 374A, 376, and 378 Yonge Street remains in force and effect.

"David Brown"

DAVID BROWN
MEMBER

Ontario Land Tribunal

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