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| **Ontario Land Tribunal** |
| Tribunal ontarien de l’aménagement  du territoire |

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| **ISSUE DATE:** | January 08, 2025 | **CASE NO(S).:** | OLT-22-003866 |

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| **PROCEEDING COMMENCED UNDER** subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended | |
| Applicant/Appellant: | Burlington 2020 Lakeshore Inc. |
| Subject: | Request to amend the Official Plan – Refusal of request |
| Description: | The applications propose to demolish the existing hotel and restaurant and construct a new mixed-use building in a 2-tower format atop a 5-6 storey podium, with tower heights ranging from 30-35 storeys, and associated underground parking. |
| Reference Number: | 505-04/19 |
| Property Address: | 2020 Lakeshore Road |
| OLT Case No.: | OLT-22-003866 |
| OLT Lead Case No.: | OLT-22-003866 |
| OLT Case Name: | Burlington 2020 Lakeshore Inc. v. Burlington (City) |
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| **PROCEEDING COMMENCED UNDER** subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended | |
| Applicant/Appellant: | Burlington 2020 Lakeshore Inc. |
| Subject: | Application to amend the Zoning By-law – Refusal of application |
| Description: | The applications propose to demolish the existing hotel and restaurant and construct a new mixed-use building in a 2-tower format atop a 5-6 storey podium, with tower heights ranging from 30-35 storeys, and associated underground parking. |
| Reference Number: | 521-11/21 |
| Property Address: | 2020 Lakeshore Road |
| OLT Case No.: | OLT-22-003867 |
| OLT Lead Case No.: | OLT-22-003866 |

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| **Heard:** | April 29, 2024 – May 17, 2024 by Video Hearing |

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| **APPEARANCES:** |  |
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| **Parties** | **Counsel/Representative\*** |
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| Burlington 2020 Lakeshore Inc.  (“Applicant”) | David Bronskill  Matthew Lakatos-Hayward  Emily Groper (Student-at-law)\* |
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| City of Burlington (“City”) | Chris Barnett  Evan Barz |
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| Bridgewater Hospitality Inc. and  The Pearle Hotel & Spa Inc.  (“Pearle”) | Ira Kagan |
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| Regional Municipality of Halton  (“Region”) | Kelly Yerxa |

**Written Reasons for INTERIM DECISION DELIVERED BY SHARON L. DIONNE on october 18, 2024 AND FINAL ORDER OF THE TRIBUNAL**

[Link to Final Order](#ORDER)

**INTRODUCTION**

1. Burlington 2020 Lakeshore Inc. (“Applicant”) appealed its planning applications for amendments to the City of Burlington’s Official Plan and Zoning By-law (“Planning Applications”) to permit intensification in the form of a mixed-use, high-density, tall building with two towers of 31 and 36 storeys in height (“Proposed Development”) on the property at 2020 Lakeshore Road (“Property”).
2. The Property is located in a prominent place, on the south side of Lakeshore Road at the foot of Brant Street, next to two of the City’s most significant landmarks, Spencer Smith Park and the Brant Street Pier. This is where the City’s Downtown and Waterfront intersect, and where tens of thousands of residents and visitors of the City come to attend festivals and events held throughout the year.
3. While presently there is a six-storey hotel, restaurant/bar, and surface paid parking lot on the Property, the City has long recognized and planned for the redevelopment of this site in its landmark location. In fact, the “in effect” Official Plan for the City, Official Plan (1997) (“COP”), contains site specific policy for the Property, namely 5.5.9.2 I) which is discussed herein.
4. More recently, the City initiated a public planning process for the Waterfront Hotel Planning Study (“WHPS”), as envisaged by policy 5.5.9.2 l) of the COP, to establish a land use and urban design framework to inform site specific policies to guide development of the Property[[1]](#footnote-1). The Applicant participated in and assisted in the funding of the WHPS. A City Staff Recommendation Report on the WHPS, which included a Preferred Concept, was received by City Council in April 2022.
5. Additionally, in April 2022, City Council refused the Applicant’s Planning Applications on the basis of City Staff’s recommendation. A revised proposal is before the Tribunal in the Hearing.
6. In this case, the non-Appellant Party is the owner and operator of the Pearle Hotel and Spa (“Pearle”), described as one of the finest, high-quality luxury hotels west of Toronto. The Pearle is located directly across from the Property with its main entrance and lobby on Elizabeth Street. Pearle enjoys views of Lake Ontario, the Brant Street Pier and Spencer Smith Park, and Pearle is particularly concerned about how it will be impacted by the Proposed Development in terms of wind impact on pedestrians at its main entrance, traffic conflicts on Elizabeth Street, and the loss of view from the Pearle’s guest suites, meeting rooms and banquet facilities.
7. The Tribunal held a 10-day Hearing and heard opinion evidence from 10 experts, in the fields of land use planning, land economics, urban design, landscape architecture, transportation, and wind impact studies. At the commencement of the Hearing, the Region of Halton withdrew its Party status on the basis that the Region and Applicant had reached a settlement.
8. Over the course of the Hearing, it became apparent that all of the Parties agree that there should be intensification of the Property, for a tall mixed-use building, containing a hotel, residential apartments, and retail/commercial and office uses, in two tall tower buildings sitting on top of a lower height podium, positioned on the Property to preserve view corridors of Lake Ontario from the adjacent/nearby Brant Street, Elizabeth Street, and John Street. However, the Parties disagree as to the appropriate intensity, scale, and height of the built form to be permitted. After a thorough consideration of the expert opinion evidence, and the submissions of the Parties, and having reviewed the Participant Statements of Donald Fletcher, Ron Porter and Tom Muir, the Tribunal has arrived at its Decision on the Planning Applications before it.
9. On October 18, 2024, the Tribunal issued its Interim Order dismissing the appeals (effective October 17, 2024) based on the Tribunal’s finding that the Planning Applications did not satisfy the statutory requirements under the *Planning Act*, R.S.O., c. P. 13, as amended (“Act”). The written reasons for the Decision are provided herein, and at a high level can be summarized as follows:
   1. While the Tribunal concludes that the opinion evidence provided in the Hearing supports a finding that a mixed-use tall building with two towers in the range of 25 – 27 storeys in height on the Property from a planning and urban design perspective, it is subject to how those towers are situated on the Property (as discussed herein). However, aside from the proposed height, the Tribunal has also found that the Proposed Development in its current form is not compatible with the surrounding land uses and represents an over-development of the Property.
   2. Upon reflection of the opinion evidence, the Tribunal finds that there is much “more work to be done” in relation to the Planning Applications, involving a re-design of the Proposed Development to address issues of scale and intensity of built form, transitions to and compatibility with neighbouring land uses, and other technical items in order to meet the applicable statutory requirements under the Act.
   3. The Tribunal, in its finding that there is much “more work to be done” in relation to the Planning Applications, also concludes that it would be good planning and in the public interest for the work to be guided by appropriate amendment(s) to the COP in light of the evidence presented in the Hearing. However, the Tribunal was not persuaded that either the draft Official Plan Amendment (“OPA”) presented by the Applicant’s planning expert, or the Alternative Amendment presented by the City’s planning expert, were appropriate given the opinion evidence of other experts in the Hearing.
10. The reasons for the Tribunal’s Decision follows, and it is noted that only the issues as summarized by the Tribunal to be pertinent to making a decision on the Planning Applications are discussed in this Decision. It is also noted that the submissions of the Parties on their respective positions, including books of authorities, have been reviewed and considered by the Tribunal, and are only selectively referenced herein.

**EVIDENCE**

1. The Tribunal qualified the following expert witnesses, on consent of the Parties, to provide opinion evidence under oath in their respective disciplines:

**For the Applicant:**

* David Falletta – Land Use Planning
* Tom Kasprzak – Urban Design
* Mario Patitucci – Landscape Architecture
* Dan Bacon – Pedestrian Wind Studies and Wind Impact Analysis
* Stew Elkins – Transportation
* Daryl Keleher – Planning Policy and Land-Use Economics

**For the City:**

* Adrian Smith – Land Use Planning
* Catherine Jay – Urban Design and Landscape Architecture
* Anil Seegobin – Transportation

**For Pearle:**

* Lincoln Lo – Land Use Planning

1. The Tribunal found the experts to be independent and fair-minded. It is worthy of note that the Tribunal found Mr. Lo, in particular, to be impartial and non-partisan, and found his opinion evidence to be reasonable and balanced in its approach.
2. In addition, the Tribunal received an extensive volume of documentary and visual evidence filed in the Hearing, totalling 18 Exhibits and some 9700 pages, as marked in the Exhibits List on file with the Tribunal.
3. The Compendium of Agreed Statement of Facts of the “like experts” is found in Exhibit 1, and the facts as set out are accepted by the Tribunal.

**PLANNING APPLICATIONS**

1. The Applicant is seeking the Tribunal’s approval of its Planning Applications to facilitate the demolition of the existing Waterfront Hotel, restaurant/bar, and surface parking lot for the re-development of the Property as a new mixed-use high-rise building, comprised of two (2) podium/point towers with the buildings separated at grade along Lakeshore Road, opposite John Street, to create a central privately owned public space (“POPS”).

***Proposed Development***

1. As noted, the Proposed Development has been revised from that originally submitted to the City with the applications, and is as depicted in the plans prepared by NEUF Architects, dated February 27, 2024, and the latest plans and drawings are found in **Exhibit 3C** (Tab 139) andthe Site Plan (Ground) is also found in **Exhibit 5** (PDF Page 32).
2. Due to the grade differential of approximately 2.5 metres (“m”) across the Property, the podium portions of the building(s) visible from Spencer Smith Park (west and south sides) and Elizabeth Street are up to approximately one storey greater in height.
3. West Tower - Looking from Lakeshore Road on the north, the West Tower has a three-storey podium and steps up to a tower height of 35 storeys (inclusive of podium and excluding the mechanical penthouse). That portion of the podium on the west, closest to Spencer Smith Park, is one storey in height and is stepped back on the second and third levels such that the second-storey is proposed for outdoor patio areas overlooking Lakeshore Road, Brant Street and Spencer Smith Park. The podium is up to four storeys in height in the southwest corner of the West Tower due to the change in grade. Patio space is also proposed along the south side of the second storey podium facing Spencer Smith Park and Lake Ontario.
4. East Tower - Looking from Lakeshore Road on the north, the East Tower has a three-storey podium, which steps back to a seven-storey base building proposed as part of the hotel space (10-storeys in total) and steps up to a tower height of 30 storeys (inclusive of podium and base building and excluding the mechanical penthouse). Looking from the east, the East Tower steps back on levels 11, 12 and 13, to its tower floorplate. The East Tower podium is just under four storeys in height in the southeast corner due to the change in grade.
5. The Proposed Development includes a total of approximately 594 residential apartment units, a 5,621 square metre (“sq. m”) hotel component with 120 guest suites, 1,488 sq. m of retail/commercial space, and 1,218 sq. m of indoor amenity space. The total Gross Floor Area (“GFA”) is proposed to be 49,203 sq. m, which achieves a density of approximately 6.45 Floor Area Ratio (“FAR”). The associated underground parking structure (four levels) accommodates parking for the residential units, and access to it for vehicular, bicycle and loading is from Elizabeth Street. No parking spaces are proposed for the hotel and non-residential uses.
6. There is a proposed POPS between the podium/point tower buildings, centrally situated on the Property opposite the terminus of Lakeshore/John Street, which is proposed to provide a view of Lake Ontario from north of Lakeshore Road and a walkway connection between Lakeshore Road and the Spencer Smith Park. It is also proposed to provide for on-site landscaping and commercial patio space for the re-development. The West and East Towers themselves are proposed to be separated by a minimum of 35.4 m, which exceeds the City’s recommended standard of 25 m.
7. As agreed to, there is a widening of Lakeshore Road to be dedicated to the City.
8. Parkland dedication totalling 732.8 sq. m is proposed by way of three pieces of land:
9. A 263 sq. m triangular piece in the northwest corner of the Property at the intersection of Lakeshore Road and Brant Street;
10. A 55 sq. m triangular piece in the southeast corner adjacent to Elizabeth Street; and
11. A 415 sq. m piece across the south limit, within which steps and terracing are proposed.
12. Due to the grade change, there are steps and terracing proposed down from the POPS along the south portion of the Property and into at least one of the pieces of land proposed as parkland dedication.
13. In addition, a portion of the Property, approximately 150 sq. m in area, is located within the erosion allowance established by Conservation Halton, which is non-developable and is to be dedicated to the City.

*The Proposed Amendments*

1. The Planning Applications before the Tribunal seek the approval of a proposed OPA and Zoning By-law Amendment (“ZBLA”) to permit the Proposed Development, as described below.
2. The OPA - The purpose of the proposed OPA (as set out therein) is to amend the COP Part III, Subsection 5.5.9 Wellington Square Mixed Use Precinct policies by deleting site specific policy 5.5.9.2 l) and replacing it to facilitate a mixed-use development with retail, service commercial, restaurant, office, hotel (including accessory banquet facilities) and residential apartment uses. The uses will be accommodated in a two-building format with West and East Towers sitting atop a low-rise four storey podium. The West Tower will have a height of 35 storeys (plus a mechanical penthouse), inclusive of a four-storey podium, and the East Tower will have a height of 30 storeys (plus a mechanical penthouse), inclusive of a four-storey podium, and a 10-13 storey mid-rise element.
3. The ZBLA - The ZBLA proposes (as set out therein) to amend the City’s existing Zoning By-law 2020, as amended (“ZBL”), to permit two mixed-use buildings at 30 and 35 storeys (plus mezzanine and mechanical penthouse/rooftop amenity) with 594 units, 120 hotel suites, 3,110 sq. m of commercial space and 1,488 sq. m of office space, resulting in a 7.5:1 FAR for the Property.
4. The Tribunal notes that there is a discrepancy in the FAR shown on the Proposed Development plans/drawings of 6.45:1 versus the 7.5:1 noted in the Proposed Amendments.
5. In addition, the Tribunal was provided with an Alternative OPA (**Exhibit 3C**, PDF Pages 28-30) and an Alternative ZBLA (**Exhibit 3C**, PDF Pages 32-35), collectively referred to as the Alternative Amendments as part of the expert opinion evidence presented by the planning expert for the City. The major differences are that the Alternative Amendments would allow for a reduced maximum height of 22 storeys and a reduced density of FAR of 5.0:1.

**STATUTORY REQUIREMENTS**

1. The Tribunal, in making its Decision in relation to the proposed OPA and ZBLA, must have regard to matters of provincial interest as set out in s. 2 of the Act. Under s. 2.1(1) of the Act, the Tribunal must also have regard to (a) any decision City Council made under the Act that relates to the same planning matter, and (b) the information considered by City Council in making those decisions. In this case, the appeals were brought as a result of City Council’s refusal of the Planning Applications, and the Proposed Development was revised for the purposes of the Hearing.
2. Under s. 3(5) of the Act, the Tribunal’s Decision on the OPA and ZBLA must be consistent with the Provincial Policy Statement, 2020 (“PPS”), and must conform (or not conflict) with A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2020 (“Growth Plan”), in effect on October 17, 2024 being the date of the Tribunal’s Interim Decision on the matters before it.
3. Under s. 17(34.1) of the Act, the OPA must conform with the Region of Halton Official Plan (“ROP”) as amended, in this case by ROPA 48, as being the pertinent in force ROP policies. As an amendment to the COP, the OPA need not strictly conform with the COP, but may be evaluated against the COP’s purpose and intent, including policies pertaining to OPAs. Under s. 24(1) of the Act, the ZBLA must conform with the COP as amended.
4. The Tribunal must be satisfied that the OPA and ZBLA represent good planning and are in the public interest.

**POSITION OF THE PARTIES**

Applicant’s Position

1. The Applicant submits that the Property, being in a Strategic Growth Area (“SGA”) as defined under the Growth Plan, is an important site and represents a significant opportunity for optimization of the use of the lands. The Applicant also submits that the Proposed Development is compatible, animates the public realm, and links the Downtown to the Waterfront.
2. The Applicant submits that there is agreement, between the Parties and amongst the experts, that the Property should be intensified with two tall high-density mixed-use towers, and that there is no dispute that the Proposed Development is pedestrian oriented, transit-supportive, well serviced by transit, located within walking distance of community amenities, and the existing surrounding context which includes tower heights of up to 29 storeys.
3. The Applicant submits that the remaining issues in dispute solely relate to:
4. Height: 36 and 31 storeys versus 22 and 23 storeys (inclusive of mechanical penthouse) supported by the City in the Hearing, and that heights should not be arbitrarily reduced in the absence of unacceptable impacts;
5. Integration: parkland dedication parcels, conceptual nature of public realm features, and the location of the Towers; and
6. Transportation: supply of hotel and office parking, technical issues (such as lay-by parking), vehicular access location(s).
7. The Applicant also submits that the City and Pearle’s cases are flawed based on a selective reading of the ROP that reads in maximum heights and densities, and ignores an “intensification first approach” as in the context of the Growth Plan.
8. The Applicant asks that the Tribunal allow the appeals and approve in principle the Applicant’s OPA and ZBLA to permit the Proposed Development, contingent upon certain conditions on the basis that the remaining issues can and will be addressed through a site plan approval process to follow.

City’s Position

1. The City submits that it has a “vision” for its Downtown and Waterfront, one that has evolved over time, and that with the approval of ROPA 48, the Property is no longer within the City’s Urban Growth Centre (“UGC”) and Major Transit Station Area (“MTSA”) in accordance with the Growth Plan, and is now in a “Secondary Regional Node” of the hierarchy of Strategic Growth Areas under the Halton Regional Urban Structure. As a result, the scale, height, and intensity of any re-development on the Property should be less than it may have been before this change and should be less than those most recent approvals granted for other lands to the east and northeast in the Downtown at the time the Downtown was an UGC.
2. The City submits that the Property is a prominent “Landmark” location, and while it concurs that it is an under-utilized site at present and is an appropriate location for intensification, the City submits that the Planning Applications do not meet the statutory and policy tests, do not represent good planning and are not in the public interest, because the Proposed Development:
3. is of an improper scale, too much height and intensity;
4. does not adequately avoid and/or mitigate wind impacts on the site, and adjacent Spencer Smith Park;
5. inappropriately imposes transition on the public lands, namely grading, steps and terracing in Spencer Smith Park and the proposed parkland dedication lands;
6. inappropriately imposes on the streetscapes along Lakeshore Road and Elizabeth Street with the removal of a significant number of trees, lay-by parking for hotel guests, and the removal of the northbound left-turn lane on Elizabeth Street.
7. Additionally, the City seeks parkland dedication totalling approximately 733 sq. m to add to Spencer Smith Park. The City agrees that the numeric value in the Proposed Development meets this, however the City submits that the location(s) and configuration(s) of the proposed pieces of land are not satisfactory. The City is also critical of the proposal by the Applicant to accommodate the transition in grade on the lands proposed as parkland dedication.
8. The City submits that many of the impacts are not on the Property, but on the adjacent public lands and rights-of-way and that deferring these issues to site plan approval is not appropriate.
9. The City asks that the Tribunal deny the appeals and refuse the Planning Applications. In the alternative, should the Tribunal find merit in the Planning Applications and allow the appeals, the City asks that the Tribunal’s Order be withheld until such time that:
10. Additional work in respect of wind impacts is undertaken, including providing a wind tunnel study to the City’s satisfaction;
11. Location(s) and configuration(s) of the proposed parkland dedication, and the design and programming of the City’s existing parklands is to the City’s satisfaction; and,
12. Design and configuration of the streetscape along Elizabeth Street and Lakeshore Road is to the City’s satisfaction.

Pearle’s Position

1. Pearle submits that The Pearle Hotel and Spa is very important to the City as a luxury tourism-supportive business and can be considered part of another Landmark development, located in a similar location as the Property, where the City’s Downtown meets the City’s Waterfront.
2. Pearle takes the position that the Proposed Development has some positive aspects to it, but there are still too many unaddressed issues related to inappropriate impacts on adjacent lands including public rights-of-way, Spencer Smith Park, and the Pearle, and that as such, at present, the Proposed Development is contrary to good planning.
3. The Pearle’s concerns with the Proposed Development relate to its claims of impacts on:
4. the Pearle’s current views of Lake Ontario and Spencer Smith Park (including the Brant Street Pier);
5. winds on pedestrians particularly at the Pearle’s main entrance and lobby, and main drop-off/pick-up for the hotel guests and visitors, situated on the east side of Elizabeth Street; and
6. the function of the Pearle’s main entrance, including traffic conflicts on Elizabeth Street because of the Proposed Development.
7. Pearle asks that the Tribunal deny the appeals and consider providing guidance to the Applicant as to what needs to be worked on to improve the Proposed Development.

**PARTICIPANT STATEMENTS**

1. In summary, the Participants conveyed the beauty of Downtown Burlington and its Waterfront to the Tribunal, and while the Participants accept that there will be intensification in this location, they would like to see any redevelopment be a genuine “fit” in its planning context and be an enhancement to the gateway to Lake Ontario at the foot of Brant Street.
2. Some see the Proposed Development as too large for its context and want to see its height, massing and proportions re-evaluated. Some suggest that the WHPS Preferred Concept would be more appropriate in this location. Some also suggest that there should be a greater setback on the west to the Spencer Smith Park to improve the transition between the lands and to mitigate shadow impacts at the intersection of Brant Street and Lakeshore Road.
3. The concerns of the Participants fall within the scope of issues that have been raised by the City and have been addressed by way of the experts’ opinion evidence.

**ANALYSIS AND FINDINGS**

1. The Tribunal’s Decision is based on its consideration of the evidence and submissions in the Hearing, and the Tribunal’s evaluation of the Planning Applications in the context of the statutory requirements set out above.
2. In the Hearing, the planners all agreed that the Property is an appropriate location for mixed use intensification, and an appropriate form would be a tall building containing residential apartments, retail/commercial, and office uses and a hotel, with two tall towers sitting on top of a lower height podium, with the tall towers positioned on the Property to afford view corridors of Lake Ontario from Brant, Elizabeth and John Streets. There was also a consensus of the urban design and planning experts that intensification on the Property should be of a high-quality urban design, in accordance with the City’s policies and guidelines, reflecting the Landmark location of this site.
3. The Parties disagreed as to what the appropriate intensity, height and scale should be. In this regard, most of the experts provided opinion evidence comparing the Proposed Development to the WHPS Preferred Concept. To assist readers, the WHPS Preferred Concept 2022 is found as **Attachment 1** hereto.
4. The Tribunal has weighed the opinion evidence of the experts in its consideration of the issues and merits of the Planning Applications, and the Tribunal prefers the opinion evidence of some experts over others as summarized below:
5. The Tribunal prefers the opinion evidence of Mr. Smith and Mr. Lo and accepts that the Planning Applications do not have proper regard for matters of Provincial interest set out in s. 2 of the Act;
6. The Tribunal is persuaded by the opinion evidence of Mr. Smith and Mr. Lo that the Planning Applications are not consistent with the PPS and do not conform with the Growth Plan;
7. The Tribunal preferred the opinion evidence of Mr. Smith and Mr. Lo over that of Mr. Keleher and Mr. Faletta in respect of the test of conformity with the ROP, and on that basis the Tribunal accepts that the Proposed Development does not conform with the ROP, in particular the Regional Strategic Growth Area objectives to provide urban form that is complementary to existing developed areas, high quality public parks and open spaces, and appropriate transition of built form to adjacent areas;
8. On urban design issues, the Tribunal preferred the opinion evidence of Ms. Jay and accepts that the Proposed Development inappropriately transitions onto Spencer Smith Park and the adjacent public streets, and that the building siting and massing requires modifications to meet the City’s guidelines;
9. The Tribunal accepts the opinion evidence of Ms. Jay that the proposed parkland dedications may not in be in the appropriate locations, sizes and configurations, and agrees that those lands proposed to be dedicated as parkland should be unencumbered with steps and terraced walls;
10. The Tribunal accepts the evidence of Mr. Patitucci that matters related to landscape architecture and the interface along the Elizabeth Street and Lakeshore streetscapes can be adequately addressed through revised design at the site plan level;
11. The Tribunal commends Mr. Bacon for acknowledging that the Proposed Development would result in adverse pedestrian wind impacts and that there is “more work to be done” to address this issue. The Tribunal finds that additional study of wind impacts is required;
12. The Tribunal prefers the evidence of Mr. Seegobin in respect of traffic and parking issues and accepts his opinion that “more work needs to be done” to address traffic impacts on Elizabeth Street, and to ensure that all transportation related functions associated with the various land uses are adequately accommodated within the limits of the Property itself (parking, short-term drop-off and pick-up for hotel guests, residents and visitors, deliveries, loading and unloading). There was a fair amount of the evidence in the Hearing focused on the availability of frequent public transit connected into a higher-order transit system, and some suggested that, as a consequence, persons coming to the mixed-use redevelopment would be taking transit, walking or cycling. Mr. Seegobin was the only expert to provide opinion evidence with respect to the importance of considering accessibility, so that persons of all physical abilities are accommodated;
13. The Tribunal also prefers the opinion evidence of Mr. Lo in respect of issues of compatibility of the Proposed Development, and accepts his opinions related specifically to his visual impact assessment which demonstrates that the Proposed Development will impact the views of Lake Ontario from both the Pearle and the public realm, and his opinions that there is far “more work to be done” to address traffic conflicts within Elizabeth Street (including turning movements), dependency on on-street lay-by parking for short-term drop-offs and pick-ups of hotel guests and visitors, the removal of the north bound left turn lane, and lack of adequate parking on-site, and adverse wind impacts on pedestrians at the main entrance to Pearle; and,
14. The Tribunal accepts and agrees with the opinion evidence of the City’s and Pearle’s experts that the Proposed Development is not compatible with the surrounding land uses. The Tribunal concludes that additional technical study is required, related traffic and parking, and wind impact, as well as modifications to the Proposed Development in terms of its scale and height.
15. On the basis of the above, the Tribunal finds that the Planning Applications if approved, would result in too much intensity, density and height in the context of the applicable policies and guidelines, and that the Proposed Development in its present form represents “over-development” of the Property in its existing and planned context, and that it is not compatible with the adjacent and surrounding lands, and does not represent good planning. Given this, the Tribunal finds that the Planning Applications in their current form do not satisfy the statutory requirements.
16. The Tribunal agrees that “more work needs to be done” to address the various technical issues, including a traffic study and wind impact study, and that substantive revisions to the Planning Applications are required. The Tribunal finds that Mr. Lo’s recommendations to address issues of compatibility, including his recommendations for modifications to the Proposed Development and the proposed amendments were reasonable and of assistance to the Tribunal.
17. A fuller explanation on the analysis of the issues is set out below.

***Property and Surrounding Context***

1. The Property has an area of 0.76 hectares (“ha”) (1.88 acres) and is presently the site of a six-storey hotel containing approximately 129 suites, a two-storey wing containing a restaurant and bar, and a surface parking area of approximately 140 spaces. The parking area serves the guests and visitors of the hotel and is a paid public parking lot often used by guests of the Pearle.
2. The Property is bounded by Lakeshore Road on the north, Elizabeth Street on the east, and Spencer Smith Park on the immediate west and south. The Property has approximately 105 m of road frontage on the south side of Lakeshore Road and approximately 50 m of road frontage on the west side of Elizabeth Street. There are two additional City streets that terminate at Lakeshore Road across from the Property, namely Brant Street on the west and John Street located mid-block between Brant Street and Elizabeth Street. Brant Street is a major commercial spine of the City’s Downtown Core.
3. At present, the Property has three (3) vehicular access points: one on Elizabeth Street and two on Lakeshore Road, one of which is opposite to Brant Street. Frequent bus transit is available, with stops at both the Lakeshore/Brant and Lakeshore/Elizabeth intersections, and the Property is located within a 140 m (three-minute) walking distance of the John Street Bus terminal, located to the north, off Brant and John Streets.
4. The adjacent and surrounding land uses and public amenities include:

* The Pearle Hotel and Spa (nine storeys in height) and the Bridgewater Condominium Residences (22 storeys in height) which are both part of the Bridgewater Development to the east (across Elizabeth Street), which contains 151 guestrooms/suites, two restaurants, a spa and office space;
* Mixed-use (commercial/retail and residential) developments in a form typical of Downtown Burlington to the north, northwest, and northeast (across Lakeshore Road);
* The Brant Street Pier, which juts out into Lake Ontario, is situated within Spencer Smith Park directly south of the Property;
* A small public open space, with seating area, within the Elizabeth Street boulevard, and an existing row of trees along Lakeshore Road across the frontage of the Property;
* A pedestrian entrance to Spencer Smith Park is located adjacent to the Property, across from Brant Street. It is noted that Spencer Smith Park is used for many of the City’s civic and cultural events and festivals throughout the year, attracting tens of thousands of persons to Downtown Burlington;
* The buildings in the immediate vicinity of the Property vary in height, from the existing low-rise commercial buildings (less than five storeys) to the existing and planned developments with heights in the range of 22 to 29 storeys; and
* Elizabeth Street south of Lakeshore Road is a local road which serves as the vehicular access to both the Pearle and the Bridgewater Condominium residences, and is also a pedestrian access to Spencer Smith Park, and vehicular access used occasionally in association with events and festivals held in the park.

1. There are existing public infrastructure and amenities, including frequent bus transit connected by way of the John Street bus terminal to one of the three higher-order GO Transit stations in Burlington and to the broader Metrolinx system, already in place to support intensification of the Property. The Property is an appropriate location to accommodate intensification subject to satisfying the statutory requirements.

***Matters of Provincial Interest***

1. The Tribunal in carrying out its responsibilities under the Act, shall have regard to matters of provincial interest. In this case, there is some difference of opinion amongst the planners, but all agree that the Property is an appropriate site for mixed use intensification, comprised of residential apartments, commercial/retail uses, office uses, and a hotel, and in a tall building-built form, with two tall towers and lower height podiums.
2. However, the Tribunal found that the Proposed Development was not well designed, does not encourage a sense of place, and does not provide for public spaces that are of high quality, safe, accessible, attractive, and vibrant. The Tribunal found that the Planning Applications do not have proper regard for matters of provincial interest set out in s.2 (r) of the Act.

***PPS***

1. The Building Strong Healthy Communities policies 1.1.1, 1.1.3.2, 1.1.3.3, 1.2.1 and 1.5.1 of the PPS 2020 place emphasis on accommodating growth through increased densities and through infill, intensification, and re-development to support efficient use of infrastructure, transit supportive land use and complete communities that deliver a variety of housing and affordability while addressing health and safety, environmental and other potential impacts. The Tribunal found that the Proposed Development had not addressed adverse impacts on adjacent public and private lands, including wind impact on pedestrians, traffic conflicts, lack of preservation of views, and potential negative impacts on the neighbouring private lands (Pearle). Given this, the Tribunal found that the Planning Applications do not satisfy the statutory requirements.

***Growth Plan***

1. The Growth Plan policies address matters such as building strong and healthy communities, where and how to grow, and the coordinated planning of land use and infrastructure. The Tribunal heard opinion evidence of the planners in the Hearing that provincial planning policy and plans promote the integration of land use and growth management planning by way of coordinating transit infrastructure planning and investment.
2. There was much evidence provided in the Hearing on the evolving planning policy applicable to Burlington's Downtown.
3. The Tribunal notes that on January 3, 2023, by way of an Order of the Tribunal, differently constituted, the Planning Applications were deemed to be “made” on December 17, 2021 and therefore subsequent to the November 10, 2021 decision of the Minister of Municipal Affairs and Housing approving and modifying OPA No. 48 to the ROP. As a result, the Property is not subject to the MTSA and UGC policies of the ROP, nor the related UGC transitional policies added by the Minister.
4. At the time of the hearing, the Property is within an SGA as defined in the Growth Plan, and that as is required under the Act, the applicable provincial policies and plan (PPS 2020 and Growth Plan 2019, as amended), have been implemented by way of ROPA 48. The Regional Urban Structure is set out under the operative ROP policies. The Property continues to be in an SGA, albeit not in an UGC or MTSA under the Growth Plan. Mixed use intensification is encouraged on the Property.
5. There is agreement amongst the Planners that the Property represents an appropriate and important opportunity for mixed use intensification within the City's Downtown, and the Tribunal agrees.
6. The Tribunal found, based on the opinion evidence of the planners, Mr. Smith and Mr. Lo, that the Planning Applications, subject to some modifications, could conform to and not conflict with the Growth Plan. The Tribunal concludes that with appropriate modifications to address the many substantive issues outlined herein, the Proposed Development could facilitate mixed use intensification that is serviced by existing infrastructure, adds housing of a mix to support complete communities, and provides transit supportive design in a tall building format which is transit-supportive, pedestrian friendly, and supports the social and cultural well-being of the community in Downtown Burlington. However, the Planning Applications before the Tribunal do not conform with the policies set out in the Growth Plan.

***Regional Official Plan***

1. The Property falls within one of the Secondary Regional Nodes (“SRN”), known as the Downtown Burlington Secondary Regional Node. The SRNs are areas intended to be a focus of growth through mixed-use intensification. The policy of the Region, as set out in policy 82.2 (1) of the ROP, is to direct development with higher densities and mixed uses to SRNs in accordance with the hierarchy identified in policy 79.2 and based on the level of existing and planned transit service. As set out in policy 82.1(2) of the ROP, SRNs are: “historic downtown areas or village, and/or are intended to be a focus for growth through mixed use intensification at a scale appropriate for their context”.
2. In the Hearing, there was a consensus on the part of the planners and land economist that the Property is under-utilized, appropriate for intensification, and represents a significant opportunity for a mixed-use development, which would contribute to an increase in housing supply, thereby helping the City and the Region in meeting their growth targets. However, there was some disagreement in opinion as to the level of intensification that should be approved on the Property.
3. One of the propositions put forward in the Hearing by the Applicant’s experts was that regardless of the hierarchy of SGAs in the Regional Urban Structure, Ontario’s provincial-led policy planning system mandates an “intensification first” approach, with direction to focus growth in SGAs where transit (and other) infrastructure exists and/or aligns with infrastructure investments. Mr. Keleher opined that SRNs are SGAs, and that there should not be a differentiation between SGAs as there is need for more housing supply in the Region, and that the more residential units that can be approved on the Property the better from the perspective of assisting the Region and City in accommodating their share of growth targets, and Mr. Faletta opined that the Planning Applications align with the planning objectives for optimization of infrastructure and efficient use of land. More simply put, the proposition was the more units approved the better, or alternatively the proposition came across as there cannot be too many units approved for the Property.
4. This was countered by the City planner’s evidence that the City is already on track to meet its growth targets, and more importantly, the City has a vision as to where the growth should be directed, and how much growth should be accommodated in those areas. The focus and concentration of high-density development has been shifted away from Downtown Burlington (formerly the City’s UGC) and shifted to the relocated UGC around the Burlington GO Station.
5. Although it was acknowledged that the COP is yet to implement the latest Regional Urban Structure, the Tribunal notes that the Regional Urban Structure set out in the ROP is in force and prevails as the upper tier plan in the event of a conflict, in accordance with ss. 27(4) of the Act, which reads as follows:

27(4) – In the event of a conflict between the official plan of an upper-tier municipality and the official plan of a lower-tier municipality, the plan of the upper-tier municipality prevails to the extent of the conflict but in all other respects the official plan of the lower-tier municipality remains in effect.

1. The City’s expert was of the opinion that under the ROP policies, there is a differentiation as to how much growth is planned to occur in the different types of SRNs given the reference to a “hierarchy”. The SRN is listed further down (second last in the list) in the hierarchy.
2. The Tribunal prefers the perspective as set out in Mr. Lo’s Witness Statement:

The 2020 Lakeshore (Property) and the Pearl lands represent an appropriate location for intensification and redevelopment as they are located in a strategic growth area. However, in accordance with the policies of the Halton Region OP, such intensification and redevelopment should be implemented at a scale appropriate for their context, commensurate with the level of existing and planned transit and in accordance with the hierarchy established by the Halton Region OP (ROP).[emphasis added by Tribunal]

The Tribunal finds that the objective should not be to “maximize” the number of persons (and jobs) that can be accommodated on any particular parcel of land, but rather it is about finding the “right balance” as to what represents good planning.

1. Ultimately, the Tribunal relies on the opinion evidence from the planning experts in the Hearing that the determinative official plan policies do not provide a requirement for minimum growth targets or densities applicable to the Property. In other words, the City is not required to ensure the Property is approved to accommodate a certain number of residential units or GFA at a minimum.
2. The Tribunal finds that the Property is within an area of the City for which there are operative policies, that when applied, are intended to find the right balance of intensification, high-quality urban design, and land use compatibility.
3. As discussed in more detail in later sections of this Decision, the Tribunal finds that the Proposed Development, if the Planning Applications were to be approved, would result in an over-development of the Property.

***City Official Plan***

1. The Property is within the Wellington Square Mixed-Use Precinct under the COP (1997), as amended (Office Consolidation 2019). An amendment to the COP is required to facilitate the redevelopment of the Property.
2. One of the guiding principles of the COP related to intensification is set out in Part I – Policy Framework of the COP, s. 3.0 h):

Promote the efficient use of land through intensification within appropriate areas of the City, in accordance with Provincial growth management objectives, while recognizing the need for balancing this objective with other planning considerations.

1. The Part III policies of the COP, namely in policy 5.4, provide for mixed use intensification, and encourage higher intensity, transit-supportive and pedestrian-oriented development within the Mixed-Use Centres while retaining compatibility with nearby land uses. Further, policy 5.4.2 (c) provides that a range of development intensities shall be permitted and policy 5.4.2 (d) provides that a range of building heights shall be permitted. As set out in Part III, policy 5.4.2 g) provides that the design and development of Mixed-Use Centres shall ensure compatibility between the Mixed Use Centre uses and adjacent uses.
2. The definition of compatibility as set out in the COP is as follows;

Compatible – Development or re-development that is capable of co-existing in harmony with, and that will not have an undue physical (including form) or functional adverse impact on, existing or proposed development in the area or pose an unacceptable risk to environmental and/or human health. Compatibility should be evaluated in accordance with measurable/objective standards where they exist, based on criteria such as aesthetics, noise, vibration, dust, odours, traffic, safety and sun-shadowing, and the potential for serious adverse health impacts on humans or animals.[emphasis added]

1. Based on the evidence in the Hearing, the Tribunal found that the Wellington Square Mixed Use Precinct policies under COP (1997), and site specific policy 5.5.9.2 l) in particular, in addition to the ROP policies, to be particularly pertinent relative to the evaluation of the Planning Applications.
2. The Wellington Square Mixed Use Precinct policies, set out in policy 5.5.9 of the COP, allow for the designation of a limited, concentrated area within the Downtown, where taller, higher-density development intended to meet provincial growth objectives and to support greater transit use would be permitted, and to prevent unlimited spread of higher density throughout the Downtown. A variety of uses, including commercial uses, high-density residential apartment buildings, cultural uses, recreation and hospitality uses, and entertainment uses and community facilities are permitted. The policies also require a high standard of design for new buildings in order to provide a sense of place, compatibility with existing development, and the sense of pedestrian scale and comfort.
3. The Wellington Square Mixed Use Precinct policies, as set out in policy 5.5.9.2 of the COP, permit a maximum residential density of 51 units per net ha, a maximum height of eight storeys, and a maximum FAR of 5.0:1. In addition, the policies may also permit a higher FAR and heights of up to 14 storeys for development proposals where compatible with surrounding land uses.
4. The Tribunal finds one of the most consequential policies applicable is policy 5.5.9.2 l):

Notwithstanding the above policies, the lands along Lake Ontario shoreline, at the foot of Brant St., (known as the Travelodge lands), represent a significant opportunity for mixed-use development linking the Downtown with the waterfront. Any further development on these lands shall provide a high quality of urban design reflecting the landmark nature of this site and shall be contingent upon the completion of a master plan to the satisfaction of the City Council. This master plan shall address the integration of these lands with the publicly owned lands to the south and west and the private development to the east, and shall address other matters such as preservation of lake views and enhancements to the public realm. [emphasis added by the Tribunal]

1. The Tribunal finds that there is a lot to digest from this policy, and there was considerable opinion evidence provided in regard to this policy in the Hearing.
2. Firstly, the Tribunal accepts that the site-specific policy recognizes that there is something special about the location of this Property, and that the form of mixed use development contemplated is to be something more than any typical development site.
3. Secondly, the Tribunal accepts that it is important to “link” the City’s Downtown and Waterfront by way of the re-development, and that its Urban Design is to be of a “high quality” so as to be worthy of being referred to in the context of a “Landmark”. A Landmark is defined in the COP as “Landmark – A natural feature or man-made structure used as a point of orientation in locating other natural features or man-made structures, or a structure of noteworthy aesthetic interest.”
4. Thirdly, by way of the policy, a master plan is required to establish what the re-development should be, and how it must address integration with Spencer Smith Park (to the South and West) and with the Pearle and Bridgewater Residences (to the East). The Tribunal accepts that the WHPS was intended to satisfy this requirement, however it is noted that the City has not endorsed it nor approved amendments to the COP to implement it.
5. Fourthly, views of the Lake must be preserved, and the public realm must be enhanced, and the development of the Property must also integrate not only with the surrounding public lands, but also with the private lands on the East (i.e. Pearle). It is on the issues related to the transitions to or integration with the surrounding land uses that the Tribunal found the Proposed Development failed substantively (as discussed later on).
6. In the context of what is permitted to develop on the Property, namely COP policy 5.5.9.2 l), the Tribunal concludes that there can be no dispute that the purpose and the intent of policy is to provide for a re-development of such a high quality of urban design that is noteworthy in its design (albeit this in and of itself can be subjective) and that it provides for a mix of uses that provides a point of orientation, linking the Downtown and Waterfront, in what the Tribunal accepts is one of the most high profile locations of the City. The urban design experts offered contrasting opinions on the virtues of the design of the Proposed Development, and the planners’ opinions differed as to whether the Proposed Development satisfies the intent of the policy. The Applicant’s experts opined that being the tallest building satisfies the “point of orientation” criteria. The Tribunal is not persuaded that height on its own is the sole determining factor in this regard.
7. The Applicant’s experts spoke of ‘optimization’ of infrastructure and efficient use of land, and the other planners supported the same objectives. There was some difference of opinion amongst the planning experts as to whether the Proposed Development, if approved, would result in ‘optimization’ or ‘maximization’, as discussed later in this Decision.
8. The Tribunal concludes that the City is not against accommodating more population growth and is not against increasing housing supply, or against working to expedite that supply. On the contrary, the City is committed to its growth targets and has been working to achieve those, but through its vision the majority of growth at higher densities and taller heights should be located in its UGC which has been moved so as to be located around the Burlington Go Station. The Tribunal was not persuaded by the evidence presented in the Hearing that there is a basis for challenging the City’s approach.
9. Based on the opinion evidence, the Tribunal concludes that the operative policies of the COP for the Wellington Square Mixed-Use Precinct are clear in that they provide for higher-densities and taller buildings too, just not as much as those in the UGC.
10. It was Mr. Smith’s evidence that when he speaks of the Proposed Development being too much “intensity of development”, he is referring to density and built form, where density is the number of people and jobs per ha or the number of residential units and square footage of non-residential uses that can be accommodated on a site, and the built form that can be accommodated on a site, is measured as FAR. There was no substantive dispute between Keleher, Faletta and Smith in respect of the number of persons or jobs that should be permitted on the Property.
11. Issues in the Hearing included what is the appropriate scale, intensity and height of the re-development. While an Issue was raised about how much intensification is appropriate, for which there was both some agreement and some disagreement in opinion amongst the planners and land economist, the Tribunal finds that a substantial amount of intensification can be supported on the Property, and that the real issue in the Hearing is with respect to the proposed built form and how it “fits in” with the surrounding land uses, and how it does or does not satisfy policy 5.5.9.2 l).
12. The Tribunal concludes that by way of COP policy that the permitted height today is eight storeys and FAR of 5.0:1. The COP recognizes that there can be additional height up to 14 storeys and there can be additional FAR, subject to satisfying certain criteria as noted above. The City’s position in the Hearing, based on the findings of the WHPS, is that heights of 22-23 storeys are acceptable and the Alternative Amendments, if approved, would allow for such.
13. The Tribunal finds that the Applicant has failed to convince the Tribunal that the Proposed Development is appropriate and would be desirable for the Property. Rather, the Tribunal finds that the OPA and ZBLA would, if approved, result in too much height, scale and intensity on the Property or in other words would result in an over development of the Property.

*City’s Waterfront Hotel Planning Study (WHPS)*

1. The Tribunal concludes that the WHPS was undertaken by the City to serve as the master plan contemplated in COP policy 5.5.9.2 l). The Parties all participated in the study process, along with the Participants and other members of the public. The study process culminated in a Preferred Concept (2022), as recommended by City Planning Staff[[2]](#footnote-2) in a report which was received and filed by City Council (“WHPS Preferred Concept”). The WHPS was not formally endorsed by City Council.
2. It is the position of the Applicant that the use of non-determinative materials for evaluation of the Planning Applications is inappropriate. On this, the Tribunal recognizes that the WHPS and WHPS Preferred Concept do not have the status of policy and as such are not determinative in the appeals.
3. The WHPS and the Preferred Concept were before City Council for consideration coincident with the time of City Council’s consideration of the Planning Applications. The recommendation of City Planning Staff on the record in respect of the Planning Applications is Recommendation Report PL-24-22, dated April 12, 2022, wherein City Staff concluded that the Planning Applications and the original Development Proposal did not meet the statutory requirements and did not satisfy the Council endorsed key policy directions of the WHPS. City Council adopted the recommendations of that Report, thereby refusing the Planning Applications.
4. Most, if not all, of the planners and urban design experts provided opinion evidence comparing the Proposed Development with the WHPS Preferred Concept. (City Staff did not appear as witnesses in the Hearing). A side-by-side illustration of the WHPS Preferred Concept and the Site Plan for the Proposed Development was filed as visual evidence (**Exhibit 18**) and is attached as **Attachment 2** to this Decision.

1. On the evidence in the Hearing, it was clear to the Tribunal that Mr. Smith, Ms. Jay, and Mr. Lo did not have any substantive issues or concerns with the WHPS Preferred Concept and, accordingly, used it as a comparison at times as a basis for explaining their opinions on the Planning Applications. Mr. Falletta and Mr. Kasprzak also compared the Proposed Development to the WHPS Concept.
2. The Tribunal has heard evidence from the experts for all Parties comparing and contrasting the WHPS Preferred Concept and the Proposed Development. The Tribunal also notes that support of the WHPS Preferred Concept is found by way of the Participant Statement(s). The Tribunal has discerned that no Party took the position that the Proposed Development must conform to the WHPS Preferred Concept. The Tribunal concluded that it is a useful illustration in the discussion on the myriad of issues related to height, scale, intensity, built form, etc.

***Urban Design and Built Form***

1. There was much evidence from the two urban designers and three planners in the hearing regarding urban design and built form. While the urban designers both spoke to the same goals, objectives, and principles, their assessment and opinions on whether the Proposed Development’s built form is appropriate and represents good planning differ greatly. The Tribunal preferred the opinion evidence of Ms. Jay that the Proposed Development fell short in meeting the requirement for high quality urban design, particularly in relation to its interface with the public realm and transitions to the adjacent public lands. Additionally, the Tribunal found it preferred the opinion evidence of Mr. Lo in respect of the Proposed Development’s adverse impacts and lack of compatibility with both the adjacent public lands and Pearle. The combination of the two directs the Tribunal to a conclusion that a substantial re-design of the Proposed Development is in order.
2. The primary areas of difference of opinions in respect to the height, scale and built form of re-development appropriate for the site, as discussed below, comes down to the following items:
3. The height of the two towers and podiums;
4. The appropriate location and configuration for Parkland dedication;
5. The integration of the Proposed Development with the adjacent public lands (Spencer Smith Park, Elizabeth Street and Lakeshore Road);
6. The preservation and enhancement of the view corridors of Lake Ontario along John, Elizabeth and Brant Streets; and
7. Impacts on The Pearle (compatibility, traffic, views, access and parking supply).

***Height***

1. The Tribunal is of the view that it is in the interest of the Parties and the public for the Tribunal to make a decision in respect of appropriate heights for the two towers in this location and for which the redevelopment of the Property could proceed. The Tribunal is also confident that sufficient evidence was provided in the Hearing to make a determination despite the Tribunal’s other findings on the Proposed Development.
2. On the issue of height, based on the evidence in the Hearing, the Tribunal is persuaded that context matters. In its context, the Burlington Waterfront and Downtown skyline, particularly when viewed from the south and west, is that of, or soon will be, a scattering of taller buildings along Lakeshore Road, east of the intersection of Brant Street and Lakeshore Road, in the range of 12 to 29 storeys in height regardless of whatever approvals are granted on the Property. The Tribunal sees it as these heights are now part of the character of Downtown Burlington despite that approvals were granted under a previous planning policy framework.
3. Additionally, the Applicant’s experts opined that by virtue of COP policy 5.5.9.2 l) this location should have built form of distinction and stand out and that includes having the tallest building in the Downtown in order to achieve the goal of being a Landmark and a point of orientation. The City’s experts disagreed with this opinion, and one opined that being the tallest building does not make it a Landmark.
4. In determining an appropriate height for the re-development of the Property, context does matter but so does compatibility and potential impacts on views intended to be protected by way of COP policy (as is the case for the public realm from the adjacent streets and for the development to the East, that is the Pearle and Bridgewater Residences). The COP policy allows for up to a maximum of 14 storeys on the Property, and the tallest building (existing or planned) is 29 storeys. The Tribunal accepts the evidence of Mr. Keleher that the objective of provincial policy is an intensification first approach to growth management and finds it reasonable to assume that there is merit in a building height taller than 14 storeys in this location. The Tribunal acknowledges that the City Staff recommended up to 23 storeys in the WHPS.
5. The Tribunal finds that the intent of policy 5.5.9.2 l) is not that the building(s) on the Property are to be the tallest, but rather that it will be through high quality urban design that the built form will be of a noteworthy aesthetic and be a point of orientation of where the City’s Downtown and Waterfront meet.
6. While Mr. Kasprzak and Mr. Faletta opined that up to 36 storeys was appropriate, Mr. Smith and Mr. Lo both opined that a height taller than in the WHPS was supportable from a planning perspective and both suggested that a height in the mid-20 storey range would be appropriate for the two towers. Ms. Jay opined that the results of a wind impact assessment are required to inform the building heights and placements so as to ensure no adverse impacts and deferred to Mr. Smith as to a numerical value of height that is supportable.
7. The Tribunal has considered all of the opinion evidence in the Hearing and agrees that the policy 5.5.9.2 l) does not call for the building to be the tallest to be considered a Landmark. The Tribunal is satisfied that a mixed-use tall building with two towers of in the range of 25 - 27 storeys in height is appropriate in this location from a planning and urban design perspective, and subject to a building design supported by confirmation of no adverse impacts of wind on pedestrians that can not be mitigated with recommended measures.
8. Based on Ms. Jay’s evidence, the Tribunal accepts that building massing and appropriate setbacks are about urban design, negating or minimizing shadows and wind impacts, and preserving view corridors. In addition, based on the urban design evidence with respect to the podium heights provided in the Hearing, the Tribunal finds that three storeys along the street frontages are appropriate, and where the grade transitions down towards the south, it is justified to have the podiums in those situations increase to four storeys on the basis that the building will be stepped-back at the third level. The Tribunal also finds that along the west side facing Spencer Smith Park the podium height should be one storey, and where grade transitions down to the south it is justified to be two storeys in height. These podium heights will allow for roof top patios to be positioned west and south facing Spencer Smith Park.
9. The Tribunal is satisfied that two tall towers in the range of 25 - 27 storeys are appropriate on the Property.

***Parkland Dedication and Transitions in Grade***

1. The calculated amount for parkland dedication to the City has been agreed to, however the dispute pertains to the location and configuration of the dedication block(s).
2. The Applicant proposes to provide blocks on the west and south side of the Property, however based on the evidence in the Hearing, these block(s) are clearly proposed to be utilized to the benefit of the Proposed Development for “transition” in grade with steps and terraces.
3. It is the City’s position that the dedication block(s) should be in the location the City prefers, and should be unencumbered so as to be used for the City’s parkland programming purposes (as the City sees fit).
4. The opinion evidence of Ms. Jay, whom has qualifications in both urban design and landscape architecture, was that “programming” of the park should be the determining factor as to what locations, sizes and configurations of land(s) are appropriate, and that there should be no encumbrances on these lands for functions required to be satisfied by the Proposed Development. Ms. Jay’s evidence was that the City had not determined what the programming should be, and that the WHPS Preferred Concept showed conceptual parkland dedication locations only.
5. There is a Proposed Development before the Tribunal which illustrates three slivers of land as proposed parkland for which the Tribunal may make a finding as to whether they are acceptable or not. The Tribunal found that there was sufficient evidence in the Hearing that the parkland dedications could be used to enhance the entrance to the Spencer Smith Park off Brant Street, provide for spillover for event planning, and as a public gathering space. It seems reasonable to the Tribunal that the purposes of the parkland dedications are known.
6. Based on the evidence, the Tribunal is of the view that there should be two areas for parkland dedication blocks. One area is a strip along the west side extending from Lakeshore Road to the south limit of the Property, at a width to be determined by the City, and to be used for improving/enhancing the entrance to the Spencer Smith Park and providing the spillover for events. The other one to be along the southeast portion of the Property to allow for easier access to and staging for the special event space from Elizabeth Street.
7. The Tribunal finds that the location, size, and configuration of the parkland dedication(s) should be to the City’s satisfaction. In absence of the City having provided specific definitive information as to where the agreed numeric amount of parkland dedication should be located in the Hearing, and in fairness to the Applicant to be able to work on revised plans/drawings, the Tribunal encourages the City to make this determination as soon as possible.

***Integration with Adjacent Public Lands***

1. In this section, the Tribunal will lay out its analysis and findings regarding the design of the Proposed Development, including commenting on how it integrates with the adjacent public lands.
2. After considering the opinion evidence of the experts in the Hearing, including a review of the plans/drawings filed as Exhibits, it is the Tribunal’s conclusion that the Proposed Development has been designed to “maximize” the built form that could be accommodated on the Property. The relationship of the proposed built form to the Spencer Smith Park, Lakeshore Road streetscape and Elizabeth Street streetscape and their rights-of-way are reflective of the substantive issues the Tribunal found with the Proposed Development.
3. The Tribunal prefers the opinion evidence provided by the City and Pearle’s experts and concurs that the Proposed Development disregards the need for it to provide for the associated functions related to parking, loading, access, drop off and pick up for the hotel use, outdoor amenity areas, and the grade along the street frontages. The Proposed Development is predicated on an assumption that those functions can all be accommodated on the surrounding lands owned by the City, namely the Lakeshore Road, Elizabeth Street and Spencer Smith Park, despite that these are public lands and amenities that are intended to be for the benefit of the whole of the City’s residents and visitors.
4. The Tribunal does not agree with the presumption made on the part of the Applicant that the proposed transitions of grade to accommodate the Proposed Development are appropriate to be dealt with outside the limits of the Property, particularly without permission of the adjacent owner of the lands, in this case the City. Similarly, the presumption that lay-by parking will be allowed within the adjacent public streets to accommodate the functions of the various uses within the Proposed Development (and make-up for a lack thereof on the Property), and a presumption that the truck turning maneuvers on the adjacent streets are presumed to be okay, are simply flawed. Little effort has been made to resolve these technical issues. The evidence in the Hearing on these issues clearly demonstrated adverse impacts and led to the Tribunal concluding that the Proposed Development represented an “over-development” of the Property.
5. The design leaves the impression that it was contemplated as an “infill” within a typical dense urban city block, surrounded by existing similar developments, and the building footprint and massing is maximized. The Tribunal is not satisfied, based on the evidence in the hearing, that this is the context within which the Property is located. The only difference in the case of the Proposed Development is that the architectural styling depicted in the elevations would result in a “sail pattern”, which could provide the impression that the development is on or near the water. The Tribunal is persuaded by the opinion evidence of the City’s urban design expert and does not accept this is what is contemplated by the COP policy in terms of “noteworthy aesthetic”.
6. On the issue of adverse impact on the row of trees along Lakeshore Road and seating area along Elizabeth Street, the Tribunal is persuaded by the Applicant’s experts that the City’s guidelines for tree preservation, urban design, landscape and streetscapes, would, if applied through a future site plan approval process, be sufficient to address the concerns.
7. The Tribunal notes that intensification inherently brings about change, and change has impacts, including to streetscapes and the feel or character of a neighbourhood. Good planning is about balance and negating adverse impact(s), perhaps by way of mitigation of the impact. In this case, there may be the removal of some existing streetscape amenities and trees. The change will also entail the replacement with enhanced amenities, and through the implementation of the City’s guidelines, there will be more trees (albeit perhaps not the same trees that exist today given the level of disturbance as a result of the magnitude of servicing and construction associated with) than exist today on the Property. In finding the right balance, there will be an opportunity to create new and improved streetscapes along both Lakeshore Road and Elizabeth Street (as opposed to clinging onto what’s there today).

***View Corridors of Lake Ontario***

1. The Tribunal finds based on the evidence in the Hearing that policy 5.5.13 (d) of the COP provides for preservation of views of Lake Ontario from the public realm, along Elizabeth Street, John Street and Brant Street. Further, the Tribunal accepts the evidence in the Hearing that the proposed centrally located POPS satisfies the intent for the John Street view corridor.

***Wind Impacts on Pedestrians***

1. The Tribunal found that the evidence in the Hearing demonstrated that there are wind impacts that need to be assessed to inform proposed building siting and tower heights to ensure that there are no adverse impacts on pedestrians using the adjacent Spencer Smith Park and the boulevards of the Elizabeth Street and Lakeshore Road, and on the main entrance to the Pearle. Mr. Bacon acknowledged that there is “more work to do” in looking at the wind impacts. Additionally, Mr. Smith, Ms. Jay and Mr. Lo believed that additional work should be done to look at wind impacts to determine the design of the buildings.
2. The Tribunal concludes that the additional study, including a wind tunnel model is required to be undertaken to ensure that wind impacts are minimized and mitigated for all comfort of pedestrians 12 months of the year on the site and the adjacent lands because of the year-round usage of Spencer Smith Park. It is recommended that this requirement be fulfilled prior to approval of an amendment to the ZBL so that specific setback and stepbacks can be established and set out clearly for the purposes of review of a future building permit application.

***Impacts on Pearle, Views, Traffic and Parking***

1. The impacts regarding views, wind, traffic conflicts, and parking are well articulated in Mr. Lo’s Witness Statement found in **Exhibit 2**, at Tab 16 and Reply Witness Statement found in **Exhibit 2** at Tab 17, including in respect of the preservation of views, traffic conflicts such as the proposal to remove the northbound Elizabeth left turn lane queuing, truck turning movement conflicts, parking supply issues including the notion of relying on street layby parking for short-term drop-offs and pick-ups of visitors and guests, and deliveries, and wind impacts on pedestrians.
2. The Tribunal finds that Mr. Lo has raised some legitimate concerns that could reasonably have negative impacts on Pearle’s operations, that would lead to a question as to compatibility of the Proposed Development with the existing land uses on the east side of Elizabeth Street, and compatibility issues with the City’s use of the Elizabeth Street access to Spencer Smith Park. At a minimum, it would be appropriate for further investigations to be undertaken particularly in respect of traffic and wind.
3. The Tribunal encourages the City to re-visit opportunities for vehicular access in and out of the Property from both Lakeshore Road and Elizabeth Street in the context of a revised proposal, in order to both maximize the efficient use of the Property and to minimize adverse impacts on all forms of traffic in the immediate area of the Property.
4. The Tribunal found the visual impact assessment completed by Mr. Lo to be more credible than that provided by the Applicant, and on this basis, the Tribunal agrees that the Proposed Development would have a negative impact on Pearle.
5. While Mr. Kasprzak’s opinion was that it was more in the public interest to not adversely impact the view for the residents of Bridgewater Residences, it was the opinion of Mr. Lo that the “public” who is adversely impacted is actually from the Pearle’s restaurants/banquet facilities. Both experts acknowledged there will be adverse impact on views. The Tribunal accepted the opinion evidence that the COP policies provide for preservation of views, namely those set out in policies 5.5.1 (j), 5.5.9.2 (g), 5.5.12 (e ) and 5.5.13 (d). On this, the Tribunal finds that the “right balance” is for the redevelopment of the Property to take into account these policies intended to work towards preserving the views of Lake Ontario from the public realm including the development to the east (Pearle and Bridgewater Residences), and to mitigate any adverse impacts where possible through the siting of the new building(s).
6. The Tribunal also accepts Mr. Lo’s opinion evidence that the positioning of the building mass is particularly impactful on the Pearle and is contrary to the preservation of some of the views from the Pearle guest spaces. The Tribunal agrees with Mr. Lo that the East tower, where proposed, should be moved further away from Lake Ontario and Spencer Smith Park to minimize the impacts on the Pearle.
7. On parking supply, opinion evidence was provided by the Applicant’s experts that they are relying on a parking by-law for the City of Burlington that exempts parking to be provided for non residential uses in the Downtown. On the other hand, Mr. Smith points to the City’s ZBL and the existence of a standard rate of parking spaces per hotel room. The Tribunal preferred the opinion evidence of Mr. Seegobin that parking for the proposed residential units is sufficient as proposed (as is set out in the Agreed Statement of Facts), but that in his opinion, parking is also needed to be provided for the hotel and office uses. The Tribunal prefers Mr. Seegobin’s opinion and finds that the Proposed Development is deficient in this regard.
8. The Tribunal accepts Mr. Lo’s opinion evidence as set out therein in its entirety and finds that the Proposed Development does not have proper regard for parking, short-term parking and designated areas for drop-off and pick-up or deliveries within the site.

***Transportation Matters / Access Points***

1. In the Hearing, Mr. Lo raised an issue with respect to the function of Elizabeth Street and the loss of the dedicated right-turn lane as a problem which could result in adverse impact on existing traffic from Bridgewater Residences and the Pearle. He opined that the Property today has three access points, and that the City should not preclude exploring an opportunity for two vehicular access points in order to save some street trees along Lakeshore Road. He suggested that a study be undertaken to look at one access with restricted movements (right-in/right-out) from Lakeshore Road and one access with full movements from Elizabeth Street to better distribute the traffic generated from the intensification on the Property.
2. Based on Mr. Seegobin’s evidence, which as previously noted was preferred by the Tribunal, the Tribunal concludes that there is more work to do to resolve traffic movements along Elizabeth Street. This includes looking at the locations for vehicle ingress and egress to the underground parking, the loading and unloading of trucks, short-term parking for the purposes of passenger drop-off and pick-up, and deliveries associated with the uses that are proposed for the Property. The Tribunal prefers the opinion evidence of Mr. Seegobin about the importance of considering the hotel operations, and the importance in which certain site’s attributes are important for a successful hotel, namely the need for on-site areas to perform guest arrival by way of all modes of transportation. This includes guest arrivals, short term parking, unloading of luggage, short term parking for taxi and for Uber car services for picking up and dropping off guests.
3. In addition, Mr. Seegobin gave the only evidence with respect to the need to consider the hotel, guests or visitors of the Property for office and or retail purposes, and for persons of limited mobility. The Tribunal agrees the evidence in this hearing is such that “more work needs to be done” to accommodate more short-term parking and more long-term parking for non residential uses within the Property, and the Tribunal concludes that a further traffic study is required to address the many points discussed herein.

***Zoning***

1. The Property is zoned DW (Downtown Wellington Square Mixed Use Zone) which zone permits a mix of uses, including retail, service commercial, office, hotel, and residential apartment uses as proposed. The zone permits a maximum building height of eight storeys (up to 29 m), and a maximum FAR of 5.0:1. The applicable standards require that the ground floor of any building within 15 m of a public street shall be used only for retail or service commercial uses.
2. An amendment to the ZBL is required to facilitate the redevelopment of the Property. As noted above, the Tribunal has found that the Proposed Development is not appropriate in scale, intensity and height, and by extension the Tribunal finds that the ZBLA is not supportable. Additionally, the Tribunal concludes that the draft ZBLA should be tailored to the specifics of an appropriate redevelopment proposal for the Property based on its planning policy context and the high level of urban design objectives to be met to ensure that the built form reflects the Landmark location of the Property.

***Good Planning and In the Public Interest***

1. The Tribunal finds that the Proposed Development as currently contemplated does not represent good urban design and good planning. However, the Tribunal finds that with certain modifications, informed by further technical work, as discussed in this Decision, could result in an outstanding mixed-use re-development linking the City’s Downtown to its Waterfront, enhancing public spaces, worthy of the distinction of its Landmark location, providing a positive contribution to the City and the Region.
2. Several issues have been discussed in this Decision, and several findings have been arrived at by the Tribunal. Many of the findings pertain to the sorts of modifications and/or revisions that could be made to the draft Alternative OPA and a future revised plan/design for the Property so that it may address issues of land use compatibility, and may be able to satisfy the statutory requirements for approval, and will result in a re-development that represents good planning. It is up to the Applicant and the City to work towards such an outcome.

**CONCLUSIONS**

1. Simply put, the Proposed Development and Planning Applications push the limits beyond what is good planning. The Tribunal finds that the Planning Applications do not satisfy the statutory requirements under the Act, and that the Proposed Development represents an over-development of the Property.
2. Based on the evidence before it, the Tribunal finds that the Proposed Development is not of proper intensity, scale and height, does not “fit” in this location and planning context, nor is it compatible with the adjacent public park lands and private lands east of Elizabeth Street, and it does not represent good planning.
3. The Tribunal concludes that there is much “more work to be done” on the Proposed Development, involving technical study and re-design.
4. The Tribunal has had regard for City Council’s decision of refusal, albeit it on an earlier proposal.
5. The Tribunal finds that the Planning Applications are lacking in merit and are not consistent with the PPS, do not conform with the Growth Plan, do not conform with the ROP, and are not in keeping with the policies of the COP, as amended.
6. The Tribunal has found that the opinion evidence provided in the Hearing supports a finding that a mixed-use tall building with two towers in this location, of heights in the range of 25 - 27 storeys, could be appropriate from a planning and urban design perspective in the event that a re-design addresses the issues discussed herein.
7. The Tribunal has had regard to matters of Provincial interest under s. 2 of the Act and is not satisfied that the draft OPA will promote high-quality urban design and facilitate intensification in an appropriate location, scale, intensity and height on the Property. As noted above, the Planning Applications do not represent good planning.
8. In terms of the public interest, the City’s COP policies for the Property should be updated in the near term, to provide assurance to the Public and the Applicant, all of whom have put in considerable time and effort to date. As noted previously, the Participants support the findings and Preferred Concept from the WHPS. The Tribunal did look at the alternative OPA and ZBLA presented by Mr. Smith, but the City did not ask that the Tribunal consider an approval of these draft amendments, and that said, the Tribunal did not find them to be appropriate based on the evidence in the Hearing in any event.
9. The Tribunal finds that the appeals pursuant to s. 22(7) and s. 34 (11) of the Act should be denied for the reasons set out above.

**FINAL ORDER**

1. **THE TRIBUNAL ORDERS THAT** the appeals are dismissed and the requested amendment to the Official Plan for the City of Burlington and the requested amendment to the City of Burlington Zoning By-law 2020, as amended, are refused.
2. The effective date of the Tribunal’s Final Order is October 17, 2024.

*“Sharon L. Dionne”*

SHARON L. DIONNE

MEMBER

**Ontario Land Tribunal**

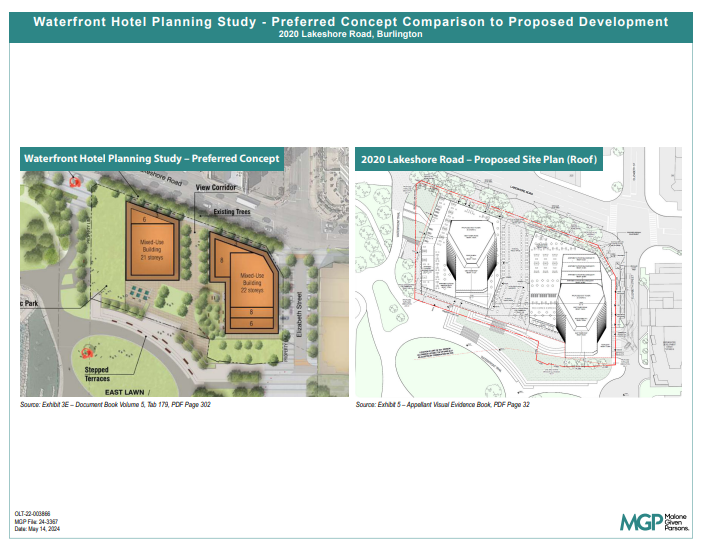
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The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal (“Tribunal”). Any reference to the preceding tribunals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

**ATTACHMENT 1**



**ATTACHMENT 2**



1. Burlington Waterfront Hotel Planning Study, Planning Justification Report, March 23, 2022 [↑](#footnote-ref-1)
2. Staff Report Number: PL-28-22 dated April 5, 2022, Exhibit 3e – Volume V Joint Document Book, Tabs 177-181 [↑](#footnote-ref-2)