

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: March 01, 2024

CASE NO(S): OLT-22-004195

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

Applicant and Appellant:	100 Davenport Limited Partnership
Subject:	Application to amend Zoning By-law - Refusal or neglect to make a decision
Purpose:	To permit a 19-storey mixed-use building
Property Address:	100 Davenport Road
Municipality:	City of Toronto
Municipal File No.:	21 231497 STE 11 OZ
OLT Case No.:	OLT-22-004195
OLT Lead Case No.:	OLT-22-004195
OLT Case Name:	100 Davenport Limited Partnership v. Toronto (City)

PROCEEDING COMMENCED UNDER subsection 114(15) of the *City of Toronto Act*, 2006, S.O. 2006, c. 11, Sched. A

Applicant and Appellant:	100 Davenport Limited Partnership
Subject:	Site Plan
Purpose:	To permit a 19-storey mixed-use building
Property Address:	100 Davenport Road
Municipality:	City of Toronto
Municipal File No.:	21 231498 STE 11 SA
OLT Case No.:	OLT-22-004196
OLT Lead Case No.:	OLT-22-004195

Heard:	October 26-November 3, 2023 by Video Hearing
---------------	----------------------------------------------

APPEARANCES:**Parties****Counsel**

100 Davenport Limited Partnership

J. Park
A. Frank

City of Toronto

J. Dexter

ABC Residents Association
Belmont House
The Greater Yorkville Residents
Association

R. A Biggart

DECISION DELIVERED BY S. BRAUN AND INTERIM ORDER OF THE TRIBUNAL**INTRODUCTION**

[1] This Decision and Order arises out of the hearing of appeals filed by 100 Davenport Limited Partnership (“Applicant” / “Appellant”) pursuant to s. 34(11) of the *Planning Act* (“Act”) and s. 114(15) of the *City of Toronto Act*. The Applicant proposes to redevelop the property located at 100 Davenport Road (“Subject Property”) with a 19 storey mixed use building and, to that end, applied for a Zoning By-law Amendment (“ZBA”) and Site Plan approval. The City of Toronto (“City”) failed to decide upon these applications within the legislated time frames, which led to the present appeal.

[2] At a Case Management Conference held on November 2, 2022, Party status was granted to:

1. Toronto Standard Condominium Corporation No. 2280 (“TSCC 2280”);
2. ABC Residents Association;
3. Greater Yorkville Residents Association (“GYRA”); and
4. Belmont House.

Participant status was granted to Toronto Lands Corporation ("TLC"), agent to the Toronto District School Board, which owns property at 61 Davenport Road (Jesse Ketchum Junior & Senior Public School). While not opposed to the development in principle, TLC sought such status for the purpose of monitoring the appeal.

[3] Prior to the hearing, the City and the Applicant reached a settlement ("Settlement"). In accordance with the Settlement, the Tribunal was asked to allow the appeal in part, approve the ZBA in principle and withhold a final order pending the satisfaction of certain conditions and to hold the Site Plan appeal in abeyance. In support of the Settlement, the Applicant called the following witnesses, qualified to provide opinion evidence in their respective fields of expertise: Tom Kasprzak – Urban Design; Ralph Bouwmeester – Sun/Shadow; Peter Smith – Land Use Planning. The City appeared at the Hearing, and made submissions in support of the Settlement, relying upon the evidence presented by the Applicant.

[4] TSCC 2280 did not oppose the Settlement, and did not appear at the Hearing. TLC was made aware of the Settlement and provided with a copy of the Procedural Order governing the proceedings which specified a deadline to submit a written statement outlining any concerns, but no further communication was received.

[5] The remaining added Parties were aligned in opposition to the Settlement, presented one case and are collectively referred to herein as "AGB". AGB requested the appeal be dismissed in its entirety or, in the alternative, be approved in part to allow the construction of a building at the south end of the site up to a maximum height of 59.6 meters ("m") to the top of the mechanical penthouse. In support of its position, AGB called the following witnesses qualified to provide opinion evidence in their respective fields of expertise: Dr. Sonia Ancoli-Israel – Psychology, specializing in light exposure in the elderly; Michael Spaziani - Architecture and Urban Design; Martin Rendl – Land Use Planning.

LEGISLATIVE FRAMEWORK

[6] The Tribunal must be satisfied that the Proposed Settlement: has sufficient regard for provincial interests as set out in s. 2 of the Act; is consistent with the Provincial Policy Statement, 2020 (“PPS”); conforms/does not conflict with A Place to Grow: Growth Plan for the Greater Golden Horseshoe (“GP”); and conforms/does not conflict with the City of Toronto Official Plan (“OP”). Additionally, the Proposed Settlement must be considered to be representative of good planning, and in the public interest.

[7] The Tribunal must also give regard to the decision of City Council and the information considered by it in the course of making that decision. While this Appeal relates to the City’s failure to make a decision, it is noted that City Council endorsed the Settlement achieved, and instructed counsel to appear at the Hearing in support of the proposed development.

SITE AND SURROUNDING CONTEXT

[8] The Subject Property is located near the intersection of Bay Street and Davenport Road, within 800 m of five subway stations. It is irregularly shaped, approximately 0.13 hectares in size and, at present, contains a single-storey commercial building. It is designated on Map 18 (Land Use Plan) of the OP as *Mixed Use Areas*. The *Mixed Use Areas* designation is intended to accommodate growth and achieve a multitude of planning objectives, by permitting a broad range of commercial, residential and institutional uses in single use or mixed use buildings as well as parks, open space and utilities.

[9] This Hearing was narrowly focused upon the potential for the proposed development to adversely impact Belmont House, located across the road and northeast of the Subject Property at 55 Belmont Street. The Hearing was further

focused on shadow impacts on interior and exterior areas of congregation at Belmont House between 11:18 a.m. and 3:18 p.m. and at February 21 and October 21.

[10] Belmont House is a relatively large residential facility for seniors that has been in operation since the 1800's. It occupies most of the city block bounded by Davenport Road, Belmont Street, McMurrich Street and McAlpine Street and contains buildings of one, four and seven storeys in height. Belmont House offers a range of accommodations (from retirement residences to Long Term Care beds) and differing levels of assistance/support to its elderly residents, a number of whom have significant mobility restrictions and/or cognitive impairments, including Alzheimers and Dementia. The Tribunal heard that the existing buildings on the Belmont House Property were designed with south facing windows and deliberate placement of common areas/open spaces, both indoors and outdoors, to maximize exposure to sunlight for its residents.

[11] Immediately north of the site is 110 Davenport Road, a four storey commercial building with a three storey street wall. To the east of the site is a 10-storey residential condominium fronting onto McAlpine Street, and further east are three-storey townhomes. Lands to the north and east, including the property owned and occupied by Belmont House, are designated within the OP as *Apartment Neighbourhoods*. Further to the north is a low rise residential neighbourhood with detached, semi-detached and townhouse units on lands designated as *Neighbourhoods*.

[12] To the west is a four storey apartment building, a small portion of Jesse Ketchum Park and to the southwest are Jesse Ketchum Park and Jesse Ketchum Public School. To the south of the site is the Florian, a 25-storey residential condominium tower. Further south is a 10 storey building at the corner of Davenport Road and Bay Street, and a 41 storey residential condominium currently under construction at 50 Scollard Street.

[13] The area context includes a number of existing buildings including:

- 19 storeys at 914-926 Yonge Street;
- 31 storeys at the northwest corner of Davenport Road and McMurrich Street;
- A 15 storey apartment building at 15 McMurrich Street; and
- A 55-storey and 26 storey combined hotel and residential building located south of 50 Scollard Street.

[14] In addition to the above noted buildings which already exist, or are currently under construction in the vicinity of Belmont House it is noteworthy that, during the course of this Hearing, a different panel of the Tribunal approved a Settlement; (*906 Yonge Street Development Inc. v. Toronto (City)*, 2024, CanLII 7644 (ON LT)) to which ABC and GYRA were Parties. In that case, an interim order was issued approving a ZBA in principle, subject to certain conditions. The effect of that Decision is to permit the development of a 40 storey building at 906 Yonge Street and a 23 storey building at 25 McMurrich Street.

RELEVANT HISTORY AND CURRENT PROPOSAL

[15] Since approximately 2001, there have been a number of development applications and appeals involving the Subject Property. In a 2006 Decision, *Davenport Three Develco Inc. v Toronto (City)*, 2006 CarswellOnt 3598 (OMB) the Ontario Municipal Board (“OMB”) directed that development thereon be limited to a three storey podium component of a proposed tall building at 76 Davenport Road. While the tall building at 76 Davenport Road was constructed, the low rise component on the Subject Property was never built.

[16] In 2016, a proposal to redevelop the site with a 39 storey residential building was refused by City Council and appealed to the Tribunal (*Davenport Development Inc. v.*

Toronto (City), 2019 CanLII 103878 (ON LPAT)). At that Hearing, the Local Planning Appeal Tribunal (“LPAT”) considered a revised proposal for a 29 storey mixed use building. The City and AGB both appeared in opposition to that proposal and the LPAT ultimately dismissed the appeal finding, among other things, that the 29 storey proposal did not conform with the OP, did not fit within the existing and planned context for the Bloor-Yorkville/North Midtown area and created unacceptable adverse impacts upon Belmont House.

[17] In 2021, the Applicant proposed to redevelop the site with a 19-storey mixed use building with ground floor non-residential uses and 42 dwelling units with a total gross floor area of 10,684.23 square metres (“m²”). Although the City failed to make a decision on the applications within the legislated timeframes, which led to the current Appeal, the City continued to have discussions with the Applicant which ultimately led to the Settlement now before the Tribunal.

[18] That Settlement still contemplates a 19 storey mixed-use building, but a number of revisions were made to the proposal at the express direction of the City. Importantly, the tower portion was shifted further to the south, and additional stepping to the north was incorporated. The Tribunal heard uncontested evidence that those specific revisions were intended to ensure further mitigation of shadow impacts upon Belmont House.

[19] While the City now supports the proposed 19 storey building on the Subject Property, AGB does not. Counsel for AGB noted that much of his clients’ case is rooted in the 2019 LPAT Decision, including the following finding at paragraph [53] of the Decision:

The facility and the occupants of Belmont are not commonplace in Apartment Neighbourhoods, and what may be reasonable and acceptable in the average Apartment Neighbourhood cannot be the standard in this situation. The residents at Belmont House are more vulnerable, less independent and less mobile. Belmont House has presented uncontradicted evidence that this development would change the conditions necessary for the health and well-

being of its residents. Good planning principles should prevail to protect the residents in these circumstances.

AREAS OF AGREEMENT AND POSITIONS OF THE PARTIES

[20] For the purposes of this Hearing, there were many areas of agreement between the Parties and their witnesses. Below is a summary of what the Tribunal considered to be the most noteworthy.

[21] The land use planning and urban design witnesses agreed that, since the time of the aforementioned application and the 2019 Decision, a number of new policy documents have come into effect, including but not limited to: the PPS 2020, the 2019 GP and the amended 2020 GP, the Downtown Secondary Plan (“DSP”) and a number of Official Plan Amendments. These witnesses further agreed “major” changes have been made to the development proposed for the Subject Property in response to the 2019 LPAT Decision including, but not limited to, a significant reduction in building height from 29 to 19 storeys and a reduction in the metric building height from 99.7 m to 66.0 m.

[22] All Parties agreed that the key issue for determination in this appeal relates to the shadow impacts from the proposed 19 storey building on Belmont house. There was no dispute with respect to the designations of the Subject Property (*Mixed Use Areas*) and Belmont House (*Apartment Neighbourhoods*) and no dispute that OP Policy 4.5(2) sets out the criteria for development within *Mixed Use Areas*, including the requirement that new buildings be located and massed so as to “adequately limit shadow impacts on adjacent *Neighbourhoods*, particularly during the spring and fall equinoxes”.

[23] There was also no dispute that, in accordance with the City’s terms of reference requiring study of impacts at the spring and fall equinoxes (March 21 and September 21), shadowing from the proposed development upon the surrounding area and Belmont House are adequately limited.

[24] The disagreement between the Parties was whether shadow impacts from the 19 storey proposal are adequately limited when studied at October 21 and February 21. Those times of year fall outside the City's Terms of Reference for shadow studies and outside of what is required by OP policies. A significant amount of disagreement also centred around OP policies which speak to limiting shadow impacts upon public open spaces and schoolyards, and whether outdoor amenity areas at Belmont House should be treated similarly.

[25] Counsel for AGB urged the Tribunal to dismiss the appeal in its entirety and submitted shadow impacts from the proposed 19 storey building would adversely affect the health and quality of life of the elderly residents of Belmont House, many of whom are confined to the facility and restricted in their ability to move about freely even within the facility due to mobility issues, illnesses and cognitive impairments. It was further submitted that, in light of the special needs of this vulnerable demographic, it is reasonable for Belmont House to ask that shadow impacts from the development be limited beyond the times typically required.

[26] Counsel for AGB argued that, in this case, an appropriate balancing of interests and policies leads to the conclusion that the building must be lowered. To that end, AGB presented an alternative development concept, which maintains currently proposed setbacks and stepbacks, but reduces the height of the building from 19 to 15 storeys. The Tribunal was urged to accept that 15 storeys results in a more adequate limitation of shadows during the months of February and October, providing Belmont House residents with more access to sunlight during two-thirds of the year.

[27] Counsel for the Applicant argued that the proposal before the Tribunal does not overlook impacts upon the elderly, submitting that the building was deliberately and sensitively designed to limit shadow impacts on Belmont House. While he acknowledged the general finding at paragraph [53] of the 2019 LPAT Decision, that "Belmont House is not commonplace in *Apartment Neighbourhoods* and what may be reasonable and acceptable in the average apartment neighbourhood cannot be the

standard in this situation”, he also drew the Tribunal’s attention to the following paragraph of that Decision, which provides more specific guidance to appropriately mitigate impacts upon Belmont House:

... the impact on Belmont House from this development is imposed by its non-compliance with the Official Plan policies and the design guidelines. The placement of the tower at the northern edge of the subject site is contrary to the Official Plan which calls for gradual reduction from south to north. A different placement and lower tower height would mitigate the impact of this tall building.

[28] He noted that those specific directions made their way into the 2021 proposal, which changed the placement of the tower, increased setbacks and decreased the height of the building by 10 storeys. He further noted the City did not accept that proposal, instead directing the Applicant to make additional design changes which go even further toward limiting shadowing on Belmont House.

[29] It was uncontested that the only shadow evidence presented at the previous LPAT Hearing related to shadow impacts in September and March, and that impacts in the months of February and/or October were not raised as an issue. Counsel for the Applicant submitted that AGB now seeks to set the bar higher, asking this Tribunal to read language in to existing policies which would effectively establish detailed shadow protections specific to Belmont House without going through the necessary public processes set out in the Act.

[30] The City echoed the position taken by the Appellant, and made brief additional submissions in support of the proposed development, noting that it would be subject to the City’s recently enacted Community Benefits Charge (“CBC”) By-law. The Tribunal heard that, four months after endorsing the Settlement, Council re-opened and amended its decision to add direction that the City and the Applicant engage in discussions in relation to the form of community benefits (cash vs. in-kind) to be received.

[31] It was submitted that, apart from what the City already considers to be good planning and urban design, it specifically views the proposed 19 storey building as serving an additional public interest benefit as a result of the community benefits to be received. It was noted that lowering the height of the building to 15 storeys would likely result in the exemption of the proposal from the CBC regime, which is applicable to developments of 10,000 m² or more.

SHADOW EVIDENCE

[32] Mr. Bouwmeester explained that his shadow studies compare existing/approved conditions against proposed conditions, showing where *new* shadows land on areas that are currently not shadowed. He opined that such incremental shadows do not necessarily represent adverse or undue impacts and explained that impact is typically assessed on the basis of the coverage area and the duration of new shadowing. He pointed out that the Subject Property and Belmont House are located within an urban downtown context and therefore, some degree of shadowing is unavoidable.

[33] The Tribunal's attention was drawn to the City's Terms of Reference for Shadow Studies, which require:

A sun/shadow study should be done for March 21 and September 21 at hourly intervals between 9:18 am and 6:18 pm...Development that proposes additional shadow impacts on parks and open space (including natural areas), will require supplementary sun/shadow tests at hourly increments for June 21 and December 21 to provide additional information on the impacts of shadows. Additional times may also be requested to respond to specific site contexts.

Mr. Bouwmeester explained that shadows are not generally studied beyond the benchmarks of March 21 and September 21, because the sun descends quickly throughout the day, and shadows are significantly longer earlier in the spring and later in the fall. In fact, the difference in the length of shadows throughout the day from September 21 to October 21 is roughly equivalent to the difference in the length of shadows between all of June to September.

[34] Despite the foregoing, he conducted not only the studies as required in the City's Terms of Reference but, for the purposes of this Hearing, conducted additional studies specific to Belmont House, including analysis of shadowing on areas of concern identified by AGB (windows and private amenity areas) on February 21, June 21 and October 21 and during times of concern specifically identified by AGB (11:18 a.m. to 3:18 p.m.). He also compared the 19 storey proposal and the 15 storey alternative development concept and provided sunpath studies depicting shadow impacts on areas of concern identified by AGB, and the duration of such impact at June 21, September 21, October 21, November 21 and December 21. In addition to the foregoing, he provided detailed tables which analyze the impact of the 19 storey building, quantifying the number of minutes of full sun, partial sun and shade upon various areas of concern identified by AGB from sunrise to sunset at February 21 and October 21.

[35] Mr. Bouwmeester led the Tribunal through all of these studies in great detail, opining that incremental shadows from the proposal are not only adequately limited but almost non-existent on Belmont House's indoor and outdoor amenity areas in June/September/March. He opined that, even when departing from the typical benchmarks of March and September, the proposal results in little incremental shadow on Belmont House and leaves a generous amount of sunlight available throughout the day in the locations of concern identified by AGB.

[36] With reference to tables quantifying the number of minutes of sun and shadow from sunrise to sunset at February and October 21, Mr. Bouwmeester noted that the majority of the indoor amenity area windows studied range from 264 to 432 total minutes per day of sunlight, with the majority of those minutes falling within the times of concern identified by AGB (11:18 am to 3:18 pm) and that many of those windows are in full sunlight.

[37] Similarly, outdoor amenity areas like the west wing roof terrace and the central garden/courtyard area still have 401 and 349 total minutes per day of sunlight (mostly

partial to full sun), with the majority of those minutes falling within 11:18 a.m. to 3:18 p.m., and the times when these areas are in full shade fall outside of that time period. Mr. Bouwmeester also suggested that use of those outdoor amenity areas may vary through the seasons, with use in February and October likely to be more limited as a result of the average outdoor temperatures in Toronto. The Tribunal's attention was drawn to federal data showing that average highs and lows in October are 13 and 6 degrees, and 0 and -6 degrees in February.

[38] While Mr. Bouwmeester admitted that he could not speak to the impacts of shadows upon the residents of Belmont House specifically, he nevertheless opined that, overall, there is limited incremental shadowing from the proposed development and a great deal of light remaining in each location studied throughout the day and particularly during the times of concern. In addition, the difference between the incremental shadows resulting from the 19 storey proposal compared to the 15 storey alternative design concept put forward by AGB would be insignificant.

[39] In furtherance of this opinion, he drew attention to the sunpath study which compares the number of minutes of shadowing from 15 and 19 storeys, respectively. He noted, for example, that at October/February 21, between 11:18 a.m. and 3:18 p.m., the proposed building casts additional shade for:

- 43 minutes on the centre of the roof terrace;
- 13 minutes¹ on the lobby lounge windows;
- 10 minutes on the west outdoor sitting area;
- 15 minutes in the centre of the courtyard garden, 66 minutes in the northeast corner and 49 minutes in the northwest corner; and
- 39 minutes, 56 minutes and 70 minutes on each of three second floor activity room windows in the east wing.

¹ In his oral evidence, Mr. Bouwmeester noted that he had made a typographical error on this slide which indicated 40 minutes and the correct amount of shade was, in fact, 13 minutes.

Beyond the foregoing, it was noted that amenity area windows and outdoor amenity spaces would be largely unaffected.

[40] Although the bulk of Mr. Bouwmeester's evidence focused upon shadow impacts from the proposed development on Belmont House, he briefly addressed shadowing on the surrounding neighbourhood, noting that new shadows from the proposed development do not reach key areas such as Jesse Ketchum Park and there is only minor shadowing on area sidewalks.

[41] Mr. Bouwmeester testified that previous rulings by this Tribunal and its predecessors have established that, similar to views, there is no guarantee to direct sunlight unless that right is vested in the OP or the ZBL, and that it is not necessary to have direct sunlight in order to have access to light. He further noted that relevant policies and guidelines in relation to shadowing do not afford the same level of protection to private amenity space as public parks and open spaces. He pointed out that there are no special shadow policies/protections in the OP or ZBL applicable to Belmont House, and while he acknowledged that it is located within a "shadow sensitive" area in the Bloor-Yorkville/North Midtown Urban Design Guidelines ("BYGL"), he noted the absence of any protections for individual private properties. Instead, the guidelines require that residential areas and the public realm within these areas be protected from undue overshadowing.

[42] The BYGL indicate that shadows should be shown for December 21, June 21, March and September 21 for the hours of 10 a.m., 11 a.m., noon, 2 p.m. and 4 p.m. and that studies for additional times may be required when warranted. While it was Mr. Bouwmeester's opinion that additional times refers to times of the day, studies conducted at the request of AGB for additional times of the year led him to conclude that the 19 storey building adequately limits shadow impacts on all surrounding areas (including Belmont House) in accordance with all relevant policies and guidelines.

[43] Of the approximately 170 shadow studies Mr. Bouwmeester has conducted in the City of Toronto, he has never been required/asked to analyze shadow impacts in February and October and has never been involved in a project where February and October were the determining factor in evaluating building heights. In his view, giving weight to shadow impacts in February and October could set a dangerous precedent leading to the hinderance of future development in Toronto.

PSYCHOLOGICAL EVIDENCE

[44] The Tribunal heard extensive evidence from Dr. Ancoli-Israel with respect to Circadian Rhythms ("CR's"), which she likened to an internal body clock, reset each day with exposure to light. She explained that we depend upon daily cycles of dark and light to regulate energy, mood, sleep, metabolism, hormones and other biological processes, and the strongest cue for synchronizing CRs is light - the best source of which is the sun. She noted the most beneficial exposure to light is gained outdoors with direct exposure to sun, followed by exposure to sun through a window.

[45] Dr. Ancoli-Israel testified that older adults require a greater amount of exposure to light, referencing recent studies of elderly patients with Dementia showing that exposure to light throughout the day had a positive effect on sleep quality, CR's, mood and cognitive performance, reduced daytime napping and increased social and physical activity. She testified that the inverse – insufficient exposure to light – poorly impacts CR's and negatively affects overall health, including increasing the risk for older adults of developing certain conditions such as Dementia. Ultimately, she opined that greater exposure to bright light throughout the day aids in better CR's and results in a better overall quality of life.

[46] She explained that institutionalized individuals, like the residents of Belmont House, typically have less access to sunlight because they are often "stuck" inside. In her view, this portion of the population should be treated differently, in recognition of the fact that light exposure is more important for them but they cannot, for instance, take

walks in the park whenever they want. She further explained that those with cognitive impairments, such as Alzheimers and Dementia, tend to pace and move around and do not understand the importance of moving to places where they can receive light exposure, while those with mobility impairments, who may understand the need for exposure to light, do not have the ability to get up and go to the places where they can receive such exposure.

[47] Although she did not provide an opinion on the amount of light exposure those with Alzheimer's/Dementia require, when questioned about the minimum amount of light exposure required for elderly persons in general, Dr. Ancoli-Israel noted that 30 minutes of bright light, while not optimal, would be the minimum daily exposure required. In cross-examination, she agreed that it is possible for one to receive therapeutic benefits from exposure to indirect light (for example, sitting outdoors in the shade on a bright sunny day or near a window in partial shade), but pointed out that in order to benefit from a lower level of light, one would require a longer exposure thereto. She also noted that while exposure to light *throughout the day* has the most positive effect overall, if one were only going to have *some* exposure to light, morning light (ideally soon after when one wakes up, but any time before noon) would provide the most benefit.

[48] Dr. Ancoli-Israel noted that despite this Hearing being focused upon studies involving sunlight and shadow impacts at specific times of the day and year, "health is a year-round issue" and opined that what is more important to assess is the "bigger picture of exposure to light throughout the day and throughout as much of the year as possible". Taking that bigger picture view, she commented upon the shadow studies provided for both the 19 storey proposal and the 15 storey alternative development concept. She provided a general opinion that "more light is better" and a 15 storey building, while not ideal, would provide more bright light throughout the day and year in the areas where Belmont House residents are most likely to congregate, allowing for increased opportunities to enjoy the health benefits associated with improved CR's.

[49] Despite her opinion with respect to the foregoing, Dr. Ancoli-Israel admitted on cross examination that she had not conducted any light level analysis at Belmont House for the purposes of this Hearing, despite having done so for the previous LPAT Hearing, nor were those previous studies put before the Tribunal for this Hearing. She admitted that she had not interviewed any residents or caregivers at Belmont House, and was not familiar with any of the residents' specific conditions/treatment plans/needs and how much time they are exposed to sunlight (indoors or outdoors). Finally, Dr. Ancoli-Israel acknowledged that, as a result of the climatic conditions in Toronto, weather and temperature in February and October would play a role in the use of outdoor amenity areas for light exposure.

LAND USE PLANNING, ARCHITECTURE AND URBAN DESIGN EVIDENCE

[50] The majority of the evidence in this regard focused on local policies and guidelines. There was little disagreement with respect to consistency and conformity with the PPS and GP and matters of provincial interest, but Mr. Rendl did note that health is an important planning interest; that Belmont House meets the definition of special needs housing for the purposes of the PPS; and that the GP speaks to complete communities which support people of all ages and abilities. Both he and Mr. Spaziani view Belmont House as a sensitive land use in a shadow sensitive area with a special needs user group that should be treated differently. Relying on the evidence of Dr. Ancoli-Israel, they opined that lowering the building to 15 storeys would result in significant improvement in access to sunlight during the day in the months of February and October ultimately benefitting the health of this user group and moreover, would provide better transition to the lower scale development to the north.

[51] The planning and urban design witnesses for the Applicant opined that the proposal has appropriate regard for matters of provincial interest, is consistent with the PPS, conforms with the GP and OP, and maintains the intent of applicable guidelines. They also pointed out that, since the previous LPAT Decision, provincial policies have been updated to include a greater emphasis on transit supportive intensification.

[52] Mr. Smith provided a comprehensive review of applicable provincial and local policy objectives, and opined that the proposal strikes an appropriate balance. He noted that it will provide predominantly large, family-sized units in proximity to three Major Transit Station Areas and, through careful tower placement, stepping and massing, the built form impacts (including shadow impacts) on the surrounding area and on Belmont House specifically will be adequately limited.

[53] A number of policies within the OP including those within the DSP, Site and Area Specific Policy No. 211 ("SASP 211") and relevant guidelines, specifically address shadow impacts. These include *Mixed Use Area* policy 4.5.2 (discussed above) as well as built form and public realm policies 3.1.2 and 3.1.3, which speak to access to direct sun and daylight on the public realm, good transition in scale between areas of differing building heights and/or intensity of use, designing the tower portions of buildings to limit shadow impacts on the public realm and neighbouring properties, maximizing access to sunlight and open views of the sky from the public realm by stepping back towers, limiting tower floorplates and locating and shaping balconies to limit shadow impacts.

[54] Mr. Rendl testified that planning is done for the benefit of people, with the focus of most planning policies being on an anonymous general population. In this case though, he exercised his professional judgment as a planner to interpret applicable policies expansively for the benefit of the elderly residents of Belmont House who have special needs. He pointed out that there are specific policies and guidelines which plan for certain sectors of the population including children, pets and the disabled, but noted a lack of same when it comes to seniors. He drew attention to the OP preamble which states, in part, "this Plan provides a general guide, but cannot encompass or even imagine every circumstance". He expressed the view that "public interest should not be short-changed because you can't find a policy that corresponds to your specific circumstance" and until such time as specific policies/guidelines for seniors come forward, it is "up to planners to fill that gap". To that end, he suggested that the Tribunal

look beyond policy text and designations and instead focus upon the use and the user to determine relevant impacts and the appropriate mitigation of same.

[55] By way of example, he discussed OP policy 2.3.1.3, which speaks to maintaining adequate light for residents in *Neighbourhoods* and policy 4.5.2, which addresses shadow impacts in *Neighbourhoods*. He acknowledged that these policies do not mention residents of *Apartment Neighbourhoods*. However, he expressed the view that we must move away from a restrictive interpretation of the policies which differentiate between these two OP designations, because residents of *Apartment Neighbourhoods* next to *Mixed Use Areas*, especially the residents of Belmont House, are no less deserving of protection from shadowing and access to adequate light. Similarly, he referred to policy 3.1.3.5 (which speaks to ensuring access to direct sunlight and daylight on the public realm) and expressed the view that private spaces are equally deserving of access to sunlight.

[56] Mr. Smith disagreed with Mr. Rendl and, without going into debate about who/what is or is not deserving, opined that policy makers deliberately chose appropriate designations, protections and inclusions/exclusions within the OP. In his view, it would be inappropriate to apply *Neighbourhoods* policies to the *Apartment Neighbourhoods* and furthered that in order for Mr. Rendl's contention to be given any weight in policy terms, the OP would need to be amended.

[57] The DSP, which directs the highest density to *Mixed Use Areas* near existing or planned transit stations, designates the site as *Mixed Use Areas 2*. These areas are intended as intermediate, transitional areas between taller development in *Mixed Use Areas 1* and predominantly mid-rise *Mixed Use Areas 3*. The policies for *Mixed Use Areas 2* speak to building typologies that respond to their site context, including mid rise and some tall buildings. DSP policy 9.17 speaks to adequately limiting shadow impacts on sidewalks, parks, open spaces, natural areas and institutional open spaces as necessary to preserve their utility. Policies 9.18 and 9.19 speak to adequately limiting net new shadow on specific parks, open spaces and on all schoolyards.

[58] Both the Subject Property and Belmont House fall within SASP 211. Among other things, SASP 211 specifies that the tallest buildings in the area will be located in the 'Height Peak' area in the vicinity of the intersection of Bloor/Yonge Streets. It also specifies that building heights will step down from that intersection within the *Mixed Use Areas* in descending ridges of height along Yonge Street, Bloor Street and along portions of Avenue Road, Bay and Church, and provides direction for development in *Mixed Use Areas* adjacent or near to 'Low Rise Areas' and in areas of Special Identity. It also provides direction on urban design in general, specifying that;

In order to assist in meeting the objectives of this Plan and area specific policies, the Bloor-Yorkville/North Midtown Urban Design Guidelines will be used to provide direction for reviewing development applications in this area. These guidelines will be read in conjunction with the urban design policies in the Official Plan and should not be substantially changed without full public consultation.

[59] SASP 211 notes that pedestrian activity is a vital component of the Bloor-Yorkville/North Midtown Area, and the amenity of public sidewalks, walkways, access and views to open space and parks will be maintained or enhanced and any additional shadowing and uncomfortable wind conditions will be minimized as necessary to preserve their utility.

[60] Mr. Spaziani opined that, in general, a tall midrise building of 15 storeys is more appropriate for this site than what is proposed. He explained that this opinion was informed by the Height Peaks and Ridges in SASP 211, the idea that this site is to be "transitional", and the 2006 OMB Decision which considered a height of three storeys to be appropriate. It was noted that, beyond the impacts to Belmont House, a 19 storey building would not achieve good fit with, and transition to, the surrounding area. Mr. Rendl agreed and noted that the existing zoning which speaks to a three storey maximum height, suggests that three storeys should be the benchmark for assessing development on this Subject Property rather than starting from 29 storeys and working backwards.

[61] While acknowledging that guidelines do not generally have the weight of OP policy, SASP 211 states that the BYGL *will* be used to provide direction for reviewing development applications. As such, Mr. Spaziani gave weight to the guidelines, treating them “similar to OP policies”. He noted that the BYGL speak to protecting access to sunlight and adequately limiting shadows on open space, including schoolyards, playfields and cemeteries. He likened the supervised spaces outdoors at Belmont House to those of a schoolyard, and opined that such spaces should be afforded the same protections. He noted that because of the special needs of the user group at Belmont, it would be appropriate to limit shadow impacts beyond the standard test times of March and September.

[62] On cross examination, Mr. Spaziani agreed there is no policy in the OP, the DSP or SASP 211 that establishes a test of no new-net shadow and no policy addressing shadow impacts on Belmont House, other than the reference in SASP 211 to the BYGL to shadow sensitive areas, one of which is where Belmont House is located. When questioned about the policy rationale for his opinion that outdoor spaces at Belmont House should be treated like schoolyards, Mr. Spaziani admitted there was none, stating “I’ve created my own policy, if you will”.

[63] The witnesses for the Applicant again disagreed with the notion that policies and guidelines applicable to public open spaces, schoolyards etc., should be stretched to extend to private open spaces/amenity areas at Belmont House. While they acknowledged that the existing zoning and SASP 211 remain in force, they noted that the Subject Property is not adjacent to Low Rise Areas and not within an area of Special Identity. In addition, they noted that since the 2006 OMB Decision (which informed the existing zoning) and the most recent approval of SASP 211 almost 20 years ago, the area has evolved with tall buildings that have not followed the Height Peaks and Height Ridges. In fact, the 19 storey building now proposed would be lower in height than a number of existing and planned buildings within the Height Ridge and within the immediate area of Belmont House, including the recently approved 40 and 23 storey buildings at 906 Yonge Street and 25 McMurrich Street (discussed above at paragraph

[14]). For this reason, they opined that SASP 211, as it relates to height, is of little value and that the existing zoning is out of step with the existing and planned context of the area.

[64] Mr. Kasprzak opined that applicable policies and guidelines all recognize that, to some degree, shadow impacts from new development are unavoidable in the urban context of downtown Toronto, which is why they speak to *limitation* rather than elimination of such impacts, meaning that some shadowing is, in fact, permitted. Similar to Mr. Bouwmeester, Mr. Kasprzak assesses impact by considering the area impacted by shadow and the duration of that impact.

[65] While Belmont House is located within a shadow sensitive area in the BYGL, Mr. Kasprzak noted that the guidelines do not have the force of policy and pointed out that shadow sensitive area is not a term which is used in the OP, the DSP or SASP 211. In his view, the proposal conforms with all relevant policies and maintains the intent of all applicable guidelines, including but not limited to, the Tall Building Design Guidelines, which speak to locating and designing tall buildings to protect access to sunlight and sky view within the surrounding context of streets, parks, public and private open space and other shadow sensitive areas. With reference to the detailed studies provided by Mr. Bouwmeester, he expressed the view that this has been done, noting that one of the main considerations driving the various revisions to design of the building was Belmont House and the need to mitigate potential shadow impacts thereon.

ANALYSIS AND FINDINGS

[66] For the reasons that follow, the Tribunal accepts the evidence and opinions of the witnesses for the Applicant, allows the appeal in part and approves the ZBA in principle.

[67] The Parties agreed, in light of the narrow issues presented, the Tribunal is tasked with balancing various interests and policies in order to determine what, under the

circumstances, constitutes good planning. The Tribunal is satisfied that the Settlement is representative of good planning, and finds that the interests of the Belmont house have been sensitively and appropriately balanced with larger Provincial and Municipal planning objectives, including but not limited to intensification through transit-supportive development, which contributes to a range of housing options on an underutilized site.

[68] While the Tribunal recognizes and is sympathetic to the concerns raised by AGB, Belmont House is located in a downtown urban area which has, for many years, been evolving with tall buildings. The Tribunal agrees with the submissions of the Applicant that the ruling sought by AGB would effectively result in the provision of special protection/status to Belmont House and that there is a formal mechanism available to seek such protection/status. The hearing of a ZBA appeal is not the appropriate forum for same.

[69] Relevant policies in relation to shadowing set out the specific test to be met (which is whether the proposed development adequately limits impacts) as well as relevant times and areas/spaces to be studied in order to determine whether such impacts are adequately limited. It is clear from a plain reading of these policies that a deliberate choice was made to differentiate *Neighbourhoods* from *Apartment Neighbourhoods* in terms of shadowing.

[70] Although the previous LPAT Decision recognized that Belmont House is not typical of what exists in the *Apartment Neighbourhoods* designation, it does not create special policies/protections in relation to Belmont House, does not stand for the proposition that *Neighbourhoods* policies can be applied to Belmont House, and does not include an obligation to study and/or limit shadow impacts beyond what is required by relevant policies and the City's Terms of Reference. In the view of this Tribunal, the previous LPAT Decision provides specific guidance in terms of the design of development on the Subject Property in an effort to lessen impacts upon Belmont House. By lowering the height of the building and changing the placement of the tower, the Applicant has followed that guidance. It was also considered significant that the City

required the Applicant to include additional sculpting and design changes to ensure further reduction of shadowing on Belmont House specifically, and is now in support of the 19 storey development.

[71] The planning and urban design opinions offered by Messrs. Rendl and Spaziani largely focused on extending to Belmont House protections specific to *Neighbourhoods* and to the public realm/public open spaces. The Tribunal acknowledges their well-intentioned reasoning for interpreting policies in this way, but is nevertheless of the view that reading in language to “fill in gaps” (whether existing or perceived), erodes designations and protections deliberately chosen by the policy makers and would not result in good planning. The Tribunal instead preferred the evidence of Messrs. Kasprzak and Smith, who applied a plain reading approach in their interpretation and application of relevant policies and guidelines which, in the view of the Tribunal, maintains the purpose and intent of same.

[72] While SASP 211 states that the BYGL *will* be used to provide direction for reviewing development applications, the Tribunal accepts the opinions of the witnesses for the Applicant, that the existing context of the Bloor Yorkville/North Midtown Area has evolved differently than what was envisioned by SASP 211, with taller buildings outside of designated Height Peaks and Ridges. The Tribunal finds it significant that, at 19 storeys, the proposed development will be lower than other existing and recently approved developments in the immediate area, including that of 906 Yonge and 25 McMurrich. In addition, although it is acknowledged that Belmont House is in a “shadow sensitive area” and the BYGL indicate that studies for additional times may be required when warranted, in this instance, the City did not require studies for additional times, be it times of day or times of the year. In any event, the guidelines require that shadows be adequately limited, and the Tribunal accepts the evidence and opinions of Mr. Bouwmeester that this has been done both for the times of year the policies require and beyond.

[73] Although quite a bit of argument and opinion was heard with respect to how the words “open space” should be interpreted, and whether the private open spaces at Belmont House should be treated similarly, the Tribunal is satisfied, based upon the evidence provided by Mr. Bouwmeester, that while there may be some incremental shadow resulting from the 19 storey building as compared to the 15 storey building on February 21 and October 21, there is still plenty of sunlight, either direct or partial, on both the windows and outdoor open spaces at Belmont House such that the utility of those spaces is preserved for the benefit of the residents.

[74] Mr. Kasprzak explained that, as an urban designer, he considers buildings and has no control over the users or use of spaces, which may change over time. In fact, the Tribunal heard evidence that a rooftop terrace, once regularly enjoyed by Belmont House residents, has been closed off indefinitely due to safety concerns and residents must now resort to using other spaces. The Tribunal finds that similarly, should a portion of the outdoor courtyard, for example, be shadowed for a certain period of time, the use of that space and the behaviours of staff and residents may adapt such that residents find or are directed to areas which remain exposed to sunlight during that time.

[75] Counsel for AGB submitted that, if one does not possess the expertise to understand the impact of shadows upon the health and well-being of the residents of Belmont House, one cannot claim that the OP test of “adequately limiting” shadow impact is satisfied. He further submitted that Dr. Ancoli-Israel was the only witness with the expertise in this regard, and urged the Tribunal to accept her opinion that the 15 storey concept would be a significant improvement over the 19 storey proposal, allowing for greater light exposure in amenity areas to enhance the health and well-being of the residents of Belmont House.

[76] While Mr. Bouwmeester admitted that he could not speak to shadow impacts upon the residents of Belmont House specifically, the Tribunal agrees with the submissions of the Applicant, that Dr. Ancoli-Israel’s evidence was also not helpful in

this regard, as she offered no analysis in terms of the current levels of light at Belmont House, the amount of time residents are exposed to such light each day and the specific impact the proposal would have. Instead, she offered opinions of a general nature including but not limited to: more light is better throughout the day, more light is better throughout the year and the shadows cast by a 15 storey building would be significantly less impactful than the 19 storeys proposed.

[77] In contrast, Mr. Bouwmeester provided shadow studies with detailed graphs and tables showing the amount of time specific areas of concern identified by AGB would be in sun, partial sun and shade to support his opinion that the comparative difference between 19 and 15 storeys would be insignificant. The Tribunal found this detailed evidence to be of great assistance, and accepts the opinions of Mr. Bouwmeester that: incremental shadows from the proposal are adequately limited on Belmont House's indoor and outdoor amenity areas in June/September/March; such areas will still benefit from a great deal of light exposure throughout the day in February/October (and specifically at the times of concern identified by AGB); and based on the existing policy framework, February and October studies ought not to be determinative of building height. The Tribunal further accepts his opinion that incremental shadow does not, in and of itself, equate to adverse impact, and notes Dr. Ancoli-Israel's evidence that, although not ideal, the residents can still benefit from receiving partial sunlight.

[78] Finally, it was submitted by counsel for AGB that there is no policy requirement to construct a 19 storey building and no evidence that a 15 storey building would be inappropriate at this location. While this may be so, the Tribunal finds that there is no basis in policy to refuse the 19 storey building and although not determinative, the current proposal will provide additional public benefit through CBCs, while a 15 storey building would be exempt from this regime.

[79] Overall, the Tribunal preferred the opinion evidence provided by the witnesses for the Applicant and finds that the Settlement satisfies the requisite legislative tests, meets the intent of the applicable guidelines, heeds the direction provided by the LPAT

Decision in 2019 and, with the additional design alterations borne out of settlement discussions with the City, appropriately transitions to, and sensitively mitigates shadow impacts upon Belmont House while achieving a number of higher order policy goals.

INTERIM ORDER

[80] The Tribunal orders that the appeal pursuant to s. 34(11) of the *Planning Act* is allowed in part, on an interim basis, contingent upon confirmation, satisfaction or receipt of the pre-requisite matters identified in paragraph [81] below. The Zoning By-law Amendment is approved in principle and generally in accordance with the draft submitted as **Exhibit D** to the Affidavit of Peter Smith, appended hereto as **Attachment 1**.

[81] The Tribunal will withhold the issuance of its Final Order, contingent upon the satisfaction of the following pre-requisite matters:

- a) The Tribunal has received, for its review and approval, the Zoning By-law Amendment submitted in a final form confirmed to be satisfactory to the City Solicitor and the Chief Planner and Executive Director, City Planning; and
- b) The Tribunal has received confirmation from the City Solicitor that:
 - i) The Owner has provided a revised Functional Servicing Report, Stormwater Management Report, Municipal Servicing and Grading Plan, and any other reports or documents deemed necessary in support of the development to the City for review and acceptance by and to the satisfaction of the Chief Engineer and Executive Director, Engineering and Construction Services; and
 - ii) The Owner has entered into a financially secured agreement to the satisfaction of the Chief Engineer and

Executive Director, Engineering and Construction Services for the construction of any improvements to the municipal infrastructure, at the Owner's sole expense, should it be determined that upgrades are required to support the development as identified in the accepted Functional Servicing and Stormwater Management Reports or other reports accepted by the Chief Engineer and Executive Director, Engineering and Construction Services.

[82] The Applicant and the City are directed to update the Tribunal, within six months of the issuance of this Interim Order, of their progress on the above noted conditions and the expected timeline in which they intend to request issuance of the Final Order.

[83] The Tribunal further orders that the appeal pursuant to s. 114(15) of the *City of Toronto Act* is held in abeyance, and directs the City and the Applicant to provide an update to the assigned Case Coordinator within six (6) months.

[84] The Member will remain seized for the purposes of issuing the Final Order and may be spoken to should issues arise with respect to the implementation of this Order.

"S. BRAUN"

S. BRAUN
VICE-CHAIR

Ontario Land Tribunal

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

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

ATTACHMENT 1

Authority: Ontario Land Tribunal Decision issued on [date] and Ontario Land Tribunal Order issued on [date] in Tribunal File OLT-22-004195

CITY OF TORONTO**BY-LAW [Clerks to insert By-law number]****To amend Zoning By-law 569-2013, as amended, with respect to the lands municipally known in the year 2022 as 100 Davenport Road.**

Whereas the Ontario Land Tribunal, by its Decision issued on [date] and its Order issued on [date], in respect of Tribunal File OLT-22-004195, upon hearing an appeal under Section 34(11) of the Planning Act, R.S.O. 1990, c. P13, as amended, determined to amend Zoning By-law 569-2013, as amended, with respect to the lands municipally known in the year 2022 as 100 Davenport Road; and

Whereas the Ontario Land Tribunal has the authority pursuant to Section 34 of the Planning Act, as amended, to pass this By-law; and

The Ontario Land Tribunal Orders:

1. The lands subject to this By-law are outlined by heavy black lines on Diagram 1 attached to this By-law.
2. The words highlighted in bold type in this By-law have the meaning provided in Zoning By-law 569-2013, as amended, Chapter 800 Definitions.
3. Zoning By-law 569-2013, as amended, is further amended by adding the lands subject to this By-law to the Zoning By-law Map in Section 990.1, and applying the following zone label to these lands CR 2.0 (c2.0; r2.0) SS1 (x####) as shown on Diagram 2 attached to this By-law.
4. Zoning By-law 569-2013, as amended, is further amended by adding the lands subject to this By-law to the Policy Areas Overlay Map in Article 995.10.1 and applying the following Policy Area label to these lands: PA-1 as shown on Diagram 3 attached to this By-law.
5. Zoning By-law 569 -2013, as amended, is further amended by adding the lands to the Height Overlay Map in Article 995.20.1, and applying the following height and storey label to these lands: HT 18.0, as shown on Diagram 4 attached to this By-law.
6. Zoning By-law 569 -2013, as amended, is further amended by adding the lands to the Lot Coverage Overlay Map in Article 995.30.1, and applying no value.

City of Toronto By-law [Clerks to insert By-law number] (OLT)

7. Zoning By-law 569-2013, as amended, is further amended by adding the lands to the Rooming House Overlay Map in Article 995.40.1, and applying the following rooming house label to these lands B3, as shown on Diagram 5 attached to this By-law.
8. Zoning By-law 569-2013, as amended, is further amended by adding Article 900.11.10 Exception Number CR ### so that it reads:

(###) Exception CR ###

The lands, or a portion thereof as noted below, are subject to the following Site Specific Provisions, Prevailing By-laws and Prevailing Sections:

Site Specific Provisions:

- (A) On lands municipally known as 100 Davenport Road, if the requirements of By-law [Clerks to insert By-law ##] are complied with, a **building** or **structure** may be constructed, used or enlarged in compliance with Regulations (B) to (H) below;
- (B) Despite regulations [40.5.40.10(1) and (2)], the height of a **building** or **structure** is the distance between the Canadian Geodetic Datum of 116.88 metres and the elevation of the highest point of the **building** or **structure**;
- (C) Despite regulation [40.10.40.10(1)(2) or (3)], the permitted maximum height of a **building** or **structure** is the number in metres following the letters "HT" as shown on Diagram 6 of By-law [Clerks to insert By-law ##];
- (D) Despite regulations [40.5.40.10(3) to (8) and (C) above, the following equipment and **structures** may project beyond the permitted maximum height shown on Diagram 6 of By-law [Clerks to insert By-law ##]:
 - (i) equipment used for the functional operation of the **building**, including electrical, utility, mechanical and ventilation equipment, as well as enclosed stairwells, roof access, maintenance equipment storage, elevator shafts, chimneys, and vents, by a maximum of 6.5 metres;
 - (ii) **structures** that enclose, screen or cover the equipment, **structures** and parts of a **building** listed in (i) above, including a mechanical penthouse, by a maximum of 6.5 metres;
 - (iii) architectural features, parapets, and elements and **structures**

City of Toronto By-law [Clerks to insert By-law number] (OLT)

associated with a **green roof**, by a maximum of 3.0 metres;

- (iv) **building** maintenance units and window washing equipment, by a maximum of 6.5 metres;
- (v) planters, **landscaping** features, guard rails, and divider screens on a balcony and/or terrace, by a maximum of 3.0 metres;
- (vi) antennae, flagpoles and satellite dishes, by a maximum of 5.0 metres; and
- (vii) trellises, pergolas, and unenclosed **structures** providing safety or wind protection to rooftop **amenity space**, by a maximum of 3.0 metres;

(E) Despite regulation [40.10.40.40(1)], the permitted maximum **gross floor area** of all **buildings** and **structures** is 11,000 square metres, of which:

- (i) a maximum of 10,500 square metres shall be residential **gross floor area**; and
- (ii) a maximum of 500 square metres shall be non-residential **gross floor area**;

(F) Despite regulation [40.10.40.70(1)(2) or (3)], the required minimum **building setbacks** are as shown in metres on Diagram 6 of By-law [Clerks to insert By-law ##];

(G) Despite Clause [40.10.40.60] and (F) above, the following elements may encroach into the required minimum **building setbacks** and **main wall** separation distances as follows:

- (i) decks, porches, and balconies, by a maximum of 2.2 metres;
- (ii) canopies and awnings, by a maximum of [-] metres;
- (iii) exterior stairs, access ramps and elevating devices, by a maximum of 0.6 metres;
- (iv) cladding added to the exterior surface of the **main wall** of a **building**, by a maximum of 0.6 metres;
- (v) architectural features, such as a pilaster, decorative column, cornice, sill, belt course, or chimney breast, by a maximum of 0.6 metres;
- (vi) window projections, including bay windows and box windows, by a

City of Toronto By-law [Clerks to insert By-law number] (OLT)

maximum of 0.9 metres;

(vii) eaves, by a maximum of 0.9 metres;

(viii) a dormer, by a maximum of 0.9 metres; and

(ix) air conditioners, satellite dishes, antennae, vents, and pipes, by a maximum of 0.9 metres; and

(H) Regulations 200.25.15, 200.25.15.2, 970.10.1 and 970.10.15 shall not apply.

9. Despite any severance, partition or division of the lands, the provisions of this By-law shall apply as if no severance, partition or division occurred.

Ontario Land Tribunal Decision issued on [date] and Ontario Land Tribunal Order issued on [date] in Tribunal File OLT-22-004195



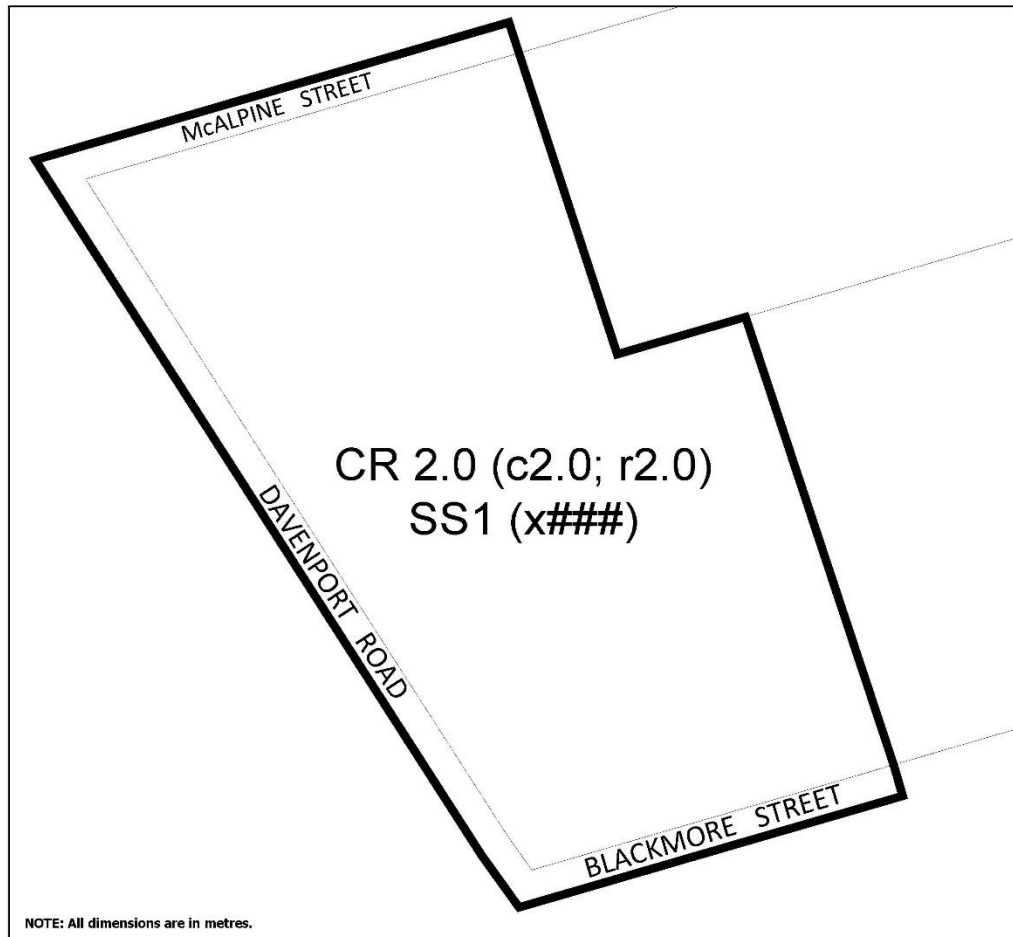
100 Davenport Road, Toronto

Diagram 1

Not to Scale



City of Toronto By-law No. xxx-2023(OLT)



 **Toronto** City Planning Division

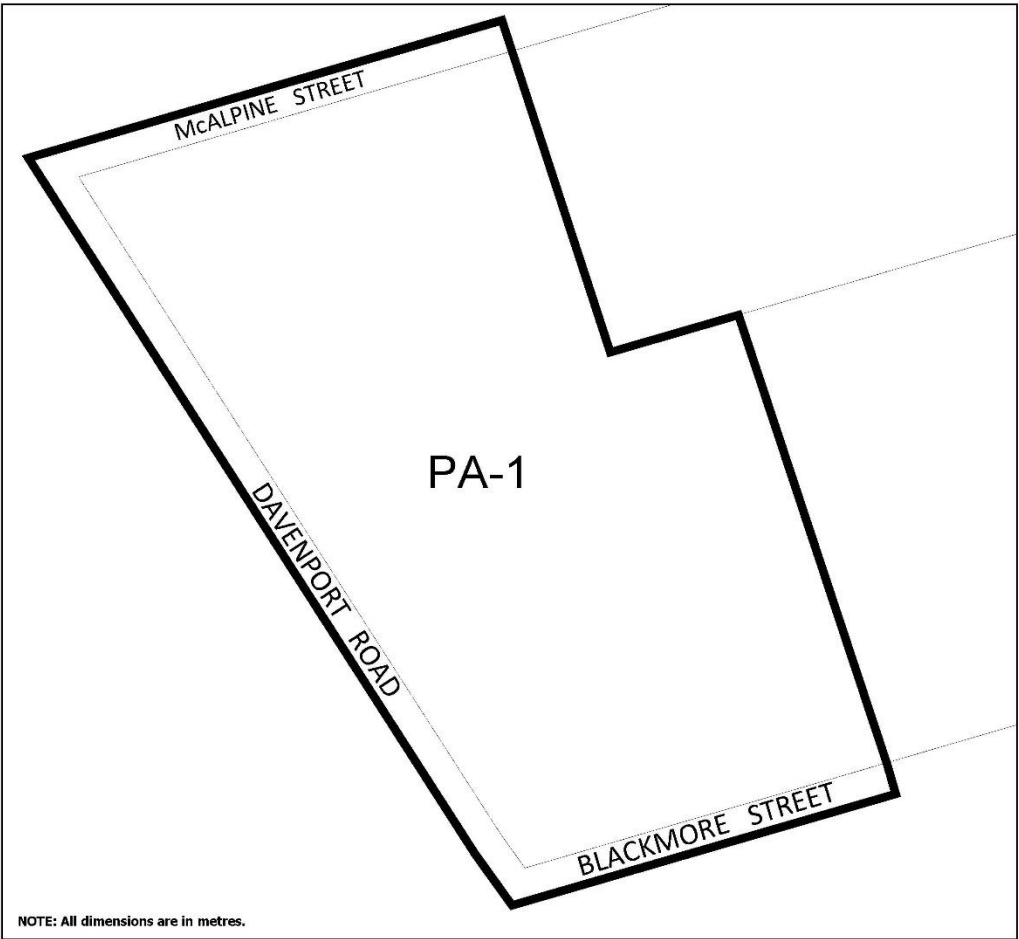
100 Davenport Road, Toronto

Diagram 2

Not to Scale



City of Toronto By-law No. xxx-2023(OLT)



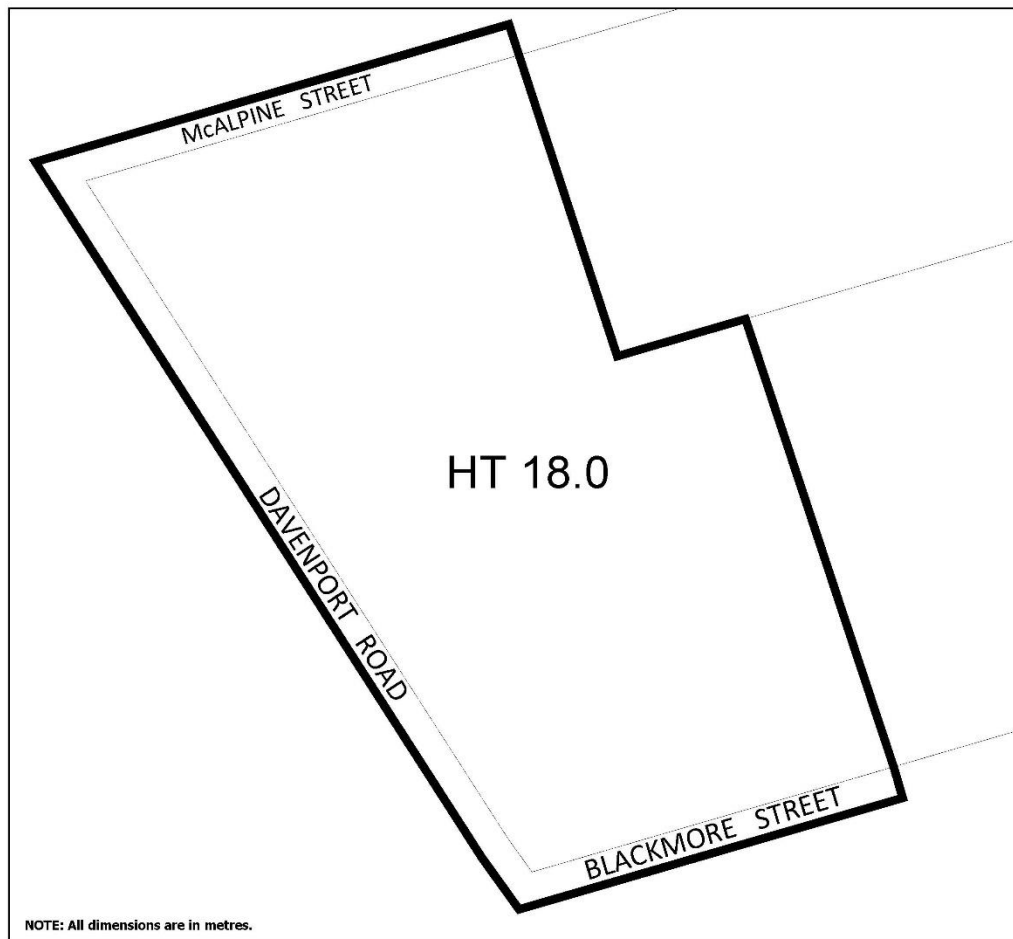
100 Davenport Road, Toronto

Diagram 3

Not to Scale



City of Toronto By-law No. xxx-2023(OLT)



 **Toronto** City Planning Division

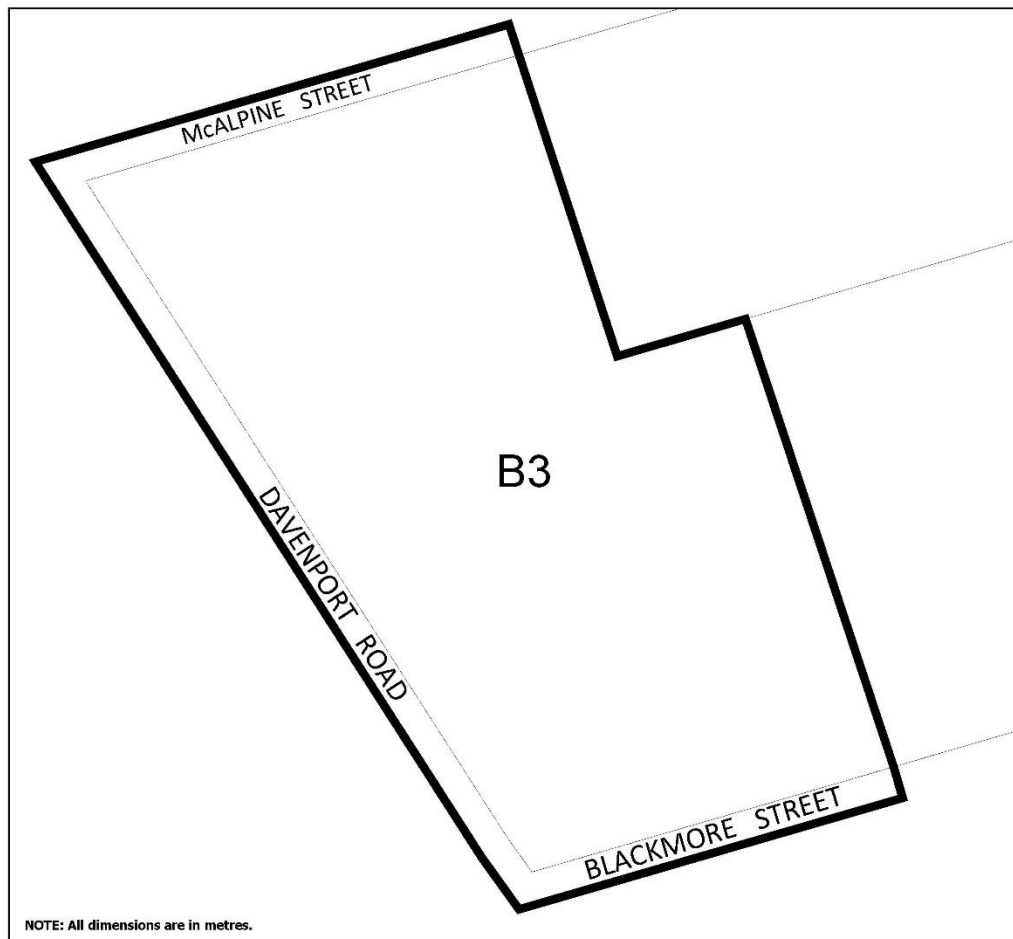
100 Davenport Road, Toronto

Diagram 4

Not to Scale



City of Toronto By-law No. xxx-2023(OLT)



 **Toronto** City Planning Division

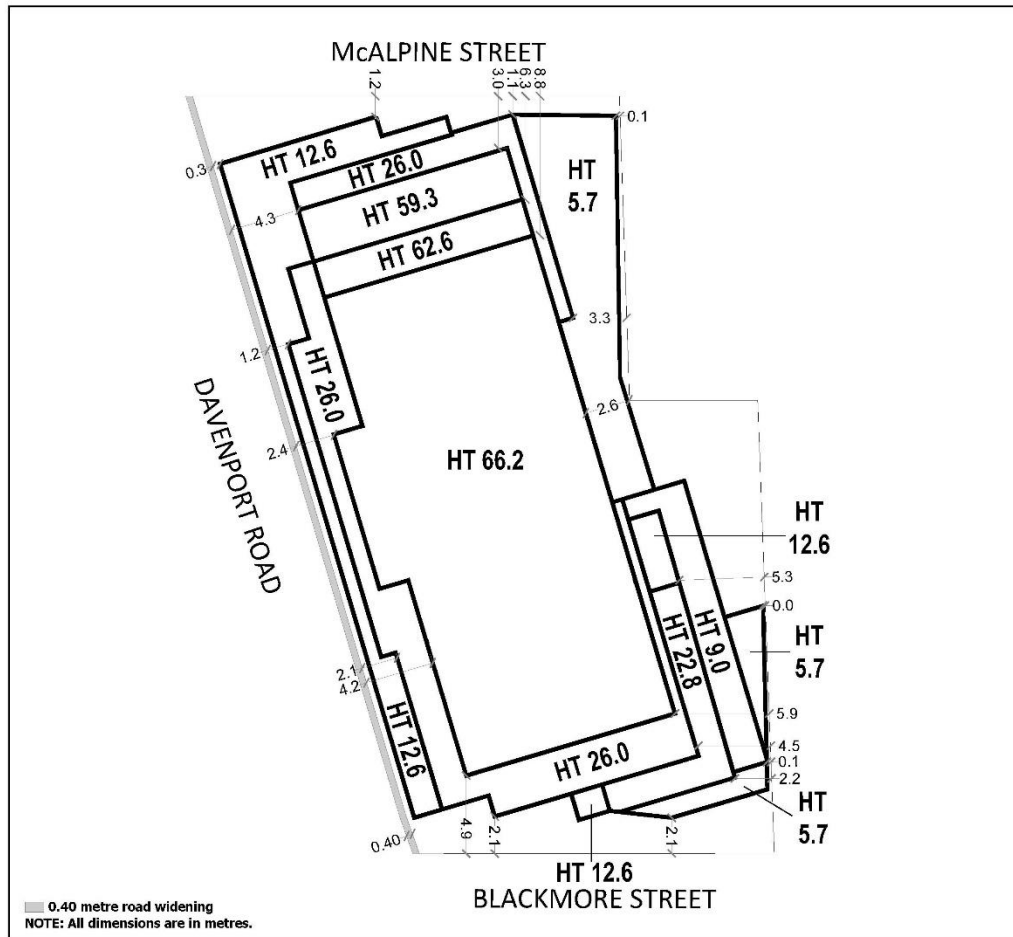
100 Davenport Road, Toronto

Diagram 5

Not to Scale



City of Toronto By-law No. xxx-2023(OLT)



Toronto City Planning Division

100 Davenport Road, Toronto

Diagram 6

Not to Scale

