

**Ontario Land Tribunal**  
Tribunal ontarien de l'aménagement  
du territoire



**ISSUE DATE:** August 08, 2025

**CASE NO(S):**

OLT-24-000656

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

Appellant:	Jane Bloor LP
Subject:	By-law No. 569-2013
Description:	To permit a 12-storey mixed use building
Reference Number:	23 181154 STE 04 OZ
Property Address:	2453-2469 Bloor Street West
Municipality/UT:	Toronto
OLT Case No.:	OLT-24-000656
OLT Lead Case No.:	OLT-24-000656
OLT Case Name:	Jane Bloor LP v. Toronto (City)

**Heard:** March 24-28, 2025, by Video Hearing

**APPEARANCES:**

**Parties**

Jane Bloor LP

City of Toronto

Swansea Area Ratepayers Group

**Counsel**

Matthew Helfand

Jyoti Zuidema  
Sarah Barnett

William Roberts

## DECISION DELIVERED BY MEMBER N. EISAZADEH AND INTERIM ORDER OF THE TRIBUNAL

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[Link to Final Order/Decision](#)

### INTRODUCTION

[1] This Decision arises from a Hearing on the Merits of the Appeal filed by Jane Bloor LP (“Applicant”) against the City of Toronto (“City”) pursuant to subsection 34(19) of the *Planning Act* (the “Act”) respecting City Council’s decision to amend its Zoning By-law No. 569-2013 (“ZBL”) to facilitate a modified version of the Applicant’s initial development proposal to a reduced 10-storey mixed-use building (“City Approved ZBA” and “City Modified Development”) on the lands municipally known as 2453-2469 Bloor Street West (“Subject Lands”).

[2] The Applicant appeals the City Modified Development and seeks approval of a revised proposal which requires amendments to the City’s zoning by-law (“Proposed ZBA”) to facilitate the development of a 16-storey residential mixed-use building plus mechanical penthouse (“Revised Proposal”). The main issue before the Tribunal regards what level of intensity is appropriate for the site having regard to built-form including height, side setbacks, rear transition, shadow impact, as well as the existing and planned context for the area.

[3] For the reasons set out in this Decision, the Tribunal finds in favour of the Applicant, allows the appeal in part, repeals the City Approved ZBA, and approves the Proposed ZBA in principle, subject to, *inter alia*, its final form to be submitted by the Parties.

## **BACKGROUND**

### **The Subject Property and Surrounding Area**

[4] The Subject Lands are generally rectangular in shape, with 45 metres (“m”) of frontage on the south side of Bloor Street West between South Kingsway and Jane Street. It has a depth of approximately 31 m and an overall site area of approximately 1,221 square metres (“m<sup>2</sup>”). The site is slightly sloped. Its frontage along Bloor and the rear along the public laneway slope westward. The site also slopes slightly from north to south.

[5] Currently, the Subject Lands are occupied by a two-storey brick building with retail on the ground floor and offices above, with no setbacks on the north, east, and west sides, and a 12 m setback at the rear facing a 6 m wide public laneway. Vehicular access to the site is through the public laneway. Visitor and service parking is provided for in the rear yard.

[6] In terms of its area context, the site is in the Bloor West Village which spans four former Municipalities – Brockton, West Toronto, Swansea, and the Borough of York – each historic boundary contributing to distinct patterns in the fabric of its current main street. The Subject Lands are at the northern edge of the former Village of Swansea, an area known for its village-like feel, and predominantly single and semi-detached homes. Bloor Street West itself is a traditional main street, surrounded by residential neighborhoods. The area is well connected to public transit, including subway and numerous bus routes, with public parking on the north side of Bloor Street West, supporting a vibrant retail environment, with several mid-rise developments already approved or built.

[7] The land uses in the immediate area surrounding the Subject Lands are comprised as follows:

- a) **IMMEDIATELY NORTH:** directly across the street from the Subject Lands on the opposite side of Bloor Street West cornering Jane Street, municipally known as 2 Jane Street, is a five-storey commercial building with a public plaza<sup>1</sup> area located at the front of the building (the “Plaza”).
- b) **FURTHER NORTH:** a four-and-a-half storey mixed-use building with retail uses at grade and residential uses above (12-20 Jane Street); low-rise residential uses, predominantly single-detached dwellings continuing north; a vacant building previously occupied by a bank on the east side of Jane Street north of Bloor Street West (2438 Bloor Street); the Jane Subway Station and Toronto Transit Commission bus terminal; a low-rise apartment building and the Saint Pius X Catholic School further north (71 Jane Street).
- c) **NORTHEAST:** two-storey main-street style mixed-use buildings continuing towards High Park; surface parking lots and public parks further north; and a low-rise residential neighbourhood dominated by single and semi-detached dwellings continuing north.
- d) **NORTHWEST:** a twelve-storey mixed-use building currently under construction (2442-2454 Bloor Street West); Riverview Gardens; further west is a twelve-storey mixed-use building (1 Old Mill Drive) and a ten-

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<sup>1</sup> While there was some contention between the Parties over whether the public area was appropriately referred to as a public plaza or a public square, for the purposes of this Decision the Tribunal shall refer to the area as the “Plaza”.

storey residential apartment building (2 Old Mill Drive); and further west transitions to a mid-and-low-rise residential neighbourhood.

- e) **EAST:** three, two-storey main-street style commercial buildings (2445-2449 Bloor Street West); a five-storey medical office building known as the Toronto West Professional Centre (2425 Bloor Street West); main-street style buildings further east; and low-rise residential neighbourhoods to the south.
- f) **SOUTHEAST:** a low-rise residential neighbourhood characterized by single-detached dwellings (former Swansea Village).
- g) **WEST:** two-storey main-street style buildings with commercial uses at grade and above (2477-2481 Bloor Street West); an Esso gas station and Tim Horton's restaurant (2485 Bloor Street West); various commercial and medical office uses to the west of South Kingsway; and further west a transition to residential neighbourhood dominated by mid-rise residential buildings.

### **The Applicant's Original Proposal**

[8] The Applicant filed its original zoning by-law amendment application on July 25, 2023, seeking to modify maximum height, residential density, building setbacks and other performance standards ("Original ZBA"). The Original ZBA sought to facilitate the development of a thirteen-storey (48.7 m) mixed-use building consisting of 91 dwelling units, 260 m<sup>2</sup> of ground floor retail space, and an overall gross floor area ("GFA") of approximately 8,249 m<sup>2</sup>, resulting in a density (Floor Space Index or "FSI") of 6.8 times the area of the lot (the "Original Proposal"). The proposed streetwall height within the Original Proposal was eight-storeys with mechanical penthouse and amenity access located on the thirteenth storey. The Applicant's intention was to achieve Tier 2

compliance with the Toronto Green Standards V4, by proposing to construct the building using mass timber.

[9] The application for the Original Proposal was deemed complete on January 15, 2024. Due to the *Act* requirements under Bill 109, which required the City to process applications within ninety days without necessitating an application refund, the Applicant and City Staff did not have an opportunity to continue discussions respecting built-form and density. On March 13, 2024, City Staff issued their report on the Original Proposal (“Staff Report”).

### **The City Modified Development**

[10] The applicable legislative framework at the time of issuance of the Staff Report, included the Provincial Policy Statement, 2020 (“2020 PPS”) and A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2020 (“Growth Plan”). Evaluated against the applicable framework at the time, City Staff concluded that the Original Proposal presented the following key challenges:

- a) The Bloor West Village Avenue Study (“BWVA Study”) which had not yet been adopted by Council, supports a mid-rise built form proportionate to the width of Bloor Street West for the West Village Character Area within which the Subject Lands are located;
- b) Appropriate transition is required from the existing eight-storey streetwall northwest of the site to the lower streetwall heights envisioned through the BWVA Study recommendations; and
- c) Appropriate massing is required to maintain quality access to sunlight on the Plaza which is identified as a key view and prominent site in the BWVA Study.

[11] Accordingly, City Staff recommended a modified proposal which included the following key revisions from the Applicant's Original Proposal:

- a) Reduced total height from thirteen-storeys down to ten-storeys (36.7 m).
- b) Reduced streetwall height from eight to six-storeys.
- c) Relocating the outdoor amenity space to the ninth floor.
- d) A deeper building footprint.
- e) Limited side yard setbacks reduced to an 11 m rear-yard setback above the ground floor with no setbacks above the streetwall – consolidated from the originally proposed 14 m rear-yard setback above ground floor with setbacks at the seventh, eighth, and ninth floors.
- f) Including a minimum of 15% two-bedroom units and 10% three-bedroom units in the ZBA to meet the Growing Up Guidelines.
- g) That the modified ZBA be subject to a holding provision until satisfactory compliance with conditions including:
  - i. the submission of a revised Functional Servicing Report to demonstrate adequate capacity of the storm and wastewater system and to identify if any improvements are required; and,
  - ii. entering into a financially secured agreement with the City to secure the construction of any required improvements to the municipal sewer and/or water system.

[12] The modified proposal was intended to “better facilitate mass timber construction and to support housing provision, while also ensuring the [Plaza] retains its positive microclimate conditions.” City Staff opined their modified proposal would accommodate

an adequate GFA for a viable dwelling unit composition and construction method. There are no architectural plans in support of the modified recommended proposal, nor a unit count.

[13] On April 3, 2024, the Toronto and East York Community Council (“Community Council”) adopted Staff’s recommendations, and on April 17, 2024, City Council approved the City Modified ZBA reflecting Staff’s modifications (the City Modified Development).

### **The Applicant’s Revised Proposal**

[14] The Revised Proposal currently before the Tribunal entails:

- a) A sixteen-storey (56.5 m) residential mixed-use building, inclusive of mechanical penthouse.
- b) A streetwall height of six-storeys.
- c) A total of 461.9 m<sup>2</sup> of amenity space comprised of 219.2 m<sup>2</sup> indoor, and 242.7 m<sup>2</sup> outdoor space which adjoins the indoor amenity spaces on levels two and sixteen, totaling 4 m<sup>2</sup> per unit of combined indoor/outdoor amenity space (1.9 m<sup>2</sup>/unit indoor and 2.1 m<sup>2</sup>/unit outdoor).
- d) A total GFA of approximately 10,477 m<sup>2</sup> including approximately 260 m of non-residential (retail) uses at grade.
- e) Ground floor setbacks of between 1 m–3 m from the north property line, 1.5 m–8.6 m from the south property line (the variances arising as a result of the curvature of the property line), and flush with the west and east property lines.
- f) Setbacks above the ground floor as follows:
  - i. Level Two: between 0 m–1.5 m from north property line, 1.4 m–8.1 m from the south property line (excluding

exterior amenity), and flush to the west and east property lines. The exterior amenity setback is between 1.4 m–1.5 m from the south property line.

- ii. Level Three: projecting balconies located along the northern and southern portions of the building with a private terrace and potential green roof proposed at the southern corner of the site.
- iii. Level Four to Level Six: potential projecting balconies to the north and south.
- iv. Level Seven: 2.9 m–5.8 m from the north property line to accommodate large terraces.
- v. Level Eight: 2.9 m–5.8 m from the north property line, 8.1 m–8.3 m from the south property line, and flush to the west and east property lines.
- vi. Level Eight to Level Twelve: potential projecting balconies proposed with a depth of 1.4 m to the north and south.
- vii. Level Thirteen: 2.9 m–5.8 m from the north property line, 8.1 m–8.3 m from the south property line, and flush to the west and east property lines. Projecting balconies are proposed to the south and private inset terraces proposed to the northeast and northwest façades.
- viii. Level Fourteen: 2.9 m–5.8 m from the north property line, 8.1 m–8.3 m from the south property line, 0 m–6.1 m from the west property line, and 0 m–5.8 m from the east property line.
- ix. Level Fourteen to Level Fifteen: Projecting balconies are proposed to the south, with smaller private balconies proposed at northeast and northwest.

- x. Level Sixteen: 6 m–11.8 m from the north property line, 10.9 m–11 m from the south property line, 0 m–6.1 m from the west property line, and 0 m–5.8 m from the east property line. Outdoor terraces are proposed to the north and south. A potential green roof is also proposed to the south and exterior amenity space along the northern portion of the building that connects to interior amenity space. The remainder of the floor is dedicated to mechanical use.
  
- g) A total of 115 residential units comprised of 31 one-bedroom units (27%), 58 two-bedroom units (50.4%), and 26 three-bedroom units (22.6%).
- h) A total FSI of 8.8 times the area of the lot.
- i) Two levels of an underground parking garage accessed via the existing 6 m wide public laneway to the south of the site, comprised of 38 resident parking spaces and 2 visitor parking spaces.
- j) A total of 104 long-term bicycle parking spaces with 42 spaces located in the underground garage at P1 and 62 spaces at-grade.
- k) A total of 24 short-term bicycle parking spaces at-grade with 20 spaces along Bloor Street West and 4 spaces at the rear of the building.
- l) One 'Type G' loading space at-grade.

## **LEGISLATION, PLANS, POLICIES, AND GUIDELINES**

[15] The relevant legislative framework, planning policies and guidelines applicable to these appeals include: the Act, the Provincial Planning Statement, 2024 ("2024 PPS"), the City of Toronto Official Plan ("City OP"), the Swansea Secondary Plan ("SSP"),

Official Plan Amendment No. 540<sup>2</sup> (“OPA 540”), the BWVA Study, the Bloor West Village Heritage Conservation District Study (“BWV-HCD Study”), the ZBL, 2010 Mid-Rise Building Design Guidelines (“2010 Mid-Rise Guidelines”); 2024 Draft Mid-Rise Building Design Guidelines<sup>3</sup> (“2024 Mid-Rise Guidelines”), the Pet-Friendly Design Guidelines (“Pet Guidelines”), and the Growing Up Guidelines.

## ISSUES

[16] There is no dispute between the Parties that the Subject Lands are an appropriate location for intensification. This is because, among other reasons, the site is located approximately 83 m from the Jane Subway Station, as well as within the proposed Jane Protected Major Transit Station Area (“Jane-PMTSA”) delineated through OPA 540 (implemented through Site Area Specific Policy No. 650 and awaiting approval).

[17] Where the dispute arises between the Parties is how that intensification is appropriately realized from, namely, a height and massing perspective. The Applicant states its Revised Proposal is not fundamentally different from its Original Proposal and is supported by the changes to the policy and regulatory scheme including the 2024 PPS and OPA 540. The City states that the regulatory and policy regime has not changed in substance and is not supportive of the increased height and massing, which constitutes a maximization of the site, not optimization. This overarching disagreement is organized and addressed in this Decision under the following sub-issues:

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<sup>2</sup> OPA 540 was adopted by the City in July 2022, and currently remains with the Ministry of Municipal Affairs and Housing for consideration and approval.

<sup>3</sup> The evidence established that the 2024 Draft Mid-Rise Building Design Guidelines have been published, adopted by the City’s Housing and Planning Committee and directed by the Committee to be used by Planning Staff; however, all witness and the Parties have acknowledged they have yet to be adopted by City Council.

- a) Does the Revised Proposal constitute a mid-rise or tall building?
- b) Does the Revised Proposal fit the existing and planned context of the area?
- c) Does the built form conform to the policy framework for a 16-storey height?
- d) Is there appropriate regard for the BWVA Study?

## **DISCUSSION AND ANALYSIS**

### **Issue #1: Does the Revised Proposal Constitute a Mid-Rise Building?**

[18] There was contention during the hearing as to whether the proposed new height for the development constitutes a tall building or a mid-rise building. The City's Urban Design witness, Nathan Bortolin, and the planning witness for the Swansea Area Ratepayers' Group ("SARG"), Terry Mills, both classify the Revised Proposal as a tall building which does not fit within the existing or planned context for the Subject Lands along Bloor Street West, and lacks regard for the BWVA Study which provides that mid-rise buildings will define the Bloor Street West Village frontages. The Applicant submits that this is not a threshold issue for the Tribunal given that the City's OP does not outrightly prohibit tall buildings in a Mixed-Use Designation on an Avenue, nor does it require only mid-rise buildings. However, the Applicant also concedes that Avenues generally consist of mid-rise buildings under the current framework and contends that the Revised Proposal does constitute a mid-rise building. While the Tribunal agrees that this is not a threshold issue, there is utility in addressing whether the Revised Proposal constitutes a tall or mid-rise building from the outset, as this will provide clarity to the discussion of the balance of issues within this Decision.

[19] Mr. Bortolin and Mr. Mills rely on policies 3.1.4.4(a) and 3.1.4.7 of the City's OP in support of their position, as these policies define mid-rise-buildings as being generally no greater in height than the width of the right-of-way ("ROW") that they front onto, while

tall buildings are defined as generally greater in height than the width of the adjacent ROW. Accordingly, Mr. Bortolin and Mr. Mills opine that the Tall Building Guidelines are applicable in this context, with more restrictive criteria (for instance with respect to greater separation distances and mid-block side stepbacks, to achieve appropriate fit within their context), that they say are not respected by the Revised Proposal.

[20] In response, the Applicant's urban design witness, Richard Witt, opines that there is a policy gap which fails to capture a building that is taller than the adjacent ROW but still presents itself as a mid-rise building, coining this the "tall mid-rise form". Mr. Witt points to the term "generally" as used in policies 3.1.4.4(a) and 3.1.4.7 of the City's OP and interprets the term as importing a degree of latitude. He states, for example, that a building which is one-storey taller than the width of the adjacent ROW would not necessarily or automatically be captured as a tall building. In his experience, many buildings which exceed the width of the adjacent ROW are still better designed as mid-rise buildings. Counsel for the Applicant, Matthew Helfand, submits that Mr. Witt's opinion is supported by the City's own 2024 Mid-Rise Guidelines as well as recent decisions of this Tribunal including *Future Delight Investment Ltd. v. Toronto (City)* ("*Future Delight*")<sup>4</sup>.

### **Findings on Issue #1**

[21] The Tribunal prefers the evidence of Mr. Witt and finds that the Revised Proposal does constitute a mid-rise building. First, the Tribunal wishes to address the weight that has been afforded to the opposing opinions. With respect to Mr. Witt, the Tribunal finds him to be a very experienced and accomplished architect with over 27 years of experience. He has received many awards and accolades including, *inter alia*, the Royal Architectural Institute of Canada Governor General's Medal in Architecture in 2022, the

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<sup>4</sup> *Future Delight Investment Ltd. v. Toronto (City)*, 2023 CanLII 21674 (ON LT).

Toronto Urban Design Award of Excellence in 2021, and the WoodWORKS! Ontario Mass Timber Wood Design Award in 2020 for his work on 80 Atlantic Avenue, the Toronto Urban Design Award of Merit in 2019 for his work on DUKE Condos and in 2017 for 619 Queen Street West, and the Toronto Urban Design Award of Excellence in 2015 for 60 Atlantic Avenue and in 2013 for Cube Lofts. He has served as a member for numerous industry and community organizations over the years, undertaken significant research and publications, and was part of the team at his firm in 2010 who created the 2010 Mid-Rise Guidelines which won multiple awards from the City for urban design. Mr. Witt presented as a very credible, reliable, and knowledgeable witness.

[22] In contrast, while Mr. Bortolin presented as genuine and forthright, it is evident that his education, experience, and training is much more limited. He was qualified without objection to provide opinion evidence in the field of urban design for the first time before this Tribunal based on his education and role as City Urban Design Planning Staff. However, the Tribunal notes that Mr. Bortolin has been in his current role since 2021, equating to an approximate four-years of total experience reviewing applications from an urban design lens. In addition, Mr. Bortolin confirmed that in transitioning to his current role from his former position as Heritage Planner, he did not receive any additional education or training above the urban design courses that he completed when obtaining his Masters degree in Landscape Architecture between 2009-2012. While the level of qualification required for successfully performing the responsibilities within his role is not in question, Mr. Bortolin's limited experience and training compared to Mr. Witt's is relevant in weighing the evidence presented in this case.

[23] Similarly, the Tribunal finds the reliability of Mr. Mills' evidence to also fall short in comparison to that of Mr. Witt's. First, Mr. Mills was qualified to provide opinion evidence in the area of Land Use Planning and not Urban Design. Additionally, while Mr. Mills has a lengthy and extensive experience as a Planner, he readily admitted that his clients are generally made up of residents and neighbourhood groups opposing

development applications, and he is not often retained in the capacity to speak in support of an application. Indeed, Mr. Mills confirmed that since 2002 he has been qualified to provide expert testimony in approximately 46 cases, 45 of which were in opposition to development. Accordingly, while Mr. Mills' evidence has been carefully considered from a Land Use Planning perspective, its reliability on account of his frequent opposition before this Tribunal is also weighed against that of Mr. Witt's more balanced professional history.

[24] Returning to the question of building type, policies 3.1.4.4(a) and 3.1.4.7 of the City's OP read as follows (emphasis added):

4. Mid-rise buildings will be designed to:
  - a) have heights **generally** no greater than the width of the right-of-way that it fronts onto;
- ...
7. Tall buildings are **generally** greater in height than the width of the adjacent right-of-way.

[25] The Tribunal agrees with Mr. Witt that the use of the term "generally" in the City OP is significant in its interpretation. This language is not prescriptive creating rigidity. Rather, on a plain and ordinary reading, it imports some degree of flexibility in defining the limits of where a mid-rise building ends and a tall building begins by allowing for "generalities" rather than a bright-line rule.

[26] The Tribunal disagrees with the submissions of Counsel for the City, Jyoti Zuidema, that because there is no policy in the City OP that speaks to the "taller mid-rise form", that we are left only with the typologies that are addressed – in this case, Ms. Zuidema submits it is the tall-building typology that dictates and against which the Tribunal is mandated to assess the proposal against to ensure conformity. While there may not be a specific policy that addresses a "tall mid-rise form" expressly, this gap in the City OP policy as suggested by Mr. Witt is indeed addressed by the 2024 Mid-Rise Guidelines themselves at s.3.1 respecting "Mid-Rise Building Height" where it is stated (emphasis added):

The Avenues and Mid-Rise Buildings Study introduced Performance Standards for mid-rise buildings in 2010 which prescribe a maximum building height equivalent to the width of the adjacent right-of-way to a maximum of 11 storeys. Since 2010, many mid-rise buildings of various heights and scales have been constructed across Toronto, with many built to heights equivalent to the adjacent right-of-way width. **In some instances, buildings that are taller than the right-of-way width, but still present a mid-rise typology have been approved through site-specific applications which were evaluated based on the context of the site, including considerations for proximity to transit, separation from Neighbourhoods properties and other low-rise areas and demonstration of the mitigation of built form impacts and appropriate contextual fit.**

There may be **certain circumstances where buildings that exceed the height of the right-of-way are appropriate.** Consideration for the **development of mid-rise buildings greater than the adjacent width of right-of-way should be evaluated on a site-by-site basis** and is dependent on the criteria indicated in these guidelines.

[27] While the 2024 Mid-Rise Guidelines have not yet been adopted by City Council, there is no dispute that the City's Housing and Planning Committee has directed Planning Staff to evaluate applications against these new draft guidelines, and are relevant in the evaluation of the proposal, as agreed to by the City's own Planning witness Mr. Bortolin. It is expressly seen in the language of the City's 2024 Mid-Rise Guidelines here that *mid-rise* buildings which are greater than the width of the adjacent ROW may be evaluated on a site-by-site basis – in other words, buildings which are greater than the width of the ROW may still be classified “mid-rise”, as stated, and need not be classified into a further category of “taller mid-rise” as that is implied. This language has been updated from the 2010 Mid-Rise Guidelines which states:

The maximum allowable height of buildings on the Avenues will be no taller than the width of the Avenue right-of-way, **up to a maximum mid-rise height of 11 storeys** (36 metres).

[28] Mr. Helfand submits that while the language of height in relation to the ROW is largely the same in substance, its interpretation has evolved which he states can be seen from the *Future Delight* Decision, which the Tribunal ultimately agrees. In *Future Delight*, a fourteen-storey (54.3 m in height inclusive of mechanical penthouse) building was classified as mid-rise, despite exceeding the width of the adjacent ROW which measured 23 m. In that case, the City put forward the same argument – that because

the height exceeded the width of the adjacent ROW, that the typology was a tall-building which attracted the Tall Building Guidelines as applicable. The Tribunal determined at paragraph 108 (emphasis added):

The Tribunal finds that the DSSP anticipates evolving building typologies when it states that new development will be encouraged to include a mix of residential and commercial uses at various scales and building types with mid-rise buildings as the predominant built form. **The Tribunal finds that the Proposed Development represents a building that is accurately and appropriately described as a tall mid-rise building, and not a Tall building as defined in the OP.** As a result, the Tribunal determines that the **Tall Building policies and the Tall Building Design Guidelines are not applicable** to the Proposed Development.

[29] Accordingly, even prior to the 2024 Mid-Rise Guidelines, the Tribunal has acknowledged that a Secondary Plan (the Dufferin Street Secondary Plan) anticipated evolving typologies and endorsed the concept of the tall-mid-rise building that remained within the realm of the mid-rise building typology. While this Decision is not binding, it serves to illustrate the evolution in the interpretation of the City OP policy respecting height in relation to the adjacent ROW, and the changes to the 2024 Mid-Rise Guidelines reflect this evolution in interpretation. Significantly, the property at issue in *Future Delight* was also subject to an Avenues overlay in terms of its urban structure designation within the City OP, and the width of the ROW along Orfus Road was significantly narrower than in the case at bar at only 23 m. To add, a building of 14-storeys in height was considered by the Tribunal as a mid-rise building typology appropriate for the property. The concept of a tall-mid-rise building is not a novel one, and is reflected in the changes to the 2024 Mid-Rise Guidelines which now speaks in “generalities”. However, each proposal must be evaluated on a site-by-site basis and on its own merits.

[30] In the present case, the Tribunal accepts Mr. Witt’s evidence as to the reasons why the Revised Proposal is properly considered a taller mid-rise building that is appropriate for the Subject Lands. First, Table 1 of the 2024 Mid-Rise Guidelines provides direction regarding a ROW in relation to ideal lot depth and building height:

Table 1: Ideal Lot Depth in relation to the adjacent Right-of-Way Width and Building Height\*

R.O.W. WIDTH (Metres)	IDEAL LOT DEPTH (Metres)	BUILDING HEIGHT*	
		Metres	Storeys(Approximate)
20	30	20	6
27	34	27	8
30	34	30	9
36	36	36	11
45	37	45	14

\* Heights shown in the table may be adjusted based on site conditions and geometry, geographical location in the city (or geographical location relative to proximity to transit), impacts on the public realm and solar orientation as described further in detail in these guidelines. This chart is intended to be read with the guideline document in its entirety.

[31] The portion of Bloor Street West along which the Subject Lands front, has a ROW width of 30 m as shown on Map 3 of the City OP. The Subject Lands measure approximately 31 m in depth. Per Table 1 of the 2024 Mid-Rise Guidelines, a 30 m ROW corresponds to a nine-storey (30 m) ideal building height. However, as Mr. Witt testified to under cross examination, below the Table marked with an asterisk it states that the heights “may be adjusted based on site conditions and geometry, geographical locations in the city (or geographical location relative to proximity to transit), impacts on the public realm and solar orientation as described further in detail in these guidelines.” The chart is meant to be read in conjunction with the guidelines in their entirety. As clarified earlier, s. 3.1 of the 2024 Mid-Rise Guidelines sets out the express direction that mid-rise buildings taller than the adjacent ROW may be considered based on the context of the site including proximity to transit, separation from low-rise areas, demonstrated mitigation of built form impacts, and appropriate contextual fit. Based on these factors, Mr. Witt’s key evidence, which the Tribunal accepts, is as follows.

[32] First is the proximity to transit as expressly set out in s. 3.1 of the 2014 Mid-Rise Guidelines. There is no dispute that the Subject Lands are well-situated in close proximity to various forms of public transit including the City’s main transit infrastructure by way of the Jane Subway Station just 83 m away. Mr. Witt opines, and the Tribunal agrees, that the location of the Subject Lands is an important terminus which warrants greater heights above the nine-to-fourteen-storey range in s. 3.1 of the 2024 Mid-Rise Guidelines, notwithstanding the ROW. Mr. Bortolin for the City opines that the ten-storeys approved by the City, achieves the appropriate upwards adjustment in height

from nine-storeys on account of proximity to transit. The Tribunal disagrees. The 2024 Mid-Rise Guidelines are clear that the upwards adjustment in height may achieve heights beyond the general recommended range of nine-to-fourteen-storeys in appropriate circumstances. There are limited sites within the City that have as close proximity to the subway system as the Subject Lands. The policy direction from the Province by way of the 2024 PPS, down through the OP, to the guidelines, expressly direct that density is to be focused near major transit sites. When considered alongside the lot depth, ground conditions, and grade level, as discussed below, the Subject Lands have contextual factors which warrant upwards adjustment above the fourteen-storey height limit.

[33] The second factor is the lot depth. While the depth of the lot speaking strictly from the site's property boundaries is approximately 31 m, when the abutting 6 m-laneway is factored in, the lot depth totals 37 m reaching the largest ideal lot depth on the Table 1 chart within the 2024 Mid-Rise Guidelines. Mr. Witt states there is support for including the 6 m public laneway in lot depth calculation within both the 2010 and 2024 Mid-Rise Guidelines. Table 6 within the 2010 Mid-Rise Guidelines provides direction on determining "deep" lots in relation to the width of an adjacent ROW. For a 30 m ROW, the table sets out that a deep lot is one that is greater than 44.6 m. It also sets out that for the purposes of determining the property depth (for performance standards 5A and 5B relating to rear transition to Neighbourhoods from deep or shallow properties), that an abutting public laneway may be included.

[34] Ms. Zuidema submits that Mr. Witt's evidence on this point is neither credible nor accurate. First, she states that Mr. Witt cherry-picks favourable portions between the two versions of the Guidelines to suit his desired outcome of achieving greater height. Second, she argues that the purpose of Table 6 within the 2010 Guidelines is not in relation to directing height, but rather deals with establishing appropriate setbacks and the angular plane. The Tribunal rejects these arguments.

[35] Mr. Witt very clearly responded on cross-examination that he was not being selective between the two versions of the Guidelines, rather they are aligned. He points to figures 3.3.1 and 3.3.2 within the 2024 Guidelines which show the same 7.5 m setback from the rear property line in relation to rear-transition as is depicted in the figure following Table 6 within the 2010 Guidelines – both which he states reinforce the direction of including the laneway in lot depth calculation. Additionally, Mr. Witt testified that he was part of the team that worked on drafting the 2010 Mid-Rise Guidelines, that neither guideline states the laneway should not be included in calculating lot depth, that such a calculation of lot depth between the two versions has not substantially changed, and that in his experience, this is always the way that the contextual factor for lot depth has been assessed. The Tribunal accepts Mr. Witt's experience and testimony. As further set out within the discussion on changes to the legislative scheme, the Tribunal agrees that the intent of the changes to both the 2024 Mid-Rise Guidelines and the 2024 PPS has been to reflect the importance on the provision for housing. Accordingly, where the 2024 Mid-Rise Guidelines have evolved to generally allow for greater heights, it is reasonable to conclude that they have maintained the general direction to include abutting laneways in calculating lot depth.

[36] The third factor is the ground conditions which make the experience of the ROW feel greater than 30 m. Mr. Witt testified this is because of two factors: (i) the open Plaza immediately across from, and connected to, the street, and (ii) Jane Street which terminates at the Subject Lands and goes north. The Tribunal would agree that these are conditions that are unique to the Subject Lands, creating the experience of a much greater ROW width along Bloor Street West than would otherwise be the case absent these conditions, and which warrant an upwards adjustment respecting building height.

[37] The fourth factor is the slightly lower elevation of the south side of Bloor Street West than its north side. The Tribunal agrees that the height of the Revised Proposed building being on the south side of Bloor Street West will present slightly lower than it would if it were located on the north side.

[38] The fifth factor is the wrapped mechanical penthouse. Mr. Witt testified that the City's zoning standards generally allow height maximums exclusive of mechanical units which typically results in visually unpleasing utility boxes being located on the tops of buildings rather than "beautiful building tops" (generally permitted at 6.5 m above the maximum building height). The Revised Proposal, however, has wrapped the rooftop mechanical equipment within the top two penthouse-levels above the fourteenth storey (being the maximum height within the 2024 Mid-Rise Guidelines for a 45 m ROW / 37 m lot depth) along with other active uses.

[39] The sixth factor relates to impacts on the public realm, and in particular regarding shadow. This factor is addressed in greater detail in the discussion under "Issue #3" below.

[40] In sum, the Tribunal agrees with Mr. Witt and finds that the site conditions, including proximity to transit, lot depth inclusive of the public laneway, ground conditions creating a wider ROW experience, slightly lower elevation grade, and built form impacts, warrant an upwards adjustment in height above the fourteen-storey maximum per the 2024 Mid-Rise Guidelines. The two additional storeys up to sixteen-storeys is a contextually appropriate fit for the site given the wrapped mechanical penthouse, as well as the setbacks and built-form described in further detail below, in order to provide the appropriate density near the proposed Jane-PMTSA.

## **Issue #2: Does the Revised Proposal Fit the Existing and Planned Context?**

[41] It is the evidence of the Applicant's Planning witness, Kate Cooper, that the Revised Proposal fits the existing and planned context, including the planned context within the current and emerging policy and planning framework. The City does not agree.

### Planned Context Within the Policy and Planning Framework

[42] Dealing first with the policy and planning framework, Ms. Cooper opines that there have been various changes in the framework which have strengthened support for intensification and delivery of housing on sites such as the Subject Lands which are well serviced by municipal infrastructure and higher order public transit, and which minimize built form impacts. The particular changes relate to the 2024 PPS from the former 2020 PPS; OPA 540; Official Plan Amendment 778 (“OPA 778”); the BWVA Study; and the 2024 Mid-Rise Guidelines.

[43] Ms. Zuidema argues that the language within the 2024 PPS which directs intensification to strategic growth areas, MTSA’s and frequent transit was carried forward from the former 2020 PPS and Growth Plan, and that the definitions for “Major transit station areas”, “Strategic Growth Areas”, and “Transit-supportive” remain virtually the same. Ms. Zuidema submits that the Tribunal should reject the contention that the 2024 PPS supports greater height or density, as the direction is the same under both the former and current provincial policy documents which recognize the need to consider the local context by acknowledging that Municipal official plans are “the most important vehicle for the implementation” of Provincial policy. Therefore, Ms. Zuidema posits that the City’s current OP is at the forefront, and to which zoning must conform.

[44] With respect to the BWVA Study, the Bloor West Village Avenue Segment Study (“Segment Study”)<sup>5</sup>, and the Block Context Plan (“BCP”)<sup>6</sup>, Ms. Zuidema argues that they

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<sup>5</sup> The Segment Study arises from a request by Staff given the BWVA Study had not yet been implemented through a Council adopted Official Plan Amendment or Zoning By-law Amendment. Bousfields Inc. on behalf of the Applicant prepared a Segment Study for its Original Proposal dated July 2023.

<sup>6</sup> The BCP now arises from the 2024 Mid-Rise Guidelines which suggests including a BCP based on the Development Guide Terms of Reference requirements. Before the 2024 Mid-Rise Guidelines the evidence established that City Staff would often request BCPs as part of a development application. Bousfields Inc. on behalf of the Applicant prepared a BCP for its Original Proposal dated July 2023.

remain relevant contrary to Ms. Cooper's opinion that they are dated and no longer useful or representative. She submits that OPA 778 (detailed further below) is not determinative, that the studies are still required under the current OP, and that the current OP was the planning instrument in effect at the time the application was submitted, therefore the *Clergy* principle applies.

#### Existing and Planned Context of the Area

[45] With respect to the existing and planned context of the area, Ms. Cooper opines that the Subject Site is located in a Mixed-Use Area which includes various existing low-and-mid-rise buildings of differing heights reaching up to twelve-storeys in recent years within the West Village. She states the area is characterized by a mixed-building scale and typology with taller buildings located along the north and south sides of Bloor Street West, while lower scale buildings are further beyond. She examined the West Village Character Area Block, particularly those on the south side of Bloor Street West in terms of potential redevelopment and concluded, namely, as follows:

- a. The three lots to the immediate east of the Subject Lands (2445, 2447, and 2451 Bloor Street West) are too small, even if assembled, to redevelop with a mid-rise building without also merging with the larger property to their east at 2425 Bloor Street West. Should assembly occur, the Revised Proposal does not have window openings on the east façade with the exceptions of recessed alcoves near the exit stairs which are not primary windows, and provides appropriate setbacks to window openings where present;
- b. The properties to the west of the Subject Lands (2475, 2477, 2479, 2481 and 2483 Bloor Street West) are similarly too small on their own to redevelop with mid-rise buildings without some assembly. Should such assembly occur, the Revised Proposal does not have window openings on

its west facade with the exceptions of recessed alcoves near the exit stairs which are not primary windows, and provides appropriate setbacks to window openings where present; and

- c. The property at the southeast corner of Bloor Street West and South Kingsway at 2485 Bloor Street West may redevelop on its own with a mid-rise building or assembled for a larger redevelopment. The Revised Proposal would not impact the site given its significant distance away.

[46] Ms. Cooper opines that the Subject Site is in a unique position as it represents the closest redevelopment site to the entrance of Jane Subway Station, and is located at the terminus of Jane within the “curved” segment of Bloor Street West, therefore representing the “height-peak” in the context of Jane Subway Station with other buildings to the east and west stepping down and away from the Jane Subway Station. In this respect, she suggests that the Subject Lands act as a “gateway” to the Main Street area of Bloor West Village, which demarcates the location of Jane Subway Station, and the change in character to a taller-mid-rise typology.

[47] Ms. Zuidema submits that the existing context from July 2023, in proximity to the Subject Lands has not changed, and that what exists today is as it was when the Original Proposal of twelve-storeys was sought and justified by the Applicant’s first Planning & Urban Design Rationale Report. Ms. Zuidema therefore questions how a taller building may be justified to fit the same existing context which she states did not support a twelve-storey proposal. To this end, Mr. Kopec testified that the existing context includes ten-and-twelve-storey buildings located on the north side of Bloor Street West on lots much larger, wider, and deeper, than the Subject Lands, and which were developed on corner properties rather than mid-block as is the case under the Revised Proposal. He states that the balance of the buildings in proximity to the site are between only eight-to-twelve-storeys. Accordingly, he opines that the Revised Proposal

of sixteen-storeys is not reflective of, nor fits, the existing context and character of the surrounding area.

[48] Mr. Bortolin also provided evidence on the existing and planned context of the area from an urban design perspective. His opinion is predicated on the Revised Proposal constituting a tall building which he states is not considered appropriate. Semantics aside, he states that a sixteen-storey building on the south side of Bloor Street West would create unacceptable shadow impact on the public realm. With respect to other recently-constructed and under-construction buildings exceeding their adjacent ROW widths in the vicinity, he states there are three buildings, but all on the north side of the street which therefore cast their shadows generally onto parking lots or neighbourhoods to the north – they are: a twelve-storey building (39.95 m) at 1 Old Mill Drive; a ten-storey (32.55 m) building at 2 Old Mill Drive; a twelve-storey (42.5 m) approved building at 2442 Bloor Street West<sup>7</sup>. Mr. Bortolin adds that should the Revised Proposal be approved, it would reduce the opportunity for the block to develop at an appropriate and incremental scale with potential for overdevelopment.

[49] As to the planned and future context, Ms. Zuidema contends that the current City OP still requires the work under the BWVA Study to be done, as well as a Segment Study and BCP in respect of the sixteen-storey Revised Proposal which work was not done. Ms. Zuidema submits that the studies are critical, as it can create a precedent for future development which one cannot turn back from. In this regard, Mr. Kopec opined that if approved, the sixteen-storey Revised Proposal would have a greater height and massing than any other building within the West Village of Bloor Street West creating the risk of setting a negative precedent for future development in the area. Mr. Mills opined that per the Applicant's own analysis, "soft-sites" (comprising underutilized or vacant parcels of land considered suitable for redevelopment) encompass nearly the

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<sup>7</sup> Neither of the three buildings heights includes the additional height for mechanical penthouse.

entire block length between South Kingsway and Armadale Avenue, presenting a distance of approximately 220 m. Mr. Mills opined that the Subject Property's determination of height and massing would become the zoning standard for determining the future development of the amalgam of these contiguous "soft-sites".

## **Findings on Issue #2**

### Planned Context Within the Policy and Planning Framework

[50] The Tribunal does not agree with the City's submission that it must reject Ms. Cooper's interpretation regarding the shift in the planned context within the policy and planning framework that suggests increased support for density above what was sought in the Original Proposal. Firstly, the Revised Application must be reviewed by the Tribunal on its own merits. It matters not that the Applicant originally submitted a proposal for thirteen-storeys that was rejected. Any landowner is at liberty to revise even an approved development concept and seek a modified proposal, whatever form those revisions may take, which must be evaluated on its own merits. Secondly, and notwithstanding, the Tribunal agrees with Ms. Cooper, that there have indeed been changes to the policy and planning framework which are informative, and which support an emerging direction for further intensification at sites such as the Subject Lands.

[51] With respect to the 2024 PPS, Ms. Cooper agreed on cross-examination through a compare and contrast exercise that much of the language of the relevant policies and definitions within the former Growth Plan remains the same if not very similar to that within the 2024 PPS. She also agreed that the general intent and direction of those policies have not substantially changed, as most have been carried forward. However, the Tribunal accepts that there are subtle and nuanced differences which convey an intent. First, the former ss. 2.2.1 and 2.2.4 of the Growth Plan respecting settlement areas, strategic growth areas, priority transit corridors and MTSA's state that they "will be" the focus of growth. This language has changed subtly in the 2024 PPS to "shall

be”, which conveys a more direct intent with the use of prescriptive language. More significantly however, is the definition of “Strategic Growth Areas”. The 2024 PPS identifies MTSA’s as those where the highest level of growth and development will occur, followed by existing and emerging downtowns, whereas the Growth Plan focused the highest level of growth in urban growth areas followed by MTSA’s. The revision to the language is depicted in the following table (emphasis added):

GROWTH PLAN	2024 PPS
<p><b>Definitions - Strategic Growth Areas</b>            Within <i>settlement areas</i>, nodes, corridors, and other areas that have been identified by municipalities or the Province to be the focus for accommodating <i>intensification</i> and higher-density mixed uses in a more <i>compact built form</i>.</p> <p><i>Strategic growth areas</i> include <b>urban growth centres</b>, <b>major transit station areas</b>, and other major opportunities that may include infill, <i>redevelopment</i>, <i>brownfield sites</i>, the expansion or conversion of existing buildings, or <i>greyfields</i>. Lands along major roads, arterials, or <b>other areas with existing or planned frequent transit service or higher order transit corridors may also be identified as strategic growth areas.</b></p>	<p><b>Definitions - Strategic growth areas:</b> means within <i>settlement areas</i>, nodes, corridors, and other areas that have been identified by municipalities to be the focus for accommodating <i>intensification</i> and higher density mixed uses in a more <i>compact built form</i>.</p> <p><i>Strategic growth areas</i> include <b>major transit station areas</b>, existing and emerging downtowns, lands in close proximity to publicly-assisted postsecondary institutions and other areas where growth or development will be focused, that may include infill, <i>redevelopment</i> (e.g., underutilized shopping malls and plazas), <i>brownfield sites</i>, the expansion or conversion of existing buildings, or <i>greyfields</i>. Lands along major roads, arterials, or <b>other areas with existing or planned frequent transit service or higher order transit corridors may also be identified as strategic growth areas.</b></p>

[52] This change is significant when considered alongside OPA 540, which delineated the site as the Jane-PMTSA. While OPA 540 has not yet been formally adopted by the Province, there was no evidence tendered to oppose the basis for the delineation. Nor was there any evidence tendered to refuse Ms. Cooper’s testimony that OPA 540 was initiated as an exercise to delineate MTSA’s in order to meet the Provincial minimum intensification requirements. Thus, while not determinative, the Tribunal takes notice of the emerging planning policies and the direction to delineate the site as a proposed PMTSA, which is now expressly elevated by the 2024 PPS as a primary location within “strategic growth areas” where intensification and growth is to be focused foremost.

[53] In addition, the changes to the 2024 Mid-Rise Guidelines previously mentioned, further strengthens the emerging direction for increased heights and densities – those key changes are: (i) the increase to the maximum mid-rise building height from eleven-storeys to fourteen-storeys adjacent to streets with a 45 m ROW; and (ii) providing express direction on factors for consideration in determining when additional heights taller than the adjacent ROW widths may be appropriate. While they remain in draft form, all witnesses agree that City Staff have been directed to use the 2024 Mid-Rise Guidelines. When the 2024 Mid-Rise Guidelines are considered alongside the language revisions to the 2024 PPS and the pending OPA 540, it is reasonable to conclude that there is support for increased intensification and the delivery of much needed housing on sites located on higher order public transit.

[54] Finally, Ms. Cooper testified that Avenue and Segment Studies are suggested to no longer be required per the Housing Action Plan: Avenues Policy Review – Decision Report dated January 2, 2025 (“Avenues-HAP”), which the Tribunal agrees. The Avenues-HAP “examined opportunities to enable more housing by reframing the *Avenues* vision, policies and mapping.” It recommended an OPA to, among other things, update the Avenues policies – updates which “leverage the *Avenues* as a growth management tool, identifying more opportunities for housing across the city and creating a more streamlined policy framework with clear direction on the type of growth to be directed to *Avenues*.” One of the significant changes proposed was, indeed, removing requirements for Avenue Segment Reviews and new Avenue Studies. Within the discussion of streamlining study requirements, the Avenues-HAP states (emphasis added):

Avenue Segment Reviews

The recommended OPA **proposes to delete the requirement for Avenue Segment Reviews** (Section 2.2.3, Policy 3 and 4). **Deleting these policies will help streamline the review process for development along Avenues.** Through consultation with Development Review staff, there was a near consensus that *Avenue* Segment Reviews (submitted as a complete application requirement) **slow down the development review process.** It was determined that **much of this work duplicates a Block Context Plan** that can form part of a complete application for development.

Avenue Studies

The recommended OPA **proposes to delete the requirements for city-initiated Avenue Studies** and replace them within a monitoring program. This **would help streamline the policy framework for development along Avenues** by applying a more consistent and predictable development framework based on existing best practices...

[55] As part of the Avenues-HAP, OPA 778 was adopted by City Council in February of 2025, which indeed removed the requirements for Avenue Segment Reviews and new Avenue Studies. OPA 778 is not yet in force as it was subsequently appealed and currently remains under appeal. While not determinative, as agreed to by the City's own Planning witness, Mr. Kopec, OPA 778 remains informative as to the intended direction for future development along Avenues.

[56] Significantly, that emerging direction increases the focus along Avenues for where growth is anticipated and encouraged. Specifically, OPA 778 states (emphasis added):

1. Growth and intensification will be directed to Avenues as shown on Map 2 to:
  - a. **concentrate jobs and housing in areas well served by public transit;**
  - b. accommodate and contribute to complete communities that meet the daily needs of all people; and,
  - c. provide a full range of housing, including affordable housing.
2. Avenues policies apply to lands or development with frontage on Avenues as shown on Map 2 and the right-of-way of Avenues.
3. To achieve growth and intensification on Avenues, development along Avenues:
  - a. will be up to the height and scale of a mid-rise building in Mixed Use Areas and Apartment Neighbourhoods; and,
  - b. **may go beyond the height and scale of a mid-rise building in Mixed Use Areas when located within a 500 to 800-metre walking distance of an existing or planned subway station, light rail transit station, or GO rail station as shown on Map 4. The greatest height and scale should be focused at the station.**

[57] Accordingly, the Tribunal is of the view that the emerging direction within OPA 778 is informative, and having regard to that direction agrees with the opinion of Ms. Cooper that the requirement for Avenue and Segment Studies “slow down the development review process” and hinders the emerging direction for streamlined processes in order to concentrate housing in areas well served by public transit along Avenues. The Tribunal also rejects Ms. Zuidema’s submission that the *Clergy* principle would apply to require that the proposal be evaluated against only the current City OP in force now and at the time the initial application was submitted, without regard for OPA 778. The *Clergy* principle developed as a shield to ensure procedural fairness for Applicants in the face of a Municipality’s ability to change policies during the course of an application. While OPA 778 is not determinative in any event, the *Clergy* principle is not meant to be used by a Municipality as a sword in the face of the evolution of its own policies that any other new application would be subject to.

[58] Finally, the Tribunal finds it important to consider that the requirement for development to fit within its planned context stems from s.3.1.3 of the City OP. The explanation of what constitutes the planned context is provided within the commentary under s.3.1.3 of the City OP (emphasis added):

The existing context of any given area refers to what is there now. **The planned context refers to what is intended in the future.** In stable areas, such as *Neighbourhoods* and *Apartment Neighbourhoods*, the planned context typically reinforces the existing context. **In growth areas, such as *Centres* and *Avenues*, the planned context generally anticipates change.**

Height and density aspects of the planned context of new development will be assessed on the basis of the Plan’s policies, including Secondary Plans and site and area specific policies. Where there are no height and density limits in the Plan, height and density limits of area zoning that implements the Plan will be a benchmark for assessment of those aspects of the planned context. Where there are no height and density limits in the Plan and no area zoning implementing the Plan, height and density aspects of the planned context will be determined on the basis of an area review such as that undertaken to implement Subsection 2.2.3.2 b) of the Plan. In this case, in determining an application, Council will have due regard for the existing and planned contexts. **In instances of apparent inconsistency between existing and planned contexts when interpreting the built form policies as they relate to height and density, the planned context will prevail.**

[59] The City OP itself therefore expressly recognizes that the planned context anticipates change.

#### Existing and Planned Context of the Area

[60] Notwithstanding the findings made above in respect of the planned context within the emerging planning and policy framework, the Tribunal also finds that the Revised Proposal fits within the existing and planned context of the area.

[61] The existing context, quite simply, is what exists today. The tallest buildings in the immediate area range between eight-and-twelve-storeys. The Tribunal recognizes that the Revised Proposal would be one with the greatest height and massing to date within the West Village of Bloor Street West. However, the Tribunal concurs with Ms. Cooper's evidence that the Subject Lands are in a unique position being the closest redevelopment site to the City's main transit infrastructure, only 87 m away from the Jane Subway Station and proposed PMTSA. In this regard, coupled with its location along the "bend" on Bloor West, the Tribunal agrees that the location acts as a "gateway" to the Main Street area of the Bloor West Village. A height peak with a taller mid-rise building at such a location would fit well within the existing context, as other buildings to the east and west step down and away from the Jane Subway Station. This is particularly so when considered alongside the planned context within the emerging planning policy framework addressed above, which emphasizes that heights may be greater than a mid-rise scale in Mixed-Use Areas when located within 500-800 m from an existing or planned subway station, and that the greatest heights and scale should be focused at the station.

[62] Mr. Kopec concedes that this height peak in the context of Jane Subway Station is indeed relevant, however asserts that it ought not be used as the sole determinant. Mr. Kopec states that other factors need be considered including lot size, lot depth, lot

frontage, shadow impact and transition to neighbourhoods. Indeed, the Tribunal does not view the height peak as the sole determinant. While the shadow impact and transition are discussed further below, the Tribunal has duly considered the reasons why the lot size, frontage, and depth support heights greater than the mid-rise scale in the discussion surrounding the 2010 and 2024 Mid-Rise Guidelines above, which are equally applicable as to the fit in the existing context.

[63] In respect of Mr. Kopec's evidence regarding the north side of Bloor West having been redeveloped with maximum heights of ten-to-twelve-storey buildings, considered contextually appropriate, on larger and deeper lots than the Subject Lands, the Tribunal finds this unpersuasive. Most of these developments were approved fifteen-years ago in 2010, with the most recent approval being six-years ago in 2019. They all predated the emerging developments to the planning and policy framework delineating Jane Subway Station as a PMTSA, setting new guidelines for heights beyond the mid-rise scale where contextually appropriate, and directing the greatest height and scale to subway stations. Each application must be evaluated on its own Merits on the planning framework and emerging policies of the day, and it is the natural progression for such policies to evolve over time to respond to the needs of the community and Province at large.

[64] Finally, in respect of the planned context, the Tribunal further concurs with the opinion of Ms. Cooper as to the redevelopment opportunities and limitations of the soft-sites in the area which align with future development taking the form of low-to-lower-mid-rise developments given the nature of the smaller and narrower lots. This relates to Ms. Cooper's testimony as to the reasons why a BCP is not often helpful or strictly applied – because blocks are not often developed in the way a BCP would depict, given the nuanced ways that any given site varies, and therefore an assessment is better served by evaluating the merits of the respective development potential of each soft-site. The Tribunal finds that Ms. Cooper has conducted this evaluation which achieves the purpose of the BCP in a more accurate way. Ms. Cooper identified the soft sites to

the east, west and southeast of the Subject Lands, assessed their lot size, configuration and development potential. Ms. Cooper concluded that the majority of the sites are too small to redevelop with mid-rise structures on their own without assembly, and that even if assembled, the Revised Proposal would not impact the redevelopment opportunities of those sites and their independent respective built-forms, including height, scale, and massing, as they would be evaluated on their own merits against the legislative and policy framework of the day. Accordingly, the Tribunal does not accept that the Revised Proposal would result in a negative precedent for future redevelopment.

[65] To the extent that the planned context raises issues that overlap with built-form, including scale, massing and the public realm, those considerations are addressed below under the discussion as to whether the built-form conforms to the policy framework for a sixteen-storey height.

### **Issue #3: Does the Built-Form Conform to the Policy Framework for a Sixteen-Storey Height?**

[66] Many of the issues within the Issues List appended to the Procedural Order governing the present Appeal overlap and relate to whether the built-form, including massing and scale, conform to the policy framework for a height of sixteen-storeys in relation to its impact on the transition to existing built-forms, privacy and overlook, as well as sky-views, sun access and shadow cast on the public realm. Accordingly, these issues can be reorganized and addressed under the following four key categories: shadow impact, rear transition, side setbacks, and privacy and overlook concerns.

#### Shadow Impact

[67] Mr. Bortolin opines that the Revised Proposal's massing will dominate within the Bloor Street West streetscape, and will impact access to sunlight and sky-view for pedestrians on the north and south sidewalks as well as the Plaza limiting it to less than

four hours of sunlight during the shoulder seasons and spring and autumn equinoxes. More specifically, Mr. Bortolin refers to both the Applicant's Shadow Study prepared by BDP Quadrangle ("Shadow Study") and his own sun/shadow computer modelling analysis to conclude that during the equinoxes, the Revised Development would add net new shadows on the Plaza to cover much of its western half by 11:18 a.m., almost entirely cover the Plaza at 12:18 p.m., and continue to cover the eastern corner at 1:18 p.m. He states the Plaza would only have access to full sun at 9:18 a.m., 10:18 a.m., and 2:18 p.m., when the existing buildings on the north side of Bloor Street West would begin to shadow the Plaza by 3:18 p.m. Mr. Bortolin states that given the few public open spaces in the vicinity, the Plaza's access to sunlight during the shoulder season and colder months is of greater importance.

[68] Mr. Bortolin states that the 2010 Mid-Rise Guidelines require the use of angular planes measured from the front and rear-property lines to fit an appropriate massing within a site. While the 2024 Mid-Rise Guidelines have removed the use of angular planes, it remains the intent of the Guidelines to limit building height and massing for appropriate contextual fit. Mr. Bortolin states that the 2010 Mid-Rise Guidelines require a minimum of 5.5 m stepbacks above streetwall height, which requirements have been carried forward in ss. 3.1 and 3.2 of the 2024 Mid-Rise Guidelines, meant to create breaks in massing to provide appropriate sky-views and increase sunlight access to the public realm. Mr. Bortolin's evidence is that both the 2010 and 2024 Mid-Rise Guidelines require a minimum of five consecutive hours of midday sunlight on public sidewalks, generally between 8:18 a.m. to 6:00 p.m., with additional shadow mitigation for "a particular street, park, open space, natural area, heritage property, Heritage Conservation District or other shadow sensitive area on a site- or area-specific basis." Mr. Bortolin states the City has upheld these practices, noting the "Sun, Wind, and Pedestrian Comfort: A Study of Toronto's Central Area" (the "Bosselman Study"), and that City Council has recently adopted the Thermal Comfort Guidelines intending to build on the Bosselman Study to update thermal related comfort in the public realm.

[69] Mr. Kopec similarly opines that shadows cast by the Revised Proposal onto the sidewalks and Plaza are at an unacceptable level, thereby failing to conform to s.2 of the Act respecting the orderly development of safe and healthy communities, the promotion of development oriented to pedestrians, and built-form that is well designed encouraging a sense of place and high quality public spaces. Mr. Kopec raises that s.3.1.1.21 of the City OP highlights the importance and role of public squares in urban spaces, referring to the Plaza, in concluding that the Revised Proposal ought not be permitted to negatively impact the current function and future functionality and use of the Plaza. In this regard, he states that City Staff and the Bloor West Village Business Improvement Area (“BIA”) are considering improvements to the Plaza with meetings having been held to discuss its potential, including to hold gatherings both seated and standing and hosting various festivals.

[70] In contrast, Mr. Witt opines that the performance criteria for shadows from buildings is generally understood to be five hours of continuous sunlight. He states that the building has been intentionally articulated to ensure that the new shadows cast from it are no longer evident on the opposing sidewalk by 2:18 p.m. and do not reappear for the balance of the day, which he states is supported by the Shadow Study. Mr. Witt opines that while the recommended duration of sunlight is between 9:18 a.m. to 6:18 p.m., given the sun does not set until 7:31 p.m. on March 21 nor until 7:18 p.m. on September 21, that the five-hour window of sunlight access is provided, thereby satisfying the intent of s.3.1(c)(iii) of the 2024 Mid-Rise Guidelines.

[71] Ms. Cooper concurs with Mr. Witt, stating that the incremental shadow impact on neighbouring properties, sidewalks and the public realm including the Plaza would be “adequately limited” as set out within policies 3.1.3(5) and 4.5(2)(d) of the City OP. Accordingly, she opines that the resulting sky-view is also appropriate. Ms. Cooper relies on the Shadow Study to support her opinion. Responding to concerns raised respecting the utility of the Plaza, Ms. Cooper relied on a Pedestrian Study entitled ‘Bloor-Jane Plaza Study’ (“Pedestrian Study”) conducted by the Applicant’s

transportation planner, Ana Sasic, in forming her opinion that the Revised Proposal would not impact the utilization of the Plaza, and that the additional shadow is adequately limited and acceptable.

[72] According to Ms. Sasic's Pedestrian Study, the Plaza is used primarily as a walking corridor with very few pedestrians pausing or staying for leisure. Her weekday data depicted that only 17 of 848 people walking through paused or stayed in the Plaza between 11:00 a.m. and 3:00 p.m., with only 65% of those individuals pausing for less than one minute, 24% staying for up to five minutes, and 12% staying between 5-30 minutes. There were no individuals observed by Ms. Sasic during her study to stop and stay within the Plaza for longer than thirty minutes. Ms. Sasic's weekend data increased slightly, with 38 of 837 people pausing or staying in the Plaza between 11:00 a.m. and 3:00 p.m. Of those individuals, 61% paused for less than one minute, 21% stayed between one-and-five minutes, and 15% remained between five-and-thirty minutes, and 3% staying for more than thirty minutes.

#### Rear-Transition

[73] Mr. Bortolin's evidence is that the Revised Proposal does not conform to s. 2.3.1.3(b) of the City OP respecting appropriate transition to Neighbourhoods. Mr. Bortolin states this is because there are no step-downs towards the properties to the south along Larkin Avenue, except for a stepback above level fifteen and above level one. Mr. Bortolin expressed concern that the depth of the site is shallow (at 31.72 m, not inclusive of the public laneway at the rear), therefore there is limited opportunity for designing more significant stepping down at the rear while also achieving the Applicant's described desirable unit sizes and floor layouts, and so suggests the overall building height ought to be lowered to help create better transition to the southern Neighbourhoods.

[74] Mr. Bortolin states that the rear transition also fails the performance standards within both the 2010 and 2024 Mid-Rise Guidelines, in failing to use angular planes as set out within the former, and in failing to include appropriate setbacks above the streetwall height as set out in the current draft guidelines. He adds that the 2024 Mid-Rise Guidelines suggests that s.1.3 of the Tall Building Guidelines should be referenced where a building is taller than 45 m for additional design considerations to ensure cohesive and context sensitive development. Mr. Bortolin states that the greater the height, the greater the need for transition.

[75] Mr. Witt contends that the Revised Proposal provides for a 7.5 m setback to the rear property line, in addition to the 6 m public laneway, totaling a 13.5 m setback and thereby exceeds the minimum setback set out in s.3.3.1 of the 2024 Mid-Rise Guidelines. He states that the minimum 2.5 m setbacks above the sixth-storey at the rear were not articulated because the design opted for the more generous separation distance at a 13.5 m setback from the property line, rather than the minimum 10 m required, had the 6 m laneway been included in the calculation. In his opinion, increasing the setback while eliminating the upper-level setbacks is not only permitted by the guidelines, but also allows for a superior condition to that illustrated in figure 3.3.3 of the 2024 Mid-Rise Guidelines.

[76] It is Ms. Cooper's evidence that there is appropriate transition between the Revised Proposal to the abutting Neighbourhoods achieved through special separation, appropriate setbacks and terracing on levels one through three, which include screening on south-facing balconies and terraces.

#### Side Setbacks

[77] Mr. Bortolin opines that the Revised Proposal ought to have side setbacks above the base building height at each side to achieve an appropriate level of transition to adjacent lots. Mr. Bortolin states that the Revised Proposal fails to satisfy policies

3.1.4.10 and 3.1.4.11 of the City OP respecting appropriate mitigation of the physical and visual impacts because the Tower is not appropriately set back from the side lot lines to create appropriate separation distance or to limit the shadow impacts to the public realm and surrounding properties. Mr. Bortolin adds that given the Tall Building Guidelines are better suited to be applied, per those guidelines, there should be greater separation distance between the Neighbourhoods and the Revised Proposal, and even mid-block side setbacks of 12.5 m above street wall height.

[78] Mr. Kopec also opines on the issue stating that both the 2010 and 2024 Mid-Rise Guidelines require appropriate side setbacks in order to maintain sky-views and sunlight access as well as to prevent a “canyon effect” on the street restricting future redevelopment on neighbouring sites.

[79] Mr. Witt too acknowledges that the City OP directs mid-rise buildings to maintain street proportion and open views by stepping back at a height generally equivalent to 80 percent of the adjacent ROW width. He also acknowledges s.3.4 of the 2024 Mid-Rise Guidelines respecting the minimum 5.5 m recommended sideyard setbacks above the sixth-storey. However, he relies on the preamble of s.3.4 as well as subsection 3.4(g) which sets out that determining the appropriate sideyard setbacks requires consideration of the redevelopment potential of adjacent properties whereby, in some cases, reducing or eliminating side setbacks at upper levels on narrow sites may be appropriate to improve building performance. In his opinion, given the urban fabric and dimensions of the neighbouring lots the likely redevelopment potential would have a taller building at the corner of Bloor Street West and South Kingsway, with smaller scale buildings in between and on the eastern two lots. Accordingly, he opines that sideyard setbacks are not necessary. Notwithstanding, he states that the design incorporates a 5.7 m setback in the north half of the building above the twelfth-storey to reduce massing on the street side while maintaining consistency of the exit stair location. Mr. Witt adds that incorporating the same setback to the south of the building does not achieve the intent of the guidelines and are therefore not necessary.

### Privacy and Overlook

[80] Mr. Mills states that the south elevation of the Revised Proposal is to be lined with balconies of 5.95 m in depth and floor areas of between 18 m<sup>2</sup> to 35 m<sup>2</sup> which he states presents privacy and overlook issues. Specifically, the concern is in connection with the abutting neighbourhood residential zone which restricts detached dwelling balconies, above the first-storey, to floor areas of 4 m<sup>2</sup> allowing for less congregation of people in comparison. Mr. Mills suggests that the balconies ought to be reduced in size and indented into the rear main wall on the lower six to seven storeys to mitigate the impact. Similarly, he states that the outdoor amenity space of the Revised Proposal at the rear of the second storey is in close proximity to the abutting low scale neighbourhood to the south imposing adverse impacts in terms of overview, privacy and noise. Accordingly, he states the amenity space would be better situated on a higher floor to create increased separation distance.

[81] In contrast, it is Mr. Witt's evidence that the balconies along the south side of the building exceed industry standards, and are designed to provide functional outdoor space to residents while setting back occupancy from the building's edge to, in fact, mitigate overlook issues. He stated this strategy was successfully employed by the building at 2803 Dundas Avenue West with similar concerns. He adds that the south side of the building most associated with overlook was also specifically designed to have balconies with sufficient space to provide integrated furniture which would maintain distance from the edge and reduce further overlook.

### **Findings on Issue #3**

#### Shadow Impact

[82] Before addressing shadow impact, the Tribunal will first address contention over the significance of the Plaza. The witnesses diverge from referring to the space as a Plaza, and in particular, Counsel for the City along with its witnesses refer to the space as a public square. Contrarily, the Applicant expended resources on a Pedestrian Study to tender evidence that the Plaza holds no more significance to the community than any other open space within the public realm.

[83] It matters not that Ms. Sasic's Pedestrian Study concluded the space was primarily a walking corridor or that there were significant limitations in the methodology of her study. Equally, the evidence tendered by Mr. Kopec that the City and BIA are in discussions regarding the future potential of the Plaza which may change over time, while regarded, carries little weight. Ultimately, the Tribunal must look at the designation of the lands and the test to be applied in terms of shadow impact. In this regard, the Tribunal finds that the space is most appropriately referred to as a Plaza, as that was the title historically used within the BWVA Study, within the City's own Staff Report, and within the City's own issues list drafted prior to the hearing. The Tribunal acknowledges that within the BWVA Study, the Plaza is identified as a key view and prominent site. However, the Tribunal also makes the finding that the Plaza is not designated 'Parks' in the City OP and is not provided any special sun or shadow protection within the City OP or zoning such that it is afforded protections above what good planning requires for any general open space within the public realm. These findings are consistent with the statement within the BWVA Study itself, that the Plaza is a minor open space, and "not considered a principal central gathering area for the community". Accordingly, the Tribunal's findings respecting the shadow impact on the public realm below applies equally to the Plaza as it does to the public sidewalks.

[84] The test respecting shadows cast from new development stems from the City's OP. In particular, policy 4.5.2(d) states that buildings will be located and massed to adequately limit shadow impacts on Neighbourhoods, particularly in the spring and fall equinoxes. While Mr. Bortolin speaks to concerns of new net shadows on the Plaza, he also conceded on cross examination that the City OP only speaks to adequately limiting shadows and does not in fact reference a test for "no net new shadows". Guidance, for which the Tribunal must have regard, in respect of how shadows may be adequately limited are set out in both the 2010 and 2024 Mid-Rise Guidelines which recommend five consecutive hours of sunlight between the spring and fall equinoxes. With the revisions to the 2024 Mid-Rise Guidelines, which removed the requirement of angular planes, s.3.2.1 was also updated as follows (emphasis added):

Mid-rise buildings **should** be designed to protect access to sunlight within the surrounding public realm. The height, scale and massing of the building and front façade **should** achieve at least five consecutive hours of sunlight on the street boulevard at the equinoxes.

- a. The **consecutive five-hour sunlight window will vary** depending on the location of the site and the orientation of the street but will be measured **generally** between 9:18 a.m. and 6:18 p.m. on March 21st and September 21st.
- b. The consecutive five-hour sunlight window on various streets across the City should **generally** align with the sample sun/shadow study provided in Appendix A.
- c. Mid-rise buildings should demonstrate through a sun/shadow study, how the proposed building provides good access to sunlight **and minimizes shadowing of nearby parks and natural areas.**
- d. On sites with multiple mid-rise buildings, limit or vary the height of buildings **to reduce the extent of shadows and length of time they are cast on public realm** elements and consider the cumulative effect of multiple buildings on resulting shadowing.
- e. Additional shadow mitigation may be required for a particular street, park, open space, natural area, heritage property, Heritage Conservation District, or other shadow sensitive area on a site- or area-specific basis.

[85] The key language within the 2024 Mid-Rise Guidelines includes that “buildings should be designed”, that the “consecutive five-hour sunlight window will vary”, and also provides for flexibility with use of the term “generally” – in that the window will “generally” be measured between 9:18 a.m. and 6:18 p.m., and will “generally” align with the sun/shadow examples appended to its Appendix A. These measures set out a sure way to guarantee that there is conformity with the City OP test that shadows are adequately limited. This does not mean it is the only way to ensure that shadows are adequately limited. Indeed subsection (d) above states that new development should include a sun/shadow study to demonstrate how the proposed building provides good access to sunlight and minimizes shadowing of nearby parks and natural areas. What it does not say is that a shadow study shall demonstrate a minimum of five-hours of consecutive sunlight. It is readily apparent that the guidelines acknowledge shadows are inevitable, and the goal is to minimize and reduce the extent and length of the shadows cast on the public realm which achieves the intent of the City OP.

[86] Mr. Bortolin described that the intention behind limiting building height to the width of the adjacent ROW regards, primarily, the ratio which guarantees achieving the minimum five consecutive hours of sunlight onto the public realm. However, the emerging policy direction and change in the guidelines permit achieving greater heights beyond the width of the ROW where the contextual factors deem it appropriate including proximity to higher order transit. This necessarily contemplates that the extent and length of time that a shadow will be cast may exceed the recommended general guideline. It stands to reason then, that use of the term “generally” within the guidelines is intended to allow an evaluation as to whether the shadows cast are minimized such that they still achieve the intent behind the policies and guidelines.

[87] In respect of the shadows cast from the Revised Development, and turning to the Applicant’s Shadow Study which was not disputed in its conclusions or findings, the Tribunal finds the following:

- a. In respect of the residential neighbourhoods, while the Revised Proposal creates shadows on some of the properties on Larkin Avenue, Armadale Avenue and Willard Avenue at 6:18 p.m. on March 21 and September 21, it also demonstrates that much of the neighbourhood is also in shade at this time of day;
- b. In respect of the sidewalk on the north side of Bloor Street West, the shadows that would be cast from development permitted as-of-right, with the shadows that would be cast from the Revised Proposal almost entirely overlap at 9:18 a.m., 10:18 a.m. and 11:18 a.m. on March 21 and September 21. Any additional shadow created by the Revised Proposal during these time periods are cast onto other buildings or existing shadows;
- c. In respect of the sidewalk on the north side of Bloor Street West and the west side of Jane Street, the shadows cast from the Revised Development are at varying times of the day, and overlap with shadows that would be cast from the City Modified Development on a portion of the north side of Bloor Street West between 9:18 a.m. and 12:18 p.m. The shadows arising from the Revised Proposal gradually sweep off and are entirely gone by 1:56 p.m. on March 21 and by 1:43 p.m. on September 21.
- d. The Revised Proposal creates increased shadow after 12:18 p.m. on the 45.9% of the Bloor Street West sidewalk between Jane Street and Riverview Drive. It also creates increased shadow at 1:18 p.m. on 18.1% of the Jane Street sidewalk between Bloor Street West and Rivercrest Road;
- e. With respect to the Plaza, the shadows cast are at varying times of the day. A portion of the shadow cast from the Revised Proposal overlaps with development that would be permitted as of right on a small portion of the western quadrant at 10:18 a.m. on both March 21 and September 21. The additional shadow created by the Revised

Proposal is at 11:18 a.m. on a small portion of the western quadrant, and then at 12:18 p.m. and 1:18 p.m. when the Plaza is in partial shade for both March 21 and September 21. The shadows gradually sweep off the Plaza and are entirely gone at 1:56 p.m. on March 21 and at 1:43 p.m. on September 21. The Plaza is never entirely in shadow as a result of the Revised Proposal; and

- f. The Revised Proposal does not create shadow on any lands designated "Parks" at any given time.

[88] To put it another way, the Shadow Study demonstrates that the Plaza would have access, almost entirely, to full sunlight most of the day but in particular between 9:18 a.m. to 11:18 a.m. and then again at 2:18 p.m. until about 4:18 p.m. at which time any shadows cast onto the Plaza are from other existing buildings. It is also demonstrated that at least half of the Plaza will continually receive five or more consecutive hours of sunlight. As for the sidewalks, the Shadow Study demonstrates that there are some portions of the sidewalk that would continue to receive five-hours of consecutive sunlight, and other minor portions which would receive more than five hours of non-consecutive sunlight. This applies to the key months of September, October, March and April. For the balance of the year (November, December, January, February, May, June, July, and August), as conceded to by Mr. Bortolin, the shadow impacts between the City Modified Development and the Revised Proposal do not significantly vary. The Tribunal determines that these findings support that the shadows cast onto the public realm are adequately limited, notwithstanding the portions of the sidewalk which receive five hours of non-consecutive sunlight.

[89] As submitted by Mr. Helfand, the Tribunal would agree that to require strict adherence to five-*consecutive* hours, for only a portion of a sidewalk that would otherwise receive five non-consecutive hours of sunlight and only in the shoulder season, in the face of a proposal that is otherwise well supported by the emerging policy framework regarding the provision of increased housing near higher order transit, would

be punctilious insistence on a guideline that would be less than felicitous and contrary to the words of Associate Chair Lee (as he then was) in *Sentinel (Broadway) Holdings Inc. v. City of Toronto*.<sup>8</sup>

[90] While the Tribunal has always recognized the importance of minimizing shadows during the spring and fall equinoxes when sunlight is needed most within the Canadian climate, it has also historically recognized that sun and shadow policies must be balanced against other worthy interests and OP goals. As set out in the *Oben Flats Sherbourne GP Inc. v. Toronto (City) (“Oben Flats”)*,<sup>9</sup> “[t]here may well be other applications where, in the interest of achieving worthy and necessary OP goals some reconciliation of this policy will be required and some minimal shadow permitted. The world will turn and the sun will shine”. In this case, the emerging policies directing increased density focused near major transit infrastructure are goals intended to achieve the provision of increased housing supply during a housing shortage which is a worthy interest that must be reconciled against, not another policy within the City OP, rather a guideline that suggests but just one way to achieve conformity with the City OP.

[91] With respect to the City’s arguments that the shadows cast onto the Plaza will negatively impact sunlight access to trees, flower boxes, future landscape design or future planned functionality and use as a gathering space for various festivals and occasions, the Tribunal finds there to be inadequate evidence. No professional evidence was tendered from a landscape architect or arboriculturist to demonstrate that organic plantings were not viable or feasible in the portions of the Plaza that received shade. Equally, the Tribunal did not hear any compelling evidence to suggest that the Plaza could not continue to evolve in its functionality or use, even as a gathering place for large crowds, where at least half (and sometimes beyond half) of the Plaza would receive five-consecutive hours or more sunlight throughout the year.

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<sup>8</sup> *Sentinel (Broadway) Holdings Inc. v. City of Toronto*, 2014 CarswellOnt 8511.

<sup>9</sup> *Oben Flats Sherbourne GP Inc. v. Toronto (City)*, 2019 CarswellOnt 1312.

[92] Accordingly, the Tribunal finds that the Revised Proposal creates incremental shadows that are adequately limited, and which do not pose unacceptable impacts to the surrounding neighbourhoods, sidewalks or the public realm including the Plaza. The Revised Proposal is therefore in conformity with the public realm and shadow policies of the City OP and has appropriate regard for the guidelines.

### Rear Transition

[93] The Tribunal finds that the Revised Proposal is designed with acceptable rear transition to the neighbourhood to the south. While the 2010 Mid-Rise Guidelines direct use of angular planes, those directions were removed in the updated draft 2024 Mid-Rise Guidelines. Section 3.3.1 of the 2024 Mid-Rise Guidelines directs that there should be a minimum of 7.5 m set-back from the building to the rear property line, with 2.5 m stepback at the seventh-storey for mid-rise buildings greater than six-storeys. This would equate to a 10 m setback from the rear property line above the sixth-storey. Subsection 3.3.1(d) states (emphasis added):

d. There may be scenarios where **increasing the rear setback while reducing or eliminating upper-level step-backs may be appropriate to achieve appropriate transition with a more simplified built form**. This option should be considered on a site-by-site basis and be informed by the appropriate supporting studies that demonstrate that built form impacts (e.g., wind impact) can be appropriately limited and mitigated (see Figure 3.3.3).

[94] Figure 3.3.1 within the 2024 Mid-Rise Guidelines allows for a public laneway to be included in the calculation of the minimum 7.5 m setback to the rear property line. However, the Revised Proposal does not include the 6 m public laneway at its rear. Rather, it provides for a 7.5 m setback from the rear property line, in addition to the 6 m public laneway, equating to a total 13.5 m setback in a more simplified built-form, rather than the 7.5 m setback up to level six and then 10.5 m separation distance thereafter.

[95] While the 2024 Mid-Rise Guidelines suggest references to the Tall Building Guidelines for buildings exceeding fourteen-storeys, Mr. Bortolin himself conceded that the Tall Building Guidelines do not set out a minimum separation distance to Neighbourhoods. Rather it depicts that the tower portions of a building should have increased horizontal separation distance. The Tribunal accepts Mr. Witt's evidence that the Revised Proposal has been intentionally designed to remain within mid-rise building massing without a tower. The Revised Proposal includes a stepback above level fifteen, in order to maintain the mid-rise massing which achieves the intent of the guidelines, and does not step into the bounds of a tall building.

[96] Accordingly, the Tribunal accepts and agrees with the evidence of Mr. Witt that the Revised Proposal provides for a more generous separation distance from the rear property line than what the 2024 Mid-Rise Guidelines direct. In addition, the City's planning witness agreed that the rear transition does not cause any unacceptable privacy or overlook concerns to the neighbourhood to the south. The Tribunal therefore determines that there is an acceptable and appropriately articulated rear transition.

#### Sideyard Stepbacks

[97] On the issue of sideyard setbacks, the Tribunal also prefers the evidence of Mr. Witt and Ms. Cooper over Messrs. Bortolin and Kopec. The first key reason is with respect to the City Modified Development, which the Tribunal notes also did not include any sideyard setback. To explain, Mr. Bortolin on cross-examination stated the reason for this was because he understood timber construction was difficult to achieve with side stepbacks, and so the City took the initiative not to refuse the application on this point but to compromise given they had achieved, what they viewed as, an appropriate building height that provided access to a larger amount of sun and sky-views. In contrast, Mr. Witt opines that the Revised Proposal continues to be designed to accommodate mass timber construction. Accordingly, the feasibility of its use would continue to be negated with the imposition of sideyard setbacks. Mr. Witt did further

state that whether mass timber will be used remains to be seen given the higher costs associated with the material and the unforeseen added costs that the project has accumulated to obtain its development approvals. The Tribunal rejects Ms. Zuidema's submissions that this constituted back-tracking on a commitment to sustainable materials or inserts the concept of market conditions and profitability into the requisite analysis. Costs, including those associated with utilizing sustainable materials, may very well be a reality of the constraints within the business of development, but the use of materials is not an issue to be decided on the present appeal, and neither is profitability of the project. The simple fact is, the desire to use sustainable materials in the way of mass timber construction has been expressed, and it is in the interests of the environment, good planning, and the public, to facilitate that to the extent possible.

[98] In any event, the use of timber construction is not the only relevant consideration on the issue of sideyard setbacks. Indeed, it was revealed in evidence that Mr. Bortolin was the City's urban designer who was assigned to the application respecting a development located at 1728 Bloor Street West, which culminated in settlement between the Parties as approved by the Tribunal ("1728 Bloor Settlement"). One of the outcomes of the 1728 Bloor Settlement, was approval of an eighteen-storey development that directly abutted an adjacent nine-storey building, which also did not provide any sideyard setback. Significantly, this was not a proposal that contemplated the use of mass timber construction. The Tribunal finds Mr. Bortolin's evidence on the matter problematic. On the one hand, he admits in cross examination that the site was too small for its scale and that the lack of setbacks also did not meet urban design guidelines. On the other hand, he states that the matter was a settlement, and he had limited input in the final agreed upon concept which was dictated by legal considerations and the risks associated with litigating to a full hearing. The Tribunal cannot accept this assertion. Every Municipality, and this Tribunal when stepping into the shoes of an approval authority, has an obligation to ensure that a proposal withstands the applicable policy framework, constitutes good planning, and is in the public interest, regardless of whether a settlement is reached. It is troublesome, in the least, to say that after an

approval is endorsed by City Council, that the urban designer assigned to the matter did not voice professional concerns of non-compliance. In the alternative, it is equally troublesome to reconcile why different proposals may receive a different interpretation or application of the guidelines. Similarly, the Tribunal also finds it difficult to accept the submissions of Ms. Zuidema, that the 178 Bloor Settlement serves as an example of how the creation of precedent can be used as a measure against the current proposal. As in *Oben Flats*, the Tribunal here too is not impressed with such an argument. Not only does it fail to acknowledge that the settlement was deemed good planning by City Staff, the City's legal Counsel, and the elected members of its Council, it also fails to account for the reasons that inform planning decisions including the context and facts and the matter of properly interpreting the relevant policies of the day.

[99] The preamble of s. 3.4 of the 2024 Mid-Rise Guidelines is clear that the appropriateness of sideyard setbacks is to be determined in consideration of the redevelopment potential of the adjacent properties in order to maintain appropriate facing conditions and to allow sky-views and sunlight on the adjacent street. The Tribunal has already determined that the shadows cast onto the sidewalk and public realm are adequately limited, thereby appropriate sunlight also provided. The partial setback at the twelfth-storey also achieves the objective of preserving sky-view, thereby meeting the objective of the guideline. Section 3.4(g) adds that eliminating sideyard stepbacks at upper levels may be appropriate on narrow lots to improve building performance, which should be evaluated on a site-by-site basis based on the criteria laid out. The Tribunal accepts the evidence of Mr. Witt and Ms. Cooper in this regard. Mr. Witt opined that the canyon effect is not realistic or likely because blocks do not develop in the way described by Mr. Bortolin. This is aligned with Ms. Cooper's evidence respecting the reasons why BCP's are not typically looked at, because of the nuanced ways in which a site varies therefore limiting its development. The Tribunal accepts Ms. Cooper's opinion that the development potential in the planned context is likely to be in the low-to-mid-rise scale. The Tribunal further accepts Mr. Witt's evidence that given the urban fabric and dimensions of the neighbouring lots, any taller buildings

are likely to be located at the corner of Bloor Street West and South Kingsway, with smaller scale buildings in between. The Tribunal does not find any compelling evidence to demonstrate that the Revised Proposal would interfere with the opportunities for future developments, support the existing and planned context, and contribute to sustainable development.

### Privacy and Overlook

[100] The Tribunal finds that the Revised Proposal does not pose any privacy and overlook concerns on account of balconies or the outdoor amenity space as designed. Quite simply, in direct contrast to Mr. Mills' stated concerns for the SARG, Mr. Kopec for the City opines that "there are no issues related to privacy and overlook relating to abutting properties". Mr. Bortolin, too, makes no comment with respect to privacy concerns. Given the City's own witnesses raise no issues with respect to privacy and overlook, and the SARG is required to shelter under issues raised only by the City, the Tribunal is of the view that this is not a proper issue within the administrative bounds governing the Appeal. Notwithstanding, the Tribunal accepts the evidence of Mr. Witt that the balconies and outdoor amenity space functions to mitigate privacy and overlook by setting back the occupancy of the buildings edge. The implementation of planters and additional screening on the balconies will further assist with increasing privacy which will be addressed through the site plan stage.

[101] Before turning to the next issue, the Tribunal will briefly address two additional issues raised by the SARG:

- a. Non-Residential Space: Mr. Mills raises issues respecting the appropriate amount of non-residential space. Again, this is not an issue or concern raised by the City's witnesses under which the SARG is required to shelter. Additionally, neither the SARG nor the City relate this issue to any policy conflict. In any event, the Tribunal finds that the evidence

establishes mixed-use will be provided with retail accounting for approximately 70-percent of the building frontage, and that there are no issues rooted in the policy and planning framework raised that would restrict development based on this level of non-residential space provided.

- b. Sidewalk Fronting Revised Proposal: Mr. Mills described a pinch-point on the sidewalk fronting the proposed building as the result of a layby that is not contemplated to be removed, and as such, he states the Revised Proposal negatively impacts the front sidewalk unless the layby is removed or the streetwall is indented at the first three storeys. While the witnesses for the City did not raise this same concern, the Tribunal finds that the building envelope is situated in the same approximate location as the existing structure currently occupying the Subject Lands, and therefore the Revised Proposal will not negatively impact a pinch-point which already exists. The Tribunal accepts Mr. Witt's evidence that the proposed building creates a streetwall, utilizing good urban design.

#### **Issue #4: Is there appropriate regard for the BWVA Study?**

[102] Mr. Kopec's evidence on the BWVA Study is that it has been an undertaking by the City to assess the land uses, transportation and servicing infrastructure, community services and facilities, built-form character and redevelopment potential for the corridor along Bloor Street West, between Humber River and Keele Street. Mr. Kopec states the main goal of the study is to establish a specific planning and design framework to guide change in the area. With guiding principals, the study ultimately seeks to reinforce the Village identity, by maintaining the vibrant Main Street character of the area, the quality and local scale of retail, and to improve this special place in the City.

[103] Mr. Kopec opines that although the BWVA Study is not yet complete, it remains in force and relevant in providing valuable insight into the vision of the area. The

preliminary built form recommendations provided for Bloor Street West in the West Village area contemplates development at nine-storeys (30 m) in height and recommends five-hours of sunlight on the north side of the sidewalk from March 21 to September 21. Mr. Kopec opines that the Revised Proposal is out of scale and not in line with these recommendations, does not adequately respect the context of the Bloor West Village Avenue, nor the directions in the BWVA Study. He concedes to the acknowledgment at s.2.2.3.3 of the City's OP which states that development may occur prior to an Avenue Study being completed and, in such case, is to be considered based on the policies of the OP. His position is that, given the City OP acknowledges that development on an Avenue has the potential to set precedent, that permitting a sixteen-storey mixed-use development in the West Village would set a negative precedent for future development in the area in contrast to the preliminary recommendations in the BWVA Study.

[104] Mr. Bortolin concurs with Mr. Kopec, reiterating the three key reasons for his opinion that the Revised Proposal lacks appropriate regard for the BWVA Study. These reasons overlap with his opinion on the scale of the building, the side setbacks and shadow cast. First, he states that the proposed building scale is beyond the scale envisioned for the site within the study given the height exceeds the width of the adjacent ROW. Second, he maintains that the proposed building does not include significant upper storey side setbacks. Third, he contends that the first two reasons result in less than the recommended five-hours of continuous sunlight during, namely, the spring and fall equinoxes on a portion of the Plaza and portions of the north sidewalk on Bloor Street West.

[105] In contrast, Mr. Witt concedes that in evaluating the building from an urban design perspective, he did not give considerable weight to the BWVA Study, and rather focused on the 2024 Mid-Rise Guidelines, which he states provides a more recent and detailed articulation of the urban design standards applicable to the Subject Lands. In

respect of meeting the general intent of the BWVA Study, he relies on Ms. Cooper's evidence.

[106] Ms. Cooper states that the Revised Proposal meets the general intent of the BWVA Study with respect to many of its guiding principles. Notwithstanding, she opines that the study is outdated and that its weight should be balanced with the other important planning objectives. To this end, Ms. Cooper contends that the BWVA Study underwent a public consultation process which commenced in December 2016, and concluded in December 2017. A Status Report dated May 17, 2018, proceeded to the Etobicoke York Community Council, and was adopted on June 6, 2018. However, Ms. Cooper highlights that was over six years ago, and since that time, there has been no implementing OPA nor ZBA adopted by Council to implement the components of the Study. Other than an open house held in October 2024, there have been no draft amendments prepared for public consultation or review. Additionally, Ms. Cooper asserts that the BWVA Study predates the various emerging changes in the policy and regulatory context already discussed including the 2024 PPS and OPA 540. On this basis, Ms. Cooper opines that relying strictly on the BWVA Study would be to rely on an outdated document which precludes the ability to maximize the efficient use of land and infrastructure on the Subject Lands and to strike an appropriate balance of all applicable planning objectives.

#### **Findings on Issue #4**

[107] The Tribunal finds that the Revised Proposal has appropriate regard for the BWVA Study. This finding is made in tandem with the determination that indeed the weight of the BWVA Study must be balanced against all planning objectives as well as the emerging direction arising from the changes in the policy framework including the 2024 PPS, OPA 540 and OPA 788. Firstly, and significantly, there is no implementing OPA or ZBA to elevate the status of any of the components of the BWVA Study as official plan policy or zoning standards, notwithstanding that the study was concluded

over six years ago. The City has had ample opportunity to do so, however there is no evidence that any steps have been taken in this regard. To the contrary, the Avenues-HAP aims to simplify approvals to facilitate development along Avenues and in Mixed-Use Areas. OPA 778 arising from the Avenues-HAP, while not yet in force and as previously discussed, remains relevant and informative as a considerable policy direction adopted by Council. Significantly, it proposes to remove the requirements for Avenue Segment Studies and new Avenue Studies altogether, to facilitate a streamlined approach encouraging development along Avenues. It also allows increased heights beyond the scale of mid-rise in Mixed Use areas within 800 m distance to a subway station. This demonstrates what Ms. Cooper correctly conveyed in her evidence regarding the datedness of the BWVA Study. Secondly, and to reiterate, while not yet in force, OPA 540 has delineated the Subject Lands as a PMTSA in order to meet the Provincial minimum intensification requirements. To this end, MTSA's have been elevated within the 2024 PPS as the primary area for where the highest level of growth and development will occur under the definition of Strategic Growth Areas. The BWVA Study precedes, and is not directly aligned with, these changes. Accordingly, the weight to be afforded to the BWVA Study must be carefully considered.

[108] Turning to the recommendations and objectives of the BWVA Study which Messrs. Bortolin and Kopec opine are impugned by the Revised Proposal, they entirely overlap with the policies within the City OP and more recent 2024 Mid-Rise Guidelines that have been directed to be used by the City's Housing and Planning Committee, namely, in regard to height, scale, massing, built-form, setbacks, stepbacks, sky-views, sun access and shadow cast. Each of these considerations have already been carefully considered with reasons set out within this Decision regarding their conformity and regard to the respectively related policies and guidelines. In the interests of efficiency, that discussion need not be repeated here. Contrary to Messrs. Bortolin and Kopec, the Tribunal agrees with Ms. Cooper that the general intent of the BWVA Study with respect to many of its guiding principals is indeed met in the following ways:

- a. A ground floor height of 5 m is provided, exceeding the minimum 4.5 m standard within the study;
- b. An approximate 3 m streetwall stepback is provided along the front façade above the sixth-storey, which is generally consistent with the minimum standard of the 3 m setback above five-to-six-storeys set out within the study;
- c. A setback of approximately 3 m is provided at the fifteenth level, meeting the intent of the study which recommends additional stepbacks as a means of mitigating the perception of height;
- d. The building has been designed to take advantage of its prominent location at the Bloor Street West and Jane Street intersection to act as a vista terminus from the Humber River bridge to the west, and respond to its unique site characteristics through a façade that respects the configuration of the street while also framing the north and west views. This is in line with the study's recommendation to design buildings in consideration of key views and vistas for prominent sites;
- e. The retail use within the building, limited at approximately 260 m<sup>2</sup>, respects the study recommendations that retail units be limited to support the character of fine grain retail at a maximum GFA of 3500 m<sup>2</sup> per retail unit, and maximum floor plate of 400 m<sup>2</sup> at grade; and
- f. The building, which is designed to be within mid-rise scale and form, respects the study recommendation of the building types meant to define the Bloor Street West Village frontages and provide appropriate transition to low-rise neighbourhoods.

[109] Accordingly, the Tribunal finds there is sufficient regard for the BWVA Study which predates the changes to the 2024 Mid-Rise Guidelines as well as significant pending changes to the planning and policy framework. The Revised Proposal achieves an appropriate balance of the applicable policy objectives including transit-supportive intensification and increased housing supply while adequately limiting built-form impacts

in the context of the site within the Bloor West Village. In addition, the Tribunal finds that approval of the requested ZBA permitting the Revised Proposal would not preclude the City from preparing an implementing OPA or ZBA for the BWVA Study area, as the Revised Proposal would serve to inform such documents.

### **Regard for the Information and Materials before, and Decision of, City Council**

[110] The Tribunal must have regard for the information and materials before City Council, as well as for its decision. However, the term 'regard' in this context must not be conflated with deference. The Tribunal finds that, in this case, the decision of Council to approve a modified version of a development proposal not put forward by the Applicant, without any detailed drawings or plans, troublesome for a few key reasons. Significantly, the information and materials that were before Council regarding the City Modified Development were significantly limited. There were no floor plans, elevations, or architectural drawings for the ten-storey modified proposal that was ultimately approved. The Tribunal could not affirmatively determine what the proposed building would ultimately look like from the exterior, nor from the interior. As conceded to by Mr. Bortolin, he too could not definitively provide a description of the unit layouts or unit count for the ten-storey proposal. Notwithstanding, based on his assumption that there would be enough space to accommodate the appropriate unit layouts and unit count, Mr. Bortolin opined that the ten-storey proposal would effectively meet the Growing Up Guidelines. Additionally, neither of Messrs. Bortolin or Kopec could affirmatively state whether the revised materials were circulated, as in the ordinary course, among City Staff for comment to divisions including engineering or transportation. Indeed, Mr. Kopec conveyed that while he appreciated City Staff's attempt at recommending a modified proposal under time pressure, if it had been up to him, he would have recommended refusal altogether. This provides little comfort in the materials and information that was before Council in rendering their decision.

[111] Accordingly, while the Tribunal has had regard for the information and materials before Council as well as its decision, ultimately, the Tribunal is tasked with rendering a decision by evaluating the proposal before it based on its own merits. That is what has been done, as set out in the reasons for this Decision.

## **CONDITIONS**

[112] Mr. Kopec provided evidence, that should the Tribunal be inclined to approve the ZBA, that the approval be granted on the conditions set out within the Issues List. Mr. Helfand submits that the Applicant is satisfied to have the Order withheld conditional on the final form of the ZBA to be crafted to the satisfaction of the Parties. There was no opposition to the balance of the proposed conditions, and the Tribunal finds these conditions to be reasonable.

## **SUMMARY OF DISPOSITION**

[113] The policy directions at both the Provincial and Municipal levels emphasize the efficient and optimal use of land and infrastructure while encouraging the integration of land use planning and the Revised Proposal achieves this. The Subject Lands are located within a “Strategic Growth Area” as defined by the 2024 PPS, which includes MTSA’s. It is also located within the proposed boundary of the Jane-PMTSA as per OPA 540, identified as an area which is to be the focus of intensification and higher-density mixed uses. The Subject Lands are within the Mixed-Use Areas designation pursuant to the City OP, which is one of the four designations anticipated to accommodate the majority of the City’s envisioned growth strategy, and which does not set out any general height or density limits.

[114] The Tribunal finds that the Revised Proposal serves to revitalize and reurbanize a currently underutilized lot within walking distance to the City’s major transit infrastructure in a manner that is in keeping with the built form context, both existing and

planned, along an Avenue within the Bloor Street West Village. The evidence has demonstrated that the Revised Proposal provides for a street-oriented development in an urban typology, an active mixed-used frontage at-grade, and landscaping improvements that will enhance the public realm by creating an animated, attractive, high quality and safe environment for residents and the community. It will increase the vibrancy of the area by providing living opportunities within a walkable distance to transit, jobs and amenities. The height and massing of the Revised Proposal are designed to adequately limit the shadow on the streets, sidewalks, Plaza, and the public realm and its sensitive design and articulation limit privacy and overlook impacts. The Revised Proposal, in its height, density and built-form, strikes the appropriate balance between all planning policies and objectives in supporting intensification in proximity to a proposed PMTSA without compromising access to sunlight and sky-views, and maintaining pedestrian comfort within the surrounding public realm.

[115] The Tribunal concludes that the Revised Proposal has sufficient regard for the matters of Provincial Interest under s.2 of the Act. It is also consistent with the 2024 PPS, and conforms to the City's OP, both of which promote intensification of underutilized sites within the built-up urban area, particularly in locations well served by existing municipal infrastructure and higher order transit. The Revised Proposal also has sufficient regard for the 2010 and 2024 Mid-Rise Guidelines as well as the general intent of the BWVA Study.

### **INTERIM ORDER**

[116] **THIS TRIBUNAL ORDERS THAT** the appeal is allowed, in part, and on an interim basis, and:

- a) Zoning By-law No. 488-2024 is hereby repealed;

- b) The proposed amendments to By-law No. 569-2013 of the City of Toronto, as set out in this Decision are hereby approved in principle;
- c) The issuance of the Tribunal's Final Order shall be withheld contingent upon confirmation from the City Solicitor, of satisfaction of the following pre-requisite matters:
  - i. The Tribunal has received and approved the final form and content of the draft Zoning By-law Amendment, confirmed to be to the satisfaction of the City Solicitor, the Executive Director of Development Review and the Chief Planner, City Planning;
  - ii. 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 the Chief Engineer and Executive Director, Engineering and Construction Services. These reports shall determine whether the municipal water, sanitary, and storm sewer systems can support the proposed development and whether upgrades and/or improvements of the existing municipal infrastructure are required;
  - iii. The owner has entered into a financially secured agreement 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 any other

reports accepted by the Chief Engineer and Executive Director, Engineering and Construction Services;

- iv. Necessary studies, including those related to pedestrian level wind impacts, noise and vibration have been updated and their recommendations addressed to the satisfaction of the Chief Planner and Executive Director, Development Review Division;
- v. Submitted a Transportation Demand Management Plan, including any necessary financial securities to the satisfaction of the General Manager, Transportation Services and the Chief Planner and Executive Director, City Planning and that such matters arising from such study, be secured if required; and the Plan shall include:
  1. mode share targets intended on shifting travel away from passenger cars and required parking;
  2. method(s) by which the target mode share and parking rates will be reached (for example -future implementation of a bike share station, car-share or transit pass program);
  3. the level of commitment to implement, enforce and maintain the plan moving forward;
  4. expected short-term and long-term outcomes; and
  5. should the accepted Transportation Demand Management Plan include any cash contribution toward Transportation Demand Management measures, such cash contribution shall be paid by

the owner prior to the issuance of any building permit, including a conditional building permit, for the development and allocated in accordance with the Transportation Demand Management Plan, and such cash contribution shall be indexed upwardly in accordance with the Statistics Canada Non-Residential Construction Price Index for the Toronto Census Metropolitan Area, reported quarterly by Statistics Canada in Building Construction Price Indexes Publication 18-10-0135-01, or its successor, calculated from the date of any Ontario Land Tribunal order, allowing the appeal in whole or in part, until the date of payment.

- d) Counsel for the Applicant is to advise the Tribunal within 120 days of the issuance of this Interim Order as to the Status of the final instrument(s), should they not yet be finalized;
- e) The Panel Member will remain seized for the purposes of reviewing and approving the final draft Zoning By-law Amendment and the issuance of the Final Order; and

- f) The Tribunal may be spoken to in the event of any issue arising in the implementation of this Order.

*“N. Eisazadeh”*

N. EISAZADEH

**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.