Ontario Land Tribunal
Tribunal ontarien de l'aménagement du territoire

ISSUE DATE: July 25, 2025 **CASE NO(S).:** OLT-24-000731

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

Applicant and Appellant:	ABC Eglinton LP
Subject:	Request to amend the Official Plan – Failure to adopt the requested amendment
Description:	To permit redevelopment of the Property for a 19-storey mixed-use development.
Reference Number:	23 127502 NNY 08 OZ
Property Address:	444-466 Eglinton Avenue West
Municipality:	Toronto
OLT Case No.:	OLT-24-000731
OLT Lead Case No.:	OLT-24-000731
OLT Case Name:	ABC Eglinton LP v Toronto (City)

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

Applicant and Appellant:	ABC Eglinton LP
Subject:	Application to amend the Zoning By-law – Refusal or neglect to make a decision
Description:	To permit redevelopment of the Property for a 19-storey mixed-use development.
Reference Number:	23 127502 NNY 08 OZ
Property Address:	444-466 Eglinton Avenue West
Municipality:	Toronto
OLT Case No.:	OLT-24-000732
OLT Lead Case No.:	OLT-24-000731

Heard: June 17 to 25, 2025 by Video Hearing

APPEARANCES:

Parties	**Counsel**
ABC Eglinton LP	D. Bronskill
City of Toronto	K. Czajkowski J. Dexter

INTERIM DECISION DELIVERED BY S. TOUSAW AND ORDER OF THE TRIBUNAL

Link to Order

INTRODUCTION

[1] ABC Eglinton LP ("Applicant"/"Appellant") appealed to the Tribunal on the City of Toronto's ("City") absence of decisions on applications for Official Plan Amendment ("OPA") and Zoning By-law Amendment ("ZBA") affecting 444 – 468 Eglinton Avenue West ("site") in Toronto.

[2] The Applicant proposes to replace the site's 2-storey buildings with a 31-storey mixed use building in an area where the planning framework calls for 8 storeys.

[3] On the primary issue of building height, the Tribunal finds for the City in not approving 31 storeys, but will provide the Applicant the opportunity to "keep this file alive" through this Interim Order, given the City's recent adoption of Official Plan Amendment 778 ("OPA 778"). Under the in-force policy environment and contextual setting of this site, the Tribunal finds 31 storeys to be too tall, while also finding valid policy and site support for a building above the existing mid-rise limit. OPA 778 is under appeal, but if it comes into force, it will expressly allow consideration of a height and scale above mid-rise along Avenues. It is the confluence of timing of this appeal and OPA 778 that leads the Tribunal to not issue a Final Order here. Given the strengths of

this site for intensification, the Tribunal sees high potential for a resolution between the Parties, should OPA 778 come into force.

[4] The Parties called the following witnesses, each of whom was qualified to provide opinion evidence in their field of expertise.

Expertise	Applicant/Appellant	City
Urban Design	Angus Laurie	Abhinav Sukumar
Wind Engineering	David Huitema	x
Land Use Planning	Michael Goldberg	Amie Chung

[5] The Tribunal has reviewed the written statements from 10 Participants, with special thanks for the thorough and reasoned input from the two community associations and from Peter Danson which spoke to the matters addressed at this Hearing.

PARTY POSITIONS

Applicant

[6] In requesting that the appeals be allowed and the OPA and ZBA be approved in principle, subject to pre-conditions, the Applicant argues as follows.

[7] The local planning framework affecting this area has failed to achieve intensification for over two decades. The mid-rise 8-storey limit is stale and has failed. The massive public investments in Light Rail Transit (“LRT”) warrant and require

support from intensification. This proposal is transit-supportive development as called for by the Provincial Planning Statement, 2024 (“PPS 2024”/“PPS”). The Yonge-Eglinton Secondary Plan (“SP”) for Midtown Toronto, approved with modifications in 2019, substantially predates and lags behind the PPS 2024. Even if a mid-rise build-out occurred along the entire Eglinton Way, the density target would not be achieved without a further 850 dwelling units in the area.

[8] Intensification is necessary to optimize investments in infrastructure. OPA 778, while not yet in force, will enable tall buildings along the Avenues to better achieve the intensification goals, as has been occurring in other areas of the SP where tall buildings are allowed and taller buildings have been approved through OPAs. The City’s 2024 Housing Pledge further supports this proposal.

[9] As not substantially disagreed by the City’s witnesses, this site’s proposal is compatible with its planned context, transitions down appropriately from taller buildings closer to and within the Yonge-Eglinton Centre, and implements the Tall Building Design Guidelines (“Guidelines”), including built form and acceptable shadows. The details for wind mitigation, landscaping, and amenity areas are resolvable and should be addressed at the Site Plan Application (“SPA”) stage.

[10] An OPA must be consistent with the PPS, but need not conform in all respects to the Toronto Official Plan (“OP”). The OP itself has policies to guide an OPA, which this proposal has addressed. Regard for provincial interests and the PPS must take priority, which, here, warrant an amendment to the OP to permit a tall building.

City

[11] In requesting that the appeals be dismissed, the City argues as follows.

[12] The Applicant has not and cannot demonstrate that the SP has failed. Development takes time, and Eglinton Way should be given time to build out as a mid-rise Avenue over its intended 25-year planning horizon.

[13] As approved by the Minister of Municipal Affairs and Housing ("Minister") in 2019 under the Provincial Policy Statement, 2014 ("PPS 2014"), the SP was not shown by the Applicant to be outdated. Despite the Minister increasing several of the SP areas' height ranges, the 8-storey limit was maintained for Eglinton Way. In addition, the higher density goal of 200 persons and jobs per hectare ("p+j/ha") is to be achieved over a 25-year horizon, with only 6 years having passed to date. The SP's comprehensive approach to intensification is well-aligned with the new PPS 2024 intensification policies.

[14] A tall building on this site fails to *"fit with the existing and planned context"* as required by the OP. Although all witnesses agreed that a tall building can be designed and located to fit with mid-rise buildings, the planned context here is for a mid-rise streetscape. Eglinton Way in the SP is consistent with the high-level guidance of the PPS, where the City may determine the planned context.

[15] The Tribunal should not give weight to Mr. Goldberg's references to economic factors, given that no economist was called by the Applicant. There may be numerous reasons why developers have not proceeded with intensification projects along Eglinton Way, and the Tribunal has found in other cases that a project's financial viability is not a consideration when assessing planning matters.

[16] The site's wind impacts – on the potential park to the north, on sidewalks, and on the building's outdoor amenity areas atop the podium – have not been shown to achieve acceptable levels through mitigation. A wind tunnel study is required in accordance with the City's Pedestrian Level Wind Study Terms of Reference Guide. Mr. Huitema agreed that a mid-rise building would have lesser wind impacts than a tall building. Similarly, Mr. Goldberg agreed that northward shadows would reach further into the adjacent Neighbourhoods from tall buildings than from mid-rise buildings.

POLICY CONTEXT

[17] Certain provincial interests in the *Planning Act* ("Act") and numerous policies in the PPS, OP and SP are relevant and apply to the issues in this Hearing. The following paraphrased excerpts, while not an exhaustive list, identify the key policy considerations raised by the Parties (with the Tribunal's emphasis added).

Planning Act

[18] The provincial interests in s. 2 of the Act include: (f) the efficient use of transportation systems; (h) the orderly development of safe and healthy communities; (j) the adequate provision of a full range of housing; (p) the appropriate location of growth and development; (q) development designed to support public transit and oriented to pedestrians; and (r) built form that is well designed, encourages a sense of place, and provides for public spaces of high quality.

Provincial Planning Statement, 2024

[19] The PPS Vision speaks to building more homes that respond to changing market needs; prioritizing transit-supportive design, where locally appropriate; and optimizing investments in infrastructure. The s. 2.2 Housing policies of the PPS require that planning authorities shall provide for an appropriate range and mix of housing options and densities to meet projected needs (s. 2.2.1), including by prioritizing intensification in proximity to transit corridors and stations (s. 2.2.1.d). Similarly, directions are provided in s. 2.3 Settlement Areas to support active transportation and transit (s. 2.3.1.2), and in s. 2.4 Strategic Growth Areas to accommodate significant population and employment growth (s. 2.4.1.2.a). Major Transit Station Areas ("MTSA") shall maximize the number of potential transit users within walking distance of a station (s. 2.4.2.1) with a built form that supports achieving the minimum density targets (s. 2.4.2.3.a), and plan for intensification along frequent transit corridors, where appropriate (s. 2.4.3.1). The definition of "transit-supportive" includes making transit viable through a high level of employment and residential densities.

Toronto Official Plan

[20] The OP designates the stretch of Eglinton Avenue West ("Eglinton") containing this site as: "Avenues" on Map 2, Urban Structure; "Expansion Elements - Transit Corridors" on Map 4, Higher Order Transit Corridors; and "Mixed Use Areas" on Map 17, Land Use Plan.

[21] The City's "Green P" parking lot abutting the north side of this site is designated as "Parks" on Map 17, Land Use Plan. Beyond the parking lot, to the north and northeast of the site, is the "Neighbourhoods" designation.

[22] The OP s. 2.3.1 Healthy Neighbourhoods calls for developments in Mixed Use Areas that are close to Neighbourhoods to be compatible, to maintain adequate light and privacy for Neighbourhood residents, and to minimize impacts from parking and service areas (s. 2.3.2.3). Development is to be located and massed "to fit within the existing and planned context" (s. 3.1.3.5). The Built Form policies for Tall Buildings (s. 3.1.4), as elaborated through the Guidelines, speak to: street proportion and pedestrian scale; active grade level uses; reduce physical and visual impacts of the tower on the public realm; limit shadow impacts; maximize access to sunlight and open views of the sky from the public realm; limit and mitigate pedestrian level wind impacts; and contribute to the skyline identity and character. Mixed Use areas are to transition by stepping down, particularly towards lower scale Neighbourhoods (s. 4.5.2.c).

[23] The OP s. 5.3.1.3 discourages OPAs that are not consistent with the OP's general intent and should consider whether a broader review and possible area specific policy change would be appropriate.

Yonge-Eglinton Secondary Plan

[24] The SP for Midtown Toronto designates the stretch of Eglinton containing this site as: "C1 Eglinton Way" under "Villages" on Map 21-2, Midtown Character Areas, with an anticipated height limit of 8 storeys (Ex. 5, p. 17); "Corridor" under "Transit Corridors"

and within the 500 metre ("m") radii of two "Eglinton Crosstown Station(s)" on Map 21-3, Midtown Transit Station Areas; and "Mixed Use Areas C" on Map 21-4, Land Use Plan.

[25] The SP designates the "Green P" parking lot as "Parks and Open Space Areas – Parks" on Map 21-4, Land Use Plan, and "City-Owned Opportunity Sites" on Map 21-8, Parks and Open Space Network Plan.

[26] The SP s. 1 Vision includes that new buildings will be compatible with the character and varied scale of Midtown's different character areas. The SP s. 1.3.2 describes the desired Midtown Village's character, including that buildings will reinforce the local character of these main streets and their design will complement planned public realm improvements. The distinguishing feature within Eglinton Way is to be its renewed Eglinton Avenue right-of-way.

[27] The SP s. 2 Area Structure explains that: not all areas will experience the same level of intensification; and that development will ensure a complete community, the vitality and liveability of the various Character Areas, and be transit-supportive, compatible with surrounding areas, and meet the desired character of the area.

[28] The SP s. 2.4.1 directs that Midtown Transit Station Areas will maximize the number of potential transit users within walking distance to a station, and be planned to accommodate higher density, with the highest density to be located close to higher order transit stations (s. 2.4.1.3). Development is to be supported, where appropriate, by: a mix of uses; public/private collaboration; alternative development standards; and prohibiting built form that would adversely affect transit-supportive densities (s. 2.4.1.2). Applicable to Eglinton Way, transit corridors are oriented along major transit routes where buildings will be compatible with the character of the area and transition to surrounding areas (s. 2.4.2.b). A density target of 200 p+j/ha applies to the Chaplin and Avenue station areas within Eglinton Way, to be achieved over the long-term horizon of the SP (s. 2.4.4).

[29] The SP s. 5.1.1 Built Form enables intensification in a variety of building scales

appropriate to the existing and planned context of the Character Area. Redevelopments must contribute to a transit-supportive built form, the skyline, and the desired character of the area (s. 5.3.1).

Zoning By-law 569-2013 ("ZBL")

[30] The ZBL zones the full stretch of Eglinton Way, including this site, as "Commercial Residential." The Green P parking lot to the north is zoned as "OR – Open Space Recreation."

AREA CONTEXT

[31] The site is in the centre of Eglinton Way's approximately 9-block east-west length, which extends from Oriole Parkway in the east to Chaplin Crescent in the west. Eglinton Way generally consists of contiguous 2-storey buildings on both the north and south sides of Eglinton, with its mid-rise buildings consisting of only two or three 8-storey buildings existing or approved along its length.

[32] The site is approximately 250 m from the Avenue Crosstown LRT Station ("Avenue Station") to the east, and approximately 400 m from the Chaplin Crosstown LRT Station ("Chaplin Station") to the west. Both stations are nearing completion and are expected to be operational later in 2025.

[33] Proposed for this site is a 31-storey mixed-use building, including a 6-storey podium and stepped back tower above, with ground floor commercial space, amenity space at level 7, and a total of 322 residential units ("proposal").

ISSUES and FINDINGS

[34] The Tribunal will begin by reviewing the design strengths of this site's proposed building, followed by the main issues in dispute, with emphasis on the core issue of height.

Design

[35] There is little dispute that the proposed building is well designed, as depicted in the rendering below, viewed from the southeast along Eglinton (Ex. 4, p. 68).



[36] The Tribunal finds, on the urban design evidence, that the proposal satisfies the design policies and Guidelines for tall buildings, including:

- a podium that lines the street;
- a 6.6 m ground floor for street-facing commercial uses that replicate the area's 2-storey shop fronts;
- widening of the Eglinton street allowance to provide a 6 m pedestrian realm along the streets;
- widening the rear service lane to 6 m for access to service bays and below-grade parking;

- a 3 m stepback of the tower on its south and east sides;
- the tower setback of 12.5 m from the west lot line, enabling suitable separation should there be a tall building on abutting lands to the west;
- widening the pedestrian lane to 2.5 m along the site's west limit;
- a tower-top mechanical penthouse with a green roof;
- a mix of 1, 2, and 3-bedroom units;
- a desirable, low parking supply of 0.22 spaces/unit (i.e., 78% of units will not have a parking space) which promotes walking and transit use;
- 306 long-term and 65 short-term bicycle parking spaces; and
- "eyes on the public realm" from the podium balconies facing the streets and public parking lot / future park.

Height

[37] The primary question for the Tribunal in this case is:

> Should a 31-storey tall building be permitted on this site within the C1 Eglinton Way Character Area that calls for 8-storey (+/-) mid-rise buildings?

[38] The Applicant referred to the Chedoke[1] Decision of the Ontario Municipal Board, the Tribunal's predecessor, to emphasize that "*a policy that is being amended cannot be used to defeat the amendment.*" In other words, an OPA need not conform with the OP policy it is intending to amend.

[1] Chedoke Terrace Inc., Re, 1993 CarswellOnt 5196, 29 O.M.B.R. 430

[39] However, the Tribunal finds that one must consider the broader purpose and intent of the OP when evaluating the merits of an OPA. Using perhaps an obvious example, the Tribunal can imagine the contextual issues if this 31-storey tower were proposed in the middle of a low-rise Neighbourhood of detached dwellings. The reasons behind the Neighbourhood designation would be worthy of evaluation regarding the suitability and impacts of a tall building.

[40] In the present case, the Tribunal finds that the City did not argue 'that 31 storeys are inappropriate because only 8 storeys are allowed here' but rather that the purpose, intent and function of the SP involves a sequence of different Character Areas that generally result in heights transitioning down from the centre outward, including along Avenues. The Tribunal finds that the height proposed for this site fails to fit sufficiently with the planned context of both Eglinton Way and the broader SP.

[41] This case involves weighing broad planning principles in the context of an area's intended character. Deviations from a strict interpretation of a policy are often appropriate, given that policy is not law, but rather a strong direction. The issue of height requires careful analysis of context, transition, transit support, and the need for housing.

[42] The challenge with the Applicant's request for 31 storeys, is that it "over-tops" the policy environment to such a degree that it fails to fit with the existing and planned context broadly espoused by the OP and SP. Again, some deviation can be considered, but this proposal not only fails to enable a reasonable height transition within Eglinton Way, it also protrudes into height transitions across the entire Midtown area. The proposed design is impressive and could contribute much to the urban streetscape and skyline, but it belongs in or near a Character Area intended for tall buildings and where its height fits with the intended transition.

[43] The Applicant emphasized the need for this OPA due to the alleged failure of the SP to provide housing, arguing that such broad-based failure warrants the requested

intensification on this site. However, the Applicant did not accompany such position and planning evidence with studies and resulting recommendations on how Eglinton Way, as a whole Character Area, should evolve. Such consideration is warranted under OP s. 5.3.1.3 given the scale of this OPA, found here to be well above the height and transition intentions of the SP.

[44] The Tribunal accepts that the proposal for this site has due regard for the provincial interests of s. 2 of the Act related to housing and support for public transit. However, as argued by the City, it fails to have regard for "orderly development" and "the appropriate location of growth and development." Further, the Tribunal finds that the "sense of place" along Eglinton Way and as intended through the SP is undermined by a tall building that fits better with higher intensity areas to the east. A lower tall building would be found to better align with the over-riding transition intentions woven throughout the SP, which itself, was approved under these provincial interests in the Act.

[45] There is no dispute that this site's density and low parking supply rate are consistent with the PPS directions for housing and transit support. However, such benefits must be weighed against a careful reading of the directions of the PPS, including the tempering terms "as/where appropriate" for housing and intensification (e.g., sections: 1 Vision para. 5; 1 Role of PPS para. 3; 2.1.6.a; 2.2.1; 2.3.1.2.d; 2.4.1.3.b; 2.4.2.3; and 2.4.3.1). Collectively, those policies convey the planning principle that the location and its surroundings are relevant when considering intensification near transit. Within the broader SP, Eglinton Way is an area for intensification at a lower scale given its existing and intended main street character.

[46] Brought into force recently, the PPS 2024 is central to the Applicant's evidence and submissions that the provincial policies warrant a change to this 2019 SP for this particular site within Eglington Way. The SP was established based on the 2017 Growth Plan for the Greater Golden Horseshoe and the 2014 Provincial Policy Statement.

[47] Regarding consistency with the PPS 2024, there is no dispute that transit-supportive housing is needed and desired. Intensification is to be prioritized in proximity to transit for significant population and employment growth. Again, however, the PPS Vision refers to a planning caveat: "transit-supportive design, where locally appropriate." The Geographic Scale of Policies indicates that "local context is important." The Settlement Areas s. 2.3.1.4 mandates targets for intensification "based on local conditions."

[48] These directives and policies lead the Tribunal to accept the City's position that the SP establishes the intensification hierarchy necessary to achieve required housing targets over time. Such hierarchy includes the "low end" of intensification applicable to Eglinton Way, given such factors as its main street character, its narrow alignment with a continuous interface to abutting Neighbourhoods to the north and south, and its distance from the Yonge-Eglinton Core, being the "high end" of the intensification hierarchy.

[49] Under focus at this Hearing was PPS s. 2.4.2.1 where MTSAs are to "*maximize the number of potential transit users that are within walking distance of the station*" while s. 2.3.1.2 and the definition of "*transit-supportive*" speak to densities which "*optimize existing and planned infrastructure*." These terms and themes also appear in the SP s. 2.4.1.

[50] Generally, Mr. Goldberg emphasized that these terms push towards greater height and density, and while Ms. Chung agreed, she added that such intensification is achieved across the SP as a whole. Mr. Goldberg focussed on the factual evidence

that no mid-rise buildings are being pursued along Eglinton Way, whereas numerous tall buildings are underway where permitted by the other Character Areas. Mr. Goldberg opined on economic considerations, but clarified that he is not an economist and reads such sections of the PPS only from a planning perspective. He acknowledges that individual project viability is not a planning consideration.

[51] The Tribunal finds that the PPS use of “maximize” and “optimize” are intentional and one does not over-ride the other. “Maximize” is used in the context of delineating the boundaries of a MTSA, where as many potential transit users as possible are within walking distance of a station. “Optimize” is used in the context of establishing land use patterns, where the most effective use of infrastructure is achieved.

[52] By way of example, the Tribunal observes that the Chaplin and Avenue MTSAs are 500 m circles around each station to maximize the number of potential transit users. However, a variety of land use designations exist within those areas, based on their existing and planned contexts, which endeavour to optimize the use of transit. Tall buildings are permitted where considered appropriate, while mid-rise and low-rise buildings are the permitted limits elsewhere.

[53] The Tribunal accepts that this site’s proposal would help to maximize the number of transit users, but finds that such conclusion focusses on this site alone as opposed to the broader intentions for the SP area. The Tribunal accepts Ms. Chung’s opinion that the SP endeavours to maximize transit users through varying scales based on the intentions of the various Character Areas. Avenues with frequent transit are intended for intensification, but at a scale suitable to the localized character. In accord with a full reading of the PPS, including the “where appropriate” caveats referenced above, the Tribunal finds that the SP intentions relevant to this site appear to reasonably align with the PPS. The City has also enabled further densification within Neighbourhoods through recent amendments to the ZBL. More may be coming for Eglinton Way via OPA 778 as addressed later in this Decision.

[54] To the Applicant's argument that Ms. Chung agreed that this site's proposal is compatible with the planned context, as required by the OP, the Tribunal finds that Ms. Chung tempered such conclusion. The Tribunal heard Ms. Chung explain that, while the Guidelines for form and massing are met, and thus considered compatible, such height is not what the overall SP intends for this site and within Eglinton Way. The Tribunal accepts the City's argument that the City's planning evidence remains against a 31-storey height at this site.

[55] The Minister's 2019 approval of the SP included many modifications, two of which were addressed by the Parties (Ex. 1 p. 1295 shown as ~~deletion~~ / addition).

> 2.4.2b Transit Corridors are oriented along major transit routes. The corridors will consist of ~~mid-rise~~ buildings that are designed to ~~respond to~~ be compatible with the ~~historic~~ character of the respective Character Areas and ~~the scale of~~ transition to surrounding ~~Neighbourhood designated lands~~ areas.
>
> 2.4.4.c ~~160~~ 200 residents and jobs per hectare for the Leaside, Chaplin and Avenue Transit Station Areas.

[56] The planning witnesses agree that these modifications pertain to Eglinton Way, enable the consideration of tall buildings, and set a higher minimum density target. Mr. Goldberg opines that a tall building which adds more to the density target will better align with these policies than would a mid-rise building. Ms. Chung agrees that a tall building is not excluded by the policy, but that the proposal's visual and physical discontinuity would not be compatible with the area's character and would not transition to surrounding areas.

[57] Again, the Tribunal finds for the City that 31 storeys in this location does not align with the intended, lower-scale main street character of Eglinton Way and fails to adequately transition down from the Core, being well to the east. To the Applicant's argument that 31 storeys is clearly scaled down from the Core's 65-storey and potentially taller towers, and from 49 storeys in E3 Henning, the Tribunal finds the geographic separation along Eglinton to be problematic for this proposal. Several city blocks separate this site from the nearest edge of tall building areas beginning at E3

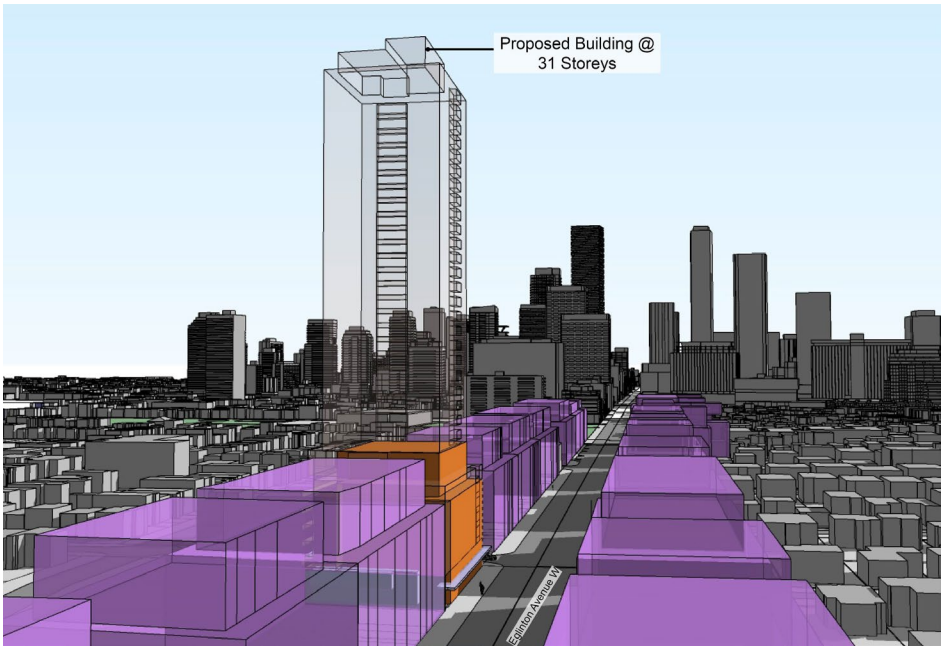
Henning. This distance effectively disconnects this site from the taller buildings near and at the Core, such that it would "stand out alone" and be disassociated with its immediate context and the broader SP. Again, OPA 778 may change the transitional context, but such consideration is for another day.

[58] The Applicant emphasizes PPS s. 6.1.5 in arguing that the SP has failed to achieve intensification and is, therefore, not consistent with the PPS 2024:

> Official plans shall identify provincial interests and set out appropriate land use designations and policies. Official plans shall provide clear, reasonable and attainable policies to protect provincial interests and facilitate development in suitable areas.
>
> In order to protect provincial interests, planning authorities shall keep their official plans up-to-date with the Provincial Planning Statement. The policies of the Provincial Planning Statement continue to apply after adoption and approval of an official plan.

[59] The Tribunal generally accepts the City's position that achieving transit-supportive density takes time and that the numerous developments built, approved or proposed across Midtown all contribute towards achieving density targets in support of transit investments. Moreover, the Tribunal considers the City's adoption of OPA 778 as demonstrating its intention to keep the SP current with the PPS. However, such finding does not contradict the Tribunal's parallel finding that 31 storeys is a poor fit for this site. The valid purpose and intent of the SP's framework for Character Areas with different scales and transition of height is insufficiently represented by this site's proposal. Again, the balancing of the PPS policies for intensification in appropriate locations leads to the finding that 31 storeys is too tall for this site's planned context.

[60] The Tribunal finds the City's schematic in Ex. 5, p. 34 particularly illustrative, albeit not depicting more recent approvals for higher heights in/near the Yonge-Eglinton Core. Nevertheless, when utilizing this schematic, one can visualize a few more taller towers at Yonge-Eglinton and a few taller step-down towers at Henning.



[61] The proposed building's architecture displays many attributes as listed above, but it belongs in a more central area closer to the D1 Core where its contextual "fit" would align with the rise in heights towards Yonge-Eglinton. Put simply, the proposal here appears "dropped in" and "out of place" within Eglinton Way given its substantial distance from the Core at and around the Yonge-Eglinton Crossroads. As opined by Mr. Sukumar, the overall SP intentions would be erased with a Village building roughly four times higher than envisioned, with no built form transition along Eglinton from the Core to this Village.

[62] The graph of building heights along Eglinton (Ex. 4, p. 78), as referred to and acknowledged by Mr. Laurie and Mr. Goldberg, is drawn to scale to depict heights but is not to scale east-west along Eglinton. Without geographic scale, 31 storeys at this site appears to transition appropriately down from both the east and west. However, those taller buildings on the chart are several blocks to the east at Henning and substantially further to the west at Marlee Avenue and Allen Road, being well outside both Eglinton Way and the SP area. Within the foregoing stretch of Eglinton, only one tall building exists, it being just 16 or 17 storeys at Bathurst Street, and none exist or are proposed within Eglinton Way (other than this site).

[63] Travelling east from the 8-storey C1 Eglinton Way, the SP height limits are 10 storeys in A1 Eglinton Park, 35 storeys in E3 Henning, and 65 storeys at D1 Yonge-Eglinton Crossroads (Ex. 1, p. 1274). Even with some taller buildings approved in the range of 10 to 15 storeys taller, the Tribunal does not accept Mr. Laurie's opinion that this proposal satisfies the SP built form and transition intentions despite being higher than expected heights. A 31-storey height is more aligned with the E3 Henning area as a stepdown from the D1 Core. Mr. Laurie did agree, however, that a mid-rise building would also represent a form of densification, with benefits to the housing supply, transit use, and retail functions at grade.

[64] Eglinton Way is a narrow channel of one lot depth along the north and south sides of Eglinton. It backs onto Neighbourhoods along its full length. Such context is different than the more rectangular Character Areas that surround the Yonge-Eglinton intersection. The result is that tall buildings, if developed along Eglinton Way, will "stand out" in their local context much more so than the clusters of tall buildings closer to and within the Core areas. As opined by Mr. Sukumar, the sought height of 31 storeys is a "downtown scale" imposed within a "main street" area.

[65] OPA 778, if/when it comes into force, may allow tall buildings within Eglinton Way. However, the wording adopted by City Council continues the concept of "contextually appropriate" and "transition down in height and scale" when further from a transit station. This site is somewhat midway between two stations, such that, if 31 storeys were at the lower end of Eglinton Way's height transition, the potential buildings at or near the stations would be much higher. Those station-area heights could well match or exceed the heights closer to Yonge-Eglinton (e.g., E3 Henning) and thus, degrade the intended transition down in heights westward from Yonge-Eglinton. Suffice it to reiterate that OPA 778 will not be finalized until its appeals are addressed.

[66] The broader area considerations are relevant in this case, given this site's substantially higher building form than envisioned by the SP. The SP is a comprehensive plan for the entire Yonge-Eglinton area, that, in total, is highly

permissive in enabling intensification, as fully justified and necessary to enable housing at densities that support public transit and help achieve complete communities. Eglinton Way is planned to continue its main street function and appearance, while also providing mid-rise housing that supports transit. The Tribunal accepts Ms. Chung's opinion that, while a tall building is eligible for consideration, it must have due regard to the Eglinton Way character, context and transition.

[67] While the merits of this site for a taller than 8-storey building include its separation from the Neighbourhood by the large parking lot and/or future park, evaluating its alignment with the SP's transition intentions leads to a finding that 31 storeys is too tall. The Tribunal finds that a tall building, but of lower height, would better fit with the planned context and transition, both within Eglinton Way and within the full length of Eglinton from the Yonge-Eglinton Core westward. Such finding results, in large part, from the PPS call for more housing that enhances the use and viability of transit, as emphasized by Mr. Goldberg, as well as this site's distance from the Neighbourhood given the intervening parking lot/park. A tall building but of lower height would better fit with the SP-wide intended transitions, reduce the shadow and wind effects, and still aid in achieving the density target.

[68] Given the evidentiary need for housing density within Eglinton Way to help meet housing targets and support transit, and given the pending OPA 778, the Tribunal will "keep this file alive" through an Interim Order under s. 9(3) of the Ontario Land Tribunal Act. The Parties are directed to consider an acceptable resolution that reflects the findings of this Decision and aligns with OPA 778 if/when approved. Given the uncertain timing of OPA 778 potentially coming into effect, the Tribunal will provide six months for the Parties to report back on progress, including whether an OPA and ZBA aligned with this Decision is anticipated and the necessary timeframe to finalize plans and documents.

[69] The Tribunal finds that there is truth and reason in both Parties' arguments: the Applicant argues that only this site is before the Tribunal, not the entire Eglinton Way;

while the City argues that what happens on this site will become the context and reference point for other developments. The Tribunal finds that good planning involving height transition warrants a broad view. Eglinton Way is an intensification area, but is moderated by its main street character and intention. Tall buildings may be proposed in the future for other lands along Eglinton Way, including as potentially to be permitted by OPA 778. While only this site is before the Tribunal today and upon which this Decision is based, its result will become context for the evolution of Eglinton Way.

[70] On the Tribunal's findings on height, it finds that this site's proposal fails to have full regard to s. 2 of the Act, is not consistent with the PPS, and does not have sufficient regard for the OP and SP.

Stepbacks

[71] The tower floorplate is 775 square metres ("m²"), being above the Guideline of 750 m². The Tribunal accepts Mr. Laurie's opinion that the difference of 0.5 m in width and 0.5 m in depth is imperceptible and the tower steps back appropriately from the podium on three sides.

[72] However, the Tribunal accepts Mr. Sukumar's evidence that the tower should display a similar stepback on its north side. This building would be highly visible from the north, including from: the parking lot (or future park); houses in the Neighbourhood beyond; and the streets approaching this site. A north side stepback would help distinguish the mid-rise podium and reduce the tower's visual presence.

Shadow

[73] The OP s. 3.1.4 and s. 4.5 call for limiting the shadow impacts from tall buildings on adjacent properties and Neighbourhoods by assessing shadows at the spring and fall equinox. The Tribunal accepts the evidence of both urban design witnesses that the narrow shadow from this common tower size moves relatively quickly from west to east through the day, typically leaving any shadowed property within one to two hours. The

60 m separation, between this site and the Neighbourhood dwellings, reduces the Neighbourhood area affected by shadowing.

[74] The intervening area is occupied by the City-owned property used as a Green P parking lot, but designated as “Park” in the SP. Mr. Sukumar remains concerned with the tower’s shadowing on the potential park, but agreed in cross-examination that the tower’s moving shadow enables any point within the north half of the park to receive 5 hours of sunlight. Mr. Laurie considers the shadowing acceptable given that a narrow tower shadow moves quickly and if this site were covered by an 8-storey building, a larger portion of the park would be shadowed for much of the day.

[75] The Tribunal finds that the shadow effects of this proposed tall building sufficiently limit shadowing, given the distance to the Neighbourhood to the north, the movement of the narrow shadow across the potential park, and the shadowing on the park that could result from an as-of-right 8-storey building.

Wind

[76] Mr. Huitema explained that computer modelling was used to estimate the wind effects from this proposed building. The modelling identified areas requiring mitigation at the adjacent sidewalks, future park, patio fronting Eglinton, walkway along the west lot line, and amenity areas at Floor 7. Mitigation would include canopies/overhangs, windscreens, and landscape elements, all based on how spaces are to be used. Mr. Huitema opined that suitable mitigation can be achieved. The results can be confirmed by a wind tunnel study and suitable mitigation to acceptable wind levels can be assured through SPA.

[77] While the City did not call a wind expert, Mr. Sukumar referred to the relevant wind policies (OP s. 3.1.4.10.d and SP s. 5.6.6), noting that the modelling reveals several locations on and around the site that would not be suitable for sitting or standing, with particular concern for sidewalks, the amenity floor, and the possible park.

[78] The Tribunal finds that, were this proposal to proceed, wind tunnel results and demonstrated mitigation would be necessary, as the Applicant agreed through an additional pre-condition.

Public Spaces

[79] Other matters raised in the City's urban design evidence include street greenery, the covered westerly walkway, and amenity space. Mr. Sukumar advises that insufficient space is available for street trees given the limited setback of the podium and its overhanging sidewalk canopies. He opines that the public walkway, as a mid-block connection, should be taller and wider and is hindered by a wind screen necessitated by the building's height. Ms. Chung noted that the total amenity space is 106 m² below that required for this size of building.

[80] The Tribunal finds that it need not make specific findings on the public and amenity spaces, given that final details may be addressed when considering this Decision's general directions affecting height and density, as well as through SPA.

OPA 778

[81] The Tribunal will ascribe no weight to the City's OPA 778 given that it is not in force and not legally applicable to this case. It does, however, illustrate the City's intentions for further intensification along Avenues served by higher order transit.

[82] OPA 778 was adopted by City Council on February 11, 2025 to expand the options for intensification, including tall buildings, along Avenues near higher order transit stations. Ms. Chung agrees that OPA 778, if brought into force subject to its appeals being resolved, will apply to Eglinton Way when the LRT stations become operational.

[83] OPA 778 was introduced as Ex. 8 only during the Applicant's cross-examination of Ms. Chung. The Tribunal did not receive fulsome evidence in chief from Mr.

Goldberg or Ms. Chung on OPA 778 to fully understand its intentions and potential results.

[84] The Applicant properly acknowledges that OPA 778 is not binding in this case, but argues that it demonstrates Council's intended directions for Avenues.

[85] The introductory paragraphs 7 and 8 include (emphasis added):

> While the function of *Avenues* varies, the planned built form of *Avenues* is mid-rise, except where existing and planned subway, light rail transit, and GO rail stations can potentially support greater intensification along *Avenues*. Mid-rise buildings are a transit-supportive form of development between low-rise and tall building forms. They provide good transition and predictable impacts on nearby low-scale areas while supporting growth.
>
> *Mixed Use Areas* along *Avenues* with existing or planned higher order transit stations offer unique opportunities where redevelopment at a greater scale may be appropriate. … These areas are not all the same and it is important that development in these areas be contextually appropriate and meet the intent of the built form policies of this Plan. Generally, development with the greatest height and scale should be located at the higher order transit stations and transition down in height and scale further from the stations.

[86] The foregoing directions are confirmed in s. 3:

> 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.

[87] The Tribunal accepts the evidence of Ms. Chung that OPA 778 continues the OP's intention for careful contextual analysis of the existing and planned context when considering applications for intensification. Of note, the Tribunal observes that for transition, the greatest heights are intended at/near the stations, being a proposed policy that is aligned with the existing SP s. 2.4.1.3. This site is somewhat mid-way between two stations, albeit well within two MTSAs.

[88] Again, the Tribunal will not assign weight to OPA 778 for the issues before the Tribunal in this case. However, having found that the 31-storey proposal fails to satisfy the relevant planning considerations, a "*possible area specific policy change*" (OP s. 5.3.1.3) appears to be underway through OPA 778. Given both Parties' substantial time, effort and cost devoted to this Eglinton Way site, the Tribunal will "keep this file alive" to enable a possible resolution pending the coming into force of OPA 778.

CONCLUSION

[89] In balancing the PPS directives for intensification and appropriate scale, the Tribunal finds that a 31-storey building on this site is not consistent with the PPS. In accordance with the OP, the Yonge-Eglinton SP establishes the Character Areas for Midtown with transition expectations, which this site "over-tops" beyond an acceptable height. The Tribunal finds that, while an OPA need not conform with the OP/SP it seeks to amend, the purpose and intent of the planning documents must be attributed weight.

[90] The Tribunal finds that the OPA and ZBA do not have sufficient regard for s. 2 of the Act, are not fully consistent with the PPS, unduly over-ride the purpose and intent of the OP and SP, and do not represent good planning in the public interest.

[91] There is no dispute that housing is needed, as planned for through the existing SP and through its recent evolution by the City's adoption of OPA 778. The Tribunal will "keep this file alive" by an Interim Order to enable the Parties' discussions, taking into account the findings of this Decision.

INTERIM ORDER

[92] **The Tribunal Orders** that:

- the appeals are dismissed in principle;

- the Parties are directed to consider a resolution / settlement aligned with

the findings in this Decision and the pending outcome of OPA 778;

- the Parties are directed to advise the Tribunal, within six months of this Decision's issuance, on the status of discussions and requested next steps; and

- this Member is seized for the consideration of a Final Order.

"S. Tousaw"

S. TOUSAW
VICE CHAIR