

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: March 21, 2018

CASE NO.(S): PL160081

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

Applicant and Appellant: L. Richmond Corp.
Subject: Application to amend Zoning By-law No. 438-86
Refusal or neglect of City of Toronto to make a decision
Existing Zoning: RA and CRE(x76)
Proposed Zoning: RA and CRE with site specific exceptions To be determined)
Purpose: To permit an 18 storey mixed-use building
Property Address/Description: 452-458 Richmond Street West
Municipality: City of Toronto
Municipality File No.: 15 223802 STE 20 OZ
OMB Case No.: PL160081
OMB File No.: PL160081
OMB Case Name: L. Richmond Corp v. Toronto (City)

PROCEEDING COMMENCED UNDER subsection 41(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Referred by: L. Richmond Corp.
Subject: Site Plan
Property Address/Description: 452-458 Richmond Street West
Municipality: City of Toronto
OMB Case No.: PL160081
OMB File No.: PL160643

Heard: May 29 - 31, June 1, 2 and 5, 2017 in Toronto, Ontario

APPEARANCES:

<u>Parties</u>	<u>Counsel/Representative*</u>
L. Richmond Corp. (“Applicant”)	Kim Kovar
City of Toronto (“City”)	Jessica Braun Alexander Suriano
Garment District Neighbourhood Association (“GDNA”)	Max Allen*

DECISION DELIVERED BY DAVID L. LANTHIER AND ORDER OF THE BOARD

[1] The Applicant made applications to the City on September 16, 2015 to permit the development of an 18-storey mixed-use building that would contain non-residential uses at ground level and 235 residential units above (the “Building” or the “Development”) located at 452-458 Richmond Street West (the “Site”). The Applicant appealed the non-decision with respect to the site specific zoning by-law amendment which was then consolidated with the site plan appeal.

HEARING AND WITNESSES

[2] There were no other participants recognized during the pre-hearing processes. During the five days of testimony, the Board heard from the following witnesses:

Applicant:

- (a) Peter Clewes – Expert qualified in architecture and urban design;
- (b) Terry Wallace – Expert qualified in transportation and planning; and
- (c) Peter Smith – Expert qualified in land use planning and urban design.

City:

- (a) Rong Yu – Expert qualified in urban design; and
- (b) Kirk Hatcher – Expert qualified in land use planning.

GDNA:

- (a) Ann Marie Strapp; and
- (b) Valerie Eggertson.

ISSUES

[3] The Board has been provided with the Issues List (Exhibit 1) but is advised by the parties that some of those issues have been resolved. As the evidence has been presented, the remaining issues for determination are:

- (a) **Height and Built-Form** – This is the primary issue which has been the focus of much of the hearing. The City opposes the Applicant’s proposed height and urban design of the Development and takes the position that due to the limited size of the Site, the existing and planning context, and all applicable planning policies and instruments the Development is too tall, disproportionate, and lacks sufficient setbacks.
- (b) **Transportation and Safety** – This second issue relates to safety concerns relating to vehicular movements, service and loading entrances, particularly as it relates to the bike lanes on Richmond Street West (“Richmond”), and is raised by GDNA. The concerns are not shared by the City. GDNA asserts that the Applicant’s location of the service entrance and loading dock, which is proposed from the rear lane north of the Site, should instead be relocated off Richmond to promote safety for the bike lane.

- (c) **Adequacy of Community Facilities and Services** – This issue is also raised by GDNA and is not shared by the City. GDNA raises general concerns over the additional density being added to the neighbourhood, with the Development, when services and facilities are already lacking in this area.

The parties have also agreed that the proposal is consistent with the Provincial Policy Statement (“PPS”) and the Growth Plan for the Greater Golden Horseshoe (“GP”), both the version in force at the time of the hearing, and the new 2017 GP.

THE SITE AND IMMEDIATE AND NEIGHBOURHOOD CONTEXT

[4] The Site is 556 square meters in size, with a frontage of approximately 18.5 metres (“m”) along the north side of Richmond which is classified as a Major Arterial Road. The Site is west of Spadina Avenue (“Spadina”). Immediately to the east of the Site, on the north side of Richmond between the Site and Spadina, there is an adjacent parking lot (444-450 Richmond) and then the large 16-storey development on the corner of Richmond and Spadina known as the “Morgan”. To the west of the Site there is, in east-to-west order: a 7-storey warehouse office building; McDougall Lane; an historic red-brick 3-storey townhouse and a 6-storey residential development known as “Cityscape”. To the rear (north) of the Site, and these buildings, runs the laneway known as “Graffiti Alley”.

[5] To the South, across the street, is the 17-storey building at 431/435 Richmond, referred to as the “Fabrik”, which is not on the corner of Spadina, but is separated from Spadina by a small, angular shaped 2-storey commercial building. In order of location, east-to-west from the Fabrik there is: a parking lot and an older 3-storey brick commercial building (451-457 Richmond); another parking lot, a 2-storey brick building; the 10-storey building at the corner of Richmond and Brant Street (471-477 Richmond), Brant Street itself, and then a block of lands containing the “Waterworks” building which has been rezoned with approval of a 13-storey development. The Board is advised that there is currently a proposal for a 19-storey mixed use development across the street from Richmond at 451-457 Richmond.

[6] The Site is within the West Precinct of the King-Spadina area which is framed by Queen Street West to the north, Bathurst Street (“Bathurst”) to the west, Front Street West (“Front”) to the south and Spadina to the east. The West Precinct contains a mix of row houses and low and mid-rise converted industrial style buildings, interspersed with numerous tall mid-rise residential and commercial buildings ranging between 8 and 16-storeys, with additional developments approved up to 20-storeys. The Board heard much evidence about the pattern of heights in the West Precinct based on existing and approved development. Building heights are taller along the edges of the Precinct, on Bathurst, Front and Spadina, with a mix of lower height buildings in the interior. The Board has also heard considerable evidence regarding the various buildings, many characterized as tall mid-rise developments, and their respective heights and number of storeys, for the purposes of assessing the existing and planned context of the proposed Development.

[7] The West Precinct, and the whole of the King-Spadina area, is considered a desirable location, in proximity to the Financial District to the east, and is experiencing rapid growth in population and job numbers, benefited in part by its presence to transit services, bike lanes and the Downtown core. There is no dispute that the provincial and municipal planning policies support intensification and infill opportunities on the Site.

THE PROPOSAL

[8] The residences in the proposed Development are being constructed and marketed as smaller/moderately sized units that will not be serviced with onsite parking. This issue of parking has been resolved by the parties, and aside from the limited few spaces on the main level, units in the Development will not include on-site parking. Parking will instead be made available off-site as confirmed through a leasing agreement.

[9] The proposed Building consists of an 11-storey base podium built to the property lines on the west and east, and set back 1.16 m to the north to allow for a widened lane-way access and 0.4 m fronting Richmond. Facing Richmond, the remaining upper

storeys will be stepped back 1.4 m with the last (18th) storey stepped back by an additional 2.3 m. The design of the upper area of the south side facing Richmond, has included balconies on the 5 storeys above the podium, extending the same depth of the step-back which means that visually, the south-facing upper step-back will be extended by the design of the balconies. This aspect of the Building's design changed in the course of the hearing. After all of the evidence was heard relating to the setbacks, step-backs, design, and the appropriateness and compatibility of the massing and appearance of the Richmond Street façade of the Development, in closing argument the Applicant suddenly amended the design by proposing to remove the projecting balconies on the upper 5 storeys, floors 13 through 17, facing Richmond.

[10] On the north side of the building, facing the lane, floors 2 through 16 are to be set back approximately 3.88 m to 4.15 m from the rear property line with 2 m projecting balconies. At the 17th floor, there is an additional step-back of 3.6 m and on the 18th floor, an additional 2.45 m step-back with a full length terrace (subject to the setback of the mechanical penthouse of 3.45 m). There was little issue raised about the rear north setbacks or the design of the ground floor, (save and except for the issues raised about access to the rear loading bays) and the majority of the focus was on the design, and scale and massing of the building and streetscape as viewed from Richmond.

[11] The exterior design of the building has been aptly depicted in a number of the exhibits with numerous renderings and drawings. The Board finds that in the overall assessment of the Development, the building represents a visually appealing, contemporary design that would represent a quality addition to the streetscape environment on Richmond. However this finding is wholly segregated from the disputed contextual issues relating to height and transition, and built-form design relative to massing and scale of the building, which must be determined as they are disputed by the parties.

ANALYSIS OF THE EVIDENCE

Introduction

[12] The City's objections to the design of the Development are based on a number of concerns, one of which is "proportion", something referred to a number of times by Ms. Yu during her evidence, and as well, by Mr. Hatcher. Based predominantly upon the King-Spadina Secondary Plan (the "KS Secondary Plan") (Exhibit 1A, Tab 4) Ms. Yu, and Mr. Hatcher, are of the opinion that the Development's design does not meet the built-form criteria requiring that the building: be located along the front property line in such a way to define and form edges along streets; enhance the public nature of streets; be massed and situated so as to "provide adequate light, view, privacy for neighbouring properties"; be compatible with their built form context through building height, massing, scale, setbacks, step-backs, roofline and architectural character and expression; and provide high quality, coordinated streetscape and open space improvement to promote greening, landscape enhancement, access, orientation and personal safety. Mr. Hatcher categorizes the Building as a tall building governed by the City's Tall Buildings Design Guidelines, and concludes that the Building is thus out of proportion to its footprint and does not meet the criteria of the Tall Buildings Design Guidelines.

[13] The City's principal objection is the proposed height of the Development and the lack of transition towards the interior of the Precinct, as buildings are developed westwards from the "edge" on Spadina. This approach, as explained by Ms. Yu and Mr. Hatcher, is rooted firmly in the conclusion that the Official Plan, the Secondary Plan, and the Zoning By-law, together with the Urban Design Guidelines, require a transition from higher to lower from Spadina westwards into the interior of the West Precinct, a transition that they assert is already in place with the Morgan and the Fabrik buildings. The City stresses that nothing in the interior is above 50 m, save and except for the YMCA building, which was granted extra height as a heritage density bonus. Ms. Yu's, and Mr. Hatcher's opinions are that the YMCA site itself is substantially larger than the Applicant's site, where 18-storeys, and a height of 61.10 m of height, are unduly

compressed into a limited footprint and as a result, with the height, scale, and massing, are disproportionate without any substantial step back.

[14] The Board has carefully considered the planning and urban design opinions from the experts of both parties and, subject to the identified modifications, prefers the analysis and opinions offered by the Applicant as being more persuasive and supportable by the evidence for the reasons that follow.

Governing Planning Policies – Height and Urban Design in the West Precinct

[15] In the course of the evidence from the experts tendered by the Applicant and the City, there have been differences of opinion, in some respects, as to the policies governing the proposed development, and specifically as they relate to the issues of height and urban design. Other aspects of the planning policies are not contentious. The Board has considered this evidence and concludes as follows:

- (a) As indicated the parties are in full agreement that the proposed Development is consistent with the PPS and the GP which promote residential intensification within urban areas, and especially those areas such as this which are serviced by municipal infrastructure, in proximity to transit or to employment minimizing the need to commute.
- (b) Under the City's Official Plan, the Site is designated within the "Regeneration Areas" which is expressly identified as a growth area in the Downtown that promotes intensification and infill and is to be guided by a Secondary Plan. Not all areas in the Downtown are targeted for growth. The Official Plan supports a full range of housing opportunities and choices. The development of sites in the King-Spadina area, which are in proximity to employment opportunities, urban amenities, and the Financial District, is encouraged in the Official Plan.

- (c) With respect to urban design, the Official Plan policies provide for guidelines to be developed for historic districts or distinct areas to ensure that development respects the context of such areas and fits with such things as the existing streets, step backs, building heights, streetscape and the characteristics of nearby development. Chapter Three of the Official Plan provides a variety of policies governing the principles of good built-form design such as step backs and the three-part components, massing and scale, light, privacy, public access which have been fully reviewed by all of the planning and urban design witnesses in this hearing. These include the important policy requirement, identified in a various ways in the Official Plan, that any new development “fit within the existing and/or planned context of the neighbourhood and the City” and “promote and achieve the overall objectives of the Plan”.
- (d) The Official Plan addresses the issue of transition. The Board accepts Mr. Smith’s opinion that transition is not an absolute and that as it is addressed in the Official Plan, transition is a means to advancing the objectives of the Official Plan and is not an end in itself. As transition is dealt with in s. 3.1.2.3(c), and a number of other policies, a development may fit harmoniously into its existing and/or planned context by creating appropriate transitions in scale to neighbouring existing an/or planned buildings for the purpose of achieving the objectives of this Plan. Accordingly, from a planning perspective, the Official Plan does not require the immediacy of regimented transition downwards or upwards to what is adjacent, or nearby, to a proposed development but rather, requires transition that achieves the broader planning and design objectives of the Official Plan—which includes the fundamental policy of ensuring a harmonious fit with the existing and/or planned context.
- (e) The Official Plan does not provide specific policies relating to appropriate building heights as it relates to this site. Section 3.1.3 of the Official Plan confirms that tall buildings whose height is greater than the width of the

- adjacent road allowance are generally limited to the “Downtown” areas identified in a Secondary Plan or otherwise on the basis of appropriate planning justification consistent with the policies of the Official Plan. Section 3.1.3.2 sets out urban design considerations including, again, the relationship to the existing and/or planned context, as well as the location of other tall buildings.
- (f) The Site is in an area governed by the KS Secondary Plan which is intended to attract new investment to the area and provide for a “mixture of compatible land uses with the flexibility to evolve as the neighbourhood matures”. The KS Secondary Plan does not provide definitive policies relating to appropriate building heights. Section 3.6 provides a number of policies relating to new development which requires, among the list, “new buildings that achieve a compatible relationship with their built form context through consideration of such matters as building height, massing, scale setbacks, step-backs, roof line and profile and architectural character and expression”. New development is also to be sited and massed to provide adequate light, view and privacy for neighbouring properties, minimize wind and shadow impacts on streets, parks or open spaces, and provide comprehensive, high quality coordinated streetscape and open space improvements. The Board agrees with Mr. Smith that there is nothing in the KS Secondary Plan that promotes a “lower-scale historic warehouse built-form” as the City suggests. The removal of existing surface parking is encouraged in the KS Secondary Plan.
- (g) There has been no comprehensive update of the KS Secondary Plan since it was adopted in 1996. Official Plan Amendment 2 (“OPA 2”) was adopted in 2006 as the KS Secondary Plan Review, but was appealed and never brought into force. OPA 2 was intended to allow for increased building heights beyond those provided for in the ZBLs. Intensification and approvals of taller buildings in the King-Spadina area, including the West Precinct have continued and some 10-plus years later, OPA 2 is still not in-force planning.

- (h) The King-Spadina Urban Design Guidelines accompanying OPA 2, which were also drafted in 2006, (the “2006 KS Guidelines”) were not approved either and are not in-force guidelines. The Board must adopt the consistent approach that because OPA 2 has not been approved, the 2006 KS Guidelines cannot effectively operate to further non-approved policies in OPA 2. As has been noted, as a measure of the ineffective nature of the 2006 KS Guidelines, they cannot be found within the City’s online website collection of planning instruments and policies. In reliance upon the Divisional Court’s decision in *Toronto (City) v. 621 King Developments Ltd.*, 2011 ONSC 3007, the City submits that the Guidelines are in force and have application in this Appeal. With respect the Board cannot agree. As they have been under appeal, the 2006 KS Guidelines are not in force, and the Divisional Court’s consideration of them was limited to a reference to the section that provided for height incentives for heritage buildings. That being said, the Board agrees that the 2006 KS Guidelines may still serve as general indication of the approach of the City to aspects of urban design, particularly in the absence of any definitive guidelines for the hybrid building typology that is the “tall mid-rise” building that has become a part of the development fabric of the West Precinct. Whatever relevance it may have this “approach” is, however, not policy.
- (i) The 2004 King Spadina Guidelines enacted in June 2004 (“2004 KS Guidelines”) remain as the in-force design guidelines since the 2006 revisions were never implemented. The 2004 KS Guidelines do not address building height but do require that development along Spadina should respect the massing, height, setback, orientation and character of industrial buildings that are prevalent here and height and massing of new development is to be based on prevalent building types in the area.
- (j) Zoning By-law (“ZBL”) No. 438-86 zones the Site a Reinvestment Area. The new City-wide ZBL No. 569-2013 zones the Site Commercial Residential Employment. Both ZBLs provide for a maximum height of 23 m with the

- additional 5 m for rooftop mechanical sections. The ZBLs provide for a number of performance standards including a 3 m step-back above a height of 20 m for main walls facing streets, amenity space ratios, building depth. ZBL No. 438-86, as it provides building height mapping, is not helpful in determining planning context. The Board agrees with the Applicant's submission, supported by Mr. Smith's planning evidence, that the ZBL height standards have little connection to approvals granted in either the West or East Precincts and neither of the ZBLs can be considered as comprehensive and governing planning policies for the planned context of the Precincts, particularly in relation to height.
- (k) As indicated there are no guidelines or planning policies in force which govern the "tall-mid-rise" buildings that have risen in the West Precinct. The City's Tall Building Design Guidelines provide limited guidance given the manner in which they apply to the towers of the City. The Building, and the area in which the Site is located, is not specifically governed by the Mid-Rise Guidelines either which generally cover only buildings with heights that do not exceed the adjacent right-of-way width. The West Precinct has evolved with a diverse character that is different from the Spadina Corridor and the East Precinct of the King-Spadina area with a fair number of "tall mid-rise" buildings that has been referred to as a "hybrid" built-form.
- (l) The Queen Street West Heritage Conservation District affects the Site to the extent that the shadow impact arising from the Development's height cannot result in greater shadowing on Queen Street West beyond what is set out.

The Height of the Development

[16] There is no question that the King-Spadina area has undergone, and continues to undergo, considerable change and growth, including the West Precinct. That growth has included, and continues to include, tall mid-rise developments many of which are located in the West Precinct. Based on the evidence there is, in the Board's view, little

question that the Applicant's Site can accommodate a tall mid-rise design. The question of appropriate height (and urban design) of a tall mid-rise building is what must be determined.

[17] As indicated, it is clear from the evidence that the "matter of right" height limits in place in the City's ZBLs do not reflect approvals granted by the City and the Board for other developments in the West (or East) Precinct and therefore do not, and cannot, assist in assessing the planned context of the area or determining appropriate height limits for proposed development in the area. The Board accepts the Applicant's submissions and finds that because the ZBL height map does not reflect the planning policies of the City as it relates to the design of mid-rise tall buildings such as those in the West Precinct, it cannot be given much, if any, weight in determining height and some aspects of design (as the City does in its evidence and submissions).

[18] Based upon the in-force planning policies and instruments reviewed above, and the evidence presented, the Board must therefore consider the existing and planned context of the King-Spadina area and the West Precinct, inclusive of the recognition of those approvals of built-forms by the City or the Board, and the manner in which the area has developed and is developing. It is the existing and planned context which assists in determining whether the height and urban design of the proposed Development are appropriate and represent good planning.

[19] As the evidence is before the Board in this proceeding, the question of appropriate building height is directly connected to the question of whether the proposed Development is, or is not, to be classified as "the interior" of the West Precinct and the additional matter of whether transitioning is required.

Existing Context - Spadina and Richmond – Identifying the Edge and the Interior

[20] There are opposing views as to how the Site's immediate contextual location on the section of Richmond as it meets (and jogs south) at Spadina, should be interpreted and applied to determine the appropriate height of the Applicant's Building.

[21] The City, upon Ms. Yu's and Mr. Hatcher's testimony, proposes a rigid interpretation of the "edge" that is inclusive only of the Morgan on the north side of Richmond, and the Fabrik, within the Spadina Corridor. Their views on this point are based in large part upon OPA 2 and the 2006 KS Guidelines. Mr. Hatcher also supports this approach and testifies that the Fabrik should be considered part of the Spadina Corridor and the eastern "edge" of the West Precinct. Upon these presumptions, the City's witnesses thereafter consider all other buildings westerly from the Morgan and the Fabrik to be part of the interior, and thus requiring a transition immediately downwards in height, westerly from Spadina. This approach, for the City, negates the possibility of an 18-storey Building as proposed by the Applicant.

[22] The Applicant's planning and urban design evidence, from Mr. Smith and Mr. Clewes, rejects this approach, and views the immediate context of the Site much differently.

[23] As the Morgan is located immediately adjacent to Spadina, it is obvious that it is indeed considered as part of the Spadina Corridor. However, to summarily consider only the Morgan to be "the" eastern edge of the West Precinct on the north side of Richmond at Spadina, as Ms. Yu opines, is to ignore the totality of the visual and spatial character of the Morgan as it also faces Richmond, and forms part of the Richmond streetscape in this area. Upon the whole of the evidence, and in particular the visual evidence (e.g. Exhibit 7, p 1-4, Exhibit 5, p. 7-9, 14-16, Exhibit 12, p. 5-7, 12, 16-20) the Board is inclined to agree with Mr. Smith's approach, that visually, from the perspective of Richmond, the Morgan is more predominantly a Richmond Street West property. The Morgan indeed has a strong presence on Spadina, but more of significance to the immediate context of the Site, is the extent to which the Morgan continues along the north side of Richmond, towards the Site, as a significant part of that streetscape. The numerous photographs in the Exhibits support this.

[24] Also apparent from the evidence is that while the Fabrik is in proximity to Spadina, separated as it is by the single irregularly-shaped building to the east, neither is that building singularly representative of the eastern "edge" of the West Precinct on

the south side of Richmond. The Board does not find Mr. Hatcher's opinion, disassociating the Fabrik building from the Richmond streetscape, and suggesting that it has its presence on Spadina, to be accurate or persuasive. The Fabrik, with its design, has a more predominant Richmond Street impact, highlighted to some extent by the curvilinear nature of Richmond as it jogs north from the point that Richmond meets Spadina from the east. Visually, as indicated in the testimony of Mr. Smith, and Mr. Clewes, and supported by the photographic exhibits, the Fabrik building very much "begins" the Richmond south streetscape vista westerly from Spadina as it is the first tall mid-rise building on the south side of Richmond west of the irregularly shaped 2-storey building at 140 Spadina. It is accordingly difficult to accept Mr. Hatcher's treatment of the Fabrik as part of a hard edge of the West Precinct on Spadina and removed from the Richmond Street streetscape.

[25] The Board does not accept that the eastern "edge" of the West Precinct needs to be narrowly restricted to the Morgan and the Fabrik as the City suggests. There is no persuasive planning evidence to support this segregated approach to this part of Richmond and the West Precinct. The Board prefers the more practical and flexible analytical approach to examining heights in the Precinct in advancing the policy objectives of the Official Plan and the KS Secondary Plan, as adopted by Mr. Smith and Mr. Clewes. Mr. Smith indicates that he relies upon the immediate context of the adjacent section of Richmond extending west from Spadina towards the "interior", and a broader, and more flexible view, of the height patterns and character of the entire West Precinct. Mr. Smith and Mr. Clewes assert that the immediate context on Richmond, near Spadina, should be considered in a more fluid sense as seen elsewhere in the Precinct, such that the Development, together with the Morgan and the Fabrik, becomes a collective (and compatible) part of the eastern edge of the West Precinct at Spadina.

[26] There was pointed discussion, within the testimony, about Mr. Clewes' use of the term "density cluster" in describing the immediate context of the Site his witness statement. The Board is less concerned about the use or assignment of such a conceptual term to the immediate collective context of the buildings near the Development at the eastern edge of the Precinct (as the last stretch of Richmond as it

meets Spadina), and is more inclined to accept the appropriateness of Mr. Smith's, and Mr. Clewes' analytical lens which they apply to the visual, spatial and contextual grouping of the three buildings together. In this regard the connecting aspects of the immediate built-form context, for Mr. Clewes, are important because the design of the Building, in conjunction with the Morgan and Fabrik, "wraps" the nature of the streetwall from Spadina around to Richmond and creates a continuity of the perimeter character allowing for a subsequent transition eastwards towards the interior of the Precinct.

[27] The Board accordingly finds that the Applicant's proposed Building will possess a design character and fairly commensurate height that corresponds to the height, and the type of relationship to the street, that the Morgan and Fabrik buildings possess and which represent the current character of the eastern Precinct perimeter on Richmond. The Board also finds that the Development will, as such, represent a collective part of the higher eastern edge of Richmond as it meets Spadina, located as it is in close proximity to two existing mid-rise buildings.

[28] In regards to specific height in meters, the Building will be slightly lower than the Morgan and slightly higher than the Fabrik. In terms of storeys, the proposed Building will be two storeys higher than the Morgan and one storey higher than the Fabrik. In Mr. Smith's view this is consistent with height patterns seen in the West Precinct where buildings are generally taller along the east and west boundaries, but not necessarily limited to the singular "end" properties but as well, other buildings "next-in" from the edge. Mr. Smith opines that the proposed Building fits within that pattern.

[29] Mr. Clewes considered the appropriate height of the Development to be reasonably determined by taking into account the heights of the Fabrik and the Morgan. Mr. Clewes and Mr. Smith conclude that in the immediate context, the height of the Development at 18 storeys and 61.1 m, is comparable to, and compatible with, the heights of the Morgan at 16 storeys (61.95 m) and the Fabrik at 17 storeys (57 m). The comparative podium heights are also considered and as the evidence indicates the 11-storey podium on the proposed Development is identical to the 11-storey podiums on both the nearby Morgan and the Fabrik across the street. The consistency of the street

wall podium height of the Development, the Morgan and the Fabrik results in a uniform perspective from both west and east along Richmond and reinforces the character and scale of the existing street wall in the immediate surrounding area.

[30] Mr. Smith's planning opinion, supported by Mr. Clewes, is that the Applicant's Development thus fits harmoniously in the context of the immediate area that maintains an appropriate and compatible scale along the Richmond street edge, and is sufficiently set back from the street and adjacent sites and the laneway. Upon the whole of the evidence, and in particular the visual evidence (e.g. Exhibit 7, p. 1-4, Exhibit 5, p. 7-9, 14-16, Exhibit 12, p. 5-7, 12, 16-20) the Board agrees with Mr. Smith's, and Mr. Clewes' approach, that visually the Morgan is predominantly a Richmond Street property and as such is consistent with the height of the Fabrik and the Morgan. This visual transition of the three buildings on Richmond, moving from Spadina inwards and easterly is, for both Mr. Clewes and Mr. Smith, an appropriate transition to the interior of the Precinct. This view of transitioning differs from that of the City's experts.

Transitioning and Height in the Broader Context of the West Precinct

[31] A primary component of the City's planning evidence is focused on the need for a downward transition in height from the eastern edge of Spadina, towards the interior of the West Precinct. For this reason, the City concludes that the proposed Building is too high, given its location, and that it must be considerably lower in height than the Morgan and Fabrik and the buildings in the Spadina Corridor so that a downwards transitioning will begin.

[32] As addressed earlier, the Building and the Site are at the eastern edge of the West Precinct where there is a pattern of greater height consistent with the greater height at the other perimeters of the West Precinct. Parts of the evidence before the Board, in Exhibit 12, are the Height Maps in both storeys and meters (p. 9 -10) and the Context Height Study-Sections (p. 12, 13) which have been carefully considered by the Board. Mr. Clewes has testified, and Mr. Smith agrees, that the West Precinct building heights, including the height of the Applicant's proposed Building at 61.1 m, are indeed

lower than that of the East Precinct and represent a compliant aspect of both the transitional pattern from the Downtown, to the East Precinct and then to the West Precinct, with lower heights to the west. The Building is also, in Mr. Smith's view, compliant with the West Precinct's pattern of greater heights at the perimeter. Accordingly, Mr. Smith opines that the Development conforms to the planning, and design requirements, of the City planning policies.

[33] The City's evidence relating to the necessity for the discernible downward transition of building heights from Spadina westwards is predicated upon the conclusion that the Applicant's Building cannot, in its location, constitute a part of the higher buildings at the end of Richmond as it meets Spadina. The Board has rejected that segregated approach and for the reasons indicated above, the Board cannot agree that the Site, which is west of the Morgan, and cater-corner to the northwest corner of the Fabrik building, should be summarily classified as a component of the "interior" of the Precinct, as the City submits.

[34] As well, the Board does not, on the issue of height, consider that Ms. Yu's, and Mr. Hatcher's entrenched position that the Development must immediately and significantly step down in height from the Morgan is supported by the municipal planning legislation. Ms. Yu has, in her evidence, referred to an 11-storey height as warranting a more receptive consideration. The City cannot point to any in-force policies that require such an immediate drop in height. Ms. Yu's opinion is reliant upon the not-in-force 2006 KS Urban Design Guidelines, neither of which are in-force matters of policy governing the question of "how high" and "where". Ms. Yu refers to the identification of the Spadina Avenue Corridor and the two precincts within the 2006 KS Guidelines and the provisions there that suggest that heights must immediately drop from the downtown financial district eastwards towards the low rise Niagara Neighbourhood to the west.

[35] On the issue of the height of the Development, relative to the entirety of the West Precinct, Mr. Smith testifies that this area contains a number of buildings that could be classified as "tall mid-rise" buildings, which are, in his view, buildings that are taller than the true mid-rise buildings in the 5 to 14-storey range, which might be dealt with under

the “Mid-Rise Guidelines” and lower than the tall buildings classified and dealt with under the City’s Tall Building Design Guidelines. In Mr. Smith’s opinion the West Precinct is an interesting mix of building typology which includes tall mid-rise residential buildings and purpose-built office buildings ranging between 8 and 16-storeys with additional buildings now approved up to 20 storeys in height. The Development will, in Mr. Smith’s view, fit into this broader existing and planned context as required under the Official Plan policy directions.

[36] Mr. Smith was of the opinion that it is not reasonable, nor practical, to assess the design of this Development in the manner suggested by the City. Attempts to look to either the Mid-Rise or Tall Building Guidelines for guidance are misplaced because neither applies and instead this “hybrid form” of tall mid-rise building should be assessed against the existing and planned context seen within the West Precinct. Failing to understand the nature of the built-form proposed in the Development results in a misdirected planning analysis of what that existing and planned context is exactly.

[37] Mr. Clewes also testified that the height of the Development, as it abuts the Queen Street West Heritage Plan, was also determined to ensure that it was below the 45 degree angular plane required under the Plan. This is fully supported in the evidence before the Board.

[38] Although Mr. Smith and Mr. Clewes are disinclined to consider it necessary to address the type of transition urged by the City, since the Development represents an appropriate part of the edge of the Precinct, they nevertheless are of the view that there is nothing within the policies that immediately requires a significant drop in height towards the interior along Richmond in any event even if transitioning is to occur.

[39] The Board has reviewed the planning policies which applies to this Development, has made its findings and concurs (see. Paragraph 15 above) and prefers Mr. Smith’s planning opinion in this regard. The Board is not of the view that any of the planning policies require the kind of immediate and rapid downward-height transitioning for the Building, relative to the edge of the Spadina Corridor as suggested by the City. The

Board accordingly cannot agree with the City's submission that the Official Plan, the KS Secondary Plan and the Guidelines, support the requirement for immediate and noticeable transitioning of height "down" from the height of the Morgan to the east. Such a strict interpretation is narrow and absolute. The Board prefers the approach of Mr. Smith and Mr. Clewes in regards to what "transitioning", if any, is required as a consideration for the height of the Development.

[40] Further, as discussed below when examining the broader context, the West Precinct, as it has developed, does not reflect the type of downward transitioning and reduction in building heights suggested by the City. The "YMCA Building" at 505 Richmond, closer to the center of the West Precinct, when built, will result in a development with a height higher than a number of buildings found to the west and the east. Despite the rationale for the approval by the City, the YMCA Building will be at a height of 13 storeys and 53.5 m, and located near the center of the West Precinct. As such, located where it is in the center of the West Precinct the YMCA does not necessarily support Ms. Yu's and Mr. Hatcher's planning opinion that the heights must decrease towards the interior. While the existing and planned context of the heights of the interior of the West Precinct do indeed represent lower heights relative to the greater heights on the edges of the west, east and south boundaries of the Precinct, in the Board's view, this does not necessarily demonstrate the need for a required and regimented transitioning downward pattern from west to east, or even from the edges to the center of the West Precinct. As well, the evidence discloses that elsewhere in the West Precinct, there exist 15, 16 and 17-storey buildings are located further in from the edge of the streets forming the boundary of the West Precinct and the "edge", in terms of height, is not confined only to the single buildings located at the perimeter.

[41] In summary, the Board finds that transitioning does occur in the sense that there are higher and denser developments on the outer perimeters of the West Precinct (i.e. Queen, Spadina, Front, and the Bathurst) with lower heights in the interior area. Transitioning is not however required in a stringent and immediate decreasing form beyond the eastern edge of the West Precinct, westerly, as Ms. Yu and Mr. Hatcher suggest. The broader planning policies in the Official Plan that requires that

development represent a harmonized fit within the existing and/or planned context of the area is, as proffered by Mr. Smith, gives rise to a more fluid process directed to promoting the larger policy objectives of the Official Plan—as opposed to a regimented numerical exercise of pursuing reductions in height and storeys towards the center of the West Precinct.

[42] Finally, of relevance to the Board’s consideration of issues relating to height (and urban design) is the absence of any evidence presented to suggest that there are any negative impacts either in the public realm or of a sphere of potential private interests in adjacent lands to the Site. Aside from those separate issues raised by GDNA, addressed below, there are no objections from any residents (including nearby Queen Street West as it might relate to shadow) relating to the proposed height of the Development, no evidence that there will be unacceptable built-form impacts upon any other person or entity nor any assertion from owners of adjacent or immediate owners that the proposed height will be out of character or an improper fit. Aside from concerns of adverse impact, the Board is unable to agree with the City’s submission that the proposed height, even at 18 storeys, would result in a significant loss of open space and light at this location such that it would fail to conform to the City’s applicable planning policies.

[43] The Board accordingly finds that insofar as “transitioning” is required in the broader sense under the applicable planning policies, the proposed generally greater height of the Development is not objectionable. In considering all of the evidence, the Board accepts the Applicant’s submission that the “robust” massing and scale of the proposed Building will be comparable and compatible to the other adjacent developments and those supported and approved elsewhere by the City.

What is the “Right” Height?

[44] It remains to be determined if the 18-storeys proposed is the appropriate height. It is the Board’s view that notwithstanding the findings of the Board as outlined above, there still remains some concern that the Applicant’s proposed eight of 18-storeys is two

storeys higher than the Morgan's 16-storey height and one-storey higher than the Fabrik. While an immediate and rapid drop in height is not, in the Board's view, supportable, the Board does have reservations that the height, in storeys, exceeds the other two buildings and is, in terms of storeys (viewed from the street) would be the tallest of the three if approved. As disclosed in the course of the hearing, the Board is cognizant of the fact that an additional development proposing 19-storeys is proposed, and under appeal across the street.

[45] The City has expressed concerns about precedent. While the Board agrees with the Applicant that each development must be determined on its own characteristics and planning merits, and take into account the context and planning policies that exist at that time, it is nevertheless impossible to fully ignore the fact that the appropriate height for this Building will be relevant to future development of either the site immediately adjacent to the Site or the Site on the south side of Richmond that is currently before the Board. The existing context of the immediate area will obviously be affected by the approved height.

[46] The Board has heard the rather compelling opinions of Mr. Clewes on cross-examination in relation to the question of how many storeys is the right number of storeys. When pressed, Mr. Clewes acknowledged that the determination of height is not an exact science and that he could have picked 16-storeys as easily as 18-storeys but that in the absence of any adverse impact, and in the context of the existing nearby built-forms, he would question what exactly would be achieved in reducing the height by one or two storeys. Mr. Clewes stated that "we are talking about a difference of two storeys only" and that he doubted a difference of two storeys "would make much difference".

[47] On this point, the Board would consider that such a rationale applies equally in support of the proposition that reducing the height by one or two storeys will also not make much of a difference. The Board would conclude that what would be "achieved" is that the broader transition spoken to by Mr. Smith in his testimony would be better supported and demonstrated if the height of the building within the eastern edge of the

West Precinct did not exceed, in storeys, both existing buildings in this segment of the West Precinct edge. An increase, in the number of storeys, moving westerly from Spadina may begin to erode the flexible, but appropriate, differentiation between the edge and the interior of the Precinct. The Board, to a limited extent, accepts the City's submission that allowing such an increase in the number of storeys inwards to the interior of the Precinct may raise concerns about further replication and that if the number of storeys increases further in from the edge, the edge begins to have no meaning because the edge "moves into the Precinct".

[48] The Board accordingly finds upon all of the evidence, that within the broader context of the West Precinct, the height of the Building set at 17-storeys instead of 18-storeys will represent a harmonious fit with the existing and/or planned context of the West Precinct and visually and conceptually, recognize the broader transitioning that should occur across both Precincts, and the more limited transitioning that is occurring within the West Precinct (albeit not as rapidly as the City would request). Upon the evidence presented and outlined above, the elimination of one of the floors would be appropriate above the podium to maintain the connectivity of the streetscape addressed above.

URBAN DESIGN ISSUES – STEPBACK, SETBACK AND GENERAL DESIGN

[49] The City, as indicated, argues that the proposed design of the Building, particularly as it relates to step-back, does not accord with applicable urban design policies. The Board has already made findings relative to the manner in which this building, in particular as it is located in proximity to the streetscape form of the Morgan and the Fabrik, represents a harmonious fit insofar as height is concerned. This is particularly the case as to the manner in which the proposed 11-storey podium of the Building will "line up" visually with the step-back and podium design of both the Morgan and Fabrik buildings.

[50] In regards to step-back the Board indeed has had concerns, in the course of receiving the evidence, as to manner in which the balcony extensions above the

eleventh floor, as identified for the Building, might be negating the visual form of the step-back and the podium by “re-extending” the built-form face of the Building facing Richmond back to the step-back depth. Although the design recognized a step-back of the façade of the Building, the view from the street below, up to the rising footprint of the Building, inclusive of the balcony floors would, as conceded by the Applicant, detract from that step-back. The Applicant has, as noted, advised the Board in closing that it will now remove the five rows of balconies to address that concern.

[51] This alteration of the design will be consistent with the built-form and façade of the Fabrik and thus allow for the visual alignment of the buildings at this location. The City has further raised an objection as to the depth of the step-back, suggesting that there should be an increase of the step-back from 2 m to 3 m, citing sky-view. Admittedly, Ms. Yu’s evidence on this point was without the benefit of knowing that the Applicant would recant and remove the balconies. There is no other evidence before the Board to suggest that a step-back of only 2 m instead of 3 m, results in any type of unacceptable adverse impact including sky-view. Upon all of the evidence, the Board cannot conclude that the difference of the 1 m, given the manner in which the Building has been designed to accommodate the Site, will result in any significant improvement in the design, and finds that the step-back, built-form design, massing and scaling of the Building is appropriate, in keeping with the policies governing urban design, and respects the public realm into which the Building will be placed.

[52] Upon the urban design opinion evidence of its witnesses, the City submits that the Applicant’s Building has been designed to “push the envelope” to maximize intensification on a small-sized property, maximize built-form while minimizing the required standards, and “cherry-pick” approved components of other development while ignoring relevant urban design principles. Ms. Yu and Mr. Hatcher are critical of the massing, scale and height of the Building, the limited sky-view and the absence of a material step-back, which result in a design that is insensitive to applicable urban design policies and principles and disproportionate to the limited size of the property.

[53] The Board has considered all of this evidence and prefers the evidence of Mr. Clewes' and Mr. Smith's as they have addressed the various components of the design of the building. Mr. Clewes has testified that the Building's design is responsive to the demands of the moderately sized site in a manner that achieves a good fit relative to this section of Richmond at the edge of the West Precinct. The Board agrees and finds that, overall, the design of the Building effectively achieves the intensification promoted by the provincial and municipal policies of building that is proportionately relative to the dimensions of the Site which fits within the existing and planned context of the neighbourhood, achieves a compatible relationship with the built form context of the immediate area and in particular, the Morgan and Fabrik buildings, without any undue adverse impacts upon the public realm or adjacent buildings.

[54] With the noted changes to the design of the Building, the Board is unable to concur with the City's submissions that the Building represents an inappropriate and insensitive design that is too high, too large, and too imposing. On the totality of the evidence, the Board finds that the Building has, in fact, been designed to provide a type of alternative housing responsive to its location in a transit accessible area (i.e. without parking) and still satisfy all of the servicing, amenity space, access and other hard requirements. The Board would agree with the Applicant's submission that it is inaccurate to negatively characterize the reference to, and reliance upon, approved elements of other developments in the West Precinct, as selective "cherry picking" and that the consideration of design aspects of other approved developments is appropriate and relevant to the task of determining the existing or planned context in which the Building has been designed.

SHADOW IMPACT – QUEEN STREET WEST HERITAGE CONSERVATION DISTRICT PLAN

[55] Evidence was presented to the Board briefly touching upon the issue of shadow impact, and in particular, shadow impacts upon the Queen Street West Heritage Conservation District Plan (the "Queen HCDP").

[56] Shadow studies were conducted on behalf of the Applicant recognizing the possible shadow impact upon the Queen HCDP and the Board is satisfied, upon the evidence presented, that the Building as proposed (and is approved) will avoid shadow impact on the relevant segment of the public sidewalks and properties, as designated in the Queen HCDP and the proposed (and approved) height, and step backs on the north side, of the Building will fall within the angular plane set out in the Queen HCDP. The Board accordingly finds, upon the oral and visual evidence presented, that there are no shadow impact on the Queen HCDP or any neighbourhood parks or designated lands.

AMENITY SPACE

[57] The Board has considered the evidence presented by the parties as it relates to the sufficiency of the amenity space proposed for the Building. Mr. Clewes and Mr. Smith have opined that with the amendments proposed for the comprehensive zoning by-law will reduce the required amenity space per unit, and that given the overall design of the Building, and the more limited amenity space approved for other developments, the proposed amenity space represents good planning and conforms to both the reduced amenity space being approved for other nearby developments. There is also no conflicting planning evidence from the City introduced on this point or evidence which would suggest that there are adverse impacts or problems arising from the reduction in amenity space. The Board accordingly finds that the proposed amenity space is appropriate, conforms to the applicable planning policies, and represents good planning.

LOADING AREAS, BIKE LANES AND TRANSPORTATION ISSUES

[58] The position taken by GDNA is that there is a site-specific concern relating to the Building as it fronts on the Richmond west-bound bike lane. The evidence indicates that Richmond, at this location, benefits from a heavily used dedicated bike lane along the north side of the street and as with much of the bike lane network in the City, safety for cyclists is an ongoing concern as motor vehicles regularly ignore the rules and obstruct or infringe upon the dedicated right of way granted to cyclists. Ms. Eggertson

describes the Garment District as a “frenetic” type of neighbourhood that contains an always-in-motion synergy of pedestrian, cyclist and vehicle flow along the streets, sidewalks and bike lanes. As well, due to its location and orientation, it is also apparent that in the latter part of the day, motorists travelling westbound may be faced with bright sunlight in their eyes, which may exacerbate safety concerns in the west-bound bike lane. The Board accepts this uncontradicted evidence.

[59] There are clear policy provisions within the City’s Official Plan that direct that most access, loading, and parking of service vehicles be directed to available rear lanes of all buildings. In regards to cyclist safety, the obvious benefit of eliminating front-street driveways and delivery routes to the rear of a building is to avoid repeated incidence of motor vehicles cutting across bike lanes.

[60] GDNA submits that the Applicant’s Building should be designed to allow for a curb-cut, and a one-way delivery and loading driveway, at the west side and front of the Site off of Richmond, instead of through the rear access designed for “Graffiti Alley”. It appears, at first glance, that GDNA’s position would be illogical and counterproductive to cyclist safety to direct loading and deliveries from Richmond instead of the rear lane. The evidence and submissions of GDNA do however explain the rationale behind this approach which is based on the practical realities of how motorists, taxis, and delivery vehicles conduct themselves when dropping off passengers or delivering goods to a building such as the one proposed by the Applicant. Experience dictates that vehicles unfortunately do not respect bike lanes and regularly stop in front of buildings obstructing the bike lanes and endangering cyclists. GDNA submits that the problem is further exacerbated as delivery personnel, using Google Maps or GPS will not be directed to the rear of the building, but to the front of the building and may be unaware of the rear access/off-loading services.

[61] The solution, according to GDNA, is to direct the vehicles into the Site for unloading. Although such maneuvers temporarily cross the flow of west-bound traffic in the Richmond bike lane, requiring vehicles to stop and unload on the property, relocates the potential harm caused by deliveries and offloading, and the realities of driver-

conduct oblivious to the rules away from the public realm and onto the Applicant's property. Ms. Eggertson, on behalf of GDNA reiterated the GDNA "mantra" that: New buildings should internalize solutions to the problems instead of externalizing them to the public". More precisely, GDNA submits that its position is that "interactions between a new building and the vehicles that service it should not be externalized to the public realm, but should be internalized to the building site itself".

[62] While the internalizing of the "drop-off" process to the privately owned property and the proposed practical solution to GDNA's concerns about the bike lanes may be fairly rationalized, the Board nevertheless cannot conclude that the proposed solution is a sound one. First, and foremost, to direct such a delivery and offloading entry from Richmond is contrary to the clear policies of the Official Plan which serve the objective of protecting the safe and efficient movement of pedestrians, cyclists, and the various types of motor vehicle and transit use.

[63] As well, while the location of some internal lanes may be unknown to some delivery personnel or cab/uber drivers, the existence of "Graffiti Alley" and its service functions is well-known. With time, familiarity with the specifics of each building's delivery/offloading services and locations increases. Neither the extent of the concern, nor the solutions, as expressed by GDNA are supported by any traffic study, or hard scientific evidence and it must be observed, in contrast, that the policies of the Official Plan relating to rear pick-up/drop-off, which remain unchanged, arose from extensive public consultation and study processes.

[64] GDNA's proposed solution for the Richmond one-way delivery entrance is also predicated on the presumption that drivers will fail to follow the rules of the road, and while this undoubtedly occurs with some regularity, the Board is unable to endorse a solution such as the one proposed by GDNA, which would formally sanction an approach that would abandon the larger scheme of urban traffic and development planning policies, the rules of the road, and provincial offences enforcement measures that have been mandated for the community.

[65] Finally, the Board has heard, and accepts, Mr. Wallace's uncontradicted transportation planning evidence in regards to the safety and adequacy of design for the two rear loading spaces of the Building which in fact exceeds the zoning requirements for only one rear loading space. Mr. Wallace has also testified as to the existence of the parking/curbside stopping areas on the south side of Richmond, and the "no-stop" regulations adjacent to the bike lane, which arose from the 2014 Pilot Project (Exhibit 2c, Tab 67) in relation to the bike lane design and general servicing for the Building. Mr. Wallace opined that the introduction of a new conflict point by placing a service driveway off of Richmond could not be justified or recommended in light of the overall planning and development of the bike lanes on Richmond.

[66] Based upon all of the evidence heard on this issue, and for the reasons indicated, the Board accordingly finds that the proposed rear lane delivery and off-loading services incorporated into the design (and the related avoidance of a Richmond Street curb cut and vehicle entrance) are appropriate, represents good transportation planning, and are in conformance with the City's Official Plan and planning policies.

[67] The Board has also considered the uncontradicted transportation planning evidence provided by Mr. Wallace in the course of the hearing as it relates to both parking and the sufficiency of the Type C loading bay accessed from the rear lane. Mr. Wallace fully explained the design and configuration of the loading docks to the rear of the building and the specifics of the accommodations that would be made for waste disposal and concluded that the loading bays and configuration were adequate and appropriate for the proposed Building and represented good transportation planning.

[68] In regards to parking, the Board has considered the evidence presented in relation to the proposed parking arrangement, and the discussions with the City that took place following the Transportation Study completed for the proposed Development. The Board has been advised that the City is satisfied with the off-site parking solution to be arranged with the owner of the "Brant" Development located at 426-444 Adelaide Street West. This followed as assessment and consideration of the trend and realities of reduced demand for parking in the area by condominium owners and renters, and

specifically the surveyed parking requirements of those potential residents in the proposed Building (where 78 units in the Building have been sold with no parking spaces sold).

[69] Based upon these facts, and the other conclusions and considerations arising from the assessment of parking requirements for the Development, Mr. Wallace was of the opinion that the provision of the four parking spaces in the Building and the arrangements for off-site parking if required, would adequately serve the parking demands arising from the proposed Development and represented good transportation planning.

[70] The Board accordingly finds that the matters relating to traffic and access, and related transportation and cycling safety issues, proposed parking arrangements, and the design and configuration of the loading docks and services within the design of the Applicant's proposed Building have been adequately addressed, conform to the Official Plan and represent good planning and good transportation planning.

COMMUNITY SERVICES

[71] GDNA produced Ms. Strapp who provided testimony on the issue raised by GDNA as to the sufficiency of community services and facilities for the additional residents of the proposed Development. As a component of the proposed design rationale, the Applicant had provided a Community Services and Facilities Report. The City has not taken a position of support for these concerns of GDNA. Ms. Strapp provided a well-prepared and comprehensive overview of the community services and facilities accessible which was structured to respond to the Applicant's earlier report on services and facilities.

[72] While GDNA's input into the issue of servicing in the neighbourhood may perhaps be represent valuable input for the City to consider when dealing with the broader issue of community services in the Garment District and nearby areas, the Board is unable to conclude that the evidence supports any issue or concern as to the

availability of community services and facilities, that would prohibit the proposed Development. The Board has also been advised that although not necessary requested by the City, the Applicant has agreed to the provision of a cash-in-lieu payment which would be incorporated into any planning approvals.

SUMMARY

[73] To summarize, upon the totality of the planning, transportation planning, and urban design evidence presented, and careful consideration of the submissions of all parties, the Board finds that the site-specific amendments to the City's in-force and harmonized zoning by-laws, as presented to the Board in Exhibits 21 and 22, with the two amendments relating to the front balconies and the number of storeys, is consistent with the provincial policies, conforms to the Official Plan and other related high level planning policies in the City and represents good planning in the public interest. A quality, and creatively designed development, consistent with the applicable design guidelines and policies, will be added to the eastern edge of the West Precinct and fit harmoniously with the existing and planned context of the immediate and broader area. The Building will also serve to promote the provincial and municipal objectives relating to intensification and provide an alternative form of condominium housing within a transit supportive area in proximity to the Downtown.

ORDERS

[74] The Board orders that the appeals are allowed in part as follows:

Zoning By-Law Amendments

- (a) Subject to the holding conditions referred to below, Zoning By-law No. 438-86 and Zoning By-law No. 569-2013 (the "Amending By-laws") are amended in the manner set out in the draft By-laws filed as Exhibits 21 and 22 in this proceeding, subject to the following required changes to those Exhibits:

- (i) The Amending By-laws shall be revised as necessary so as to reduce the number of levels by one (1) level, by removing one level as shown on plan 2.07 (Levels 13-16) of the Site Plan (Exhibit 6), and to adjust all related references to height and floor area measurements in the Amending By-laws;
 - (ii) The Amending By-laws shall also be revised as necessary to remove the four rows of balconies (reduced from five) on the south side of the Building at levels 13 to 16 (as now reduced as per (i) above) and which project into the 2 m step back above Level 11 and to adjust all related references to measurements in the Amending By-laws.
- (b) In the event that any issues arise with respect to the form of the Amending By-laws, the parties shall request an appearance date from the Case Coordinator and the Panel will remain seized of this matter.
- (c) The Order relating to the Amending By-laws will be held in abeyance, and shall not issue, until such time as the Board has been provided with the final form of the Amending By-laws and they have been approved the Board;
- (d) The Order relating to the Amending By-laws will be held in abeyance, and shall not issue, until such time as the Board has been provided with documentation confirming that the Agreement between the City and the Applicant pursuant to s. 37 of the *Planning Act*, has been registered on title to the Site, to secure payment.
- (e) The Order relating to the Amending By-laws will be held in abeyance, and shall not issue, until such time as the Board has been provided with documentation confirming that a binding agreement has been executed by the Applicant, with the registered owner of the Brant development located at 426-444 Adelaide Street West, confirming the availability of 40 parking

spaces to residents of the Development in accordance with paragraph 10(c) of the Site Plan Conditions

Site Plan and Site Plan Conditions and Agreement

- (f) The Site Plan drawings prepared by the Applicant, L. Richmond Corp. dated May 16, 2017 filed as Exhibit 6 and the revised Site Plan Conditions dated May 31, 2017 and filed as Exhibit 27 in this proceeding are approved, subject to the following required changes to the Site:
- (i) The Site Plan drawings and Site Plan Conditions shall be revised as necessary so as to reduce the number of levels by one (1), and implemented by the removal of one of the levels as shown on plan 2.07 (Levels 13-16) of the Site Plan (Exhibit 6), and to adjust all related references to height, levels, floor area measurements and other specifications and references as set out in the Site Plan drawings and the Site Plan Conditions;
 - (ii) The Site Plan drawings and Site Plan Conditions shall also be revised as necessary so to remove the four rows of balconies (reduced from five) on the south side of the Building at levels 13 to 16 (as now reduced as per (i) above) and which project into the 2 m step back above Level 11 and to adjust all related references to heights, levels, floor area measurements and other specifications and references set out in the Site Plan drawings and the Site Plan Conditions.
- (g) In the event that any issues arise with respect to the form of the Site Plan drawings or the Site Plan Agreement the parties shall request an appearance date before the Panel, from the Case Coordinator and the Panel will remain seized of this matter.

- (h) The Order relating to the Site Plan drawings and the Site Plan Conditions will be held in abeyance, and shall not issue, until such time as the Board has been provided with the final form of the amended Site Plan drawings and the Site Plan Conditions, and they have been approved the Board;
- (i) The Order relating to the Site Plan drawings and the Site Plan Conditions will also be held in abeyance, and shall not issue, until such time as the Board has received confirmation from the City that all of the pre-approval conditions set out in paragraphs 1 to 3 of the Site Plan Conditions have been satisfied, including the execution of the City's standard Site Plan Agreement incorporating the Post-Approval Conditions.

"David L. Lanthier"

DAVID L. LANTHIER
MEMBER

If there is an attachment referred to in this document,
please visit www.elto.gov.on.ca to view the attachment in PDF format.

Ontario Municipal Board

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