

Local Planning Appeal Tribunal
Tribunal d'appel de l'aménagement
local



ISSUE DATE: October 03, 2019

CASE NO(S): PL160685

The Ontario Municipal Board (the “OMB”) is continued under the name Local Planning Appeal Tribunal (the “Tribunal”), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

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

Applicant and Appellant:	City Front Developments Inc.
Subject:	Application to amend Zoning By-law Nos. 438-86 and 650-91 - Refusal or neglect of City of Toronto to make a decision
Existing Zoning:	I2 D7, I3 D7
Proposed Zoning:	Site Specific (To be determined)
Purpose:	To permit the construction of 4 mixed use buildings with 58- and 60-storey buildings on the northern portion of the subject property and 24- and 25-storey buildings on the southern portion of the subject property
Property Address/Description:	400 Front Street West
Municipality:	City of Toronto
Municipality File No.:	15 136961 STE 20 OZ
OMB Case No.:	PL160685
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OMB Case Name:	City Front Developments Inc. v. Toronto (City)

Heard: June 18, 21, 22, 25, 26, 28 and 29 and July 3, 4, and 6, 2018 in Toronto, Ontario

APPEARANCES:

Parties

City Front Developments Inc.
("Applicant")

Counsel

David Bronskill
Max Laskin

RT Twenty-Sixth Pension Properties Limited	Evan Barz Michael Bowman
Portland Property Spadina Inc. ("Portland")	Eileen Costello Laura Dean
City of Toronto (the "City")	Sharon Haniford Mathew Longo Daniel Elmadany

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

INTRODUCTION

[1] This Appeal arises as a result of the failure of the City to make a decision on the Applicant's application to permit a four-building mixed-use development (the "Development") on a large irregular-shaped composite parcel of land (the "Site") described herein permitted through amendments to Zoning By-law Nos. 438-86, 569-2013 and Site Specific Zoning By-law 650-91. The Applicant appealed the non-decision pursuant to s. 34(11) of the *Planning Act* ("Act"). As this Appeal is now before the Tribunal, the City opposes the Development as proposed by the Applicant.

[2] The conduct of the hearing was governed by a Procedural Order issued on May 3, 2018 which confirmed that there were two added parties to the hearing of the Appeal: RT Twenty-Sixth Pension Properties Limited, and Portland Property Spadina Inc. ("Portland"). As explained below, the Applicant's Appeals were directed to be heard concurrently with the Appeal brought by Portland in relation to the proposed development of its property adjacent to the Applicant's Site.

PORTLAND'S APPLICATION, APPEAL AND SETTLEMENT

[3] As the Applicant's Appeal moved forward, Portland also concurrently advanced its Appeal in Tribunal Case No. PL170820 in relation to its proposed development of the

adjacent parcel of land at 49 Spadina Avenue (“49 Spadina”), which Appeal was intended to be heard at the same time as this Appeal. At the opening of the hearing the Tribunal was advised that Portland and the City had reached a settlement of its Appeal which had yet to be approved by City Council. It was expected that the approval of Council would be secured during the course of the hearing of the Applicant’s Appeal and anticipated that a settlement would be ready for presentation to the Panel for approval. This did occur, and the Panel heard evidence supporting the approval of the settlement and the instrument that would permit the construction of Portland’s mixed-use tower.

[4] The Panel advised the parties, after hearing that evidence, that due to the interrelationship of the two developments, in proximity to one another, and the issues involved, that the settlement would be approved in principle without reasons, and that the Panel would exercise its discretion to withhold its decision with reasons on the Portland Development Appeal and issue that decision concurrently with the release of this Decision on the merits of this Appeal as it was fully argued and determined by the Panel. The decision relating to the proposed settlement for the Portland Development is issued concurrently today.

HEARING

[5] The hearing of the Applicant’s Appeal took place over the course of ten days between June 18, 2018 and July 6, 2018. The Panel heard from five witnesses on behalf of the parties, as well as from Mr. Mark Sterling on behalf of Portland. All witnesses were qualified to provide expert planning evidence in their respective fields of expertise. There were no participants that were granted status in this hearing. The witness were as follows:

Applicant’s Witnesses:

1. **Peter Smith** – land use planning;

2. **Cliff Korman** – non-expert architecture witness, providing overview design evidence;
3. **Anne McIlroy** – urban design;

City's Witnesses:

1. **Setarah Fadaee** – urban design;
2. **Dan Nicholson** – land use planning;

Portland Property Spadina Inc:

1. **Mark Sterling** – land use planning and urban design.

[6] Mr. Sterling's evidence was introduced primarily for the purposes of introducing into this hearing, the particulars of the proposed settlement relating to the 49 Spadina Avenue Development ("49 Spadina Development").

THE ISSUES

[7] The issues list forming part of the Procedural Order governed the presentation of the evidence and the hearing of this Appeal. In the broad scope of the Appeal the issues before the Tribunal require the general determinations of whether the Zoning By-law Amendments of the three Zoning By-laws ("ZBLAs") that will permit the Development: has sufficient regard to the Provincial interests listed in s. 2 of the Act; is consistent with the Provincial Policy Statement, 2014 ("PPS"); conforms to the applicable Growth Plan for the Greater Golden Horseshoe ("Growth Plan"); conforms to the City's Official Plan (and related and applicable secondary plans as addressed in the evidence); properly applies all relevant design guidelines; and represents good planning in the public interest.

[8] As the evidence was presented over the course of the hearing, it has been clear that there are a number of specific issues relating to context that have arisen that determine the manner in which the broader planning issues are to be decided. The determination of both the “on-the-ground” existing physical context and planning context of a proposed development will, of course, always have implications for the planning and design evidence and issues in any hearing such as this, but in this case, there were a number of key issues that arose in relation to the existing and planned context of the proposed Development that significantly impact the determination of the issues of consistency, conformity and good planning. Those issues can be briefly summarized as follows:

- (a) Relevance of Other Developments – Are developments such as The Well, and to a lesser extent, the Mirvish-Gehry project included or excluded from consideration in this Appeal because they are the subject of an Official Plan Amendment (“OPA”) and/or specialized design guidelines and intended not to represent precedent for other development. Conversely are developments like The Well or the Gehry development to be considered as part of the existing and planned context and if so, what relevance and impact do they play.
- (b) Relevance of the 2006 Design Guidelines – Are the 2006 Design Guidelines effective for development proposals such as this one.
- (c) Relevance of the City-Approved 49 Spadina Development – Given the manner in which the 49 Spadina Development has been approved, what impact does the City’s endorsement of the set-backs on the south face of the approved building have on the consideration of the Tribunal to the distance separation and proposed design of Tower A.
- (d) Gateway – Whether the Applicant’s Site is a “Gateway” site and if so, what

impact does this have on the determination of the planning issues – Is the subject site a Gateway, or not. If it is a Gateway what impact does this have on the issues of height, massing and scale of the Development.

- (e) Council Directives – Whether the City’s staff reports, as endorsed by Council, form part of the planning context and policies to be considered by the Tribunal – Are staff reports endorsed by council, such as the directives stated as intending to achieve a downward gradation of building heights from Simcoe to Spadina - part of the relevant planning policies which the Tribunal is required to consider, or are they not.
- (f) Relevance of Adjacent Pre-Guideline Developments – How is the Tribunal to consider the appropriateness of the Development’s urban design and minimum distance separations relative to adjacent buildings - i.e. The Element - when the adjacent buildings’ design predates guidelines and does not meet current guidelines in regards to minimum distance separations. Is the Development required to adjust its design to rectify such deficiencies in minimum distance separations which lie with the adjacent building?

[9] Based upon the whole of the evidence as presented, as the parties have differed in their respective presented evidence and submissions, within the issues contained within the issues list in the Procedural Order, the primary focused issues to be determined by the Tribunal can be identified as follows:

1. What are the policy considerations and spatial context that inform the determination of the appropriateness of height of the Development’s buildings? Specifically is there a “clothesline” height transition policy or a tabletop/plateau of building heights within those policy considerations and context?
2. What are the appropriate mass, floorplates, scale and built-form and height of

- Tower A. This issue involves the differing urban design opinions and matters of floor-plate size, step-back, set-back, podium height and considerations of transition and inter-relationship with adjacent buildings.
3. What are the appropriate heights of Towers B and C;
 4. What is the appropriate mass, scale, and built-form of Towers B and C.
Again the Tribunal must consider differing urban design opinions, the buildings' step-back, set-back, podium height and considerations of transition and inter-relationship with adjacent buildings.

GEOGRAPHICAL CONTEXT AND PROPOSED DEVELOPMENT

[10] The spatial and geographical context of the Site is, of course, of significant relevance to the issues before the Tribunal and the Tribunal has received a number of maps, photos including an aerial photo overview of the Site and its context. Although the relevance of certain aspects of the spatial context are in dispute in the hearing, including as to how they relate to policy, the facts relating to the spatial area for the proposed Development are not disputed.

The Site and Proposed Development

[11] Described as a “bow tie”, the Site itself is, as indicated, rather substantial in size (1.127 hectares) and irregularly shaped within the area bounded by Front Street West (“Front”) to the south, two streets, Clarence Square and Wellington Street West (“Wellington”) to the north; Spadina Avenue (“Spadina”) to the west; and Blue Jays Way to the east. There are essentially two blocks of land, one in the southwest and one in the north east, which are connected by a diagonal area.

[12] The corner portion of the Site in the southwest area (the “South Block”) fronts onto Front and Spadina with the west-east portion of Clarence Square separating it (and

49 Spadina) from Clarence Park to the north. The adjacent 49 Spadina Development also occupies a segment of land north of the South Block, fronting onto Clarence Square and as a result, this parcel also forms part of the north boundary of the South Block. To the east of the South Block are two existing developments which also face onto Front. The building known as “The Fly” is immediately east of the South Block, and next and east to it, is “The Element”, which is at the corner of Front and Blue Jays Way.

[13] A single mixed-use building identified as “Tower A”, is planned for the South Block, which will have a series of 26 step-backed storeys with a multi-faceted type of façade and a myriad of floor designs. The building will be surrounded by set-back street-level areas and entrances to the north, south, west and east. The Tribunal heard considerable evidence as to the design of this building and its interrelationship with the adjacent buildings and streets.

[14] The corner portion of the Site to the northeast (the “North Block”) fronts onto Wellington (to the north) and Blue Jays Way (to the east). As Clarence Square Park lies to the west of the Site, with the Clarence Square Street surrounding the Park, the park, and its circumnavigated street, will form the west boundary of the North Block. To the south of the North Block are The Fly and The Element. Two residential towers (“Tower B” and “Tower C”, collectively the “Two Towers”) will be located atop an eight, storey podium with various articulations and design elements within the North Block with pedestrian street-level areas to the west, north and east, and vehicular/loading access and interior road access occurring from the south of the building.

[15] The diagonal middle portion of the Site lying between the North Block and the South Block (the middle of the “bow-tie”) will be comprised mostly of public realm area containing a park area of 1,608 square meters (“sq m”) and “living laneways” for inter-area pedestrian movement, within two “Privately Owned Publicly-accessible Spaces (“POPS”). There will also be a small triangular “Building D” used to support park and retail activities at ground level in the locale of the Park and the POPS.

[16] The overall Gross Floor Area of the Development will be 148,608 sq m with a resultant Floor Space Index (“FSI”) of 13.01. There will be a total of 1,920 residential units in the Development with commercial and retail components located at ground or near ground level within various locations of the overall Development accessible from all streets and the interior Park, POPS and pedestrian areas.

[17] The essential “numbers” for the height and size of the four buildings of the Development are as follows:

Building	Height in Meters	Height in Storeys	Podium Streetwall Height	Gross Floor/Land Area	Floor Space Index	Units
A South Block	97.5 m	26 (+ 1 Mech Penthouse)	5 storeys 21.85 m	39,407 sq m on 4,505 sq m	7.377	434
B North Block West Side	188.75	57 (+ 1 Mech Penthouse)	2 storeys and 8 storeys 32.5 m	112,055 sq m on 6,763 sq m	16.78	848
C North Block East Side	195.75	59 (+ 1 Mech Penthouse)	8 storeys 32.5 m			638
D (in Park Area)	7.5	2	n/a			
TOTALS				146,608 sq m on 11,268 sq m	13.01	1,920

[18] The Site is situated in proximity to a number of relevant contextual elements. The Site, located as it is along Front, is in close proximity to the western portion of the rail lands and the multitude of rail lines that extend westward from Union Station. There are four residential developments immediately across Front that separate the Site from the rail lands. Directly across from the Site, on the southwest corner of Spadina and Front, is the site of the new Spadina-Front GO transit station which may eventually be integrated into the planning for the proposed Rail Deck Park. The Site is also located

on the Spadina LRT Streetcar line. Although it does not qualify as a major transit station, the St. Andrew subway station is approximately a 10 minute walk from the Site.

[19] The proposed Development is also in fairly close proximity to Union Station and its GO transit hubs, and access to both Pearson and Billy Bishop airports (via the UP Express and bus connection). The Rogers Centre and the Air Canada Centre sports venues are within easy walking distance of the Site. Located in the East Precinct of the King Spadina neighbourhood the Site is also in proximity to the employment and commercial centres of the Downtown Core.

[20] Within the evidence provided by all of the witnesses, and the numerous and varied exhibits provided by the parties, the Tribunal was provided with the details of the various developments that are in immediate and close proximity to the Site. With only a few exceptions, the nature of these developments/sites is not disputed, but again, the relevance and impact of each of the sites as context are the subject of differing opinions in the planning evidence.

[21] In immediate proximity to the four buildings of the Development, there are (and in the case of 49 Spadina, will be) the following structures:

- (a) Steele Briggs Seeds Building and Approved Development (49 Spadina) – Filed as Exhibit 1 to the hearing are the drawings and plans for the adjacent development approved by the Tribunal in the course of the hearing in accordance with the terms of the accord reached between the City and Portland Property Group. The existing five storey commercial heritage property will be augmented by new development which is more fully described in the concurrently issued decision. The new construction will result in an extensive expansion of the developed structure with a five storey street podium located to the east to align with the height of the heritage building, with a further elevated tower extending upwards to 14 storeys above the heritage building to a height of 65.1 m to the top of the mechanical

- penthouse. The interrelationship of the expanded development approved at 49 Spadina, encompassing the Steele Briggs building will be discussed in further detail in the context of the architecture and urban design of Tower A. The proximity of the 49 Spadina Development immediately to the north of the South Block and Tower A figures into the consideration of issues relating to urban design and context.
- (b) Clarence Square Park and Clarence Terrace – The 0.76 hectare (“ha”) park, and its crescent road encircling the park is composed of a dog run and a recreational space covered in mature trees. North of the park is a row of historic, heritage designated, townhouses.
- (c) SoHo Metropolitan (“Met Soho”) – The 16 storey SoHo Metropolitan Hotel and Residences is located to the north of the North Block with a six to seven storey podium along Wellington Street with a step-down to three storeys on the west side as it is adjacent to the Clarence Terrace townhouses.
- (d) The Element – This 24-storey residential development (commercial at grade) is located at the northwest corner of Front and Blue Jays Way and the south façade of Tower C and the Podium will abut the north side of The Element. The building steps down long Blue Jays Way from Front, northerly, to 20 storeys and then again to 16 storeys. Of significance to issues of urban design and impact is the fact that the 16 storey north face of The Element is located at the north property line with no setback. The first 12 storeys of the north façade is a blank wall but there are north-facing windows above that which will face the south side of Tower C. This interface issue is discussed below.
- (e) On the east side of Blue Jays Way there is a nine storey office building on the southeast corner of Blue Jays Way and Wellington, and south of those, on the east side of Blue Jays Way are three 8, 16 and 12 storey buildings.

- (f) The Fly – The Fly is a residential building (commercial at grade) located along Front, between The Element to the east and the South Block to the west. There is a four storey base to the 24-storey residential building. On the west side of The Fly’s site is a driveway and, of significance, a public walkway running north from Front Street, which will, as part of the Development, be extended north to Clarence Square Park through the public spaces of the diagonal portion of the “bowtie” configured the Site. Windows on the upper floors face the Development to the north and the east.
- (g) Apex and Matrix Towers – To the south of the South Block, across Front Street, are four tall residential buildings which vary in height, from west to east, at 36 storeys, 28 storeys, and then 28 and 32 storeys.
- (h) The Well – This large development is directly across the street from the South Block and will represent a significant addition to Front Street. The relevance and contextual impact of The Well is discussed in detail below.

[22] Detailed evidence was provided and reviewed by the Tribunal in relation to the height context, which is discussed below in the analysis of the height issues.

[23] The Site is located within the King-Spadina area, the area stretching west from the City’s Financial District, and roughly bounded by Queen Street West to the North, Front Street West to the south, Bathurst Street to the west and Simcoe Street to the east. The rectangular King-Spadina area is acknowledged as being divided into two precincts by Spadina, with the West Precinct lying west of Spadina, and the East Precinct, east of Spadina. All areas of King-Spadina have experienced rapid and significant growth over the past two decades, and is comprised of residential, commercial, employment and entertainment uses. The West Precinct is characterized by the planners as containing low to mid-rise development while the East Precinct, in closer proximity to the Financial District’s towers, has seen higher approved

developments, ranging up to 92 storeys (305 m) as indicated in the Table set out in paragraph 97 below.

ANALYSIS OF EVIDENCE AND THE ISSUES

Intensification and Optimization

[24] There is no dispute between the parties, and the planners, that the Site is appropriate for intensification and the City, and its witnesses, have emphasized that the City is supportive of intensification and that intensification is appropriate in this area of the City, and on this Site. The line in the sand for the City however, is that intensification cannot prevail over conformity to policy and the necessity for good transition, fit and appropriate massing, scale and design of built-forms that avoids impacts. The City and the Applicant also differ in their approach as to the weight to be given to “optimization” and “intensification imperative” in planning considerations.

[25] Mr. Smith’s evidence, and the submissions of the Applicant, are supportive of the policies that recognize that both optimization and the “intensification first” approach as they are addressed in the Growth Plan (and OP) and prioritize intensification. The Applicant submits that while the City acknowledges that intensification is appropriate for the Site, beyond that, the City’s witnesses have all but ignored the intensification imperative in the policies and fail to recognize that the Site demands consideration for increased density. There are a number of references in the Growth Plan to optimizing land and infrastructure first. This is one section that was addressed in the evidence:

There is a large supply of land already designated for future urban development in the *GGH*. In some communities, there may be more land designated for development than is required to accommodate forecasted growth to the horizon of this Plan. It is important to optimize the use of the existing urban land supply as well as the existing building and housing stock to avoid further over-designating land for future urban development. This Plan’s emphasis on optimizing the use of the existing urban land supply represents an *intensification* first approach to development and city-building, one which focuses on making better use of our existing *infrastructure* and *public service facilities*, and less on continuously expanding the urban area.

[26] The Tribunal acknowledges the recognition of the City that the Site is appropriate

for intensification but also finds that the City's supporting opinion evidence has nevertheless failed to appropriately consider the significance of the provincial policies in the Growth Plan that prioritize intensification in considerations relating to height, mass, scale, floorplates etc. as they are being determined on a relatively large Site that can accommodate higher density due to its size.

[27] The Tribunal finds, on the facts of this case, that Mr. Smith's receptive approach to optimizing land and infrastructure (and thus density) is appropriate and supported by policy and comparatively, Mr. Nicholson has placed little emphasis, from a planning policy perspective, upon the optimization on the Site given because of its location, its proximity to higher order transit and its attributes. Mr. Nicholson's opinions on the appropriate level of intensification for the Development were informed more by the perceived downward height transition policies – the non-applicability of which is addressed herein.

[28] Generally, the Tribunal finds, when weighing and preferring the expert evidence on a number of issues in this case, that the differences in the consideration of intensification is a factor in preferring some aspects of the evidence of the expert witnesses. In the Tribunal's view simply acknowledging that the Site is appropriate for intensification is insufficient given the significance and priority given to policies intensification in the Growth Plan and the OP. Given the weight given to the policies, on a site such as this, it is necessary to go further than that and actually apply and consider the Province's priority policies of urban intensification when considering issues of height, massing, floor plates in the existing and planned context of any development.

[29] For this reason, it is the Tribunal's view that the City's lack of focused consideration and analysis given to intensification policies as important factors in considering and balancing the issues relating to height, floor plates, massing and scale, to some extent weakens the objectivity Ms. Fadaee's and Mr. Nicholson's evidence when assessing the merits of the Development. In failing to balance the objective of "intensification first" as an important policy, in the Tribunal's view, negatively reflects on

their ability to adequately apply and balance policy considerations that relate to the importance of context, compatibility, transition and appropriate built-form. The City's approach is further weakened, in the Tribunal's view, in minimizing, in tandem, the contextual importance of The Well, the status of the Site as a gateway, and the special attributes of the Site which are discussed herein.

[30] In contrast Mr. Smith has repeatedly emphasized that the ability of this Site, with its location and character, and in particular its size, is a prime location for intensification, optimizing the use of the land and infrastructure, and considering heights and floor plate sizes that allow for increased density while considering all other development and built-form policies.

[31] Mr. Smith's witness statement summarizes his opinion: "It is reasonable to establish an appropriate density for the subject lands based on a specific design, context and urban structure considerations, rather than on the basis of density numbers." Considerations of height, floor plates, the mass and scale of built-forms, should be undertaken based upon the policy directions that focus on growth in "strategic growth areas" to achieve complete communities, make efficient use of land and infrastructure and support transit. The Tribunal finds that Mr. Smith's opinions and approach to considering intensification are correct and appropriate and does not find that Mr. Smith has overemphasized intensification, on the facts of this case, as the City has argued.

The Contextual Relevance of "The Well"

[32] The large development known as The Well, immediately across Spadina, and encompassing the entire block between Spadina and a boundary just east of Draper Street, and north of Front Street and south of Wellington, where the former Globe and Mail building was situated, is currently under construction. As detailed in Exhibit 34, a total of seven buildings will be located on that site in addition to the heritage building at the corner of Spadina and Wellington.

[33] The largest of The Well's towers at the corner of Spadina and Front, Building 7, will be immediately across from the South Block and Tower A in the Development. This commercial building is a three-tiered tower with the lowest height along Spadina at 83.0 m, rising to 120.0 m in the second middle tier, and then again to the highest level of 169.0 m (or 175 m inclusive of the mechanical penthouse).

[34] Buildings 6 and 5 of The Well, fronting onto Front Street and west of Building 7, will stand at heights of 157.4 m and 136.4 m with the lowest of the four buildings at 81.4 m at the corner of Front, closest to Draper Street. Three additional buildings fronting on Wellington will range between 55.9 m and 62.5 m. The height scale and massing of the entirety of The Well development are comprehensively laid out in Exhibit 34, which are "The Well – Urban Design Guidelines" and include a number of renderings of the project as it will exist in proximity to the proposed Development across the street and the immediate area.

[35] The City and the Applicant have two opposing positions on the matter of the relevancy and context of The Well, each supported by their respective planners.

[36] Mr. Nicholson, on behalf of the City, emphasizes that the Well has the benefit of special planning designations and zoning with a site-specific Official Plan Amendment and zoning by-law amendments in place to govern the built-form and mixed uses. The City submits that with the City's intended efforts, the removal of The Well from the King-Spadina Secondary Plan ("KSSP"), and the imposition of entirely separate guidelines and its own policies, means that The Well should not be considered to be of significance in context to the subject Development. The City's contention is that The Well's location immediately north of the rail corridor, its heritage concerns, the considerations for approval of height, floor plates and other matters dealt with through the special Guidelines, make The Well unique such that it should not be illustrative of what height, floor plates, massing and scale is appropriate for the Development's Site across the street.

[37] The Applicant submits that The Well, having been approved, becomes part of the existing context and is relevant in the interpretation of policy. While boundaries of different areas may exist and different planning policies and performance standards may apply to different areas in proximity to each other, what is actually built (or being built) is the reality of what exists and therefore becomes context.

[38] The Applicant also relies upon the documentary evidence (Exhibit 3, Tab 1, pp. 1-11) to support the fact that planning consideration was initially being given by the City to both developments concurrently as they are located at the same intersection and immediate location of the City. The Design Review Panel indicated in March 2015 that they appreciated the opportunity to review the Development “in parallel” with The Well and stressed the need for the review process to bring these two projects together to fully understand the public realm and impact of building heights and shadow, and encouraged the City to “focus on these combined projects” in “...such an important part of the downtown area”.

[39] Mr. Smith is of the opinion that The Well represents a significant factor in considering and applying applicable planning policies and is particularly indicative of the height and floorplate context, and the reality of elevated and larger development that has evolved in the East Precincts of King-Spadina. Although The Well, west of Spadina, is “technically” in the boundaries of the West Precinct, and subject to a site-specific OPA and ZBLA, Mr. Smith opines that The Well’s tall buildings, and large massing, floor plates and scale of development, are more in keeping with the other developments approved in the East Precinct with significantly greater height limits and represents a notable element of context that must be considered in assessing the height, massing and scale of the proposed buildings in the Development.

[40] Mr. Smith has expressed the firm opinion that the removal of The Well from the KSSP and its policies through the operation of the OPA and ZBLA and site-specific policies adopted to govern The Well, does not change the fact that The Well remains

part of the geographic area of the King-Spadina area and part of the spatial context to be considered in this Appeal. For Mr. Smith, although exceptions may have been made through the site-specific instruments, once approved The Well becomes part of the existing built and planned context.

[41] On cross-examination Mr. Smith's attention was drawn to the Staff Report to Council regarding The Well (Tab 33) and the special considerations and distinctions between The Well and this Development including the fact that it is directly across from the rail corridor. The City put to Mr. Smith that there were many special considerations in approving The Well that were of significance due to the Site's unique size, location and character and that Council has endorsed special Guidelines and designations and area-specific policies making The Well distinct and separate under such planning instruments. Counsel for the City went to some length to attempt to secure admissions from Mr. Smith that these special circumstances and special policy applications clearly distinguishes The Well from the Subject Site and Development, which is not similarly atypically large and special. For these reasons, Ms. Haniford put it to Mr. Smith that The Well should not, accordingly, inform the assessment of this Development or support larger floor plates, greater density or elevated height.

[42] Mr. Smith forthrightly acknowledges the adoption of the OPA, ZBLA and guidelines to facilitate and permit The Well but was firm in indicating that such considerations did not exclude other sites, such as this Site, from also being considered as being large-in-size and having unique characteristics. Notwithstanding the distinctions, Mr. Smith was adamant that while indeed there were specific circumstances, many considerations similarly applied to this Development and contextually supported the Development. Mr. Smith opined, through cross and re-examination, and the review of the staff report and instruments governing The Well, that the King-Spadina Area Urban Design Guidelines and the Tall Building Design Guidelines ("TBDGs") continue to apply to The Well, as they do to this Development and that the special considerations and characteristics for The Well, are not now obviated by the OPA, ZBLA and Guidelines adopted and endorsed by Council.

[43] Specifically the Tribunal finds in the evidence, and accepts, as submitted by the Applicant, that The Well and the proposed Development share commonalities:

- The buildings in The Well and the Development have large floor plates;
- The Well's layout includes a notable area dedicated as publicly accessible POPS;
- Vehicular parking and servicing is located in underground levels shared between buildings;
- The Well was noted by Staff, notwithstanding the removal of the site from the KSSP, to respond to many of the policy objectives of the KSSP (Page 999, Tab 33) and Mr. Smith opines that the Development will similarly conform to policy objectives such as: improvements to streets; a mix of uses; mid-block connections; address the public realm; create high-quality coordinated streetscapes; and provide transition in height with set-backs and step-backs;
- Both The Well and this Development are designed to limit new shadow on park lands beyond those currently permitted;
- The mixed use arising from both the development of The Well and the Development recognizes the evolution of the entirety of the King-Spadina area from an area in need of revitalization to a successful mixed-use neighbourhood which has attracted significant reinvestment since the KSSP was approved in 1996 (OPA, Tab 33, Exhibit 2). Mr. Smith opines that in both the assessment of The Well, and this Development proposal, the context is area-wide and not strictly compartmentalized;
- The Well's OPA (Page 1024, Tab 33, Exhibit 2) acknowledges that the built-

- form proposed for the site would not be appropriate in another location in the West Precinct of the KSSP Area which is comprised of mid-rise and tall mid-rise buildings, and not tall buildings. The same applies to this Development;
- The intersection of Spadina Avenue and Front Street West is recognized by the City, in its OPA for The Well (Page 1026, Tab 33, Exhibit 2) for its importance as a gateway location in the City, and Building 7, as a major office tower with a floorplate, is located at the northwest corner of the intersection. Mr. Smith opines that the Development, at the same intersection, will also support the importance of the Site as a gateway location.

[44] In considering the relevance of The Well, in the Site's context, Mr. Smith states that: The Well is directly across the Street; if forms the other significant large-site development at the corner of Spadina and Front; it will have tall buildings over 157 m; and the Well's buildings will have large floor plates. The site of The Well has unique characteristics due to its large size and its context. Considering these factors, and the above noted commonalities, Mr. Smith contends that The Well simply cannot be ignored just because the City enacted planning instruments that may have technically removed the Well from the operation of the KSSP. The Well is still very much there and must be considered as an integral part of the context of this Development.

[45] The Tribunal has considered the evidence of the two planners on the contextual relevance of The Well, and all of the evidentiary record relating to The Well, and prefers the opinion of Mr. Smith, and the submissions of the Applicant on this point for the following reasons.

[46] Context is a fundamental element of planning. The manner in which a development, a building, a road, a park, or any other elements of an Urban or rural landscape exist in relationship to other elements, or other parts of a living environment, is the starting point, and an integral aspect of, all planning analysis. Across the province hundreds of Official Plans, Secondary Plans, Urban Design Guidelines, Planning

Studies and the vast array of planning instruments require that the decision maker examine context. The approach to the examination of context and how it is to be applied in planning policies is expressed in an equally numerous variety of forms incorporating concepts such as harmonious fit, compatibility, transition, consistency with, or recognition of prevailing patterns or built-form. All of these concepts and analytical processes necessitate an understanding of “existing and/or planned context”, one of the most often expressed phrase in planning analysis.

[47] Planned context is distinct from existing geographical and spatial context. Existing context is simple as it involves the determination of what exists, or is in the process of being constructed, “on the ground”. There can be little room for argument or misunderstanding as to existing physical context since what is “on the ground” and clearly visible leaves little room for dispute.

[48] Existing context also generally includes all of the approved developments and urban elements that have been approved for construction since generally, except in limited circumstances where approvals for development are approved but subsequently abandoned, approved developments are accepted to rise and exist as spatial contextual elements and are known elements. Consistently, planning evidence includes an overview of those buildings and developments which will soon form part of the landscape and therefore must be accepted as existing within the planned context.

[49] Planned context is recognized as involving the examination of planning policies to determine what *might* exist within the framework of current adopted planning policies and the expected change that will occur in the identified study area and surrounding environs.

[50] On this basis, the question of whether or not The Well should, or should not, be included as a relevant consideration an examination of the context of the proposed Development at 400 Front Street must be answered in the affirmative. The enactment of site-specific planning instruments, that create exceptions for a development such as

The Well, does not change the fact that the Development will exist in proximity to, and exist in a contextual relationship with, the Development that is proposed. It will be there and visible. As the City's OP, and planning analysis necessitates the application of various planning and urban design policies that speak to matters of compatibility, transition, gateway function, fit, scale, definition, and elimination or mitigation of impact upon adjacent properties, as a matter of common sense what exists and is approved to exist, must be considered, and cannot be ignored, when deciding the appropriateness of any development, and what is good planning. For this reason, as well as the commonalities which exist between the two developments (referred to above) the Tribunal finds that The Well, in almost every respect, is of relevance to the determination of the issues in this hearing.

[51] For the reasons that are provided, the approach taken by the City's witnesses to exclude The Well as part of the existing context of the Development factors into the analysis of the evidence by the Tribunal and the preference given for the opinions of the respective experts.

What is the Height Context – Planning and Spatial – Tent, Clothesline or Plateau?

Introduction

[52] The parties are opposed in their approach and opinion evidence on the identification and application of policy relating to building heights and the interpretation of the building height data that is summarized in the table in paragraph 97. Mr. Nicholson's planning opinions and the City's submissions are shaped, in part, by the adoption of the "clothesline approach" to height which holds to this concept of a downward drop in building heights from the Downtown Core westerly through the East Precinct and then the West Precinct – a concept that the Applicant submits is not supported by in-force planning policy. Mr. Smith's planning opinions are more focused on in-force planning policies and an interpretation of the building height context that he believes supports the Development's building heights.

[53] What then are the in-force policies and what other planning guidance is there that governs tall building heights, or gradations or transitions in building heights, in the East Precinct? The expert witnesses provided differing opinion evidence as to what they believe is the applicable underlying policy framework.

[54] Once the governing policies and guidelines are identified the spatial height context must then be examined. Although the data as to the buildings, their respective heights in meters and storeys, and location are not substantially disputed, exactly which buildings are to be considered in the analysis, and the opinions as to the pattern of heights that exists and should be considered, are in dispute.

In-Force Planning Policies on Height

[55] Dealing first with the policy framework in the City's OP, Chapter 3 contains the built-form policies for Building a City, provides no specific policy relating to height, but sets out general built-form policies relating to new development that encompass height considerations. The broad policy statements on new built-forms are simple: "*New development will be located and organized to fit with its existing and/or planned context*" and "*..will be massed and its exterior façade will be designed to fit harmoniously into its existing and/or planned context, and will limit its impact on neighbouring streets, parks, open spaces and properties*".

[56] New development is also to frame and support adjacent streets, parks and open spaces to improve safety, casual views to these spaces from the development through a number of policies. Policy 3.1.2.3 and 3.1.2.4 set out the fundamental policy guidelines to achieve the "harmonious fit":

3. New development will be massed and its exterior façade will be designed to fit harmoniously into its existing and/or planned context, and will limit its impact on neighbouring streets, parks, open spaces and properties by:
 - a) massing new buildings to frame adjacent streets and open spaces in a

- way that respects the existing and/or planned street proportion;
- b) incorporating exterior design elements, their form, scale, proportion, pattern and materials, and their sustainable design, to influence the character, scale and appearance of the development;
 - c) creating appropriate transitions in scale to neighbouring existing and/or planned buildings for the purpose of achieving the objectives of this Plan;
 - d) providing for adequate light and privacy;
 - e) adequately limiting any resulting shadowing of, and uncomfortable wind conditions on, neighbouring streets, properties and open spaces, having regard for the varied nature of such areas; and
 - f) minimizing any additional shadowing and uncomfortable wind conditions on neighbouring parks as necessary to preserve their utility.
4. New development will be massed to define the edges of streets, parks and open spaces at good proportion. Taller buildings will be located to ensure adequate access to sky view for the proposed and future use of these areas.

[57] Policy 3.1.3 relating to built form for tall buildings emphasizes that tall buildings give rise to greater concerns due to the significance of their impact in the City's streetscape, and notes that poorly located and designed tall buildings can overwhelm adjacent neighbourhoods. Before setting out the built-form principles relating to the requisite three components of a tall building, the OP articulates that "*Tall buildings come with larger civic responsibilities and obligations than other buildings*". As such the OP provides the basis for tall building components "*...to ensure that tall buildings fit within their existing and/or planned context and limit local impacts...*".

[58] Policy 3.1.3.1 of the OP sets out the additional built form policies that will apply for the location and design of tall buildings:

1. Tall buildings should be designed to consist of three parts, carefully integrated into a single whole:
 - a) base building – provide definition and support at an appropriate scale for adjacent streets, parks and open spaces, integrate with adjacent buildings, minimize the impact of parking and servicing uses;
 - b) middle (shaft) – design the floor plate size and shape with appropriate dimensions for the site, locate and orient it on the site and in relationship to the base building and adjacent buildings in a manner that satisfies the provisions of this Section; and
 - c) top – design the top of tall buildings to contribute to the skyline character and

integrate roof top mechanical systems into the design.

2. Tall building proposals will address key urban design considerations, including:
 - a) meeting the built form principles of this Plan;
 - b) demonstrating how the proposed building and site design will contribute to and reinforce the overall City structure;
 - c) demonstrating how the proposed building and site design relate to the existing and/or planned context
 - d) taking into account the relationship of the site to topography and other tall buildings;
 - e) providing high quality, comfortable and usable publicly accessible open space areas; and
 - f) meeting the other goals and objectives of this Plan.

[59] The in-force 2004 KSSP contains only limited, but nevertheless significant, guidance on the matter of height in the King-Spadina Precincts, again through policies requiring that all new buildings “...*achieve a compatible relationship with their built form context through consideration of such matters as, building height, massing, scale, setbacks, stepbacks, roof line and profile and architectural character and expression*”. Buildings must also have height and massing to provide appropriate proportional relationships to streets, parks and open spaces. The KSSP essentially mirrors the requirement of compatibility for new development, inclusive of height considerations.

[60] The KSSP Guidelines also indicate, from an urban design perspective that new development along Front Street West, inclusive of the area where the Site (and The Well) are located, “*will demonstrate an overall coherence as befits an increasingly prominent street in the city*” and will have a massing and topological compatibility with the areas directly to the north. The Guideline provides that “*The height and massing of new buildings will be based on building types prevalent in the area.*”

[61] The “Fit and Transition” provisions of the TBDGs also address height. In addition to the matters of setbacks, stepbacks, access to sunlight and sky view, and other provisions relating to site scale, s. 1.3 (b) of the TBDGs provides the following with

respect to the broader context:

- b. At the broader district or city scale, encourage fit and transition in scale in the following ways:
- when a tall building or group of tall buildings is proposed within an identified growth area, design towers nearer to the edge of the growth area to be progressively lower in height than those in the “centre” – the location of greatest intensity and highest order transit;
 - when a tall building or group of tall buildings is proposed on a site surrounded by other tall buildings of consistent height, relate the height and scale of the proposed tower to the existing context.

Not-In-Force Height Policies and other Planning Instruments/Directions

OPA 2, Zoning By-law No. 922-2006 and the 2006 Guidelines

[62] There are pending planning instruments under appeal that have been introduced into evidence for consideration, the relevance of which has been raised in this Appeal. OPA 2 and Zoning By-law No. 922-2006, were intended to amend the KSSP and zoning provisions for the King-Spadina area. Updated King-Spadina Urban Design Guidelines (dated 2006) were also passed based upon Official Plan Amendment No. 2 (“OPA 2”). The instruments were, however, appealed to the Ontario Municipal Board as it then was, and there has been no determination made on those appeals. Accordingly these planning policies and guidelines are not in force.

[63] Mr. Nicholson has relied on aspects of OPA 2, the zoning by-law and the 2006 King-Spadina Urban Design Guidelines in his opinions. Mr. Smith takes the position that they are not in-force and therefore are not applicable, but he extends the opinion nevertheless that the proposed Development generally conforms to them.

[64] One section of the 2006 updated King-Spadina Urban Design Guidelines (Exhibit 2, Tab 21) relating to building heights is the subject of debate in the hearing. The section states that built-form in the precincts of King-Spadina area follows a pattern of

decreasing heights from the higher towers of the Financial District downwards westerly to the low rise residential Niagara Neighbourhood with heights dropping lower through each successive area from the Financial District “*down to the East Precinct, down again to those in the West Precinct, and lower still in the adjacent residential neighbourhood*” to the west.

[65] What relevance or weight, if any, is then to be given to OPA 2 and the 2006 Guidelines?

[66] With respect to OPA 2 and the 2006 Guidelines this Panel has previously received and considered arguments relating to the relevance and applicability of these not-in-force instruments in the decision of *L. Richmond Corp v Toronto (City)* 2018 CanLII 25415 (ON LPAT) (PL160081) where the Tribunal was asked to consider the same policies as they related to tall mid-rise developments in the West Precinct, and in particular the suggested “clothesline” of downward transitioning heights from the Financial District towards the western edge of the West Precinct.

[67] As was the case there, and is the case here in the East Precinct, despite the original enactment of those instruments, following initial appeal they have remained dormant and unenacted in the ensuing thirteen years. In the meantime intensification, rapid construction of higher developments and the approvals of taller buildings in the King-Spadina area, in both Precincts, have continued at a steady pace. These many years later, OPA 2 and the 2006 Guidelines are still not in-force and no steps have been taken to advance those appeals.

[68] The Tribunal will accordingly adopt a consistent approach to the City’s arguments in this Appeal, and finds that because OPA 2 has not been approved, the 2006 KSSP Guidelines do not effectively operate to provide in-force planning policies or guidelines relating to heights in the King-Spadina Precincts and these instruments and guidelines may, at best, serve as a general indication of the approach of the City to aspects of urban design, but are not policy. In this analysis, as further time elapses, and yet more

towers are approved in the East Precinct areas, the dated reference in the 2006 Guidelines to downward height transitions throughout the King-Spadina area, from east to west, becomes less relevant and out of sync with the pace of development approvals. The contextual evidence demonstrates that the pace of construction of higher buildings, and the resultant height patterns in the East (and West) Precincts has eclipsed the notion of a clothesline of height reduction that was inserted into the 2006 proposed policies.

[69] Inasmuch as they are not policy, both Mr. Smith and Ms. McIlroy have nevertheless given consideration to the 2006 KSSP Guidelines, as have Mr. Nicholson and Ms. Fadaee as they summarize the assessment process. The relevant section of the 2006 KSSP Guidelines that addresses height (and other built-form considerations) which are consistent with the City's OP built-form policies, is as follows:

For any application seeking an increase in height above the height limits set out in the Zoning By-law, portions of these buildings above the height limit will be considered as "Tall Buildings", and will be evaluated based upon the following principles.

New developments will be required to demonstrate how any potential tall building elements would impact the public realm, the adjacent properties on the block and any surrounding buildings or properties. Proof should be provided to show how any additional height above the current Zoning By-law permissions could exist in a compatible way within the surroundings without undue impacts on light, view, privacy and sunlight access on nearby properties. Skyviews from the surrounding public realm should also be considered and respected. New development may require a comprehensive approach for blocks with multiple landowners and sufficient parcel size to construct more than one tall building. One should consult the City of Toronto Tall Buildings Design Guidelines for standards of appropriate separation and facing distances, block layouts and potential massing details.

King-Spadina East Precinct Built Form Study and Council Directions

[70] The City's approach, and the opinions of its witnesses, are also much informed by directions adopted by Council with respect to the processing of applications. Mr. Nicholson refers the Tribunal to the City Planning Staff Report titled "*King-Spadina East Precinct Built Form Study – Status Update*" dated August 5, 2014, which was endorsed by City Council on August 25, 2014 (Tab 30, Exhibit 2). The oral and documentary evidence, which includes numerous planning comments and opinions regarding the

King-Spadina East Precinct Built Form Study (“East Precinct Study”), confirms that the East Precinct Study was an ongoing process intended to refocus planning policies for the East Precinct in recognition that it had, by 2013, evolved into a tower neighbourhood as a result of numerous development approvals, and thus permit, and manage, new towers (with heights well beyond those anticipated in established zoning), create infrastructure plans and provide direction for planned and managed intensification.

[71] The East Precinct Built-form Study has not resulted in adopted and in-force amendments to the Secondary Plan policy governing that area. The City nevertheless considers the Study, and Council has endorsed recommendations of City Planning Staff, as being of relevance and application for City planning staff in assessing development applications.

[72] One of the primary aspects of these Planning Staff initiated directions, or approaches, upon which Mr. Nicholson bases his planning opinion, again relates to the concept of a downward gradation of heights. The emerging “policy direction” crafted by Planning Staff in the report dated November 4, 2013, received for information by City Council on December 16, 2013 was as follows (Tab 29, Exhibit 2, Page, 923):

Reduce heights from east to west to create a transition down from the Financial District using the Shangri-Law (214 m) adjacent to the East Precinct as the elevation mark for the highest elevation, followed by the Toronto International Film Festival (“TIFF”) building at King and John (157 m) as the next elevation mark, and transitioning down to the Charlie building (123 m) (Attachment 2) as a means to moderate scale and density, thereby managing population growth;

[73] On August 25, 2014 City Council adopted an endorsement (Tab 30, Exhibit 2) of staff recommendations that were contained in the Planning Staff Report dated August 5, 2014. The endorsed direction for the review of current and future development applications with respect to tower heights in the King-Spadina East Precinct was: “a downward gradation of tower heights from east to west from university Avenue towards Spadina Avenue” and “employing the city-wide Tall Buildings Guidelines to evaluate towers, particularly with regard to tower spacing and tower floor plates”.

[74] That endorsement of directions was based upon the Staff report (Tab 30, Exhibit 2, Page, 939) which recommended that Council address a number of issues including the following:

A policy should be established to ensure that heights generally become lower from east to west (University Avenue to Spadina Avenue) with the objective of maintaining a lower height regime for Spadina Avenue and protecting the West Precinct from encroaching heights. Staff have used the concept of a height limit which establishes maximum heights from the 65 storey Shangri-La tower on University Avenue (214 m) (“m”) to the 21storey Hudson’s Condos at the north-east corner of Spadina Avenue and King Street West, as a means of establishing an appropriate height transition across the East Precinct.

[75] With that endorsement of the direction to be used for the East Precinct for the “downward gradation of tower heights from east to west from University Avenue towards Spadina Avenue” City Council also directed planning staff “*to bring forward any required Official Plan and Zoning By-law Amendments arising from the East Precinct Built-form Study to a statutory public meeting*”.

[76] To date, no such amendments to the OP or the Zoning By-law have been implemented as in-force policies in the City in accordance with that directive.

[77] As Mr. Smith opines in his written and oral evidence the City’s planning policies have not kept up with the evolving character of the King-Spadina area and in particular the East Precinct. The Tribunal accepts this opinion, as it is supported by the body of planning instruments and related studies, guidelines, resolutions, and reports, and the totality of the evidence before the Tribunal is indeed clear that the final adoption of binding, in-force planning policies for this area of the City have not kept pace with the construction activity occurring in the King-Spadina Precincts.

[78] What relevance or weight, if any, is then to be given to these “policy directions” or “emerging approaches” which have been endorsed by Council?

[79] With respect to Council’s endorsements of City Planning Staff recommended

approaches to height transition in 2013 and 2014, it is the opinion of Mr. Smith, and the submission of the Applicant, that such endorsed directives of Council stipulated to govern development applications, which are based on Staff Reports expressing opinions as to emerging directions or objectives, are simply not policy. If they are not policy, says Mr. Smith, then they are not relevant to issues of height (or other planning issues) in the East Precinct.

[80] The Tribunal must, on the evidence, accept Mr. Smith's analysis as a correct one and finds that the City's attempt to press forward Council endorsed approaches that have adopted comments from planning staff, as imperative directives that validate the downward transition of building heights, is inappropriate and should not prevail. Such directives or adopted approaches to development should not achieve the strength and status of policy. The Tribunal finds as such for a number of reasons.

[81] First, the directive is, itself, out of sync with the contextual height patterns that have evolved through the application of existing built-form and development policies. This is addressed below.

[82] As a matter of procedure, form and fairness, the City's reliance upon staff-initiated directives which have not been enacted in accordance with the planning policy structure in the Province, and in accordance with the regulatory requirements of the Act, is problematic and objectionable in a number of respects. First where "directives" intended to guide development applications have not been formally adopted into an Official Plan or Secondary Plan, or Zoning By-law, they have by-passed the mandatory requirements of the Act relating to public consultation, formal adoption and enactment, and the rights of appeal granted by the Province to every person. The avoidance of that process gives rise to a number of failings, not the least of which is the dispensing off the public consultation process, which is a foundation of planning in every municipality, that permits the stakeholders and residents the opportunity to provide input. When this has not occurred the larger public interest has not been served.

[83] As well, if development directives are given to staff to be followed, and thus elevated to a status where they must be given consideration when assessing matters of good planning in the public interest, then such imposed directives have also avoided: the ordinary continuing process, after public consultation, of dialogue and debate; informed and regulated requirements for municipal enactment of policy; Provincial review; and the rights of appeal.

[84] If such directives outside of the regulated system of enacted planning policy are to govern planning, there is a very real danger that decisions are no longer being decided upon policy and instead upon interpretive directives that have avoided the requirements imposed under the Act. In the Tribunal's view, such directives cannot be considered as "policy" in the sense that true policy is something that is process-driven, publicly scrutinized, enacted or adopted and, where necessary, tested by the Tribunal or the Courts upon appeal.

[85] Such informality of policy application also results in a lack of precision and clarity that comes with the crafting of true policy. In this case the Tribunal is being asked by the City to consider, in its determination of this Appeal, excerpts of staff reports or council resolutions instead of enacted planning policy or regulations that have been carefully and rigorously drafted and proofed through the procedural stages that are legislated. In the City's submission the Tribunal was urged to consider that there has been "an evolution of planning documents" and that they are "living documents that have to be interpreted" as time goes by. While true planning policy, amended through official plan, secondary plan and zoning by-law amendments may indeed evolve, and should evolve as "living documents", over time to reflect change, the Tribunal is of the view that it is an error to assign the same weight character and status to informal Council directives that change and evolve outside of the policy framework governed by the Act.

[86] The Tribunal would further note an important distinction between Council endorsed directives to staff, and Council enacted policy within regulated planning

instruments governed by the Act. Adopted Amendments to an Official Plan or Secondary Plan, and related policy documents and guidelines are subject to the statutory requirements of the Act. Policy changes through such processes cannot be arbitrary or changed upon the whim of a council and must withstand the rigours of public consultation, enactment and appeal processes. This is not the case with unilateral directions of Council to staff that are applied by staff in compliance with Council directives. Members of Council come and go, every four years, and the Tribunal must be protective of the process of properly implemented planning policy and resistant to the influence of endorsed directives that may be subject to the changing minds of successive municipal councils.

[87] Finally, it is the Tribunal's view that the basis upon which the Clergy Principle has been established should apply equally to circumstances where Council's "directives" or "emerging approaches" to development issues such as the height of towers are being used to substantiate planning decisions, when such directives are very clearly not "policy".

[88] Policy is, in its simplest form, the set of known rules, or the "playing field" for planning and development, upon which applications are made. The Clergy Principle is based on the notion that applicants should fairly expect that their applications will be examined and tested against the policy documents in place at the time that the application is commenced in order to lend some certainty to the land use planning process and the knowledge that changes in policy subsequent to the application will not be considered. The objective of the process is certainty and fairness in the application of the planning rules so that the applicant is not trying to hit a moving target in meeting policy requirements.

[89] These basic tenets of the application system should apply when it comes to the process of applying legitimate policy. Applicants are faced with more than a moving target of changes in planning policy when they are required to follow unilaterally imposed Council directives and subjective views of emerging approaches or trends that

are being applied outside the parameters of the regulated policy regime provided for in the Act. In such circumstances Applicants are being required to respond to development parameters that have not even achieved the status of policy, and that is at odds with the accepted understanding of the development approval process.

[90] Given the failings of such directives espoused by councils, and the fact that they are clearly not policy, it is the view of the Tribunal that they should be given very guarded consideration, and given little weight or no weight. Specific fact circumstances unique to a particular case, or circumstances where there is consensus amongst experts, might give rise to exceptional reasons as to why non-policy directives might be given greater weight or status. However, in the absence of any exceptional reason, which does not exist in this case, the Tribunal must instead look to the “best planning evidence” that exists which is the enacted and adopted planning policies and implementing zoning by-laws and guidelines that are in place, and, importantly, the determined existing context against which those policies are to be considered.

Existing Height Context

[91] With respect to height limits, on applications and appeals such as this one in the King-Spadina area, based on a review and examination of the totality of the enacted and applicable adopted policies and guidelines, the Tribunal concludes that practically speaking there is no in-force policy or guideline that provides a designated or maximum height for the buildings such as those proposed in this Development.

[92] The Tribunal has heard evidence that the City’s staff have adhered to a generalized approach to maintain building heights in the KSSP (or specifically in the East Precinct) to a maximum of 157.0 m – which is the height of the Festival Tower approved in 2004 more or less in the centre of the East Precinct. The evidence is that originally, there was a loosely accepted premise that the Festival Tower would represent a type of centre “tent pole” in the East Precinct with heights descending outwards such that the Festival Tower would be the landmark exception in the middle of

the Precinct.

[93] The evidence leads the Tribunal to conclude that if such a premise was considered as an intended guide to building heights in the East Precinct, it has certainly not come to fruition as the anticipated height context of the East Precinct.

[94] The evidence is that tall buildings, which are accepted as those being in excess of 30 storeys, have emerged as common-place built-forms throughout the East Precinct, without such an outwards reduction in height from the TIFF Tower. OPA 2, which is not in-force, contained provisions acknowledging that tall buildings in excess of existing zoning regulations may be considered in the East Precinct provided that they meet the criteria in the City's TBDGs. Documents and evidence relating to development approvals and an overview of the fabric of building heights in the East Precinct, support the finding of the Tribunal that notwithstanding the absence of any established policy as to heights, tall buildings are now an integral part of the East Precinct. This finding is consistent with the opinion of Mr. Smith, which is unopposed by Mr. Nicholson, and acknowledged in City staff reports, that the East Precinct has become a *de facto* westerly extension of the downtown as a location for tower built-forms.

[95] As discussed earlier in regards to the specific issue of whether height and massing of the buildings in The Well development practically forms part of the context for this Development, this question has been answered in the affirmative. The Tribunal must, consider The Well and all other built, or approved towers in the East Precinct, and in the immediate surrounding areas, as part of existing and planned context. This building height context is directly relevant to the determination of whether the height of the proposed buildings of the Development, and in particular, Towers B and C, conform to the applicable policies and represent good planning.

[96] In his evidence Mr. Smith undertook a detailed overview of building heights in context aided by the visuals and collected data relating to developments in the area to support his planning analysis that the City has demonstrated clear flexibility for buildings

above the outdated 157 m height “ceiling” once considered as guidance for other developments throughout the two King Spadina Precincts in the railway lands south of the Downtown Core. The City’s exhibits do not substantially alter, and in most respects, corroborate Mr. Smith’s data.

[97] Within the spatial context of the East Precinct and the other surrounding areas, there are a number of built, construction phase and approved tall buildings which the Tribunal finds are of direct relevance to the consideration of height for the Towers B and C of the Development. The Tribunal has summarized the particulars of the following tall buildings based upon the evidence presented in this hearing:

Building Address	Building Name	Height In Storeys	Height in Meters
266-322 King Streets West	Mirvish + Gehry 1	92	305.0
266-322 King Streets West	Mirvish + Gehry 2	82	275.0
Blue Jays Way (23 Spadina Ave)	Concord Canada House – Building 1	69	231.2
180 University Ave.	The Shangri-La	66	214
181-183 Wellington St. W	Ritz-Carlton	53	210.0
Blue Jays Way (23 Spadina Ave)	Concord Canada House – Building 2	59	202.1
19 Duncan Street	19 Duncan	58	186.5
155 Wellington St. W	RBC Centre	42	186.0
Front and Spadina	The Well (Commercial – Building 7)	38	172.8
Front Street	The Well (Residential – Building 5)	46	157.4
8-20 Widmer Street	8-20 Widmer	47	157.0
330 King Street West	Festival Tower (TIFF Bell Lightbox)	42	157.0
81-87 Peter Street	Noir	49	156.8
30 Widmer Street		48	156.5
300 Front Street W	300 Front Street West	52	156.0
156 Front Street W	(Cadillac Fairview)	52	156.0
15-35 Mercer Street	Nobu Hotel and Residences	49	156.0
355 King Street W	King Blue Condos	47	155.8
323-333 King Street W		47	154.0
350 Adelaide St. W	Peter and Adelaide Condos	47	153.0
200 Front St. W		33	148.0

401-415 King Street W	401 King	44	145.0
119 Blue Jays Way	King Blue Condos	42	140.4
56 Blue Jays Way	Bisha Residences		137.0
Front Street	The Well (Residential – Building 4)	39	136.4
430 King Street W.	Charlie	36	129.0
397 Front Street W	Apex Towers (West building)	36	119.0
11 Charlotte Street		32	114.5
361 Front Street W	Matrix Towers (East building)	32	94.6

[98] Despite a few quibbles about the precise meters, the inclusion of the mechanical penthouse, or the number of storeys of a few of the buildings discussed in the evidence, the parties are *ad idem*, and the evidence is consistent, as to the specificity of the heights and storeys of the various buildings.

[99] Against this data relating to height, the Tribunal has considered all of the various visual exhibits, renderings, drawings, profiles, and height maps assembled and presented by both parties in order to determine the appropriate height of the Towers A, B and C.

Analysis and Summary of Findings – Planning Policy Context and Existing Context for Height

[100] Based upon the above determinations and findings of the Tribunal already set out above in relation to planning policy and height data for the existing context, what then is: (a) the appropriate planning context to consider when weighing the opinions of the experts; and (b) what is the pattern of the existing height context for the proposed Development.

Findings - Planning Policies as to Height

[101] The Tribunal concludes that neither OPA 2 or the 2006 King-Spadina Urban Design Guidelines, nor the directives of Council are an effective policy bases relating to

height transition, or building height, which can validly operate to inform the analysis of the proposed building heights for Towers B and C because they are not in force, or they are not policy. On this basis the Tribunal concludes that the proffered clothesline approach to building heights is not validated planning policy in the East Precinct.

[102] As indicated, much of Mr. Nicholson's comments on the appropriate height of Towers B and C is based upon those instruments and the guidelines under appeal, and not in force. Mr. Nicholson's opinions are also informed by a staff-directed, Council endorsed "approach" to transitioned heights which is simply not planning policy. It is only that, an "approach", and it is one which is being outpaced by approvals from the City and Tribunal recognizing the extension of the tower neighbourhood into the East Precinct. The Tribunal cannot accept this approach to be sound policy guidance on the determination of height context and the governing policies relating to height patterns in King-Spadina area.

[103] For the extensive reasons and analysis outlined above, the Tribunal prefers the evidence of Mr. Smith over that of Mr. Nicholson as to the range of applicable policies that relate to height. For the reasons indicated, it is difficult to accept the City's submissions, and Mr. Nicholson's opinions, in regards to these non-effective policies as they might inform the issue of building heights in this proposed Development, and other proposals for towers in the East Precinct.

[104] The Tribunal finds instead that the identified OP policies and the in-force 2004 KSSP, relating to height limits that are consistent with the OP, operate as policy to determine the appropriate height of tall buildings in the East Precinct based upon the existing height context.

Findings - The Existing Height Context And The Determined Pattern

[105] As to what the determined pattern of height context, Mr. Nicholson holds to his assessment of the downward trend of building heights within the East Precinct.

[106] The suggested transitional east-to-west “clothesline” policy is, according to Mr. Smith, not valid policy but equally as important for him is the fact that the policy is inconsistent with the actual building height context and contrary to and the numerous and various approvals of tall buildings in the East Precinct, in The Well, and in the immediate areas to the south of the East Precinct.

[107] In the Tribunal’s view Mr. Smith’s assessment of the tall building context, supported by the data of the various tall buildings outlined in the evidence, and summarized above, is that the actual height context is more accurately representative of a plateau or table-top throughout the East Precinct. Mr. Smith’s assessment is that building heights do not achieve this downward slope line that the City suggests is the case, but rather, building heights generally *step* down to lower heights further east within the West Precinct (exclusive of the approved Well development governed by the site-specific instruments). Mr. Smith points to the number of various approvals that have been granted which confirm that the old 157 m height guideline has been abandoned. Instead, approvals indicate a significant number of higher buildings taking shape in the landscape and skyline of the East Precinct and its immediate surroundings. Mr. Smith refers to the skyline cross-sections and axonometric views set out in pages 25 to 29 of Exhibit 5 in support of this opinion as to the existing pattern of building height context.

[108] The Tribunal has carefully considered all of the visual exhibits relating to heights and transitional patterns provided by the Applicant in Exhibit 5, and in particular pages 2, 5 to 9, and 25 to 29. The Tribunal has also been attentive to the visual exhibits of the City in Exhibit 21, and in particular pages 2, 4 to 13, 19 to 23, 30, 31, 40, 41, and 50. Exhibits 9, 10 and 34 have also been considered.

[109] The Tribunal prefers the evidence of Mr. Smith and the Applicant over that of Mr. Nicholson and the City as to the existing and approved on-the-ground height context and accepts the Applicant’s submissions in relation to the contextual framework for

height in the East Precinct for the following reasons:

- (a) Overall, the Tribunal finds Mrs. Smith's underlying identification of the contextual reality of what is on the ground, currently rising up from the ground, or approved to be put into the ground, as more accurately informing the tall-building landscape of the East Precinct and adjacent portions of the downtown, which constitute the existing tall building landscape context for the Site.
- (b) The Tribunal finds that the Site context identified and considered by Mr. Nicholson and the City to be unreasonably narrow in scope and thus fails to fairly examine the entire breadth of the tall building environs around the Site. The City would constrict the existing context to the immediacy of the East Precinct and exclude tall buildings beyond that area. This was the approach applied by both Mr. Nicholson and Ms. Fadaee and is reflected in the cross-sections presented to the Tribunal (Exhibit 21, Pages 19, to 23).
- (c) While the Official Plan's designations and the City planning instruments do define designation and zoning boundaries for development, in some cases context extends beyond such boundaries depending on the assessment being undertaken. As both planners agree, Policy 3.1.3 of the OP expressly recognizes the greater visibility and impact of tall buildings which give rise to larger civic responsibilities and obligations than other buildings. Tall buildings and towers, by their very nature rise above the landscape, and are viewed across a broader perspective by residents, and as such, are logically part of a broader context that Mr. Smith opines, must be examined to truly understand the existing context of tall buildings.
- (d) The Tribunal accordingly agrees with Mr. Smith's approach that the existing context must accordingly be broadened to recognize the larger visual impact of the tall building landscape and that tall buildings have spread beyond the

- Downtown and into the adjacent Precinct. If that is the case it is more reasonable to consider the height of Towers B and C in that more extended tall building context that exists around it.
- (e) Mr. Smith is of the further view that the broader existing context of the downtown and the King-Spadina area does not abruptly end at the limits of the East Precinct but rather, the Spadina Corridor and the surrounding perimeters bring into context the other tall buildings such as: the two buildings of Concord Canada House on Blue Jays Way (231 m and 202 m), the Shangri-La, 180 University Avenue (214 m), the RBC Centre at 155 Wellington (186.0 m), and Building 7 of The Well, across from the South Block (172.8 m) (See below). The Tribunal accepts as reasonable, Mr. Smith's opinion that the fact that these other tall buildings are south of the East Precinct does not change the fact that with their heights, they form part of skyline and downtown urban landscape that surround the Site.
- (f) Specifically, upon the analysis set out above, as it relates to The Well, the Tribunal accepts Mr. Smith's planning opinion and finds that it also must consider that Building 7 (as well as the other buildings) in The Well as functionally part of the King-Spadina area and that it forms a relevant and important part of the built-form context in which the development will ultimately fit. The Tribunal finds that its location immediately across from the Site, whether in the Spadina Corridor or in the area designated as part of the West Precinct, is a very significant factor when considering the context of building heights and requires that the Tribunal consider the buildings of The Well, and their heights, in the consideration and application of the built-form and development policies
- (g) The Tribunal has carefully considered the extensive details of the many different developments arising in the course of the oral testimony, as well as the height maps identifying specific building heights, the height transition

cross-sections, the axonometric views, and the varied supporting documentation relating to prior and recent tall building approvals.

- (h) The list of those buildings in the East Precinct that are at 157 m (or within a range above or below 157 m where the height difference is difficult to discern) is not a small list. The summary of building heights gleaned from the evidence, as set out above, reveals no less than twelve buildings in the range of 153 m to 157 m.
- (i) The examples of buildings with heights that have significantly pierced the height limit previously set by the TIFF Tower in and around the East Precinct is also not inconsequential. The two Mirvish + Gehry towers on King Street West (305 m and 275 m), the Ritz Carlton on Wellington (210 m), and 19 Duncan Street (185 m), all rise well above the 12 tall buildings throughout the East Precinct. As the table of data demonstrates there are six others nearby.
- (j) The Tribunal has considered the skyline cross-section as it will appear with the existing building context (inclusive of the proposed Development) in Exhibits 4 and Exhibit 5 (pages 26 and 27) submitted by the Applicant and Exhibit 21, page 19 submitted by the City. The Exhibits are inclusive of the tall buildings which are technically outside the King-Spadina area because they remain part of the existing built-form context and part of the broad pattern of heights that must be considered under the City's policies governing tall building development and urban design.
- (k) The Tribunal considers the City's approach advocating a westerly downward transition of building heights is outdated and fails to recognize the contextual height patterns demonstrated in the evidence. The height patterns in the East Precinct reflect the cumulative results of a rather different reality that has emerged in development approvals which have effectively transformed the East Precinct into a precinct of tall buildings adjacent to the Downtown's

towers, that has accommodated the pressures of growth and intensification. This is consistent with Mr. Smith's opinions. It is also consistent with the various reports of City's planning staff that have recognized this transformation.

- (l) The Tribunal therefore finds that the pattern of tall building approvals in the East Precinct, as described by Mr. Smith, correctly identifies a tabletop type of height pattern rather than the downward transitioning pattern proffered by Mr. Nicholson, and the City. The contextual height pattern of a levelled cross-section of heights at the 157 m mark, with the number of buildings spreading throughout the East Precinct is, in the Tribunal's view, consistent with the height statistics outlined in the evidence (and summarized above), and is more accurately identified in the Applicants visual evidence and axonometric views of the broader cityscape.

- (m) Included in the submitted Exhibits in the hearing are the two cross sections from two different reference points. The skyline depicted in the City's building height skyline cross-section at page 19 of Exhibit 21 is viewed from the north looking south. The Applicant's version of the west/east building height skyline cross-section is the view from the south looking north. In the Tribunal's view both versions are fully consistent with Mr. Smith's 157 m "tabletop" description and his identification of the multiple building exceptions that are much higher than those levelling out around the 157 m point. The City's downward "clothesline" shown in red on its skyline at page 19 of Exhibit 21, as highlighted by Mr. Nicholson is, in the Tribunal's view, subjectively positioned to accord with the directive of Council to advance the notion of the downward transition (as opposed to a step-down transition in the West Precinct where heights are truly reduced in comparison to the East Precinct).

- (n) The Tribunal further finds, and accepts Mr. Smith's opinion to be correct, as he identifies the various approvals of tall buildings that have far exceeded the

table-top plateau of tall buildings in the range of 157 m and have pierced the table top. The City's approach which seeks to apply a rather pedantic invocation of a 157 m height limit and a downward transition westerly from an arbitrary point selected on University Avenue (the Shangri-la) to an equally arbitrary point on the corner of Charlotte Street and King Street (Charlie Condos) does not, in the Tribunal's view accord with the existing context. It is the City's submission that Mr. Smith has "challenged" the skyline. The Tribunal cannot agree, and at the end of the day it is more accurate to say that Mr. Smith has correctly *identified* the skyline which itself is what challenges the City's understanding of what is the correct and in-force policy relating to heights.

- (o) Accordingly, upon the evidence before the Tribunal, it must, in considering the opinions on the subject of appropriate heights, provided by Mr. Nicholson and Ms. Fadaee that rely heavily on the underlying existing and planned context, do so on the basis of the findings of the Tribunal as they relate to the existing context.

[110] Having made its findings upon the appropriate existing and planned context of the proposed Development, it remains to consider the evidence and the issue relating to the proposed heights of Towers B and C (Tower A's height will be dealt with in the analysis and discussion dealing with design issues for that building, as set out below).

The Appropriate Heights of Towers B and C

[111] Mr. Nicholson, in his evidence, and as summarized in paragraph 13 of his Witness Statement (Exhibit 18, Tab 2), is of the opinion that Towers B and C do not conform to the objective of maintaining a pattern of decreasing heights contained in the 2006 KSSP Urban Design Guidelines and what he considers to be the "emerging policy framework". Mr. Nicholson bases his opinion regarding the height context of the Development upon Council's endorsements of Planning Staff's recommended directives

relating to height transition. Upon that basis Mr. Nicholson is of the opinion that Towers B and C cannot therefore fit harmoniously within the planned context since they do not conform to the policy directions.

[112] The analysis and findings of the Tribunal as set out above, have fully addressed the relevancy of the not-in-force OP Amendment and the non-policy directives of Council and the Tribunal accordingly accords no weight to Mr. Nicholson's position on the existence of such policy.

[113] Mr. Nicholson also bases his opinions as to the necessity of a lower height for Towers B and C, in order to achieve a compatible relationship with their built-form context as to height, and to fit harmoniously into their existing context – a context which he opines, possesses such a downward reduction in building heights from the east to the southwestern perimeter of the East Precinct, and in which buildings of that height are reserved for locations where they have been approved, in special circumstances.

[114] The analysis and findings of the Tribunal as set out above, have fully addressed the existing context of the Site and the Tribunal is unable to agree with the premise of Mr. Nicholson's underlying opinion that Tower's B and C will not be compatible and fit harmoniously in the East Precinct.

[115] Mr. Smith acknowledges that the two north towers will certainly exceed the identified 157 m "unofficial height guideline" generally applied by City Planning Staff in the East Precinct but is of the opinion that Towers B and C will nevertheless be well situated in the established height context that has evolved in the West and East Precincts and the Downtown Core.

[116] In the broader context of building heights, and the existing and planned context relating to building heights as is found to exist, Mr. Smith's planning opinion is that the heights of the buildings in the North Block, at 188.75 m and 195.75 m will fit harmoniously. The fact that the heights of the two towers will fit harmoniously in the

broad pattern of heights is, in Mr. Smith's view, supported by the absence of any unacceptable adverse impacts. The Tribunal agrees and finds that save and except for the concern relating to the manner in which a portion of the south face of Tower C will interact with the north face of The Element building to the south (which is addressed herein and unrelated to the height issue), there has been no demonstrated evidence of any adverse impacts arising from the height of the towers in the North Block (nor from other aspects of massing, scale and urban design).

[117] The Tribunal has also considered the evidence with respect to the status of the Site as part of a Gateway Site, and as the Site is located at the southwestern corner of the East Precinct and the Spadina Corridor, and the rail corridor/transit line, in conjunction with The Well's position, it is recognized as a Gateway Site. So too does the Site represent a large and unique site, upon the evidence, given its significant size, its proximity to the new Go Station, and positioning in a part of the City recognized for its proximity to employment, recreation, transit, entertainment and centre core amenities.

[118] With respect to The Well, the evidence indicates that the unique size and location of The Well, in proximity to the rail yards and the transit station to the south was a consideration in determining the height of Building 7. The Tribunal has made findings with respect to the commonalities of The Well and the Development in paragraph 43. The evidence before the Tribunal establishes that this Site is also particularly large, is also in close proximity to the rail lands (albeit separated by additional development on the south side of Front) and to the new transit station and sitting at a Gateway location that is recognized as being of importance in the City. The Well Urban Design Guidelines (Exhibit 34) and the evidence of the witnesses, indicate that a balanced mix of uses contained in the unique and interesting character of the new buildings of The Well that respond "... to the surrounding structures of the King-Spadina neighbourhood".

[119] The Tribunal finds that these aspects of The Well as they are right beside this

Development, in context, share similarities with the subject Site and similarly inform the question of height (and massing and scale) for the Development. As Mr. Smith pointed out in cross-examination, despite the OPA and design guidelines specific to the Well, and its larger size, and the City's questioning to attempt to distinguish The Well from this Site, this does not exclude other sites, in proximity to The Well, from similarly being quite large and possessing unique characteristics that allow for special consideration. Mr. Smith's opinion is that in the right circumstances locations such as the subject Site may be appropriate for greater heights like the Mirvish and Gehry sites and The Well, as they too can contribute to the public realm, provide public spaces within a large size, contribute distinctive architecture because of a uniquely large site, and allow for deliberate departures from some development standards, such as height.

[120] The fact that the Site is accepted by the Tribunal as part of the same Gateway location as The Well, and where Building 7 (at 172.8 m in height) are located, is of contextual significance as well. The location of The Well at the Spadina-Front Gateway intersection was admitted as something of some important significance in the approvals granted to The Well. Mr. Smith has pointed out that if this was of important relevance in the context consideration of The Well, it would also be of contextual relevance in considerations for this Development.

[121] The Applicant, with Mr. Smith's supportive planning opinion, also submit that the general policies in the Growth Plan and the OP as they speak to intensification and growth areas, also support greater height at the Site's location. Generally these type of policy considerations were referred to in relation to the Mirvish and Gehry approval (Exhibit 3, Tab 21, p 189) where the planning rationale was advanced that that location was appropriate for additional height because it was capable of moving more people closer to the downtown area, where they are able to walk easily within the downtown core and access public transit conveniently by virtue of its proximity to the centre. Mr. Smith opines that this Site is a site that is similarly appropriate for additional height.

[122] Finally, but not last in consideration by him in his evidence, Mr. Smith's planning

opinion is that the Province's Growth Plan has given rise to clear public policy regarding optimization and an intensification imperative that requires consideration to achieving greater density where sites can accommodate increased density, through height, provided that there are no adverse impacts and that considerations of compatibility and fit, and good built-form policies are favourable.

[123] The Tribunal has considered the evidence and accepts Mr. Smith's planning opinion and with respect to determination of heights and prefers Mr. Smith's evidence over that of Mr. Nicholson for the reasons indicated. The Tribunal concludes that the proposed heights of Towers B and C, at 188.75 m (57 storeys) and 195.75 m (59 storeys), respectively, will fit harmoniously in the existing and planned height context. There is no persuasive evidence to suggest that reducing the height to the City's preferred limit will eliminate any adverse impact that it is necessary to achieve good planning in the public interest. There are, conversely, intensification imperative and optimization policies that support increasing the heights to those proposed, due to the attributes of the Site, provided that the Towers are compatible and a harmonious fit. The Tribunal finds that upon all the evidence it prefers Mr. Smith's evidence that the heights of Towers B and C fit harmoniously into the overall existing and planned context, without any form of unacceptable impact.

[124] The Tribunal finds that the proposed heights of the Tower conform to Policies 3.1.2.3 and 3.1.3 of the OP, as well as the built-form policies in 3.1.3.1 and the TBDGs.

Tower A – Urban Design - Floor plates, Massing, Scale, Set-Back, Step-Backs And Podium

Introduction

[125] The development of the South Block was initially, at the time of preparation of the Applicant's planning justification report, (Exhibit 4, Tab 3) comprised of two residential towers rising from a single podium along Front Street, with each of the towers

articulated in a different manner (Exhibit 21, Page 14). Subsequent review of the design for the South Block, to accommodate concerns of City staff, and to align with the proposed design of the adjacent development on 49 Spadina has led to the revised proposal now before the Tribunal.

[126] The South Block will now contain a single tower built-form (Tower A), with varying set-backs and a built form characterized by undulating curvature and articulation, and a complex series of step-backs and terrace treatments from the perimeters and varying sized floor plates. A significant component of the final presented design contains both dedicated parkland, and the POPS integrated into the portion of the South Parcel (and “bow tie”) along the Clarence Square Park street and north of Tower A and along Front Street.

[127] The Tribunal received opinion evidence from Ms. Fadaee and Mr. Nicholson on behalf of the City and from Ms. McIlroy and Mr. Smith on behalf of the Applicant in relating to urban-design and planning as it relates to the proposed built-form of Tower A. The primary point of contention between the parties is less about the 26 storey, 108 m height, and more about built-form and urban design and the elements of floorplate, massing, scale, set-back and step-back, and the manner in which Tower A adheres to the TBDGs, defining the “base-middle-top” requirements or the “wedding-cake” silhouette of tall buildings.

[128] For the purposes of assessing the differing opinions of the expert witnesses, and the opposed positions of the parties relating to Tower A, the Tribunal has carefully reviewed the drawings, site plans, renderings, axonometric views and other visual exhibits relating to Tower A including:

- Exhibits 9,10, 11 and 14, including the rather instructive renderings and 3D views of the defined elements and articulation of the building’s built form from base to mechanical penthouse (A1.1 and A1.4);

- the renderings of the parklands, street level views and POPS in Exhibit 39;
- the axonometric views on pages 28 and 29 of Exhibit 5;
- the relevant photos in Exhibit 6;
- the various visuals and computer renderings within Exhibit 21, the City's Visual Exhibits and in particular the comparative computer renderings of the massing of Tower A; and
- finally, Exhibit 8, the settlement documents for the approved 49 Spadina Development containing drawings and renderings that are of importance considering its proximity and relationship to Tower A on the south side of that development.

The Public Realm - POPS and Parkland Attributes

[129] There is consensus in the evidence as to the positive attributes achieved through the layout of the Development which results in a significant contribution of public realm areas through the 6 m sidewalk along all streets, the s. 42 parkland dedication in the diagonal connecting area between the North and South Blocks, fronting onto Front and along Clarence Square and the POPS and Living Laneway described in paragraph 15 and depicted in renderings in Exhibit 39.

[130] While Ms. Fadaee and the City in its submissions recognize the benefits to the public realm achieved through these contributions, they have failed to weigh and consider those benefits when considering issues of height, floor plates, massing and other aspects of the design, focusing instead on their identified problematic failings of the Development. Counsel for the City has indicated that they have not dealt with matters relating to the public realm because they take no issues with them. In the Tribunal's view there is a difference between accepting the public realm attributes of the

design of the Development and going further to fairly consider the benefits of the public realm aspects of the design in the overall planning assessment of the Development.

[131] Ms. McIlroy and Mr. Smith, supporting the evidence of Mr. Korman, are of the opinion that the contributions to the public realm are of significance in assessing the planning and design attributes of the Development which they believe are directly related to the important factors of significant size, the configuration of the Site and its layout, the immediacy of its location as a Gateway Site at Front and Spadina, and the manner of its function in its relationship context with The Well.

[132] Generally it is the view of the Tribunal that in the whole of the evidence presented by the City through Ms. Fadaee and Mr. Nicholson (and with the supporting submissions of counsel) there was an obvious, if not intended, tendency to be dismissive of the public realm benefits of the Development arising from the character and size of the Site. This occurred, to the Tribunal's thought, as the City obviously attempted to distinguish, or "distance, as it were, The Well from the subject Development, downplay the status of the Site as a Gateway site, and restrict the contextual examination to the immediacy of the south-western portion of the East Precinct. The Tribunal has made its findings regarding the contextual relevancy of The Well, the Site's Gateway status, and the broad context necessary for examination in this Appeal. Objectively, it is the Tribunal's conclusion that the City's constrained approach on these matters, has meant that in assessing the Development, the City has failed to properly fully consider the entirety of the Development's planning merits.

The City's Position and Supporting Evidence

[133] The City is opposed to the massing of Tower A and its set-back separation distances from the north property line and the 49 Spadina Development now approved as a result of the settlement between its owner and the City.

[134] Ms. Fadaee, relying upon the OP, believes that Tower A fails to frame the

adjacent Spadina and Front Streets in a way that respects the existing and planned street proportions, because the combined height of the base building, the inappropriate step-backs, floorplate size, and articulation of Tower A are inappropriate and provide better street proportion and public realm. Ms. Fadaee believes that more generous stepbacks must be applied at the lower levels in order to achieve good street proportion which, as it is designed in her view, ignores and does not respond to the prominent character of Spadina.

[135] More specifically, Ms. Fadaee is of the opinion that Tower A fails to create a continuous streetwall that responds to the prominent mid-rise characteristic along Spadina.

[136] The City also objects to the lack of proper stepbacks above the 5 storey, 22.5 m base building and facing Spadina as well as the failure to respect the scale and character of the 49 Spadina Development. In the opinions of the City's witnesses, the massing and scale of Tower A, as it extends along Front Street and meets Spadina, lacks the defined requirements of "base-middle-top" in tall building design as set out in the TBDGs and thus results in an inappropriate, dominant, elongated massing, or "slab-like tower", that must accordingly be rejected. Ms. Fadaee is of the opinion that the three-part step-back requirements are mandatory under the OP policies and Guidelines and does not read the built-form has having the required three distinctive parts and instead is a "bulky tower" that overwhelms the public realm.

[137] Ms. Fadaee, in her opinions and testimony, has focused on what she describes as the problematic aspects of Tower A, namely the separation distances, the floorplate sizes, and the inappropriate setbacks and step-backs, and the fact that the design does not conform to the TBDGs. As a result the City submits that the South Block built-form will not fit harmoniously within the existing and planned context. Specifically, for Ms. Fadaee, there are problems with how the scale, height and form of the Spadina street wall will fit in relation to the rest of the streetscape on Spadina.

[138] Specifically, with respect to the floor plates of Tower A, Ms. Fadaee opines that the floorplate sizes in Tower A exceed 1000 sq m for the majority of the tower levels except for levels 22 to 26 and do not meet the intent of the performance standard for floorplate sizes in the TBDGs of 750 sq m per floor.

[139] Ms. Fadaee's analysis of the Tower A built-form leads her to conclude that the massing and scale fail to meet the built-form policy requirements of s. 3.1.2.3, s. 3.1.3.1 and s. 3.1.3.2 of the City's OP because: the building's base and the limited step-backs of only 1.2 m between the base and the 17th and other upper floors, articulation and floorplate size do not properly frame the street and existing street proportions. Proper street proportion and lower-scale built form closer to street level, for Ms. Fadaee, can only be accomplished if more generous setbacks in the middle of the building are imposed. Of significance to Ms. Fadaee's opinion is that Tower A's design neglects the required base-middle-top components as they are set out under s. 3.1.3.1 of the OP and the provisions of the TBDGs, which results in one too large massing of the built-form. Ms. Fadaee's perception that the three distinctive layered elements are absent will result in negative impacts as sky view and light will be impeded.

[140] The various preferred built-forms for Tower A, on pages 29, 31, 33, 35, 37, 41 aptly reflect Ms. Fadaee's opinions as to the impropriety of the proposed design and the necessary amendments that would be required to achieve conformity with her opinions, and the position of the City as to the appropriate built-form for Tower A.

[141] Ms. Fadaee's opinion is that the lack of setbacks in Tower A, and appropriate separation distances result in non-conformity with Policy s. 3.1.2.4 of the City's OP. Cumulatively Ms. Fadaee's evidence summarizes the individual built-form requirements contained within Policy s. 3.1.2.3 and the Tall Building design policies in Policy s. 3.1.3.2 and s. 3.1.2.3. and concludes without exception that the design of Tower A does not conform with any of these policies.

[142] Mr. Nicholson agrees with Ms. Fadaee's urban design opinions and is of the view

that the proposed Tower A does not relate well to its context, is without sufficient distinction between the base and tower and has too-large floor plates that result in a single massing. Mr. Nicholson also concurs that Tower A fails to provide sufficient facing distance with the 49 Spadina Development, because of the 10 m separation on the northwest side of Tower A.

The Applicant's Position and Supporting Evidence

[143] The urban design and planning evidence from the Applicant asserts that Tower A is well proportioned, fits harmoniously in its immediate and surrounding context, and conforms to the built form and development policies and guidelines governing tall buildings. The building built-forms are reflective of the large and unusual Site proportions and have been well-designed to respond sensitive to its immediate surroundings.

[144] Both Ms. McIlroy and Mr. Smith believe that Tower A's design is well referenced and proportioned to adjacent buildings including 49 Spadina and the Steele Briggs Building and The Well development immediately to the west, as well as Front and Spadina and, importantly, at street level, the interior living laneways, parks and pedestrian areas and public spaces. Ms. McIlroy's testimony emphasises the distinctive features of Tower A with its varying articulation and stepbacks which will maintain a good relationship with adjacent built-forms and the public realm. Both Ms. McIlroy and Mr. Smith are of the opinion that the ultimate design of Tower A, as it will be located on an acknowledged Gateway site, represents a unique built-form typology that responds to its position across from The Well, and at the intersection of Spadina and Front.

[145] Ms. McIlroy's testimony, as supported by Mr. Korman's overview of the design of the Development, addresses the specifics of Tower A in relation to its location, particularly as it relates to the adjacent built-form resulting from the final settlement of the development of 49 Spadina which was achieved and approved as the hearing of this Appeal was underway.

[146] Ms. McIlroy testifies that the five storey podium, as it wraps around to face Spadina Avenue, is specifically designed to align with the proportion and scale of the height of the Steele Briggs heritage building on the corner of Spadina and the south extension of the Clarence Square crescent street. The base podium of Tower A is set back 9.3 m, at one point, to the boundary with the heritage building to the north, 16.3 m from the east boundary, 2.4 m from the south boundary along Front, and 1.8 m to the west boundary along Spadina.

[147] Both Mr. Korman and Ms. McIlroy, aided by the visuals, outlined the nature of the terraced organization of the middle tower portion and the manner in which the step-backed terracing of the tower progresses from the sixth to the seventeenth levels, in angled fashion between 1.5 m and 10 m. Further step-backs then occur more dramatically, again in an angled form, on the east side from the eighteenth to the 26th level. Ms. McIlroy opined that the stepbacks provide a downward transition toward Spadina Avenue.

[148] Articulations through terraced balconies occur on the south side, and on the north side Exhibit 8 visualizes the manner in which the terracing extends to the north and northeast, in angled extensions in a manner that follows the north property line between the two developments and the angled south face of the southeast side of the newly approved 49 Spadina built-form that is to be built to the east of, and both cantilevers and extends over, the Steele Briggs heritage building. In a consistent manner, the drawings renderings and site plans in Exhibit 8, relating to 49 Spadina similarly indicate the distance relationship between that approved building and the north façade and terracing on the north of Tower A.

[149] Ms. McIlroy and Mr. Korman describe the Tower A built-form as having a “sculpted built-form” and a type of waterfall effect, with a high level of vertical detail, articulation and variety of terracing and step-backs to interrupt the length, massing and scale of the Tower. The facing appearance of the building’s form, massing and scale, is

further articulated and varied through the use of rounded corners which assists in softening the changes in elevation moving from Spadina to Front Street. Due to its form and height, Mr. Korman refers to Tower A as more of a large mid-rise building than a tower building.

[150] Ms. McIlroy and Mr. Korman explain that due to the manner in which the building's design has been integrated into the South Block, in a contextual relationship and positioning relative to the south facades of the 49 Spadina building to the north, and in order to address the concerns raised by the City with the prior design with two residential towers from the podium, the design of Tower A utilizes unconventionally larger floor plates. The massing of Tower A therefore does present as elongated, but Ms. McIlroy opines that such larger floor plates and altered massing is possible because the South Block of the Site is itself quite large and can accommodate alternatively larger floor plates, such as is seen in The Well, while still maintaining separation distances and adequate or exceptional sky view, light and privacy.

[151] Of significance in the design of Tower A, for Ms. McIlroy, is the fact that the massing of the building with the established floor plates, assists in avoiding any new net shadow on Clarence Square Park. The Tribunal was provided with the progressive floorplate sizes of Tower A summarized in the table on page A1.3 of Exhibit 14 and Ms. McIlroy testified that the rectangular shape of the South Block necessitated this form of building, and that the progressively tapering floorplate from west to east narrows the resulting shadow as the building rises, thus mitigating any shadow impact.

[152] Ms. McIlroy has provided a detailed overview analysis in her evidence as to the manner in which Tower A conforms to the City's OP, the KSSP, the TBDGs and the King-Spadina Urban Design Guidelines (both 2004 and 2006). Ms. McIlroy has also considered the Draft Public Realm Strategy of 2014, as endorsed by Council, and although it is not policy, the goals of the Strategy are achieved. Ms. McIlroy in her evidence has noted that the Strategy identifies the intersection of Spadina and Front Street West as a "Major Gateway" and that the Site is thus regarded, under the

Strategy, as a major entry point in the City.

[153] From an urban design perspective, Ms. McIlroy is of the opinion that Tower A's design represents an appropriate scale of development, achieves compliance with the various built-form design policies in the City's OP, establishes appropriate relationships with the public realm, and has appropriate height, density, massing, scale and built-form, with adequate set backs and step-backs.

[154] Tower A also, in Ms. McIlroy's opinion, complies with the relevant design guidelines including the TBDGs and is also consistent with the Draft Public Realm Strategy. Specifically, Ms. McIlroy has determined that the design of the South Block, the articulation of the Tower A and the large contribution to public space and the public realm enables this building to enhance pedestrian movement through quality landscape and access to Clarence Square Park, and also serve an effective role as a major gateway in the City.

[155] Ms. McIlroy concludes that the South Block's built form ensures compatibility with adjacent properties by allowing adequate sunlight, view and privacy and mitigates shadow with the placement and height of the rising floor plates. The massing of Tower A is, in Ms. McIlroy's view appropriate, as a result of its use of high quality materials, unique façade articulation, compatible and proportionate podium height and form, as it relates to its corner gateway site, adjacent buildings, streets and nearby area. She concludes that the Development demonstrates principles of good urban design, architectural excellence and will contribute positively to its prominent location in the King Street and the Spadina Area.

[156] Mr. Smith's evidence, from a planning perspective, as he has assessed urban design policies and issues, supports Ms. McIlroy's expert opinions relating to the proposed built-form for Tower A. Specifically, Mr. Smith noted that the elongated floor plates, the considerable amount of articulation and varying setbacks and reductions in floor plates as the building rises, results in a type of massing approach that

accomplishes a number of objectives including the important goal of avoiding shadows on Clarence Square Park.

[157] The Applicant submits that from a planning perspective the addition of POPS and parkland will contribute significant public amenity space at a gateway site, that would be well integrated to its immediate context and adjacent streets and buildings, Clarence Square Park, the adjacent 49 Spadina Development, and the intersection of Spadina and Front.

[158] The more unique design of Tower A also, as Mr. Smith indicates, results in a modest increase in floorplate size, and varies from the base form approach to redeploy some of the massing from the podium of the building into the tower itself. The conventional “base-middle-top” defined tall building design is indeed varied, in Mr. Smith’s opinion, but it nevertheless has a variation of that tall building definition. The final built-form of Tower A has a clearly defined 5 storey, 21.85 m base, curving around Front to Spadina, leading to an unconventional middle series of continually reduced and step-backed upper storeys from the sixth to the seventeenth, nineteenth and twenty-first floor, with the top floors having much smaller floor plates.

[159] In his view, Mr. Smith posits that although the floor plates are larger and elongated as the building rises, with all of the articulation and massing, and with the unique type of design, it does not present as having “big, boxy, dominant massing, and large, elongated, or slab-like floor plates” – that is, it is not the type of built-form to be avoided according to the TBDGs (Exhibit 2, Tab 18, Page 9).

[160] The opinion evidence provided by both Mr. Smith and Ms. McIlroy, as it relates to the appropriateness of the design of Tower A, was consistent in recognizing the unique nature of the large expansive Site located as it is at the corner of Front and Spadina. It is the large and special nature of the Site that lends itself to the overall format of the Development, which the Applicant submits, is something that the City seems to ignore in its assessment of the proposed Development. The Applicants submit that Tower A

(and the balance of the development) is appropriate for the very reason that it possesses special characteristics and attributes that would not necessarily exist on other sites in the King-Spadina precincts.

[161] Mr. Smith and Ms. McIlroy, in their evidence note that the Site is:

- within a very large City block;
- is itself a large site, and one of the few larger sites remaining in the downtown area of the City;
- is a uniquely proportioned site in its “bowtie” form;
- is currently large surface parking areas, the removal of which is encouraged with priority given to the removal of surface parking around heritage buildings under s. 6.3(b) of the KSSP;
- is a gateway site at the intersection; is sized to permit large floor plates and still allow for sufficient setbacks;
- is a corner site;
- is a location on the far southwestern corner of the East Precinct and along the Spadina Corridor;
- is on Front Street in proximity to the railway lands; and
- is now situated across from a similarly unique (albeit larger) site where similarly special considerations were applied to allow for buildings with larger floor plates, greater height and alternative urban design and approved built-forms.

[162] Specifically, as it was addressed in both her evidence in-chief, and in cross-examination, the Tribunal received Ms. McIlroy's opinion that the unique nature and location of the Site afforded the opportunity for the design of the buildings, including Tower A, to transcend, so to speak, the ubiquitous "sameness" of tall buildings that precisely adhere to the TBDGs or guidelines relating to mid-rise buildings, which may constrain other possibilities. Ms. McIlroy believes that the Site is a special site, of considerable size, where something more unique and distinct, while adhering to the requirements of the Guidelines is possible, and in order.

[163] Ms. McIlroy was pointedly expressive in her testimony, when challenged in cross-examination, that design guidelines in the City are being subjected to a trend of more literal interpretation which restricts new buildings to uniformity and sameness due to narrow application of guidelines. Ms. McIlroy concedes that there must of course be conformity with policy, as policy may be informed by guidelines, but such conformity should not prevent moments where architectural discretion can be accommodated due to the size and site-specific characteristics that allow for a building to vary somewhat from the guidelines while still being contextually appropriate.

Tower A - Analysis and Findings of the Tribunal

[164] The Tribunal has carefully considered all the evidence relating to the stated issues in this Appeal that involve the design of Tower A. This has included an objective analysis of the application of the policies contained in s. 3.1.2 and 3.1.3 of the OP, and in particular s. 3.1.3.1 as it relates to the "three part" tower design, and those relevant provisions of the TBDGs, are in particular the guidelines in s. 3.1, 3.2 and 3.3 as they relate to the base, middle and top of towers. The Tribunal has also examined the visual exhibits and renderings which are of value in putting the oral testimony and written evidence summaries into perspective.

[165] Upon all the evidence the Tribunal prefers the evidence and submissions of the

Applicant over that of the City, with respect to the issues relating to Tower A, upon the following analysis and findings:

- (a) Based particularly upon the visual exhibits, and the whole of the evidence, the Tribunal has difficulty accepting the correctness of Ms. Fadaee's opinion (and Mr. Nicholson's) that the five storey podium somehow fails to meet the proportion and scale of the street and fails to create a continuous street wall consistent with the prominent mid-rise characteristic along Spadina. The Tribunal instead prefers Ms. McIlroy's stated perception that the podium in fact, does exactly that. The plans, drawings and renderings, and in particular Exhibits 9, 11 and 14, support Ms. McIlroy's opinion that the podium of Tower A, from all perspectives, lines up with, and continues, the proportion and scale of the adjacent heritage building at 49 Spadina. That development, approved by the Tribunal with the consent of the City, similarly contains design elements in the new addition to the heritage building that, in part, maintain the continuity of street scale and proportion. There is, in the Tribunal's view no evidence to support the opinions of the City's witnesses that are critical of the proportionality and scale of the podium base in relation to Spadina and Front Streets and assert that the podium design fails to conform to the policies of the OP or the TBDGs.
- (b) Dealing next with the height of Tower A, although the evidence was not focused primarily on the height of Tower A, the Tribunal finds that the proposed height of 26 storeys plus mechanical penthouse, at 97.5 m, is appropriate in its surrounding context, and planned context and adequately protects sunlight and sky view, with only a marginal shadow impact. In and of itself the Tribunal finds that Ms. Fadaee's comments regarding Tower A as being "too tall" are not supported by any persuasive justification and finds that Tower A's height is appropriate and based on planning policy. As the matter of height is integrated into the general determination of massing and scale, the Tribunal also finds that the height is appropriate.

- (c) As indicated, the Tribunal accepts the Applicant's submissions and the evidence that confirm that the entirety of the Site, and each of the two Blocks are rather exceptional in size and a Gateway location on Front Street adjacent to its contemporaneously planned and considered development – The Well. As indicated as well, these are factors which the City has somewhat unreasonably downplayed or ignored in its assessment of the Site and the Development, including Tower A.
- (d) It is this recognition of the relevance of the size, location and uniqueness of the Site that results in the preference by the Tribunal of Ms. McIlroy's and Mr. Smith's evidence over that of Ms. Fadaee and Mr. Nicholson in assessing the conformity or non-conformity of Tower A to the built-form policies and those guidelines informing the massing, scale, floor plates and overall design of Tower A.
- (e) With respect to floor plates the Tribunal also finds that, as the Applicant's witnesses have testified, the floor plates of Tower A reflect the existing and emerging architectural context in the immediate area. The 49 Spadina Development, immediately adjacent and now approved with the consent of the City is reflective of a larger floorplate design, (relative to the much more limited lot size). Also immediately adjacent are buildings 4, 5 and 6 in The Well, which have larger elongated floor plates due to the size of The Well's site, and which are massed and scaled to Front and the rail corridor.
- (f) Larger floor plates give rise to the determination of larger and different built-forms and massing/scale of a building. The non-disputed evidence is that the Applicant's initial proposal (Exhibit 4, Tab 3, Planning and Urban Design Rationale, Pages 18 to 23, 33 to 43 and Exhibit 21, Pages 14 and 15), provided for a shared podium with two distinct towers on the South Block, more conventionally following the distinct three -part built-form. That was

abandoned and the existing proposal for a single tower built-form, with set-backs to shift the mass of the tower to the east, avoiding shadow on Clarence Square Park.

- (g) Does this conform to the three-part built form provided for in the OP tall building built-form policies and the TBDGs? Both Ms. Fadaee and Mr. Nicholson are absolute in their conclusion that Tower A fails to provide the requisite distinctive three -part form, and is composed of excessively sized floor plates. Ms. McIlroy and Mr. Smith disagree and point out that the reduction of shadow on the Park has influenced the design and the shift from the earlier proposal. They have opined that the large lengthened dimensions of the South Block, along Front Street, have allowed for unique features and design elements that permit the larger floor plates and articulation and set-backs that accord with the intent of the performance standards of the TBDGs.
- (h) The Tribunal prefers the opinions of Ms. McIlroy and Mr. Smith over that of Ms. Fadaee and Mr. Nicholson as to whether Tower A responds to the requirements in policy s. 3.1.3.1 of the OP and the TBDGs requiring the three distinct parts: the base, middle and top. Ms. Fadaee's approach to this subject, and Mr. Nicholson's reliance therein, is, in the Tribunal's view, too rigid and overly pedantic in requiring strict angular profile compliance of the performance standard (as indicated in their renderings of preferred massing) which has, in that approach, failed to objectively consider the intent of the three part components or the various sections of the TBDGs that permit flexibility and variance where appropriate.
- (i) The opinions of the Applicant's witnesses on this important point are more compelling and credible because of their recognition of the character of the Site and its important Gateway context. The Tribunal accepts the evidence of Ms. McIlroy that on sites such as The Well, and this Site, it is possible to have larger floor plates (as well as greater height) with room enough to achieve

- sufficient separation distances. Ms. McIlroy in her evidence, again supported by Mr. Smith, is of the opinion that although technically not a tall building (30 storeys or higher) Tower A conforms to s. 3.1.3 of the OP which requires that such a building be designed to consist of the three parts “carefully integrated into a single whole” and s. 3.2.1 of the TBDGs which, as a guideline, indicates that any increase in tower floor plate size requires that exceptional design attention be given to the shape and articulation of the tower to diminish the overall scale and impact of the building mass.
- (j) Upon the preferred evidence of Ms. McIlroy and Mr. Smith, the Tribunal finds that Tower A does conform to these guidelines. As indicated above, the Tribunal finds that the articulated “bottom” podium design and scale addresses policy requirements and appropriately reflects the form and massing of buildings on Spadina, including 49 Spadina. With respect to the “middle” the Tribunal accepts Ms. McIlroy’s opinion that the middle portion of the tower, which she confirms is between Level 6 and Level 21, is distinguished through progressive stepbacks, and detailed articulation, such that the tower creates a downward transition to Spadina, thus framing the street. The middle tower is distinct from the base as a result of the set-back after the fifth storey, the pronounced terracing at Level 6, and the horizontal articulation. The angled “top” mechanical penthouse is an extension of the vertical articulation present on the face of Tower A and creates a distinct contribution to the City, and Front, skyline.
- (k) The Tribunal accepts the evidence of the Applicant’s witnesses and finds that the large rectangular shape of the South Block is what informs the progressively tapering and narrowing of the floorplate from west to east. Ms. McIlroy describes the Site as a special one that allows for distinctive architecture that varies slightly but does not wholly depart from the tower form, and a building that has been consciously designed as an entrance to the City.

- (l) Ms. McIlroy's evidence on cross-examination, in relation to the unique design of Tower A is of significance to the Tribunal in accepting her urban design opinions as to the appropriateness of Tower A's design. Ms. McIlroy was vigorously questioned as to the manner in which the design of Tower A adheres to the TBDGs and the three-part design requirements. Ms. McIlroy was consistent and credible in her responses explaining that the bottom-middle-top design guideline approach to tall and mid-rise buildings could be implemented but yet avoid the ubiquitous "sameness of look" that can arise in the City's architectural landscape that comes from a too-literal interpretation and application of the guidelines. The Tribunal accepts as compelling, Ms. McIlroy's opinion that on a special site such as this one, where "architectural discretion can be accommodated" and variations can occur, something more unique and distinct, but still contextually appropriate, is in order because of the size and character of the block and site including its Gateway location.
- (m) An additional consideration and finding of the Tribunal in relation to Tower A is that of the manner in which the Tower A built-form increases density and intensification and conforms to those policies. The Tribunal as noted above, has found that this Site, given its size, does call for increased density and furthers the optimization imperative set out in the Growth Plan. The Tribunal is of the view that the opportunity for the architectural discretion, creativity and excellence referred to by Ms. McIlroy, on a large site such as this, coexists with the opportunity for optimizing that large site and facilitating the intensification imperative. The Tribunal thus finds that both objectives are achieved with Tower A, while conforming to built-form policies and standards.
- (n) The Tribunal accordingly finds that Ms. McIlroy's opinions regarding the manner in which the design conforms to design and built-form policies and guidelines are reasonable and consistent with the in-force policies and adequately support her conclusion that Tower A will be amassed, and its

exterior façade will be designed, to fit harmoniously into its existing and/or planned context and will limit any impact. This is supported by Mr. Smith.

- (o) The Tribunal has also heard and considered the evidence relating to the matter of distance separation of Tower A from 49 Spadina. The Tribunal finds that the separation distance of Tower A's north façade, terracing, articulation and step-backs have provided for appropriate and acceptable building set-backs of Tower A from the 49 Spadina now approved by the Tribunal, with the consent of the City.
- (p) In considering the matter of separation distances, the Tribunal has considered the evidence received with respect to the 49 Spadina Development, and its approval of that development, in the course of the hearing of this Appeal, on the day prior to receipt of closing submissions. The City supported, and the Tribunal has approved, the settlement of the 49 Spadina Development which provides for no setback for the portion of new construction on the east side of that site.
- (q) The Tribunal has found, based on the evidence presented in support of the approval of the settlement that the 49 Spadina Development conforms to the policies of the OP, including those relating to built-form. This includes the tacit acceptance that the zero-setback on the south side, across from Tower A, represents good planning. It therefore seems disingenuous of the City to suggest that the setback distance of Tower A from the south boundary of 49 Spadina is not good planning. The Tribunal has considered as significant the additional evidence as to how the space between 49 Spadina's new construction and Tower A will function, and how it is integrated into the overall public realm in and around both buildings and the entire Site, in relation to pedestrian and vehicle traffic. It is also noted that there were no objections or suggestions of adverse impact voiced by 49 Spadina in regards to any matter of setbacks and separation distances between the two buildings. Finally, the Tribunal finds, upon the opinion evidence provided generally, that the manner

in which Tower A has been positioned with the terracing and curvature of its north façades, at all levels, has achieved a good working relationship and interfacing with the south side of both the existing heritage building and the new development approved by the City.

- (r) In summary, upon Ms. McIlroy's evidence, and that of Mr. Smith's, and in considering the opposed opinions of Ms. Fadaee and Mr. Nicholson, and all of the evidence, the Tribunal thus accepts that Tower A, is well articulated, terraced, and combines set-backs and design element with significant architectural treatment on all four sides, which has thus mitigated its height and achieved a tapering of the mass to the east. This overall design and built-form departs from, but still achieves, the distinct three-part design standards provided for in the OP and the TBDGs. When taking into account all of the other urban design elements of the TBDGs, and all other planning considerations, Tower A conforms to the OP and represents good design and good planning in the public interest.

Towers B and C – Podiums, Massing, Scale and Urban Design Matters

[166] The points of contention in relation to Towers B and C relate to: whether the base podium of Towers B and C is appropriate in relation to set backs, step backs, height; whether the separation distance between the two towers is appropriate given the floor plate size and heights of the towers; whether the floor plate size of Towers B and C are excessive; whether the separation distance between the south side of Tower C and the north side of The Element is appropriate. The issue of the separation distance on Tower C is addressed separately below.

Towers B and C – Podium

[167] Beginning first with the matter of the podium height for the North Block buildings, it is the City's view that the height of the podium is too high and inappropriate. The

starting point for the Tribunal is the presented evidence relating to the podium of Tower A and the approved development at 49 Spadina, where the podium height was directly informed by the five storey heritage Steele Briggs building. As the Tribunal has found, the manner in which the podium of Tower A as it wraps around Front to Spadina, is consistent with the heritage building and the Spadina streetscape.

[168] The development at 49 Spadina, approved by the Tribunal during this hearing, was presented as a consent approval between the City and the applicant in 49 Spadina. The evidence presented from the witness in that hearing provided planning evidence and it was noted that part of the approved design involved the continuation of the five - storey podium to that portion of 49 Spadina that is added to the east of the heritage building. The Tribunal there, and again here, finds that this continuation of the top of the podium of the addition, maintains a continuity of the top of the heritage building (as does Tower A).

[169] The approved 49 Spadina Development however includes additional treatment above the top of the building of the heritage building which then has a step-backed continuous level running the length, visually, of the entire north side of the building. Then, above the fifth floor of the new addition, and after this set back, the new portion of the tower cantilevers back out towards the street and rises straight up to a total height of 51 m before stepping back. The result is an apparent consistent front rise on the podium to a height of 51 m, albeit with the uniformity of the five storey podium/street wall height. The Podium of Towers B and C must co-exist with this streetscape context.

[170] The podium for Towers B and C must also relate to the townhouses immediately across the Clarence Square Park and the Met Soho across Wellington. As Mr. Korman explained in his overview of the Development, the podium, although rising to eight storeys before stepping back, was also articulated, in and out, with step-backs and double-heights for some articulations so as to allow for balancing with the Clarence Square townhouses, the Met SoHo as well as the Steele Briggs building.

[171] It is Ms. McIlroy's and Mr. Smith's evidence that the podium of eight storeys along Clarence Square Park and then Wellington, wrapping around to Blue Jays Way thus has a wide variety of adjacent context to respond to the different surrounding components. Exhibit 13(a) demonstrates the podium's varied dimensions and blocking to correspond to The Element, the Met SoHo and buildings to the north and the east side of the podium. It was Ms. Fadaee's opinion that there was a lack of regard in the podium for Towers B and C for adjacent built-forms and thus a failing in the overall compatibility and fit of the podium in its streetscape context.

[172] The Tribunal has considered the varied opinions, examined the visuals and prefers the opinions of the Applicant's witnesses and the submissions of the Applicant. The Tribunal accepts the submission of the Applicant and concludes that, upon the evidence, as the North Block podium is situated in proximity to a number of varying built-forms, it must have regard to context in a number of different directions and in this case, the Tribunal agrees that the result is successful. In particular, in reviewing the visuals from the City and the Applicant, the Tribunal finds that they support the visual observations and opinions of the Applicant's witnesses.

Floor Plate Size of Towers B and C and Separation Distance between Towers

[173] The floor plates of Towers B and C exceed 750 sq m and are 23 m in width. They are 863.18 m in floors 9 to 57 m of Tower B and floors 20 to 59 in Tower C. The floor plates exceed this of course in the floors in the podium. The question is whether the floorplate size of the Towers is excessive. Whether the floor plates of Towers B and C are excessive also requires a consideration of the context and consideration of the site-specific attributes of the Site as they are able to accommodate larger floor plates. It also requires that the separation distance between the towers be considered. In this case the distance between Towers B and C ranges between 28 m and 30 m.

[174] In considering the floor plates of Tower A, the Tribunal has already considered and accepted that the floor plates of many of nearby buildings and development in the

East Precinct are larger than the 750 sq m maximum performance standard. There is no dispute on the evidence that within the King-Spadina area approximately 20 of 40 buildings, or 50%, exceed the 750 performance standard. Exhibit 5, page 10 is an indicator of the incidence where the floor plates are exceeding the standard. Mr. Smith's evidence is also that three buildings the buildings in The Well are also obvious examples of larger floor plates that must be considered as contextual when considering whether larger floor plates are appropriate for Towers B and C in the North Block. Nearer to the Site, both the Fly and The Element have larger floor plates on smaller sites.

[175] Mr. Smith's evidence is that that The Well's buildings are demonstrative of the fact that larger sites with greater capability for density are appropriate for larger floor plates and greater height. Mr. Smith frankly explained how the redesign of the North Block resulted in an increased setback and a reduction in the height of the podium which has meant that there has to be a redeployment of space and density from the podium into the Towers.

[176] Mr. Smith has relied upon s. 3.2.1 of the TBDGs which provides that on a site-specific basis, where there is adequate tower separation setbacks and setbacks are achieved, flexibility in the maximum floor plate size may be considered for a tower or a portion thereof to accommodate modest increases from additional servicing and structural requirements for buildings greater than 50 to 60 storeys. Mr. Smith however emphasizes that he has relied more on the contextual analysis and general flexibility in determining that greater floor plates were appropriate based on the size of the North Block and the various attributes already reviewed.

[177] Section 3.2.3 of the TBDGs provide for the minimum separation distance between onsite towers of 25 m or greater, with stipulations that if floor plates are increased, or buildings are higher, then separation distances should be increased proportionally and a minimum distance separation should be the widest dimension of the tower floor plates.

[178] Upon the policy framework identified both Mr. Smith and Ms. McIlroy are of the view that the large floor plates in Towers B and C are possible, with sufficient separation distances, due to the size of the North Block.

[179] The Tribunal finds that the 28 m to 30 m separation distance is sufficient. The separation distance well exceeds the maximum width of the towers. The rationale for the tower floor plate limitations and minimum separation distance between towers is to minimize negative impacts on the public realm and neighbouring properties such as shadows obstruction of sky view, privacy and sunlight, as well as the living quality of the building interiors. Mr. Smith's, and Ms. McIlroy's, opinion is that given the context of floor plates and tower separations, the large site, the placement of the two towers and the Site organization, the floor plates are not excessive, and the separation distance is adequate. In support of this opinion they observe that there is no evidence anywhere of any adverse impacts, the design evidence indicates good spacing and ample opportunity for sunlight and sky view, and there are no concerns of privacy. The Tribunal accepts this evidence.

[180] For Mr. Smith he again emphasizes that the use of the larger floor plates and the tower heights achieve a good optimization of the lands and infrastructure on a large block of land in a location where height and floor plate increases are contextually appropriate and consistent with similar developments where additional height and enlarged floor plates have been approved. Again, of significance for Mr. Smith, and Ms. McIlroy is The Well, immediately adjacent to the Site where large floor plates and building heights have been approved and will also optimize use of the lands with appropriate intensification. As well Mr. Smith's broad experience leads him to also indicate to the Tribunal that there are other areas of the City where other towers have similarly large floor plates within their existing context and conform to intensification policies in the Growth Plan. These opinions are supported by the evidence and the various findings of the Tribunal in this Decision.

[181] The Tribunal has considered the opposing opinions of Ms. Fadaee and Mr. Nicholson. Again, the Tribunal finds that these witnesses for the City have: placed considerable emphasis on the incorrect assumption as to relevant policies; have elected not to sufficiently consider intensification policies and public realm benefits; have been pointedly restrictive in examining context (i.e. refusing to consider the adjacent Well as existing context and concluding that the Development must only fit harmoniously within the King-Spadina area); and have minimized the attributes and character of the Site as they may be relevant for consideration of greater height, floor plates and intensification. As such, the Tribunal finds that it must prefer the Applicant's witnesses on these contested issues relating to Tower A.

[182] Furthermore, the Tribunal has also noted an aspect of the opinions provided by Ms. Fadaee, and to a lesser extent, Mr. Nicholson, where the summary opinion has been provided that aspects of the development individually or collectively, represent "overdevelopment". Although the word is used often enough, and at times by the Tribunal, as a convenient means to summarize the manner in which a proposal will represent development beyond what is appropriate, the Applicant submits that "overdevelopment" is not a term that is embodied in policy within the OP. That appears to be correct upon the evidence. Where the opinion of "overdevelopment" is expressed, as it has often by the City's witnesses, it must be supported by analysis and balanced planning or urban design opinions that go beyond a simple determination that a specific policy or guideline or standard has not been met. The Tribunal must agree with the Applicant's submission that the conclusion of overdevelopment by Ms. Fadaee and Mr. Nicholson has not been properly supported on a number of occasions, for the reasons given by the Tribunal.

[183] The Tribunal prefers the evidence of the Applicant and accepts the submission, and finds, that the floorplate sizes of the two Towers and their distance separation conform to policy and guidelines and serve to achieve intensification on a site appropriate for higher density while meeting built-form and development guidelines. The Tribunal also finds that the North Block component of the Development has

appropriate massing, as it is a function of height, step-backs, set-backs, articulation and site organization, inclusive of its towers, as they are sized and separated, is compatible with its existing context and represents a harmonious fit in the location without any adverse effects of sky view, sunlight, privacy, wind or other impacts.

Community Facilities and Services

[184] In the course of submissions, and mainly in cross-examination of the Applicant's witnesses, the City raised the matter of the sufficiency of community services and facilities to service the Development. The Tribunal is of the view that despite the general references to the issue of adequacy there were no real substantive issues raised, and more importantly, no evidence brought forward by the City to support any reasonable concern relating to the delivery of services and the provision of facilities for the incremental addition of population residing or working in the Development.

[185] The only evidence before the Tribunal indicates that the Applicant completed its study in its original planning rationale and the City raised no concern relating to any other deliverables necessary to address any concern.

[186] Accordingly, the Tribunal finds that there are no issues of consistency or conformity with policies relating to matters of community services and facilities and no reason to prevent the approval of the Development in relation to this issue.

Tower C Transition – Interfacing with “The Element”

[187] The Tribunal will deal with this last issue separately due to its findings and directions regarding this aspect of the Development, involving the south façade of Tower C, along Blue Jays Way.

[188] The Tribunal is assisted with Exhibits 5 (pages 6, 7, 9, 13, 13a, 38, 40 and 43) which deal with this section of the Development.

[189] The south face of Tower C abuts the north face of the adjacent The Element building. The first 12 storeys of the north face of The Element are a blank wall and the building is built up to the north property line, obviously with the expectation of a similar interface with a large development to the north. At that point, after the first 12 levels, The Element's next four floors are set back from the building by 3.0 m and from the property line by 3.9 m. (Thereafter there is a considerable step back to the south of The Element). Those next four floors above the 12 level have windows and balconies facing north.

[190] On the other side of the property line, as this section of Tower C is configured, it is also similarly built up to the property line with no setback and the first 12 storeys of the building are a blank wall. At that point, after the first 12 levels, Tower C then steps back a distance of 6.1 m for the next seven levels and then steps back another 5.9 m as the south face of Tower C, then rises uniformly with that total step back of 12 m in total from the south property line of Block C.

[191] As a result the total distance separation from the residential units on those top four floors of The Element to the south face of Tower C will be a total of 10 m (being the 3.9 m step back of The Element and the 6.1 m step back of Tower C).

[192] The TBDGs provide for a minimum 12.5 setback of towers from all sides of a site abutting other properties. Both the OP and the KSSP require a compatible relationship/harmonious fit of any building, with its built-form context through setbacks and stepbacks and the siting of buildings to ensure adequate light, view and privacy.

[193] In Ms. Fadaee's and Mr. Nicholson's opinions, this condition which exists on the south face of Tower C represents an inappropriate application of the Guidelines and results in non-conformity with the OP and the KSSP, which will result in potential adverse impacts of light, view and privacy on those residents located above the 12th level on the north side of The Element.

[194] Ms. Fadaee generally objects to the absence of a 12.5 m setback on the first 12 floors as well but it is unclear to the Tribunal how a set back in the first 12 floors, adjacent to the blank wall results in an adverse effects upon The Element or how strictly enforcing the set back at this location represents good planning.

[195] The Element itself of course does not achieve the setback requirement of 12.5 m given its build-out to the north property line, and the step-back above the first 12 floors for residences or amenity space of The Element also would fail to achieve guideline standards. This does raise the question of why, if under such circumstances an existing adjacent building development is in non-conformity, the Applicant is called to task to “address the problem”, so to speak.

[196] While no resident or representative of The Element has appeared at the Tribunal, in exercising its public mandate, and with the absence of any explanation from the Applicant as to why the full step-back could not be continued between the 13th and the 19th floor to ensure at least a 12 m distance separation between the south face of Tower C and the north side of The Element above the 12th floor, the Tribunal finds that it is appropriate that the intent of the performance standards and the policies of the OP and KSSP be observed. While the condition of the north façade of The Element certainly long preceded this proposed Development, it is nevertheless a relevant aspect of the context that requires compatibility and a harmonized fit. In this case that can be achieved with a minimum of alteration to the plans, and counsel for the Applicant has acknowledged this in closing submissions.

[197] In his evidence Mr. Smith acknowledged that the separation distance between The Element and Tower C for The Element floors above the twelfth level were a bit tight.

[198] Accordingly it is the finding of the Tribunal that in order to achieve conformity to permit approval of the Development, these segments of Tower C, between the 13th and

19th floors must be removed such that the south façade and floor plans will be consistent with the floor plan for Floors 20 to 59, on Sheet A2.10 of Exhibit 9 and such that the south tower face will continue downwards without variance to the top of the podium above the 12th floor.

CONDITIONS

[199] In closing submissions the parties have made submissions, supported by recommendations of the planners, as to the inclusion of a number of conditions to be put into place, and the withholding of the final order until such time as such matters are finalized. The Panel has no difficulties with the form of the recommended conditions which will essentially allow the parties to approve the final form of the ZBLA, and attend to the agreements and documents required to facilitate settlement of those matters agreed upon in relation to the Development and which were not raised as issues in this hearing.

[200] Given the Tribunal's finding that the form of the development must be amended to increase the separation distance between The Element and Tower C this also must be addressed before a final Order can be issued.

SUMMARY OF FINDINGS

[201] For the purposes of analysis and the delivered reasons, the Tribunal has, as indicated in this Decision, in a number of instances, preferred the evidence of the Applicant's witnesses over that of the City. In most cases, it is unrelated to any specific matter of credibility or veracity of the evidence and instead, on the facts of this Appeal, as the evidence has been presented, the difficulty with the opinions of Ms. Fadaee and Mr. Nicholson is that they are predicated upon conclusions or assumptions which are, ultimately, contrary to findings of the Tribunal in relation to existing context and planning context and the weight or relevance attributed to certain planning policies and concepts, and the limited or misguided approach of the witness that does not accord with the

Tribunal's findings.

[202] The reasons of the Panel in preferring the evidence bears summarizing: The Tribunal has generally preferred the evidence of the Applicant's witnesses because the City's witnesses have in the nature of their evidence:

- (a) been dismissive of The Well and other sites and developments of significance to the issues before the Tribunal which the Tribunal has concluded form an important part of the existing context;
- (b) have minimized or excluded from the balancing of planning considerations, the considerable public realm benefits and related pedestrian and public realm policies that will arise and be satisfied through the Development;
- (c) placed varying degrees of emphasis and reliance upon directives or not-in-force policy that the Tribunal has concluded has no relevance as planning policy;
- (d) of relevance in this hearing, they have placed repeated emphasis on the existence of a policy of downward declining heights in the East Precinct that the Tribunal has found is not supported in policy or in actual context;
- (e) they have insufficiently considered important policy matters of intensification and the concept of optimization identified in the Provincial Growth Plan when balancing planning considerations which the Tribunal believes is of significance on the facts of this Appeal;
- (f) they have formulated the opinion that many aspects of the proposed Development represents "overdevelopment" (which is not a planning concept or criteria in any relevant policy) without adequate supporting reasons or justification tied to such opinions;

(g) they have not, in their formulated opinions, given sufficient recognition to the attributes or characteristics of the Site that are of relevance to the planning analysis and assessment of the proposed Development – some of which are shared with the attributes and characteristics of the adjacent Well development (such as size, proximity to the Rail lands on Front, proximity to higher order transit) making them “ripe for major growth” which the Tribunal has accepted as correct; and

(h) in the case of Ms. Fadaee, in matters of existing context, although earnest in their delivery, she has drawn on somewhat limited hands-on urban design experience and familiarity with Toronto developments and the downtown area in comparison to the breadth of familiarity of urban design and developments attained by Ms. McIlroy and Mr. Smith. In a number of cases, that experience has, for the Panel, also warranted greater weight being given to such opinion evidence relating to context.

[203] The Tribunal finds that the proposed Development has regard to Provincial Interests as set out in the Act, is consistent with the PPS and conforms to the 2017 Growth Plan which was in force and effect at the time of the hearing of the evidence. (Since the hearing, the Province has enacted a revised 2019 Growth Plan). Specifically the Tribunal finds that the proposed Development, as amended, will represent effective and appropriate intensification and optimize the land and infrastructure available on the Site by taking advantage of the expansive size and attributed found to exist.

[204] The Tribunal finds that the proposed Development, and the draft ZBLAs that will enable it, conform to the policies of the OP, and the in-force KSSP, and adheres to the TBDGs.

[205] The Tribunal finds that the proposed Development is appropriate and desirable from the perspective of both land use planning and urban design, and should be

approved with its enabling ZBLAs, subject to the required alteration, and final review of the ZBLAs, and to the final review by the parties and those conditions stipulated in the Tribunal's Order.

[206] The Tribunal finds, upon all of the evidence, that in its existing context, and as it is located at its Gateway location, on Front street, in proximity to The Well, the rail lands and high order transit, the Development is a well designed contribution to the King-Spadina East Precinct and Spadina and Front streets, which will contribute, once confirmed, well-designed public realm components integrated into the existing park and nearby pedestrian areas.

[207] Upon all of these findings the Tribunal concludes that the Development as altered in accordance with this Decision, and the proposed ZBLAs, represent good planning in the public interest and should be approved.

[208] As a final point, in closing submission counsel has made reference to approval of the draft of the ZBLAs and agreement as to the inclusion of the conditions referred to in Mr. Nicholson's Report which is assumed to be Appendix 3 attached to his Witness Statement (Exhibit 18, Tab 2, Pages. 42-44). As the Panel was not provided with Word or PDF versions of the ZBLAs to allow for inclusion in the final Order, if counsel find it necessary to address the Panel for the purposes of the form of the conditions and referenced instruments, that may be arranged through the Case Manager. The Panel will also require a final review of the ZBLAs following the required amendment and review in accordance with the Conditions.

[209] To the extent that it is possible the Panel will also remain seized with respect to any matters arising from the Order.

ORDER

[210] The Tribunal, having found that one aspect of the Applicant's proposed

Development relating to Tower C, as provided for in this Decision, does not maintain adequate step-back, the Applicant is permitted to amend its proposal in accordance with the findings and directions of the Tribunal in this decision and to submit revised development application materials in relation to the suggested changes to the City and then to the Tribunal, in satisfaction of the condition noted herein.

[211] In the event the Applicant elects to amend its proposal in accordance with the directions of the Tribunal, the Tribunal orders only then that the Appeal is allowed in part and the City is then directed to amend Zoning By-law No. 438-86, Zoning By-law No. 569-2013, and Site Specific By-law 650-91 each in the form and manner originally submitted by Bousfields Inc. with the Applications to the City filed April 7, 2015, or as they may have been subsequently been updated by the Applicant, in accordance with the Tribunal's decision, subject to the conditions provided for herein.

[212] The Tribunal's Final Order with respect to the Zoning By-law Amendments is withheld pending confirmation in writing from counsel for the City and the Applicant that the following conditions have been satisfied:

- (1) The Applicant has resubmitted to the City, and then to the Tribunal, such amendments revising its Development application relating to adequate stepback of Tower C, in accordance with the findings and directions of the Tribunal in this Decision, to the satisfaction of the Tribunal;
- (2) The Draft Zoning By-law Amendments amending City of Toronto Zoning By-law No. 569-2013, Zoning By-law No.438-86, and Site Specific By-law 650-91 are confirmed by parties to be satisfactory in form and content to the Applicant, and to the City Solicitor, the City Chief Planner and Executive Director, City Planning and the Chief Engineer and Executive Director, Engineering and Construction Services; including, among other things:

- (i) the repeal of any previous site specific zoning for the lands; and
- (ii) the repeal and replacement of the underlying zoning designations with appropriate King-Spadina RA zoning designations consistent with the general zoning by-law designation for other lands in the vicinity of the site, all to the satisfaction of the chief Planner and Executive Director, City Planning

and thereafter, the draft Zoning By-law Amendments have been submitted to the Tribunal for final review and approval;

- (3) The Applicant, at its expense, has entered into a Section 37 Agreement to secure the proposed Section 42 Parkland, the Privately Owned Publicly-Accessible spaces (POPS) and any other matters, services and facilities, as a matter of convenience, including those matters related to Issues 21 and 22 as they are set out in Appendix 3 to the Witness Statement of Dan Nicholson filed in Exhibit 18, at Tab 2, of the hearing;
- (4) The Tribunal has been advised by the City Solicitor that a Section 37 Agreement satisfactory to the Chief Planner and Executive Director, City Planning, the Chief Engineer and Executive Director, Engineering and Construction Services and the City Solicitor, has been executed and registered to the satisfaction of the City Solicitor.

[213] The Tribunal's Order for the amendment to City of Toronto Zoning By-law No. 569-2013, is a contingent order, pursuant to s. 12(2) of the *Local Planning Appeal Tribunal Act*, on the by-law coming into force and effect for the subject site.

[214] In the event matters arise related to the implementation of this Order, the Tribunal may be spoken to in accordance with the Tribunal's *Rules of Practice and Procedure* or as otherwise agreed. The Panel Member will remain seized with respect

to such outstanding matters relating to these Orders to the extent that he is able as an appointed active member of the Tribunal.

[215] If the Parties do not submit the final drafts of the Zoning By-law Amendments, and request the issuance of the final Order, by **Monday, December 9, 2019**, the Applicant shall provide a written status report to the Tribunal by that date, as to the timing of the expected confirmation and submission of the final form of the draft Zoning By-law Amendments and issuance of the final Order by the Tribunal. The Tribunal may, as necessary arrange the further attendance of the Parties by Telephone Conference Call to determine the time lines for the submission of the final form of the instruments and the issuance of the final Order and further follow-up as may be required to have the final Order issued by the Tribunal.

“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.

Local Planning Appeal Tribunal

A constituent tribunal of Tribunals Ontario - Environment and Land Division
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