

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



ISSUE DATE: February 04, 2020

CASE NO(S): PL170076

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: Wellington House Inc.
Subject: Application to amend Zoning By-law No. 438-86 -
Refusal or neglect of City of Toronto to make a
decision
Existing Zoning: RA
Proposed Zoning: Site Specific (To be determined)
Purpose: To permit the development of a 23-storey tower
containing 1,428 square metres of office and retail
uses and 129 dwellings units
Property Address/Description: 422-424 Wellington Street West
Municipality: City of Toronto
Municipality File No.: 16 213925 STE 20 OZ
OMB Case No.: PL170076
OMB File No.: PL170076
OMB Case Name: Wellington House Inc. v. Toronto (City)

Heard: October 29, 2018 to November 8, 2018 in
Toronto, Ontario

APPEARANCES:

Parties

Wellington House Inc.

City of Toronto

Counsel

Kim Kovar

Alexander Suriano and Sarah O'Connor

Wellington Place Neighbourhood
Association

Andrew Biggart

DECISION DELIVERED BY HELEN JACKSON AND ORDER OF THE TRIBUNAL

INTRODUCTION

[1] Wellington House Inc. (“Applicant”) applied to the City of Toronto (the “City”) for a Zoning By-law Amendment (“ZBLA”) to permit the development of a 17-storey mixed use building at 422-424 Wellington Street (the “subject property”). This decision follows the hearing of the appeal of City Council’s non-decision on the application within the statutory timeframe under s. 34(11) of the *Planning Act*.

Subject Property and Surrounding Area

[2] The subject property is located on the north side of Wellington Street West (“Wellington Street”). It is within the block bounded by the north side of Wellington Street and the south side of King Street West between Spadina Avenue and Portland Street. As described by the witnesses in this hearing, this block is morphologically unique due to its historical setting with a wide landscaped road right-of-way (“ROW”) between two important parks, and due to the history of development of the block.

[3] The subject property is within 1.35 kilometres (“km”) of the St. Andrew subway station and is near streetcar routes and the planned Spadina-Front GO Regional Express Rail (RER) station would be within about 350 m of the site.

[4] As was described during the hearing, an 1834 Plan of Survey laid out the Garrison Neighbourhood between Victoria Memorial Square to the west and Clarence Square to the east. This grand street had homes with deep setbacks modelled after Regent Street in London and George Street in Edinburgh. The ROW on Wellington Street along this stretch is 45 m, to allow for a landscaped street intended to extend and

connect the green space between the two squares. The 45-metre (“m”) ROW width is 2.25 times the width of typical streets in the City.

[5] The subject property has an area of approximately 1,359.50 square metres (“sq m”) with approximately 20.55 m of frontage on Wellington Street and a depth of 65.73 m. The site is currently occupied by a large vacant three storey semi-detached house(s) known as the “McLeish-Powell Houses”, built in 1888 and listed on the City’s Heritage Registry. The houses are surviving examples of the first wave of residential development in the King-Spadina area and the first development on this stretch of Wellington Street.

[6] The next wave of redevelopment on this portion of Wellington Street, referred to in the hearing as the ‘second generation’ of development, is characterized by long narrow industrial warehouse buildings up to about eight storeys in height, mostly of brick masonry. A number of these mid-rise buildings remain and have led to the area being designated as a heritage conservation district by way of the King-Spadina Heritage Conservation District (“HCD”) Plan (June 2017), adopted by City Council on October 4, 2017, currently under appeal.

[7] Due to market conditions in the 1990s, many of these industrial buildings were vacated, and some demolished. As was described by Paul Bedford, Chief Planner for the City at the time, radical measures were required to respond to this situation. As a result, a new designation in the Official Plan (“OP”) called Regeneration Area (“RA”) was provided for lands in the King-Spadina area. The RA designation did not restrict uses, but rather provided a method of guiding the form of development by establishing restrictions to the built form with respect to height, setback and step backs. Density was not restricted.

[8] This resulted in a third wave of development which included the conversion of the low-rise and mid-rise industrial and warehouse style buildings from the early 1900s into residential, commercial office and retail uses, interspersed with new residential buildings

and purpose-built office buildings. Within this stretch of Wellington Street, there are some third generation in-fill structures of between 7- and 13-storeys constructed within the last 15 years.

[9] The fourth generation of buildings are those recently built or approved buildings characterized by the gradual and incremental increase of heights in the area.

[10] The existing built form along this stretch of Wellington Street currently consists of a mix of relatively narrow masonry warehouse buildings that reflect the original lot divisions and that run in a north-south orientation. These buildings are generally built to their front property line and have side yard setbacks ranging from 0 to 4 m, which creates a series of open spaces that run between King Street and Wellington Street. This configuration provides both an opportunity for outdoor spaces as well as pedestrian mid-block connections between the two streets.

[11] The subject property is subject to the King-Spadina Secondary Plan of 1996. Updates of the 1996 Secondary Plan (described later in this decision) now refer to this portion of the King-Spadina area as the West Precinct. The West Precinct is generally bounded by Queen Street to the north, Bathurst Street to the west, Front Street to the south and Spadina Avenue to the east.

Adjacent Recent Approvals

[12] There are two significant development approvals (not yet constructed) in the vicinity that were referenced with respect to the context for this proposed development; these are: 'The Well' and 'The Big'.

[13] The Well is a large (about 7.7 hectare) development located on the former Globe and Mail site. It borders the south side of Wellington Street opposite the subject property, Spadina Avenue, and Front Street. A range of uses are provided, including

offices, privately owned public spaces (“POPS”), public realm improvements, a new park, and pedestrian connections.

[14] The Well has three ‘tall mid-rise’ buildings that front onto the south side of Wellington Street directly south of the subject property. These three buildings have a series of step backs from the street and two gaps of about 10 m and 15 m that mimic the north side of the street where there are gaps between the buildings sited on the long narrow lots. The three tall mid-rise buildings have heights ranging from 27.7 m to 62.5 m, and the upper portions of the buildings are setback from the north property line by about 13.5 m. South of the tall mid-rise buildings are three tall point towers fronting the railway lands that are up to 45 storeys/169.0 m. The Floor Space Index (“FSI”) is 9.31.

[15] The Big development is on a large consolidated parcel fronting onto King Street. The FSI of The Big is 5.88. It incorporates a number of heritage buildings into the unusual building form that consists of a series of mountain-like peaks with a courtyard in the centre. The long narrow block morphology is no longer evident. At its highest point it is 16 storeys at 56.5 m. The setbacks to the adjacent property lines are 4 to 7 m. The setback to the 16-storey element at the southeast corner of the site is 6.1 m to the property line abutting the subject property.

[16] At the rear southeast corner of The Big development, at 495 King Street, is a three storey office building, built close to its rear property line, adjacent to the western portion of the subject site. This building is a designated heritage building as part of The Big development. The interface of this building with the proposed development is very tight.

[17] The Big development provides a pedestrian connection from the central courtyard to the south through “Cat Park”, a dedicated lot that fronts onto and connects to Wellington Street and provides the parkland obligations for The Big development.

Witnesses

[18] Over the course of the nine-day hearing, the Tribunal heard from the following expert witnesses:

For the Applicant:

- Peter Clewes – architecture and urban design
- Peter Smith – land use planning

For the City:

- Dan Nicholson – land use planning
- Diana Birchall – urban design

For Wellington Place Neighbourhood Association (“WPNA”):

- Paul Bedford – land use planning

[19] All experts were qualified in their field of expertise and signed Acknowledgement of Expert Duty forms confirming their responsibilities to the Tribunal.

THE PROPOSAL

[20] The proposal consists of a 17-storey, 58.9 m height (including mechanical penthouse) mixed-use building, reduced from an originally proposed 23-storeys. The total Gross Floor Area (“GFA”) is approximately 9,033 sq m with approximately 8,169 sq m of residential and 864 sq m of non-residential floor area. The FSI is 6.67. There will be 104 residential units, 627 sq m of commercial/retail uses and 237 sq m of commercial office uses. The outdoor amenity space of 115 sq m is proposed to be on top of the heritage homes and will be connected to the indoor amenity space of

208 sq m. There will be a total of 33 parking spaces and 106 bicycle parking spaces in two levels of below grade parking.

[21] The front portion of the existing residential heritage building will be retained and restored, however the recent rear addition is to be removed. A restaurant use will be provided on the first floor at the front of the heritage building, and office and commercial uses will be provided on the remainder of the first floor to the third floor of the heritage building. The heritage building is currently setback about 10 to 12 m from the front lot line. The proposal is to move the building forward but to retain sufficient space for a front yard patio for the proposed restaurant. The resulting street setback will be 5.63 m to the west bay window and 6.056 m to the east bay window on the existing heritage house. This is satisfactory to the City Heritage department.

[22] A six storey podium is to be located to the rear of the heritage home. The setback on the north side of the podium is approximately 0.74 m. The setback to the west is approximately 4.2 m for a widened mutual driveway with the site at 432 Wellington Street, occupied by Le Select Bistro restaurant. To the east a party wall condition is created with the three storey non-residential building, which steps down to a one storey addition at the rear.

[23] The entrance to the building residences and offices will be at the west side of the building. Access to underground parking will be along the mutual driveway with parking elevators at the end of the driveway. Loading is at grade within the building.

[24] East to west oriented residential units (called 'Slim Jim's') with windows on the west side will be located on levels two to six of the podium. There are no windows along the east or north side of the podium. In the original application, this portion of the building was proposed to be non-residential uses. The Tribunal notes that during cross-examination, Mr. Clewes acknowledged that, as this is now intended to be living space, it would be appropriate that this setback be increased to 5.5 m from 4.2 m.

[25] At levels seven to 14 (the 'tower' portion of the building), the setback at the front of the building increases to 10.54 m, while the setbacks at the north, east and west are approximately 5.5 m. This portion of the building will cantilever about 12 m above the relocated heritage building and about 5.3 m to the north of the main front wall of the heritage building.

[26] At levels 15 to 17, the front of the building terraces back for a maximum upper setback of 16.8 m. The setback from the north property line at level 17 is a further 3 m. There are balconies only on the north and south faces of the building.

[27] For the Tribunal's ease, the Applicant provided a three-dimensional model illustrating the proposed development. The model shows the existing buildings in the area, the proposed development, and the proposed configuration for The Well, The Big and Portland Commons, another development at the western extent of the block. This model was not entered into evidence.

THE APPEALS AND THE ISSUES

[28] The City identified a list of twenty one issues, which were adopted by the WPNA.

[29] The issues that fall under Community Planning and Urban Design include items such as: is the proposed development appropriate in terms of height and massing? Is it located and organized to fit within its existing and planned context? Does it establish an appropriate built form relationship to the public realm and to abutting properties including the appropriate provision of setbacks, step backs, and separation distances? Do the height and mass represent a standard of intensification that is appropriate for the King Spadina area? Are light, view, and privacy ("LVP") issues appropriately addressed? Does the proposal establish appropriate relationships at grade, including provision of an appropriate pedestrian realm and contributions to public space?

[30] The issues also include whether the proposed development has appropriate regard to matters of provincial interest in s. 2 of the *Planning Act*, whether consistency with the Provincial Policy Statement, 2014 (“PPS”) is achieved, and whether conformity with the Growth Plan for the Greater Golden Horseshoe, 2017 (“Growth Plan”) is achieved. The issues ask whether conformity to specific OP policies is met, whether the proposal appropriately responds to the: Tall Buildings Design Guidelines (2013) (“TBDG”) and the King-Spadina Urban Design Guidelines (“UDG”), Official Plan Amendment (“OPA”) No. 352 (performance standards for tall buildings), OPA 406 (TOcore Downtown Plan), and the King-Spadina HCD Plan. The issues also ask whether the proposed zoning by-law to permit the development represents good planning and is in the public interest, and whether the proposed development is inappropriate and/or premature.

[31] The Tribunal, having considered the evidence and submissions provided at this hearing, as well as having reviewed the case law provided by counsel, concludes that the proposal does not represent good land use planning in the public interest. This is based on a number of findings, however the main concern that arises upon deliberation relates to the height and built form of the proposed building, particularly given its location along this stretch of Wellington Street West, which is identified as an “Area of Special Identify”.

[32] The following sections of this decision outline the planning context, a summary of the evidence and the findings of the Tribunal.

PLANNING CONTEXT

[33] The land use planning and urban design witnesses spoke to the policy framework in the context of the proposed application.

Provincial Interest

[34] The *Planning Act* section 2 (h) and (r) (ii) address the challenge of accommodating development in a manner which adds to livability in a high density neighbourhood.

[35] The PPS provides policy direction on matters of provincial interest. Section 1 policies encourage healthy, livable and safe communities by promoting efficient development and land use patterns that accommodate a range and mix of residential, employment institutional, recreation, park and other uses to meet long-term needs. Policy 1.1.3.3. directs that planning authorities shall identify appropriate locations and promote opportunities for intensification and redevelopment where this can be accommodated, taking into account various conditions such as existing building stock, availability of existing or planned infrastructure and public service facilities needed to accommodate projected needs. Policy 1.5.1 a) and b) direct that healthy, active communities should be promoted by planning public streets, spaces and facilities to be safe, to meet pedestrian needs and foster community connectivity, and provide for publicly accessible settings for public spaces, open spaces, and linkages. Policy 4.7 notes that the OP is the most important vehicle for the implementation of the PPS.

[36] The Growth Plan directs how regional growth in the Greater Golden Horseshoe should be managed. It includes policies addressing transportation, infrastructure, land use planning, urban form, housing and natural heritage protection on a regional scale. In addition to identifying where growth should occur, the policies of the Growth Plan also describe how growth will contribute to complete communities. Section 5.2.5.6 recognizes the role of urban design by stating that “in planning to achieve the intensification and density targets, municipalities will develop and implement urban design and site design official plan policies to direct the development of a high-quality public realm and compact built form”.

Official Plan

[37] The subject property is located within the Downtown and Central Waterfront on the Urban Structure Map (Map 2) of the OP. Within the Downtown, the site is designated Regeneration Area, which is one of the key areas expected to accommodate employment and residential growth, including residential and commercial uses such as the proposal before the Tribunal. This designation is intended to accommodate the highest amount of growth and the broadest range of uses.

[38] Issue 11 asks whether the proposal conforms to the OP policies as follows:

a) OP Chapters

- Downtown – 2.2.1.6
- Built form – 3.1.2.1, 3.1.2.3, 3.1.2.4, 3.1.2.6
- Built form – Tall Buildings 3.1.3
- Regeneration Areas – 4.7.2
- Implementation Plans and Strategies for City Building – 5.3.2

b) King-Spadina Secondary Plan (Chapter 6.16 of the OP) policies;

- 3.3
- 3.6
- 4.3
- 6.1

c) OPA 352 Tall Building Setback Policies (under appeal)

[39] Chapter Two – Shaping the City, identifies that the downtown area offers opportunities for substantial employment and residential growth, but this growth is not anticipated to be uniform. Policies and design guidelines specific to districts of historic

or distinct character will be implemented to ensure new development fits into the context of existing built form, streets, setbacks, heights and relationship to landmark buildings. Policy 2.2.1.6 states that design guidelines specific to districts of historic or distinct character will be developed and applied to ensure new development respects the context of such districts in terms of the development's fit with existing streets, setbacks, heights and relationship to landmark buildings.

[40] Chapter Three – Building a Successful City, includes policies and criteria to evaluate new development including general built form policies and tall building built form policies. The built form policies in Section 3.1.2 provide direction for new development to fit within its existing or planned context including location of buildings and massing.

[41] Section 3.1.2.1 of the OP sets out policies to ensure that:

New development will be located and organized to fit with its existing and/or planned context. It will frame and support adjacent streets, parks and open spaces to improve the safety, pedestrian interest and casual views to these spaces from the development by:

- a) generally locating buildings parallel to the street or along the edge of a park or open space with a consistent front yard setback. On a corner site, the development should be located along both adjacent street frontages and give prominence to the corner. If located at a site that ends a street corridor, development should acknowledge the prominence of that site;
- b) locating main building entrances so that they are clearly visible and directly accessible from the public sidewalk;
- c) providing ground floor uses that have views into and, where possible, access to, adjacent streets, parks and open spaces; and
- d) preserving existing mature trees wherever possible and incorporating them into landscaping designs.

[42] Section 3.1.2.3 of the OP sets out policies to ensure that:

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 [emphasis added]:

- 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...

[43] Section 3.1.2.4 of the OP provides that 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.

[44] Section 3.1.2.6 of the OP indicates that every significant new multi-unit residential development will provide indoor and outdoor amenity space for residents of the new development. Each resident of such development will have access to outdoor amenity spaces such as balconies, terraces, courtyards, rooftop gardens and other types of outdoor spaces.

[45] Section 3.1.3 Built Form – Tall Buildings provides policies related to the development of tall buildings. Policy 3.1.3 states that tall buildings come with larger civic responsibilities than buildings of a smaller scale. Section 3.1.3 of the OP states:

Tall buildings are desirable in the right places but they don't belong everywhere. When appropriately located and designed, tall buildings can support and draw attention to the city structure, visually reinforcing our civic centres and other areas of civic importance....By concentrating development on a small part of the site, they can also provide high quality publicly accessible open spaces and areas for community services and amenity.

When poorly located and designed tall buildings can physically and visually overwhelm adjacent streets, parks and neighbourhoods. They can block sunlight, views of the sky and create uncomfortable wind conditions in adjacent streets, parks and open space and create traffic congestion...

Tall Buildings come with larger civic responsibilities and obligations than other buildings... To ensure that tall buildings fit within their existing and/or planned context and limit local impacts, the following additional

built form principles will be applied to 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.

[46] Section 3.1.3.2 requires tall building proposals to “address key urban design considerations including: ...c) demonstrating how the proposed building and site design relate to the existing or planned context; d) taking into account the relationship of the site to topography and other tall buildings; e) providing high quality, comfortable and useable publicly accessible open space areas; and f) meeting the other goals and objectives of this plan.”

[47] Section 3.1.5 addresses heritage conservation policies which address the protection, wise use and management of cultural heritage resources.

[48] Policy 3.1.5.3 states that heritage properties of cultural value or interest, including Heritage Conservation Districts, will be protected by being designated under the Ontario Heritage Act and/or included on the Heritage Register. Section 3.1.5.4 provides that properties on the Heritage Register will be conserved and maintained, and Policy 3.1.5.6 states that the adaptive re-use of properties on the Heritage Register is encouraged for new uses. Policy 3.1.5.29 provides that heritage buildings should be conserved in their original location, however a heritage building may be relocated within its property where certain criteria are met, such as in this situation.

[49] Section 4.7.2 of the OP describes development criteria for Regeneration Areas. The policy states that the Secondary Plan will set out the framework for new development and should include urban design guidelines, a greening strategy, a community improvement strategy, a community services strategy, a heritage strategy, environmental policies and transportation policies.

[50] Section 5.3.2 of the OP states that implementation plans, strategies and guidelines will be adopted to advance the vision and policies of the OP:

The Official Plan provides a long term vision based on principles that are durable, but detailed action-oriented plans, programs and strategies will be needed to implement the Plan and adapt to changing circumstances and challenges over the life of the Plan...They help to ground the Plan's policies and vision and bring balance to decision making to ensure priorities are addressed over the life of the Plan. They provide on the one hand more detailed guidance and precision about implementation that cannot be captured in the Plan itself and on the other, the ability to respond to changing circumstances and priorities over time.

King-Spadina Secondary Plan

[51] The King-Spadina Secondary Plan is found in Chapter 6.16 of the OP. The Secondary Plan area is generally bounded by Queen Street, Bathurst Street, Front Street and Simcoe Street. The objectives are to attract new investment to the area, to provide for a mix of compatible uses with the flexibility to evolve as the neighborhood matures, and to retain, restore and re-use heritage and other important buildings within the King-Spadina area.

[52] In the Secondary Plan, Map 16-1, Urban Structure Plan, identifies this section of Wellington Street as a "Significant Street and Open Space" with a "Landscaped Edge". Map 16-2, Areas of Special Identity, also identifies this section of the street, along with Clarence Square and Victoria Square, as "Areas of Special Identity" with a "Landscaped Edge".

[53] Policy 3.3 provides measures for Areas of Special Identity including zoning regulations and design guidelines that respect and promote the unique characteristics of

these areas. Section 3.3(b) provides that “the portion of Wellington Street West between Clarence Square and Victoria Square maintains important characteristics that reflect the historical role of the area. The historical industrial buildings with large setbacks should be maintained and reused and act as a model for any redevelopment of the south side of the street.”

[54] The Secondary Plan policies of Section 3.6, General Built Form Principles, specify that in order to ensure the maintenance and enhancement of public spaces that are attractive, pleasant, comfortable and inviting:

- a) new buildings will locate along front property lines in such a way that they define and form edges along streets, parks, public squares, and mid-block pedestrian routes;
- b)
- c) the lower levels of new buildings will be sited and organized:
 - i) to enhance the public nature of streets, open spaces, and pedestrian routes;
 - ii) provide public uses which are directly accessible from grade level;
 - iii) encourage, where possible, servicing and vehicular parking to be accessed from rear lanes rather than streets; and
 - iv) encourage the design and location of servicing and vehicular parking so as to minimize pedestrian/vehicular conflicts.
- d) new buildings will be sited and massed to provide adequate light, view, privacy for neighbouring properties;
- e) new buildings will 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;...
- f)
- g) new developments will provide comprehensive, high quality, co-ordinated streetscape and open space improvements to promote greening, landscape enhancement, access, orientation and confidence of personal safety within King-Spadina; and
- h) new developments will provide high quality open spaces for the use of residents, visitors and area workers.

[55] Section 3.6 states that new buildings will be sited and massed to achieve a compatible relationship with their built form context through consideration of such matters as building height, massing, scale, setbacks, step backs, roof line and profile and architectural character and expression; provide adequate light, view and privacy for neighbouring properties; minimize the wind and shadowing impacts on the streets, parks or open spaces.

[56] Section 4.3 specifies that new buildings should achieve a compatible relationship with heritage buildings in their context through consideration of such matters as building height, massing, scale, setbacks, step backs, roof line and profile and architectural character and expression.

[57] Section 6.1 encourages streetscape improvements that promote a healthy and vibrant pedestrian environment on both publicly and privately-owned lands.

[58] Section 6.3b states that to assist with the implementation of the Secondary Plan, the removal of existing surface parking will be encouraged with priority given to the removal of surface parking around heritage buildings and in Areas of Special Identity.

King-Spadina Secondary Plan Review (OPA 2)

[59] A review of the King-Spadina Secondary Plan was initiated in 2005, and OPA No. 2 (by-law No. 921-2006) was enacted September 27, 2006 amending the Plan. The amendments are intended to further clarify and reinforce the fundamental intent of the King-Spadina Secondary Plan. OPA No. 2 was appealed and therefore is not in force.

[60] OPA 2 proposes a new Urban Structure Plan that divides the area into three precincts, the East Precinct, where the heights are the greatest; the Spadina Corridor, where the heights are slightly less; and the West Precinct, with the lowest heights. The subject site is in the West Precinct. Policy 3.1 states that development will complement and reinforce the distinctive qualities of these precincts and corridor. Policy 2.2 notes

that the scale and character of the historic buildings and pattern of the public realm will be protected and enhanced.

[61] Mr. Nicholson described the outcome of a further review of the King-Spadina Secondary Plan. City planning staff prepared a report dated September 6, 2017, adopted by Toronto and East York Community Council, that contains the following reference:

In the West Precinct, the Secondary Plan Update will include policies that limit the scale of development to be significantly lower than the East Precinct. New development will be limited to a height of 45 m, including all mechanical elements. This is slightly taller than a typical mid-rise building which is equivalent to the width of the right-of-way. This height is generally in keeping with the consistent scale of development in the last 20 years and better suited for integration with the historic warehouse fabric. This height may not be appropriate for all sites, as development is also regulated by the other policies in the Secondary Plan Update. **If the proposed development has a height of less than 45 m, including all mechanical elements, a minimum setback of 5.5 m from a lot line having no abutting street would be permitted for all portions of a building above the base building.** Any OPA applications to permit heights above 45 m, including mechanical elements, would be required to meet the minimum setback requirement from a lot line having no abutting street as required by OPA 352." [emphasis added]

[62] Mr. Nicholson indicated that staff reviewed the subject proposal consistent with this direction.

Zoning

[63] Zoning by-law No. 438-86 applies to the site, and zones the site as Reinvestment Area (RA), with a maximum height of 23.0 m. The RA zoning permits a wide range of uses. There is no density limit, as GFA is controlled by height and setback controls as follows:

A minimum side yard and rear yard setback of 7.5 m for any portion of a building located further than 25 m from a street line or further than 25 m from the centre line of a lane; and

A minimum 11 m setback from the wall of another building on the same lot, excluding exterior walls that form a 90 degree angle or more to each other on a horizontal plane.

Guidelines

[64] As stated in section 5.3.2 of the OP, guidelines will be adopted to advance the vision, objectives and policies of the OP. Relevant guidelines discussed during the hearing are the King-Spadina UDG and the TBDG.

King-Spadina UDG

[65] The existing King-Spadina UDG (June 2004) were initially approved in 1996 and primarily focus on Areas of Special Identify and Special Streets. The Wellington Street Area of Special Identity is described as follows:

“Wellington Street is an east-west street which axially and visually connects Clarence Square to Victoria Square. Originally called Wellington Place, this portion of Wellington Street West was designed as a stylish residential avenue with especially large landscaped setbacks. The original pattern of long, narrow building lots and tall, narrow building facades has survived on the north side of the street. On the south side of the street, the original building pattern has been mostly replaced by consolidated building parcels with wide frontages and large industrial buildings. The large setbacks have generally been paved over and used for surface parking.”

[66] Among other directions, the guidelines provide: “the siting, massing and vertical articulation of buildings will be based on the historic building and property patterns, which are still evident on the north side of the street. On wider sites, building facades will be broken into narrower elements, interrupted by additional setbacks.”

[67] The guidelines were subsequently updated in 2006 as part of the King-Spadina Secondary Plan Review process (OPA 2). However, as described previously, OPA 2 is under appeal to the Tribunal.

[68] Issue 14 asks whether the proposal appropriately considers the following sections of the King-Spadina UDG 2006:

2.4, 2.5, 3.0, 4.3, 4.3.1, 4.3.2, 4.3.3, 4.4, 4.5, 5.1, 5.2, and 5.4.

[69] Section 2.4 Development and Design Directions states that King-Spadina is distinguished by the number and type of high quality historic buildings it contains within close proximity to the City core. These historic buildings are the primary defining characteristics of the area and the public realm they shape are central to the guidelines. These guidelines identify the importance of the public realm in achieving a desirable quality of life.

[70] Section 2.5 establishes general guidelines for the entire King-Spadina area under the following: Heritage Character; the Public Realm; Parking and Service Access; and Tall Buildings. Under Tall Buildings, the UDG states:

Where “tall buildings” may be accommodated, they will only be permitted if they meet the objective and policies of the Official Plan and the principles set out in these Guidelines. This requires the observance of site conditions to achieve adequate access to light, view and privacy for all future occupants of the newly proposed building and maintain the potential for adjacent sites to develop in a similar manner.

[71] Section 3 The Role of Historic Buildings reinforces the idea that new development will be assessed against the scale, massing and street relationships of the historic building stock.

[72] Section 4.3.3 Built Form states that the West Precinct is developing as a mid-rise neighbourhood, different than Spadina and the East Precinct. The north side of the street is characterized by a series of openings between buildings.

[73] Section 5.4 Urban Scale Characteristics, states that building height is one of the key built form elements that defines the scale and character of King-Spadina. Also, the West Precinct is characterized by a more homogenous form of low to mid-rise warehouse, office and mixed-use buildings patterns. Existing and newly constructed buildings generally are within the height regime contemplated by the ZBL for the area.

[74] Section 5.4 states that tall building proposals in the West Precinct should demonstrate impacts on the public realm, adjacent properties, and compatibility with the

surroundings without undue impacts on light, view and privacy and sunlight access on nearby properties, and on sky views from the surrounding public realm.

[75] The King-Spadina UDG direct that opportunities to introduce new pedestrian links should be a priority consideration for development applications in this area, given the street and block pattern in the precinct.

TBDG

[76] The Applicant characterizes the proposed building as a ‘tall mid-rise building’; or as ‘a lower scale tall building which displays elements of a mid-rise typology’. A mid-rise building is defined in the Mid-Rise Performance Standards (2010) as having a height no taller than the Avenue ROW, up to a maximum height of 11 storeys. The proposed building, though not a typical point tower, falls within the definition of a ‘tall building’, which is defined as a building with a height that is greater than the width of the ROW.

[77] On May 8, 2013, City Council adopted the City-Wide TBDG, which update and replace the Design Criteria for the Review of Tall Building Proposals (2006). The TBDG states that they are “intended to provide a degree of certainty and clarity of common interpretation, however, as guidelines, they should also be afforded some flexibility in application, particularly when looked at cumulatively.”

[78] Sections 1.3, 1.4, 1.6, 3.0, 3.2, 4.1, 4.2 of the TBDG are at issue.

[79] The TBDG has four sections that address: 1) Site Context, 2) Site Organization, 3) Tall Building Design and 4) Pedestrian Realm. The Introduction section states that “Regardless of stylistic approach, the design and placement of all tall buildings should make a positive contribution to the public realm, fit harmoniously within the surrounding context and skyline, and be consistent with the following:

- Slender point towers, rising above well proportioned and articulated base buildings, with a strong relationship to the existing context and adjacent public realm, are preferred;
- Avoid big, boxy, dominant massing, and large, elongated, or slab-like floor plates;

[80] The Site Context section identifies six guidelines, including: 1.3 Fit and Transition in Scale, which states that: in developing a site ensure tall buildings fit within the existing or planned context with an appropriate transition in scale down to lower-scaled buildings. This section also states: “Appropriate fit and transition in scale may mean that not all sites are suitable for tall buildings, or that the existing or approved massing and scale of a tall building on one site can be applied or used as a reference point for redeveloping a neighbouring site.”

[81] Section 1.4 Sunlight and Sky View states that to protect access to sunlight and sky view, provide generous separation distances, and limit or vary the height of towers, to retain sky view between buildings.

[82] Section 1.6 provides guidelines to locate and design tall buildings to respect and complement the scale, character, form and setting of on-site and adjacent heritage properties and HCDs.

[83] The Site Organization section 2.0 identifies how tall buildings are placed on a development site in order to best achieve the City’s urban design objectives. This includes building placement, which should fit harmoniously within the existing context; locating site servicing, access and parking away from the public realm; and, providing grade related publicly accessible open space within the tall building site to complement, connect and extend the existing network of public streets, parks and open space.

[84] The Tall Building Design section 3.0 includes guidelines organized by the three sections of a tall building: Base, middle (tower), and Tower Top. The Base Building is to be designed to fit harmoniously within the existing context of neighbouring building heights. The Tower Placement should be placed away from streets, parks, open space and neighbouring properties to reduce visual and physical impacts of the tower and allow the base building to be the primary defining element for the site and adjacent public realm. Section 3.1.4 states: avoid blank walls, but if necessary, articulate them with the same materials, rhythm, and high-quality design as the more active and animated frontages.

[85] Section 3.2.1 states that the limit of the tower floor plate should be 750 sq m or less. Section 3.2.3 speaks to separation distances of tall buildings from property lines and between towers. The TBDG call for a setback of tall building towers 12.5 m or more from the side and rear property lines.

[86] Section 4.1 provides guidelines to provide high-quality sustainable streetscape and landscape design between the tall building and adjacent streets, parks, and open space; and Section 4.2 provides guidelines for a comfortable sidewalk zone.

OPA 352

[87] OPA 352 is a City-initiated OPA for the Downtown area that updates OP policies regarding performance standards for tall buildings. It was the outcome of work undertaken in the City's TOcore process. OPA 352 was adopted by City Council at its meeting in October 2016 and is currently under appeal to the Tribunal. The implementing By-law Nos. 1106-2016 and 1107-2016 amend ZBL Nos. 438-86 and 569-2013 respectively, impose quantitative development standards, which include a 12.5 m setback to the centre line of an abutting street, a 3.0 m setback to a lot line that abuts a street and a 12.5 m setback to a lot line, which neither abuts a street nor a public lane.

[88] The intent of these policies are to ensure that future growth positively contributes to the liveability, sustainability and health of Toronto's Downtown. The policies establish the reasoning for tower setbacks and recognize that not all sites can accommodate tall buildings.

[89] These policies and zoning protect the development potential of other sites and prevent 'first to the post' situations; protect access to sunlight and sky view in order to avoid the creation of a 'wall of shadow'; provide access to natural light and a reasonable level of privacy for occupants, given that units often have windows on only one side of the unit by providing sufficient setback this increases the access to natural light and privacy for occupants; and, providing pedestrian level views of the sky between tall buildings, particularly as experienced from adjacent streets, parks and open spaces.

TOcore Downtown Plan – OPA 406

[90] Council adopted the Downtown Plan in 2018 and is with the Minister of Municipal Affairs for approval. As such, it is not in force.

[91] As described by Mr. Nicholson, Council have directed staff to use policies within the Downtown Plan to inform the evaluation of new development proposals in the Plan area while it is under consideration. Mr. Nicholson states that the Plan emphasizes the importance of building livable communities.

[92] The Plan designates the site as Mixed Use Areas 2 – Intermediate on map 41-3 and 41-3B. The Plan notes that the existing character and planned context of Mixed Use Areas 2 forms an intermediate, transitional scale between the taller buildings anticipated on some sites in Mixed Use Areas 1 and the mid-rise character anticipated in Mixed Use Areas 3. Policy 6.25 provides that development within Mixed Use Areas 2 will include building typologies that respond to their site context including low-rise, mid-rise and some tall buildings.

Evidence and Submissions

The Applicant's Position

[93] Mr. Smith and Mr. Clewes both provided extensive oral and written evidence to support their respective opinions that the proposed development conforms with the OP policies and the King-Spadina Secondary Plan and meets the intent of the guidelines to provide for development that is compatible within its context. The witnesses provided evidence specific to the issues identified in the Issues List. The following summarizes the Applicant's position, as provided by the evidence.

[94] Mr. Clewes is of the view that the proposed development respects the historical aspects of this area through the design of the building as a long and narrow built form, and the heritage aspects of this particular site are appropriately addressed by retaining and re-using the heritage houses. The shifting of the houses closer to the street provides greater visibility to the homes and the front patio helps to animate the street and contributes positively to the public realm. The seventh floor of the building is cantilevered above the heritage houses. Mr. Clewes is of the opinion that this provides for the appropriate visual separation of the heritage houses.

[95] Mr. Smith is also of the view that the massing is appropriate and in keeping with the pattern of development along this stretch of Wellington Street. The height is stepped back into the interior of the block. His opinion is that the long and slender massing of the upper building elements (floors 7-17) is appropriate and recognizes the narrow and deep configuration of the site, typical of the lots that are long and deep along this stretch of Wellington Street. The slender east – west dimension of 9.6 m responds appropriately to the narrow width of the site and creates a distinctive building, which adds to the variety of building forms in the West Precinct while continuing to emphasize the north-south orientation of buildings within the block. Mr. Clewes added that the building depth is consistent with the pattern established by the second generation warehouse buildings in the block.

[96] As well, in his view, the proposed height of 59.8 m is in line with the planned context of the area, consisting of the development of The Big directly to the north, at 56.5 m; and The Well directly to the south of the subject property, with heights of the buildings fronting Wellington Street at 55.9 m, 62.5 m, and 62.5 m. He states the height of the proposed building at 59.8 m is appropriate as it is between the height of The Big to the north and The Well to the south.

[97] During the hearing, numerous recent developments with heights similar to that of this proposal were referenced. Mr. Smith noted that the height of the proposed building is less than the approved 19 storey building at 46-62 Spadina Avenue (63.5 m) within the same block. The Musee building is at a height of 55.6 m and the King Portland Centre is 58.8 m to the top of the mechanical penthouse.

[98] With respect to density, the proposed building has an FSI of 6.67, which is within the range of the planned context consisting of The Well with an FSI of 9.31 and The Big with an FSI of 5.88; therefore, Mr. Smith is of the opinion that the proposal is not an overdevelopment of the site.

[99] Mr. Clewes characterises the lands west of Spadina as comprising a tall mid-rise form, which transitions to low rise buildings west of Bathurst Street. He is of the view that the large ROW of 45 m permits consideration of a taller building element at the subject property. Though both Mr. Clewes and Mr. Smith refer to the proposed building as a 'tall mid-rise' building, it is technically a 'tall' building because it is taller than the street ROW of 45 m on which it fronts. Nevertheless, as noted by Mr. Smith, it is not a typical tall building with a tower-podium form, on which the TBDGs are predicated.

[100] According to Mr. Clewes, for a street to be 'successful' one must consider both sides of the street. In his view, the step backs on the proposed building bookend the profile of The Well on the opposite of the street and this provides for a consistent streetscape.

[101] Exhibit 3, drawing A4.2, provides a cross-section showing the proposed building profile facing the street with the mirror image of the step backs for the profile of The Well. The lowest portion of The Well buildings that are opposite the proposed development are at a height of 31 m, which Mr. Clewes states acknowledges the morphology of the second generation warehouse buildings.

[102] Both Mr. Smith and Mr. Clewes gave evidence in chief that the proposed setbacks for the base building are appropriate given the built form and lotting context. The party wall condition created along the east lot line, adjacent to the building at 420 Wellington Street, would not impede any potential residential redevelopment of this property. There are no principal windows facing north and east and therefore no LVP conditions.

[103] Mr. Clewes states that the 4.7 m west setback to the west facing windows on the podium is appropriate, given the likely continued commercial use of the building at 432 Wellington Street, and that site's limited redevelopment potential due to its narrow width. However; **in cross-examination he agreed that a 5.5 m setback would be appropriate for the Slim Jim residential units located within the podium that face 432 Wellington Street.**

[104] With respect to the separation distance to the existing three storey heritage building at 495 King Street to the north, Mr. Smith stated that a tight condition should be anticipated, given that the building is close to its lot line. He indicated that the owner at 495 King Street has not indicated any concern regarding the subject proposal and the setbacks. He indicated that the separation distance would be about 1.97 – 2.0 m from the proposed development on the subject property to the existing three storey building at 495 King Street. He did not consider this to be a concern. **However, under cross-examination, Mr. Clewes testified that he thought it appropriate that the rear setback of the podium should be increased to reflect the heritage building at 495 King Street.**

[105] Above the podium, the upper levels of the building are located in the middle of the property with about equal setbacks to the north, east and west of about 5.5 m. Mr. Smith states that this is appropriate given the tall mid-rise scale of the building. The 5.5 m setbacks comply with the zoning standards set out in the Commercial Residential (CR) and Mainstreet Commercial Residential (MCR) zones in By-law No. 438-86 and are in line with what has been recently approved in The Big and The Well. This provides one half of the appropriate separation distance between principal windows to another dwelling unit, which is set at 11 m to ensure that there is adequate LVP for the proposed units.

[106] Though the City is of the view that mid-block connection should be either provided or accommodated in this proposal, the Applicant notes that Map 16-1 of the Secondary Plan does not identify a mid-block connection at the location of the subject site. Nevertheless, a connection can be made through the driveway and subsequently to the west over private property to the abutting property to the north.

[107] In summary, the witnesses for the City provided their opinion that the OP and Secondary Plan policies as identified by the Issues are met by this proposed development. The proposed building achieves an appropriate balance within its context, that includes the buildings of The Well that will front the south side of Wellington Street, and The Big to the north. It will be compatible within its context. The proposed development provides a balance of the cantilever for the built form, appropriate intensification, and heritage preservation. There will also be significant street scape improvements, the front patio provides public access and animates the space, and a north-south connection can be provided through the driveway, and then to the west onto other properties.

City's Position

[108] Both Ms. Birchall and Mr. Nicholson provided evidence contrary to that of the Applicant. They both state that the proposal does not conform to the OP policies which

deal with built form, open space, and the public realm, and are of the view that the height and mass of the proposed building represents overdevelopment of this small site. The setbacks at grade level and the step backs at higher levels are not appropriate. They state that the proposed building is not compatible with the unique character of this stretch of Wellington Street, there is insufficient contribution to the public realm, and the opportunity for a mid-block connection to King Street is either impeded or not facilitated by this proposal.

[109] Mr. Nicholson's opinion is that the long, slab-like building will read like a tower from the street, and it will be visually out of context and would overwhelm the street. This view is echoed by Ms. Birchall, who notes that a typical point tower would be about 30 to 35 m at its longest dimension, whereas this building would be 50 m in length. She states that though some of the historic warehouse and contemporary buildings reach deep into the lot, they are considerably shorter in height at 2 – 12 storeys and less than 40 m in height. She calls the proposed building, at 17 storeys, a 'slab form' building that does not relate to its historic and distinct context. The building will overwhelm the site and other buildings on the street and the overly tall element is out of keeping with the existing and planned context. The relationship to the abutting properties is not appropriate due to insufficient setbacks and separation distances.

[110] Accordingly, in her opinion, the proposed building fails to achieve a compatible relationship with its built form context. It does not comply with s. 3.1.2.3 of the OP that requires that new development "fit harmoniously into its existing and/or planned context".

[111] In Mr. Nicholson's view, the unique nature of Wellington Street between Spadina Avenue and Portland Street, linking Clarence Square and Victoria Memorial Square, and the unique character of the buildings on the north side of this portion of Wellington Street West with narrow deep lots is as relevant today as when the King-Spadina Secondary Plan was created in 1996. In Mr. Nicholson's opinion the proposal sets a standard of intensification that is inappropriate for the West Precinct of the King-

Spadina Area, particularly for the lands on the north side of Wellington Street West, as the stretch is identified as an Area of Special Identity in the King-Spadina Secondary Plan.

[112] He said the proposed development does not meet the King-Spadina Secondary Plan s. 4.3 that states: “New buildings will achieve a compatible relationship with their built form context through consideration of such matters as height, massing, scale, setbacks, step backs, roof line and profile and architectural character and expression”.

[113] Mr. Nicholson states that the absence of a rear yard setback results in a building which does not provide for an appropriate separation to the approved development to the north, particularly with respect to the heritage building at 495 King Street. The windows of the heritage building will be obscured by the base building at the subject property, significantly affecting the light and view to this heritage building.

[114] The lack of a rear yard setback also limits the opportunities for pedestrian connections through these long sites and the ability to animate these areas with retail uses and patios, according to Mr. Nicholson, and agreed by Ms. Birchall. This situation results in no contribution to the public realm in a neighbourhood where publicly accessible open space is at a premium, nor does it help to create a “sense of place”.

[115] Ms. Birchall’s opinion is that the application does not conform to the King-Spadina Secondary Plan (1996) policies found in Section 3.1 that state that the existing network of public streets and lanes will be used and enhanced in accommodating new development. Section 3.6 includes policies to ensure the maintenance and enhancement of public spaces that are attractive, pleasant, comfortable and inviting.

[116] With respect to setbacks, she states that the development to the north, The Big, has an average rear yard setback of 6.0 m, with the exception of the existing heritage building at 495 King Street. It is intended that the landscaped rear yard setback on The

Big site will extend the existing network of animated open spaces between buildings that characterize this part of the West Precinct.

[117] The lack of an appropriate rear yard setback limits the contribution to the public realm in a neighbourhood where POPS is at a premium. She states the base building should be set back 6 m to match the setback on The Big site creating a POPS and the tower should set back a further 1.5 m from the base building.

[118] She also is of the view that the owner should work with the adjacent landowners to explore the possibility of a pedestrian connection through to King Street. She noted the possibility of the connection through the 'secret garden' to the eastern side of The Big, which has active commercial uses at grade that would help to animate a walkway.

[119] The current configuration for the driveway, consisting of solid walls and service doors does not create a positive pedestrian environment, as described by Ms. Birchall. Without appropriate setback at the rear and conditions along the west side, the proposal fails to address the opportunities which exist on the site for enhanced public access through the site.

[120] Ms. Birchall notes that within the West Precinct, building heights are generally less than 45 m. Where there are exceptions, these are on large sites with unique opportunities for improvements to the public realm. She is of the view that there is nothing to warrant consideration for the additional height in this proposal. The design of the new building does not contribute to the public realm in any meaningful way.

[121] Ms. Birchall states the proposal does not meet the intent of the 2006 King-Spadina UDG guidelines. It:

- a) does not create a compatible relationship with its built form context due to the inappropriate height;

- b) is not compatible with historic buildings as the primary defining characteristics of the area in terms of massing, height, setbacks, step backs and incorporating landscaped areas between the buildings and between the buildings and the public sidewalk;
- c) does not achieve an appropriate separation and relationship with the existing buildings and proposed development to the north due to the absence of an appropriate rear yard setback;
- d) is not compatible with the western part of King-Spadina as a mid-rise neighbourhood, a distinguishing characteristic that differentiates this area from the Spadina Corridor and the East Precinct of the Secondary Plan Area. The proposed 17-storey building represents an uncomfortable departure from the mid-rise buildings that characterize the area; and
- e) does not provide adequate pedestrian links for greater block permeability, as an extension of the open space network, which could be achieved by providing a pedestrian friendly connection along the west side of a reorganized ground floor with publicly accessible open space at the rear of the site to contribute to the “enhancement of public spaces that are attractive, pleasant, comfortable and inviting” a key objective in West Precinct redevelopment.

[122] Ms. Birchall states the proposal does not meet the intent of the TBDG (2013) with regard to the design of the tower and the setbacks and step backs to limit the impact on the public realm and adjacent properties in terms of LVP and sunlight access. Ms. Birchall states that the proposal will result in a loss of sunlight, sky views and privacy for nearby property owners and residents, particularly for the building to the north and the abutting sites to the east and west if they redevelop.

[123] Ms. Birchall referenced OPA 352, the Downtown Tall Building Setback Area. The objective is to ensure that individual tall buildings and the cumulative effect of multiple tall buildings within a block, contribute to building strong, healthy communities by fitting in with their existing built and/or planned context with adequate space between the tall buildings. Policies are developed to prevent: first to the post developments; preventing the clustering of buildings that can create a wall of shadow; providing access to natural light and a reasonable level of privacy for occupants; and, maintaining sky-view between buildings to maintain character and quality of neighbourhoods. The tall building form is required to provide a tower separation distance consistent with the guidelines of a minimum 12.5 m from the lot line to achieve an overall 25 m separation distance between potential towers.

[124] Ms. Birchall states that because this proposal has only 5.5 m setback and windows facing in only one direction, if either of the sites to the east and west were to redevelop in a similar manner, there would be very poor LVP conditions. Ms. Birchall notes that this may be acceptable for a mid-rise building where windows are not primary, however, it is not appropriate for a 17-storey building where many of the units have only views to the east or west. In her opinion, the built form, height and lack of appropriate setbacks maximizes the negative impacts such as loss of sky view as well as overlook and privacy on adjacent properties.

[125] Ms. Birchall disagrees with Mr. Smith's evidence that "eliminating the upper storeys would not make any material difference to light or sky view in the neighbourhood". Mr. Smith also testified that a building that removed the upper storeys would be "equally compatible" with the existing buildings as the proposal, of which she disagrees.

Wellington Place Neighbourhood Association's Position

[126] On behalf of the WPNA, Mr. Bedford provided his opinion that the proposal is inappropriate and does not 'fit' the unique context of this stretch of Wellington Street

West. He states that the 1996 Secondary Plan, which is still applicable today, recognizes this location as an Area of Special Identity. In his opinion, the proposed built form does not satisfy the provisions of the King-Spadina Secondary Plan and the OP. It is out of character with the prevailing character, and if approved, would be a model for other developments coming forward.

[127] Mr. Bedford is of the view that the mid-rise vision has generally remained intact in the West Precinct, though some buildings are at greater height for various reasons. The historical warehouses have been retained, and converted to office and residential uses, such as 462 Wellington Street, converted to an office, and the Monarch building at 436 Wellington Street, which was converted to a residential building. He noted that the recent buildings at 400, 500, and 508 Wellington Street (to the west of the subject property) fit into the established character and relate to the scale of the north side of the street. These buildings range from 35 to 38 m in height.

[128] Mr. Bedford agrees with Ms. Birchall's comments that the proposed building will stick out like a sore thumb. He noted that the long narrow slab profile will have an impact on neighbouring buildings and character. Section 4.3 of the Secondary Plan includes building profile as an important component to meet the vision of the plan, which, in his opinion, the proposed building with a slab profile does not meet.

[129] In his view, it is important to improve living conditions in the downtown, not make them worse. This building is too tall for the long narrow lot with the setbacks provided and results in poor conditions of LVP, especially in the Slim Jim units. In his opinion, this is undesirable. A tall building such as the proposed has obligations to have greater setbacks and must meet planning policy framework to be supportable. He said a more modest building up to 40 m in height with appropriate setbacks would provide the appropriate level of intensification for this small site.

Distinguishing The Well and The Big

[130] The City's position is that these two developments are distinguishable and do not provide justification for the proposed development.

[131] The Well is not part of the Heritage Conservation District Character Sub-Area – Wellington Place, while the subject property is. The Site-Specific OPA No. 317 in relation to The Well was adopted by Council in July 2015. The interpretation of the OPA states, in part:

The area governed by the site and area specific policy has been proposed to be removed from the King-Spadina Secondary Plan in recognition of the unique size of this site, allowing the opportunity to provide for a significant amount of publicly accessible, privately owned open space and dedicated parkland. The site is also able to provide built form transition downward toward Wellington Street West and the Draper Street Heritage Conservation District within its boundaries. The built form proposed for this site would not be appropriate in another location in the West Precinct of the King-Spadina Secondary Plan Area.

[132] In Ms. Birchall's opinion, this confirms that The Well is unique and a transitional site and is not meant to be considered as a precedent for other areas in the King-Spadina Secondary Plan Area, particularly, the West Precinct.

[133] Ms. Birchall distinguishes the built form of The Well and establishes that, in her opinion, The Well provides an appropriate transition in height downwards towards the Wellington Street frontage. She states that the two easterly buildings that are 15-storeys in height and the westerly 13-storey building have a six to seven storey street wall height on Wellington Street. The three buildings then step back about 7 m from the front face of the base buildings and from that point, terrace back and up over about 6.5 to 9 m. As such, the taller 13 – 15 storey elements occupy a very small part of the building footprint and are organized at the rear, about 13.5 to 16 m back from the front face of the buildings.

[134] This compares to the proposed building on the subject site, where the building is setback from the heritage building by about 5.29 m and rises straight up to 15 storeys.

In her opinion, the proposed lack of appropriate setbacks results in a building that does not fit within the pedestrian scaled context and street wall established along Wellington Street. She states the proposed building should terrace back under a 45-degree angular plane from a six to seven storey base building height in order to fit within the pedestrian scaled context of Wellington Street, and to not overwhelm the heritage buildings on site and in the vicinity.

[135] Ms. Birchall states that the buildings that front Wellington Street, in The Well, are designed to pick up on the rhythm of narrow frontages on the north side of the street. She further opines that the massing of these buildings and the differentiation of material will result in a built form, particularly for the base buildings, which is similar to the built form and lot pattern on the north side of the street. She states that the stepping back and differential materials will reduce the visual impact of the buildings. As well, the fact that they are not as deep, reduces the impact of the proximity of adjacent buildings, and results in less impact on privacy, loss of sunlight and sky views.

[136] An important point noted by Ms. Birchall is that as a large development, The Well deals with issues of adjacencies and built form relationships on the site, which lessens the impact to adjacent sites.

[137] She also notes that the most important *datum* on The Well is the six to seven storey street wall that reinforces the heights and lot patterns of the historic industrial fabric and lot patterns on the north side of the street. This is in contrast to Mr. Clewes' interpretation that the proposal is appropriate, because it falls within the mirrored profile of The Well, on the opposite side of the street.

[138] The Big has a different form of structure, which rises and falls like a mountain, and includes five building 'peaks' of which the two tallest are 16 storeys. This development has an articulated form that gets smaller as it rises and has a lesser impact on the street that it fronts, King Street.

ANALYSIS AND FINDINGS

[139] The Tribunal is satisfied on the evidence and submissions provided at the hearing that the proposal is consistent with the PPS and conforms to the Growth Plan, and appropriately considers matters of Provincial Interest. These are broad policy documents that call for intensification in appropriate areas, and the development of complete communities. The proposal provides for development that is supported by transit and brings new accommodation into an urban area. The details of how this growth should proceed within a municipality and whether a proposed development fits a specific site in the downtown core is directed by the City's OP, zoning by-laws and associated policies and guidelines.

[140] As was heard during the evidence, the RA designation implemented by Mr. Bedford's planning team has been a great success as evidenced by the rapid growth in the King-Spadina area since this designation has been put in place. This success and rapid pace of development has meant that the planning policy regime has not been able to stay ahead of development.

[141] This adds complexity to the Tribunal's evaluation of this proposal, as the Tribunal is tasked with determining whether the proposal conforms to the applicable in-force planning policies. The Tribunal must also consider, but to a lesser extent, more recent policies and guidelines that have been approved by Council but are not currently in-force due to appeals or awaiting further approval.

[142] The in-force planning instruments are the OP, the King-Spadina Secondary Plan and King-Spadina UDG 2004, and the RA zoning under By-law No. 438-86. Of note, as well, is that the Tribunal considers that guidelines provide guidance but do not have the effect of policy that is operative; as guidelines are not a statement of policy to which this application must conform.

[143] Mr. Smith states that the 2006 King-Spadina UDG are relevant but not determinative. Ms. Birchall notes that these are the most current reflection of the City's

intentions and are regularly applied by City staff to evaluate proposals in the King-Spadina area. She notes they are generally consistent with the in-force King-Spadina Secondary Plan, in particular with respect to the West Precinct and the 2004 UDG's and elaborate upon its' themes.

[144] Mr. Nicholson is of the view that the King-Spadina UDG (2006) provides an indication of the emerging direction of Council, and that these guidelines provide a more current direction and thinking regarding appropriate design and built form and the development of open spaces and the public realm than the earlier King-Spadina Design Guidelines. The 2006 Design Guidelines acknowledge the evolving character of the West Precinct as a mid-rise neighbourhood, distinct from the East Precinct and the Spadina Corridor.

[145] Ms. Kovar took the Tribunal to a recent decision issued March 21, 2018, by Member Lanthier (PL160081) *L. Richmond Corp. v. Toronto (City)*, 2018 CanLII 25415 (ON LPAT) relating to the approval of an 18 storey building on the north side of Richmond, where Member Lanthier discussed the applicability of the 2006 King – Spadina UDG. Member Lanthier stated, and this panel of the Tribunal agrees, that:

The King-Spadina Urban Design Guidelines accompanying OPA 2, which were also drafted in 2006, (the "2006 KS Guidelines") were not approved either and are not in-force guidelines. The Board must adopt the consistent approach that because OPA 2 has not been approved, the 2006 KS Guidelines cannot effectively operate to further non-approved policies in OPA 2. As has been noted, as a measure of the ineffective nature of the 2006 KS Guidelines, they cannot be found within the City's online website collection of planning instruments and policies. In reliance upon the Divisional Court's decision in *Toronto (City) v. 621 King Developments Ltd.*, 2011 ONSC 3007, the City submits that the Guidelines are in force and have application in this Appeal. With respect the Board cannot agree. As they have been under appeal, the 2006 KS Guidelines are not in force, and the Divisional Court's consideration of them was limited to a reference to the section that provided for height incentives for heritage buildings. That being said, the Board agrees that the 2006 KS Guidelines may still serve as a general indication of the approach of the City to aspects of urban design, particularly in the absence of any definitive guidelines for the hybrid building typology that is the "tall mid-rise" building that has become a part of the development fabric of the West Precinct. Whatever relevance it may have this "approach" is, however, not policy.

[146] This provides elucidation of how this panel of the Tribunal considers the application of the 2006 KS UDG.

[147] Similarly, in this rapidly evolving area, the Tribunal must keep in mind the 'existing' and 'planned' context. Mr. Clewes provided his guidance that the planned context is what has been approved, but not yet built. The Tribunal agrees that to evaluate the current proposal it is necessary to consider both the existing and the planned context, as represented by approved developments. Therefore, the Tribunal finds that it is appropriate to consider the presence of both The Big and The Well, as these clearly are developments that have been approved represent the emerging context. The 3-Dimensional Model was particularly useful for reviewing the existing and planned context.

[148] The Tribunal was directed to numerous other recent developments in the King-Spadina area beyond the immediate development block. These examples are useful for the purposes of putting this proposed development in perspective with the emerging built form in the area. In particular, the height map prepared by the Applicant and provided in Exhibit 7 shows the proposed development in the context of The Big within the same development block, and other proposed, but not approved, developments to the west, and to the east, on Spadina Avenue. The height map also shows The Well to the south. Numerous other developments that were referenced in the hearing are also shown.

[149] Particular consideration is required to evaluate the 'fit' of the proposed development on this stretch of Wellington Street, given that it is identified as an 'Area of Special Identity' in the King-Spadina Secondary Plan. Developments that are outside of the "Area of Special Identity", though they are important in order to establish the planning context for this development, they do not provide a direct basis for comparison to development on this particular stretch of Wellington Street.

[150] The Tribunal finds that the proposed building does not sufficiently respond to the heritage context of this stretch of the north side of Wellington Street, that is identified as

an Area of Special Identity in the King-Spadina Secondary Plan. The Tribunal notes that the existing heritage building is appropriately protected and preserved; however, the remainder of the development which consists of a podium with insufficient setbacks and an overly tall slab-like building, does not adequately respond to the historical character. At the height and length proposed, it no longer responds to the warehouse vernacular, but introduces a new built form, a thin slab, or a piece of 'toast' as it was described during the hearing. There will be an excessively long and tall blank wall on the western elevation of the building with nothing to mitigate the impact of this wall.

[151] The Tribunal agrees with the opinions of Mr. Nicholson and Ms. Birchall that this built form does not respond to the heritage context of the site, it does not 'fit', and it is not compatible. The proposal requires greater deference to the scale of adjacent buildings and properties that form the existing and planned context. As such, the Tribunal finds that the proposal fails policies found in s. 3.6 d), e) provided in paragraph [54] above; and s. 4.3 provided in paragraph [56] above, of the King-Spadina Secondary Plan.

[152] In contrast to Mr. Clewes' opinion that the long and narrow form of the building does reflect the historic building type, the Tribunal agrees with Ms. Birchall's opinion that at the height proposed, the proposed building becomes 'slab-like' and prominent; particularly due to the long blank wall on the western side. The Tribunal agrees with the opinions put forward by Ms. Birchall, Mr. Nicholson and supported by Mr. Bedford, and finds that the building will be overly tall, long and prominent, and will overwhelm the site and the other buildings on the street. It will result in an element that is out of keeping with the existing and planned context. The Tribunal finds this does not meet policy 3.1.2.3 of the OP, as provided in paragraph [42] above, summarized as, "New development will be massed and its exterior façade will be designed to fit harmoniously into its existing and/or planned context, ...". Simply put, the Tribunal has concluded that the proposal does not fit harmoniously into the existing and planned context.

[153] The predominant building height along the north side of Wellington Street through this stretch is less than 40 m; though, as is evidenced by the height map and as heard through the evidence, there are other redevelopment proposals on the western end of the street that ask for much greater height. This proposed building proposes a height that is higher than The Big directly to the north and slightly less than the height of the buildings that front onto Wellington Street from The Well proposal. The Tribunal does not agree with the proposition put forward by the Applicant that the proposed building height is appropriate because it is at a height that lies between the two developments on either side. There is much more to be considered. Both The Big and The Well are large sites and are able to provide transitions within their sites, and provide many other public amenities. The proposed building offers height, but no appropriate transitions by way of setbacks. There are stepbacks provided, but overall, the design is not sufficient to provide for an appropriate transition to lower scale buildings nearby, contrary to the TBDG, particularly s. 1.3 which states that "... ensure tall buildings fit within the existing or planned context with an appropriate transition in scale down to lower-scaled buildings. ... not all sites are suitable for tall buildings, ..."; and s. 1.6 that provides guidelines to locate and design tall buildings to respect and complement the scale, character, form and setting of on-site and adjacent heritage properties and HCDs. The Tribunal finds that the evidence put forward by Ms. Birchall in reference to the deployment of The Well and The Big distinguishes those two developments and identifies that both these sites provide for appropriate transitions within their site boundaries. The Tribunal agrees with the position put forward by Ms. Birchall that the proposed building offers nothing by way of public amenities or mitigating factors to warrant the excess in height. The Tribunal finds that this is not reflective of the principles of good planning.

[154] The Tribunal finds that the insufficient setback to the north property line would have a negative impact on the heritage building at 495 King Street to the north. The interface between the existing heritage building and the proposed building would be very tight and would preclude the ability to provide a contribution to the public realm at this location and to recognize the heritage building, as required by s. 1.6 of the TBDG

described above, as well as ss. 3.6 and 4.3 of the Secondary Plan. This concern was acknowledged by Mr. Clewes in cross-examination where he agreed that a greater setback to the heritage building at 495 King Street would be appropriate. Similarly, Mr. Clewes acknowledged that it would be appropriate that the westerly setback for the Slim Jim's be increased from 4.2 m to 5.5 m. These acknowledgements serve to raise concerns that insufficient attention has been paid to the interface of the proposed building with its surroundings.

[155] Contribution to the public realm is a theme woven through the King-Spadina UDG and the TBDG. As was stated by Ms. Birchall and Mr. Nicholson, publicly accessible open space is at a premium in this vicinity, and the Applicant should make an effort to add some publicly accessible open space as part of the proposal and / or provide connectivity to other sites. The Applicant notes that the front patio of the restaurant will meet this objective; however, in the view of the Tribunal, this is insufficient for the scale of the proposed building. The Tribunal notes that the boulevard improvements would be achieved no matter what development occurs. The north-south connection proposed through the driveway has little in the way of amenity to improve the space. The Tribunal finds that the proposal does not sufficiently consider improvements to the public realm.

[156] Ms. Birchall and Mr. Bedford state that significant negative impacts to LVP conditions would arise as a result of the organization of the proposed development if there was a redevelopment on an adjacent property, given the length and height of the proposed building. Ms. Birchall references the TBDG and OPA 352 to support her position that a much greater setback of 12.5 m should be applied for the tower portion of the building.

[157] However, the Tribunal notes that the City currently considers that proposals up to a height of 45 m to be generally appropriate, and that the 11 m separation distance between windows also to be appropriate, based on Mr. Nicholson's description of how

the City currently conducts review of such proposals, as provided above in paragraph [61].

[158] In this case, the Tribunal finds that it is due to the excessive length and height of the proposed building within its context that leads to the conclusion that the setbacks are inadequate. It is the elevated slab building that is excessively long that is inappropriate.

[159] The attempts that the Applicant has made to provide for a built form that conforms to the policies and guidelines has improved the proposal immensely from the original application for 23 storeys; nevertheless, the proposed building still falls short of a design that the Tribunal finds is appropriate for its particular context. The shortcomings relate to insufficient setbacks for the base building, a need for improved potential pedestrian connections; increased setbacks to principal windows for the units in the base building, reduced length of the building, and reduced height of the building.

[160] In aggregate, the above shortcomings result in a proposed development that does not conform with the OP policies in respect to a harmonious 'fit' with the existing and planned context, as described above. The proposed building does not appropriately reflect the scale, massing and street relationships in this Area of Special Identity as is described in the Secondary Plan. The proposed building mass is simply too large, too high and too long for this relatively small lot, it has inadequate setbacks, and this results in a building that overwhelms its context, rather than providing for a harmonious 'fit' with its context.

ORDER

[161] The Tribunal orders that the appeal is dismissed. The requested ZBLA is not approved.

"Helen Jackson"

HELEN JACKSON
MEMBER

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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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