

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



ISSUE DATE: May 11, 2021

CASE NO(S): PL200097

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

Applicant and Appellant:	Distrikt (Burnhamthorpe) Inc.
Subject:	Request to amend the Official Plan - Failure of City of Toronto to adopt the requested amendment
Existing Designation:	Neighbourhoods
Proposed Designated:	Site Specific (To be determined)
Purpose:	To permit a five block townhouse development
Property Address/Description:	26-38 Burnhamthorpe Road & 45-49 Burnhamthorpe Crescent
Municipality:	City of Toronto
Approval Authority File No.:	19 183250 WET 03 OZ
LPAT Case No.:	PL200097
LPAT File No.:	PL200097
LPAT Case Name:	Distrikt (Burnhamthorpe) Inc. v. Toronto (City)

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

Applicant and Appellant:	Distrikt (Burnhamthorpe) Inc.
Subject:	Application to amend Zoning By-laws former City of Etobicoke Zoning Code as amended, Site Specific By-law No. 1992-25 and City-wide Zoning By-law No. 569-2013. - Refusal or neglect of City of Toronto to make a decision
Existing Zoning:	R2, RD (f13.5; a510; d0.45) (x37)
Proposed Zoning:	Site Specific (To be determined)
Purpose:	To permit a five block townhouse development
Property Address/Description:	26-38 Burnhamthorpe Road & 45-49 Burnhamthorpe Crescent

Municipality:	City of Toronto
Municipality File No.:	19 183250 WET 03 OZ
LPAT Case No.:	PL200097
LPAT File No.:	PL200098

Heard: March 2, 2021 by video hearing

APPEARANCES:

Parties

Counsel

Distrikt (Burnhamthorpe) Inc.

Mark Flowers
Grace O'Brien (Student-at-law)

City of Toronto

Sara Amini
Benjamin Baena

Chris Grant and Concerned
Residents of Burnhamthorpe

Mark Kemerer

**DECISION DELIVERED BY M. RUSSO and S. BRAUN AND ORDER OF THE
TRIBUNAL**

[1] The appeals presently before the Tribunal are brought pursuant to s. 22(7) and s. 34(11) of the *Planning Act*¹ ("Act") by Distrikt (Burnhamthorpe) ("Appellant") against the City of Toronto ("City"), for failure to make a decision on Applications for an Official Plan Amendment (the "OPA") and Zoning By-law Amendment (the "ZBLA") within the legislated timelines.

[2] Prior to this hearing, two Case Management Conferences ("CMC"s) were held where party status was granted to Chris Grant, who opposes the development and represents a large group of concerned area residents ("the Residents") also opposed to the development.

[3] At the second CMC, the Tribunal reviewed, revised and accepted a Procedural Order (the "PO") filed by the parties. The PO provided direction and details of how this

¹ R.S.O. 1990, C. P. 13, AS AMENDED.

hearing was to proceed, the responsibilities of both parties and participants, as well as key timelines for this matter to be heard. Attachment 4 to the PO was an Issues List consisting of twenty-five issues for the Tribunal to address at this hearing.

[4] The Appellant proposes to redevelop nine residential lots, each of which currently contain a detached single-family dwelling. The original development proposal, as submitted to the City, sought to demolish those nine dwellings and replace them with a five-block townhouse development, consisting of 123 units in 'stacked back to back' 3 ½ storey townhouses as well as an underground garage containing 161 parking spaces.

[5] Prior to the merits of that proposal being heard by the Tribunal, and in response to comments received from the public and the City, the above noted proposal was revised on December 2, 2020. *Inter alia*, the revised proposal reduced the number of units from 123 to 82 and reduced the height of some of the proposed buildings. Rather than five blocks of 3.5 storey buildings, the developer now seeks to construct four blocks of back to back townhouses (Buildings A, B, C and D - all of which have been reduced from 3.5 to 3 storeys in height) and two blocks of stacked back to back townhouses (Buildings E & F) being 3.5 storeys in height (the "Proposal").

[6] A total of 82 units are proposed, including 33 two-bedroom units (40%) and 24 three-bedroom units (29%) suitable for families, with the remainder being one-bedroom units suitable for those just starting out or seeking to downsize.

[7] The Proposal would have a gross floor area of 7,489.39 square metres and a resulting density of 1.18 times the area of the lot. Buildings A through D consist of smaller buildings of 4 units each, providing for an increasing setback along Burnhamthorpe Crescent towards existing house-form buildings to the west. Buildings E and F are the larger of the six buildings and contain 34 and 32 units, respectively. Building E has a T-shape and is generally oriented perpendicular to Burnhamthorpe Road. Building F is an L-shaped building and is also oriented perpendicular to Burnhamthorpe Road. Units facing Burnhamthorpe Road are designed to be oriented to the street with front doors and porches.

[8] Vehicular parking for the proposed development has been consolidated and located within an underground parking garage. 100 parking stalls would be provided including 18 visitor spaces. Residential bicycle parking spaces, 56 below grade considered long term and 24 short term at the surface on the site and lockers are also in the parking garage.

SITE CONTEXT

[9] The subject site is located immediately adjacent to the north edge of the Etobicoke Centre, which is the urban focal point for the western part of the City. Etobicoke Centre is characterized by a mix of building types, including older “tower in the park” style buildings and the more recently constructed high-rise condominiums. Dundas Street West, which runs just to the south of the subject site, is part of the historical “Islington Village”, a main street section consisting primarily of low-rise commercial buildings.

[10] The pattern of streets and blocks in this area are influenced by the convergence of Dundas Street West, which runs in a southwest to northeast direction with Bloor Street West and Mimico Creek. Within the walkable context of the area of the subject site, one encounters many local and major streets, including Burnhamthorpe Road (a major street, as designated within the City’s Official Plan (OP), which is oriented perpendicular to Dundas Street West to circumvent Mimico Creek. North of Dundas Street West, along Burnhamthorpe Road are larger lots that contain apartment buildings on the west side and institutional uses on the east (Islington United Church).

[11] Situated directly to the south of the subject site are 22 and 24 Burnhamthorpe Road. These lots contain two five (5)-storey apartment buildings with parking at the rear. Further south is a three (3)-storey commercial building with surface parking lot at the corner of Dundas Street West and Burnhamthorpe Road (4920 Dundas Street West).

[12] To the north, the subject site abuts Burnhamthorpe Crescent, followed by a 1½-

storey single detached dwelling (46 Burnhamthorpe Crescent) and a one (1)-storey single detached dwelling (48 Burnhamthorpe Crescent), both of which consist of lot configurations that differ from the remainder of the lots along the north side of Burnhamthorpe Crescent. West of 48 Burnhamthorpe Crescent is a series of detached dwellings ranging between 1 and 2½ storeys in height. Also noted to the north of the site and across from Burnhamthorpe Road is open space comprising portions of the Mimico Creek and Islington Golf Club.

[13] To the west, the subject site abuts a 2½ storey detached dwelling (51 Burnhamthorpe Crescent) followed by a series of detached dwellings.

[14] To the east is Burnhamthorpe Road, followed by a larger than typical surface parking area servicing Islington United Church, which is situated slightly east of that surface parking area.

THE HEARING - WITNESSES

[15] The Tribunal was provided the Curriculum Vitae and Acknowledgement of Expert's Duty Forms of the proposed witnesses, and without objection by Counsel present, the following individuals were qualified by the Tribunal to provide expert witness testimony in their field of expertise, as summarized below. For the Applicant: Tyler Grinyer – *Land Use Planning*; Tom Kasprzak – *Urban Design*; Peter Wynnyczuk – *Arboriculture*; Lucien Marton – *Landscape Architecture*; and Richard Pernicky – *Transportation Planning*. For the City: Martin Rendl – *Land Use Planning*; Reynold Caskey – *Urban Design*; and Hai Nguyen – *Arboriculture*. For the Residents: Paul Johnston - *Land Use Planning*.

[16] The Tribunal also heard testimony from three lay witnesses: Valerie Gibson, William Moffet and Glen Hoglund and considered written submissions filed by the following participants: Valerie Gibson and the Islington RatePayers and Residents Association. The opinions provided expressed opposition to the Proposal and the Tribunal took these views and any evidence into consideration.

PRELIMINARY MATTER – Issue 21

[17] At the outset of the hearing, the Tribunal was informed that information provided in the reply witness statement of Landscape Architect, Mr. Marton, satisfied the City that the proposed development could provide adequate soil volume for planting replacement trees in accordance with Toronto Green Standard guidelines. With no objections being heard, the Tribunal allowed City Issue 21 of the Issues List, as provided in PO, to be withdrawn.

ISSUES and ANALYSIS

[18] While a number of specific issues were raised, at the heart of this dispute is the OP and competing interpretations of policies which contemplate a more intense form of development along major streets, as well as policies aimed at protecting established neighbourhoods. In this case, the development proposal at issue involves nine lots within the OP's *Neighbourhoods* land use designation and includes lots fronting onto a major street, two flanking lots, and an interior lot to the neighbourhood.

[19] There was consensus amongst the parties that any new development within the *Neighbourhoods* designation must respect and reinforce the existing physical character of the *Neighbourhood*. However, the witnesses for the Appellant were of the strong opinion that respect and reinforce does not equate to a replication of what is already there, but rather, that the new and the old be compatible and harmoniously co-exist, without unacceptable impacts upon one another.

[20] The Appellant takes the position that the Proposal has been sensitively designed to do just that, deliberately locating the more intense portions thereof along the major street; lessening the height, mass, scale, etc. on lots within the interior; and gradually transitioning toward the existing single detached dwellings further into the interior.

[21] The City and the Residents acknowledge that, in appropriate circumstances, the OP allows for more intense forms of development along major streets. However, they take the position that this Proposal is an overdevelopment of the site, that the OP seeks

to generally protect *Neighbourhoods* from over intensification and more particularly, deter development from creeping into the interior of those *Neighbourhoods*. On that basis, the City and the Residents view the Proposal as inappropriate for this particular neighbourhood.

Applicable Legislation and Policies

[22] Land use planning in Ontario is a policy-led system implemented in hierarchical fashion. This system is deliberately crafted to recognize that there cannot be a ‘one-size fits all’ approach to implementing the policy framework, given the diversity of Ontario’s local communities. As such, the broader Provincial policies and objectives are to be implemented by each municipality through an Official Plan (“OP”), Zoning By-laws and issue-specific guidelines.

[23] In adjudicating these appeals, the Tribunal must have regard to matters of Provincial interest enumerated in s. 2 of the *Act* (including but not limited to: the orderly development of safe and healthy communities; adequate provision of a full range of housing and appropriate location of growth and development).

[24] The proposal must conform with The Growth Plan for Greater Golden Horseshoe 2019 ², (the “GP”). Pursuant to s. 3(5) of the *Act*, the Tribunal must be convinced that the Proposal is consistent with the Provincial Policy Statement, 2020 (the “PPS”). The Tribunal must also find that the Proposal conforms with policies of the OP, as well as represent good land-use planning in the public interest.

[25] A detailed planning policy analysis to support conformity with the GP and consistency with the PPS was provided by Mr. Grinyer, along with his expert opinion that both conformity with the GP and consistency with the PPS were achieved by the Proposal. Although, the Tribunal did hear from witnesses of the opposing parties that the Proposal neglected to conform to, and be consistent with, some policies of the GP and PPS, it was generally accepted and conceded by Mr. Rendl and Mr. Johnston that

² as amended by Amendment No. 1, and prepared under the Places to Grow Act, 2005

the overall intent of the GP and PPS were met. The expert witnesses did, however, differ with respect to their opinions on whether the Proposal conforms to the OP.

[26] A recurring theme at this hearing and an essential aspect for this Tribunal in adjudication is 'interpretation'. The GP in s. 5.2.1.1 instructs the reader that "the Plan should be read in a manner that recognizes this Plan as an integrated policy framework". The PPS in s. 4.2 provides direction that "the PPS shall be read in its entirety and all relevant policies are to be applied to each situation". The City's OP in s. 5.6.1, highlights, "the Plan should be read as a whole to understand its comprehensive and integrative intent as a policy framework for priority setting and decision making".

[27] The OP expands in s. 5.6.1.1, that "The Plan is more than a set of individual policies. Policies in the Plan should not be read in isolation or to the exclusion of other relevant policies in the Plan. When more than one policy is relevant, all appropriate policies are to be considered in each situation. The goal of this Plan is to appropriately balance and reconcile a range of diverse objectives affecting land use planning in the City".

The OP

[28] The PPS promotes a number of objectives, including but not limited to: intensification, directing growth and development to settlement areas; the provision of a full range and mix of housing and densities; and the optimization of municipal infrastructure. It also declares, in s. 4.6, that Official Plans are the most important vehicle for its implementation.

[29] Notwithstanding the foregoing, the OP cannot be the singular focus in planning decisions and must be read in conjunction with other relevant policies. Similarly, individual policies within the OP are not to be read in isolation.

[30] As mentioned previously, the OP Interpretation policy 5.6.1 indicates that the OP should be read as a whole and is more than an individual set of policies. It is noted that

in situations where more than one policy is relevant, all appropriate policies are to be considered. The challenge, then, is to appropriately balance and reconcile a range of diverse and, at times, competing land use planning objectives. For example, the protection of *Neighbourhoods* and the provision of a full range of housing to meet the current and future needs of residents.

[31] The preamble to Chapter 4 – Land use designations - references the growth strategy set out in Chapter 2, directing major growth to some parts of the City and away from others. It is noted that land use designations are key to implementing this strategy, and while the development criteria for various land use designations enumerated in Chapter 4 are viewed as critical, they do not constitute the only considerations, as all of the policies in the OP apply when evaluating development proposals.

Official Plan Amendment (“OPA 320”)

[32] In December 2018 OPA 320 was approved, modifying aspects of the *Neighbourhoods* policies in Chapter 4 of the OP. Mr. Rendl provided the Tribunal with a helpful summary of the Amendment, noting that one of its main objectives was to clarify *Neighbourhoods* policies in terms of language and intent.

[33] He explained that the term “geographic neighbourhood” was introduced to provide planners with guidance in terms of the spatial limits or boundaries to be used for the purposes of applying the development criteria in Policy 4.1.5. He also explained that the word “prevailing” was added to a number of the development criteria in Policy 4.1.5 as a means of strengthening *Neighbourhoods* policies, clarifying what is to be considered when assessing whether new development respects and reinforces the existing physical character of the neighbourhood.

[34] Mr. Grinyer’s testimony also included a discussion of OPA 320. He noted that, in addition to the foregoing, the Amendment introduced the concept of distinguishing lots fronting onto major streets within *Neighbourhoods* from those located in the interior so as to allow for consideration of more intense development (to the extent permitted by

the OP) along major streets. In Mr. Grinyer's opinion, this part of OPA 320 was enacted in an effort to diversify housing stock along the edges of *Neighbourhoods*.

[35] Both Mr. Kasprzak and Mr. Grinyer referred the Tribunal to text provided in s. 4.1.5, as was amended by OPA 320, and opined these fortify the intent and direction of the policy. The policy reads;

Lots fronting onto a major street shown on Map 3 and designated *Neighbourhoods* are to be distinguished from lots in the interior of the block adjacent to that street in accordance with Policy 6 in order to recognize the potential for a more intense form of development along major streets to the extent permitted by this Plan.

[36] Section 4.1.5 continues to provide direction;

"Any impacts (such as overview, shadowing, traffic generation, etc.) of adjacent, more intensive development in another land use designation, but not merely its presence or physical characteristics, may also be considered when assessing the appropriateness of the proposed development".

[37] This, in the opinion of Mr. Grinyer, highlights that direction is given to consider the Proposal in its totality, which necessarily includes consideration of what exists within the both the interior of the *Neighbourhood* as well as what exists on the major street, rather than solely focusing inward and ignoring what is happening along the major street.

Neighbourhoods

[38] Policy text from s. 4.1 of the OP highlights that the stability of *Neighbourhoods'* physical character is one of the keys to Toronto's success.

While communities experience constant social and demographic change, the general physical character of Toronto's residential *Neighbourhoods* endures. Physical changes to our established *Neighbourhoods* must be sensitive, gradual and "fit" the existing physical character. A key objective of this Plan is that new development respect and reinforce the general physical patterns in a *Neighbourhood*.

[39] The Proposal is located in an established neighbourhood within the

Neighbourhoods land use designation. Policy 4.1.1 states that *Neighbourhoods* are considered physically stable areas made up of residential uses in lower scale buildings such as detached houses, semi-detached houses, duplexes, triplexes and townhouses, as well as interspersed walk-up apartments no higher than four storeys. Small scale retail, service and office uses are also provided for in *Neighbourhoods*.

[40] As has been mentioned, s. 4.1 of the OP states, “physical changes to established *Neighbourhoods* must be sensitive, gradual and “fit” the existing physical character. A key objective of this Plan is that new development respect and reinforce the general physical patterns in a *Neighbourhood*. The Tribunal accepts, as opined by Mr. Grinyer and Mr. Kasprzak, that the foregoing does not require replication, but requires that any new development “fit in” harmoniously without unacceptable negative impacts to what is existing. The objective is to ensure that new development is of a physical character in keeping with the spirit of what is already present.

[41] Neighbourhood delineation of the geographic boundary as depicted in 4.1.5 of the OP, reads;

The geographic neighbourhood for the purposes of this policy will be delineated by considering the context within the *Neighbourhood* in proximity to a proposed development, including: zoning; prevailing dwelling type and scale; lot size and configuration; street pattern; pedestrian connectivity; and natural and human-made dividing features.

[42] Mr. Grinyer and Mr. Kasprzak both opined that the neighbourhood delineation must include that which is part of the overall pedestrian experience (roads, built forms and natural features etc.) encountered while travelling the neighbourhood. Mr. Grinyer’s geographic neighbourhood delineation was broad, including for example, the properties facing Burnhamthorpe Road of differing massing and built form (including two five-storey apartment buildings); properties along Dundas Street, which include commercial uses of varying heights; as well as the direct exposure to greater volumes of traffic and ease of access to public transit along the major street, all of which form part of the Neighbourhood.

[43] Both Messrs. Grinyer and Kasprzak urged the Tribunal to consider that the

Neighbourhoods policy contemplates a number of different low rise housing forms (including townhouses) and also to consider that OPA 320 contemplates a more intense form of development along major streets. They noted that the policy recognizes the unique circumstance of a Proposal such as this, which includes lots on a major street *and* lots within the interior of a *Neighbourhood* and recognizes these as distinguishable:

Lots fronting onto a major street, and flanking lots to the depth of the fronting lots, are often situated in geographic neighbourhoods distinguishable from those located in the interior of the *Neighbourhood* due to characteristics such as:

- different lot configurations;
- better access to public transit;
- adjacency to developments with varying heights, massing and scale; or
- direct exposure to greater volumes of traffic on adjacent and nearby streets.

[44] Mr. Grinyer reiterated, with reference to the above, that part of the intent of OPA 320 was to allow for a more diversified housing stock along the edges of *Neighbourhoods*.

[45] In contrast, Mr. Rendl was adamant that, for the purposes of delineating the geographic neighbourhood, the OP is explicit and very clear. He noted that all other factors, although relevant in a broader sense, are not encompassed within the policy and are thus not relevant when establishing the neighbourhood delineation.

[46] In his view, arterial roads represent logical boundaries for neighbourhood delineations. He considered Burnhamthorpe Road to be a logical boundary, across which there exist different land use designations and zoning permissions. Because the properties across Burnhamthorpe Road are zoned differently and not within the *Neighbourhoods* designation, he did not include properties like the Islington Church, the apartments to the south or any of the properties along Dundas Street in his geographic neighbourhood delineation, which ultimately only included single detached one and two-storey dwellings.

[47] While he acknowledged the policy distinguishing lots fronting onto major streets

contemplating more intense forms of development, he focused on the phrase “to the extent permitted by this Plan”, considering this to be a restrictive qualifier. He opined that the location of some of the lots on the major street does not exempt the Proposal from the development criteria in the OP. In his view, and on the basis of his geographic delineation of this neighbourhood, applying the development criteria in 4.1.5 leads to a conclusion that a more intense form of development is not permitted by the OP.

[48] The Tribunal finds that Mr. Rendl’s geographic neighbourhood delineation leads to a situation where the wording in Policy 4.1.5 prohibits any sort of change within this neighbourhood and views the phrase “to the extent permitted by this Plan” not as a restriction but rather, as a direction to look at other policies within the OP to determine if the Plan, *as a whole*, permits the type of development contemplated.

[49] In addition, the Tribunal does not accept the major street as a boundary beyond which nothing was to be considered – this is because the policy itself recognizes major streets and their place within *Neighbourhoods*, expressly contemplating some form of intensification thereon.

[50] Instead, the Tribunal prefers the opinions of Messrs. Grinyer and Kasprzak, that one cannot ignore the reality of what is occurring along the major street (including but not limited to: differing built forms, uses, greater volumes of traffic). A number of the lots in this Proposal front onto Burnhamthorpe Road, which is designated as a major street. As such, to consider that street to be an impenetrable boundary, effectively ignoring what lies on the other side and enveloping the lots which front onto it into the interior of the *Neighbourhood* is, in the view of the Tribunal, artificial and antithetical to the very policy which recognizes the unique situation of these lots and contemplates more intense forms of development thereon.

[51] The Tribunal is further of the view that one cannot ignore the real neighbourhood experienced by the residents in the course of their daily lives, which is not limited by policy or artificial boundaries. The preamble to the OP’s Healthy Neighbourhoods policy (s. 2.3.1) states that our neighbourhoods are more than just our homes and include

trees, parks, schools, libraries, community centres, childcare centres, places of worship and local stores. This suggests that there is a greater neighbourhood experience.

[52] Neighbourhood residents Ms. Gibson and Mr. Moffet provided testimony in opposition to the Proposal, and yet did not adhere to the geographic neighbourhood delineated by the policy and as interpreted by Mr. Rendl. They considered themselves 30 plus year residents of this neighbourhood, yet they live on the east side of Burnhamthorpe Road (not within the geographic neighbourhood as delineated by Mr. Rendl). Ms. Gibson made reference to Islington United Church being part of “their” neighbourhood, and Mr. Moffet made reference to the open space east of Burnhamthorpe Road being in the neighbourhood (both outside the geographic neighbourhood). The foregoing reinforced for the Tribunal the balance necessary between interpretation of policy and “real life experience”.

Development Criteria Within Policy 4.1.5

[53] Although it is recognized that communities will change over time, the OP aims to ensure that new development in established *Neighbourhoods* will be sensitive, gradual and “fit”, respecting and reinforcing the general physical character of the existing neighbourhood.

[54] As the Proposal seeks to redevelop an assembly consisting of nine lots, Policy 4.1.10 provides guidance with respect to the manner in which the application is to be evaluated:

Residential infill development applications on properties that vary from the local pattern in terms of lot size, configuration and/ or orientation as a result of the assembly of lots that previously had adhered to the local pattern will be evaluated applying Policy 5. In all other situations where residential infill development can replicate the existing prevailing lot pattern, Policy 5 and/or Policy 9 will be applied to evaluate development applications. The applicable policy will be determined based on the evaluation of the development application and having regard for potential impacts on other properties within the Neighbourhood

[55] The foregoing clearly speaks to situations where it is appropriate to consider development applications that are comprised of lot assemblies, as is the case in this

Proposal. It not only contemplates, but provides direction on how one “will” evaluate such proposals applying Policy 5, where lot size, configuration and/or orientation vary from the local pattern. The Tribunal finds that the applicable policy as indicated is Policy 5, and the evaluation of the policy in its entirety will have regard for potential impacts on the other properties within the *Neighbourhood*

[56] To that end, Policy 4.1.5 sets out specific development criteria to be considered when evaluating whether a proposal for new development respects and reinforces the existing physical character of the neighbourhood. The witnesses agreed that the following criteria were applicable in this instance:

- a) the patterns of streets and blocks
- b) prevailing size and configuration of lots
- c) prevailing heights, massing, scale and dwelling type of nearby residential properties
- d) prevailing building heights
- e) prevailing setbacks of buildings from streets
- f) prevailing patterns of rear and side yard setbacks and landscaped open space
- g) prevailing location, design and elevations relative to the grade of driveways and garages.

[57] Messrs. Rendl and Johnston opined that taking nine smaller lots and assembling them into one large lot alters the patterns of streets and blocks and neither respects nor reinforces the prevailing lot size and configuration in the neighbourhood. They noted the heights and massing of the proposed buildings are greater than the prevailing single detached dwellings and opined that they would appear visually larger and inconsistent with the height, massing and scale of those nearby residential properties.

[58] Mr. Rendl further pointed out that the Proposal includes a single driveway serving 82 units leading to underground parking, a clear departure from the existing 9 individual laneways, some of which include individual garages. He noted materially different rear and side yard setbacks and opined that, despite the spacing between the buildings, they would create the perception of a “wall” along the street, a condition which exists neither on Burnhamthorpe Road or Crescent. Other than the common shared amenity space, the only other open space would be individual balconies and rooftop terraces, as

opposed to the large private rear yards prevailing in the neighbourhood.

[59] Mr. Kasprzak's evidence was that there would be no alterations to the streets or block patterns and that, in the area and along Burnhamthorpe Crescent, there exist a variety of lot depths, frontages and sizes resulting from the larger network of streets and geographical influences such as Mimico Creek, which winds throughout the area. Notwithstanding that the proposed buildings differ in height, massing and scale from the nearby residential properties, especially within the interior of the *Neighbourhood*, he opined that the Proposal respects and reinforces what exists, as the height of the buildings proposed at 3 and 3.5 storeys are only modestly taller than the existing one and two storey dwellings and further, that as the development transitions from the major street towards the interior, the building heights scale downward. He also noted that the existing residences, in some cases, have an even larger footprint than some of the buildings proposed.

[60] Mr. Kasprzak went through a detailed description of how design elements such as mansard rooftops and other architectural articulations will make the buildings appear more like the individual dwelling type that prevails in that *Neighbourhood* and opined that, overall, the Proposal's general configuration, the type of buildings and the spacing between them, in combination with carefully selected design details would have the effect of mitigating the differences, making them "read" similarly to the existing and prevailing single detached dwellings within the neighbourhood, thereby fitting harmoniously within it.

[61] With respect to setbacks, Mr. Kasprzak noted that there will be a generous distance between the rear yards of the existing houses with the open space amenity separating those yards and the proposed buildings and that buildings along Burnhamthorpe Crescent increasingly setback as they transition towards the interior, ultimately providing a setback condition similar to what currently exists. In terms of driveways and garages, he described how the Proposal closely follows current Guidelines and policies that speak to amalgamating curb cuts away and off major streets when possible; providing only underground parking on the site; and doing this

with landscaping and screening where and when possible.

[62] Both Messrs. Grinyer and Kasprzak reiterated in discussing the Proposal relative to the criteria in 4.1.5, that the OP permits a broad range of building types within *Neighbourhoods*, including townhouses up to four storeys and that Policy 4.1.5 does not require that a proposal replicate the criteria, but rather, that it be designed and constructed in such a way as to fit into and coexist in harmony.

[63] The Tribunal considered the Proposal in relation to the criteria in Policy 4.1.5 both individually and cumulatively. While there is no question that what is proposed is different from what prevails in some respects, especially in the immediate context of the *Neighbourhood* interior, The Tribunal finds the Appellant has demonstrated, on balance, that the Proposal respects and reinforces the prevailing physical character of the *Neighbourhood* as the neighbourhood has been identified and characterized by the Tribunal upon all of the evidence.

Lot Assembly, Precedent and Lot 49 Burnhamthorpe Crescent (“Lot 49”)

[64] Both Counsel for the Residents and City submitted, and their witnesses opined, the inclusion and use of Lot 49 is a breach into the interior, and a clear violation of OP policies. In their view, this would set an inappropriate precedent which could be used in the future to justify similar developments (that include 1 or 2 lots in the interior of a Neighbourhood) sharing similar objectives to develop along major streets.

[65] In addition to the foregoing, Mr. Rendl referred the Tribunal to the side bar text adjacent to s. 4.1.5, that speaks to not encouraging lot assemblies within *Neighbourhoods* as well as some development enabling policies within s. 4.1 which indicate these should not be interpreted so as “to encourage, facilitate or justify”. The Tribunal agrees with Mr. Rendl that lot assembly is not encouraged. However, Mr. Grinyer conversely opined, and the Tribunal concurs, that the use of the phrase ‘not encouraged’ does equate to a policy prohibition and that side bar text is not policy, but rather commentary intended to guide policy interpretation. Moreover, as previously

discussed, the Tribunal recognizes that Policy 4.1.10 specifically contemplates situations involving development on lot assemblies and guides the evaluation of applications for same.

[66] Mr. Grinyer and Mr. Kasprzak testified that the proposed development was deliberately and sensitively designed such that two larger buildings (Buildings E and F) are to front onto Burnhamthorpe Road, contributing to a more prominent and desirable streetscape along this major street, while four smaller buildings (Buildings A to D) are to be located towards the interior, using Lot 49 as a transition between those smaller townhouses and the existing, less dense, detached single family dwellings further along Burnhamthorpe Crescent.

[67] They also discussed the As-Of-Right (“AOR”) zoning situation on Lot 49, noting that although not proposed, the potential building mass in such a situation could be located much closer and extend considerably back (to the south) to the rear yard. The witnesses opined the potential AOR built form would have significantly greater impact than what is proposed. They concluded with the opinion that Lot 49 is not being used for intensification but rather, transition, which has the effect of protecting and augmenting the interior neighbourhood, thereby achieving the goals of respect and reinforcement.

[68] The Tribunal finds the inclusion and proposed use of Lot 49 does create a gradual transition between the proposed new development and the single detached dwellings within the balance of the interior neighbourhood. This is because the majority of the lot will be dedicated to the driveway, open space amenity area and landscaping. Only a small portion of a building (Building A) would occupy part of Lot 49, thus creating a lesser impact than what currently exists or can exist on the lot in within the immediate neighbourhood and in particular, in relation to 51 Burnhamthorpe Crescent (“Lot 51”).

[69] With regard to the concern that the proposed development could set an inappropriate precedent, the Tribunal is satisfied that it will not. All land-planning

applications are judged on their own merits with site specific, as well as immediate and broader contexts considered. Further, all relevant policies are utilized accordingly when assessing any proposal. Specifically, when considering similar proposals, the Tribunal turns to s. 4.1.6 of the OP. This policy provides a clear limitation and includes a list of factors that all proposals, including this Proposal, must address and be considered. The merits and specifics of the development proposal are to be evaluated on those factors which include: its relation to a major street, the need to respect and reinforce the prevailing character, consideration of the interior lots and not intensifying within the interior of the neighbourhood.

Urban Design

[70] Mr. Kasprzak provided a summary opinion based on his expertise in urban design. In his view, the Proposal maintains the intent of applicable City urban design Guidelines and conforms to the OP, fits harmoniously with and respects the existing context and character of the *Neighbourhood*, while providing adequate transition to a modest growth form of development. He noted the proposed residential 'stacked back-to-back' and traditional 'back-to-back' townhouse forms conform with the OP and are permitted by the applicable *Neighbourhoods* designation, which permits all forms of low-rise residential uses, including all forms of townhouses, up to four (4) storeys in height. Ultimately, he concluded that the proposed townhouse development should be approved, as it is appropriate and desirable on the subject site, and respects and reinforces the character of the geographic neighbourhood.

[71] Mr. Caskey opined that, from an urban design perspective, the Proposal's height represents inappropriate over development of the subject lands by not fitting harmoniously into the existing and planned context and that the proposed built form, in height, scale and massing visually and physically are overwhelming. He further opined the proposed development site design layout and built form does not meet the Urban Design policies of the OP nor the Townhouse and Low-Rise Apartment Guidelines (the "Guidelines"), and in particular, OP policies relating to public realm and built form, setbacks and others are not met.

[72] Mr. Kasprzak opined the proposed development conforms to the policy direction set out in the OP, s. 2.3.1 Healthy Neighbourhoods, from an urban design perspective. He provided, through his testimony and included within his witness statement, the introductory text in the policy. It notes the diversity of Toronto's neighbourhoods offers options within communities to match every stage of life and goes on to say that "by focusing most new residential development in the Centres, along the Avenues, and in other strategic locations, the "shape and feel of our neighbourhoods" can be preserved. However, these neighbourhoods will not stay frozen in time; some physical change will occur over time as enhancements, additions and infill housing occurs on individual sites.

[73] Policy 2.3.1(1), as amended, states that *Neighbourhoods* are low-rise and low-density residential areas that are considered to be physically stable. The policy goes on to encourage development in *Neighbourhoods* to be consistent with this objective, and respect and reinforce the existing physical character of buildings, streetscapes and open space patterns in these areas.

[74] In Mr. Kasprzak's view, the Proposal respects and reinforces the existing physical character of buildings, streetscapes and open space patterns. In contrast, Mr. Caskey disagreed and cited the prevailing lot patterns, building types, and open space prevalent on lots in the neighborhood as several factors which, in his opinion, do not meet OP policies and thus do not conform in this Proposal.

[75] Section 3.1.1 of the OP recognizes the significance of a high-quality public realm in between buildings through the provision of attractive, safe, comfortable and accessible streets, parks and open spaces.

[76] In the opinion of Mr. Kasprzak, the Proposal conforms to the public realm policies in s. 3.1.1, insofar as the pedestrian zones along the street frontages and the numerous connections throughout the subject site allow for pedestrians to move safely. The building setbacks provide opportunities for hard and soft landscaping in addition to new street trees. Proposed coordinated street furnishings will make the public realm more attractive and comfortable for pedestrians.

[77] In contrast, Mr. Caskey opined that the Proposal fails to meet the public realm policies of the OP. This is because the Proposal does not provide the minimum dimensions required for courtyard entrances at certain pinch points and the general reduction in openings between buildings. As such, he opined the pedestrian lacks opportunities to enhance their experience. He also provided the opinion that the Proposal, within its mews, has reduced visibility at points and overall, there is a reduced extension of the public realm converging into the site.

[78] Section 3.1.2 of the OP – Built Form - recognizes the importance of good urban design. It demands high quality architecture, landscape architecture and urban design, both within the public realm and within privately developed built forms. In putting forward policies to guide built form, the Plan notes that developments must be conceived not only in terms of the individual building site and program, but also in terms of how that building and site fit within the context of the neighbourhood and the City.

[79] In the opinion of Mr. Kasprzak, the Proposal conforms with the policy direction set out in s. 3.1.2 of the City's OP. He discussed Policies 3.1.2(1), 3.1.2(2), 3.1.2(3), 3.1.2(4), 3.1.2(5), and 3.1.2(6) in depth and provided the following opinions:

- a) s. 3.1.2(1) - The proposed siting and orientation of the buildings on the subject site ensure that the buildings are located along street frontages with entrances that are either visible and/or directly accessible from the public sidewalks.
- b) s. 3.1.2(2) - From a site servicing perspective, the Proposal consolidates and minimizes driveway access and integrates many of the utility functions into the below grade parking garage.
- c) s. 3.1.2(3) - The Proposal will be massed, and its exterior facades will be designed, to fit harmoniously into the existing and planned context of house form buildings to the north and west. In terms of any potential impacts on the surrounding area, the Proposal will adequately limit any

shadowing on neighbouring streets and properties. The Shadow Study reviewed during testimony demonstrates minimal and acceptable impacts on two Neighbourhood properties to the immediate north and little or none on any others. The design and location of proposed buildings will provide for adequate light and privacy from adjacent residential uses.

- d) s. 3.1.2(4) - The buildings have been located to maximize separation distance from existing low-rise residential properties to the immediate west. Taller buildings have been situated on a major street edge providing adequate access to skyview.
- e) s. 3.1.2(5) - Residents and visitors will be able to access adjacent streets and open spaces, serving the functional needs of pedestrians while providing an experience which includes attractive mews and landscaping.
- f) s. 3.1.2(6) - Each unit within the Proposal will be provided with its own balcony or rooftop private amenity space, as well as communal shared open space, playground and sitting area.

[80] Mr. Caskey disagreed with the opinions provided by Mr. Kasprzak on s. 3.1.2, and again, in contrast, opined the Proposal fails to meet these built form policies as required by the OP.

Townhouse and Low Rise Apartment Guidelines

[81] City Council adopted the Guidelines in March 2018, replacing the Infill Townhouse Guidelines (2003).

[82] Mr. Kasprzak opined that, generally, the Guidelines help illustrate how the public realm and built form policy objectives of the OP can be addressed by establishing a balance between the protection of stable residential neighbourhoods and heritage features while allowing for appropriate infill development and intensification.

[83] In his view, the Proposal maintains the general intent of the Guidelines, by implementing and adhering to the following five relevant criteria:

- 1.0 – Site Context
- 2.0 – Building Types
- 4.0 – Site Organization
- 4.0 – Building Design
- 5.0 - Pedestrian Realm

He reviewed the foregoing in depth, and ultimately concluded that the Proposal's urban design adheres both with policy and Guidelines.

[84] Mr. Caskey explained that the Guidelines are not policy, but rather, directives that incorporate relevant urban design tools and often some flexibility that may dive into even greater specificity than policy. They often aid in interpretation and provide a greater level of detailed analysis and illustrations to guide the evaluation of relevant proposals.

[85] Mr. Caskey's opinion again differed quite drastically from that of Mr. Kasprzak with respect to relevant urban design policies and whether this Proposal met same. Two particular opinions stood out; one was an element introduced in Issue 12 of the Issues List of the PO. Mr. Caskey opined that the Proposal failed when implementing the use of the 45-degree angular plane, in assessing adequate separation distances and setbacks to neighbouring and structures. Secondly, in assessing facing and separation distances, Mr. Caskey used measurements to the top of the parapet in his analysis, while Mr. Kasprzak maintained measurements should be to the roof line or commencement of the parapet.

[86] Mr. Kasprzak explained to the Tribunal that the use of the angular plane is simply one of several urban design tools and methods which can be employed to aid in achieving appropriate transition. He pointed out that it is not a requirement of any policy and is contained within the Guidelines. While he acknowledged its usefulness in providing separation and setback distances, he ultimately opined the use of the angular plane has no relevance in this case, as the angular plane is often used to

assess setbacks in high-rise buildings and in the Guidelines specifically, it is used in rear yard setbacks and not side yard setbacks, as opined by Mr. Caskey.

Urban Design – Analysis and Disposition

[87] Speaking to the Guidelines and the OP policies, the Tribunal generally prefers the opinions and approach of Mr. Kasprzak over Mr. Caskey based upon the totality of the evidence and policy reviewed in the hearing.

[88] The Guidelines do not specifically reference the use of angular plane in side-to-side conditions and, as pointed out by Mr. Kasprzak, appropriate transition may be achieved in other ways. In the case of this Proposal, the Tribunal is satisfied that the use of transition between buildings at the major street descending towards the interior, the setbacks of buildings D – A, as they progress into the interior and the overall separation distance between building A and Lot 51 provide appropriate transition. Moreover, although Mr. Caskey's measurement of height was to the top of the parapet, the measurement criteria within the Guidelines clearly directs one to measure to the roofline and not the parapet when assessing facing distances and separation distance.

[89] Although Mr. Caskey opined that the Proposal would visually and physically overwhelm with its overall height, massing and scale, he admitted that, from an urban design perspective, it is not inappropriate to have one storey higher located beside existing two-storey buildings. He further admitted that the five-storey apartment buildings which currently exist within the neighbourhood do not physically overwhelm because they benefit from generous rear yard setbacks creating a separation distance that lessens the impact of height.

[90] He also admitted that replacing front yard parking and asphalt with landscaping and pedestrian walkways up to front doors was a significant improvement from an urban design perspective, in addition to siting parking underground. As well, he acknowledged that some shadow is unavoidable when living in a City and the fact that the proposed development will cast some shadows will allow for a mix of direct sunlight

as well as shade, for those who seek to avoid direct sunlight.

[91] Mr. Caskey did not offer any opposing studies or plans (such as a shadow study) to refute the Appellant's position that the Proposal met the intent of and conformed with applicable OP Policies. In essence, his opinion was that if the Proposal were overall smaller in scale, height, massing, built form and other factors, there would be more opportunity for larger open spaces, expanded pedestrian mews, more sunlight, soft landscaping and trees.

[92] While the foregoing may be true, the Tribunal is tasked with answering the question of whether *this* particular Proposal meets the intent of the Guidelines and conforms with applicable urban design and *Neighbourhoods* OP policies.

[93] In this instance, the Tribunal accepts the Appellant's evidence that the Proposal maintains the intent of applicable City urban design Guidelines and conforms to the OP, fits harmoniously with and respects the existing context and character of the *Neighbourhood*, while providing adequate transition to a modest growth form of development.

Traffic Impacts

[94] Mr. Hoglund, a long-time area resident, raised concerns with respect to the impact of increased vehicular traffic generated by the addition of 82 new residential units. Beyond this general increase, he raised a specific concern with respect to what he described as a hazardous "S" curve on Burnhamthorpe Road. He testified that this curve, combined with constant heavy and fast-moving traffic along Burnhamthorpe Road makes left turns challenging for motorists.

[95] Mr. Hoglund believes that motorists using the development's only vehicular entrance (which would be located on Burnhamthorpe Crescent), when faced with turning onto Burnhamthorpe Road, would look for an alternative route to safely and easily access other streets in the area. He indicated that the obvious alternative would be to travel west down Burnhamthorpe Crescent, which in his view, would result in an

unacceptable impact of increased traffic as well as on-street overflow parking in the interior of the neighbourhood.

[96] With respect to traffic impacts, the Tribunal heard and accepted the uncontested expert evidence of Transportation Consultant, Mr. Pernicky, who authored a transportation study in relation to both the 123-unit original development proposal and an updated study based on the revised 82-unit proposal. He opined generally that the existing road network could accommodate the additional vehicular trips generated by the proposed 82-unit development without the need for any road improvements, that existing public transit had the capacity to accommodate increased ridership associated with this and other proposed new developments in the area and that he did not foresee an on-street overflow parking problem, given ample on-site parking (which meets or exceeds the requirements of By-law No. 569-2013) and existing street parking restrictions .

[97] He acknowledged that Burnhamthorpe Road is a busy arterial road which moves large amounts of heavy traffic in the form of passenger vehicles, trucks and buses and does have a curve that can inhibit a driver's sightline. However, he testified that the subject site currently contains nine curb cuts with five entrances onto Burnhamthorpe Road. In his professional opinion, the proposed development's elimination of all those entrances in favour of one main access point to be located on Burnhamthorpe Crescent, represents an advantageous improvement to the overall road network

[98] It is noteworthy that City Transportation Staff reviewed the original development proposal and transportation study (both of which envisioned the addition of 123 residential units) and concurred with Mr. Pernicky's findings noting, "the traffic impact of the proposal has a minor impact on the adjacent road network". Mr. Pernicky explained that the City utilizes engineering theory and specific criteria to determine what is "unacceptable" in relation to traffic and noted City Transportation Staff made no comments with respect to any unacceptable safety or traffic impacts in their findings.

[99] Based on the foregoing, the Tribunal is satisfied that the proposed development

would generate a moderate amount of traffic that would not be significant or impactful to the existing road network and increased ridership on local area transit could easily be accommodated.

Transit

[100] The City is currently in the process of a Municipal Comprehensive Review (“MCR”) which, *inter alia*, will result in the delineation of boundaries for Major Transit Station Areas (“MTSAs”) and the setting of density targets required to achieve conformity with the GP. While the subject site is located in close proximity to the Islington subway station, the MCR is not complete. Thus, Mr. Rendl and Mr. Johnston opined it would be premature to consider the area an MTSA as it has not yet officially been designated as such.

[101] The Tribunal concurs that the MTSA policies of the GP are not applicable in this instance. Notwithstanding the foregoing, whether or not the City so designates the area, the proposed development clearly is transit supportive, as required by OP policies 1.1.1 e), 1.1.3.3, 1.4.3, 1.6.7, 1.8.1, given it is located within a short (approximately 10 minute) walk to both the Islington subway station and bus stops along Burnhamthorpe Road. While certainly not the basis of the Tribunal’s decision, the Tribunal is persuaded that the transit-supportive nature of this development is considered both desirable and in the public interest and, as such, represents good planning from the perspective of the provincial transit-supportive policies.

Trees

[102] The City of Toronto, through its OP and by-laws, seeks to conserve and enhance the urban forest. Policy 3.4.1 (d) speaks to preserving and enhancing the urban forest by: providing suitable growing environments for trees; increasing tree canopy coverage and diversity, especially of long-lived native and large shade trees; and regulating the injury and destruction of trees. The City’s Tree By-laws (found in the City of Toronto Municipal Code Chapter 813 Articles II and III) protect City-owned street trees of all

diameters and privately owned trees having a diameter of 30 centimetres (“cm”) or more.

[103] In order to accommodate the proposed development, a number of protected trees (six City-owned and forty privately owned) would need to be removed. On the basis of testimony provided by the arboriculture expert for the City, Ms. Nguyen and for the Appellant Mr. Wynnyczuk and Mr. Marton, the Tribunal is satisfied that, from an urban forestry perspective, the proposed plan with respect to City-owned trees in terms of retention or removal/replacement is acceptable and conforms with applicable OP policies. As such, the balance of this section will focus on the proposed removal of the forty privately owned protected trees.

[104] In this instance, the majority of the tree removal is required to accommodate the construction of the underground parking structure (which has been included in the Proposal in accordance with Guidelines). It is noted that none of the trees proposed for removal are designated under Part IV of the *Ontario Heritage Act* or recognized by the Ontario Heritage Tree Program of Trees of Ontario, nor is the area designated as an “Environmentally Significant Area” within the OP.

[105] However, the forty privately owned trees slated for removal are protected under the City’s Tree By-laws and, as such, permits to destroy/injure must be obtained. Such permits are subject to certain conditions, including the planting of replacement trees. In addition, while the OP does not distinguish between protected trees or trees of a certain size, it does speak in general to increasing tree canopy coverage and diversity, especially for long-lived native and large shade trees.

[106] With respect to replacement planting obligations, the City requires three trees to be planted for every tree that is removed. In this case, the physical constraints of the development and the site render it infeasible to replant at a 3:1 ratio which would require one hundred and twenty trees to be planted. In this case, only a total of forty-three trees can be accommodated, representing approximately 35% of the replanting requirement of one hundred and twenty. However, it should be noted that this 3:1 ratio

is not an OP policy and, in circumstances such as this, where the required replanting cannot be accommodated, the City has the ability to accept cash-in-lieu of replanting.

[107] Ms. Nguyen pointed out that, of the privately owned protected trees slated for removal, there are currently nineteen trees over 50 cm in diameter which, in her view, contribute more significantly to the environment because of their size. She acknowledged that a number of these are coniferous and may not contribute as significantly to the tree canopy as deciduous varieties but noted a host of other benefits including habitat for wildlife and windbreak.

[108] She ultimately concluded that the Proposal does not promote the preservation and enhancement of the urban forest and does not adequately compensate for the loss of existing tree canopy, opining that the development should be designed around existing mature healthy trees by constructing buildings with smaller footprints, for example. With respect to the provision of cash-in-lieu of the satisfaction of replanting requirements, Ms. Nguyen is of the view that this is not an acceptable option. She explained that the City is limited in where it can plant, which is why planting is encouraged on private property.

[109] Mr. Marton provided expert testimony from a landscape architecture perspective. In his opinion, the Proposal provides generous soft landscaping for large planting and growing large native shade trees, which would contribute to an improved streetscape frontage. He noted, with reference to the proposed landscape plan, that the development makes use of greenspace and pedestrian connections to plant trees around the buildings and in the outdoor amenity areas.

[110] With respect to the street tree canopy, of the forty privately owned and protected trees slated for removal, he pointed out that the majority are coniferous, some of which are not long-lived. He opined that such trees in tight groupings, as found on the subject site, are less effective in terms of promoting tree canopy than deciduous trees. Of the remaining deciduous trees, only two are long-lived native shade trees. Of those two, one has a structural flaw, which would make it a candidate for removal irrespective of

the approval the arboriculture expert for the Appellant, Mr. Wynnyczuk, referred the Tribunal to a City document entitled *Every Tree Counts: Help Grow Toronto's Street Tree Canopy*, listing the types of trees which are valued and promoted by the City to increase and enhance the tree canopy. Both Mr. Marton and Mr. Wynnyczuk, in contrast to Ms. Nguyen, concluded that the proposed replanting of forty-three large native growing shade trees, of the types promoted by the City, would result in a significant net increase to the tree canopy coverage over time. Mr. Wynnyczuk opined that the new trees would provide noticeable benefits within a decade of planting and concluded that replacement of damaged and diseased trees and the provision of cash-in-lieu of replanting would be an overall benefit to the Proposal and area.

[111] The Tribunal acknowledges that there is no City initiative or mandate directing the removal of existing trees to replace them with these preferred plantings. It is further acknowledged that, in the short-term, the removal of existing healthy trees will result in a decrease in tree canopy coverage. Notwithstanding the foregoing, the Tribunal accepted the evidence of Mr. Marton and Mr. Wynnyczuk, that some of the trees slated for removal are considered invasive, in poor condition, or are not long-lived canopy-enhancing varieties and the Proposal presents a coincidental opportunity to replace these with the types of trees emphasized in the OP, which will result in an enhanced canopy over the long-term.

[112] Based on the evidence provided by Mr. Wynnyczuk, the Tribunal is satisfied that the developer in this case has made efforts to preserve trees and tree canopy where possible (for example, notching the underground parking areas to allow for some degree of tree retention). It is further satisfied that trees to be retained on the site will be adequately protected during the demolition and construction phases of the development in accordance with the City's Tree Protection Policy and Specifications for Construction Near Trees and through adherence to the obligations required in applicable permits to injure.

[113] With respect to the physical constraints of the site and proposed development which make it infeasible to plant replacement trees at the preferred ratio of 3:1, the

Tribunal accepted the opinion of Mr. Wynnyczuk that replacement with new trees and cash-in-lieu is an appropriate way to contribute to the continued evolution of the urban tree canopy in this neighbourhood.

[114] The Tribunal finds that the Proposal addresses and satisfies Issues 18 – 22 (noting Issue 21 has been withdrawn) as set out in the PO and accepts the opinions of Mr. Wynnyczuk and Mr. Marton on behalf of the Appellant.

Expanding Housing Options in Neighbourhoods – “The Missing Middle”

[115] Mr. Grinyer testified, and the Tribunal agrees, that the OP represents a long-term vision of a City capable of adapting to changing circumstances and meeting challenges as they arise. He described the current challenge of a lack of housing options within the City, highlighting a “missing middle”, which has resulted from past development trends favouring, at one end of the spectrum, high rise apartment buildings and at the other, low rise detached dwellings. As a result, a range and mix of housing options in between the two is lacking, which is an obstacle to attaining the objective of providing the City’s residents with complete communities.

[116] The word complete is defined as having all necessary parts, elements, or steps - it connotes that nothing important is missing. In order to rise to the challenge of providing complete communities, there must be some degree of evolution to fill in the “missing middle” and this evolution must necessarily take place in *Neighbourhoods*, given that 70% of the City is designated as such.

[117] Mr. Grinyer referenced a City Council directed Land-Use Planning report commenced July 2019 and adopted by Council in 2020, titled *Expanding Housing Options in Neighbourhoods*. This City report warrants weight in this analysis given its relative recency and its recommendations to review (and, if necessary, amend) relevant policies. The most notable is the contemplation of City-initiated rezoning on suitable sites along approximately 250 kilometres of major streets within *Neighbourhood* designations and the recognition that the OP may require amendments in order achieve

the goal of increasing housing options within *Neighbourhoods*. While the Tribunal is cognizant that the report references City-initiated projects, there is no wording to suggest that private development projects contributing to the achievement of this goal will not be considered.

[118] The Tribunal accepts the opinion provided by Mr. Grinyer, if *Neighbourhoods* are incapable of accommodating any sort of change, the City will have little choice but to continue growing upward. Residents who do not wish to reside in high-rise buildings but who cannot afford to purchase single family dwellings in established *Neighbourhoods* will have little choice but to relocate outside of the City. These housing trends conflict with policy interests including, but not limited to: environmental issues in the form of increased commutes in and out of the city and increased reliance on motor vehicles, rather than active forms of transportation.

[119] In this instance, the geographic neighbourhood at issue contains no other form of low-rise residential housing beyond single detached dwellings. The sidebar text to policy 3.2.1 specifically addresses townhouses, recognizing that “infill townhouses will keep families in the City”. In the view of the Tribunal, the Proposal represents a sensitive addition of much needed housing diversification which the PPS, GP and OP seek to achieve.

Issue 25 - The OPA

[120] Although the Appellant filed an OPA with the Tribunal “out of an abundance of caution” and at the direction of City staff in its initial application, Counsel for the Appellant argued that the evidence provided by the Appellant’s witnesses demonstrated that an OPA is not required to implement the proposed development, as the Proposal does conform with the OP. Citing policy 4.1.1, he opined the OP expressly acknowledges *Neighbourhoods* are made up of lower scale buildings, including townhouses as well as apartments limited to four storeys and also permits small scale retail, service and office uses.

[121] The City and the Residents maintained the opinion that the development proposal does not conform to the OP and as such, an OPA would be required to implement the proposed development were the Tribunal inclined to approve the Proposal.

[122] The Tribunal is satisfied, based on the totality of the evidence, that the Proposal does conform with the OP, and thus finds an OPA is not required for the Proposal.

CONCLUSION

[123] The Tribunal finds that the Proposal has regard to matters of provincial interest, as enumerated in s. 2 of the *Act* and further, that it conforms with the GP and is consistent with the PPS.

[124] With respect to the policies of the OP the Proposal represents modest intensification through redevelopment in an area within the *Neighbourhood* land use designation which respects and reinforces the character of the existing geographic neighbourhood in which it is to be located and does not result in unacceptable adverse impacts. It is also evident the Proposal efficiently uses existing urban land, resources and infrastructure (including transit) in an appropriate location for moderate growth and development. It contributes to the goal of creating complete communities capable of meeting the diverse needs of existing and future residents at all stages of life by providing of a range and mix of housing options. With these contributions, as well as others discussed throughout this hearing, the Tribunal finds that the Proposal represents good land-use planning in the public interest.

[125] The Tribunal has been satisfied and finds the Proposal and its assembly of nine separate lots and the demolition required, as well as the use of the interior lot to be appropriate. The Tribunal further finds that Proposal does not represent an overdevelopment of the site and is considerate and has regard to the existing as well as planned context of the surrounding area.

[126] Issue 24 of the PO provided conditions sought by the City in the event the

Tribunal approved the Proposal in whole or in part. The Tribunal finds it appropriate to maintain conditions a) through e) and i) through k), as set out in the PO (with condition 'a' to exclude reference to OPA). With respect to conditions f, g and h, the Tribunal finds they are either not required, as they have already been satisfied or are more appropriately dealt with in the context of a future site plan application.

[127] Condition l) requires the Applicant to enter into a s. 37 agreement to be registered on title to the subject property. The OP provides for the use of s. 37 of the Act to secure community benefits in exchange for increased height and density in new development. Mr. Grinyer explained that, while the original development proposal (which included 123 units and increased gross floor area) may have triggered s.37, the Proposal currently before the Tribunal is below 10,000 square meters of gross floor area, no capital facility is contemplated that directly has a reasonable relationship to the Proposal and therefore, in this instance, s. 37 is not applicable.

[128] Notwithstanding the foregoing, Counsel for the City requested that condition l) be retained but amended so as not to require an agreement but rather, to encourage the parties to work together to explore s. 37 possibilities. As the parties are free to engage in further discussions on the matter should they so choose, the Tribunal makes no order in this regard and finds that condition l) is not applicable.

[129] For all of the reasons and upon the findings made, the Tribunal is satisfied that the proposed ZBLA conforms to the City's OP, and applicable guidelines, and thus represents good planning in the public interest. Accordingly, the Tribunal will approve the ZBLA in principle and will withhold its final Order pending receipt of the ZBLA in final form and completion of the remaining legal, technical and other matters indicated in Attachment 1.

[130] Finally, the Tribunal is satisfied that, with the ZBLA approved in principle, the Proposal otherwise meets the intent of applicable Zoning By-laws, including the City of Etobicoke Zoning Code as amended, Site Specific By-law No. 1992-25 and City-wide Zoning By-law No. 569-2013.

ORDER

[131] The Tribunal Orders that the Appeal under s. 22(7) of the *Planning Act* is dismissed as no amendment to the City's Official Plan is required.

[132] The Tribunal Orders, on an interim basis, that the Appeal under s. 34(11) of the *Planning Act* is allowed in part and the Zoning By-law Amendment is approved in principle.

[133] The Tribunal will withhold its final Order pending completion of the items set out in Attachment 1, to be read as amended in accordance with this Decision and Order.

[134] If the parties have not completed the items in Attachment 1 within three months of the issuance of this decision, the parties shall provide a written status update to the Tribunal's Case Coordinator by that same date.

[135] The Panel remains seized and may be spoken to, at a time that is convenient to the Tribunal and the parties, should any difficulties arise in finalizing the items set out in Attachment 1.

"M. Russo"

M. RUSSO
MEMBER

"S. Braun"

S. Braun
MEMBER

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

Local Planning Appeal Tribunal

A constituent tribunal of Ontario Land Tribunals

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INTERIM ORDER for PL200097

[1] The Tribunal orders, on an interim basis, that the Appeal is allowed in part, and the proposed Development presented at the hearing of this Appeal, and the Zoning By-law Amendment(s) required to permit the proposed Development, are provisionally approved, in principle. The Tribunal will, as requested, withhold issuance of its Final Order, conditional upon, and pending confirmation or receipt of, the following from the Parties:

- a) The Tribunal has received and approved the Zoning By-law Amendment(s) submitted in a form to the satisfaction of the Director, Community Planning, Etobicoke York District, and the City Solicitor;
- b) The Tribunal is advised that the Owner has provided the City an updated Functional Servicing and Stormwater Management Report, including confirmation of water, sanitary and storm water capacity, to the satisfaction of the Chief Engineer and Executive Director, Engineering and Construction Services;
- c) The Tribunal is advised that the Owner has provided the City an updated Hydrogeological Report and supporting documents addressing any on-site groundwater to the satisfaction of the General Manager, Toronto Water;
- d) The Tribunal is advised that the Owner has designed and has provided the City financial securities for any upgrades or required improvements to the existing municipal infrastructure identified in the accepted Functional Servicing Report and the accepted Hydrogeological Report to support the development, all to the satisfaction of the Chief Engineer and Executive Director, Engineering and Construction Services and the General Manager, Toronto Water, should it be determined that improvements or upgrades are required to the infrastructure to support this development;
- e) The Tribunal is advised that the Owner has provided the space within the development for the installation of maintenance access holes and sampling ports on the private side, as close to the property line as possible, for both the storm and sanitary service connections, in accordance with the Sewers By-law Chapter 681;
- f) The Tribunal is advised that the owner has submitted a tenant relocation and assistance plan to the satisfaction of the Chief Planner and Executive Director, City Planning and the City Solicitor;
- g) The Tribunal is advised that the owner has submitted a Rental Housing Demolition Application to the satisfaction of the Chief Planner and Executive Director, City Planning;
- h) The Tribunal is advised that the Chief Planner and Executive Director, City Planning has authorized the Rental Housing Demolition Application under Chapter 667 of the Toronto Municipal Code pursuant to Section 111 of the City of Toronto Act, 2006, as applicable, to demolish the existing rental dwelling units at 26 - 38 Burnhamthorpe Road and 45-49 Burnhamthorpe Crescent;