

**Ontario Land Tribunal**  
Tribunal ontarien de l'aménagement  
du territoire



**ISSUE DATE:** September 09, 2021

**CASE NO(S):** PL200249

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

Applicant and Appellant: Burnac Enterprises Inc.  
Subject: Request to amend the Official Plan - Failure of City of Toronto to adopt the requested amendment

Existing Designation: The site is designated primarily Neighbourhoods with a section along Davenport Road designated Mixed Use

Proposed Designated: To amend it to allow a portion of a mixed-use mid-rise building in a Neighbourhoods designated area that is residentially zoned.

Purpose: to permit a 15-storey mixed-use building with 105 dwelling units and 278 square metres of commercial space on the ground floor and a four level underground parking garage.

Property Address/Description: 287 Davenport Rd. & 141-145 Bedford Rd.  
Municipality: City of Toronto  
Approval Authority File No.: 19 244078 STE 11 OZ  
OLT Case No.: PL200249  
OLT File No.: PL200249  
OLT Case Name: Burnac Enterprises 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: Burnac Enterprises Inc.  
Subject: Application to amend Zoning By-law No. 569-2013 - Refusal or neglect of City of Toronto to make a decision

Existing Zoning: Site is largely zoned Residential (R), while the site frontage along Davenport Road is zoned Commercial Residential (CR)

Proposed Zoning: Site Specific (To be determined)

Purpose: to permit a 15-storey mixed-use building with 105 dwelling units and 278 square metres of

Property Address/Description:	commercial space on the ground floor and a four level underground parking garage.
Municipality:	287 Davenport Rd. & 141-145 Bedford Rd.
Municipality File No.:	City of Toronto
OLT Case No.:	19 244078 STE 11 OZ
OLT File No.:	PL200249
	PL200250

**Heard:** July 26 - August 6, 2021 via video hearing

### **APPEARANCES:**

#### **Parties**

#### **Counsel**

Burnac Enterprises Inc.	David Bronskill
City of Toronto	Gabe Szobel
Bedford Neighbourhood Coalition	Andrew Biggart
Annex Residents' Corporation	Andrew Biggart

### **DECISION DELIVERED BY BRYAN W. TUCKEY AND T. F. NG AND INTERIM ORDER OF THE TRIBUNAL**

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[1] The Ontario Land Tribunal (“Tribunal”) convened a hearing of the merits respecting Burnac Enterprises Inc.’s (“Appellant”) application to redevelop its properties located at 287 Davenport Road and 141 – 145 Bedford Road (“subject site”) in the City of Toronto (“City”). The proposed development would replace an existing one-storey commercial building on Davenport Road and three existing dwellings on Bedford Road. The City failed to make a decision on the Appellant’s applications for an Official Plan Amendment (“OPA”) and Zoning By-law Amendment (“ZBA”) within the timeframe established in the *Planning Act*, R.S.O. 1990, c. P 13, as amended. The Appellant appealed to the Tribunal pursuant to s. 22 (7) and s. 34 (11) of that statute. The Appellant’s original application was for a 15-storey mixed use building consisting of 106 residential units; residential gross floor area (“GFA”) of 13,548 square metres (“sq. m”); a non-residential GFA of 278 sq. m; height of 53.67 metres (“m”) to top of roof; a density

equivalent to 7.33 Floor Space Index (“FSI”); total residential amenity space of 466.1 sq. m; 169 bicycle parking spaces; and 124 vehicular parking spaces.

[2] A revised proposal was filed in March 2021 and is described in detail in Exhibit – 6 – ‘Revised Plans for LPAT’. It is this revised application that is adjudicated at this proceeding.

[3] There are three parties of record all of whom are represented by counsel. There are six participants of record none of whom attended the hearing but did submit participant statements and all are considered by the Tribunal in its findings. Several observers were present throughout the hearing.

## **KEY ISSUES**

[4] The Tribunal heard from all parties that the subject site is appropriate for intensification but how much should this intensification be is the heart of the dispute. The Procedural Order defined several issues put forward by the Annex Residents’ Corporation and Bedford Neighbourhood Coalition (“Ratepayers Associations”) and the City but during the proceeding it was clear that the key issues related to the revised proposal are:

1. does the revised proposal conform to relevant Provincial and City planning policy?
2. does the revised proposal optimize the subject lands by realizing its full potential being appropriate intensification or is it considered over development?
3. is the typology of the proposed building of a form that is best described as a ‘hybrid’ or ‘tall midrise’ that is not directly described in Official Plan policy or the City’s guidelines?

4. does one measure the context surrounding the subject site only with the pattern of development on the south side of Davenport Rd. without considering the context immediately north?
5. does the revised proposal present an urban form that is not compatible with the areas planned or existing context due to its scale, mass, character, and intensity of visual impact on both the private and public realm? Is it too tall and is the transition to the neighbourhood to the south insufficient?
6. what is the most appropriate technique for the City to use in the redesignation of the revised proposal that is within the 'Neighbourhood' portion of the subject site? Should the underlying designation be 'Neighbourhood' or 'Mixed Use'?

## **DECISION GUIDING PRINCIPLES**

[5] The Tribunal is fortunate to have considerable experienced and competent expert evidence from witnesses that demonstrates both the unique nature of the subject site and the clear interest that area residents have regarding the changes in their neighbourhood. This is a very complex issue and so as to assist the reader, the Tribunal feels it is prudent to note the salient and overarching themes that are critical to understand its conclusions in this matter. The guiding principles include:

1. Ontario has a Provincially led planning policy regime that has weight in Tribunal decisions. The planning structure does not defer the responsibility of being consistent with or complying to these policies to the municipal Official Plan.
2. Both an OPA and ZBA are required to implement the revised proposal and both are being considered by the Tribunal. The assessment and consideration of the amendment in relation to Neighbourhood policies is important but not all that must be considered. The Tribunal (then the Ontario

Municipal Board) has previously made reference to this concept: "It is not sufficient to answer with what Neighbourhood restrictions are in the Plan when an amendment to the Plan is sought." (*6645411 Canada Ltd v. Toronto (City) October 21, 2011 page 8*).

3. The revised proposal is a 'hybrid' building typology that is finding its way into the City's 'Downtown Urban Growth Centre'. It does not readily fit into any of the various City built form guidelines presented at this hearing. Therefore, it is correctly evaluated against the Official Plan policy in place at the time the application is deemed complete by the City. Those documents are: City of Toronto Official Plan ("City OP") as in force in November 2019 and the Downtown Plan ("DOP") known as Official Plan Amendment 406.
4. In this matter, Official Plan policies are determinative and municipal guidelines that may support or clarify these policies are instructive with a purpose to simply inform and provide guidance to applicants and decision makers.
5. The existing and planned context located to the North of the subject site is appropriately considered when evaluating the revised proposal. The significant differences in the existing context are rationalized in the evidence of the City and the Ratepayers Associations, but it cannot be ignored in the Tribunal's review of the matters before it.
6. Transition is appropriately measured to all sides of the subject site not just to the properties to the south. Impacts to 277 Davenport Rd. (mixed use building immediately east of the subject lands) merits proper consideration.
7. Comparators are helpful but decisions of City Council or the Tribunal are not 'precedent setting' and each application is reviewed and evaluated on its merits.

## THE WITNESSES

[6] The Tribunal had the benefit of testimony from five witnesses. This decision includes oral testimony and material found in the various expert witness statements (“WS”). The witnesses are as follows:

1. Land Use Planning – David Huynh for the Appellant (WS Exhibit 2), Jason Tsang for the City (WS Exhibit 15) and John Gladki for the Ratepayers Associations (WS Exhibit 27). All three are qualified to give expert evidence in the discipline of Land Use Planning.
2. Urban Design – Tom Kasprzak for the Appellant (WS Exhibit 11 and 12) and Michael Spaziani for the Ratepayers Associations (WS Exhibit 21). Both are qualified to give expert evidence in the discipline of Urban Design.

## SITE AND AREA ANALYSIS

[7] The subject site is located on the south east corner of Davenport Road and Bedford Road. The subject site comprises four lots consisting of a single storey commercial building on the Davenport Rd. frontage and three 2 – 2 1/2 storey detached dwellings on the Bedford Rd. frontage. The subject site is irregular in shape and with a frontage of approximately 48.2 m along Davenport Road and 45.1 m along Bedford Road. The portion of the site fronting on Davenport Rd. is irregular in shape and has a greater depth on the west property line. The properties fronting on Bedford Rd are rectangular in shape. There is a 1.22 m wide easement on the southern property line adjacent to 141 Bedford Rd which is a shared access which will remain intact as part of the redevelopment.

[8] The properties containing existing detached dwellings are part of a larger area and designated under Part V of the Ontario Heritage Act and are located within the East Annex Heritage Conservation District (“HCD”) but have been evaluated as being “not in the original character’ of the HCD”.

[9] Davenport Rd. is an arterial road and the main commercial east-west avenue through the northeastern portion of the Annex neighbourhood. It is a very diverse streetscape lined with a variety of building types and forms including low, mid, and high rise buildings. Bedford Rd. is a local collector with largely low-rise detached dwellings along its frontage. The subject site is considered a prominent location at the corner of two major streets, is within walking distance of three existing transit stations, has bus stops at all four corners and bicycle lanes on both roads.

[10] A portion of the subject site is in the Annex Neighbourhood which is predominantly residential comprised of Victorian and Edwardian homes typically constructed between 1880 and the early 1900's. Since the 1950's, consistent with the construction of the Bloor-Danforth and Spadina Subway lines, the character of the Annex neighbourhood has evolved with the introduction of mid and high rise apartment buildings.

[11] Surrounding the subject site are the following:

1. North – immediately across from the subject site is a 27-storey apartment building with two rows of integrated back to back townhouses (under construction) and an existing 25-storey apartment building. On the northwest corner of Davenport and Bedford Rd. is a recently approved 22-storey mixed use residential building.
2. East – is a seven-storey residential condominium building. Further to the east are several two- and three-storey commercial, office and mixed-use buildings.
3. South – a predominately low-rise residential neighbourhood that is part of the East Annex HCD.
4. West – is the former 'Creed Warehouse' a three-storey heritage building that has been converted into a residential condominium. Further to the west are

several commercial, office and residential buildings with a variety of built forms including converted dwellings. At 321 Davenport Rd. there is an approved nine storey building containing a six-storey street wall.

## **BACKGROUND**

[12] Representatives for the Appellant had two meetings with City officials before submitting an application on November 1, 2019. The application was deemed complete on January 10, 2020. The original proposal was for a: 15-storey mixed-use building with a height of 53.67 m (to top of roof): a FSI of 7.3; a total of 106 residential units; approximately 278 sq. m of retail space on the ground floor and four levels of underground parking with access from Davenport Rd.

[13] The Appellant had an information meeting with community representatives, the local councillor, and members of the Annex Residents Association to outline the proposal followed by a City-led community meeting.

[14] On April 21, 2020, the Appellant appealed the application to the Tribunal. In October 2020, City Council directed staff to oppose the proposal identifying issues related to height, massing, built form context, transition, sun/shadow and wind impacts and privacy resulting from the overlook.

[15] The Appellant submitted a revised proposal along with a planning addendum and revised architectural plans with many modifications in March 2021 to respond to the issues raised by the City and Ratepayers Association. The revised proposal is what is before the Tribunal in these proceedings.

## **REVISED PROPOSAL**

[16] The revised proposal attempts to improve its relationship to the existing residential building to the east. Transition to the neighbourhood to the south is considered appropriate and therefore is maintained but has some modifications from the



original proposal. The base element continues to be seven storeys fronting on Davenport Rd. stepping down to a 3-storey street related townhouse block found at the southwest corner. The first two storeys on Davenport Rd. will be recessed by 2.0 m to provide a widened sidewalk zone and weather protection to the public realm.

[17] The integrated townhomes will be setback a minimum of 2.5 m from the west property line and approximately 1.2 m from the south lot line which is a “an appropriate side yard setback” when one considers the orientation of the townhomes. The mid rise base element and Levels 8 and 9 of the mid-rise building are setback 7.5 m from the south lot line save and except for a ‘bump out’ at the southwest corner of the building at the 4<sup>th</sup> and 5<sup>th</sup> levels which will be set back a minimum of 4.97 m. A complete articulation of the several stepbacks are found in Exhibit 5 page 26.

[18] In respect of the residential building to the east, most of the mid-rise components found in levels 1 to 6 will be setback a minimum of 3.5 m save and except for a small portion of the elevation where modifications are made to the proposed buildings east elevation where a 5.0 m setback is proposed to create ‘light wells’ thereby improving the light and sky view for residents of both the existing and proposed buildings. To mitigate overlook, levels 7 to 10 will be setback 3.5 m where there are private terraces, levels 11-13 will be setback approximately 7.1 m and the mechanical penthouse a total of 12.84 m.

[19] The following are the key components of the revised proposal.

1. Total GFA – 12,622,6 sq. m made up of Residential GFA – 12,314.3 sq. m. and Non-residential GFA – 308.3 sq. m.
2. Height – 47.9 m (top of roof) and 52. 9 m to top of mechanical penthouse.
3. Total residential amenity space – 4.0 sq. m/unit made up of 2.0 sq. m/unit interior and minimum of 40 sq. m exterior.

4. Parking will continue to be in four levels of underground parking and bicycle parking will be provided both in compliance with the minimum ratios found in City By-law No. 569-2013.
  
5. One Type “G” loading space.

[20] The revised proposal includes improved amenity to adjacent streets to make these areas more attractive, interesting, comfortable, and functional for pedestrians. Changes include sustainable design elements including trees shrubs and plantings; permeable paving material; bicycle parking; weather protection; setbacks designed to create attractive transitions from the private to public realm and landscaped open space in the development site.

[21] Representatives for the Appellant met with immediate neighbours on numerous occasions to better understand and mitigate their issues. The Tribunal notes that both the owner of 139 Bedford Rd. (Exhibit 14) and the residents of 277 Davenport Rd. (Exhibit 13) provided letters of support for the revised proposal.

[22] There are no planning instruments before the Tribunal. The revised proposal requires:

1. an OPA in the form of a Site and Area Specific Policy (“SASP”) including both the lands fronting on Davenport Rd. presently designated ‘Mixed Use 3 – Main Street’ and the three lots designated ‘Neighbourhood’ fronting on Bedford Rd.; and
  
2. a ZBA designed to implement the revised proposal.

The basis for the construction of these planning instruments are found in the Appellants ‘Revised Plans for LPAT’ dated March 19, 2021 (Exhibit 6).

## LAND USE PLANNING POLICY

[23] The revised proposal is subject to several relevant Provincial and City planning policies found in various statutory planning documents. The planning structure in Ontario is provincially led and the Tribunal must be satisfied with all aspects of relevant planning documents in the formulation of its decision.

### Provincial Policy

#### *The Planning Act*

[24] Mr. Huynh in his testimony opined that the revised proposal has regard for s. 2 of the *Planning Act*. He made specific note of s. 2 d), h), j), p), q) and r). Neither planner for the City or the Ratepayers Associations spoke to the *Planning Act*. The Tribunal agrees with Mr. Huynh that the revised proposal has appropriate regard for s. 2 of the *Planning Act*.

#### *Provincial Policy Statement 2020*

[25] On February 28, 2020 the Province issued a revised Provincial Policy Statement (“PPS”) which took effect on May 1, 2020 and all land use planning decisions made after this date are required to be consistent with its policy directions. The PPS provides overarching policy on land use planning in Ontario with the general goal to enhance the quality of life of those living in the Province. The PPS is one of the foundations of the Provincially led planning policy regime.

[26] Messrs. Tsang and Gladki both believed that the PPS is ‘outcome oriented’ and how intensification happens in a municipality is deferred to, best evaluated by, and implemented within the framework provided within the City’s Official Plan.

[27] Mr. Gladki took an economic perspective to the concept of optimizing the use of land, resources and public investment in infrastructure and public service facilities. He

provided a dictionary definition of optimize as the “best compromise between opposing tendencies” and introduced the concept of Pareto optimal efficiency which refers to ‘a situation “where there is no alternative state that will make some people better off without making anyone else worse off”’.

[28] Mr. Gladki spoke of the need to balance the objectives of the PPS and made the following observations: the concept of optimization is defined as the ‘best compromise between opposing tendencies’; the promotion of opportunities for transit supportive development through intensification is ‘where this can be accommodated’ (s. 1.1.3.3); “appropriate development standards should be promoted...while avoiding or mitigating risks to public health and safety” (s. 1.1.3.4); and the official plan is the most important vehicle for implementation (s. 4.6). Mr. Gladki opined that municipal policy is the most important vehicle in balancing competing interests and the implementation of Provincial Policy.

[29] Mr. Huynh provided a comprehensive review on how the revised proposal in his opinion is consistent with the PPS 2020. He emphasized that he read the document in its entirety and identified an extensive list of important policy considerations that speak directly to the revised proposal being:

1. Building Strong and Healthy Communities (s. 1.0) with specific reference to efficient land use patterns, financial well being; accommodating an appropriate range and mix of residential types, the integration of land use planning growth management, transit-supportive development, intensification and infrastructure planning (s. 1.1.1 a), b) and e)).
2. Settlement Areas (s. 1.1.3) - settlement areas are where growth and development is to be focused (s. 1.1.3.1); land use patterns based on densities and a mix of land uses that efficiently use land and resources; are appropriate for, and efficiently use, the infrastructure and public service facilities which are planned or available, support active transportation, and are transit supportive (s. 1.1.3.2 a), b) e) f) and s. 1.1.3.6)

3. Identification of appropriate locations and promote opportunities for transit-supportive development and accommodating a significant supply and range of housing options through intensification and redevelopment. (s. 1.1.3.3)
4. The promotion of appropriate development standards to facilitate intensification, redevelopment, and compact urban form while avoiding or mitigating risks to public health and safety (s. 1.1.3.4)
5. Coordination – growth and development that is integrated with infrastructure planning, in an effort to meet population, housing and employment projections, and addressing housing needs (s. 1.2.1 a) g) and h))
6. Housing – provide a range and mix of housing options and densities required to meet projected requirements of current and future residents (s. 1.4.1), planning authorities shall provide for an appropriate range and mix of housing options and densities to meet projected market-based and affordable housing needs of current and future residents and all types of residential intensification (s. 1.4.3).
7. Transportation Systems – land use patterns that minimize the length and number of vehicle trips and support current and future use of transit and active transportation (s. 1.6.7.4).
8. Long-Term Economic Prosperity – referring to encouraging residential uses that provide necessary housing supply and range of housing options; optimizing the long-term availability and use of land, resources and infrastructure; enhancing the viability of main streets, promoting well-designed built form, and providing for efficient, and cost-effective, reliable multimodal transportation systems (s. 1.7.1 b), c), d), e), and g))
9. Energy Conservation and Climate Change – the promotion of a compact urban form, active transportation and transit and encouraging transit-

supportive development and intensification (s. 1.8.1a), b), and e)).

10. Implementation (s. 4.6) – Mr. Huynh stated that the City OP is the most important vehicle for implementation of the PPS but noted it is important to keep Official Plans up to date and that the policies of the PPS ‘continue to apply after adoption and approval of an official plan’.

[30] Mr. Huynh opined that the revised proposal is consistent with the 2020 PPS.

*A Place to Grow: Growth Plan for the Greater Golden Horseshoe - 2019*

[31] All planning witnesses offered testimony on how the proposed settlement conforms to ‘A Place to Grow: Growth Plan for the Greater Golden Horseshoe – 2019’ (“Growth Plan”). Each noted that the Growth Plan builds on the policy foundation of the PPS and provides more specific land use policy. Suffice it to say that the evaluation of policy considerations and the planning expert’s divergence in opinion followed similar lines to those in the above evaluation of the PPS. The policies of the Growth Plan are very consistent with the themes found in the PPS. Hence, although the evidence is extensive, it is appropriate for the Tribunal to provide a concise review.

[32] Mr. Tsang observed that the Growth Plan provides a strategic framework for growth for the Greater Golden Horseshoe which includes where and how to grow, the need to provide necessary infrastructure, building of complete communities, and minimizing negative impacts of climate change. He did not provide an opinion regarding the revised proposals conformity to the Growth Plan in his testimony but did opine that it conforms to the Growth Plan in cross examination.

[33] Mr. Huynh stated that the Growth Plan must be read in its entirety to determine conformity. He provided a comprehensive policy review in his evidence and is of the opinion that the revised proposal conforms to the Growth Plan. His evidence spoke to the Growth Plan’s many important themes including: the intensification first perspective on where and how to grow, supporting the achievement of complete communities,

prioritizing intensification and higher densities in strategic growth areas, support a range and mix of housing options, the integration and alignment of land use planning with existing infrastructure, growth is to be directed to settlement areas, targets for growth are to be established, and the Toronto Downtown is designated as an urban growth centre. He made specific note of policies relating to optimizing the use of land and resources and all policy references mentioned speak directly to the revised proposal before the Tribunal. A complete and extensive record of relevant Growth Plan sections to support his opinion are found in Mr. Huynh's witness statement. The most important sections are:

1. s. 1.2.1 outlines the support to developing 'complete communities' and the prioritization of intensification and higher densities in strategic growth areas to make efficient use of land and infrastructure and support transit viability.
2. s. 2.2.1 provides direction for managing growth and includes policies related to supporting the achievement, key features, and characteristics of complete communities.
3. s. 2.2.4 provides for the establishment of Major Transit Station Areas ("MTSA") where transit supportive development is supported, and a substantial residential and employment growth, is to be located. The subject site clearly falls within an area that could be appropriately defined as an MTSA and both the Dupont and St. George subway stations are within a 650 m radius.
4. in keeping with s. 2.2.4.10 "makes use of land near existing frequent transit and will provide a range and mix of uses to support active transportation and transit use".
5. s. 2.2.6 is relevant as the proposed settlement will provide a diverse range and mix of housing options and densities, with a variety of unit sizes and built form to meet the projected needs of current and future residents. Housing

but especially family sized units, is a priority in the City and the revised proposal has a minimum of 55% two-bedroom units and 10% three-bedroom units with an average size of approximately 1,192 sq. ft.

[34] Mr. Huynh's observed that the evolution of Growth Plan policy has been progressively strengthened in two areas being: 1. as they apply to the integration of land use and infrastructure planning, as well as the importance of 'optimizing' the use of the land supply and infrastructure; and 2. the objectives of building a complete community with the inclusion of minimum density targets for 'major transit station areas' along 'priority transit corridors' and existing subways. In his view, both are extremely relevant in the review and analysis of the revised proposal.

[35] Mr. Huynh is of the opinion the revised proposal conforms to the Growth Plan.

[36] In his analysis of the Growth Plan, Mr. Gladki took the Tribunal to many of the same sections of the Growth Plan as did Mr. Huynh. He is of the view that intensification on the site is appropriate from a 'high-level policy perspective' but his issue is whether the revised proposal is an appropriate level of development and how that development fits from a Official Plan built form and transition policy standpoint.

[37] In his review of Growth Plan policy, the planner took special note of:

1. s. 2.2.2.3 where municipalities are required to develop a strategy to achieve intensification targets and strategic growth areas to make efficient use of land and infrastructure and support transit viability which include 'identifying the appropriate type and scale of development and transition to built form in adjacent areas': and
2. s. 2.2.4.2 9) "within all major transit station areas, development will be supported where appropriate"

[38] It became clear in his evidence and cross examination that in Mr. Gladki's



opinion the revised proposal 'largely conforms' to the Growth Plan but in his view the protection of the neighbourhood to the south is paramount and therefore the many other sections of the Growth Plan do not carry the equivalent weight in his assessment. Again, it is his point of view that when evaluating how the revised proposal fits on the site one must first demonstrate conformity to the City OP's built form and transition policies to determine a proposal's appropriateness. City OP policy is salient if not the only consideration.

[39] The Tribunal accepts the evidence of Mr. Huynh and finds the revised proposal as described in Exhibit 6 being the "Revised Plans for LPAT" dated March 19, 2021 has appropriate regard to the *Planning Act*, is consistent with the PPS 2020, and conforms to the Growth Plan 2019. Planning policy in Ontario is a Provincially led policy framework and the Tribunal heard in evidence that the revised proposal clearly meets or exceeds all the relevant statutory policy tests and therefore Provincial policy carries weight in this decision.

[40] The Tribunal finds the planning framework in Ontario is clearly hierarchical and does not defer the responsibility of being consistent with or complying to Provincial policies to the local municipal Official Plan. Goals and objectives of Provincial policy review is not appropriately deferred to a limited policy review and analysis found in the municipal Official Plan.

[41] The Tribunal agrees with the evidence of Mr. Huynh that the revised proposal speaks directly to relevant statutory Provincial policy by:

1. implementing the intensification first perspective by identifying and prioritizing intensification in appropriate areas and higher densities in strategic growth areas to make efficient use of land and infrastructure. Promoting opportunities for transit-supportive development and accommodating a significant supply and range of housing options through intensification and redevelopment.

2. maintaining long-term economic prosperity of the City by including residential uses that provide necessary housing supply and range of housing options, optimizing the long-term availability and use of land, resources, and infrastructure.
3. supporting the achievement of complete communities as defined by the Growth Plan.
4. being in the City's Downtown Urban Growth Center where growth and development are to be focused and directed.
5. being in support of a range and mix of housing options. The supply of all forms of housing is an important policy objective of both the Province and City especially larger units that are appropriate for families. The revised proposal includes 55% two and 10% three-bedroom units suitable for families. Provincial housing policy has weight in the Tribunal's consideration,
6. recognizing the need to integrate and align land use planning with existing infrastructure and showing clear alignment with policies relating to the optimization of the use of land and resources.
7. being in a settlement area and thereby assists in meeting the established growth targets found in the Growth Plan.
8. being of a compact, transit-supportive development urban form which promotes active transportation and the use of the robust network of transit in the area. Assisting in the implementation of a land use pattern that minimizes the length and number of vehicle trips and supports current and future use of transit and active transportation.
9. promoting appropriate development standards to facilitate intensification, redevelopment, and compact urban form while avoiding or mitigating risks to

public health and safety

[42] The Tribunal notes that all comparators used during the hearing were approved before the PPS 2020, the Growth Plan 2019, and Downtown Plan. This fact is confirmed by all witnesses either in examination or cross examination. The update of these relevant planning documents is pertinent as they change the approach to land use planning within the City's Downtown. Policies in the Downtown Plan implement Provincial policy that direct an optimization of lands that are well served by transit and by doing so describes that a different approach is applied within the Downtown when compared to land that are outside the downtown.

### **City Official Plan Policy**

[43] The Tribunal observed that the hearing largely became a debate on conflicting urban design and built form opinion as it relates to the City's OP policy. The Tribunal in its adjudication has a much broader responsibility as it must make a comprehensive review of all applicable policies to establish Official Plan conformity and determine what is an appropriate balance between competing City goals and objectives as described in their planning documents.

[44] The Tribunal notes that all witnesses did eventually agree that the revised proposal is a 'hybrid' building typology that is finding its way into the City's 'Downtown Urban Growth Centre'. It is aptly described as a 'tall mid-rise'. Therefore, it is correctly evaluated against the Official Plan policy in place at the time the application is deemed complete by the City. Those documents are the City OP in-force November 2019 and the Downtown Plan. The City's Downtown Plan is the result of considerable study, public consultation and reporting described within the TOcore Downtown Planning Study. Planning and urban design evidence that evaluated the revised proposal against these two in-force policy documents is critical in the Tribunal's determination of the revised proposals suitability.

[45] Evidence demonstrated the relationship between the City OP and the Downtown

Plan is important in the evaluation of applicable policy and therefore the Tribunal's deliberation of the relevant City policy framework. It is clear to the Tribunal that when there is conflict between the City OP and a Secondary Plan, the Secondary Plan policies prevail. In this matter, the Downtown Plan is the applicable Secondary Plan. An example of this statutory policy relationship is:

The provisions of the Official Plan, which set out the policies applicable to Neighbourhoods, and development criteria within Neighbourhoods, will continue to apply to Neighbourhoods in the Downtown unless such policies are in conflict with an applicable Secondary Plan, or Site and Area Specific Policy. (Downtown Plan s. 1.7)

[46] The Subject site is designated as:

1. In the City OP - as 'Mixed Use Areas' for the properties fronting on Davenport Rd. and 'Neighbourhoods' for the properties fronting on Bedford Rd. as illustrated on Map 2 – Urban Structure. Map 3 – Right-of-Way Widths Associated with Existing Streets' identifies Davenport Rd. as a major street with a right-of-way width of 23 m.
2. The Downtown Plan maintains the land use designations found in the City OP. The portion of the subject site that fronts on Davenport Rd. is designated as 'Mixed Use Areas 3 – Main Street on Map 41-3 and 41-3C and the portion fronting on Bedford Road is designated as 'Neighbourhoods'.

[47] The 'Mixed Use Areas' portion of the subject site has a relatively long frontage and narrow depth. It was clear in evidence that on its own, the Davenport Rd. frontage portion of the subject site has little opportunity to intensify to any significant degree in keeping with its designated Official Plan policies. The physical extent of the potential SASP does not reach the southern limit of the comparable Mixed Use Area designation found immediately east. It is seen by the Appellant as simply a regularizing of land use designations and provides the opportunity to optimize the subject sites land use potential. The Tribunal agrees.

[48] Mr. Gladki spent a considerable amount of time in his testimony speaking to Neighbourhood policies found in the City OP and the Downtown Plan. He is of the opinion that since a large portion of the site is in a Neighbourhood designation, policies found in s. 4.1 are salient. “Neighbourhoods are considered physically stable areas made up of residential uses in lower scale building...that are no higher than four storeys” (City OP s. 4.4.1). He opined that this policy serves to establish a four-storey height limit within Neighbourhood designations. The revised proposal exceeds this maximum height on the portion of the subject site that is presently designated as Neighbourhoods. A maximum height of four storeys is a theme that runs through the entirety of Mr. Gladki’s evidence.

[49] The planner made special note of the development criteria found within the Neighbourhood designation policy (City OP s. 4.1.5) “Development in established Neighbourhoods will respect and reinforce the existing physical character of each geographic neighbourhood...”. Policy goes on to speak to prevailing heights, massing, scale, density and dwelling type, setback of buildings from the street and conservation of heritage buildings, structures, and landscapes. Therefore, developments proposed in Neighbourhoods “will be materially consistent with the prevailing physical character of properties in both the broader and immediate contexts”.

[50] In Mr. Gladki’s opinion the revised proposal does not meet the tests set out in the Neighbourhood designation of the City OP. A 13-storey mixed use building essentially eliminates “all of the policies and protection governing development within Neighbourhoods” for the portion of the site within this designation. Therefore, the revised proposal “would remove the protection that exists with the Neighbourhoods designation and replace it with a proposed development that will have negative impacts on the remaining Neighbourhoods designated area in terms of compatibility, transition, in scale and density, and inadequate setbacks and stepbacks”.

[51] Mr. Gladki’s themes remained the same when providing testimony on the Downtown Plan as there is no physical change to the extent of the Neighbourhood

designation. “New buildings will fit within their existing and planned context...provide compatibility between differing scales of development...” (Downtown Plan s. 3 (3)) Areas of intensification will vary as not all will experience the same amount of intensification and “Tall buildings will not be permitted on sites within Neighbourhoods” (Downtown Plan s. 9.12) which in his opinion “amounts to an explicit prohibition”.

[52] Mr. Huynh and, to a degree, Mr. Tsang took the most comprehensive approach in their evidence. They outlined and described for the Tribunal the suite of Official Plan policy and the resulting framework they create.

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...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. (City OP s. 5.6 1 and 1.1).

The Tribunal is disappointed that the planner for the City chose to give little opinion evidence on the competing planning policy objectives and deferred opinion on urban design policy to other witnesses. Hence, the evidence he provided was of little assistance to determine a balance between competing policy priorities.

[53] All planners did agree that the subject lands are appropriate to be intensified, it is a matter of degree. Hence, the Tribunal in this decision will briefly note the overarching in-force policies that are important to its decision not related to the revised proposals built form. Mr. Huynh took considerable time to describe how the City OP establishes the overarching policy framework and then led the Tribunal through how the revised proposal conforms to the many relevant policy principles being:

1. The City OP speaks to “working with the Province of Ontario...to implement the Provincial framework across the GTA...” The City has established growth forecasts and residential/job targets to 2031. (City OP s. 2.1)
2. The urban structure promotes the integration of Land Use and Transportation planning and states “Areas that can best accommodate this growth are

shown on Map 2: Downtown...as locations where growth is to be directed and create a better urban environment”. Policy statements are similar to those of the Growth Plan and often maintain and echo Provincial priorities. Common themes are efficient use of land, infrastructure, and resources, concentrating jobs and people close to surface and rapid transit and promoting mixed-use development. (City OP s. 2.2.(1)).

3. The subject lands are in the Downtown which plays a vital role in the City’s growth management strategy. (City OP s. 2.2.1)
4. The Downtown is identified as an Urban Growth Centre and a Strategic Growth Area. “Growth is encouraged within the Downtown, in particular on lands designated...Mixed Use Areas 3... The highest density of development within the Downtown shall be directed to Mixed Use Areas in close proximity to existing or planned transit stations...” (City OPs. 4.1 and reinforced with similar wording in Downtown Plan s. 6.36).
5. "A full range of housing opportunities will be encouraged...through residential intensification in the Mixed Use Areas...sensitive infill within Downtown Neighbourhoods..." (City OP s. 2.2.1 (4)).
6. Areas designated ‘Neighbourhoods’ are stable but not static. “A cornerstone policy is to ensure that new development in our neighbourhoods respects the existing character of the area, reinforcing the stability of the neighbourhood”. A series of criteria for development adjacent to ‘Neighbourhoods’ is found in City OP s. 2.3.1 (3).
7. Policy supports “a progressive agenda of transportation change” They refer to active transportation, transportation demand management and reducing auto dependency. (City OP s. 2.4). Specific policies relate to “sites in areas well served by transit” and speak to density and parking requirements.

8. The integration of land use and transit is encouraged subject to an appropriate form of development.

Development in proximity to existing and planned rapid transit stations, as shown on Map 41-4, will prioritize mixed-use development. These areas will be planned to accommodate higher density development to optimize the return on investment and increase the efficiency and viability of existing and planned transit service levels. (Downtown Plan s. 6.34).

9. the provision of a wide range of commercial, residential, and institutional land uses to accommodate a diverse mix of permitted uses.
10. Mixed Use Areas “will provide an urban form that will optimize infrastructure, particularly within 500-800 metres of existing or planned rapid transit stations” (Downtown Plan s. 6.18).
11. Provision of “a full range of housing, in terms of form, tenure and affordability across the City and within neighbourhoods, will be provided and maintained to meet the current and future needs of residents”. (City OP s. 3.2.1 (1)). The Downtown Plan reinforces the importance of housing in the City by stating: “The quality of life and prosperity are intrinsically connected to the provision of housing that meet the requirements of a diverse population with varying housing needs”. (Downtown Plan s. 11). A balanced mix of housing types and unit sizes suitable for families is specifically noted as a priority and a minimum threshold for two and three bedroom units are established in policy (Downtown Plan s. 11.1).

### **The ‘Built Form’ Debate**

[54] Much of the testimony heard by the Tribunal relates to built form in relationship to the planned and/or existing context and should the revised proposal’s context be only measured by the pattern of development on the south side of Davenport Rd. The Appellant takes a position that the revised proposal optimizes the use of the subject lands by realizing an appropriate intensification while the City and Ratepayers



Associations consider it as over development. Significant testimony is heard along with extensive visual evidence from all parties on the issues of compatibility, height, mass, insufficient transition to the south and visual impact on the private and public realm.

[55] Mr. Spaziani, on behalf of the Ratepayers Associations, provided an 'alternative built form design' ("alternative design") which he opined is more appropriate for the subject lands. The alternative design is essentially lower in height, wider in girth and advocated a different transition to the lands to the south. The alternative design would require an OPA and a ZBA and, like the revised proposal, struggled to meet related built form guidelines.

[56] The Tribunal does not see this as a hearing evaluating competing building designs although having one presented is helpful and instructive. The Appellant's revised proposal is before the Tribunal and is being assessed in these proceedings.

[57] All witnesses agreed (the City and Ratepayers Associations reluctantly under cross examination) that the revised proposal is a 'hybrid' building typology that is finding its way into the City's 'Downtown Urban Growth Centre'. It does not readily fit into any of the various City built form guidelines presented at this hearing. Therefore, it is correctly evaluated against the Official Plan policy in place at the time the application is deemed complete by the City. Those documents are the City OP as in force in November 2019 and the Downtown Plan. The Tribunal agrees with this assessment of the witnesses and writes the Build Form Debate section of the decision from this perspective.

[58] Evidence demonstrated that both the City OP and the Downtown Plan have extensive built form policies that are determinative in the matters before the Tribunal and as mentioned earlier in this decision where there is conflict between the City OP and a secondary plan (in this case the Downtown Plan), the secondary plan prevails. The policies are very comprehensive and therefore the Tribunal will reference the most relevant policy sections now, then speak specifically to those highlighted as most relevant in witnesses' evidence in the following sections.

[59] In the City OP Built Form policies are found in:

1. Chapter 3 – Building a Successful City. The Built Environment (s. 3.1) policy includes: The Public Realm (s. 3.1.1) and Built Form (s. 3.1.2).
2. Chapter 4 – Land Use Designations has policy related to Neighbourhoods (s. 4.1) and Mixed Use Areas (s. 4.5)

[60] In the Downtown Plan, Built Form policy is detailed in:

1. Chapter 6 – Land Use and Economy includes policy related to Mixed Use Areas (s. 6.18 to 6.22) and Mixed Use Areas 3 – Main Streets (s.6.28 to 6.31).
2. Chapter 9 – Built Form which includes policy related to: Improving the Public Realm (s. 9.8 to 9.10), Physical Determinants of Intensity and Scale (s. 9.11 to 9.16) , Creating a Comfortable Microclimate (s. 9.17 to 9.21), Transition (s. 9.22 to 9.27) , and Mid-Rise Buildings (s. 9.28).

All land use planning and urban design witnesses made extensive use of the above policy directions in their evidence.

### *Existing and Planned Context*

[61] The Tribunal heard evidence from all witnesses describing the existing and planned context specifically related to the revised proposal. In Chapter 3 of the City OP there is a side bar that assists the Tribunal in its determination of the City's interpretation of the Existing and Planned Context. A sidebar is not policy but is helpful in the Tribunal's evaluation.

The existing context of any given area refers to what is there now. The planned context refers to what is intended in the future. In stable areas, such as Neighbourhoods, the planned context typically reinforces the existing context. In growth areas, such as Centres and Avenues, the planned context generally

anticipates change. Height and density aspects of the planned context of new development will be assessed on the basis of the plan's policies, including Secondary Plans and site and area specific policies...in instances of apparent inconsistency between existing and planned contexts when interpreting the built form policies as they relate to height and density, the planned context will prevail.

[62] A pertinent policy statement relating to existing and planned context is found in s. 6.19 of the Downtown Plan which states: "Mixed Use Areas will contain development of varying scales and intensities, based on the existing and planned context". In this area, the Mixed Use 3 designation applies to both sides of Davenport Rd. (except for lands designated Apartment Neighbourhood east of Bedford Rd). The planned context is well described in the Downtown Plan (s. 6.28) as follows:

"Development in Mixed Use Areas 3 will be in the form of mid-rise buildings, with some low-rise and tall buildings permitted based on compatibility".

[63] Evidence from all witnesses is consistent in the description of the existing context. There is considerable redevelopment on the north side of Davenport Rd immediately across from the subject lands. To the west of Bedford Rd. is a redevelopment commonly known as the Davenport Triangle. It consists of an approved 22-storey mixed use development with a significant podium. Immediately north (east of Bedford Rd.) is a large site that is occupied by a 25-storey Toronto Community Housing rental apartment building and a 27-storey (under construction) residential building with townhomes integrated into the design. The south side of Davenport Rd has a variety of land uses and density of development ranging from low rise existing development to more recent mixed use and residential buildings ranging in height from five to 12-storeys.

[64] The Tribunal is intrigued to learn of the land use designations north of Bedford Rd and how the City has managed the intensification of these lands and their commitment to the City's and Provinces land use policies. The designation of the Davenport Triangle lands is Mixed Use Areas 3 which has an approved 22 storey mixed use building. The Toronto Community Housing lands (east of Bedford Rd) are

designated Apartment Neighbourhoods which by policy are "...residential areas with taller buildings and higher density than *Neighbourhoods* and are considered to be physically stable." (City OP s. 2.3.1 (2)) and any redevelopment in these areas are subject to a series of development criteria (City OP s. 4.2.2). Within this policy context, a 27-storey building is nearing completion on these lands.

[65] The City and Ratepayers Associations evidence related to the existing context found immediately north of the subject lands is to simply rationalize the obvious differences but, to a large extent, ignore its existence. Essentially in their evidence, the only relevant context is the development located on the south side of Davenport Rd, the homes designated Neighbourhood immediately west of the subject lands and to the existing neighbourhood to the south. Streets may provide clear, consistent, and convenient boundaries for land use designations, but they often do not, as the City argued, serve the same function, or have the same relevance with respect to context either existing or planned. Such a limited evaluation is at best inappropriate. The Tribunal finds that a more comprehensive and complete review of context is merited in these proceedings.

[66] Messrs. Tsang, Spaziani and Gladki all focused on the residential neighbourhood to the south. Mr. Spaziani in his testimony took the Tribunal through an extensive review of the area with a photo exhibit illustrating 63 different perspectives to describe neighbourhood character. The properties fronting on Davenport Rd. are designated for intensification and in his testimony, Mr. Spaziani recognized the contextual reality by noting the physical impact of redevelopment outcomes resulting from different planning regimes. The "more recent the more aggressive" is the resulting built form.

[67] A large proportion of Mr. Spaziani's photographs are within the Annex neighbourhood which is dominated by well maintained two to three storey residential homes with an obvious pride of ownership. Most front yards have extensive landscaping and a tall tree canopy which serves to mitigate the impacts of the homes and buildings located on Davenport Rd. Mr. Spaziani's walk around illustrated clearly

that City OP policies are working very well and the internal part the neighbourhood appears to be relatively stable and has seen little change in keeping with the City OP's Neighbourhood policies (City OP s. 2.2.1).

[68] Messrs. Kasprzak and Huynh spoke more directly to the entirety of the areas existing and planned context, relevant City planning policy and how the revised proposal will "be located and organized to fit with its existing and/or planned context" (City OP s. 3.1.2 (1)) and will be massed and designed to fit harmoniously into both the existing and planned context. There is no debate on the existing context of the neighbourhood to the south.

[69] Mr. Huynh provided his opinion regarding the planned context as found in the Downtown Plan. His evidence is clear and consistent. It related to the Appellants' commitment to the City's 'optimization' policy theme, but he also made reference to the entirety of both the City OP and the Downtown Plan. He noted that the "Downtown's Mixed Use Areas will absorb most of the anticipated increase in office, retail and service employment as well as the majority of new housing over the coming decades" and outlined the following relevant policy directions:

1. the provision of a wide range of commercial, residential, and institutional land uses to accommodate a diverse mix of permitted uses. Mixed Use Areas will provide an urban form that will optimize infrastructure, particularly within 500-800 metres of existing or planned rapid transit stations (s. 6.18).
2. the building heights, massing and development will be compatible between each of the four Mixed Use Areas (s. 6.20).
3. will be in a form of mid-rise buildings with some low-rise and tall buildings permitted based on compatibility (s. 6.28).
4. retail and service commercial are encouraged at grade with residential above (s. 6.29).

5. development in Mixed Use Areas will be encouraged to include retail and service commercial uses at grade with residential...uses above (s. 6.29).
6. development in proximity to existing and planned transit will prioritize mixed use development and be planned to accommodate higher density development to optimize the return on investment and increase the viability of existing and planned transit service levels (s. 6.34).
7. within the Downtown that lands within 500 – 800 m of existing or planned rapid transit stations will be transit supportive and have a diverse mix of uses of sufficient intensity to optimize support for existing and planned transit service levels. The highest density of development 'shall be' directed to Mixed Use Areas close to existing transit stations. (s. 6.35)

[70] Mr. Kasprzak in his evidence spoke to important urban design elements of the revised proposal and how it is in keeping with the City OP policy specifically related to the planned and/or planned context. The 13-storey building comprises residential units, which include three integrated street related townhomes elements along Bedford Rd with grade related retail uses along the Davenport Rd frontage. The seven storey streetwall element along Davenport Rd is built to the lot line except for the first and second storeys which are recessed 2.0 m to provide a widened sidewalk zone to assist in enhancing the street's public realm. This base element recognizes podium heights on the north side and serves to 'frame' Davenport Rd in an appropriate way. The 13-storey height is providing an appropriate transition from the 27-story building the north and the two to three storey residential buildings to the south.

[71] Mr. Kasprzak made specific note of City OP policies that direct how a development is to be 'located and organized to fit with its existing and/or planned context' (City OP s. 3.1.2(1)). Important considerations are:

1. generally locating buildings parallel to the street...with a consistent front yard setback.

2. on corner lots, locating development along both adjacent street frontages and giving prominence to the corner.
3. locating main building entrances so that they are clearly visible and directly accessible from the public sidewalk.
4. providing ground floor uses that have views into, and where possible, access to adjacent streets....

[72] Messrs. Huynh and Kasprzak are of the opinion that the revised proposal conforms to both the City OP and the Downtown Plan both from a land use planning and urban design perspective.

[73] In the following sections of this decision relating to Transition, Height and Compatibility, the Tribunal determined that the evaluation is largely found in the testimony of the expert Urban Design witness and which design (revised proposal or alternative design) is preferred. Suffice it to say on matters relating to land use planning Mr. Gladki's position is consistent with that of Mr. Spaziani and Mr. Huynh's is consistent with that of Mr. Kasprzak.

### *Transition*

[74] The Tribunal notes that in Chapter 3 of City OP again there is a side bar that assists in the City's interpretation of Transition. As previously stated, a sidebar is not policy but is helpful in the Tribunals assessment and understanding of the issues.

Appropriate transition in scale can be achieved with many geometric relationships and design methods in different combinations including angular planes, stepping height limits, appropriate location and orientation of the building, the use of setbacks and stepbacks of building mass. The larger the difference in scale of development the greater the need for transition.

[75] Evidence heard by the Tribunal illustrates that there is an important policy distinction when considering the appropriateness of transition on lands within the Downtown and those that are not. In the explanatory text found in the City OP states as a consideration City wide that:

physical changes to our established Neighbourhoods must be sensitive, **gradual**

and “fit” the existing physical character, and that new development is to respect and reinforce the general physical patterns in a Neighbourhood (City OP s. 4.1). (emphasis added)

[76] The Downtown Plan describes transition very differently illustrating a clear policy distinction on how transition is evaluated in the City’s Downtown. The term gradual is not mentioned as an objective needing to be adhered to when evaluating transition in Downtown. Introductory paragraphs to the Transition sections of the Downtown plan serve to describe how transition is to be evaluated.

Transition means that buildings adopt some of the characteristics of both the existing and planned context without necessarily replicating the form or design precisely. Transition allows for buildings of disparate heights, scale, type and use to have adjacencies yet still be perceived harmoniously from the street level and contribute to the overall context and quality of the streetscape. Transition in scale minimizes the impact of large-scale developments on surrounding areas, including adjacent and nearby low- and mid-rise buildings and heritage properties, and maintains access to light, views and privacy...

[77] The text introducing transition in the Mid-Rise Buildings section of Downtown Plan provides further insight to inform the Tribunal. It states:

The scale of mid-rise buildings provides a unique connection to surrounding neighbourhoods through a development form that is moderate in scale, built form transition that is sensitive to adjacent buildings and to the street, and allows for good sky-views and access to mid-day sunlight in the spring and fall.

[78] Downtown Plan policy goes on to provide further understanding respecting transition by stating that

transition in scale can be achieved by geometric relationships and design methods in different combinations including angular planes, stepping height limits, location and orientation of the building, the use of setbacks and step-backs of building mass, separation distances, as well as other means to achieve compatibility. (s. 9.23).

[79] The Downtown Plan policy also speaks to the importance of how new development should address the street. The base of buildings will generally be designed to: ‘relate to the scale and proportion of adjacent streets and when on a corner lot “relate to the height, scale and built form character of the existing context of both streets” (s. 9.8.1 & 9.8.2).



[80] All witnesses spoke to the use of a 45-degree angular plane found in the Mid-Rise Performance Standards as being one measure of transition but in this matter, it is not a relevant consideration. The evidence is:

1. neither the revised proposal nor the alternative design met the 45-degree angular plane.
2. all the comparator buildings reviewed at the hearing had greater angular planes as a transition to the Neighbourhood.
3. there is not a consistent angular plane applied to the comparator buildings indicating each was evaluated and approved in keeping with the policies of the Downtown Plan. Angular planes found in the Appellant's Visual Evidence (Exhibit 5) illustrated comparator angular planes ranging from 50 plus degrees to 70 plus degrees.

[81] Mr. Spaziani maintains a position that the revised proposal does not meet the tests of transition to the stable low-rise neighbourhood to the south because there is not a gradual transition of height and massing as required by the City OP nor is it in keeping with the City's Mid Rise Guidelines that have angular plane and setback strategies that ensure appropriate transition. The proposed 13-storey's rear wall has few stepbacks, is too sheer and jarring and "must be more gradual and incremental". He made special note of the transition of the Bedford Rd flankage where "there is an absence of stepbacks that would mark a low-rise base reflecting the entry to the Neighbourhood and Heritage District." His opinion is that "the degree of stepping is insufficient, resulting in an overwhelming south building face encroaching into the visual privacy space of adjacent yards, limiting daylight and skyview and (*sic*) unnecessary levels".

[82] Mr. Spaziani spoke in considerable detail on the City OP policy relating to Development Criteria in Neighbourhoods (s.4.1(5)) requiring that development within established Neighbourhoods "respect and reinforce the existing physical character of each geographic neighbourhood". Much of this policy direction speaks to the prevailing

patterns of development in Neighbourhoods. In this situation, it is important to remember there is an OPA and ZBA being considered and it is not appropriate to evaluate the revised proposal against only Neighbourhood policy.

[83] In Mr. Spaziani's opinion the alternative design provides much more appropriate transition to its southern neighbours. Important design considerations include: a reduced height of nine stories; more gradual setbacks beginning at the fourth floor to reduce the imposing 'sheer' wall; a reduced number of units with overlook into the private yards of immediate neighbours; and a different treatment of the townhome units on Bedford Rd by 'moving back' the upper floors thereby having them appear as more traditional townhomes, thereby reducing the impact on the neighbourhoods both to the south and west of the subject lands. The alternative design also removed the agreed upon transition to the existing building to the east which is an important design change to the condominium owners in their decision to support the revised proposal. This reinforced Mr. Spaziani's view that the most important, if not the only important, transition consideration is that to lands designated as Neighbourhoods.

[84] From the outset of Mr. Kasprzak's evidence, he noted that there is an OPA and SASP required to permit the revised proposal and that transition must be appropriate to all existing or planned land uses surrounding the site. He did this by carefully considering the scale and massing of the revised proposal's built form. He took into account the emerging pattern of tall buildings on the north side of Davenport Rd, made specific recommendations to modify building design to facilitate better transition to the existing condominium building to the east, and provide for an appropriate relationship to the lower scaled neighbourhoods to the south. The revised proposal "incorporates a series of set backs and step backs along the south façade to ensure adequate transition and along the two street frontages to allow for appropriate framing of the streets. At grade, the proposal will animate the public realm with active at grade uses and improved streetscaping."

[85] Mr. Kasprzak opined that "transition in scale is not an objective in and of itself.

Transition is a means of achieving the objectives of the Official Plan which include mitigation of potential impacts such as shadows, light and privacy and can be provided in a variety of ways...". He took the Tribunal through a very detailed description on how the revised proposal meets the policies of both the City OP and the Downtown Plan. Important urban design considerations he described in evidence include:

1. the mid-rise portions of the townhouse block are well setback from the west and south property line to maintain a low-rise street wall and provide appropriate transition in scale towards Neighbourhoods through the use of setbacks, stepbacks and integration of lower scale elements such as townhouses along Bedford Rd. A side yard relationship is maintained at the building base.
2. including an appropriate separation distance of 7.5 m on the building's lower levels to a total stepback of 14.85 m at the top of the building.
3. making use of creative transitions in scale through a series of geometric relationships including stepping height, location, and orientation of the building.
4. building stepbacks are many, varied and are found in Mr. Kasprzak's witness statement (Exhibit 11) and the Visual Evidence (Exhibit 5). He stated that the purpose of these stepbacks is "to provide a transition between areas of different development intensity and scale as necessary to achieve the objectives of this Plan... particularly towards the lower scale Neighbourhoods" (City OP s. 4.5.2 (c)) and the Downtown Plan s. 9.23). Suffice it to say the revised proposal makes considerable effort to have setbacks respond to the differing building heights and intensity of uses on Davenport Rd, the neighbourhood to the south, and to mitigate overlook onto the existing condominium to the east.
5. provides for good street proportion and improvements to the amenity on

adjacent streets with improvements in setbacks to create an attractive transition from the public realm to the private space, providing sustainable elements which include trees and shrubs and providing weather protection (City OP s. 3.1.2 (4) and (5)). The Downtown Plan has similar policy direction to ensure there is optimal tree planting and landscaping conditions, adequate space for tree infrastructure and be designed to allow for access to utilities or other below-grade services.

6. along the Davenport and Bedford façades, a stepback of 2.0 m is provided above the seventh floor, and additional 1.6 m stepback is provided above the eleventh floor to mitigate the perception of height and create comfortable pedestrian conditions.
7. the revised proposal provides for a gradual transition of scale between the existing Neighbourhoods and the emerging pattern of tall buildings on the north side of Davenport Road.
8. with respect to light and privacy for residents in Neighbourhoods, the proposal provides appropriate setbacks and stepbacks. There are no shadow impacts on the neighbourhood to the south.
9. parking and service areas are screened from the adjacent Neighbourhoods.

[86] In conclusion Mr. Kasprzak is of the opinion that the revised proposal:

1. reflects the principles of good urban design in terms of transition to Neighbourhoods and provides an appropriate transition in scale to the low-rise properties to the immediate south and to the west of the subject lands.
2. provides for a gradual transition of scale between the existing Neighbourhoods and the emerging pattern of tall buildings on the north side of Davenport Road.

3. provides for an appropriate transition between the existing mid-rise to the east.
4. provides for mid-rise element that appropriately addresses a corner condition whereas the townhouse element helps create a transition to the lower scaled residential areas.

### *Height*

[87] The height of the revised proposal is 13-storeys and 47.9 m to the top of roof and 52.9 m to the top of the mechanical penthouse. Four facts are material in the Tribunal's analysis of height:

1. Mr. Spaziani's alternative design is nine stories with an approximate height of 33.5 m. It was clear from the evidence that neither plan meet the Performance Standards for Mid Rise Buildings Standard #1 that the maximum building height be no taller than the width of the Avenue right-of-way.
2. All witnesses are in agreement that along Davenport Rd there are existing or approved buildings that are much greater than the width of the right-of-way. In the immediate existing context, there are buildings with heights ranging from 22 – 27 storeys.
3. Both the revised proposal and the alternative design have limited to no shadowing impacts on lands designated Neighbourhood. Both would create shadows on the north side of Davenport Rd greater than the five-hour window in both the spring and fall equinoxes, but the shadows move quickly over the sidewalks ensuring no prolonged shadow impact throughout the day. Mr. Kasprzak in his evidence noted there would be limited shadowing on the existing Joseph Tough Park in the late afternoon but will not impact its utility.

4. Comparators of nine to 12-storey buildings in the area also did not meet Performance Standards for Mid Rise Buildings Standard #1 and ranged from approximately 33 to 42 m. as illustrated in Exhibit 5).

[88] Mr. Spaziani in his evidence stated that recent mid-rise height approval's on Davenport Rd at 30 to 33 m and nine storeys are 'establishing a reasonable baseline increase in height above the width of Davenport at 23m.' Therefore, adverse impacts are limited and tailored with respect to the abutting context. His perspective on when allowing heights greater than the right-of-way, is that one must consider the adverse impacts with respect to light, view, privacy, mass, scale, and character to determine what is appropriate. His analysis of these components led him to his conclusions which are illustrated in his alternative design.

[89] Mr. Gladki in his evidence opined that the revised proposal is simply too tall especially when one considers land use policy, local context of the neighbourhoods to the south and recent approvals in the area. Mr. Gladki's opined in evidence that the revised proposal is a tall building and therefore should be evaluated against the City's Tall Building Design Guidelines; the subject site is not an appropriate location for a tall building and does not meet the transition guidelines from tall buildings to lower scale neighbourhoods. He is very insistent that no portion of a building located in the Neighbourhoods designation should be greater than four storeys. His evaluation of the revised proposal against the Tall Building Design Guidelines came into question when in cross examination, he reluctantly agreed that the revised proposal could be considered a 'hybrid' built form typology.

[90] Both Messrs. Huynh and Kasprzak are of the opinion that the revised proposal is not a tall building but constitutes a mid-rise building and displays elements of a tall mid-rise typology. It is not a tall building in the traditional sense or as defined in the Tall Building Guidelines having three components: a base, tower and top. Their evidence related to height reinforced this hybrid typology.

[91] Mr. Kasprzak in his evidence stated that height is only one aspect when one

considers the regulation of a building's design. The design of mid-rise buildings in the Downtown is challenged by the variety of differing existing context and area character found within the Downtown's diverse built form. Buildings must contribute positively to the overall character by complementing the local areas existing and planned context. He opined that the revised proposal "fits into the existing context of the Downtown which is comprised of a variety of built forms and contributes positively to the character of the area".

[92] The urban designer noted that the subject site is at the corner of two major streets and is therefore confronted with the challenge to address both in an appropriate manner. The 7-storey streetwall along Davenport Rd is in keeping with existing context and the 3-storey townhouse element respects the existing context along Bedford Rd. He opined that the revised proposal "will fit harmoniously within the range of existing and approved building heights in the surrounding context".

[93] When addressing the importance of the corner, Mr. Kasprzak referenced Build Form policies in the City OP (s. 3.1.2(1)) that relate to new development.

New development will be located and organized to fit with its existing and/or planned context. It will frame and support adjacent streets...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 the corner.
- b) locating the main building entrances so that they are clearly visible and directly accessible from the public sidewalk.

The design of the revised proposal is parallel to both streets and provides the prominence to the corner through creative massing and has an architectural articulation of the building that is appropriate for an intersection of two major streets.

[94] Mr. Kasprzak noted that the front streetwall is exceedingly important in the design of the building and one's perception of height and is a major consideration of his review and subsequent recommendations in building design. Important elements of the

front façade are: a seven storey streetwall along Davenport Rd and a minimum three storey height along Bedford Rd; along both street facades, there are setbacks at the seventh floor (2.0 m) and at the eleventh floor (1.6 m) to mitigate the perception of height and create a more comfortable pedestrian environment; the floor to ceiling height of the front wall is 4.5 m to allow for commercial uses; the building will be constructed to the property line along Davenport Rd at the second floor where the building is setback generally in line with the adjacent building to the east; appropriately responds to the differing building heights along Davenport Rd and along Bedford, the building is setback to be in line with the adjacent buildings to the south.

[95] Mr. Kasprzak's evidence demonstrated how the revised proposal's design elements reduce height impacts to the neighbourhood to the south. His evidence is that the height is acceptable when one considers:

1. any shadow impacts on the surrounding residential areas are adequately limited with no shadow impacts on the neighbourhood to the south and would not adversely affect the utility of any parks in the area.
2. provides a transition of height and scale between the emerging pattern of tall buildings on the north side of Davenport Rd and the existing Neighbourhoods to the south.
3. the townhouse block serves to maintain a low-rise street wall condition along Bedford Rd as well as providing an appropriate transition in scale.
4. privacy is an important consideration and the Appellant made several changes to gain support of the most directly impacted property owner immediately south. The revised proposal maintains a side to side relationship and the "building projection is limited to the side yard condition of the existing house-form building limiting any potential overlook conditions on rear yards".

### *Compatibility*



[96] The concept of compatibility is found in both the City OP and the Downtown Plan. Important policy sections include:

1. in the City OP, policy states that developments in Mixed Use Areas...that are adjacent or close to Neighbourhoods will: “be compatible with those Neighbourhoods” provide a gradual transition of scale and density, as necessary to achieve the objectives of this plan through the stepping down of buildings towards and setbacks from these Neighbourhoods; maintain adequate light and privacy for residents in those Neighbourhoods”. (City OP s. 2.3.1(3))
2. development in established Neighbourhoods will respect and reinforce the existing physical character of each geographic neighbourhood...subject to criteria. (City OP s. 4.1.5)
3. within Downtown Plan (as previously noted in this decision) that the provisions of the City OP which establish policies and development criteria applicable to Neighbourhoods will continue to apply in the “Downtown unless such policies are in conflict with an applicable Secondary Plan, of Site and Area Specific Policy”. (Downtown Plan s. 1.7)
4. In Mixed Use and Mixed Use Areas 3 - building heights, massing and scale of development will be compatible between each of the four Mixed Use Areas, with the most intense development located in Mixed Use Areas 1, generally stepping down through Mixed Use Areas 2 and Mixed Use Areas 3 to Mixed Use Areas 4 (Downtown Plan s. 6.20)
5. There is also a policy recognition that not all sites can accommodate a maximum scale of development. “Development will be required to address specific site characteristics including lot width and depth, location on a block, on-site or adjacent heritage buildings, park or open spaces, shadow impacts, and other sensitive adjacencies, potential resulting in a lower-scale building”.

(Downtown Plan s. 6.22).

6. “development in a Mixed Use Area will be in the form of mid-rise buildings with some low-rise and tall buildings permitted based on compatibility”  
(Downtown Plan s. 6.28).

[97] Compatibility is important in the Tribunal’s consideration and analysis of Official Plan policy. The first point of departure is to determine exactly what compatibility indeed is as the Tribunal hears evidence that new development must be compatible with the existing development. The Tribunal looks to *Motisi v Bernardi*, 1987 CarswellOnt 3719, (1987) O.M.B.D. No. 2, 20 O.M.B.R. 129 for some direction.

Being compatible with is not the same thing as being the same as. Being compatible with is not even the same thing as being similar to. Being similar to implies having a resemblance to another thing; they are like one another, but not completely identical. Being Compatible with implies nothing more than being capable of existing together in harmony.

[98] Mr. Spaziani opined that the subject development presents an urban form that is not compatible with the existing context due to its scale, mass, height, character, and intensity of visual impact on both the private and public realm. With regard to compatibility with the neighbourhood to the south and west, the revised proposal fails when one considers the transition tests intended for developments within Mixed Use lands adjacent to stable low-rise Neighbourhoods; the City OP directs an appropriate gradual transition of height and massing; and the City’s Mid-rise guidelines and zoning provisions both include specific angular plane setback strategies that ensure massing compatibility with stable low-rise Neighbourhoods. Therefore, the guideline standards for transition and setback must be more stringently applied to achieve compatibility in form, mass, and scale.

[99] Mr. Spaziani spoke in some detail to the City’s Tall Building Guidelines, but he did admit the revised proposal is that of a ‘tall mid-rise’ building typology. His evidence applied applicable guideline requirements of a “Tall Building” and relevant City OP policies and guideline standards and concluded the revised proposal’s built form does

not comply in any manner because of: insufficient building separation distance and does not meet the three part built form definition.

[100] He is of the opinion that this proposal should be considered in an “Avenue” context. One is moving from a stable house form character to a more intensified development form; therefore, the massing strategies should be more gradual and incremental to achieve greater compatibility. When a 13-storey tall mid-rise mass jumps in scale with minimal setbacks, it results in a poor fit that is incompatible.

[101] Mr. Spaziani’s analysis remains consistent with respect to compatibility policy of the Downtown Plan. The revised proposal fails to provide a gradual transition to the portion of the site abutting Neighbourhoods designation; is not sensitive infill as it is excessive in height, mass and scale; and does not conform to the planned context of a Mixed-use Area 3 and the adjacent and underlying East Annex HCD.

[102] Mr. Kasprzak is forthright in his evidence regarding how the revised proposal is compatible with the neighbourhood located both to the south and the west side of Bedford Road. He opined that the revised proposal can co-exist in harmony with the adjacent low rise residential areas by: providing a series of appropriate setbacks, setbacks and stepping down of height; establishes an appropriate transition of scale between the existing Neighbourhoods and the emerging pattern of tall buildings on the north side of Davenport Road; the setbacks and balcony placement maintain an appropriate condition to ensure light and privacy for residents in Neighbourhoods; and parking and service areas are screened from the adjacent Neighbourhoods.

[103] Further the urban designer noted other important compatibility measures related to the design of the integrated townhouse units are: to respect and reinforce the physical character of the geographic neighbourhood; sited and designed to reinforce the prevailing lot widths and pattern of the existing properties along Bedford Road; and although contemporary in their overall design, each will integrate certain design principles found on other sites within the neighbourhood including prominent bay windows, dormers, sloped roofs, and front lawns. With these considerations in mind,

Mr. Kasprzak is of the opinion that the proposed townhouse units will be respectful of, and compatible with, the prevailing built form character of the existing low-rise dwellings to the south.

[104] Messrs. Huynh and Kasprzak are of the opinion that the revised proposal conforms to the in-force policies of the City OP and the Downtown Plan and represent good planning and urban design. In summary, both opined that the revised proposal: is an appropriate location for a 13-storey mixed use development; the Mixed Use 3 designation provides for a mid-rise form of development of which the proposal is; the subject site is within 500 – 800 m of existing or planned rapid transit stations where urban form is to ‘optimize’ infrastructure; has a large number of family sized units assisting with Provincial and City housing needs; is designed to fit with the existing and planned context found in the area; there are no shadowing impacts on the lands designated Neighbourhoods; has in its design appropriate setbacks, stepbacks and a stepping down of height to ensure it is compatible to and has no unacceptable impacts on the adjacent properties; represents an appropriate transition of scale between the tall buildings that have emerged on the north side of Davenport Rd and the low-rise neighbourhood to the south; the mid-rise component will be highly articulated and generally set back 7.5 m; all parking and service areas are well screened; and setbacks to the property to the east will allow additional light penetration to the existing condominium. In short, the revised proposal can co-exist in harmony with the adjacent low-rise residential communities and “would further enhance the area by intensifying an underutilized site with an appropriately scaled residential mixed-use building”.

[105] The Tribunal has the responsibility to review and evaluate all the evidence and relevant City planning policy. It is established that conformity to the in-force City planning instruments are determinative in this matter being those found in the City OP and Downtown Plan. The Tribunal is challenged to evaluate the interaction between relevant policies and balance the many competing City public policy interests competently presented during the hearing. In doing so, the Tribunal prefers the evidence of Messrs. Huynh and Kasprzak and finds the revised proposal is good

planning, represents good urban design and is in the public interest.

[106] The Tribunal finds that the revised proposal conforms to the in-force statutory City OP and Downtown Plan policy as:

1. It is located in the Downtown which is identified as an Urban Growth Centre and a Strategic Growth Area. Mixed Use Areas are locations where growth is encouraged and within this land use designation, the highest density of development 'shall be' directed to those areas close to existing or planned transit stations and provide an urban form that will optimize infrastructure, particularly within 500-800 m of existing or planned rapid transit stations.
2. the integration of land use and transit is encouraged subject to an appropriate form of development. Therefore, development is planned to accommodate higher density development to optimize the return on investment and increase the efficiency and viability of existing and planned transit service levels.
3. City policy advocates "a progressive agenda of transportation change". The revised proposal encourages active transportation, transportation demand management, thereby contributing to the reduction of auto dependency.
4. both the City OP and the Downtown Plan speak to the need to provide for a full range of housing, in terms of form, tenure and affordability across the City and within neighbourhoods to meet the various requirements of a diverse population now and in the future. Housing is tied to quality of life and prosperity of those who choose to live in the City and its downtown. A balanced mix of housing types and unit sizes is important to the City with a clear priority being the provision of two and three-bedroom units that are suitable for families. Provincial and City housing policy has weight in the Tribunal's consideration.

5. those areas designated 'Neighbourhoods' are intended to be stable but not static. New development should respect the existing character and reinforce its stability. Evidence demonstrated that these policies have been very successful in the interior of the neighbourhood and development on the edges like the revised proposal, respects the existing character of the area and serves to reinforce the stability of the neighbourhood.
6. a comprehensive review of the existing and/or planned context is required in this matter. The evidence presented by the City and Ratepayers Associations witnesses relating to existing context found immediately north of the subject lands is to simply rationalize the obvious differences but, to a large extent, ignore its existence. Such a limited analysis is at best inappropriate. The properties fronting on Davenport Rd. are designated for intensification and the contextual physical reality of redevelopments along it have been approved during different planning regimes which have resulted in a more aggressive built form in keeping with evolving in-force Provincial and City public policy.
7. when one considers the area's entire existing and planned context as described in relevant City planning policy the revised proposal is located and organized to fit with its existing and/or planned context. It is massed and designed to fit harmoniously into the existing and/or planned context emerging along Davenport Rd.
8. it reflects the principles of good urban design in terms of transition to Neighbourhoods and provides an appropriate transition in scale to the low-rise properties to the immediate south and to the west of the subject lands while respecting the emerging pattern of tall buildings on the north side of Davenport Road.
9. the building has an appropriate separation distance of 7.5 m on the building's lower levels to a total stepback of 14.85 m at the top of the building. The

building design represents a creative transition in scale by using a series of geometric relationships which include many and varied building setbacks as the height of the building increases as well as giving careful consideration to the building's location and orientation.

10. the proposed tall mid-rise building uses creative massing and architectural articulation to meet the challenges of addressing two major streets. It is designed to appropriately create a corner condition by conferring necessary prominence while the townhouse element helps create a transition to the lower scaled residential areas. The 7-storey streetwall along Davenport Rd is in keeping with existing context while the 3-storey townhouse element respects the existing context along Bedford Rd. This results in a condition that allows the revised proposal to fit harmoniously within the range of existing and approved building heights in the surrounding context.
11. transition is appropriately measured to all sides of the subject site not just to the properties to the south. The revised proposal gives proper consideration to adjacent properties where impacts are the greatest. The utmost care is taken by the Appellant to mitigate impacts on 277 Davenport Rd and 139 Bedford Rd.
12. the front street wall is important and serves to frame the street and assist in one's perception of height. This is achieved with a seven-storey front façade along Davenport Rd and minimum three storey height along Bedford Rd. Along both street facades, there are a series of setbacks designed to mitigate the perception of height and create a more comfortable pedestrian environment.
13. the revised proposal can co-exist in harmony with the adjacent low rise residential areas because it provides a series of appropriate setbacks, setbacks and stepping down of height; establishes an appropriate transition of scale between the existing Neighbourhoods and the emerging pattern of

tall buildings on the north side of Davenport Road, the design of stepbacks and the placement of balconies are intended to maintain an appropriate condition to ensure light and privacy for residents in adjacent neighbourhoods.

14. shadow impacts on the surrounding residential areas are adequately limited and there are no shadow impacts on the neighbourhood to the south or that would adversely affect the utility of any parks in the area.

*City OP Amendments Adopted after the Proposal is Deemed a Complete Application*

[107] There have been two updates to the City OP that may be relevant to the matters before the Tribunal. Neither were in-force at the time the application was deemed complete by the City and as such do not apply. Both OPA's generally speak to changes in urban design principles as they continue to evolve.

[108] OPA 479 relates to the Public Realm policies by making reference to the fact that it is a "fundamental organizing element of the city and its Neighbourhoods", each element of the public realm "has its own roles and responsibilities and "development will enhance and extend, where appropriate, a high quality public realm".

[109] OPA 480 brings into effect updated Built Form policy (City OP s. 3.1.2) and Built Form – Building Type (City OP s. 3.1.3). This OPA served to add to the 'continuing evolution of urban design principles' and adds clarity regarding transition to reduce abrupt transition by ensuring it be more gradual and sensitive to adjacent land uses.

[110] Conformity to these two OPA's is in the City's procedural order's issue list #4 but it called no urban design witness to assist the Tribunal. The planner for the City did spend time in his testimony and witness statement describing the changes but deferred all urban design matters to those witnesses.

[111] Mr. Spaziani stated his alternative design addresses the changes in both OPA



479 and 480 better than the revised proposal. Mr. Kasprzak through his testimony opined that the OPA's are not determinative but he did have appropriate regard for both when finalizing the urban design elements of the revised proposal.

[112] The Tribunal prefers Mr. Kasprzak's evidence that the revised proposal has appropriate regard for OPAs 479 and 480.

### *Required OPA*

[113] All planning witnesses agreed that both the revised proposal and the alternative presented by Mr. Spaziani required all the subject lands to be redesignated and the most appropriate method to do this is by a SASP. Exactly how this OPA is implemented did become an issue at the hearing. The dispute is whether it is better to:

1. redesignate the entire site as Mixed Use Areas 3 – Main Street with a corresponding SASP to permit development on the site; or
2. leave the underlying designations of 'Mixed Use 3 – Main Street' and 'Neighbourhood' with a corresponding SASP to permit development on the site.

[114] Evidence from all planners demonstrated that the City has considerable experience in dealing with comparable applications and it's preferred SASP methodology is to leave the underlying designations intact and carefully construct a SASP to permit a proposed development. Mr. Gladki is adamant and disagrees with the City's approach. If either alternative is approved, he said the entire site should be redesignated to Mixed Use 3.

[115] The Tribunal heard no evidence that there are ongoing issues with the method or applicability of other SASPs that have been previously approved by the City and agrees that maintaining the underlying designations of 'Mixed Use 3 – Main Street' and 'Neighbourhood' with an implementing SASP is proper. The appropriate underlying

designation for the three lots fronting on Bedford Rd is that of Neighbourhood. Both the required OPA and ZBA will be constructed using the 'Revised Plans for LPAT' as illustrated in Exhibit 6.

### *City Guidelines*

[116] The City has a robust series of Guidelines which are intended to be reference tools to assist and provide design direction to redevelopment applications in the City. None are statutory policy documents but do serve to complement and add detail to City Official Plan policy. They inform Official Plan policy and because of the diversity of the City's existing built form, must be applied in a flexible manner in keeping with the area's built form context. Two important considerations became clear to the Tribunal as the evidence is presented by the various witnesses:

1. all witnesses either through examination or cross-examination described the revised proposal as a 'hybrid' building typology that is finding its way into the City's 'Downtown Urban Growth Centre' and is often described as a 'tall mid-rise'. Therefore, it does not readily fit into any of the City's built form guidelines; and
2. neither the revised proposal nor the alternative design presented by the Ratepayers Associations met the City's built form guidelines evaluated during the hearing. This evidentiary fact leads to the conclusion that these guidelines either as a whole or individually have limited value or relevance in this matter.

[117] The various urban design and planning witnesses drew to the attention of the Tribunal in their considerable testimony the following guidelines being:

1. Mid-Rise Performance Standards (2010).
2. Mid-Rise Performance Standards Addendum (2016)

3. Townhouse and Low Rise Apartment Guidelines (2018).
4. Tall Building Guidelines (2013).
5. Downtown Tall Buildings: Vision and Supplementary Design Guidelines (2013).
6. the East Annex Heritage Conservation District (general guidelines for the District).
7. Streetscape Manual User Guide.
8. Growing Up: Planning for Children in New Vertical Communities.

[118] The Tribunal finds the evidence clearly demonstrates the revised proposal is of a 'hybrid' typology as are the comparators assessed during the hearing. Hence, the built form guidelines may be somewhat instructive but frankly provide only limited guidance to the design of a 'hybrid' building. Therefore, a review against the in force Official Plan policies are seminal in this matter.

[119] The Tribunal makes note of one guideline that articulates an important priority of both the Province and City being the provision of a range and mix of housing options and densities required to meet projected requirements of current and future residents: Growing Up: Planning for Children in New Vertical Communities. Mr. Huynh in his witness statement stated that the revised proposal 'appropriately addresses the need of young families as 55% two-bedroom and 10% three-bedroom units exceed the unit mix contemplated in these guidelines. Evidence showed that these units, while accommodating families, will not likely 'enhance affordability'.

## **OTHER CONSIDERATIONS**

*The East Annex Heritage Conservation District (By-law No. 1194-0520)*

[120] Issue # 9 put forward by the Ratepayers Associations questioned conformity of the revised proposal to the relevant HCD policies. The Tribunal is advised that a Heritage Impact Assessment was completed by GBCA Architects (dated October 17, 2019) and Mr. Gladki introduced the East Annex HCD study (Exhibit 28). No qualified heritage evidence is called by any party. Relevant conclusions of the GBCA study as identified in Mr. Huynh's witness statement include:

1. 141 – 145 Bedford Rd. are category “X” buildings which do not have heritage value as their “character is substantially diminished” and the HCD policies do not prohibit the demolition of category “X” buildings.
2. the “impacts on the adjacent heritage resources would be primarily visual in nature by the addition of the new and would not negate the cultural heritage value of adjacent heritage resources or the East Annex HCD”.
3. the “proposed building will become an appropriate northern gateway to the East Annex HCD”.

### *Rental Housing Demolition Application*

[121] The City has before it an application (File No. 19 244085 STE 11) under the Rental Housing Demolition and Conversion By-law (By-law No. 885-2007) for the demolition of the six existing rental dwelling units located at 141-145 Bedford Rd. The Tribunal heard no evidence in relationship to the demolition application but notes it remains a condition found in City Council directions to staff at Report TE 20.6. In the preliminary staff report to City Council dated January 20, 2020 (Exhibit 1b Tab 19) reference is made to the existing rental units as follows: “All six rental dwelling units are classified as high-end rental units based on their rents at the time of the application. Because all six units are high-end units, replacement of the existing rental units is not required per Official Plan Policy 3.2.1.6.a”. Staff go on to say that they “will continue to work with the applicant and tenants to determine an acceptable tenant relocation and assistance plan.”

[122] The Tribunal finds that the removal of the existing structures at 141-145 Bedford Rd. is appropriate as they are identified as not having heritage value and the addition of the revised proposal would not “negate the cultural heritage value of adjacent heritage resources of the East Annex HCD”.

*Tribunal Requested to Withhold a Final Decision*

[123] The City requests that, should the Tribunal choose to approve the appeal in part, conditions should be imposed in keeping with City Council directions to staff at Report TE 20.6 as found at Exhibit 1 Tab 20, the final Order should be withheld until the conditions set out in TE 20.6 have been met to the satisfaction of all parties. Conditions include: an OPA and ZBA that is satisfactory to the Chief Planner, an updated functional servicing and stormwater management report including financial securities; an updated Hydrogeological Report; community benefits and other matters being secured in an executed Section 37 Agreement; and approval of the Rental Housing Demolition Application for the six existing rental dwelling units at 141-145 Bedford Rd. The Tribunal agrees with this request.

## **CONCLUSIONS**

[124] For all the foregoing reasons the Tribunal finds that the revised proposal represents good planning and is in the public interest. It is consistent with the PPS 2020, it conforms to the Growth Plan 2019, is in conformity with the City OP and the Downtown Plan.

[125] The evidence before the Tribunal is clear on one important point. The revised proposal represents a ‘hybrid’ building typology that is finding its way into the City’s ‘Downtown Urban Growth Centre’. As such, it does not readily fit into any of the various City built form guidelines presented at this hearing. Therefore, it is correctly evaluated against the Official Plan policy in place at the time the application is deemed complete by the City.

[126] The Tribunal finds that the City has well established planning policy for the area and is capably facing the challenges of managing change in the rapidly evolving Downtown Urban Growth Centre. The Official Plan policy framework is thoroughly tested during this hearing and proved to be sufficiently robust to give proper consideration to all relevant matters and issues presented during its course. The City's Downtown has such a diverse and varied built form, it seems appropriate and proper that applications of this type be evaluated on their merits against determinative Official or Secondary Plan policy as is done in this proceeding.

[127] The Appellants have appealed both an OPA and ZBA. Although no instruments are before the Tribunal, the revised proposal is illustrated by a complete series of plan found in Exhibit 6 – 'Revised Plans for LPAT'. Much of the evidence from the City and Ratepayers Associations focused on City OP policy relating to Neighbourhoods and criteria that require new development within established Neighbourhoods to respect and reinforce the existing physical character and prevailing patterns of development. As previously stated, the Tribunal in its evaluation of matters before it must answer to more than "with what Neighbourhood restrictions are in the Plan when an amendment to the Plan is sought". Evidence in this proceeding is extensive and thoroughly addressed all relevant policy considerations which is fully taken into account. Evidence also demonstrates that these policies have been very successful in the interior of the neighbourhood and development on the edges like the revised proposal, respects the existing character of the area and serves to reinforce the stability of the neighbourhood.

[128] The area around the subject site has a varied existing context and the planned context is beginning to be established and take shape. The Tribunal agrees that the revised proposal is in keeping with and complements the existing and planned context. It is therefore very appropriate that existing and proposed development located to the North of the subject site be considered when evaluating the revised proposal. The rationalization of how tall buildings found their way onto the north side of Davenport Rd. is interesting, but their existence cannot be ignored. Official Plan policies are clearly working in the interior of neighbourhood and the visual evidence demonstrates it

remains stable. However, as determined by the planned context efforts to intensify on the extremities adjacent to major roads that are well served by transit are evolving to sensitive higher density development.

[129] Ontario has a provincially led planning policy regime and, the responsibility of being consistent with or complying to Provincial policy is not deferred to the municipal Official Plan. The revised proposal speaks directly to many, if not all the relevant, policy objectives of the Province whether it be focusing growth in designated urban centres, encouraging compact urban form, making efficient use of land, infrastructure and existing transit resources, and providing a range and mix of housing units that includes a large percentage of much needed family sized units.

[130] The Tribunal finds that the revised proposal addresses many of the public policy objectives of the City OP and Downtown Plan and when one balances all those heard in testimony, conformity with these documents is clear. Important policy objectives (Built Form aside) the revised proposal address directly include:

1. it is located in the Downtown which is identified as an Urban Growth Centre and a Strategic Growth Area and a portion of the subject site is designated Mixed Use Areas where growth is encouraged with the highest density of development directed to those areas close to existing or planned transit stations. The express intent is to have an urban form that will optimize infrastructure, particularly within 500-800 m of existing or planned rapid transit stations.
2. the integration of land use and transit is encouraged subject to an appropriate form of development and supports active transportation, transportation demand management contributing to the reduction of auto dependency.
3. an important policy agenda of the City is to provide for a full range of housing, in terms of form, tenure and affordability across the City and within

neighbourhoods to meet the various requirements of a diverse population now and in the future. A clear priority is the provision of two and three-bedroom units that are suitable for families.

4. a comprehensive review of the existing and/or planned context is required in this matter. The existing context found immediately north of the subject lands is relevant. One may rationalize the obvious differences but cannot largely ignore its existence. Properties fronting on Davenport Rd. are designated for intensification and the contextual physical reality of redevelopment along north and south Davenport Rd must be taken into account and evidence demonstrated the result is a progressively more aggressive built form in keeping with evolving in-force Provincial and City public policy.
5. when one considers the areas entire existing and planned context as described in relevant City planning policy the revised proposal is located and organized to fit with its existing and/or planned context. Its massing and design allow it to fit harmoniously into the existing and emerging planned context.

[131] The Tribunal finds the revised proposal reflects the principles of good urban design in terms of transition to Neighbourhoods and provides an appropriate transition in scale to the low-rise properties to the immediate south and to the west of the subject lands while respecting the emerging pattern of tall buildings on the north side of Davenport Road. Important built form findings include:

1. the building as designed has appropriate separation distances, represents a creative transition in scale by using a series of geometric relationships through setbacks at various building heights, and careful consideration to the building's location and orientation.
2. the building uses creative massing and architectural articulation to meet the challenges of addressing two major streets and the prominence of this corner



while the townhouse element helps create a transition to the lower scaled residential areas. The streetwall along Davenport Rd is in keeping with existing context and the 3-storey townhouse element respects the existing context along Bedford Rd. This treatment allows the revised proposal to fit harmoniously within the range of existing and approved building heights in the surrounding context.

3. transition is appropriately measured to all sides of the subject site not just to the properties to the south and mitigates impacts to adjacent properties (277 Davenport Rd and 139 Bedford Rd).
4. the front street wall serves to frame the street and there are a series of stepbacks designed to mitigate the perception of height and create a more comfortable pedestrian environment.
5. shadow impacts on the surrounding residential areas are adequately limited and there are no shadow impacts on the neighbourhood to the south.
6. the building has been carefully designed to co-exist in harmony with the adjacent low rise residential areas. Design features include: a series of appropriate setbacks, stepbacks and stepping down of height; establishing a transition of scale between the existing Neighbourhoods and the emerging pattern of tall buildings on the north side of Davenport Road. The design of stepbacks and the placement of balconies are intended to maintain an appropriate condition to ensure light and privacy for residents in Neighbourhoods.

[132] The Tribunal agrees with Messrs. Huynh and Kasprzak evidence opining that the OPA's 479 and 480 are not determinative and the revised proposal has appropriate regard for both.

[133] The Tribunal finds that the revised proposal is of a 'hybrid' typology and

therefore, the various built form guidelines are instructive but frankly provide only limited guidance to the design of a 'hybrid' building. Neither of the two alternatives put forward during the hearing would meet most of the tests of any guideline and witnesses were very good at pointing out how their particular proposal is superior, or the other was deficient. Without a relevant built form guideline, the Tribunal's analysis is pursuant to the in force Official Plan policies which are seminal in this matter.

[134] The Tribunal agrees that one City guideline is relevant. The Growing Up: Planning for Children in New Vertical Communities guideline provides important insight and detail with respect to the City priority, being the provision of a range and mix of housing options and densities required to meet projected requirements of current and future residents. The revised proposal will have a minimum of 55% two and 10% three-bedroom units that exceed the unit mix contemplated in these guidelines.

[135] The Tribunal notes the decision of City Council not to approve this application. The courts (*Minto Communities Inc. v. Ottawa (City)*, 2009 CarswellOnt 7349) determined that the Municipal Council is the first to determine the public interest but "...the appeal process before the Ontario Municipal Board is not merely a *lis* between parties, but a process requiring the OMB to exercise its public interest mandate..."

[136] The Tribunal is not presented with a draft ZBA to implement the revised proposal but did receive a list of conditions requested by City Council should the Tribunal approve what is proposed. It is evident the Applicant has a substantial path of City approvals to follow before a Final Order may be issued. The Tribunal is prepared to give an Interim Order approving the revised proposal. It is therefore appropriate, that City conditions found in City Council directions to staff at Report TE 20.6 as found at Exhibit 1 Tab 20, be included as part of this Interim Order to ensure all necessary matters and requirements are met prior to a Final Order being issued.

## **ORDER**

[137] Accordingly, the Tribunal Orders:

- a) **THAT** the appeal is allowed in part and approves in principle the proposed development of the properties known municipally in the City of Toronto as 287 Davenport Road and 141 – 145 Bedford Road in accordance with the plans dated March 19, 2021 prepared by Audax Architecture Inc. and entered as Exhibit 6 to this proceeding.
- b) **THAT** the final Order be withheld until such time as the Tribunal has been advised by the City Solicitor that upon consent of the parties pending the:
1. satisfaction of the pre-conditions set out in the City resolution TE 20.6 Tab 20 Exhibit 1 found in Attachment 1: and
  2. the Official Plan Amendment and Zoning By-law Amendment being in final form satisfactory to the Parties and to the Tribunal.
- c) **THAT** upon receipt of such written confirmation, the Final Order will issue.
- d) **THAT** the Counsel for Burnac Enterprises Inc. will advise the Tribunal no later than **Monday, January 10, 2022**, regarding the status of the Official Plan Amendment and Zoning By-law Amendment if these instruments have not been finalized.

[138] The Panel Members will remain seized for the purposes of the issuance of the Final Order and with respect to the Provisional Interim Orders set out above. In the event any matters arise, which are related to the implementation of this Interim Order, the Tribunal may be spoken to.

*“Bryan W. Tuckey”*

BRYAN W. TUCKEY  
MEMBER

*“T.F. Ng”*

T.F. NG  
MEMBER

**Ontario Land Tribunal**

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The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal (“Tribunal”). Any reference to the preceding tribunals or the former Ontario Municipal Board is deemed to be a reference to the Tribunal.

## ATTACHMENT 1



## Tracking Status

- [City Council](#) adopted this item on November 25, 2020 without amendments and without debate.
- This item was considered by the [Toronto and East York Community Council](#) on November 10, 2020 and adopted without amendment. It will be considered by City Council on November 25, 2020.

## City Council consideration on November 25, 2020

TE20.6	ACTION	Adopted on Consent		Ward: 11
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### 287 Davenport Road and 141-145 Bedford Road - Official Plan and Zoning Amendment Application and Rental Housing Demolition Application - Request for Direction Report

#### City Council Decision

City Council on November 25 and 26, 2020, adopted the following:

1. City Council direct the City Solicitor, the City Planning Staff and other appropriate City staff to attend the Local Planning Appeal Tribunal hearing to oppose the Official Plan amendment and Zoning By-law amendment for 287 Davenport Road and 141-145 Bedford Road (File 19 244078 STE 11 OZ) application as proposed.
2. City Council defer making a decision at this time on the Rental Housing Demolition Application (Application File 19 244085 STE 11 RH) under Chapter 667 of the Toronto Municipal Code pursuant to Section 111 of the City of Toronto Act, 2006, which allows for the demolition of the six (6) existing rental dwelling units at 141-145 Bedford Road and instruct staff, if necessary, to report on the Rental Housing Demolition Application to City Council at such time as a Local Planning Appeal Tribunal decision has been issued regarding the Official Plan and Zoning By-law Amendment application appeal for the lands at 287 Davenport Road and 141-145 Bedford Road.
3. In the event that the Local Planning Appeal Tribunal allows the appeal in whole or in part, City Council authorize the City Solicitor to request the Local Planning Appeal Tribunal to withhold its final Order to approve the Official Plan Amendment and Zoning By-law amendment applications until such time as:
  - a. the City and the owner have presented the Local Planning Appeal Tribunal an Official Plan Amendment and Zoning By-law Amendment that implements the decision of the

Local Planning Appeal Tribunal in a form and substance satisfactory to the Chief Planner and Executive Director, City Planning and the City Solicitor, including securing rental housing matters, such as a tenant relocation and assistance plan;

b. the owner has provided an updated functional servicing and stormwater management report, satisfactory to the Chief Engineer and Executive Director, Engineering and Construction Services, including securing (and the provision of any financial securities) for any identified and/or required improvements and/or upgrades to municipal infrastructure;

c. the owner has provided an updated Hydrogeological Report and supporting documents addressing any on-site groundwater to the satisfaction of the General Manager, Toronto Water;

d. community benefits and other matters in support of the development as determined appropriate, including rental housing matters, are secured in a Section 37 Agreement executed by the owner and registered on title to the satisfaction of the Chief Planner and Executive Director, City Planning and the City Solicitor; and

e. City Council, or the Chief Planner and Executive Director, City Planning, where authorized to do so, has approved the Rental Housing Demolition Application (Application File 19 244085 STE 11 RH) in accordance with Chapter 667 of the Toronto Municipal Code and pursuant to Section 111 of the City of Toronto Act, 2006, which allows for the demolition of the six (6) existing rental dwelling units at 141-145 Bedford Road.

### **Background Information (Community Council)**

(October 16, 2020) Report and Attachments 1-11 from the Director, Community Planning, Toronto and East York District - 287 Davenport Road and 141-145 Bedford Road - Official Plan and Zoning Amendment Application and Rental Housing Demolition Application - Request for Direction Report

(<http://www.toronto.ca/legdocs/mmis/2020/te/bgrd/backgroundfile-157630.pdf>)

### **Communications (Community Council)**

(November 10, 2020) E-mail from Josh Fullan (TE.New.TE20.6.1)

## **Toronto and East York Community Council consideration on November 10, 2020**

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Source: Toronto City Clerk at [www.toronto.ca/council](http://www.toronto.ca/council)