

# PUBLIC ATTACHMENT 1

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



**ISSUE DATE:** December 21, 2020

**CASE NO(S):** PL180105

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

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

Applicant and Appellant:	Latch Developments Ltd.
Subject:	Application to amend the Etobicoke Zoning Code – Refusal or neglect of the City of Toronto to make a decision
Existing Zoning:	Limited Commercial – Avenues Zone (AV)
Proposed Zoning:	Site Specific (To be determined)
Purpose:	To permit a 14-storey mixed-use development
Property Address/Description:	859 The Queensway
Municipality:	City of Toronto
Municipality File No.:	17 237625 WET 05 OZ
OMB Case No.:	PL180105
OMB File No.:	PL180105
OMB Case Name:	Latch Developments Ltd. v. Toronto (City)

**Heard:** October 26 to 30, 2020 by video hearing (“VH”)

### **APPEARANCES:**

#### **Parties**

#### **Counsel**

Latch Developments Ltd. (“Applicant”)

D. Bronskill / R. Oster (student-at-law)

City of Toronto (“City”)

A. Suriano

## **DECISION DELIVERED BY BLAIR S. TAYLOR AND INTERIM ORDER OF THE TRIBUNAL**

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### **INTRODUCTION**

[1] The matter before the Tribunal concerns the appeal of a site specific rezoning application for the lands known municipally as 859 The Queensway (“Subject Lands”) seeking approval for a 14 storey mid-rise building.

### **CONTEXT**

[2] The Subject Lands are located on the south side of The Queensway between Royal York Road and Islington Avenue. The Subject Lands occupy the southwest corner of The Queensway and Plastics Avenue with 61 metres (“m”) of frontage on The Queensway and a depth of 62 m along Plastics Avenue. The Subject Lands were formerly occupied by an automotive repair facility with associated surface parking between the building and the front property line, but that building has since been demolished and the site is vacant.

[3] The Queensway is a major arterial street running east/west and has at the location of the Subject Lands, a designated 30 m right-of-way and there is frequent transit on The Queensway.

[4] The Gardiner Expressway runs parallel to The Queensway, but two blocks south of the Subject Lands, and is accessible by ramps at Islington Avenue.

[5] The Queensway at the Subject Lands might be characterized as a “main street” with neighbourhood retail and services available.

[6] Along the north side of The Queensway, and beyond the “main street” uses that front onto the Queensway, lie low-rise residential neighbourhoods.

[7] Immediately south of the Subject Lands is an industrial/employment area. To the southeast of the Subject Lands is a Costco store.

## **DEVELOPMENT PROPOSAL**

[8] The Applicant proposes to construct a mixed-use building consisting of retail uses at grade with residential apartments above, in an “L” shaped building. The frontage along The Queensway frontage will be occupied by ground level retail and then residential up to the 8<sup>th</sup> storey, with the building wrapping around the corner onto Plastics Avenue and there rising to a height of 14 storeys.

[9] Access is proposed off Plastics Avenue into firstly a loading area, then a ramp to underground parking, and then at-grade surface parking for the retail space. The surface parking would occupy more than 50% of the width of the Subject Lands.

[10] The City failed to make a decision on the Applicant’s zoning by-law amendment application (“ZBA”) and the Applicant appealed to the Tribunal.

## **THE ISSUES**

[11] The primary issue concerns building height, and specifically whether an additional 8 storeys should be allowed over the as-of-right zoning of 6 storeys. Inherent in that issue is also a dispute with regard to urban design, massing, setbacks and stepbacks and of course this involves the consideration of the proposed development’s “fit” with the existing and planned context.

[12] The City contends that the development proposal is a “tall” building (i.e. height in excess of the right-of-way for The Queensway), and that as there are no height and density limits in the Official Plan, that height and density limits of the area zoning that implement the Official Plan, will be a “benchmark” for the assessment of such development applications: i.e. 6 storeys.

[13] The Applicant contends that the Avenue Study completed for The Queensway dates from the year 2000, that the zoning by-law was enacted by council on June 26, 2003 significantly predating both the Provincial Policy Statement 2020 (“PPS”) and A Place to Grow: the Growth Plan for the Greater Golden Horseshoe 2020 (“Growth Plan”), and that the Tribunal is statutorily bound to render a decision that is consistent with the PPS and conforms to the Growth Plan.

## **DECISION**

[14] For the reasons set out below, the Tribunal finds that the development proposal for 14 storeys in accordance with the plans and drawings filed in Exhibit 11, do not satisfy the policy regime in such a manner as to warrant outright approval.

[15] Rather than deny the development application and force the Applicant to restart the process, the Tribunal will instead enable the parties to have the opportunity to see if a settlement might be arrived at through the following directions from the Tribunal.

[16] The Tribunal finds that a development proposal based on the L shaped design in Exhibit 11, of up to and including 12 storeys in height, with an increased rear yard setback from the south property line of about 7.5 m, with a south elevation stepback of 2.5 m above the 4<sup>th</sup> floor, and the application of the angular plane to the Plastics Avenue frontage would satisfy the policy regime, provided of course that it achieves the angular plane to The Queensway and minimizes shadowing.

## THE POLICY REGIME

[17] Land use planning in Ontario is a policy led system: s. 1.1(b) of the *Planning Act* (“PA”).

[18] The matters of Provincial Interest that arise from s. 2 of the *PA* concern:

- h) orderly development;
- j) the adequate provision of a full range of housing including affordable housing;
- p) the appropriate location of growth and development;
- q) the promotion of development that is designed to be sustainable, to support public transit and to be oriented to pedestrians; and
- r) the promotion of a built form that is:
  - (i) well designed,
  - (ii) encourages a sense of place and,
  - (iii) provides for public spaces that are of high quality, safe, accessible, attractive and vibrant.

[19] The *PA* in s. 3(5) mandates this Tribunal decision shall be consistent with policy statements that are in effect on the date of the decision and shall conform with provincial plans that are in effect on the date of the decision. (Emphasis added)

[20] Additionally, of course the proposed ZBA must conform with the City’s Official Plan.

## THE DEVELOPMENT PROPOSAL

[21] The Applicant’s development proposal has gone through a number of iterations in order to try and find favour with the City, all to no avail. The most recent iteration of

the development proposal is found in Exhibit 11 to this hearing and it proposes a total gross floor area of 20,038.2 metres squared (“sq m”) of which the non-residential portion is 1,163 sq m and the residential portion is 18,875.2 sq m.

[22] The overall proposed height is 14 storeys. The proposed density is 5.22 F.S.I.

[23] Of interest to the City is the proposed residential bedroom count: the proposal has 1 bachelor/studio, 122 one bedroom units, 105 two bedroom units and 9 three bedroom units with a notation that 13 units have been designated as “paired units” that can be combined into three-bedroom units for a total of about 10% three-bedroom units.

[24] As noted above, the L shaped building occupies most of the frontage along The Queensway and extends southerly along Plastics Avenue.

[25] The 14 storey component of the development application is located towards the rear of the property along Plastics Avenue.

[26] On the ground level, at the rear, there is a large surface parking area for the retail component of the development.

[27] This L shaped building design with the setback of the taller 14 storey building element has its origins in The Queensway Avenue Study Appendix ii. This specifically is referenced in the Planning Justification Report by Urban Strategies Inc. dated September 21, 2017.

[28] That Planning Justification Report reproduces from Appendix ii the conceptual drawing and states that: “... the proposed development displays similar design characteristics to this portion of the recommended design for large sites.”

[29] The Planning Justification Report then provides this rationale:

In addition to a range of other factors the Study noted that setting back taller building elements, together with pedestrian scaled portions lining the street is one of the hallmarks of healthy streets (page 14). While the Study generally recommends a 6-storey height limit as being the most appropriate adjacent to low-rise housing (which is not the case for the subject property, adjacent as it is to commercial sites), it also acknowledged that taller buildings may be acceptable on sites with greater lot depths (greater than 60 m deep, such as the subject property) (page 51) where the street wall is set back above six storeys, micro-climate impacts are acceptable, and if the taller buildings are not near low-rise residential buildings (page 51). The subject property meets these criteria.

[30] Of particular concern to the City are the following from the Mid-Rise Design Performance Standards:

1. maximum height;
- 4B. front façade: pedestrian perception step back;
- 5C. the rear transition to employment area;
6. corner sites and angular plane;
- 8B. the limiting blank side wall;
- 8C. the step backs at upper storey; and
13. roofs and roofscapes.

[31] Finally, the City is concerned that approval of this development application would set a potential negative precedent for other development applications already filed.

## **THE QUEENSWAY AVENUE STUDY**

[32] Exhibit 1, Tab 8 contains: The Queensway/The Avenues/City of Toronto Incremental Growth Study/Phase II/February 2001 (“Study”).

[33] The Study itself refers to a July 2000 directions report entitled “Toronto at the Crossroads Shaping Our Future” (“Directions Report”).

[34] That Directions Report introduced the Avenues and their potential.

[35] The Study cites the following from the Directions Report:

On major arterial avenues and adjacent plazas and malls, new buildings are erected incrementally, gradually changing the character of the street or district over the years. There are many of these areas and they are often underdeveloped at one or two stories, with vast expanses of front-yard parking. They pose a tremendous opportunity for reurbanization and residential intensification along major transit routes without having a big impact on established residential neighbourhoods. This is especially true on post-war arterial streets where there are more large lots that lend themselves to redevelopment without difficult land assembly.

[36] The Study then, under the section Understanding Healthy Streets in Order to Understand Healthy Avenues, highlights a number of characteristics of healthy streets including:

Positive building-street relationships refer to the ways in which buildings and streets work together to create a public realm which is well defined, pleasant to be in, comfortable in size and not crowded or overshadowed by excessive height. Protection from the elements by canopies or arcades, special measures to deal with the wind generated by sheer building faces and easily recognized building entrances are also keys to good building-street relationships. The ratio of building height to the width of the distance to a building edge on the opposite side of the street is close to one to one. The potential negative impacts of very tall buildings are often overcome by building set-backs so that the portion of the building close to the street is in scale with the width of the distance to the facing building.

[37] The Study outlines its Study Area which extends from Mimico Creek on the east to Kipling Avenue on the west. Within that Study Area, there are three distinct Sub Areas: the first being Mimico Creek to Royal York Road, the second being from Royal York Road to Islington Avenue (Subject Lands), and the third is Islington Avenue to Kipling Avenue.

[38] Within Sub Area 2, the Study notes that there are a number of sites which seem suitable for redevelopment, on deep lots on the south side of the street.



[39] Within Sub Area 3, the Study notes that the south side of The Queensway is dominated by three large land holdings: the Kipling Queensway Mall, the Queenston Square development site, and the Glaxco site which was then being redeveloped for a multiplex theatre with surface parking.

[40] Turning to the issue of land use, the Study recommends mixed-use development as being desirable throughout the Study Area with the street-related retail shops and/or community services on the ground floor and substantial residential development on the floors above.

[41] Turning to the issue of density and setbacks, the Study recommends consistently aligned buildings along The Queensway frontage. To accomplish this the Study proposes the use of an angular plane:

In order to assist in accomplishing this objective, while allowing for an appropriate set back and angular plane from adjacent low density residential development, we are proposing a building zoned for infill development within approximately 35 metres of the front property line. (Emphasis added)

The Study then states that Appendix ii to the Study has a discussion on the particular issues raised by large, deep lots, and has guidelines for developing those kinds of sites.

[42] Under the heading “Scale and Fit”, the Study recommends a 6 storey height as being appropriate for regularly sized parcel depth. The justification for this is that it promotes intensification, it provides sufficient economy for underground parking and then it states:

It is the maximum approximate height where there is adjacent low-rise housing, based on the use of a 45 degree angular plane to establish an appropriate relationship between low rise housing and higher density street- related development. (Emphasis added)

However, the Study clearly distinguishes the regularly sized lots to lots with greater depths:

In certain cases where there are larger land assemblies with greater lot depths (i.e. more than 60 metres) taller buildings may be acceptable if all the following criteria are met:

- i) the street scale of 6 storeys or less is achieved on the Avenue frontage by setting back building elements above the site;
- ii) heights can be greater when the increased height is a product of providing consolidated open space effectively;
- iii) taller building elements are set back from street frontages;
- iv) taller buildings are not close to low-rise residential buildings on adjacent residential streets...;
- v) micro-climate impacts, shade and wind conditions are proven acceptable on public streets; and
- vi) slab form buildings higher than six storeys are not permitted.”  
(Emphasis added)

[43] Appendix ii to the Study provides guidelines for the redevelopment of larger, deep sites. Those large sites, the appendix notes, are typically deep (i.e. deeper than 40 or 50 m) and may be irregularly shaped in comparison to the neighbouring sites. Larger sites also typically require effective subdivision to become understandable, accessible, serviceable and to provide necessary amenities.

[44] The Appendix ii guidelines go on to point out that there are broad objectives to be achieved demonstrated in a conceptual design contained within Appendix ii. The broad objectives include:

- a. that the maximum as-of-right development potential should not generally be extended to the entire depth of the large site;
- b. development potential should not generally be shifted to the interior or the rear of the site such as the frontage is left with insufficient development;
- c. that side street frontages should not be vacant or developed with buildings incompatible to adjacent residential structures;

- d. large sites should result in the creation of a simple and integrated public realm which allows visitors to understand and find buildings deeper within the site; and
- e. higher buildings should be held back from all site perimeters and the shadow and wind effects do not affect offsite streets and buildings.

[45] These general objectives are followed by a conceptual drawing of a large rectangular site, depicting two L shaped buildings fronting onto an Avenue, with one of the L wings containing a higher building held back from the Avenue frontage.

### **THE QUEENSWAY AVENUE STUDY – THE PHASE 3 IMPLEMENTATION REPORT DATED MAY 2003**

[46] The City staff report under the heading “Building Heights” states:

The concept plan prepared by the consultant provides for a building height of six storeys, based on the lot depth of 35 metres (115 feet) and in cases where there are deeper lots, building heights may be increased. The six storey height will allow the avenues to develop a building mass along the street edge that will foster the evolution of the avenue.  
(Emphasis added)

[47] The report notes that there are three arterial intersections: Royal York and The Queensway, Islington and The Queensway and Kipling and The Queensway. Planning staff recommended that building heights of 8 storeys be allowed for corner lots that at these prime intersections.

### **ZONING BY-LAW NO. 514-2003**

[48] The City Planning Staff sent, in parallel fashion, its April 14, 2003 report to City Council outlining implementation strategies for The Queensway Study Area and the recommended zoning by-law.

[49] Of note is the following discussion with regard to Building Heights.

The concept plan prepared by the consultant provides for a building height of 6 storeys, based on a lot depth of 35 metres (115 feet), and in cases where there are deeper lots, building heights may be increased. The 6 storey height will allow the Avenues to develop a building mass along the street edge that will foster the evolution of the Avenue.

Even though this stretch of The Queensway is long and linear, there are significant intersections along this corridor that have potential for increased building heights. Three major arterial roads that connect to The Queensway study area are Royal York Road, Islington Road, and Kipling Avenue. All three roads have a connection to the Bloor-Danforth subway line, via surface transit. These roads provide an entranceway onto the Avenue. (Emphasis added)

[50] In May of 2003, City Council passed Zoning By-law 514-2003 ("ZB") which is the in force and of effect zoning by-law for the Subject Lands. Building heights are set out in diagram fashion and 6 storeys is the general height, with 8 storeys allowed at the significant intersections. The Subject Lands, not being at a significant intersection, are zoned with a 6 storey height.

[51] With regard to lot frontage, the ZB provides that a minimum of 24 m shall be required in order to permit any development having a building height of greater than 6 storeys.

[52] Regarding building setbacks, the ZB allows a minimum front yard setback of 0 m, the side yard setbacks of 0 m, and a rear yard landscape strip is required at a minimum of 2 m where the site abuts a second density residential or third density residential zone. There is no minimum or maximum lot coverage.

## **QUEENSWAY DESIGN GUIDELINES**

[53] The City also has The Queensway Design Guidelines ("Q Guidelines") which appear to date from or about the passage of the ZB.

[54] With regard to large sites, the Q Guidelines note that they will be subject to an urban design concept plan that will look for opportunities to create new secondary streets, parks and other spaces.

[55] The Q Guidelines provide that buildings will: provide a uniform street edge; that new development will respect adjacent single family development; that new developments will be subject to the application of 45 degree angular planes from the adjacent residential rear lot line; that buildings will occupy at least 70% of the Avenue frontage; that all buildings will have main entrances onto The Queensway and the buildings will not create adverse shadows on adjacent public and private outdoor spaces and will maximize sunlight protection to the sidewalks.

## **THE HEARING**

[56] At the hearing, the only parties were the City and the Applicant. No residents or no residents' associations attended, nor any adjacent landowners, or business groups.

[57] The Applicant called two witnesses: Emily Riesman, an expert in land use planning and Ann McIlroy, an expert in urban design.

[58] The City called Nicole Ivanov, the Acting Senior Planner for the Community Planning District of Etobicoke/York and Jack Krubinik, the City's Senior Planner in Urban Design.

[59] The planning witnesses gave considerable evidence identifying the recent developments and approvals on The Queensway.

[60] For example, Exhibit 9, prepared by the Applicant's planner at page 12 depicts the proposed and recent developments along The Queensway with their either

approved or requested building heights and a fulsome depiction of the built, approved or proposed developments in Sub Area 3.

[61] The City planner's Exhibit 2 at page 14 provides a similar depiction of the built and approved applications along The Queensway but does not illustrate the development approvals that have taken place south of The Queensway in direct proximity to the Gardiner Expressway, in which there are approved developments (at 60 m, 70 m, 95.2 m, 140.2 m and 108.3 m) and a development proposal mid-block for 69 m and 84 m.

[62] The Tribunal has, from this evidence considered a number of criteria: Sub Area character, right-of-way widths, heights, proximity to a major intersection, and whether located on the north or south side of The Queensway.

[63] All of this is important for a number of reasons:

- a. Generally, north of The Queensway there are low-rise residential lands that abut the Avenue designated lands on The Queensway;
- b. The Study recognizes three Sub Areas and describes their character;
- c. The right-of-way is different in Sub Area 2 than Sub Area 3, the latter of which is larger at 36 m;
- d. Sub Area 3 is located between two significant intersections: Islington Avenue and Kipling Avenue;
- e. The Subject Lands are at a local intersection;
- f. Sub Area 3 has a Site and Area Specific Policy 6 bounded by The Queensway, St. Lawrence Avenue, and Zorra Street, and a Mixed Use Areas Official Plan designation extending from The Queensway to the Gardiner Expressway and from St. Lawrence Avenue to Kipling Avenue;

- g. Whereas Sub Area 2 has either Core Employment Areas or General Employment Area designations south of the band of Mixed Use Areas designated lands on the south side of The Queensway.

[64] To the Tribunal, the development projects on the north side of The Queensway are readily distinguishable from those on the south side due to their adjacency to the low-rise residential neighbourhoods.

[65] With regard to the projects on the south side of The Queensway, there are three of interest and note: 1061 to 1193, 1001 to 1037, and 1197 The Queensway and 8 Zorra Street. The latter has been approved with a height of 10 storeys and 33.6 m in height.

[66] 1061 to 1193 The Queensway is built with a height of 12 storeys at 39.5 m excluding the mechanical penthouse. This exceeds the 36 m right-of-way and thus according to the City's lexicon would constitute a "tall" building.

[67] 1001 to 1037 The Queensway is a City Council approved four building complex with heights of 9 storeys, 10 storeys, 10 storeys and 17 storeys and heights reflective of 32.9 m, 35.9 m, 35.0 m and 56.9 m. Again, the latter building at 56.9 m would in the City's lexicon constitute a "tall" building.

[68] With regard to 1197 the Queensway and 8 Zorra Street, it was the subject of a settlement with the City. Originally the application was for 13 storeys, but a settlement was reached and approved by the Tribunal in PL180191 at 10 storeys.

[69] With regard to the lands at 1061 to 1193 The Queensway, the Tribunal notes from Exhibit 13D, that the Committee of Adjustment approved in 2007 a minor variance permitting the height of 12 storeys and found this to be within the general intent and purpose of the Official Plan, met the general intent and purpose of the ZB, that the

variances were considered desirable and appropriate for the development of the land and in the opinion of the committee, the variances were minor.

[70] The development at 1001 to 1037 The Queensway is a much more recent approval. The initial application was for three of the buildings to be 12 storeys in height and the fourth (at the intersection of Islington Avenue and The Queensway) would be 20 storeys in height. The initial staff report found in Exhibit 13C indicates that the lands south of the development are the Cineplex Theatre lands and more specifically their parking area.

[71] The staff report indicates the following:

Although The Queensway Avenue Study is the prevailing policy document, the applicability of the Mid-Rise Design Guidelines will be evaluated through the review of this application.

[72] Finally with to regard this development proposal for 1001 to 1037 The Queensway, the Tribunal was shown Exhibit 13B being the (then) without prejudice settlement offer dated as of February 11, 2019 whereby the heights of the four towers were reduced to 9 storeys, 9 storeys, 10 storeys and 17 storeys respectively, and then approved by City Council.

[73] The site plan at Exhibit 13B illustrates that for the southwest corner of Islington Avenue and The Queensway, the corner element of the proposal would be at 11 storeys and 35 m rising but rising to the south to 17 storeys at 56.9 m with a mechanical penthouse of an additional 4 m.

[74] As the City lexicon references a “tall” building as having a height greater than the width of the adjacent right-of-way, both 1061 and 1001 The Queensway would constitute “tall” buildings. Notwithstanding that, they were either approved by the Committee of Adjustment through an unappealed minor variance or approved by City Council and the Mid-Rise Design Guidelines were used to evaluate them both.



## PROVINCIAL POLICY STATEMENT 2020

[75] As this decision of the Tribunal must be consistent with the PPS, the Tribunal will highlight the following policy directives.

[76] From Part IV of the Vision, the PPS focuses growth and development within urban settlement areas. It notes that land use must be carefully managed to accommodate appropriate development to meet the full range of current and future needs while achieving efficient development patterns that optimize the use of land resources and public investment and infrastructure and public services.

(Emphasis added)

[77] From Building Strong Healthy Communities, the PPS notes that these are sustained by promoting efficient development and land use patterns, accommodating an appropriate affordable and market based range and mix of residential types, promoting integration of land use planning growth management, transit supportive development, intensification and infrastructure planning to achieve cost effective development pattern. (Policy 1.1.1 a, b and e).

[78] In Settlement Areas, settlement areas shall be the focus of growth and development and land use patterns within settlement areas shall be based on densities and a mix of land uses which effectively use land and resources that are appropriate for the infrastructure and public services that are planned or available, support active transportation and are transit supportive. (Policy 1.1.3.1, and 1.1.3.2 a, b, e and f).

[79] The provisions in the Settlement Areas carry on providing that appropriate development standards should be promoted which facilitate intensification, redevelopment and compact form while avoiding a mitigating risk to public health and safety. (Policy 1.1.3.4) (Emphasis added).

[80] Under Coordination, the PPS directs that municipalities shall identify areas where growth or development will be directed including the identification of nodes and corridors linking those nodes. (Policy 1.2.4 d).

[81] Turning to Housing, the PPS directs that there will be an appropriate range and mix of housing options and densities (Policy 1.4.1) and planning authorities shall provide an appropriate range and mix of housing options and densities to meet market-based and affordable housing needs. (Policy 1.4.3).

[82] Finally, from the PPS the Tribunal will quote s. 4.6 in its entirety:

The official plan is the most important vehicle for implementation of this Provincial Policy Statement. Comprehensive, integrated and long-term planning is best achieved through official plans.

Official Plans shall identify provincial interests and set out appropriate land use designations and policies. To determine the significance of some natural heritage features and other resources, evaluation may be required.

In order to protect provincial interests, planning authorities shall keep their official plans up-to-date with this Provincial Policy Statement. The policies of this Provincial Policy Statement continue to apply after adoption or approval of an official plan. (Emphasis added)

## **A PLACE TO GROW: THE GROWTH PLAN FOR THE GREATER GOLDEN HORSESHOE 2020**

[83] The Growth Plan's guiding principles for how land is to be developed, how resources are to be managed, and how public dollars are to be invested, are based on a number of principles. First among those principles is the support for the achievement of complete communities that are designed to support healthy and active living and meet peoples' needs for daily living throughout an entire lifetime. Second is to prioritize intensification and higher densities in strategic growth areas to make efficient use of land and infrastructure for transit viability; and the fourth general principle is to support a

range and mix of housing options including additional residential units and affordable housing to serve all sizes of incomes and ages of households.

[84] The Context provisions of Where and How to Grow highlights the issue that many communities in the Greater Golden Horseshoe are facing issues with regard to housing affordability and that the Growth Plan helps to address that challenge by providing direction for a range and mix of housing options including residential units and affordable housing and in particular higher density housing options that can accommodate a range of household sizes and locations that can provide access to transit and other amenities.

[85] The Context provisions also contain direction that communities in larger urban centres need to grow transit supported densities, with walkable street configurations, that compact built form and intensification efforts go together with more effective transit and active transportation networks and are fundamental to where and how municipalities should grow. The Growth Plan then states:

It is important to optimize the use of the existing urban land supply as well as the building and housing stock to avoid over-designating land for future urban development while also providing flexibility for local decision-makers to respond to housing need and market demand. This plan's emphasis on optimizing the use of the existing urban land supply represents an intensification first approach to development and city-building, one which focuses on making better use of our existing infrastructure and public service facilities and less on continuously expanding the urban area. (Emphasis added)

[86] From there the Managing Growth provisions direct focusing growth in delineated built-up areas, in strategic growth areas, and locations with existing or planned transit with a priority on higher order transit where it exists or is planned (s. 2.2.1 ii (c)). Further municipalities are directed to undertake integrated planning which will provide direction for an urban form that will optimize infrastructure, particularly along transit and transportation corridors to support the achievement of complete communities through a more compact built form (s. 2.1.3 c); and if these policies are applied, this will achieve

complete communities that feature a diverse mix of land uses including residential and employment uses and will provide for a diverse range and mix of housing options.

(s. 4 c)

[87] Under s. 2.2.3 Delineated Built-up Areas, the Growth Plan directs that all municipalities will develop a strategy to achieve the minimum intensification target and intensification through at delineated built-up areas which will identify strategic growth areas, identify the appropriate type and scale and development in strategic growth areas, ensure lands are zoned and development is designed to support complete communities and will “...be implemented through official plan policies and designations, updated zoning and other supporting documents”. (Emphasis added)

[88] Section 2.2.4 deals with transportation corridors and station areas and Policy 10 indicates that lands adjacent to or near to existing and planned “frequent transit” should be designed to be transit supportive and supportive of active transportation for a range and mix of uses and activities. (The Tribunal would note that “frequent transit” is a defined term meaning a public transit service that runs at least every 15 minutes in both directions throughout the day and into the evening every day of the week).

[89] As the Subject Lands back onto an employment designation, s. 2.2.5 is relevant and in Policy 2.2.5.7 municipalities are directed to plan for employment areas within settlement areas by providing an appropriate interface between employment areas and adjacent non-employment areas to maintain land use compatibility.

[90] Finally in terms of Housing, s. 2.2.6 directs that municipalities will support housing choice for the achievement of the minimum intensification density targets by identifying a diverse range and mix of housing options and that municipalities will consider the use of available tools to require that multi-unit residential developments incorporate a mix of unit sizes to accommodate a diverse range of household sizes and incomes.

## OFFICIAL PLAN

[91] Turning to the City's Official Plan, the Tribunal will note from Chapter 2 "Shaping the City" that the (non-policy) preamble to s. 2.2, provides that growth areas are locations where good transit access can be provided along bus and streetcar routes and at rapid transit stations. Areas that can best accommodate this growth are shown on Map 2: Downtown including the Central Waterfront, the Centres, the Avenues, and the Employment Areas. Accordingly, the policies in Chapter 2 direct growth to the Avenues in order to make effective use of infrastructure; concentrate jobs and people to areas that are well serviced by surface transit; to promote mixed use development for opportunities to live close to work and to encourage walking and cycling for local trips; and to protect neighbourhoods from the effects of nearby development.

[92] In s. 2.2.3 the Avenues are highlighted in the preamble as important corridors along major streets where reurbanization is anticipated and encouraged to create new housing and job opportunities.

[93] This preamble continues that as each Avenue is different in terms of lot sizes and configuration, etc., there is no 'one size fits all' program and thus a framework for change will be tailored through a local Avenue Study and the framework for development will be established through a new zoning by-law and design guidelines.

[94] The policy provisions of the Official Plan note that reurbanizing the Avenues will be achieved the preparation of Avenue Studies, that contextually appropriate as-of-right zoning and other regulations will be set out including permitted uses, maximum density and height.

[95] Under the heading "Built Form" in Chapter 3, the preamble provides that since most of Toronto is already built that future development will need to be built on infill and

redevelopment sites and will need to fit in, respecting and improving the character of the surrounding area. The areas noted for the majority of the new growth are the Downtown, the Centres and along the Avenues.

[96] The preamble also states that developments must be conceived not only in terms of the individual building site and program, but also in terms of how that site, building and its façades fit in with existing and/or planned context of the neighbourhood and the City. Thus, the policy provision provides that new development will be located and organized to fit with its existing and/or planned context.

[97] The (non-policy) sidebar indicates that the “existing context” of any given area referred to what is there now and the “planned context” refers to what is intended in the future. It then states that in growth areas such as Centres and Avenues, the planned context generally anticipates change.

[98] Further with regard to height and density, the sidebar continues and provides:

...where there are no height and density limits in the official plan, height and density limits of area zoning that implements the plan will be a benchmark for the assessment of those aspects of the planned context.  
(Emphasis added)

[99] In terms of the criteria for new development beyond fitting into the existing and planned context, the policy provisions direct that: new buildings will be masked to frame adjacent streets; there will be appropriate transition and scale to neighbouring and/or planned buildings; there will be provision for adequate light and privacy; shadowing will be adequately limited; new development will be masked to define the edges of streets; and taller buildings will be located to ensure adequate access to sky view.

[100] Also under Built Form the preamble to s. 3.1.3 deals with tall buildings and it provides this guidance: “Tall buildings, typically buildings whose height is greater than

the width of the adjacent road allowance, are generally limited to parts of the Downtown, Centres and other areas in which they are permitted...” (Emphasis added)

[101] As the Subject Lands are designated in the Official Plan not only as Avenues but also as Mixed Use Areas, the Tribunal takes note of the provisions in Chapter 4 which in the preamble states that Mixed Use Areas will absorb most of the anticipated increase in retail, office and service employment in Toronto in the coming decades as well as much of the new housing, but that much of the new development on the Avenues will have a residential emphasis. The preamble continues to note the hierarchy with regard to the highest buildings and greatest intensity will occur in the Downtown particularly in the financial district, then the Centres and development along the Avenues will generally be of a much lower scale than in the Downtown and most often at a scale lower than the Centres.

[102] With regard to the policies, the development criteria in the Mixed Use Areas provide directions to locate and mass new buildings: to provide a transition between the areas of different development intensity and scale; to provide appropriate setbacks and/or a stepping down of heights particularly towards lower scale neighbourhoods; to locate and mass new buildings so as to adequately limit shadow impacts on adjacent neighbourhoods; to locate and mass new buildings to frame the edges of streets; and to take advantage of nearby transit services.

### **MID-RISE DESIGN GUIDELINES**

[103] The Mid-Rise Guidelines date from 2010. There are a number that are at issue as noted above. However, the Tribunal will start with some general observations including s. 3.1.2 with regard to optimal site conditions. This provision notes that no two Avenues are identical nor are there other sites with identical characteristics or conditions. So, this section outlines some of the “ideal” site conditions for the optimal development of a mid-rise building. Table 3 recommends on a 30 m right-of-way, a

mixed use building would have a height of 9 storeys and 28.5 m in height and if it were a commercial building, it would have 8 storeys and 29.7 m in height. In Table 4 with a right-of-way width of 30 m, the ideal lot depth would be 44.6 m. For a right-of-way width of 36 m, the ideal depth would be 51.8 m. The Tribunal notes that the Subject Lands have 62 m of depth.

[104] The actual performance standards themselves are summarized in s. 3.2, while each performance standard is separately discussed later in the Mid-Rise Guidelines.

[105] Performance Standard 1 deals with the maximum allowable height and the standard says that buildings on the Avenues will be no taller than the width of the Avenue right-of-way up to a maximum mid-rise height of 11 storeys (36 m). The Tribunal will consider this issue in detail below.

[106] Performance Standard 4B deals with the Front Façade and Pedestrian Perception Stepback. The actual standard indicates that such a step-back “may” be required to mitigate the presence of height and create comfortable pedestrian conditions. The Tribunal does not find this performance standard to be at issue, as the front elevation is well articulated, and the thrust of the City’s case is with regard to the 14 storey portion of the proposed development.

[107] Performance Standard 5C is relevant to this proceeding as it deals with the rear transition to employment areas. The performance standard itself states: “The transition between an Avenue property and areas designated Employment Areas to the rear should be created through setback and stepback provisions”.

[108] While the performance standards for transition to neighbourhoods are dealt with and require the use of a 45 degree angular plane, the discussion concerning Performance Standard 5C notes that the need for privacy, sunlight and sky view are not



as stringent for abutting employment areas and that the angular planes are not necessary. Then under Rationale, the following is provided:

This transition includes a minimum setback of 7.5 metres from the property line to the building face to allow for a rear lane. At the setback line, the building height is permitted up to 13.5 metres (or approximately four storeys) all floors above the 13.5 metre height must step back an additional 2.5 metres. This equates to a total setback of 10 metres from the property line above the 13.5 metre height.

[109] The development proposal as found in Exhibit 11, has only a 4.6 m access lane leading into the proposed loading area, driveway to underground parking and the surface parking. The Tribunal will deal with this issue below.

[110] Performance Standard 8B deals with the side property line and limiting blank sidewalls. The actual performance standard states: "Blank sidewalls should be designed as an architecturally finished surface and large expanses of blank sidewalls should be avoided." The Tribunal does not share the City's concern with regard to the westerly blank wall, as it only occupies a portion of the lot depth leading back to the surface parking area. With redevelopment of the westerly abutting vacant property, the visible blank wall area will be quite slight.

[111] As the Subject Land is at the southeast corner of The Queensway and Plastics Avenue, Performance Standard 6 for corner sites is applicable: "On corner sites the front angular plane and heights that apply to Avenue frontage will also apply to the secondary street frontage." The intent here is to avoid awkward transitions around corners, where the right-of-way width is different from the Avenue and that buildings should be tapered on their taller floors to ensure sun penetration. This issue will be dealt with below.

[112] Performance Standard 8C provides that there should be breaks at upper storeys between new and existing mid-rise buildings that provide sky views and increased

sunlight access to the sidewalk. This can be achieved through side setbacks at upper storeys. This will be dealt with below.

[113] The final Performance Standard that appears to be at issue is No. 13: “Mechanical penthouses may exceed the maximum height limit by up to five metres but may not penetrate any angular planes.” This goes to the issue of height.

## **GROWING UP**

[114] The final policy document to be considered is the 2020 City publication “Growing Up: Planning for Children and New Vertical Communities”. There at s. 2.1 under the heading “Guidelines”, a building should provide a minimum of 25% large units: 10% of units as three bedroom units and 15% of the units as two bedroom units. At Exhibit 11, the development proposal has 44% of the units as two bedroom units and about 4% as three bedroom units, with the notation that there are 13 units that may be converted to three bedroom units, which would result in about 10% three bedroom units. As the Tribunal will not approve the development application as found in Exhibit 11, it is not necessary to deal with this issue.

## **EMERGING POLICY REGIME**

[115] The Tribunal would note that on September 11, 2020 (about six weeks prior to the start of this hearing), the Minister of Municipal Affairs and Housing issued a decision with respect to Official Plan Amendment No. 480 (“OPA 480”) for the City. This OPA changes the City’s Official Plan policies as they relates to ‘built form’ and ‘building types’. It stipulates that there will be three scales of building types: townhouse and low rise apartments; mid-rise; and tall. The distinction between the latter two is that mid-rise buildings will be designed to have heights generally no greater than the width of the right-of-way that it fronts onto.(Emphasis added) Finally, under the heading “Tall

Buildings”, OPA 480 notes that tall buildings are generally greater in height than the width of the adjacent street right-of-way.

[116] While the Clergy Principle applies in this case with regard to OPA 480, the Tribunal notes the emerging policy regime.

## COMMENTARY/FINDINGS

[117] In relation to the Growth Plan, the Tribunal highlights this passage from then Associate Chair Lee in *Toronto (City) By-law No. 438-86, Re*, [2014] O.M.B.D. No. 447:

What must be pointed out, at the outset, is the potent and binding nature of the Provincial Plans. The Board doesn't only mean that the decision-maker cannot readily ignore the fact that the Growth Plan and the RTP act as mandatory guiding to planning and development. That much is never in doubt. Provincial Plans bind decision-makers not only in the larger sphere of rule-making, such as the design of a master planning document or a comprehensive zoning by-law. They bind them also in this following sense: these Plans are both omnipotent and omnipresent. Section 3(5) of the Planning Act ensures that every time a decision is made whether it is by a municipality, a local board, the Minister of the Crown, or, indeed, the Board, the concern of conformity is ever-urgent and ever-present. Such mandatory conformity applies, irrespective whether it is a minor variance or a major event, as long as it affects a planning matter.

[118] The Tribunal would add that the principle of law laid out in that discussion with regard to the Growth Plan also applies to the matter of consistency with the PPS as set out in s. 3(5) of the PA.

[119] The parties agree that the Subject Lands are appropriate for intensification. The central issue before the Tribunal is the proposed height, and inherent in that the building design.

[120] Counsel for the Applicant first points out that there are no members of the public here, no residents' association, no individual property owners, no business or associations at the hearing: only the City appears in opposition.

[121] Counsel for the Applicant submits that the PPS and the Growth Plan direct an intensification first approach in order to optimize the existing urban land supply. Counsel submits that both the PPS and the Growth Plan are binding on the Tribunal.

[122] Counsel further asks the Tribunal to note that the Subject Lands have all the characteristics identified in The Queensway Avenue Study to warrant additional height: they have a width and depth greater than typical lots along The Queensway; they are not adjacent to any low-rise residential neighbourhoods; and their location on the south side of The Queensway supports that greater height. All of this counsel for the Applicant submits has resulted in a careful design that utilizes a built form taken directly from the Study and it will result in a development that fits the existing context, and the planned context.

[123] Counsel for the City submits that the Official Plan anticipated an Avenue Study, and the Avenue Study was done, and the Q Guidelines were done, and the as-of-right zoning was put in place for the Avenue. Based on the Official Plan, counsel argues that the ZB should be considered as the 'benchmark' for assessment of this development proposal and it is simply too high and fails to respond appropriately to the Mid-Rise Design Guidelines.

[124] The Tribunal notes that this benchmark reference comes from a (non policy) sidebar to the Official Plan and not from the actual policies of the Official Plan.

[125] Moreover, the Tribunal is troubled by the fact that the Growth Plan 2020 in s. 2.2.3 (f) provides that municipalities will develop a strategy to achieve the minimum intensification target and intensification throughout delineated built up areas, which (f) will be implemented through official plan policies and designations, updated zoning and other supporting documents. To the Tribunal, the ZB dates from a 2000 Study and

substantially predates the PPS and the Growth Plan with which this decision must be consistent and with which this decision must conform.

[126] Further, the Tribunal has examined all the developments on The Queensway put to the Tribunal through the various exhibits. Of all the developments, the Tribunal found only one development at 892 The Queensway that strictly complied with the ZB height. All of the other built and approved developments exceed the maximum number of storeys as found in the ZB.

[127] Additionally, for the south side of The Queensway there are two developments which have heights that exceed the 36 m right-of-way, including one at 17 storeys and 56.9 m in height (excluding the mechanical penthouse).

[128] If indeed, as counsel for the City submits, that the ZB should constitute the 'benchmark' for the assessment of this particular application, then the Tribunal finds that for past assessments, that 'benchmark' has been predominantly honoured only in the breach.

[129] Examining the issue of height, the Tribunal finds that there are several features that distinguish Sub Area 3 from Sub Area 2:

- a. In Sub Area 3, The Queensway has a 36 m right-of-way;
- b. Sub Area 3 has some (very) large land holdings;
- c. There, the land use designations considerably differ from the land use designations in Sub Area 2, as the Mixed Use Area designations extend all the way to The Gardiner Expressway.;
- d. There in Sub Area 3 is SASP 6; and
- e. There the approved developments that will front onto The Gardiner Expressway include heights of 108 m, 140 m, 95 m, and 60 m, whereas there are no such heights in Sub Area 2.

[130] The Tribunal agrees with the City's submission that Sub Area 2 is materially different in character from Sub Area 3.

[131] In Sub Area 2, the designated right-of-way is 30 m, there are no existing or approved building over 8 storeys, and south of the band of Mixed Use Areas along The Queensway are lands that are designated as Core Employment and General Employment and are highly likely to remain so designated.

[132] The Subject Lands, while at an intersection, are not at a major intersection that is recognized in the Study as requiring significant additional height. At the proposed 14 storeys, that height would exceed all but one either built or approved development on The Queensway frontage in Sub Area 3, and that development approval is at the south west corner of the major intersection of Islington Avenue and The Queensway.

[133] In addition to its concerns with regard to the proposed height, the Tribunal notes that the architectural plans found in Exhibit 11 provide for only a 4.6 m laneway at the rear of the property and there is no public lane. While the evidence of Ms. McIlroy was that the 4.6 m was "adequate", the Tribunal remains concerned about the interface of the proposed development with the employment lands to the south and finds that with a greater rear yard set back/laneway width would be appropriate.

[134] The Tribunal also has concerns with regard to the easterly elevation as it fronts onto Plastics Avenue. While the lands to the east have not yet redeveloped, it is likely in time that they will and the development on the Subject Lands should take that into account, so as to ensure that its height and massing has a minimal impact on Plastics Avenue.

[135] To the Tribunal, the development proposal as presented is an attempt to maximize the development potential of the Subject Lands through a reduced rear yard setback, excessive height for the Sub Area 2, and neglects to allow for an appropriate built form to transition to the abutting employment area, and fails to meet the intent of the Mid-Rise Design Guidelines with its presence onto Plastics Avenue. Both the PPS and the Growth Plan speak to optimizing not maximizing, and to the Tribunal the difference is that optimizing incorporates good land use planning and good urban design.

[136] In summary, the Tribunal finds the Subject Lands to be within a sub area that is distinct from Sub Area 3, that the Subject Lands are on a right-of-way that is 30 m, that the Subject Lands while being quite deep, warrant additional height over the ZB, but not at 14 storeys. The Tribunal also has serious concerns with the appropriateness of the interface to the rear at the employment lands and has concerns with regard to the appropriate design and massing onto Plastics Avenue.

[137] The Tribunal observes that immediately across the street at 880 – 890 of The Queensway, there is approved development at the intersection of Chartwell and The Queensway at 8 storeys backing onto a low-rise residential neighbourhood and abutting that site to the west at 892 The Queensway is an existing 6 storey building.

[138] Based on the differing locational attributes of the Subject Lands versus the lands on the north side of The Queensway, the Tribunal finds that a development proposal based on the L shaped design in Exhibit 11, of up and including 12 storeys in height, with an increased rear yard setback from the south property line of about 7.5 m, with a south elevation step-back of 2.5 m above the 4<sup>th</sup> floor, and the application of the angular plane to the Plastics Avenue frontage would satisfy the policy regime, provided of course that it achieves the angular plane to The Queensway and minimizes shadowing.

[139] Additionally, the Tribunal is cognizant of other current development applications for Sub Area 2, and the fact that there are other deep lots along the south side of The Queensway in Sub Area 2. While each application will be considered on its own merits, the Tribunal recognizes that its decision here may have ramifications for other developments.

[140] Accordingly as the Subject Lands are appropriate for intensification, rather than refusing this application and requiring the Applicant to start all over again, the Tribunal is prepared to consider a revised development proposal that hopefully would come with consent of the City and would take into account the findings in this decision.

[141] To that end the Tribunal would suggest that the parties consider Tribunal-led mediation with a view to arriving at a settlement.

[142] In the event that such a process is not sought or a resolution cannot be reached, the Tribunal, in these Covid-19 times, will allocate a period of six months from the issuance date of this Decision, or within three months from the close of mediation, whichever is later, whereby the Applicant is permitted to submit a revised development proposal to the City.

[143] Within three months following the date of the revised submission, the City shall provide its responding comments to the Applicant in an effort to resolve any final outstanding matters.

[144] Finally, within another three months (being within six months of the revised submission above), the parties will provide their final written submissions on the resulting revised proposal to the Tribunal.

[145] After considering the submissions, the Tribunal will issue a Final Order.



[146] Scheduling permitting, the Tribunal may be spoken to if issues arise.

[147] This is the Interim Order of the Tribunal.

[148] I remain seized of this matter.

*“Blair S. Taylor”*

BLAIR S. TAYLOR  
MEMBER

If there is an attachment referred to in this document,  
please visit [www.olt.gov.on.ca](http://www.olt.gov.on.ca) to view the attachment in PDF format.

**Local Planning Appeal Tribunal**

A constituent tribunal of Ontario Land Tribunals

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