

**From:** [Alan Heisey](#)  
**To:** [Toronto East York Community Council](#)  
**Cc:** "[dwheler@hotmail.com](#)"; "[paul416realestate@gmail.com](#)"; [King Parliament](#); [Clerk](#)  
**Subject:** FW: King-Parliament Secondary Plan and Draft Zoning By-law Amendment - TEYCC Meeting April 21, 2021/Agenda Item TE.24.11 Council Meeting May 5, 2021  
**Date:** May 3, 2021 10:50:44 AM  
**Attachments:** [PL161267-FEB-05-2021.pdf](#)

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Please substitute this communication for the one just sent

Your Worship and Members of Council,

Please be advised we are the solicitors for 1175484 Ontario Inc. 1606072 Ontario Inc. and John Gault Holdings Inc. the owners of 301-317 Queen Street East.

I have reviewed the minutes of the April 21, 2021 Community Council Meeting concerning agenda item TE.24.11.

I do not see attached to the Minutes my email to the Community Council dated March 30, 2021 attached below sent on behalf of 1175484 Ontario Inc., 1606072 Ontario Inc. and John Gault Holdings Inc. concerning these proposed planning instruments.

Out of an abundance of caution I am resending that communication.

Please accept this letter as our client's formal request that the writer, as well as our clients (1175484 Ontario Inc., 1606072 Ontario Inc. and John Gault Holdings Inc. at ) be provided with notice of any meetings of Council, Committees of Council, Community Council or Public Meetings/Community Consultation Meetings where reports related to the proposed Secondary Plan and Zoning by-law amendments are to be considered.

We repeat our request that both our client and the writer be forwarded copies of any future reports and/or proposed bylaws related to the proposed Secondary Plan.

Finally, we would respectfully request that both the writer and our clients be notified of the City's passage of the proposed Secondary Plan and By-law amendments at the following address 504 Jarvis St, Toronto, Ontario M4Y 2H6 and email address [dwheler@hotmail.com](mailto:dwheler@hotmail.com) .

A.Milliken Heisey Q.C.

**Papazian | Heisey | Myers,**

Barristers & Solicitors/Avocats

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**From:** Alan Heisey

**Sent:** Tuesday, March 30, 2021 12:58 PM

**To:** 'teycc@toronto.ca' <teycc@toronto.ca>

**Cc:** [dwheler@hotmail.com](mailto:dwheler@hotmail.com); paul azzarello <[paul416realestate@gmail.com](mailto:paul416realestate@gmail.com)>;

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**Subject:** King-Parliament Secondary Plan and Draft Zoning By-law Amendment - TEYCC Meeting April 21, 2021

Please be advised we are the solicitors for 1175484 Ontario Inc. 1606072 Ontario Inc. and John Gault Holdings Inc. the owners of 301-317 Queen Street East.

Our client recently had an LPAT decision attached approving residential tall building development for these properties.

We would expect the approved KPSP and implementing zoning would reflect this approval.

Kindly provide the author with notice of adoption of any Official Plan Amendment or notice of passing of any Zoning Bylaw Amendment arising out of this process.

Kindly acknowledge receipt of this communication by return email.

A.Milliken Heisey Q.C.

**Papazian | Heisey | Myers,**

Barristers & Solicitors/Avocats

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



**ISSUE DATE:** February 05, 2021

**CASE NO(S):**

PL161267

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

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

Applicant and Appellant: 1175484 Ontario Inc., 1606072 Ontario Inc., et al  
Subject: Request to amend the Official Plan - Refusal of request by the City of Toronto  
Existing Designation: Regeneration Area  
Proposed Designated: Site Specific  
Purpose: To permit a 25-storey mixed-use building  
Property Address/Description: 301-317 Queen Street East  
Municipality: City of Toronto  
Approval Authority File No.: 16 161250 STE 28 OZ  
OMB Case No.: PL161267  
OMB File No.: PL161267  
OMB Case Name: 1175484 Ontario 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: 1175484 Ontario Inc., 1606072 Ontario Inc., et al  
Subject: Application to amend Zoning By-law Nos. 438-86 and 569-2013 - Refusal of Application by the City of Toronto  
Existing Zoning: MCR T3.0 "Mainstreet Commercial Residential", and CR  
Proposed Zoning: Site specific  
Purpose: To permit a 25-storey mixed-use building  
Property Address/Description: 301-317 Queen Street East  
Municipality: City of Toronto  
Municipality File No.: 16 173154 STE 27 OZ  
OMB Case No.: PL161267  
OMB File No.: PL161268

**Heard:** November 9, 2020 by video hearing

**APPEARANCES:**

**Parties**

**Counsel**

1175484 Ontario Inc. 1606072  
Ontario Inc.  
John Gualt Holdings Inc.

Alan Heisey

City of Toronto

Matthew Longo

Concert Real Estate Corporation

John Dawson

**DECISION DELIVERED BY STEVEN COOKE AND MARIO RUSSO AND INTERIM ORDER OF THE TRIBUNAL**

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**INTRODUCTION**

[1] The matter before the Tribunal are the appeals filed by 1175484 Ontario Inc., and 1606072 Ontario Inc., and John Gualt Holdings Inc. (the “Applicants”). Under s. 22(7) and 34(11) of the *Planning Act*, the Applicants have appealed the City of Toronto’s (the “City”) refusal of an application to amend Zoning By-laws (“ZBL”) Nos. 438-86 and 569-2013 (collectively, the “ZBLA”) and the refusal to amend the Official Plan (the “OPA”).

[2] A decision on this matter had been rendered on July 13, 2018 that dismissed the Applicants’ appeals of the refusal by the City. Under the Tribunal’s *Rules of Practice and Procedure*, a request for review of the decision was granted. On August 16, 2019 the review Panel issued an order that found errors in law that formulated the original decision.

[3] It should be noted that the matter before the Tribunal was heard as an entirely new Hearing and adjudicated on the merits put before the Tribunal during the course of this Hearing.

[4] The development site proposal is located at the southwest corner of Queen

Street East and Berkeley Street, collectively known municipally as 301-317 Queen Street East (the "Site"). The original proposed development refused by the City was a 25-storey mixed use building with a four-storey podium.

[5] After several revisions, the current proposed development is a 19-storey mixed use building. The building continues to propose a four-storey podium that will have a height in line with the roof peak of the historic Berkeley Church. The podium will include retail and commercial uses at grade level. The second floor is proposed to include additional employment office space. The remaining two floors of the podium will consist of residential dwellings. The proposed development would consist of a setback tower starting on the fifth storey to the 17<sup>th</sup> storey comprised of residential dwellings. With an additional setback the 18<sup>th</sup> and 19<sup>th</sup> storeys would include the mechanical suite, pool, and other indoor and outdoor amenities.

## **CONCERT**

[6] John Dawson appeared on behalf of his client the Concert Real Estate Corporation ("Concert"). Concert are the owners of a 10-storey residential rental building located to the immediate south of the proposed Site.

[7] Concert, throughout the process of this application, has raised numerous concerns regarding the proposed project, including issues surrounding the use of the shared private lane-way, the impact of noise and wind the proposed development might create and the privacy of the existing Concert residence.

[8] The Tribunal was informed that through ongoing negotiations and concessions from the Applicants a settlement of the Concert issues has occurred. Mr. Dawson submitted as an exhibit an email exchange between the Parties that includes important aspects to drawings and revisions that have satisfied the major concerns of Concert.

[9] Mr. Dawson informed the Tribunal that given the major concerns of Concert have been settled they would no longer oppose the application as long as the Parties agreed

that the Tribunal's Order will be withheld until the remaining technical, legal, and site plan conditions have been satisfied. With the Parties all in agreement Mr. Dawson was granted permission to excuse himself for the remainder of the hearing.

## **EXPERT WITNESSES**

[10] For the ease of the reader, the Tribunal qualified without objections the following individuals to provide expert witness testimony in their field of expertise. For the Applicants: planner Michael Goldberg, heritage architect Michael McClelland, urban designer Anne McIlroy, and, architect Leslie Klein. Appearing for the City: urban designer Setareh Fadaee, and planner Henry Tang.

## **ARCHITECTUAL EVIDENCE**

[11] Mr. Klein testified that his firm, Quadrangle Architects, was commissioned to design the proposed development of the Site with a mixed-use building that would preserve the historic Berkeley Church.

[12] Mr. Klein described the Site as a total area of 1782.4 square metres ("sq m") and is a rectangular-shaped lot with 58.085 metres ("m") frontage on Queen Street East and 30.447 m frontage on Berkeley Street. Mr. Klein considers the overall fabric of the corridor of Queen Street East between Parliament Street to the east and Jarvis Street to the west to be inconsistent in built forms and mixed uses.

[13] Since being retained, Mr. Klein stated that the proposed development has had numerous modifications. From the witness statement provided by Mr. Klein, he describes the current modified proposed development as follows:

1. A 19-storey residential tower on a four-storey podium (which includes, commercial and residential uses) on the west portion of the site, with the residential lobby along the north façade facing Queen Street East and loading and the ramp to the underground garage accessed via the private

laneway south of the site running west off Berkeley Street;

2. A courtyard between the new tower and podium and the Berkeley Church, a minimum separation of 6 m, but the tower above the fifth floor extends over the space between the podium and the Berkeley Church by 2.5 m (plus an additional 1.5 m at balconies);
3. A total of 423 sq m of interior amenity space and 302 sq m of exterior amenity space at the top of the podium on the fifth floor;
4. A total of 150 residential units, including 71 one-bedroom units, 8 one-bedroom-plus-den units, 48 two-bedroom units, 6 two-bedroom-plus-den units and 17 three-bedroom units;
5. A total of 44 vehicular parking spaces in a three-level underground garage including 13 visitor spaces, as well as one Type G loading space and 150 bicycle parking spaces (including 25 short-term and 125 residential long-term spaces);
6. A building height of 64.8 m (excluding the mechanical penthouse) above established grade;
7. A total gross floor area ("GFA") of 13,269.2 sq m (11,432.1 sq m of residential GFA, 1,066 sq m of new non-residential GFA and 722 sq m of existing non-residential GFA to remain in the existing Berkeley Church) and a floor space index of 7.45 including the existing Berkeley Church and 7.02 excluding the existing Berkeley Church.
8. The minimum setback of the tower from the west property line is 5.5 m, from the north is 3.7 m, from the main west wall of the church is 6.0 m and from the main wall of the Concert building is 11 m.

[14] The proposed development would have residential and visitor parking accessing the underground parking by entering and exiting from Queen Street East. Mr. Klein explained that should an agreement between Concert and the Applicants not be reached, the garbage pick-up and loading area would remain on Site accessed from Queen Street East. However, Mr. Klein indicated that should there be an agreement reached between Concert and the Applicants that a garbage pick-up and loading area could be on the Site or potentially shared between both properties using an access lane via Berkeley Street.

[15] It is the opinion of Mr. Klein that the proposed development before the Tribunal conforms with the standards for architecture within the context of the built form policies of the OP and meets the intent of the Tall Building Guidelines.

[16] Mr. Klein testified that the preservation of the Berkeley Church heritage structure will provide positive benefits to the area's long-term revitalization and rejuvenation. It is his opinion that the proposed development would not have any negative impacts to the surrounding area.

## **PLANNING EVIDENCE**

### **Henry Tang**

[17] Through the testimony of Mr. Tang, the City raised questions of the proposed development's ability to have regard to the *Planning Act*, s. 2, be consistent with either of the Provincial Policy Statements ("PPS"), PPS 2014 which was in effect at the time the application was submitted or the current PPS 2020, and conform with the Growth Plan for the Greater Golden Horseshoe, 2019, as amended by Amendment 1 ("GP"), the City Official Plan ("OP"), the King-Parliament Secondary Plan ("KPSP"), or OPA 406 and OPA 352.

[18] Mr. Tang put forward the opinion that the proposed development did not have the appropriate regard for the following matters of provincial interest as set out in s. 2 of the

*Planning Act:*

- (h) the orderly development of safe and healthy communities,
- ...
- (p) the appropriate location of growth and development (r) the promotion of built form that (i) is 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] Mr. Tang asserted that the Site is an appropriate location for growth, but the proposed building typology, and built form, conflicted with the planned context of Mixed Use Area “D” (“MUAD”) that the Site is located in. The MUAD predominantly calls for low to mid-rise development for its vision of this section of Queen Street East.

[20] It is the opinion of Mr. Tang that the policy framework of the OP, MUAD and the KPSP, does not support the tall building proposed on this Site and fails to meet the intent of the City’s Tall Building Design Guidelines.

[21] Mr. Tang opined that the proposed development is not included in what the City has set out as an appropriate location for redevelopment and intensity of that growth, through the policy framework of the OP and KPSP. Mr. Tang submitted that OPA 352 provides clearer direction in identifying the policy context for tall building development. This includes the provision of separation distances between buildings and identifies pedestrian level and sky views. He further opined that OPA 480, in identifying building mass transition to different setbacks of tall buildings, further supported his opinion that the proposal is inconsistent with this section of the PPS.

[22] In Mr. Tang’s opinion the proposed development is not consistent with the PPS in s. 1.7.1:

- (d) maintaining and, where possible, enhancing the vitality and viability of downtowns and mainstreets.
- (e) encouraging a sense of place, by promoting well-designed built form and cultural planning, and by conserving features that help define character, including *built heritage resources* and *cultural heritage landscapes*. [Italics in original to indicate defined terms].

[23] The Parties both acknowledged that good land use planning obligates policies and documents to be read in their entirety and not in isolation. The GP generally aims to revitalize downtowns, create complete communities, create more housing options, protect greenspace, reduce gridlock and promote public and active transportation. Therefore, conformity with the GP supports good land use planning and helps regions and municipalities grow in a manner envisioned by the province. When there are overlaps with the PPS, the GP should be read in conjunction with the PPS, however, when in conflict the policies of the GP prevail.

[24] It was the opinion of Mr. Tang that the proposed development does not conform with and would conflict with the GP. He maintains that s. 2.2.2.3 supports the City's position for refusal of the development. It reads:

All municipalities will develop a strategy to achieve the minimum intensification target and intensification throughout delineated built up areas, which will:

...

- b) Identify the appropriate type and scale of development and transition of built form to adjacent areas.

[25] Mr. Tang submitted that this is done within the OP, KPSP and guidelines that the City has established for tall buildings and urban design. It was his opinion that the proposed development would not conform to these policies.

[26] With the Site being located on the south side of Queen Street East and falling solely within the MUAD boundaries, Mr. Tang opined, the character and identity of the area will be altered with the introduction of a tall building and deviate from the vision of the OP and KPSP. He further expressed that growth can be accommodated on the Site, but the built form and typology should be more in line with the mid-rise vision, therefore enhancing the feel of a main street and encouraging the sense of place sought.

[27] It was the opinion of Mr. Tang that the proposed development, and applications to amend the OPA and ZBLA, were not appropriate as several key aspects of the Site conflicted with the OP. Mr. Tang stated that the proposed development negatively

affected and/or failed to meet the aspects of the OP.

[28] In s. 3.1.1 - "Public Realm" states that buildings work together to create a great public realm. In particular, this policy speaks to quality of architectural and urban design ensuring new development enhances the quality for the public. It is the opinion of Mr. Tang that the proposed development does not contribute to the greater public realm as the 19-storey building deviates in scale and character of Queen Street East.

[29] "Built Form" policies in s. 3.1.2 of the OP directs that development is to fit within the context of the existing and/or planned context of the neighbourhood. New developments are to have exterior façade that are designed to fit harmoniously into this planned context. Mr. Tang gave the opinion that he did not believe that the proposed development met these criteria of fitting within the existing and/or planned context of this section of Queen Street East.

[30] "Built Form - Tall Buildings" in s. 3.1.3 of the OP states that tall buildings come with a larger civic obligation than other buildings. As such, Mr. Tang believes that the location of the subject site is not appropriate for a tall building as the planned built character in the MUAD in the KPSP is predominantly planned to have low to mid-rise built form and scale.

[31] "Regeneration Areas" in s. 4.7 of the OP indicates that the different areas of the City are unique. New development in one area to the next will not necessarily be the same and should be addressed by the specific policies of the Secondary Plan. Mr. Tang informed the Tribunal that in this case the City Council enacted the KPSP to set out that vision, and in his opinion, the proposed development does not conform.

[32] With regard to the Downtown Secondary Plan, the Ministry of Municipal Affairs and Housing issued a decision regarding OPA 406 on June 5, 2019. The Policy is applied to all applications received after that date. As the subject application was received prior to June 5, 2019, it is not subject to the policy direction of the Downtown Secondary Plan. However, Mr. Tang did indicate to the Tribunal that the proposal is

informed by the policy directions.

[33] The subject site under the Downtown Secondary Plan would be lands that are designated Mixed Use Area 3 – Main Street. This designation does permit a mixture of land uses in the form of mid-rise buildings with some considerations for low-rise and tall buildings based on the compatibility. As the subject site is within a section of Queen Street East that is planned for a mid-rise typology within designated MUAD in the KPSP and would be considered part of the Downtown Secondary plan it is the opinion of Mr. Tang that the level of intensification of a tall building on the subject site would not conform with these policies.

[34] As a tall building Mr. Tang maintains that the proposed development fails to comply with the standards of the Tall Building Guidelines. In his view the fit and transition in scale of the proposed development does not provide appropriate transition in scale to neighbouring lower-scaled buildings. The proposed development would create an inappropriate shadowing to the public realm. Tower setback from both the 10-storey building to the south or from Queen Street East to the north are both minimal and not appropriate.

[35] It is the opinion of Mr. Tang that the overall base building height should not exceed 16 m as this height would represent 80% of the Queen Street East right-of-way that is 20 m. The proposed 18 m base building height with an additional 2.5 m wind screen on top of the building base height would create a visual street wall height that is not consistent with the area.

[36] However, Mr. Tang does note that as the existing Berkeley Church is not proposed to have any alterations to the building, it would comply to KPSP urban design guidelines.

[37] Mr. Tang explained to the Tribunal that the OP states that:

... new development be massed to fit harmoniously into its existing/planned context by adequately limiting resulting shadowing of ... neighbouring streets, properties and open spaces, having regard for the varied nature of such areas.

It is his opinion that massing of the proposed development would not adequately limit shadowing on the Moss Park apartments on the north side of Queen Street East. Based on the results of the shadow impact study, it was the view of Mr. Tang that there would be an increase in new shadowing to the open spaces of the Moss Park apartments for up to seven hours.

### **Michael Goldberg**

[38] Mr. Goldberg appeared before the Tribunal as a land use planning expert for the Applicants. He began by giving a physical description of the Site location in both a geographical and OP context.

[39] The Tribunal was informed by Mr. Goldberg that the proposed OPA was sought by the City in the pre-application meeting for City staff to consider the application to be complete. In the City Refusal Report dated on October 5, 2016, it stated that:

The proposal requires an amendment to the Official Plan as the built form does not conform to the objectives of the King-Parliament Secondary Plan that directs development be compatible and complement existing built form for character and scale of the Mixed Use Area 'D' designation, a predominately low-rise area.

[40] It is the opinion of Mr. Goldberg that an OPA is not needed to implement the proposed development. Built form context within the KPSP has very specific policy language regarding the height and scale of buildings where the MUAD designation does not. Mr. Goldberg believes that the application for an OPA was only filed out of an abundance of caution to ensure that the City would deem the application complete.

[41] Mr. Goldberg opined that the proposed development does have regard to s. 2 of the *Planning Act* and the relevant sections of the PPS and GP.

[42] Of the several PPS policies cited by Mr. Goldberg, he discussed at greater length in his testimony the housing policy in s. 1.4. Mr. Goldberg opined that the proposed development provides a wide variety of one to three bedroom dwelling types in what would relatively be considered a smaller tall building. The range of dwelling units includes three bedrooms for families which is desired by the City policies.

[43] Mr. Goldberg submitted that the proposed development is consistent with the PPS s. 1.7.1. a) through e). The inclusion of retail, commercial, office and residential units within the proposed development provides long-term economic prosperity while maintaining the preservation of the heritage building on site, in line with provincial interests. It is his testimony that the proposed development represents efficient land use, cost effective and optimal utilization of existing infrastructure and community facilities, and is located near current and planned public transit and is in the vicinity of several active transit routes.

[44] Mr. Goldberg testified that the proposed development before the Tribunal meets the goals of several aspects of the GP including under s. 1.2.1:

Support the achievement of complete communities that are designed to support healthy and active living and meet people's needs for daily living throughout an entire lifetime.

Prioritize intensification and higher densities in strategic growth areas to make efficient use of land and infrastructure and support transit viability.

Support a range and mix of housing options, including second units and affordable housing, to serve all sizes, income, and ages of households.

[45] Like the PPS, Mr. Goldberg told the Tribunal that the GP encourages compact, vibrant, complete communities, optimizing the use of land and infrastructure in order to support growth in a compact, efficient form. It aims to revitalize downtowns that offer more options to live, work, and play with a range of transportation options to help reduce traffic, while providing a choice in housing types.

[46] Under the GP, Mr. Goldberg describes the Site location as an ideal location for intensification. Located in an identified settlement area, in a downtown area

designation, supported by existing public transit and within walking distance of two planned subway stations, the proposed development would reach the objectives defined as Strategic Growth Area, Urban Growth Centre, Major Transit Station Area, Higher Order Transit, and Transit-supportive.

[47] Mr. Goldberg is satisfied that the proposed development is in line with the policies of the OP. The Site is in a Regeneration Area of the Downtown Area that is identified for significant growth.

[48] It is his opinion that the OP provides little direction on heights and density in the Regeneration and Downtown Area policies. The OP leaves this responsibility to be interpreted in the Secondary Plan, which in this case is the KPSP. The KPSP provides no direction of height within the MUAD. Furthermore, the grade level event venue, retail and commercial uses are envisioned in the KPSP and envisioned for this section of Queen Street East specifically outlined in policies of the MUAD.

[49] While Mr. Goldberg maintains that an amendment to the OPA is not required, he did remark that the Ministerial modification of OPA 406 clarifies specific policy direction permitting tall buildings that are compatible. It is his opinion that the proposed development would meet the planned context for OPA 406 along Queen Street East.

[50] By creating a built form that respects the adjacent historical Berkeley Church it is Mr. Goldberg's opinion that the proposed development satisfies the Heritage Policies of the OP.

## **URBAN DESIGN EVIDENCE**

### **Setareh Fadaee**

[51] Dr. Fadaee gave testimony that in her opinion the Site is too small and not appropriate for a tall building. Instead she testified that the Site would be more appropriate for mid-rise built form that would conform to the existing policies of the

MUAD.

[52] Although acknowledging the revisions to the proposed development has provided some positive changes particularly with the removal of balconies on the west, south, and east sides, the tower setback along Queen Street East has increased from 1 m to 1.5 m, a building reveal from storeys five to seven, and the decrease in the overall height of 5.45 m from the original proposal, Dr. Fadaee was still of the opinion that the built form and urban design were not appropriate for the existing subject site.

[53] Dr. Fadaee raised new concerns of the negative impacts of the current proposed development with the increase to the podium height from 17.7 m to 18 m and the increase of the overhang towards the Berkeley Church from 2.5 m to 6 m.

[54] Dr. Fadaee's testimony acknowledged and recognized that the determinative sections of the OP remain as the version of the OP that was in force at the time of the application. She believed it appropriate to take guidance from OPAs 406, 479, 480 and 352 that are current but came into place after the application.

[55] On October 5, 2016, City Council adopted OPA 352 and the implementing zoning by-laws for the Downtown. If the application was subject to OPA 352 the zoning by-laws require a minimum 12.5 m setback between a tower and property lines that do not abut a street. In the opinion of Dr. Fadaee, the proposed development is not in keeping with the intent of OPA 352. In order to comply with OPA 352 the 12.5 m setback from the west property line would shift the tower separation burden onto adjacent property owners.

[56] It was the opinion of Dr. Fadaee that the proposed development would dominate the streetscape of this section of the Queen Street East corridor. She believed that the tower did not have the appropriate set and step backs and its dominating height ignored the contextual scale and character of the street. In Dr. Fadaee's expert opinion the proposed tower would negatively impact the public realm by limiting sunlight to adjacent neighbours and have shadow impacts.

[57] The four-storey, 18 m podium base of the building is not ideal but in the opinion of Dr. Fadaee is acceptable from an urban design perspective as the height is comparable to the height of Berkeley Church.

[58] Dr. Fadaee opined that if approved by the Tribunal, the proposed development would provide an undesirable precedent for future development that would incrementally change this part of the Queen Street East corridor.

### **Anne McIlroy**

[59] Ms. McIlroy provided evidence and expert opinion in Urban Design supporting the appeal which had conflicting views with those of Dr. Fadaee, particularly in interpreting and assessing setback implementation. Ms. McIlroy opined that the mechanical and amenity space located on the 18<sup>th</sup> and 19<sup>th</sup> storeys have a significant setback that would give the tower a reduced height feel both in terms of pedestrian and sky view. Ms. McIlroy further submitted the revision to the tower from the original single storey reveal to a three storey reveal at levels was significant in achieving OP and KPSP conformity and satisfying the intent and spirit of the Tall Building Guidelines.

[60] Ms. McIlroy opined that the Tall Building Guidelines have been satisfied with the tower floor plates between 499 to 665 sq m, a reduction from the previous 535 to 725 sq m. This is all below the 750 sq m floor plate recommendation within the Tall Building Guidelines. She submitted that these attributes positively impact the appropriateness of the tower and its transition and compatibility further compliment the built form character and scale of the area.

[61] Ms. McIlroy testified that in her analysis and opinion, based on the shadow studies provided by Quadrangle Architects, the shadow cast by the tower are minor in nature. Although being classified a Tall Building, the proposed development will cast a minimal, fast moving shadow, that will not impact any neighbouring property or open space for a prolonged period.

[62] Ms. McIlroy highlighted the benefit of the open space/outdoor courtyard and 6 m separation between the proposed development and Berkeley Church. In her opinion this has regard for the public realm and is mutually benefiting both to the proposed development and the heritage building. Further supporting the public realm, Ms. McIlroy gave evidence that the proposed streetscaping and seven new street trees to be included along the Queen Street East frontage will positively contribute to the neighbourhood character.

[63] Ms. McIlroy opined that she is satisfied that the proposed development meets the objectives of s. 3.1.2 of the OP. It has been located and organized to fit within the existing and planned context of the area, by framing the Queen Street East frontage with a fully glazed frontage at grade and sufficient setbacks meeting both OP and Tall Building Guidelines. She submitted that loading to the south accessed from Berkeley Street and tower parking with a well-designed garage access at the northwest aspect of the proposed development from Queen Street East will positively impact the streetscape and pedestrian view.

[64] Ms. McIlroy concluded her testimony putting forward the opinion that the proposed development is a modest and slender 19-storey tall building that meets the overall requirements of the Tall Building Guidelines. It is well designed in reference to the evolving lower scale of the area, while recognizing that Queen Street East is evolving with approved and more intensive and taller developments existing and planned in the immediate area.

## **HERITAGE EVIDENCE**

[65] Mr. McClelland was qualified as an expert in heritage architecture, heritage planning and urban design as it relates to heritage matters. As part of his scope of work, Mr. McClelland prepared a Heritage Impact Assessment (“HIA”) of the Site for both the original application and the current proposed development.

[66] Mr. McClelland provided a historical account and a heritage perspective and

opinion on the proposal. The Berkeley Church was constructed in 1871 as one of the first Methodist churches in the City. The building is in good condition structurally but is in need of exterior repair and upkeep as the weather and age have caused some deterioration.

[67] Mr. McClelland referenced s. 2(d) of the *Planning Act*, which states:

...regard shall be given to matters of provincial interest such as conservation of features of significant architectural, cultural, historical, archaeological or scientific interest.

[68] He submitted that the proposal will not require any alteration or demolition of heritage resources and claimed that this approach is rare at best in the current City development context.

[69] With respect to cultural heritage policies of the PPS Mr. McClelland referred to policy 2.6.1:

Significant built heritage resources and significant cultural heritage resources shall be conserved.

and policy 2.6.3:

Planning authorities shall not permit development and site alteration on adjacent lands to protected heritage property except where the proposed development and site alteration been evaluated, and it has been demonstrated that the heritage attributes of the protected heritage property will be conserved.

[70] As outlined in the HIA authored by Mr. McClelland, there are no heritage properties adjacent to the Site, and being that the Berkeley Church will be fully conserved demonstrates consistency with these PPS policies.

[71] Mr. McClelland gave evidence that GP Policy 4.2.7.1 directs municipalities to implement OP policies in support of conservation, stating:

Cultural heritage resources will be conserved in order to foster a sense of place and benefit communities, particularly in strategic growth areas.

[72] Mr. McClelland opined the proposed development conforms to GP policy, particularly in recognizing that the Site falls within a strategic growth area, and the Berkeley Church being conserved in its entirety.

[73] Mr. McClelland submitted that it was his expert opinion of heritage conservation that the proposed development, having no negative impact to the Berkeley Church, has regard to the OP, KPSP and both the Tall Building Guidelines and the King-Parliament Design Guidelines.

[74] Mr. McClelland opined maintaining a 6 m separation distance from Berkeley Church and the proposed development respects and improves the public realm by creating an open courtyard space. The tower reveal and cantilevering being consistent with Berkeley Church's roof peak both aid in framing visually and paying respect to its heritage structure.

[75] In summary, Mr. McClelland put forward the opinion that the proposed development is appropriate, consistent and conforms to relevant planning policies from a heritage point of view.

## **ST. LAWRENCE NEIGHBOURHOOD ASSOCIATION**

[76] The St. Lawrence Neighbourhood Association ("SLNA") has been an active group of engaged and concerned residents that advocate and seek the best interests for their community in general. As the SLNA had been granted participant status and the ability to make a verbal presentation in the previous hearing the Tribunal recognized Suzanne Kavanaugh to say a few words.

[77] Ms. Kavanaugh informed the Tribunal that the SLNA has been involved with this application from day one through the process of the City and Tribunal hearings. The SLNA is not in support of the proposed development as it feels it is too high for the area.

The SLNA believes the character of the area is more suitable for low and mid-rise development and expressed concerns with increased traffic and pedestrian safety.

[78] While the SLNA is happy to see the modification to the proposed development from 25 to 19 storeys, it remains concerned that the 19 storeys are still too high. However, the SLNA does not object to the redevelopment of the Site and would be more supportive with a 15 storey height. It attributes this height threshold to the Moss Park Apartments and claims many residents are accustomed to and comfortable with that height. It stresses that the SLNA does not want to see skyscrapers in its neighbourhood.

### **SECTION 37**

[79] The Applicant and the City have agreed to the method of calculation and the quantitative amount of \$1,050,000 for a Section 37 contributions from the proposed development. However, the Parties are not in agreement as to how the contributions are to be allocated.

[80] Counsel for the Applicants submitted to the Tribunal that the Section 37 funds should be used to restore and repair the exterior of the Berkeley Church. Given the geographical size of the City Ward, he argued that the Section 37 contributions from his clients should be spent in the immediate area of the Site and not anywhere throughout the Ward.

[81] Mr. Goldberg recommended that the Section 37 funds should be allocated to the exterior restoration of Berkeley Church. He maintained that as the proposed development conserves a heritage structure of the Berkeley Church, the exterior restorations would only benefit the public realm, and has the greatest impact to the nearby community most affected by the ZBLA.

[82] Mr. McClelland testified that after completing an assessment of the exterior of the Berkeley Church it is estimated that the repairs for conservation is approximately

\$2,000,000.

[83] It is the opinion of Mr. McClelland that the conservation and repairs to the exterior of the identified heritage building of Berkeley Church is an appropriate use of Section 37 funds. Both Mr. McClelland and Mr. Goldberg referred to policy 5.1.1.5 a) of the OP which states:

Despite Policies 3 and 4, Section 37 may be used, irrespective of the size of the project or the increase in height and/or density:

a. To conserve heritage resources or rental housing in accordance with the provisions of this Official Plan.

[84] In contrast, Counsel for the City indicated that while the City was in agreement in regard to the calculation and quantitative amount of \$1,050,000 it found that the request to direct the Section 37 contributions to be used as suggested by the Applicants was not appropriate.

[85] In the view of Mr. Tang, the allocation of Section 37 funds to the restoration of Berkeley Church would not result in the desired benefit to the community the policy envisions. Section 37 funds have been allocated towards heritage conservation within the area but in a wider context that better serves the community at large. Some examples would be the Heritage Interpretation Master Plan, or the Heritage Lighting Master Plan for Old Town Toronto.

[86] Mr. Tang explained that the City Staff work corroboratively with the area Councillor to determine what the best use of the Section 37 funds would be as the need in every area is different. Mr. Tang gave testimony that it would be his recommendation that the Section 37 funds be allocated towards local streetscape/parkland and community facility service improvements at Moss Park, or contributions toward affordable housing.

**DECISION**

[87] In considering these appeals the Tribunal has reviewed and given careful consideration to the materials and submissions of all Parties. The Tribunal finds that the application pre-dates OPA 406. Even though the expert witnesses for the Applicants have been able to demonstrate that the proposed development in their opinion has given regard to OPA 406 it is not in force for this application. OPA 352 while discussed throughout the hearing is still under appeal with the Tribunal and is not yet in force. The Tribunal agrees with Mr. Goldberg that an OPA is not required for this proposed development, as the Tribunal finds that the ZBLA conforms with the relevant, in-force, OP policies. Therefore, the Tribunal will dismiss the application of amendment to the City OP.

[88] As the application pre-dates the enforcement of OPA 406 and potentially OPA 352 the Tribunal is not persuaded by the testimony of Dr. Fadaee that the proposed development would create a negative precedent of future development along the Queen Street East corridor. Future applications would be considered with the appropriate enforcement of current OPAs at the time of an application deemed to be considered complete and heard on a site by site basis.

[89] The Tribunal was persuaded by the testimony of Mr. Goldberg and Ms. McIlroy that the proposed development is appropriate for the Site. The shadow impact to the Moss Park Apartments would be minimal and primarily cast shadow on an existing tree covered area. The tower height in this section of the Queen Street East corridor is appropriate in the context of the existing 15 storey Moss Park apartments and the City approved developments of greater height, planned in the immediate area. The Tribunal is convinced that a mixed-use development that incorporates the heritage elements, without modification, of Berkeley Church is in the greater interest of the public realm.

[90] Regarding Section 37 contributions, the Tribunal was not asked to provide an opinion or input on the quantum amount of \$1,050,000 that has been agreed upon between the Parties. However, it has been asked to provide direction to the allocation

of the Section 37 contributions. After hearing the evidence, the Tribunal is satisfied that the Berkeley Church is a significant heritage building and that its conservation does serve the greater public realm. The Members presiding over this hearing would encourage the City to take into consideration the value to the public realm of the exterior restoration of the Berkeley Church, but the Tribunal will not determine the priorities of the City by directing allocation of the Section 37 contributions.

[91] The Tribunal is persuaded by the evidence that the proposal promotes efficient development of land, accommodates a range of appropriate mixed uses, intensifies uses within the settlement area, and contributes to the range of housing options, and in particular, with the increase in three-bedroom dwelling units as desired by the City that is supported by significant existing and planned public and active transportation.

[92] The Tribunal has considered the concerns raised by the SLNA but was not persuaded that the concerns it has raised are sustainable given the evidence offered in support of the proposed development.

[93] The Tribunal finds that the proposal is consistent with the policy direction established by the PPS, and conforms to the relevant directives established by the GP, and as maintained by the OP. The Tribunal is further satisfied that the proposal has due regard for matters of Provincial interest, is consistent with the principles of good land use planning and is in the greater public interest. More significantly, the proposal furthers the goals and objectives of the Provincial planning regime to increase housing opportunities.

[94] Accordingly, the Tribunal will approve the ZBLA in principle, and will withhold its final Order, pending receipt of the ZBLA in final form and completion of the remaining legal, technical, and site plan matters indicated in Attachment 1. The Tribunal notes that the Attachment refers to providing the OPA in final form and to the Tribunal's determination regarding the Section 37 funds. Those references should now be read as amended in accordance with this Decision.

**INTERIM ORDER**

[95] The Tribunal Orders that the OPA appeal is dismissed.

[96] The Tribunal Orders that the ZBLA appeal is allowed in part and the ZBLA is approved in principle.

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

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

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

“Steven Cooke”

STEVEN COOKE  
MEMBER

“Mario Russo”

MARIO RUSSO  
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

Website: [www.olt.gov.on.ca](http://www.olt.gov.on.ca) Telephone: 416-212-6349 Toll Free: 1-866-448-2248

**301-317 Queen Street East**

The Parties jointly request the Tribunal withhold its final Order in this matter until such time as it is informed by the Parties of the following:

1. The Official Plan Amendment and Zoning By-law Amendments are in a form satisfactory to the City Solicitor.
2. With respect to site access:
  - a. The Owner has provided an updated and final transportation report to the satisfaction of Transportation Services.
  - b. The Owner has obtained permission from City Council and/or the Toronto Parking Authority for the removal of on-street parking on Queen Street East and paid any associated fees for such removal.
  - c. The Owner has obtained legal rights or created easements over the portion of the private lane owned by Concert to permit for the loading and waste operation to serve 301-317 Queen St. E. to the satisfaction of Transportation Services and the City Solicitor.
  - d. The Owner has obtained legal rights or created easements over the portion of the private lane not owned by Concert to use or travel over for the loading and waste operation to serve 301-317 Queen St. E. to the satisfaction of Transportation Services and the City Solicitor.
3. The Owner has entered into a section 37 agreement, which has been registered on title to the lands, to secure the following:
  - a. A cash payment of \$1,050,000 to be paid by the Owner for the following Community Benefit (to be identified and inserted by the Tribunal) pursuant to s.37 that are determined to be appropriate by the Tribunal through the hearing of this matter.
  - b. The Owner and Concert agree that as a condition of site plan approval the City will require the installation of truck sensors in the laneway and warning lights within the Concert building to warn vehicles when a garbage truck is present on site.
  - c. The Owner and Concert agree that as a condition of site plan approval the Owner shall grant an easement to Concert for the truck turnaround bay as depicted in the BA Group draft report dated September 25, 2020.
  - d. The Owner acknowledges and agrees that the vehicular access from Queen Street East will be right-in/right-out ("RIRO") only, and as a condition of site plan approval the Owner will be required to install signage, infrastructure, or take any measures to ensure that the RIRO is

\* in the event no s.37 benefits are directed to the church.

\*\* in the event s.37 benefits are directed to the church.

enforceable by the City and Toronto Police Services, all of which will be secured as a condition of site plan approval.

- e. The Owner and Concert agree as a condition of site plan approval to take steps in cooperation with the adjoining landowner Concert to ensure that there will be no illegal parking in the private lane that would impede operation of waste pick-up. The City will consider any requests made by the Owner and Concert to assist with vehicle removal in accordance with the Municipal Code.
  - f. \*Prior to any site plan approval for the site the Owner shall provide an acceptable Conservation Plan and enter into a Heritage Easement Agreement with the City of Toronto.
4. \*\*The Owner shall provide an acceptable Conservation Plan and enter into a Heritage Easement Agreement with the City of Toronto.
  5. The Owner has provided an updated functional servicing report and revised hydrogeological report which is acceptable to the Executive Director and Chief Engineer, Engineering and Construction Services, and any required upgrades to services identified in the accepted report are addressed through a financially secured agreement.

The Tribunal may be spoken to if difficulties arise in implementing these matters.

\* in the event no s.37 benefits are directed to the church.

\*\* in the event s.37 benefits are directed to the church.