

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



ISSUE DATE: April 14, 2020

CASE NO(S): PL171452

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:	445 Adelaide Street West Inc.
Subject:	Application to amend Zoning By-law No. 438-86 - Refusal or neglect of the City of Toronto to make a decision
Existing Zoning:	RA - (Re-Investment Area)
Proposed Zoning:	Site Specific (To be determined)
Purpose:	To permit an 11-storey non-residential building
Property Address/Description:	445, 447, 449 & 451 Adelaide Street West
Municipality:	City of Toronto
Municipality File No.:	16 207248 STE 27 OZ
OMB Case No.:	PL171452
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OMB Case Name:	445 Adelaide Street West Inc. v. Toronto (City)

Heard: February 18 to March 6, 2020 at Toronto, Ontario

APPEARANCES:

Parties

Counsel*/Representative

445 Adelaide Street West Inc.

Kim Kovar* and Maggie Bassani*

City of Toronto

Joanna Wice* and Daniel Elmadany*

N. Alfred Apps

David Tang* and Neal Altman*

Joseph and Salwa Musa

Amber Stewart* and Anthony Soscia (student-at-law)

Toronto Standard Condominium Corp.
1984

Dieter Riedel

DECISION OF THE TRIBUNAL DELIVERED BY GERALD S. SWINKIN AND D. CHIPMAN

THE PARTIES

[1] This appeal hearing before the Local Planning Appeal Tribunal (the “Tribunal”) spanned twelve hearing days. It was brought by 445 Adelaide Street West Inc. (the “Appellant”) under the authority of s.34 (11) of the *Planning Act* (the “Act”) by reason of the refusal or neglect of the Council of the City of Toronto (the “City”) to make a decision on the Appellant’s application for zoning amendment with respect to lands municipally known as 445 – 451 Adelaide Street West (the “Property”). The Property is located at the southwest corner of Adelaide Street West and Morrison Street.

[2] In addition to the Appellant and the City, there were three other Parties represented at the hearing, all of whom were opposed to the appeal

[3] Toronto Standard Condominium Corporation 1984 (“TSCC 1984”) is the condominium corporation located in the immediate vicinity of the Property to the south and west. TSCC 1984 is municipally known primarily as 10 Morrison Street but also has a convenience address of 455 Adelaide Street West as it fronts on both Morrison Street and Adelaide Street West. It is a ten storey condominium apartment building with embedded townhouse units on the Morrison Street frontage, which has an east/west wing fronting on Morrison Street and a north/south wing fronting on Adelaide Street West.

[4] Alfred Apps is the owner of Unit 907 within TSCC 1984. That unit is an amalgamation of units on the 9th floor of the north/south wing. It has, according to Mr. Apps, a floor area of just under 3,000 square feet and a balcony and north and east facing terrace of approximately 1,800 square feet. The unit runs the length of the building wing, with windows along its full eastern side and along its northern side. It is bounded on the west by the corridor serving the unit and has no windows along that wall or the south wall.

[5] Joseph Musa is the owner of the most westerly of four townhouse units fronting Adelaide Street West. His property is municipally known as 453 Adelaide Street West. That dwelling unit is attached to the three other units which are on the Property and are municipally known as 447 – 451 Adelaide Street West. These townhouse units are two storeys in height. Mr. Musa's unit is immediately adjacent to the blank east wall of TSCC 1984.

THE PRINCIPAL ISSUES

[6] The matter before the Tribunal was focused on two principal issues: 1) how to treat the existing buildings on the Property in light of their designation under Part IV of the *Ontario Heritage Act* ("OHA"); and 2) built form issues relating to the overall height of the proposed building, the height of its streetwall, its relationship to abutting buildings and the extent of shadow which will be thrown from it onto St. Andrew's Playground, a public park on the north side of Adelaide Street West.

THE PROPERTY

[7] The Property is rectangular in shape, with a frontage of approximately 20.4 metres ("m") along Adelaide Street West and a flankage of 27.4 m along Morrison Street. The site area is 551.6 square metres ("sq.m."). The Property is bounded to the south by a public lane, approximately 4.5 m in width, which runs west from Morrison Street and terminates just west of the site, at 455 Adelaide Street West.

[8] The Property is improved with 2- and 2¹/₂-storey brick buildings containing office/commercial uses, as well as three residential units, two at 447 Adelaide Street West and one below-grade suite at 449 Adelaide Street West. The building at 445 Adelaide Street West consists of a converted 2¹/₂-storey detached house, built in 1880, while the buildings on 447-451 Adelaide Street West comprise the easterly three units of a 2-storey, 4-unit residential block built in 1906.

[9] The buildings at 445 and 451 Adelaide Street West have rear additions that extend nearly the entire depth of their respective lots, and have overall building depths of approximately 24-26 m. By contrast, the buildings at 447 and 449 Adelaide Street West have lesser building depths, measuring approximately 13 m.

[10] The area at the rear of these properties is used for parking, with vehicular access from the public lane. Pedestrian access to all 4 units is taken from Adelaide Street West, while 445 Adelaide Street West also has a rear 1-storey commercial component, with pedestrian access from Morrison Street.

THE SURROUNDING PHYSICAL CONTEXT

[11] To the immediate west of the Property, at 453 Adelaide Street West, is the Musa property as described above.

[12] To the west of 453 Adelaide Street West is TSCC 1984, also known as Fashion District Lofts, which was completed in 2009, being an L-shaped building as described above. The east-west wing of the building has a height of 10 storeys (34.2 m), which steps down to an 8-storey north-south wing fronting on Adelaide Street. The north-south wing is built to the east property line with a blank east wall near the Adelaide Street frontage. Further south, the building is set back from the east lot line approximately 5 m with east-facing windows. The building is built to its west property line with a party wall condition.

[13] To the west of Fashion District Lofts is the north building of Fashion House Lofts, an 11-storey (35.7 m tall) building at 461 Adelaide Street West. The building steps back along its Adelaide Street frontage above the 7th floor and again above the 10th floor. It is built with a party wall condition along its east property line, with a zero setback to its west property line and along Adelaide Street and an inset building face in the middle portion of the building.

[14] Further west is a 1-storey commercial building (471 Adelaide Street West), a 4-storey brick warehouse-style office building with a nightclub at the ground level (473 Adelaide Street West) and a commercial surface parking lot at the southeast corner of Adelaide Street and Portland Street (115 Portland Street). These properties together with properties at 582-590 King Street West, are the subject of active rezoning and Site Plan Approval applications to permit a 12-storey office building along the Adelaide Street frontage (51.45 m to the top of main roof and 56.45 m to the top of the mechanical penthouse), together with a 6-storey office building along King Street (two storeys on top of the existing 4-storey building). The application has been appealed to the Tribunal.

[15] On the north side of Adelaide Street West, west of Maud Street, is a 4-storey office building set back behind a surface parking area (480 Adelaide Street West), a 3^{1/2}-storey warehouse-style office building (490 Adelaide Street West) and a single-storey commercial building at the northeast corner of Adelaide Street and Portland Street (502 Adelaide Street West).

[16] Together with the properties to the north at 119-123 Portland Street, 502 Adelaide Street West has been rezoned to permit a 14-storey mixed-use building (45 m to the top of the main roof, and 49.3 m to the top of the elevator overrun), with retail uses at grade and residential units above. Interestingly, the site was improved with a 1 storey commercial building and three 2-storey rowhouses. As they were not identified as heritage resources, there was no issue with their intended demolition. The City Planning Department staff report dated May 18, 2018 for this zoning amendment was introduced

in evidence. It is of note as it addresses a similar type of building proposal to that which is before this panel. The report notes the height to be consistent with, and compatible with, heights in the area, which is relatively near to the Property on Adelaide Street West. The building will essentially be constructed to the lot lines. There is proposed to be a 3 m stepback above the 8th floor level on the Portland Street and Adelaide Street West frontages. In order to anticipate residential development to its immediate north, the north elevation will be primarily finished as precast concrete with some panels of spandrel (non-transparent) glass at the western extremity of that elevation. Access to the loading space and to the underground parking will be from a 4.8 m public lane to the east. The report also makes reference to the fact that the proposal will cast some shadow on St. Andrew's Playground between 4:18 p.m. and 6:18 p.m. and that this shadow impact is acceptable to staff.

[17] To the north of that parcel, at 135-143 Portland Street, is a site that is currently developed with 2- and 3-storey house form buildings that was the subject of a rezoning application appeal to the Tribunal and settlement with the City. The settlement will permit a 16-storey building (49.9 m to top of mechanical penthouse), with 129 residential units in an essentially non-stepped building set adjacent to and behind three of the townhouse units, the fourth unit being authorized for demolition.

[18] West of Portland Street are several recently built and approved buildings, including an approved 15-storey mixed-use building at 543-553 Richmond Street West (49.3 m, including mechanical penthouse), an approved 16-storey mixed-use building at 149-157 Bathurst Street (52 m, including mechanical penthouse), a 17-storey mixed-use building at 525 Adelaide Street West (known as Musee, 55.6 m, including mechanical penthouse) and a recently completed mixed-use development at 620 King Street West/501 Adelaide Street West (King Portland Centre, 13 office storeys, 58.8 m and Kingly Condos, at 501 Adelaide Street West, 15 storeys, 54.5 m).

[19] To the immediate north, and opposite, the Property, in the city block bounded by Adelaide Street West to the south, Maud Street to the west, Richmond Street to the

north, and Brant Street to the east, is the park known as St. Andrew's Playground (450 Adelaide Street West) and the site of the approved "Waterworks" redevelopment. The block formerly served as a public market in the mid to late 1800's and early 1900's.

[20] St. Andrew's Playground is a 0.59 hectare park, which occupies the southerly portion of the block and includes a children's play area and seating within an open green space in the north-central area of the park, a dog off-leash area, heavily treed areas along the south and east edges of the park, and a surface parking lot along the west edge. The City is proposing improvements to St. Andrew's Playground including an expansion to incorporate the parking lot on the western portion of the block, which will become a larger dog off-leash area, as well as updated amenities and programming and increased connectivity to the surrounding area.

[21] Within that block, directly north of the park is the Waterworks Building at 497-511 Richmond Street West, which was built in 1932 and is designated under Part IV of the OHA (By-law 1350-2013). The property is the subject of an approved rezoning application to permit the "Waterworks" redevelopment, which comprises a 13-storey mixed-use building (47.5 m to the main roof and 53.5 m to the top of the mechanical penthouse), with a food hall at grade, a YMCA on the second and third floors, and residential uses above. The development is currently under construction.

[22] Further to the north, on the north side of Richmond Street West, is a 6-storey residential mid-rise building (500 Richmond Street West) and a 1-storey commercial building (520 Richmond Street West). The 520 Richmond property has a recent zoning approval to permit a 15-storey mixed-use building (45 m and 47.2 m to the top of the mechanical penthouse) containing 124 residential units and 215 sq.m. of commercial space at grade, which is currently under construction (Rush Condos).

[23] Immediately east of St. Andrew's Playground, on the east side of Brant Street, are a recently completed 11-storey mixed-use building known as Brant Park at the northeast corner of Adelaide Street West and Brant Street (39 Brant Street). There is

the 14-storey Ace Hotel at 49-51 Camden Street, which is under construction and nearing completion. Immediately north of it is a 7-storey residential building at the northeast corner of Brant Street and Camden Street (50 Camden Street) and a 10-storey converted office building at the southeast corner of Brant Street and Richmond Street (Soho Lofts, 477 Richmond Street West).

[24] The Ace Hotel development, which was approved in 2016, has a permitted height of 45 m, including mechanical penthouse, and a permitted density of 12.9 Floor Space Index (“FSI”). It is located on a site that has similar dimensions to the Property (a site area of 620 sq.m. compared to that of the Property at 551.6 sq.m.) and is bounded by a private lane (rather than a public lane). The building will have a rooftop restaurant and wrapped mechanical penthouse at the 14th floor.

[25] To the east of the Property, at the southeast corner of Adelaide Street West and Morrison Street, is a 2-storey commercial building (443 Adelaide Street West), with a private surface parking lot to the south of the public lane (1-7 Morrison Street). A combined site consisting of 1-7 Morrison Street and 540-544 King Street West has a minor variance approval from 2009 to permit an 8-storey (36.8 m) office building, stepping down to 33.6 m along King Street (OMB File PL081578). This same combined site is the subject of a recently approved rezoning application (approved by Council on December 17, 2019) to permit a mixed-use development, comprised of a 12-storey retail/office component at the northwest corner of King Street West and Brant Street and a 15-storey residential portion fronting Morrison Street, both with an overall height of 50 m. Loading for the proposed development would be accessed from the public lane and vehicular access to an underground garage would be from Brant Street. The residential lobby is accessed through Morrison Street.

[26] Further to the east, at the southwest corner of Adelaide Street West and Brant Street, is the 4-storey Alpha Alternative School/former Brant Street Public School (20 Brant). The property, consisting of the school building, outdoor play area (along the north lot line) and surface parking lot (along the south lot line), is listed on the City’s

Heritage Register. To the south of the school is a 1-storey restaurant (12 Brant Street).

[27] At the southeast corner of Adelaide Street West and Brant Street is a 10-storey (42.5 m) office building, built in 1989 (425 Adelaide Street West). Access to the building's loading and underground parking area is from Brant Street, at the south end of the site. To the south of this building is a 3-storey office building (25 Brant Street), adjacent to a 9-storey residential building known as "Quad Lofts 1" (19 Brant Street) and a 3-storey converted warehouse building with restaurant uses at-grade and office uses above (522 King Street West).

[28] Further east, beyond the office building at 425 Adelaide Street West, is a recently completed 10-storey residential building known as "Lofts 399" (399 Adelaide Street West) and, beyond that, at the southwest corner of Spadina Avenue and Adelaide Street, is a proposal for a 16-storey non-residential building (69.6 m to the main roof, and 76.6 m to the mechanical penthouse), with at-grade retail and office uses above (379-391 Adelaide Street West and 96 Spadina Avenue).

[29] To the immediate south of the Property, fronting on the west side of Morrison Street, is the 10-storey east-west wing of TSCC 1984, known as Fashion District Lofts (10 Morrison Street). The east-west wing has windows and balconies along its northerly façade and is set back approximately 5 m from south limit of the lane (approximately 7.25 m from the centre line of the lane). There is a component of the building along the Morrison Street frontage which is a 6-storey element that is built to the south limit of the lane and has clerestory windows (being windows which are essentially set above eye level to allow light in but preserve privacy) facing north. Vehicular access to the underground garage and loading is from Morrison Street at the north end of the building.

[30] To the south of Fashion District Lofts, on the north side of King Street West, is the south building of Fashion House Condos, a 12-storey mixed-use building (560-572 King Street West). The L-shaped building has a narrow frontage along King Street West and wraps around a 3-storey heritage building designated under Part IV of the OHA,

which contains restaurant and office uses (the Toronto Silver Plate building, 1882, designated in 2011). The east-west wing runs parallel to the Fashion District Lofts and the north building of the Fashion House to the north, with a publicly accessible 9m wide “woonerf” style pedestrian mews between the buildings.

[31] To the east of the Fashion House Condos is a 3-storey converted warehouse building with a restaurant at the ground level and offices above (548 King Street West).

[32] Directly west of the Fashion House Condos is a 3-storey warehouse-style office building (578-580 King Street West), which is the subject of a rezoning application to permit a 15-storey office building (58.6 m to the main roof, and 63.3 m to the mechanical penthouse). The application has been appealed to the Tribunal.

[33] Further south, on the south side of King Street West, is a proposed 16-storey mixed-use development (56.5 m, including mechanical penthouse) (485-539 King Street West), which includes a mix of residential, office and retail uses (KING Toronto).

THE WEST PRECINCT OF THE KING SPADINA SECONDARY PLAN AREA

[34] For planning purposes, the Property is situated within the area identified in the more recent iterations of the King Spadina Secondary Plan as the West Precinct, which are the lands within the secondary plan located west of Spadina Avenue, generally bounded by Queen Street to the north, Bathurst Street to the west, Front Street to the south and Spadina Avenue to the east.

[35] The Tribunal was provided with background on the evolution of this area by the Appellant’s land use planning consultant, Peter Smith. He advised the Tribunal that the West Precinct includes a mix of rowhouses from the late 1800s and low-rise and mid-rise industrial and warehouse style buildings from the early 1900s, most of which have been converted to commercial office and retail uses, interspersed with newly constructed residential buildings and purpose-built office buildings generally ranging in

height between 8 and 20 storeys. Mr. Smith pointed out an exception to this range in the very significant development of "The Well", further to the south, which includes approved heights of up to 46 storeys (residential) and 36 storeys (office). However, he was clear that this was located at the south of the District and was differentiated for planning purposes (and removed from the Secondary Plan area.)

[36] It is clear from a consideration of the various parcels and developments detailed above, under the heading of the surrounding physical context, that there is no uniformity in height and density. It is also clear that as time progresses, in keeping with the Provincial mandate to seek intensification within urban growth areas, that this area has been a prime, and successful, example of the implementation of that policy goal. To aid the Tribunal in an appreciation of the location of the area's built form and its height relationships, the Appellant's architects produced a model, which was used for reference throughout the hearing.

[37] Mr. Smith advised that the newer buildings in the district have typically been built on vacant or underutilized lots, using a variety of materials and architectural styles. The area is seen as a desirable location for new infill development given its proximity to the Entertainment and Financial Districts. Businesses locating in the area are often in creative and design related fields, while residential developments include smaller "boutique"-style buildings as well as larger developments that occupy sizeable portions of city blocks. The area continues to evolve into its planned function of a mixed-use area of denser development.

[38] The King-Spadina area is one of "The Kings" neighbourhoods that flank the Financial District to its east and west. Formerly industrial districts, these areas have evolved into vibrant mixed-use areas containing a mix of residential, office, media and entertainment uses.

[39] As he relates the history, Mr. Smith advises that the King-Spadina area was initially developed predominantly as a residential neighbourhood. Beginning in the late

1800s with the introduction of the railways, and accelerating following the Great Fire of 1904, the King-Spadina area was transformed into a predominantly industrial area as the original residential building stock was demolished and brick-and-beam industrial and warehouse buildings were built in their place. It was his opinion that the brick-and-beam buildings are the defining element of the area's heritage character and that they include numerous buildings that are significant architecturally both on their individual merits and as part of a larger collection of such buildings.

[40] He was further of the view that the remnant residential buildings, now limited to a few small pockets within the King-Spadina area, are not part of the defining character of the area and are generally unremarkable (with a few exceptions, such as the Clarence Row townhouses). He pointed out that the prior official plan and zoning restrictions, which prohibited residential uses and made existing residential uses legal non-conforming, served to encourage the further elimination of the remaining residential buildings and their replacement with surface parking lots and infill office and industrial buildings.

[41] However, by way of a kind of reincarnation, since the adoption of the King-Spadina Part II Plan in 1996, which provided a flexible planning framework with no density limitations and limited use restrictions (which specifically included permission for residential uses), the King-Spadina area has experienced significant investment and redevelopment both east and west of Spadina Avenue. It was his opinion that the resulting mix of uses and building types is also part of the defining character of King-Spadina. The Tribunal understands his view to recognize the mix of uses as reflecting the evolving character, which draws upon the two historical periods of use, but which are manifesting in contemporary structures that speak to today's needs of delivering the housing and employment mandated by both Provincial and City policy and blending those needs in a compatible and efficient fashion.

ROAD AND TRANSIT INFRASTRUCTURE

[42] Adelaide Street West is a three-lane one-way eastbound Major Arterial Road. It accommodates a bicycle lane which is now to be relocated to the north side of the street. There are sidewalks on both sides of the street, as is the case with all of the Downtown streets. The City has instituted new traffic management techniques to better accommodate the different modalities of user and make more efficient use of the public highways, the most recent being the King Street Pilot Project, which gives precedence to streetcars and opens up a greater pedestrian realm.

[43] From a transit perspective, the Property has excellent access to transit services. In terms of higher order transit, the site is located approximately 1.3 kilometres (approximately a 16- to 18-minute walk) west of the St. Andrew and Osgoode subway stations on the Yonge-University subway line (Line 1). It will be within a radius of approximately 500 m (approximately a 715 m walk) from the proposed Front-Spadina GO RER station and approximately 345 m and 380 m from the proposed King-Bathurst and Queen-Spadina stations, respectively, on the proposed Ontario Line.

[44] Surface transit routes serving the vicinity include the 504 King streetcar, the 506 Lake Shore streetcar, the 510 Spadina LRT/streetcar, the 501 Queen streetcar and the 511 Bathurst streetcar.

[45] The Property is also within convenient walking distance of numerous restaurants, retail stores, professional and social services, theatres and sporting venues within the Entertainment District and the Financial District.

THE PRIOR (2005) DEVELOPMENT PROPOSAL APPROVAL

[46] The Property has a history in connection with redevelopment approvals. In 2005, an application was made to the Committee of Adjustment under File No. A0853/05TEY seeking variance approval to permit a 10-storey mixed-use building on the Property for

residential and retail uses. It must be noted however, that that application also presumed the inclusion in the development parcel of the lands municipally known as 453 Adelaide St. West, the Musa property. The application contemplated demolition of the existing buildings on the combined property.

[47] The variance application was approved by the Committee of Adjustment on December 14, 2005, on the condition that the building be constructed substantially in accordance with plans on file with the Committee of Adjustment and that the mechanical penthouse equipment not exceed the building height variance of 29.6 m. In addition, the approved variances permitted a reduction in the required number of parking spaces (from 34 to 33 spaces) and the elimination of any requirement for indoor and outdoor residential amenity space.

[48] With respect to setbacks and separation distances, the variances permitted a setback of 0 m from the west side lot line and 3.02 m from the centre line of the lane for the portion of the building located more than 25 m from the street line, and a minimum separation of 8.1 m between facing main walls. In addition, the building was permitted to be stepped back 3 m from the north and east façades at a height of 21.5 m rather than the 20 m prescribed by the zoning by-law.

[49] The architectural plans dated October 15, 2005 filed with that application provided for a total gross floor area of 5,810 sq.m., including a commercial gross floor area of 264 sq.m. on the ground floor. A total of 64 residential units were proposed, including 1 bachelor, 56 one-bedroom and 7 two-bedroom units.

[50] The Committee of Adjustment approved proposal was referred to throughout this hearing as the “as-of-right” development and will be so referred to in this Decision. To be fair though, there was a question as to whether a building permit could be secured for the 2005 proposal, not just for the very significant fact that the current Property does not include 453 Adelaide Street West, but also due to certain new standards in Zoning By-law 569-2013 which would have to be addressed.

THE CURRENT DEVELOPMENT APPLICATION

[51] The plans originally filed with the present Application under appeal were for an office building that would have required demolition of the existing buildings on the Property. Mr. Smith advises that the rationale for proposing a non-residential use was to contribute to a broader range of uses in the King-Spadina area. Although taller than the previously Committee of Adjustment approved height of 29.6 m, the proposed height of 40.5 m, in his view, would have fit harmoniously with the existing and planned heights in the area, which had generally increased since 2005.

[52] Following submission of the application, City staff advised that they did not support demolition of the existing buildings, the result of which would have been to reduce the office floor plates, which were already small. As a result, he said that the Appellant and its team considered the potential for an alternative non-residential land use that could potentially function with a smaller floor plate, specifically a hotel use.

[53] The Appellant connected with, and entered into an agreement with, what was billed to the Tribunal as a prestigious boutique hotel operator (The Hudson, part of the SBE Hotel Group). After review of the hotel operator's programme requirements, it was determined among the group that the optimal floorplate and accessory space cannot be accommodated within a built form that involves retention of the existing buildings on the Property.

[54] Based upon the hotel operator's requirements, the architect created a new set of plans and the zoning amendment application was recast based upon those drawings. Mr. Smith re-considered the proposal and provided the City with an updated Planning Justification Report., along with revisions to the other supporting material.

[55] The current plans contemplate a 14-storey hotel, including 146 suites and accessory restaurants and cafes. The proposed height to the top of roof is 45.7 m, including an 11-storey streetwall height along Adelaide Street West (35.5 m) and

stepbacks at the 12th and 14th levels. The building will have a total gross floor area of 6,597 sq.m. (5,481 sq.m.) above grade as there is floor area included within the four underground levels as required by the terms of the zoning by-law) and an overall density of 11.96 FSI (9.94 FSI above grade).

[56] On the ground floor, the main wall of the north facade of the building is set back approximately 2.34-2.72 m from Adelaide Street West (1.62-2.0 m from the projecting pilasters), which is generally consistent with the adjacent building at 453 Adelaide Street West. It is intended that the sidewalk along Adelaide Street West will be widened from 1.5 m to 3.6 m. Together with the space in front of the building this results in a pedestrian clearway or minimum sidewalk zone width of approximately 5.6 m at the west end and 5.3 m at the east end, measured from the face of the building to the edge of the curb.

[57] The ground floor includes the hotel lobby entrance and a café facing Adelaide Street West. The loading space for the building is to be toward the rear of the building on the east elevation and accessed from Morrison Street. It is to be a Type "B" loading space with an overhead door operated by a dockmaster. Loading, servicing and utility functions will be integrated within the building and will not be visible from the public realm, with the exception of the loading garage door facing Morrison Street.

[58] At the rear of the building toward the west wall will be the access along the public lane to a parking elevator which will convey vehicles to the underground parking floor. The parking floor will accommodate 11 vehicles. Movement of the vehicles in and out of the parking facility will require a valet as it is necessary to be certified to operate the elevating device. This is meant to serve hotel guests.

[59] Above the ground floor, the building is set back 1.12 m from the west lot line, while the front facade is extended to the extent of the pilasters, providing a slight overhang above the ground level. Above the 11th level, the front wall is stepped back approximately 4.6 m, providing a roof terrace facing Adelaide Street West. The 14th

(penthouse) level consists of a restaurant use and is stepped back an additional 5.07 m from Adelaide Street, providing a rooftop terrace for the restaurant, which is also stepped back 0.52 m at the rear.

[60] Below grade, the proposal includes four levels which accommodate accessory hotel uses, including a restaurant at the B1 level, meeting rooms and a restaurant at the B3 level and a fitness room, preparation kitchen and hotel storage at the B4 level. As noted above, hotel valet parking is proposed to be accommodated at the B2 level accessed via the public lane along the site's southerly property line. In accordance with the City's request, there is to be a minor stratified lane widening.

[61] An outdoor seating area will be provided in conjunction with the ground floor café. A 3.24 m canopy will be located along the entirety of the front main wall along Adelaide Street West and will encroach approximately 0.9 m into the Adelaide Street right-of-way, for which the City's permission would be required.

[62] A total of 14 bicycle parking spaces are proposed on and adjacent to the Property, including eight spaces within the Adelaide Street West right-of-way, four spaces within the Morrison Street right-of-way and two spaces within the B1 level.

[63] Architecturally, the presentation of the east, west and south façades is a checkered pattern of glass and metal panels (coloured terra cotta in the design presented to the Tribunal) to create visual interest, while the north facade is treated predominantly with window wall accented by projecting horizontal and vertical metal elements framing the windows. The penthouse level is enclosed by windows wrapped with vertical metal louvres.

[64] For comparison purposes, Mr. Smith provided a table identifying key data points between the original 2017 zoning amendment application and its revision in November, 2019. That table is reproduced here for convenience:

	Original Submission (August 2017)	Current Plans (November 2019)
Site Area	551.6 sq.m.	551.6 sq.m.
Total Gross Floor Area	4,204 sq.m.	6,597 sq.m. (5,481 sq.m. above grade)
Office GFA	3,955 sq.m.	0 sq.m.
Retail GFA	249 sq.m.	0 sq.m.
Hotel GFA	0 sq.m.	5,540 sq.m.
Eating Establishment GFA		1,057 sq.m.
Overall FSI	7.62	11.96 (9.94 above grade)
Height (Top of Roof)	40.5 m	45.7 m
Total Vehicular Parking	10 spaces	11 spaces
Total Bicycle Parking	20 spaces	14 spaces
Long-term	9 spaces	2 spaces
Short-term	11 spaces	12 spaces
Total Loading	One Type 'C'	One Type B'

[65] Mr. Smith asserts that, in his opinion, the present proposal represents a scale of intensification that is in keeping with the general height pattern of existing and approved buildings in the area and would fit within the evolving planned context. Specifically, the proposal is consistent with street wall heights of recently constructed and proposed buildings to the east and west of the Property, which range from 7 to 11 storeys.

THE HERITAGE POLICY FRAMEWORK

[66] Key to the hearing was understanding and applying the relevant heritage policy from the Provincial planning policy instruments and the City Official Plan ("OP").

[67] The relevant policies are transcribed as follows:

[68] From the Provincial Policy Statement, 2014 (“PPS”):

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

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 has been evaluated and it has been demonstrated that the heritage attributes of the protected heritage property will be conserved.

Definitions:

Built heritage resource: means a building, structure, monument, installation or any manufactured remnant that contributes to a property’s cultural heritage value or interest as identified by a community, including an Aboriginal community. Built heritage resources are generally located on property that has been designated under Parts IV or V of the *Ontario Heritage Act*, or included on local, provincial and/or federal registers.

Conserved: means the identification, protection, management and use of *built heritage resources, cultural heritage landscapes and archaeological resources* in a manner that ensures their cultural heritage value or interest is retained under the *Ontario Heritage Act*. This may be achieved by the implementation of recommendations set out in a conservation plan, archaeological assessment, and/or heritage impact assessment. Mitigative measures and/or alternative development approaches can be included in these plans and assessments.

Significant: means in regard to cultural heritage and archaeology, resources that have been determined to have cultural heritage value or interest for the important contribution they make to our understanding of the history of a place, an event, or a people.

Criteria for determining significance for the resources identified in sections (c)-(e) are recommended by the Province, but municipal approaches that achieve or exceed the same objective may also be used.

[69] From the Growth Plan for the Greater Golden Horseshoe, 2019 (“GP”)

4.2.7 Cultural heritage resources

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

Municipalities will work with stakeholders, as well as First Nations and Métis communities, in developing and implementing official plan policies and

strategies for the identification, wise use and management of *cultural heritage resources*.

Definitions:

Built heritage resource

A building, structure, monument, installation or any manufactured remnant that contributes to a property's cultural heritage value or interest as identified by a community, including an Aboriginal community. *Built heritage resources* are generally located on property that has been designated under Parts IV or V of the Ontario Heritage Act, or included on local, provincial and/or federal registers. (PPS, 2014)

Cultural heritage resources

Built heritage resources, cultural heritage landscapes and archaeological resources that have been determined to have cultural heritage value or interest for the important contribution they make to our understanding of the history of a place, an event, or a people. While some *cultural heritage resources* may already be identified and inventoried by official sources, the significance of others can only be determined after evaluation. (Greenbelt Plan)

Conserved

The identification, protection, management and use of *built heritage resources, cultural heritage landscapes and archaeological resources* in a manner that ensures their cultural heritage value or interest is retained under the Ontario Heritage Act. This may be achieved by the implementation of recommendations set out in a conservation plan, archaeological assessment, and/or heritage impact assessment. Mitigative measures and/or alternative development approaches can be included in these plans and assessments. (PPS, 2014)

Strategic growth areas

Within *settlement areas*, nodes, corridors, and other areas that have been identified by municipalities or the Province to be the focus for accommodating *intensification* and higher-density mixed uses in a more *compact built form*. *Strategic growth areas* include *urban growth centres, major transit station areas*, and other major opportunities that may include infill, *redevelopment, brownfield sites*, the expansion or conversion of existing buildings, or *greyfields*. Lands along major roads, arterials, or other areas with existing or planned *frequent transit service* or *higher order transit corridors* may also be identified as *strategic growth areas*.

[70] From the City OP [underlining added by the Tribunal]:

3.1.5 HERITAGE CONSERVATION

Toronto's cultural heritage can be seen in the significant buildings, properties, districts, landscapes and archaeological sites found throughout the city. Their protection, wise use and management demonstrate the City's goal to integrate the significant achievements of our people, their history, our landmarks, and our neighbourhoods into a shared sense of place and belonging for its inhabitants.

The City's significant heritage properties tell stories about the forces and events that have shaped Toronto. They reveal the City's historical geography; a lakefront terrain carved by rivers and valleys that 11,000 years ago first allowed our First Nations to hunt and fish, and later farm. The Plan policies call for an engagement protocol with First Nations and the Métis for heritage properties and archaeological sites that may be of interest to them, as well as ensuring that information is provided to First Nations and Métis where archaeological resources are found to be First Nations or Métis in origin.

Our cultural heritage includes both the tangible and intangible values and attributes of the distinct towns, villages and cities that have come together to create the Toronto we know today. They enable us to reflect upon the diversity of our communities and neighbourhoods, and our distinct role as a provincial capital. The scale, number and significance of our cultural heritage resources is described in an on-going process of identification, evaluation and preservation that includes a Heritage Register and a comprehensive mapping of the City's archaeologically sensitive areas and sites. The identification of heritage properties that tell our City's stories is an on-going process

Our heritage properties represent a collective past and their protection, use and adaptive reuse also enrich our daily experience of the City; from commuting through Union Station and dining at the Distillery District, to hiking the Humber River and Rouge Valleys, which were important trade routes and the sites of large and vibrant First Nations settlements. We celebrate communally in squares in front of the Scarborough and North York Civic Centres and City Hall. Consciously or unconsciously, our heritage resources are part of our daily experience of our City.

Cultural Heritage is an important component of sustainable development and place making. The preservation of our cultural heritage is essential to the character of this urban and liveable city that can contribute to other social cultural, economic and environmental goals of the City. As a result, heritage conservation is integrated within the policies in many other sections of this Official Plan. The heritage policies of this Plan not only promote the preservation of important heritage buildings and structures but also the public views of them for the enjoyment of Torontonians. Schedule 4 describes the significance of each of the views of important heritage properties shown on Maps 7A and 7B.

The conservation of natural heritage is also an important element of heritage conservation in Toronto. The Official Plan provides for the conservation of Toronto's urban forest, ravines and river valleys in policies protecting the Natural Heritage System contained in Section 3.4 and Map 9 of the Plan. The

conservation of important heritage resources includes those policies protecting Toronto's Natural Heritage Areas.

As Toronto continues to grow and intensify this growth must recognize and be balanced with the ongoing conservation of our significant heritage properties, views, natural heritage system, and landscapes. In this context, the regulatory tools available to the City will be used to conserve the significant cultural heritage values and attributes of our heritage properties. Conservation of cultural heritage resources not only enriches our lives, it is an important shared responsibility and a prominent civic legacy that we must leave for future generations.

Policies

1. The Heritage Register will be maintained by the City Clerk, or his or her designate and will include all properties and Heritage Conservation Districts of cultural heritage value or interest that are designated under Parts IV and V of the Ontario Heritage Act, and will include all non-designated properties that have been identified through consultation with the City's heritage committee and approved by Council for their inclusion. The Heritage Register will be publicly accessible.
2. Properties and Heritage Conservation Districts of potential cultural heritage value or interest will be identified and evaluated to determine their cultural heritage value or interest consistent with provincial regulations, where applicable, and will include the consideration of cultural heritage values including design or physical value, historical or associative value and contextual value. The evaluation of cultural heritage value of a Heritage Conservation District may also consider social or community value and natural or scientific value. The contributions of Toronto's diverse cultures will be considered in determining the cultural heritage value of properties on the Heritage Register.
3. Heritage properties of cultural heritage value or interest properties, including Heritage Conservation Districts and archaeological sites that are publicly known will be protected by being designated under the Ontario Heritage Act and/or included on the Heritage Register.
4. Properties on the Heritage Register will be conserved and maintained consistent with the Standards and Guidelines for the Conservation of Historic Places in Canada, as revised from time to time and as adopted by Council.
5. Proposed alterations, development, and/or public works on or adjacent to, a property on the Heritage Register will ensure that the integrity of the heritage property's cultural heritage value and attributes will be retained, prior to work commencing on the property and to the satisfaction of the City. Where a Heritage Impact Assessment is required in Schedule 3 of the Official Plan, it will describe and assess the potential impacts and mitigation strategies for the proposed alteration, development or public work.
6. The adaptive re-use of properties on the Heritage Register is encouraged for new uses permitted in the applicable Official Plan land use designation, consistent with the Standards and Guidelines for the Conservation of Historic Places in Canada.

7. Prior to undertaking an approved alteration to a property on the Heritage Register, the property will be recorded and documented by the owner, to the satisfaction of the City.

8. When a City-owned property on the Heritage Register is no longer required for its current use, the City will demonstrate excellence in the conservation, maintenance and compatible adaptive reuse of the property.

9. When a City-owned property on the Heritage Register is sold, leased or transferred to another owner, it will be designated under the Ontario Heritage Act. A Heritage Easement Agreement will be secured and monitored, and public access maintained to its heritage attributes, where feasible. This policy may not apply to City-owned properties in Heritage Conservation Districts that are not considered to be individually significant.

10. A heritage management plan will be adopted by Council. The heritage management plan will be a comprehensive and evolving strategy for the identification, conservation and management of all properties on the Heritage Register, unidentified and potential heritage properties.

11. A protocol will be developed to co-ordinate and direct actions of the City and its agents in the event that a property on the Heritage Register is threatened by an emergency such as a fire, flood, willful damage or other unanticipated events. This protocol will address the conservation of the heritage property once the primary life and safety objectives of evacuating and ensuring public safety have been completed.

12. Designated heritage properties will be protected against deterioration by neglect through the enforcement of heritage property standards by-laws.

13. In collaboration with First Nations, Métis and the Provincial Government, the City will develop a protocol for matters related to identifying, evaluating and protecting properties and cultural heritage landscapes on the Heritage Register, archaeological sites and artifacts where they may be of interest to First Nations or Métis.

14. Potential and existing properties of cultural heritage value or interest, including cultural heritage landscapes and Heritage Conservation Districts, will be identified and included in area planning studies and plans with recommendations for further study, evaluation and conservation

[71] From the King-Spadina Secondary Plan (in-force):

Section 2.5 – Heritage buildings and other important buildings within the King-Spadina Area will be retained, restored and re-used.

Section 4.1 – Heritage buildings in the King-Spadina Area are essential elements of the physical character. In this regard, the City will seek the retention, conservation, rehabilitation, re-use and restoration of heritage buildings by means of one or more appropriate legal agreements.

THE HERITAGE DESIGNATION OF THE PROPERTY

[72] The Property has structures on it. The parcel at 445 Adelaide Street West is improved with a 2^{1/2}-storey detached dwelling, executed in what is described as the Bay & Gable style, a very Toronto style found throughout the older parts of the City. It was apparently constructed in 1880. The Tribunal is advised that the structure is altered from its original state by the removal of the two-storey decorative enclosed porch. Michael McClelland, the Appellant's heritage architect and heritage planner, identified this as a character defining element. This porch had allowed a walkout from the second storey window. As a result of the removal, which apparently occurred in 2005, that window has been replaced with a contemporary style window not in character with the balance of the front windows.

[73] There is also adjacent to that detached dwelling a row of four townhouses, the easterly three of which are on the Property (being 447- 451 Adelaide Street West), these structures having been constructed in 1906. They have been described as Edwardian Classical as they were constructed during the reign of King Edward. As acknowledged by Mr. McClelland, there isn't a hint of an architect's hand evident in their design. In this Panel's view, to say that they are unprepossessing would be kind. Though they say that beauty is in the eye of the beholder, this structure is utterly bereft of any attractive features, street appeal or indicia of artisanship or historic reference.

[74] At the City Council meeting on January 29, 2020, the property at 445 Adelaide Street West was designated under Part IV of the OHA by By-law No. 114-2020 as being of cultural heritage value or interest. At that same Council meeting, the properties at 447-453 Adelaide Street West were designated under Part IV of the OHA by By-law No.115-2020 as being of cultural heritage value or interest.

[75] Attached to both by-laws are Statements of Significance/Reasons for Designation. In both cases, they are asserted to have met the criteria under Ontario Regulation 9/06 (being the regulation setting forth the criteria for designation under the

OHA) under all three categories of design, associative and contextual value.

[76] The Report for Action dated November 25, 2019 prepared by the Toronto Preservation Board with respect to recommending the issuance of the Notices of Intention to Designate, which culminated in the enactment of the designation by-laws, advises Council that the proposed redevelopment of the Property was the subject of appeal to the Tribunal. The Report confirms that the properties were listed on the Heritage Register in 2017 and that they are identified in the King-Spadina HCD as contributing heritage properties. And although both of those facts create stays on any physical dealing with the structures, the advice to Council is that designation enables Council to refuse demolition. The Tribunal was not advised that this was part of a uniform exercise relating to all of the listed properties within the King-Spadina HCD. The report suggests that the properties have been targeted for this treatment as a consequence of the development proposal, which does not presume retention of the structures on the lands. The Tribunal takes note of the timing of the designation.

THE KING-SPADINA HERITAGE CHRONOLOGY

[77] By way of background, a King Spadina Heritage Conservation District Study was authorized by City Council on October 2, 2012. A Study Report was brought forward by the retained consultants in July, 2014. That report made recommendations as to Heritage Conservation District (“HCD”) boundaries and as to Statements of District Significance.

[78] This then led to the enactment of the King-Spadina Heritage Conservation District Study Area By-law under the authority of s.40.1 of the OHA, which would have the effect of prohibiting the demolition or removal of any buildings or structures on properties that have the potential to contribute to the cultural heritage value of King-Spadina within the study area. Those potentially contributing properties were listed on Schedule B to the by-law. 445 and 447-453 Adelaide Street West were listed on Schedule B. The Study Area By-law was enacted on December 15, 2016.

[79] Consequent upon this, a Heritage Conservation District Plan was developed, which culminated in the enactment on October 2, 2017 of By-law No.1111-2017, which designated the identified King-Spadina HCD as an HCD under Part V of the OHA. Multiple appeals were filed against the by-law. A hearing before the Tribunal has yet to be scheduled.

[80] The HCD is not co-extensive with the King Spadina Secondary Plan, as it excludes the properties on the south side of Queen Street West and other properties at the southern periphery of the secondary plan area, but it does include the bulk of the secondary plan area.

[81] The Property is on the map of contributing properties. The Property is located within the St. Andrew's Character Sub-Area.

THE HERITAGE EVALUATION OF THE PROPERTY

[82] On the Statement of Contribution Appendix attached to the HCD Plan, 445 Adelaide Street West is shown as being of a High Victorian Gothic style and having contribution to the HCD on the basis of design and contextual, while 447- 453 Adelaide Street West are shown as being of an Altered style and having contribution to the HCD on the basis of design and contextual. In neither case is there a reference to historical or associative value.

[83] It appears that Toronto Bay & Gable is a more local reference to a High Victorian Gothic style. It was the evidence of Mr. McClelland that the Toronto Bay & Gable style is ubiquitous in the older neighbourhoods of the City. Mr. McClelland produced for the Tribunal Exhibit 30D, which was an extensive booklet of Bay & Gable Property Photographs. The key map showed his study area as including the King Spadina HCD but extending beyond that, north to Dundas Street West, west to Niagara Street and east to Simcoe Street.

[84] In all, within this Study Area, there were 428 Bay & Gable properties. Within the King-Spadina HCD, a number of these properties were either designated or listed (now that they are on the list of contributing properties within the King-Spadina HCD). However, the area north of Queen Street West, up to Dundas Street West, is rich with this building type, the majority of which seem to have no heritage status whatsoever.

[85] A review of the entries in the booklet discloses many fine examples of the building type, most of them in what appears to be their natural context of clusters of same. Unlike other groupings of the type elsewhere in the King-Spadina HCD and within the Draper Street HCD, which area forms part of the King Spadina Secondary Plan, the property at 445 Adelaide Street West is modified, isolated and disconnected from its historic residential context.

[86] The Tribunal was advised by Mr. McClelland that, due to the host of appeals against the King-Spadina HCD Plan, and since the control over alteration and demolition of buildings would not be effective until the Plan was approved, as a protective measure, a report was brought forward in late October, 2017 to Council from Heritage Preservation Services staff of the City Planning Department with recommendations to list on the Heritage Register 94 properties that were identified as contributing properties under the HCD Plan. As the properties would not have heritage protection until the HCD Plan was approved, this was intended as a measure to provide some interim protection.

[87] The exercise was described as the “batch” listing. Mr. McClelland took the Tribunal to the report and its attachments. 445 and 447-453 Adelaide Street West are included in the Adelaide Street West properties to be listed. Mr. McClelland directed the Tribunal to the associated Statements of Significance and identified Heritage Attributes for both.

[88] He was critical of the disconnect between the Statements of Significance and the Heritage Attributes for not just the Property but with respect to quite a number of entries

of other properties. In fact, when taken to many of the pages of the Report Attachments, it was apparent that something of a template approach appeared to be used in the enumeration of the attributes. This was manifested in an almost uniform reference to the setback, placement and orientation of the building on the parcel, and the scale, form and massing of the structure as a purely generic statement.

[89] Reference is made to colour of brick or style of roof without a connection to the Statement of Significance. The attributes simply stand as descriptors without identifying any significance or heritage value or interest.

[90] In support of the zoning amendment application, Mr. McClelland prepared a Heritage Impact Assessment (“HIA”), which was updated with the amended application relating to the proposed hotel use. Mr. McClelland spoke to this HIA in his oral testimony. O.Reg. 9/06 made under the OHA sets out three broad categories of criteria to be considered as the basis for a designation and requires that only one be present to warrant a recommendation for designation.

[91] Mr. McClelland’s HIA includes the language from the Regulation and he advises that none of the structures represent a “rare, unique, representative or early example of a style, type, expression, material or construction method”, nor do they “demonstrate a high degree of craftsmanship or artistic merit or scientific or technical achievement”. These are the design criteria bases. The historical, factual and pictorial evidence provided to the Tribunal in the hearing would sustain this conclusion.

[92] With respect to historical or associative value, it was his evidence from archival research that there were no links to any important event, person or organization and there was no attribution to a significant architect, builder, designer or theorist who was significant to the community.

[93] Finally, with respect to contextual value, although Mr. McClelland acknowledged that the structures are linked to their surroundings, neither of them is a landmark nor

singularly important in maintaining the character of the area. In fact, he offers that with the evolution of the neighbourhood, the structures have become incongruous with the surrounding built form.

[94] After his considered review of the features of these structures on the Property, Mr. McClelland was of the opinion that they did not bear significant heritage attributes. As a consequence, in his view, they do not attract the conservation obligation which was being advanced by the City.

[95] The Tribunal would take Mr. McClelland's conclusions even further. They undermine the underpinning for the designation by-laws as, to the extent that none of the criteria in Regulation 9/06 are legitimately met, the justification and authority for those by-laws is vulnerable.

[96] The City did not call any of the City staff who were involved in conducting the evaluation of the Property for OHA listing or designation purposes. The witness called by the City, Georgia Kuich, was the heritage planner assigned to comment on the development application. As explained by Ms. Kuich, there are two distinct functions in the Heritage Preservation Section, the Development Review function and the Policy and Research function. Designation by-laws, and their associated evaluations and reports, are handled by the Policy and Research group. Ms. Kuich is not in that group, she is on the Development Review side.

[97] Ms. Kuich testified as to her handling of the zoning amendment application. She asserted that she advised the assigned co-ordinating planner, Joanna Kimont, that she could not support the hotel proposal, but she was uncertain whether this was communicated in written comments or simply advised orally. There was apparently no comment produced in writing to the Appellant regarding the position of Heritage Preservation Services.

[98] The City presses upon the Tribunal to give little or no weight to the evidence of

Mr. McClelland by reason of his involvement in a project at 8-30 Widmer Street, where he purportedly changed his opinion as the project evolved. Mr. McClelland did acknowledge that he proffered a view, similar to that in this case, that certain residential heritage fabric was not significant and was appropriate for removal, which opinion then changed as the proponent acquired adjoining property and recast the project on a larger platform. As the Tribunal understood it, this enlarged parcel would enable retention of the heritage fabric and its incorporation into the development proposal, as that proposal was settled with the City. To facilitate the settlement, Mr. McClelland, at the insistence of the City, provided a revised Heritage Impact Assessment which supported the retention of the buildings. The Tribunal does not treat this history as besmirching Mr. McClelland's reputation or causing the panel to pause with respect to the opinion evidence of Mr. McClelland as given in this proceeding. The Tribunal treats Mr. McClelland as a professional and the opinion delivered in this proceeding as being genuine and true to his acknowledgment of expert's duty.

[99] As the opinion of Mr. McClelland was the only qualified opinion evidence which the Tribunal heard respecting application of the Regulation O.9/06 criteria, and as the Tribunal is persuaded as to the merit of that opinion evidence, the Tribunal finds that the heritage fabric located on 445 and 447-453 Adelaide Street West is not significant within the meaning of the PPS and the GP.

THE HERITAGE STATUS OF ST. ANDREW'S PLAYGROUND

[100] Before leaving the topic of heritage evaluation, the Tribunal must note that all Parties pressed upon the Tribunal the heritage importance of St. Andrew's Playground. The actual designation by-law was put in the record and was the subject of review by the Tribunal in the proceeding. The designation was effected in 2013 by By-law No. 1350-2013. The property description is referenced to 497 Richmond Street West (which is the Waterworks Building), however the map attached clearly indicates that the property includes 450 Adelaide Street West (which is the address assigned to the park). In the Reasons for Designation/Statement of Significance there is a reference in the

property description to St. Andrew's Playground being included within the site. After that, there is nary a reference to St. Andrew's Playground save for the last bullet point of the Heritage Attributes, which simply acknowledges that the Waterworks Building overlooks it. For all intents and purposes, as it relates to the park, this designation by-law provides absolutely no reference to any of the criteria required by Regulation 9/06 and arguably is devoid of any value as it relates to the park.

[101] The Tribunal also had before it the King Spadina HCD Plan (which, as noted above, is under appeal and not yet in effect). The Plan contains a variety of references to St. Andrew's Playground, most particularly with respect to its function as a park. The Plan contains a List of Contributing Properties and 450 Adelaide Street West is on the list. However, under the category of Heritage Status, whereas other properties on the List have notes indicating 'Listed', 'Part IV' or 'Intention to Designate', there is a blank space for this property. That is the case for many other properties, but it appears to be incompatible with what was produced as a designation by-law for the property. Suffice it to say that the official documents relating to the heritage status of this park leave a great lack of clarity and much to be desired.

THE APPROACH TO INTERPRETING THE POLICY INSTRUMENTS

[102] The Appellant, through the evidence of Mr. Smith and Mr. McClelland and the submissions of counsel, urges the Tribunal to read the Provincial policy instruments as those instruments exhort a reader to approach them. This is expressed in s.4.4 of the PPS as "This Provincial Policy Statement shall be read in its entirety and all relevant policies are to be applied to each situation."

[103] This is supported by the text in Part III of the PPS which says that:

The Provincial Policy Statement is more than a set of individual policies. It is to be read in its entirety and the relevant policies are to be applied to each situation. When more than one policy is relevant, a decision-maker should consider all of the relevant policies to understand how they work together. The language of each policy, including the Implementation and Interpretation policies, will assist decision-makers in understanding how the policies are to

be implemented.

[104] In a similar vein, s.5.2.1.1 of the GP declares that:

The policies and schedules of this Plan should be read in a manner that recognizes this Plan as an integrated policy framework.

[105] In the instance of this appeal, the Tribunal is advised by all Parties that the relevant policies of these instruments are those which relate to: intensification and the associated obligation to seek the efficient use of infrastructure and optimization of land use, especially as the Property is within a strategic growth centre; an appropriate range and mix of uses; supporting long term prosperity by 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*. There is an affinity of purpose in regard to these matters in both the PPS and the GP, which although expressed in somewhat different language within each instrument, essentially cleaves to the same objectives.

[106] Both Provincial policy instruments expressly declare that there is no ranking, or priority, of the policies by reason of their numbering or location in the respective instruments. It is left to the planning decisionmaker to understand them in the particular context in which they are to be applied.

[107] To come back to the position of the Parties in this matter. The City advances a view that the policies in the PPS and GP with respect to heritage conservation are manifest on their face. There is a plain and simple duty to conserve heritage resources. They treat any property which is the subject of designation under Part IV or Part V of the OHA as a built heritage resource which is referred to in these policies. As a consequence, they advance the view that the Tribunal can only approach the planning appeal on the basis that the duty under the Provincial planning policy instruments must embrace retention of the existing structures on the Property.

[108] By contrast, the Appellant’s position is that one must more closely read the language of the cultural heritage policies against the background of the totality of the purpose of the Provincial policy instruments to wisely manage change and promote efficient land use and sustainable, liveable and resilient communities.

[109] These disparate approaches to the interpretation of the language of the policy instruments was the subject matter of recent judicial comment by the Ontario Court of Appeal in *Oakville (Town) v. Clublink Corporation ULC*, 2019 ONCA 826 (CanLII) (“*Oakville*”). In that case, the majority of the Court speaks to the modern approach to statutory interpretation and the Tribunal is of the view that the opinions articulated by the Court are of direct application to the matter before the Tribunal in this appeal, and that these principles of construction apply equally to policy as to law.

[110] The Tribunal here reproduces the full text of paras. 37 to 42 from the majority decision:

The Modern Approach to Statutory Interpretation

[37] I begin with the overarching principles of statutory interpretation applicable to this appeal. The governing approach to statutory interpretation in Canada is the so called “modern principle” of statutory interpretation. The modern principle, first formulated by Elmer Driedger and adopted as the prevailing approach to statutory interpretation by the Supreme Court of Canada in *Rizzo*, is as follows:

[T]he words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act and the intention of Parliament.

[38] The core teaching of the “modern principle” is that statutory language must always be interpreted purposively and in context. In other words, “statutory interpretation cannot be founded on the wording of legislation alone”: *Rizzo*, at para. 21. As summarized by Ruth Sullivan in *Statutory Interpretation*, 3rd ed. (Toronto: Irwin Law, 2016), at p. 46:

The key point of the principle is ... that statutory interpretation cannot be founded on the wording of the legislation alone. The words of the text must be read and analyzed in light of a purposive analysis, a scheme analysis, the larger context in which the legislation was written and operates, and the intention of the legislature, which includes implied intention and the

presumptions of legislative intent. In the course of resolving an interpretation problem, an interpreter must also consider the relevance of a wide range of rules, principles and maxims.

[39] The Supreme Court's decision in *Rizzo* is illustrative in this regard. In that case, the issue was whether an employer petitioned into bankruptcy was required to pay employees termination pay and severance pay under ss. 40 and 40a of the *Employment Standards Act*, R.S.O. 1980, c. 137, respectively. The Court of Appeal held that the plain meaning of those provisions indicated that termination pay and severance pay were payable only when the employer terminates the employment. In a bankruptcy, an employee's employment is terminated not by the employer, but by the operation of law. As such, no termination or severance pay was required: *Rizzo*, at paras. 18-19.

[40] Iacobucci J., writing for a unanimous Supreme Court, reached a different conclusion. He accepted that "at first blush" the conclusion that an employee is terminated by an employer upon bankruptcy "did not fit comfortably" with the plain meaning of the impugned statutory provisions, but found that the Court of Appeal's analysis was "incomplete": *Rizzo*, at para. 20. Rather, it was necessary to look to the purpose of the impugned provisions, the purpose of the Act, the scheme of the Act, its legislative history and the consequences of each plausible interpretation. After engaging in that analysis, Iacobucci J. concluded that termination and severance pay were payable upon an employer's bankruptcy.

[41] As *Rizzo* indicates, the modern principle embodies a contextual approach to statutory interpretation. It instructs that a purely textual approach – focusing only on the literal or plain meaning of a statutory provision – may fail to adequately capture the legislature's intended meaning. This point is made in *Bell ExpressVu v. Rex*, 2002 SCC 42, [2002] 2 S.C.R. 559, at paras. 26-27, another leading Supreme Court case on statutory interpretation:

Driedger's modern approach has been repeatedly cited by this Court as the preferred approach to statutory interpretation across a wide range of interpretive settings....

The preferred approach recognizes the important role that context must inevitably play when a court construes the written words of a statute: as Professor John Willis incisively noted in his seminal article "Statute Interpretation in a Nutshell" (1938), 16 *Can. Bar Rev.* 1, at p. 6, "words, like people, take their colour from their surroundings".

[42] Similarly, in his text *Interpretation of Legislation in Canada*, 4th ed. (Toronto: Carswell, 2011) at p. 46, Pierre-André Côté describes the modern principle as embodying "the rise of contextual interpretation" with a corresponding shift away from textual literalism and plain meaning:

Statutory interpretation requires the interpreter to weigh a series of factors before establishing the true, or at least best, meaning. The range of factors to be considered has been elastic, and has known historical expansion and compression. Currently, the list of mandatory or recommended factors is extensive.

This extension is an outgrowth of the rise of contextual interpretation, an approach increasingly favored by both doctrine and the case law. It is now recognized that it is impossible to

determine the meaning of words in the absence of context. Today, it is fair to say that the Plain Meaning Rule, which restricts the interpreter to a consideration of the literal meaning of a clear text, has fallen into disrepute.

The urtext of broader approach to interpretive authority is ... the modern principle of statutory interpretation...

It would be unreasonable to suppose that Driedger's principle expresses, in and of itself, every dimension of the Canadian interpretive practice. It is nonetheless true that it has materially contributed to the overthrow of the Plain Meaning Rule and the promotion of a contextual approach to interpretation that draws on a wide range of factors and is, in particular, open to the consideration of the objectives of the provisions and statutes under examination.

[111] Put simply, the Appellant's position in this appeal is that meaning must be given to the explicit use of the term "significant" and "important" in the cultural heritage policies. The PPS obligates the conservation of significant built heritage resources. 'Significant', for the PPS, for cultural heritage purposes as transcribed above, means resources which have been determined to have cultural heritage value or interest for the "important" contribution they make to our understanding of the "history of a place, an event, or a people."

[112] And the inclusion of the words "significant" and "important" are informed by the other objectives of the Provincial policy instruments to achieve intensification, the efficient use of infrastructure and land resources, good design and sustainability. There is an implied sifting of the heritage fabric so as to not impede achievement of the other goals. This issue and conclusion was similarly approached and confirmed by the Tribunal's predecessor tribunal, the Ontario Municipal Board, in *PROUD Port Dalhousie v. St. Catharines (City)*, [2009] O.M.B.D. No. 170, at paras. 93 and 97 (which decision was upheld on a subsequent Request for Review). The Board there also asserted that "The PPS, in defining "significant", necessarily calls for judgment to be used in determining significance....the PPS implicitly acknowledges that there may be built heritage resources and cultural heritage landscapes which are not significant and which do not warrant conservation."

[113] Based upon the evidence heard by the Tribunal, the existing structures on the Property have not been demonstrated to meet the standard of significance or importance.

THE STRUCTURE OF THE OHA

[114] It is here apposite to address the structure of the OHA itself. The OHA creates procedures for designation, whether as an individual exercise under Part IV or as a collective exercise under Part V. It then creates restraints in dealing with properties that are subject to these designations. It most pointedly creates an avenue for demolition of designated properties and invests owners with a right of appeal to this Tribunal from local decisions in that regard.

[115] One can draw from this statutory structure that a designation is not therefore a matter of perpetuity. This reality informs the matter of what represents conservation of a heritage resource. The force and dynamic of city building will create a changing context and a closer scrutiny of the relative value of any given heritage resource and open up a searching inquiry as to how best to achieve the bundle of objectives which are set forth in the Provincial planning instruments. Conservation may thus take on many different forms in different times and different contexts, including demolition. That must always be an open inquiry. Designation does not close the door on the nature of the conservation of the relic.

[116] The structure of the OHA was also the subject matter of discussion by the Ontario Court of Appeal in *Oakville*. The Court, as pronounced in the majority decision, makes some broad observations about the very direct affect that the OHA has on a property owner's rights. It expresses this in paras. 47 and 48 as follows: "However, the Legislature has also recognized that the preservation of Ontario's heritage "should be accomplished at the cost of the community at large, not at the cost of the individual property owner, and certainly not in total disregard of the property owner's rights": *St. Peter's*, at pp. 623-624; *Toronto College*, at pp. 531-532. To this end, the OHA

counterbalances the broad powers provided to municipalities to designate a property as being of cultural heritage value or interest with procedural protections for property owners when seeking to make changes to a designated property: *St. Peter's*, at p. 626; *Toronto College*, at p. 532.

[117] With respect to the distinction between alteration and demolition of a designated structure, at para. 52, the Court said this: “The important point for the purpose of the present appeal is that the 1974 Legislation was the genesis of the statutory distinction between the procedural route to “alter” a designated property (s. 33) and the procedural route to “remove or demolish” any “building or structure” (s. 34). As will become evident from the following discussion, this distinction reflects a particular balancing of private property rights and heritage conservation.”

[118] This is followed with the observation in para. 85 as follows: “While it is consistent with the purpose of the OHA to construe broadly the municipality’s power to designate a property as being of cultural heritage value or interest, ss. 33 and 34 are concerned with providing corresponding procedural protections to property owners that seek to make changes to their property. Both ss. 33 and 34 are consistent with the overarching goal of the OHA – to conserve, protect, and preserve Ontario’s heritage – because the ultimate decision as to whether to approve an alteration or demolition is made by a public body. Both provisions fetter the property owner’s ability to deal with their property as they would otherwise choose to do. There can be no assumption that the LPAT will act in a manner inconsistent with the purpose of the OHA, and the balancing of the public interest and private property rights that it envisions.

[119] The *Oakville* appeal concerned itself with the question of the meaning of the term “structure” for the purposes of the OHA, and in the context of an application for demolition. For the purposes of that appeal, the Court was not obliged to engage in a review of the interplay of the OHA with planning legislation, as the Tribunal is here. Reference is made to the court’s observations here though simply to confirm that there is a balancing of rights and interest in any designation and ongoing conservation of the

property, with demolition always potentially available where circumstances warrant.

[120] It falls to the Tribunal in this instance to fully grasp and interpret the totality of applicable policy in order to apply and reconcile those policies with a view to achieving the desired policy objectives while being at the same time mindful of rights.

APPROACH TO THE CITY OP

[121] As is the case with the Provincial planning policy instruments, the City OP also provides guidance to the reader in how to approach and apply its contents.

[122] From Chapter 1.5 of the OP is guidance on how to read the OP. It is expressed as follows:

HOW TO READ THE PLAN This is not a conventional Official Plan with individual, stand-alone chapters devoted to specific topics. In successful city-building, “everything is connected to everything” and so it is with the Plan. While the Plan is organized into various chapters, it is a comprehensive and cohesive whole. The Plan consists of the policies, maps and schedules as indicated in Chapter Five under Interpretation of the Plan. The Plan also consists of non-policy textual commentary (unshaded text and sidebars) to make the Plan more accessible and to make the context and intent of the policies more readily understandable. The non-policy textual commentary is not to be afforded any independent status in interpreting the Plan and is to take on meaning only as an explanation of the policies, maps and schedules. The Plan is an integrated document. For any individual part to be properly understood, the Plan must be read as a whole.

THE SIGNIFICANCE OF THE FACTUAL FINDINGS TO APPLICATION OF THE POLICY

[123] Following the guidance of Chapter 1.5 of the OP, the non-policy introductory text of s.3.1.5 should be used to make the meaning and intent of the policies therein more accessible and understandable. This text very clearly suggests that the exercise of designation under the OHA should be founded upon a determination that the object of the designation is truly significant and important.

[124] The Tribunal recently grappled with this very issue in *Dale Inc. and Dale II Inc. v.*

Toronto (City), 2019 CanLII 62124 (ON LPAT) (“*Dale Inc.*”), a planning appeal involving an official plan amendment and a zoning amendment sought within the South Rosedale HCD. The Decision of the Tribunal was upheld by the Ontario Divisional Court with particular paragraphs isolated and commented upon with favour (*My Rosedale Neighbourhood v. Dale Inc.*, 2019 ONSC 6631 (CanLII)). In that regard, with respect to the obligation to apply the very same Provincial and City heritage policies which are engaged in this appeal, the Tribunal there stated at para. 148 of the *Dale Inc.* Decision:

The Tribunal engages in this observation simply to ensure that in these matters there is an understanding and awareness of the question of perspective. Dr. Letourneau has brought a microscope to assessment of the properties and supplies us with a host of facts through time. The mandate of the decision maker is then to consider all of the facts which are presented and determine what value should be assigned to them in terms of the importance to the community of any one or more of those matters that then warrants conservation going forward. As noted above, this is the task of the municipal council under the OHA.

[125] The task of the municipal council, on an appeal, then falls to this Tribunal on precisely the same terms.

[126] The City, in its final submissions, drew to the attention of the Tribunal a decision of the Ontario Municipal Board styled *ADMNS Kelvingrove Investment Corp. v. Toronto (City)* [2010] O.M.B.D. No. 282. The case, along with the decision of the Divisional Court confirming it, was advanced for the proposition that the demolition of properties with a heritage designation is not the norm but the exception. However, in that decision, Member Denhez engages in a robust discussion of whether there is a presumption of heritage merit in a designation and, if so, whether it may be rebuttable. He thereupon goes into a close dissection of the evidence which he heard about the criteria under Regulation 9/06 relating to the property which was there under appeal for official plan and zoning amendment. He confirms that he heard detailed evidence regarding all of the reasons for designation and that he was satisfied that the assertions in the designation as to associative value, distinctive design value and its rarity regarding the property were warranted and justified. On the strength of that, he was not persuaded that required conservation was being achieved by the proposed demolition. He clearly

was of the view that such an inquiry was within the jurisdiction and ambit of the tribunal on a planning appeal.

[127] Based upon the full record of evidence in this proceeding, the Tribunal finds that the structure on the Property do not reach a level of significance or importance. The Tribunal approaches the full text of the OP as importing the necessity of an assessment of heritage relics with a view to their significance and importance to the community. There was no demonstration in the Statement of Significance or the Heritage Attributes that this scrutiny was brought to these designations. In fact, there is an absence of any evidence to support such an analysis, and an explicit determination by Mr. McClelland that none of the structures met any of the designation criteria.

[128] The Tribunal prefers the evidence of Mr. McClelland and determines that the existing structures on the Property do not attract an obligation of conservation as set forth in the Provincial policy instruments and the City OP.

[129] From this determination, it is the Tribunal's view that the two designation by-laws may contravene s. 24(1) of the Act. That section reads as follows:

24(1) Despite any other general or special Act, where an official plan is in effect, no public work shall be undertaken and, except as provided in subsections (2) and (4), no by-law shall be passed for any purpose that does not conform therewith. R.S.O. 1990, c. P.13, s. 24 (1); 1999, c. 12, Sched. M, s. 24

[130] The Tribunal is not here empowered to strike down the designation by-laws or to directly authorize the demolition of the existing structures. As the Property has now been designated, that must necessarily follow a process involving an application to the City Council for demolition, and if necessary, an appeal to this Tribunal.

[131] However, the value of the existing structures in terms of their significance and importance so as to engage the applicable planning policies and attract some form of conservation is within the purview of this panel on this appeal and the Tribunal makes its findings in the discharge of its jurisdiction to determine the planning appeal before it.

THE HEIGHT OF THE PROPOSED BUILDING

[132] It was noted above that back in 2005, the Committee of Adjustment authorized a building on the Property (including at that time 453 Adelaide Street West) having a height of 29.6 m. The current zoning under By-law No. 569-2013 allows for a building height of 23 m along with provision for a mechanical penthouse apparently up to 5 m (as was the case under By-law No. 438-86).

[133] The proposal seeks approval for a height of 45.7 m. Mr. Smith advises, and the drawings disclose, that there will not be a mechanical penthouse. So, the 45.7 m represents a measurement from grade to the top of the roof of the 14th floor. As also noted previously, there are to be setbacks at the 12th and 14th levels. At the 12th floor, the setback is 4.6 m and at the 14th floor, the setback is 5.07 m.

[134] The proposal then represents a height essentially double to what the zoning by-law permits. However, bearing in mind the Surrounding Physical Context review detailed at the outset of the Decision and the nature and extent of zoning amendments in the West Precinct in the last few years, it would appear that the zoning height limit is essentially nothing more than a screening device to compel a review of proposals and the creation of tailored zoning to authorize them. In this regard, the approval of the zoning of 1-7 Morrison Avenue in December, 2019 to permit 15 storeys and a maximum height of 50 m reflects the City's view of implementation of official plan policy today. This property is immediately to the east of the Property and doesn't even front on Adelaide Street West.

[135] The various new developments in the area were detailed by Mr. Smith and are noted in the context review. But there is one very recent development which draws the particular attention of the Tribunal in this proceeding due to its similarities to the proposal for the Property and its relationship to what was advanced as the key community feature in this area (St. Andrew's Playground), being the Ace Hotel. It warrants special attention due to the parallel factors.

THE ACE HOTEL – 49-51 CAMDEN STREET

[136] The Ace Hotel is a project presently under construction. It is located at the southeast corner of Brant Street and Camden Street. It is in a relationship to St. Andrew's Playground similar to the Property in the sense that it directly faces the park on the northeastern edge of the park, whereas the Property directly faces the park at its southwestern edge. The Tribunal discerns something of a locational symmetry.

[137] The Ace Hotel property was the subject of a zoning amendment application, which was approved in the form of a zoning amendment enacted on July 15, 2016. The details of the project as set forth in the Planning Department staff report are that it is a 13-storey hotel with 130 suites, a reception and lobby, meeting rooms, and a penthouse lounge and outdoor terrace. The building contains three basement levels, which are to include a restaurant, a gymnasium, a meeting room, storage spaces as well as back of house offices and facilities.

[138] The height of the approved development is 45 m plus an additional 4.8 m mechanical penthouse which is partially integrated into the 13th floor, for a total height of 49.8 m. The permitted gross floor area is 7,918 square meters of non-residential gross floor area. The development is setback 0-1.9 m from the north property line, 1.1 m from the south property line, 0 m from the east property line, and 0 m from the west property line. No stepping is provided.

[139] Vehicular access to the site for the purposes of loading is provided from Brant Street via a private laneway immediately south of the site. The building does not contain any vehicular parking spaces. A total of seven long-term bike parking spaces are provided in the basement (level -2) and 16 short-term bike parking spaces are provided along Camden Street in the way of eight posts and rings.

[140] The staff report goes on to address land use matters and it says that in the King-Spadina Secondary Plan, the retention and promotion of commercial and light industrial

uses is a priority. Development within the King-Spadina Secondary Plan Area has seen substantial residential development in the past 20 years. The addition of employment uses to the area also is important to maintaining a balanced mix of residential and employment uses. When considering the proposed height and other building attributes on this comparatively small site, Staff have taken into consideration the value of the proposed development as a hotel adding employment and contributing to diversity in use to an area. The site-specific zoning by-law will limit the use of this building to a hotel with associated uses. Residential uses will not be permitted.

[141] The report then goes on to address the adjacency of St. Andrew's Playground and the impact of shadow on it. It says that the proposed development is located adjacent to St. Andrew's Playground. In the King-Spadina Secondary Plan, St. Andrew's Playground is identified as an Area of Special Identity. It is identified as "an important park within part of the King-Spadina Area". New development is to respect the integrity and potential for increased use of the park. The King-Spadina Secondary Plan requires buildings adjacent to parks to be designed to minimize the wind and shadowing impacts on the streets, parks, and open space.

[142] The report continues to advise that the initial proposal for the site added some new shadow to St. Andrew's Playground beyond what would be permitted as-of-right at 9:18 a.m. and 10:18 a.m. on June 21, any shadow beyond the as-of-right was off the park by 11:18 a.m.. At a height of 45 m, the proposed development would continue to add some additional shadow beyond the as-of-right but at a level that is acceptable to Staff while still allowing for the functional requirements of a hotel use.

[143] Mr. Smith spoke to this development and to the Staff report on it. It was his understanding that there was a critical mass of rooms that had to be accommodated in order for there to be an economic basis to proceed with the hotel. In his view, the City was sensitive to that and in order to gain what they perceived to be an important employment use, and boon to tourism, they authorized the height and floor space that was required despite the design not having any stepbacks and casting some shadow on

the park.

THE PLANNING EVIDENCE

[144] Beyond the heritage resource issues and the evidence heard by the Tribunal from Mr. McClelland and Ms. Kuich on that topic, the Tribunal heard a full policy analysis on the proposal from Mr. Smith on behalf of the Appellant and from two City witnesses. The City called an urban design witness, Swathika Anandan, and the development planner who was handling the application file, Joanna Kimont. As did Mr. Smith, Ms. Anandan and Ms. Kimont provided their opinion evidence on the relevant sections of the Act, the PPS, the GP and the OP within their respective domains of urban design and planning expertise. The Tribunal will not replicate the evidence and opinion of each on each particular policy but will document below those elements of the evidence which it found pertinent and determinative of the issues on this appeal.

THE HEIGHT OF THE PROPOSED BUILDING AND THE SHADOWING OF ST. ANDREW'S PLAYGROUND

[145] One significant issue for the City was that the proposed building on the Property would cast shadow on St. Andrew's Playground.

[146] Although there are policies which have been adopted by City Council which stipulate that there shall be no net new shadow on key City parks, St. Andrew's Playground being one them, those policies are not presently approved and in effect. For instance, the new King Spadina Secondary Plan (which is under multiple appeals) contains such a provision. Mr. Smith is quick to point out that the Downtown Plan, which is a broader secondary plan including the King Spadina area, had a similar policy as adopted by Council but which was modified by the Minister of Municipal Affairs in his approval to a standard of adequately limiting shadow. In light of that Ministerial amendment, it was Mr. Smith's divination that a similar modification would be made to the new King Spadina Secondary Plan.

[147] The operative, in force, policies on the matter are found in Policy 3.1.2.3 (e) and (f) of the City OP, which requires adequately limiting shadows on parks to preserve the utility of the park, Policy 3.6 (f) of the King Spadina Secondary Plan (1996), which provides that buildings adjacent to parks will be massed to provide appropriate proportional relationships and will be designed to minimize the wind and shadowing impacts on the park and in the 2004 Guidelines made under the 1996 King Spadina Secondary Plan as they relate to St. Andrew's Playground, which requires development around St. Andrew's Playground to be assessed for its impact upon wind and sunlight conditions in the open space.

[148] The Appellant's architects prepared Sun/Shadow studies which were taken into evidence. They do confirm that at the City prescribed times of year, namely the spring and autumnal equinoxes, but not at the summer solstice, there will be shadow cast upon the park.

[149] The architects quantified the ground area of the park affected by shadow at each of ten hourly intervals (9:18 a.m. to 6:18 p.m.). Of these ten intervals, four produce no shadow on the park at all. Two of the intervals show negligible shadow. The intervals between 11:18 a.m. to 2:18 p.m. are when shadow sweeps easterly along the southern edge of the park. At its greatest extent, at 12:18 p.m. on March 21, the shadow affects 3.81% of the park's ground area. Based upon the park development plan which was put before the Tribunal (having been endorsed in principle as the design to be implemented by the City), the particular area affected at this time is a southern portion of the dog off-leash area. As the hours progress, the shadow moves easterly into a mature treed area just south of a story telling circle and reduces in extent to a ribbon form along the south boundary of the park, calculated at ground level as 1.36% of the park area.

[150] The Tribunal had no demonstrable evidence (apart from suggested supposition) that the location and extent of these shadows would adversely affect the utility of the park based upon the proffered park design.

[151] There are two further matters of note in considering this shadowing. Firstly, part of the City's response to the Appellant's development proposal was the production of two alternate development options for the Property. Both options presumed retention of the existing structures (at least to the original rear wall of the structures, i.e., taking off the later constructed additions). Option 2 involved a proposed structure to a height of 35 m, set back 7.6 m from the front wall of the existing structures with two stepbacks. The City produced shadow impact drawings for this option and although the extent of shadow is dramatically less than the Appellant's proposal, there is nonetheless shadow cast upon the southern edge of the park into the dog off-leash area at the interval hours of 10:18 and 11:18 a.m. in the equinoxes. It is therefore presumed that the City is not applying the no net new shadow policy and treats some shadow as tolerable.

[152] The second consideration is what the shadow study drawings show regarding the shadows cast by the other existing and prospective buildings framing the park. The buildings on the east side of Brant Street show very extensive shadow cast on a play area and the medicine garden, as well as almost the entire southern edge of the park at 9:18 a.m., which then reduces, but still exists with more than marginal reach, at 10:18 a.m., following which it is off the park.

[153] From the west, taking the as-of-right development on the west side of Maude Street, the westerly park bounding street, at 4:18 p.m., there is material shadow on the dog off-leash area which then proceeds over the following two hours to totally envelop the park in shadow.

[154] Based upon these findings, the Tribunal accepts the evidence and opinion of Mr. Smith that there is policy compliance regarding the matter of the shadowing on the park in the sense that, in the circumstances and the context, and bearing in mind achievement of the goals of intensification and properly framing the park, the shadow has been adequately limited.

BUILT FORM POLICY

[155] The built form issues spring largely from Policy 3.1.2 of the City OP.

Policy 3.1.2.1 sets the primary focus of the policy on new development being located and organized to fit with its existing and/or planned context. The new development is to frame and support adjacent streets, parks and open spaces to improve the safety, pedestrian interest and casual views to these spaces from the development.

[156] That objective is to be achieved by certain enumerated goals. The first is to generally locate buildings parallel to the street or along the edge of the park or open space. For corner sites, the development should be located along both adjacent street frontages and give prominence to the corner. Secondly, main building entrances are to be located so that they are clearly visible and directly accessible from the public sidewalk. Thirdly, ground floor uses are to be provided which have views into adjacent streets, parks and open spaces.

[157] The general thrust of this policy is to establish a symbiotic relationship with the public realm and to create an interplay between the development and the public realm.

[158] The development proposal of the Appellant has been designed with these goals in mind. The ground floor is to be set back to create, in conjunction with the public sidewalk, a broader pedestrian zone. There will be multiple front doors to the Adelaide Street West frontage, which will provide access to the hotel lobby but also to an extensive ground floor café. A weather protection canopy is proposed along the entire front elevation, which the Tribunal understands may create an opportunity for outdoor tables for the café as well as providing cover the those on the street.

[159] The design creates views of interest both from the hotel to the park but also from the park into the hotel. The hotel stands in a similar relationship and built form to the park as the Ace Hotel discussed earlier. In fact, the Tribunal sees these similarly pitched developments as paired landmarks in demarcating and drawing attention to the park.

[160] With respect to the policy goal of giving prominence to the corner, the proposed building has a presence and definition which architecturally creates a statement, compared to the diminished presence that would result from retention of the existing structures. The presentation of the proposal as set forth in the architectural drawings creates a porousness and connection to the street all the better to animate both the public and the private realm as against the constrained portals of the existing structures that are designed to maintain privacy.

[161] These policy goals are echoed in the King Spadina Secondary Plan through general built form policies 3.6 (b), (c) and (f), with the location of the building to animate the edges of the park and increase surveillance opportunities, enhance the public nature of the street and open space and to provide an appropriate proportional relationship to the park.

[162] This secondary plan policy is further articulated in the King Spadina Design Guidelines (2004) with specific reference to St. Andrew's Playground. Under the heading of Important Characteristics, the Guideline references its history as a market square. The text then goes on to suggest that if the parking lot on the west edge was eliminated, *and building development took place around the park* [emphasis added], there would be great potential for restoring St. Andrew's original character as an urban square and re-establishing its role as an important park space in the area. It then goes on to say that although the Water Works Building is a heritage building, it is not an urban design precedent for future development around the park.

[163] Two things emerge from this text. The first is that the framers of it treat the condition of the park at the time of the creation of this text as having its former glory as an important park eclipsed by time and events, and that it may be restored to glory by urban development around it befitting a significant urban gathering place. Indeed, the two storey Water Works building of old, which was not to be taken as a precedent, is now the subject of redevelopment whereby construction will occur on top of it to a height of 13 storeys. The zoning amendment for this redevelopment was enacted in July, 2017

and the height map appended to the by-law shows a stepped building but with the a very significant portion of the height permitted up to 47.5 m.

[164] This redevelopment of the Water Works building to 13 storeys/47.5 m along the north edge of the park, together with the recent construction of the Ace Hotel to 14 storeys/45 m along the east edge of the park is complemented by the proposed construction on the Property to 14 storeys/45.7 m along the south edge of the park. This can fairly be assessed as a 'fit' with the existing and planned context due to the fact that the park was taken by all witnesses to be a central planned function in this area and may thus be more worthy of the Tribunal's attention regarding fit and compatibility than any given stretch of public highway in the vicinity of the Property.

[165] As Mr. Smith rightly identified, the area is a mix of heights, so that there is no uniformity. However, the new development is consistently taller and more dense than the existing. The proposal here is in line with the height of many projects in the West Precinct and not even close to the heights in the East Precinct, east of Spadina Avenue.

[166] The built form policies in Policy 3.1.2.2 require the location of parking, servicing and utility areas to minimize impact on the property and surroundings properties. In this instance, the location of the entrance to the underground parking and to the loading dock are off the public lane and the secondary street respectively, with both the parking and loading activities occurring within the building itself.

[167] Policy 3.1.2.3 addresses the need to mass the building and design its exterior façade to fit harmoniously into the existing and/or planned context, and limit its impact on neighbouring streets, parks, open spaces and properties. As with the prior policies, specific goals are asserted to this end.

[168] The goals are identified as: a) massing new buildings to frame adjacent streets and open spaces in a way that respects the existing and/or planned street proportion; b) incorporating exterior design elements to influence the character, scale and appearance

of the development; c) creating appropriate transitions in scale to neighbouring existing and/or planned buildings for the purpose of achieving the objectives of the Plan; d) providing for adequate light and privacy; e) adequately limiting any resulting shadowing of, and uncomfortable wind conditions on, neighbouring streets, properties and open spaces, having regard for the varied nature of such areas; and f) minimizing any additional shadowing and uncomfortable wind conditions on neighbouring parks as necessary to preserve their utility.

[169] The goals set forth as clauses e) and f) have been discussed in full above. Clause d) will be discussed in a following portion of the Decision.

[170] Clauses a) to c) go to the physical relationship of the proposed building to the abutting streets and properties. This took shape in the hearing to two particular avenues of inquiry and assessment. One of them was in connection with the relationship with both the Musa property at 453 Adelaide Street West and with the TSCC 1984 building at 10 Morrison/455 Adelaide Street West. The other involved what is referred to as 'streetwall height'.

STREETWALL HEIGHT

[171] There was much time spent in the oral testimony on the question of streetwall height. This would be the height of the face of the wall of the building on the street. It is distinguished by the height at which that wall steps back from the its nearest point to the street. In a canvass of the buildings in the area, one can find a variety of streetwall heights. Furthermore, a number of buildings have multiple setbacks as the height of the building rises. In some cases, this technique is used in order to reduce shadow thrown on the area facing that elevation.

[172] The stepping of buildings is largely an architectural effect and is done for aesthetic reasons. In the case of the proposed building on the Property, the final stepping at the 14th floor has a practical application as it creates a terrace for the

restaurant use proposed for that floor.

[173] Despite the isolation of this feature of built form as a matter to be considered in this hearing, the Tribunal perceives that the consequence of it is of little apparent effect, and as there are a number of streetwall heights in the area, the Tribunal does not treat the streetwall of the proposed building as creating any problem or being inconsistent or non-conforming with any policy which the Tribunal is bound to consider in this hearing (being the policies and guidelines which are in force, none of which specify streetwall height). In that regard, this building feature is generally associated with impact on the public realm. In truth, the matter which is of much greater impact on the public realm in this case is the considerable pedestrian clearway in front of the building which is to be created by the proposal. This will be a real felt impact by the users of the public realm and represents a benefit which is produced by the project whereas the Tribunal perceives no adverse effect on the public realm arising out of the streetwall height on the proposal.

LIGHT, VIEW AND PRIVACY

[174] The issues with respect to light, view and privacy were brought before the Tribunal in a direct and focussed fashion by the participation of two of the Parties to the proceeding and the evidence of their witnesses. In this regard, the Tribunal had the direct testimony of N. Alfred Apps and the expert retained by him, James Borst. Mr. Borst created scalable visual imagery of the present built landscape along with the introduction into that landscape of the proposed building, viewable from a variety of heights and points of view. The Tribunal also had the testimony of Matthew Bianco, an owner\occupant of Unit # 1001 at 10 Morrison St., called by the representative of TSCC 1984.

[175] Mr. Bianco's unit is on the top floor of the east/west wing of the 10 Morrison St. building. It is located at the east end of the building so that it faces onto Morrison St. It has terraces which face north, east and south. The south terrace is the more extensive

of them and, based upon Mr. Bianco's testimony, appears to be the area where meals are taken and the family gathers, when they choose to be outdoors. It appeared, from his testimony and from the photographic evidence, to be a nicely laid out and well used area. This terrace is faced now with a tall building immediately to the south (560 King Street West) which is 12 storeys, 40.1 m, in height. It will be faced to the east with the now approved development of 1-7 Morrison Street/540 King Street West, with the 15 storey (50 m height) component of that mixed-use development in front of the Bianco unit.

[176] From the drawings produced by the Appellant, the separation distance between the south wall of the proposed building on the Property and the north wall of the east/west wing of the building at 10 Morrison Street will be 11.3 m at Levels 2 to 9 in the 10 Morrison Street building (save for the 03 numbered units on Levels 2-6 (as per the floor plans submitted), which are not subject to the same privacy and view impacts due to the design and emplacement of clerestory windows in this elevation for these units, which are narrow and placed close to the ceiling). The north wall of the Bianco unit will be separated from the proposed building by 15.72 m. The Tribunal was advised that the minimum standard separation sought by the City with respect to the buildings in this District is 11 m.

[177] Mr. Bianco expressed a variety of concerns. He was concerned about his young daughters being exposed to views of inappropriate activity through the windows of the hotel. At 15.72 m, the separation distance is well in excess of the standard generally employed by the City. A hotel is a permitted use in this area and the rooms will undoubtedly be equipped with shades or blinds. One would expect that the hotel patrons would crave their own privacy.

[178] Mr. Bianco was concerned, especially given the L-shaped configuration of his building, that the ventilation of the hotel, bearing in mind that it will have a prep kitchen in one of the basements, and various eating facilities, will generate malodours which will be trapped in the space between the buildings and become a noxious element. In

response to this concern, as the architect for the building was present and available for questioning by the Tribunal, the architect advised that the venting could be arranged to be directed out to the Morrison Street side of the building. This will not eliminate odours, but it would conduct them to an area where there is likely to be quicker dissipation into the atmosphere. This is a matter that would typically be considered and dealt with at the site plan review stage and the Tribunal will simply here commend the Appellant in its final design, and the City in its site plan and permit review, to have regard for this concern and attempt to find a solution which creates the least possible odour impact on the residents at 10 Morrison Street.

[179] Lastly, Mr. Bianco expressed concern over the possibility that the 14th floor restaurant may become a club or entertainment venue for late evening gatherings and that this would generate assemblies of people on the street and vehicles looking for parking where essentially no parking for visitors is immediately available. There was nothing in the presentation of evidence by the Appellant to sustain a presumption that such a use will be occurring on the 14th floor. Ms. Kovar drew to the Tribunal's attention the present provisions of the zoning by-law for this area, which tightly controls the use of premises for an entertainment establishment, the ration for such uses now fully absorbed, and the performance standards such that a facility on the 14th floor would not qualify.

[180] As noted above, preceding the testimony of Mr. Apps, Mr. Borst took the Tribunal through various views of the proposed building from various vantage points. There were two viewpoints from the Apps terrace, one at the northeast corner and then a view from further south along the terrace. The views factored in alternate development scenarios for the proposal at lesser heights and with different stepping from Adelaide Street West. The model did not introduce the proposed construction at 1-7Morrison/540 King Street West, which development will have a major impact on the view southeast to the Financial District and CN Tower area. As can be expected, the result facing east from that terrace is a view directly into the wall of the proposed building whereas with the lower height variables, straight ahead sky view is available and based on the modelling

without the 1-7 Morrison/540 King Street West development, some skyline of the downtown.

[181] Mr. Apps relayed to the Tribunal the history of his decision to buy the premises which he occupies on the 9th floor of 10 Morrison. He moved into it on a leasehold basis at first in 2012 and then exercised an option to purchase in 2014. This was, in fact, originally two units, which were merged into an approximate 3000 square foot unit by the removal of a demising wall between them. He advised that he made specific inquiry as to the zoning of the Property and was made aware of the 2005 Committee of Adjustment decision. He said that he was not concerned with the prospect of a building on the Property at 29.6 m as approved by the Committee as this would still allow him an acceptable view to the east as well as ambient light. His terrace sits at 26.4 m from ground level, being the height of the top of the 8th floor of his building.

[182] Despite the reference to impacts on view found in the OP, the law of the Province of Ontario does not accord a right to a view to any owner or occupant outside of some negotiated right to it. Having heard the testimony of Mr. Apps, and the extensive use made of the outdoor terrace by Mr. Apps and his family, the Tribunal understands how the proposal will dramatically change the visual experience of being on the terrace. The physical change will not, however, remove the view to the north or the access to the air and ambient light that will continue to serve this amenity area. Having heard Mr. Bianco regarding the use of his main terrace, which is fronted by a building taller than 10 Morrison Street, the Tribunal does not see the building proposal as depriving Mr. Apps and his family of reasonable use of this area.

[183] The position urged by Mr. Apps is that the Tribunal allow a building on the Property but limit its height so that it will not impede his eastern view or create potential invasion of privacy. That view will already soon be compromised by the development of 1-7 Morrison Street/540 King Street West. In acceding to this request, based upon the evidence heard by the Tribunal, that would result in refusing a height limit which is in keeping with the heights of buildings in the area recently approved in full conformity with

Provincial and City policy and would run counter to the mandate of optimizing and using efficiently land resources and the infrastructure which serves them.

[184] On the matter of privacy, the Tribunal does recognize that the proposed separation distance is not extensive, especially where the potentially impacted use will be that taking place outdoors without the benefit of screens. The Tribunal was advised that the separation distance from the west wall of the proposed building on the Property and the edge of the Apps terrace would be 5.5 m and the separation distance to the east wall of the Apps unit would be 12.25 m.

[185] With regard to this concern, Mr. Smith advised that his client was fully prepared to commit to creating a west elevation which was not at all transparent. Where windows are now shown as part of the architectural design, those windows would be of spandrel glass or some treatment which would render them perhaps translucent but not transparent (which he referred to as 'sandblasted glass'). The Tribunal sees much merit in this solution and will require it to be embodied in the zoning amendment by-law. This accommodates the alternative final submissions of both Mr. Tang and Ms. Stewart.

THE MUSA PROPERTY – 453 ADELAIDE STREET WEST

[186] Amber Stewart, counsel to the Musas, argued strenuously that the heritage designation of 447-453 Adelaide Street West should be treated as final and be taken as reflecting a determination that these properties must now be treated as significant heritage resources for policy purposes. This then would trigger an obligation of conservation, which she argues would necessitate the retention of at least the original part of the group of townhouses to their rear wall.

[187] In her submissions, this would achieve not only the basic obligation of conservation on the Property but would also fulfill the policy obligation set forth in Policy 2.6.3 of the PPS to conserve protected heritage property on adjacent lands, being the property of her clients at 453 Adelaide Street West.

[188] As her client's structure is part of the row townhouse block and is captured within designation By-law No.115 -2020, the discussion above with respect to the questionable validity of that by-law due to its apparent failure to meet any of the criteria in Regulation 9/06 holds true for her client's property equally. As such, her client's property would not then be treated, for the purposes of the Tribunal's inquiry in this appeal, as a protected heritage property and those considerations would not apply.

[189] Ms. Stewart recognizes that approval by the Tribunal of the development proposal before it necessitates the demolition of the structures on the Property. She argues that making a finding in this proceeding to that effect amounts to a collateral attack on the designation by-law, and more importantly, would reduce a future application for demolition approval to a formality. She makes this assertion on the basis that it would be difficult for the demolition approval decision maker to disagree with the findings of this panel following a three week hearing where the merits of the heritage designation were exhaustively litigated. The panel here simply wishes to acknowledge Ms. Stewart's recognition that this panel did hear very extensive evidence on the matter and has brought careful and close consideration to its conclusions.

[190] Ms. Stewart did not call any evidence. The Tribunal had no evidence before it as to why, especially as it was part of the assembly of parcels which was before the Committee of Adjustment in 2005, this parcel was not presently part of the land assembly. Mr. Smith did acknowledge that this was a less than ideal situation. Mr. Smith was asked by the Tribunal whether there was redevelopment potential for the parcel as a standalone parcel, as everything around it would now be developed and the opportunity for assembly past. Although it was what appeared to be more off the cuff than a prospect fully explored, Mr. Smith presumed that some additional floor area could conceivably be added vertically.

[191] With a view to fully preserving any redevelopment rights which her client may wish to pursue in the future, in her closing submissions, Ms. Stewart indicated that allowing a building on the Property with windows within 1.12 m of the west lot line, as

the Appellant's application seeks, would create very real use conflicts between the two properties. She exhorted the Tribunal to prevent this and preferably prohibit windows on the west wall of the proposed building, or alternately, if there are proposed to be windows, to require that west elevation to be setback 5.5 m from the property line. As the Tribunal has resolved, in the interest of privacy to the occupants of 10 Morrison/455 Adelaide Street West, to prohibit transparent openings in the west wall, this request will be accommodated in its preferred form.

[192] With respect to the relative scale of the building proposed on the Property with the Musa building, they are radically different and will necessarily be perceived as such close up or at a distance. It is the view of the Tribunal that a streetwall height on the proposed building of 6, 8 or 11 storeys makes no difference whatsoever in this regard given the present height of the Musa structure. As was illustrated by the extensive photographic record filed in the proceeding, the District is already peppered with many such examples of disparate adjacent heights and one could say that the outcome is entirely in character with the broader neighbourhood and therefore will not be taken as out of keeping or beyond "fit".

CONGESTION ON MORRISON STREET

[193] Mr. Riedel, the representative for TSCC 1984, called one of the townhouse unit owners of the condominium as a witness. Rick Pennycooke owns a two-storey townhouse unit within the east/west wing of the building. This unit faces Morrison Street and as it has a grade level floor and a second storey floor, Mr. Pennycooke has a close and direct view of activity on Morrison Street. Mr. Pennycooke was called to advise the Tribunal of the serious traffic movement issues on Morrison Street. He prepared an extensive album of photos of the street on various dates and various times of the day.

[194] The photos underscore the very narrow width of this street, which the Tribunal understands from traffic movement drawings produced by the Appellant's transportation consultant, to be 6.24 m from curb to curb. It was clear from the photos that when trucks

enter and stand/park, the passage on the road becomes constricted. In many cases, the passage becomes blocked until the unloading has concluded, and the truck is moved. Trucks park by overtopping the curb in order to leave as much space as possible in the roadway to allow passage by others.

[195] 10 Morrison has a loading space but due to variance relief granted for the property, its height was allowed to be reduced so that it cannot pass anything other than a light duty truck. Consequently, the servicing which occurs does so on the street this includes regular waste removal activity, deliveries and loading/unloading of household goods destined for 10 Morrison. As well, there is additional large truck activity which occurs on the street in order to serve the needs of the pub and restaurant on King Street West at the south end of the street as there is no loading bay for those premises and no opportunity to stand on King Street West to unload the orders. In addition, there is a commercial premise at the southeast corner of Morrison Street and Adelaide Street West known as Rotblotts which receives, and dispatches goods related to its business. The City has designated space on Morrison Street to the extent of two spaces as a loading area next to that store in order to reserve this area for loading rather than parking.

[196] There is parking otherwise permitted on the east side of Morrison Street. It is clear from Mr. Pennycooke's presentation that the presence of parked vehicles on the street very dramatically restricts movement when any kind of truck is present on the west side of the street.

[197] The Tribunal heard evidence from a qualified transportation consultant called by the Appellant, Kenneth Chan. Mr. Chan spoke to anticipated trip generation from the use and its impact on the road network as well as the amount and type of on-site parking which was to be provided for the use. He also spoke about the design of the loading function and guest drop off and pick up capability.

[198] Mr. Chan advised the Tribunal that there was to be a lane widening conveyed

from the Property in the width of 1.49 m. Together with the building setback from the south property line, which will be paved to accommodate vehicle queueing, there will be a paved area 6 m in width so that there would be clear passage room for two vehicles along this lane.

[199] The development will provide 11 on-site parking spaces, which will be located in the second basement level and accessed by automobile elevator. The elevator must be operated by a licensed person. It will thus be valet parking and is intended for hotel guests. Mr. Chan explained that they used proxy hotel sites to determine the likely mode of arrival for guests. The expectation based upon the empiric review of these other hotel facilities in this area is that the majority will arrive not in their own vehicle (i.e., by taxi or other ground transportation). This then gives rise to the question of standing time to unload or receive these hotel guests. This is to be accommodated by a layby opportunity for two vehicles in front of the hotel on Adelaide Street West save and except during the rush hour restricted parking/standing times. This was given consideration and it was the opinion of Mr. Chan that a turn onto Morrison Street would be made at these restricted parking times and that there was adequate capacity on Morrison Street for that purpose during those limited hours.

[200] A further matter addressed in his testimony was the functioning of the loading space accessed by Morrison Street. The door will only be activated by a hotel dockmaster, who can then also function as a flagman in the street for larger vehicles. The location of the loading door was tested and selected in order to ensure reasonable movements in and out. To facilitate the movement of trucks in this location, Mr. Chan indicated that the City will be asked to remove permission to park on the east side of Morrison Street to the extent of two vehicle parking spaces, one north and one south of the east side lane. This will create clear maneuvering room for the trucks. Apparently, the City is prepared to follow through on this request subject to compensation for lost parking revenue.

[201] Due to the improved public lane which will be located on the opposite of Morrison

Street and will be the access route for the loading function at 1-7 Morrison Street/504 King Street West, which lies directly opposite the lane to the south of the Property, which is also to be widened, an additional opportunity for hammerhead turns will become available.

[202] Mr. Chan freely acknowledged that there is a congestion problem on Morrison Street. He suggested that removal of the surface parking lot on 1-7 Morrison Street in connection with development of that property will result in a decrease of vehicle movements (as underground parking for the development will be accessed from a ramp on Brant Street) but agreed in cross-examination that as the residential lobby for that development will be accessed from Morrison Street as well as the loading function from the lane, there may not be a net decrease in vehicle movements.

[203] In terms of traffic impact, the forecast is that there will be nine trips in the a.m. peak period and 10 trips in the p.m. peak period. Mr. Chan was of the view that the hotel use will not impose a traffic burden on Morrison that will worsen the situation. He was candid that although he didn't think that the proposed use would increase the traffic burden, congestion was likely to persist on this street due to its characteristics and the properties which it is presently serving. The City did not see fit in the course of processing the zoning amendment and development application for 1-7 Morrison Street to seek a road widening or greater bulb cul de sac at its southern terminus. It is presumed that City Transportation Services does not perceive this situation as dire as they did not adversely comment on the Appellant's application nor the one on the opposite side of the street.

[204] It strikes the Tribunal, from the evidence before it, that a step toward a cure may be the total elimination of street parking on Morrison Street. It is understood that many residents may view this as adverse in terms of accommodation of their visitors but there is off-street parking in the area and other modes of arriving at this destination than one's own private vehicle. That is a matter beyond the jurisdiction of this panel, and which will be left to the City to consider. It is raised here strictly as a reaction to the evidence

heard in this proceeding.

[205] The Tribunal will accept the testimony of Mr. Chan on the adequacy of the on-site parking and loading and with respect to acceptable impact on the transportation network.

SUMMARY OF FINDINGS

[206] Based upon all of the evidence heard by the Tribunal and the submissions of counsel, the Tribunal makes the following findings.

[207] Due regard is had to s.2 of the Act, with particular reference to subsections (d), (f) and (r) on grounds of the matter of heritage conservation, adequacy of infrastructure and the design of the proposal.

[208] The proposal will be consistent with the relevant policies of the PPS as there is no significant heritage resource to be conserved on the Property, the proposal represents appropriate intensification on this site within an identified urban growth centre, which is well served by infrastructure, both in terms of municipal services and transportation, and will introduce a use which will tend to support the long term economic prosperity of the region

[209] The proposal will be in conformity with the policies of the GP, the relevant of which are similar and parallel to those in the PPS.

[210] The proposal will conform with the relevant policies in the City OP, inclusive of the King Spadina Secondary Plan. The relevant policies are discussed in detail in the Decision text above.

CONCLUSION

[211] On the weight of the evidence heard by the Tribunal, its assessment of same as

detailed in the reasons above and the submissions of counsel, the Tribunal will allow the Appellant's appeal, in part, and authorize in principle the rezoning of the Property in keeping with the general framework of the draft by-laws submitted in evidence as Exhibit Nos.23 and 24 (which were the further revised versions of Exhibits 18 and 19).

[212] This approval of the draft amendment by-laws must accommodate the addition of text which will require that the west wall of the building may be located as depicted in the architectural drawings submitted in evidence but that there shall not be transparent openings. Spandrel glass or other treatments of glass which result in only translucency may be permitted. It was suggested to the Panel that a further restriction should be applied in that any windows should not be capable of opening on the west wall of the building. The panel does not necessarily see the opening of windows as an adverse effect so long as the opening is limited and does not afford a view as to invade privacy. The panel believes that this may be left to the City to deal with as part of Site Plan review.

[213] The Tribunal was requested to withhold its final Order, in the event of allowing the appeal, until advised that certain matters had been addressed and satisfied with the City. Those items were as follows:

- a. The Zoning By-law amendments are in a form satisfactory to the Chief Planner and Executive Director, City Planning and the City Solicitor;
- b. The owner has obtained approval to demolish the structures at 445, 447, 449 and 451 Adelaide Street West;
- c. The owner has provided photographic and measured drawing documentation of the properties at 445, 447, 449 and 451 Adelaide Street West, to the satisfaction of the Senior Manager, Heritage Preservation Services; and
- d. The owner has addressed outstanding items in relation to servicing and solid waste management for the proposed development and has submitted revised servicing and stormwater management reports and associated municipal servicing plans, to the satisfaction of the Chief Engineer and Executive Director, Engineering & Construction Services.

[214] In the event that any difficulty arises in addressing or satisfying the aforementioned matters, this panel of the Tribunal, or either Member of it, may be spoken to by contacting the appropriate Case Co-ordinator at the Tribunal, following which instructions will be given as to how any submissions will be considered.

“Gerald S. Swinkin”

GERALD S. SWINKIN
MEMBER

“D. Chipman”

D. CHIPMAN
MEMBER

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please visit www.elto.gov.on.ca to view the attachment in PDF format.

Local Planning Appeal Tribunal

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