

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: December 17, 2025

CASE NO(S).:

OLT-24-000191

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

Applicant and Appellant:	Format Lakeshore Inc.
Subject:	Request to amend the Official Plan – Failure to adopt the requested amendment
Description:	To permit a maximum building height of 11 storeys.
Reference Number:	OPA1715.25
Property Address:	42 Lakeshore Road West
Municipality/UT:	Oakville/Halton
OLT Case No.:	OLT-24-000191
OLT Lead Case No.:	OLT-24-000191
OLT Case Name:	Format Lakeshore Inc. v. Oakville (Town)

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

Applicant and Appellant:	Format Lakeshore Inc.
Subject:	Application to amend the Zoning By-law – Refusal or neglect to make a decision
Description:	To permit a maximum building height of 11 storeys
Reference Number:	Z.1715.25
Property Address:	42 Lakeshore Road West
Municipality/UT:	Oakville/Halton
OLT Case No.:	OLT-24-000192
OLT Lead Case No.:	OLT-24-000191

Heard:

May 20 – 27, 2025, by Video Hearing

APPEARANCES:**Parties**

Format Lakeshore Inc.

Town of Oakville

Region of Halton

Frastell Associates Inc.

CounselIra Kagan
Sarah KaganAndrew Biggart
Nadia Chandra
Ben Horovatin (student-at-law)

Kelly Yerxa

John G. Richardson

DECISION DELIVERED BY MEMBER N. EISAZADEH AND ORDER OF THE TRIBUNAL

[Link to Final Order/Decision](#)**INTRODUCTION**

[1] This Appeal arises under section 22(7) and 34(11) of the *Planning Act*, R.S.O. 1990, c.P.13, as amended (the “Act”). The Applicant is seeking an Official Plan Amendment (“OPA”) and a Zoning By-law Amendment (“ZBA”) to facilitate the development of an 11-storey mixed-use building (“Proposed Development”), at the property municipally known as 42 Lakeshore Road West (“Subject Property”) in the Town of Oakville (“Town”), in the Region of Halton (“Region”).

[2] For the reasons that follow, the Tribunal finds in favour of the Applicant and grants the amendments, in principle, withholding its Final Order subject to the Directions contained in this Decision respecting finalization of instruments.

NON-APPELLANT PARTIES AND PARTICIPANTS

[3] The issues raised by the Region on the present Appeal have been resolved, and the Parties have agreed that any remaining Regional concerns may be addressed through the Site Plan Approval process.

[4] The non-appellant Party, Frastell Associates Inc., took no position at the Hearing and advised it was conducting only a “watching-brief”.

[5] Accordingly, the only participating Parties at the Hearing were the Applicant and Town, whom, through cooperative efforts narrowed the scope of issues as between them to, predominantly, issues of Urban Structure and Urban Design respecting the appropriate height and density of development for the location of the Subject Property.

[6] At a prior Case Management Conference held before a panel differently constituted, Participant status was granted to: (i) Lorna Sinclair, in her personal capacity as she was speaking on behalf of a group of neighbours who were not organizationally incorporated, and (ii) Arbour Memorial Inc., the owners of lands adjacent to the Subject Property occupied by Oakview Funeral Home (“Funeral Home”). The key relevant concerns raised by the Participants in their lengthy and detailed Participant Statements may be distilled, jointly, into the following categories:

- I. Compatibility with the neighbourhood community and streetscape from a height, density, and massing perspective, and in particular, transition and shadow impacts to the low-rise dwellings to the south as well as the Funeral Home.

- II. Transportation planning concerns including inadequate capacity for increased traffic congestion and parking, particularly on Chisholm Street where short-term street parking is permitted on the west side of the street, adequacy of the proposed underground parking, increased noise pollution due to traffic, and increased vehicle-pedestrian conflict.
- III. Adequacy of design, landscape treatment and fencing over the proposed setback areas and the mutual property lines with abutting lands in relation to the attractiveness of the public realm, mitigation of privacy and overlook concerns, and the future development rights of neighbouring landowners.
- IV. The adequacy of mitigation measures during construction for potential disturbance to the neighbouring land uses.

APPLICATION HISTORY

[7] Since 2009, the Subject Property has changed ownership multiple times and has had a history of prior approvals for low-rise mixed-use development, the last approval permitting up to five-stories in height conditional on entering into an agreement under s.37 of the *Act* (“Bonusing Agreement”). The approvals have not, ultimately, proceeded to the building permit or Site Plan Approval stage to date.¹

[8] In September of 2023, the Applicant brought forward its applications for the current Proposed Development, which contemplates demolition of the existing structure occupying the lands known as the McCraney-Robertson House. The McCraney-Robertson House is designated under Part IV of the *Ontario Heritage Act*, R.S.O. 1990, c. O.18 as amended (“*Heritage Act*”), by By-law 2009-074, for attributes associated with

¹ Per the amendments to the *Act* enacted through Bill 23, the bonusing policies arising from the existing policy exception under s.23.7.9 of the TOP no longer apply to the subject applications.

the rectangular house form, side porch composition, windows and shutter wood makeup, and a magnolia tree which has since been removed.

[9] Subsequently, the Applicant obtained approval for a demolition permit for the McCraney-Robertson House through the Planning and Development Council in June of 2024, subject to conditions including, *inter alia*, heritage conservation through cooperation in a commemorative strategy and structure to be rebuilt that more adequately reflects the statement of cultural value and interest and interpretative landscape. The Tribunal was advised that the programming of the commemorative structure and courtyard will not impact the height, siting or setbacks of the Proposed Development. Additionally, the conditions regarding conservation measures are to be addressed through an independent process under the *Heritage Act*. Accordingly, neither the conditions related to conservation measures nor heritage related policies form issues before the Tribunal on the present Appeal.

[10] In between this time, on January 22, 2024, the application for the Proposed Development was brought before the Town Planning and Development Council (“Town Council”) which was resolved in a closed session for the purposes of advice subject to solicitor-client privilege. The recommendation of the Town’s Planning and Services Staff (“Town Staff”), by way of its report dated January 9, 2024 (“Town Staff Report”), was for approval of a modified building, which modifications included a reduction in height to nine-stories (inclusive of rooftop amenity space and mechanical penthouse – “Staff’s Modified Proposal”). The Minutes of the Town Council’s closed session resolution reflect only that both the Proposed Development and Staff’s Modified Proposal were unanimously refused without further reasons.

STATUTORY, LEGISLATIVE AND POLICY CONTEXT

[11] The relevant legislative framework, planning policies and guidelines applicable to this Appeal includes:

- I. The *Act*;
- II. The Provincial Planning Statement, 2024 (“PPS”);
- III. Bill 23, More Homes Built Faster Act, 2022 (“Bill 23”);
- IV. Bill 185, Cutting Red Tape to Build more Homes Act, 2024 (“Bill 185”);
- V. The Halton Region Official Plan (“ROP”);
- VI. The Liveable Oakville Official Plan (“TOP”);
- VII. The Town’s Zoning By-law No. 2014-014 (“ZBL”); and,
- VIII. The Town’s Livable by Design Manual (“LD Manual”).

THE SUBJECT PROPERTY AND SURROUNDING CONTEXT

[12] The Subject Property is a rectangular shaped corner lot located on the southwest corner of Lakeshore Road West (with 48.76 meters (“m”) of frontage) and Chisholm Street (with 48.11 m of frontage), consisting of a total area of approximately 2,337 square meters (“sq m”) or 25,156 square feet (“sq ft”). The site is predominantly vacant land, a small portion of which is occupied solely by the McCraney-Robertson House.

[13] The Subject Property is located within a Settlement Area as defined by the PPS. Pursuant to Bill 185, the Region, being the upper tier municipality, no longer retains planning responsibilities as of July 1, 2024, and therefore, the ROP has become a local document. It identifies the Subject Property as an Urban Area, with applicable Built Up Area and Secondary Regional Node policies. Within the TOP, the Subject Property is

identified to be within the Strategic Growth Area of Kerr Village, specifically the Lower Kerr Village District, with a Main Street 1 land use designation and site-specific exception limiting a maximum building height of five-storeys subject to a Bonusing Agreement. The Town's ZBL zones the Subject Property within the Central Business District ("CBD") with Special Provision 17 allowing building heights of four-storeys (which may go up to five, subject to a Bonusing Agreement).

[14] The Subject Property is located approximately 200 m west of Sixteen Mile Creek, and 450 m from several green spaces including the Sixteen Mile Creek Trail, Trafalgar Park, Westwood Park, Shipyard Park, Burnet Park, Chisholm Parkette, Busby Park, Centennial Park and Tannery Park. It is surrounded by various commercial and retail buildings along Lakeshore Road and Keer Street as well as amenities including the Oakville Public Library, Trafalgar Community Centre and The Oakville Centre for the Performing Arts.

[15] To the north-west, the Subject Property is bounded by a local "Main Street" (Lakeshore Road West), being a two-lane street carrying one-lane traffic in each respective east-west direction with a left-turn lane, as well as street parking and a continuous pedestrian sidewalk along the north and south sides of the road. Lakeshore Road West is identified as a Minor Arterial Road in the Town OP with a planned Right-of-Way ("ROW") width of 26 m. to the east, Chisholm Street is a two-lane street that carries one lane of traffic in each north-south direction with a continuous pedestrian sidewalk and short-term parking along the west side of the street. Chisholm Street is identified in the Town OP as a Local Road with a planned ROW width of 16-18 m.

[16] The Subject Property is well situated near public transit. The nearest bus station (Stop #2544 with Routes 14 & 14A) is located at Chisholm Street and Rebecca Street approximately 170 m north of the Subject Property, which connects to both Downtown Oakville as well as the Oakville Go Train Station located approximately 3 kilometers on the Lakeshore West line with service to Downtown Toronto. Oakville Transit also

connect with MiWay and Burlington Transit which service the Cities of Mississauga and Burlington.

[17] A summary of the immediate land uses surrounding the Subject Property includes:

- I. NORTH: a one-storey commercial building and a two-storey mixed-use building on the north side of Lakeshore Road West.
- II. EAST: Chisholm Street immediately east; a low-rise commercial building with surface parking; mixed-use buildings further east on the south side of Lakeshore Road West; a two-storey townhouse block on the northeast side of Chisholm Street; and a six-, seventeen-, twelve-, and thirteen-storey mixed-use buildings on the north side of Lakeshore Road West between Chisholm Street and Forsythe Street.
- III. SOUTH: a three-storey townhouse block to the immediate south; walk-up apartments; and single-detached dwellings.
- IV. WEST: commercial, mixed-use and Live Work buildings along Lakeshore Road West ranging from one- to three-stories in height.

THE PROPOSED DEVELOPMENT

[18] The Proposed Development comprises a total of eleven-storeys (ten floors plus an additional floor for mechanical penthouse and amenity space), totaling 40.86 m in height for a mixed-use apartment building containing 152 apartment dwelling units featuring a mix of 1-, 2-, and 3-bedroom units, forty-one percent of which are proposed to be larger 2- and 3-bedroom family-oriented units. There is 630 sq m of proposed at-grade commercial space, a total of 152 vehicle parking spaces (120 for residents and

32 for visitors) within four levels of underground parking accessed from Chisholm Street, a total of 152 bicycle parking spaces (40 of which are proposed at-grade at both the Lakeshore and Chisholm frontages), and a courtyard with a commemorative heritage structure and interpretive landscape. The total proposed amenity space is 1,112 sq m (309 sq m indoor and 803 sq m outdoor). The plans illustrate the following additional key details:

- I. Most of the building's mass is located towards the northeast corner of the Subject Property at the intersection of Lakeshore Road West and Chisholm Street.
- II. The ground floor commercial space is located at the northern portion of the site at sidewalk level, with continuous glazing proposed, along Lakeshore Road.
- III. The residential main entrance and amenity space is accessed from Chisholm Street at the rear of the site. Vehicular access is also accessed from Chisholm Street on the west side of the site, via a two-way driveway. The underground parking access is located near to the Chisholm Street vehicular access so as not to disrupt the primary street-facing façade of the building.
- IV. The floorplate forms an "L"-shape, which frames the courtyard on the northwest side of the site. The courtyard is connected to the retail space and residential amenity space, providing direct access at grade to the southwest corner of the site, which ensures accessibility to all ground floor areas with taller ceiling height. It includes a landscape amenity area inclusive of proposed tree plantings featuring a magnolia tree, seating areas proposed underneath the commemorative heritage feature, and a

potential outdoor expansion for patio/bistro-seating adjacent to the retail/commercial space.

- V. Additional landscape area is proposed at the eleventh level rooftop terrace which is to include lounge seating and dining furniture for residents' use, and raised planters and plantings at the southern edge for additional opportunities to mitigate potential or perceived privacy and overlook impacts.
- VI. The indoor amenity area is located at ground-level and is proposed to accommodate a range of uses and multi-purpose spaces for the building occupants. The outdoor amenity space is comprised of the courtyard and the rooftop terrace, both proposing to accommodate a range of passive and active uses.
- VII. With multiple entry points on both Lakeshore Road West and Chisholm Street, there are also multiple access paths proposed along both streets, with sidewalk extensions incorporated to connect the retail spaces, the commemorative heritage space, residential amenity areas, and the main residential entrance.
- VIII. The building steps down in height at the south side from the tenth- to the fifth-storey, at the east side from the seventh- to the eighth-storey, and at the north side from the eighth- to the fifth-storey.
- IX. There are setbacks proposed at the south elevation of the building at the ground floor with a setback of 7.2 m, at levels two through five with a setback of 6 m, at levels six through ten with a setback of 10 m, and at the eleventh level with a setback over 13 m from the property line.

- X. The building cladding is predominantly comprised of stone and brick panels except for the ninth and tenth levels which are clad in glass. There are punched windows, and both inset and projecting balconies which provide for the articulation of the building and private amenity space. Planter boxes are proposed on some of the balconies along the south side of the building to mitigate any privacy or overlook impacts with adjacent properties.

[19] The Proposed Development requires both the OPA and ZBA in order to permit the proposed building height of eleven-storeys. The ZBA is also required to specify the built form criteria.

THE TOWN STAFF REPORT

[20] While the Applicant did not revise its proposal to reflect the Staff Modified Proposal and continues to pursue its own Proposed Development, a review of the Town Staff Report serves to provide the background context of the materials that were before Town Council in rendering its decision at the Municipal level. A high-level overview of the key comments respecting Staff's Modified Proposal includes:

- I. A reduction of the total height by two storeys would minimize the height, massing, and shadow impacts on abutting properties while maintaining the character of the main street area.
- II. Introducing larger setbacks and stepbacks adjacent to the residential rear yards would provide a more gradual transition to the abutting residential units and minimize shadow impacts and visual dominance.
- III. Limiting the first four levels of terraces to inset balconies would reduce privacy impacts on adjacent properties.

- IV. Creating commercial entrances at the corner of Lakeshore Road West and Chisholm Street would enhance street activation.
- V. Incorporating a setback of 1 m at the ground floor would facilitate the extension of commercial activities along the Lakeshore frontage.
- VI. Increasing commercial parking, potentially through shared visitor parking, would meet by-law requirements and may be confirmed through site-plan application.
- VII. Including a holding provision would permit the required updates, reports, and studies to the satisfaction of all reviewing departments and agencies.

[21] Town Staff concluded that through the incorporation of its proposed modifications, Staff's Modified Proposal meets all statutory, legislative and policy criteria and requirements and stated specifically (at page 36 of the report):

- The revised Proposal is consistent with the PPS and conforms to the Growth Plan and the Halton Region Official Plan, and has regard for matters of Provincial interest and represents good planning;
- The subject property is located within a Node and Corridor (Kerr Village) and Main Street Area on Schedule A1, Urban Structure on an established main street (Lakeshore Road West). Growth, albeit at a lesser extent than primary growth areas, is directed towards Kerr Village at an appropriate scale for the context to achieve broader policy goals and objectives.
- The Official Plan amendment, as revised, proposing a 3-storey increase in the maximum building height from that permitted, allows for the appropriate intensification of the subject property of which is located in the Town's system of Nodes and Corridors, and within the Kerr Village Growth Area, supporting the objectives of the Towns urban structure;
- The Zoning By-law amendment, as revised, will support the appropriate intensification of the subject property to encourage the vitality of the

Kerr Village Growth Area, in keeping with the intent of the Central Business District zone;

- The implementing Zoning By-law amendment includes a holding provision to address required updates to reports and studies to the satisfaction all reviewing departments and agencies before development could proceed.
- The Official Plan and Zoning By-law amendments, as revised, foster the maintenance of the existing neighbourhood character by ensuring the existing McCraney-Robertson heritage dwelling be restored, as to commemorate the history of the site and continue the historic main street character, and encouraging a public square along Lakeshore Road West;
- Site design matters will continue to be advanced through the required site plan application;
- Comments from the public have been appropriately addressed; and,
- Comments from Council have been appropriately addressed.

OVERVIEW OF ISSUES AND EVIDENCE

[22] The Issues within the Issues List are overlapping and may be distilled to the following overarching concerns with which the structure and organization of this Decision follows:

- I. Conformity with the Urban Structure set out within the ROP and TOP;
- II. Compatibility with Surrounding Area and District Character;
- III. Conformity with Urban Design Policies and the LD Manual;
- IV. Affordable Housing;
- V. Conformity with the PPS;

VI. Conformity with the *Act*, and,

VII. Whether the Final Order Should be Withheld.

[23] This Decision is rendered based on the voluminous documentary and visual evidence before the Tribunal that were entered as exhibits, including an Agreed Statement of Facts in the area of land use planning, as well as the oral testimony of the following witnesses:

On behalf of the Applicant:

- I. Paul Demszak, a full member of the Canadian Institute of Planners (MCIP) and the Ontario Professional Planners Institute (“RRP”), who was qualified without objection to provide expert opinion evidence in the area of Land Use Planning.
- II. Shadi Adab, a full member of the Canadian Institute of Planners (MCIP) and the Ontario Professional Planners Institute (“RRP”) with two Masters’ degrees in Architecture and Urban Planning (M.U.P.) respectively, who was qualified without objection to provide expert opinion evidence in the area of Urban Design.

On behalf of the Town:

- I. Franco Romano, a full member of the Canadian Institute of Planners (MCIP) and the Ontario Professional Planners Institute (“RRP”), who was qualified without objection to provide expert opinion evidence in the area of Land Use Planning.

ANALYSIS AND FINDINGS

Issue #1: Is the Proposed Development in Conformity with the Urban Structure Provisions and Related Policies Within the Region and Town Official Plans?

[24] This overarching issue is raised by Issue Nos. 3, 4, 5 and 7 within the Issues List, namely particularizing the urban structure provisions within the ROP and TOP against which the development must be assessed.

[25] Mr. Romano's overall conclusion on conformity with the ROP is that the Proposed Development does not maintain its intent, and in particular, its Urban Structure. His view is that the scale and intensity of the Proposed Development does not fit the Subject Lands' smaller scale context, does not incorporate appropriate transition provisions, and does not reflect the Town's intended development and intensification planning framework.

[26] Mr. Romano begins his evidence on this issue by highlighting that the ROP is intended to provide higher level policy and relies on the lower Town level for the refinement and implementation of its general policy directions. He states that while the Regional structure identifies Strategic Growth Areas, that is not a land use designation conferring any developmental rights in and of itself, but rather the delineation of areas that are to be developed in accordance with the local official plans and zoning by-laws. Mr. Romano states that while Kerr Village is not mapped within the ROP's Strategic Growth Areas, it is identified by language as a Secondary Regional Node and mapped as an Urban Area within the Built Boundary. Transportation facilities are identified in the regional structure. Maps 3 and 4 within the ROP, identifying Lakeshore Road West as a Minor Arterial Road and the ROW requirements for such roads, also defers to the Town level for detailed planning instruments. He states that Lakeshore Road West is not planned within the TOP to accommodate any transit services, nor is it classified as a frequent transit corridor within the PPS.

[27] Mr. Romano's evidence is that the policies for Urban Areas within the intended Regional structure, where urban services are provided to accommodate development, already sets out the distribution of population and employment (Table 1 of the ROP), the expected growth rate to the year 2051, and the proportion of the Regional phasing for residential dwelling units (Table 2 of the ROP, 19,400 units phased between 2022-2041). He states that an adequate mix and variety of housing is to be supplied in a manner that is contextually appropriate and in accordance with local policies as set out in policies 84 to 86 of the ROP. Mr. Romano highlights policy 72 of the ROP which reflects this further, wherein it is stated:

Urban Area and the Regional Urban Structure

72. The goal of the Urban Area and the Regional Urban Structure is to manage growth in a manner that fosters complete communities, enhances mobility across Halton, addresses climate change, and improves housing affordability, sustainability and economic prosperity.

[28] Mr. Romano states that the objectives of the Urban Area, as reflected in policy 72.1, describes, *inter alia*, Regional unity, retaining local community identity, and creating healthy communities. He states that these objectives include supporting compact, efficient, transit-supportive growth, including reducing automobile dependency. In Mr. Romano's opinion, the ROP recognizes that its Urban Structure will achieve these objectives including identifiable, inter-connected complete communities of various sizes, types and characters that are to be developed in accordance with the more refined and detailed local planning instruments. He states that while Kerr Village, generally, is identified by language as a Secondary Regional Node, that is a lower order Strategic Growth Area within the Region's hierarchy to which the intensity of development at an appropriate scale is to conform. Further, Mr. Romano is of the opinion that Lower Kerr Village, specifically, as delineated within the TOP and where the Subject Lands are specifically located, are not within the boundary of the Secondary Regional Node at all, evidencing the intent of an even lesser level of planned intensity and scale of development.

[29] With respect to the TOP, Mr. Romano emphasizes that the Town's Urban Structure, like the Region's, does not confer land use designation but provides a comprehensive guide for certainty in the major growth of the Town, including infrastructure and development advancements. Mr. Romano reiterates his opinion that the Subject Property does not fall within the Town's Urban Growth Centre or Major Transit Station ("MTSA") area, where the primary growth and highest intensification is directed. Rather, he states the Subject Property is located in the category of "Other Growth Areas" (or "Secondary" Growth Area), which are intended to accommodate less intensification.

[30] In support of his position, Mr. Romano reemphasizes that the Subject Property is identified in the TOP Schedule A1 Urban Structure Map as within Nodes and Corridors, but also as a Main Street Area. He states Main Street Areas are recognized "for their distinctive character and are intended to accommodate lesser amounts of intensification", per Policy 3.6. He points out that the TOP Schedule A1 Map identifies Lakeshore Road as a Scenic Corridor and Major Transportation Corridor which permits all transportation modes while also recognizing, through Policy 3.14, the scenic value and natural and cultural heritage features of the Town's Character. Given that the TOP Schedule O1 Map identifies the Subject Property as within a Main Street 1 land use designation, Mr. Romano points to the section 12 Policies which he states sets out the clear intention for a lesser intensity of mixed-use development within Kerr Village, meant to enhance the historic Main Street character in a manner that is compatible with surrounding lands including lower density residential neighbourhoods.

[31] Finally, Mr. Romano points to the Implementation and Interpretation Policies of the TOP, specifically ss. 30.2, 30.2.1, 30.2.2, 30.2.3, 30.3 in support of his opinion that the Proposed Development does not appropriately implement the objectives and policies of the plan, and specifically in relation to the goals, objectives and policies of the TOP including its Guiding Principles, its Urban Structure, its Land Use Designation of Main Street 1 and the Special Policy considerations for Kerr Village. Mr. Romano

adds that the existing TOP designation and ZBL already facilitates substantial development of the Subject Lands at a maximum height of five-stories (subject to a Bonusing Agreement) with a range of permitted building types in a manner that conforms with, and maintains the intent of, the TOP. Accordingly, he states an increase in height is not required for development to conform with, or maintain the intent of, the Town's Urban Structure and the Kerr Village Growth Area.

[32] In response, Mr. Demczak highlights Bill 23, the vehicle through which Town Council unanimously approved the Housing Pledge assigned by the Province for a target of 33,000 new dwelling units by 2031. His view is that the Housing Pledge replaces the previous forecast, which was provided through the integrated growth planning process undertaken by the Town and Region, with the new target representing the minimum growth the Town has set out to achieve and not a cap on the delivery of housing.

[33] Mr. Demczak agrees that, as reflected in policy 44 of the ROP, the Region's role is to provide broad policy directions on strategic matters and to direct local municipalities to deal with their local environments to express their own local individualities as long as the Regional Urban Structure is adhered to. Mr. Demczak states that the applications which seek a site specific local OPA and ZBA to allow increased height, are consistent with the intent of both the Regional and Town's Urban Structures.

[34] Where Mr. Demczak's opinion diverges from Mr. Romano's relates primarily to the scale and intensity of the Proposed Development as being appropriate and fitting within both the Regional and Town Urban Structures. Most significantly, and from a policy perspective, Mr. Demczak is of the view that the Subject Property *is* mapped within the ROP's Strategic Growth Areas, and specifically as a Secondary Regional Node where high-rise and high-density mixed-use developments either exist, or are approved to be built, in a compatible manner with neighbouring lower density

development. To underscore his opinion, Mr. Demczak points out that Regional Staff have never required an amendment to the ROP and have withdrawn their issues on the present Appeal, which he states should add weight to his opinion that the Proposed Development achieves conformity with the ROP.

[35] With respect to the Urban Structure policies of the TOP, Mr. Demczak highlights that it also directs intensification to Growth Areas, within which the Subject Property is situated, and is precisely where density, transit, and pedestrian-oriented development is intended. He stresses that the TOP prioritize intensification within the Built-Up Areas, including Kerr Village, highlighting that Nodes and Corridors, as defined in the Plan, are key areas identified as the focus for mixed-use development and intensification. While Main Street Areas and Kerr Village are intended for lesser amounts of intensification in the general Urban Structure, he opines that the Proposed Development still fits within the distinct character supporting the creation of a livable community.

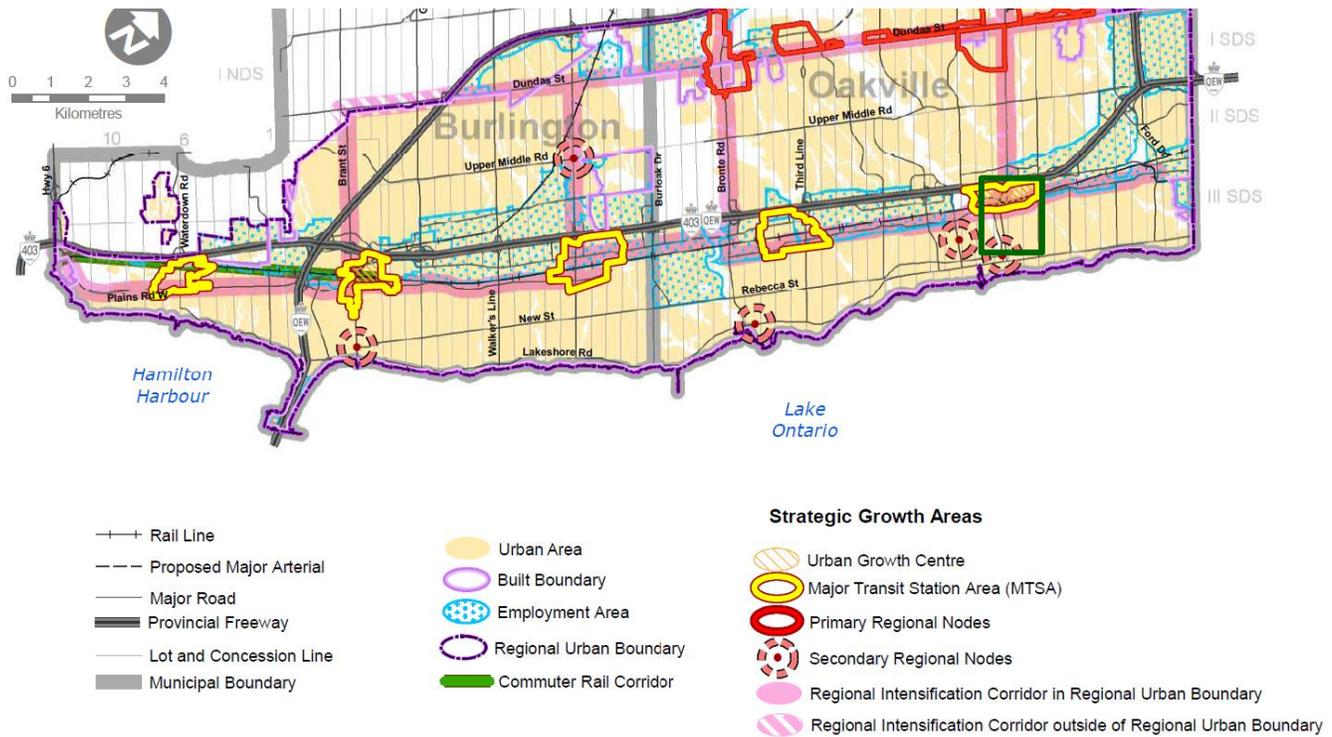
[36] Mr. Demczak also diverges with the opinion of Mr. Romano on the point that the existing TOP designation and ZBL already facilitates adequate and substantial development of the Subject Property to meet intensification targets. He reemphasizes that the intensification targets within the Built-Up boundary are to be monitored only to ensure conformity with the Region's requirements and are not a cap on density and development.

Findings on Issue #1 - Urban Structure:

[37] The Tribunal finds that the Proposed Development, which seeks a site-specific OPA and ZBA to increase height, conforms to the ROP and the TOP, inclusive of their policies setting out the intended Urban Structure. As submitted by Counsel for the Applicant, the Urban Structure indeed concerns itself with the "forest and not the trees", and the "trees" are what the evidence of Mr. Romano erroneously focuses on. While the Urban Structure provisions of the ROP and TOP establish a lesser intended

development intensity for Lower Kerr Village than Primary Growth Areas, that does not automatically preclude higher density infill development with a massing and scale that is circumstantially appropriate for its unique location based upon the relevant provisions of the local planning policies and guidelines – or, the proverbial “trees”.

[38] Turning to the larger Urban Structure policies, and first to the disagreement respecting the boundary of the Secondary Regional Nodes, the Tribunal refers to Map 1h of the ROP²:



² This is a focused excerpt of Map 1h: Regional Urban Structure from the ROP that the Tribunal has annotated with a rectangle outlined in dark green, being the general vicinity of the Subject Lands based upon the evidence. The entirety of the original Map 1h is appended at Appendix A to this Decision.

[39] The Map 1h legend sets out a symbol which resembles a dashed-circle with a centered pink dot (“Pink Symbol”). This Pink Symbol corresponds to the location of Secondary Regional Nodes. Map 1h also sets out Primary Regional Nodes through the use of bold red-coloured circling (“Red Boundary”). Significantly, as reflected in Appendix A capturing the entirety of Map 1h, an annotation also expressly states that “[t]his map should be viewed and interpreted with the text of the Official Plan”.

[40] Policy 82.1 of the ROP addresses the Regional Nodes. The two subsections that provide the relevant and necessary context are policies 82.1(1) and 82.1(2), which read as follows (emphasis added):

82.1 Regional Nodes are shown on Map 1H as follows:

(1) *Primary Regional Nodes* **are delineated on Map 1H** and Map 6 and are planned to accommodate growth and contain a concentration of *public service facilities* or transit-supportive high-density mixed uses, or which perform a regional transit network function at a scale appropriate for their context:

- a) Uptown Core, Oakville;
- b) Trafalgar Urban Core, Oakville
- c) Hospital District, Oakville;
- d) Palermo Village, Oakville;
- e) Neyagawa Urban Core, Oakville;
- f) Dundas Urban Core, Oakville; and
- g) Milton Education Village Innovation District, Milton.

(2) *Secondary Regional Nodes* **are identified by symbol on Map 1H** and are historic downtown areas or villages, and/or are intended to be a focus for growth through mixed use intensification at a scale appropriate for their context:

- a) Uptown Urban Centre, Burlington;
- b) **Kerr Village, Oakville;**
- c) Bronte Village, Oakville;
- d) Downtown Oakville;
- e) Downtown Urban Centre, Burlington;
- f) Downtown Georgetown, Halton Hills; and
- g) Guelph Street Corridor, Halton Hills.

[41] Policy 82.2 adds further that local Municipalities are *encouraged* to “delineate the boundaries of Secondary Regional Nodes.”

[42] The Tribunal accepts and agrees that the significant distinction in the text of the policies within the ROP is that Primary Regional Nodes are *delineated*, while Secondary Regional Nodes are only *identified* with a symbol. This language directly corresponds to the mapping, which reflects the exact Primary Regional Node boundaries delineated through the Red Boundary lines, and the Secondary Regional Nodes being only conceptually identified through use of the Pink Symbol. Use of a generic symbol which functions in the same manner as a standard sized stamp, will necessarily fail at capturing the entirety of (or, theoretically, over capturing) a Secondary Regional Node area. Had it been the intent of the ROP and Map 1h to encapsulate the entirety of a Secondary Regional Node area or to delineate a specific boundary stopping short of the Subject Property, it may have done so through use of a delineated boundary line as was done with Primary Regional Nodes, but does not. Rather, the ROP encourages the Town to delineate the specific boundaries for Secondary Regional Nodes.

[43] This distinction in the language within ss.82.1(1) and 82.1(2) of the ROP which differentiates between the “delineation” and “identification” of the two Regional Node areas is one which Mr. Romano refused to accept under cross-examination. The Tribunal was not persuaded by Mr. Romano’s evidence that the Secondary Regional Node must end at Rebecca Street, because it is not delineated in the TOP.

[44] Mr. Biggart challenged Mr. Demszak’s evidence, suggesting there are no words in the TOP which expressly set out the delineated boundaries of the Secondary Regional Node to include, specifically, Lower Kerr Village and no other evidence to support such an interpretation. However, the Tribunal agrees with the submissions of Mr. Kagan that the TOP need not expressly state so in policy language, given the Secondary Nodes are delineated through the various schedules for each “Secondary Growth Area” in the Town, thereby achieving the Region’s direction in policy 82.2(2).

[45] Specifically, Schedule A1 of the TOP maps the Local Urban Structure, within which Kerr Village falls within “Nodes and Corridors”. Schedule G of the TOP sets out

the South East Land Use Map and designates the Subject Property as within a Growth Area. This is also reflected in the language of the policies. Policy 3.7 of the TOP states that the Nodes and Corridors shown in Schedule A1 are referred to in the Plan as Growth Areas and corridors, which include Kerr Village. Policy 4 of the TOP respecting “Managing Growth” sets out that growth is to occur within the defined Growth Areas set out in Part E, which include Midtown Oakville, Bronte GO major transit station area (“Bronte Go MTSA”), the Uptown Core, Palermo Village, *Kerr Village*, Bronte Village, Downtown Oakville and Hospital District. Policy 4.1 clarifies that the primary Growth Areas with the highest level of intensification intended are Midtown Oakville, Bronte GO MTSA, the Uptown Core and Palermo Village, while Bronte Village, *Kerr Village* and Downtown Oakville remain Growth Areas intended to develop as mixed-use centres with viable main streets (or what the Town colloquially refers to as “Secondary Growth Areas”).

[46] The land use for the three particular Secondary Growth Areas is then mapped in the TOP within Schedules O1, P1, and Q1, respectively. The Schedule O1 Map reflects the division of Kerr Village into three districts (per the Development Concept Policy 23.3 of the TOP) comprising the north end being Upper Kerr Village District (“Upper Kerr”), the central area being Kerr Village Main Street District (“Main Kerr”), and the southern end south of Rebecca Street being Lower Kerr Village District (“Lower Kerr”). It also uses a red-dashed line to delineate the Growth Area for Kerr Village, which includes each of the Upper Kerr, Main Kerr, and Lower Kerr districts, including the Subject Property.

[47] Indeed, based on the foregoing the Tribunal agrees and accepts that the definitions within the ROP of “Regional Nodes”, “Strategic Growth Areas”, “Local Nodes” and “Local Urban Structure”, each support and demonstrate that all of Kerr Village is in fact within the Secondary Regional Node. Those definitions are as follows:

273. REGIONAL NODE means a *Strategic Growth Area* derived from a *Local Urban Structure* that has a role in the accommodation of mixed use intensification, and supporting the transit network in the *Region*, which merits its identification as a component of the Regional Urban Structure hierarchy.

280.2 STRATEGIC GROWTH AREAS means lands identified by the *Region* or its Local Municipalities within the Urban Area that are to be the focus for accommodating population and employment *intensification* and higher-density mixed uses in a more compact built form. *Strategic Growth Areas* include *Urban Growth Centres, Major Transit Station Areas, Regional Nodes, Regional Corridors, and Local Nodes* as identified in Local Official Plans.

255.1 LOCAL NODE AND LOCAL INTENSIFICATION CORRIDOR means a *Strategic Growth Area* identified by a Local Municipality in an approved Official Plan, which has a role in the accommodation of mixed use *intensification* and/or employment *intensification* at a scale appropriate to the context.

255.2 LOCAL URBAN STRUCTURE means an urban structure defined by a Local Municipality in an approved Official Plan, which furthers the growth management and community building objectives of the Local Municipality, and complements the *Regional Urban Structure*, in conformity with the *Regional Official Plan*.

[48] To put it another way, the Local Urban Structure within the TOP identifies the Subject Lands as being within a Local Node as defined in the ROP and identified within the TOP Schedule A1 Map. This in turn fits the Regional definition of Strategic Growth Area, which in turn fits the Regional definition of Regional Node. Mr. Romano himself conceded that the definition of Regional Node includes both Primary Node and Secondary Node. As a result, the entirety of Kerr Village, including the Subject Property, is determined to, in fact, fall within the boundary of the Secondary Regional Node, which

comprises part of the six types of Strategic Growth Areas within the Regional Urban Structure where intensification and growth is planned.

[49] Turning to Mr. Romano's evidence respecting the intensification targets within Table 2B of the ROP, the lack of targets set out for Secondary Regional Nodes does not make higher density development within those nodes at an appropriate scale and intensity for the area contrary to the policies of the ROP – namely, because the appropriateness of the scale and intensity of development within the Urban Structure is not strictly measured in relation to the targets alone. Policy 55.3 of the ROP referencing Table 2B states expressly that in relation to Strategic Growth Areas, the Table sets out “specific **minimum** targets” (emphasis added). The Tribunal also finds that Bill 23 and the adopted Housing Pledge with a Town target of 33,000 new dwelling units formalizes the Town's commitment to an implementation plan for housing production with numbers exceeding the overall intensification and density targets set out for the Town by the Region, demonstrating a minimum, not maximum, of intended development. In sum, exceeding either of these targets does not automatically negate conformity with the ROP or its intended Urban Structure, if the scale and intensity of the development still fits within the more particularized policies of the local official plans.

[50] The Subject Property is within a Settlement Area as defined by the PPS, an Urban Area and a Built-Up Area within the ROP, a Strategic Growth Area within both the ROP and TOP, and within a Secondary Regional Node where growth and intensification is to be focused. While growth is intended at a lesser intensity than the four Primary Growth Areas hierarchically above in the TOP Urban Structure, as well as within the three districts comprising Kerr Village, the evidence demonstrated through the cross-examination of Mr. Romano is that the proposal for an eleven-storey building falls well below the planned heights within the four Primary Growth Areas which range in maximum heights of between eighteen- to twenty-stories. The Tribunal accepts that the applications for a six-storey height increase in a compact built-form that is compatible

with neighbouring lands may represent an appropriate scale of development within the Urban Structure of both the ROP and the TOP.

[51] The detailed analysis respecting the development's compatibility with the unique local character and individuality as expressed by the TOP, and directed by the ROP, is addressed within the discussion concerning compatibility under Issue No. 2 below.

Summarizing the findings related specifically to the overarching Urban Structure then, the Tribunal accepts the evidence of Mr. Demczak that the Proposed Development, *inter alia*:

- I. Conforms with the Regional Structure policies (ss.43-51) as it is located within a Settlement Area within the Urban Area where urban services are provided to accommodate concentrations of existing and future development.
- II. Will contribute to the Region's intensification targets for the Town by providing new housing within the Urban and Built-Up Area.
- III. Achieves the objectives of the Urban Area and Regional Structure policies (ss. 72-78) respecting managing growth as it comprises a mid-rise building, in a compact built-form, at an appropriate level of intensification within the context of Kerr Village, with a range and variety of unit sizes, 41% of which are proposed to be 2-, and 3-bedroom units, thereby diversifying the housing stock in the area and fostering a complete community, and improving mobility being near transit services which assists in decreasing dependence on private vehicular use.
- IV. Conforms with the Strategic Growth Area policies and Regional Urban Structure policies (s.79) as a mixed-use building providing an appropriate transition of built form within the Secondary Regional Node with appropriate Urban Design features which mass the built-form and height compatibly and

in a manner that complements the existing developed area (as addressed in the discussion on compatibility further below), utilizes the land more economically, diversifies the land use in the local context including residential and employment uses, promotes-live-work relationships, fosters social interaction, enhances public safety and security, reduces travel by private automobile, promotes active transportation, and is environmentally more sustainable.

- V. Will contribute to achieving the Town's Housing Pledge of 33,000 units by the year 2031, for which the Town has only yet achieved a total of 7306 units between 2022-2024 (Exhibit 14: Ontario Tracking Housing Supply Progress Report).
- VI. Conforms with the Town's Urban Structure Policies (s.3.7) as the Proposed Development is located within identified Nodes and Corridors, providing effective and efficient use of existing and planned investment.
- VII. Conforms with the Town's Managing Growth and Change Policies (ss. 4.1 and 4.4) as a compact built form development which proposes infill within the Built-Up and Strategic Growth Area of Kerr Village, thereby optimizing existing infrastructure and public services and facilities.
- VIII. Conforms with the Town's Transportation Policies (Part C, Section 8) by providing for single vehicle access to the Subject Property from Chisholm Street and locating all parking and loading areas within the building creating direct and safe vehicle access and circulation routes, and minimizing disruption to the public sidewalk.
- IX. Conforms with the Town's Mixed-Use Designation Policies (ss. 12.1.1, 12.1.2, 12.1.3, 12.1.4) as the Proposed Development is for mixed-use,

designed to be pedestrian-oriented and to animate Lakeshore Road West with retail and commercial uses at-grade. It also utilizes existing and municipal services and infrastructure including transit, since even though not located within an MTSA, the Subject Property remains within 170 m walking distance to the nearest bus station on Chisholm Street and Rebecca Street which provides bus service connecting to Downtown Oakville, Oakville Go Train Station, MiWay, and Burlington Transit, respectively connecting to the Cities of Toronto, Mississauga, and Burlington.

- X. Conforms with the Town's Main Street 1 Designation Policies (ss. 12.2, 12.2.1, 12.2.2, 12.2.3) as it provides a compact urban form of intensification accessed by multiple modes of transportation and provides 154 bicycle parking spaces, reducing dependency on personal automobile travel, and making efficient use of underutilized local infrastructure and investment. The immediate context along Lakeshore Road West is further addressed under the Issue of compatibility below.

- XI. Conforms with the Town's Kerr Village Objective Policies (Part E, Section 23) for the reasons set out above. While the proposal exceeds the maximum height prescribed by the Main Street 1 policies and the existing height exception, it has been designed, massed and cited to respond appropriately to the character of the area, and appropriately within the overall Urban Structure, while balancing other provincial, regional, and local policy objectives regarding the creation of complete and sustainable communities driven by mixed-use buildings in a compact built-form without creating any unacceptable impacts.

Issue #II: Is the Proposed Development Compatible with the Surrounding Area?

[52] This overarching issue is raised within Issue Nos. 4, 5, 8 and 9 within the Issues List.

[53] Mr. Romano's evidence begins with the TOP direction within its Guiding Principles to maintain and improve "the collective qualities and characteristics that distinguish a particular area or neighbourhood", this being the definition of "character" within the TOP. His opinion on the issue is premised on Lakeshore Road West, being a Main Street, having a small-scale character reflected in what he describes as the true immediate context surrounding the Subject Property. He states that both recent and older construction in the immediate area have remained low-rise in physical form thereby maintaining compatibility with adjacent development including the residential neighbourhood to the south. In Mr. Romano's view, the existing and emerging context along Lakeshore Road West consists of modest building footprints, and a prevailing low-rise and low intensity form. He points out that the mixed-use buildings surrounding the area contain modest to no setbacks given their ground-oriented form and are often accompanied by surface parking for retail such as restaurants and the Funeral Home. In this way, transition is addressed through means such as setback areas and road allowance separation, rather than through the use of angular planes and step-backs as would be the case for taller buildings.

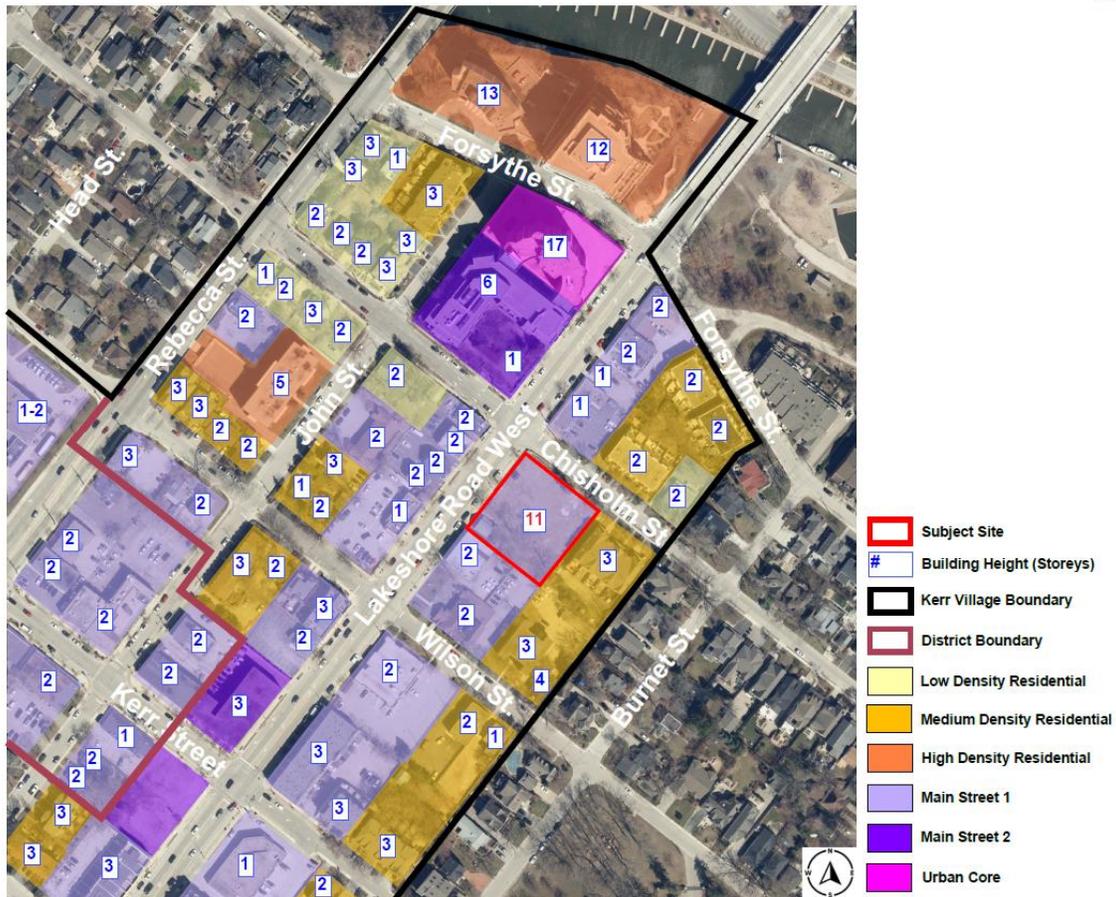
[54] In terms of the surrounding area, Mr. Romano expresses his disagreement with the view that there are a cluster of taller buildings within the immediate context of the Subject Property. He states that the taller buildings (including the nine-storey building at 100 Lakeshore Road East, and the six-, seventeen-, twelve-, and thirteen-storey mixed-use buildings on the north side of Lakeshore Road West between Chisholm Street and Forsythe Street) are located at such a distance that they do not interface with the Proposed Development. He also disagrees that they represent a height peak in the local context such that the Subject Property is located "on the periphery of the established context of height" as suggested by Mr. Demczak. Rather, Mr. Romano states that the height peak is in relation to the perimeter Gateway location (Lakeshore Road West and Forsythe Street per the TOP) within Kerr Village, does not apply to proposed building heights inside Kerr Village, and particularly not to the location of the Subject Property

which is not within the Gateway. Mr. Romano emphasizes his opinion that the true height peak in the immediate context surrounding the Subject Property is a lone six-storey building among otherwise small-scale buildings ranging from one- to three-stories, and this is the context that the Tribunal must consider when assessing compatibility.

[55] Additionally, Mr. Romano distinguishes between the Subject Property and those taller buildings at the Gateway. He states that none of those taller buildings directly abut residential areas in the same manner as the Subject Property and at the nearest, the taller buildings are across the street or across an intersection from low-rise residential areas. He also raises that the ROW separation distance, building setbacks and landscaping also contribute to buffer those taller buildings which features are not present in the case of the Proposed Development, as well as the difference in the land use designation of the lands housing the taller buildings. He states that the height transitions downwards, east to west from the Gateway towards the Subject Property and that the Proposed Development would represent and upwards spike in height moving away from the Gateway that is isolated and out of context. To illustrate his position, Mr. Romano produced an illustration mapping the surrounding building heights in relation to their land use designations, replicated as follows:

Building Heights in Kerr Village

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[56] Mr. Romano emphasizes that this context, consisting of prevailing low-rise building mass and scale in the immediate surrounding area, contributes to the traditional Main Street character which the Proposed Development would disrupt. More specifically, Mr. Romano opines that the Proposed Development is not in keeping with the character of the Lower Kerr Village context because its height, mass and density is at a scale that exceeds the existing and planned context, and further, is designed with inappropriate setback and transition to surrounding lands as further detailed in his evidence respecting the applicable guideline policies of LD Manual below. Mr. Romano opines that the result is a building with adverse impacts including proximity, privacy, overlook, and shadow impacts to neighbouring lands, amounting to an overdevelopment out of keeping with the character of the area and the existing and planned context.

[57] In contrast, Mr. Demczak describes the immediate area as including a range of mixed-use building heights including the six-, seventeen-, twelve-, and thirteen-storey mixed-use buildings on the north side of Lakeshore Road West at the Gateway. He emphasizes that this is the existing and established context that the Subject Property directly sits within, where heights gradually increase from low-rise to the east towards the taller heights up to seventeen-stories at the Gateway. Mr. Demczak points out that the taller buildings are in close proximity to low-rise residentially areas, similar to the Proposed Development. Moreover, he emphasizes that the Subject Property does not immediately abut lands designated low-density residential. Rather, the lands immediately to the south are designated medium-density residential, while low-rise residential communities are located further to the south.

[58] As the taller buildings are commonly on the same block as the low-rise residences, Mr. Demczak states that care has been taken to appropriately transition the building to neighbouring lands through its design. The setbacks are further transitioned from the townhomes to the south by way of a 3.6 m vehicular laneway. Mr. Demczak highlights that the architecture provides a compatible design within the context of the relevant Kerr Village Character design policies, including both inset and projecting balconies some of which include planter boxes providing for further articulation of the building as well as privacy and buffering.

[59] The Applicant's Urban Design witness, Ms. Adab, also provides her professional opinion that the Proposed Development is in keeping with the evolving character of a Growth Area adjacent to a Gateway. Her analysis is aligned with Mr. Demczak's which states that the immediate context includes the cluster of taller buildings to the northeast at the Gateway location, and that eleven-stories in height would ensure a smooth transition from east to west, as well as from north to south, where the land designation changes from Main Street 1, to medium-density residential, and then low-density residential further south. In her opinion, the Proposed Development would achieve a

unique sense of identity at the edge of Kerr Village as the building is oriented toward the street with accessible doors for at-grade active uses, utilizes high quality architectural and landscape design along both street frontages, and incorporates a courtyard on Lakeshore Road West encompassing a commemorative heritage structure. Additionally, she states the Proposed Development follows existing and planned placement of buildings being aligned parallel and close to both street frontages with setbacks and stepbacks included to breakdown the overall massing, and elevations compatible with both existing and taller buildings in the surrounding area providing a good transition to what is already existing. Ms. Adab emphasizes that the Proposed Development exceeds in-force ZBL standards which permit a 0 m setback for a five-storey wall on the property line, to a combination of setbacks and stepbacks achieving a gradual transition to the south with a 10 m setback over the fifth-storey from the property line. On Chisholm Street, there are also gradual setbacks between 1.3 m to 10 m at the southeast corner adjacent to the townhouse block, with an approximate 6 m front yard setback.

[60] On the issue of compatibility, Ms. Adab also provides evidence as to the potential adverse impacts. She highlights that the Applicant obtained a Shadow Study from Icon Architects Inc. dated July 28, 2023 (“Shadow Study”), which reflects that the Proposed Development will not cast excessive shadows on the pedestrian realm nor the neighbouring properties.

Findings on Issue #II - Compatibility:

[61] Mr. Biggart argues that the onus is on the Applicant to establish compatibility, and further, that the Proposed Development will also preserve and enhance the subject area, which he states the Applicant has failed to do. The Tribunal disagrees and finds that the Applicant has discharged that onus.

[62] The Tribunal finds that the policy direction of the TOP is clear, that to maintain compatibility with the surrounding context does not require that development be the same as, or even similar to, the predominant building types and form of the area. Indeed, it would be rather difficult to reconcile such a stringent requirement with other policy directions that encourage Growth Area intensification with a diverse range and mix of housing types within communities. Rather, what is required is harmony with the surrounding area as set out within the Section 6 Urban Design policies of the TOP:

6.9.2 Building design and placement **should be compatible with the existing and planned surrounding context** and undertaken in a creative and innovative manner.

6.9.3 **To achieve compatibility** between different land uses, development **shall be designed to accommodate an appropriate transition through landscape buffering, spatial separation, and compatible built form.**

6.9.9 New development shall ensure that **proposed building heights and form are compatible with adjacent existing development** by employing an **appropriate transition of height and form from new to existing development**, which may include **setbacks, façade step backs or terracing** in order to **reduce adverse impacts** on adjacent properties and/or the public realm.

[63] The TOP further elucidates the definition of Compatible as meaning “the development or redevelopment of uses **which may not necessarily be the same as, or similar to**, the existing development, **but can coexist** with the surrounding area **without unacceptable adverse impact**” (emphasis added).

[64] To assess compatibility, the boundaries of the “surrounding area” needs first to be delineated. Policies 6.9.2, 6.9.3, and 6.9.9 use the language “existing and planned surrounding context”, “different land uses” and “adjacent existing development” to express the surrounding area. Significantly, there is nothing in this language that limits the surrounding area to a geography which must share the same land use designation or which excludes unique locations such as a Gateway intersection. To the contrary, the TOP expressly states “different land uses” between which compatibility is to be achieved. The Tribunal accordingly rejects the notion that the taller buildings with heights of six-, seventeen-, twelve-, and thirteen-stories located at the north side of

Lakeshore Road West at the Gateway are not part of the “immediate context” or “surrounding area” with which compatibility is to be assessed, as testified to by Mr. Romano. To the contrary, the Tribunal finds that the cluster of taller buildings are located within one- to two-blocks from the Subject Property, are within a two-minute walking distance as testified to by Mr. Demczak, and therefore the Tribunal agrees with Mr. Demczak and Ms. Adab that they form part of the neighbourhood fabric and the Character of the area within which the Subject Property is situated, and is to be assessed.

[65] Mr. Biggart submits that the TOP directs that Kerr Village, along with Downtown Oakville and Bronte Village, are intended to develop as viable Main Streets distinctive for their character of a lesser degree of intensification. He states that the TOP directs development of compact urban forms, and that the Town’s planning for the subject area has established that a height of up to 4 stories constitutes appropriate intensification, with more intense density directed to Main Kerr and Upper Kerr. Mr. Biggart argues that the Applicant’s own visual evidence demonstrates comparable development of eleven-stories within Upper Kerr showing a distinction in character and where compatibility is better achieved. Mr. Biggart submits that Mr. Demczak also agreed there is a great opportunity to intensify and build in the Upper Kerr Village District.

[66] The Tribunal finds these facts are not mutually exclusive. The overall evidence demonstrates that eleven-stories in Lower Kerr maintains a lower scale, intensity, and compact built-form consistent in character when compared to the general heights and forms comprising the character typically found in the Primary Growth Areas, and even in the planned context for Upper Kerr. This is reflected in the evidence of Mr. Demczak, which the Tribunal finds to be persuasive. Mr. Demczak testified that within the Town’s Urban Structure, the Primary Growth Areas (Midtown Oakville, Uptown Core, Palermo Village and Bronte Go MTSA) where the highest level of intensification is directed have an existing and planned context for developments up to thirty-stories in height. Mr. Demczak states that as you move from the Primary to the Secondary Growth Areas,

even in Upper Kerr, the planned and existing context includes developments ranging between nineteen- to twenty-eight-stories in height. This can be seen through the TOP Schedule Maps, and in particular Schedules L2, M2, and S2 demonstrating planned heights of between two- to twenty-stories for Midtown Oakville, two- to eighteen-stories for Uptown Core, and two- to twenty-stories for Bronte Go MTSA. There are also existing site-specific exceptions in Upper Kerr (at Speers Road and Kerr Street) as set out in Policy 23.7.1 of the TOP for planned building heights of between twenty-two- to twenty-eight-stories.

[67] The Tribunal accepts and agrees with the opinion of Mr. Demszak, that a height of eleven-stories (ten-stories with mechanical penthouse) in Lower Kerr does not undermine the planned hierarchy of intensification nor the intention for development to maintain viable Main Streets distinctive for its character with lesser amount of intensification in a Secondary Growth Area. Rather, the Tribunal finds that the eleven-storey proposal reflects the characteristics of the immediately surrounding area context, including the taller cluster of seventeen-, twelve-, and thirteen-storey buildings on the north side of Lakeshore Road West. The Tribunal finds that the proposal represents a height that is considerably less than the height-peak at the Gateway, on a larger parcel of land than is typical for the immediate area on a Main Street in a Strategic Growth Area.

[68] The Tribunal further accepts and agrees with the opinions of Mr. Demczak and Ms. Adab that the Proposed Development achieves an appropriate transition from the taller buildings to the east, moving to the lower-scale buildings to the west, as well as from north to south moving away from a Main Street to medium-density residential. The Tribunal also accepts that the Proposed Development conforms to the existing and planned placement of buildings, which are to be aligned to street frontages, and that the setbacks and stepbacks of the Proposed Development, as previously summarized, are appropriate to address transition and which serve to adequately breakdown the overall massing of the building. The Tribunal determines that the design of the Proposed

Development achieves compatibility within the context of the relevant Kerr Village Character design policies. The analysis respecting appropriate site layout, height, density, massing, scale, setbacks and transition are addressed with greater particularity within the discussion of the Urban Design Policies and guidelines within Issue III below.

[69] With respect to the direction in Policy 2.2.1(a) to preserve and enhance the surrounding area, contrary to Mr. Biggart's submissions the Tribunal finds that the Applicant has in fact demonstrated this through its evidence. In her cross-examination, Ms. Adab agreed that the word "preserve" does not mean to remain the same without change, though it could imply to keep the same or similar. Mr. Demczak also agreed that this policy may be used in some instances to keep character the same. However, Ms. Adab highlights that one must read the guiding principle in its full context which states to "preserve, **enhance**, and protect the distinct *character*, cultural heritage, living environment, and sense of community of neighbourhoods" (emphasis added). Accordingly, Ms. Adab states that the intent of the guiding principle is to enhance or make better and ensure no harm, and not to suggest that neighbourhoods must always remain the same. The Tribunal agrees with this interpretation and finds it aligns with the definition of compatibility within the TOP emphasizing co-existence without unacceptable adverse impacts. To suggest that a guiding principle would require a more stringent interpretation of the term "preserve" with respect to the character of an area would contradict the Plan's very own definition of compatibility and serve to stifle evolving growth. Where it can be shown that the character of the immediate area is enhanced without any unacceptable adverse impacts, it is reasonable to conclude that the s. 2.2.1(a) Guiding Principal and Compatibility are both achieved.

[70] To this end, the Tribunal accepts Ms. Adab's evidence that the Proposed Development will enhance the surrounding area through providing at-grade active uses along the public street, introducing a courtyard space open to the public with interpretive heritage structure and opportunities for gathering, as well as by framing both street frontages with aligned building walls and elevations which utilize various design

practices to break up massing and create variation and visual interest along a mixed-use Main Street. The Tribunal rejects the argument that the attributes bringing public benefit are independent of the height of the building and must therefore be separated. Indeed, often there are development proposals which may very well focus only on height and density without such public benefits. However, as suggested by Mr. Biggart himself, proposals must be viewed as a whole, and the benefits they carry come with the entire development package. The concerns related specifically to height, are addressed through an assessment of adverse impacts.

[71] Mr. Biggart submits that the Proposed Development will result in unacceptable privacy and overlook concerns through the introduction of 45 balconies facing the residential yards to the south, as well as increased shadow impact along the boulevards which is contrary to the LD Manual directing to maximize sun exposure on boulevards.

[72] With respect to shadow impact, the Tribunal rejects the Town's submission that the test is to "maximize sun exposure" and prefers the submission of the Applicant. Indeed, policy 6.9.15 of the TOP states "[b]uildings should be sited to maximize solar energy, ensure adequate sunlight and skyviews, minimize wind conditions on pedestrian spaces and adjacent properties, **and avoid excessive shadows**" (emphasis added).

[73] The Town also employs numerical standards for evaluating shadows. That is, shadow impacts from the Proposed Development should not: (i) exceed two consecutive hours after 12:00 p.m. on the 21st of April, June and September; and (ii) public sidewalks and plazas on the main street must receive at least 5 hours of continuous sunlight per day on the 21st of April, June, and September.

[74] The only technical evidence tendered at the Hearing was the Applicant's Shadow Study which makes the following key conclusions:

- Only three properties adjacent to the Subject Property experience some level of shadow impact, which results in partial solar energy effects and remain well within acceptable limits;
- The Proposed Development's design, including upper floor setbacks along the eastern and northern property lines, results in minimized impacts on the public realm within acceptable limits;
- The Proposed Development will not create any adverse effects on the residential amenity spaces in the surrounding area as the net new shadows are minimal and have negligible impacts on rooftops; and,
- The overall shadow impacts caused by the proposed development are well within acceptable parameters.

[75] Neither does the Town Staff Report conclude that there are any unacceptable shadow impacts to residential amenity spaces, the public realm, or solar energy (building faces and rooftops) from the Proposed Development. Rather, it simply states that a reduction in height would have a "meaningfully positive impact" on shadow, and concludes that Staff's Modified Proposal of nine-stories meets and exceeds the Town's shadow standards. The Tribunal accepts Mr. Kagan's submissions that there is no evidence to suggest that the Proposed Development at eleven-stories fails the Town's numerical standards or contravenes the TOP policy direction to avoid excessive shadows. To the contrary, the evidence before the Tribunal which it accepts, includes Ms. Adab's opinion that the Shadow Study adequately demonstrates that shadow impacts from the Proposed Development are fast moving, minimal and acceptable for a Growth Area near a Gateway location.

[76] With respect to privacy and overlook, the Tribunal also finds there are no unacceptable adverse impacts. The main concerns raised related to the residential

homes to the south. More specifically, that the Proposed Development will have 45 balconies overlooking their rear yards, a significant increase from the number of balconies and windows that would be permitted as-of-right. With increased density directed to Growth Areas, an increase of dwelling units in vertical form are to be expected which bring with them, increased windows and balconies. It is for this reason precisely that buildings are directed to be articulated with setbacks and stepbacks in such a way so as to minimize those impacts.

[77] The Tribunal accepts and relies on Mr. Demczak's testimony that a five-storey building permitted as-of-right also permits a 0 m setback from the rear property line. The Tribunal agrees that the as-of-right permissions result in a worsened condition from a privacy and overlook perspective, with rear balconies and windows up to five-stories permitted to be in even closer proximity to the rear residential yards. The Proposed Development, however, and as Ms. Adab elaborates, provides a 7.2 m setback at grade from the rear property line to level two, a setback of between 6 to 6.75 m from levels two to five, a 10 m setback from level 6 through 10, and over 13 m setback at level eleven housing the wrapped mechanical penthouse. The proposed rooftop terrace further includes raised plantings intended to mitigate privacy and overlook impacts on adjacent uses. As Ms. Adab also explained, Planter boxes are provided on all balconies and terraces along the south elevation to further mitigate privacy and overlook concerns.

[78] The Tribunal finds that the Subject Property, being in a Strategic Growth Area, will inevitably introduce more windows and balconies where intensification is proposed, presenting increased conditions of overlook and potential privacy impacts. In this instance, and in balancing of all policy and planning considerations, the Tribunal is satisfied that the Proposed Development employs adequate design criteria including appropriate layout, stepbacks, setbacks, and proposed plantings, to mitigate those concerns such that they do not present an unacceptable adverse impact.

Issue #III: Does the Proposed Development Have Appropriate Regard to the Urban Design Policies Set Out in the Town's Official Plan and the Livable by Design Manual (Part B) – Urban Design Direction for Kerr Village?

[79] This overarching issue respecting the appropriateness of the Proposed Development's Urban Design features is raised within Issue Nos. 1, 5 and 9 within the Issues List.

[80] Mr. Romano opines that the Proposed Development does not have appropriate regard to the LD Manual for three key reasons. Firstly, he states that s.1(D) regarding the Introduction to the Urban Design Focus sets out a direction to reinforce the context of the character of the traditional commercial area, specific to Kerr Village, and builds upon the section 6 policies within the parent TOP. With reference to those TOP streetscape, built-form and landscaping policies, Mr. Romano opines that the Proposed Development does not strengthen or improve the small scale, Main Street character that reflects the local context and identity for the same reasons he sets out under Issue No. II, and namely, because its massing, form, placement and scale represent an abrupt departure from the existing and planned identity for the Subject Property in a Main Street area.

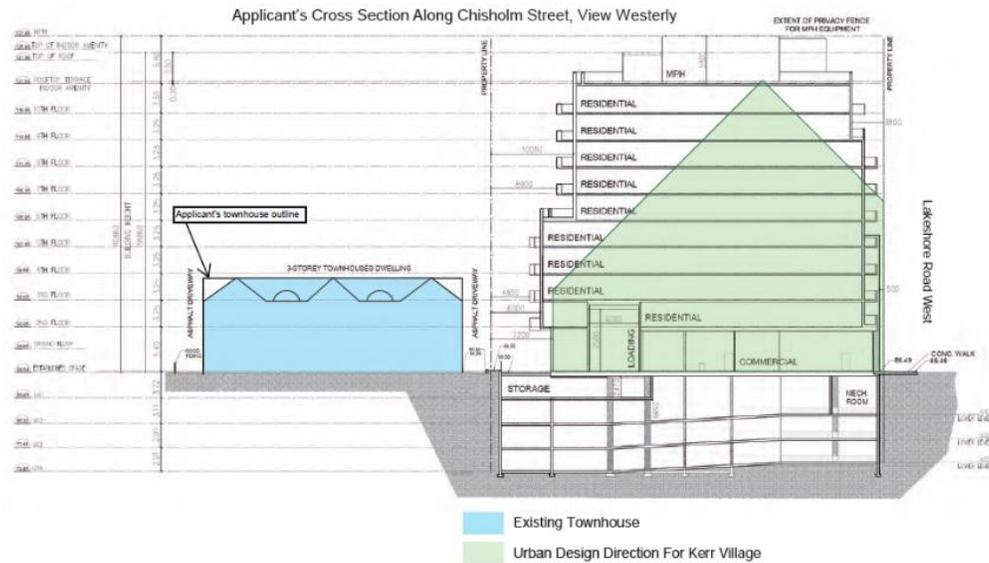
[81] Secondly, Mr. Romano quotes section 2 of the LD Manual describing the district of Lower Kerr which emphasizes the need to balance compatibility and differentiation between Lower Kerr and Downtown Oakville.

[82] Thirdly, he states that the Proposed Development lacks appropriate regard for the LD Manual setback and transition provisions, particularly in relation to the adjacent low rise residential lands and therefore fails to be compatible with its existing and planned context. In Mr. Romano's opinion, the "Redevelopment Concept" illustration at s.3C of the LD Manual (Part B – Urban Design Direction for Kerr Village) respecting "framing the street" is applicable to the Subject Property and includes a 45-degree

angular plane to achieve transition to adjacent low-rise residential areas, but which guideline he states is not incorporated to the Proposed Development. During his oral testimony, Mr. Romano expanded by referring to the first two illustrations under “be compatible with surroundings” at s.3D of the LD Manual:



[83] Mr. Romano states that the first illustration does not have reference to “low-density residential”, and still stands to demonstrate that a larger massed building over three-stories must have appropriate setback and stepback transition to any adjacent lower-rise building, as shown by way of the red-hatched lines in the image which gradually come down, and level off next to the lower buildings. Mr. Romano states that this is further demonstrated through the second illustration with the aqua coloured lines (“Aqua Lines”). Mr. Romano states that the Aqua Lines represent lands surrounding which the 45-degree angular plane for appropriate transition from taller to lower-rise dwellings must be applied. He states that because the southern most Aqua Line abuts the southern property boundary of the townhomes immediately adjacent to the Subject Property, the LD Manual thus directs any taller building abutting those townhomes to include the 45-degree angular plane for appropriate transition. Not conceding other issues in respect of appropriate height, Mr. Romano provided an illustration using a cross section from the Applicant’s drawings to demonstrate his opinion of what an appropriate transition might look like for the Subject Property (in green colour), to the southern townhomes (in blue colour) as follows (Ex.6, Pg.20):



[84] In contrast, Ms. Adab's evidence is that the illustrations and wording within the LD Manual are in furtherance of the direction and wording of the TOP. She states that while differing language may occasionally be used between the two, that the purpose of the LD Manual is intended to be the same as, and in accordance with, the parent TOP. So, whereas the LD Manual in s.3C shows a 45-degree angular plan to transition to adjacent "low-rise residential areas", this would refer to the direction in TOP Policy 23.5.6(b) which states that "[b]uildings greater than three storeys in height, on lands immediately adjacent to lands designated **Residential Low Density**, shall be stepped back above the third storey" (emphasis added). Ms. Adab states that because the townhomes to the south of the Subject Property are designated Medium-Density Residential and not Low-Density Residential, that the 45-degree angular plane does not strictly apply. Rather, the proposal needs only to employ good design practice and principles to ensure appropriate visual transition and to avoid negative impacts. When cross-examined, Ms. Adab stated that her interpretation is consistent with the Aqua Line illustration which is attempting to conceptually demonstrate where the height transition with low-density residential needs to occur. The Aqua Line at the southern edge of the townhomes represents where the designation reduces to Low Density Residential

further south from the townhomes, and where the step back starting from the third-storey would have to be employed towards the low-density residential designated lands.

[85] Ms. Adab provided further detailed and thorough evidence on the additional ways in which the Proposed Development has regard for the balance of the guidelines within the LD Manual, which were not raised as issues at the Hearing.

Findings on Issue #III – Urban Design:

[86] At the outset the Tribunal will briefly address the issue of the weight to be given to the Applicant's urban design evidence. Mr. Biggart submits that Ms. Adab's evidence should be given less weight because she was retained after all the materials had been filed by the Applicant, and she did not suggest a single change to those materials, including to any of the alleged deficiencies of the proposed ZBA (addressed under Issue No.VIII below). The Tribunal does not agree. Ms. Adab has an extensive professional history of 23 years working as a reputable Urban Designer, nearly half of that time having worked for the Town itself between 2009 – 2019. During her time employed by the Town, Ms. Adab testified that she took part in both drafting the Urban Design Guidelines for Kerr Village as well as applied them to development applications. Contrary to the Town's submissions, the Tribunal does not find Ms. Adab to have been evasive when answering questions during cross-examination. Rather, the Tribunal finds Ms. Adab to have been very knowledgeable and credible in her evidence.

[87] In contrast, the only evidence tendered by the Town was proffered by Mr. Romano. While Mr. Romano was permitted to speak to urban design policies and guidelines, he was qualified to provide opinion evidence in the area of Land Use Planning, and not Urban Design. Mr. Biggart argues that Mr. Romano need not be qualified in urban design to accept and prefer his evidence as his evidence was, *inter alia*, clear and based on an obvious, ordinary, and fair reading of the policies and guidelines. However, the Tribunal disagrees. For instance, the Tribunal did not find Mr.

Romano's evidence to be based on an obvious, ordinary or fair reading of the policies respecting the location of the Subject Property as outside of the Secondary Regional Node within the ROP and TOP. Mr. Romano also appeared reluctant to accept that the Proposed Development constituted a mid-rise building per the Urban Design Direction for the Town which states that mid-rise buildings are up to twelve-stories in height; on account of his view that this is set out in a guideline and not a policy within the TOP or a zoning standard. Indeed, the Tribunal agrees that the evidence of Mr. Romano consistently stood alone in contrast to not only the opinions of Ms. Adab and Mr. Demczak, but also to the conclusions of Town Staff within the Town Staff Report. Accordingly, the Tribunal assigns less weight to the evidence of Mr. Romano in contrast to the evidence received from Ms. Adab and Mr. Demczak.

[88] The Tribunal accepts Ms. Adab's interpretation of the application of the 45-degree angular plane and fourth-storey stepbacks. The starting point is within the parent TOP itself at s.23.5.6(b), expressly stating that the fourth-storey stepback is applicable to developments greater than three-storeys on lands immediately adjacent to lands designated Residential Low Density. The lands housing the townhomes to the south are designated Medium-Density residential, and, therefore, this policy direction is not strictly applicable. The Tribunal further accepts Ms. Adab's evidence that while the Proposed Development does not employ a 45-degree angular plane, that it still meets the intent of the s.3C guidelines, which are aimed at achieving a dynamic streetwall to improve pedestrian comfort, support retail along the street, and provide access to sky views and sunlight.

[89] The Tribunal accepts Ms. Adab's testimony that this is effectively fulfilled through the various design features she spoke to including the multiple layered stepbacks previously summarized. The ROW on Lakeshore Road West is approximately 26 m, 80% of which equates to an approximate 20 m height. Using the standard practice of attributing 4.5 m to the first floor and 3 m to every floor thereafter, Ms. Adab states that the 20 m equates to an approximate six-storey base building, at which the Proposed

Development indeed does incorporate a 10 m setback at its south elevation, this being in addition to the further setbacks and stepbacks at levels two, ten and eleven. Further still, and along the Lakeshore Road property line, the street wall is only five-stories, and the rest of the building is pushed back as depicted in the architectural drawings (Exhibit 4, Page. 23). Through use of her Coloured Proposed Building Stepbacks illustration (Exhibit 12), Ms. Adab clearly articulates precisely how the Proposed Development appropriately employs multiple layered stepbacks. In combination with the conclusions of the Shadow Study previously addressed, the Tribunal is satisfied that the Proposed Development successfully achieves the intent of the s.3C and s.3D LD Manual guidelines in appropriately framing the street and ensuring transition compatibility with its surroundings. More particularly, the Tribunal accepts and agrees with Ms. Adab's opinion that the Proposed Development provides a continuous streetwall with appropriate regard to the LD Manual guidelines, as well as an active interface with the pedestrian public street by, *inter alia*:

- I. Siting the Proposed Development close to both Lakeshore Road West and Chisholm Street.
- II. Introducing at-grade active uses on both fronting streets.
- III. Positioning its vehicular access on the side-street with a significant setback.
- IV. Providing a significant setback along Lakeshore Road West to form a narrower building along that street frontage, while also introducing a courtyard with a commemorative feature, which will significantly enhance the public realm.
- V. Providing a 1.5 m stepback above the fourth-level along Lakeshore Road West for a portion of the building, while siting the balance very close to the street to be in line with the prevailing setbacks on the street.

- VI. Providing setback increases from 1.3 m to 10 m at the southeast corner of the Proposed Development along Chisholm Street, adjacent to the townhouse block, with an approximately 6 m front yard setback for an appropriate transition.
- VII. Providing further transition to the southern medium-density residences through use of a combination of additional setbacks and stepbacks of 7.2 m at grade, 6 – 6.75 m from levels two to five, 10 m from levels 6 to ten, and 13 m at level eleven.
- VIII. Including planter boxes on all balconies and terraces along the southern elevation.
- IX. Applying different materials to breakdown the streetwall and massing including glazing and masonry.
- X. Incorporating recessed entrances and projected balconies to provide visual interest in streetwall design.
- XI. Providing varying materials between the stepbacks to reflect the district's rhythm and scale from a pedestrian point of view.

[90] Ms. Adab's evidence, which the Tribunal accepts, are also consistent with the appropriate interpretation of the s.3D Aqua Line illustration within the LD Manual. The Tribunal finds that the Aqua Lines represent the conceptual area where higher buildings may abut low-density residential designated areas, and where the application of the stepback beginning above the third storey is applicable. The Aqua Line, which borders the southern limit of the southern townhome properties in the illustration demarcates where the lands change from medium density to low-density designation further south.

The Aqua Line does not appear on the border between the townhome properties and the Subject Property. However, there are Aqua Lines within the general perimeter border to demarcate Trafalgar Park and Westwood Park. Contrary to the evidence of Mr. Romano, the Tribunal finds that if it were the intent of the illustration to include the same transition provisions between the border of the Subject Property and the residential townhomes to the south, there would have been further Aqua Lines on those particular abutting land borders. This interpretation is also consistent with the manner in which Town Staff applied the LD Manual and design guidelines to its Staff Modified Proposal, which does not employ a third-storey stepback or the 45-degree angular plane.

Issue #IV: Does the Proposed Development Include an Appropriate Amount of Affordable Housing?

[91] This issue was originally identified as Issue Nos. 1 and 11 within the Issues List. Mr. Romano opines that affordable housing is directed through policies within the PPS at s.2(b) and 2.2.1(a). He states that the absence of a provision for any affordable housing within the Proposed Development is an additional reason why the Proposed Development is not appropriate.

[92] In response, Mr. Demczak opines that because the location of the Subject Property is not governed by any inclusionary zoning, being the land use vehicle by which affordable housing may be mandated, that the Proposed Development does still have appropriate regard for the PPS, including the matters of Provincial interest under s.2, as well as ss. 2.2.1(a).

Findings on Issue #IV – Affordable Housing:

[93] The Tribunal agrees with Mr. Demczak, that while the PPS generally directs affordable housing as matters of Provincial and public interest, that there are no plans,

polices or inclusionary zoning which mandate it as a strict requirement for new development at the location of the Subject Property. While affordable housing is always encouraged, the Tribunal accepts Mr. Kagan's submissions that in the present instance, affordable housing outside of lands subject to inclusionary zoning must be voluntary. This finding is consistent with Tribunal decisions on the issue (*Calloway REIT (Mississauga) Inc. v. City of Mississauga*, 2023, CanLII 83079 (ON LT)).

[94] The Proposed Development is therefore not strictly required to have included affordable housing to meet the applicable policy and planning framework against which it is to be assessed. The Tribunal further accepts the evidence of Mr. Demczak that apartment units are more intrinsically affordable than grade related housing, and that the Proposed Development would accordingly introduce a substantial number of apartment units that would diversify the cost-range of housing in the area creating more affordable units for families as well as the aging population in the area.

Issue #V: Is the Proposed Development Consistent with the 2024 Provincial Planning Statement?

[95] This issue is raised as Issue No. 3 within the Issues List; however, the evidence and submissions of the Town on PPS consistency are duplicative, overlapping with the concerns raised within the balance of the overarching issues already addressed. Briefly, Mr. Romano's key evidence on consistency with the PPS is, primarily, two-fold. Firstly, he states that the PPS expressly states that Municipal official plans are the most important vehicle for implementing the policy directions with the PPS. Mr. Romano states that the Proposed Development does not respect the TOP's policies on Urban Structure and Land Use Designations, because it represents overdevelopment of the Subject Property, detracts from the existing and intended sense of place, is out of keeping with the small-scale Main Street Character, and incompatible with its surrounding area. Mr. Romano opines that the Proposed Development cannot,

therefore, be consistent with the PPS as it fails to achieve the larger goals of creating integrated and complete communities.

[96] Secondly, Mr. Romano states that the PPS expressly recognizes that Zoning By-laws are important implementation tools which should facilitate opportunities for an appropriate range and mix of housing. Mr. Romano asserts that the proposed ZBA instrument which fails to describe the number of dwelling units and the unit mix, to include affordable housing, or to specify the urban design aspects including all setbacks, building projections and building heights, cannot, therefore, be consistent with the PPS.

Findings on Issue #V - 2024 Provincial Planning Statement:

[97] The Tribunal has set out its reasons within this Decision for its findings that the Proposed Development does in fact respect the Urban Structure set out within both the ROP and TOP, is in keeping with the character of the Main Street area which includes the existing six-, seventeen-, twelve-, and thirteen-storey mixed-use buildings one block away at the Gateway, and is compatible with the surrounding area with appropriate regard for the transition guidelines respecting the Medium-Density Residential designated lands to the south. The Tribunal therefore rejects Mr. Romano's evidence that the Proposed Development offends any policy direction within the PPS for the additional height increase. The Tribunal further makes no finding that there are deficiencies within the proposed ZBA that cannot be appropriately addressed through withholding its Final Order, the reasons for which are set out under Issue No. VIII below. With respect to the PPS, the Tribunal agrees with and accepts Mr. Demczak's evidence that the Proposed Development is consistent because it, *inter alia*:

- I. Supports the achievement of complete communities through accommodating a mix and range of unit types (41% of which are proposed to be 2-, and 3-

bedroom units), and uses including commercial, retail, and residential, as well as through implementing accessibility standards;

- II. Makes more efficient use of an underutilized lot consisting of mostly vacant land that comprises one of the largest lots on Lakeshore Road West within the Growth Area of Lower Kerr, prioritizes investment into existing infrastructure and Municipal services, and assists the Town increase its housing supply with a range and mix of housing units for the area;
- III. While not located within an MTSA, is located within a Settlement Area and a Strategic Growth Area which are the focus of growth and development with higher-density mixed uses in a more compact built form, and is within close proximity to various services and amenities including within 170 m to the nearest Bus Station connecting to various forms of additional and wide reaching transit services and networks; and,
- IV. Helps promote energy conservation, air quality and climate change policies as it provides compact-built form infill intensification in a transit-supportive area while providing 152 bicycle parking spaces, thereby encouraging less reliance on personal vehicular automobile use.

Issue #VI: Does the Proposed Development have Appropriate Regard for Matters of Provincial Interest Including Section 2 of the Planning Act?

[98] This issue was originally raised as Issue No. 1 within the Issues List, and is also duplicative of the Issues otherwise addressed within this Decision. To reiterate, the basis for Mr. Romano's opposition against appropriate regard for the Act, and specifically subsections 2(j), (m), and (r)(i)-(iii), relate to his evidence that the Subject Property is intended for smaller scale development than what is contemplated by the Proposed Development. Mr. Romano states that the Proposed Development offends

the existing and planned character of the Main Street area, does not achieve compatibility with the lower-rise dwellings to the south, and contravenes the Urban Structure within the ROP And TOP.

Findings on Issue #VI - Matters of Provincial Interest:

[99] The Tribunal finds that the Proposed Development demonstrates appropriate regard for the Matters of Provincial Interest, including s.2 of the Act. The evidence of the Applicant has adequately established that the Proposed Development introduces a new building type to the predominant mid- and low-rise built-forms in the area thereby increasing the range of the types and mix of dwelling units available in the area, in a built-form that is massed and cited parallel and close to frame the Main Street in a pedestrian oriented manner, with multiple layers of setbacks and stepbacks to break up the massing, increase sky views and sun access, and mitigate any privacy and overlook concerns while providing visually appropriate transition and interest, and animating the public realm. The Proposed Development therefore achieves the orderly development of safe and healthy communities, the adequate provision of a full range of housing, at an appropriate location for growth and development, and in a built-form that is well designed, encourages a sense of place, and provides for high quality, safe, accessible, attractive and vibrant public spaces.

Issue #VII: Does the Proposed Development have Appropriate Regard for the Decision of the Municipal Council?

[100] This issue was originally raised as Issue No. 2 within the Issues List. Mr. Romano's evidence suggests that the applications before this Tribunal conflict with the Town Council decision to refuse both the Proposed Development as well as the Staff Modified Proposal, including the information and material that was provided to the Town. Counsel for the Town submits that the Tribunal is required to have regard to Town Council's decision, and given there are no substantial changes to the Proposed

Development, that it is entirely reasonable to refuse the subject applications in keeping with the decision of Town Council.

Findings on Issue #VII - Decision of the Municipal Council:

[101] The Tribunal disagrees with the position of the Town. The Town Staff Report formed part of the information and materials that were before Town Council in coming to its decision, which in fact supports a greater height and density at nine-stories and which contradicts the evidence and position of the Town throughout the Hearing. The Town Staff Report was not addressed in the reasons cited for Town Council's refusal. In fact, there were no reasons cited at all for the decision to refuse the applications which was arrived at in closed session. Moreover, while the Town Staff Report suggested two fewer stories achieves a better balance of competing policy objectives, it did not actually determine that the Proposed Development at eleven-stories failed to meet the statutory and planning policy framework. To the contrary, the Applicant's Proposed Development achieves more housing units, and makes more efficient use of land, services and resources while still meeting the balance of the other planning and policy considerations.

[102] While the Tribunal is required to have regard for the decision of the Municipal Council, regard does not equate to strict deference. Rather, it requires the Tribunal to genuinely consider the prior decision, which the Tribunal has done. In the act of balancing all required considerations, the Tribunal diverges from the decision of Council in finding that the Proposed Development meets the applicable legislative, statutory, and planning policy framework, constitutes good planning, and is in the public interest.

Issue #VIII: Should the Final Order be Withheld Subject to Conditions?

[103] This issue was originally listed as Issue No. 12 within the Issues List. Mr. Romano criticizes the form and content of both the draft OPA and ZBA, stating that at

present, they do not properly capture the Proposed Development's permissions that are sought. For instance, Mr. Romano points to Policy 6.1.2(b) and (c) of the TOP, stating that in his experience, a ZBL is typically an instrument used to implement the applicable urban design aspects under the urban design heading of the TOP. Mr. Romano points out that the draft instruments in this case do not do so. To set out another example, Mr. Romano points out that the proposed amendments also do not describe active ground floor uses as intended, as the current ZBA reference to non-residential uses on the ground floor is non-descript with no provision to include retail and service commercial, office, or other permitted active uses. Additionally, he states the proposed amendments do not contain provisions for the courtyard as appears on the architectural drawings. With respect to the OPA, he criticizes that it maintains the Main Street 1 land use designation with an exception to replace the height permissions, which he states contravenes the intent of that designation as it surpasses the intended density within the overall Urban Structure. Mr. Romano suggests that if the Proposed Development were to be approved, a redesignation of the lands within the OPA would be more appropriate. For all of these reasons, Mr. Romano states that the instruments, as drafted, are deficient.

[104] Without conceding his position on the balance of issues opposing the Proposed Development, Mr. Romano opines that should the Tribunal be inclined to approve the applications, the final Order should be withheld until the proposed OPA and ZBA instruments are in a form and content that is satisfactory to the Town, and which include modifications as follows:

- a) Reduce the building height, and increase the building setbacks, to align with the built form provisions described in paragraph 102 of this witness statement and incorporate a courtyard at the northwest corner of the Subject Lands generally as shown in the drawings.
- b) Redesignate the Subject Lands from Main Street 1 to a higher intensity land use designation commensurate with the Tribunal's approval, and include a description of the dwelling unit mix, including affordable housing, as appropriate.

- c) The Zoning By-law should include a schedule to describe all building setbacks, building projections, and building heights.
- d) The Zoning By-law should include provisions to describe the total number of permitted dwelling units, and the provision of a mix of dwelling unit sizes, including larger dwelling units to accommodate families.
- e) The Zoning By-law should include provisions to ensure that retail and service commercial and office uses, at the minimum proposed floor area shown on the drawings, are required to be located on the ground floor fronting onto Lakeshore Road West.

[105] In response, Mr. Demczak testified that the intention of the proposed OPA and ZBA is to implement the Proposed Development as set out within his evidence. While Mr. Demczak testified that he had no objection to working with Town Staff to finalize the proposed instruments to their satisfaction, he also provided the following responses to Mr. Romano's proposed modifications:

- I. A redesignation of the lands from Main Street 1 to another designation is not necessary or required, as supported by Town Staff in the Town Modified Proposal, which also did not propose to change the land designation.
- II. A description of the dwelling mix and affordable housing requirements is not a requirement or utilized within the context of the Oakville Zoning By-Law. The total number of permitted dwelling units and the mix of dwelling unit size is also not required as this is based upon the City of Toronto Growing Up Guidelines which have no application in the Town.
- III. A schedule to describe all building setbacks, building projections, and building heights is not necessary, and all rear yard transitions are already noted in the draft ZBA. However, Mr. Demczak is not opposed to including additional details in the draft instruments.
- IV. The ZBA is intentionally non-descript respecting the minimum non-residential uses in order to permit the full range of non-residential uses permissible

within the parent Central Business District Zone. The proposed ZBA stipulates a minimum non-residential floor area to be accommodated on the ground floor and the layout details may be further refined in a subsequent Site Plan Approval process.

Findings on Issue #VIII – Approval in Principle Subject to Conditions:

[106] The proposed ZBA is attached to this Decision as Appendix C. Mr. Biggart submits that the substance of the draft instruments should contain all necessary elements and must reflect the permissions that are actually sought, leaving the door open only for amendments to meet editorial requirements of a particular municipality related to style or format. The Tribunal rejects Mr. Biggart's argument that the deficiencies in the draft instruments in this case are of such a substantial nature amounting to fundamental deficiencies which warrant a rejection of the applications in their entirety.

[107] Respecting proposed modification (a), for the reasons set out in this Decision the Tribunal finds that the height of the Proposed Development is suitable for the Subject Property, fits within the ROP and TOP Urban Structure, and is compatible within the Main Street Character and surrounding area. Mr. Romano's suggested modification (a) is therefore not reasonable or necessary.

[108] Respecting proposed modification (b), the Tribunal agrees with Mr. Demczak that it is not necessary or required to redesignate the Subject Property from Main Street 1, and that the OPA seeking to permit an exception for additional height is sufficient and appropriate. There are multiple ways in which an OPA may be drafted. It is not uncommon for land-use designations to remain unchanged except for a site-specific exception to address height increases. This finding is supported by Town Staff with the Town Modified Proposal which also maintains the Main Street 1 land use designation

for a nine-storey building. Mr. Romano's suggested modification (b) is therefore not reasonable or necessary.

[109] Respecting proposed modification (c), given Mr. Demczak's candour regarding his inability to work with Staff on the language of the ZBA due to the nature of the appeal, and that the ZBA does currently leave room for ambiguity in the permissions for the ultimate building parameters, the Tribunal finds it reasonable and necessary to modify the ZBA to include a schedule describing all building setbacks, projections, heights, and parameters, as shown on the architectural drawings.

[110] Respecting proposed modification (d), the Tribunal has found that there is no inclusionary zoning mandating affordable housing units. The Tribunal further acknowledges that Town Council has not endorsed the City of Toronto's Growing Up Guidelines that were applied by Mr. Romano, and therefore there is also no mandatory requirements to include provisions within the ZBA describing the total number of dwelling units, the mix of dwelling unit sizes, nor the mix of larger dwelling units. Mr. Romano's suggested sub (d) modification is therefore not reasonable or necessary.

[111] Respecting proposed modification (e), the Tribunal can appreciate that the proposed ZBA is intentionally non-descript respecting the minimum non-residential uses. As the commercial tenants may not be known now, it can be appreciated that there is a desire to permit the full range of non-residential uses permissible within the parent Central Business District Zone ("CBD"). However, the Tribunal agrees that s.12.2.1(b) of the TOP respecting Permitted Uses for Main Street 1 states that "[t]he requirements for the size and location of retail, service commercial and office uses on the ground floor **shall** be determined through the *development* process **and regulated by the implementing zoning**" (emphasis added). Accordingly, it is reasonable and appropriate to modify the ZBA to include provisions to ensure that the retail, service commercial and office uses, at the minimum proposed floor area shown on the

architectural drawings, are required to be located on the ground floor of the Proposed Development.

[112] The Tribunal makes a final note that it endorses Parties to employ due diligence and ensure that all materials that are before the Tribunal are in their true final form, including draft instruments which should accurately reflect all permissions sought. However, it is also well within the powers of the Tribunal, as set out in the *Act* itself, to approve applications in principle and make or direct modifications to all or part of an OPA or ZBA that may be before it. In this matter, the Tribunal has determined that it will withhold its Final Order subject to the finalization of the instruments which is best left to the Parties to implement revisions as directed within Paragraphs [109], [111] and [119] of this Decision.

PARTICIPANT CONCERNS

[113] The Tribunal has already addressed the majority of overlapping concerns raised by the Participants within this Decision, respecting, namely, compatibility, transition, public realm, privacy, overlook, and shadow impacts.

[114] With respect to the additional concerns raised by Arbour Memorial Inc., and Lorna Sinclair, not otherwise and elsewhere addressed, the Tribunal highlights the following additional evidence of Mr. Demczak with which it agrees and accepts:

- I. The as-of-right permissions allowing a 0 m setback from all four property lines with a five-storey height allowance would create a wider massed structure being in closer proximity to the abutting Funeral Home, whereas the Proposed Development creates an improved condition well suited for its location.

- II. The west elevation towards the Funeral Home includes a blank wall condition to ensure the Proposed Development will not preclude any future redevelopment of the Funeral Home property.
- III. The vehicular entrance to the Funeral Home, being on Wilson Street, does not conflict with the vehicular entrance to the Proposed Development on Chisholm Street.
- IV. A Transportation Impact Study by LEA Consulting Ltd., dated August 25, 2023, was included within the initial submissions demonstrating that the Proposed Development may be appropriately accommodated on the site without any traffic or parking impacts within the immediate vicinity.
- V. Any need for potential warning clauses in future agreements of purchase and sale may be determined and addressed through the Site Plan application process.
- VI. All detailed landscaping and fencing requirements will also be subject to a future Site Plan application process, as well as the Heritage Easement Agreement requirements with the Town.
- VII. A construction management plan will also be required at the time of Site Plan approval, which will be subject to review and approval of the Town and which will address any potential concerns related to construction disturbance.
- VIII. Any future applications within Kerr Village must be assessed and evaluated on the nuances of its own facts and on the merits of its own case. Any future approvals must still satisfy Provincial and Municipal planning policy and establish that it represents good planning that is in the public interest. The allegation of a negative precedent does not undermine the fact that the

current Proposed Development satisfies the applicable planning and policy framework.

SUMMARY OF DISPOSITION

[115] Issue No. 10 within the Issues Lists asks whether the proposed amendments represent good land use planning that is in the public interest. Mr. Romano's evidence suggests that matters related to good land use planning are epitomized by the existing Provincial, Regional, and Town planning framework. Indeed, the Tribunal finds that the Proposed Development achieves the objectives of the applicable framework.

[116] The Subject Property is located within a Settlement Area under the PPS, an Urban Area and a Built-Up Area within the ROP, a Strategic Growth Area within both the ROP and TOP, and within a Secondary Regional Node where growth and intensification is to be focused. It is one of the largest parcels of land remaining on Lakeshore Road West in Lower Kerr Village, in close proximity to various amenities and only 170 m away from the nearest bus station connecting it to multiple wide-reaching transit networks, rendering it uniquely suitable to accommodate a higher-density mixed-use development, in a compact built-form adjacent to a cluster of taller buildings located one block away at the Gateway into Lower Kerr Village. The proposal serves to make efficient use of underutilized lands that are mostly vacant, prioritizing investment into the existing Municipal services and resources.

[117] The eleven-storey height remains well below the existing and planned heights in the four Primary Growth Areas of the Town as well as the Main Kerr and Upper Kerr Districts. The Proposed Development utilizes multiple layers of setbacks, stepbacks, and projections to appropriately frame and animate the Main Street, while providing appropriate visual transition to the Medium Density Residential townhomes to the south, with appropriate skyviews and sun access, and without any unreasonable adverse impacts. The Proposed Development serves to revitalize Kerr Village, fostering a

positive and engaging relationship with the public realm. It integrates seamlessly into its surrounding context, ensuring compatibility with both existing and emerging adjacent uses and built-forms. It further serves to contribute towards the Town's Housing Pledge through the provision of a variety of apartment units in an area that consists predominantly of grade-related housing.

[118] The Tribunal determines that the Proposed Development has appropriate regard for the matters of Provincial interest including s.2 of the *Act*, is consistent with the PPS, conforms with the ROP and TOP, has appropriate regard for the LD Manual, constitutes good planning, and is in the public interest.

[119] Through this Interim Decision, the Tribunal grants the OPA and ZBA appeals in part and in principle, with direction to finalize the content of the ZBA in due course. The Tribunal directs that the ZBA generally satisfy the following:

- I. Include a schedule to describe all building setbacks, building projections, and building heights as shown on the architectural drawings;
- II. Without limiting the range of CBP Permitted Uses, include provisions to ensure that retail, service commercial and office uses, at the minimum proposed floor area shown on the drawings, are required to be located on the ground floor of the Proposed Development; and,
- III. Other alterations and minor deviations to the above as agreed to by the Parties and in keeping with this Decision.

[120] The Parties may determine how best to incorporate this Decision's direction through the Amendments.

INTERIM ORDER

[121] Pursuant to ss. 17(50) and 34(26)(b) of the *Planning Act*, the Tribunal: allows the appeals, in part; approves in principle an Amendment to The Livable Oakville (2009 Town of Oakville Official Plan) as set out in Appendix B, and an Amendment to Zoning By-law No. 2014-014 as set out in Appendix C (the “Amendments”), subject to the direction that the Parties are to revise and finalize the Amendments in accordance with this Decision including as contained in paragraph [119].

[122] The Tribunal with withhold its Final Order and the Parties are directed to submit the Amendments within six months. If unable to complete the Amendments within that time, the Parties shall provide a written status report by **Monday, June 1, 2026**, and the expected timeframe to completion. A Party may request that the Tribunal convene a Case Management Conference in the event of difficulties satisfying this Interim Order.

[123] This Member will remain seized to review the Amendments and to consider the issuance of the Final Order.

“N. Eisazadeh”

N. EISAZADEH
MEMBER

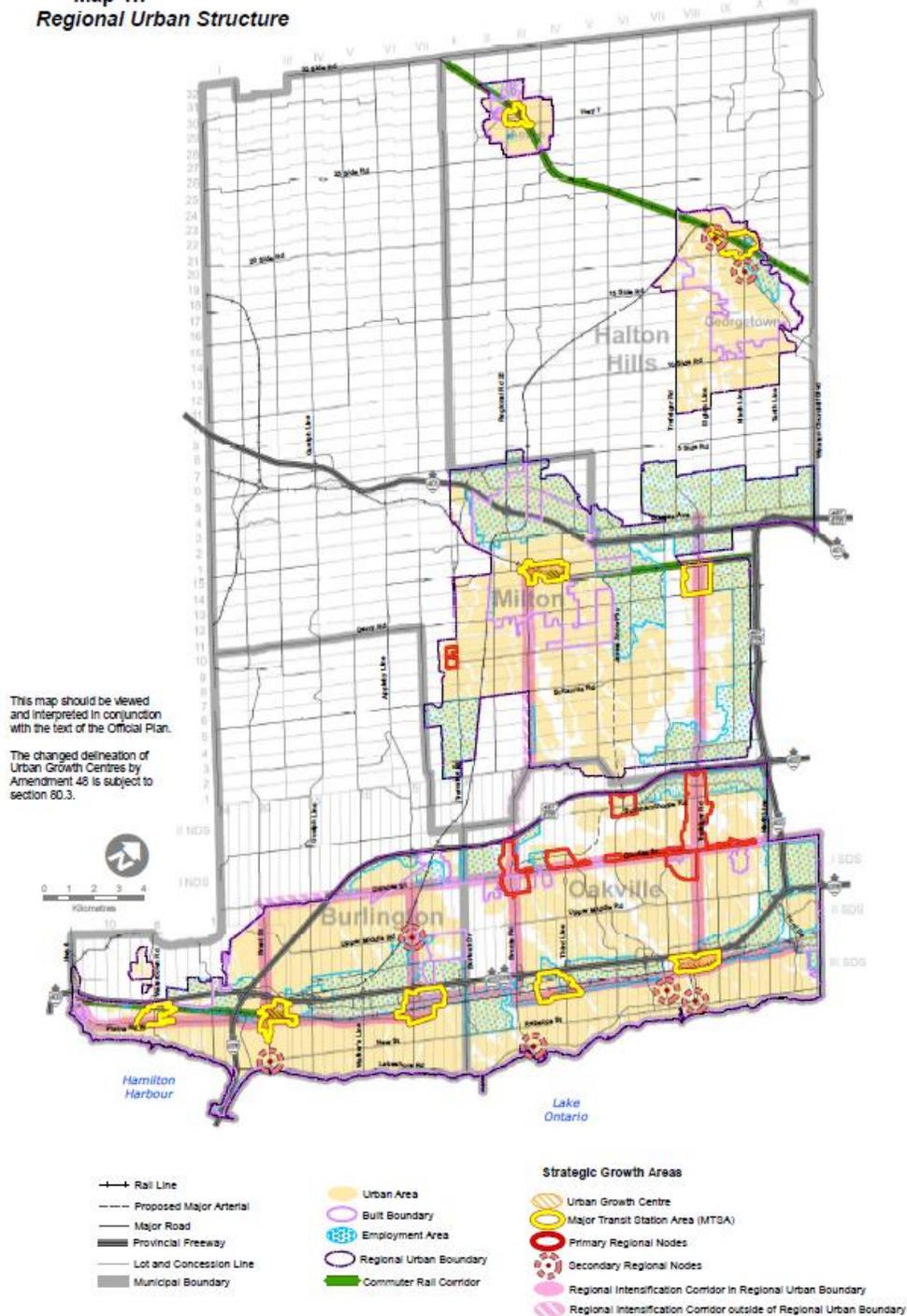
Ontario Land Tribunal

Website: www.olt.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

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

APPENDIX A

Map 1h
Regional Urban Structure



APPENDIX B

DRAFT OFFICIAL PLAN AMENDMENT THE CORPORATION OF THE TOWN OF OAKVILLE

BY-LAW NUMBER 2024-XXX Official Plan Amendment XX

A by-law to adopt an amendment to the Livable Oakville Plan, Official Plan Amendment Number XX (42 Lakeshore Road West; File No. OPA 1715.25).

WHEREAS the Livable Oakville Official Plan, which applies to the lands south of Dundas Street and the lands north of Highway 407, was adopted by Council on June 22, 2009, and approved with modifications by the Ontario Municipal Board on May 10, 2011; and,

WHEREAS subsection 21(1) of the Planning Act, R.S.O. 1990, c.P.13, as amended, states that a council of a municipality that is within a planning area may initiate an amendment to any official plan that applies to the municipality, and section 17 applies to any such amendment; and,

WHEREAS subsection 22(1) of the Planning Act, R.S.O. 1990, c.P.13, as amended, provides that a person or public body may request a council to amend its official plan; and

WHEREAS the owner of the lands known as 42 Lakeshore Road West has requested to amend the Livable Oakville Plan to apply site-specific exception policies to permit a maximum building height of eleven storeys; and,

WHEREAS it is deemed necessary to pass a Town-initiated Official Plan Amendment to the Livable Oakville Plan to amend existing site-specific exception policies to a permit a maximum building height of eleven storeys on the lands known as 42 Lakeshore Road West.

COUNCIL ENACTS AS FOLLOWS:

1. The attached Amendment Number XX to the Livable Oakville Plan, included as "Part 2", is hereby adopted.
2. Pursuant to subsection 17(27) of the Planning Act, R.S.O. 1990, c.P.13, as amended, this Official Plan Amendment comes into effect upon the day after the last day for filing a notice of appeal, if no appeal is filed pursuant to subsections 17(24) and (25). Where one or more appeals have been filed under subsection 17(24) and (25) of the said Act, as amended, this Official Plan Amendment comes into effect when all such appeals have been withdrawn or finally disposed of in accordance with the direction of the Ontario Land Tribunal.
3. In the event that the Regional Municipality of Halton, being the Approval Authority, does not exempt this Official Plan Amendment from its approval, the Clerk is hereby authorized and directed to make an application to the Approval Authority for approval of this Official Plan Amendment.

PASSED this day of _____, 2024

MAYOR

CLERK

Constitutional Statement

The details of the Amendment, as contained in Part 2 of this text, constitute Amendment Number ___ to the Livable Oakville Plan.

Part 1 - Preamble

A. Purpose

The purpose of this amendment is to modify Livable Oakville, Section 23.7.9, Kerr Village Exceptions – Schedule O1 and Schedule O1, Kerr Village Land Use to introduce a site-specific exception to permit a maximum building height of eleven storeys for the lands known as 42 Lakeshore Road West.

B. Location

The subject lands are municipally known as 42 Lakeshore Road West and legally described as Lots 10, 12 & 13, Block 68, Plan 1 As Part 1 on 20R22219. The Kerr Village Growth Area is located along Kerr Street from the railway tracks in the north to south of Lakeshore Road West in the south. The southerly portion of the Kerr Village Growth Area extends along Lakeshore Road West, from Dorval Drive in the west to Sixteen Mile Creek in the east. Kerr Street and Lakeshore Road West are the main streets of the Kerr Village Growth Area. The Kerr Village Growth Area is comprised of three land use districts. The subject lands are located within the Lower Kerr Village District.

C. Background

On October 25, 2022 the Ontario Government introduced Bill 23, the More Homes Built Faster Act 2022, that proposes extensive changes to the planning and land development system in Ontario. The province's goal for the Bill is to facilitate the construction of 1.5 million new homes, of which 33,000 homes are targeted in Oakville by 2031.

The subject lands are located within a Strategic Growth Area and are within a transition area to support transit-supportive development.

The revitalization of Kerr Village has been the subject of detailed and comprehensive land use studies that have resulted in land use policies and designations to provide for intensification opportunities.

42 Lakeshore Road West is subject to Official Plan and Zoning By-law amendment applications (File No. OPA 1715.25 & Z.1715.25) proposing the development of an eleven (11) storey mixed-use building.

D. Basis

An Official Plan Amendment is required to:

- permit the development of an eleven (11) storey mixed use development on the lands designated Main Street 1 known as 42 Lakeshore Road West;

The proposed Official Plan Amendment is consistent with the Provincial Policy Statement, conforms with applicable Provincial Plans, the Region of Halton Official Plan, and the Livable Oakville Plan, has regard for matters of Provincial interest, and represents good planning for the reasons set out in the staff report titled "Recommendation Report – Official Plan Amendment (File No. 1715.25) and Zoning By-law Amendment (File No. 1715.25), Format Lakeshore Inc., 42 Lakeshore Road West".

A Public Information Meeting was held on July 25, 2023, to receive public input on the applications.

The Statutory Public Meeting on the proposed Official Plan amendment was held on November 13, 2023, by the Town's Planning and Development Council.

Notice of the Statutory Public Meeting regarding the applications was published in the Oakville Beaver, was mailed to property owners within 240 m of the subject land on or before October 24, 2023, and circulated to the agencies and public bodies prescribed by the Planning Act.

Notice of the Recommendation Meeting was also mailed to persons who requested to be notified, and to any persons who provided written and/or oral submissions and circulated to the required agencies and public bodies prescribed by the Planning Act.

Information related to the applications was available for public review on the Town's website as of October 2, 2023, being at least 20 days before the recommendation meeting.

The Subject Lands are identified for intensification through the Provincial Growth Plan, being within a Strategic Growth Area.

- The Official Plan Amendment will include a site specific exception to the maximum permitted height to permit an 11 storey building on the Subject Lands.

- The proposed increase in height and density will support the intensification of the site as encouraged through the Provincial Policy Statement, the Growth Plan, the Region of Halton Official Plan, and the Livable Oakville Official Plan.

Part 2: The Amendment

The Livable Oakville Official Plan is amended as follows:

Item No.	Section	Description of Change
1	Section 23.7.9 Kerr Village Exceptions – Schedule O1	<p>The current exception policy 23.7.9 is revised and replaced as follows under 'revised exception policy':</p> <p>Current policy 23.7.9:</p> <p>On the lands designated Main Street 1 at the southwest corner of Lakeshore Road West and Chisholm Street, a maximum building height of five storeys may be permitted, condition on the owner entering into an agreement under section 37 of the Planning Act.</p> <p>Revised policy 23.7.9</p> <p>27.7.9 On the lands designated Main Street 1 known as 42 Lakeshore Road West, a maximum building height of eleven storeys shall be permitted.</p>

APPENDIX C

DRAFT ZONING BY-LAW AMENDMENT

**THE CORPORATION OF THE TOWN OF OAKVILLE DRAFT
BY-LAW NUMBER 2024-XX**

Being a By-law to amend the Town of Oakville Zoning By-law 2014-014, as amended, to permit the use of lands Described as Lots 10, 12 & 13, Block 68, Plan 1 As Part 1 On 20R22219;

WHEREAS the Corporation of the Town of Oakville has received an application to amend Zoning By-law 2014-014, as amended; and,

WHEREAS authority is provided pursuant to Section 34 of the Planning Act, R.S.O 1990, C.P.13 to pass this by-law; and

NOW THEREFORE the Council of the Corporation of the Town of Oakville hereby enacts that Zoning By-law 2014-014, as amended, be further amended as follows:

1. This By-law applies to the lands on the southwest corner of Lakeshore Road West and Chisholm Street 42 Lakeshore Road West between Forsyth Street and Wilson Street, as identified on Schedule "A" to this By-law.
2. Map 19 (7a) of By-law 2014-014, as amended, is further amended by rezoning the lands as depicted on Schedule "A" to this By-law.
3. Part 15, Special Provisions, of By-law 2014-014 as amended, is further amended by a revision to Section 15.17.1 as follows:

17	28, 36 and 42 Lakeshore Road West and 88, 90 and 94 Chisholm Street (Lots 10, 11 and 13, Block 68, Plan 1) (Parts of Lot 15, Concession 4 S.D.S.)	Parent Zone: CBD
Map 19 (8)		(2024- XXX)
Section Number 15.17.1 Zone Provisions		
The following regulations apply to all lands:		

a)	Minimum floor area for non-residential uses on the ground floor	445 m ²
b)	Maximum number of storeys	11
c)	Maximum Height	44.0 m
4)	Minimum width of landscaping required along any lot line abutting a Residential Zone	0.0 m
e)	Minimum rear yard (south lot line abutting 86 Chisholm Street)	0.0 m
f)	Minimum rear yard (south) Above first Storey	4.65 m
g)	Minimum rear yard (south) Above fifth Storey	8.0 m
Section Number 15.17.2 Parking Provisions		
a)	Designated residential visitor parking spaces may be counted toward non-residential parking spaces and may be provided in any combination.	
b)	A minimum of 20% of the parking spaces in a building shall include the provision for the installation of electric motor vehicle supply equipment.	
Section Number 15.17.3 Special Site Provisions		
a)	The front lot line shall be deemed to be Lakeshore Road West.	
b)	The maximum height shall include a mechanical penthouse.	

4. In all other respects the provisions of By-law 2014-014 shall apply.

This By-law shall come into force and effect in accordance with the provisions of the Planning Act, R.S.O 1990, C.P.13.

This By-law read a FIRST, SECOND, and a THIRD time and finally PASSED on the _____ day of _____, 2024.

Mayor

Clerk

Schedule "A"

