Ontario Land Tribunal

Tribunal ontarien de l'aménagement du territoire

22-241-OLT Attachment 1
22-242-OLT Attachment 2

2022 CanLII 78186 (ON LT)

ISSUE DATE: August 24, 2022 **CASE NO(S).:** OLT-21-001127

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

Applicant and Appellant:	King West Crossing Limited & DV Trillium Group Inc.
Subject:	Request to amend the Official Plan - Failure of City of Hamilton to adopt the requested amendment
Existing Designation:	'Urban Corridor' on Schedule E - Urban Structure of the City of Hamilton Urban Official Plan ("UHOP)" and 'Mixed Use - Medium Density' on Schedule E1 - Urban Land Use Designations
Proposed Designated:	Urban Site-Specific Area in the UHOP
Description:	To permit an additional 19 storeys atop the multiple dwelling building and an additional 2 storeys atop the hotel
Property Address:	354 King Street West, Hamilton
Municipality:	City of Hamilton
Municipality Reference No.:	UHOPA-20-003
OLT Lead Case No.:	OLT-21-001127
OLT Case No.:	OLT-21-001127
OLT Case Name:	King West Crossing Limited & DV Trillium Group Inc. v. Hamilton (City)

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

Applicant and Appellant:	KING WEST CROSSING LIMITED & DV TRILLIUM GROUP INC.
Subject:	Application to amend Zoning By-law No. 05-200 - Neglect of the City of Hamilton to make a decision
Existing Zoning:	Transit Oriented Corridor Mixed Use Medium Density (TOC1) with exception 295
Proposed Zoning:	Site Specific Exemption
Description:	To permit an additional 19 storeys atop the multiple dwelling building and an additional 2 storeys atop

	the hotel
Property Address:	354 King Street West, Hamilton
Municipality:	City of Hamilton
Municipality Reference No.:	ZAC-20-008
OLT Lead Case No.:	OLT-21-001127
OLT Case No.:	OLT-21-001128

Heard: June 20, 2022 by video hearing

APPEARANCES:

Parties	**Counsel**
King West Crossing Limited and DV Trillium Group Inc. ("King West" or "Applicants")	D. Baker
City of Hamilton ("City")	P. MacDonald

MEMORANDUM OF ORAL DECISION DELIVERED BY WILLIAM R. MIDDLETON ON JUNE 20, 2002 AND ORDER OF THE TRIBUNAL

INTRODUCTION

[1] This matter proceeded as a settlement hearing on Monday, June 20, 2022 by Video Hearing ("VH") having been previously scheduled for a full merits hearing commencing on the same date.

[2] The City and King West resolved all disputes concerning the Applicants' appeal related to a proposed development located at the address municipally known as 345 King Street West in the City ("Subject Lands") comprising 19 storeys atop a multiple dwelling building and an additional two (2) storeys atop a hotel ("Development").

[3] At the VH, with the consent of counsel for the City, King West called Brenda Khes to provide expert evidence. Ms. Khes is a Registered Professional Planner in Ontario with over 35 years of professional experience in land use and policy planning and was qualified by the Tribunal to provide opinion evidence on land use planning

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matters.

[4] Counsel for King West also tendered an Affidavit from Ms. Khes sworn June 14, 2022. In addition to this Affidavit, a Document Book comprising 1163 pages and a Photo Book comprising five (5) pages was before the Tribunal at the VH.

[5] In her Affidavit and *viva voce* evidence, Ms. Khes opined as follows:

a) The Subject Lands are located in the lower City of Hamilton, at the northwest corner of King Street West and Queen Street North. The site is irregularly shaped with a frontage of ±70 metres along King Street West, a flankage of ±74 metres along Queen Street North and frontage along Market Street of ±70 metres and has an overall area of 0.70 hectares (1.7 acres);

b) She reviewed the Urban Hamilton Official Plan (“UHOP"), the Strathcona Secondary Plan (“SSP”), the Downtown Hamilton Secondary Plan (“Downtown SP”), the Hamilton Zoning by-law 6593 (“By-law 6593") and 05-200 (“By-law 05-200") and visited the Subject Lands and surrounding neighbourhood to examine the planning merits of the Development;

c) On August 17, 2018, site plan application number DA-18-096 was conditionally approved by the City pursuant to the as-of-right zoning on the Subject Lands, for a ten (10) storey hotel with a two (2) storey podium, six (6) storey multiple dwelling building, and six (6), two (2) storey multiple dwelling units within the podium fronting Market Street, with at-grade parking off King Street West and two (2) levels of underground parking accessed from Queen Street North and Market Street;

d) On October 4, 2019, the City granted final Site Plan approval to site plan application DA-18-096 for a six (6) storey multiple dwelling, 10 storey hotel and 8 multiple dwelling units fronting Market Street within the parking podium, all on the Subject Lands. Construction of the podium, hotel, six storey

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multiple dwelling and townhouse units fronting Market Street are currently ongoing;

e) On October 4, 2021, the City granted final approval to an addendum to approved site plan application DA-18-096 for a six (6) storey multiple dwelling and 12 storey hotel and 14 multiple dwelling units on the Subject Lands. The applications before the Tribunal for determination is for the Phase 2 OPA/ZBA applications only, being the amendments to the UHOP and Zoning By-law 05-200 to permit an additional 19 storeys atop the previously approved 6 storey building. The total height of the building is 25 storeys, however as noted above, the first 6 storeys are already approved;

f) On June 9, 2022, the City and the Applicant entered into Minutes of Settlement to permit the 19 storeys atop the previously approved 6 storey building subject to some design changes, including the removal of the 2 additional ground-related residential units along the western property line to allow for greater landscaping treatment;

g) The Phase 2 Application and the proposed implementing Official Plan Amendment (“OPA”) and Zoning By-law Amendment (“ZBA”) as set out in the Minutes of Settlement are appropriate from a land use planning perspective. The requested increases in height and resulting density exceed what was permitted as of right, but are consistent with the Provincial Policy Statement 2020 (the “PPS") and conforms to A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2020, (the “Growth Plan”);

h) The OPA is in keeping with the policies of the UHOP related to: housing, urban design, cultural heritage, archaeology, health and public safety, climate change, noise and vibration, energy and environmental design, road network, complete streets, traffic management, and parking and loading. The proposed development is suitably located along the proposed Light Rail Transit (LRT) with access to existing local and regional public transit and

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active transportation options and will further support the financial viability and sustainability of these facilities. The requested height is compatible with the surrounding development, provides appropriate transition from low rise development to the north and west, and will provide additional dwelling units along a City-designated Primary Corridor;

i) The Development applications, OPA and ZBA meet the intent of the policies within the SSP and the requested modifications to the TOC1 Zone of Zoning By-law 05-200 conform to the policies in the UHOP and SSP, except for the maximum building height for which an amendment is being sought;

j) The proposed settlement, as set out in the Minutes of Settlement, focuses on the following design matters:

   a) the removal of the 2 additional ground-related residential units along the western property line;

   b) enhanced landscaping;

   c) a reduced building massing depth on the north side of the building to provide additional gradation to the adjacent low rise residential areas to the west;

   d) a better-defined podium massing to create an appropriately scaled and robust urban edge condition along King Street West,
   e) a greater building setback from King Street West to improve public open space, landscaping opportunities and site permeability - particularly at the southeast portion of the building, and

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f) revising the building materiality to sensitively respond to the surrounding historic urban and neighbourhood fabric, (the "Settlement”).

(k) The Settlement is therefore for a 19-storey residential building positioned above the previously approved 6-storey development for a total of 25 storeys served by 2 levels of underground parking. The total gross floor area of the Development is approximately 24,000 square metres and includes 315 residential units ranging from one to three bedrooms, 255 parking spaces with 38 at grade and 217 parking spaces below grade and 166 long term and 5 short term bicycle parking spaces to serve the residents and visitors. The Applicants have committed to providing 3-bedroom units for a minimum of 5% of the overall units approved for the site (±17 units);

(l) Overall, the Settlement will:

a) Further intensify a site in the lower City abutting the Downtown Urban Growth Centre and adjacent to public and active transportation routes including Hamilton Street Railway (“HSR”) Bus routes (1a, 5+, 10 [B-Line], 34, and 51), the SoBi bicycle sharing service, and sidewalks along King Street West;

b) Allow for a transit-supportive density adjacent to a proposed LRT stop which will facilitate additional residents to be located along the future transit corridor which will help improve the financial viability of the significant public investment the City and Province have dedicated;

c) Add to the City’s housing rental housing stock including 3-bedroom family sized units;

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d) Increase and diversify the rental housing stock within the Strathcona neighbourhood, bringing additional residents and vitality into the broader community area; and

e) Not exceed the height of the escarpment;

(m) The proposed Settlement has had regard to the matters of provincial interest described in Section 2 of the *Planning Act*, R.S.O. 1990 c. P13 ("PA");

(n) Overall, the additional building height of the Development conforms with the applicable policies of the UHOP with the notable exception of the maximum height requirement. It is for this reason that the OPA is being sought;

(o) The Development aligns with the key intentions of the SSP Urban Design Guidelines and aims to sensitively respect the historic neighbourhoods located within the area, while supporting the evolution of the Subject Lands within the broader urban context; and

(p) For all of the reasons set out above, approval of the OPA and ZBA is recommended to permit the establishment of the Development, which constitutes good planning.

[6] The Tribunal accepted the unchallenged expert evidence of Ms. Khes as set out in paragraph [5] above and is satisfied that the OPA and ZBA meet the requirements of s. 2 of the PA, are consistent with the provisions of the PPS, conform with the Growth Plan and the UHOP, and represent good planning, and therefore finds that the Settlement is reasonable, fair and appropriate.

[7] At the VH, the Parties had submitted only the draft planning instruments and were seeking an Interim Order from the Tribunal. However, subsequent to the VH, the Parties submitted their request for a Final Order along with the final form of the OPA

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and ZBA, appended to this Decision as Attachment 1 and Attachment 2, respectively. This was on consent of both Parties.

ORDER

[8] **THE TRIBUNAL ORDERS THAT** the appeal is allowed in part and that the OPA and ZBA set out in Attachment 1 and Attachment 2 respectively to this Order, are hereby approved for issuance by the City.

"William R. Middleton"

WILLIAM R. MIDDLETON
MEMBER

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Attachment 1

Urban Hamilton Official Plan

Amendment No. 177

The following text, together with Map B.6.6-1 Strathcona Secondary Plan – Land Use Plan, attached hereto, constitutes Official Plan Amendment No. 177 to the Urban Hamilton Official Plan.

1.0 Purpose and Effect:

The purpose and effect of this Amendment is to add the lands to Area Specific Policy – Area C within the Strathcona Secondary Plan to permit a 25 storey mixed use building.

2.0 Location:

The lands affected by this Amendment are a portion of the lands known municipally as 354 King Street West within the former City of Hamilton.

3.0 Basis:

The basis for permitting this Amendment is :

- The requested height increase is consistent with the Provincial Policy Statement 2020 and conforms to A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2020;

- The proposed development is compatible with the City-wide Corridor Planning Principles and Design Guidelines by minimizing sun/shadow and wind impacts, and by providing an appropriate transition from the Primary Corridor to the adjacent low rise residential neighbourhood;

- The proposed development is suitably located near the proposed Light Rail Transit (LRT) Queen Station with access to existing local and regional public transit and active transportation options and will further support the financial viability and sustainability of these facilities;

- The proposed development satisfies all characteristics and requirements of the Strathcona Secondary Plan Mixed Use – Medium Density policies, save and except the prescribed building height.

4.0 Actual Changes:

4.1 Volume 2 – Secondary Plans

Text

4.1.1 Chapter B.6.0 - Hamilton Secondary Plans – Section B.6.6 – Strathcona Secondary Plan:

i replacing the text "C-5" between the words "to" and "on" with "C-6", so the Policy reads as follows:

"B.6.6.15.3 Notwithstanding the maximum building height identified in Policy 6.6.5.5 b) – High Density Residential Designation and 6.6.6.1 b) – Mixed use – Medium Density designation of this Plan, shown as Areas C-1 to C-6 on Map B.6.6-1 Strathcona Secondary Plan: Land Use Plan, the following shall apply:" ; and,

ii adding a new paragraph f), as follows:

"f) For the lands known municipally as 354 King Street West, designated Mixed-Use – Medium Density, shown as Area Specific Policy – Area L, C-6 on Map B.6.6-1 Strathcona Secondary Plan: Land Use Plan, the maximum building height shall be 25 storeys."

Maps and Appendices

4.2 Map

a. That Volume 2: Map B.6.6-1 – Strathcona Secondary Plan – Land Use Plan be amended by adding Area Specific Policy – Area C-6 identification to the subject lands, as shown on Appendix "A", attached to this Amendment.

5.0 Implementation:

An implementing Zoning By-law Amendment and Site Plan will give effect to the intended uses on the subject lands.

This Official Plan Amendment is Schedule "1" to By-law No. 22-241-OLT passed on the 24th day of August , 2022.

PLANNING & ECONOMIC DEVELOPMENT DEPARTMENT

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