

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



18-112-LPAT-03 Schedule 1
18-114-LPAT-04 Schedule 2

ISSUE DATE: March 28, 2023

CASE NO(S): OLT-22-002191

PROCEEDING COMMENCED UNDER subsection 17(24) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: Brown Wharf Development Corp. et al
Subject: Proposed Official Plan Amendment OPA 102
Municipality: City of Hamilton
OLT Case No.: OLT-22-002191
Legacy Case No.: PL180548
OLT Lead Case No.: OLT-22-002191
Legacy Lead Case No.: PL180548
OLT Case Name: Brown Wharf Dev. Corp. et al v. Hamilton (City)

PROCEEDING COMMENCED UNDER subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: Brown Wharf Development Corp. et al
Subject: By-law No. BL 18-114
Municipality: City of Hamilton
OLT Case No.: OLT-22-002195
Legacy Case No.: PL180549
OLT Lead Case No.: OLT-22-002191
Legacy Lead Case No.: PL180548

Heard: March 15, 2023 by video hearing

APPEARANCES:

Parties

Brown Wharf Development Corp.
and Southwest Crossing Ltd.

City of Hamilton

Counsel

Richard Minster

Patrick MacDonald

**MEMORANDUM OF ORAL DECISION DELIVERED BY C. HARDY AND S. BRAUN
ON MARCH 15, 2023 AND ORDER OF THE TRIBUNAL**

INTRODUCTION

[1] This settlement hearing was convened for the purpose of hearing the last remaining appeal related to the adoption of Official Plan Amendment No. 102 (“OPA 102”) and Zoning By-law No. 18-114 (“ZBL”) by the City of Hamilton (“City”). OPA 102 amends the Urban Hamilton Official Plan (“UHOP”) to adopt the Downtown Hamilton Secondary Plan (“DTSP”) and the ZBL amends Zoning By-law No. 05-200 to facilitate the implementation of the DTSP. The effect of OPA 102 is to create new site-specific land use designations and policies for Downtown Hamilton.

[2] Multiple appeals of the foregoing were filed by various parties in this matter, all of which were previously resolved, save and except for the appeals presently before the Tribunal filed by Brown Wharf Development Corp. and Southwest Crossing Ltd. (“Appellant”) pursuant to s. 17(24) and s. 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended (“Act”). The Appellant’s properties at 215-231 Main Street West, 62 & 64 Hess Street South and 67-69 Queen Street South (together “Subject Property”) are located in the area of the City affected by OPA 102 and the ZBL

[3] On August 14, 2019, the Tribunal granted a Motion by the City to partially approve OPA 102 and deem parts of the ZBL which were not at issue in the site-specific appeals into force. The Tribunal’s Order deemed OPA 102 to be in force and effect as of June 5, 2018, except for the properties which were under appeal, including the Subject Property. The Tribunal’s Order further deemed the ZBL to be in force and effect as of May 9, 2018, except for the properties which were under appeal, including the Subject Property. As such, if approved, this settlement will result in the DTSP coming into full force and effect throughout Downtown Hamilton.

[4] The present appeals were focused upon two issues: height restrictions proposed for the Appellant’s lands in both OPA 102 and the ZBL and the inclusion of the Appellant’s lands in a Cultural Heritage Landscape within the DTSP.

[5] Briefly summarized, the proposed settlement contemplates the Subject Property remaining within the Cultural Heritage Landscape and further contemplates site-specific revisions to OPA 102 and the ZBL to address the Appellant's concerns in relation to restrictions on maximum permitted building height. It further contemplates the withdrawal by the Appellant of its appeals related to 62 & 64 Hess Street. Subsequent to the hearing, the Appellant formally withdrew its appeals related to 62 & 64 Hess Street, which the Tribunal accepts.

[6] Shannon McKie, a Registered Professional Planner, whom the Tribunal qualified to provide land use planning opinion evidence, provided a sworn Affidavit and delivered a comprehensive contextual and planning rationale in support of the settlement. She opined that the proposed modifications to OPA 102 and the ZBL satisfy all requisite legislative tests and overall are representative of good planning in the public interest.

LEGISLATIVE CONTEXT

[7] On this appeal, the Tribunal must be satisfied overall that the proposed site-specific modification to OPA 102 and the proposed site-specific amendment to the ZBL are representative of good planning in the public interest. With respect to the specific legislative tests to be met, the Tribunal must be satisfied that the foregoing are consistent with Provincial Policy Statement, 2020 ("PPS") and conform with A Place to Grow: Growth Plan for the Greater Golden Horseshoe Area ("Growth Plan"). Additionally, the proposed modification to OPA 102 must conform with the policy regime of the applicable official plan which, in this instance, is the UHOP and the proposed amendment to the ZBL must conform with the UHOP, as modified.

[8] Finally, the Tribunal must have regard to matters of Provincial interest set out in s. 2 of the Act, as well as to the decision of the City and the information considered by it, pursuant to s. 2.1(1) of the Act.

PLANNING EVIDENCE

[9] Ms. McKie provided a brief overview of the history and purpose of OPA 102 and the ZBL and noted that, were the Tribunal to approve the proposed settlement, the DTSP would come into full force and effect throughout Downtown Hamilton.

[10] With respect to the specifics of the proposed settlement, Ms. McKie explained that no change is proposed to Appendix B-1 Cultural Heritage Landscape as passed by Council with respect to the Subject Property. The proposed site-specific revisions relate to maximum building heights, whereby the designation of the Subject Property on Map B.6.1-2 of OPA 102 would change from Mid-rise 1 to High-rise 2 and the maximum building height for the Subject Property in the implementing ZBL would change from 44 metres ("m") to 78 m.

[11] The Subject Property is located within 100 m of a higher order transit station on a priority transit corridor and within a settlement area for the purposes of the PPS and an Urban Growth Centre for the purposes of the GP. Given the Subject Property's locational context, Ms. McKie opined the proposed revisions have appropriate regard for matters of Provincial interest, including but not limited to: the appropriate location of growth and development and encouraging development which is supportive of public transit and oriented to pedestrians. In her view, the proposed revisions represent an efficient use of land, resources and infrastructure (including existing and planned transit), allow for the achievement of minimum intensification targets by locating development within a settlement area and an Urban Growth Centre and therefore, are consistent with the PPS and conform to the GP.

[12] Ms. McKie reviewed the proposed height modifications against the DTSP and opined that they align with the intent and vision thereof. She noted that a massing model and supporting sun shadow impact study demonstrates that a 78 m building can be developed on the Subject Property without increasing the cumulative shadow on surrounding properties, in accordance with policy 6.1.5.35. She also noted that the proposed height modifications align with policies which indicate that no building should

exceed the height of the Niagara Escarpment (anecdotally understood to be 30 storeys). In Ms. McKie's opinion, the proposed maximum height for the Subject Property is consistent with existing and approved building heights in the surrounding area, is compatible with adjacent land uses and allows for appropriate transition to surrounding lands.

[13] With respect to transition specifically, Ms. McKie pointed out that any future development of the Subject Property would be subject to minimum setbacks within the ZBL intended to maintain and achieve appropriate transition in height and scale to surrounding properties. In addition, she noted that no development can occur on the Subject Property prior to the lifting of a Holding symbol ("H") in the ZBL, which remains unchanged as a result of the proposed settlement. As such, further assessment with respect to conformity would occur once a specific development proposal comes forward.

[14] Based on the foregoing, she opined that the proposed modification to OPA 102 conforms to the policy regime of the UHOP and the proposed amendments to the ZBL conform to the UHOP, as modified.

ANALYSIS AND DISPOSITION

[15] On the strength of the uncontradicted land use planning testimony and sworn Affidavit of Ms. McKie, the Tribunal is satisfied that the proposed modification to OPA 102 and amendment to the ZBL represent an efficient use of land, resources and infrastructure and achieve important local, regional and provincial policy objectives, including providing for a range of housing and leveraging proximity to existing and planned transit in order to accommodate growth targets.

[16] The Tribunal wholly accepts Ms. McKie's opinion that the proposed site-specific modification to OPA 102 and amendment to the ZBL have appropriate regard for matters of Provincial interest, are consistent with the PPS, and conform with the GP. The proposed modification to OPA 102 conforms with the policy regime of the

applicable official plan and the proposed amendments to the ZBL conform to the applicable official plan, as modified. In accordance with s. 2.1 of the Act, the Tribunal has given regard to the decision of the approval authority and the information considered by it, noting that the matter came before it on consent as a settlement between the Appellant and the City.

ORDER

[17] **THE TRIBUNAL ORDERS** as follows:

1. The appeals by Brown Wharf Development Corp. and Southwest Crossing Ltd. with respect to the properties located at 215, 217, 219, 221, 225 and 231 Main Street West and 67 and 69 Queen Street South, Hamilton (“Subject Lands”) are allowed, in part, and:
 - a) Urban Hamilton Official Plan Amendment 102 (“OPA 102”) is amended for the Subject Lands in accordance with the Official Plan Amendment attached as Schedule 1 to this Order; and
 - b) City of Hamilton Zoning by-law Amendment 18-114 (“ZBL 18-114”) is amended for the Subject Lands in accordance with the Zoning By-Law Amendment attached as Schedule 2 to this Order. The Tribunal authorizes the municipal clerk of the City of Hamilton to assign a number to this by-law for record keeping purposes.
2. With respect to the Subject Lands, the parts of OPA 102 and ZBL 18-114 that are not amended by this Order and were not previously deemed in force by the Tribunal’s order dated August 14, 2019 are deemed to come into force for the Subject Lands:
 - a) For OPA 102, on March 15, 2023, pursuant to subsection 17(30.1) of the *Planning Act*, and

- b) For ZBL 18-114, on the day ZBL-18-114 was passed, being May 9, 2018, pursuant to subsection 34(30) of the *Planning Act*.
3. Pursuant to the withdrawal by the Appellant of its appeals of OPA 102 and ZBL 18-114 for the lands known municipally as 62 and 64 Hess Street South, Hamilton:
- a) In accordance with subsection 17(30.1) of the *Planning Act*, OPA 102 shall come into force without modifications for said lands as of March 15, 2023; and
 - b) In accordance with subsection 34(30) of the *Planning Act*, ZBL 18-114 shall come into force without modifications for said lands as of May 9, 2018.

[18] The Panel may be spoken to should any issues arise with respect to the implementation of this Order.

“C. Hardy”

C. HARDY
MEMBER

“S. Braun”

S. BRAUN
MEMBER

Ontario Land Tribunal

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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.

Schedule 1

By-law No. 18-112-LPAT-03**Urban Hamilton Official Plan
Amendment No. 102**

The following text, together with Appendix "A" – Volume 2: Map B.6.1-2 Downtown Hamilton Secondary Plan – Maximum Building Heights, attached hereto, constitutes Official Plan Amendment No."102" to the Urban Hamilton Official Plan.

1.0 Purpose and Effect:

The purpose and effect of this Amendment is to change the height category for the subject lands from Mid-rise to High-rise 2.

2.0 Location:


The lands affected by this Amendment are known municipally as 215 – 231 Main Street West and 67 - 69 Queen Street South, in the former City of Hamilton.

3.0 Basis:

The basis for permitting this Amendment is:

- That future development on the subject lands can achieve the policies of the Downtown Hamilton Secondary Plan related to mitigating shadow impact on surrounding properties and the public realm;
- The change in height category does not negatively impact the adjacent low density residential lands; and,
- The Amendment is consistent with the Provincial Policy Statement, 2020 and conforms to the Growth Plan for the Greater Golden Horseshoe, 2019, as amended.

4.0 Actual Changes:**4.1 Volume 2 – Secondary Plans****Maps**

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4.1.1 Map

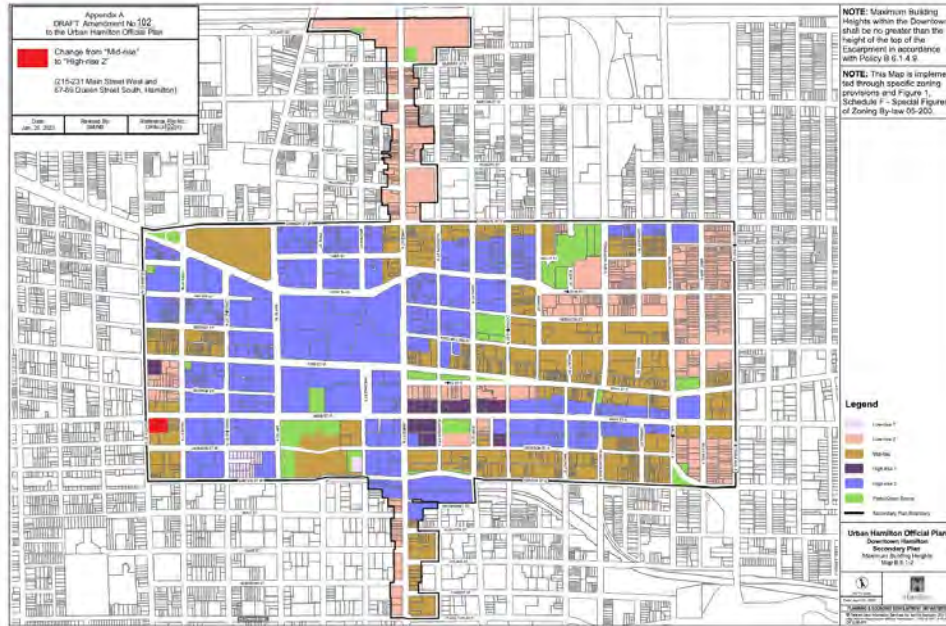
- a. That Volume 2: Map B.6.1-2 Downtown Hamilton Secondary Plan – Maximum Building Heights be amended by changing the height category from Mid-rise to High-rise 2 for the lands located at 215-231 Main Street West and 67 - 69 Queen Street South, as shown on Appendix “A”, attached to this Amendment.

5.0 Implementation:

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

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This Official Plan Amendment is Schedule “1” to By-law No. _____ passed on the 15th day of March 2023.



Schedule 2

Appendix "C" to Report LS19037(a)/PED19198(a)
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CITY OF HAMILTON

BY-LAW NO. 18-114-LPAT-04

To amend Zoning By-law No. 05-200
with respect to lands located at
215-231 Main Street West and 67-69 Queen Street South Queen Street South,
Hamilton

WHEREAS the Ontario Land Tribunal, in its Decision/Order No. PL180549, dated 28th day of March, 2023, approved the amendment to Zoning By-law No. 05-200 as hereinafter provided;

AND WHEREAS this By-law conforms with the Urban Hamilton Official Plan upon adoption of Official Plan Amendment No. 102;

NOW THEREFORE the Ontario Land Tribunal enacts as follows:

1. That Schedule "F" – Special Figures is amended by amending Figure 1: Maximum Building Heights as shown in Schedule "A" to this By-law.
2. The by-law is passed and shall come into effect immediately upon the date of decision by the Ontario Land Tribunal.

APPROVED this 28th day of March, 2023.

Appendix "C" to Report LS19037(a)/PED19198(a)
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