

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: April 19, 2024

CASE NO(S): OLT-22-004187

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

Appellant: 2697331 Ontario Inc.
Subject: Proposed Official Plan Amendment No.
Description: To permit the development of three (3) residential apartment buildings and twelve (12) townhouse blocks
Reference Number: OPA-2022-02
Property Address: 1289 Wellington Street East
Municipality/UT: Aurora/York
OLT Case No.: OLT-22-004187
OLT Lead Case No.: OLT-22-004187
OLT Case Name: 2697331 Ontario Inc. v. Aurora (Town)

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

Applicant and Appellant: 2697331 Ontario Inc.
Subject: Application to amend the Zoning By-law – Refusal or neglect to make a decision
Description: To permit the development of three (3) residential apartment buildings and twelve (12) townhouse blocks
Reference Number: ZBA-2022-02
Property Address: 1289 Wellington Street East
Municipality/UT: Aurora/York
OLT Case No.: OLT-22-004188
OLT Lead Case No.: OLT-22-004187

Heard: February 26-29, 2024 and March 5-6, 2024 (6 days)
by Video Hearing

APPEARANCES:**Parties**

2697331 Ontario Inc.

Town of Aurora

CounselKatarzyna Sliwa
Jessica Jakubowski

Andrew Biggart

DECISION DELIVERED BY C. HARDY AND INTERIM ORDER OF THE TRIBUNAL

INTRODUCTION

[1] 2697331 Ontario Inc. (“Appellant”) owns a vacant piece of property municipally known as 1289 Wellington Street East (“subject property” / “site”) in the Town of Aurora (“Town”). The Appellant filed applications for an Official Plan Amendment (“OPA”) and Zoning By-law Amendment (“ZBA”) (together referred to as “applications”) to facilitate the redevelopment of the subject property, both of which were refused by the Town. The Appellant appealed the Town’s refusal of its applications pursuant to s.17(24) and s. 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended (“Act”).

SITE CONTEXT

[2] The subject property comprises a total lot area of 5.86 hectares at the south-west corner of Wellington Street East and Leslie Street, which are Arterial Road corridors under the jurisdiction of the Region of York (“Region”). It is an irregular-shaped lot located generally east of the downtown core of the Town with a frontage of approximately 270 metres on Wellington Street East and 300 metres on Leslie Street.

[3] The Aurora GO Station, which is a Major Transit Station Area, is located approximately 3.2 km west of the subject property. Highway 404 is located approximately 950 metres east of the subject property, and the Wellington Street East exit off of Highway 404 includes a carpool parking lot and a GO Transit Park and Ride bus stop.

[4] Located to the south and west of the subject property are low-density residential neighbourhoods. The Stronach Aurora Recreation Complex and a commercial gas station are located north of the subject property. East of the subject property across Leslie Street is a commercial gas station and a Business Park and Commercial Centre area.



[5] This area is currently undergoing redevelopment and intensification as exemplified by the Town Council's recent approval of an application for a 30-unit, 3.5 storey townhouse development directly north of the subject property across Wellington Street East and the Tribunal's recent approval of a site-specific Official Plan Amendment and Zoning By-law Amendment to permit three 7 storey buildings further north on Leslie Street.

[6] The subject property is located within a "Settlement Area" as defined by the Provincial Policy Statement, 2020 ("PPS") and outside of the "Built Boundary" as defined by the Growth Plan for the Greater Golden Horseshoe ("Growth Plan"). The subject property is within the "Urban Area" as identified by the Region of York Official Plan ("Region OP") and defined as a "Community Area".

[7] The subject property is currently primarily designated as “Business Park” with a portion also designated “Linear and Other Open Space” in the Town of Aurora Official Plan (“in effect Town OP”). To be clear, despite the emerging policy regime described in the paragraph below, the Parties are in agreement that the applications must conform to the in effect Town OP.

[8] Town Council recently adopted a new Town of Aurora Official Plan (“adopted Town OP”), however, at the time the appeals were heard, the adopted Town OP had yet to receive Regional approval. The subject property is identified in the adopted Town OP as “Medium-High Density Residential” and is located within the intensification and strategic growth areas. More specifically, the adopted Town OP locates the subject property in the Local Corridors of Wellington Street and Leslie Street on Schedule A. Section 3.1.3 directs intensification to the Local Corridors at densities and scales compatible with surrounding areas. Finally, the adopted Town OP includes Site-Specific Policy #57(a) which identifies a maximum building height of 7 storeys for the subject property. The Parties agreed that the adopted Town OP was not yet in force, however, reference was made to it throughout the course of the hearing as it was demonstrative of the emerging policy regime.

HISTORY OF THE APPLICATIONS

[9] The planning context and different development iterations proposed by the Appellant since the submission of the initial applications provide an important and relevant framework for the appeal. Despite changes to height and density, the applications are consistent in their proposal of a mixed-use residential development. Site plan control policies require a site plan for the subject property, however, one has not yet been submitted to the Town.

First and Second Submissions

[10] The Appellant's initial proposal was for three seven-storey apartment buildings, two levels of underground parking, and 12 townhouse blocks with a total of 600 residential units and a proposed density of 161 units per hectare ("u/h") ("First Submission Proposal").

[11] The Town's Design Review Panel ("DRP") provided written comments dated May 9, 2022 on the First Submission Proposal. In addition, Town Staff provided a Preliminary Report to Town Council and recommended that comments be presented at the public meeting and addressed by Town Staff in a report to a future General Committee Meeting. Despite this recommendation, the First Submission Proposal was refused by Town Council following the public meeting, and the Appellant appealed the refusal to the Tribunal on July 14, 2022. While under appeal, the Region OP was being reviewed by the Minister of Municipal Affairs and Housing ("MMAH"). On November 4, 2022, the Town was advised by the MMAH that while approving the Region OP, it made modifications, including a new policy to allow development on the subject property for a minimum height of 12 storeys and a minimum density target of 330 u/h ("Modification 14").

[12] On November 22, 2022, the Town passed a motion opposing Modification 14 and requesting its revocation. In addition, Town Council enacted an Interim Control By-law freezing development on the subject property in order to study the subject property and evaluate appropriate heights and development context through the Town's Official Plan Review process.

[13] In response to comments received and changes in policy documents, including Modification 14, on September 21, 2023, the Appellant submitted a revised proposal for four 15-storey apartment buildings, three levels of underground parking, six townhouse blocks, and eight single detached dwellings with a total of 1562 residential units and a proposed density of 420 u/h (Second Submission Proposal).

[14] On December 6, 2023, Bill 150 was given Royal Assent. The effect of Bill 150 was, *inter alia*, the revocation of Modification 14 relating to the subject property. On December 12, 2023, Town Council adopted the adopted Town OP, which, among other things, granted permission for a 7 storey residential use on the subject property. As noted above, the adopted Town OP is not yet in force and effect.

Third Submission

[15] Subsequent to the receipt of additional comments and further legislative changes, on December 15, 2023, the Appellant filed revised application materials proposing four 13 storey apartment buildings, two levels of underground parking, six townhouse blocks, and eight single detached dwellings with a total of 1,343 residential units and a proposed density of 362 u/h (“Proposed Development”). The OPA and ZBA, which will facilitate the Proposed Development are currently before the Tribunal in this hearing.

Proposed OPA and ZBA

[16] The in effect Town OP currently designates the subject property “Urban Area” and “Business Park” necessitating the proposed OPA.

[17] The OPA sets out the “Purpose of the Amendment” as follows:

The purpose of this Amendment is to redesignate the subject lands from “Business Park” and “Linear and Other Open Space” to “Medium-High Density Residential” and “Linear and Other Open Space” and to realign the “Recommended Environmental Protection Line”.

The amendment will allow for condominium development containing apartment units, townhouse and detached dwelling units within the “Medium-High Density Residential” designation, and define the open space and natural features on the site within the “Linear and Other Open Space” designation and the “Recommended Environmental Protection Line”.

[18] The ZBA “Explanatory Note” provides as follows:

To amend By-law Number 6000-17, as amended, the Zoning By-law in effect in the Town of Aurora, to rezone the subject lands from “Rural RU Zone” and “Rural RU-ORM Zone” to “Townhouse Dwelling Residential R8(XX) Exception Zone”, “Second Density Apartment Residential RA2(XX) Exception Zone”, “Detached Fifth Density Residential R5(XX) Exception Zone”, and “Environmental Protection EP Zone”.

The rezoning will permit a Plan of Condominium with a total of up to 33 townhouse dwelling units, 8 detached dwelling units, and approximately 1,302 apartment dwelling units, private roads and open space areas.

HEARING

[19] The appeals were governed by a detailed Procedural Order and Issues List, which were established during case management leading up to the hearing. The Region was granted party status at the first Case Management Conference, however, by email dated October 23, 2023 the Region withdrew as a party to the appeals.

[20] Prior to the hearing, the Parties filed Agreed Statement of Facts relating to Planning and Transportation and had worked diligently to scope various issues included on the Issues List.

[21] Each of the parties tendered extensive professional evidence through qualified experts who referenced a joint document book (Exhibit 1) and a compendium of written and visual evidence book (Exhibit 2).

[22] The Tribunal had the benefit of testimony and opinion evidence from the following experts called by the Parties:

Town Witnesses

- Marco Ramunno – land use planning

- William Maria – transportation engineering

Appellant Witnesses

- Brad Rogers – land use planning
- John Northcote – transportation engineering
- Eldon Theodore – urban design
- Eric Knetchel – municipal and water resource engineering

[23] On consent of the Parties, all six experts were duly affirmed/sworn, and qualified by the Tribunal to tender expert opinion evidence in their respective fields. All six experts executed an Acknowledgement of Expert's Duty, which can be found in Exhibit 2.

[24] Mr. Rogers provided the Tribunal with contextual non-opinion evidence at the outset of the hearing.

The Issues

[25] On the morning of the commencement of the hearing, the Parties submitted a revised Issues List setting out approximately 12 specific issues to be adjudicated. The Lake Simcoe and Region Conservation Authority accepted the proposed limit of development and the realignment of the "Recommended Environmental Protection Line", which led to the Town's withdrawal of issues related to natural heritage. Consequently, the Appellant did not call an expert in Ecology and Natural Heritage.

[26] The Parties were in agreement that the subject property is currently underutilized and that some degree of intensification is appropriate. Where the Parties disagree is what constitutes appropriate height and density for the subject property. Stated in basic terms, it is the Town's position that the appropriate maximum height for the subject property is 7 storeys, while the Appellant's position is that 13 storeys is appropriate.

[27] The Tribunal found that the core issues for adjudication focus on the application of the statutory and policy requirements in relation to:

- Height and Density
- Urban Design
- Traffic and Parking
- Servicing

[28] The Appellant requested that the Tribunal approve the OPA and ZBA and withhold the Final Order for 30 days until the Town and the Appellant have finalized the form of the ZBA. The Appellant argued that the Town was in agreement that the subject property should be redesignated to Medium-High Residential and that the Town Planner is supportive of 7 storeys on the subject property. The Appellant argued that if the Tribunal finds an alternative to the proposed 13 storeys is appropriate, the Tribunal has the jurisdiction to approve the OPA and ZBA found at Tabs 47 and 48, Exhibit 1 with appropriate revisions.

[29] The Town requested that the Tribunal dismiss the appeals, or in the alternative, dismiss the ZBA appeal, and approve the OPA in a form that "mimics" the language in Special Policy 57(a) of the adopted Town OP, which states: "(s)pecial provisions for the lands known municipally as 1289 Wellington Street East in the Town of Aurora (PIN

036425499). Notwithstanding any other policies in this Plan to the contrary, the maximum building height of 7 storeys”.

Legislative Regime

[30] Land use planning in our Province is a policy-led system. The OPA and ZBA, which will facilitate the Proposed Development, must be representative of good planning, have regard for matters of provincial interest set out in s. 2 of the Act, be consistent with the PPS, and conform/not conflict with the Growth Plan.

[31] The proposed ZBA must conform with the Region OP and in effect Town OP, including the proposed OPA, if approved. The OPA, which seeks to make changes to the in effect Town OP, need not strictly conform to the in effect Town OP, however, it must align with the goals and objectives of same. The Tribunal must also have regard for the Town’s decision to refuse the instruments, including the information and material that the Town considered in making that decision pursuant to s. 2.1(2) of the Act.

[32] As noted above in paragraphs 11-14, following the First Submission Proposal, two significant changes occurred in the policy regime. The Region adopted a new Region OP, and the Town adopted the adopted Town OP, which is currently before the Region for approval. The new Region OP is in force and contains a new planning horizon to 2051. The Appellant noted that the Proposed Development conforms to the Region OP, and the Town did not raise any issues regarding conformity with the Region OP.

[33] The adopted Town OP has not been approved by the Region, and as such, the in effect Town OP will be considered by the Tribunal to weigh the applications. The Parties were in agreement that the adopted Town OP is relevant, but not determinative, to the appeal. As noted above, the Tribunal heard considerable evidence and submissions relating to the policies contained within the adopted Town OP, and the Tribunal will have regard to this emerging policy regime.

[34] With respect to s. 2.1 of the Act, the Appellant argued that the Tribunal should give little weight to Town Council's refusal of the OPA and ZBA as it was premature. The recommendation from Town Staff with regard to the First Submission Proposal was that Town Council receive the initial report and any comments would be addressed by Town Staff in a future Report, however, Town Council did not wait for the future Planning Report and voted to refuse the applications. The Appellant argued that Town Council's decision to refuse the OPA and ZBA was premature in the absence of a recommendation or a recommendation report from Town staff, and the Tribunal has an obligation to scrutinize the Town's decision in this regard (*Ottawa (City) v. Minto Communities Inc.*, 2009 O.J. No. 4913 (Ont. Div. Ct.)).

Height and Density

[35] The Appellant noted that the subject property is located in a Designated Greenfield Area, within a settlement area and argued that the Proposed Development implements policy 1.1.3.6 of the PPS through its proposed mix of uses and densities allowing for efficient use of land, infrastructure, and public service facilities in a location adjacent to an existing built-up area.

[36] The Appellant submitted that, pursuant to the PPS, Official Plans are the most important vehicle for the implementation of the policies contained in the PPS. The Appellant argued that the adopted Town OP carries forward heights contemplated over 20 years ago and does not go far enough with respect to height and density, thereby making it inconsistent with the PPS. The Appellant agreed that the adopted Town OP was not applicable, however, argued that the Tribunal could approve the site-specific OPA and ZBA allowing for additional height and density on the subject property, which would be consistent with the PPS.

[37] The Appellant took the Tribunal to *Armel Corporation v. Guelph (City)*, 2021 CanLII 119182 (ON LT), where increased height and density outside of an intensification corridor or proximity to a Major Transit Station Area was approved by the Tribunal. The Appellant

argued that there is nothing in the PPS prohibiting the proposed growth and, as Mr. Rogers opined, the Proposed Development would contribute to the range and mix of housing in the Designated Greenfield Area with easy access to services and amenities while making use of existing infrastructure. He went further to note that complete communities in a Designated Greenfield Area should include higher density forms of development, such as the Proposed Development. The subject property is located in close proximity to a Major Transit Station Area with two bus stops bookending the site. The Appellant argued that it is the “ham in the sandwich” with existing transit available to support the Proposed Development and the addition of residents who will contribute to transit use.

[38] The Region OP designates the subject property “Urban Area” on Map 1 and “Community Area” on Map 1A. The Region OP defines “Community Area” as “(a)reas where most of the housing required to accommodate the forecasted population will be located, as well as most population-related jobs and most office jobs. Community Areas include delineated *Built-up Areas* and *Designated Greenfield Areas*”. The Region OP further defined “Designated Greenfield Area” as “(l)ands within the urban area and towns and villages but outside *Built-up Areas* that have been designated in a local official plan for *development* required to accommodate forecasted growth to the horizon of this Plan”.

[39] The Region OP policies encourage complete communities with a focus on the “15-minute community” factors, which the Appellant argued are all met by the Proposed Development. Mr. Rogers reviewed the 9 factors and opined that the Proposed Development meets each one and thereby conforms with policy 2.3 of the Region OP. The Proposed Development will contribute to the Region’s intensification targets and its objective of building complete communities with its close proximity to jobs, shops, and amenities.

[40] Mr. Rogers testified that the Proposed Development is in overall conformity with the in effect Town OP and the Town of Aurora Official Plan Amendment 30 (“OPA 30”). It meets the purpose of the in effect Town OP set out in policy 1.1 supporting the

achievement of complete communities through the incorporation of a greater range of housing types and diversity in unit sizes and configurations while fitting into the surrounding context and complimenting the existing community. Mr. Rogers testified that the Aurora Wellington Street East Corridor (Area 2B) Urban Design Guidelines (“Urban Design Guidelines”) indicate that buildings in the area should generally be no taller than 7 storeys, but further noted that the language does not specifically limit heights to a maximum of 7 storeys.

[41] The Appellant noted that the in effect Town OP does not identify Strategic Growth Areas, while the adopted Town OP does introduce this concept and identifies the subject property within a Strategic Growth Area. Despite the identification of Strategic Growth Areas, the Appellant argued that the adopted Town OP continues to limit heights for the subject property to a maximum of 7 storeys and, in fact, caps height at 7 storeys in the Major Transit Station Area and the Aurora Promenade, which are the two areas in the Town designated to accommodate the most intensification. The Appellant acknowledged that the Town “got it right” in the adopted Town OP proposing to designate the subject property “Medium-High Urban Residential” on Schedule B, but argued that it did not go far enough as it capped height at 7 storeys which is antiquated and does not consider current planning context and reality.

[42] Mr. Rogers explained that the Second Submission Proposal increased the height and density in response to comments received from various agencies and in response to the approval of the Region OP, which included Modification 14 adding a site-specific minimum density for the subject property of 330 u/h and a minimum height requirement of 12 storeys. Subsequently, Modification 14 was reversed by Bill 150, and the Appellant submitted a further revision with a reduced height and density, which is the Proposed Development currently before the Tribunal.

[43] The Appellant argued that the in effect Town OP and OPA 30 both highlight the importance of Wellington Street East noting that it is a Gateway location. The Appellant argued that Wellington Street East is a major gateway for the Town when travelling from

the east and will become increasingly important as the Town grows. The Appellant disagrees with the Town's planned hierarchy argument, as it pre-supposes that the adopted Town OP will be approved. The Appellant argued that the Town got heights wrong in the adopted Town OP and as such, it is likely that either the Region will not approve the adopted Town OP or, if it receives Regional approval, there will be appeals filed against the adopted Town OP.

[44] In his opening remarks to the Tribunal, Mr. Ramunno stated that the current dispute between the Parties is between the original 7 storey proposal and the current 13 storey proposal. Mr. Ramunno maintained throughout his testimony that he was supportive of a maximum 7 storey height on the subject property. He testified that the Town has a plan for development, and this plan places the Town on pace to meet or exceed its Growth Plan targets.

[45] The Appellant's argument that the Town does not currently have a planned hierarchy was disputed by the Town. Mr. Ramunno testified that the Town has a hierarchy, which is reflected in the in effect Town OP. He explained that the Town is distinct from surrounding Municipalities, and it generally limits building heights to between 4 and 7 storeys. This hierarchy and height capping are set out in Schedules B1 and B2 of the in effect Town OP, contrary to the submission of the Appellant. He did note that the hierarchy has been clarified in the adopted Town OP and opined that the Proposed Development will put the existing and planned hierarchy at risk.

[46] Although not determinative, Mr. Ramunno spoke to the hierarchy of Strategic Growth Areas proposed in the adopted Town OP, which are: (a) The Aurora Promenade and Major Transit Station Area; (b) Regional Corridor; (c) Local Corridors. The subject property is located in the Local Corridor, which has a height limit of 4 storeys unless a greater height is specified in a Secondary Plan or Site-Specific Policy. The adopted Town OP includes Special Policy 57(a) allowing a maximum building height of 7 storeys on the subject property.

[47] Mr. Ramunno referred to policy 3.2.2(b)(iii) of OPA 30, which limits density to 99 u/h and heights to 4 storeys, except for certain locations along Wellington Street East where increases up to 7 storeys may be considered appropriate. As Mr. Ramunno repeatedly noted, the Town carried forward the policies in OPA 30 into the adopted Town OP. He took the Tribunal to the vision and principles set out in policy 2.0 of the in effect Town OP, which has been carried over into the adopted Town OP, summarizing that intensification is encouraged in appropriate locations and noting that he supports growth on the subject property, but at the appropriate scale of 7 storeys in height.

[48] Mr. Ramunno testified that extensive public consultation occurred in preparing the updates to both the in effect Town OP and the adopted Town OP. He noted that the Town understood the need to accommodate significant growth and that the Promenade area is considered the Town's intensification area, where the majority of growth will occur due to its proximity to the Aurora GO station. He further noted that the height limits of 7 storeys in the Town was a conscious decision agreeing in cross examination that the height caps set in the in effect Town OP were transferred into the adopted Town OP. The Proposed Development at 13 storeys in height would result in the tallest building in the Town in a location outside of an intensification area and outside of the Major Transit Station Area and Aurora Promenade, which Mr. Ramunno opined is an inappropriate scale and does not represent good planning.

[49] The Town argued that the Appellant failed to refer to any policy that would support the proposed 13 storey height at the subject property, rather, it repeatedly submitted that the policies were antiquated. Mr. Ramunno opined that this is irrelevant and that the in effect Town OP conforms to the higher-level policy documents and constitutes good planning. Further, during cross examination, Mr. Rogers agreed that policy 3.2.2(b) of OPA 30 states that the "maximum net residential density for any individual lot and/or block designated Medium-High Density Residential shall generally not exceed 99 units per hectare (a)t certain locations along Wellington Street East, building heights may increase provided such an increase is considered appropriate as articulated in the Urban Design Guidelines and does not exceed seven storeys in height as set out in the Official Plan".

Although this policy does not currently apply as the subject property is currently designated Business Park, the Appellant is seeking re-designation to Medium-High Density Residential. Mr. Rogers agreed that policy 3.2.2(b) will apply to the subject property if the redesignation is approved, and it does maximize density at 99 u/h, whereas the Proposed Development is requesting 364 u/h, which amounts to more than 3.5 times the maximum permitted under this policy.

[50] The Town highlighted the fact that Mr. Rogers' initial Planning Justification Report supported 7 storeys on the subject property, and during cross-examination, Mr. Rogers agreed that none of the policy documents have changed since he provided this opinion.

Urban Design and Transition

[51] Mr. Theodore was the sole urban design expert called to speak to compatibility issues raised by the Town. Mr. Theodore opined that the Proposed Development is an appropriate height providing an appropriate transition within the neighbourhood in a gateway location that fits within the existing and planned context.

[52] With respect to transition, Mr. Theodore testified that the Proposed Development is thoughtful in locating the highest built form and density in the form of apartment buildings at the periphery of the subject property along the roadways. From there, the Proposed Development steps down to townhouse units and then to single detached units leading to the existing residential community abutting the subject property. He opined that the Proposed Development demonstrates compatibility and appropriate transition fitting within the existing and planned context.

[53] Mr. Theodore emphasized the prominent location of the subject property as a gateway location. He testified that the Proposed Development conforms to the design objectives set out in s. 4.1 of the in effect Town OP for a number of reasons, including achieving a sense of place on a Greenfield site at a prominent intersection and orienting the built form to achieve a downward transition in height and density as one moves

southwest. He noted that given the change in grade on Wellington Street East, when standing on Goulding Avenue to the east of the subject property, the Proposed Development appears to be 7 storeys in height as opposed to 13 storeys.

[54] Mr. Theodore expanded on the prominent location of the subject property at the lower grade explaining that it creates a sense of arrival, which is indicative of a gateway location. He testified that these gateway locations, whether they are primary or secondary, typically have unique design elements, such as increased height and density. In his opinion, the change in designation from Business Park to Medium-High Urban Residential does not alter the fact that the subject property is in a transitional location between the business park to the east and the residential area to the west further making it an ideal location for a gateway. He opined that what defines a gateway is a threshold moment or transition between one place and another providing a sense of arrival, and the increased height and density of the Proposed Development celebrates this gateway function.

[55] Mr. Rogers expanded on Mr. Theodore's evidence noting that the Proposed Development conforms with policy 3 of the in effect Town OP as the subject property is located at a major intersection at a defined gateway in the Town in close proximity to existing and planned infrastructure and services. The Proposed Development will revitalize an underutilized vacant parcel of land to establish a prominent corner and create a sense of place that builds upon the existing character of the area.

[56] Mr. Theodore reviewed the 45-degree angular plane with the Tribunal noting that the Proposed Development does not penetrate this plane from the opposite side of the street nor the property line of the adjacent residential neighbourhood, which demonstrates that 13 storeys is an appropriate height and transition to the surrounding context. He testified that the Proposed Development meets the intent of the definition of "compatible" in the in effect Town OP. As opposed to being the same as or similar to the surrounding area, it can coexist, which is demonstrated by the angular plane analysis as the quality of life in adjacent buildings will not have privacy, overlook, or shadow impacts. Mr. Theodore also reviewed shadow impact images concluding that any shadow impacts were minimal,

and this, combined with the angular plane analysis demonstrates urban design best practice. Mr. Theodore and Mr. Rogers agreed that the Proposed Development meets the definition of compatibility in s. 17.1(a) of the in effect Town OP as it will enhance an established community and coexist without causing adverse impacts on the surrounding neighbourhood, as evidenced in the angular plane analysis from the property line of this neighbourhood.

[57] Mr. Theodore discussed the Urban Design Guidelines and opined that the Proposed Development conforms to the design direction of the applicable guidelines. In cross examination, Mr. Theodore reiterated that the Urban Design Guidelines are meant to be flexible and are dated as they were approved in 2002. His review of the Proposed Development considered the guidelines, but also used best practices in order to ensure that the proposal achieves the directions of both the in effect Town OP and the adopted Town OP.

[58] The Town argued that the appeal should not be determined based on urban design, and the bottom line is that the Proposed Development does not belong on the subject property.

[59] Mr. Ramunno testified that the Town made an effort to identify locations where the majority of intensification should occur and determined that it should be in the Promenade Area and Major Transit Station Area. He opined that the Proposed Development is not consistent with the PPS, which permits growth where it can be appropriately accommodated. He noted that 13 storeys is an excessive height and scale which will result in over development of the subject property and conflicts with the existing and planned growth pattern of the Town. Mr. Ramunno opined that a maximum of 7 storeys on the subject property would be an appropriate transition from a low rise area and would be appropriate intensification of the subject property. He is supportive of 7 storeys and further testified that he supports the First Submission Proposal of 600 residential units.

[60] Mr. Ramunno testified that the Urban Design Guidelines clearly identify the subject property as a Secondary Gateway location. During cross-examination, Mr. Theodore agreed that on Figure 2 of the Urban Design Guidelines the subject property falls within the “Secondary Gateway” and that markers in secondary gateways must be at smaller scales than primary gateways. He further acknowledged that the Urban Design Guidelines provide a coordinated approach for the area, which means that one area of development will affect the other.

[61] The Town argued that the bulk of Mr. Theodore’s evidence is not relevant to the OPA and ZBA appeals. Evidence tendered relating to the attributes of the Proposed Development, such as building materials, terracing, and protrusions are meaningless as the Appellant made a conscious decision not to file a site plan application at this time. The renderings of the Proposed Development are not before the Tribunal for approval and if the OPA and ZBA are approved, the Town argued that what eventually is built on the subject property may look very different. Further, in cross examination, Mr. Theodore agreed with the Town that the Appellant could sell the subject property following the OPA and ZBA approvals and that the new owner could present a site plan for approval that looks very different from the renderings that have been presented to the Tribunal during the hearing.

Transportation and Parking

Transportation

[62] Mr. Northcote provided expert transportation evidence to the Tribunal in support of the Proposed Development. He prepared a Traffic Impact Study (“TIS”) dated December 13, 2021 (“2021 TIS”), which was updated in September 2023 and again in December 2023 (“December TIS”) to respond to comments provided by the Region and Town.

[63] Mr. Northcote opined that there were no significant differences in traffic operations in the area between a 7 storey building and a 13 storey building. He explained that the height itself does not have a significant impact on traffic operations, rather, it is a combination of other developments in the area along with development on the subject property that causes an impact. He noted that Mr. Ramunno is supportive of a 7 storey development, which was analyzed in the 2021 TIS, and he opined that little changed with respect to traffic operations if height is increased at the subject property from 7 storeys to 13 storeys.

[64] Mr. Northcote made recommendations to the Region in the December TIS and opined that once the recommended traffic infrastructure improvements are implemented by the Region, the existing road network provides sufficient transportation capacity to accommodate existing traffic, background traffic growth, adjacent development traffic and additional traffic generated by the Proposed Development. He noted that the Region is in the best position to evaluate opportunities relating to the transportation network and ensure adequate transportation capacity is available, and once the Region determines its preferences, the site plan will be designed accordingly. He acknowledged that the access points to the Proposed Development do not meet the Region's threshold for signalization, however, the December TIS recommended that the Region implement traffic signals to assist with the efficient movement of pedestrians, motorists and bicycles generated by the Proposed Development in accordance with Policy 1.1.1(c) of the PPS.

[65] Mr. Northcote opined that the Proposed Development would not cause any operational issues nor add significant delay or congestion to the local road network if the proposed recommendations set out in the December TIS were implemented. Mr. Northcote further opined that the OPA and ZBA, which facilitate the Proposed Development, are consistent with applicable transportation requirements outlined in the PPS and conform with transportation policies set out in the Growth Plan and the in effect Town OP.

[66] Mr. Northcote maintained that the site plan approval process will ensure the provision of adequate transportation facilities, and further, he opined that Regional improvements were not the only available approach. In the event the Region does not implement the recommendations, other options are available to accommodate growth in the Town, such as increasing transit and active transportation mode share.

[67] Mr. Rogers opined that, at a high level, the Proposed Development has regard for matters of provincial interest as set out in s. 2 of the Act and relevant policies in the PPS. He focused on many subsections of s. 2 of the Act and policy 1.1 of the PPS, testifying that the Proposed Development is currently a vacant, underutilized site in a settlement area that will make use of existing services and infrastructure in addition to being supportive of existing public transit.

[68] The Town criticized Mr. Northcote's approach noting that there is no guarantee that the Region will make any improvements to the traffic network or implement any of Mr. Northcote's recommendations. Further, in cross examination, Mr. Northcote agreed that the traffic analysis conclusions assumed that the Region would implement infrastructure improvements, and no analysis had been conducted to determine the traffic impacts of a 7 storey proposal on the traffic network without any Regional improvements. The Town emphasized that there are no planned traffic improvements in this area, and the Appellant has no control over if and when such improvements will occur.

[69] With respect to the Proposed Development, the Town reviewed in detail with Mr. Northcote the various tables that he prepared for the TISs, setting out traffic scenarios with various heights of buildings and with and without the recommended infrastructure improvements to the traffic network. The December TIS noted that "LOS is expressed on a scale of A through F, where LOS A represents very little delay and LOS F represents very high delay" and further detailed that a volume-to-capacity ratio ("v/c") of 0.85 or greater is considered to be a critical movement. In cross examination, Mr. Northcote explained that having an intersection operating at a Level of Service ("LOS") A is an inefficient use of infrastructure, and he also agreed that it is not appropriate to strive for a LOS F.

[70] During cross-examination of Mr. Northcote, the Town highlighted that the majority of tables in the TISs indicated multiple instances with LOS F and a v/c above 0.8. Mr. Northcote was asked if these numbers were acceptable, and his response was that there are situations where a LOS F is acceptable depending on the location of the intersection. He acknowledged that on average there were more LOS F and v/c over 0.8 in the tables showing operations without the recommendations being implemented by the Region, and further acknowledged that the Region has not made any commitments to implement any improvements.

[71] During cross examination, the Town took Mr. Northcote to Table 15, which showed the results of the intersection operation with the Proposed Development in place and with the recommendations being implemented by the Region. The table demonstrates 9 movements with a LOS F in the AM and PM peak hour and 9 movements with a v/c greater than 1.0 in the PM peak hour and 8 movements with a v/c greater than 1.0 in the AM peak hour. Mr. Northcote agreed in cross-examination that this translated to a 10-minute delay travelling from Leslie Street south in the PM peak hour. Mr. Northcote was also taken to Table 9 depicting anticipated traffic volume in 2026 without the Proposed Development in place but including the approved developments in the area. He noted that the anticipated volumes would result in 5 LOS F in both the AM and PM peak hour.

[72] Mr. Maria referred to policy 3.3(d) of the in effect Town OP noting that the December TIS has not demonstrated adequate capacity on the existing or planned road network to accommodate the proposed density. He referred to policy 15.2.1(b)(iv) of the in effect Town OP noting that this policy is required to be met when applications for an OPA and ZBA are submitted. He interprets this policy to mean that it is essential for Town staff to understand, prior to approval, adverse impacts on traffic and transportation and how these will be mitigated to ensure existing and future residents are not adversely affected. He opined that deferring these issues to the site plan approval process is not appropriate or consistent with the in effect Town OP. He further noted that good planning does not rely on anticipating that the Region will improve the roadways, because there is no guarantee that an approved development will trigger improvements.

[73] Mr. Maria testified that the work conducted by Mr. Northcote demonstrated traffic problems that would arise if the Proposed Development were approved, and the recommended infrastructure improvements were not implemented. He noted that the proposed entrances do not meet the threshold for signalization, and as such, the Region would have to approve traffic signals at these locations, and there is no indication that it will do so. He further testified that he was unaware of any planned transportation infrastructure improvements in the area, including the addition of traffic signals or road widening. As such, Mr. Maria opined that the policies relating to traffic and transportation management have not been met by the Appellant.

Parking

[74] The Appellant included a reduced parking rate for the Proposed Development of 0.8 spaces per unit (“s/u”) for residents plus 0.2 s/u for visitors, for a total parking ratio of 1.0 s/u. The Town Zoning By-law 6000-17 requires the following minimum parking rates for residents on the subject property:

- Single Family Detached – 2 s/u
- Townhouse and Apartment Units – 1.5 s/u

Pursuant to the by-law, the visitor parking for townhouse and apartment units must be provided at 20% of the required spaces. The following table included in the December TIS sets out the required parking spaces to comply with the Town’s parking standard and the number of spaces in the Proposed Development.

Table 18 - Zoning By-law Parking Requirements

Category	Zoning By-Law Section	Parking Standard	Size	Required	Provided	Net Supply
Detached	5.4	2.0 spaces / unit	8	16	28	+12 spaces
Townhouse			33	50	102	+52 spaces

Apartment	1.5 spaces / unit	1,302	1,953	1,302	-651 spaces
TOTAL		1,343	2,019	1,432	-587 spaces
<i>Townhouse</i>	<i>Visitor Spaces (20% of required spaces)</i>		10	26	+16
<i>Apartment unit</i>	<i>Visitor Spaces (20% of required spaces)</i>		391	260	-131
	<i>Barrier-Free Spaces (2 + 2% of visitor spaces)</i>		12	12	-
	<i>Bicycle Spaces (1 spaces / 5 apartment units)</i>		260	330	+70 spaces

[75] Mr. Northcote provided the Tribunal with his opinion on the proposed parking supply and concluded that based on his review of proxy locations, the parking supply at the Proposed Development will be acceptable for the intended use. He noted that Vaughan Metropolitan Centre (“VMC”) was used as a proxy location to demonstrate reduced parking rates that were approved in an adjacent municipality, and a reduction is similarly appropriate in this case given that the subject property is suitable for a car-free lifestyle. In response to Mr. Maria’s concerns with the use of VMC as a proxy location, Mr. Northcote explained that VMC is an appropriate reference because, despite VMC having access to superior levels of existing transit, the subject property has significantly better access to commercial amenities than one would find in VMC.

[76] Mr. Northcote testified that there were a number of benefits to a reduced parking ratio at the Proposed Development, including unbundling parking from unit sales so only those who require parking will incur that cost. Further, reduced parking supply will assist in reducing the demand on the transportation network, as noted above, and encourage the use of both local transit and the active transportation network.

[77] The December TIS outlined that an oversupply of parking can result in an induced parking demand, inefficient land use, and increased costs to residents of the Proposed Development. The proposed reduced parking rate supports the Town and Region transportation objectives in promoting active transportation. Mr. Northcote opined that the subject property is well situated for a car-free lifestyle due to its proximity to existing services, amenities, and transit. He testified that reduced resident parking supply is a Transportation Demand Management tool that will assist in supporting public transit use as set out in section 14.2 of the in effect Town OP. He opined that the proxy site at 145-147

Wellington Street West demonstrated that the proposed parking supply is not significantly lower than historic parking demand in the Town and further, historically, the Town had a car-centric development approach. He testified that as opposed to this historic development approach, the Proposed Development seeks to control parking supply to reduce unit costs, induce transit use, and promote the active transportation network.

[78] The Town highlighted that Mr. Northcote did not raise concerns about an oversupply of parking nor did he note that the subject property is well suited for a car-free lifestyle when providing his initial report on the First Submission Proposal at 7 storeys. The Town argued that there were no policy changes impacting parking supply between Mr. Northcote's initial report in support of the First Submission Proposal, which proposed parking in compliance with the Town By-law and his report in support of the 13 storey Proposed Development with a reduced parking rate. The Town argued that there was no policy change during this time to support the reduced parking standard proposed, and as such, the Tribunal should disregard Mr. Northcote's evidence regarding parking.

[79] Mr. Ramunno noted that the subject property is located outside of the Major Transit Station Area and does not conform with many Growth Plan policies, including but not limited to 2.2.1, 3.2.2, 3.2.3, and 4.2.10. He opined that the applications do not provide convenient access to a range of transportation options, including active transportation, which will result in car dependency for residents to meet their daily needs. He further noted that the excessive proposed density on the subject property without convenient access to higher order transit neglects the Growth Plan's intensification first approach.

[80] Mr. Maria testified that the Town would likely support a reduced parking standard at the subject property, however, he did not feel that the Town had been provided sufficient evidence to satisfy that the proposed reduced parking was appropriate.

[81] Mr. Maria had concerns with the VMC proxy location chosen by Mr. Northcote. He testified that proxy locations need to have similar context in order to be useful, and VMC has access to a subway line, HOV lanes, and Viva Rapid Transit, which operates 18 hours

each day 7 days a week. Alternatively, the subject property has one transit route with hourly service 6 days a week and no Sunday service. He further noted that there were no planned upgrades to existing transit that services the subject property.

[82] Mr. Maria raised his concerns with VMC as a proxy site at the Expert's Meeting noting the distinctions between the two sites, which prompted Mr. Northcote to conduct a resident parking survey at two further proxy locations in the Town: 145-147 Wellington Street West and 14924 Yonge Street. Mr. Maria summarized that all of the proxy sites demonstrated that the proposed 0.8 s/u is too much of a reduction from the required 1.2 s/u and may result in negative impacts to adjacent neighbourhoods. He recommended that the proposed reduced parking is neither justified nor supported through any of the TISs and should be denied by the Tribunal.

Servicing

[83] Mr. Knechtel was the sole water and servicing engineer called to provide opinion evidence to the Tribunal. He analyzed the existing water and wastewater infrastructure and concluded that there was sufficient capacity to service the Proposed Development.

[84] Mr. Knechtel prepared a Functional Servicing and Stormwater Management Report ("FSSR") as part of the First Submission Proposal and another FSSR in support of the Second Submission Proposal. He testified that the Proposed Development at 13 storeys would generate less water demand than the 15-storey proposal, which the second FSSR analyzed, and as such, he opined that there is sufficient existing capacity to service the Proposed Development.

[85] Mr. Knechtel reviewed the Town Staff Report No. PDS23-122 dated September 26, 2023 ("Town Allocation Report") which was prepared by the Town's Manager of Development Planning to provide the Town with a servicing allocation update. It identified a total of 2,063 residential units approved by the Town and Tribunal as of September 2023, which Mr. Knechtel estimated would be approximately 4,500 persons.

[86] In November 2023, the Region completed a servicing capacity assignment (“Region Allocation Report”) whereby it assigned additional servicing capacity of 2,071 persons to the Town. It noted that 738 persons were dependent on completion of the North York Durham Sanitary System Expansion – Phase 1, thereby leaving 1,333 persons allocated to the Town which are not dependent on the completion of the expansion project.

[87] Mr. Knechtel acknowledged that servicing allocation was a planning matter, however, he did review the Town Allocation Report and the Region Allocation Report and concluded that there is an unused servicing allocation in the servicing capacity assignment from the Region in addition to an unassigned servicing allocation capacity at the local level. He opined that there is no purpose to include a Holding provision in the proposed ZBA as capacity and allocation appear to be available based on his review.

[88] Mr. Rogers explained that the Region is responsible for the distribution of servicing allocation to lower-tier Municipalities and from there, the Town distributes allocation units to proposed developments. The Town’s practice for distributing servicing allocation is on a first come, first served basis. Mr. Rogers opined that a Holding provision is not required to be added to the ZBA relating to servicing because the Town can only grant allocation if it is available. The first come, first served practice of the Town makes a Holding provision unnecessary and places an additional challenge to getting homes built.

[89] The Town did not call a municipal servicing engineer to challenge Mr. Knechtel’s evidence. However, Mr. Rammuno explained the Town’s allocation policies noting that the Town provided allocation to developments at the site plan approval stage.

[90] Mr. Ramunno testified that pipes were in the ground, but servicing capacity is neither currently available nor sufficient. He recommended that if the Tribunal allows the appeal and approves the ZBA, the Tribunal include a Holding provision on the zoning with the condition that the site plan application be submitted by the Appellant prior to the removal of the Holding provision due to servicing capacity constraints. Under cross-examination, Mr. Ramunno maintained that he would recommend a Holding provision on

the ZBA due to the timing of allocation at the development stage as opposed to the OPA and ZBA application stage.

[91] In cross-examination, Mr. Knechtel acknowledged that he did not know what servicing allocation had been granted by the Town since the release of the Town Allocation Report in September 2023. He further testified that he would not be willing to provide the Appellant with a letter which they could rely upon stating that there was currently sufficient capacity for the Proposed Development. As such, the Town argued that Mr. Knechtel's opinion with respect to servicing capacity is not reliable and should not be accepted by the Tribunal. Rather, the Town noted that the Town Allocation Report was approved by Mr. Ramunno, who testified that there is not sufficient servicing capacity available for the Proposed Development and that the Tribunal should prefer Mr. Ramunno's evidence.

ANALYSIS AND FINDINGS

[92] Based on the voluminous documentary evidence, which included numerous technical reports, and the compelling evidence of the witnesses, the Tribunal finds that a 7 storey height limit on the subject property constitutes optimization and appropriate intensification. The Tribunal approves in principle the designation of Medium-High Density Residential on the subject property.

[93] The Tribunal acknowledges that in deciding matters, it shall have regard to decisions of Municipal Council pursuant to s. 2.1 of the Act. In this case, there were three reasons provided by Town Council for the refusal of the applications, two of which have been resolved/are no longer issues. The remaining reason for refusal was the proposed density was not appropriate for the subject property. The Tribunal was persuaded by the Appellant that Town Council had insufficient information before it to make a determination to refuse the applications. Upon carefully scrutinizing Town Council's decision, the Tribunal finds that it was premature and uninformed for Town Council to refuse the applications

without the benefit of staff recommendation report.

[94] The Tribunal does not agree with the Town that a dismissal of the appeals is appropriate based on the Appellant's decision to appeal to the Tribunal rather than move forward with a 7 storey proposal, which Mr. Ramunno testified the Town would support. In fact, all of the witnesses agreed that the subject property is suitable for intensification (as is evident through the designation proposed for the subject property in the adopted Town OP currently awaiting Regional approval) and there are many areas where the parties are in agreement with respect to development. The Province is in the midst of an identified housing "crisis" and many of the planning policies referred to during the hearing are aimed at accommodating growth by encouraging development that makes use of available land and existing resources and infrastructure. The Tribunal determines that sending the Appellant "back to the drawing board" would be inefficient and cause undue expense when the evidence demonstrated that a 7 storey building is consistent with and conforms to relevant planning policies.

[95] The Town also argued that the Tribunal should dismiss the appeals wholly and not approve a height of 7 storeys as this outcome will likely occur through the Regional approval of the adopted Town OP. The Tribunal finds that this reasoning is flawed. The Tribunal has determined that a 7 storey building is in accordance with the appropriate policy documents and leaving it in the hands of a potential Regional approval, which may or may not happen and may or may not be appealed, is not in the public interest.

[96] The parties provided submissions regarding the lack of a site plan application and further, that many details could be worked out at the site plan stage. The Tribunal disagrees with the Town that the appeal should be dismissed due to the absence of a site plan and a lack of certainty on what will eventually be built on the subject property. The Tribunal routinely adjourns site plan appeals *sine die* and considers official plan amendments and/or zoning by-law amendments independently of a site plan. The subject property is located in an area of site plan control, and as such, the Town will have input into the site plan when the application is filed, and the Town has the ability to refuse the

site plan if it disagrees with the concept. The Tribunal finds that the absence of a site plan is similar to adjourning a site plan appeal *sine die* – it is a distinction without a difference and not a reason to warrant dismissal.

[97] With those preliminary findings, the Tribunal will provide analysis and reasoning for its determination that the appeals are allowed in part. The Tribunal finds it significant that the witnesses all agreed that a height of 7 storeys “works” on the subject property. Following consideration of the oral and written evidence and the submissions of Counsel, the Tribunal agrees. The only draft instruments before Tribunal are an OPA and ZBA that allege to regulate a 13-storey proposal and the Tribunal is not in a position to modify these draft instruments to the extent that they could adequately regulate a proposed 7 storey development on the subject property. The Tribunal finds that a 7 storey concept is supportable recognizing that the original concept did incorporate a transition down to meet the lower density neighborhood abutting the subject property. The Tribunal will therefore deal with the instruments accordingly in the Order clause.

[98] The subject property is appropriate for intensification, and its corner location at the intersection of two arterial roadways calls for some form of height. That said, intensification must be done properly and in conformity with surrounding uses, and it cannot be intensification at all costs. The Tribunal finds that a maximum building height of 7 storeys with a transition to lower density townhouse blocks abutting existing residential uses contributes towards the achievement of a complete community and will contribute to a range and mix of housing and will also contribute to the Region’s intensification targets.

[99] The Tribunal finds that a maximum height of 7 storeys meets all of the policies raised by the Appellant and the Town, and the Tribunal is persuaded that a height of 13 storeys does not align with the current and emerging policy regime. Increased height and intensification on the subject property is supported by the planning policies, however, the Tribunal acknowledges that the site is located outside of the area that height is directed towards in the Town’s planning policies, including the Town’s emerging policy regime. The Tribunal does not agree with the Appellant that the Town merely took 20 year old height

caps and moved them into the adopted Town OP. This argument presumes that there was little thought put into the planned context of the Town, and based on the evidence before the Tribunal, this is not the case. The Tribunal found Mr. Ramunno's testimony and opinions persuasive and further finds that the evidence clearly supports a maximum height of 7 storeys in this particular case at this particular site in this particular Town.

[100] The PPS permits growth where it can be appropriately accommodated. The Parties agree that the subject property is currently underutilized, and the Tribunal also agrees. Appropriate growth on this site based on the evidence is a height of 7 storeys. The Tribunal agrees with Mr. Ramunno that the height and scale of a 13 storey building would result in over development of the site. The Tribunal finds that 7 storeys at the corner stepping down to the proposed townhouse blocks will provide an appropriate transition to the existing low rise residential neighbourhood.

[101] The Tribunal acknowledges that the subject property is an important secondary gateway location and prefers the evidence of Mr. Theodore regarding the attributes of a gateway. The Tribunal was persuaded by Mr. Theodore's explanation that a gateway's defining characteristics include a threshold moment or transition between one place and another. However, the Tribunal finds that a 13 storey building would be excessive and not appropriate for a secondary gateway. A maximum of 7 storeys at this corner is a height that will provide a sense of arrival thereby celebrating the gateway function. The Tribunal notes that Mr. Theodore agreed in cross examination that secondary gateways must be at smaller scales than primary gateways, and the Tribunal agrees and finds that 7 storeys will achieve the secondary gateway function.

[102] The Tribunal heard evidence that the applications were the subject of independent review by the DRP, however, finds that the review lies outside of a process that is useful to this appeal. The DRP conducted an early-stage review, the recommendations of which are not the subject of any appeal process and are therefore not germane to the Tribunal's consideration.

[103] The Tribunal acknowledges that the recommendations put forward by Mr. Northcote in his TIS are merely recommendations. Based on the evidence, the Tribunal heard that the Region does not have any planned traffic infrastructure upgrades in the area around the subject property and is in no way compelled to implement the recommendations in the TIS. While the Tribunal heard and agreed, that the recommendations would be improvements to this area, which is ripe for intensification, if they do not occur, the road network would be negatively impacted.

[104] While the above paragraph causes some concern, the Tribunal was persuaded by the Appellant's witnesses and submissions that it is a combination of improvements in the area, including the construction of future approved developments, that will impact traffic operations in the area as opposed to development on the subject property. The Tribunal notes that both the Region and the Town contemplate medium-density residential permissions on the subject property, and considering the totality of the traffic evidence, the Tribunal was persuaded that the traffic generated by development on the subject property itself will not cause the system to fail. The traffic issue is not determinative of this appeal, as the resolution lies outside of the matters before the Tribunal for consideration.

[105] The Tribunal was persuaded by the Town's parking submissions and finds that the Appellant did not present sufficient evidence to demonstrate to the Tribunal that a reduced parking rate was supportable. The proxy locations used by Mr. Northcote were distinguishable for a number of reasons, including the lack of convenient access to high-frequency transit at the subject property. The subject property has limited access to existing and planned transit options in addition to services and amenities, such as the Aurora GO station, which is located outside of a 15-minute walk of the subject property. The relief from the parking standard in the ZBL to the extent sought by the Appellant was not supported by the evidence.

[106] The Tribunal heard varying accounts of the availability of servicing capacity for any development at the subject property. The Town allocates servicing on a first-come, first-served basis at the site plan approval stage. Based on the evidence, it appears that there

is sufficient servicing capacity in the Town to allocate to a development on the subject property. However, capacity is not determinative in this appeal because the evidence as presented was that if capacity is available at the site plan stage, it will be allocated. If it is not available, then the Appellant, and any other developers, will have to wait.

[107] The Tribunal prefers the evidence of Mr. Knechtel and Mr. Rogers regarding the utility of a Holding provision on the proposed ZBA. Based on the evidence, the Tribunal finds that placing a Holding provision on the ZBA to be removed when servicing is available is redundant. As noted in the immediately preceding paragraph, the Town's practice is to distribute allocation when it is available, and as such, no need for a Holding provision related to servicing has been adequately demonstrated by the Town.

[108] Based on the totality of the evidence presented and the consideration of the submissions of the Parties, the Tribunal finds that it is appropriate and representative of good planning to redesignate the subject property from Business Park to Medium-High Density Residential subject to a 7 storey height limit transitioning to townhouse blocks as set out in the First Submission Proposal. The Town's most recent policy deliberation regarding the adopted Town OP represents good planning and demonstrates that Town Council has turned its mind to 7 storeys in height on the subject property. The Tribunal will direct the Parties to draft a Zoning By-law Amendment that achieves the objectives for the subject property as it relates to a maximum height of 7 storeys.

[109] The Tribunal finds that a 7 storey height limit on the subject property has regard for Provincial interests, is consistent with the PPS, conforms with the Growth Plan and the Region OP, and appropriately implements the in effect Town OP.

[110] Through this Interim Decision, the Tribunal allows the appeals in part, with the direction to finalize the content of the OPA and ZBA in due course. The Tribunal elected not to use its powers to modify the OPA or ZBA that was presented, as the required number of modifications given the findings above are best left to be drafted by the Parties.

However, leading from the planning findings in this Decision, the Tribunal directs that the OPA and ZBA generally must satisfy the following:

- Permit medium-high-density residential and linear and other open space on the subject property in the OPA;
- Allow for a maximum building height of 7 storeys on the subject property in the ZBA and OPA;
- Include a transition from the 7 storey height at the corner of Wellington Street East and Leslie Street stepping down to townhouse blocks or lower height and density leading to the existing residential use abutting the subject property;
- Sufficient parking to comply with the Town ZBL;
- No requirement to include a holding provision related to servicing in the ZBA; and
- Other alterations and minor deviations to the above as agreed to by the Parties and in keeping with this Decision.

INTERIM ORDER

[111] **THE TRIBUNAL ORDERS THAT** the appeals are allowed in part and approves in principle an Amendment to the Town of Aurora Official Plan and an Amendment to Zoning By-law 6000-17, as amended (the “Amendments”). The Tribunal directs the Parties to prepare the Amendments in accordance with this Decision and with consideration to the matters contained in paragraph 110 of this Decision.

[112] The Parties may determine how best to incorporate this Decision's directions through the Amendments. The Tribunal will withhold its Final Order and the Parties are directed to submit the Amendments within six months of issuance of this Decision. If the Parties are unable to complete the Amendments within six months, the Parties shall provide a written status update, including the expected timeframe to complete the Amendments. If the Parties encounter difficulties complying with this Interim Order, a request for a Case Management Conference may be made through the Case Coordinator.

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

"C. Hardy"

C. HARDY
VICE CHAIR

Ontario Land Tribunal

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