

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: June 08, 2021

CASE NO(S): PL171453

The Ontario Municipal Board (the “OMB”) is continued under the name Local Planning Appeal Tribunal (the “Tribunal”), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

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

Applicant and Appellant: WAM Montez C & W Inc.
Subject: Application to amend Zoning By-law No. 438-86 - Refusal or neglect of the City of Toronto to make a decision
Existing Zoning: CR T3,0 C2.0 R3.0
Proposed Zoning: Site Specific (To be determined)
Purpose: To permit the development of a 43-storey mixed-use building
Property Address/Description: 66 Wellesley Street East & 552-570 Church Street
Municipality: City of Toronto
Municipality File No.: 17 210131 STE 27 OZ
LPAT Case No.: PL171453
LPAT File No.: PL171453
LPAT Case Name: WAM Montez C & W Inc. v. Toronto (City)

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

Applicant and Appellant: WAM Montez C & W Inc.
Subject: Request to amend the Official Plan - Refusal of request by the City of Toronto
Existing Designation: Mixed Use Areas
Proposed Designated: Mixed Use Areas
Purpose: To permit the development of a 43-storey mixed-use building
Property Address/Description: 66 Wellesley Street East & 552-570 Church Street
Municipality: City of Toronto

Approval Authority File No.: 17 1210131 STE 27 OZ
 LPAT Case No.: PL171453
 LPAT File No.: PL171509

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 Refusal of Application by the City of Toronto
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 LPAT Case No.: PL171453
 LPAT File No.: PL180068

Heard: December 3-8 and December 11-18, 2020 by
 Video Hearing

APPEARANCES:

Parties

Counsel*/Representative

WAM Montez C & W Inc.

David Bronskill*

City of Toronto

Mark Piel* and Daniel Elmadany*

Church Isabella Residents
 Co-operative Inc.

Donald Altman

Church Wellesley Neighbourhood
 Association Inc.

Ian Flett* (*In absentia*)

**DECISION DELIVERED BY G. BURTON AND D.S. COLBOURNE AND ORDER OF
 THE TRIBUNAL**

INTRODUCTION

[1] The Tribunal heard Appeals concerning applications by WAM Montez C & W Inc. (the “Applicant”/“Appellant”) for amendments to the City of Toronto Official Plan (“OP”), and to the former City of Toronto Zoning By-law No. 438-86 and Zoning By-law No. 569-2013, as amended (“ZBL”). These would permit the development of a 36-storey, mixed-use residential and retail building on a corner property, with municipal addresses of 64-66 Wellesley Street East and 552-570 Church Street. It is in the midtown area of the City of Toronto (“City”), south of Bloor Street East and east of Yonge Street.

[2] The City of Toronto refused the revised applications for amendments to the OP, and failed to make a decision on amendments to the ZBLs, providing the Applicant with the right to appeal to the Tribunal. The current proposed amendments to the OP and ZBLs may be seen in Exhibit 8, (Vol. 6), Tab 50, H and I, and Tab 51, D.

THE APPLICANT/APPELLANT

Evidence of Tom Kasprzak

[3] Evidence on behalf of the proponent, was provided first by professional planner and urban designer, Tom Kasprzak, who lectures at the Ryerson University School of Urban and Regional Planning and has been qualified many times by the Tribunal. He has particular knowledge of the Church Street Village area and the surrounding context of North Downtown Yonge, having dealt with many mid- and high-rise developments nearby. He was retained in December 2019 to provide urban design analysis and advice to the Applicant.

The Site

[4] Mr. Kasprzak described the present collection of six properties, herein referred to as “the site”, and the site’s surroundings. It is located at the northwest corner of Wellesley Street East and Church Street. This is considered the central intersection of the renowned Church Street Village. The site is an assembly of 64-66 Wellesley Street

East and 552-570 Church Street and is about 2,931 square metres (“sq m”) or 0.29 hectares (“ha”) in total. The Wellesley Street frontage is approximately 60.3 metres (“m”), and there is about 50.5 m frontage on Church Street.

[5] The properties now included in the site are the following. At the west end of the site at 64 Wellesley Street East is the most recently added, a five-storey rental apartment building, designated in July 2020 as a heritage building. East of it is 66 Wellesley East, a four-storey building set back from the street, with surface parking in the front. The properties at 552-554 Church Street are three-and-a-half storeys in height, with retail at grade and six dwelling units above. At 556-568 Church Street are two-storey commercial buildings, with retail units and offices above. These have a squat profile from the street. 570 Church Street to the north is vacant. The surroundings, especially the Church Street streetscape around this intersection, are illustrated in Exhibit 11, a Photo Book.

[6] There is a public lane about 2.12 m wide, located approximately in the middle of the Wellesley Street frontage. Mr. Kasprzak said it runs “along the east limit of the 66 Wellesley property” (Ex. 1, Tab 1, para. 14, and see Ex. 11, p. 3, where a photo confirms this). It runs north from Wellesley Street and ends just south of the site’s northern border. It currently provides access to the rear of the four properties on Church Street. The proposal would retain the lane in public ownership, while building around it (Ex. 10, p. 21, and see, especially the elevations, at pp. 2553 and 2554).

The Surroundings

[7] The Tribunal will set out in some detail the areas both close to the site, on Church Street, and the neighbourhood slightly farther away. These have more than the usual significance for the applicable existing and planned context within which this proposal must be assessed.

[8] There has been little development in the Church Street Village itself over the past decade, Mr. Kasprzak testified. However, the surrounding area has experienced growth

and change, with many new tall buildings constructed toward the north, mainly towards the intersection of Yonge Street and Bloor Street. Wellesley Street East between Yonge Street and Sherbourne Street is a “High Street” (see below – Tall Buildings Design Guidelines (“TBDG”/“Guidelines”) Supplementary - Ex. 2, Tab 12, Map 1, p. 458). There are many tall buildings in this segment, from 23 to 39 storeys. Map 2 of this Guideline, Downtown Vision Height Map, limits this portion of Wellesley to 35 storeys (p. 459). However, this schematic shows an indented triangle at Wellesley Street and Church Street, leaving scope for the 36 storeys proposed.

[9] Church Street Village has principally low- to mid-rise structures for about seven blocks here, along Church Street itself. Tall buildings, if any, are located behind the two- to five-storey structures on Church Street. There is an active street life here day and night.

To the North

[10] Approval has been granted for a 12-storey mixed-use building at 572 Church Street, immediately north of the site. This will step back from four storeys along the street edge to 12 storeys at its west side. It will have a party wall to the seventh floor, next to the subject site. The remaining floors will be set back approximately 5 m from its south lot line.

[11] Further to the north on Church Street, on the southwest corner of Church and Dundonald Street is a two-storey office building, then further to the west along the south side of Dundonald is an 18-storey rental apartment building, number 41. Mr. Altman, who took part in the Hearing, resides here (Ex. 11, p. 9). His Church-Isabella Co-Operative Residence Inc. is a Party to this Appeal. It is situated diagonally across from the northwest corner of the subject site.

To the East

[12] Across from the site, on the east side of Church Street, is Barbara Hall Park (“BHP” or the “Park”), formerly known as Cawthra Square. This culturally important Park is a community gathering location. It is L-shaped, with many different sections and components: a plaza next to Church Street, with benches and a LED-light installation; green spaces to the north and northeast; a significant large AIDS Memorial; a splash pad and children’s playground at the rear; and an off-leash dog area to the southeast. South of the Park is 519 Church Street Community Centre (“The 519” or “519 Centre”), in a designated heritage building with a modern addition on its south side. There is a pedestrian walkway from the Park to Church Street on the south side of the 519.

[13] Continuing down the east side of Church south of The 519 are two, three-storey mixed-use buildings, with at-grade retail and residential above. One is at the northeast corner of Church and Wellesley.

Wellesley Street, north side - east of Church Street

[14] Along Wellesley here there are taller residential buildings at 80 and 88 Wellesley East, backing onto BHP. To the east of these is a 28-storey building at 100 Wellesley East. This will shortly have an eight-storey addition along Jarvis Street and Cawthra Square.

Wellesley Street, south side - east of Church Street

[15] At the southeast corner of Church and Wellesley at 77 Wellesley Street East is a four-storey apartment building with retail uses at-grade. Then further to the east on Wellesley are several mid-rise and tall structures. Notably, a 28-storey building (recently, approved by OLT) is being constructed at 81 Wellesley East. This is the third property east from Church Street but is only 36.5 m from the east limit of Church, Mr. Kasprzak noted. Further yet to the east, the predominant building type along the west side of Jarvis Street up to Bloor Street East is mid-rise to tall “slab” buildings from 11 to

20 storeys. Further to the north are three tall buildings of 49, 44 and 42 storeys, near the intersection of Jarvis Street and Charles Street East.

South of Wellesley on Church

[16] The Church streetscape may be seen in Exhibit 11, pp. 7- 16. Further south of the proposal on Church are several blocks of mainly two- and three-storey mixed-use buildings, with a few at five storeys, on both sides of Church Street. Applications seek a 15-storey mixed-use building at 506-516 Church. There is a 12-storey residential building at Alexander Street and Church, two blocks south. On the southwest corner of Wellesley and Church opposite the site, is a five-storey office building with retail uses at grade. Further to the west on the south side of Wellesley is a nine-storey residential apartment building at 55, and an eight-storey Sunnybrook Hospital building. Further west still there are other mid-rise buildings, with mixed uses, located behind converted dwellings.

Wellesley West of the Site

[17] On the north side of Wellesley Street, at 56-60 Wellesley Street East, just west of the subject site, is the Paul Kane House and Parkette (the "Parkette"). This consists of a heritage-designated house and a small garden. The Parkette is to the south of the Co-op apartment at 41 Dundonald Street. To the west of the Parkette are three tall residential buildings, the tallest being 37 storeys at 50 Wellesley East, then 35 storeys at 40 Wellesley East, and 23 storeys at 22 Wellesley East. The Wellesley subway station at Yonge is about 150 metres west of the subject site.

The Proposed Development, As Revised

[18] The application has been revised following meetings and mediations with City staff. The current proposal is Resubmission No. 3, dated Sept. 11, 2020. It is for a 36-storey, 111.25-metre mixed use tower (excluding a six-metre tall mechanical penthouse). It would have a five-storey base facing both Wellesley and Church. This

would incorporate the south and west facades of the existing heritage-designated building at 64 Wellesley Street East. Along Church Street, it would step back to become a nine-storey mid-rise. The concept is best illustrated at Exhibit 10, p. 20.

[19] The total gross floor area would be 34,515 sq m, for a density of 11.78 times the lot area. There would be 433 residential units, with 66 rental replacement units, 114 vehicle and 450 bicycle parking spaces, which are proposed in two levels of underground parking. There would be 1,695 sq m of indoor and outdoor amenity space on the site.

[20] As seen in Ex. 10, p. 20, there would be two distinct elements to the same structure:

- a. the five-storey base building, with a streetwall on Church, stepping up to a nine-storey building back from Church; and,
- b. a curved tower element on the northwestern portion of the site, with a similar five-storey base. The two would be separate and distinct, as seen on the Site Plan, p. 21 of Ex. 10, but connected by a two-storey element along the north portion of the site.

[21] Mr. Kasprzak opined that the low-rise base section along the two streets will reinforce their existing and planned built character, with materials complementary to buildings to the south as well as to the heritage building at 64 Wellesley East.

[22] There would be a short interior pedestrian mews along the public lane (seen in Ex. 11, pp. 4 and 5). This lane would effectively be the driveway to the servicing and loading areas, and would continue to the ramp down to two levels of parking. The building would not encroach over the public laneway lands, Mr. Kasprzak testified, and there is no encumbrance below at lower levels.

[23] Along Wellesley Street, the five-storey streetwall of the mid-rise is articulated, Mr. Kasprzak stated, so that the façade appears as three distinct building volumes. This breaks up its length. The height of the streetwall matches the height of the existing heritage building. This retained façade would contain the primary residential entrance. The heritage structure itself would be reconstructed along the western edge of the site, facing the Paul Kane House Parkette.

[24] The proposed ground floor height is 4.8 m, allowing for internal servicing, loading and garbage storage spaces, as well as flexibility for retail spaces. These are proposed for Level 1 and part of Level 2 on both streets. The rest of Level 2 is dedicated to residential rental replacement units. Amenity spaces are located throughout the podium on Levels 2, 3 and 4. Above Level 5 on Church is a four-storey middle element, extending to the ninth level and terracing back westward at each level. These would be residential units, each with private terraces overlooking Church Street. At the southeast corner, on Level 6, is an indoor amenity space adjacent to outdoor amenity space, overlooking the Church-Wellesley intersection.

[25] The tower would be 36 storeys, reduced from earlier proposals. It has been shifted to the rear and further to the west on the site, west of the public lane. It is “rectilinear” and oriented north-south but is designed with curved edges along opposite corners of the tower shaft. This curve extends across the southeast building face from Level 6 to the top, and across the northwest building face from Level 21. The floor plate is approximately 890 sq m (gross construction area, excluding balconies) from Level 10 to 20, and above this it reduces to 825 sq m.

[26] It is important to note, he testified, that the tower element has been relocated **entirely** west of the public laneway. This is of particular relevance: the proposed tower is therefore entirely within the Wellesley Wood Character Area (“WWCA”) with respect to Site and Area Specific Policy No. 382 (“SASP 382”) (see below), **rather than partly within** the Church Street Village Character Area (“CSVCA”), as in the previous proposals reviewed by the City.

[27] Mr. Kasprzak then provided detailed measurements of proposed setbacks, which would meet By-law requirements. Respecting public realm improvements, all public sidewalk zones along both Church Street and Wellesley Street East would be increased to a minimum of 6 m, and street trees would line both street frontages.

[28] The material composition would consist of masonry to visually ground the base building and complement the heritage building and those along Church; and also curtain wall glazing, providing contrast to the masonry elements. At grade, use of vision glass would provide views to the street-related uses and animate both Church and Wellesley, as seen at Ex. 10, p. 20.

[29] He concluded that the tower, presenting as a unified element, makes an appropriate contribution to the quality and character of the city skyline, especially in the context of nearby tall buildings along Wellesley Street East.

Urban Design Policy and Regulatory Framework

[30] Mr. Kasprzak was the first witness to outline the complex planning context in which this proposal must be considered. His testimony was augmented by that of Peter Smith, which follows. Mr. Smith relied on Mr. Kasprzak's witness statement.

[31] City witnesses later repeated much of the physical and planning context. Only their interpretation differed.

City of Toronto Official Plan

[32] Section 3.1.1 of the OP supports significant public open spaces and streets promoting sustainable, economically vibrant and complete communities. Section 3.1.1(5) states that streets should reflect differences in local context and character, permit amenities such as sky view and sunlight, and serve as community destinations and gathering places. In s. 3.1.1(6) of the OP, sidewalks should be designed to provide

safe, attractive, interesting and comfortable spaces for pedestrians. In Mr. Kasprzak's opinion, the proposal conforms to the public realm policies in s. 3.1.1 of the OP.

[33] Section 3.1.2 of the OP recognizes the importance of good urban design, noting that developments must be conceived not only in terms of the individual building site, but also in terms of how that building and site will fit within the context of the neighbourhood and City.

[34] Section 3.1.2(1) of the OP is met, in his view, in that it would have new development located and organized to fit with its existing and/or planned context. It will frame and support adjacent streets, parks and open spaces to improve the safety, pedestrian interest and casual views to these spaces. On corner lots like this one, development along both street frontages should give prominence to the corner. This would occur here by locating the main entrance there, where it is clearly visible and accessible, and by providing ground floor uses that have views into and access to adjacent streets.

[35] Likewise, he opines that Section 3.1.2(2) of the OP is satisfied. It requires that new development locate and organize parking, servicing and access to minimize impact on the property and surrounding properties. Here, a shared and screened service area via the public lane will provide access to underground parking, without requiring a curb cut.

[36] Section 3.1.2(3) of the OP contains policies to ensure that new development will be massed and its exterior façade designed to fit harmoniously into its existing and/or planned context. This would be achieved here by: massing this building to frame adjacent streets and respect the existing and/or planned street proportion; creating an appropriate transition in scale to existing neighbouring or planned buildings; providing for adequate light and privacy; adequately limiting any shadowing of, and uncomfortable wind conditions on neighbouring streets, properties and open spaces, and especially by minimizing any additional shadowing and uncomfortable wind conditions on neighbouring parks.

[37] In Mr. Kasprzak's opinion, this harmony is achieved by the proposed built form. The massing, with five storeys stepping back to nine on Church Street, follows the existing street scale. The location of the tower in the western portion of the site permits an appropriate transition down in scale, across the proposed structure on Church to the BHP to the east. The tower's orientation, setbacks and separation distance to nearby towers preserve light and privacy for the dwellings in nearby low-rise neighbourhoods.

[38] He testified that lack of adverse impact from shadowing is demonstrated by both Bousfield's Contextual Shadow Study (Ex. 10, pp. 32-37), and the Detailed Shadow Studies prepared by Robert Bouwmeester (Ex. 14). The latter specifically analyzed shadow impacts from the proposed development on BHP, the surrounding area and important public spaces. In Mr. Kasprzak's opinion, the incremental shadowing, both on neighbouring streets, properties and open spaces, and on BHP itself, has been minimized. Any adverse impact is adequately limited due mainly to the orientation and slender design of the tower, and its westerly location on the site.

[39] Section 3.1.2(4) provides that new development will be massed to define the edges of streets, parks and open spaces at good proportion. The eastern edge of Paul Kane Parkette will be well-defined by the reconstructed western façade of the heritage-designated building, he stated. Above the base, the tower is set back 4 m from this west property line. Due to its separation from other nearby tall buildings and its slender curved shape, it is his opinion that the tower allows adequate access to the sky view from Paul Kane Parkette.

[40] North of the Wellesley subway station, there are three linear parks between Dundonald Street and Charles Street East, constructed above the subway line. In terms of incremental shadowing on the Paul Kane House Parkette, BHP, and this George Hislop/Norman Jewison/James Canning Park network over the subway, Mr. Kasprzak testified that the impacts from the proposal are acceptable, given the urban context and proximity of existing tall buildings.

[41] Section 3.1.2(6) provides that each resident of a “significant new multi-unit residential development” will have access to outdoor amenity spaces such as balconies, terraces, courtyards, rooftop gardens and so on. These are provided here, and in his opinion, this policy is sufficiently addressed.

[42] Section 3.1.3 of the OP recognizes that tall buildings, properly located and designed, can draw attention to the city structure, visually reinforcing civic centres and other areas of civic importance. Given Toronto’s relatively flat topography, tall buildings can become important city landmarks, he opined, when the quality of architecture and site design is emphasized. Tall buildings come with larger civic responsibilities and obligations. Here the design, scale and siting of the tall building portion address the location and character of the site within the surrounding area. This proposal has particular regard for how this building “fits” within the existing tall building context along the north side of Wellesley Street. It is set well back from Church Street.

[43] Addressing Section 3.1.3(1) of the OP, concerning components of tall buildings, the proposal creates a multi-faceted base element along the Wellesley frontage, incorporating the heritage building in a complementary built form. Along Church Street there would be a similar five-storey streetwall, stepping back to nine, responding to the approved 12-storey terraced building to the north. The curved tower is set back over 30 m from the Church Street edge (see site plan, Ex. 10, p. 21). In Mr. Kasprzak’s opinion, the tower form relates well to the tall building context along the north side of Wellesley between Yonge and Church.

[44] Section 3.2.3 deals with parks and open spaces. The City’s system of open and green spaces must be protected from the effects of development on adjacent properties. This includes shadowing, noise, traffic and wind. Here he opines that the proposal conforms with these policies, as the shadow impacts from the proposed development do not unduly affect the utility of nearby parks, specifically BHP. Balancing the OP’s policy directions, the tower location to the west, together with rounding of its corners, will minimize any incremental shadows on BHP. These minimal

impacts do not impede the Park's utility, and are acceptable given the urban context and the tall buildings west and east of the Church Street Village.

[45] In sum, his opinion is that the proposal reinforces the OP public realm policies and the city structure with appropriately scaled base and tower elements, at the intersection of two major streets in the Downtown. The tower's height reinforces the general stepping down of building heights along Wellesley Street, moving east from Yonge Street. The podium supports the scale and character of the Church Street Village.

Official Plan Amendment No.183 (North Downtown Yonge) – SASP 382

[46] Mr. Kasprzak then outlined other instruments and guidelines that apply to this site. Official Plan Amendment No. 183 ("OPA 183") is mostly in force (policies related to heritage preservation and the Yonge Character Area are still under appeal).

[47] OPA 183 resulted from a North Downtown Yonge Planning Framework study. Its boundaries, set in 2011, were the west side of Bay Street, Charles Street to the north, the east side of Church Street and College/Carlton Streets to the south. This study considered mixed-use sites for intensification and revitalization, and recommended a framework for redevelopment. In addition to OPA 183, this study resulted in the North Downtown Yonge Urban Design Guidelines ("NDY – UDG"), described in further detail below.

[48] OPA 183 introduced a new Site and Area Specific Policy 382 ("SASP 382") applying to the North Downtown Yonge area (Ex. 3, Tab 8 - see Maps 1 and 2 for the area to which it applies). SASP 382 contains both **area-wide** policies (shadow impacts, heritage, parks and open space, public realm, and urban design), and also policies for "**Character Areas**". Map 1 of SASP 382 (Character Areas) illustrates that the subject site is located within **two** character areas. Its eastern portion is in the "Church Street Village Character Area" ("**CSVCA**") consisting of properties fronting on Church Street between Charles and Wood Streets. The western portion, including the heritage

property at 64 Wellesley Street East, is within the “Wellesley Wood Character Area” (“**WWCA**”). The boundary between the WWCA and the CSVCA shown on Map 1, considered by the Applicant/Appellant to be schematic only (see discussion below), runs along the existing public lane. This is significant, Mr. Kasprzak testified, in that the policies applicable to the WWCA are indeed distinct from those for the CSVCA, as described below. He emphasized that the tower portion of the proposed building falls **entirely within the WWCA**.

[49] **Section 5.6 of SASP 382 deals with the WWCA.** This Character Area is designated *Apartment Neighbourhoods* (“*AN*”) in the City OP, from north to south (partly from Dundonald Street to Maitland Street, then fully from Maitland Street to Wood Street). For more details see Ex. 13, p. 48, which illustrates in colour the designations from the OP, Map 18. This WWCA segment is described as a primarily stable area, consisting of “tower in the park” apartment buildings. It provides a transition to the low-rise *Neighbourhoods* (“*N*”) to the north, and to the *Mixed-Use Areas* to the east (i.e. the CSVCA). The WWCA is then designated *Mixed-Use Areas* (“*MUA*”) along Wellesley from Dundonald to Maitland Street, on the west side of the WWCA. SASP 382 indicates that the north and south sides of the subject block of Wellesley East contain a mix of uses including residential, office and retail, and also a transit node at the Wellesley subway station.

[50] Mr. Kasprzak emphasized that the proposed tower would be entirely within the WWCA, and is designated *AN*. The preamble to the policies for the WWCA state that this portion of the Character Area may be appropriate for “**limited infill growth**” (s. 5.6), subject to the following development policies:

[51] Section 5.6.1: The only development/redevelopment permitted within the *Apartment Neighbourhoods* designated areas of this Character Area, will be **sensitive low-rise infill**, that:

- a) respects and reinforces the general physical character, pattern, scale, massing, setbacks of the area;

- b) maintains the prevailing patterns of landscaped open space; and
- c) makes best efforts to preserve and enhance existing private amenity space.

[52] When a tall building is proposed close to the Gloucester/Dundonald Character Area, the tower portion of the tall building must be set back a minimum of 20 m, excluding balconies, from any abutting property line (Section 5.6.2). The nearest property within this Character Area, 41 Dundonald, is approximately 38 m west of the subject site.

[53] **Section 5.7 of SASP 382 deals with the CSVCA.** By s. 5.7.1, the only redevelopment permitted within the *Mixed-Use Areas (MUA)* and *Apartment Neighbourhoods (AN)* designations in the CSVCA will be “**sensitive low scale infill**” that reinforces the preamble, and:

- respects and reinforces the general physical character, pattern, scale, massing setbacks (and heritage value) of the Character Area; and
- respects and reinforces the fine grain retail at grade, and the low-rise scale of existing development.

[54] Section 5.7.2 of SASP 382 states that development within the CSVCA between Wood Street and Charles Street East must ensure that no part of any building is located above the angular plane drawn from the Church Street lot line, commencing at a height of 16 m above street level, angling upwards at an angle of 44 degrees away from Church Street over the site. As explained by Mr. Smith, a proposed OPA would provide an exception to s. 5.7.2 to permit balcony railings on the Church Street portion to encroach slightly within the described angular plane.

[55] Section 5.7.3, which again only applies to development **within the CSVCA**, and **not within the WWCA**, mandates that development/redevelopment cast “**no new net shadow**” on the parkland forming part of The 519 Church Street community hub for a

period of six hours generally between the hours of 10 a.m. and 4 p.m. on March 21st and September 21st. “New net shadow” is defined to mean shadow cast by a proposed development in excess of the shadow already cast on December 31, 2015 by existing and approved structures, as well as buildings and structures permitted by the existing in-force ZBL.

[56] Mr. Kasprzak stressed that the proposed tower element, which is the only portion of the development that results in any incremental shadow impact on this Park, is entirely within the WWCA, and thus **s. 5.7.3 does not apply to it.**

[57] Section 5.7.5 indicates that where a tall building is proposed close to areas designated *Neighbourhoods*, the tower portion of the tall building will be set back a minimum of 20 m (excluding balconies), from any such abutting property line. The closest *Neighbourhoods*-designated lands are located on the north side of Dundonald Street, more than 20 m to the northwest of the subject site.

[58] Policy 6.0 of SASP 382 outlines **area-wide** policies (thus applying to both Character Areas here). Policy 6.A deals with Sun and Shadows. The preamble states that parts of the area are particularly sensitive to shadow, so that additional policy guidance is appropriate. While it **does not apply to parks** (see below), Policy 6.A.1 states that it is the policy of Council to protect sunlight in the North Downtown Yonge area. Accordingly, by its location and massing, redevelopment should “**adequately limit**” shadows to preserve or improve the functional and qualitative utility of streets and publicly owned or accessible open spaces. Policy 6.A.2 goes on to state that where SASP 382 sets out a property-specific sun/shadow standard, such property-specific standard will apply, and Section 6.A.1 will not apply.

[59] Mr. Kasprzak stressed that the specific guidance in Section 6.A makes no reference to the subject site, nor does it mention BHP. Policy 6.2.9, which applies to all SASP 382 land, prohibits “net new shadow” within set time frames, but **only** on 1) Opera Place Park and 2) the new park on Map 2 of the SASP (Wellesley Street West, St. Luke Lane, Breadalbane and Bay). BHP is **not** identified on this list. In the drafting

of SASP 382, he opined, BHP could well have been afforded the same protection from shadowing as Policy 6.2.9 provides for the two identified parks. As the policy is written, this protection does not exist. The direction is only to “**adequately limit**” shadows.

[60] Mr. Kasprzak expressed his opinion that the mid-rise element of the overall design conforms with SASP 382, Policy 5.7.3, which again is applicable only to the portion of the development in that it is situated within the CSVCA. This policy was set out above. It would cast no additional shadows on BHP.

[61] As noted, the tower is situated entirely outside the CSVCA, and therefore, is not subject to the policies for that Character Area, he stated. Further, there are no applicable policies specific to the WWCA that prohibit shadow from development on BHP. Nor are there area-wide policies providing similar protection in the broader North Downtown Yonge area. Thus, in Mr. Kasprzak’s opinion, Policy 5.7.3 does not apply to the tower element. The more general OP test of adequately limiting shadowing on neighbouring streets, properties and open space is met, when considering the minimal shadow impacts from the development proposal (as demonstrated in the shadow studies to be addressed by Mr. Bouwmeester, below).

Proposed Official Plan Amendment No. 352 (“OPA 352”), (Downtown Tall Buildings Site and Area Specific Policy No. 517 (“SASP 517”))

[62] OPA 352, which introduced Site and Area Specific Policy 517 (“SASP 517”) was adopted in November 2016, but is not yet in force. It would apply to the Downtown area, including the subject one. The Council also enacted amendments to ZBLs 438-86 and 569-2013 regarding tall building setbacks in the “Toronto Downtown” area, in order to implement OPA 352.

[63] The purpose of SASP 517 is to provide direction for Downtown tall building development, providing setbacks from the face of a tower to adjacent lot lines, and adequate separation distance between towers. These would generally achieve a comfortable public realm, access to sunlight on public land, natural light and privacy for

those in tall buildings, sky views between towers from adjacent streets, parks and open spaces, and limited wind conditions on streets, parks, open spaces and surrounding properties.

[64] These policies do not apply here, as they are not in force. Mr. Kasprzak considered them in any event, as the proposal does in fact address them. SASP 517 states that sites that cannot achieve the intent of the setback policies are not considered suitable for tall buildings. As heights increase, greater lot line setbacks may be required. Base heights should reinforce a pedestrian scale, and respect the existing and planned streetwall context of the block. Bases may also require a setback at grade for good street proportion, and access to sunlight on sidewalks, parks and open spaces. Wider sidewalks and streetscape elements may be needed.

Official Plan Amendment No. 406 (“OPA 406”) (Downtown Secondary Plan)

[65] OPA 406 was approved, as modified, in June 2019. This created a new Downtown Secondary Plan (the “Downtown Plan”), and associated amendments to Section 2.2.1 and Map 6 of the OP (Ex. 3, Tab 7). However, the Downtown Plan does not apply to this application as it was deemed complete prior to its enactment (it is thus, exempt by Policy 1.9). However the OPA, especially Policies 1.6 and 9.18, forms part of the planned context, for which he feels the development has appropriate regard.

[66] The Downtown Plan states that a Secondary Plan or a SASP within its boundaries, will take precedence over the policies and maps of the Downtown Plan where they conflict (Policy 1.6). Thus Policy 9.18, setting out hours for limits to net-new shadow, does not apply. This is so even though BHP is identified there as a Sun Protected Park, included in an existing SASP (SASP 382). However, Mr. Kasprzak opined that the development proposal has appropriate regard for the Downtown Plan parks and public realm policies, particularly Policies 7.3 and Section 9 (“Built Form”).

Tall Building Design Guidelines (“TBDG”) and Downtown Tall Buildings Vision and Supplementary Guidelines

[67] Back in 2013, Council adopted Tall Building Design Guidelines (“TBDG”) (Ex. 3, Tab 13). This consolidated all Downtown Guidelines with city-wide applicability. Guidelines for specific locations (particularly the Downtown Vision and Tall Building Typologies) still remain in effect, in a companion document “Downtown Tall Buildings Vision and Supplementary Design Guidelines” (“DTBSG” or “Supplementary Design Guidelines”) (“SDG”) - Ex. 3, Tab 12). Thus, the city-wide TBDG apply, along with these Supplementary Design Guidelines, in the evaluation of all tall building proposals within the Downtown study area boundary.

[68] The TBDG notes that they are “intended to provide a degree of certainty and clarity of common interpretation, however, as guidelines, they should also be afforded some flexibility in application, particularly when looked at cumulatively”. Furthermore, s. 5.3.2(1) of the City OP provides that, while guidelines express Council policy, they are not part of the OP unless the OP has been amended to include them. Nor do they have the status of policies in an OP adopted under the *Planning Act*.

[69] The TBDG encourage a building form of a slender tower above a lower podium base. (Tribunal note: This appears to be in reaction to the “tower in the park”, slab structures of the past.) There are guiding principles relating to site context, design (including base, middle and tower top) and the pedestrian realm. The TBDG recommend that tower floor plates be limited to 750 sq m, and that the setbacks from side and rear property lines be 12.5 m, or a separation distance of 25 m between towers on the same site. In Mr. Kasprzak’s opinion, the proposed tower floor plate of 825 and 890 sq m meets the intent of the City’s TBDG. While the proposed floor plate modestly exceeds the recommended values, the proposed increase is marginal and is compensated through the design of the facades, use of lighter materiality, and a well-articulated floor plate. Mr. Kasprzak is aware of many tower floorplates which exceed the 750 sq m of the guideline, and so it is a not hard limit.

[70] For the proposed tower, he testified, the 5.5 to 7.5 m tower setback from the approved structure to the north (72 Church) is indeed less than the 12.5 m recommendation in the TBDG. However, the distance to the existing tall building at 41 Dundonald is approximately 20 m diagonally. In his opinion this is sufficient, as the two do not face each other or have any parallel walls. The intended effect of s. 3.2.3(f) of the TBDG is maintained. Setbacks to the 12-storey mid-rise building to the north are appropriate, since the built form relationship is one between a tall and a mid-rise building, and not two towers as contemplated in the TBDG.

[71] The Supplementary Design Guidelines (Tab 12) identify “High Streets”, where tall buildings should be located, and also set out height ranges and built form typology. Wellesley Street from west of Bay Street to Jarvis Street, is identified as a “High Street”, suitable for tower and base buildings of 20 to 35 storeys (62 to 107 metres). The proposed tower would be 36 storeys, not including the mechanicals.

[72] Section 1.3 of these DTBSG identifies three “mitigating factors”, which take precedence over height assigned to High Streets. These factors seek to minimize potential negative impacts with respect to:

- heritage properties on or adjacent to the development site;
- sunlight on parks and open spaces; and
- views of prominent and heritage properties, structures and landscapes.

[73] Section 3.2 would restrict new shadowing on “**Signature Parks/Open Spaces**” on September 21, between 10 a.m. and 2 p.m., and for other parks a lesser time of 12 (noon) and 2 p.m. is referenced. Thus new development should locate and design tall buildings so as to cast no new net shadows on other parks in these hours. BHP is **not** identified in the DTBSG SDG as a “Signature Park”. Therefore the lesser times of 12 noon and 2 should be considered. He is satisfied that this standard is met.

North Downtown Yonge Urban Design Guidelines (“NDY – UDG”)

[74] Also, having specific application here are the NDY – UDG. These were prepared to accompany SASP 382. Thus they have special relevance here. The Tribunal sets these out in detail as it is clear that the Appellant paid careful attention to them in its redesign of the proposed development. The NDY – UDG seek to achieve many objectives, including:

- conserving and maintaining existing heritage buildings and heritage characteristics;
- maintaining and enhancing priority retail with narrow street frontages;
- protecting and reinforcing the human-scaled and pedestrian-oriented main streets - scale of shops and buildings fronting onto these areas;
- enhancing streetscape design, tree planting, street furniture, pavement treatment and well-designed sidewalks;
- enhancing and encouraging active uses at grade;
- representing the area with a distinct identity - high-quality gateways and entry points, while respecting heritage properties;
- encouraging the redevelopment of underutilized sites when appropriate; and,
- providing appropriate transition from tall buildings to lower-rise areas.

[75] As mentioned, by Map 1 of SASP 382 (Ex. 3, Tab 8), the subject site is located within two Character Areas: CSVCA and WWCA.

[76] For the CSVCA, the Guidelines note that Church Street does not have a height designation in the TBDG due to “its high concentration of heritage properties and the surrounding context”. Thus, the heritage and built form characteristics there should be **“enforced by new small scale and mid-rise developments”** (emphasis added by the Tribunal). Potential low-rise and mid-rise developments within the CSVCA are to conform to specific design directions, including the following:

- materials used in the façade of new low-rise developments or the base of mid-rise buildings will conform to the prevailing materials of adjacent existing heritage buildings;
- mid-rise buildings will have strategic step backs from the base buildings to maintain the existing pedestrian scale and create architectural interest;
- base buildings should be no less than three storeys and no taller than four storeys to reinforce the prevailing low-rise main street character;
- building frontages facing onto Church Street should create a continuous streetwall;
- new developments along Church should have a setback from the property line to allow for enhanced streetscape design and wider sidewalks;
- active uses at-grade and above-grade, cafes, patios and spill-out zones strongly encouraged to enhance the character area; and,
- the scale of retail uses and articulation of shop fronts, should be consistent with the prevailing scale and character of retail shops.

[77] For the WWCA, the NDY-UDG recognize that this Character Area contains mostly mid-rise and “tower in the park” style apartment buildings, with slab style floor plates. Properties here are within walking distance of the Yonge subway line and,

accordingly, may have the potential for infill development. The Guidelines suggest that future infill developments here should:

- Protect the low-rise built form, heritage buildings and pedestrian scale;
- Maintain the open space network, by identifying sites that can complement and enhance the existing public open spaces;
- Create a height transition from Yonge Street to the mid-rise built form along Church Street;
- Provide a compatible relationship to the street right-of-way, immediate context, existing heritage buildings, nearby parks and open spaces and *Neighbourhoods*;
- Provide strong street edges along the streetscape with tree planting, minimum paved sidewalk and conform to the City of Toronto Streetscape Manual; and,
- Minimize shadow impacts on designated *Neighbourhoods* such as the Gloucester/Dundonald Character Area to the north.

[78] Section 5.0 of the NDY-UDG also sets out general design guidelines that will apply to all types of built form in the North Downtown Yonge area. Specifically, all new developments will:

- be consistent with the existing heritage value, attributes and character of adjacent or nearby properties;
- have clear entrances facing the street;

- have a gradual transition in height from low-rise buildings to tall buildings; and
- minimize shadow impact.

[79] Tall buildings will: have a base no less than three storeys (10.5 m) and no taller than 80% of the street right-of-way width; conform to the height of adjacent low-rise buildings; and have permeable materials in their facade to create animated frontages. Towers of tall buildings are to: be slender to minimize adverse shadow impact on residential *Neighbourhoods* and open spaces and streets; have a floor plate area less than 750 sq m (similar to the policies in the TBDG), otherwise, they should be highly articulated. They should be placed a minimum of 12.5 m away from adjacent property lines, and 20 m away from abutting low-rise buildings.

[80] These NDY- UDG identify both Church Street and Wellesley Street East as “Urban Streets”. These generally have larger buildings that reflect the functional importance of the street.

[81] The four corners at the intersection of Wellesley and Church are identified as a “Gateway” in the NDY - UDG. They are an opportunity to mark the entry into the CSVCA, and may be accentuated through distinct architectural design and use of special materials and façade treatment. The proposal meets this goal, in Mr. Kasprzak’s opinion.

[82] With respect to shadow-sensitive areas, the NDY- UDG states that parks, residential areas and the public realm must be protected from “undue overshadowing” by new development. Applicants for a height above the existing context must provide drawings showing shadows cast by the proposal on publicly accessible areas and on buildings surrounding it. For these Guidelines, shadowing should be shown for March 21st, June 21st, September 21st and December 21st, for each hour between 9:18 AM and 4:18 p.m. No specific mention is made here of shadowing on BHP.

Summary – Urban Design – Mr. Kasprzak

[83] In his opinion, the proposed redevelopment is appropriate and desirable and should be approved. From an urban design perspective, it will improve an underutilized site located centrally within the Village, and contribute to the vitality and revitalization of Church Street. The site is an appropriate location for residential intensification, and the proposal is compatible with the existing and planned built form context. It is a creative response to massing, built form, height, setbacks and materiality, on a site with a varied built form context, along two important street frontages within the Downtown.

[84] In Mr. Kasprzak's opinion, the development conforms with the applicable urban design policies of the OP, in particular those for built form (s. 3.1.2) and tall buildings (s. 3.1.3). The proposal maintains the intent of and is generally in keeping with the TBDG and the DTBSG (Ex. 4, Tabs 12, 13 and 14), with appropriate regard for other urban design guidelines.

[85] With respect to height, the 36-storey tower fits within the general pattern in the context, including existing and approved towers along Wellesley East. These now include the 28-storey tower at 81 Wellesley East, across Church but close to Church itself. Its 36 storeys is only slightly taller than recommended in the DTBSG (of 35 storeys - Ex. 4, Tab 12). This earlier height vision has been superseded by nearby built forms, he argued. In the immediate area and indeed throughout the Downtown, recently built and approved buildings exceed this vision, while still meeting the objectives and intent of the OP and the TBDG.

[86] With respect to shadow impacts, his opinion is the same as that in the February 2020 Addendum Letter (Ex. 1, Tab 4, Attachment E). The incremental shadow impacts on the neighbouring public areas (including BHP) are "adequately limited", as shown by both the Contextual Shadow Study by Bousfields (Ex. 12) and the Detailed Shadow Study by R. Bouwmeester & Associates (see below). The Bousfields Study for the larger area demonstrates that shadows on the low-rise *Neighbourhoods* nearby would continue to be minor at the spring and fall equinoxes, and nonexistent at the summer

solstice. There is a similar result for all nearby parks, including the Paul Kane Parkette, given the urban context and proximity of other tall buildings.

[87] The Bouwmeester Study analyzed the shadow impacts on BHP specifically, and demonstrates that there are no undue impacts on the utility of the Park. Even the latest policy document for this Urban Growth Centre, the Downtown Plan (although not applicable to the project), directs that development will “**adequately limit**” net-new shadow within the specified hours. It provides no such test as “no new net shadow”, which is found only in Policy 5.7.3 of SASP 382.

[88] Mr. Kasprzak stressed again that Policy 5.7.3 applies **only to the CSVCA area**, and in his opinion, does not apply to the proposed tower, which is located in the WWCA alone. Again, BHP is not identified as a Signature Park in the DTBSG. Thus the appropriate test of “adequately limiting” shadow there is limited in time to noon and two hours after noon. In his opinion, the Guideline is mainly satisfied for these two hours on September 21. Shadows occur only towards the end of this period, and affect only a small area of the park. He stated that although by Policy 1.6 of the Downtown Plan, SASPs take precedence over it, evaluation of shadow impacts should be informed by the most current policy direction. Recourse to the Downtown Plan test to “adequately limit” shadows is required (rather than that of “no new net shadow”), since this policy in SASP 382 does not apply to the WWCA where the tower is situated. Further, the recommendations from the TBDG are not policy but rather guidance, for which this development has appropriate regard.

[89] Within the foregoing policy context, it is his opinion that shadow impacts on BHP and the surrounding context are “adequately limited.” Incremental shadows have been minimized due to the orientation and design of the tower, and its location at the west of the site. These would not adversely affect the utility of the park. In his opinion, the shadow analysis by Mr. Bouwmeester demonstrates that the incremental shadows created by the 36-storey tower will satisfy the policy tests. Extra shadow occurs only toward the end of the relevant period, and affects only a small area of the park at any

time. Similarly, any incremental shadows created by the mid-rise component on Church will also satisfy the “adequately limit” test.

[90] He opined that the proposal also maintains the intent of the NDY UDG with respect to a “Gateway Treatment” at the intersection. As well, along Church the setback of retail at grade increases towards the Church-Wellesley intersection. The design incorporates a pedestrian mews, further complementing the public realm at the intersection.

[91] In terms of base height, the podium is appropriately scaled. It incorporates the existing heritage structure into the base along Wellesley East, and at the same height. Along Church the base building forms a streetwall that steps back above Level 5 to maintain the angular plane, as outlined in SASP 382. The proposal also conforms with Policy 5.7.4 of SASP 382 (Ex. 2, Vol. 1, Tab 8) regarding minimum store fronts along Church.

[92] It should be noted that the pocket of *Neighbourhoods* to the north here is characterized by rear yards that are often paved, and include parking. The proposed siting, size and articulation of the tower floorplate ensure that there is adequate access to skyview and sunlight.

[93] Therefore, in Mr. Kasprzak’s opinion, the proposed OPA and rezoning are appropriate and desirable in planning and urban design terms, and should be approved. The development represents a valid response to its location within the City’s Downtown, a designated Growth Centre in proximity to a subway station, and within an area identified for intensification.

[94] More generally, the proposal will make a positive contribution to the North Downtown Yonge area, he said, providing an opportunity to achieve residential/mixed-use intensification on an underutilized site. It distributes density across the site so that the tower element is within the WWCA and is outside of the CSVCA. This approach

complements the pattern of tall buildings along Wellesley East, and reinforces the existing and planned context of low- to mid-rise buildings along Church Street.

Evidence of Peter Smith

[95] Additional evidence for the Applicant/Appellant was provided by Mr. Peter Smith, a consulting land use planner and partner with Bousfields Inc., with over 40 years' experience in a wide variety of planning matters. The list of downtown developments he has been involved with is extensive and impressive.

[96] Mr. Smith was retained by the present Appellant WAM Montez C and W Inc. (the "Owner") for land use planning and urban design advice for the proposal. The initial application for 43 storeys and density of 18.0 Floor Space Index ("FSI") was filed in 2017. Through various external factors, the initial applications were refused. Resubmission No. 3 was filed in September 2020. This proposed a height of 36 storeys, and a density of 11.8 FSI (the "revised plans").

[97] Mr. Smith pointed to other revisions. The shift in the tower location would require demolition of the rental units in the recently acquired heritage building at 64 Wellesley East, now to be replaced within the tower. Portions of the heritage structure would be reconstructed at the west side of the site, and form the tower base.

[98] The public lane in the middle of the site, now named Dapper Lane, is about 2.12 - 2.44 m wide. It was excluded from the plans, since the City opposed its closure. Thus, two components to the new structure were planned: a midrise to the east of the lane, and a 36-storey tower to the west of it. The tower would be entirely within the WWCA. Plans are to widen the area beside the public lane to provide 2 m of sidewalk. A public mews would carry pedestrians through to the east, to emerge onto Church Street. Stepbacks and setbacks for the project are set out in Ex. 1, Tab 4, Attachment E, pp. 4 and 5.

[99] The proposal conforms to the land use policies of the *AN* and *MUA* designations, applying to the west (*AN*) and east (*MUA*) portions of the site, Mr. Smith testified. Amendments to SASP 382 are needed to permit a tall building on the westerly portion of the site within the WWCA. Also required is an OPA for minor penetrations into the angular plane by balcony guards in the mid-rise on Church Street, within the CSVCA.

[100] From an urban design perspective, Mr. Smith's opinion is that the proposal is an appropriate response to the two Character Areas, as it is located on either side of their boundary. He stressed that this site is at an important crossroad, two streets with very different existing and planned contexts. It is, as stated, within a designated Urban Growth Centre, in proximity to a subway station. The building height would fit harmoniously within the range of existing and approved building heights in this portion of the Downtown, where there are many tall buildings of up to 62 storeys. Mr. Smith emphasized the other tall buildings along the north side of Wellesley East, west of Paul Kane Parkette, as set out by Mr. Kasprzak.

[101] The incremental shadow impacts on BHP are adequately limited, and would not adversely affect the utility of the park. He repeated that the "no new net shadow" test in Policy 5.7.3 of SASP 382 does not apply to the tower location and massing within the WWCA, but only to the mid-rise portion of the proposed development along Church in the CSVCA. For this mid-rise, the shadow analysis by Mr. Bouwmeester (below) demonstrates that the incremental shadows (if any) will satisfy the "no new net shadow" policy test.

[102] Mr. Smith added details about some of the six properties forming the site:

- a) 66 Wellesley Street East, a four-storey building constructed in the late 1880s, has modern modifications, with a mural created for the 2014 World Pride celebration. This is not seen from the street, and is beginning to deteriorate.

- b) 552-554 Church is a three and a half storey building with a one-storey addition on Wellesley. Three murals here were also created as part of 2014 World Pride celebration, and are also in various states of disrepair.
- c) 556 to 568 Church are two-storey commercial buildings with street-related retail and community uses and offices above.
- d) Approval was granted in 2019 for the redevelopment of 572 Church to the north, for a 12-storey, mixed-use building stepping back from four storeys to 12 at the western end. Minor penetrations into the Church Street angular plane were permitted there for parapets, railings and dividers on all floors.

[103] Mr. Smith elaborated on much of Mr. Kasprzak's testimony. Respecting the importance of the Church Street Village area, he described the intersection of Church and Wellesley as the "heart" of the Village, the focal point for Toronto's LGBTQ2S community. It has evolved as a place of activism, refuge and celebration.

[104] The core of the Village is the six blocks of Church between Wood Street to the south and Isabella Street to the north. It is home to a broad range of cultural, retail, commercial, institutional and residential uses, reflecting the diversity and ongoing evolution of the neighbourhood. It consists of two- to five-storey buildings, varying widely in built form, period, architectural style and physical condition. Taller buildings are located behind the Church corridor between Isabella Street to the north and Alexander Street to the south. He also noted significant growth and change in the area beyond Church Street itself, including a general pattern of increasingly tall buildings towards the intersection of Yonge and Bloor.

[105] As mentioned, opposite the site on the east side of Church Street is The 519 Centre, an agency of the City. It was opened in 1975 to build healthier and more welcoming communities for LGBTQ residents in the Downtown. This designated heritage building (the Granite Curling Club, 1906) has a modern addition on the south

side. It is surrounded to the north and east by BHP, formerly Cawthra Square, renovated in 2014.

[106] The subject site also has excellent access to public transit. About 160 m west is the Wellesley subway station and 670 m north of it is the south entrance to the Bloor-Yonge station. Route 94 (Wellesley Street) provides all-hour bus service adjacent to the site. For active transportation, Wellesley Street East is two lanes with separated bike lanes on either side, tying into existing bike lanes along Harbord Street (an east-west route extending from Shaw Street in the west, to Parliament Street in the east).

[107] Mr. Smith further described the revised proposal of September 2020.

[108] The height and massing strategy now places the tower entirely on Wellesley Street, in keeping with existing and planned tall buildings both east and west of Church Street. It would be separated from its Church Street frontage by the City-owned lane. He stated that the tower also fits within the broader urban structure of tall buildings set back from Church, but located immediately adjacent to it.

[109] The mid-rise element fronting on Church would fit with the existing and planned character of the Church Street Village area, and especially with the recently approved building at 572 Church Street, immediately to the north.

[110] He addressed the applicable provincial and municipal planning instruments, including the Provincial Policy Statement (“PPS”), the Growth Plan for the Greater Golden Horseshoe (“2020 GP”), the OP and especially OPA 183 (SASP 382), finding concurrence with all requirements therein.

[111] Mr. Smith emphasized, as did Mr. Kasprzak, that the portion of the site known as 64 Wellesley Street is located within the “Wellesley/Wood Character Area”. Map 1 (Character Areas) of OPA 183 and SASP 382 delineates the boundaries of the Character Areas by two lines only, that is, schematically, and not by one distinct line. In his opinion, it appears that the boundary between the WWCA and the CSVCA in fact

bisects the property to the east at 66 Wellesley Street East. Therefore, the tower portion of the building (No. 64) would fall entirely within the WWCA.

[112] This necessitates an OPA to introduce a site-specific amendment to Policy 5.6.1 in SASP 382 to permit the height proposed. This would prevail over this Policy, which limits redevelopment designated *Apartment Neighbourhoods* within the WWCA to “**sensitive low-rise infill**”. This Policy is inappropriate for this site, he testified, given the applicable Provincial policy context. This promotes transit-supportive intensification in strategic growth areas, including urban growth centres and major transit station areas. As well, it is at odds with the direction set out in the Downtown Tall Building Guidelines, which identify Wellesley Street East as a High Street with a height range of 20 to 35 storeys.

[113] Another OPA sought would allow the balcony railings on Church to penetrate beyond the angular plane within the CSVCA (as set out in Policy 5.7.2 of SASP 382).

[114] In his opinion, the proposed development otherwise conforms with the applicable policies in SASP 382, in particular Policies 5.6.2, 5.7.1, 5.7.3, 5.7.4, 5.7.5, 6A.1, 6.2.8, 6.3.6, 6.3.9 and 6.4.1 to 6.4.6.

[115] Respecting shadowing, he agrees with Mr. Kasprzak that the portion on Church Street would conform to Policy 5.7.3 of SASP 382, based on the shadow studies of Mr. Bouwmeester (below). [*Tribunal note*: This evidence is repeated here, because of its importance to the City and the objectors]. This mid-rise portion within the CSVCA would result in “no new net shadow” on the parkland within the 519 Church community hub for the six-hour period between 10 a.m. and 4 p.m., on March 21st and September 21st. He stressed, however, that Policy 5.7.3 does not apply to lands outside the CSVCA. It would not apply then to the tower portion within the WWCA. For the tower, shadow policies are found in Policies 6A.1 and 6.2.8 of SASP 382. These require only that development “**adequately limit**” or “**minimize**” shadows, to preserve or improve the utility of parks, functionally and qualitatively. These policies **do not prohibit new net**

shadow impact. In his opinion, the perceived shadow impact of the tower satisfies these tests in SASP 382.

[116] Furthermore, he stressed, Policy 5.7.3 clearly does not apply beyond the CSVCA. This cannot be explained away as a drafting error, as the City claims. It is found only in Section 5.7 of SASP 382, labelled as CSVCA. Policy 6.2.9, on the other hand, applies to all lands within the SASP 382 boundary. This states that it is the objective of Council that new development will not cast any new net shadow, for specified timeframes, on only **two specific parks**: (1) Opera Place Park; and (2) the “new public park identified on Map 2 and located between Wellesley Street West, St. Luke Lane, Breadalbane Street and Bay Street” (now known as Dr. Lillian McGregor Park). Had the City intended that BHP be subject to the test of “no new net shadow”, it would have been treated in the same manner, and included in the list in 6.2.9. It was not.

[117] Mr. Smith confirmed that that Official Plan Amendment No. 406 (“OPA 406”) (the “Downtown Secondary Plan” or “DSP”), does not apply to the subject application. The application was deemed complete as of October 20, 2017, and thus by Policy 1.9, the Secondary Plan does not apply to it. It does apply to the surrounding properties, however, and forms part of the planned context. In particular, the Church Street frontage here and lands north and south fronting on Church Street are designated *MUA3* in the Plan. This permits mid-rise buildings, with some low-rise and tall buildings based on compatibility.

[118] Even if is not subject to it, the owner draws support from the Plan’s policy direction as amended by the Minister. Policy 9.18 of the DSP requires that any development “adequately limit” net new shadows, as mentioned. BHP is identified as a Sun Protected Park on Map 41-13. However, this OPA 406 **had originally** provided that development “will not cast net new shadow”. That policy was modified by the Province to **delete** the no net new shadow test and replace it with the test of “**adequately limit**”. Mr. Smith again referred to the shadow studies of Mr. Bouwmeester to conclude that this test is met.

[119] Mr. Smith then reviewed the applicable provisions of City of Toronto Zoning By-law Nos. 438-86 and 569-2013, as amended. The requested rezoning would increase the permitted height and density, and revise other regulations such as parking requirements to accommodate the proposal.

[120] Mr. Smith addressed the provincial policy context. On matters of provincial interest in s. 2 of the *Planning Act*, his summary was that optimizing the use of land and infrastructure in a transit-supportive location, planned for residential intensification, responds directly to many of the matters of provincial interest. This optimization is achieved, he stated, by balancing conservation of a building of historical interest with a well-designed built form.

[121] Reading the 2020 GP as an integrated policy framework, this conforms with its overall direction to focus growth in “strategic growth areas”. Residential intensification on the site will result in population growth to contribute to achieving forecasts in the 2020 GP. The proposal conforms with Policy 2.2.1(4) for a complete community by including: a mix of land uses; a range and mix of housing options (including three-bedroom and rental replacement units); a more compact built form, and a vibrant public realm. It also conforms with Policy 4.2.7(1) because it conserves on-site cultural heritage.

[122] Mr. Smith disagreed with City witnesses who said that the proposal did not conform to the City’s OP, and is therefore not consistent with the PPS. He called this an inappropriate “reading up” of the requirement of OP consistency with the PPS. In his opinion, it meets this test of consistency with the PPS. It also conforms with the 2020 GP, especially concerning urban growth centres and transit station areas.

[123] On the many relevant policies in the City’s OP, Mr. Smith stated:

The proposal conforms with the policies related to Healthy Neighbourhoods in Section 2.3.1. Although *Apartment Neighbourhoods* are considered to be physically stable areas, the *AN* designations within the Downtown continue to experience significant growth. This development would respect and reinforce the existing physical character of buildings, streetscapes and open spaces in

the area. Policies 2.3.1(2), 2.3.1(3), and 5.7.5 are not applicable, since the site is well separated from the closest low-rise *Neighbourhoods* designations.

[124] Respecting OP built form policies, those for the public realm, heritage conservation, rental housing, and parks and open space are all met by the proposal. It conforms with the area-wide policies included in Section 6 of the SASP, including sun and shadow, park and open space, public realm and urban design policies. It also conforms with Policy 5.7.4 in SASP 382 respecting store frontage widths along Church Street.

[125] Regarding OPA 352 (not yet in force), which would ensure adequate separation between towers in the Downtown, the Downtown Tall Building Setbacks By-laws do specify minimum tower setbacks, including 12.5 m setbacks from side and rear lot lines. While the proposed tower would be set back 7.5 m from the north lot line and 4 m from the west lot line, it would have a separation distance of more than 25 m from the closest tower (meeting the goal of OPA 352). The 12-storey building to the north at 572 Church will be a mid-rise building, with a setback of 5 m adjacent to the site. Thus the intent of OPA 352 is maintained.

[126] He concluded that the OPAs sought are appropriate and desirable. They would permit a contextually appropriate design, responding both to existing and planned built form context, and to the policy directions promoting intensification on this site.

[127] He put it this way:

Given that this portion of the site has appropriate size and configuration to accommodate the location and massing of a tall building without unacceptable built form impacts, it would be contrary to principles of good planning, in particular the optimization of land and infrastructure, to restrict development on the site to a low-rise height. (Ex. 1, Tab 4).

Shadow Studies – Mr. Bouwmeester

[128] The Appellant provided shadow studies illustrating the impacts of the proposed tower, especially on BHP. These were prepared by Mr. Bouwmeester, a civil engineer with significant experience with shadow and noise analyses, and of sun position for collision reconstruction. He is also a registered Ontario Land Surveyor. The focus of his retainer, he testified, was to assess the degree of potential new shadowing on BHP and the 519 Centre.

[129] He highlighted the important factors in the assessment of these impacts:

- existing buildings;
- buildings approved but unbuilt;
- low sun angles;
- time of year; and,
- shadow length and duration (i.e. does it reach a given location, and how long does it affect it?).

He concluded that the predicted ground level shadows from the proposal through March 21st to September 21st, at 10:18 a.m. to 4:18 p.m. (hours set out in the Downtown Secondary Plan, even if not directly applicable), are minimal. In fact, on July 22, there was **no new net shadow anywhere on the park**, while in August, only minor ones on the roof of the 519 and into the dog park.

[130] Further, shadows cast by the proposed building would move quickly, and are minimized due to the orientation and slender design of the tower as well as its westerly location on the site. The duration of the shadows is another important measure. He found that for each of the park areas, shadowing met the reasonable cutoff time of **one hour at each test site**. “No new net shadow” refers to the full perimeter of the Park, not just at test points. The proposal easily met his test of 50% sun /50% shadow, as discussed below, and it created only one extra hour of shadow at each test point.

[131] The Shadow Studies in Ex. 10, pp. 32 to 37 were prepared by Bousfields Inc. Mr. Bouwmeester's Studies in Ex. 14 also included a Sunshade Area and Duration Analysis. This illustrates his test of a "Sun Access Factor", expressed in percentages. This showed his findings on additional shadowing as a percentage of the total shadows now present. He concluded that the existing shadows cover 15.1% of the Park, while additional shadows from the proposed building would cause only 18.2% of the Park to be covered in shadow at any time. These greater percentages were present only on March 21 and September 21. The Park is now 84.9% free of shadow, and the additional would only constitute 3% more, to 81.9% on the Sun Access Factor. Thus, the total additional shadowing would be well under the goal of 50% on the Sun Access Factor. This test, he said in cross-examination, is utilized by other municipalities.

[132] In response to Mr. Altman, he assessed that this percentage coverage would reach 81% only on the walkway area to the south of the 519, and only later in September. He stated that sun is more important in a public place in the shoulder months, and not in the summer. Some seek out shade instead in warmer months. Any shadowing on Paul Kane Parkette to the west of the site would continue to be from the existing heritage structure at 64 Wellesley, and not from the new tower.

[133] Trees are not included in shadow studies, Mr. Bouwmeester testified, because of their deciduous nature. In cross-examination, he was taken to a 2018 study, "TOcore, Building for Liveability", where in Access to Sunlight on Parks and Open Spaces (Ex. 1, p. 762), emphasis was placed on access to direct sunlight. Once a building is constructed that interferes with this goal, year-round access to this benefit is reduced. He reiterated that this Park, which the Downtown Plan shows as "Sun Protected Park" within a SASP (p. 381), would be subject to increased shadow only in certain seasons, and only for a few hours. This is an acceptable result. As mentioned, many seek shade in summer months as well. This is not a large park. There would be no new shadows from the tower over the Park from May 5 to August 7. He repeated that SASP 382, section 5.7.3, which forbids "new net shadow" on the park for six hours, 10 a.m. to 4 p.m. on March 21st and September 21st, does not apply to the tower in the WWCA.

CITY OF TORONTO

Urban Design – Mr. Luk

[134] The City's first witness was Joseph Luk, Master of Architecture, of the Urban Design Section, City Planning.

[135] He responded primarily to Mr. Kasprzak's opinions. He has had extensive experience with Guideline documents and in reviewing applications for tall buildings, including this one since its first submission in 2017.

[136] In sum, in Mr. Luk's professional opinion, the proposed development:

- does not conform with nor maintain the intent and purpose of the City's OP and SASP 382;
- does not respond appropriately to applicable urban design and built form guidelines; and
- does not represent good urban design.

Thus, he recommends that the Tribunal dismiss the appeals and refuse the applications.

[137] He covered in his evidence most of the same facts as the witnesses for the proponent, as did other City witnesses. Thus the Tribunal will, in general, set out only the points he made that add to them, or illustrate where they differ.

[138] The site is subject to two OP land use designations, *AN* and *MUA*, he emphasized. Each designation pertains to a specific part of the site, and they do not overlap. He also noted that the site "straddles" two "Character Areas", as identified in Map 1 of SASP 382. 64 Wellesley Street East is within the WWCA and the remainder of the site is within the CSVCA.

[139] To the north is 41 Dundonald Street, the Co-op, an 18-storey apartment building with surface parking on the south side (next to the Paul Kane Parkette). To the west of the subject site is this public park, located at 56-60 Wellesley East. The Paul Kane House in the Paul Kane Parkette also has a heritage designation.

[140] Mr. Luk pointed out that the predominant building types on both sides of Church Street between Isabella Street and Alexander Street are low-rise commercial, 'house form' commercial, low-rise residential apartments, and low-rise public buildings, such as the Church Street Junior Public School and the 519 Community Centre.

[141] On Wellesley Street East there is a mix of commercial and residential buildings: low-rise, mid-rise and tall. There are indeed taller buildings on the north side of Wellesley Street, but these are located closer to the Yonge Street corridor. He also noted taller buildings on Wellesley further to the east, closer to the intersection of Jarvis Street and Wellesley East, but these are located outside of the SASP 382 area.

[142] The intersection is especially important as the venue for the annual Pride celebration, the largest in North America. The 519 is a meeting place for numerous social and political groups, and became well known as a LGBTQ2+ friendly space. BHP has a variety of programming and uses. It also contains the large AIDS Memorial, where the names of those lost to AIDS are etched into bronze plaques. A memorial vigil is held here each year during Pride Week.

[143] He repeated that Church Street is characterized in planning documents as having a "main street feel", with an existing built form of about three storeys, usually retail at grade with apartments and offices above. Development here is intended to be low-scale, mid-rise buildings that maintain the existing pedestrian scale.

Built Form - The Proposed Development

[144] The built form and measurements of the proposed development were set out by the Appellant's witnesses. Mr. Luk opined that:

The third revised proposal is worse when compared to the previous proposals in areas such as: the reduction in tower separation distances to the north which creates poor access to light, skyview and privacy for this development and the approved building to the north; the increase in tower floor plate sizes which create additional visual bulk and built form impact to adjacent area; and a poorly considered public realm at grade especially the north-south vehicular access and pedestrian walkways.

Even though the third revised proposal has reduced the overall height of the building and provided some additional step backs on the north side of the base building, the overall proposal continues to be significantly larger than the planned built form for the area as outlined in various City policies....”

[145] Mr. Luk expressed his concerns with other urban design issues as: lack of downward transition in height to lower intensity areas; unacceptable shadow impact on BHP; overall lack of compatibility to surrounding context; and non-conformity with Official Plan policies, Secondary Plan policies, and other city policies and guidelines. He reviewed all of the Urban Design Policies and Guidelines set out above, and illustrated where he disagreed with the witnesses for the Appellant.

City OP

[146] The Public Realm policies of the OP speak to the importance of great streets, plazas, parks and public spaces, which draw people together and create social bonds at the neighbourhood level. These encourage design excellence, well designed streetscapes, and public spaces as community destinations and gathering spaces. Mr. Luk stressed that the Built Form policies emphasize the “fit” of developments within existing and/or planned contexts. Policies for massing and street proportion are explicit, and address tall buildings to ensure that they minimize impacts and ensure access to light, view, privacy, and open space.

[147] The Heathy Neighbourhoods’ policies speak to locations where growth is anticipated and intensification is appropriate. There are areas however, such as *AN*, where significant growth is not anticipated, even though a greater scale is permitted than in *Neighbourhoods*. Neither designation is intended to have significant growth, and these areas are considered stable. The MUA’s applicable to Church Street allow a variety of intensities. However, development on this site must reflect the context,

surroundings and the Secondary Plans. In Mr. Luk's opinion, the proposal is not consistent with the policies of the OP, as further discussed below.

Official Plan Amendment Nos. 479 and 480

[148] On September 11, 2020, the Minister approved Official Plan Amendments 479 and 480 ("OPA 479" and "OPA 480"), which amend the policies in Chapter 3 of the OP respecting Built Form and Public Realm. They have no transition policies, thus in his opinion (and in Ms. Leontine Major's – see below) these now **apply** to the proposal.

North Downtown Yonge - Site and Area Specific Policy (SASP 382)

[149] As mentioned, the development is subject to SASP 382. In Mr. Luk's opinion, the proposal is not consistent with, and fails to conform to the direction provided in SASP 382, as further discussed below.

Downtown Secondary Plan ("DSP")

[150] This DSP contained the transition policy referred to above, i.e. applications completed before the Plan were not subject to it. Given that this application was complete prior to June 5, 2019, this OPA 406 does not apply to it. However, Mr. Luk stated that it is important to consider this Plan for additional guidance on the planned context. He disagreed with the assumptions made by the Appellant that the Downtown Plan is not relevant.

Official Plan Amendment No. 352 ("OPA 352")

[151] OPA 352 and associated Zoning By-law Amendments ("ZBLA") were adopted by Council in 2016, but as mentioned, have not yet been approved by the Tribunal. These would provide a policy and regulatory framework to ensure appropriate separation distance between tall buildings. These build on the Design Guidelines for Tall Buildings and Downtown Tall Buildings, and also should be considered here.

North Downtown Yonge Urban Design Guidelines (NDY – UDG)

[152] These Guidelines support the implementation of SASP 382, providing guidance for appropriate built form and public spaces to respect the integrity of the surrounding context. In his opinion, the proposal is not consistent with the direction provided in the NDY-UDG, as discussed below.

Tall Building Design Guidelines (“TBDG”)

[153] The TBDG focus on how their design should be carried out to ensure that tall buildings “fit” within their existing and/or planned context. These should be read together with the OP. They define tall buildings as, "buildings with height that is greater than the width of the adjacent street right-of-way or the wider of two streets if located at an intersection" (Ex. 4, p. 474). The proposed building of 117.25 m to the top of roof is considered a tall building. The right-of-way width is only 20 m on both Wellesley Street East and Church Street. In his opinion, the proposal is not consistent with the intent of the TBDG.

Downtown Tall Buildings: Vision and Supplementary Design Guidelines (DTBSG)

[154] These are an evaluation tool to determine the appropriateness of tall buildings measured against guidelines for optimal siting and design, both enhancing the public realm and respecting the built environment. In his opinion, the proposal is not consistent with the intent of the Guidelines.

[155] Mr. Luk specified policies in all of the planning documents that he believed are contravened.

[156] Policy 6.4.6 of SASP 382 directs that tall buildings will not **generally** be permitted on:

- a) sites that have a planned context that does not contemplate tall buildings as a suitable form of development; or
- b) sites where development/redevelopment is not able to provide floor plate sizes, tower separation distances, step backs and setback distances that achieve the policies as set out in (this SASP). (emphasis added)

[157] In his opinion, the site does not have the planned context for tall buildings. In response to Policy 6.4.6 b), the proposal does not achieve the appropriate tower floor plate size, etc. that would be required to achieve the SASP policies. While modest infill may be appropriate, the type, scale, massing and form of development permitted is at a much lower and less intense scale. As one example, Downtown Plan Policy 9.15 directs a maximum 750 sq m of gross construction area. While in certain circumstances larger floorplates may be appropriate, in this case floor plate sizes of 890, then 825 sq m from the 21st to 36th floors, are not appropriate “given the significant impacts on adjacent properties and BHP.”

[158] Further to the AN policies in the OP, Policy 5.6.1 of SASP 382 provides additional direction for the WWCA.

[159] The only development/redevelopment permitted within the AN designated areas of this Character Area, will be **sensitive low-rise infill** that a) respects and reinforces the general physical character, pattern, scale, massing, setbacks of the area. Further, in s. 5.7’s explanatory text,

The Church Street Village Character Area is regarded as a stable area that should experience limited growth, both along Church Street and in the residential areas abutting and surrounding it.

Section 5.7.1 for the CSVCA explicitly states that,

The only development/redevelopment permitted within the *Mixed Use Areas*of this Character Area will be **sensitive low-scale infill** that: a) respects and reinforces the general physical character, pattern, scale, massing, and setbacks of this Character Area.

In his opinion, the proposed large Church Street frontage does not respect and reinforce the existing fine grain retail at grade, and the low-rise scale of development.

[160] His conclusion is that the proposal will result in the destabilization of the framework for SASP 382. Both Character Areas contemplate infill developments of a low-rise to mid-rise scale, to relate positively to the existing area context. The proposed tall building with a height of 117.25 m and a base of approximately 30 m are significantly taller and larger than buildings in the existing and planned context.

[161] Mr. Luk also objected to the proposed setbacks and step backs. He appeared to take particular exception to proposed setbacks from the new property on Church Street to the north. Similarly, he found that the massing of the tall building is inappropriate due to the insufficient tower setbacks. Lack of appropriate setbacks also results in floorplates between 825 - 890 sq m. These would create additional adverse effects on the area and the public realm, with larger areas of shadow, reduced sunlight and sky views.

[162] His opinion in sum is that, even in addition to the excessive height, other factors such as insufficient setback of the tower from the north property line, and large floorplate areas, means that the development, particularly the tall building portion, does not meet the planning requirements. It would not provide transition to lower-scale areas.

Parks – Ms. Bake

[163] Mr. Luk's evidence was added to by other City witnesses, first by Ms. Andrea Bake. She has a Masters of Forest Conservation degree and is a Project Manager with the Parks, Forestry and Recreation Division in the Parks Development and Capital Projects Division, Development Application Unit. She coordinates with Community Planning to ensure the City's interest in parkland is maintained and provides her professional opinion on park planning issues. In this matter, she focused on the impacts of the proposed shadows on BHP.

[164] In sum, in her opinion, the proposed development casts unacceptable shadows on BHP, and thus does not result in “no new net shadows”, contrary to City’s OP policies. She stressed that this is one of the few mid-sized parks in the downtown. None of the amenities here is available at any of the parkettes in the neighbourhood.

[165] During the spring and fall, the temperature difference in areas in shadow versus areas in sunlight is noticeable. In her opinion it is important to have access to sunlight during these colder shoulder seasons, to maintain or increase the usability of the park from a functional and qualitative perspective. The proposed extra shadows would reduce the utility of this park during these shoulder seasons.

[166] Ms. Bake further described the large AIDS Memorial and its significance here. It consists of two half circles, with a series of 14 triangular concrete pillars bearing stainless steel plaques. There is a triangular concrete pad in front of the columns, with plantings on each side and behind it. There are often flowers and notes inserted between the plaques and the concrete columns. There is also an intersecting path and plaza within these semi-circles. The AIDS memorial is the only one of its kind in the City, and it would be cast in shadow from the proposal, she concluded.

[167] The 519 Centre web portal provides the following information about the importance of the AIDS Memorial to BHP, the Church-Wellesley LGBTQ2+ community and the broader community:

The AIDS Memorial reflects a particular place and time. It is a physical monument in a park in a neighbourhood that was devastated by AIDS in the early years of the epidemic. The AIDS Memorial Advisory Committee, which carries on the work of the committee initially led by Michael Lynch, has decided that creating a virtual memorial on the internet would not be part of this particular project. The AIDS Memorial is managed by The 519...The AIDS Memorial is the site of the Annual AIDS Candlelight Vigil.

[168] Respecting the test in s. 5.7.3 of SASP 382 (above), Ms. Bake stated that it prohibited only *additional* shadow (i.e. “no *new* net shadow”). In the Interpretation section of SASP 382, applicable to the whole of the area, “new net shadow” means shadow “in excess of the shadow already cast on December 31, 2015 by existing and

approved buildings and structures as well as buildings and structures permitted on December 31, 2015 by the existing in-force Zoning By-law” (s. 6.6.3 of SASP 382, p. 380).

[169] She provided details of the shadows as of that date: At 10:18 a.m., approximately one third of the eastern portion of the park is shadowed by the existing building at 100 Wellesley Street East. This shadow moves off the Park by 12:18 p.m. and the Park remains sunlit, with only very minor shadows from structures at 80 and 88 Wellesley Street East until 2:18 p.m., and shadows from the 519 building itself until 4:18 p.m.

[170] Ms. Bake concluded that the AIDS Memorial, with current sunlight access all year, would be impacted by the proposed structure. The new shadow would not permit the park to remain a welcoming place, especially in shoulder seasons. There could also be fewer 'eyes on the park,' since there would be lower usage with increased cold, and possibly then decreased safety. Additional shadows would therefore reduce the Park's usability.

[171] Having evaluated the Appellant's shadow studies, she concluded that provincial policies have not been met (as required by s. 2 of the *Planning Act*), since the proposal has a negative impact on the park. She based this on a finding that the applicable test for this park was found in SASP 382, s. 5.7.3, that is, “no new net shadow” for the six-hour period therein.

[172] Considering the PPS and Growth Plans' encouragement of vibrant public park spaces, she concluded that the reductions she sees are not consistent with, nor conform to the policies therein. BHP would be less vibrant with the proposed shadowing, as the public space would become much colder in the shoulder seasons. This would result in the park being used less by the public, when people seek out the sun's warmth to lengthen their time outdoors.

[173] The OP's requirements are also not met. Chapter 3.1.2 (Built Form), Policies 3 e) and 3 f) stated, (prior to OPA 480 mentioned by Mr. Luk) that new development should limit its impact on neighbouring streets, parks, open spaces and properties by:

- e) adequately limiting any resulting shadowing of, and uncomfortable wind conditions on, neighbouring...open spaces, having regard for the varied nature of such areas; and
- f) minimizing any additional shadowing and uncomfortable wind conditions on neighbouring parks as necessary to preserve their utility."

[174] In her opinion, the substance of these policies remains even following OPA 480. Policy 3.4.1 of the OP requires development to be environmentally friendly, including preserving and enhancing the urban forest. The policy to provide suitable growing environments for trees is not met here, as the proposal would adversely affect existing trees. Trees require access to sunlight from March to November to ensure proper growth, unless the tree species is specifically selected to endure shaded conditions. The trees within BHP have grown in and are conditioned to significant amounts of sunlight year round. Changing these conditions to a "significantly shadowed" environment during the shoulder seasons may have a detrimental effect on the health of the trees.

[175] Ms. Bake takes support from Chapter 9, Built Form of the Downtown Plan under the subheading '*Creating a Comfortable Microclimate*'. This states that access to sunlight is especially important in the shoulder seasons, when radiation from the sun can compensate for cooler air temperatures and promote the use of parks. Thermal comfort in the public realm where people gather is crucial to promoting the livability and utility of these spaces. Access to sunlight supports pedestrian activity and other active transportation modes, and extends the seasonal period of comfortable conditions, particularly in the spring and fall. She concluded that the proposed development would increase the shadowing of BHP appreciably, and therefore it does not maintain the intent of the Downtown Plan.

[176] She concluded that the shadows would affect every amenity in the park during the afternoons in the shoulder seasons, which would deter people from using the amenities or hosting events within the space. Parks in the area with similar amenities are a significant distance away, more than a ten-minute walk, and involve crossing major intersections, a deterrence for persons with children.

[177] Her general conclusion is that additional shadowing on BHP from the development impacts the current vegetation in the park and its existing amenities, making the park less desirable to users. This is not consistent with and fails to conform to the relevant provincial and municipal policies for parks planning matters. This is also true of morning shadows on Paul Kane Parkette and James Canning Gardens to the west.

Urban Forestry – Mr. Graham

[178] Ms. Bake's evidence was supported and supplemented by that of Drew Graham, Acting Planner in Urban Forestry – Tree Protection and Plan Review. He has a Master of Landscape Architecture and a PhD. in Applied Life Sciences. His department enforces the Street Tree and Private Tree By-laws [Municipal Code Chapter 813 – Trees – Articles II (Trees on City Streets) and III (Private Tree Protection)], as well as the Parks By-law (Municipal Code Chapter 608 – Parks – Article VII (Trees)). This involves assessing trees in the field, including species, size, health/structural condition, and valuation.

[179] Mr. Graham addressed especially the effect of the proposal on the seven existing trees to the west of the 64 Wellesley Street parcel, within the Paul Kane House Parkette (Littleleaf lindens, about 40-50 years old). These are located in parkland in the public trust. Their significance is found in a combination of their species, age, size, healthy condition, and that they form a dense row. They collectively provide social, environmental, and economic health benefits that far exceed those of younger and smaller trees. This is also an area of the city that has below average canopy cover, and poor potential for planting more trees.

[180] Urban Forestry's comments to the Appellant in June 2020, authored by Mr. Graham, were expressed in this way:

Urban Forestry objects to the removal of healthy City-owned Trees - 675-680 and these trees must be preserved (some minor injuries to the trees may be acceptable). All applicable plans and Arborist Report must be revised to maintain the west foundation and façade of the building at 64 Wellesley Street East intact and to avoid all forms of site disturbance east of the west foundation and façade. Revisions to the plans of most/all disciplines will be required.

[181] In his evidence, he also recommended that to protect this row of healthy City-owned trees, the development should retain *in situ* the existing below-grade foundation of the west façade of the heritage building at 64 Wellesley Street East. The proposal is to demolish this, and to reconstruct the heritage façade as part of the new structure. In his opinion it is likely that any construction between existing structures and the City trees would lead to significant damage or their death.

[182] Mr. Graham had reviewed the Appellant's Arborist Report, Tree Preservation Plan, Landscape Plans, and the most recent Architectural Plans, dated Aug. 31, 2020. From the City's Tree Protection Policy and Specifications for Construction Near Trees, he explained that most of a tree's roots are found in the upper 30-60 cm of soil, and the root system can extend up to 2-3 times the spread of the crown. Roots are critical for many functions of a tree's life, even for communication with adjacent trees through root-to-root connections. Any root cutting from excavation, and soil compaction from heavy equipment and storage, are two main causes of root damage. This can significantly impact tree health and stability, and result in a tree's premature decline and/or death.

[183] There is a concrete walkway to the west of and parallel to the row of trees, a sidewalk and retaining wall to the south, and a surface parking lot to the north. All these together will likely already have restricted the root growth of these trees. Thus there may be "compensatory" root growth toward the east, into the space between the seven trees and the existing building at 64 Wellesley Street East. Mr. Graham is very concerned that, given existing construction methods, equipment such as a drill rig for supports for shoring would be required. This can be up to 1.0 m wide. Similar large

equipment within the root zone between the trees and the façade and foundation of 64 Wellesley Street:

....will compact the soil and damage the underlying tree roots. Further, the shoring and excavation will require the complete removal of all tree roots and soil within the shoring footprint and to the east of the shoring. To my knowledge, I am not aware of a method that could be used to construct an underground parking structure underneath the root zone of an existing tree while keeping the roots intact and unharmed.

[184] Mr. Graham also saw potential damage from a heavy-duty scaffold, which stabilizes the existing structure during construction. This would in his view extend several metres beyond the western limit of the subject site in the southwest corner, into Paul Kane House Parkette and close to the subject trees. Should they be injured or destroyed, the community would lose benefits for many decades to come. This renders the trees “irreplaceable”. A new tree planted today would not catch up in the foreseeable future. As mentioned, this area of the City already has a below-average tree cover, with less space for growth of the urban canopy.

[185] He reviewed all references in the planning documents to the importance of maintaining and enhancing the natural environment, and the value of trees generally. His final conclusion was that conventional construction practices will “catastrophically impact the root systems of the subject trees, directly resulting in their premature decline and removal.”, contrary to OP policies such as revised s. 3.1.2 of the Built Form section:

preserving existing mature trees wherever possible and incorporating them into the development site; ...

[186] The City had provided the Appellant with alternate measures to save the trees as early as June 2018. These design criteria would allow the subject trees to continue to survive well.

[187] Mr. Graham also agreed with Ms. Bake about the additional shadow effect on the trees in BHP, planted in the 1940s or 1950s. They require sunlight from March to November to ensure their proper growth, as they had not been selected to endure shadowed or shaded conditions. Given their age, he agrees that they have been

extensively conditioned to the sunlight they now receive year-round. When these conditions change dramatically, as proposed, there may be a detrimental effect on the health of the trees and their longevity.

Planning Context – Ms. Major

[188] Further evidence of the planning context was provided by Leontine Major. She is a very well qualified and experienced Senior Planner, with the Planning Division since 1988, primarily in Community Planning.

[189] Her general conclusion was that, contrary to the Appellant's witnesses, the development does not fit within the character or the existing and planned context of the area. Where there is a conflict, the planned context prevails. This proposal fails to adhere to the *AN and MUA* designations, as further addressed in SASP 382. The proposed form, height, mass, scale and density of the building, particularly the 36-storey tower component, are not a "fit". The proposal fails to provide appropriate built form relationships to adjacent properties and park areas, and does not transition appropriately to adjacent Character Areas in SASP 382.

[190] Ms. Major also found lack of compliance with provincial and other planning policies. In her opinion, the proposed development is not consistent with the PPS 2020, lacks conformity with the Growth Plan and does not conform to general policies in the OP. Further, the amendments proposed to the OP, in particular to SASP 382, are not consistent with its general intent, and are contrary to the *AN* policies in both of them.

[191] The Tribunal will highlight only the areas where it seems that Ms. Major added to the evidence of the previous City witnesses.

[192] Respecting Church Street's *MUA* designation, she noted that development there is subject to many development criteria, including to:

- locate and mass new buildings to provide a transition between areas of different development, intensity and scale;
- provide appropriate setbacks and/or stepping down of heights, particularly, towards lower scale *Neighbourhoods*;
- provide good site access and circulation, and an adequate supply of parking for residents and visitors; and
- locate and screen service areas, ramps and garbage storage to minimize the impact on adjacent streets and residences.

[193] She outlined the changes made to the City-owned lane, now Dapper Lane, when the last resubmission was made in August 2020. It would now be widened to City standards. However, she stated that the below-grade parking encroaches under some of the lane, and a portion of the building cantilevers over the lane. Mr. Luk had objected to this treatment as well. Both mentioned that the lane with walkways is too narrow for safety. It would create an uncomfortable pedestrian environment, Ms. Major opined. The nine-storey portion of the building requires revisions to eliminate this cantilever over the lane.

[194] Even absent this revision, in her opinion the nine-storey building form on Church is not appropriate. Her main objections can be summarized as the significant impacts to the surrounding neighbourhood, as well as the “potential unravelling of the in-force policy framework of SASP 382.”

[195] She emphasized that SASP 382 contained policies both specific to the identified Character Areas, and also applying to the entire area. The CSVCA is to be a stable area, having a village atmosphere with low- to mid-rise buildings and street-related retail. It is expected to experience limited growth. It is designated *Mixed Use Area 3 – Main Street*. Policy 6.28 of the Downtown Plan states: "Development in *Mixed Use Areas 3* will be in the form of mid-rise buildings, with some low-rise and tall buildings

permitted based on compatibility." No tall buildings are permitted here unless the test of compatibility is met. In her opinion, a tall building is not compatible with the character of the CSVCA, given its existing physical character.

[196] Ms. Major conceded that this application was complete prior to the Downtown Plan, so that this Plan does not apply to it. However, in her opinion, it is important to consider it for additional guidance in analyzing the proposed development and its impact. Even Policy 6.4.6 in the Urban Design section of SASP 382 directs that tall buildings will not generally be permitted on sites that have a planned context that does not contemplate them. Policy 9.24 of the Downtown Plan requires development to provide transition in scale to achieve built form compatibility, if adjacent to lands with a planned context that does not anticipate tall buildings, including *Mixed Use Areas 3*. Both the Downtown Plan and SASP 382 recognize that areas and sites designated as *Mixed Use Areas* have varied characteristics and constraints. Thus the anticipated scale and intensity of development will vary based on the local context. Further, "areas where the existing and planned context is low in scale require a modest and measured approach to intensification."

[197] Ms. Major also emphasized the applicable zoning provisions for this site (Ex. 1, Tab 4, paras. 87-89). The two parts of the property have different size permissions under the applicable By-laws. Under By-law No. 438-86, the properties at 66 Wellesley Street East may have a mix of commercial and residential uses, and a maximum height of 18 m with a base height at the lot line of 6 m. The maximum permitted density is 3 times the lot area. Non-residential GFA may not exceed 1.7 times the lot area, but this may be exceeded by 0.3 times if used for street-related retail and service uses. The heritage property at 64 Wellesley East at the west end of the site, by way of contrast, is zoned for mainly residential uses, with density of 2.5 times the lot area. Zoning provisions are similar under Zoning By-law No. 569-2013.

[198] The DNY - UDG provide that, given the existing low-rise context and the heritage properties in the area, new development should be low-scale, mid-rise buildings that adhere to design directions. These include step backs from the base building to

maintain pedestrian scale and architectural interest. The base building should be no less than three storeys and **no taller than four**, to reinforce the prevailing low-rise main street character.

[199] She testified that the Wellesley/Wood area, which is mostly mid-rise and "tower in the park" buildings with slab-style floor plates, is unique in its built form and open space configuration. This results in large separation distances from adjacent properties, and porosity through the block. These open spaces contribute to the quality of life for residents. Infill developments on these blocks should protect the low-rise built form, heritage buildings and pedestrian scale.

[200] Ms. Major's conclusion on required conformity with the Growth Plan is that, although there is a direction to accommodate intensification, this proposal is excessive for this location. Based on both the policy framework and the existing context of the WWCA and the CSVCA, the development proposes a height, scale, form, massing and density on this site that are not appropriate here. In addition, intensification is not required in order to meet the minimum growth targets in the Growth Plan, as the target is measured across the whole of the Downtown UDG. (See Ex. 12, Tab 4, para. 128). By Policy 5.2.4.6, these Schedule 3 forecasts cannot be applied on a site-specific basis as a reason for approving development proposals.

FINDINGS AND DECISION

OP and SASP 382 - Height

[201] Mr. Kasprzak concluded that the tower, presenting as a unified element, makes an appropriate contribution to the quality and character of the city skyline, especially in the context of nearby tall buildings along Wellesley Street East. Mr. Smith stated that this development will respect and reinforce the existing physical character of buildings, streetscapes and open space patterns in the area, as the OP Built Form policies require.

[202] From its conclusions on the issue of height on this specific site, the Tribunal must disagree with these opinions.

[203] The Tribunal agrees with Ms. Major that the City of Toronto OP requires care in siting new infill structures. Section 3.1.2, Built Form, states that most of the City's future development will be on infill and redevelopment sites. This means that it will need to fit in, respect and improve the character of the surrounding area. It also states that developments must be conceived not only in terms of the individual building site and program, but also in terms of how that site, building and facades “fit” within the existing and/or planned context of the neighbourhood (Ex. 12, Tab 4, para. 50). Each new building should effectively promote and achieve the overall objectives of the OP.

[204] Ms. Major acknowledged that the more recent Downtown Plan (“DP”) would not apply to this site for the purposes of a conformity analysis. Policy 1.6 of this plan makes it clear that SASP 382 takes precedence in case of conflict. However, she said, the DP does inform the planned context for the site and its surroundings, as well as what is anticipated for the Downtown Urban Growth Centre more generally. By Policy 4.1 of the DP, *MUAs* are specifically directed for growth, with varying levels of scale and intensity within each *MUA*, especially close to transit stations. Church Street is designated as *MUA 3*, which by Policy 6.28 of the DP has a Main Street character and would have mid-rise buildings, “...with some low-rise **and tall** buildings permitted **based on compatibility**”.

[205] The Tribunal finds it ironic, in this planning context, that this policy applying to the CSVCA appears to be **less** restrictive for tall buildings than SASP 382 is for the WWCA. Within the *AN* designation, the SASP requires that redevelopment be of a low-rise nature (Policy 4.1, see Ms. Major’s Witness Statement, para. 144). The DP continues that other areas of the Downtown will have more modest levels of intensification. This means that the portion of the site at 64 Wellesley East that is designated *AN* should have “more modest” development. The proposed tower would however be located here.

[206] Ms. Major opined that the proposed development cannot be characterized as 'sensitive low-rise infill', as SASP 382 requires for the WWCA. By s. 5.6.1, development must respect and reinforce the general physical character, pattern, scale, massing, and so on, of the area. An amendment to the SASP is being requested which would allow a height of 36 storeys on the site. The proposed amendment does not seek to amend the AN designation of the property. The Tribunal agrees that the height would not remotely conform to the OP policies calling for structures of a "low-rise" nature within this designation.

[207] The Tribunal emphasizes that the preamble to the WWCA states that this portion of the Character Area may be appropriate for "**limited infill growth**" (s. 5.6), and that the only development within the AN portion should be **sensitive low-rise infill**. There are indeed taller buildings close by on Wellesley Street. However, this height so close to Church Street itself does not respect and reinforce the general physical character, pattern, scale, massing, setbacks of the area, as the SASP requires. This is true when considering either the Wellesley or the Church surroundings as the "area".

[208] Ms. Major went so far as to opine that the proposed OP amendment seeks a full exemption from all of the policies in s. 5.6 and 5.7 of SASP 382. These, as mentioned, deal with the two Character Areas here. She testified that this is wholly inappropriate, for the reasons stated by all the City witnesses. It would "delete" for this proposal the two sets of character area policies for the North Downtown Yonge plan area. This would be a total of seven policies as well as any non-policy text providing direction for each character area. This is inconsistent with the general intent of the OP. In her opinion, the amendment is not good land use planning.

[209] As an initial comment, the Tribunal finds that a significant amount of time and testimony in this hearing was devoted to the attempt to distinguish between the physical areas subject to the designation of "Character Areas" within SASP 382, Map 1. This amounted to a lengthy debate over the **location of the double line** apparent in Map 1: Character Areas, (p. 381 of Ex. 3) and elsewhere in the materials. The Appellant termed it as "schematic" only, and sees the actual dividing line is as shown on the

Survey, Ex. 10, p. 17, where the public lane is located. This would have the tower structure entirely within the WWCA, and thus subject only to its policies rather than the CSVCA policies. Much effort was devoted by the Appellant to achieving a design that would “fit” within this Character Area. The City witnesses, however, placed this line further west, so that the tower structure would be about two-thirds within the WWCA and one-third in CSVCA. Thus it would be subject to two different sets of policies, not just those for the WWCA.

[210] The uncertainty of this situation appears unsatisfactory for both sides. The Tribunal believes that it was possible to illustrate this important boundary line in a much clearer manner than by an indistinct double line on Map 1. In any event, for its evaluation of the proposed structure this so-called boundary was not a useful planning tool. The Tribunal was left with a struggle to determine which set of policies apply, **or if they are even relevant for a proposed “amalgamated” structure consisting of a tower and low-rise base.**

[211] The Tribunal finds that the proposed five- and nine-storey structure within the CSVCA does not directly contravene to any significant extent any of the general or specific OP policies. However, it finds that the five-storey base (over the four mentioned in the DNY – UDG) is excessive in appearance considering its overall massing, with a width of 50.5 m along Church Street. No specific shadowing or zoning requirements for the CSVCA appear to be breached. The former “Beer Store” as the parties called it, at 572, will rise only to four storeys on Church Street, then step back. Mr. Luk and Ms. Major pointed to recent OP amendments, especially to Policy 3.1.2.5:

Policy 3.1.2.5:

Development will be located and massed to fit within the existing and planned context, define and frame the edges of the public realm with good street proportion, fit with the character, and ensure access to direct sunlight and daylight on the public realm by:

- a) providing streetwall heights and setbacks that fit harmoniously with the existing and/or planned context; and
- b) stepping back building mass and reducing building footprints above the streetwall height.

[212] The sidebar to this policy states:

Transition in Scale: Transition in scale is the geometric relationship between areas of low-scale development, parks or open spaces and taller, more intense development. It provides a measure of the impacts, including shadows and privacy, of larger-scale development on low-scale neighbourhoods and the public realm.... Good transition in scale is contextual and will be determined by considering the planned level of growth in relation to adjacent sites and the public realm....

[213] The portion of the design located within the CSVCA on Church Street inclines the Tribunal to reject the proposal because of its massing. However, the OP amendment for the angular plane is justifiable, as Mr. Kasprzak stated, as it does not appear to apply to the proposed tower within the WWCA.

[214] It is principally the height of the tower that is excessive, in both the existing and planned context. The tower does not “fit” the planned context of this site, so close to Church Street, even though it might be very close in height to the existing structures further west. It is proposed to be PART OF a structure on Church Street, it must be recalled. The streetscape of Church Street in Ex. 10 shows an average maximum of five storeys. The Tribunal agrees with the City that the tower at its present height is too close to Church physically, and to the different OP designation there, for it to be a “fit”. Adjustments in the design in last resubmission do lessen its impact overall, especially with respect to setbacks and shadowing.

[215] Overall, the Tribunal agrees that the revised design could be a good balance here, meeting both existing and planned context, but only if there were less height, in both components. Mr. Kasprzak sees the proposal as an appropriate built form response for the intersection of two major streets in the City’s Downtown. However in the Tribunal’s view, the proposed 36-storey height does not “fit” well so close to low-rise Church Street. The proposed tower with less height could also reinforce the general stepping down of building heights along Wellesley Street east from Yonge Street.

[216] The panel in the 81 Wellesley Street East decision [*Aragon (Wellesley) Development (Ontario) Corp. v. Toronto (City)*, 2015 CanLII 66919 (ON LPAT)] made

the point that, although its height exceeded the low-scale height for the CSVCA, the greater height approved would not be located on Church Street itself. It refused to include the property in the CSVCA, saying that it would actually enhance the retail on Church Street by increasing the density on a property in close proximity to the CSVCA (para. 36).

[217] The proposed two-component structure in the subject application is factually different. A portion of the structure itself would be directly on Church, but would be attached to and thus **part of** a tall tower which also would be “on Church”, even if it is in another OP designation. At the risk of much repetition, s. 5.7.1 of SASP 382 dealing with the CSVCA, states that the only redevelopment permitted within the *MUA* designation in the CSVCA will be “sensitive low scale infill”. The DP seems to differ, although it does not apply here. Church Street is designated as *MUA 3*, which by Policy 6.28 would have mid-rise buildings, “...with some low-rise and tall buildings permitted based on compatibility”.

[218] Thus the proposed tower, even if the tower portion is entirely designated *AN* as the proponent would have it, forms part of a structure within the *MU3* designation on Church. It would be acceptable to this Panel only if shorter. Even the nine-storey height of the portion over Church Street, within the same structure, could be challenged as not “low scale infill” in the context of the predominantly five-storey structures on Church.

[219] The City appeared to place less emphasis on the proposed height of the Church Street component. Mr. Luk pointed out that:

The Wellesley Wood and Church Street character areas are specific in their direction to maintain a **low rise and low scale** (respectively) infill development. It is important to note that **low scale**, as used in these policies does not mean **low rise** as used elsewhere in the Official Plan, in that it **could contemplate a mid-rise form of a building on the site**. For example, Policy 5.7.2 of SASP 382 contemplates a building commencing at a height of 16 metres, and angling back at a 44 degree angle. Generally buildings that exceed 16 metres would not be considered low rise buildings. Therefore, through the lens of SASP 382, sensitive low scale development would be relative to the policy permissions in the plan... (emphasis added)

[220] He also commented on the angular plane requirement in the SASP. Policy 5.7.2 states that redevelopment located within this Character Area (i.e. the CSVCA) must ensure that no part of any building is located above the angular plane drawn from the Church Street lot line, commencing at a height of 16 m above street level, and then angling upwards at an angle of 44 degrees away from Church Street over the site. The portion of the base building located within the CSVCA does not meet the angular plane drawn from Church Street, requiring a relatively minor (in the Tribunal's view) OP amendment. Witnesses for the Appellant pointed to Ex. 10, p. 24, as demonstrating that the angular plane measured as in Policy 5.7.2 would have no portion of the proposed tower in the WWCA located above this angular plane. It is proscribed only within the CSVCA. Thus Policy 5.7.2 is not contravened. Ms. Major stated that the amendment to the angular plane would impact the intention for the CSVCA to remain a low- and mid-rise built form, and erode the 'village atmosphere' that is important to the local community, the character of the area and future tourist activities. The Tribunal considers this conclusion to be exaggerated, as the approved angular plane design for 572 Church immediately to the north appears very similar.

Setbacks and Stepbacks

[221] Mr. Luk and Ms. Major also objected to the proposed setbacks for the tower, based on SASP 517 and implementing Zoning By-laws, and s. 3.2.3, Separation Distances, of the TBDG (Ex. 3, p. 394 and 455). These speak to the importance of adequate tower separation distances from property lines and other towers, in order to minimize negative impacts such as shadowing, loss of sky view and privacy. Ms. Major said that in her opinion the proposed setbacks of the podium, and the stepbacks of the tower portions from the base building are not adequate. These required setbacks also protect the development potential of adjacent sites, she testified.

[222] As demonstrated in Figure 6 of the TBDG (Ex. 3, Tab 13), there is a minimum 12.5 m tower setback required. The tower here has a proposed setback from the north property line of only 5.5 m from the 6th to 20th floors, and 7.5 m from the 21st to 36th floors. This tower setback is indeed less than the minimum 12.5 m, but the structure to

be built to the north on Church is only a mid-rise, and not a tower. Thus the Guidelines do not apply to the two structures. However, the Tribunal is satisfied that the revised tower design with its westerly placement and rounded corners would mitigate any adverse effects of the smaller setbacks to the north. There are few or no other nearby structures that could be impacted adversely, nor does the tower appear to limit redevelopment of lots nearby. There was no specific evidence on this point. The new structure to the north will have a party wall next to the proposed tower. Its owners made no objection and did not appear at this Hearing. The specific setbacks and stepbacks appear to the Tribunal to be satisfactory for this specific site and context, contrary to the opinions of the City's witnesses.

[223] Section 6.4.1 of SASP 382 (design, scale) is mostly satisfied, but s. 6.4.6 (tall buildings) is not. However, exceptions are at least contemplated:

6.4.6 Tall buildings will not **generally** be permitted on: (a) sites that have a planned context that does not contemplate tall buildings as a suitable form of development; or (b) sites where development/redevelopment is not able to provide floor plate sizes, tower separation distances, step backs and setback distances that achieve the policies as set out in this North Downtown Yonge Site and Area Specific Policy. (emphasis added).

[224] The Tribunal agrees with Mr. Kasprzak's arguments on this point in Ex. 2A, para. 4, except on the question of the requested height. This site is anomalous in its context, since a tall building as proposed would not adversely affect nearby properties in any measurable way. Mr. Altman for the Co-op agreed with the City that the height, setbacks and floor plate are unacceptable. However, the Tribunal would be inclined to make an exception for the design of the tower built form here, should its height be lower.

Shadow Impact

[225] The proven shadow impacts satisfy the tests in both the DTBG and SASP 382. BHP is shown as "Sun Protected Park" in the DP, p. 381. However, it must again be noted that this Plan does not apply to this previously filed application. Ms. Major concluded that the shadow impacts are not minimized and would result in reduced utility

of the park in a qualitative, if not quantitative sense. The Tribunal disagrees, based on the minimal extra shadow seen in Mr. Bouwmeester's study (next paragraph). His study and its percentages were based on the park minus The 519, as stated in Mr. Smith's Reply, Ex. 2B, para. 6. His conclusion was that the utility of BHP is preserved. The Tribunal has little real concern over the minimal additional shadows found here, in an area of 7,167 sq m less The 519. It is small for an urban park according to Ms. Bake, even if it is culturally significant. The Tribunal accepts that the "no new net shadow" test in section 5.7.3 of SASP 382 **does not apply** to a tower location and massing within the WWCA. It would apply only to the mid-rise portion of the proposed development, which is along Church Street in the CSVCA. No shadow impact was proven as a result of the proposed built form on Church Street.

[226] As per the Bouwmeester Detailed Shadow Study, on March 21st and September 21st, there would be incremental impact from the development on different parts of the park from approximately 1:41 p.m. until 4:49 p.m. On these dates, increased shadows on any portion of the park generally would last **less than one hour**. There is no incremental shadow impact from the proposal on June 21st. More specifically, there is no incremental shadow impact from the proposal on the park from May 21st to July 21st inclusive. While this already appears to be an acceptable impact, a reduced tower height would better satisfy both this and other planning requirements.

World Pride Day Murals

[227] Ms. Bake stated that there were major improvements in BHP for World Pride, which Toronto hosted in 2014. This included murals along the north side of The 519 Centre. These murals, similar to those found on several buildings on the subject site, were part of the Church Street Mural Project completed in anticipation of World Pride. Ms. Major said of these Murals that their destruction would discourage a sense of place for this community. The Applicant's Heritage Impact Assessment had recognized the associative value that the murals have to an understanding of the evolution of the LGBTQ2S+ community. The Tribunal is convinced that murals on the walls of the subject site could be preserved in some manner, within or outside a proposed structure.

Conclusions on Proposed Height

[228] The City's main concern appeared to be that the CSVCA would be diminished by the proposed tower. It is indisputable that there are tall buildings located beyond the CSVCA and behind Church Street itself (Ex. 11, Photos 12 – 16). However, there are none **forming part of a structure**, which is located **on Church Street itself**, as proposed. The two different OP designations here seem to the Tribunal to be a distinction without a real planning difference for this site, as presently constituted. This is true despite the aforementioned concentration on the confusing boundary line between the WWCA and the CSVCA. A 28-storey building is now being constructed at 81 Wellesley East, east of Church Street, but it is two whole properties east, and not so close to Church Street as is the proposed (Ex. 11, Page 36). NDY-UDG, while Guidelines only, say that Church Street does not have a height designation in the Downtown Tall Building Guidelines due to "its high concentration of heritage properties and the surrounding context". Thus the heritage and built form characteristics there should be "**enforced by new small scale and mid-rise developments**" on Church Street (emphasis added by Tribunal). Its "low-rise main street character" should be retained, although the limitation to four storeys appears to have been ignored over the years.

[229] While Policy 2.3.1(2) of the OP dealing with the AN designation states that taller buildings and higher density may be located there (and nearby 50 Wellesley Street East is 37 storeys), AN are "considered to be physically stable". The tower would be well above this general Policy and the Guidelines **in this location**, so close to both low rise residential to the north on Dundonald Street, and to Church Street itself. SASP 382 states for the WWCA here (and it is west of Church) that the only development there will be "**sensitive low-rise infill**" that respects and reinforces the general physical character, pattern, scale, massing, setbacks...of the area." [s. 5.6.1 (a)]. Yet there are many tall buildings already on this segment of Wellesley. The Tribunal found that it was difficult to assess the WWCA portion of the property because of the many overlapping and seemingly inconsistent planning documents applying to it.

[230] The Tribunal concludes that both components of the proposed structure should meet the applicable planning policies for this combined site. The City appeared to rely heavily on the DP for its assessment, but all acknowledged that this does not apply to this site because this application preceded its adoption. Although the OP designations and policies appear to significantly limit heights in both the WWCA and the CSVCA, the Tribunal could envisage a tower to the west of this site, but with less height. The proposed setbacks and the tower design do somewhat mitigate the adverse effects.

[231] The DTB – UDG stated for the WWCA that developments should create a height transition from Yonge Street to the mid-rise built form along Church Street. The tower height here does not provide this transition. Ms. Major had said of this WWCA area that the built form of slab structures and open spaces, resulting in large separation distances and porosity through the block, is a unique characteristic of the area. The open spaces on these blocks are valuable and contribute to the quality of life for residents, she stated. The Tribunal finds that this has no real relevance to the subject site, because of the existing Paul Kane House Parkette, and the inevitability of some development on the site.

[232] The aforementioned DP states that in *MUA 3* areas having a Main Street character (Church Street here), development will be mid-rise, with some low-rise and tall buildings permitted based on compatibility (p. 304, Policy 6.28). This Plan is persuasive, if not directly applicable. Intensification near rapid transit stations is encouraged, as with Wellesley station here. Thus the Tribunal sees no disconnect in general with the proposal for a “taller” building here, given recent Plan policies.

[233] Again, the NDY - UDG do appear to deal differently with the CSVCA (s. 4.5, p. 610). There are no height limits there, it is stated, but base buildings of mid-rises here should be no less than three storeys and no taller than four, to reinforce the low-rise main street character. This does give the Tribunal pause, as it finds that the massing proposed on Church Street would not comply with this and seems excessive. The Tribunal does not engage in redesign, but would find better compliance with the existing and planned context if this component were reduced in height and mass.

[234] Respecting the details of the design, Mr. Luk was critical of the proposed pedestrian mews, which provide entry from Church Street and continue westerly to the public lane and its adjacent walkway, then out to Wellesley Street. He found the mews is not in accord with planning directions and is essentially unsafe. The Tribunal finds no contravention of the rules for public access. It seems like an interesting proposal for access to the retail units in the interior.

Trees

[235] There was a somewhat apocalyptic statement by Mr. Graham on the effect of the possible loss of the seven trees in Paul Kane Parkette. These can be seen in Ex. 13, p. 100 as both large and very healthy. Mr. Altman stressed the significance of these trees. Any mature trees proposed to be damaged or removed to the west would be indeed a major regret, but it seems to the Tribunal that they might not be destroyed, given newer construction methods. While Mr. Graham testified that the City provided alternatives to the Appellant in 2018, it was not clear whether these have been updated for the new proposed structure. In fact, the lindens might well be harmed after ANY reconstruction on the site, on the evidence. This is so with any underground garage structure, which seems essential given the nature of any condo tower, no matter how tall. The Tribunal sees a multi-unit structure here as almost inevitable. The City has ultimate control over the permitting of tree damage or loss.

Other Conclusions

[236] In general, the positive factors in the most recent proposal are: retention/reconstruction of a heritage structure; incorporation of a public lane (though narrow) with a public walkway; and a reduced profile for the tower. However, Mr. Smith stated that proposed height of the tower would “recapture GFA eliminated by other redesign problems”. The Tribunal finds that this private purpose cannot override the public interest here.

ORDER

[237] The Appeals are dismissed, and the requested amendments are not approved.

"G. Burton"

G. BURTON
VICE-CHAIR

"D.S. Colbourne"

D.S. COLBOURNE
VICE-CHAIR

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