

**Ontario Land Tribunal**  
Tribunal ontarien de l'aménagement  
du territoire



**ISSUE DATE:** July 11, 2023

**CASE NO(S).:**

OLT-22-003966

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

Applicant/Appellant: Bertone Montreal Road LP  
Subject: Application to amend the Zoning By-law – neglect to make a decision  
Description: Zoning amendment to develop a 26-storey mixed use building  
Reference Number: D02-02-21-0038  
Property Address: 1649 Montreal Road & 741 Blair Road  
Municipality/UT: Ottawa  
OLT Case No.: OLT-22-003966  
OLT Lead Case No.: OLT-22-003966  
OLT Case Name: Bertone Montreal Road LP v. Ottawa (City)

**PROCEEDING COMMENCED UNDER** subsection 41(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant/Appellant: Bertone Montreal Road LP  
Subject: Site Plan  
Description: To permit the development of a 26-storey mixed use building  
Reference Number: D07-12-22-0132  
Property Address: 1649 Montreal Road & 741 Blair Road  
Municipality/UT: Ottawa  
OLT Case No.: OLT-22-003966  
OLT Lead Case No.: OLT-22-003966  
OLT Case Name: Bertone Montreal Road LP v. Ottawa (City)

**Heard:** April 24 - 28<sup>th</sup> 2023 by Video Hearing

**APPEARANCES:****Parties**

Bertone Montreal Road GP

City of Ottawa

**Counsel**Michael Polowin  
Kelly Duquette

Timothy Marc

**DECISION DELIVERED BY JEAN-PIERRE BLAIS AND KURTIS SMITH AND ORDER OF THE TRIBUNAL**

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[Link to Order](#)**INTRODUCTION**

[1] The matter before the Tribunal are appeals pursuant to s. 34(11) and s. 41(12) of the *Planning Act* (“Act”) for the failure of the City of Ottawa (“City”) to decide applications within the prescribed statutory timeframe. Bertone Montreal Road GP (“Applicant”) is seeking an amendment (“ZBA”) to the City’s Zoning By-law 2008-250 (“ZBL”) and an approval of a Site Plan Application (“SPA”), for lands known municipally as 1649 Montreal Road and 741 Blair Road in the City (“Subject Property”).

[2] The effect of the ZBA is to permit the development of a 26-storey mixed-use tower, principally for residential rental units, at the northeast corner of Montreal Road and Blair Road in the City.

[3] Pursuant to a Case Management Conference decision issued on October 14, 2022 (“CMC Decision”), the Tribunal set down the matter for a five-day oral hearing commencing on Monday, April 24 to Friday, April 28, 2023.

## **SUBJECT PROPERTY AND SURROUNDINGS**

[4] The Subject Property is comprised of two parcels of land. The parcel on Montreal Road is zoned 'Arterial Mainstreet, Subzone 10, Urban Exception 2199 (AM10[2019])' and has historically been used as an automobile service station, garage, car sale business and surface parking lot. The existing single-storey commercial building is modest in size and set-back from the road. The parcel on Blair Road is zoned 'Residential Third Density, Subzone K, Urban Exception 1631 (R3K [1631])' and includes a neglected wood-frame, clapboard single-detached dwelling, with mature trees and vegetation. A significant grade-change is noticeable at the rear of the Subject property, defined by a rock outcrop.

[5] The Subject Property is located east of the City's downtown, approximately 7 to 8 kilometres from Parliament Hill. It is in the Beacon-Hill-Cyrville Ward of the City and within the broader Gloucester community. It has a combined area of 4,903 square metres, with 40 metres of frontage on Montreal Road, and 74 metres of frontage on Blair Road.

[6] The Rothwell Heights neighbourhood is to the north, and the Cardinal Heights neighbourhood is to the south. These are well established outer-urban neighbourhoods.

[7] The Subject Property is also in proximity to important amenities, commercial areas, services, institutions, and employment opportunities. The immediate area comprises a mix of uses and building forms and is characterized predominantly by residential and commercial uses with building heights varying from low to mid-rise. Major employment hubs and institutional facilities are near including the National Research Council (NRC) campus, the Canada Mortgage and Housing Corporation (CMHC) campus, the Canadian Security Intelligence Service (CSIS) campus, and the Communication Security Establishment (CSE) campus, the *Collège La Cité*, the *Hôpital Montfort*, and the Canotek Business Park.

[8] Both Montreal Road and Blair Road are designed as Transit Priority Corridors in Schedule C2 of the City's now-in-force Official Plan 2022 ("OP 2022").

## **BACKGROUND**

[9] The ZBA was submitted to the City on May 13, 2021, and was deemed complete June 2, 2021. On June 7, 2022, the Applicant filed its appeal with the Tribunal with respect to the ZBA based on the City's failure to reach a decision within 90 days.

[10] Notwithstanding the appeal, staff for the City's Planning Department circulated a report recommending refusal of the ZBA on August 25, 2022. The report recommended refusal of the proposal as it stood at that time, based on City staff's opinion that the building transition was inadequate in relation to the residential properties to the rear of the lands (*i.e.*, the Rothwell Heights neighbourhood). The report evaluated the proposal against the then-in-force City Official Plan 2003 ("OP 2003"). The report also recommended refusal of the ZBA based on the proposal failure to meet the direction provided by the applicable Urban Design Guidelines.

[11] On September 8, 2022, the ZBA was heard at the City's Planning Committee which also recommended refusal of the ZBA. On September 21, 2022, City Council refused the ZBA.

[12] The SPA was submitted to the City on August 30, 2022 and was deemed complete on September 15, 2022. On January 23, 2023, the Applicant appealed the SPA to the Tribunal on the grounds of a failure to reach a decision within the statutory timeframe.

[13] Section 2 of the City's By-law 2021-386 repealed OP 2003 on November 24, 2021. That section came into force upon ministerial approval of the new OP 2022 on November 4, 2022. The Planning Committee's recommendation and Ottawa City Council's denial of the ZBA occurred before the ministerial approval. Although the staff

report briefly references OP 2022, the recommendations to the Planning Committee and to Council were based on OP 2003, in full force and effect at that time. As a result, the Tribunal heard evidence which referred to both OP 2003 and OP 2022.

[14] As a result of the lengthy approval process, both the ZBA and the SPA evolved. In particular, the SPA informed changes to the ZBA as refinements arose. The Tribunal is therefore seized with an amended ZBA, but the essence of the application remains unchanged. The ZBA seeks to rezone the entire site to “Arterial Mainstreet, Subzone 10” (AM10), with site-specific exceptions to increase the height, reduce the number of required doors along rights-of-ways, new step backs and setbacks, and finally, for reduced parking spaces.

## **PROPOSED DEVELOPMENT**

[15] The revised Proposed Development is a 26-storey (81.5 metres) mixed-use building with approximately 254 residential dwelling units and 17,805 of total gross floor area. It includes a combination of 1-bedroom, 2-bedroom, and 3-bedroom (including two-bedroom plus den) units.

[16] The building is comprised of a 21-storey tower atop a four-storey podium (15.5 metres) which steps-down to a further one-storey podium at both the east and west property line along Montreal Road. The one-storey podium is 6.5 metres in height, has rooftop amenity space, and wraps around the eastern façade of the building and continues along the interior lot line again wrapping around the north end of the building towards the rear property line. On the north side of the tower, the podium rooftop opens to a larger communal amenity space where an outdoor pool is provided.

[17] The mature grove of trees along the rear property line is retained in the proposed development, as part of the separation of the podium and high-rise tower from the low-rise Rothwell Heights residential neighbourhood to the north. Due to the grade change from south to north, the podium appears as one and three storeys at the rear façade.

[18] At grade, the front-yard setback is 3.4 to 4.8 metres from the south property line for the four-storey podium increasing to over 5 metres for the tower portion, while the corner side yard setback along Blair Road to the west is 4.8 metres at-grade and stepping back to an 18-metre setback at the fourth floor and 20.2-metre setback for the tower portion of the building.

[19] The rear-yard setback to the north is 11.0 metres for the podium portion of the ground floor and increasing to 20.2 metres from the second to fourth storey with the tower portion of the building setback a total of over 30 metres from the rear property line. The tower steps back a further 3.4 metres at the twenty-second floor (total 33.4 metres from rear property line). The interior yard setback for the one-storey podium is 0.5 metres to the east but steps back 8.1 metres after the first floor for the four-storey podium and to a total of 10 metres for the tower.

[20] A Privately-Owned Public Space (POPS) is now located on the south-west corner of the Subject Property, to be more publicly accessible, visible, and integrated with the at-grade commercial space of the podium. The previously proposed POPS was retained, as a secondary amenities space, in the north-west corner of the Subject Property on Blair Road.

[21] The Proposed Development includes a total 289 vehicular parking spaces. The sole vehicular egress to the site is from Blair Road in which a semi-circular drop-off area and access to the parking lot is provided. The access is of a safe and sufficient distance from the intersection of Montreal Road and has been designed to municipal standards. Visitor parking is proposed at grade.

[22] The overhead hydroelectric wires along Montreal Road and the curved intersection at the corner of Montreal and Blair Roads (to accommodate a turn lane) both created design constraint which are reflected in some of the requested setbacks in the ZBA.

## **POSITION OF PARTIES**

[23] Mr. Polowin, co-counsel for the Applicant, asserted that the City has been slow to respond to his client's Applications. He argued that OP 2022 allows buildings of 40 storeys, subject to transition, and that transition "is the issue" in this proceeding. He further argued that the non-statutory Design Guidelines ("DG") need to be revised due to the general change in height permissions from 9 to 40 stories under OP 2022. He argued that in this case the DG exist to prevent undue adverse impact of a tall building, that there is no "requirement" to adhere to an angular plane, and that mere apprehension of an undue adverse impact is insufficient. He argued that the Proposed Development will not impact shadowing, noise, traffic, access to light or important views in any meaningful way. Counsel for the Applicant also asserted that the issue regarding parking has been "entirely made up" and that a rate of 0.7 places per residential unit is appropriate. Based on this, Mr. Polowin submitted the Appeals should be allowed.

[24] Mr. Marc, Counsel for the City, argued that the Applications should be denied. He submitted that the DG, including the recently updated 2018 Guidelines for High Rise Buildings ("HR Guidelines"), are key documents to have regard to in this proceeding, and that OP 2022 provides for the use of these Guidelines as important tools. Mr. Marc argued that the tower component of the Proposed Development intrudes significantly into the angular plane. Counsel for the City acknowledged that the Proposed Development, as it stood at the hearing, is transit and pedestrian supportive. Counsel for the City also acknowledged that parking was a small component in this case, argued that a higher level is appropriate, and noted that the City had agreed to a reduction to 1.0 per residential unit.

## **Participants' Statements**

[25] The Tribunal was in receipt of two Participant Statements in opposition to the Proposed Development from: (1) Rothwell Heights Property Owners Association, and (2) Julie Deloë, the owner of an adjacent property at 216 Amberly Court in the Rothwell

Heights neighbourhood. These Statements raised a number of issues including the reasonableness of the intensification, alternative designs, undue adverse impact (from shadowing, wind, noise, artificial lighting); loss of privacy; transition; the small lot size; the discordance of the development with the context; calculation of the angular plane; on-street parking; unsafe traffic patterns; proximity to rapid transit; scale and height of the proposed development; cycling and pedestrian access; and the availability of transit.

[26] The issues raised in the Participant Statement were addressed by the Expert Witnesses of the Applicant.

[27] The issues raised and the position taken by the Participants were taken into consideration by the Tribunal in making its findings in this Decision.

## **EVIDENCE AND ANALYSIS**

[28] The Tribunal considered the extensive evidence from five expert witnesses. Miguel Tremblay, retained by the Applicant, was qualified on consent as an expert in land use planning. Roderick Lahey, retained by the Applicant, was qualified on consent as an expert in architecture and urban design. Chris Gordon, retained by the Applicant, was qualified on consent as an expert in transportation. Shoma Murshid, a land use planner employed by the City, was qualified as an expert in land use planning but not in urban design. Rongding (Randolph) Wang, a land use planner with the City, was qualified as an expert in land use planning, with an emphasis on urban design.

[29] To be successful, the Applicant must first persuade the Tribunal that the appeal of the ZBA should be allowed in whole or in part. If the Applicant is successful, the Tribunal must then consider the SPA. Of course, if the Applicant is unsuccessful with respect to the ZBA, the SPA would also not be approved. The Tribunal will therefore consider those Applications in order.



**SHOULD THE APPEAL OF THE ZBA BE ALLOWED?**

[30] The Tribunal must consider the following legislative tests and conclude whether the ZBA:

- a. Has regard to matters of provincial interest pursuant to s. 2 of the Act;
- b. Is consistent with the Provincial Policy Statement (“PPS 2020”) pursuant to s. 3 of the Act;
- c. Conforms to the City’s Official Plan pursuant to s. 24 of the Act; and,
- d. Has regard to any decision made by City Council, as well as information and material received by the City in relation to the matter pursuant to s. 2.1 of the Act.

**Matters of Provincial Interest**

[31] With respect to matters of provincial interest, the Parties agreed that the ZBA has regard to matters of provincial interest. Mr. Tremblay testified that the Proposed Development had appropriate regard to the relevant matters enumerated in s. 2 of the Act. He noted that the Proposed Development would preserve the rock outcrop, would contribute to a full range of housing, would be located close to transit, would leverage existing water and waste infrastructure, would be sensitive to the needs of persons with disabilities, would contribute to recreational infrastructure and would help create a sense of place. He also noted that the Proposed Development would contribute to employment matters through on-site commercial space, and by providing housing for employees who worked in a large concentration of nearby employment venues.

[32] Ms. Murshid agreed with Mr. Tremblay’s conclusions.

[33] The Tribunal accepts this evidence and finds that the ZBA has regard to matters of provincial interest.

### **Provincial Policy Statement 2020**

[34] The Parties agreed that the ZBA is consistent with PPS 2020. Mr. Tremblay testified that by providing residential and commercial intensification on a serviced lot that is currently underutilized at the intersection of two major roadways, the Proposed Development is consistent with the objectives and intent of the PPS 2020.

[35] He noted that the Proposed Development is located within the urban boundary, on a designated transit priority corridor and on land designated as a settlement area. As a site directly abutting a Mainstreet Corridor and on the edge of an established neighbourhood, he opined that the site presents an opportunity for the efficient use of land in proximity to existing amenities and services including parks, schools, employment, retail, and transit. He added that the Proposed Development will contribute to the mix of housing types and sizes to accommodate a variety of family and tenant compositions.

[36] Mr. Tremblay also testified that public sidewalks are provided adjacent to the Subject Property, and cycling infrastructure also exists in the area. The site is an appropriate location for development that promotes opportunities for transit-supportive development along two identified transit priority corridors and within 1.8 kilometres of the operational Blair Station on the City's Light Rail Transit ("LRT") network. The Proposed Development is an infill development that contributes to a compact form and locates a community use in proximity to those it serves. These characteristics reduce the length and number of vehicle trips and support opportunities for public transit and active modes of transportation.

[37] Finally, he explained that under the PPS 2020 healthy, active communities should be promoted by public spaces and facilities that meet the needs of pedestrians

and foster social interaction, as well as encourage active transportation and community connectivity. Mr. Tremblay testified that the Proposed Development encloses the street edge with active at-grade uses that feature large amounts of glazing and active entrances to the sidewalk. Furthermore, the Proposed Development will support the reinvigoration for this portion of Montreal Road, which is in the early stages of a City-led redesign that will include additional space for pedestrians and cyclists within the public realm.

[38] Ms. Murshid concurred with Mr. Tremblay's conclusions with respect to the ZBA's consistency with the PPS 2020.

[39] The Tribunal accepts this evidence and finds that the ZBA is consistent with the PPS 2020.

### **Does the Proposed Development Conform to the City's Official Plan?**

[40] Conformity to the City's OP is at the heart of the dispute between the Applicant and the City.

[41] As noted above, the Applications were submitted prior to the coming into force of OP 2022. However, now that the Applications are before the Tribunal for *de novo* consideration, OP 2022 is in full force. There was a discussion at the hearing as to whether the Tribunal should consider the Applications against OP 2003 pursuant to the *Clergy principle*. This is a discretionary principle applied by the Tribunal to address the inherent unfairness to an applicant having to deal with a moving target while their development proposal goes through a lengthy approval process. Municipal planning instruments may be subject to change during that time, as was the case in this instance.

[42] In this instance, there was extensive evidence by all expert witnesses with respect to both OP 2003 and OP 2022. Mr. Tremblay's Witness Statement stated that the applications ought to be considered under OP 2003. The Issues List was defined

under OP 2003, and the Agreed Statement of Fact also reflects OP 2003. Moreover, Mr. Polowin, Counsel for the Applicant, made extensive references to OP 2003 in his closing arguments.

[43] Nevertheless, the Parties submitted that the applicable Official Plan is OP 2022. As the Clergy principle is a discretionary principle that inures to the benefit of the Applicant, the Tribunal is prepared, in this instance, to consider the matter before it under OP 2022. The Tribunal notes, moreover, that more restrictive planning policies were not put into place by the municipality following the filing of the Applications. It was common ground between the Parties that the policies under both OP 2003 and OP 2022 were indistinguishable and not materially different. Accordingly, the Tribunal considered the conformity of the Applications against OP 2022 pursuant to s. 24 of the Act, while having regard to OP 2003 pursuant to s. 2.1 of the Act.

### **Is the Proposed Development in Conformity with the Strategic Direction of OP 2022?**

[44] OP 2022 provides guidance for development across the Ottawa region and outlines how planning over the next 25 years will accommodate the projected population growth. The plan highlights specific desired features, such as 15-minute neighbourhoods, and other intensification targets aimed at improving the walkability and sustainability of existing built-up areas. OP 2022 proposes five broad policy directions (the so-called five Big Policy Moves) as the foundation to becoming the most livable mid-sized city in North America over the next century. The five broad policy directions are (1) intensification, (2) sustainable transportation, (3) improved urban and community design, (4) environmental protection and energy efficiency, and (5) economic growth.

[45] OP 2022 sets the objective to achieve, by the end of the planning period, more growth by intensification than by greenfield development. OP 2022 states the share of future growth will be within Ottawa's existing built-up area by putting in place zoning and other mechanisms to give the City the opportunity to avoid or delay further expansions.

In support of this direction, new policies will increase the variety of affordable, low-rise housing options for residents within existing neighbourhoods close to Hubs and Corridors, increase the urban tree canopy, and promote an evolution to 15-minute neighbourhoods.

[46] OP 2022 also introduces a transect approach to planning that will better distinguish, by context, distinct neighbourhoods, resulting in policies that are better tailored to an area's context, age, and function in Ottawa. The City has been divided into six concentric policy areas called transects.

[47] Policies associated with land use designations, including Hubs, Corridors, and Neighbourhoods are specific to the context of each transect. Finally, overlays have been identified where specific policy direction is needed beyond those contained in land use designations to guide growth and provide built form guidance.

[48] Mr. Tremblay, the Applicant's principal land use planning expert, testified that in his professional opinion, the ZBA conforms to both OP 2003 and OP 2022. He opined, in particular, that the Proposed Development was aligned with numerous strategic objectives in OP 2022 by: (a) supporting intensification through infill construction on under-utilized lands; (b) supporting a range of housing, including larger family units; (c) supporting sustainable transportation by providing convenient and nearby access to a wide range of transportation options including the Blair LRT Station, existing and future bicycle routes, and within walking distance of many employment areas and key services and amenities; (d) supporting efficient and cost-effective development pattern by proposing an infill development in an already established and serviced area; and (e) supporting economic vibrancy through both the residential and commercial component of the Proposed Development.

[49] The Tribunal finds that Ms. Murshid, the City's principal land use planning expert, did not disagree with Mr. Tremblay's views in this respect. Where the expert witnesses of both Parties part ways is on the question of whether OP 2022, from an overall

strategic perspective and from a design perspective, supported the proposed building height and design at this location.

### **Does OP 2022 Provide for a Strategic Hierarchy for Growth?**

[50] Mr. Tremblay and Mr. Lahay testified that at a strategic level, OP 2022 allowed a 26-storey building, subject to design policies, including transition. Ms. Murshid and Mr. Wang testified that the ZBA does not conform to OP 2022 because, in their view, OP 2022 incorporates, at a strategic level, a hierarchy for growth, and that the Proposed Development does not align with that hierarchy. By contrast, the Expert Witnesses for the Applicant contend that such hierarchy does not exist in OP 2022.

[51] Ms. Murshid and Mr. Wang testified that there was a hierarchy in OP 2022 for height and density. Mr. Wang based his evidence on Tables 2, 3a and 3b of OP 2022 and his reading of OP 2022 in its entirety. These tables set out residential intensification targets (by dwelling size across the City), minimum area-wide density requirements for Hubs and Mainstreet Corridors and target residential density ranges for neighbourhoods and Minor Corridors. He also based his evidence on Schedule C2, the Ultimate Transit Network for the City, which sets out Transit Level of Service A (Grade separated O-Train and Transitway), Service B (At Grade O-Train and Transitway) and Transit Priority Corridors. He also testified that the tallest buildings have been constructed historically in the Downtown Core Transect, on the outskirts of the central business district (to protect views of Parliament Hill) or near to LRT stations in the Inner Urban and Outer Urban transects.

[52] However, on cross-examination, Mr. Wang admitted that Table 3(a) did not speak to maximum height or density, and that Tables 2, 3a and 3b and Schedule C7A (City's Design Priority Areas) did not speak to a height or density hierarchy. Similarly, Ms. Murshid admitted on cross examination that Schedule C2 does not provide for a tiered density and does not speak to any form of hierarchy, and that "hierarchy is not

explicitly explained” in section 2.2.1 (Intensification and Diversifying Housing Options) and section 3 (Growth Management Framework) of OP 2022.

[53] On cross examination, Ms. Murshid admitted that the Subject Property, at the intersection of two transit priority corridors is an appropriate target site for intensification under OP 2003, because it equated such a transit priority corridor to a rapid transit station. She also admitted on cross-examination that pursuant to s. 2.2.2 (11)(a) of OP 2003 one would expect the tallest height and the greatest density at such a location.

[54] Whilst the Tribunal agrees that OP 2022 must be read as a whole, the Tribunal prefers the evidence of Mr. Tremblay and Lahey to the effect that OP 2022 does not provide for a height and density hierarchy for managing growth as suggested by the City’s Expert Witnesses. The transect structure is indeed roughly comprised of concentric half-circles. This however does not translate in OP 2022 directing growth for higher height to be in or closer to the Downtown Core Transect. The Tribunal cannot accept that such an implicit hierarchy could be extrapolated from minimum density in Table 3(a), when the transect policy clearly and explicitly envisages high-rise constructions of up to 40 storeys in Hubs and along Mainstreet Corridors outside the Downtown Core transect, specifically in the Inner Urban Transect, the Outer Urban Transect and even the Suburban Transect. A minimum density cannot somehow become an implicit maximum. Moreover, Schedule C2 illustrates the Ultimate Transit Network and cannot, by any stretch, be extrapolated to speak to height and density of future growth and intensification. Observations of *historic* growth patterns of taller buildings across the City are of little probative value when OP 2022 is intended to be a strategic roadmap for managing *future* growth. If such a hierarchy was intended, OP 2022 should have been far more explicit given significant consequence such a hierarchy would have on proposed development in the City over the next 25 years. Finally, OP 2022, at section 3.2(12), explicitly states that the density targets in Tables 3a and 3b and the City-wide growth management targets in Table 2 are to be implemented in the Zoning By-law, clearly implying that in the absence of such a By-law those Tables are

not fully operationalized. The Tribunal accepts the evidence of Mr. Tremblay, and the admission of Ms. Murshid on cross-examination, that OP 2022 creates an equivalency of Transit Stations and Transit Priority Corridors for the purpose of locating the areas of greatest height and density.

### **Is a High-Rise Development Appropriate on the Subject Property?**

[55] For the following reasons, the Tribunal finds that, in principle, the construction of a 26-storey building on the Subject Property is consistent with OP 2022, subject to meeting other policy considerations.

[56] Section 5 of OP 2022 sets out the height policies for the various transects. The Subject Property is in the Outer Urban Transect. The Outer Urban Transect is generally comprised of neighbourhoods inside the Greenbelt which were built in the last third of the twentieth century and represent the classic suburban model. These predominantly residential bedroom neighbourhoods, such as the Rothwell Heights neighbourhood, feature stand-alone buildings, generous setbacks, and low-rise building forms (section 5.3 OP 2022). However, along Mainstreet Corridors within the Outer Urban Transect, OP 2022 allows for building heights which include low-rise (up to 4 storeys), mid-rise (5 to 9 stories) and high-rise (10 to 40 storeys) heights on sites that front segments of streets whose right-of-way is 30 meters or greater (s. 3.2(2), Figure 8, Table 7, s. 5.3.3(3)(a), Definitions, and Schedule C16 OP 2022). As Montreal Road is a Mainstreet Corridor, a building of up to 40-storeys is permitted under OP 2022 on the Subject Property subject to appropriate consideration of height transitions, stepbacks and angular planes discussed below. Indeed, Mr. Wang eventually admitted that under OP 2022 the Subject Property is a “potential candidate” for a 40-storey construction, albeit subject to “meaningful and effective” transition. Counsel for the City also admitted, at the start of the hearing, that a high-rise of 10-storeys or above could be built on the Subject Property. However, at no time did the City’s Experts and Counsel ever offer what height would be acceptable to the City on the Subject Property.



[57] The Tribunal notes that OP 2003 similarly supported intensification within the urban boundary and permitted maximum building heights of 10 to 30 storeys on the Subject Property, provided urban design and compatibility objects are met (section 2.2.2 (10)). The Tribunal accepts the evidence of Mr. Tremblay that OP 2003 promoted efficient land-use patterns through intensification of locations strategically aligned with the transportation network and specifically the rapid transit network.

[58] With respect to density, an issue raised by the Participants, the Tribunal agrees with Counsel for the Applicant that density is not a significant concern despite being mentioned by the Counsel for the City and Expert Witnesses for the City. Under cross-examination Mr. Lahey stated that he had never heard that density was an issue for the City with respect to these Applications. Ms. Murshid admitted in her cross-examination that density was not a concern raised by City staff in comments to the Applicant, was not mentioned in the Staff report to Council, was not referred to in Council's decision, and was not included in the joint Issues List. She stated further on cross-examination that she agreed with Mr. Lahey's evidence that another, less tall design, could actually result in a greater density.

### **Does the Proposed Development Conform to the Urban Design Policies?**

[59] As noted above, even though the Subject Property is a "candidate" for a high-rise development, the Proposed Development must also conform to OP 2022 with respect to Urban Design Policies, in particular the need for appropriate transition. This was one of the issues raised by the Participants.

[60] Mr. Tremblay testified that in his opinion the Proposed Development conformed to OP 2022 with respect to Urban Design Policies, particularly with respect to protecting views (Policy 4.6.2), providing appropriate POPS (Policy 4.6.3 (2)), responding to the street context (Policy 4.6.5 (2)), providing appropriate transition to adjacent properties (Policy 4.6.6(2)), providing appropriate amenities for residents (Policy 4.6.6 (4)),

providing appropriate floorplate size (Policy 4.6.6 (8)), and providing appropriate tower separation (Policy 4.6.6 (9)).

[61] In his view, the Proposed Development contributes to an appropriate building transition to the low-rise Rothwell Heights residential neighbourhood to the north through: (1) the building placement closer to Montreal Road, (2) the orientation of the tower so that the narrow side of the building faces north and south, (3) the design and height of the podiums, (4) the large separation of the podium and the tower from the northern property line, (5) the protection of a mature grove of trees, (6) the significant grade change from south to north, and (7) the rock outcrops along that northern property line. He underscored that the tower portion of the building is setback 30 metres from the rear property line to the north; and that the 4-storey podium is setback 20.2 meters.

[62] Mr. Lehay, recognized by the Tribunal as an Expert in architecture and urban design, added that further mitigation measures to reduce impact on the adjacent neighbourhood included: (1) primary windows facing east and west, and not north towards the Rothwell Heights neighbourhoods, (2) the absence of projecting balconies, and (3) the recessed balconies are facing east and west, and not north towards the Rothwell Heights neighbourhoods, thus minimizing balcony overlook into the neighbourhood. He also noted the 30-metre setback from the north property line. He testified that the Proposed Development could be a “kick start” and a “catalyst” to contribute a new character for the area. He was also critical of the Urban Design Review Panel for not focusing on the future potential over the next 10- to 20 years.

[63] The Tribunal heard contradictory perspectives with respect to transition, floorplate size and tower separation.

## Transition

[64] Sections 5.3.1 (2) (b) and 5.3.3(3) (a) of OP 2022 provides that along Mainstreet Corridors in the Outer Urban Transect, development may have building heights of 40-storeys “subject to appropriate height transitions, setbacks and angular planes”. OP 2022 defines transition as follows:

**Transition:** Refers to the integration of buildings that have greater height or massing than their surroundings. Transition is an important building design element to minimize conflicts when development that is higher or has greater massing is proposed abutting established or planned areas of low-rise development. Building height and massing transitions can be accomplished through a variety of means, including: incremental changes in building height (e.g., angular planes or stepping building profile up or down); massing (e.g., inserting ground-oriented housing adjacent to the street as part of a high-profile development or incorporating podiums along a Mainstreet); and building setbacks and setbacks [Emphasis added]

[65] Moreover, sections 4.6.6 (1) and (2) of OP 2022 provides as follows:

(1) To minimize impacts on neighbouring properties and on the public realm, transition in building heights shall be designed in accordance with applicable design guidelines. [...]

(2) Transitions between Mid-rise and High-rise buildings, and adjacent properties designated as Neighbourhood on the B-series of schedules, will be achieved by providing a gradual change in height and massing, through the stepping down of buildings, and setbacks from the Low-rise properties, generally guided by the application of an angular plane as may be set in the Zoning By-law or by other means in accordance with Council-approved Plans and design guidelines. [Emphasis added]

[66] Notwithstanding section 4.6.6(2) of OP 2022, which refers to the possibility of a ZBL setting standards on the application of angular planes, Mr. Tremblay testified that no standard with respect to the use of angular planes has been implemented. His evidence was not challenged on this point. On cross-examination Mr. Lehay testified that if the City wished to have angular planes to apply “as a rule”, the requirement could have been moved to the ZBL.

[67] The two Guideline documents considered by the Expert Witness are the City’s Urban Design Guidelines for Development along Arterial Mainstreets (“DG”) and Urban Design Guidelines for High-Rise Buildings (“HR Guidelines”).

[68] The DG were adopted many years prior to OP 2022. Under OP 2003, “Mainstreets” were streets that offered the most significant opportunities for intensification, and could either be Traditional Mainstreets (*i.e.*, those developed prior to 1945) or Arterial Mainstreets (*i.e.*, developed later and that present an urban fabric of larger lots, larger buildings, varied setbacks, lower densities, and a more-automobile oriented environment). Guideline 14 of the DG states that a transition in the scale and density of built form should be created when a development site is located next to lower density neighbourhoods. Mr. Tremblay testified that the DG are intended to deal with large-format retail outlets, and less important when dealing with high-rise development.

[69] The HR Guidelines are more current but were adopted in 2018, which is also prior to OP 2022, which made a significant policy increase in the height of high-rises that are generally acceptable in Ottawa.

[70] There was considerable discussion at the hearing on how to apply angular plane analysis to consider transition, including the weight to be placed on the HR Guidelines.

[71] Mr. Tremblay testified that there is no policy requirement to adhere to an angular plane and that the design for the Proposed Development was informed by an angular plane analysis, along with other meaningful ways of ensuring a sensitive integration to the adjacent neighbourhood of Rothwell Heights. He opined that the City’s Expert Witnesses over-relied on angular plane analysis to reach their unfavourable conclusions. Mr. Tremblay also testified that the proposed design actually reduces lower-level massing. In his view, the use of stepbacked podiums provide an experience of the building which is different from the expression of the building through its tower components.

[72] Mr. Tremblay testified that when considering transition between the Proposed Development and the existing low-rise neighbourhood of Rothwell Heights, the policy frameworks provides a “tool-kit” of approaches including setbacks, stepbacks and angular planes. Mr. Lehay agreed with this. In line with this, Ms. Murshid acknowledged

on cross examination that angular plane is but one tool set out in OP 2022. Mr. Wang admitted on cross-examination that angular plane is not a hard line, but a frame of reference. Mr. Tremblay also opined that one had to have regard to the DG and the HR Guidelines but these are not statutory.

[73] Ms. Murshid acknowledged on cross examination that the guidelines are adopted by City Council through resolution and not through a By-law. She also agreed that there is no legal requirement to conform to the HR Guidelines, and “to cross all the Ts”. She also admitted on cross-examination that there is nothing in OP 2022 about how to measure angular planes, and that there are situations when angular planes are not used.

[74] The Tribunal was invited to review an alternate massing option filed during the Application review phase (option B). The alternative mid-rise U-shaped building provided an increase in height from north to south, from four-storeys to 6 storeys to 9 storeys. Mr. Lehay explained on cross-examination that this was not a desired development option but was developed as a comparison to illustrate that a much more substantial building could be built within a 45° angular plane. Mr. Tremblay testified that the alternate massing was more impactful on the Rothwell Heights neighbourhood, failed to protect the existing grove of trees and the rock outcrop, and did not optimize on-street pedestrian activity. He noted that although the alternative U-shape alternate built form conformed to an angular plane in theory, it resulted in a larger massed building which would have more impact on the abutting neighbourhood than the Proposed Development. Mr. Lehay did not consider the alternative massing good design, described it as “old school development” and “nothing to be proud of”. He confirmed that it would be a larger building even if it was not as high. He also surmised that it would result in greater impact on the Rothwell Heights neighbourhood, including prolonged shadowing.

[75] For the following reasons, the Tribunal finds that the Proposed Development conforms to OP 2022 in providing a suitable transition to the adjacent Rothwell Heights neighbourhood.

[76] Firstly, the Subject Property is not too small to provide a suitable transition. Sections 5.3.1 (2) (b) and 5.3.3 (3) (a) include a proviso to the permission to develop a 40-storey high rise where the “lot is too small to provide a suitable transition”. The first question that arises is whether the Subject Property is a “small” lot. The Tribunal notes that the Subject Property is a consolidation of two parcels. The combined surface is 4,903 square metres, and measures approximately 80 metres by 77 metres (subject to the curved shape on the south-west corner). Of all the Expert Witnesses, only Mr. Wang described the Subject Property as being small. He provided little help to the Tribunal to support that conclusion. By contrast, Mr. Lahay testified that the site was very deep (*i.e.*, between 74 and 77 metres), which is two and a half times larger than a usual lot in the City. The Tribunal prefers the evidence of Mr. Lahay and finds that the Subject Property is not small. In any event, OP 2022 does not define how a lot is to be considered “small” as a stand-alone, independent matter. Clearly, the intent of OP 2022 is to link lot size to the ability of a given lot to accommodate suitable transition. There is obvious support for this interpretation in HR Guidelines:

**Lot Conditions for Infills.** To achieve effective transition and incorporate positive attributes of design such as separation between towers and built form articulation (see Section 2) a development lot must meet certain conditions such as size, shape, and the relationship with the surrounding public realm. In an area where high-rise buildings are generally allowed, there may be lots that are not suitable to accommodate a high-rise building due to their small size and configuration. In some cases, lot consolidation may be necessary

Guideline 1.17: When a proposed high-rise building abuts lots where only low-rise residential buildings are permitted, the lot should be of sufficient width or depth to establish the desirable transition: [...] the lot should be of sufficient size to establish a gradual height transition on site by generally following an angular plane, typically 45° (Diagram 1-6) [Emphasis added]

[77] Secondly, the Tribunal finds the HR Guidelines do not establish a bright line test of when and how to apply angular planes. The language itself of the HR Guidelines

invoke a level of art rather than science in approaching transition in scale when those Guidelines refer to angular planes: “typically 45°” and “frame of reference” (see guideline 1.13), “possible application” (see captions for Diagrams 1-3 and 1-4). The preambular portion of the HR Guidelines that set out their use and application:

These are general guidelines. They are not intended to be used as a checklist for evaluating a proposal and not all of the guidelines are applicable to every site. The context of each development proposal will inform the application of, and the emphasis on, the particular guidelines that are relevant to the site. Proponents of a development proposal and City staff participating in the review of the proposal should review these guidelines holistically, and work collaboratively at the pre-consultation stage to determine which guidelines are priorities for implementation and how they may be applied in the preparation and review of the development proposal. [Emphasis added]

[78] Thirdly, because they are non-statutory Guidelines, the Tribunal must have regard to them pursuant to s. 2.1 of the Act, whereas it must assure conformity with OP 2022. Counsel for the City was careful to use this appropriate language underscoring that distinction in his closing arguments. The Tribunal notes that the standard of “having regard to” the Guidelines is a lower standard of review than assuring “conformity” with OP 2022.

[79] Fourthly, the Tribunal finds considerable merit in the Applicant’s position that the HR Guidelines need a revision with respect to the application of angular plane due to the significant new definition of a “high-rise” under OP 2022. Co-counsel for the Applicant asked both Ms. Murshid and Mr. Wang on cross-examination, what size lot would be required to accommodate a 40-storey tower applying simple Euclidian geometry and a 45° angular plane considering their proposed way of calculating angular plane. Ms. Murshid did not respond to the question directly and answered that there were some circumstances when angular planes are not used. Mr. Wang became unhelpfully combative and referenced his role as an author of the HR Guidelines. He eventually admitted that they needed revision. The Tribunal notes the risk of a rigid application of angular planes containing outdated HR Guidelines have the potential of undermining OP 2022 broad objectives in section 5 to increase intensification through high-rise construction in certain parts of the City.

[80] Finally, the Tribunal finds that appropriate transition, as contemplated in OP 2022, can be achieved through several means beyond the singular application of angular plane analysis. The evidence demonstrates that the Applicant and the City had regard to angular plane analysis, including the consideration of alternative designs. Nevertheless, in this case, the Tribunal finds that the following measures ensure an appropriate transition for the Proposed Development, namely 1) the building placement closer to Montreal Road, (2) the orientation of the tower so that the narrow side of the building faces north and south, (3) the design and height of the podiums, (4) the large separation of the podium and the tower from the northern property line (20 and 30 metres respectively), (5) the protection of a mature grove of trees, (6) the significant grade change from south to north, (7) the rock outcrops along that northern property line, (8) primary windows facing east and west, and not north towards the Rothwell Heights neighbourhoods, (9) the absence of projecting balconies, and (10) the recessed balconies are facing east and west, and not north towards the Rothwell Heights neighbourhoods, thus minimizing balcony overlook into the neighbourhood.

### **Floorplates**

[81] OP 2022 provides that floorplates for high-rise buildings “should generally be limited to 750 square metres for residential buildings and 2000 square metres for commercial buildings with larger floorplates permitted with increased separation distances [emphasis added] (Section 4.6.6 (8))”. OP 2022 does not specify how a floor plate should be measured. Ms. Murshid acknowledged this on cross-examination. However, HR Guidelines defines a floorplate as the total area of a high-rise building floor measured from the exterior of the outside walls and includes the total floor area occupied by balconies.

[82] Mr. Lahay testified that the proposed floorplate for the tower is 793 square meters, and confirmed on cross-examination that the proposed floorplates, including the recessed balconies, would be 845 square metres. Mr. Tremblay testified that in his



opinion the specification on how to measure floorplates in the definition section of the HR Guidelines is just a guideline and the balcony area should not be included in the calculation. Mr. Wong testified that the floorplates were too big for this “small site”.

[83] Mr. Lahay and Ms. Murshid agreed that, whether the recessed balconies are included in the calculation of the floorplates, this would have no effect on the bulk of the building visually.

[84] The Tribunal notes that the definition of floorplate in the HR Guidelines feeds the application of certain high level design guidelines. This includes distinguishing the slenderness of point towers from slab high-rise buildings and explaining the form of high-rise buildings with a base, middle and top component. The HR Guidelines prefer a point-tower built form over slab high-rise buildings. They also “encourage” small tower floorplates to minimize shadow and wind impacts, to avoid the loss of sky views, to favour the passage of natural light. Although the HR Guidelines parallel OP 2022 distinction by stipulating that maximum tower floorplates for high-rise residential building “should be” 750 square meters for residential buildings and “should be” 2000 square meters for office buildings, they also provide that larger floorplates may be considered in suburban locations with design features to mitigate shadow and wind impacts, maintain sky views and allow for access to natural lights.

[85] Considering the language used in OP 2022 and the HR Guidelines, the Tribunal finds that the purpose and intent of floorplate size provided for in OP 2022 is to promote design outcomes that mitigate shadow and wind impacts, maintain sky views, and allow access to natural light. Section 4.6.6 (8) of OP 2022 is not intended to be a prescriptive, statutory, and standard-setting rule that is commonly found in a zoning by-law. The use of the word “generally” in that section supports this interpretation. Similarly, section 4.11(15)(c) of OP 2003 supports a non-prescriptive interpretation that seeks to address the underlying policy concern given that floorplates “may also vary depending on the uses and the context”.

[86] The Proposed Development on the Subject Property, whether the tower floorplates are measured at 793 square metres or 845 square metres, does not result in undesirable shadow and wind impacts nor would it cause unreasonable obstruction for sky views and natural light. Although the proposed floorplates are greater than 750 square metres, the Tribunal is able to conclude that the ZBA is in conformity with OP 2022.

### **Tower Setback**

[87] The Proposed Development includes a setback to the eastern property line of 10 metres. Section 4.6.6 (9) of OP 2022 provides as follows:

High-rise buildings shall require separation distances between towers to ensure privacy, light and sky views for residents and workers. Responsibilities for providing separation distances shall be shared equally between owners of all properties where High-rise buildings are permitted. Maximum separation distances shall be achieved through appropriate floorplate sizes and tower orientation, with a 23-metre separation distance desired, however less distance may be permitted in accordance with Council approved design guidelines. [Emphasis added]

[88] Mr. Tremblay testified that the proposed 10 metre setback is appropriate even though it would technically be less than the implicit setback in of 11.5 metres in section 4.6.6 (9) of OP 2022 for tower separation (*i.e.*, 23 metres divided by two). He explained that the purpose and intent of tower separation policies is to ensure that a high-rise development does not diminish the opportunity for additional density in the surrounding area. He stated in his Witness Statement as follows: “[d]ue to the current government ownership arrangements and the lot configurations of the properties surrounding the intersection of Blair Road and Montreal Road, the subject site is [the] sole property capable of supporting high-rise development in the near future.” Mr. Lehay also testified that the property to the east of the Subject Property would have limited development opportunities due to lot size. Mr. Marc, Counsel for the City, did not inquire further on this issue on cross-examination of Mr. Tremblay and Mr. Lehay.

[89] Moreover, Mr. Tremblay explained that section 77 of the ZBL contains provisions for High-Rise Buildings. The provision establishes a performance standard for high-rise building developments with regard to tower separation of 10 metres. He testified that the Proposed Development is compliant with all provisions of section 77. He opined that the proposed design meets the general intent of the high-rise zoning provisions. In his view, the location of the tower will not limit development potential on the adjacent property and is still able to achieve the stated goals of the provisions.

[90] Mr. Tremblay further testified that the requirement in the ZBL, which was adopted in 2019, overrides the non-statutory guideline 2.25 in the HR Guideline adopted in 2018. Section 2.25 states that proper distance between towers should be provided to minimize shadow and wind impacts, the loss of sky views and allow for natural light into interior spaces. The guideline states that the minimum separation “should be” 23 metres, and that a tower “must” provide a minimum 11.5-metre setback from the side property line when abutting another high-rise building.

[91] On cross-examination, Ms. Murshid agreed that the ZBL only required a 10 metre side yard setback and the ZBL was adopted after the HR Guidelines. Mr. Wang testified that the tower separation was insufficient, that the tower is too close to the interior lot line to the east of the Proposed Development and that the Applicant must “carry a fair share of responsibility” for tower separation. In his closing argument, Mr. Marc argued that the zoning currently in place for both parcels of land comprising the Subject Property does not include permission for a high-rise building, and thus the question of 10 metre setback in section 77 of the ZBL does not even arise.

[92] The Tribunal disagrees with Mr. Marc’s analysis. The very purpose of the Application is to change the zoning of the Subject Property to permit the Proposed Development, including the construction of a 26-storey high-rise building. Under that hypothesis, section 77 of the ZBL is relevant. The Tribunal notes that the Applicant is not seeking relief of a side yard setback because, if the ZBA is otherwise approved by

the Tribunal, a 10-metre setback from the east property line operates automatically under section 77 of the ZBL. The City never suggested that the Applicant needed to include a new side yard setback in its proposed ZBA.

[93] Moreover, the question at this stage is whether the Proposed Development, which includes a 10-meter side yard setback conforms to OP 2022. The Tribunal agrees with the evidence of Mr. Tremblay and Mr. Lehay and finds that the proposed setback does not prevent the ZBA to be in conformity with OP 2022. The Tribunal accepts the evidence of Mr. Tremblay concerning the purpose and intent of 4.6.6 (9) of OP 2022 and accepts the evidence of Mr. Lehay that the abutting property to the east had limited development opportunities due to lot size.

[94] In addition, the Tribunal notes that OP 2003 stated that the responsibility for providing an appropriate tower separation shall “generally” be shared between owners of abutting properties where high-rise buildings are permitted; and that a separation distance of 23 metres has been the City’s “general guidance” but actual separation requirements may vary in different parts of the City depending on the context. OP 2003 also contemplated the implementation of performance measures for tower separation between a high-rise development from another future high-rise development through the ZBL (section 4.11 (16) and (17) of OP 2003). OP 2003 also provided that proposals for a high-rise building that include performance measures that deviate from the Zoning By-law shall demonstrate that the certain impacts can be satisfactorily avoided or reduced. These impacts included (a) pedestrian comfort, safety and usability resulting from changes to wind and shadow patterns in outdoor amenities and adjacent public and private spaces surrounding the building; (b) public views, including view planes and view-sheds; (c) proximity to heritage districts or buildings; and (d) reduced privacy for existing building occupants on the same lot or on adjacent lots. The Tribunal finds that under OP 2003, as is the case for OP 2022, the tower separation policies must be evaluated having regard to the underlying policy purpose and intent *i.e.*, avoiding or reducing certain negative impacts. Whilst the underlying policy intent may have shifted

between OP 2003 and OP 2022, the Tribunal concludes that the 23-metre tower separation is not a rule. The policy must be interpreted purposefully and a development can nevertheless conform to either OP in appropriate circumstances, such as this one.

### **Does the Proposed Development Avoid Adverse Impact?**

[95] Mr. Tremblay explained that under OP 2003, good urban design required new development to enhance the existing character of neighbouring communities and the way they function. Referring specifically to High-Rise Building policies, he testified that under OP 2003 such buildings should be designed to avoid or reduce impacts and disruptions considering such things as shadowing, wind patterns and privacy (section 4.11(14)). He added that proposals for a high-rise building that include performance measures that deviate from the ZBL must demonstrate that the impacts identified in policy 14 can be satisfactorily avoided or reduced.

[96] Mr. Tremblay testified that the Proposed Development is compatible with the existing built-up area, and that under OP 2003 a compatible development is defined as a development that is not necessarily the same as or similar to existing buildings, but that enhances and coexists with existing development without undue adverse impacts on surrounding properties. For him, the Proposed Development fits and works well with its surroundings when one has regard to OP 2003. He and Mr. Lehay testified with respect to the shadowing and wind studies submitted as part of the application process. As noted above, they also testified that the building design (including the building's orientation and massing, the placement of principal windows, the use of two podiums, the proposed setbacks, the use of podium and tower setbacks and recessed balconies) contributed to ensure the Proposed Development did not have an undue adverse impact. Both Mr. Lehay and Mr. Tremblay testified that the mere ability to see a building is not an undue adverse impact.

[97] Ms. Murshid admitted, under cross-examination, that there was no evidence of undue adverse impact caused by the Proposed Development and specifically agreed that there is only mere apprehension of such undue adverse impact.

[98] Counsel for the Applicant provided previous decisions of the Tribunal and its predecessor which, in his submission, stood for the proposition that mere apprehension of undue adverse impact is insufficient. Counsel for the City did not contest this. However, there is no need for the Tribunal to delve into this caselaw to any great degree. The Parties agreed that the Tribunal should consider the conformity of the Applications against OP 2022, and not OP 2003. The matter of whether the ZBA has an undue adverse impact is a policy lens that flows from OP 2003 and does not have an explicit comparable provision in OP 2022. Under OP 2022, the policy objectives for “sensitive integration” of new high-rise buildings to existing neighbourhoods is set out at section 4.6.6 discussed above starting above under the heading “**Transition**”.

[99] Accordingly, the Tribunal had appropriate regard to the issue of undue adverse impact under OP 2003 and finds that the Proposed Development, for much the same reasons under paragraphs [64] to [80] above, will not have an undue adverse impact on the neighbouring community of Rothwell Heights and its residents.

**Does the ZBA permit a Development that is Transit-Supportive and is Supported by the Transportation Network?**

[100] The Parties agreed that the ZBA allows for transit-supportive development. In her pre-hearing Witness Statement, Ms. Murshid stated that the ZBA seeks increased setbacks to the Blair frontage to create an automobile dominated streetscape along this side. In her opinion, car-dependent design is not transit supportive or pedestrian-friendly and has created obstructions to the user of this building to access the existing bus stop and the future frequent street transit. However, on cross examination, she admitted that the Proposed Development has evolved and is now transit and pedestrian supportive. Counsel for the City reiterated this change in position in his closing arguments.

[101] With respect to the transportation network, the Parties also agreed that the Proposed Development, in the long term, would be consistent the City's goal for Montreal Road and Blair Road, as articulated in the *Municipal Class Environmental Assessment Study for the Montreal-Blair Road Transit Priority Corridor* ("EA"). Where they disagreed is on the question of whether, in the interim, the Proposed Development is supported by the current transportation network.

[102] It was common ground that the timing for the implementation of the EA was uncertain as it was dependent on municipal decisions with respect to capital spending. Under the EA, the intersection of Montreal Road and Blair Road is proposed to see improvements to its pedestrian and active transportation infrastructure, as well as the addition of protected bus lanes. The City's Transportation Master Plan ("TMP") identifies several modifications to road and transit infrastructure along both Montreal and Blair Roads to accommodate future travel demand and meet modal share objectives. Montreal Road and Blair Road are identified in the TMP as part of the 2031 Affordable Rapid Transit and Transit Priority Network. The City-led study proposes options to improve transit service efficiency and travel environment for all modes along the corridors, establish the right-of-way requirements for the recommended plan and allow the project to proceed to design and construction. Improved active transportation conditions and connectivity to the Blair Station on the LRT Confederation Line will be emphasized to provide seamless mobility options for the community.

[103] Mr. Tremblay and Mr. Gordon both testified as to what came to be known as the "chicken and egg" issue. Mr. Tremblay testified that it is an unreasonable expectation for the City to "build transit to nowhere" and that there must be a reason to increase transit facilities, which can be triggered by new development. Mr. Gordon explained that unlike water and sanitary infrastructure, typically development occurs first, and transit is built second. He noted that in this case the Subject Property is already served with a certain level of transportation connectivity, that the capacity of that network will be adjusted over time to accommodate greater volume of future "people trips".

[104] The Tribunal agrees with the uncontested transportation evidence of Mr. Gordon, who appeared for the Applicant. Based on his Transportation Impact Assessment (“TIA”), the Proposed Development is supported by both the existing and the future planned transportation network. The contents of the TIA followed the City’s TIA Guidelines and incorporated industry best practices from the Transportation Association of Canada (TAC) and the Ontario Ministry of Transportation (MTO), where applicable. Ms. Murshid agreed on cross-examination that this single Proposed Development will have little transportation impact on the existing transportation network. The Subject Property is currently served by three bus routes. There was contradictory evidence, some of which was anecdotal, about the nature of the service (circuitous versus direct routes; reliability; weekdays versus weekend service) and travel time to certain destinations, including Blair LRT station. Nothing of significance turns on these disagreements from a transportation perspective. The Tribunal accepts Mr. Gordon’s evidence that even in the absence of capital expenditure, the existing bus routes can be improved to meet demand once the Proposed Development starts being occupied by future residents by increasing the number of buses or their frequency. Moreover, in the future, the City’s Transportation Master Plan includes these two roads in the Rapid Transit and Transit Priority Affordable network. Whilst the timing is uncertain for those capital-intensive plans, the City has planned and intends to implement these transit and active mode facilities. The implementation will improve the current situation, particularly when the Montreal Road Station become fully operational following the ongoing extension of the LRT to the east.

[105] The Tribunal finds that the Proposed Development is already on two transit priority corridors that connect this site to the fully operational Blair Road LRT station and to several commercial areas. The Proposed Development is thus supported by the existing transportation network. The Tribunal also agrees with Mr. Gordon’s statement, made on cross-examination, that the Tribunal must base its decision on the City’s current transportation plans and not possible operational shortcomings of the existing



bus services. To do otherwise would draw the Tribunal down a bottomless rabbit-hole of evidence on the reliability of transit in the City.

### **Does the Proposed Development Offer Sufficient Parking?**

[106] There was a surprising abundance of evidence at the hearing on the availability of parking under the Proposed Development. The ZBA for the Proposed Development seeks a parking rate of 0.7 vehicular spaces per residential unit with an additional 0.2 visitor spaces. Given the inclusion of retail space at-grade, the provision of 10 vehicular spaces per 100 square metres of gross floor area was included in the proposal. In total, 289 vehicular parking spaces are proposed. The Proposed Development also includes 264 bicycle parking spaces, a rate of slightly over 1.0 bicycle parking spaces per unit.

[107] Mr. Tremblay and Lahey testified that the proposed rate of vehicular parking rate is sufficient. Mr. Gordon, recognized as an expert in Transportation by the Tribunal, agreed.

[108] Mr. Tremblay testified that the proposed parking provisions, below the minimum required by the ZBL, are defensible based on the site's location along two transit priority corridors and the guidance provided by OP 2022, as well as the provision of ample bicycle parking spaces to further facilitate a reduction in personal vehicle usage. He opined that the amount of parking provided is sufficient to meet the needs of the Proposed Development while encouraging a modal shift in an area that is poised to support improvements to its active transportation infrastructure. Mr. Tremblay testified that the proximity to a transit-priority corridor and to the rapid-transit corridor is anticipated to decrease the dependency on cars for the future residents of the development. Mr. Gordon explained that the two transit priority corridors connect this development to the Blair LRT station and to the eventual Montreal Road LRT stations, as well as connecting the site to commercial areas and to downtown Ottawa.

[109] Mr. Tremblay and Mr. Lehay testified that, in their numerous years of experience, they have never seen the City seek an increase in parking spaces over the rates proposed by a developer. Mr. Lahey testified, that in his experience, the City advocates for higher parking space rates only in the extreme west end and south end of the City, mostly fearing overflow on-street parking in adjacent neighbourhoods. On cross-examination, Ms. Murshid agreed that she typically supports reduction in parking spaces, that there will unlikely be spill-over parking risks into adjacent neighbourhoods, and that tenants would know prior to renting whether they had access to parking. She also made the surprising admission that she “is less qualified” on matters of parking.

[110] The Tribunal notes that the issue is not whether the Proposed Development and the ZBA meets the existing ZBL standard. Rather, the question is whether the proposed number of parking spaces requested in the ZBA conforms with OP 2022. The location of the Proposed Development along transit-priority corridors seeks to take advantage of the provision of transit for the future residents. Both OP 2022 and OP 2003 seek to encourage reductions in parking where transit services are available. The future of the Montreal Road Corridor also seeks to become a more walkable and pedestrian oriented environment, facilitating the provision of everyday necessities within walking distance. The reduction of parking will encourage the use of transit, which supports two Big Policy Moves in OP 2022, namely Big Policy Move 2 which states “By 2046, the majority of trips in the City will be made by sustainable transportation”, and Big Policy Move 4 which states “Embed environmental, climate and health resiliency and energy into the framework of our planning policies”. The following passage of OP 2022 seems particularly relevant:

**Prioritize a shift to energy efficient transportation modes** The second highest source of emissions in Ottawa is transportation. In order to reduce greenhouse gas emissions, the reliance on the personal automobile needs to be replaced with active and zero emission transportation modes such as public transit, walking and cycling. The societal uptake of electric vehicles also offers a low carbon alternative for Ottawa residents, but continued reliance on low-occupancy private vehicles does nothing to relieve congestion, and that model has to change. To support Ottawa’s transformation to low carbon transportation options, land use patterns and mobility considerations will require frequent and efficient public transit service as well as sustainable transportation infrastructure and

other investments. This may include, for example, segregated cycle tracks and electric vehicle charging stations along streets and within parking areas. [Emphasis added]

[111] The Tribunal notes that City Staff's written position on parking never suggested more refined targets, including strategies related to electric vehicle spaces or community car-share spaces.

[112] Considering s. 2.1 of the *Planning Act*, the Tribunal also had regard to Area C of Schedule 1A entitled "Areas for Minimum Parking Space Requirement" and section 101 of ZBL. Although the Subject Property falls under Area C (Suburban) with a standard of 1.2 parking spaces per dwelling unit, Area X (Inner Urban), which is located just a few metres just across Blair Road, has a parking rate of 0.5.

[113] Moreover, the Tribunal considers that on-street parking is unlikely. No on-street parking is permitted on the nearby sections of Blair Road and Montreal Road. Tribunal also agrees with Ms. Murshid that no inconvenience to abutting neighbourhood properties is likely because those neighbourhood streets are "a bit too far to walk".

[114] The Tribunal also took note of Mr. Lahey's evidence that, in his opinion, each additional vehicular parking space would cost the Applicant \$60,000.

[115] Based on the above, the Tribunal finds that a parking rate of 0.7 per dwelling unit is reasonable for the Proposed Development and conforms to OP 2022.

## **CONCLUSION**

[116] In summary, based on the above analysis, the Tribunal finds that:

- The ZBA has regard to matters of provincial interest pursuant to s. 2 of the Act;
- The ZBA is consistent with PPS 2020 pursuant to s. 3 of the Act;

- The ZBA conforms to OP 2022 pursuant to s. 24 of the Act, including issues of location, design, transition, floorplates, tower separation, transportation, and parking;
- The ZBA meets the purpose and intent of the ZBL;
- The Proposed Development results in no undue adverse impacts on existing neighbourhoods;
- The Proposed development represents good planning, is appropriate and in the public interest; and,
- The ZBA application had regard to and applied in a meaningful way the DG, the HR Guidelines, the EA, and OP 2003.

### **SHOULD THE APPEAL OF THE SPA BE ALLOWED?**

[117] At the hearing, the Tribunal explored with the Parties the possibility of dividing consideration of the matter before it into two phases. The Tribunal notes that the SPA was filed with the Tribunal after the CMC Decision was issued and after the SPA appeal was consolidated administratively with the previous ZBA appeal. The City supported the approach of a decision first being made on the ZBA, and then, should the Tribunal allow the appeal and approve the ZBA, the parties would have 60 days to reach an understanding and submit plans and conditions to the Tribunal in respect of the SPA. Failing agreement, the matter would be brought back before the Tribunal. Of course, this was an alternative position for the City as it maintained that the appeals of the ZBA and SPA should be rejected. The Applicant argued that the Tribunal should allow the appeal of the ZBA and approve the SPA. However, in the alternative, the Applicant agreed with the phased approach articulated by the City.

[118] Considering sections 9 and 12 of the *Ontario Land Tribunal Act*, the Tribunal has decided to consider in this Decision and Order, as a first phase, the appeal of the revised ZBA. The Tribunal considers this to be a fair, just, expeditious and cost-effective resolution of this matter.

## **ORDER**

[119] **THE TRIBUNAL ORDERS** that:

- a. The appeal of the Zoning By-law Amendment application is allowed in part and By-law 2008-250 of the City of Ottawa is amended as set out in **Attachment A** to this Order. The Tribunal authorizes the municipal clerk of the City of Ottawa to assign a number to this By-law for record keeping purposes.
- b. The appeal of the Site Plan Approval is deferred. The Parties shall have 60 days from the date of this Decision and Order to indicate to the Tribunal whether they have come to an agreement with respect to that appeal. If the Parties have come to an agreement, the Site Plan Approval appeal will be withdrawn. If the Parties have not come to an agreement, the Parties shall inform the Tribunal of the number of days that will be required to consider the approval of the contested Site Plan application, and the Tribunal will set the matter down for a hearing. The Tribunal may be spoken to if there are difficulties in satisfying these timelines.

- c. The Members of the panel remain seized to consider the appeal of the Site Plan Approval.

*“Jean-Pierre Blais”*

JEAN-PIERRE BLAIS  
MEMBER

*“Kurtis Smith”*

KURTIS SMITH  
MEMBER

### **Ontario Land Tribunal**

Website: [www.olt.gov.on.ca](http://www.olt.gov.on.ca) Telephone: 416-212-6349 Toll Free: 1-866-448-2248

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

## ATTACHMENT A

1. The Zoning Map of By-law No. 2008-250, entitled the “City of Ottawa Zoning By-law” is amended by rezoning the lands shown on Attachment 1 as follows:

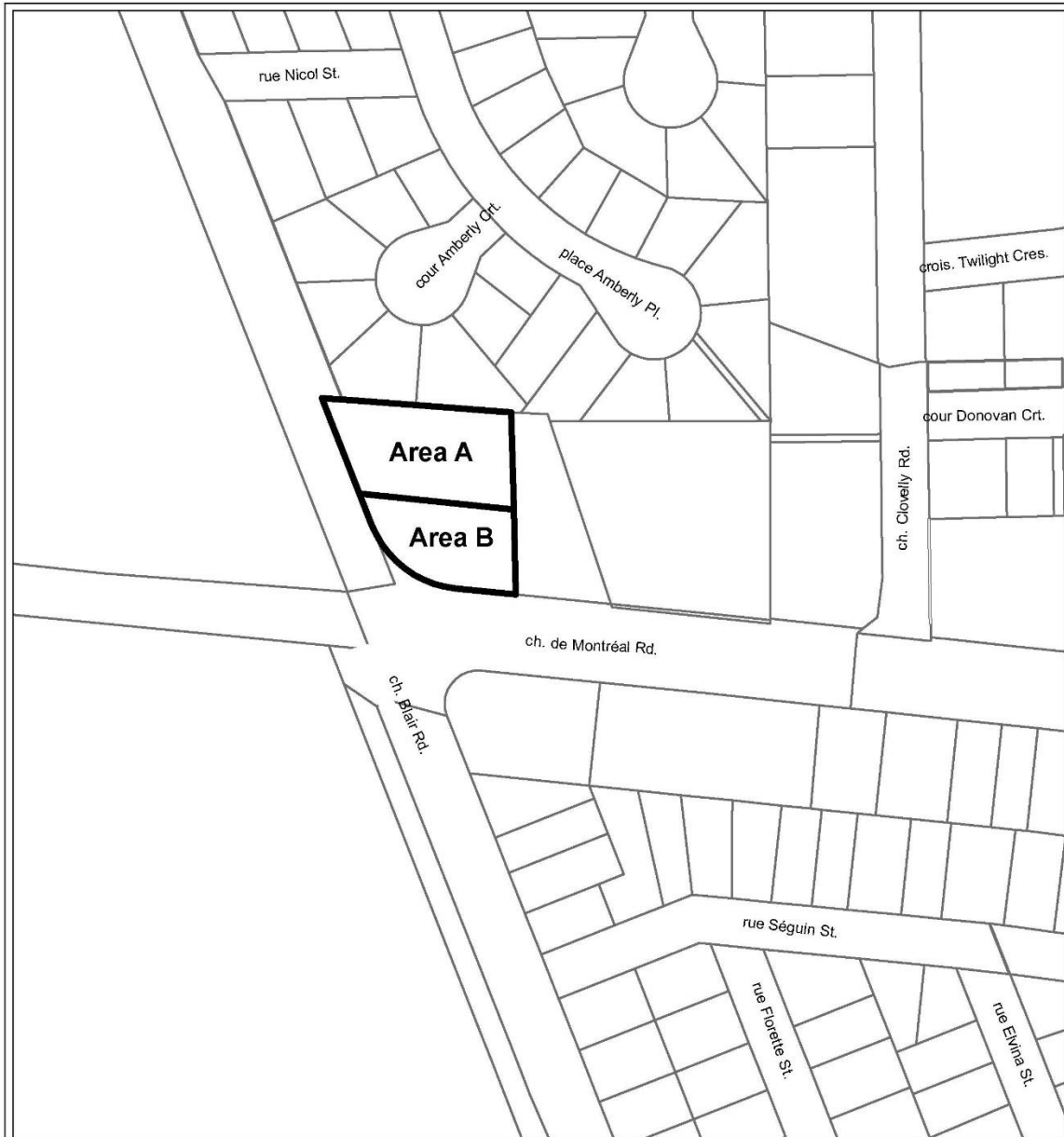
- a) Area A from R3K[1631] to AM10[XXXX] SYYY; and,
- b) Area B from AM10[2199] to AM10[XXXX] SYYY.



2. Section 239 – Urban Exceptions of By-law No. 2008-250 is amended by adding the following exception:

I Exception Number	II Applicable Zone	Exception Provisions		
		III Additional Land Uses Permitted	IV Land Uses Prohibited	V Provisions
XXXX	AM10[XXXX] SYYY			<ul style="list-style-type: none"> <li>- Building setbacks, stepbacks and maximum building heights as per SYYY.</li> <li>-Subsection 185(10)(g) does not apply and a minimum of one active entrance per non-residential ground floor occupancy with frontage onto Montreal Road is required.</li> <li>-Subsection 185(10)(e) does not apply and any portion of a building located within 10m of a front lot line or corner lot line must satisfy the following minimum building height: 5m.</li> <li>- Section 101 does not apply and the minimum parking space rate is 0.7 parking spaces per residential unit.</li> <li>- Minimum bicycle parking space dimensions and bicycle parking access aisle width do not apply.</li> </ul>

3. Part 17 – Schedules of By-law No. 2008-250 is amended by adding Schedule YYY as shown on Attachment A to this by-law.

# ATTACHMENT 1



	<p>This is Attachment 1 to By-law Number _____, passed _____, 2023</p> <p><b>Lands Affected by By-law</b></p>		
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">D02-02-21-0038</td> <td style="width: 50%;">23-0533-X</td> </tr> </table>	D02-02-21-0038	23-0533-X	
D02-02-21-0038	23-0533-X		
<p>I:\CO\2023\LAM\Montreal1649_Blair741</p> <p><small>©Parcel data is owned by Teranet Enterprises Inc. and its suppliers. All rights reserved. May not be produced without permission. THIS IS NOT A PLAN OF SURVEY.</small></p> <p><small>©Les données de parcelles appartiennent à Teranet Enterprises Inc. et à ses fournisseurs. Tous droits réservés. Ne peut être reproduit sans autorisation. CECI N'EST PAS UN PLAN D'ARPENTAGE.</small></p>	<p>Area A to be rezoned from R3K[1631] to AM10[XXXX] SYYY</p> <p>Area B to be rezoned from AM10[2199] to AM10[XXXX] SYYY</p>		
<p>LANDS AFFECTED PART OF THE ZONING MAP OF BY-LAW NO. 2008-250</p>	 <p><small>NOT TO SCALE</small></p>		



# ATTACHMENT 2

