

PROCEEDING COMMENCED UNDER subsection 17(40) of the Planning Act, R.S.O. 1990, c. P. 13, as amended

Applicant/Appellant: 30 Duke Street Limited
Subject: Failure of Approval Authority to announce a decision respecting a Proposed Official Plan Amendment
Reference Number: OPA 20/005W/JVW
Property Address: 22 Weber Street W (22 Weber Street W.)
Municipality/UT: Kitchener/Waterloo
OLT Case No: OLT-22-002377
Legacy Case No: PL210104
OLT Lead Case No: OLT-22-002377
Legacy Lead Case No: PL210104
OLT Case Name: 30 Duke Street Limited v. Kitchener (City)

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

Applicant/Appellant: 30 Duke Street Limited
Subject: Application to amend the Zoning By-law – Refusal or neglect to make a decision
Reference Number: 20/013/W/JVW
Property Address: 22 Weber Street W (22 Weber Street W.)
Municipality/UT: Kitchener/Waterloo
OLT Case No: OLT-22-002378
Legacy Case No: PL210105
OLT Lead Case No: OLT-22-002377
Legacy Lead Case No: PL210104

Expert Witness Statement of Michael Barton, RPP

Prepared: March 18, 2025

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A. Introduction

1. 30 Duke Street Limited (the “Appellant”) filed applications for amendments to the 2015 City of Kitchener Official Plan and City of Kitchener Zoning By-Law 85-1 to facilitate the development of 22 Weber Street West (the “Subject Property”) in the City of Kitchener (the “City”). The revised application of December 24, 2024 is for a 19-storey multiple residential building with 168 units.
2. The Appellant appealed the Official Plan and Zoning By-Law Amendment applications to the Ontario Land Tribunal on the basis of City Council failing to make decisions within the prescribed timeframes.
3. I have been retained by the Friends of Olde Berlin Town (FOBT), a Party to this Proceeding, as an Expert in Land Use Planning and I will be called as an Expert Witness at the hearing.
4. This Expert Witness Statement has been prepared to outline my land use planning evidence and opinion with respect to these applications. My Curricula Vitae are included in Appendix A and my Acknowledgement of Expert Duty is included in Appendix B.
5. I am a Registered Professional Planner (RPP) and full member of the Ontario Professional Planners Institute (OPPI). I am the President and Founder of MB1 Development Consulting Inc. (“MB1”) and a highly qualified land use planning and real estate development professional. I have practiced land use planning for over 20 years in communities across Ontario and Canada. I have been qualified as an expert in land use planning by the Ontario Land Tribunal (formerly Local Planning Appeal Tribunal (LPAT) and Ontario Municipal Board (OMB)), as well as the Toronto Local Appeal Body (TLAB). I have also been qualified as an expert in land use planning in court proceedings in the Province of Ontario.
6. My professional background includes extensive experience evaluating Official Plan and Zoning By-Law Amendment applications within the context of the applicable Provincial and municipal land use planning policy framework.
7. The following summarizes my land use planning opinion with respect to these applications:
 - It is my opinion that the development proposal does not have appropriate regard for its existing and planned context, and the requested Official Plan and Zoning By-Law Amendments do not have sufficient regard to the matters of Provincial interest in Sections 2 (d), (n), (p) and (r) of the Planning Act.
 - It is my opinion that the development proposal is not consistent with the applicable polices of Provincial Planning Statement, 2024, in particular 2.4.1.3., 4.6.1. and 4.6.3, 6.1.1., 6.1.7, 6.1.11, and 6.1.12.

- It is my opinion that the development proposal and requested Official Plan and Zoning By-Law Amendments do not conform to the Region of Waterloo Official Plan, specifically objective 3.8, and policies 2.D.1, 3.G.1 and 3.G.6.
- It is my opinion that the development proposal and requested Official Plan and Zoning By-Law Amendments do not conform to the City of Kitchener Official Plan.
- It is my opinion that the requested site-specific zoning regulations will not provide appropriate spatial separation and transition to the existing and planned uses in the immediately adjacent low-rise residential neighbourhood nor to the flanking neighbours. The height is not appropriate. The front and rear yard setbacks are inadequate. The landscaped area is inadequate.
- It is my opinion that the development proposal is not consistent with the City of Kitchener Urban Design Guidelines on the following basis:
 - The proposed building does not appropriately transition to the adjacent low-density residential neighbourhood and Heritage Conservation District in terms of building setbacks and spatial separation to adjacent properties;
 - The proposed height, density and building setbacks do not respect the existing and planned character of the neighbourhood in which the Subject Property is located;
 - The proposed building has not been designed or sited in a manner that considers its local context.
- It is my opinion that the development proposal and corresponding applications for Official Plan and Zoning Amendment do not represent good planning and are not in the public interest. The City of Kitchener Official Plan, through OPA 49, has implemented a new land use planning framework that includes the Kitchener City Hall PMTSA in order to respond to the Provincial direction, including the More Homes Built Faster Act, 2022. This land use planning framework includes the application of Strategic Growth Areas that provide for different types, height and scale of built form throughout the PMTSA. The Subject Property is surrounded by Strategic Growth Area A, which is intended to accommodate intensification through a range of low and medium density residential housing types up to a maximum of 8 storeys. The policies of Strategic Growth Area A are implemented through the “SGA-1” and “SGA-2” zoning categories of Zoning By-Law Amendment 2024-065. The “SGA-2” zoning category that abuts the Subject Property to the east and west permits a maximum height of 8 storeys and linear height of 20 metres for a property within 15 metres of an SGA-1 zone, in conjunction with numerous other performance standards intended to establish the maximum height, scale and massing considered appropriate in this zone. While the Subject Property was not included in OPA 49 and Zoning By-Law Amendment 2024-065, it does not represent good planning to establish site-specific Official Plan and Zoning By-Law provisions that are significantly different than the surrounding existing and planned context in the PMTSA for which an extensive planning exercise has been completed to establish appropriate permissions and performance standards for building height, setbacks, setbacks and transition. The Official Plan and Zoning By-Law Amendment applications seek to establish the Subject Property as an island of high-rise and high-density residential land use that is not based within the context of the Official Plan and Zoning work completed by the City of

Kitchener as part of its “Growing Together” project to implement Provincial policy and the growth and intensification objectives of the Region of Waterloo.

- It is my opinion that the applications by the Appellant for amendments to the 2015 City of Kitchener Official Plan and City of Kitchener Zoning By-Law 85-1 to facilitate the development of the Subject Property for a 19-storey multiple residential building with 168 units should be refused by the OLT.

B. Background and Context

B.1 Official Plans and Zoning By-Laws

B.1.1 Region of Waterloo Official Plan

8. The Region of Waterloo Official Plan in force and effect at the time of the applications was adopted by Regional Council on June 16, 2009. The Plan was ultimately approved by the Ontario Municipal Board and came into effect on June 18, 2015.
9. The new Region of Waterloo Official Plan was first approved with modifications by the Minister of Municipal Affairs and Housing (MMAH) on April 11, 2023 through Regional Official Plan Amendment (ROPA) No. 6. While this approval was reversed through Bill 150, which deemed the approval to have never been made, Bill 162 retroactively approved the new Regional Official Plan as of April 11, 2023.

B.1.2 City of Kitchener Official Plan

10. The current in-force City of Kitchener Official Plan was approved on November 19, 2014 by the Region of Waterloo and adopted through Official Plan Amendment No. 103. This Plan was in force and effect at the time of application.
11. Official Plan Amendment 49 (OPA 49) was approved by the Region of Waterloo on June 19, 2024. The purpose of the OPA 49 is to incorporate modifications to the text and mapping of the City of Kitchener Official Plan in order to implement a new land use planning framework for seven of the City's ten Protected Major Transit Station Areas (PMTSAs). OPA 49 was prepared as part of the City's “Growing Together” project, which aims to update the planning framework for Kitchener's Major Transit Station Areas (MTSAs) through updated land use policies and zoning regulations. The “Growing Together” project builds upon previous work, including the Planning Around Rapid Transit Stations (PARTS) project, while also responding to new direction from the Province, including the requirements of the More Homes Built Faster Act, 2022.

B.1.3 City of Kitchener Zoning By-Law

12. The City of Kitchener currently has two Zoning By-Laws in force and effect: Zoning By-Law 85-1 and

Zoning By-Law 2019-051.

13. Zoning By-Law 85-1 was passed in 1985 and is gradually being replaced by Zoning By-Law 2019-051. Zoning By-Law 2019-051 was passed in 2019 as part of the ongoing comprehensive review of the Zoning By-Law with the stated purpose of ensuring that land and buildings are used in ways that align with the current City of Kitchener Official Plan and complement and support growth.
14. Zoning By-Law Amendment 2024-065 was adopted on March 19, 2024 as part of the “Growing Together” project. ZBLA 2024-065 amends Zoning By-Law 2019-051 to apply new zoning permissions and performance standards to the lands in the same 7 PMTSAs that are included in City of Kitchener OPA 49. On December 9, 2024, the OLT dismissed any appeals of ZBLA 2024-065 based on height or density (Case # OLT-24-000546, Paragraphs 45, 46 and 55). The OLT further acknowledged that “It is not the role of the Tribunal to question the City’s preferred means of regulating maximum density” within PMTSAs (Case # OLT-24-000546, Paragraph 52).

B.2 The Subject Property

15. The Subject Property is known municipally as 22 Weber Street West in the City of Kitchener. The Subject Property has frontage of 27.18 metres on Weber Street West with total site area of 0.14 ha (1,392 m²). This property is currently vacant of structures and occupied by a surface parking lot with two separate one-way driveways for ingress from and egress to Weber Street West.
16. **Region of Waterloo Official Plan (2015):** The Subject Property is located in the “Urban Area” and immediately adjacent to, but not within, the Downtown Kitchener “Urban Growth Centre” as delineated on Map 3a (Urban Area) of the Region of Waterloo Official Plan (approved with modifications in 2015). Weber Street West is identified as a “Planned Transit Corridor” on Map 5a (Regional Transit Network).
17. **New Region of Waterloo Official Plan (ROPA 6):** The Subject Property is located within the “Urban Area” and “Delineated Built-up Area” (Map 2 – Urban System) but outside of the limits of the “Downtown Kitchener Urban Growth Centre” (Figure 2). These designations are consistent with the 2015 Regional Plan. The Subject Property is also located within the “Kitchener City Hall Major Transit Station Area (PMTSA)” as delineated on Figure 6b.
18. **City of Kitchener Official Plan:** The Subject Property is located in a “Protected Major Transit Station Area (PMTSA)” with Weber Street West designated as a “Planned Transit Corridor” on Map 2 (Urban Structure). The Subject Property is located north of the limits of the Downtown Urban Growth Centre delineated on Map 3 (Land Use) and located within the Secondary Plan Area of the Civic Centre Neighbourhood. While all of the properties adjacent to the Subject Property and in the surrounding PMTSA have been assigned new land use designations under City of Kitchener OPA 49, the Subject Property was excluded from OPA 49 due to its involvement in this ongoing OLT Proceeding.

Therefore, the Official Plan designation on the Subject Property is established under the Civic Centre Neighbourhood Secondary Plan. The Secondary Plans were not part of the review and approval of Official Plan Amendment No. 103 and, consequently, are not part of the 2014 Official Plan. Therefore, the Secondary Plan designations of the 1994 Official Plan remain applicable. The Subject Property is designated “High Density Commercial Residential” on Map 9 of the City of Kitchener 1994 Official Plan (Secondary Plan – Civic Centre Neighbourhood Plan for Land Use).

19. **City of Kitchener Zoning By-Law 85-1:** The Subject Property is currently zoned “Commercial Residential Three (CR-3)” under Zoning By-Law 85-1.
20. **Civic Centre Neighbourhood Heritage Conservation District Plan:** The Subject Property is located in the Civic Centre Neighbourhood Heritage Conservation District, specifically in the “Weber Street Area”. The Civic Centre Neighbourhood Heritage Conservation District Plan came into force in 2010, 16 years after the 1994 Civic Centre Secondary Plan.

B.3 Surrounding Context

21. The Subject Property is located in the Civic Centre Neighbourhood Heritage Conservation District at the southerly periphery of a mixed-use neighbourhood in the Urban Area that is adjacent to, but not within, the Downtown Urban Growth Centre. City of Kitchener OPA 49, in implementing land use designations for the Kitchener City Hall PMTSA, designates the properties on the north side of Weber Street West, except for the Subject Property, as “Strategic Growth Area A” while the properties on the south side of Weber Street West and inside the Downtown Urban Growth Centre are designated “Strategic Growth Area C”.
22. These designations represent a planned transition from “significant intensification at high density” in Strategic Growth Area C to Strategic Growth Area A, which is intended to accommodate “intensification within existing predominantly low-rise residential neighbourhoods, lands further away from Rapid Transit station stops, and/or lands where existing lots are generally too small to support high rise buildings” through a range of low and medium density residential housing types. The intent is that the Subject Property and adjacent properties outside of the Urban Growth Centre will be subject to different permissions and performance standards than properties inside the Urban Growth Centre.
23. The properties immediately north of the Subject Property include the single detached dwelling structures at 27 and 31 Roy Street, which are located along the south side of Roy Street. While 27 Roy Street has been converted into a fourplex, the built form is that of a single detached dwelling. These properties are located in the Urban Area and Kitchener City Hall PMTSA but outside of the Downtown Kitchener Urban Growth Centre. These properties are designated “Strategic Growth Area A” and zoned “Strategic Growth Area 1 (SGA-1)”. The SGA-1 zone permits a maximum height of 11 metres

and 55% lot coverage. These properties are also located within the Civic Centre Heritage Neighbourhood Conservation District.

24. The property immediately to the south is known municipally as 21 Weber Street West and is currently vacant of structures. This property is located within the Downtown Kitchener Urban Growth Centre and designated “Strategic Growth Area C” through City of Kitchener OPA 49. This property is zoned “Strategic Growth Area 3 (SGA-3)” and is located outside of the limits of the Civic Centre Neighbourhood Heritage Conservation District.
25. The property immediately to the west is known municipally as 28 Weber Street West and is currently occupied by a 3-storey commercial building. This property is located in the Urban Area but outside of the Downtown Kitchener Urban Growth Centre. This property is designated “Strategic Growth Area A” and zoned “Strategic Growth Area 2 (SGA-2)”. This property is also located within the Civic Centre Heritage Neighbourhood Conservation District.
26. The property immediately to the east is known municipally as 18 Weber Street West and is currently occupied by a 2½-storey detached structure. This property is located in the Urban Area but outside of the Downtown Kitchener Urban Growth Centre. This property is designated “Strategic Growth Area A” and zoned “Strategic Growth Area 2 (SGA-2)”. This property is also located within the Civic Centre Heritage Neighbourhood Conservation District.
27. The City of Kitchener Official Plan policies for “Strategic Growth Area A” permits a range of low and medium density housing types up to 8 storeys in height. The SGA-2 zone permits a maximum height of 8 storeys and 20 metres within 15 metres of an SGA-1 zone, which directly abuts the Subject Property to the north. A detailed review of the SGA-2 zone regulations is provided in the following section.

C. Proposed Development

28. The proposal is for the Subject Property to be redeveloped for a 19-storey, 59-metre high multiple residential building with 168 units. The proposed floor area would result in a floor space index (FSI) of 7.95 times the lot area. The building is oriented towards Weber Street West with pedestrian and vehicular access from Weber Street West. The building does not incorporate appropriate setbacks or tapering in building height to mitigate the proposed scale and massing relative to adjacent properties. While maximum building height is not identified in the CR-3 zoning under Zoning By-Law 85-1, the minimum rear yard setback establishes a de facto maximum height. The proposal incorporates a minimum rear yard setback of 8 metres for the portion of the building up to 5 metres in height and a minimum rear yard setback of 14 metres for the portion of the building above 5 metres in height. The minimum rear yard setback is 7.5 metres or one half the building height, whichever is greater. If the 14-metre rear yard setback is applied, the maximum building height permitted would be 28 metres while 59 metres is proposed.

29. The proposal seeks an amendment to the City of Kitchener Official Plan designation on the Subject Property from “High Density Commercial Residential” to “High Density Commercial Residential” with a Special Policy Area to increase the Maximum Floor Space Ratio from 4.0 to 7.95.
30. The proposal seeks an amendment to Zoning By-Law 85-1 by maintaining the “Commercial Residential Three (CR-3)” zone with the following site-specific special regulations, shown below in contrast to the existing CR-3 regulations and the SGA-2 zoning of the flanking properties:

Regulation	CR-3 (Bylaw 85-1)	SGA-2 (Bylaw 2024-065) For Multiple Dwellings	Applicant-Appellant Dec 2024 Proposal
Max. Floor Space Ratio	4.0	Unregulated	7.95
Min. Lot Width	15m	30m	Same as CR-3
Min. Lot Area	Unregulated	1500m ²	Same as CR-3
Max. Building Height	De facto 2x rear yard depth	8 storeys AND 20.0m within 15m of a lot with an SGA-1 zone	19 storeys and 59m
Min. Front Yard Setback	3m	3m	0.0m
Min. Front Yard Setback for Storeys 7 and Above	3m	6.0m	0.0m
Min. Side Yard Setback	1.2m	3.0m	2.5m
Min. Side Yard Setback for Storeys 7 and Above	1.2m	6m	2.5m
Min. Rear Yard Setback	7.5m or one half the building height, whichever is greater	7.5m (where the lot abuts a lot with an SGA-1 zone or a low-rise residential zone)	8m, for portions of the building up to 5 m in height. 14m, for portions of the building greater than 5 m in height.
Min. Landscaped Area	10%	20%	5%
Min. Parking	NA	NA	0 (NA)
Min. Class A Bicycle Parking		1/dwelling unit	1/dwelling unit
Min. Class B Bicycle Parking		6	6

Additional regulations proposed by Applicant-Appellant:

- a) Dwelling Units shall be permitted on the ground floor within either a mixed-use or multiple dwelling building;

- b) Exclusive use patio areas are not required for ground floor units;
 - c) Rear Yard Access requirements do not apply;
 - d) The minimum ground floor height shall be 4.5 metres;
 - e) A minimum amenity area of 1,500 square metres shall be provided and shall include balconies and shared amenity space;
 - f) Geothermal Energy Systems shall be prohibited.
31. The proposal seeks these increases in density and height and reductions to key performance standards intended to provide appropriate transition to the adjacent low rise residential neighbourhood through limitations on height and spatial separation. For example, constructing 19 storeys, while abiding by the CR-3 rear yard setback requirement, would require a minimum of 29.5 metres of separation from the rear property line. This would constitute significantly greater open space and spatial buffering relative to the current proposal and significantly restrict the developable limits of the Subject Property. Note that the CR-3 zoning was applied prior to the establishment of the Heritage Conservation District, which imposes more stringent requirements.
32. The building does not incorporate appropriate setbacks or tapering in building height to mitigate the proposed scale and massing relative to adjacent properties.
33. From a general perspective, the potential for adverse wind, shadow and privacy/overlook impacts associated with the development proposal is greater than the building height, massing and scale permitted as-of-right on the Subject Property or a building that incorporates setbacks and tapering to mitigate these impacts to adjacent properties.
34. The Municipal Record includes a Heritage Impact Assessment (HIA) prepared by Martindale Planning Services on behalf of FOBT dated July 2022. It is my understanding that Robert Martindale, the author of the HIA, has prepared a supplementary letter confirming that he stands by his analysis and opinion even with the policy changes that have occurred since July 2022, including Provincial Planning Statement, 2024 coming into effect and the Growth Plan for the Greater Golden Horseshoe being repealed. Mr. Martindale is of the opinion that the Heritage Impact Assessment prepared for the proposed development and associated Official Plan and Zoning By-Law Amendment applications does not demonstrate that the heritage attributes of the district will be conserved and that the proposed amendments will be consistent with the PPS and Official Plans. Mr. Martindale is of the opinion that the proposed building is not compatible in terms of the setback to Weber Street. Mr. Martindale is also of the opinion that the proposed building height is not compatible with the surrounding Heritage District and specifically states that “any height differential greater than three times the average heights and/or floor space indices of the immediately adjacent buildings within a heritage district would generally be considered incompatible, unless there are extenuating circumstances such as significant differences in lot size or unusual screening provisions that lessen the impact.”

D. Land Use Planning Analysis

35. The current issues list is included in the Procedural Order dated February 19, 2025.

D.1 Matters of Provincial Interest

36. Procedural Order Issue #1 reads as follows: “Do the proposed Official Plan and Zoning By-law amendment applications (the “proposed applications”) have sufficient regard to the matters of provincial interest listed in section 2(d), (n), (p) and (r)?”

D.1.1 Policy Overview

37. Section 2 of the Planning Act requires that the Minister, the council of a municipality, a local board, a planning board and the Tribunal, in carrying out their responsibilities to have regard to a number of matters of provincial interest, including the following:

(d) the conservation of features of significant architectural, cultural, historical, archaeological or scientific interest;

(n) the resolution of planning conflicts involving public and private interests;

(p) the appropriate location of growth and development; and

(r) the promotion of built form that,

(i) is well-designed,

(ii) encourages a sense of place, and

(iii) provides for public spaces that are of high quality, safe, accessible, attractive and vibrant.

D.1.2 Policy Analysis and Opinion

38. As will be supported in greater detail in this Expert Witness Statement, it is my opinion that the development proposal does not have appropriate regard for its existing and planned context, specifically the interface between the Downtown Urban Growth Centre and the properties located in the adjacent Civic Centre Heritage Conservation District, as well as the transition from “Strategic Growth Area A” surrounding the Subject Property to Strategic Growth Area C in the Urban Growth Centre. On this basis, it is my opinion that the requested Official Plan and Zoning By-Law Amendments do not have sufficient regard to the matters of Provincial interest in Sections 2 (d), (n), (p) and (r) of the Planning Act per Issue #1 of the Procedural Order.

39. The proposed development is not sensitive to the existing and planned built form character of the properties located in the Civic Centre Neighbourhood Heritage Conservation District, including height and transition to the adjacent land uses in the surrounding low-rise residential neighbourhood. The proposed development represents intensification of lands outside the Urban Growth Centre,

specifically in terms of height and lot coverage, that does not provide appropriate transition to the adjacent low-rise residential neighbourhood, located within a designated Heritage Conservation District.

D.2 Provincial Planning Statement, 2024

40. Issue #2a) of the Procedural Order reads as follows: “Are the proposed Official Plan Amendment and Zoning By-law Amendment applications (the proposed applications) consistent with the PPS 2024, including but not limited to, sections 2.1.3, 2.1.4, 2.1.6 a), 2.2.1, 2.3.1, 2.4.1, 2.4.2.3, 4.6.1, 4.6.3, 6.1.1, 6.1.5, 6.1.6, 6.1.7, 6.1.11, and 6.1.12?”

D.2.1 Policy Overview

41. The Provincial Planning Statement, 2024 (PPS 2024) is a policy statement issued under the authority of Section 3 of the Planning Act and came into effect on October 20, 2024. In respect of the exercise of any authority that affects a planning matter, Section 3 of the Planning Act requires that decisions affecting planning matters shall be consistent with policy statements issued under the Act.
42. In the section outlining the Role of the Provincial Policy Statement in Chapter 1, it is stated that: “Municipal official plans are the most important vehicle for implementation of the Provincial Planning Statement and for achieving comprehensive, integrated and long-term planning. Official plans should coordinate cross-boundary matters to complement the actions of other planning authorities and promote mutually beneficial outcomes.”
43. Chapter 2 contains the policies for “Building Homes, Sustaining Strong and Competitive Communities”, including the Section 2.1.3, which states: “At the time of creating a new official plan and each official plan update, sufficient land shall be made available to accommodate an appropriate range and mix of land uses to meet projected needs for a time horizon of at least 20 years, but not more than 30 years, informed by provincial guidance. Planning for infrastructure, public service facilities, strategic growth areas and employment areas may extend beyond this time horizon.”
44. Section 2.4 includes the policies for Strategic Growth Areas, including the following General Policies in Section 2.4.1:
- 1) Planning authorities are encouraged to identify and focus growth and development in strategic growth areas.
 - 2) Planning authorities should:
 - a) prioritize planning and investment for infrastructure and public service facilities in strategic growth areas;

- b) identify the appropriate type and scale of development in strategic growth areas and the transition of built form to adjacent areas.

45. Section 4.6 includes the policies for Cultural Heritage and Archaeology, including the following:

- 4.6.1 Protected heritage property, which may contain built heritage resources or cultural heritage landscapes, shall be conserved.
- 4.6.3 Planning authorities shall not permit development and site alteration on adjacent lands to protected heritage property unless the heritage attributes of the protected heritage property will be conserved.

46. Chapter 6 includes the Implementation and Interpretation policies of PPS 2024, including the following:

- 6.1.1. The Provincial Planning Statement shall be read in its entirety and all relevant policies are to be applied to each situation.
- 6.1.5. Official plans shall identify provincial interests and set out appropriate land use designations and policies. Official plans shall provide clear, reasonable and attainable policies to protect provincial interests and facilitate development in suitable areas. In order to protect provincial interests, planning authorities shall keep their official plans up-to date with the Provincial Planning Statement. The policies of the Provincial Planning Statement continue to apply after adoption and approval of an official plan.
- 6.1.6. Planning authorities shall keep their zoning and development permit by-laws up-to-date with their official plans and the Provincial Planning Statement by establishing permitted uses, minimum densities, heights and other development standards to accommodate growth and development.
- 6.1.7. Where a planning authority must decide on a planning matter before their official plan has been updated to be consistent with the Provincial Planning Statement, or before other applicable planning instruments have been updated accordingly, it must still make a decision that is consistent with the Provincial Planning Statement.
- 6.1.12. Density targets represent minimum standards and planning authorities are encouraged to go beyond these minimum targets, where appropriate, except where doing so would conflict with any policy of the Provincial Planning Statement or any other provincial plan.

D.2.2 Policy Analysis and Opinion

47. It is my opinion that the development proposal is not consistent with PPS 2024 on the following basis:

- The proposed Official Plan Amendment and Zoning By-Law Amendment are not consistent with policies 2.4.1.3 b), 4.6.1, 4.6.3, 6.1.1., 6.1.7, and 6.1.12;
- As will be demonstrated throughout my land use planning analysis, the development proposal does not conform to the 2015 and 2022 Region of Waterloo Official Plan Amendment (ROPA 6) or the City

of Kitchener Official Plan. The Applicant has not demonstrated that the City of Kitchener Official Plan is not in conformity with the PPS 2024 and the PPS 2024 identifies municipal official plans as “the most important vehicle for implementation of the Provincial Planning Statement and for achieving comprehensive, integrated and long-term planning”; and

- The proposal is not consistent with the performance standards established under the City of Kitchener Official Plan and Zoning By-Law to achieve complete communities while also taking into consideration the character of the surrounding and adjacent land uses.

D.3 Region of Waterloo Official Plan (2015)

48. The following issues are included in the Procedural Order with respect to the 2015 Region of Waterloo Official Plan:

4. Do the proposed applications conform to the Region of Waterloo Official Objective 3.8?
5. Do the proposed applications conform to the Urban Area Development policies in chapter 2.D (2.D.1, 2.D.2, 2.D.6, 2.D.10)?
6. Do the proposed applications conform to the Liveability in Waterloo Region policies in chapter 3 (3.A, 3.B, 3.C, 3.G.1, 3.G.6)?

D.3.1 Policy Overview

49. The following General Development Policies for the Urban Area are included in Section 2.D.1:

- In preparing or reviewing planning studies, or in reviewing development applications or site plans, the Region and/or Area Municipalities will ensure that development occurring within the Urban Area is planned and developed in a manner that:
 - (a) supports the Planned Community Structure described in this Plan;
 - (e) conserves cultural heritage resources and supports the adaptive reuse of historic buildings;
 - (f) respects the scale, physical character and context of established neighbourhoods in areas where reurbanization is planned to occur.

50. Chapter 3 contains the policies for “Liveability in Waterloo Region”. The overall goal of these policies is to “Create vibrant urban and rural places”. Among the objectives to achieve this goal is objective 3.8: “Support the conservation of cultural heritage resources”. The following relevant policies are included in Chapter 3:

- 3.G Cultural Heritage
 - 3.G.1 The Region and Area Municipalities will ensure that cultural heritage resources are conserved using the provisions of the Heritage Act, the Planning Act, the Environmental Assessment Act, the Cemeteries Act and the Municipal Act.

- o 3.G.6 Area Municipalities will designate Cultural Heritage Landscapes in their official plans and establish associated policies to conserve these areas. The purpose of this designation is to conserve groupings of cultural heritage resources that together have greater heritage significance than their constituent elements or parts.

D.3.2 Policy Analysis and Opinion

51. It is my opinion that the development proposal and requested Official Plan and Zoning By-Law Amendments do not conform to the Region of Waterloo Official Plan, specifically objective 3.8 (Procedural Order Issue #4), and policies 2.D.1 (Procedural Order Issue #5), 3.G.1 and 3.G.6 for the following reasons (Procedural Order Issue #6):

- The proposal does not appropriately consider the existing and planned land use and built form context of the surrounding PMTSA, which includes a delineated Urban Growth Centre adjacent to a designated Heritage Conservation District, as well as a direct interface between two Strategic Growth Areas with significantly different intent and standards; there is no Regional Official Plan intent to develop the PMTSA uniformly or with levels of intensification that do not consider the site-specific context;
- The proposal does not support the planned community structure set out in the Official Plan or respect the scale, physical character and context of the established neighbourhoods in which it is located, including the heritage characteristics; and
- There has been no consideration to protecting or providing a transition to the surrounding built form heritage characteristics.

D.4 *New Region of Waterloo Official Plan (ROPA 6)*

52. Procedural Order Issue #8 includes the following issues with respect to ROPA 6:

What consideration, if any, should be given to the following policies of OPA 6:

- a) Do the proposed applications conform to Policy 2.C.2.2.(f) and general objective bullet #8 (Chapter 2, page 3) regarding cultural heritage conservation?
- b) Do the proposed applications conform to Policy 2.D.2.8, regarding the appropriate location of major intensification?
- c) Do the proposed applications conform to Policy 2.F.3, regarding intensification on properties designated under the OHA?
- d) Do the proposed applications conform to Policy 2.I.5.1, regarding exceeding intensification and density targets?
- e) Do the proposed applications have sufficient regard to Objective 3.A., bullet 1, regarding supporting a range of housing?

D.4.1 Policy Overview

53. The purpose of ROPA 6 is to establish the planning framework in the Regional Official Plan to accommodate Region's forecasted population and employment growth to 2051. On this basis, ROPA 6 updates the land use planning framework put in place to guide strategic land use planning decisions relative to the ROP that was in place at the time of the Applications.
54. The key components of the Amendment identified in ROPA 6 include the following:
- Ensures Waterloo Region has an appropriate supply of land to accommodate its forecasted population and employment growth to 2051;
 - Establishes and delineates a hierarchy of urban areas, and of supporting nodes and corridors within them, to identify where and how the region will grow to 2051; and
 - Identifies minimum intensification targets for the area municipalities.
55. Chapter 2 of ROPA 6 includes policies for "Where and How to Grow". The introduction to Chapter 2 identifies the urban system as "composed of a hierarchy of urban areas planned to accommodate various levels of intensification and densities of development".
56. Policy 2.C.2.2 f) directs that "area municipalities will develop official plan policies and implementing zoning by-laws, and other planning documents or programs to ensure that development occurring within the Urban Area is planned and developed in a manner that: "conserves cultural heritage resources and supports the adaptive reuse of built heritage resources in accordance with the policies in Chapter 3."
57. Section 2.D of Chapter 2 includes policies for Strategic Growth Areas, including the MTSA policies in Section 2.D.2. Section 2.D.2.8 directs that "none of the policies in Section 2.D should be interpreted to mean that every property located within a Major Transit Station Area identified in this Plan is necessarily appropriate for major intensification. The appropriate scale and form of any development on lands within the boundaries of these areas will be subject to the relevant area municipal planning policies and approval processes."
58. Section 2.F includes the policies for Intensification Targets in Delineated Built-Up Areas. Policy 2.F.3 directs that "Where development occurs on properties designated under the Ontario Heritage Act, the intensification targets in Table 3 are encouraged to be met through context-sensitive infill that conserves cultural heritage attributes. This development will consider Statements of Cultural Heritage Value and be consistent with any applicable Heritage Conservation District guidelines."
59. Section 2.I contains the General Urban Development Policies. With respect to "Implementation of Intensification and Density Targets", Section 2.I.5.1 directs that "the minimum intensification and density targets in this Plan are minimum standards and the area municipalities are encouraged to go

beyond these minimum targets, where appropriate, except where doing so would conflict with any policy of this Plan.”

D.4.2 Policy Analysis and Opinion

60. ROPA 6 is directly relevant to the Applications in this Proceeding as it updates the land use planning framework for the Urban Area, including the growth and intensification objectives and targets for the surrounding lands in Strategic Growth Areas and the Kitchener City Hall PMTSA.
61. The initiatives undertaken by the City of Kitchener as part of the “Growing Together” project, particularly the application of Strategic Growth Area land use designations and zones to the PMTSA in which the Subject Property is located, represent the City’s intent to establish appropriate scale and form of development on properties located in the PMTSA in order to achieve the Region’s growth and intensification objectives.
62. It is my opinion that the development proposal for the Subject Property has not been designed to provide height, scale and transition that is sensitive to the surrounding land uses in the PMTSA, including the adjacent cultural heritage resources in the Weber Street Area.
63. It is my opinion that Section 2.D.2.8 reinforces that the City of Kitchener Official Plan and Zoning By-Law, including amendments to these documents, are intended to establish the appropriate scale and form of any development on lands within the Kitchener City Hall PMTSA. Given that the proposal does not conform to the policies of the Kitchener Official Plan and does not comply with the performance standards of the Zoning By-Law for the Subject Property and the surrounding properties in Strategic Growth Area A, the proposal does not conform to Section 2.D.2.8 of ROPA 6.
64. It is my opinion that the development proposal does not conform to Policy 2.F.3 in that the proposed height, scale and massing is not sensitive to the existing context, including the character of the cultural heritage attributes on adjacent properties, and the planned context of the surrounding Strategic Growth Area designation and SGA-1 and SGA-2 zoning.
65. It is my opinion that the City has implemented the Strategic Growth Area Official Plan designations and zoning categories to achieve the Region’s minimum intensification and density targets. The development proposal does not conform to Section 2.I.5.1 of ROPA 6 in that the permissions and performance standards established for the Subject Property will be significantly exceeded resulting in conflict with the policies of ROPA 6 identified in this section of my Expert Witness Statement.
66. ROPA 6 intends that the City will implement policies and performance standards to achieve appropriate, context-sensitive built form and densities for different areas, including within PMTSAs. The proposal is not sensitive to the existing built form on the surrounding properties in the PMTSA and the planned context set by the Strategic Growth Area designations and zoning.

D.5 City of Kitchener Official Plan

67. The following issues are included in the Procedural Order with respect to the City of Kitchener Official Plan:

9. Do the proposed applications conform to the Urban Structure policies in Part C (3.C.2.9, 3.C.2.10, 3.C.2.17, 3.C.2.20, and 3.C.2.22)?
10. Do the proposed applications conform to the Housing policies in Section 4 (4.C.1.7, 4.C.1.8, 4.C.1.9, 4.C.1.13, and 4.C.1.19)?
11. Do the proposed applications conform to the Private Greenspace and Facilities policies in Section 8 (8.C.1.21 and 8.C.1.23)?
12. Do the proposed applications conform to the Urban Design objectives in Section 11 (11.1.1 through 11.1.8)?
13. Do the proposed applications conform to the Urban Design policies in Section 11 (11.C.1.4, 11.C.1.11, 11.C.1.12, 11.C.1.21, 11.C.1.29, 11.C.1.30, 11.C.1.31, 11.C.1.32, and 11.C.1.33).
14. Do the proposed applications conform to the Cultural Heritage Resources objectives in Section 12 (12.1.2)?
15. Do the proposed applications conform to the Cultural Heritage Resources policies in Section 12 (12.C.1.1, 12.C.1.10, 12.C.1.14, 12.C.1.19, 12.C.1.21, 12.C.1.23, 12.C.1.26, 12.C.1.27, and 12.C.1.29)?
16. Do the proposed applications conform to the Active Transportation objectives in Section 13 (13.1.1 and 13.1.3)?
17. Do the proposed applications conform to the Transportation policies in Section 13 (13.C.1.4.d, 13.C.1.6, 13.C.1.13, 13.C.3.12, 13.C.7.3 and 13.C.8.4)?
18. Do the proposed applications conform to the City of Kitchener Official Plan objective 3.2.5?

D.5.1 Policy Overview

68. Part C of the Kitchener Official Plan contains the “General Policies for a Complete & Healthy Kitchener”, including the Urban Structure policies in Section 3.C.2. As noted in the preamble to this section, the Urban Structure policies are intended to provide guidance on growth management and structure for the Urban Area. It is specifically stated that “Understanding the organization of the city on a macro level is necessary for directing growth to appropriate locations while protecting established and stable areas.”

69. The following is among the Urban Structure objectives: 3.2.5. To maintain a compatible interface between Intensification Areas and surrounding areas and achieve an appropriate transition of built form.

70. The following policies of Section 3.C.2 are relevant to my land use planning analysis and opinion:

- 3.C.2.9. A high level of urban design will be expected of all new development and redevelopment within all primary Intensification Areas. In accordance with Section 11, the City may impose appropriate urban design requirements affecting, but not limited to, site landscaping, the massing and placement of buildings and the provision of cycling and pedestrian facilities.
- 3.C.2.17 d) The planned function of Major Transit Station Areas, in order to support transit and rapid transit, is to: d) have streetscapes and a built form that is pedestrian-friendly and transit-oriented.

Notwithstanding a) through d) above, Major Transit Station Areas may include lands within stable residential neighbourhoods which are not the primary focus for intensification. The planned function of these areas will be reviewed and confirmed through the course of future Station Area Planning exercises.

71. Section 4 contains the Housing policies in Part C of the Official Plan, including the following:

- 4.C.1.8. Where a special zoning regulation(s) or minor variance(s) is/are requested, proposed or required to facilitate residential intensification or a redevelopment of lands, the overall impact of the special zoning regulation(s) or minor variance(s) will be reviewed, but not limited to the following to ensure, that:
 - a) Any new buildings and any additions and/or modifications to existing buildings are appropriate in massing and scale and are compatible with the built form and the community character of the established neighbourhood and will have regard to Section 11 of this Plan, the City's Urban Design Manual, and any site-specific Urban Design Brief or Urban Design Report and Urban Design Scorecard.
 - b) Where front yard setback reductions are proposed for new buildings in established neighbourhoods, the requested front yard setback should be similar to adjacent properties and supports and maintain the character of the streetscape and the neighbourhood.
 - d) New buildings, additions, modifications and conversions are sensitive to the exterior areas of adjacent properties and that the appropriate screening and/or buffering is provided to mitigate any adverse impacts, particularly with respect to privacy.
 - e) The lands can function appropriately and not create unacceptable adverse impacts for adjacent properties by providing both an appropriate number of parking spaces and an appropriate landscaped/amenity area on the site.
 - f) The impact of each special zoning regulation or variance will be reviewed prior to formulating a recommendation to ensure that a deficiency in the one zoning requirement does not compromise the site in achieving objectives of compatible and appropriate site and neighbourhood design and does not create further zoning deficiencies.

- 4.C.1.9. Residential intensification and/or redevelopment within existing neighbourhoods will be designed to respect existing character. A high degree of sensitivity to surrounding context is important in considering compatibility.
72. Section 8 contains the policies for “Parks, Open Space, Urban Forests and Community Facilities”. The following policies from Section 8.C.1 (Parks, Open Space and Community Infrastructure) are relevant to my land use planning analysis and opinion:
- 8.C.1.21. The City will require the development of on-site recreation facilities and usable greenspace areas in multiple housing developments and affordable housing developments, in particular, multiple dwellings and cluster townhouse developments.
 - 8.C.1.23. The City will encourage, wherever reasonable and possible, the provision of useable and accessible semi-public spaces in private developments that provide linkages and/or support arts, culture, recreation and leisure opportunities for its residents. Using applicable planning tools as outlined in Section 17, the City may encourage the provision of public spaces including but not limited to, indoor amenity areas such as community rooms, fitness areas, change rooms and other supporting amenities, and outdoor amenity or landscaped areas such as courtyards, rooftop landscaped areas or green roofs, walking and cycling linkages.
73. Section 11 contains the Urban Design objectives and policies of the Official Plan, including the following objectives:
- 11.1.1. To support and achieve a high standard of urban design in order to help create a complete and healthy community that is safe, attractive, thriving, innovative and inclusive in which to live, work and interact.
 - 11.1.2. To create visually distinctive and identifiable places, structures and spaces that contribute to a strong sense of place and community pride, a distinct character and community focal points.
 - 11.1.3. To create a built environment of human scale that respects and enhances cultural heritage resources, natural heritage features, community character and streetscape.
 - 11.1.4. To design individual site elements, buildings, structures and spaces to have mutually supportive relationships with one another and with the overall urban fabric and interrelated networks and systems.
 - 11.1.5. To minimize and mitigate potential adverse impacts of development and infrastructure works on surrounding land uses, the built and natural environments, the integrated transportation system and infrastructure through careful design considerations and solutions.
 - 11.1.6. To create a safe, secure and walkable community dedicated to pedestrian activity.
74. The following Urban Design policies are relevant to my land use planning analysis and opinion:
- 11.C.1.4. The policies in this Section will be used to evaluate matters such as, but not limited to:

- a) patterns of movement and the physical and social connections that exist between people and places;
 - b) the interrelationship between built and unbuilt spaces that comprise both the public realm and private developments;
 - c) the protection and integration of the natural environment and cultural heritage resources; and,
 - d) potential adverse impacts to the urban fabric, the community and infrastructure.
-
- 11.C.1.11. The City will support the character of streets through the coordination of site, building and landscape design on and between individual sites with the design of the street.
 - 11.C.1.21. The City will promote the utmost standard of urban design for sites located at strategic or prominent locations in the City, such as at priority locations in the Urban Growth Centre (Downtown), along major arterial streets, at street intersections and at entrance points into the City, communities, neighbourhoods or design districts.
 - 11.C.1.29. The City will ensure that new sites are designed, existing sites are redeveloped, and community infrastructure is planned to enhance the site, buildings, open spaces and the streetscape.
 - 11.C.1.31. The City will ensure new buildings are designed, existing buildings are redeveloped, expanded, converted or renovated to enhance pedestrian and cycling usability, respects and reinforce human scale, create streetscapes that are accessible, safe and have a functional relationship to the street, and contribute to rich and vibrant urban places.
 - 11.C.1.32. The City will require special design consideration for buildings located at priority locations. An owner/applicant may be required to prepare an Urban Design Brief, Urban Design Report, Urban Design Scorecard and/or Urban Design Guidelines, in support of a development application.
 - 11.C.1.33. The City will encourage the following:
 - a) provision of attractive building forms, façades and roof designs which are compatible with surrounding buildings;
 - b) infill development to complement existing buildings and contribute to neighbourhood character, particularly if located within close proximity of a recognized cultural heritage resource or Heritage Conservation District;
 - c) minimization of adverse impacts on site, onto adjacent properties (particularly where sites are adjacent to sensitive land uses) and into the public realm through building design;
 - d) individual architectural innovation and expression that reinforces and positively contributes to achieving the City's urban design goals and objectives; and,
 - e) the highest standard of building design for buildings located at priority locations, with particular emphasis on architectural detailing for all façades addressing the public realm.

75. Section 12 includes the policies for Cultural Heritage Resources, including the following:

- 12.1.2. To ensure that all development or redevelopment and site alteration is sensitive to and respects cultural heritage resources and that cultural heritage resources are conserved.
- 12.C.1.1. The City will ensure that cultural heritage resources are conserved using the provisions of the Ontario Heritage Act, the Planning Act, the Environmental Assessment Act, the Funeral, Burial and Cremation Services Act and the Municipal Act.
- 12.C.1.10. The City will require the conservation of significant cultural heritage landscapes within the city.
- 12.C.1.14. In evaluating the rationale for the designation of an area as a Heritage Conservation District, the City will prepare a Heritage Conservation District Study in accordance with the Ontario Heritage Act. The Study will be considered by Council and will form the basis for the preparation of a Heritage Conservation District Plan, which will contain policies and guidelines for the conservation of properties within the district. The policies and guidelines will serve to manage change including development or redevelopment and alterations, to be in keeping with the scale, form and heritage character of the properties in the district. The Heritage Conservation District Plan will be considered by Council for adoption together with designation of the Heritage Conservation District by by-law.
- 12.C.1.19. In addition to listing and designating properties under the Ontario Heritage Act, the City may use and adopt further measures to encourage the protection, maintenance and conservation of the city's cultural heritage resources including built heritage and significant cultural heritage landscapes and implement Cultural Heritage Resource Conservation Measures Policies in this Plan. These may include, but are not limited to covenants and easements pursuant to the Ontario Heritage Act; by-laws and agreements pursuant to the Planning Act (Zoning By-law, demolition control, site plan control, community improvement provisions, provisions in a subdivision agreement); and by-laws and agreements pursuant to the Municipal Act (Property Standards By-law, tree by-law, sign by-law).
- 12.C.1.21. All development, redevelopment and site alteration permitted by the land use designations and other policies of this Plan will conserve Kitchener's significant cultural heritage resources. The conservation of significant cultural heritage resources will be a requirement and/or condition in the processing and approval of applications submitted under the Planning Act.
- 12.C.1.23. The City will require the submission of a Heritage Impact Assessment and/or a Heritage Conservation Plan for development, redevelopment and site alteration that has the potential to impact a cultural heritage resource and is proposed: a) on or adjacent to a protected heritage property; b) on or adjacent to a heritage corridor in accordance with Policies 13.C.4.6 through 13.C.4.18 inclusive; c) on properties listed as non-designated properties of cultural heritage value or interest on the Municipal Heritage Register; d) on properties listed on the Heritage Kitchener Inventory of Historic Buildings; and/or, e) on or adjacent to an identified cultural heritage landscape.
- 12.C.1.26. The contents of a Heritage Impact Assessment will be outlined in a Terms of Reference. In general, the contents of a Heritage Impact Assessment will include, but not be limited to, the following: a) historical research, site analysis and evaluation; b) identification of the significance and heritage attributes of the cultural heritage resource; c) description of the proposed

development or site alteration; d) assessment of development or site alteration impact or potential adverse impacts; e) consideration of alternatives, mitigation and conservation methods; f) implementation and monitoring; and, g) summary statement and conservation recommendations.

- 12.C.1.27. Any conclusions and recommendations of the Heritage Impact Assessment and Heritage Conservation Plan approved by the City will be incorporated as mitigative and/or conservation measures into the plans for development or redevelopment and into the requirements and conditions of approval of any application submitted under the Planning Act.
- 12.C.1.29. Where a Heritage Permit Application is required for a property designated under the Ontario Heritage Act, the owner/applicant will be required to submit supporting information in accordance with the City's Heritage Permit Application submission requirements and guidelines such as: a) a detailed site plan drawn to scale with metric dimensions; b) details of the work that is proposed to be completed including materials, samples, colours, and elevation drawings; and, c) an explanation of the reason for the work that is proposed to be completed.

76. Section 13.1.1 of the Civic Centre Secondary Plan contains the General Policies, including the following:

- 1. Approval under Section 41 of the Planning Act shall be required for any development which includes redevelopment or conversions considered development under the Planning Act. It is intended that development should be of a siting and design which will be compatible with the existing development and particularly the single detached dwellings in the interior of the neighbourhood.

77. Section 13.1.2.8 provides direction for the "High Density Commercial Residential" designation and confirms that "The aim of this designation is to recognize the proximity of the Civic Centre Neighbourhood to the higher intensity land uses of the Downtown, and the location of the properties on Primary Roads". It is also noted that "the maximum floor space ratio shall be 4.0, meaning the above grade building floor area shall not exceed 4.0 times the lot area."

D.5.2 Policy Analysis and Opinion

78. It is my opinion that the development proposal and requested Official Plan and Zoning By-Law Amendments do not conform to the City of Kitchener Official Plan, specifically on the following basis:

- While the Subject Property is located within an PMTSA, it is located outside the Downtown Growth Area, which is intended for the most significant levels of intensification, and within a designated Heritage Conservation District. The Subject Property is also located adjacent to a stable neighbourhood that is largely designated to accommodate low and medium density residential housing types. On this basis, it is appropriate to provide transition of built form moving from the HCD to the Growth Centre. This required and appropriate transition is reflected in the

different “Strategic Growth Area” designations applied under the Official Plan and SGA zoning implemented through Zoning By-Law Amendment 2024-065. However, the development proposal seeks to nearly double the permitted floor space index that has been established under the City of Kitchener Official Plan, and the maximum FSI, height and scale permitted under Zoning By-Law 85-1, to facilitate an appropriate scale of intensification on the Subject Property. On this basis, the proposal does not conform to the City of Kitchener Official Plan objective 3.2.5 (Issue #18).

- It is my opinion that the Subject Property qualifies as a property under Section 3.C.2.17 that is within a stable neighbourhood in a Major Transit Station Areas which should not be the primary focus for intensification and thus does not conform with this section of the Official Plan (Issue #9).
- The proposed intensification is not appropriate in massing and scale and is not compatible with the built form and the community character of the surrounding established neighbourhood. On this basis, the proposal does not conform to Section 4.C.1.8 a) set out in Section 11 of the Official Plan and the City's Urban Design Manual (Issue #10).
- The proposed building is not sensitive to the exterior areas of adjacent properties in terms of providing appropriate mitigation to privacy and overlook impacts and consequently does not conform to Section 4.C.1.8 d) (Issue #10).
- The proposed building has not been designed to respect the existing character of the surrounding neighbourhood and consequently does not conform to Section 4.C.1.9 (Issue #10).
- The proposed floor space index and relief to the prevailing zoning performance standards will not contribute to the strong sense of place and community pride associated with the existing and planned built form character, including the characteristics of the Heritage Conservation District, and consequently does not conform to Section 11.1.2 (Issue #12).
- The proposal does not reflect a built environment of human scale that respects and enhances cultural heritage resources and community character and consequently does not conform to Section 11.1.3 (Issue #12).
- The proposed building height and scale seeks to maximize floor space and dwelling unit yield without duly ensuring that adverse impacts will not be experienced on surrounding land uses.
- The proposal will not result in infill development that complements existing buildings and contributes to neighbourhood character, which is particularly important given the location within a Heritage Conservation District (does not conform to section 11.C.1.33 b) (Issue #13)).
- The proposed scale and intensity and the absence of necessary setbacks in the proposed development will produce adverse impacts on adjacent properties, including designated heritage resources, relative to the permitted floor space index and prevailing zoning performance standards and consequently does not conform to Section 11.C.1.33 c) (Issue #13).
- The proposed development has not been designed to be compatible with the existing development in the surrounding neighbourhood (does not conform to Section 13.1.1.1 (Issue #19)) and represents built form that does not respect the intent of the as-of-right permissions and performance standards of the Official Plan and Zoning By-Law.
- The proposed floor space index does not respect the intent of the maximum floor space index of 4.0 to achieve built form compatibility with adjacent SGA-A land uses and the surrounding community.

D.6 City of Kitchener Zoning By-Law

79. Procedural Order Issue #22 reads as follows: “Do the requested site specific zoning regulations address compatibility between the proposed development, the existing community, and the planned function of the immediate area, including: adequate setbacks from existing low density uses, maximum building heights and step backs regulations to regulate built form, setbacks for surface parking facilities from the public realm, as well as setbacks and step backs from other properties? Do the requested site specific zoning regulations address adequate setbacks and driveway visibility triangles?”
80. The proposal is seeking to implement the following site-specific special regulations that directly relate to building height, scale and massing:
- The maximum Floor Space Ratio shall be 7.95 (maximum of 4.0 permitted);
 - The maximum Building Height shall be 19 storeys and 59 metres (maximum height directly limited by the minimum rear yard setback);
 - The minimum Front Yard shall be 0.0 metres (minimum of 3.0 metres required);
 - For portions of the building up to 5.0 metres in height, the minimum Rear Yard shall be 8.0 metres;
 - For portions of the building greater than 5.0 metres in height, the minimum Rear Yard shall be 14 metres (minimum of 29.5 metres required, based on a height of 59 metres);
 - The minimum Side Yard shall be 2.5 metres;
 - The minimum landscape area shall be 5% (minimum of 10% required).
81. The proposed floor area of 7.95 is nearly twice the maximum permitted.
82. The proposed height of 19 storeys and 59 metres is not mitigated through appropriate setbacks, stepbacks or the provision of angular planes that provide transition to the neighbouring low-rise uses.
83. The proposal calls for significant reductions to the minimum front and rear yard setbacks. In particular, the minimum rear yard setback is intended to provide spatial separation to the adjacent low-rise residential community while also directly limiting height relative to the rear yard setback provided.
84. The proposed minimum rear yard setback is approximately one-half of the performance standard intended to mitigate the adverse impacts of building height on adjacent properties. This reduction is not proposed in conjunction with building stepbacks and angular planes to mitigate the impact of the proposed height on adjacent properties.

85. It is my opinion that the requested site-specific zoning regulations will not provide appropriate spatial separation and buffering to the existing and planned uses in the immediately adjacent low-rise residential neighbourhood.
86. The proposed floor space ratio of 7.95 is to be achieved through 19-storey building height, which is not reflective of the surrounding neighbourhood character, and significant reductions to the minimum required front and rear yard setbacks and minimum landscaped area. This proposal is not sensitive to its surrounding existing and planned context and does not incorporate any spatial, buffer or building design elements to mitigate the impacts of the proposed height and density on the adjacent properties and surrounding neighbourhood character.
87. Amendment 2024-065 to Zoning By-Law 2019-051 includes the SGA-1 zoning designation for the properties to the north of the Subject Property and the SGA-2 designation for the properties to the east and west. The SGA-1 designation is proposed for the majority of properties in the interior of the Civic Centre portion of the PMTSA. The two exceptions are properties that contain larger builds constructed prior to the establishment of the HCD. As noted in Section 6.1 of Zoning By-Law Amendment 2024-065, SGA-1 is a “Low Rise Growth Zone” with the intended purpose of creating opportunities for missing middle housing and compatible non-residential uses in low-rise forms up to 11 metres in height. SGA-2 is a “Mid Rise Growth Zone” with the intended purpose of creating opportunities for moderate growth in mid-rise forms up to 8 storeys in height. The SGA-2 zone will also permit a mix of residential and non-residential uses.
88. Zoning By-Law Amendment 2024-065 identifies the intent of the City of Kitchener to permit mid-rise development of up to 8 storeys along the north side of Weber Street West with low-rise development within the interior of the Civic Centre Secondary Plan Area to the north.
89. It is my opinion that site-specific zoning regulations for the Subject Property should be consistent with the SGA-2 performance standards of Zoning By-Law Amendment 2024-065, which include the following:
- Maximum building height: 8 storeys;
 - Minimum landscape area: 20%;
 - Minimum front yard setback: 3.0 metres;
 - Maximum building height within 15m of a lot with an SGA-1 zone or a lot with a low-rise residential zone: 20.0 metres;
 - Minimum yard setback where the lot abuts a lot with an SGA-1 zone or a low-rise residential zone: 7.5 metres.

D.7 City of Kitchener Urban Design Manual

90. Procedural Order Issues #23-35 specifically relate to sections from the Urban Design Manual.

D.7.1 Policy Overview

91. The City of Kitchener Urban Design Manual is defined as a set of expectations, a guiding document and a vision for design. Part A of the Urban Design Manual is intended primarily a tool used to guide private site development and to be used by the development industry and city staff when preparing or reviewing a development application, forming the basis of urban design reports and giving direction to many different planning-related processes.
92. Section 1 includes the City-Wide Guidelines while Section 2 includes the Guidelines for Major Transit Station Areas.
93. Section 1.2.7 contains the guidelines for Compatibility. Under the section titled “Scale & Transition”, the following description is provided with respect to compatibility: “A compatible city pursues development that exists in harmony with its surroundings. This includes scale, massing, architectural rhythms and compositions, transitions between forms and to lower-scaled established neighbourhoods and the suitability of height, building size, materials, and details within a neighbourhood context.” While it is directed that compatibility “should not be interpreted as desiring replication or sameness”, providing transitions in mass, height and density between areas of different scales and densities is identified as methods of mitigating potential impacts and preserving compatibility. Stepping back the upper floors of taller buildings is identified as an urban design principle “to create a human-scaled public realm, provide access to sunlight and create adequate separation”.
94. Section 1.2.7 also contains policies for New Development in Existing Neighbourhoods, including the following:
 - Design infill buildings at a compatible scale with existing and planned surroundings.
 - New buildings should respect planned and established heights and setbacks in the neighbourhood.
 - Ensure compatibility by providing appropriate building mass, design features and materials.
 - Use materials that are compatible with those found in the existing neighbourhood and maintain the rhythm of existing building separations and other spatial relationships.
 - Complement existing facade openings (size, dimension, orientation, rhythm and articulation), horizontal and vertical massing elements, architectural features, setbacks and materiality.
 - Use design elements compatible to those within the existing neighbourhood, but do not replicate.
95. Section 1.2.8 includes guidelines for Cultural & Natural Heritage. In this section, it is stated that “New development near cultural heritage resources is to be compatible, with a high level of urban design, particularly as it relates to views, streetscape character, and material selection.”

96. The Site Design guidelines are included in Section 1.3.0. The following guidelines are directly relevant to this analysis:

- Design massing to conserve and enhance local contextual conditions, including significant buildings, open spaces, civic resources and pedestrian safety and comfort;
- Concentrate height and mass where it creates the best public realm opportunities and the fewest unwanted impacts on surroundings.
- Use projections, recesses, arcades, awnings, colour, materials and textures to reduce or diversify a building's perceived massing.
- Design the built form with regard for adjacent properties to create coherent streetscapes.

97. Section 2.2.6 includes the Compatibility Guidelines for Major Transit Station Areas, including the following Guidelines for Scale & Transition:

- Conserve established neighbourhoods by focusing development within intensification areas.
- Higher density development adjacent to established neighbourhood areas is to provide a suitable transition in scale, massing, building height, building length and intensity through setbacks, stepbacks, landscaping and compatible architectural design/material selection.
- Transition in height, density and mass between the station stop and low-rise established neighbourhoods to preserve compatibility, privacy and access to sunlight.

98. The Site Design Guidelines for MTSAs are provided in Section 2.3.0 and include the following:

- Provide stepbacks for upper levels in mid-rise and tall buildings to mitigate impacts and create street facing shared amenity spaces. Ensure all building forms meet the guidelines in their associated sections of the manual.
- Provide architectural detailing that is thoughtful and visually appealing, which contributes toward the architectural resolution of the project as a whole, and which complements adjacent buildings and enhances the character of the station area.

99. Section 3 includes the Guidelines for Central Neighbourhoods, including the following Compatibility Guidelines in Section 3.2.6:

- Provide a built-form which respects and complements existing neighbourhood characteristics, including heights, setbacks, orientation, building width and length and architectural rhythms.
- Even where new infill is proposed which is larger or taller than its surroundings, provide massing and architectural elements which respect the established neighbourhood identity.

100. Section 3.2.7 includes the following guidelines with respect to Cultural & Natural Heritage:

- Protect and enhance significant views and vistas, including landmark buildings and structures.

- Conserve and enhance the continuity of cultural heritage landscapes.

101. The Site Design Guidelines in Section 3.3 include the following:

- Respect existing and planned contexts, heights, building lengths and massing.
- Ensure new buildings do not appear substantially larger than the existing buildings. If a larger building is proposed, its massing should be subdivided into smaller, compatible pieces.
- When proposing greater height than adjacent buildings, provide transition through stepbacks and massing. Transition may also be achieved by increasing separation distances between buildings and/or placing a mid-range built form between the infill development and adjacent buildings.
- Complement the existing development pattern of the neighbourhood in terms of building location, building height, landscaping, setbacks, entrances, windows and other architectural elements. The use of repetitive or generic design is discouraged.

102. The Tall Buildings guidelines are included in Section 9. A Tall Building is defined in the Official Plan as any building that is 9 storeys or more. In Section 9.1.1, tall building design is identified as “a complex and multidisciplinary process involving an array of interdependent considerations. Each site is unique. Each context provides specific issues to be addressed and opportunities to be explored.” This is followed by the following statement: “Achieving good tall building design therefore must be approached as a ‘best-fit’ solution to many (sometimes competing) needs and interests. The elements of tall building design are too diverse and multidimensional to prescribe a ‘one-size-fits-all’ set of standards.”

103. Section 9.2.2 includes the following guidelines for Tower Design:

- A tower’s size concerns Tower Floor Area and overall building Height.
- For towers adjacent to lower-rise surrounding areas: Towers must demonstrate compatibility with their surroundings and transition in height and scale through appropriate design of the project’s built form. If a site does not allow for sensitive transition between a tower and lower-rise neighbourhoods it may not be suitable for a tall building.

104. Section 9.3.3 relates to Compatibility and includes the following Scale & Transition guidelines:

- Proper compatibility creates harmonious relationships between a tall building and its surroundings.
- Complement adjacent built form through compatible height, scale, massing, and materials.
- Sensitively transition to surrounding urban contexts, accounting for both the existing context and the planned vision for an area.
- Implement Setbacks (from property lines) and Stepbacks (from the edge of the base to upper-level base storeys, the tower, and top features).
- Tall buildings should not interrupt or impose upon an existing or planned neighbourhood character or the public real

105. Section 9.3.4 provides the following guidelines for Cultural & Natural Heritage:

- Locate and design tall buildings to respect and complement the scale, character, form and siting of on site and surrounding cultural heritage resources.
- Design the Base to respect the scale, setbacks, stepbacks, proportions, visual relationship, topography, and materials specific to built heritage resources;
- Provide additional tall building setbacks, stepbacks and other appropriate placement or design measures to respect the heritage setting and to protect or enhance view corridors;
- Conform with HCD Plans policies and guidelines.

D.7.2 Policy Analysis and Opinion

106. The City of Kitchener Urban Design Guidelines include the following principles on a City-Wide basis, as well as for specific locations that include Major Transit Station Areas and Central Neighbourhoods:

- Providing transitions in mass, height and density between areas of different scales and densities, particularly to low-rise established neighbourhoods, to preserve compatibility;
- Stepping back the upper floors of taller buildings to create adequate separation and mitigate impacts to adjacent properties;
- New buildings should respect planned and established heights and setbacks in the neighbourhood; and
- Massing should be designed to conserve and enhance local contextual conditions.

107. It is my opinion that the development proposal is not consistent with the City of Kitchener Urban Design Guidelines on the following basis:

- The proposed building does not appropriate transition to the adjacent low-rise residential neighbourhood and Heritage Conservation District in terms of building stepbacks and spatial separation to adjacent properties (Issues #24, 26, 31);
- The proposed height, density and building setbacks do not respect the existing and planned character of the neighbourhood in which the Subject Property is located, including consideration for cultural heritage, built form and site function (Issue #35);
- The proposed building is not consistent with the guidelines for Tall Buildings (Issues #25, 27);
- The proposed building does not respect the Major Transit Station Area guidelines (Issue #33);
- The proposed building has not been designed or sited in a manner that considers its local context.

D.8 Civic Centre Neighbourhood Heritage Conservation District Plan

108. The Procedural Order include the following issues with respect to the Civic Centre Neighbourhood Heritage Conservation District Plan:

36. Are the proposed applications consistent with the Heritage District Objective, Principles, and Policies in the HCD Plan (Section 3.1, 3.2, 3.3.3, and 3.3.5.2, Recommendation 4.2.1 on “High Density Commercial Residential Designation” and Bullets 2 and 7 of Guideline 6.9.4)?

37. Are the proposed applications consistent with the Architectural Design Guidelines in the HCD Plan (Section 6.6 and 6.9.4)?

38. Does the proposed development provide a 45 degree angular plane measured from the rear property line to provide transition in scale from proposed development down to adjacent lands?

D.8.1 Policy Overview

109. The Civic Centre Neighbourhood Heritage Conservation District Plan was prepared in August 2007 in order to protect and manage the heritage resources in this district.

110. Section 3.1 of the Plan includes its Goals and Objectives, including the following:

- Maintain and enhance the visual, contextual and pedestrian oriented character of the Civic Centre Neighbourhood’s streetscape and public realm;
- Maintain the low-density residential character of the Civic Centre Neighbourhood Heritage Conservation District as the predominant land use, while recognizing that certain areas of the District already have or are intended for a wider range of uses by:
 - Ensuring that appropriate Official Plan policies, designations and zoning regulations are in effect that support the residential community;
 - Establishing policies that will consider and mitigate the potential impacts of non residential or higher intensity residential uses on the heritage character of low-density residential areas;
 - Developing area or site-specific policies and guidelines for those areas intended for non residential or higher intensity residential uses that will protect key heritage attributes, while allowing greater latitude for potential alterations or redevelopment;
 - Ensuring that infill development or redevelopment is compatible with the heritage character and pedestrian scale of the District.

111. Among the Principles included in Section 3.2 is the following:

- Preserve Traditional Setting - A building is intimately connected to its site and to the neighbouring landscape and buildings. Land, gardens, outbuildings and fences form a setting that should be considered during plans for restoration or change. An individual building is perceived as part of a grouping and requires its neighbours to illustrate the original design intent. When buildings need to change there is a supportive setting that should be maintained.

112. The specific policies are included in Section 3.3 and include the following:

- 3.3.3 a) New buildings will respect and be compatible with the heritage character of the Civic Centre Neighbourhood, through attention to height, built form, setback, massing, material and other architectural elements such as doors, windows, roof lines.
- 3.3.3 b) Design guidelines provided in Section 6.6 of this Plan will be used to review and evaluate proposals for new buildings to ensure that new development is compatible with the adjacent context.
- 3.3.5.2 b) Maintain residential streetscape character through the use of appropriate built form, materials, roof pitches, architectural design and details particularly at the interface between Weber Street and the interior of the neighbourhood;
- 3.3.5.2 d) Where redevelopment is proposed on vacant or underutilized sites, new development shall be sensitive to and compatible with adjacent heritage resources on the street with respect to height, massing, built form and materials.
- 3.3.5.2 e) Any buildings proposed over 5 storeys in height may be required to undertake shadow studies where they abut existing residential uses, to demonstrate that they will not unreasonably impact on access to sunlight in rear yard amenity areas.

113. Section 4.2.1 identifies the High Density Commercial Residential designation of the Official Plan as being intended to recognize the area's proximity to downtown and primary roads. This section also identifies the potential for infill or redevelopment along Weber Street to have a negative impact on the heritage character of the area if not undertaken in a sensitive manner.

114. Section 6.6 includes the Recommended Practices and Design Guidelines for New Residential Buildings, including the following:

- Match setback, footprint, size and massing patterns of the neighbourhood, particularly to the immediately adjacent neighbors.
- Setbacks of new development should be consistent with adjacent buildings. Where setbacks are not generally uniform, the new building should be aligned with the building that is most similar to the predominant setback on the street.

115. Section 6.9.4 includes Urban Design Guidelines specifically for Weber Street, including the following:

- Any infill development on Weber Street should maintain a strong relationship to the street at the lower levels (2 to 4 storeys) with respect to built form and use.
- Setbacks of new development should be consistent with adjacent buildings. Where significantly different setbacks exist on either side, the new building should be aligned with the building that is most similar to the predominant setback on the street.

- Building facades at the street level should incorporate architectural detail, similar materials and colours, and consistency with the vertical and horizontal proportions or rhythm of adjacent / nearby buildings on the street to establish a cohesive streetscape.
- Any new buildings taller than 3 to 4 storeys should incorporate some form of height transition or stepbacks to minimize the perception of height and shadow impacts to pedestrians on the street and provide more visual continuity. Stepbacks should be a minimum of 2 metres to provide for useable outdoor terraces for the upper levels.
- Any buildings taller than 5 storeys abutting a residential property to the rear should be constructed within a 45 degree angular plane where feasible, starting from the rear property line, to minimize visual impacts on adjacent property owners.
- To minimize impacts on properties to the rear of or flanking Weber Street, a rear yard setback of 15 metres should be maintained for new buildings as well as additions where feasible.

D.8.2 Policy Analysis and Opinion

116. I am not qualified to provide expert evidence with respect to built form and cultural heritage. However, the information included in the Municipal Record, including the Heritage Impact Assessment review prepared by Robert Martindale and the Witness Statement prepared by Deeksha Choudhry, provide opinions and analysis that the development proposal is not consistent with the identified policies of the Civic Centre Neighbourhood Heritage Conservation District Plan for the following reasons:

- The proposed height, density, scale and massing do not maintain and enhance the visual and contextual character of the Civic Centre Neighbourhood streetscape and public realm, or the low-density residential character of the Civic Centre Neighbourhood Heritage Conservation District as the predominant land use;
- The height, massing and scale of the proposed infill development is not compatible with the character and pedestrian scale of the District; and
- A 45-degree angular plane is not provided at the rear of the building to minimize visual impacts on adjacent property owners.

D.9 Conclusions and Recommendations

117. It is my opinion that the development proposal does not have appropriate regard for its existing and planned context, and the requested Official Plan and Zoning By-Law Amendments do not have sufficient regard to the matters of Provincial interest in Sections 2 (d), (n), (p) and (r) of the Planning Act.

118. It is my opinion that the development proposal is not consistent with the applicable polices of Provincial Planning Statement, 2024, in particular 2.4.1.3., 4.6.1. and 4.6.3, 6.1.1., 6.1.7, 6.1.11, and 6.1.12.

119. It is my opinion that the development proposal and requested Official Plan and Zoning By-Law Amendments do not conform to the Region of Waterloo Official Plan, specifically objective 3.8, and policies 2.D.1, 3.G.1 and 3.G.6. It is my opinion that the development proposal and requested Official Plan and Zoning By-Law Amendments do not conform to the City of Kitchener Official Plan.

120. It is my opinion that the requested site-specific zoning regulations will not provide appropriate spatial separation and transition to the existing and planned uses in the immediately adjacent low-rise residential neighbourhood nor to the flanking neighbours. The height is not appropriate. The front and rear yard setbacks are inadequate. The landscaped area is inadequate.

121. It is my opinion that the development proposal is not consistent with the City of Kitchener Urban Design Guidelines on the following basis:

- The proposed building does not appropriate transition to the adjacent low-density residential neighbourhood and Heritage Conservation District in terms of building setbacks and spatial separation to adjacent properties;
- The proposed height, density and building setbacks do not respect the existing and planned character of the neighbourhood in which the Subject Property is located;
- The proposed building has not been designed or sited in a manner that considers its local context.

122. Further to Issue #40 of the Procedural Order, it is my opinion that the development proposal and corresponding applications for Official Plan and Zoning Amendment do not represent good planning and are not in the public interest. The City of Kitchener Official Plan, through OPA 49, has implemented a new land use planning framework that includes the Kitchener City Hall PMTSA in order to respond to the Provincial direction, including the More Homes Built Faster Act, 2022. This land use planning framework includes the application of Strategic Growth Areas that provide for different types, height and scale of built form throughout the PMTSA. The Subject Property is surrounded by Strategic Growth Area A, which is intended to accommodate intensification through a range of low and medium density residential housing types up to a maximum of 8 storeys. The policies of Strategic Growth Area A are implemented through the "SGA-1" and "SGA-2" zoning categories of Zoning By-Law Amendment 2024-065. The "SGA-2" zoning category that abuts the Subject Property to the east and west permits a maximum height of 8 storeys and linear height of 20 metres for a property within 15 metres of an SGA-1 zone, in conjunction with numerous other performance standards intended to establish the maximum height, scale and massing considered appropriate in this zone. While the Subject Property was not included in OPA 49 and Zoning By-Law Amendment 2024-065, it does not represent good planning to establish site-specific Official Plan and Zoning By-Law provisions that are significantly different than the surrounding existing and planned context in the PMTSA for which an extensive planning exercise has been completed to establish appropriate permissions and performance standards for building height, setbacks, setbacks and transition. The Official Plan and Zoning By-Law Amendment applications seek to establish the Subject Property as an island of high-

rise and high-density residential land use that is not based within the context of the Official Plan and Zoning work completed by the City of Kitchener as part of its “Growing Together” project to implement Provincial policy and the growth and intensification objectives of the Region of Waterloo.

123. It is my opinion that the applications by the Appellant for amendments to the 2015 City of Kitchener Official Plan and City of Kitchener Zoning By-Law 85-1 to facilitate the development of the Subject Property for a 19-storey multiple residential building with 168 units should be refused by the OLT.

Respectfully,



Michael Barton, MCIP, RPP

Appendix A – Curricula Vitae

INTRODUCTION

- Highly qualified land use planning and real estate development professional with extensive and diverse experience in all aspects of land use planning and real estate development.
- Registered Professional Planner (RPP) and full member of the Ontario Professional Planners Institute.
- Founder and President of MB1 Development Consulting Inc. since 2011 with a diverse range of clients including developers and builders, land and homeowners, municipalities and neighbourhood organizations and interested members of the public.
- Qualified as an Expert in Land Use Planning by the Ontario Land Tribunal (OLT) (formerly Local Planning Appeal Tribunal (LPAT) and Ontario Municipal Board (OMB)), the Toronto Local Appeal Body (TLAB) and Ontario Court of Justice.
- Extensive policy background that provides a strong base in negotiation, industry issues, and the provincial and municipal policies that guide development.
- Land use planning and development experience with private consulting firms and senior management teams for commercial and residential development organizations.

Specific expertise and experience in the following areas:

- **Multi-Disciplinary Project Team Management** – Acting as project team lead to manage the deliverables of diverse range of professionals, including lawyers, engineers and architects.
- **Land Use Planning and Development Approvals** - Official Plan and Zoning Amendments, Committee of Adjustment (minor variances, consents), Site Plan Approval and Plans of Subdivision, Building Permits and Servicing Permits, Provincial Approvals and Certificates of Approval.
- **Urban Infill and Redevelopment** – Leading development projects in existing urban and downtown settings that require attention to critical issues such as transit-oriented design, compatibility with existing communities, heritage preservation and enhancement and affordable housing.
- **Coordination and Consultation with Municipal Staff** – Acting as a consultant and committee member on initiatives such as development application review and recommendations, development feasibility analysis for surplus municipal land assets, development charges, sustainable building and development guidelines, development engineering guidelines and financial policies, and other policies guiding land use planning and development.
- **Liaison and Communication with Municipalities and Public/Approval Agencies** – Coordination with staff and elected officials at municipal and provincial organizations with respect to individual projects, implementation of new policies and legislation, and acting as industry expert on specific real estate development and land use planning matters.
- **Public and Private Development Agreements** – Coordination and negotiation of agreements and conditions with development partners, adjacent landowners and municipalities, including joint ventures, easements, cost-sharing agreements, rights-of-way and development agreements.
- **Business Case and Project Feasibility Analysis** – Analysis of investments and projects to demonstrate technical and economic viability, return on investment and risk/uncertainty.

PROFESSIONAL BACKGROUND

MB1 Development Consulting Inc.

Founder and President (December 2011 – Present)

MB1 was founded in 2011 to offer a unique and valuable range of land use planning services and products to clients with interests in all aspects of the land use and development spectrum and falling within the following areas:

- Reports and Analysis
 - Preliminary Planning Review and Opinion
 - Development Feasibility and Options
 - Planning Justification Reports and Urban Design Briefs
- Expert Witness and Hearing Representation
 - Expert land use planning witness in support and in opposition of appeals
 - Qualified as an expert in land use planning by Ontario Land Tribunal (formerly OMB and LPAT), Toronto Local Appeal Body (TLAB) and Ontario Court of Justice
 - Experience acting as authorized representative with respect to filing appeals and managing pre-hearing procedural matters
- Land Use Planning Approvals
 - Application management, justification and representation
 - Committee of Adjustment (severance, minor variance)
 - Official Plan and Zoning By-Law Amendments
 - Site Plan Approval and Niagara Escarpment Development Permits
 - Plans of Subdivision and Condominium
- Municipal Development Review and Peer Review
 - Supporting municipal staff when additional resources and expertise are required
 - Functioning as an extension of municipal planning department in preparing staff reports and advising Council

Our clients include individuals and organizations with interests in all aspects of the land use planning and development process, including builders and developers, land and home owners, municipalities and neighbourhood organizations and interested members of the public.

Our assignments include residential (including single detached homes, apartment and condominium buildings), commercial, mixed use, institutional (including long-term care homes and private schools) and industrial projects.

**Hamilton-Halton Home Builders Association
Policy Director (February 2012 – November 2014)**

Concurrently with building and managing MB1, acted as the Policy Director for the Hamilton-Halton Home Builders' Association, which involved responsibility for representing the interests of over 250 members in addressing development and policy issues that affect the land development and construction industry. This position required an extensive understanding of the building and development industry while establishing networks and relationships with a broad spectrum of public and private stakeholders. The critical issues represented on behalf of the membership include: Development Charges; Municipal Infrastructure and Finance; Growth and Intensification; Downtown Renewal/Redevelopment; Adaptive Reuse of Existing Buildings; and Development Approvals Process.

Skills and experience critical to this position include:

- Coordination and management of multiple stakeholders;
- Strong presentation and communication skills;
- Negotiation of agreements and policies;
- Representation of the Association in OMB appeals and legal proceedings;
- Management of budgets and deliverables of consultants retained for specific services; and
- Preparation of written material for media publication.

**Landmart Realty Corp. (Landmart Homes)
Vice President of Land Development (June 2010 – December 2011)**

Full responsibility for overall management of the development program from the initial stages of real estate speculation and acquisition, through the land use planning approvals process, to servicing and construction. This experience provided a strong understanding of the needs and interests of the developer-builder. Responsibility of acting as the liaison among the different departments in the organization to ensure effective project delivery, including construction, sales and marketing, design, accounting and finance, and customer relations. This position reported directly to the CEO and corporate ownership.

Key responsibilities included:

- Due diligence for all potential site acquisitions;
- Preparation and review of real estate transactions;
- Negotiation of private and public development agreements;
- Preparation and management of budgets, including the pro forma for financing discussions with lending institutions;
- Consultant management;
- Representation of organization at municipal Council and Committee meetings; and
- Municipal planning and approvals.

Walmart Canada Corp.**Director of Civil Engineering, Real Estate and Store Development (November 2007 – June 2010)**

Direct responsibility for the overall site development process of all projects across Canada, including new stores, expansions, major renovations and conversions and retrofits of existing buildings. Directly involved in the disposition process for surplus real estate assets, including sites that were purchased for future development but subsequently deemed surplus, the Sam's Club properties upon closing of the chain in Canada, and outparcel lands on large retail development sites. This experience required extensive knowledge and expertise in all elements of the real estate development and disposition process. The scale of individual projects in terms of the size of the project team, the budget and the schedule, combined with the over 40 projects per year, required an unprecedented understanding of, and ability to manage, complex development projects. Moreover, involvement in development sites across Canada provided exposure to a wide range of environmental, land use planning, engineering and legal issues.

Relevant Experience:

- Project Team Management (large internal and consultant team);
- Joint Venture Management and Administration;
- Development Financial Analysis;
- Real Estate Analysis and Strategy;
- Representation of Large Organization in all Real Estate Matters;
- Project Budget and Schedule Management;
- Land Use Planning and Development Approvals;
- Management of Disposition of Surplus Real Estate Assets;
- Preparation of pro forma and return on investment analysis for review and approval by Executive Management Team; and
- Management of Multiple Large, Complex Real Estate Projects.

Counterpoint Engineering Inc.**Project Manager, Retail and Commercial Development (June 2006 – October 2007)**

Project Manager for the commercial real estate development program with comprehensive responsibility for delivering projects to the client from the initial due diligence stages through to final construction. The focus of this role was on large format retail, including project management for Lowe's Home Improvement Warehouse as the company entered the Canadian market. The clients managed in this role had very aggressive store development goals in terms of both schedule and budget. These goals were effectively managed to support store opening objectives. Value-added service was provided through strong skills in schedule and budget management, stakeholder communication, municipal approvals and coordinating a multi-disciplinary sub-consultant team.

BA Consulting Group Ltd.**Transportation Project Manager (February 2005 – July 2006)**

Transportation Project Manager responsible for managing transportation planning and engineering studies for mid- to large-scale real estate and infrastructure development projects. Clients included both private and public sector organizations. Value was driven through strong verbal and written communication skills and competencies in client relations, budget management and general project management. Michael was responsible for preparing and managing scopes of work, budgets and schedules for all assigned projects.

MMM Group Ltd.**Transportation Planner (July 2003 – February 2005)**

Transportation Planner managing transportation consulting services for public and private sector clients, including traffic impact studies and site plan and site access design, transportation planning studies, bicycle master plans, traffic safety analysis and parking and accessibility studies. Management responsibilities included preparation of proposal documents for prospective clients, preparing reports and other deliverables that met client needs on budget and schedule, and overall project management (budgeting, scheduling and hiring of sub-consultants).

RELEVANT COMMITTEE EXPERIENCE

- City of Burlington Housing and Development Liaison Committee
- City of Hamilton Development Liaison Committee
- Hamilton-Halton Home Builders' Development Council
- Region of Halton Housing Advisory Committee
- Hamilton-Halton Source Water Protection Committee

ACADEMIC BACKGROUND

- Master of Applied Science, Civil Engineering, University of British Columbia (2003)
- Bachelor of Environmental Studies, Urban Planning, University of Waterloo (2001)

Appendix B – Acknowledgement of Expert’s Duty



Ontario Land Tribunal

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Web Site: olt.gov.on.ca

ACKNOWLEDGMENT OF EXPERT'S DUTY

OLT Case Number:

Municipality:

My name is: (name)

I live at the: (municipality)

in the: (county or region)

in the: (province)

I have been engaged by or on behalf of (name of party/parties) to provide evidence in relation to the above-noted Ontario Land Tribunal (‘Tribunal’) proceeding.

- I acknowledge that it is my duty to provide evidence in relation to this proceeding as follows:
 - a. to provide opinion evidence that is fair, objective and non-partisan;
 - b. to provide opinion evidence that is related only to matters that are within my area of expertise;
 - c. to provide such additional assistance as the Tribunal may reasonably require, to determine a matter in issue; and

d. not to seek or receive assistance or communication, except technical support, while under cross-examination, through any means including any electronic means, from any third party, including but not limited to legal counsel or client.

I acknowledge that the duty referred to above prevails over any obligation which I may owe to any party by whom or on whose behalf I am engaged.

Date: 2025-02-26

Signature:

A handwritten signature in black ink, appearing to be 'MB', written over a light gray rectangular background.