

**Local Planning Appeal Tribunal**  
Tribunal d'appel de l'aménagement  
local



**ISSUE DATE:** May 12, 2021

**CASE NO(S):**

PL180211

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

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

|                               |   |
|-------------------------------|---|
| Applicant and Appellant:      | CRAFT Acquisitions Corporation and P.I.T.S. Developments Inc.   |
| Subject:                      | Request to amend the City of Toronto Official Plan, Railway Lands West and Central Secondary Plans – Neglect or Refusal of request by the City of Toronto |
| Existing Designation:         | Utility Corridors and Parks on Map 18 – Land Use Plan   |
| Proposed Designated:          | Site Specific (To be determined)  |
| Purpose:                      | To permit a large-scale mixed-use development with a major park and open space component over the railway corridor  |
| Property Address/Description: | Railway Lands between Bathurst Street and Blue Jays Way   |
| Municipality:                 | City of Toronto   |
| Approval Authority File No.:  | 17 164359 STE 20 OZ   |
| OMB Case No.:                 | PL180211  |
| OMB File No.:                 | PL180211  |
| OMB Case Name:                | CRAFT Acquisitions Corporation v. Toronto (City)  |

**PROCEEDING COMMENCED UNDER** subsection 53(14) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

|                          |  |
|--------------------------|--|
| Applicant and Appellant: | Canadian National Railway ("CN") and Toronto Terminals Railway ("TTR") |
|--------------------------|--|

Subject: Application for Consent - Failure of the City of Toronto Committee of Adjustment to make a decision

Purpose: To serve and merge the air right properties above rail corridor

Property Address/Description: 18D York Street

Municipality: City of Toronto

Municipal File No.: B0025/19TEY

LPAT Case No.: PL200140

LPAT File No.: PL200140

LPAT Case Name: Canadian National Railway v. Toronto (City)

**PROCEEDING COMMENCED UNDER** subsection 53(14) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: Canadian National Railway ("CN") and Toronto Terminals Railway ("TTR")

Subject: Application for Consent - Failure of the City of Toronto Committee of Adjustment to make a decision

Purpose: To serve and merge the air right properties above rail corridor

Property Address/Description: 18D York Street

Municipality: City of Toronto

Municipal File No.: B0026/19TEY

LPAT Case No.: PL200140

LPAT File No.: PL200141

**PROCEEDING COMMENCED UNDER** subsection 53(14) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: Canadian National Railway ("CN") and Toronto Terminals Railway ("TTR")

Subject: Application for Consent - Failure of the City of Toronto Committee of Adjustment to make a decision

Purpose: To serve and merge the air right properties above rail corridor

Property Address/Description: 18D York Street

Municipality: City of Toronto

Municipal File No.: B0027/19TEY

LPAT Case No.: PL200140

LPAT File No.: PL200142

**Heard:** November 2 to 5, 2020 inclusive; November 9, 10, 12, 13; November 16, 17, 23 to 25, inclusive, 2020; January 18 to 22, inclusive; January 18, 19, 25 to 29, 2021 inclusive, February 1 to 5, 2021 inclusive; February 8 to 12, 2021, inclusive; and March 2, 3 and 4, 2021, inclusive.

**APPEARANCES:**

**Parties**

CRAFT Acquisitions Corporation  
P.I.T.S. Developments Inc.

City of Toronto

Grange Community Association Inc.

Metrolinx Corporation

Canadian National Railway Company  
Toronto Terminal Railway Company  
Ltd.

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Joanna Wice

Max Allen\*

Jennifer Evola

Alan Heisey  
Michael Krygier-Baum

**DECISION DELIVERED BY WILLIAM R. MIDDLETON, T. PREVEDEL AND C. TUCCI  
ON MARCH 4, 2021 AND ORDER OF THE TRIBUNAL**

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## **1. INTRODUCTION**

### **(a) General**

[1] The Parties to this proceeding are CRAFT Acquisitions Corporation and P.I.T.S. Developments Inc. (“CRAFT”), the City of Toronto (“City”), the Grange Community Association (“GCA”) and Canadian National Railways (“CN”) and Toronto Transit Railways (“TTR”), (collectively “CN-TTR”). Metrolinx Corporation (“Metrolinx”), an Ontario crown corporation, became a Participant following its withdrawal on July 23, 2020 as a Party to the CRAFT Official Plan Amendment (“CRAFT OPA”) application. This Local Planning Appeal Tribunal (“LPAT”, “Tribunal”, “Panel”) hearing proceeded in three phases: Phase I is the subject matter of another LPAT Decision issued on October 16, 2020 in case nos. PL180211/PL200140 and shall not be further referenced; Phase II was the presentation of CRAFT’s case-in-chief, commencing November 2, 2020; and Phase III was the presentation of the City’s responding case-in-chief, commencing on January 18, 2021, which ended with the oral arguments of all Parties on March 2, 3 and 4, 2021, based on their written final submissions as requested by this Panel. The proceeding involved 36 total hearing days for Phases I, II and III. The Panel reserved its rulings at the conclusion of final argument on March 4, 2021, and now delivers this Decision.

[2] By way of summary overview, except for Spadina Avenue and one small portion owned by the City in and on which the Puente De Luz Pedestrian Bridge (“PDL Bridge”) is located, CRAFT owns the air rights above the approximately 150 year-old downtown Toronto rail corridor now owned and operated by CN-TTR. That CN-TTR rail corridor has several tracks and marshalling yards used for the transit of rail freight and passenger trains such as GO Transit and VIA Rail (“Rail Corridor”). The Rail Corridor spans the area from approximately Blue Jays Way adjacent to the Rogers Centre in the east, to Bathurst Street in the west.

[3] The CRAFT air rights above the Rail Corridor (“CRAFT Property” or “CRAFT Site”) were first secured by CRAFT from CN-TTR on December 2, 2013 - well after the

City bought in 2007 from CN-TTR solely the modest slice of air rights the City required to construct the PDL Bridge. The City owns Bathurst Street as well as the PDL Bridge and Spadina Avenue and all air rights above them. Spadina Avenue, like the PDL Bridge, bisects the CRAFT Property from roughly north to south. Blue Jays Way borders the eastern edge of the CRAFT Site. It is a street located on land leased by the City which also is roughly oriented in a north to south direction as it curves around the Rogers Centre, which is a well-known large sports stadium and hotel complex.

[4] The Rail Corridor and the CRAFT Property were designated under the City's Official Plan ("OP") as a Utility Corridor. It has been recognized by the City and others for many years that the rather barren Rail Corridor could be eventually developed for different purposes. Indeed, the majority of the major land parcels surrounding the Rail Corridor have been designated Mixed-Use, and almost all of them are populated in part by large, tall office or residential towers with approximately the same range of heights as is proposed for the buildings under one conceptual example relating to the OPA application by CRAFT (i.e. the "Concept Plan" discussed at length in Part 2 below). Under the City's OP, two secondary plans, the Railway Central and West Secondary Plans, were promulgated by the City in 1994 for the very reason that development in the Rail Corridor has been contemplated for several decades. In fact, one portion of the air rights above the Rail Corridor not owned by CRAFT or CN-TTR is the portion owned by Metrolinx and it is already designated Mixed-Use. Presumably this is one reason why Metrolinx decided to remove itself from the application by CRAFT for an OPA changing the designation for the CRAFT Site to Mixed-Use in order to permit a significant development on the CRAFT Site, which is the subject matter of this appeal.

[5] The evidence before the Tribunal indicated that CRAFT began its internal planning process regarding a possible large mixed-use development in its air rights over the Rail Corridor as early as 2013. This first resulted in the internal presentation in 2014 of a development proposal for the CRAFT Site. CRAFT's planning representative Mr. Ian Graham later made a presentation to Mr. Gregg Lintern, then the City's Chief Planner on August 26, 2015. An initial concept plan was presented by CRAFT's

architect to the City's planning department on January 26, 2016. Correspondence continued to be exchanged by CRAFT with the City in March and April 2016 concerning the Rail Corridor planning process.

[6] Evidence tendered by CRAFT established that, to the surprise of CRAFT, its representative Mr. Graham was told not to proceed with a private OPA proposal for the CRAFT Site in a July 20, 2016 meeting with the City's planning department, attended by Mr. Lintern. It soon became apparent that the City had rather different plans for the CRAFT Property: the City's Mayor made an announcement on August 3, 2016 that a new public park would be built by the City on the CRAFT Site, to be called "Rail Deck Park". It is uncontradicted that several developers were invited to the public press conference for that announcement – with the exception of CRAFT, the owner of that property.

[7] The outcome of the August 3, 2016 announcement by the City's Mayor appears to be the December 8, 2017 City Council decision to adopt an OP amendment 395 ("OPA 395") which designated the entire CRAFT Site as Public Parks. This was to facilitate the creation and construction of Rail Deck Park. OPA 395 was appealed by CRAFT which led to the July 11, 2019 decision of the Tribunal in PL180210 ("Prior Decision").

[8] As noted, at the time of the City Mayor's August 3, 2016 announcement the City did not own the CRAFT Site. The City has also not taken any substantive steps over the last almost 5 years since then to negotiate the purchase of the CRAFT Property - or to commence expropriation proceedings to acquire it. Thus, little has happened since 2016 with respect to the actual creation of Rail Deck Park. It was informally suggested on a few occasions during the hearing that the overall anticipated project costs might be a relevant contributing factor. This first arose during the cross-examination of one of CRAFT's witnesses conducted by Mr. Max Allen representing GCA, when there was a brief reference to the possible \$2B costs of building a version of Rail Deck Park – an amount that does not include the costs of acquiring the CRAFT Property.

[9] This Tribunal is not required to investigate the reasons why the City has not yet actively pursued the acquisition of any part of the CRAFT Property in order to proceed with Rail Deck Park. Certainly, CRAFT's counsel Mr. Kagan has expressed a few theories during his opening and final submissions as to why that has happened. However, this Panel need not make any findings on this curious topic in order to make a decision on whether to approve the CRAFT OPA. In any event, the Panel reiterates the observations of the Tribunal members who delivered the Prior Decision in 2019:

[86] The City unqualifiedly acknowledges that the City is serious about proceeding with the [Rail Deck Park] project and fully understands that it will have to acquire the property interest [from CRAFT].

[87] Of course, the preferred method of acquisition would be a transaction negotiated between the City and the Appellants on a consent basis. Nonetheless, the City, being a municipality, has the authority of expropriation. So, the City cannot demur here and allege an inability to acquire the property interest necessary to accommodate the project.

[10] Pursuant to the Prior Decision, CRAFT did not succeed in its appeal of OPA 395 with the result that the entire CRAFT Site became thereby designated as Public Parks. Counsel for the City and for CRAFT both now agree that the CRAFT Site is therefore currently "dually designated" because of the still-existing Utility Corridor designation which the CRAFT OPA now seeks to change to Mixed-Use. As further discussed in Part 3 below, the Tribunal's rulings in the Prior Decision were specifically without prejudice to the relief now sought in this application for the CRAFT OPA.

[11] The original CRAFT OPA was submitted on May 23, 2017 (along with 26 different supporting reports) and after the City's planning department indicated that it was incomplete, CRAFT then resubmitted it on August 24, 2017 (with three additional reports). Not long afterward, in October and November, 2017 the City's planning department and other City staff were preparing and submitting final reports and recommendations to City Council for the approval of Rail Deck Park and OPA 395 which, as noted in paragraph [7], was adopted on December 8, 2017 (in fact, the evidence of the City's senior planning witnesses was that preparatory work on Rail Deck Park had commenced years prior to that). On December 20, 2017 the City's planning

department provided some comments to CRAFT regarding the CRAFT OPA but at virtually the same time also sent its refusal report to City Council recommending denial of the CRAFT OPA (“Refusal Report”). Very shortly after that, at meetings held on January 31 and February 1, 2018, City Council accepted the Refusal Report’s recommendation, and the CRAFT OPA was denied by City Council – also on February 1, 2018 a City Council bill was adopted to pass By-law No. 126-2018 regarding OPA 395 and Rail Deck Park. The Refusal Report recommendations stated:

The development proposal raises significant planning concerns in respect to the Provincial Policy Statement (PPS), the Growth Plan for the Greater Golden Horseshoe, the Official Plan and Railway Lands Secondary Plans. The policy framework recognizes the downtown as an area that will absorb significant growth while at the same time recognizing the need to provide a full range of hard and soft infrastructure in step with growth to create complete communities. The PPS recognizes the Official Plan as the most important document to implement the PPS. The proposal is not consistent with the PPS and does not conform to the Growth Plan as it does not address the objectives of the plans to balance growth and infrastructure and poses potential challenges to sustain major transportation infrastructure with the addition of major buildings above the rail corridor. It does not conform with City of Toronto Official Plan policies to dispose of existing parkland and deliver a high quality built form and enhanced public realm... The proposal does not meet major objectives of the Railway Lands Secondary Plans including those to:

- reduce the barrier effect of the rail corridor by creating new connections across the rail corridor and protecting views across the corridor north and south to adjacent communities and the waterfront;

- ensure compatibility with the existing and future rail uses and activities in the rail corridor; create connections to and within the Railway Lands both east/west and north/south; and

- contribute to an attractive, accessible and safe public realm and parks and publicly accessible open spaces which meet a high standards of urban design.

City staff recommend refusal of the application as it does not meet Provincial and Municipal policies and does not represent good planning.  
[emphasis added]

[12] The City’s Planning Department also recommended that:

1. City Council refuse application 17 164359 STE 20 OZ for an Official Plan Amendment (the CRAFT OPA) for all of the reasons (set out above) including:

- a. the application does not conform with the Growth Plan for the Greater Golden Horseshoe;
- b. the application is not consistent with the Provincial Policy Statement;
- c. the application does not conform to the Official Plan including but not limited to policies related to structuring growth, the downtown, the greenspace system, transportation, built form and public realm, parks and open spaces, Utility Corridors, Mixed-Use Areas, and Parks and Open Space Areas;
- d. the application does not conform to the Railway Lands Central and Railway Lands West Secondary Plans including but not limited to policies related to major objectives, structure form and physical amenity, parks open space and pedestrian systems, transportation and circulation, environment, future development areas and Utility Corridors;
- e. the application does not address the emerging directions from the TO Core Planning Study; and
- f. the proposal is inconsistent with the Railway Lands Central and West Urban Design Guidelines and the Tall Building Design Guidelines.

2. City Council authorize the City Solicitor together with City Planning and other appropriate staff to appear before the Ontario Municipal Board in support of City Council's decision to refuse the application, in the event that the application is appealed to the Ontario Municipal Board.

3. City Council authorize the Acting Director, Community Planning, Toronto and East York District in consultation with the Ward Councillor, to ensure services, facilities and/or matters pursuant to Section 37 of the Planning Act, as may be required by the Acting Chief Planner, in consultation with the Ward Councillor are secured, should the proposal be approved in some form by the Ontario Municipal Board.

4. In the event this decision is appealed to the Ontario Municipal Board and the Board approves some form of development, City Council authorize the City Solicitor, to request the Ontario Municipal Board to withhold its order to ensure that the amendment contains policies requiring the use of the holding symbols in association with zoning by-law amendments, precinct plans and agreements, subdivision plans and agreements, environmental reports and agreements and public art plans, prior to the removal of the holding symbol to ensure that adequate servicing and infrastructure to support the proposal will be provided and secured. [emphasis added].

[13] The Tribunal observes that nowhere in the City staff's specific recommendations to City Council reproduced above are there any claims that the CRAFT OPA is: "premature"; fails to specifically designate and provide a large public park oriented in a

north-south direction; features excessive density and “over-development”; or does not provide sufficient policy direction on “master” or “precinct” planning. In this proceeding, however, each of these matters became major themes of the testimony of many City’s witnesses and of the City’s final written and oral arguments seeking the denial of the CRAFT OPA. The Tribunal also notes that none of the requests referenced in paragraph [12] above were made to the LPAT in connection with this proceeding.

[14] On February 6, 2018 CRAFT appealed the City’s refusal of the CRAFT OPA and the City has steadfastly continued to oppose it before this Panel. The other Parties to this proceeding, being CN-TTR, and the GCA support the CRAFT OPA. Metrolinx had previously been a party to the CRAFT OPA yet withdrew on July 23, 2020 as already noted. A range of uses is already permitted on the Metrolinx land and it does not require an OPA to permit a deck over the Rail Corridor - and the Metrolinx site is already zoned for a commercial building. On the other hand, Metrolinx remains a Participant in this proceeding and is engaged in commercial discussions and negotiations with CRAFT. Metrolinx has advised the Panel through its counsel that it does not oppose the current CRAFT OPA or any of its past versions.

[15] It should be noted that the CRAFT OPA was revised by CRAFT’s planning consultant Mr. Michael Goldberg on a number of occasions since the original application in May 2017 and the resubmission on August 24, 2017. The current CRAFT OPA now before this Tribunal for consideration was also again modified during this hearing and the latest version as appended to the final written legal argument of CRAFT’s counsel is set out at Addendum A hereto. While counsel for the City in final submissions described these changes as creating “...very much a moving target...”, he did not argue that it would be incorrect for the Tribunal to consider the version of the CRAFT OPA set out in Addendum A in determining whether to allow this appeal. On the other hand, Mr. O’Callaghan did argue that:

The fifth version of the CRAFT OPA was submitted to the Tribunal by Mr. Kagan on Friday, February 26, 2021. This version of the OPA has included a suggested improvement from Mr. Bagley, the City’s Urban Design witness through his testimony. CRAFT, through its consultant and

legal team have now made numerous changes to the draft OPA leading up to the hearing and within the hearing and now at the conclusion of the hearing. This is what the City means by premature. If substantive changes have to be made to the draft OPA as recently as three business days ago, that simply confirms that the OPA has not been thought through.

[16] CRAFT's counsel made no submissions about the history of revisions of the CRAFT OPA – no doubt in part because the City's counsel did not argue that those changes were of any consequence to this appeal. On the other hand, Mr. Kagan did argue based on the evidence tendered before the Tribunal that:

As was evident in the cross-examination of every City witness, none of them proposed a single modification to the CRAFT OPA. They instead recommended that the appeal be denied outright. CRAFT was very troubled by the fact that the City raised concerns with the OPA but refused to ever suggest modifications which could have resolved their concerns.

[17] What Mr. Kagan meant by this became clear as the evidence was called before the Tribunal. At no point after the City Council's refusal of the CRAFT OPA in early February, 2018 did the City's planning department ever engage in a dialogue with CRAFT's representative to discuss or resolve the City's concerns or to suggest changes to the CRAFT OPA that would address the City's requirements. Mr. Goldberg, who was CRAFT's planning witness at the hearing, and whose evidence is more fully discussed in Part 3 (f) below, put it this way during his direct examination testimony:

Well, the only thing I can make of this is that the City of Toronto...are recommending to this panel of the Tribunal that the application be refused outright. So, there is a bit of contradiction, they are saying it is premature...but they are not saying...it is not appropriate for mixed-use development. They are saying they have a whole raft or myriad of criticisms about details, but I do not believe that speaks to the designation of the lands...This is an OPA that sets this OPA application as but the first step in the process. And like... [other Downtown OPA applications such as]...The Well or OPA 395, or possibly even a number of other applications within the Railway Lands Central and West Secondary Plans, there remains many subsequent implementing steps should this OPA be approved to address the many details that have been raised in the context of this hearing. All City OPA issues are addressed now, in my opinion. The others, the details that others have expressed to you that are capable of being addressed later, will be or are capable of being addressed at the right time. [emphasis added]



[18] The Panel will return to these issues and others in its Conclusions set out in Part 4 below.

**(b) Certain Tribunal Rulings**

[19] CRAFT's counsel made requests to the Panel on January 11, 2021 for significant evidentiary rulings just days prior to the commencement of the City's case in chief on January 15, 2021. CRAFT sought to preclude certain testimony and the Tribunal requested that the Parties deliver written arguments on the issues raised. The relief sought by CRAFT's counsel was made in writing on January 18, 2021, at the request of the Tribunal. The relief sought was:

1. That all of the City's witnesses be excluded from attending (listening or watching) the portion of proceedings dealing with this matter and that all parties be ordered not to share these submissions, or the oral submissions, with those witnesses. This is required so that the City witnesses not tailor their evidence based on the submissions made;
2. That the Tribunal direct Mr. O'Callaghan and Ms. Wice that City witnesses who are qualified in the same field of expertise be prohibited from giving evidence on the same matter(s);
3. That the Tribunal rule that the evidence of John Gladki not be heard since it is not relevant to the matters in issue in this case or otherwise deals with matters already being covered by other City land use planners; and
4. That the City be prohibited from calling evidence on the potential difference in elevation between the CRAFT deck and the City's deck (for Rail Deck Park) since:
  - a. The height of the City's deck has not been established.

- b. In the alternative, if it has been established such information has not been made available to the public in which case it could not have been tested; and
- c. This hearing is not a “beauty contest” between the CRAFT OPA and Rail Deck Park as was clearly stated by the Tribunal in its approval of OPA 395 and has been confirmed by Mr. O’Callaghan in this hearing

[20] After discussion with the Parties’ counsel, the Tribunal indicated that it would receive these requests as a motion for directions. The hearing was adjourned to permit this and returned on January 20, 2021 at which time the Panel delivered its oral decision in accordance with the written content set out below in this paragraph [20]:

#### Motion Ruling

1. Counsel for CRAFT sent to the Tribunal on January 11, 2021 an email requesting the Panel to address issues raised in correspondence between counsel for CRAFT and counsel for City;
2. The correspondence exchange between the two counsel dated back to December 23, 2020 which was approximately one month following the conclusion of Phase II Hearing in this matter, being November 25-20, 2020
3. Briefly put, CRAFT’s counsel initiated the above exchange expressing a concern re “significant amount of overlap in the City’s Witness Statements” and noting both “expertise overlap” and “opinion evidence overlap” among similarly credentialed City witnesses whose Witness Statements (“WS”) and Reply WS were filed months ago in accordance with the governing Procedural Order. He further stated as follows:

All of this overlap creates an unfair scenario to my client. The City should not be entitled to call multiple planners, for example, who will deal with the same matter. I should be able to cross-examine one City planner on a specific topic and not have another City planner cover it again, later. This is especially troublesome when the second City planner is able to hear my cross-examination of the first. There are solutions to this unfairness and I have listed some of them below:

- a) Ensure that different witnesses in the same discipline do not cover the same topics.
- b) Call all of the same discipline witnesses at the same time, as a panel, so that they may be cross-examined together; or
- c) Have witnesses who testify later in the proceeding be excluded from hearing (or learning of) the evidence of those who proceed them.

4. CRAFT's counsel also attached a chart showing the "opinion evidence overlap" of 11 City witnesses. The City's counsel responded that:

To be clear, it is my position that there is nothing improper about overlap of evidence or duplication of opinions in the witness statements. It is completely common, for example, for land use planners and urban designers/ architects to reach similar conclusions about a policy or guideline or issue on the issues list but for different reasons. Because their conclusions are based on different reasons or areas of expertise, then that oral evidence is completely appropriate and admissible. Additionally it is entirely appropriate for a witness in one area of expertise to comment and rely upon the evidence of any other witness in forming their opinions and conclusions as many of your witnesses have.

5. Nonetheless, Mr. O'Callaghan went on to state:

Having said that, the City agrees that the exact same oral evidence from two experts with the same qualifications is not appropriate, and therefore the City will not be calling identical evidence from our experts in the same field. The City has chosen your Option 1 on page 2 of your letter regarding the structure of its oral evidence in their oral testimony

6. This did not resolve the issue and further correspondence ensued between counsel. CRAFT's counsel in its January 11, 2021 email to the Tribunal noted that it sought preliminary relief as follows:

That all of the City's witnesses be excluded from attending (listening or watching) the portion of proceedings dealing with this matter and that all parties be ordered not to share these submissions, or the oral submissions, with those witnesses.

7. The Panel recognizes that a formal motion was not brought in accordance with the standard practice under Rule 10 of the Tribunal's *Rules of Practice and Procedure* ("Rules"). However, matters such as these do arise during a hearing, as is referenced in Rule 10.10, and the Tribunal can also initiate its own motion in that regard under Rule 10.11. This "oversight" is not a barrier to entertaining the CRAFT motion therefore – and indeed it was the Tribunal who requested what was essentially motion briefing, albeit under a truncated timeline and process.
8. As part of its introductory comments on January 19, 2021, the Panel indicated that it was prepared to rule in favour of the preliminary relief sought concerning the "non-disclosure" of argument etc. to the City witnesses and Mr. O'Callaghan had no objections to this. The Tribunal now orders that this obligation shall continue throughout Phase III of this hearing – there has been no argument that any witness requires such information and there is at least a potential risk of the prejudice alluded to by CRAFT's counsel if it was disclosed as part of the final witness preparation done by the City's counsel
9. The Panel heard oral submissions from counsel for the Parties for approximately 3.5 hours and offered to sit for a longer period in the event that counsel required more time – however, they did not. The Tribunal also invited both counsel to file any additional brief submissions/

references they wished to be considered by no later than 4 p.m. on January 19, 2021, taking into account the abbreviated briefing schedule. Supplementary submissions were received from the City only.

10. After due consideration for the written submissions and oral argument of the Parties' counsel, the Panel now delivers its further rulings:
  - a. The Panel notes its disappointment that the CRAFT motion was not brought more formally and in any event sooner than January 11, 2021 – on the other hand, the Tribunal recognizes that the Parties continued their discussions aimed at arriving at a resolution which may have contributed to this delay.
  - b. The Panel notes that CRAFT's counsel did raise concerns at the time of the last Case Management Conference in October 2020 and in his opening statement. However, given how long these potential issues have apparently been “live” between the Parties it would have been preferable to deal with these matters after all WS and Reply WS had been received and, perhaps, at the time the PO was finalized. The Panel notes that at that juncture the issues that have only now been argued had crystallized - and there was no compelling reason to delay this type of motion until only a few days prior to the Phase III commencement
  - c. In any event, the Panel is very reluctant at this late stage on the eve of Phase III to strike any written evidence as filed by the City or to preclude any City witnesses from testifying in this proceeding. On the other hand, the Tribunal does have concerns about some of the evidence that was the subject of Mr. Kagan's argument, including but not limited to the WS and Reply WS of John Gladki and other City witnesses. The Tribunal's ruling might have been

different had a timely motion been brought after the City filed its WS and Reply WS as some measures to ensure no possible prejudice to the City's case would have been available then.

d. However, the Panel now sets out the following directions to the City and Mr. O'Callaghan concerning certain apparently planned *viva voce* evidence of Mr. Gladki and other City witnesses:

- (i) Except with leave of the Panel, all testimony of any City witness duly qualified in the same areas of expertise (e.g. planning or urban design or landscape architecture etc.) concerning Parks planning, design, parks policy framework, parks desirability in the Downtown etc. and otherwise in any way related to the Parks and open space elements of the CRAFT OPA ("Parks Matters") shall be delivered at the same time by a single panel of City's witnesses. Clearly, the City's counsel has the right to determine the make-up of that Parks Panel. However, subsequently, except with leave of the Panel, no City witness on that Parks Panel – or one who had not testified on that Parks Panel - shall give direct testimony on such Parks Matters. Nonetheless, a witness who had testified on that Panel may be called separately to provide evidence on other matters. Obviously, this does not cover matters and issues properly arising from cross-examination;
- ii) Notwithstanding (i) above, the City's counsel is cautioned to avoid leading direct evidence on the same matters from any Parks Panel members who are duly qualified in the same field of expertise – the Tribunal has no need to hear repetitive, confirmatory opinion evidence from more than one

witness. The same caution applies to direct evidence from other witnesses duly qualified in the same field of expertise on other issues;

- iii) As noted, Subsection (ii) above does not preclude counsel for the City from separately calling a witness on the Parks Panel at a subsequent point in the City's case to provide additional proper testimony related to other matters within such witnesses' WS and Reply WS – all as in compliance with (i) above;
- iv) Counsel for the City is also cautioned to avoid wherever possible leading direct testimony that compares the City's proposed Rail Deck Park or any other aspect of OPA 395 to the CRAFT OPA including but not limited to the "parkland" or "open space" elements set out in the Concept Plan underlying the CRAFT OPA. The Tribunal considers it to be an undertaking of the City's counsel to the Panel arising from his numerous verbal and written assurances that he will avoid conducting in any way a "beauty contest" between the City's proposed Rail Deck Park/OPA 395 to any aspect of what is being proposed under the CRAFT OPA;
- v) The City's counsel is also cautioned not to lead testimony that is directly or indirectly based on any evidence that is not already demonstrably in the public record regarding the height of any conceptual example of a public park that could be developed on the air rights/property owned by CRAFT. Certainly, the City may lead evidence that is now in the record of this proceeding that responds directly to contentions set out in the evidence of CRAFT witnesses.

- vi) The issue of whether current written references to the City's Rail Deck Park set out in the WS or Reply WS of any City witness – or any other evidence for that matter - should be modified or removed shall be dealt with by way of a motion to this Panel brought pursuant to Rule 10, at least five days prior to the beginning of final argument in this Phase III of this hearing. The Tribunal requires the moving party to provide at least five full days' notice of such motion and to deliver a motion record in accordance with Rule 10.4 at the same time. The responding party shall have three days from receipt of the moving party's motion record to deliver its response to such motion, following which the moving party shall have two days to deliver its reply. Either Party may seek leave from the Panel to dispense with one or more requirements of Rule 10 in order to facilitate the expeditious determination of the issues raised by the motion. For greater certainty, if no such motion is brought before the Tribunal, the Panel shall consider all of the written evidence contained in the WS or Reply WS of all City witnesses – save and except for such evidence as may be ruled inadmissible by the Tribunal during the course of this hearing;
- vii) The motion described in (vi) above shall be in writing only, except as otherwise permitted by the Tribunal. Thus, it may be brought at any time during Phase III subject to (vi) above;
- viii) Nothing in the preceding rulings of the Tribunal shall limit or restrict counsel for CRAFT or any other Party from raising objections based on proper grounds to the testimony of any



City witness; or shall be deemed to be an “advance ruling” by the Tribunal on evidence admissibility; and

- ix) The Tribunal may make an order excluding one or more City witnesses from hearing the testimony of other City witnesses, upon proper request by counsel for CRAFT or another Party.

[21] Following the motion ruling by the Tribunal as set out in paragraph [20], the hearing proceeded accordingly. Of course, from time to time during the hearing various evidentiary objections were made and the Panel provided immediate oral rulings on those. All such rulings are part of the record and are contained in the transcripts of this hearing and, therefore, they shall not be repeated in this Decision. No Party made any submission in their final written and oral argument that any of the Tribunal’s evidentiary rulings were unfair, incorrect or otherwise objectionable.

### **(c) Materials Before the Tribunal**

[22] The following categories of materials were submitted to the Tribunal prior to and also subsequently during the course of the hearing of this matter:

1. **Joint Document Book** – comprising 16 volumes; more than 200 documents; and 18,584 pages; compiled by the Parties – the Index to the Joint Document Book is attached as Addendum C to this Decision
2. **Exhibit List** – this list comprises all documents that became exhibits in Phase II and Phase III of this proceeding and is attached as Addendum D to this Decision. Counsel for the City and for CRAFT each filed compendiums of the Witness Statements (“WS”) and Reply Witness Statements (“Reply WS”) for all City witnesses and CRAFT witnesses, respectively, and these are described in the Exhibit List.

3. **Motion Materials of CRAFT and of the City of Toronto** – these materials are referenced above in paragraph [20] and comprised the CRAFT SUBMISSIONS RESPECTING CITY’S ORAL EVIDENCE AND WITNESS (AND REPLY) STATEMENTS, dated January 18, 2021; the CITY OF TORONTO REQUEST FOR DIRECTIONS, dated January 17, 2021; and the CITY OF TORONTO SUPPLEMENTARY SUBMISSIONS, dated January 19, 2021; and
4. **Final Written Submissions of CRAFT, of the City of Toronto and of the Grange Community Association** – submitted as requested by the Tribunal, comprising CRAFT CLOSING SUBMISSIONS PART I; CRAFT CLOSING SUBMISSIONS TRANSPORTATION EVIDENCE; CLOSING SUBMISSIONS (Rail Deck Design & Structure and Servicing); CLOSING SUBMISSION of the Grange Community Association Inc.; and CITY OF TORONTO CLOSING SUBMISSIONS.

## 2. THE TEST GOVERNING AN OPA APPLICATION

### (a) Position of the City

[23] The City argued in its final written and oral submissions to the Panel that various subsections of the *Planning Act* R.S.O. 1990 c. P.13 (“PA” or “Act”) set out a number of tests or criteria that each must be applied by the Tribunal in considering the CRAFT OPA:

- a. Section 2, which requires the Tribunal to have regard to matters of provincial interest;
- b. Subsection 2.1(1), which requires the Tribunal to have regard to any decision of Council on the same planning matter

- c. Subsection 3(5)(a), which requires the Tribunal's decision to be consistent with the in effect Provincial Policy Statement ("PPS"); and
- d. Subsection 3(5)(b), which requires the Tribunal's decision to conform with applicable provincial plans in effect.

[24] Counsel for the City particularly emphasized that subsection 2.1(1) of the PA requires the Tribunal to have regard for decisions of municipal councils:

When an approval authority or the Tribunal makes a decision under this Act that relates to a planning matter, it shall have regard to,

- (a) any decision that is made under this Act by a municipal council or by an approval authority and relates to the same planning matter; and
- (b) any information and material that the municipal council or approval authority considered in making the decision described in clause (a).  
[emphasis added]

[25] The City's legal team noted that the City Council refused the CRAFT OPA on the basis that it was "premature" – a decision that the Panel therefore shall "have regard for".

[26] Counsel for the City also argued that the Tribunal must also consider numerous policy requirements contained in the City's OP and applicable secondary plans thereunder.

[27] The City's counsel stated that The Railway Lands Central Secondary Plan ("RLCSP") enacted under the OP has clear policy tests found at policies 10.5.1 and 10.6.2 pertaining to amendments to those plans

[28] Similarly, the City's lawyers maintained that the other applicable secondary plan, the Railway Lands West Secondary Plan ("RLWSP") has a policy at 10.3.2.3 which mirrors that of the RLCSP, and that there are further policy tests set out in 10.3.1.1.

[29] Finally, counsel noted that RLCSP Policy sets out additional matters pertaining to decking over the rail corridor that must be complied with.

[30] Obviously, in support of the City's position that the CRAFT OPA appeal should be denied by the Panel as "premature", the City's counsel argued that the OPA met none of the requirements and policies described in paragraphs [23] to [29] above. He concluded that the Tribunal must therefore "have regard for" the City Council's decision to deny the CRAFT OPA and must dismiss CRAFT's appeal of that ruling.

**(b) Position of CRAFT on the Applicable Test**

[31] CRAFT's lawyers agree as to what provisions of the PA and policies of the OP and its secondary plans apply but disagree with the contention that they have failed to meet them. Moreover, CRAFT's counsel argue that the City's legal team has overstated the effect of the "have regard to" aspect of the test referred to in paragraphs [23] and [24] above.

[32] CRAFT's counsel stated that the appropriate tests for the CRAFT OPA are as follows:

- a. Does the CRAFT OPA have appropriate regard for matters of Provincial interest as required by section 2 of the PA?
- b. Is the CRAFT OPA consistent with the PPS as required by section 3(5)(a) of the PA?
- c. Does the CRAFT OPA conform with (or not conflict with) the Growth Plan for the Golden Horseshoe ("Growth Plan") as required by section 3(5)(b) of the PA?

- d. Recognizing that it is itself an amendment to the City's Official Plan and the Railway Lands Central and Railway Lands West Secondary Plans, does the CRAFT OPA nevertheless implement those plans? (This test is not contained in the PA but arises from decades of OMB/LPAT jurisprudence), and
- e. Does the CRAFT OPA represent good planning? (Again, not set out in the PA but arises from decades of OMB/LPAT jurisprudence.)

The Tribunal notes that the above elements are largely consistent with the City's proposed tests.

[33] However, CRAFT's counsel added a further refinement to highlight two essential "big picture" questions for the Panel to consider, given that this application solely concerns an OPA and not a rezoning or a site plan application:

- a. Is the proposed Mixed-Use Areas designation appropriate?
- b. Is development of the site feasible?

### **(c) Decision of the Panel on the Applicable Tests**

[34] The Tribunal agrees that the applicable statutory tests are as set out by the City's counsel, summarized in paragraphs [23]-[30], inclusive above, as further elaborated upon by CRAFT's solicitors in paragraphs [32] and [33]. The Panel also agrees that it must consider the two "big picture" questions identified by CRAFT's counsel in paragraph [33].

[35] However, in the Tribunal's view, the "have regard to" test set out in subsection 2.1(1) of the PA does not require the level of deference that counsel for the City may be urging upon the Panel. Subsections 11 and 12 of the *Local Planning Appeals Tribunal Act*, S.O. 2017, c. 23 provide broad general jurisdiction and powers to the Tribunal to

make orders in respect of its exclusive jurisdiction under the PA. It is clear under subsection 22(7) of the PA that on this appeal by CRAFT, the Tribunal has the same powers as did the City in considering the CRAFT OPA. The fact that the City denied the OPA in no way binds this Tribunal to do the same.

[36] In the Ontario Divisional Court case of *Ottawa (City) v. Minto Communities Inc.*, 2009 CanLII 65802 (ON SCDC) ("*Minto*"), the City of Ottawa argued that, in the context of section 2.1 of the PA, the words "have regard to" imposed an obligation on the [then O.M.B.]... to afford considerable deference to municipal councils' land planning decisions...[and] that the OMB, as an appellate body, ought to apply the deferential standard of "reasonableness".

[37] However, in *Minto* the Divisional Court rejected the above proposition and instead ruled at paragraph 16 that:

Questions of law that engage the specialized expertise of the Board, such as the interpretation of its own statute, attract a standard of reasonableness. In this case, the Board was interpreting one of its home statutes, the Planning Act, using its expertise in land use planning, its familiarity with the Provincial Policy Statement 2005 and its understanding of its own public interest mandate under the Act. [emphasis added]

[38] The Court in *Minto* went on to state:

[Counsel for]... the City, points out... that if this court were considering a review of the decision by the municipality, without any intervening process before the OMB, great deference would have to be afforded to Council's decision. However, the main reason for such deference is the recognition that the court does not inherently have any expertise in land use planning decisions. On the other hand, the OMB certainly does. The OMB can therefore oversee or review planning decisions by municipal councils from the vantage point of its expertise. There is another important difference between the court and the OMB. Unlike the court, the Board may determine the appeal based on fresh and expanded evidence, rather than merely reviewing the record of what was before Council in making its decision. The OMB process affords the parties a full hearing that includes an opportunity to present evidence, including expert evidence that may not have been before the municipal council in making its decision... Furthermore, it is important to keep in mind that the appeal process before the Ontario Municipal Board is not merely a lis between parties, but a process requiring the OMB to exercise its public interest mandate. The decision to be made by the Board transcends the interests of the immediate parties because it is charged with responsibility to

determine whether a land planning proposal is in the public interest...on an appeal the Board has the obligation to exercise its independent judgment on the planning merits of the application and to assess the proposal and the positions of the parties from the perspective of applicable legislation, regulations, provincial plans, the provincial policy statement, official plans and bylaws and even the potential impact on neighbouring municipalities... [emphasis added]

[39] Aston, J. for the Divisional Court thus concluded:

The legislature used language that suggests minimal deference when choosing the words "have regard to", considering the many other expressions it could have used to signal the level of deference suggested by the City in this appeal. In my view the traditional role of the Board, and the broad powers it exercises, should not be altered radically without a [clearer]... and specific expression of legislative intent... In my view...the words "have regard to" do not... suggest more than minimal deference to the decision of Municipal Council. However, in the context of the Planning Act, and balancing the public interest mandates of both the Board and the municipality, I would agree... that the Board has an obligation to at least scrutinize and carefully consider the Council decision, as well as the information and material that was before Council. [emphasis added]

[40] The Divisional Court reached the same conclusion on the standard of minimal deference owed by the LPAT [OMB] to municipal council decisions in the case of *R & G Realty Management Inc. v. North York (City)* [2009] O.J. No. 3358 ("*R & G Realty*").

[41] This Panel is bound by the Divisional Court rulings in *Minto* and *R&G Realty* and therefore, recognizes its obligation to carefully consider the City's decision to deny the CRAFT OPA, dated January 31 and February 1, 2018 and the information and material that was before the City Council on those dates. On the other hand, the Tribunal is not bound by that decision nor does it need to defer to the City Council decision in "having regard to it". Moreover, the Tribunal obviously must consider and analyze the massive collection of new expert opinion evidence by both the City and CRAFT over the course of this nine and one-half week hearing – in addition to the written and oral submissions presented. None of that voluminous material or expert testimony was before City Council when it made its decision to deny the CRAFT OPA.

### **3. ANALYSIS OF THE EVIDENCE**

#### **(a) Urban Design/Architectural/Landscape Design**

[42] The City raised a myriad of issues in this proceeding, including with respect to design and architectural matters – whether collectively this amounted to a “throwing the kitchen sink” effort as rhetorically alleged in final argument by CRAFT’s solicitors is immaterial. On the other hand, the City’s approach led to voluminous filings by both CRAFT and the City and to very substantial oral testimony during the course of this hearing which spanned the period from early November 2020 to early March 2021. The Panel’s challenge has been to reduce the discussion and analysis of such evidence to only those relevant issues which are required to be dealt with in an OPA proceeding in accordance with the applicable tests set out in Part 2.

[43] Central to the City’s position advocating the denial of the CRAFT OPA were its criticisms of the conceptual plan prepared by CRAFT’s outside architectural expert to demonstrate one example of the proposed development described by the policies and provisions in the CRAFT OPA. This concept plan soon became an enduring feature of this lengthy proceeding, incorporated into many of the WS and Reply WS as well as much of the oral evidence tendered by the City and CRAFT. However, that concept plan is not the instrument before this Panel for approval.

[44] The creator of the CRAFT concept plan is Moshe Safdie, who is a world-renowned architect and designer whose credentials over 55 years of professional practice are widely respected among members of his profession, including the City’s outside architectural expert, Mr. Forth Bagley who during his cross-examination described him as “...one of the world’s greatest architects...”. Mr. Safdie has been the recipient of numerous awards, honorary degrees, and civil honors including the Companion of the Order of Canada, the Gold Medal from both the Royal Architectural Institute of Canada and the American Institute of Architects, the National Design Award for Lifetime Achievement by the Cooper Hewitt Smithsonian, and recently the Wolf Prize



in Architecture—awarded for a career motivated by the social concerns of architecture and formal experimentation. Mr. Safdie has taught at McGill University, Yale University and later became the Director of the Urban Design Program at Harvard University serving there as a Professor of Architecture and Urban Design for several years.

[45] Mr. Safdie’s design and architecture projects include many large, complex and difficult developments certainly comparable to the challenges presented by the CRAFT Site in downtown Toronto over the Rail Corridor. Those projects include the design of large airport terminals in Singapore, Israel and Toronto in addition to complex commercial, resort and residential developments and landmark museums throughout China, the USA, Canada, Singapore, Israel and India. He has enjoyed a unique and longstanding reputation as one of the most outstanding creative design innovators of his generation and remains active and engaged in numerous ongoing projects. His Canadian projects include: Monde Residential Tower, Toronto, 2019; Lester B. Pearson International Airport, Toronto, 2007; Vancouver Library Square, 1995; Ottawa City Hall, 1994; Montreal Museum of Fine Arts, 1991; National Gallery of Canada, Ottawa, 1988; Quebec Museum of Civilization, Quebec City, 1987; and Habitat '67, Montreal, 1967.

[46] Notably, to assist CRAFT with its OPA application in accordance with the City’s requirements, Mr. Safdie and his firm created a three-dimensional physical model of his potential design concept for the development of the CRAFT property along with a lengthy visual presentation and a large slide deck (“Safdie Concept Plan”, “Concept Plan” or “Safdie/PWP Concept Plan”). The Panel found both the model and the visual slides to be an informative and impressive depiction of one possibility for the CRAFT Site. Beyond the comments of Ms. Bogdanowicz noted in paragraph [80] below, no City witness took serious issue with the level of design creativity and attractiveness of the Safdie Concept Plan.

[47] As required pursuant to the City’s checklist given to CRAFT at the Pre-Submission Consultation meeting held on or about January 20, 2017, the purpose of the Safdie Concept Plan is solely to illustrate one way in which the CRAFT OPA could be implemented. However, as already noted, the Safdie Concept Plan seemed to instead

evolve into the focal point for the City's overall critique – notwithstanding the fact that the CRAFT OPA, and not the Safdie Concept Plan was clearly the only instrument before the Panel for its approval.

[48] As the hearing progressed, the Tribunal reached the opinion that the continuous commentary by the City and its experts about the Safdie Concept Plan, as interwoven with the criticisms of the CRAFT OPA, served to distract this proceeding from its sole and proper focus: the evaluation of the CRAFT OPA in accordance with the OPA tests set out in Part 2 above.

[49] The Safdie Concept Plan was introduced in Mr. Safdie's oral evidence before the Panel on November 4, 2020 when he testified remotely from his office in Cambridge, Massachusetts (due to the ongoing pandemic and quarantine restrictions for visitors to Canada). Mr. Safdie stated that he was first contacted by CRAFT in January 2020 and was then later formally retained on February 21, 2020. He described how it was important to him before accepting this retainer to: (a) be assured of no restrictions on his designs due to any predetermined density proposed by CRAFT or limitations on his ability to design something that would respect the location and importance to Toronto of the CRAFT property and the availability of parks/open space areas and (b) be permitted to engage a familiar, world-class "A-Team" of landscape architects (PWP Landscape Architecture) and structural engineers with whom he had previously worked on numerous high-profile and challenging projects around the world (Arup Inc.).

[50] Mr. Safdie's Concept Plan was eventually provided to the City on May 31, 2020. CRAFT's then representative, Mr. Ian Graham, wrote on June 1, 2020 to Gregg Lintern, Chief Planner for the City at that time, seeking a meeting to present the Plan and to discuss the possible resolution of CRAFT's appeal to the Tribunal. This overture was acknowledged by Mr. Lintern who advised Mr. Graham that Ms. Lynda Macdonald would respond to his invitation and enquiry. No such response ever arrived and no such meeting was ever arranged by Ms. Macdonald, a senior member of the City's planning department, whose testimony and evidence is described in Part 3 below. Much was made of this by CRAFT's counsel in his final submissions where he also

pointed out that the first City response to the Safdie Concept Plan was delivered only when the City delivered its WS's on August 24, 2020. The Tribunal need not draw any adverse inferences in these circumstances, but does observe that this appeared to be unusual conduct on the part of the City in the context of a large Downtown development proposal – and that is unfortunate that settlement discussions never occurred between the Parties

[51] The Concept Plan was Mr. Safdie's effort to provide an example of what could be developed on a "... [challenging site] ...that is a very large parcel of land which disrupts the city. [and]...is certainly a barrier... that we won't be able to mend...because the city opposed any roads crossing over ...". He noted that the site also featured "...the challenge of [various] levels because we know that we need to deck it... [and]...level differences that are always a challenge... [requiring us]... to be very clever in the way we create the kind of connectivities... that we would hope to achieve...".

[52] Mr. Safdie, who essentially used the term "park" to identify any public, open spaces, described in his direct evidence some of his key objectives underlying the Concept Plan as the following:

...We said first we want to optimize the area of park. We want to get as large a park and also with contiguous areas so that it is useful. We said that we would like to integrate whatever commercial activity, and I mean by that, retail and entertainment and the park towards creating a synergy between them...creating something of much greater connection with nature and the outdoors... We wanted to optimize public access from all directions. From the south and from the north, from the east and the west and from the transit below...[something that would create]... various attractions that appeal to Torontonians of all ages, young people, older people and... we realized how important it is to create park spaces that are accessible and active through all of the seasons... And one of our objectives was to activate Front Street with retail as well as access points to the park in such a way that it would enliven the street and make it part of the network of lively streets of Toronto, which today it is absolutely not...(emphasis added)

[53] Setting out his further architectural design objectives, Mr. Safdie testified that:

...I thought that there is going to be a question about the building mass because the sites around us are so intensively developed, overwhelming densities Toronto is allowing in the downtown and I realized that building more structures, more towers with more residential and possibly office, is

going to create a question about congestion, blocking views, shadows. How might we make a design that minimizes that impact? Create maximum porosity. And as far as the environment of the project we thought that creating an environment that is pedestrian friendly was very important and that it should be all visible from the public realm... in creating a community or designing a future community of close to 3,000 households, hopefully many of them families, how would we create something that is going to be liveable, that is going to be attractive to them, that will allow for a sense of community...(emphasis added)

[54] Simply put, on the area of the CRAFT Site between Bathurst Street and Spadina Avenue, the Safdie Concept Plan features a collection of six towers, ranging from 43 to 46 stories high, oriented along Front Street at the north edge of the Site in its “West Block” (which can be compared to heights for six towers on the north side of Front Street that are existing and approved ranging from 15 to 46 stories, with little or no open or park-like spaces between them), including both residential, office, retail space interspersed with a myriad of open park-like spaces on various levels which work their way down to the southern edge of the site bordering the narrow City-owned Northern Linear Park strip, (including in some cases on open park-like spaces on the tops of elevated pedestrian walkways between certain towers). East of Spadina Avenue in the portion of the parcel between it and Blue Jays Way, called the Site’s “East Block” are proposed three additional towers, ranging from 44 to 33 to 20 stories with additional pockets of public open park-like spaces (which can be compared to four towers existing or approved on the north side of the same block that are existing and approved ranging from 20 to 33 to 36 stories, with little or no open or park-like spaces in them). Due to its acquired importance during the hearing of this case, the Tribunal has provided a few excerpts from one depiction of the Concept Plan in Addendum B to this Decision. This is for illustrative purposes only and in no way implies an endorsement by this Panel of the Safdie/PWP Concept Plan.

[55] Both Mr. Safdie and Mr. Dermot Sweeney were qualified by the Panel to provide *viva voce* opinion evidence on design and architectural matters: Mr. Safdie (architectural design evidence) and Mr. Sweeney (urban design and architectural policy matters). Each also filed a WS and Reply WS.

[56] The key elements of Mr. Safdie's evidence as set out in his WS, Reply WS and in his oral testimony were:

- a. "For many decades the railway tracks leading to Union Station, on the average 100 meters wide, bisected Toronto with an industrial cut in the urban landscape, brutally separating King St. West from the growing Queen's Quay lakefront development. While the elevated Gardiner Expressway also contributed to this barrier, it could easily be crossed. With deep retaining walls and lack of public realm at street level, the railway tracks are a dark and powerful barrier. Our concept plan sought to address these challenges."
- b. Mr. Safdie's Concept Plan, in his words, aimed to balance the private development with the public interest in the following ways:
  - "To optimize the area of the park, with wide and generous proportions.
  - To integrate the park and commercial uses towards achieving the great synergy to the benefit of both activities.
  - To facilitate and optimize public access to the park from all directions- South, North, East and West, and from the Transit Station below.
  - To develop a functional and diverse park design that will attract Torontonians of all ages and from all walks of life.
  - To enhance the public realm along the South side of Front Street with active landscaped street-fronts.
  - To minimize the presence of building mass, and resulting shadows on the surroundings, while achieving maximum visual permeability from the adjacent neighbourhoods North to South, and vice versa.
  - To orient the project to pedestrians by limiting all vehicular and service access to zones below the deck, not visible from the public realm.
  - To design an exemplary urban development with high-quality public and local resident amenities, a design that sets a new standard, is an attraction in its own right, and even becomes a tourist destination."
- c. The Safdie Concept Plan proposed to reduce the footprint of the towers and introducing bridging between the towers at various levels, with the

openings between towers serve as “urban windows” opening views from the King Street West district to the south towards the lake;

- d. The purpose of the wide spaces between buildings was to afford light and views to the sky. Mr. Safdie described that “...the distribution of the towers in a zig-zag configuration frames dynamic views between towers as one moves through and around the site”;
- e. The connecting bridges between towers provide landscaped roofs with recreational decks for residents with indoor and outdoor amenities, which, in Mr. Safdie’s opinion “...make for a highly sustainable development...”;
- f. To maximize park area, the Safdie Concept Plan proposed a novel cross section that tucks the retail galleria under the park, noting that this was the same strategy successfully deployed at the Singapore Marina Bay Sands waterfront promenade. The Plan devised a truss that spans the railways and accommodates parking within it, the park level is lowered thus improving access from the surrounding developments. Finally, the two levels of retail galleries overlap the various levels of the park, in order to contribute to its animation and public use in all seasons. The proposed design is to create an indoor/outdoor shopping environment that is integrated with the park environment to create a new kind of improved public realm experience;
- g. Along the south side of Front Street, the planned podium opens onto a wide sidewalk and public realm where nothing exists today. The Safdie Concept Plan’s goal is to preserve the grading of the City’s Northern Linear park while enhancing it by way of its integration with “...the much larger urban park over the rail deck, with easy access from the South by way of stairs and accessible ramps. The outcome is a park of almost 13

acres. We believe the resulting development will give Toronto a great new attraction, with a balance of park and development...

[57] Another key element of the Safdie Concept Plan was the detailed landscape design prepared by Adam Greenspan of the firm PWP Landscape Architecture (“PWP”), based in Berkeley, California. Mr. Greenspan led the design of many of our significant projects over the last fifteen years in the United States and abroad, working for public and private clients, including public agencies, property owners, non-profit foundations and architects. He worked with Mr. Safdie on many of his high-profile projects worldwide as already briefly described above in paragraph [49] and Mr. Safdie described him as part of his “A-Team” on such important works. Recent projects of Mr. Greenspan included the National September 11 Memorial in New York City, Jewel Changi Airport in Singapore, the elevated Salesforce Transit Center in San Francisco, The Colorado Esplanade for the City of Santa Monica and Newport Beach Civic Center Park in California, as well as Barangaroo Headland Park in Sydney, Australia.

[58] Mr. Greenspan has a Bachelor of Arts in Studio Art and Sociology with Honors, 1994 from Wesleyan University and graduated from the University of Pennsylvania, School of Design with a Master of Landscape Architecture in 2001. His *curriculum vitae* contained details of more than 16 design awards and other achievements for the period from 1998 to 2019. He was qualified to provide opinion evidence on landscape design matters before the Tribunal, and testified on November 5 and 6, 2020

[59] Mr. Greenspan’s essential conclusions from his WS, Reply WS and oral evidence before the Panel, which, in the Panel’s view, were not successfully challenged in cross-examination, were as follows:

- a. Greenspan/PWP proposed a scheme for the open space at the CRAFT Site that incorporates a varied landscape with many different plazas, gardens, play zones and experiences that are connected together so that visitors will be able to move across what is now the rail yard through a park in both the north/south and east/west directions, based on the

premise of creating a park landscape that is interwoven with the City itself to create a park with a synergetic effect to help maximize visitation and visitors' experiences year-round;

- b. In light of Toronto's wide temperature range, the project is to have indoor and outdoor routes that cross the site and are open to the public. The park's adjacency to restaurants and retail was to allow people to connect with each other and promote both inside and outside activity and recreation;
- c. At the street level, the design includes an "Urban Woodland Walk" merging with the existing City Northern Linear Park with tree planting, paving, lighting and furnishings, so as to expand "the impact of the park by creating a green threshold where pedestrians and cyclists can safely move east-west through the park setting". Pedestrian plazas "frame new and existing sculptures and become nodes within the park circulation system that lead to stairs, ramps or elevators that allow people to move through all park levels";
- d. The design includes a "Great Plateau" as the main and widest terrace level where the largest lawn, and "many sizable plazas, playgrounds and attractions, such as art and a dynamic water plaza, will be located, with diverse and well connected spaces" and open air links between the north side of the site (Front Street) to the south side (Iceboat Terrace) at both Portland Street and Draper Street. The Great Plateau level is directly connected to the indoor spaces of the retail galleria through open facades/doorways;
- e. A "Hilltop Promenade" one "step" above the Great Plateau is proposed to offer an active urban setting for people watching, meeting friends, taking walks and relaxing under the shade of trees to be planted. Interactive



water features enliven the promenade which by the nature of its elevated position makes it a promontory featuring views of surrounding City landmarks such as Fort York, Mouth of the Garrison Creek Park, and the CN Tower. This level would also connect to indoor air-conditioned spaces;

- f. Finally, the landscape design includes a “Rooftop Park” to be developed with a broad range of amenities where people of can engage in active recreation such as basketball and/or tennis courts, fitness stations, a walking loop, edible gardens, playgrounds, and a winter ice rink; and
- g. Greenspan/PWP’s goal “is to create sustainable landscapes, through their intelligent design, as well as by creating places that people love and care for, the relationships and opportunities within our scheme provide for a dynamic park that can be enjoyed for years to come” and Mr. Greenspan’s opinion was that “the open space elements of the proposed development represent a remarkable opportunity for the City of Toronto, its residents and visitors”.

[60] Mr. Sweeney was retained by CRAFT to provide architectural and urban design advice to support the preparation of the CRAFT OPA applications first made to the City on May 23, 2017. Mr. Sweeney was also actively involved in the design of the Safdie Concept Plan.

[61] Mr. Sweeney has been a licensed professional architect and a full member of the Ontario Association of Architects since 1988, a member of the Architectural Institute of British Columbia and a member of The Royal Architectural Institute of Canada. He testified that he had more than 36 years of architectural experience within Toronto, the Greater Toronto Area and across Canada. He was qualified without objection from any Party to provide opinion evidence on urban design matters to the Tribunal.

[62] In terms of the issues raised under section 2 of the PA by the City's lawyers as described in Part 2 (a) above, the essential urban design conclusions reached by Mr. Sweeney, and response, as contained in his WS, Reply WS and in his oral evidence were:

- a. The CRAFT OPA does not exempt the CRAFT Site from City of Toronto urban design policies nor from its Tall Building Guidelines. Those policies and guidelines will continue to apply to the future rezoning and site plan applications. Moreover, the subject site is very large with ample space to deploy the buildings. There is no inherent reason why the ultimate development could not meet the City's urban design Official Plan policies or the City's Tall Building Guidelines;
- b. The Safdie Concept Plan represents one (but not the only) way in which to implement the proposed CRAFT OPA. It appears that many of the City's urban design concerns appear to apply to that Concept Plan and not the actual proposed CRAFT OPA;
- c. The Safdie Concept Plan is very well-designed and creates a new public sidewalk on the south side of Front Street, offers a preferred mix of uses, provides abundant amenities for both the residents/occupants and the greater community, provides critical public connections through the development from the King West Neighbourhood to the City Place Neighbourhood to the south, has minimal negative impact, provides two direct access points to the future GO Transit Station, eliminates the negative effects of the sunken rail corridor for all in this precinct (noise, visual impact and separation of two established areas that will greatly benefit from the new north/south connections and provides nearly 13 acres of open space (which could become a public park). By virtue of its location and proposed uses, the Concept Plan will reduce car dependency within the core of the City in an area very well served by public transit and

within walking distance of employment uses. Reducing car dependency is a valid urban design objective;

- d. The Safdie Concept Plan not only “encourages a sense of place” but creates a very significant and desirable new set of high-quality public places that will serve the larger community and visitors to the City and the Plan’s design provides new access to these high-quality public open spaces from both established adjacent precincts north and south and allows each precinct to connect easily to the existing amenities, services etc. within the other precinct;
- e. The Safdie Concept Plan is designed to facilitate greater public access to existing amenities while creating all new public amenities, much needed housing and employment uses. The Concept Plan will also transform the south side of Front Street from Spadina Avenue to Bathurst Street into a pedestrian friendly animated and enriched public realm;
- f. The Safdie Concept Plan will create an important link from east to west while facilitating all new public and fully accessible north south links from Front Street to the open space and beyond to the City Place precinct;
- g. The Safdie Concept Plan will create all new publicly accessible spaces that are of the highest quality, safe, accessible, attractive, and vibrant. The all new pedestrian sidewalk along Front Street will be animated by new retail venues, pedestrian access to the residential lobbies, the new transit station and unobstructed “accessible” passage through to the new open space and beyond to the City Place Community to the south.

[63] The Tribunal is of the opinion that the intense level of detailed scrutiny of the Safdie Concept Plan, as incorporating the PWP landscape designs, urged upon the Panel by the City was unnecessary and too often not directly relevant to the Panel’s

consideration of the CRAFT OPA under the tests proposed by the City's counsel. At times it seemed to the Panel that counsel for the City and the City's witnesses treated the Safdie/PWP Concept Plan as representing the "only way" the development proposed in the CRAFT OPA could ever be built.

[64] Perhaps as a result, a "Battle of Parks Preferences" emerged due to the City's sustained critical commentary about the nature of the open space/park-like aspects of the Safdie/PWP Concept Plan versus the opinion evidence offered by the City about the "fundamental need for a large park in the Downtown" – in turn based on the continual suggestion by the City's counsel and City witnesses that somehow the long barren and largely overlooked Railway Corridor with elevated air rights development potential is Toronto's "last best chance" for a large Downtown park. Although the Panel recognizes that the CRAFT Site is a very long and relatively large area, the evidence tendered in this proceeding did not establish that it was the "best" or "only" site for such a public park. Moreover, it was no part of the Tribunal's mandate to rule upon that issue in any event.

[65] Interestingly, the City's legal team repeatedly insisted that the difference of opinion outlined in paragraphs [63] and [64] was not the often-referred to and prohibited "beauty contest" between the City's Rail Deck Park proposed under OPA 395 and the CRAFT OPA. However, CRAFT's counsel termed this, and Rail Deck Park, as the "*Elephant in the Room*". Even accepting the position of the City's counsel, the Panel certainly received a good deal of both written and *viva voce* evidence from the City's witnesses to the effect that what CRAFT has proposed for open, park-like space in its OPA and in the Concept Plan is simply unacceptable in place of the "significant park" that is required in downtown Toronto. Moreover, counsel for the City devoted considerable attention to "parks matters" in its final written and oral submissions. The Tribunal is unaware of a recent OPA appeal case where the issue of parkland dedication and the nature of a possible future public park so utterly dominated and contributed to such a lengthy LPAT hearing. Certainly, no examples were cited to the Tribunal by the City.

[66] As noted above, it is not within the purview of this Tribunal to determine: (i) which Party has the better or more preferable park design proposal for the significantly elevated space over the 150+ year old Rail Corridor; and to then (ii) bestow its approval upon one of the competing park visions. Instead, the sole task of this Panel is to decide whether the CRAFT OPA satisfies the requisite elements of the agreed tests set out in Part 2 of this Decision. Notwithstanding this reality, for the sake of completeness, the Tribunal has found it necessary to summarily deal with the Parties' evidence and main legal arguments concerning parks issues in Part 3 (b).

[67] The Panel agrees with CRAFT's counsel that many of the City's issues and criticisms are not properly OPA matters and seem to be solely directed at the Safdie/PWP Concept Plan which, as already noted, is not subject to the Tribunal's approval. In fact, as noted by CRAFT's counsel, it was only because of the City's extensive Issues List that he took the unusual step of calling Mr. Greenspan to give landscape architecture evidence in an OPA approval case.

[68] The Tribunal also concurs that too many aspects of the City's critique of the Concept Plan are applicable to later aspects of the development process following the OPA stage, including the zoning, site plan and even the building permit stages, some examples being:

- a. Location of driveways and bicycle parking, both site plan matters;
- b. The height of the towers; of the podium along Front Street; and of the step-back from the podium; all being zoning matters;
- c. The building setbacks from Front Street and Spadina Avenue, again typically zoning matters; and
- d. The height of the deck required over the Rail Corridor – another zoning matter.

[69] In terms of design and architectural matters - which the Panel assumes also must relate to the evidence of Mr. Safdie and Mr. Greenspan above in paragraphs [49] to [59] inclusive - in his final written argument, the City's counsel stated that the CRAFT OPA was "premature" and ought to be denied:

- a. for failing to provide appropriate regard for the impacts of the proposed number of units and commercial gross floor area in creating a pedestrian barrier that disrupts the ability to create meaningful pedestrian and cycling connections in contravention of subsection 2(r) of the PA: "the promotion of built form that, is well-designed, encourages a sense of place, and provides for public spaces that are of high quality, safe, accessible, attractive and vibrant";
- b. [more generally], "for failing to have regard for the lack of urban design considerations and protections in the proposed policy, creating a policy framework that does not ensure that a resulting development will be well-designed, with a sense of place, that are of high quality, safe, accessible, attractive and vibrant". [emphasis added]

[70] The City's counsel did not cite specific support at that stage of his final submissions regarding the positions described in paragraph [69] above, but later quoted a very long excerpt of 26 paragraphs from the WS of the City's witness Mr. David Leinster dated August 24, 2020 which contained a number of conclusory opinions on these matters. As characterized by counsel for the City, Mr. Leinster's evidence was: "...with regard to landscape architectural and urban design concerns with the CRAFT concept plan with regard to the many negative impacts on the public realm, of the proposed elevated open space..."

[71] Mr. Leinster is a landscape architect who was called by the City as an expert witness. He was qualified to give opinion evidence on landscape design matters before the Panel on February 3, 2021 as part of a panel of City witnesses convened to provide design related testimony pursuant to the Tribunal's motion rulings noted above in Part 1 presumably in response to the evidence of Mr. Safdie, Mr. Greenspan and Mr. Sweeney. As another City's witness had done, at the outset of his cross-examination Mr. Leinster actually agreed with CRAFT's counsel that Mr. Greenspan and PWP have

a notable international reputation and that they do "...some pretty incredible work all around the world...".

[72] Mr. Leinster is a Principal of The Planning Partnership Limited and obtained a Bachelor of Landscape Architecture from the University of Toronto in 1985. He is also a Registered Professional Planner with the Ontario Professional Planners Institute and a Member of the Canadian Institute of Planners (but did not offer planning opinion evidence). Mr. Leinster has been practicing as a professional landscape architecture consultant since 1989 and a professional planning consultant since 2009. He is a past president of the Ontario Association of Landscape Architects, and his *curriculum vitae* indicated that he has won 11 awards in Canada for landscape architecture achievements and that the majority of his project involvement has been in Toronto, Ottawa and elsewhere in Ontario.

[73] Mr. Leinster admitted that not every PPS policy mentioned in his WS, Reply WS and direct examination concerning landscape design matters is meant to be implemented at the OPA stage, since there is a detailed zoning stage and site plan approval stage to follow: "...Yes, I would say I would agree that there are different policies for different levels of approval...". He also conceded on cross-examination that most of his evidence focused on the Safdie/PWP Concept Plan and not on the CRAFT OPA. Mr. Leinster further testified during cross-examination that: "...I think there should be a park designated on the CRAFT Site [in its OPA] ..." and admitted that this was one of his key criticisms of the CRAFT OPA.

[74] Later during his cross-examination, Mr. Leinster admitted that at the OPA stage there is no requirement for the designation of a park nor its design criteria. As pointed out by CRAFT's lawyers in final submissions, Mr. Leinster also admitted during his February 5, 2021 testimony that the following elements of his opinion critical of the CRAFT OPA were actually not predetermined in the CRAFT OPA:

- a. The height of the deck anywhere on the site;

- b. The location or number of access points for pedestrians or bicycles;
- c. The location of elevators, ramps or stairs
- d. The length of the ramps or stairs;
- e. The depth of soil; or
- f. The storm-water management solution

[75] Mr. Leinster took the Tribunal through paragraphs 145-159 of his WS and opined that the CRAFT development failed to satisfy the policies in the Railway Lands West Secondary Plan but on cross-examination it was revealed that he improperly applied those policies to the lands west of Spadina Avenue.

[76] The other members of the City's urban design panel were Ms. Julie Bogdanowicz, an architect and urban designer employed by the City and Mr. Forth Bagley, also a noted architect who is currently based in New York. They filed a joint WS and Reply WS and each were qualified to give expert opinion evidence to the Tribunal on urban design matters.

[77] Ms. Bogdanowicz is a registered Architect with the Ontario Association of Architects with a Bachelor of Arts in urban geography and environmental studies and a Master of Architecture. She has been a sessional instructor at the University of Toronto's John H. Daniels Faculty of Architecture, Landscape, and Design. Ms. Bogdanowicz has worked in Toronto for 11 years, seven of them with the Urban Design section in City Planning. Prior to that, she worked in New York City for Tod Williams and Billie Tsien and more recently for Asymptote Architecture on the Marina Hotel located in Abu Dhabi at the Yas Island Formula One Circuit. While in Toronto, she also worked in private practice on the Mississauga Civic Square renovation, Toronto District School Board projects and the Regent Park Community Center (with CS+P Architects)



as well as the Globe & Mail Lands master plan and the 2015 Pan Am Athlete's Village (with KPMB Architects).

[78] Mr. Bagley is an outside expert retained by the City and a Managing Principal of Kohn Pedersen Fox Associates PC ("KPF"), a well-known New York-based architecture firm specializing in the design and delivery of impactful urban projects around the world. Since joining KPF in 2005, he led the design and management of many complicated urban projects, including: the masterplan and retail program of the Hudson Yards project in New York; the continuous development of Hong Kong's Landmark and Victoria Dockside districts; the massive new Changi Terminal 5 in Singapore and major components of the firm's Covent Garden masterplan in London, as well as a number of large mixed-use developments in the United States, Canada and throughout Asia. Mr. Bagley twice taught as the Eero Saarinen Visiting Professor at Yale University, where he also received 2002 Bachelor of Arts and a 2005 Master of Architecture degrees.

[79] As maintained by counsel for the City in final written and oral argument:

The [City's] urban design panel were united in their concerns about the latest CRAFT concept plan. While the goal was to show at least one iteration of a development flowing from this OPA that would demonstrate policy implementation, ultimately, it failed, providing greenwashed blank walls.

[80] Despite this contention, the City's counsel devoted only a modest portion of his final submissions referring the Panel to the City's design critiques and the "concerns" regarding urban design and architectural matters dealt with in the Safdie/PWP Concept Plan or in the CRAFT OPA – i.e. other than with respect to the need for a public park to be located on the site and issues concerning the possible height of the deck underlying the structures depicted in the Concept Plan and the presence of a parking structure under that deck. Mr. O'Callaghan also repeated long excerpts from only Ms. Bogdanowicz's evidence in chief concerning her opinion that there was a "lack of proportion" and a "monolithic style" of development portrayed in the Concept Plan:

So, the point we were making were the following two points when we talked about proportion. Proportion has to do with the height of the base

building, which in our opinion...in my opinion is too tall relative to the width of Front Street. And in that case, proportion is not a subjective opinion because the City identifies exactly what it wants to achieve in its policies and guidelines. The latest concept does not have good proportions because the base building is at the same height with zero setback across the entire frontage and there are few breaks. There is no rhythm and there is no articulation...So, I feel like this drawing here [Exhibit 3, Tab 4, page 7] ...very much shows the, sort of, linear extrusion of the base building here on Front Street while across the street at The Well there is breaks between the buildings, there is streets and open spaces and POPS dividing up the buildings and so you kind of generally have a bit more variety than what the CRAFT project is proposing...Further to this, when I talk about proportion and the monolithic scale, I was not talking about the project as a whole but I was specifically talking about the barrier effect and lack of mid-block connections, which we went over a little bit yesterday, and the lack of fit with special areas surrounding the site, which I will be expanding on next. So when I use the word "monolithic", I think this image really demonstrates the lack of articulation.

[81] Little effort by the City's legal team in their final oral and written arguments was devoted to the numerous issues raised in the WS, Reply WS and oral evidence of City witnesses concerning the adherence of the Safdie/PWP Concept Plan designs to the applicable provincial and City policies. In any event, the Panel is of the opinion that Mr. Sweeney in his WS, Reply WS and testimony provided a very thorough and effective response to those issues raised by City witnesses.

[82] In the circumstances, given the huge volume of evidence put before the Tribunal by the City and CRAFT, the Panel is constrained from providing an exhaustive review of Mr. Sweeney's opinions on matters that were not substantially dealt with by the City in final submissions. In any event, in the Panel's view, Mr. Sweeney's conclusions set out in paragraphs [62] a. to [62] g. above and in paragraphs [83] a. to [83] n. below were, in any event, not successfully challenged during cross-examination.

[83] The Tribunal further specifically finds that wherever Mr. Sweeney's opinions conflicted with the views expressed by Ms. Bogdanowicz, Mr. Bagley and Mr. Leinster, the Panel prefers and accepts instead the expert testimony and written evidence of Mr. Sweeney. Many aspects of Mr. Sweeney's evidence as accepted by the Tribunal are as follows:

- a. The Safdie Concept Plan conforms to the policies of the Growth Plan (2019) cited by the City's counsel and witnesses;
- b. The type and scale of the Concept Plan is very appropriate. The development is a mixed-use development providing much needed housing, a very significant amount of non-residential uses, and much needed retail and entertainment uses. The tower buildings are in keeping with the current and planned adjacent context both north and south of the site.... [and] exceed the City's Tall Building Guidelines requirements for tower design, including tower separation distances, tower floor plate sizes and typical podium/base building conditions. The Concept Plan also proposes an unusually high percentage of the overall land area for publicly accessible open space and private shared outdoor space/amenity;
- c. The bridge connections proposed under the Concept Plan between some of the towers at the top or top 1/3 of the tower forms creates very desirable outdoor garden amenities for the residences, reduces the height of the towers and podiums/base buildings and thereby reduces shadow impact while adding unique visual interest and more shared indoor and outdoor amenities;
- d. The Concept Plan conforms with the City's OP: Chapter 2 – Shaping the City, ii) 2.2.1.2.a) and 2.2.1.3.c) ...the Concept Plan is first and foremost predicated on improving the public realm. The public realm from Bathurst Street to Spadina Avenue along the south side of Front Street receives an all new full pedestrian sidewalk complete with new trees and street-scaping that will be designed in conjunction with the City of Toronto... The Concept Plan will create new linkages between the King West/Wellington Place Neighbourhood and the currently isolated City Place Neighbourhood... The new north to south publicly accessible pedestrian/bicycle connections through the site will greatly improve

connectivity from the north to the waterfront, parks and amenities such as Canoe Landing Park, the Martin Goodman Trail, Toronto Music Garden and all waterfront amenities ...[to the south]... The improvements to the public realm also include an approximate 13 acres open space ... that further facilitates greater connectivity to Spadina Avenue from the rail corridor bridge, to the continuation of the park system to the south-west of the site including access to the “Mouth Of The Creek Park”, Garrison Common and the Fort York grounds and facilities;

- e. The Concept Plan conforms with OP Policy 3.1.1.1(d): Mr. Sweeney expressed his strong view that the Safdie Concept Plan proposes a new high quality public realm including all new animated public realm along the south side of Front Street, through block “accessible” pedestrian connections that continue the public realm of Draper Street, Portland Street and “The Well” Development to an all new publicly accessible open space and the City Place Neighbourhood to the south... [also] east west connectivity to Spadina Avenue and the public parks to the west along the rail corridor are greatly enhanced;
- f. The Concept Plan meets the requirements of OP Policy 3.1.1.5(d). Mr. Sweeney testified that the Concept Plan proposes to transform Front Street from a single-sided street with no pedestrian sidewalk on the south side to a two-sided street with an all new pedestrian public realm sidewalk and streetscape. In addition, two new access points into the planned new Metrolinx/GO Station would be created along with access through the open space on the south side to the City Place neighbourhood south of the rail corridor. Front Street will thereby become a sustainable, economically vibrant, animated, and important east-west pedestrian street and no longer an underdeveloped, economically lifeless street;

- g. The requirements of OP Policy 3.1.1.14 are also satisfied in that the Concept Plan, in Mr. Sweeney's opinion, has given careful consideration to ensure that all of the new public realm promotes public safety and security, and all of the new open space is fully engaged by the new buildings providing animation and "eyes on the street/park system". The new streetscape along the south side of Front Street is continuous and is animated with retail shops, entrance lobbies for the residential buildings, entrances into the GO Station/Galleria and open-air entrances to the publicly accessible through block connections leading to the public open space and to City Place to the south;
- h. Mr. Sweeney's evidence emphasized that all aspects of Policy 3.1.1.15. of the OP are taken into account in the Safdie Concept Plan which features an indoor retail Galleria/GO Station concourse which runs directly above the planned new GO Station and is parallel to Front Street and intended to provide an indoor weather protected alternative to east-west pedestrian travel, fully accessible with multiple entrances from the north along Front Street and from the open space along the south;
- i. The City raised a myriad of other policies under its OP which it seemed to contend were not met by the Safdie Concept Plan – or, presumably, the CRAFT OPA which is the actual instrument before the Panel in this proceeding. Those OP policies included but are not limited to 3.1.1.18, 3.1.1.19, 3.1.1.20, 3.1.2.1, 3.1.2.2, 3.1.2.3, 3.1.2.4, 3.1.2.5, 3.1.3.1, 3.1.3.2, and 4.5.2. In each of his responses during oral testimony and in his WS and Reply WS, Mr. Sweeney maintained that the Plan conformed with all of the cited OP policies, and the Tribunal accepts his evidence in that regard;
- j. The City also raised issues alleging non-conformance with certain policies in the Railway Lands Central Secondary Plan, being: policies 2.1 to 2.5

inclusive, 3.1 to 3.7 inclusive, 10.6, 10.6.1, 10.6.2, 10.6.3. Again, Mr. Sweeney in his WS and oral evidence responded completely to these allegations and the Panel accepts his evidence;

- k. Similarly, the City alleged non-conformance with many of the same policies in the Railway Lands West Secondary Plan, and in the view of the Tribunal, Mr. Sweeney's evidence in his WS and *viva voce* testimony refuted those City positions pertaining to policies 3.1 to 3.7 inclusive, 6.1 to 6.8 inclusive, and he also noted that "The finer details of the open space design will be the subject of a future site plan approval application to ensure full consultation with the City and conformity... [and I] will rely upon the evidence of Mr. Adam Greenspan with respect to the design and vision of the open space." (Mr. Greenspan's evidence is discussed above at paragraphs [49] to [59]);
- l. In their Issues List, (although not specifically in final argument), the City also relied on the Tall Building Design Guidelines promulgated under the OP, specifically Guidelines 1.3 (in terms of angular plans, distances between towers, transitions and setbacks etc.), 1.4 (on sunlight access and shadowing, etc.), 1.5, 2.1 to 2.5 inclusive, 3.1.1 to 3.1.5 inclusive, 3.2.2, 4.1, 4.2, 4.3 and the Panel notes that Ms. Bogdanowicz also gave considerable evidence both orally and in her WS on these topics and guidelines. However, the Tribunal prefers the evidence of Mr. Sweeney where it contradicts Ms. Bogdanowicz's opinions, and accepts Mr. Sweeney's expert opinion that the CRAFT OPA conforms with these policies and guidelines;
- m. The City also took the position in its filings for this case that the CRAFT OPA in the example presented by the Safdie Concept Plan failed to meet Objectives 3 of the Railway Lands Central and West Urban Design Guideline, the Block Specific Guidelines for Blocks 21 and 28 (Front

Street) and the Guidelines for the Parks and Open Space System.

However, the Panel accepts Mr. Sweeney's opinion that both the CRAFT OPA and the Concept Plan satisfy all of the objectives of those Guidelines;

- n. Finally, Mr. Sweeney in his WS and testimony rejected the general criticisms levied by the City and its witnesses under Issue 27 to the effect that the Concept Plan and the CRAFT OPA were not, from a design standpoint, appropriately integrated with the surrounding streets, properties and neighbourhoods – again, the Panel prefers and accepts his opinion in this regard.

[84] In final argument, counsel for the City argued, in apparent reliance on the evidence of the City's design panel of Ms. Bogdanowicz, Mr. Leinster and Mr. Bagley, that the CRAFT OPA failed to meet the requisite OPA test relating to "...urban design considerations and protections...", because it, and presumably the Safdie Concept Plan as well, "...creat[ed] a policy framework that does not ensure that a resulting development will be well-designed, with a sense of place, that are of high quality, safe, accessible, attractive and vibrant".

[85] The Tribunal instead prefers and accepts the opinion evidence of Mr. Sweeney in his WS and oral testimony that:

...that the Concept Plan demonstrates compliance with all applicable urban design policies (both provincial and local) and to the extent required, with applicable City urban design guidelines. It is also my opinion that the Concept Plan represents good urban design and significantly improves the public realm...I continue to hold the opinion that the Concept Plan represents good urban design...

...As the design is developed through the rezoning and site plan approval stages, the base of the towers will be further studied to create an appropriate level of engagement/ interface between buildings and the open space. It is equally important however to provide a good balance between quiet open space and fully engaged open space. This is a unique opportunity to create an unprecedented strong relationship between the open space and the proposed buildings without a public street between the open space and the buildings while also creating strong ties to four significant public streets. In my opinion, therefore, the open space will be engaged by the buildings and their occupants better

than the majority of public open spaces while also providing many alternative spaces for specific recreation and quiet enjoyment...

...[the Concept Plan does not represent a monolithic design]...The Proposal replaces a very significant urban barrier, being the sunken Railway Corridor, with a much needed and desirable new development coupled with a great community asset being the significant amount of publicly accessible open space and a network of strong connections between the currently separated districts north and south of the rail corridor. Great streets are sometimes monolithic and indeed consistency of street wall and built form along a street is considered very desirable. The breaks in a consistent built form or lower street wall become special and important. The breaks in the proposed street wall along Front Street, illustrated by the Proposal, occur specifically at the ends of Draper and Portland Streets and to a lesser extent at the planned crosswalk leading into The Well development...

...The Draper and Portland breaks provide pedestrians and cyclists the opportunity to continue directly south of these streets to the open space, to the City Place district beyond, to the Mouth of the Creek Park and to Fort York. These through block connections provide essential continuation of the existing street grid over the rail corridor. Given that the height of the air rights and the need to accommodate the trains below (including future electrification), the main level of the proposed Galleria must be raised above all the adjacent street levels. The Proposal then must provide for the necessary changes in elevation and does so while clearly communicating the through block public connections and while providing for easy transitions between levels with elevators, escalators, stairs and ramps that are carefully integrated into the design. The open space provides for the transition from the upper levels to the Northern Linear Park and beyond. The proposed podium is less than 23m in height with the residential towers above set back from the street wall/podium by 3m to 35m and separated from one another by more than is required by the Tall Building Design Guidelines. The overall result is not a monolith but rather a desirable and consistent street face broken strategically and obviously with playful and inconsistently placed towers above...

...The scale of the Proposal is consistent with much of the City Place district to the south and east and with current development within the immediate area including The Well development [directly to the north on Front Street]. The Proposal encompasses a large land area and is designed to free up the ground plane for publicly accessible open space. The Proposal provides an unparalleled amount of publicly accessible open space as a percentage of the total site area...

...The towers are separated from one another by amounts greater than that required by the Tall Building Guidelines. This greater separation of the towers, the deep setback from the street for some of the towers, and the lower than average podium heights combine to create a much more open and interesting scheme that is not overbearing or over scaled when compared to the development of much smaller parcels of land with tower forms in the area. This provides excellent proportion to the site. The larger land area combined with only six tower forms across an entire City Block represents excellent proportions... [emphasis added]



[86] In conclusion, based on the totality of the evidence accepted by the Tribunal as discussed and analyzed above, the Tribunal determines that there is no failure of the CRAFT OPA – or of the Safdie/PWP Concept Plan for that matter – to meet the urban design requirement elements of the OPA test set out in Part 2 (“OPA Test”). Although the City in this lengthy proceeding marshalled a good deal of often repetitive expert opinion evidence on urban design matters, for the reasons set out above, the Tribunal strongly preferred and accepted the evidence and expert opinions of the CRAFT witnesses Mr. Safdie, Mr. Greenspan and Mr. Sweeney over the contrary evidence and opinions of the City’s witnesses, Mr. Bagley, Ms. Bogdanowicz and Mr. Leinster.

**(b) Parks/Open Spaces: “The Parks Issue”**

[87] As noted, a great deal of time was spent both before and during this proceeding on evidence and argument by the Parties concerning matters relating to open spaces and parks as reflected – or not included – in the Safdie/PWP Concept Plan and in the CRAFT OPA.

[88] In the Prior Decision concerning the same CRAFT Site was also dealt with related to the City’s OPA 395 “Rail Deck Park” proposal, under a previous PA legislative scheme commonly referred to as “Bill 139”. However, in the Prior Decision it was made clear by the reasons of Members Swinkin, Schiller and Bryson (the “Previous Panel”) at paragraph [55] therein stated that the current appeal before this Tribunal, which by then had already been initiated by CRAFT:

...is what is referred to as a legacy appeal under the [PA] and is not subject to the substantive and procedural changes wrought by Bill 139 amendments.

[89] The Previous Panel went on to note, significantly, at paragraph [56] of the Prior Decision:

...The CRAFT appeal of its proposed official plan amendment is not before this PL180210 panel and this panel expresses no opinion on it.  
The decision of the Tribunal in this OPA 395 matter is without prejudice

to, and should not derogate from, a full and fair hearing of the CRAFT proposed development in Tribunal case PL180211. [emphasis added]

[90] Both the City's lead lawyer Mr. O'Callaghan and CRAFT's counsel Mr. Kagan expressly adopted the ruling stated in the Prior Decision as described in paragraphs [88] and [89] above. As Mr. O'Callaghan stated in final written and oral argument:

This hearing started with the emphatic position of the City that this appeal – this hearing – is not a beauty contest between the CRAFT proposal and OPA 395 (the City's OPA for Rail Deck Park).

[91] However, Mr. Kagan in final written and oral submissions stated his clients' concurring position a little differently:

Through its Witness Statements the City says that this hearing is not a beauty contest between Rail Deck Park (OPA 395), which is approved and in force, and the CRAFT private development. We agree but this does not mean that Rail Deck Park is irrelevant in this hearing; on the contrary, it is the elephant in the room. If this Tribunal denies the CRAFT private appeal, OPA 395 will remain the governing policies for these air rights. Accordingly, this Tribunal should be fully aware of what that means before it renders this very important decision in this private appeal.

He further expounded, referring to the evidence and admissions of the City's own planning witnesses that:

As a result of the 'Clergy principle' and as a result of the assurances Mr. O'Callaghan gave the LPAT when it heard the OPA 395 appeal, and as a result of the LPAT's own decision which specifically provided that OPA 395 was without prejudice to the existing CRAFT appeal, the Future Development Area policies in both [Railway Lands Central and West] Secondary Plans apply to this appeal. But OPA 395 deleted those important policies so if this Panel turns this appeal down flat there would be a lack of policies to guide private development. It would be the land use planning equivalent of CRAFT being set adrift in the vast ocean in a rowboat. [emphasis added]

[92] As already noted by the Panel, it is neither the obligation nor intention of this Tribunal to rule as whether the City's public parks preferences or the parks/open space proposals set out in the Safdie/PWP Concept Plan and CRAFT OPA are the best "park choice" for the CRAFT Site. Moreover, the Panel finds it unnecessary to recount in

detail all of the documentary and *viva voce* evidence presented on parks related issues by the Parties.

[93] However, given the volume of evidence presented and time spent by counsel for the Parties on the above-noted parks related matters, and the lengthy final written and oral submissions of both Parties' counsel, the Tribunal has found it necessary to summarize the essential evidentiary points and arguments of the Parties' counsel and to set out certain findings it has reached as follows:

1. The City has not established that it is necessary for CRAFT to designate a public park in the CRAFT OPA. In fact, there is no current basis in law for the City's proposition that it is entitled to any parkland dedication in relation to the CRAFT Site. This was admitted during the cross-examinations of Ms. Andrea Bake, who is the Project Manager with the City of Toronto Parks, Forestry & Recreation Division in the Parks Development and Capital Projects Division, Development Application Unit, Toronto and East York District and has been employed in this position for 15 months. She has a Masters of Forest Conservation from the University of Toronto and a Bachelor of Science with Honours in Biology from the University of Western Ontario. The same admission was also made by both Ms. Susan McAlpine and Ms. MacDonald (briefly referred to in paragraph [50] above), two very senior professional planners and well-respected members of the City's Planning Department who were qualified to provide more general opinion evidence to the Panel on land use planning matters which is discussed in Part 3 (f) below;
2. During his cross-examination of Ms. Bake, Mr. Kagan put to her his contention that the City's parkland dedication by-law does not apply to the CRAFT Site (as set out below in this paragraph [93] (6)) ("Parkland Exemption"). After some considerable reluctance, during an unfortunately argumentative and evasive period of testimony, eventually Ms. Bake

admitted that CRAFT's legal position is absolutely correct and that the Parkland Exemption applies to the CRAFT Site – however she was unable to avoid expressing her strongly-held view that nonetheless all of this seems “wrong” from a “policy standpoint” (a point also strangely repeated at length in the final submissions of the City's legal team along with other arguments). In fact, Ms. Bake also conceded that she knew that certain members of the City Planning department, including Ms. MacDonald and Ms. McAlpine, were also aware of the Parkland Exemption and that legal advice was sought on that very issue in connection with the City's preparations for this LPAT proceeding. The evidence before the Panel demonstrated that a need was recognized to amend the City's Municipal Code in order to remove the Parkland Exemption before this hearing began and before the City's case was prepared– which amendment, of course, did not happen.

3. As noted, the admissions of Ms. Bake summarized in paragraph [93] (2) above were also largely conceded and repeated by Ms. McAlpine and Ms. MacDonald during their cross-examination. Again, however, the Panel noted that there was some unnecessary hesitation by them to acknowledge this point, and apparent reluctance, in their testimony. The Tribunal found this to be counter-productive.
4. The Panel recognizes that in any hotly contested and important proceeding, it is natural for the witnesses for each Party to find themselves embroiled in the partisan environment thereby created. This is too often the case, notwithstanding the witnesses' obligation under the Tribunal Rules to provide independent opinion evidence, free of bias, in order to assist the Tribunal. Certainly, at times, the passionate views of Ms. Bake, Ms. McAlpine and Ms. MacDonald strayed very close to the permitted line in this respect. However, the Tribunal understands and accepts that their motivations were likely informed by their longstanding service to the City

and, by extension, their views as to how to best serve the people of Toronto. On the other hand, while the Tribunal empathized with this apparent commitment of Ms. Bake, Ms. McAlpine and Ms. MacDonald, the tenor and combativeness of their oral testimony negatively impacted the Tribunal's view as to the reliability of their opinions. Unfortunately, the Panel also reached the same view on several occasions regarding the testimony of Ms. Bogdanowicz, Mr. Mendes and Mr. Gladki as is further discussed below. However, the Tribunal found it unnecessary to conclude that any of these witnesses engaged in deliberate behaviour in breach of their duties owed to the Tribunal.

5. Despite the enormous time and energy spent by the City's legal team in pursuing the position that the CRAFT OPA must identify and designate the specific location and size of a public park on the CRAFT Site, the Panel is forced to the conclusion that this specific position is not supported in law and also notes that the City's counsel spent very little time in final written or oral submissions effectively dealing with what they portrayed to be a key issue. In fact, at certain points, counsel for the City seemed to ignore the admissions of City witnesses and the reality of the Parkland Exemption:

...In any event, planning in Ontario is top down. From the Planning Act come the provincial plans and policies, which are implemented in the municipal plans, for which by-laws must conform. By-laws are required to conform with official plans, per section 24 of the Planning Act, the inverse is not true. The parkland by-law is not relevant to a consideration of what the statute allows for municipalities to require for parkland; the parkland by-law may be amended to require parkland dedications to be provided – and if the exemption were eliminated, that change is beyond the scope of an appeal to this Tribunal. The existence of that exemption does not dictate upwards to the official plan what its policies must be.

6. The Tribunal disagrees with the proposition stated above by counsel for the City in paragraph [93] (5). Instead, the Tribunal concurs with and

expressly adopts the conclusions stated in final argument by CRAFT's counsel that:

The CRAFT air rights are exempt from parkland dedication. This is provided for in policy 11.14 of the Railways Lands West Secondary Plan and policy 11.6 of the Railway Lands Central Secondary Plan. Policy 5.6.6 of the City's Official Plan further provides that in the case of a conflict between the Official Plan and a Secondary Plan, the Secondary Plan prevails. Since the Secondary Plan exempts the CRAFT site from parkland dedication, it prevails over the more general parkland dedication policies in the Official Plan. Moreover, the CRAFT air rights are also exempt by virtue of section A in Schedule B, Article III of the City's parkland dedication by-law (which is contained within the City's Municipal Code)... That section provides that the parkland dedication provisions of the Municipal Code do not apply to the geographic area of The Railway Lands as described in By-law 612-85. Andrea Bake confirmed that the CRAFT air rights are wholly contained within the geographic area known as the Railway Lands in By-law 612-85...[and further]... confirmed that Exhibit 17 [in this proceeding] is that bylaw. [Ms. Bake conceded that]...the term "Railway Lands" in the definition section of the bylaw which defines that Railway Lands as "means that part of the City of Toronto located within the area delineated and designated by heavy lines on Map 1 contained in Appendix A to this by-law and referred to thereon as "Railway Lands"...Andrea Bake then confirmed that all of the CRAFT air rights are contained within the Railway Lands as shown on Map 1... Andrea Bake confirmed that the CRAFT air rights were exempt from parkland dedication... [emphasis added]

7. The Tribunal was puzzled by the final arguments made by counsel for the City concerning the Parkland Exemption. Mr. O'Callaghan seemed to be urging the Panel to somehow interpret CRAFT's position on this issue, and the CRAFT OPA itself, as tantamount to the instigation of an unlawful exercise of the Tribunal's jurisdiction. The City's counsel argues that the City cannot be "forced" by the Tribunal to accept cash-in-lieu of dedicated parkland on the CRAFT Site. He cited several cases to support the principle that section 42 of the PA, which gives the municipality the option to seek cash-in-lieu of land for parks purposes, leaves that election to the municipality and does not provide a mechanism for the LPAT to impose that choice on the municipality. He further characterized the issue as follows:

We already know from the evidence of the City's witnesses and from the wording of the City's own OP regarding what is considered acceptable public parkland, that the elevated portions of the [CRAFT] site, not abutting public roads – do not qualify and therefore, the City will not accept these lands as public park...Thus for the Tribunal to approve CRAFT's OPA is a de facto decision by the Tribunal to force the City to accept cash-in-lieu of parkland for this site...Yet the requirement for the City to accept cash-in-lieu for this site will be the inevitable outcome if the Tribunal approves the OPA with the fsi quantum proposed by CRAFT.

8. Thus, the essential basis of Mr. O'Callaghan's argument, restated, is:  
"Since the CRAFT OPA could permit the development portrayed in the Safdie/PWP Concept Plan and because the City parks panel witnesses have testified that they will not accept as a public park any of the remaining CRAFT strata rights – therefore if the Tribunal approves the CRAFT OPA then it is forcing the City to accept cash-in-lieu of public parkland which is beyond its jurisdiction".
9. The Tribunal does not agree with the argument and characterization described in [93] 8. above nor does it agree that the evidence establishes that there is "no acceptable park site" on the CRAFT Property. That argument partly conflates the Safdie/PWP Concept Plan with the CRAFT OPA. Additionally, leaving aside the rather obvious "pro-CRAFT OPA denial" tone of the evidence of the City's witnesses who expounded on the "parks issue" as to what is or should be "acceptable" parkland - there was a profound lack of reliable, objective evidence before the Tribunal proving that there is no way to proceed with a development under the CRAFT OPA that could yield an acceptable public park site in the CRAFT strata rights. Obviously, the City cannot credibly maintain that elevations are the problem, since that is the undeniable nature of the CRAFT Property (upon which the City planned to build Rail Deck Park as noted in the Prior Decision approving OPA 395).

10. Moreover, in the Tribunal's view it is also incorrect for the City's legal team to insist that the "CRAFT Deck" under the CRAFT OPA must necessarily be higher than "a deck with only a park" (a rather vague concept that was also not appropriately established in the evidence in any event). In the Tribunal's opinion, the following statements in the City's written final argument are incorrect, or at the very least, misleading:

...And while it is true that the OPA does not identify an elevation above sea level (ASL), the OPA clearly is proposing that the 6.5 metre tall parking garage be permitted over the entire site area. Mr. Safdie agreed with the deck height in cross-examination...it is an uncontested fact based on the evidence of Mr. Safdie and others, that the top of the decking structure will always be a minimum of 6.5 metres above the lowest point of where the air rights begin.

Firstly, even if it so provides, the Safdie/PWP Concept Plan is not the planning instrument at issue here – and the CRAFT OPA does not "demand" or propose an elevated parking garage across the entire CRAFT Site, nor does it prescribe any height for such a structure. In fact, to the contrary, it states in section 3.5:

Parking for the combination of uses may be located above and/or beneath the surface of the decking structure, provided that any parking above the surface of the decking structure will be enclosed and such that vehicles will not be visible from the public realm, enabling the surface of the decking structure to be optimized with non-residential and mixed residential/non-residential buildings and large contiguous areas of open space and public realm.  
[emphasis added]

Secondly, nowhere in the CRAFT OPA is it proposed that the only public parkland that could be created on the CRAFT Site must be located above an elevated parking garage. Thirdly, it is somewhat ironic to contrast the arguments made by the City's legal team in this hearing with the situation which exists under the City's now approved OPA 395: OPA 395 did not include details such as the precise height of the deck; what facilities would be built on the deck; nor did it finally determine the height of the deck for



Rail Deck Park; or even if the decking structure would include room for parking or service vehicles, since it did not expressly prohibit parking within the deck. OPA 395 simply designated the CRAFT Property as Parks and Open Space Areas and provided policies to guide the further detailed studies which would be required as part of the next planning phase(s).

11. Again with respect to a public parkland contribution, counsel for the City also raised the prospect that "...because the build out of the air rights will be phased, each individual owner or applicant who seeks to receive zoning by-law approval may be required to provide the City with the statutorily required parkland contribution...". This unique argument went on as follows: "...because there has been no master planning exercise at the OPA stage to identify the park on-site, the City will have no alternative but to seek a dedication of parkland from each applicant as the zoning by-law applications are filed for those smaller individual sections of the air rights as applications are submitted and reviewed..." Again, these vague statements do not accord with the actual provisions of the CRAFT OPA and do not constitute evidence in this proceeding. While phasing is noted in the CRAFT OPA as is a master planning process (both the subject of separate City arguments that they had been "left out"), there was no objective, reliable evidence before the Tribunal to support the above speculative argument of the City's legal team as to how (or when) the build out will occur and regarding the resultant impact on parkland contribution. The ad hoc remarks made during the testimony of Ms. Bogdanowicz and Mr. Bagley or alluded to by Ms. McAlpine and Ms. Macdonald about 'phasing' and possible future steps in the development process, also do not create a reliable evidentiary basis for these arguments, in the Tribunal's opinion.

[94] During the oral argument phase of final submissions, the Tribunal asked Mr. Kagan for CRAFT to put in writing his verbal response to the arguments made by the

City's legal team in their written submissions, as referenced in paragraph [93]. In those written submissions, he contended as follows:

1. The PA authorizes the City to require parkland dedication from a developer through either section 51 of the PA (i.e. subdivision approval) or through section 42 of the PA (i.e. redevelopment). In this case the Parties agree that solely section 42 is applicable;
2. Section 42 of the PA deals with "development" where there is no subdivision required...Section 42 permits a municipality to require that the developer dedicate land either at the standard parkland rate (5% for residential) or the alternative rate (up to 1 hectare of land per 300 dwelling units). Section 42 also permits the City to impose what is known in the industry as the "alternative rate" [meaning the "alternative requirement" set out in section 42 of the PA]. It is the alternative parkland rate which the City bases its argument of prematurity on in this case;
3. The "20%" parkland dedication and designation comes from section 3.2.3.5 of the City's OP which is the City's alternative rate at the OP level...in paragraph 60 of Andrea Bake's Witness Statement...she specifically refers to this as the City's "alternative rate" so there is no debate between the parties that the City is basing its 20% parkland designation on the 20% parkland dedication through the alternative rate. The number "20%" is not found in section 42... [of the PA]...but is found in section 3.2.3.5 of the City's OP. It is likewise implemented through section 415-23 of the City's Parkland Dedication By-law (Municipal Code). In both the parent Official Plan and the Municipal Code, the City has limited the alternative rate to a maximum of 20% of the site area for sites 5 hectares in size or greater;

4. The City demands that 20% of the CRAFT Site in effect be “double designated” Parks and Open Space Areas in the CRAFT OPA (i.e. since OPA 395 already designates the entire CRAFT Site for this use) based on the maximum “20%” parkland dedication requirement in section 3.2.3.5 of the City’s Official Plan and section 415-23 of the City’s Municipal Code. The City’s argument goes as follows:
  - a. The City is entitled to the maximum parkland dedication from CRAFT being 20% of its site.
  - b. To protect for that ultimate dedication it requires that the CRAFT designate 20% of the site now as Parks and Open Space Areas.
  - c. The City does not disclose where that 20% should be and argues that the CRAFT OPA is premature until that is determined
5. The City concedes that the CRAFT Site is exempt from the City’s parkland dedication by-law but says, in effect, that does not matter and that the CRAFT OPA is premature unless and until it designates 20% of the site as Parks and Open Space Areas. CRAFT disagrees. The City argues that the Planning Act permits this dedication despite the exemption. The City argues that the exemption is “easily fixed”. CRAFT disagrees;
6. The City argues that section 42 of the PA authorizes the City to demand parkland dedication from a developer and that the City can thus demand 20% from CRAFT, regardless of the Parkland Exemption. This is false. Section 42 authorizes the City to demand parkland at the alternative rate, through section 42 of the PA, provided the City has first:
  - a. In force specific Official Plan policies dealing with the use of the alternative requirement (section 42(4) of the PA), and

- b. Enacted a Parkland Dedication By-law (subsection 42(1) and 42(3) of the PA)
7. Unless both conditions are met, the City is precluded from imposing the alternative parkland dedication rate on CRAFT – the reason underlying this requirement in the PA is that the Official Plan policies provide merely the policy guidance for the by-law and the by-law provides the detailed calculation formula and rules. Those policies occupy only a page or so in the OP whereas the by-law is dozens of pages long. That by-law is the instrument which the City uses to calculate the parkland dedication ‘invoice’ served upon the developer as a condition of the building permit issuance;
8. Since both policy 11.14 of the Railways Lands West Secondary Plan and policy 11.6 of the Railway Lands Central Secondary Plan exempt the CRAFT Site from any parkland dedication (land or cash-in-lieu) and because Policy 5.6.6 of the City’s OP provides that in the case of a conflict between the Official Plan and a Secondary Plan, the Secondary Plan prevails and therefore exempts the CRAFT Site from parkland dedication – i.e. it prevails over the more general parkland dedication policies (i.e. the 20%) in the OP. Thus the first condition in section 42 – no relevant in force OP policies - results in the CRAFT Site being exempt from parkland dedication (the Parkland Exemption restated);
9. The CRAFT Site is also exempt from parkland dedication by virtue of section A in Schedule B, Article III of the City’s parkland dedication by-law (the City’s Municipal Code). Since the City is statutorily precluded from imposing the 20% parkland dedication requirement on CRAFT, there is no foundation for the City’s demand for 20% designation;

10. The City argues that there is an “easy fix” to their dilemma. CRAFT disagrees. In order for the City to impose a 20% parkland dedication on CRAFT, s. 42 of the PA requires that the City to:

- i. Amend policy 11.14 of the Railways Lands West Secondary Plan and policy 11.6 of the Railway Lands Central Secondary Plan to remove the existing exemptions. These amendments would be processed under s.17 of the PA which requires public meeting and provides for a right of appeal to the LPAT under section 17(24) of the PA. Moreover, as a precondition of that OP amendment, s.42 (4.1) of the PA requires that the City complete a Parks Plan. There is no evidence before the Tribunal that the City has completed or even started a Parks Plan; and
- ii. Amend its Parkland Dedication By-law. That amended by-law is subject to a right of appeal to the LPAT under s.42 (4.9) of the PA. Under s. 42 (4.15) and s. 42 (4.16) of the PA, on appeal the LPAT also has the authority to amend the alternative rate. Thus even if the City enacts a parkland dedication by-law maintains the 20% maximum rate for sites 5ha in size or greater, the LPAT might reduce it on appeal. [emphasis added]

[95] The Tribunal agrees with the positions stated by counsel for CRAFT as detailed in paragraph [94] above and rejects the arguments on those points made by the City’s legal team. The Panel therefore determines that the Parkland Exemption cannot simply be ignored in this case. The Panel is also of the view that it seems strange that the Parkland Exemption could be somehow removed by the City in the future so as to retroactively apply to the current CRAFT OPA. However, it is unnecessary for this Tribunal to make any advance finding or ruling as to the possible retrospective impact of any future changes made to the Municipal Code or otherwise – and the Tribunal expressly declines to do so.

[96] The Tribunal also finds no language in the CRAFT OPA which precludes the establishment of appropriate public parkland at a subsequent stage of the development process and notes that there is substantial, supportive content in the CRAFT OPA relating to parks – including public parks – as well as other park and open spaces. In particular, the Tribunal notes that:

- a. the CRAFT OPA provides that: "...Map 18, Land Use Plan, is amended by redesignating [the CRAFT Site] from 'Utility Corridor Areas' to 'Mixed-Use Areas' – the Tribunal notes that it was uncontested by the City that the "Mixed-Use Areas" designation permits a public park and that this was admitted by Ms. MacDonald during her testimony.
- b. one recent adjacent example of parkland dedication occurring on a site designated "Mixed-Use" without prior specific OPA park designation and location is The Well, a development at 400 Front Street West, about which several CRAFT and City witnesses testified;
- c. the CRAFT OPA in its Introduction section 1.5 specifically states: "It is planned to include a range of Mixed-Use buildings and spaces containing residential, employment/non-residential, retail and services, community facilities, and considerable opportunity for parkland and open space providing respite, active recreational opportunities, and connections and linkages to the adjacent neighbourhoods and open space networks ... The proposed range of residential and non-residential uses, combined with the significant amount of on-site open space linked to adjacent areas, advances the place-making objectives of the Official Plan, and supports the Growth Plan objective of creating complete communities". [emphasis added];
- d. the CRAFT OPA further notes under its Site and Specific Areas Policies ("SASP") it is stated that : "...enabling the surface of the decking structure to be optimized with non-residential and mixed residential/non-residential buildings and large contiguous areas of open space and public realm..." [emphasis added];
- e. in section 3.6 of the SASP, it is stated that: "...The development includes the opportunity for significant open space in the form of City parkland,

Publicly Accessible Private Open Spaces (“POPS”), and other private open space areas, accessed by a combination of paths, pedestrian ramps, stairways, escalators and elevators...” [emphasis added];

- f. the entirety of section 4 of the SASP expressly deals with parks and open space under the heading “PARKS, OPEN SPACE, AND PUBLICLY ACCESSIBLE PRIVATE OPEN SPACE (POPS)”:

Public parks are permitted by the Mixed-Use Areas designation and may be acquired through parkland dedication under the Planning Act, other Planning Act tools, land exchanges, purchase, and any other available mechanism.

A substantial portion of the total site area will be maintained as POPS and/or parkland. Subject to appropriate arrangements and agreements with the City, these lands will be open to the public and easements will be granted to the City at appropriate locations to ensure the POPS are open to the public.

Provide for a minimum of 0.30 hectares (0.74 acres) of public parkland east of Spadina Avenue and a minimum of 1.28 hectares (3.16 acres) of public parkland west of Spadina Avenue in the “Mixed-Use Areas” if all of Northern Linear Park is effectively removed to permit decking...

While in the Panel’s view it is undeniable that Northern Linear Park is an important public amenity, the reality is also that in its current form at the southern edge of the CRAFT Site, in front of very large, tall condominium complexes, it is really more of a long walkway rather than a typical multi-purpose urban park of the sort referred to in the evidence of Ms. Bake and Ms. Bogdanowicz in particular – this was clear from the evidence tendered to the Tribunal and was also quite evident during the site tour of the Rail Corridor that all Parties and the Panel participated in. From the evidence available to the Tribunal, it appears that Northern Linear Park would be integrated by the City into a much higher Rail Deck Park, if ever built by the City. Thus, there would seem to be a future opportunity for the City and CRAFT to reach a sensible agreement on something similar that would be in the overall best interests of all City residents in the surrounding area, including but not limited to those who could live in any

new residential development constructed on the CRAFT Site pursuant to the CRAFT OPA. Of course, this is not something that the Tribunal must consider nor is it a matter that must be decided upon at the OPA stage.

- g. Under its Urban Design Guidelines in section 12, the CRAFT OPA states: “Urban Design Guidelines will be developed to the satisfaction of the Chief Planner and Executive Director, City Planning Division... in order to guide the design of the buildings and open space elements of the project. Urban Design Guidelines will guide development to implement the Official Plan and this SASP and assist staff in evaluating applications for Zoning By-law Amendment and Site Plan Approval...[and]... shall include the following elements and reflect the following matters: a) A Public Realm Master Plan for the site to implement the Vision and Major Objectives of this SASP, including the identification of all public and private open spaces, how the pedestrian network connects to and complements the public realm around the site, and how a coordinated, cohesive and connected public open space system is ensured...[and] Consider input provided by the City’s Design Review Panel.” [emphasis added];
- h. The “Environment” section of the CRAFT OPA states at section 14.1: “...The comprehensive decking of the rail corridor and the development of the site represents an opportunity to expand and enhance the public realm and open space networks in the City. This Section contains policy direction to achieve the Vision and Major Objectives of this SASP. The design, development, and maintenance of the site, will support environment stewardship, connectivity and sustainability, through: a) Including, where appropriate, a range of active recreational areas and passive areas within the open space system; b) Provide connected planted areas that potentially support wildlife habitat; c) Ensuring adequate soil volumes to support health and mature landscaping and tree canopies; d) Reducing the urban heat island effect and increasing carbon



capture through a diversity of planting and landscape design treatment; e) Planting a range of native species to support biodiversity and reduce the need for intensive maintenance; and Incorporating innovative approaches to irrigation, ventilation, and stormwater management systems.”

[emphasis added]

- i. Section 17.5 of the CRAFT OPA further provides: “In order to ensure orderly and coordinated development of the site, the owners/applicants will ensure that the necessary requirements and studies are completed and approved by Council and any other applicable approval authority, City of Toronto By-law No. ~ -20~13 before permitting the construction of the decking structure or the development of the site, including the following: a) A detailed Public Realm Master Plan as described in this SASP will be prepared, which will include specific technical, development, and design details, and will inform the development of the site.” [emphasis added]

[97] As the result of the motion rulings made by the Tribunal described in Part 1, the City’s counsel decided to call Mr. John Gladki to testify from a land use planning perspective as part of a panel about parks issues related to the CRAFT OPA. Mr. Gladki is the President of Gladki Planning Associates, a firm he founded in 2010. Mr. Gladki is a former Director at Toronto’s Planning and Development Department where he was responsible for developing the Official Plan and he has over forty years’ experience working with government agencies and private sector organizations on local and area planning studies, local economic development, policy development, urban regeneration, affordable housing, and development approvals. Mr. Gladki obtained a Bachelor of Arts from the University of Toronto in 1972 and his Master of Environmental Studies, Planning and Policy, York University in 1974.

[98] Mr. Gladke has testified many times before the Tribunal and the OMB and was qualified without objection to provide opinion evidence to the Panel on only those land use planning matters related to parks-related issues along with Ms. Bake. This is so,

notwithstanding that Mr. Gladke delivered a WS and Reply WS that dealt with other planning issues. It was also the decision of City counsel to have solely Ms. MacDonald and Ms. McAlpine focus their direct oral testimony on “non-parks, general land use planning issues” so as to avoid the duplication concern dealt with by the Tribunal’s motion ruling – their evidence is considered in Part 3 (f) below.

[99] The following summarizes Mr. Gladki’s opinion insofar as it relates to parks planning matters, as derived from his WS, Reply WS and his oral evidence:

- a. Over the past number of years the City has invested significant resources and effort to document the need for parks in the Downtown and the area immediately surrounding the site. The subject site was identified as a site of a major park. The City has considered but not yet initiated expropriation proceedings to secure parkland on the portion of the site east of Spadina Avenue;
- b. Development on the CRAFT Site, as proposed, is not required to meet Downtown population and employment growth density targets to 2041 – it is conceded that a need in this respect is not a test for approval of the CRAFT OPA;
- c. The area immediately surrounding the site as well as the Downtown as a whole have a significant deficiency in parkland provision per person and employee, which will grow worse as new development comes on stream in the future; the proposed development will exacerbate that deficiency and does not address parkland provision that meets the City’s policy framework;
- d. The proposed OPA provides for a density of 9.5 times floor space index (“FSI”), yet the concept plan submitted with the application illustrates

development at 5.1 times FSI (The Tribunal notes that it is now agreed by the Parties that the CRAFT OPA sets out a maximum density of 4.2 FSI);

- e. The application does not illustrate the implications of 9.5 times FSI on the provision of parks and open space;
- f. Even at a density of 5.1 times FSI, the concept plan does not illustrate the location of parkland, and shows an open space concept that does not meet City standards regarding connectivity, views, safety and accessibility;
- g. The application does not adequately address the quantity, location, accessibility or general provision of parks as required by the PPS, Growth Plan and the OP;
- h. The application does not meet the policies of the City of Toronto Official Plan regarding the Downtown, complete communities or provision of parkland;
- i. The application does not adequately address the policies in the Railway Lands Central and West Secondary Plan policies; and
- j. Mr. Gladki conceded during his cross-examination that he was unaware of the Parkland Exemption and that, therefore he admitted that there was no requirement that 20% of the CRAFT Site be subject to parkland dedication to the City;

[100] In the Tribunal's view, the criticisms of the CRAFT OPA described in the evidence of Mr. Gladki (and also Ms. Bake) above concerning parks and public realm planning were unconvincing. Moreover, the City was unable to provide to the Panel as part of its lengthy written and oral submissions any examples of recent OPAs that met

the apparent “standard” for the identification of public parkland now being demanded of the CRAFT OPA by the City’s planning staff and the City’s counsel. In fact, it was mainly CRAFT’s legal team who tendered examples of other neighbouring OPAs in this hearing during direct and cross-examination testimony – not the City. The Panel further agrees with CRAFT’s counsel that there is no need for the CRAFT OPA to specify a designated location for public parkland or any further details concerning a “public realm master plan” beyond what the CRAFT OPA currently contains. It is particularly noteworthy, in light of what City witnesses characterized in their oral testimony as the lack of “master planning” or “precinct planning” elements in the CRAFT OPA, that these elements were nowhere identified on the City’s Issues List prepared for this case. In any event, it is the Tribunal’s view that both such elements are acceptably referenced in the CRAFT OPA. It is the Tribunal’s view, as was partly framed in final submissions by counsel for CRAFT, that:

- a. A public park is a permitted use in a Mixed-Use Areas designation, thus the proposed designation in the CRAFT OPA already permits a public park;
- b. The CRAFT air rights are exempt from parkland dedication (for the reasons discussed above regarding the Parkland Exemption);
- c. OPA 395 is in force pursuant to the Prior Decision and therefore already designates all of the CRAFT Site as Parks and Open Space Areas;
- d. Thus, the Mixed-Use Areas designation proposed in the CRAFT OPA causes no prejudice to the City in terms of a possible future parkland contribution – on the other hand, the City’s request to have the CRAFT OPA specify a precise location of parkland (despite the Parkland Exemption) may have the effect of creating a future argument that the CRAFT OPA thereby prevents the erection of any building in such location

– which would be clearly potentially prejudicial to CRAFT and could create further protracted litigation before the Tribunal;

- e. Given the City's claim that the CRAFT OPA must contain a precise designation of Parks and Open Spaces as well as the exact location of parkland sought by the City, the Tribunal found it puzzling that the evidence demonstrates that the City's staff never provided any comment as to where the City wanted the parkland to be located on the CRAFT Site. The argument by the City's counsel that somehow the City is not required to provide such input was unconvincing, in the Panel's view. For some strange reason that was never adequately explained by the City's legal team during the hearing, the City's witnesses and its planning department seemed to perceive that to do so would undermine their past and current adamant opposition to the CRAFT OPA;
- f. The Panel also notes that the evidence demonstrated that in an earlier version of the CRAFT OPA rejected by the City, CRAFT had actually offered to designate most of the portion of the CRAFT Site east of Spadina Avenue for Parks and Open Space Areas. This proposal likely exceeded the calculation of possible parkland dedication offered by Ms. Bake during her cross-examination testimony (i.e. ignoring the effect of the Parkland Exemption);
- g. Ms. Bake testified that without a Parks and Open Space Areas designation the City would be precluded from obtaining the public parkland to which it is entitled through subsequent development approvals. Neither this assertion nor a similar final argument made by the City's legal team has been proven to the satisfaction of the Tribunal;
- h. To the contrary, it was admitted during the cross-examinations of Ms. Bake, Ms. Macdonald and Ms. McAlpine that the City has obtained onsite

parkland from other sites designated Mixed-Use Areas without any of those lands having had first “embedded” Parks and Open Space Areas designations in their governing OPAs. Otherwise, it would have made little sense for the City to have designated in its OP so much of its Downtown area as Mixed-Use;

- i. The Panel was also struck by an exchange that occurred concerning both the parkland and the “parks-on-a-deck” issues during the cross-examination by the City’s counsel on November 24, 2020 of Mr. Michael Goldberg (whose evidence is discussed in much more detail in Section 3 (f) below) as follows:

Q. Well, we are going to get to that in the fullness of time sir, but can we agree at this early stage of our discussion that the City was very clear in 2017 when they wrote the staff report, that they were looking for on-site parkland dedication?

A. And I think we provided the opportunity for that.

Q. Well, we are going to get to that, as well sir, but since we are on it, the only parkland that is being proposed is in an east/west alignment and it is elevated between six and nine metres above the surrounding streets and sidewalks, correct?

A. Mr. O'Callaghan, you have already put in [evidence] a report authored by you to initiate either acquisition or expropriation of the east block. That east block is 1.2 hectares. Ms. Bake is asking for .88 hectares. Take that land as a parkland dedication, build whatever kind of deck you want on it and put a park on it. You have already expressed you want it as a park. That could be the parkland dedication. There may be other options too. [emphasis added]

[101] The Panel found it instructive to recall the further testimony of Mr. Goldberg during his re-examination by Mr. Kagan:

Q. Okay, thank you. Mr. O'Callaghan asked you a great many questions about public park, and a public park going in a north-south direction on the west parcel. In your review of the City's witness statements or reply witness statements, did they ever request a public park in a north-south direction on the west parcel?

A. No.

Q. In your review of all of the material for this hearing, is there any Council resolution...so now, I'm not talking about witness statements, but I'm talking about a Council resolution...City Council resolution identifying a north-south park on the west parcel?

A. No.

[102] Although the alleged “need for a north-south park” certainly was alleged during the oral testimony of City witnesses, and was featured prominently in the closing submissions of counsel for the City, the Tribunal is not persuaded by objective, reliable evidence that it has been established that such a park orientation is the sole acceptable form of public park on the CRAFT Site. In the Panel’s view, much of the City’s evidence on this issue was self-serving and deficient.

[103] In summary, the Tribunal is of the view that the dire predictions and “forever lost opportunities” arguments on these issues made by the City’s legal team against approval of the CRAFT OPA have been exaggerated. Taking into account all of the evidence before the Tribunal, it is apparent to the Panel that there has for many years been a good prospect for the City to obtain either a negotiated allotment of public parkland on the CRAFT Site or to acquire an appropriate parcel of the Site for that purpose. There is also no doubt that the City is well aware of the fact that it could have long ago purchased all or a substantial portion of the strata rights now owned by CRAFT (for example, at the time of its purchase of only the air rights portion it needed for the PDL Bridge). Finally, as the City has conceded, both before and after it took the unusual step of seeking approval for OPA 395 in order to build Rail Deck Park on property it did not own, the City has long had an opportunity to acquire all or part of the CRAFT Site by way of an agreement or through the expropriation process. That opportunity existed in 2016 when the Rail Deck Park initiative was first announced with great fanfare by the City and was once again reiterated in the 2019 Prior Decision of the Tribunal. This still remains the case today.

[104] It is not part the Tribunal's mandate to determine the underlying motivations for the City's decision-making, actions – or inaction – over the last many years concerning the CRAFT air rights and the City's professed desire for a large Downtown park, or for Rail Deck Park. Certainly, CRAFT's counsel spend a good deal of time exploring just that during his cross-examination of the City's witnesses, particularly Ms. MacDonald, Ms. McAlpine, Ms. Bake and Ms. Bogdanowicz. From time to time, including in both his opening statement and in final submissions, Mr. Kagan also offered certain theories about how that key parks issue is linked to the City's denial in early 2018 of the CRAFT OPA and of the manner in which it has forcefully opposed CRAFT's position in this case – some of which were derived from evidence led from public broadcasts relating to the 2016 Rail Deck Park announcements and views expressed by a City councillor decrying the CRAFT development proposal. However, in this Panel's view, the “true reasons and motivations” behind the City's steadfast, aggressive opposition to the CRAFT OPA over the last more than four years are not matters upon which the Tribunal must make findings – however peculiar the City's conduct may seem in comparison to the City's response to other similar OPA applications for adjacent and neighbouring development parcels and more generally in the past concerning Downtown Toronto ‘terra firma’ lands.

### **(c) Engineering/Structural Matters**

[105] The Parties agree that the applicable OPA Test does not require CRAFT to provide content in the OPA to conclusively demonstrate each and every structural engineering detail of a proposed development. The Tribunal finds that the standard – which appears to have been accepted by the City - is that CRAFT need only show technical feasibility from a structural engineering standpoint. Given that the Safdie/PWP Concept Plan is one example of a proposed development under the CRAFT OPA, then CRAFT aimed to show its technical feasibility.

[106] The City raised a number of general yet vague engineering matters in the Issues List which were addressed in more detail in the WS and Reply WS filed by Janine



Turner and Peter McMillan. Naturally, this necessitated a response from CRAFT, as discussed later in this Part 3 (c).

[107] Ms. Turner was called to testify on January 28, 29 and February 1, 2021 as part of a panel with Mr. McMillan. Both Mr. McMillan and Ms. Turner have previously been engaged as the Design Manager and Project Manager respectively for several stages of the Rail Deck Park initiative eventually reflected in OPA 395 under the Prior Decision.

[108] Ms. Turner is a licensed professional engineer since 1986 and Vice President of Infrastructure – Major Projects, North America at Stantec Consulting Ltd., a multi-disciplinary engineering and architectural practice engaged in the design of transportation, transit, rail, community development, aviation, healthcare, and hospitality projects. She obtained a Bachelors' Degree in Civil Engineering from the University of Saskatchewan and has over 35 years of experience in engineering design and project management in the fields of municipal, transportation, transit, and aviation development, and is licensed across Canada (Ontario, Saskatchewan, Alberta, Nova Scotia) and in the United States (Michigan)

[109] Mr. McMillan is an architect, not an engineer, and thus could not provide opinion evidence on engineering matters to the Panel. Mr. McMillan is the Managing Director of McMillan Associates Architect Inc., an architectural practice engaged in the design of infrastructure, energy and aviation projects, among other things. He has a Masters' Degree in Architecture from the University of Michigan and a Bachelors' Degree in Technology (Architectural Science) from Ryerson Polytechnical Institute (now known as Ryerson University). Mr. McMillan has over 35 years of experience in architectural design, having been a registered architect since 1991 and having been active in private practice as a principal continuously since 1996 and has been registered to practice in Ontario (Ontario Association of Architects), Manitoba (Manitoba Association of Architects), Alberta (Alberta Association of Architects), Nova Scotia (Nova Scotia Association of Architects), New Brunswick (Architects' Association of New Brunswick) and Ecuador.

[110] In their joint WS, Ms. Turner and Mr. McMillan proposed to address various Issues List matters, including the following:

- i. Information on the adequacy and feasibility of the supply and configuration of the on-site transportation facilities;
- ii. Information on the impacts of such a development on the rail corridor uses and activities; and
- iii. The implications on the proposed design with the removal of the 433 Front Street West parcel from this development site.

[111] The overall conclusions of Ms. Turner and Mr. McMillan reached in their WS were:

- a. The proposed development relies fundamentally on receiving approval for variations and exemptions to critical rail and electrification standards and codes from Metrolinx;
- b. The proposed development relies heavily on receiving a permanent easement on Front Street from the City of Toronto;
- c. That the underlying geometric, rail, structural and stormwater implications and requirements of this development have not been thoroughly and adequately assessed;
- d. There is insufficient information contained in the proposal to evaluate these solutions or potential solutions;
- e. The feasibility of this development from these perspectives has not been established; and

f. Therefore, it is premature to consider this development application

[112] In their joint Reply WS, Ms. Turner and Mr. McMillan spent a good deal of time comparing various attributes of Rail Deck Park to those of the Safdie/PWP Concept Plan, on the apparent basis that certain CRAFT WS's did the same. On purely engineering and structural matters, they further concluded that they had concerns regarding the structural clearance assumptions of CRAFT's engineers relating to the interplay of the proposed residential and commercial towers and also regarding "portions of the core and foundation layouts" which they found to be "increasingly problematic". They also had concerns that under the proposed density of 9.5 (which is of course no longer sought by CRAFT in its OPA) it would be hard to support more towers within the operating rail tracks and that "...The September 9, 2020 objection to the application from the adjacent condominium corporation jeopardizes the structural concept in the northwest corner of the parcel east of Spadina...".

[113] The Panel notes that even though Ms. Turner was the sole City expert qualified to provide opinion evidence on structural engineering matters, and despite her credentials, she actually provided almost no direct testimony. The vast majority of direct testimony was instead given by the articulate Mr. McMillan, who, as noted is an architect and not an engineer. On cross-examination, both Ms. Turner and Mr. McMillan admitted that they had no substantial experience in designing or overseeing the construction of large multi-use projects, with high towers, built over an operating railway corridor.

[114] Counsel for the City in final written and oral argument made no specific reference to or reliance on the opinions expressed by Ms. Turner and Mr. McMillan as a justification for the denial of the CRAFT OPA. In other words, the City did not directly state in final argument that the Safdie/PWP Plan as one example of a proposed development under the CRAFT OPA, or the CRAFT OPA otherwise, failed to meet the standard of technical feasibility. That being the case, the Panel concluded that this suggested the City's legal team were no longer avidly pursuing that Issue and position

in this hearing. Nonetheless, the Tribunal reached a determination based on its weighing of the evidence tendered by the Parties that CRAFT has established technical feasibility from an engineering/structural perspective.

[115] CRAFT's expert structural engineering evidence was provided by Henry Jeens and Patrick McCafferty, who are professional engineers and who were both qualified to provide opinion evidence to the Tribunal on structural engineering matters. Mr. Jeens is an associate principal with Arup Canada Inc. in Toronto and leads its civil and rail engineering services on a broad range of transit and development projects, including projects integrating rail infrastructure and land development. Mr. Jeens heads the Arup Toronto integrated planning and civil engineering teams and has 16 years of experience in civil engineering. He graduated from the University of Cambridge in 2004 with a Master of Engineering (MEng) degree with First Class Honours.

[116] Arup is a world-renowned structural engineering firm with vast experience world-wide in designing and overseeing the construction of complex, challenging multi-tower projects including significant projects involving rail corridors. As Mr. McCafferty, an Associate Principal and the Structural Engineering Leader of the Boston office of Arup USA, Inc. somewhat amusingly put it in his direct testimony:

...Well, we [at Arup] like to consider ourselves the preeminent building engineers in the world. How is that for not boasting? We do get involved in quite a large number of, sort of, iconic buildings. Marina Bay Sands being one of the most recent. Before that, we did the Bird's Nest for the Beijing Olympics. I mean, our firm started as the structural engineers of the Sydney Opera House. So, since our founding, we have been sort of at the forefront of innovative architectural structural engineering design, pushing the boundary as we go...

[117] Mr. McCafferty obtained his Bachelor of Science from Cornell University in 1995 and his Master of Engineering (Civil) from Cornell University in 1996. Mr. McCafferty was named by Consulting Specifying Engineer Magazine as among the top 40-under-40 building engineers in the United States, was a member of faculty in Massachusetts Institute of Technology's Department of Architecture, and has served as an advisor to Cornell University's Department of Civil Engineering. He is a frequent architectural juror

at numerous United States colleges and universities and abroad and is a faculty member at Harvard University's Graduate School of Design.

[118] Both Mr. Jeens and Mr. McCafferty have extensive international experience in designing and overseeing from a structural engineering perspective highly complex and challenging multi-use developments, and have successfully provided professional engineering services to clients around the world who specialize in the design and operation of rail infrastructure and services, including high speed rail, conventional rail, and rail-based local and regional transit services. The Panel was very impressed with the credentials and deep experience of Mr. Jeens and Mr. McCafferty and accepts their opinion evidence and conclusory findings wherever they contradicted the conclusions and opinions of Ms. Turner and Mr. McMillan. In summary, Mr. McCafferty and Mr. Jeens in their WS, Reply WS and during oral evidence stated the following:

- a. They prepared a Preliminary Structural Engineering Analysis and Design of Deck and Towers Report May 29, 2020 (the "PSEADDT Report") was prepared under my direct supervision. That report summarizes the work undertaken by Arup to establish the structural engineering technical feasibility of the proposed development. Their work included the preliminary structural engineering analysis and design of ten structurally independent high-rise towers and a multi-story structural deck which extends over the entire rail corridor. Working collaboratively with Mr. McCafferty, Mr. Jeens prepared a further Technical Rail and Decking Study, prepared by Arup, dated May 29, 2020 (the "TRDS Report");
- b. The proposed deck and high-rise towers are structurally feasible. The detailed reasons in support of that opinion are found in the PSEADDT Report;

- c. The foundations of the high-rise towers are grounded to the base of the rail corridor and extend into the ground like any others in the City. These towers do not vertically bear onto the deck;
- d. The deck itself is supported by a series of columns and walls which are likewise grounded to the base of the rail corridor and founded on deep foundations. Although not aware of any public detailed structural design being prepared by the City in support of its proposed Rail Deck Park (there was no such study in support of the City's OPA 395), they believe that the City's proposed deck would likewise be supported by columns and/or walls which are grounded to the base of the rail corridor;
- e. The proposed development is structurally feasible whether or not the deck extends over the Metrolinx property (a property removed from the CRAFT OPA by request of Metrolinx prior to the hearing) and regardless of whether a residential or non-residential building is proposed for the Metrolinx property;
- f. Preliminary structural engineering analyses of the high-rise towers and of the deck have accounted for an appropriate array of load combinations acting on the structures, including concurrent loads arising from accidental train derailment. The structural engineering design of the impacted systems appropriately accounts for such load combinations in accordance with the provisions set forth in Arup's TRDS Report;
- g. CN and CP retain running rights through the rail corridor for freight traffic and that some freight traffic travels through the rail corridor presently (and is permitted to continue to do so). This also does not change their opinion respecting the structural feasibility of the proposed development;

- h. Based on the Arup-designed proposed Rail Corridor track layout and the rail safety and risk mitigation assessment, they concluded that the CRAFT development and the proposed Corridor track layout accommodates proposed infrastructure and operational changes anticipated for the Corridor; addresses the requirements of statutory and non-statutory rail-adjacent development policy; and provides an equivalent level of risk mitigation to that provided by the standard of an earth berm and setback;
- i. The CRAFT proposed development has been planned in accordance with the policies and provisions of both the Railway Lands Central Secondary Plan and the Railway Lands West Secondary Plan. Arup undertook the TRDS Report, which included a review of the Railway Lands Central & West Secondary Plans, the design of the proposed Corridor layout, and an assessment of derailment risks and design mitigations;
- j. The proposed CRAFT development and the proposed Corridor layout maintains the existing and future capacity and safety of rail operations in the Corridor. Within the limits of the Confidentiality Agreement, the TRDS Report identified the proposed infrastructural and operational changes anticipated for the Corridor, including the development, Metrolinx-identified infrastructural and operational improvements including electrification, signalling upgrades, and new track work, more frequent GO Transit passenger rail services, and the addition of the Spadina-Front GO Station beneath the CRAFT air rights site;
- k. In relation to track level access, Arup have been engaged with Metrolinx in relation to this project for four years including substantial technical coordination during 2020. Provision of appropriate access to track level is a key requirement and an appropriate approach agreed with Metrolinx. The existing access points, including that along Front Street have been maintained/re-provided by this development proposal;

- l. In relation to the rail vertical clearances Arup have developed reduced vertical clearance that can be used in locations such as this. These reduced clearances are set out in the TRDS Report and these meet the technical requirements of providing an Occupancy Control System for GO trains. These details will be refined through the further design and planning approval stages as is usual in a development like this. The technical feasibility of the proposed development has been demonstrated and will be refined through these later processes;
- m. The proposed design has widened the GO Regional Express Rail platform such that the clear platform widths are in accordance with GO standards while also providing additional space for structural support for the development above, as well a vertical circulation. This is an established approach for overbuilds and the plans provided with the TRDS Report and the Safdie/PWP Concept Plan indicate how this would work in coordination with other platform elements such as vertical circulation;
- n. The design presented reflects the future changes and configuration required by Metrolinx. These changes, irrespective of the over-build, will result in changes and reductions to the existing access and maintenance arrangement in the yard and Union Station Rail Corridor. Though Arup's consultation with Metrolinx, Arup have established an alternative approach to access through the site that can meet both the needs of Metrolinx and the proposed CRAFT development; and
- o. The PSEADDT Report and the TRDS Report addressed all key areas of rail engineering design that are relevant to assess feasibility at this stage of design. The level of detail and areas addressed were based on their teams' experience in this type of complex development. As such they were confident based on experience that sufficient information was presented to demonstrate overall feasibility. Messrs. Jeens and



McCafferty do not agree with the comment that there was insufficient information at this stage.

[119] In conclusion, the Tribunal had no difficulty in concluding that the proposals in the CRAFT OPA and Safdie/PWP Concept Plan example are technically feasible from an engineering and structural standpoint, based on the detailed, convincing and emphatic testimony of Mr. McCafferty and Mr. Jeens (and the WS's and Reply WS's), which, as noted, was preferred in all respects to the evidence and testimony of Ms. Turner and Mr. McMillan.

#### **(d) Traffic/Transportation Issues**

[120] As it had regarding structural engineering matters, the City raised a host of traffic and transportation matters on the Issues List and, to some extent, in the WS's and Reply WS's and testimony of its sole expert witness. Again, however, the unchallenged test to be applied in respect of these issues was one of feasibility only: CRAFT is not required at the OPA stage to propose complete proven solutions to any and all potential future traffic and transportation issues associated with a Mixed-Use development on the CRAFT Site.

[121] In final written submissions, the City's counsel spent only approximately six pages out of its 102-page argument dealing with traffic and transportation matters. The majority of that concerned only traffic and approximately four and one half pages of those six pages constituted mere recitation of only the direct testimony of John Mendes, a former City employee retained to provide expert opinion evidence on traffic and transportation matters. Oddly, no mention was made of Mr. Mendes' admissions made during his cross-examination nor was any attempt made to respond to his concessions at that time. The Tribunal finds that this practice is unhelpful, since the Panel must consider all of the oral testimony of each witness, not just the evidence led in chief. The purpose of final argument, especially where written submissions are made, is to be comprehensive although obviously it is well understood that counsel will be concentrate

on the points favourable to their positions. When a Party largely ignores the cross-examination testimony of its key witnesses in its final submissions, this does not assist the Tribunal's deliberations.

[122] Mr. Mendes is a Senior Consultant in the Transportation Planning and Advisory Services department of WSP Canada Group Limited, an engineering consulting firm specializing in, among other things, transportation planning and transportation impacts of land development. He joined WSP Canada in 2017 after having spent 30 previous years as a City employee most recently in the position of Director of the Transportation Services Division of the City's Scarborough District. He obtained both a Bachelor of Applied Science, Civil Engineering and a Masters of Engineering, Civil Engineering from the University of Toronto.

[123] In his WS and Reply WS, Mr. Mendes summarized his opinion as follows:

- a. The Transportation Assessment Update ("TAS" and "TAS Update") prepared in support of this OPA application is incomplete. Among other things, it does not include an assessment of the maximum level of development ; it does not include an analysis of the critical intersections along Lake Shore Boulevard and at the ramps to/from the Gardiner Expressway that will be significantly impacted by the traffic generated by this development; it does not include an analysis of the parking garage driveways serving the Central and East blocks at their intersections on Front Street West and Blue Jays Way, respectively; and it does not include all developments in the area that will contribute to the background traffic volumes on the abutting streets;
- b. The CRAFT consultant's conclusions indicate that the traffic generated by a lower scale of development at 5.1 times the area of the site cannot be adequately accommodated by the study area intersections that were analyzed at acceptable operating conditions on the basis of accepted

traffic engineering guidelines and standards. Finally, the consultant has not presented and assessed measures that would mitigate the traffic impacts of this development to acceptable levels; and

- c. Therefore, it is premature, from a transportation perspective, for the Tribunal to approve the proposed OPA application at this time.

[124] As pointed out by CRAFT's counsel, City staff themselves did not provide WS's or testimony on transportation and traffic matters. Instead the City's counsel relied on the evidence of Mr. Mendes, who was at no point in time involved in the processing of the CRAFT OPA application. Moreover, after submission of the TAS or TAS Update described in paragraphs [128] to [130] below there were no apparent concerns relayed to the City's planning department by the City's engineering staff to the effect that the OPA was "premature" or ought to be denied. There were simply observations in the November 23, 2017 Development Engineering report to Ms. MacDonald and Ms. McAlpine that certain conditions ought to be imposed at the site permit stage and that further traffic studies should be conducted in the area of the development. Mr. Mendes himself did not prepare an independent, full traffic or transportation assessment report regarding the proposed CRAFT development.

[125] During his cross-examination on February 1, 2021, Mr. Mendes when asked whether the amount of detail required in a traffic study at the time of an OPA application would be the same as is required during subsequent rezoning and site plan application stages, admitted that the OPA test was different, stating:

Not necessarily. There are often cases where it is done in stages; so the higher level review at the OPA stage and getting into more details as you go through rezoning and site plan. But often it is necessary, even at the OPA stage, to determine whether the proposed development is feasible and workable and complies with the relevant policies. And some level of detail is often required, not always, but often required to make that determination. [emphasis added]

[126] Then, in a revealing portion of his re-examination testimony on February 2, 2021 relating to the June 4, 2020 traffic study that he had prepared in support of an OPA application for a portion of a development site at 2200 Eglinton Avenue in Toronto, and had testified about during cross-examination (during a rather argumentative episode noted by the Panel), Mr. Mendes stated:

...my conclusion in the study that I did submit did not talk about the feasibility of the [2200 Eglinton Avenue] project from a transportation perspective. All I did in my report is conclude that the development, that the site-generated traffic can be adequately accommodated by the area road network. [emphasis added]

[127] The Tribunal agrees with CRAFT's counsel that the highlighted passage of Mr. Mendes' testimony in paragraph [126] effectively summarizes a reasonable test of feasibility that is relevant to an OPA application. Moreover, it now also appears to be the test that the City's counsel either accepts - or does not specifically object to. Despite quoting at length from the evidence in chief of Mr. Mendes and his WS's during final written and oral submissions, the City's counsel did not deal with his admissions noted above in paragraphs [125] to [126] inclusive, nor did he attempt to argue that this test of feasibility at the OPA stage was improper or inadequate. In any event, even if the City's counsel did not accept this feasibility standard, the Tribunal is of the opinion that it is in fact the correct test to be applied at the OPA stage and also that the conclusions reached in the CRAFT TAS and TAS Update as described below in paragraphs [128] to [130] entirely meet this standard.

[128] The TAS was prepared by Mr. Terry Wallace and Mr. Alexander Fleming. Mr. Wallace is the President of LEA Consulting Ltd., ("LEA") a Consulting Engineering firm specializing in Transportation. Over the past 30 years, he has been involved in projects requiring extensive transportation planning and traffic operations engineering for civil and municipal engineering design, Official Plan reviews, Secondary Plans, and corridor/traffic impact studies. He is a professional engineer and a graduate of Ryerson University. Mr. Fleming is also a professional engineer and is an Associate with C.F. Crozier & Associates Ltd., ("Crozier") a Consulting Engineering firm specializing in land

development and transportation, among other related disciplines. For 19 years, he has provided private and public sector clients with transportation engineering expertise on a wide range of residential, industrial, institutional and commercial development projects, including the completion of Transportation Impact Studies, Parking Justification Studies and the detailed design of roadway improvements to accommodate development-generated traffic flows. Mr. Fleming has a civil engineering degree from the University of Waterloo and a Master's in Business Administration from the University of Toronto.

[129] The Panel strongly preferred the evidence of Mr. Wallace and Mr. Fleming to the evidence of Mr. Mendes, who often strayed into partisan territory during his cross-examination. Again, while the Tribunal understands and appreciates the context that expert witnesses find themselves in, it does damage to the principles and objectives set out in the Acknowledgement of Expert's Duty when a witness is unable to sufficiently manage the impulse to largely focus his/her testimony in order to support the party that retained him/her.

[130] The Panel accepted all of the material findings and opinions of Mr. Wallace and Mr. Fleming, the key points of which are set out herein a. to gg. below (with emphasis added by the Tribunal to highlight certain aspects):

- a. LEA was first retained by CRAFT in October of 2016 to complete the TAS for a proposed mixed-use development on the subject site with residential, office, retail and open space uses. The TAS was completed in May of 2017 and presented a multi-modal transportation review and assessment of the immediate and surrounding area, the findings of which supported the proposed CRAFT development;
- b. Crozier was subsequently retained in April of 2020 to collaborate with LEA and other consultants retained by CRAFT, including land use planning, architecture and urban design to provide an updated TAS ("TAS Update") in support of a revised CRAFT OPA. The updated study reflected an

increase in residential units, as well as the removal of vehicular access onto Iceboat Terrace south of the subject site. The TAS Update was completed in May of 2020;

- c. The proposed development has appropriate regard for matters of Provincial interest set forth in section 2, subsection (f) of the PA, and has adequate provision and efficient use of the transportation system for the reasons provided below, supported by the TAS Update;
- d. The proposed development is located in an area that is well serviced by existing roadways, transit and pedestrian facilities. The arterial roadways abutting the subject lands are Spadina Avenue (major arterial), Bathurst Street (major arterial), Front Street West (minor arterial) and Blue Jays Way (minor arterial south of Front Street West; collector north of Front Street West). Other arterial roadways within the study area include Navy Wharf Court (minor arterial) and Bremner Boulevard (minor arterial) Additional lower-order public roads in the vicinity of the site include Fort York Boulevard and Dan Leckie Way, along with private roadways (with public access) such as Telegram Mews and Iceboat Terrace;
- e. Major transit routes in the area are the King Street streetcar route, the Spadina Avenue streetcar route (Route 510), the Bathurst Street streetcar route, the Lake Shore streetcar route, the Harbourfront streetcar route and the Fort York-Esplanade bus route. Transit stops for all these routes are located within a walk of seven minutes or less from the subject property. Union Station and St. Andrew Station are located within a 15 to 20-minute walk, or via connection with local transit routes, and offers access to TTC Yonge-University-Spadina line, the Union Pearson Express, and numerous GO Transit Routes;

- f. Cycling facilities in the area of the subject site are illustrated and described in Section 2.2 of the TAS Update. Dedicated bicycle lanes are provided on Fort York Boulevard, sharrows (shared lane markings) are provided on Spadina Avenue (north of Fort York Boulevard/Bremner Boulevard), and multi-use trails are provided parallel to Iceboat Terrace, Canoe Landing Park and along the Martin Goodman Trail. Puente De Luz bridge, which is proposed to remain, provides north-south pedestrian and cyclist connectivity between Front Street West and Fort York Boulevard;
- g. The existing pedestrian network in the area is extensive and provides a significant degree of interconnectivity and permeability. The network consists primarily of sidewalks along public roads (north side of Front Street West, and both sides of all other public roadways) and is supplemented by multi-use trails and paths. An existing gap in the pedestrian network is the lack of sidewalk on the south side of Front Street between Bathurst Street and Spadina Avenue. This existing gap is proposed to be completed as part of the proposed CRAFT development via a 6 metre sidewalk on the south side of Front Street West;
- h. Overall, there is a comprehensive transportation network in the area that supports all modes of travel to and from the subject site (walking, cycling, transit and auto);
- i. As discussed in Section 6.1 of the TAS Update, existing mode splits (per the Transportation Tomorrow Survey (2016) data) indicate that approximately 24%, 19% and 24% of trips made by residents, employees and commercial visitors, respectively, were completed using automobiles either as a driver or a passenger. The remaining proportion of trips are forecasted to be completed using transit, walking and cycling. These assumed mode splits are consistent with existing travel characteristics in the area and indicate that users of the proposed development will make

efficient use of the existing transportation network as mobility is achieved across all modes of travel. Transportation Demand Management (“TDM”) measures are proposed to be implemented through subsequent planning applications to target a further reduction in automobile mode share by 10%-15%;

- j. The TAS Update also discusses forecasted automobile, active transportation and transit trips generated by the proposed development. The high proportion of transit, pedestrian, active transportation trips forecasted indicates a low reliance on the automobile and makes efficient use of the overall transportation network;
- k. The CRAFT development accounts for integration of the Spadina-Front Regional Express Rail GO Station within the development, which is proposed to be the penultimate southbound stop on the GO line from Barrie to Union Station. This integration with the Spadina-Front GO Station facilitates the principles of Transit Oriented Development , which make efficient use of the overall transportation network, with reduced reliance on automobile infrastructure;
- l. Section 7.3 of the TAS Update discusses the traffic operations associated with the proposed development, particularly the vehicular impacts on the study intersections. Supplementary analysis was also conducted in section 7.3.2 reviewing the impacts should access to Iceboat Terrace (via Dan Leckie Way) be permitted. In each of the scenarios that were assessed, it was concluded that the transportation network can support the proposed development and that opportunities for improved traffic operations exist via provision of vehicular connections to Ice Boat Terrace or potential intersection capacity improvements through signal optimization and/or revised lane configurations;



- m. The CRAFT OPA proposes a mixed-use development, comprising office, commercial, hotel, residential, institutional and recreational uses, also ensures a high level of synergy among proposed and adjacent land uses to optimize the use of existing infrastructure minimizing external trips. Section 6.1 of the TAS Update forecasts internal trips resulting from the proposed mix of land uses. With the existing mode split and expected synergy among land uses, it is our opinion that the proposed development makes efficient use of the existing transportation system. As indicated earlier, subsequent to the preparation of the TAS Update we were advised that Metrolinx requested that its property (at the southwest corner of Front Street West and Spadina Avenue) be removed from the proposed OPA. We understand that the Metrolinx property currently enjoys a Mixed-Use Area designation. Metrolinx has indicated that it does not want to be restricted to non-residential uses. We have confirmed that this information does not change our overall opinion as expressed in the TAS Update;
- n. The subject site is located in close proximity to significant adjacent existing, under construction and planned communities such as City Place, the Financial District and The Well. As a mixed-use development, the proximity of the proposed development to these other existing communities will encourage higher active transportation mode splits, of which these trips will utilize the active transportation network surrounding the site. Accordingly, the proposed development makes efficient use of the overall existing and planned transportation system;
- o. The CRAFT development is, from a transportation perspective, in accordance with section 2(q) of the PA, being sustainable and supports public transit and is pedestrian oriented. The introduction of new residents and visitors to the non-residential uses will support public transit by increasing ridership, as there will be a demand for this travel mode. Given the existing and planned transit infrastructure in the area, the proposed

development, by the introduction of new residents and jobs within walking distance of transit including higher order transit, will be highly supportive of public transit;

- p. Section 8 of the TAS Update details a proposed TDM strategy, to be implemented through subsequent planning applications (i.e. rezoning and site plan), in order to target a further reduction in automobile mode share by 10%-15% and support walking, cycling and transit as preferred modal choices. The provision of an appropriate supply of parking spaces will also contribute to a sustainable development that supports public transit use, walking and cycling. Providing too much parking can encourage higher rates of auto usage;
- q. The PDL Bridge is proposed to remain and therefore the only currently existing north-south pedestrian and cycling connectivity across is maintained. However, Figure 7-15 of the TAS Update identifies six additional north-south pedestrian/cycling connections to/from Ice Boat Terrace across the proposed deck referenced in the CRAFT OPA and the Safdie/PWP Concept Plan thereby connecting Iceboat Terrace to Front Street West. The proposed internal pedestrian pathways offer four-season pedestrian connections. This will allow pedestrians to travel from Bathurst Street to Blue Jays Way indoors, thereby further enhancing the pedestrian experience;
- r. The proposed CRAFT development promotes safe public streets, spaces and facilities that meet the needs of pedestrians and facilitates active transportation and community connectivity, all within the meaning of Policy 1.5.1 of the PPS 2020;
- s. Insofar as Policy 3.2.2 of the PPS 2020 is concerned, Section 8.4 of the TAS Update identifies several TDM strategies to be incorporated into the proposed development that will contribute to increased non-automobile

mode share. The envisioned TDM strategies are intended to reduce automobile dependency and are expected to result in a reduction in vehicle trips by 10-15%. The CRAFT development also comprises a Transit Oriented Development that helps support the Transform TO – Toronto's Climate Action Strategy objective of active transportation accounting for 75% of trips under 5 km city-wide by 2050;

- t. The CRAFT Site is located within 2 kilometres (“km”) of existing residential and employment areas such as Liberty-King West, City Place and the Financial District. In addition, the proposed development plans for new office, residential, commercial, recreational, institutional and hotel uses, facilitating new destinations within 5 km of existing population and employment uses;
- u. The CRAFT OPA proposals conforms to the Growth Plan (2019)” including Policies: 3.2.2.1, 3.2.2.3 and 3.2.3.4 and also satisfy all elements under Chapter 3 of the City’s OP raised by the City on the Issues List;
- v. The amount of loading spaces set out in the Safdie/PWP Concept Plan is short by 1 Type “C” loading space relative to the Zoning By-law requirements; however, in our opinion it is considered to be sufficient for the uses proposed due to the efficiency of a centralized loading dock system with shared loading provisions;
- w. The CRAFT proposal is also in conformity with all relevant provisions of the Railway Lands Central Secondary Plan and the Railway Lands West Secondary Plan. The proposed development assesses several means to achieve automobile minimization principles as part of a TDM Plan for development of both Secondary Plans. Per Section 8.4 of the TAS Update, TDM strategies envisioned are intended to achieve auto minimization principles and further reduce vehicle trips by 10-15%. The TAS Update has been prepared and addresses the requirement that an

appropriate technical study has been undertaken from a transportation perspective. The TAS Update also addresses parking, access and the capacity of the transportation system;

- x. There is compliance with the provisions of section 2.6 of the City's Tall Building Guidelines as on-site pedestrian infrastructure has been designed to be inviting and continuous through the proposed development. Multiple access connections to the public road network are available to facilitate pedestrian travel through and to destinations within the subject site. The proposed development provides for a continuous east-west connection through open space that is designed to be appealing to pedestrians. The proposed development will also enhance the pedestrian realm for both users within the site and others travelling through the subject site via shortened north-south travel paths. Short Term bicycle spaces will be supplied with direct access from the public street and bike facilities will be designed in accordance with Toronto Green Standard and Guidelines for the Design and Management of Bicycle Parking Facilities to support future rezoning and site plan applications as required;
- y. The vehicular accesses are proposed at locations which minimize conflicts with pedestrian and cyclists, while providing direct connections to major corridors in the area to reduce impact to the local neighbourhood. With regard to ramps, the preliminary design shows that all ramps will be internal to the site for the West and Central Blocks and will meet existing rights-of-way at their existing grade. The vehicular access locations, internal access driveways, ramps to the above grade garages, pedestrian walkways, vehicle queuing and truck maneuvering movements for the proposed development are appropriate and acceptable from traffic safety, operational and pedestrian and cyclist perspectives, including both internal considerations and potential off-site impacts;

- z. It is recognized that some queue lengths under future conditions do measure beyond the storage length of the intersection or turn lane. However, those intersections were already operating above capacity under future background conditions, given the level of background developments anticipated. While the proposed development without access to Iceboat Terrance will further increase vehicular demand at these intersections, the opportunity for non-automobile orientated modes available to this subject site would render the additional vehicular impacts acceptable. A sensitivity analysis was also undertaken to evaluate the traffic operations with an additional access point on Iceboat Terrace to the south (should such access be permitted). The future total conditions analysis conducted for accesses on both Front Street West and Iceboat Terrace demonstrates that operations would improve as lower traffic volumes would travel through the critical Front Street intersections with Spadina Avenue and Bathurst Street;
- aa. Although the proposed development can be supported with Front Street accesses only for the West and Central Blocks, in our opinion traffic operations can be improved with the adoption of a one-way road system, or additional connections to Iceboat Terrace. While the proposed development will undoubtedly increase the volume of vehicular traffic onto the adjacent road network, the addition of vehicular traffic will ultimately reach the available roadway capacity resulting in inconvenience to drivers. This will encourage motorists to select alternative forms of travel, such as transit, in order to commute to the City core or force drivers to select alternate routes. This development-based modal and traffic diversion principle is consistent with the Ontario Ministry of Transportation Transit Supportive Guidelines which recognizes that vehicular congestion can be helpful in encouraging shifts to sustainable modal splits. Additionally, it states that high vehicular delays could be acceptable in high-density areas

that prioritize pedestrians, cyclists, and transit users over the private automobile;

- bb. Insofar as section 5.2.1.4 of the OP is concerned, the transportation impacts to the Fort York Boulevard/Bremner Boulevard and Spadina Avenue and Front Street West and Spadina Avenue intersections attributable to the proposed development are acceptable. No material impacts to the exiting Spadina bridge and streetcar operations are expected as a result of the proposed pedestrian bridge over Spadina Avenue. The proposed CRAFT development alone will not accelerate the need for local transit improvements. However, the 49 other background developments considered within the TAS Update, in addition to CRAFT development will also support future transit improvements contemplated in the City's Waterfront Transit Reset Study, such as the local bus route along Front Street West, should they be implemented;
- cc. From a transportation perspective, it is feasible to develop the subject site independently from the Metrolinx property. Of course a joint or co-ordinated development with Metrolinx is also feasible. In summary, with the elimination of the Metrolinx property from the OPA, a reduction in the number of required office loading facilities, office and retail parking spaces, and overall site trips would occur;
- dd. The detailed analysis of the parking and loading facilities suggested by Mr. Mendes' WS, such as designs or vehicle maneuvering diagrams are not necessary at the OPA stage of the application and do not deal with "feasibility" and will be addressed as part of the rezoning and Site Plan Control Application stage;
- ee. As discussed in Policy 17 of the draft OPA, while the development of the site is to be planned comprehensively, phasing plans and strategies are to be prepared as part of further development approval process. Therefore,

the transportation impact of each phase of development has not been assessed at this time, but rather, the TAS evaluated the overall feasibility of the proposal from a transportation perspective. It is our experience that it is common and appropriate to deal with development phasing associated with transportation infrastructure through the zoning process, not the OPA stage as suggested by Mr. Mendes. The proposed OPA requires these further studies prior to zoning amendments being approved;

- ff. The four additional developments referenced by Mr. Mendes as having not been accounted for are not expected to materially impact future background traffic forecasts and operations. The original TAS included more than 30 background developments in the traffic assessment and the TAS Update included an additional 14 background developments to the future background scenario for a total of 45 background developments. Consistent with background transportation studies in the area that have assessed extensive background development traffic volumes, no growth rate was additionally applied to avoid overestimation of background traffic conditions. The removal of the Metrolinx lands from the CRAFT OPA did not result in an adjustment of those findings even though elimination of those lands would reduce parking, loading and trip generation for the site;
- gg. Given the number of background developments anticipated for the area, the intersections were already operating at and above design capacity, regardless of the proposed development. Accordingly, wait times are expected where queues potentially block driveways. This is typical for this area. It seems contrary to prevailing policy and provincial and City objectives to oppose or deny a development which supports alternative modes of transportation where it might result in greater wait times for vehicle movements. “While we share the opinion of Mr. Mendes that where mitigation measures can be implemented to ameliorate traffic operations, these should be considered for implementation, we do not share his opinion that where

traffic operations deteriorate as a result of increased pedestrian volumes, themselves a result of increased transit usage and walking, this indicates an unacceptable outcome. Detailed assessment of precise alternative routes or impacts of displaced non-local traffic is not necessary at this OPA stage. The concept is well accepted and that is sufficient at this OPA stage”.

**(e) Servicing Issues: Stormwater/Water/Sewage**

[131] This is another area where, in the Tribunal’s opinion, the evidence of CRAFT’s expert must be preferred over the evidence of the City’s employee. In summary, the Panel finds that from a feasibility standpoint, the CRAFT Site is clearly serviceable in terms of water, sewage and stormwater management.

[132] CRAFT’s outside expert consultant was Mr. John Krpan, a Principal with the Odan/Detech Group Inc. and a consulting engineer with over 35 years’ experience in all aspects of civil engineering. In particular, Mr. Krpan commonly works with the City’s Engineering Guidelines and standards and has prepared and processed a number of functional servicing reports (“FSR”) for official plan amendments, zoning by-law amendments and site plan applications in the City. He prepared a Functional Servicing & Stormwater Management Report dated May 29, 2020 (“FSSMR”) which determined that it was feasible to service the CRAFT Site, in accordance with good engineering practices and all relevant City guidelines/standards.

[133] The Panel accepts Mr. Krpan’s evidence as set out in his WS, Reply WS, the FSSMR and in his oral testimony before the Tribunal on November 16 and 17, 2021. His conclusions were not successfully challenged in cross-examination, and the Tribunal noted that he prepared a FSR for a site adjacent to the CRAFT property that was approved by the City for development, as noted in paragraph [134] 2. (a) below.

[134] Mr. Krpan’s analysis and essential findings were as follows (with some emphasis added by the Tribunal):



1. To prepare the FSSMR, the Odan/Detech Group Inc. reviewed the CRAFT Site, collected data and evaluated the site for the proposed uses set out in the CRAFT OPA utilizing a scope of work involving the following:
  - a. Collecting existing servicing drawings from the City in order to establish availability and feasibility of site servicing;
  - b. Meetings/conversations with City engineers and the CRAFT design team;
  - c. Evaluation of the data and presentation of the findings in the FSSMR in support of the CRAFT OPA application;
  - d. Conducting flow and pressure testing of the existing water main;
  - e. Modelling of water distribution in a partial (stand - alone) model using a series of hydrant tests;
  - f. Modelling of storm sewers and stormwater management; and
  - g. Modelling of the trunk sanitary sewer (downstream).
2. Mr. Krpan and his team at Odan/Detech Group Inc. reviewed available information for projects adjacent to or near the CRAFT Site in the City which had been prepared by it or by other consultants:
  - a. The FSR for the development site known as "The Well" (440-462 Front Street West, 425-443 Wellington Street West, and 6-18 Spadina Avenue) prepared by The Odan/Detech Group, dated Sept. 20, 2016;

- b. The FSR for 23 Spadina Avenue (Block 22) Concord Adex Developments, prepared by WSP, dated April 12, 2019;
  - c. Functional Servicing and Stormwater Management Report for 400 Front Street West, prepared by Cole Engineering, dated March 15, 2018;
  - d. Functional Servicing and Stormwater Management Report Commercial Development 488 Wellington Street West, prepared by Fabian Papa & Partners, dated December 19, 2016;
  - e. 517 Wellington Street West, Proposed Commercial Development, Functional Servicing and Stormwater Management Report prepared by MGM Consultants, dated May 15, 2019; and
  - f. Proposed Mixed-Use Residential/Commercial Development, 576 - 580 Front Street West at Bathurst Street, prepared by AI Underhill & Associates Limited, dated March 2017.
3. Mr. Krpan and his team also considered alternative servicing solutions for the CRAFT project. The alternative solutions were offered as options, similar to how the City conducts its Environmental Assessment studies. Option 1 is the preferred method which was settled upon with consultation with the Developer. The other options are offered as a refuge should the preferred option prove to be non-feasible during the final design. The options are detailed as drawings and are included in the various servicing models. Refer to Appendix F for the options. Servicing for the ORCA (CRAFT) project is technically feasible but further servicing details will be finalized through the rezoning and/or site plan approval processes. The matrix of the options suggested by Mr. Krpan was:

|                 | <b>Water serviced<br/>from Street or<br/>Rail</b> | <b>Sanitary<br/>serviced from<br/>Street or Rail</b> | <b>Storm serviced<br/>from Street or<br/>Rail</b>                  |
|-----------------|---|--|--|
| <b>Option 1</b> |   |  |  |
| East Block      | Blue Jays Way                                     | Blue Jays Way and<br>Navy Wharf Court to<br>Dome PS  | Blue Jays Way to<br>Spadina Trunk                                  |
| Central Block   | Front Street                                      | Front Street   | Front Street and Rail<br>Lands                                     |
| West Block      | Front Street                                      | Front Street   | Front Street and<br>Bathurst Street storm<br>sewer thru rail lands |

|                 |              |              |  |
|-----------------|--------------|--------------|--|
| <b>Option 2</b> |              |              |  |
| East Block      | Front Street | Front Street | Rail Lands   |
| Central Block   | Front Street | Front Street | Front Street and Rail<br>Lands                                     |
| West Block      | Front Street | Front Street | Front Street and<br>Bathurst Street storm<br>sewer thru rail lands |

|                 |              |  |  |
|-----------------|--------------|--|--|
| <b>Option 3</b> |              |  |  |
| East Block      | Front Street | Blue Jays Way to<br>Front Street Trunk | Rail Lands   |
| Central Block   | Front Street | Front Street                           | Front Street and Rail<br>Lands                                     |
| West Block      | Front Street | Front Street                           | Front Street and<br>Bathurst Street storm<br>sewer thru rail lands |

4. From the investigation set out in the FSSMR, Mr. Krpan concluded that the CRAFT Site is serviceable utilizing existing sanitary, storm and water main infrastructure within and adjacent to the site. Stormwater

management can be accommodated with on-site storage as described in the FSSMR, which set out a table summarizing the stormwater management and servicing components of the development proposed under the CRAFT OPA.

[135] In reaching its conclusions, the Panel considered the critiques presented by the City on the servicing issue which were primarily delivered through the evidence of David Moyle. Mr. Moyle is a recent employee of the City since October of 2019, more than two years after the original 2017 CRAFT OPA, and became involved in this file in April of 2020, at which point he had been employed by the City for approximately six months. Mr. Moyle is a professional engineer with a Bachelor of Engineering from McMaster University. Under cross-examination, Mr. Moyle admitted that this is the first time he has dealt with a parcel of land that is made up of air rights and also his first experience being qualified to provide opinion evidence on civil engineering matters before the Tribunal.

[136] Neither Mr. Moyle nor any other member of the City's Engineering Department prepared a detailed technical analysis or report to refute – or even respond to - the very detailed findings and conclusions of Mr. Krpan. In an interesting passage during his cross-examination on Feb 8, 2021, Mr. Moyle testified as follows regarding the CRAFT OPA in relation to the servicing issue:

I would say it is premature at this point in time. I think the onus is on the...the developer's engineer to demonstrate whether or not it is or is not possible.

Later, on February 9, 2021, when pressed by CRAFT's counsel on that testimony and that fact that he had never once used the term "prematurity" in his WS, Mr. Moyle then stated:

I would like to, I guess, just clarify that, ultimately, yes, servicing is possible. But, again, it is the onus of the developer's engineer to demonstrate whether it is possible. Engineering has many solutions, and possible solutions, but ultimately I am not here to do the design work for the engineer. [emphasis added]

[137] In the Panel's view, while it empathized with the obvious and understandable discomfort and inexperience demonstrated by Mr. Moyle during his cross-examination, his testimony simply did not support any reasonable argument that CRAFT had been unable to prove through the thorough and significant work of Mr. Krpan the feasibility of servicing the CRAFT Site to enable the development proposed in the CRAFT OPA. In light of the cogent, well-prepared analysis set out in Mr. Krpan's FSSMR, and in the absence of any comparable analysis or convincing critique from the City, its engineering department or Mr. Moyle, the Tribunal wondered why it was even thought necessary for the site servicing issue to remain a point of contention between the Parties or why all of the associated oral evidence had to be called.

[138] The Tribunal also agrees with CRAFT's argument that the City's legal team focussed its attention on several tangential matters which it portrayed as somehow determinative of the issue of Site serviceability, all as set out in Mr. Moyle's testimony:

- a. Any proposed stormwater service connection to the existing Metrolinx Pumping Station ("MX Station") is in contravention of the Municipal Code, which prohibits multiple properties from draining through a single service lateral;
- b. Services cannot run under Spadina Avenue unless the City grants permission;
- c. Services cannot run under Northern Linear Park unless the City grants permission; and
- d. Services cannot be hung under the Blue Jays Way Bridge ("BJW Bridge") unless the City grants permission.

[139] The Panel concurs with CRAFT's counsel that the City has not successfully established that there would be any violation of the Municipal Code if the stormwater

service connection was made to the MX Station. As noted in Mr. Krpan's FSSMR and in his *viva voce* evidence, stormwater either hits a deck constructed under the CRAFT OPA or lands on the existing railway corridor, but not both. Thus, Mr. Moyle's contention that there is a looming, serious contravention of the Municipal Code which prohibits multiple properties from draining through a single service lateral is overstated and simply incorrect as it is based on the presumption that the CRAFT Site will be added as a second property to the MX Station as opposed to being substituted as the sole user/property instead of CN/TTR/Metrolinx as a rail operators.

[140] The City's Rail Deck Park proposal under OPA 395 would have faced this same servicing "problem" now suggested by the City's counsel, since it too proposed to create a deck structure. The fact that such a structure is not likely to contain multi-storey office or residential towers is irrelevant when it comes to stormwater dispersal and even water and sewage (assuming some sort of water and washroom facilities would need to be provided in a large urban park). CRAFT's counsel accurately notes that the City's 2017 engineering study prepared in part by Mr. McMillan to support OPA 395, had none of the detail sought now by the City in relation to the CRAFT OPA or as is set out in Mr. Krpan's FSSMR. Mr. McMillan's report merely stated:

It is assumed that significant quantities of storm water which presently drain at the track level will be captured and redirected through a storm water management system integrated with the decking structure. It is assumed that this system will be connected to the street-level sewer system by different means and paths, with opportunity for storm water detention and rainwater harvesting at the park level. [emphasis added]

The Tribunal also concluded that those statements assume only a very loose test of feasibility at the OPA stage.

[141] In a similar vein, the Panel agrees with CRAFT's lawyers that the issue of running services under either Spadina Avenue or Northern Linear Park and the need for City permission is a red herring at the OPA stage and cannot properly be relied upon by the City to allege "prematurity" argument or otherwise argue for the denial of the CRAFT

OPA. The Tribunal rejects the notion that the City should be permitted to argue, particularly in the absence of any prior lawful determination by City Council, that such future permission will necessarily be denied. Any implicit suggestion that permission would only be granted in the OPA 395 scenario because the City prefers its own Rail Deck Park to the CRAFT development proposal would of course contradict the underlying rationale for the admission by counsel for the City that this proceeding is not to be a “beauty contest” between two competing proposals for the CRAFT Site

[142] Finally, the issues and arguments raised by the City pertaining to the possible option of hanging services under the BJW Bridge were also unconvincing, in the Tribunal’s view. Leaving aside the improper “City permission” argument dealt with in paragraph [141] above, the Panel found that the manner in which this matter was presented in evidence and then argued by the City’s legal team was perplexing.

[143] In his FSSMR, Mr. Krpan described the possible option of hanging services under the BJW Bridge as “Alternative 3”. In fact, such services are already being hung under BJW Bridge as was (perhaps unwittingly) admitted by Mr. Moyle during his February 9, 2021 cross-examination:

And what I can tell you is generally speaking, this is something that...it does exist. There are sewers and water main that hang from existing bridges and structures. But this is something that is very typically not permitted. It is really only in very rare circumstances, and typically reserved for critical pieces of infrastructure, just like the force main that is currently affixed to the Blue Jays Way Bridge, which services a substantial population, including the Fort York area and the Rogers Centre.

[144] In any event, at no point did the City’s witnesses raise this issue / argument in a WS or Reply WS – it first arose during Mr. O’Callaghan’s cross-examination of Mr. Krpan when he put it to him during the following sequence on November 17, 2020

Q. All right. And I am advised that the Ontario Bridge Code does not permit the hanging of services, municipal services underneath bridges. Are you aware of that prohibition?

A. Which code?

Q. The Ontario Bridge Code.

A. Ontario Bridge Code?

Q. That is what I am advised.

[145] The Panel later on suddenly heard during the cross-examination of Mr. Moyle that actually the Ontario Bridge Code was inapplicable and that it was instead the Canadian Highway Bridge Design Code (“CHBDC”) that the City was relying on – again despite the fact that this position had never before been set out in any WS or Reply WS of a City witness. Then, the Tribunal learned from Mr. Moyle that in fact this CHBDC did not set out a blanket prohibition at all, being merely just another instance where City permission is required. This became clear when Mr. Moyle admitted during his cross-examination testimony on February 9, 2021 that there are City design criteria that apply to such hanging installations:

*Q. ...So, you will agree with me that the City of Toronto wouldn't publish criteria setting out how suspended water mains are to be designed if such water mains are prohibited, would they?*

*A. So, the area of the information you are highlighted [sic] would be in a situation in the event that the City did permit such installations. Again, we are not obligated to. It is at their discretion. But in the event that they did permit it, this would be the applicable guidelines [sic] of how it would be to be [sic] insulated, and what material would be used for the water main.*

[146] In the Panel's view, the manner in which these issues were raised and argued was regrettable. On balance, given the sheer volume of other evidence and issues and the large number of days committed to this proceeding, not to mention the resultant expenditures of time and cost, the Tribunal finds that it was unnecessary for these issues to have remained part of the City's case.

[147] As noted above, the Panel has wholly accepted Mr. Krpan's expert findings and conclusions concerning servicing feasibility for the CRAFT Site in respect of the development proposed in the CRAFT OPA - as exemplified in one example by the Safdie/PWP Concept Plan. The Tribunal therefore concurs with the position stated by CRAFT's counsel that it is uncontroverted that the OPA test applicable to site servicing



is feasibility, meaning “reasonably possible”, and that servicing is reasonably possible for the CRAFT Site.

**(f) Overall Planning Issues**

[148] The land use planning issues concerning parks/open spaces matters, which dominated this proceeding, have already been dealt with in Part 3 (b) above. However, were several other important land use planning matters concerning the CRAFT OPA that were in dispute between the Parties.

[149] The lead witness for CRAFT on land use planning matters was Mr. Michael Goldberg. Mr. Goldberg was a founding Principal of Goldberg Group in 2006, a land use planning consulting firm based in Toronto, engaged in a broad range of land use planning and development files on behalf of private and public sector clients across the Province of Ontario. He obtained a Bachelor of Applied Arts, (Urban and Regional Planning) from Ryerson University in 1983 and has worked as a land use planner for approximately 37 years. Mr. Goldberg has worked on hundreds of projects involving applications for OPA’s, zoning by-law amendments, site plan approvals, variances and land compensation matters – including numerous large mixed-use development proposed and approved in the City’s downtown area located nearby the CRAFT Site. He has been consistently qualified during his long career to provide expert testimony before the LPAT and its predecessor, the Ontario Municipal Board and was qualified without objection to provide opinion evidence on land use planning matters to the Panel.

[150] Mr. Goldberg was retained by CRAFT in January 2020 and was the main author of the most recent revisions of the CRAFT OPA now before the Tribunal for approval (set out in Addendum A). The main part of his testimony commenced on November 23, 2020 following his introductory/overview portion near the outset of Phase II of this proceeding earlier in November 2020.

[151] In his WS and during his direct examination testimony, Mr. Goldberg's evidence was that the CRAFT OPA fully implements the policies of the PPS 2020 and the Growth Plan, 2019 because:

- a. It accommodates a more compact, intensified and transit supportive urban form, in the highest order of urban growth centre locations in Ontario, and within the evolving Downtown Toronto context of the CRAFT Site;
- b. It makes more effective and efficient use of, and optimizes, the land base and infrastructure and includes affordable housing units suitable for families, employment opportunities, shopping for daily and infrequent shopping needs, day care and potentially other services, and considerable open space that could be public parkland or other publicly accessible open space. The scale of this site combined with the mix of uses amounts to a neighbourhood within a neighbourhood, that is universally accessible, age-friendly and that conveniently gives access to the necessities of daily life. As such, the proposal is a very good example of creating, or contributing to, a complete community on site, and within the broader complete community environment;
- c. It optimizes the site's redevelopment potential while at the same time having appropriate regard for the site size and configuration, the surrounding and nearby area context, the non-development use of land such as the provision of open spaces, and the integration with the surrounding area neighbourhoods and community. Optimization is not maximizing the land use potential but rather is providing the most that is contextually appropriate. The aim is to strike the right balance between these opportunities and moderating elements, where once an optimized and appropriate balance is achieved, the proposal contributes to a complete community environment and is accomplished by the Safdie/PWP

Concept Plan – which is “one representation of how the policies could be implemented”.

- d. The proposed development is well-designed, promoting active, healthy communities. It has well-designed streets fostering social interaction and active transportation, and provides considerable open space areas enabling a wide range of passive and active recreational activities, and the creation of many new community linkages. The site is designed to link neighbourhood with neighbourhood and on-site open space areas with public parkland and off-site trail systems. The site is also located in Downtown Toronto, in close walking proximity to transit, employment and the richest mix of other uses, which proximity intrinsically promotes active transportation;
- e. CRAFT's proposed development appropriately integrates transportation, transit and land use planning. The Safdie/PWP Concept Plan is located in the Downtown urban growth centre, and introduces both residential and non-residential population within a short walking distance to the subway system, the Spadina Avenue and Bathurst Street surface transit routes that feed directly into the subway system, and the regional GO Transit system being adjacent to the planned GO Transit station on the Metrolinx site at Spadina Avenue and Front Street;
- f. It will protect and maintain the rail corridor for its current and future operations while accommodating the development of the air rights above the rail corridor. The ingenuity, creativity and engineering of this assists in achieving many of the PPS and Growth Plan policy imperatives; and
- g. The proposed development will contribute to the attainment of the housing and population targets of the City, if not exceeding them, as encouraged by the Growth Plan

[152] With respect to the applicable policies of the City's OP, Mr. Goldberg's opinion was:

- a. The range of land uses proposed fall squarely within the range of uses permitted within the Mixed-Use Areas land use policies, including parks, open space and utilities. The application includes a range of uses that are aimed at reducing automobile dependency and meet the needs of the local community;
- b. A considerable amount of new jobs could be created within the retail and service commercial space and the other non-residential building(s) and space proposed on site;
- c. The Safdie/PWP Concept Plan used to illustrate the feasibility of this OPA application is one illustration of the height and massing which would conform with the proposed OPA, be consistent with the PPS, conform with the 2019 Growth Plan and conform with the City OP. During the zoning bylaw stage of approvals, the Concept Plan could be further refined. But for the Draper Street Neighbourhoods area, the subject site is surrounded by Mixed-Use Areas or the Fort York facility and open space to the west of Bathurst Street. The tower form of built form is established by the adjacent City Place, The Well and other lands on the north side of Front Street. The height and density illustrated, while conceptual, demonstrates the fit of the proposal within its context. Tall buildings of various heights coexist with each other in a compatible and fitting way for this Downtown environment. Appropriate built form standards have been applied to the Concept Plan to contribute to the compatibility of the proposal within its context;
- d. Over the years, other lands immediately surrounding and contiguous with Draper Street have obtained City approval for tall mixed-use

developments. This includes the tall building developments of The Well and the office building of 495-517 Wellington Street and 510-532 Front Street. Both of these tall building redevelopments abut properties on Draper Street, and both of these developments cast some incremental shadows on properties on Draper Street. Like many other Neighbourhoods areas in the Downtown, and unlike many other Neighbourhoods outside the Downtown, there is a planning and urban design tolerance for tall buildings to be located adjacent to low-rise and low-density Neighbourhoods area. The Neighbourhoods designation of these Downtown low-rise areas/pockets, recognize the existing built form with such areas, while at the same time tolerating and permitting surrounding Downtown Mixed-Use Areas or Regeneration Areas from realizing and fulfilling the urban structure's planned function intended for Downtown and the urban growth centre;

- e. The proposed base building together with the proposed towers along the south side of Front Street are appropriate both generally and, more specifically, in terms of their relationship to Draper Street. The largest gap or separation between towers on site, are located opposite or immediately south of Draper Street. In this location the tower separation is approximately 74 metres ("m") whereas the City's Tall Buildings Guidelines set out a standard of 25 m. This deployment of tall towers enables view corridors from Draper Street to the south and beyond the site and preserves significant sky views;
- f. In accordance with the Built Form and Mixed-Use Areas policies, the proposed location and massing of the new buildings are appropriate to achieve the objectives of the City OP and adequately limit shadow impacts on adjacent Neighbourhoods, particularly spring and fall equinoxes;

- g. The buildings along Front Street include a base building which frames the edges of the street and the potential park(s) and open spaces south of the buildings. The shadows and wind conditions have been satisfactorily addressed and will be further refined at later development approval stages;
- h. The environment of this proposed development has been designed to be comfortable, and safe for pedestrians and there are a number of off-site parks and well as considerable open space on-site. Opportunities for green infrastructure including tree planting, stormwater management and green roofs have been provided in the proposal and will be further explored and refined at later approval stages;
- i. A sufficient quantity and quality of both indoor and outdoor recreational space is provided for the future residents and the CRAFT Site is proposed to include a childcare facility. Transit is very close by in terms of the planned Go Station at the southwest corner of Spadina Avenue and Front Street, existing streetcar routes, and the subway system within walking distance to the east; and
- j. An adequate supply of parking has been provided and all service areas are located beneath the surface of the decking structure and out of sight from the public realm

[153] In terms of the City's OP, Mr. Goldberg further opined in summary that:

...the subject OPA application duly implements and conforms with the intent and policies of the City OP. Frankly, given the substantial size of the site and the significant work that has gone into this OPA application, it is hard to imagine how conformity with the City's OP would be impossible. Typically, it is the very small (re)development sites which find it challenging to conform with the City OP due to the problems associated with small site constraints, but that is not the case here. The proposed OPA does not exempt future rezoning and site plan applications from the myriad of City OP policies which ensure that the goals and objectives of

the City OP are met. Likewise, the proposed OPA does not exempt these same future applications from the City's Tall Building Guidelines  
[emphasis added]

[154] Mr. Goldberg also considered the provisions of the Railway Lands Central and West Secondary Plans and was of the view that the proposed CRAFT OPA is appropriate and conforms to their provisions. He further concluded that the CRAFT OPA satisfies the intent and general guideline suggestions contained within City OP's Urban Design Guidelines under the Railway Lands Central and West Secondary Plans, recognizing that much of this will be further implemented at later stages of approval. He noted that the effect of the City's OPA 395 was to remove all policy guidelines in those Secondary Plans, however. This was also admitted by the City's planning witnesses, Ms. Macdonald and Ms. McAlpine.

[155] In terms of the City's 2013 Tall Building Guidelines, Mr. Goldberg's view was that the CRAFT OPA has had appropriate regard for them in the preparation of the Concept Plan from site organization and tall building perspectives. He concluded that to the extent applicable to this CRAFT OPA it satisfied, or is capable of satisfying, the specific and general guideline suggestions contained in those Tall Building Guidelines.

[156] Mr. Goldberg provided substantial additional detail in his WS, Reply WS and during his testimony and visual presentations to the Panel far beyond what can be usefully and practically summarized in this Decision. Mr. Goldberg was of the overall opinion that the policies set out in the CRAFT OPA and in the one example demonstrated by the Safdie/PWP Concept Plan represent and respect good planning principles. He was cross-examined thoroughly by Mr. O'Callaghan for the City but, in the Panel's opinion, Mr. Goldberg's conclusions and opinions withstood all lines of questioning and challenges.

[157] The Tribunal found Mr. Goldberg to be articulate, well-prepared and exceedingly thorough in his serious, coherent and highly credible consideration of all relevant Ontario and City of Toronto land use planning policies and principles applicable to the

CRAFT OPA and in his convincing rebuttals to the more than 150 sub-issues raised in the City's Issues List set out in the Procedural Order in this case.

[158] The Tribunal accepts Mr. Goldberg's written opinions and oral testimony to the extent of all conflicts with the opinions and conclusions proffered by the City's planning witnesses which included the City's senior employees Ms. MacDonald and Ms. McAlpine and the City's outside expert Mr. John Gladki. For the reasons discussed above, the Tribunal will not refer to or review the planning evidence set out in Mr. Gladki's WS and Reply WS except to reiterate that the Panel accepts the evidence of Mr. Goldberg over that of Mr. Gladki. Nonetheless, the Panel has decided to summarize below some of the City's contrary planning opinion evidence and to further explain why the Tribunal does not accept it.

[159] The bulk of the City's general planning evidence was provided by two of its senior employees, who both filed WS's and Reply WS's and who testified together in a panel before the Tribunal: Lynda MacDonald and Susan McAlpine. Some of their evidence on parks issues is described above in Part 3 (b).

[160] Susan McAlpine is a Senior Planner with the City of Toronto Planning Division, Toronto and East York District and has been employed with the City of Toronto for approximately 21 years. She has 27 years of experience as a Land Use Planner focused on development review. Ms. McAlpine has Honours Bachelor of Arts Degree in Geography from the University of Western Ontario (1985) and a Master of Science in Planning from the University of Guelph (1993). She has been the Planner assigned to this application since the CRAFT OPA was first submitted by the applicant on August 24, 2017.

[161] Lynda Macdonald is the Director, Community Planning, Toronto and East York District and has worked for the City of Toronto Planning Division since 1989. She has over 35 years' experience in Land Use Planning including experience as a consulting land use planner and landscape architect prior to joining the City. Ms. Macdonald has a Bachelor of Landscape Architecture from the University of Guelph and is Registered



Professional Planner and full member of the Ontario Association of Landscape Architects. She has also been a guest lecturer at the University of Toronto, Schools of Landscape Architecture, Architecture and Geography and at the University of Guelph, School of Landscape Architecture, as well as a guest critic at the Ryerson University, School of Landscape Architecture

[162] Ms. Macdonald's curriculum vitae also notes that she was: "Director Lead for the City's Rail Deck Park initiative and witness at the Rail Deck Park hearing leading to a successful outcome for the City (OPA 395)" and that she has also been "responsible for portfolio of planning applications across the West Downtown including the King/Spadina Area, Exhibition Place, Ontario Place and the Liberty Village Area Responsible for all planning studies and Secondary Plans in the West Downtown stretching from University Avenue to High Park including the Bathurst Street Built Form and Land Use Study"; and further that she "directed the review of all development applications in the Central Waterfront including the Concord Adex, CityPlace development (23 residential towers)". CityPlace is, of course, the massive, very tall condominium complex adjacent to the southern edge of the CRAFT Site on the other side of Northern Linear Park, right next to the Rail Corridor.

[163] Both Ms. McAlpine and Ms. Macdonald are senior members of the City's planning team and Ms. Macdonald in particular has very deep expertise and experience in dealing with a significant number of Downtown development applications for large, Mixed-Use proposals – and she has a long history of involvement with the CRAFT Site as well as with many of the neighbouring large projects.

[164] The main points of the joint general planning evidence of Ms. Macdonald and Ms. McAlpine as derived from their WS and Reply WS and oral testimony are summarized as set out below in italics. The Tribunal's findings follow each point.

- a. *The CRAFT OPA has not addressed the policy framework set out Provincial Policies, the City of Toronto Official Plan, the Railway Lands Central and West Secondary Plans and*

*various other policy and guideline documents applicable to this part of the City. The CRAFT proposal as submitted is premature and does not provide the analysis or data to support the proposal or prove its viability. We opine that the proposal, as far as can be understood based on the material submitted, is overdevelopment and does not respond appropriately to its existing and planned context;*

[165] The Tribunal does not agree with these contentions and accepts instead the land use planning opinions and conclusions of Mr. Goldberg that the CRAFT OPA, including the exemplary Safdie/PWP Concept Plan, conform with all relevant policies of the PA, the PPS 2020, The 2019 Growth Plan, the City's OP and the Railway Lands Central and West Secondary Plans. The Panel also does not agree that at the OPA stage it is necessary for an applicant to definitively "prove viability" or to marshal analysis and data in the OPA on all aspects of the implementation and construction of the contemplated development. The test on an OPA is instead as set out in Part 2 above.

[166] The Tribunal also disagrees with the opinion of Ms. Macdonald and Ms. McAlpine that the CRAFT OPA represents "overdevelopment...which does not respond appropriately to its ...context." The Panel instead accepts the emphatic contrary opinions reached by Mr. Safdie, Mr. Goldberg, Mr. Sweeny and Mr. Greenspan in this regard. The Tribunal is of the view that the main thrust of the development proposal set out in the CRAFT OPA is entirely consistent with almost all of the adjacent planned or already approved developments in the Downtown Area (invariably approved on behalf of the City by Ms. Macdonald and Ms. McAlpine or their fellow planning department colleagues) – since but for that part of the Rail Corridor underlying the CRAFT Site, virtually all other parcels have been designated as Mixed-Use and now comprise tall, high density residential and commercial buildings.

- b. *The CRAFT proposal is premature. It does not identify or assess the density requested and has not coordinated*

*planning for infrastructure, parks, and other community services and facilities with the development requested. The proposal does not reflect the comprehensive master planning approach to land use planning that is essential for large scale developments on large sites, and fundamental to ensuring orderly development and complete communities.*

[167] The Tribunal does not agree with these opinions for the reasons expressed above in Part 2 and Part 3. On the planning issues, the Panel prefers instead the opinions, conclusions and findings of Mr. Goldberg. The Tribunal also finds that some of these opinions of Ms. Macdonald and Ms. McAlpine do not accord with the approach that they have taken toward other OPAs in the Downtown or even in the areas adjacent to the CRAFT Site – including but not limited to “The Well” on the north side of Front Street directly across from the CRAFT Site, the subject of OPA 317. Many of such apparent inconsistencies were very effectively raised by CRAFT’s counsel during his cross-examination of Ms. Macdonald and Ms. McAlpine.

[168] Moreover, the Tribunal is of the view that the criticisms of the CRAFT OPA and the demands for additional granular data and details ignore the actual content already contained in the CRAFT OPA as well as the fact that many important additional issues will be dealt with in the future zoning and site plan stages of the development approval process.

- c. *In its current state, the site is not suitable for development. To create the platform for development a deck will need to be constructed to span the corridor. Changes to the railway infrastructure within the corridor, including new infrastructure to address rail safety and mitigation, will be needed to support the deck along with the towers above. New infrastructure will be needed to support the development from transportation and servicing perspectives, and*

community services and facilities and parks will be needed for the people that will live and work in this new neighbourhood. All of this will be need to be carefully determined and phased over a long period of time. This scale of development in this location, requires a comprehensive approach to land use planning to ensure that orderly development occurs and that complete communities are achieved, and importantly while ensuring that the main purpose of the rail corridor is not in any way compromised.  
[emphasis added]

[169] The Tribunal points out that the City's legal team has already clearly admitted that the CRAFT Site is in fact a "development site", which seems to contradict some of the above assertions. The Panel prefers the detailed evidence and expert opinions of Mr. McCafferty and Mr. Jeens of the world-renowned Arup firm who concluded that from a structural engineering standpoint the CRAFT proposed development is clearly feasible. As already noted in Part 3 (c) above, The Tribunal does not accept the contrary findings of Ms. Turner or Mr. McMillan.

[170] The Tribunal further notes that the City's own OPA 395 also (necessarily) proposes a deck in the CRAFT Site above the Rail Corridor, and that OPA 395 contains very few details of its engineering or concerning the phasing of its construction. As discussed in Part 3 (c), and as Ms. Macdonald is certainly aware, no detailed engineering assessment approximating the analysis prepared by Mr. McCafferty and Mr. Jeens was carried out on behalf of the City to support OPA 395. Nor was such an assessment commissioned in order to respond to the CRAFT OPA and the impressive evidence of the two Arup engineers. In any event, the comprehensive analysis loosely suggested by Ms. Macdonald and Ms. McAlpine is not required to prove the requisite feasibility at this OPA stage. Finally, the Tribunal reiterates that it has accepted the clear and convincing expert opinion evidence of the following CRAFT experts: Mr. Fleming and Mr. Wallace on transportation matters; and Mr. Krpan on

water/stormwater/sewage servicing feasibility – in preference to the City’s opposing experts, Mr. Mendes and Mr. Moyle, all as already discussed in detail above in Parts 3 (c), 3 (d) and 3 (e).

- d. *The proposal does not reflect the comprehensive master planning approach to land use planning that is essential for large scale developments of this nature, particularly on this unique site above the rail corridor...The entire site is also proposed to be designated as Mixed-Use Areas with no area designated Parks and Open Space Areas within the site... No information has been provided on the mix of land uses proposed in the additional development or how many additional dwelling units will be included. No information has been provided on how this additional development will be serviced, its impacts on the transportation network, or the community services and facilities and parks that would be needed. No information has been provided on the impacts of this additional development on the railway uses below.*

[171] The Tribunal does not accept the above opinions and prefers instead the expert opinion and analysis to the contrary set out by Mr. Goldberg in his WS’s and oral testimony. The Panel further agrees with him that there is appropriate content in the CRAFT OPA regarding the above-referred to details. The Panel finds that there is no requirement for the CRAFT OPA to designate “Parks and Open Space Areas” within the requested Mixed-Use designation sought for the entire CRAFT Site based on the analysis set out in Part 3 (b) above. The Tribunal notes that Ms. McAlpine and Ms. Macdonald admitted during cross-examination that many Mixed-Use designated parcels within the Downtown had no such further “Parks” sub-designation, yet still have public parks within them.

[172] The Tribunal finds that both the CRAFT OPA and the Safdie/PWP Concept Plan implementation example clearly set out numerous details concerning significant areas of park and open spaces in the CRAFT Site along with a wide variety of other intended community services and facilities. As noted, servicing and transportation feasibility has been established to the satisfaction of the Panel in accordance with the applicable tests.

[173] It was highly apparent to the Tribunal from the evidence of Ms. Bake and other City witnesses, and from the strenuous final written and oral arguments of the City's counsel, that the City wants on-site parkland dedication at the CRAFT Site. The Panel agrees with Mr. Goldberg's opinion that this could have been negotiated earlier by the Parties and also can be secured when further development applications are filed and is not required at this OPA stage. It is also open to the Parties to adopt an approach similar to that approved by the City under OPA 317 for the adjacent development at The Well by negotiating additional policy language to address this issue in the CRAFT OPA. As Mr. Goldberg pointed out, the City was supportive of OPA 317 designating the entire site as Mixed-Use Areas and the inclusion of a policy to establish a later negotiated parkland dedication either on or off-site. This example from OPA 317 was SASP 495, Policy (c) which included the following:

***Parkland Dedication***

*c) The requirement for parkland dedication will be secured through land dedication or other arrangements. Dedicated lands will be designated City Parkland on Map 8A through subsequent Official Plan amendment. In the event that the applicant proposed an off-site parkland dedication, the applicant will be required to enter into a Letter of Agreement with the City clearly stating the commitment to prove an off-site dedication of a specific size in a specific location.*

[174] In the Panel's view, the City and CRAFT should be left with the task of considering whether to negotiate an arrangement similar to the above policy if and as they see fit, rather than have this Tribunal impose a provision that, upon reflection, neither Party may prefer. However, in the event that the Parties do agree upon a further amendment to the CRAFT OPA that they wish to have implemented, they may seek approval from the Tribunal for such further amendment.

- e. *Supporting material related to shadows, viability of planting on the above corridor, open space, universal accessibility, provision or required parkland have not been provided... The proposal represents an inappropriate density in an area of the city which is already meeting the Provincial Growth Targets for the Downtown... The proposal does not represent good planning, is not consistent with the Provincial Policy Statement (2020), does not conform to A Place to Grow: Growth Plan for the Greater Golden Horseshoe (2019), does not conform to the City's Official Plan and the Railway Lands Central and West Secondary Plans*  
[emphasis added]

[175] The Tribunal rejects the conclusions reached by Ms. Macdonald and Ms. McAlpine set out in subparagraph [174] e. above and confirms again that it has accepted instead the contrary expert opinions of Mr. Goldberg. The Panel also points out that the City's expert, Mr. Gladki acknowledged during his cross-examination that the apparent lack of a current need to meet Downtown Provincial Growth Targets is not part of the test applicable to the CRAFT OPA. The Panel also prefers the opposing evidence of Mr. Sweeney and Mr. Goldberg on design and shadow matters and the evidence of Mr. Greenspan on plantings and other landscape architecture matters.

[176] The Tribunal reiterates its findings set out in Part 3 (b) concerning the Parkland Exemption and does not accept the opinion that the CRAFT OPA must specifically designate the location of public parkland. As affirmed by Mr. Goldberg during his testimony, CRAFT has never refused to provide such public park space and the Tribunal will not repeat the discussion and analysis of these issues which has been explored at length in Section 3 (b) above. The Panel accepts the opinion of Mr. Goldberg that (i) the CRAFT OPA and SASP set out proposed policies addressing: Vision and Major Objectives; Parks, Open Space, and Publicly Accessible Private Open Space ("POPS"); Urban Design Guidelines; Public Realm Master Plan; Environment;

Community Benefits; and Implementation; and (ii) The CRAFT OPA will guide the further implementation of development and open space on the subject site and will guide what needs to be undertaken and at what stage of the development process.

[177] The Tribunal further accepts the following evidence of Mr. Goldberg over that of Ms. Macdonald and Ms. McAlpine and other City witnesses: (i) the City's desire to take the maximum parkland contribution as land is a matter that does not, in his experience, occur at the OPA stage but instead later in the development approval process; (ii) if the City is ultimately dissatisfied with the potential for parkland dedication within an area of open space as portrayed in the CRAFT OPA or the Concept Plan or as revised at later stages, then at later stages of planning approval, alternative parkland designs can be discussed; (iii) the proposed Mixed-Use Areas designation permits a public park and Northern Linear Park is an example of a public park within a Mixed-Use area (and constructed) that was not designated as Parks until the Prior Decision permitted OPA 395 to redesignate it to Parks; and (iv) since the proposed Mixed-Use Areas designation permits a public park, the CRAFT OPA would not prohibit the City from accepting dedication of a portion of the CRAFT Site for that purpose - and if the City should ever decide to acquire portions of the CRAFT Site for parkland (by negotiated agreement or by expropriation), then it can redesignate those portions at that time as it sees fit;

- f. *Mr. Goldberg describes the approvals process for the development on the north side of Front Street West opposite the site known as the Well. He notes that the approvals process for the Well included the approval of an OPA in advance of the approval of the zoning amendment. We note that the Zoning By-law and Official Plan Amendment application for the Well were submitted concurrently and that the Zoning By-law and Official Plan amendment application for the Well included details about all of the development proposed.*



[178] The Tribunal finds that the above statement seems to insinuate that it is improper to submit an OPA for a large development without simultaneously seeking a zoning by-law amendment. Although such circumstances may not be the norm, the Tribunal does not agree with this apparent contention – and notes that the City did not call evidence or make any legal argument to support it.

- g. *Mr. Goldberg describes a development application at 315 - 325 Front Street West on properties east of the subject site. This site is also within the Railway Lands Central Secondary Plan area. We note that this application includes both an Official Plan and Zoning By-law amendment together with the details of all of the development proposed as well as the open space/parkland proposed on the site and over the railway corridor.*

[179] The Panel repeats its views as set out following paragraph [178] g. above.

- h. *Mr. Goldberg notes that the proposal envisions the use of the northern portion of the subject site for the construction of buildings and the southern portion for open space uses that could include public parkland. Further he notes that if the Tribunal approves the OPA the nature and tenure of the proposed open space can be determined as part of subsequent Zoning By-law amendment approval processes, and opines that that would be the usual and customary manner to implement the open space components. We note that in master planned developments and large sites such as this one, the City determines and designates the public and private open space as part of the initial application whether it be an official plan amendment and/or rezoning. [emphasis added]*

[180] The Tribunal views the above conclusion in the same vein as the suggestion that somehow an OPA must be accompanied by other concurrent amending applications. Again, no specific authority for this proposition was provided by the City's legal team and the CRAFT OPA contains master planning policy language, as pointed out by Mr. Goldberg. In addition, both Ms. McAlpine and Ms. Macdonald admitted on cross-examination that they have approved other OPA's submitted "on their own" by other applicants in the past. The practice of the City as stated in subparagraph h. – even if it is a preferable practice - is not part of the test for granting an OPA nor did counsel for the City attempt to argue that. The Panel prefers the evidence of Mr. Goldberg as to the determination of parks and open space elements during the subsequent development processes.

- i. *Mr. Goldberg notes that the City owns the air rights above PDL Bridge and the bridge is proposed to remain in place. He also notes that the City considers the bridge to constitute public art. Mr. Goldberg fails to note that the May 31, 2020 Concept Plan proposes to extend the development including the retail mall over the Puente de Luz bridge, within the air rights above the bridge owned by the City as illustrated in architectural and landscaping drawings. As well, as outlined in the letter from Karen Mills, of Mills + Mills Consulting Services, and who is the Public Art Consultant and Member of the Puente de Luz artwork team, the PDL bridge is an artwork and Ms. Mills outlines her concerns about the impact of the development on the Puente de Luz bridge.*

[181] The Tribunal notes that even if the Safdie/PWP Concept Plan proposed the impact on the PDL bridge claimed above – which it does not according to the evidence of Mr. Sweeny and Mr. Safdie which is accepted by the Panel – this would be immaterial as the Concept Plan is exemplary only and solely the CRAFT OPA is before the Tribunal for approval. The statements concerning the negative impacts of the

Concept Plan on the PDL Bridge from an artistic standpoint were also raised by Ms. Bogdanowich in her WS where she stated: “The proposed changes have been put forward without any consultation with the artist and the City of Toronto Public Art Commission as is required under City of Toronto Public Art Policy and the arrangements agreed to with the artist. This must be rectified as the obligations for consultation are embedded in the artist design agreement and in City policy”. This same issue also then arose during the cross-examination of Ms. Bogdanowicz by CRAFT’s counsel. Unfortunately, this testimony once again illustrated an all-too-familiar combative approach which negatively influenced the Tribunal’s view of the evidence. It was admitted by Ms. Bogdanowicz that she had in fact directly solicited the “unfavourable views” of the PDL Bridge artist, as also relied upon by Ms. McAlpine and Ms. Macdonald. In the Tribunal’s view, this is undesirable conduct for a professional expert witness to engage in. It led to the following passage in the oral evidence which has been edited to reduce its length:

THE CHAIR: So, what the panel would prefer first is, Ms. Bogdanowicz, just to explain how she came to receive or possess the letter just as a first step...So we will take it in sequence.

MS. BOGDANOWICZ: Sure. So, as I understand, the Safdie [Plan] came in as a public application. It is on the City's portal, it is a public document. And so anyone who was interested in the fate of the CRAFT site could go there and download the documents...As we were preparing for our visual evidence and for our testimony, we reached out to Ms. Mills to find out information...technical information about the bridge...And so we reached out to Ms. Mills for that technical information and she was aware of the [Safdie] drawings and without, you know, us having to show her the drawings she was aware of the impacts. And she knew, of course, in the first application that the bridge was simply removed. So she is aware, obviously, of what is going on and what is at stake with the bridge because she...cares very much for this piece of public artwork.

THE CHAIR: Okay. So, Mr. Kagan, I think you wanted an opportunity once you had that answer to possibly make additional representations.

MR. KAGAN: Yes, I have a question for Ms. Bogdanowicz and then I am going to finish my submissions. My question for Ms. Bogdanowicz is at any time, Ms. Bogdanowicz, did you ask or encourage Karen Mills to write a letter on this point?

MS. BOGDANOWICZ: We asked Karen if she had any opinions on the CRAFT proposal and if she did, if she would be interested in putting that in writing so that we could bring that as evidence to the tribunal.

MR. KAGAN: When you say "we asked", is it you who asked or is it somebody else who asked?

MS. BOGDANOWICZ: I asked on behalf of the urban design section.

MR. KAGAN: Okay. Thank you. So, Mr. Chairman, I now have additional submissions. Firstly, I believe that Ms. Bogdanowicz has now crossed the line from independent consultant trying to assist the Tribunal to an advocate. It is absolutely not appropriate for an independent witness to go out and try to get opinions from other people to put in their witness statement. That is the job of the City solicitor, not the job of an independent witness. So, in addition to me believing and submitting that this letter is inappropriate for that reason alone, I will have other submissions to make in my closing statement about what weight to put on the evidence of Ms. Bogdanowicz in general...The CRAFT witness statements were referring to the Safdie concept plan and the CRAFT OPA. Those documents were in existence from May 2020. Everybody knew that the Puente de Luz Bridge was being retained, if that was the City's wish, and they all knew as early as May 2020 what the relationship would be between that bridge and the CRAFT deck and the buildings that are on the CRAFT deck....This is a classic example of splitting your case. They know that the bridge...the Puente de Luz Bridge is going to be at a lower elevation than the CRAFT deck as demonstrated in the Safdie concept plan. They put that on the issues list. My client is required to respond to matters on the issues list and it does so. It explains why that is going to be the way it is. It explains the height of the deck vis-a-vis the air rights...And it also went on to explain, for example, that...and this is in the witness statements...that the City only purchased the air rights for the Puente de Luz Bridge and not, for example, five or ten metres on either side if it wanted breathing room...That would have been the time to then deal with it in a witness statement...They did it instead in a reply witness statement. That in and of itself disqualifies this letter. But if they had put this particular letter in their witness statement, I would have asked Ms. Bogdanowicz the very questions I asked her a few moments ago and the answers she gave would have disqualified the letter from being in the witness statement. Lastly, sir, I cannot cross-examine Ms. Mills. She is not a witness in this hearing. The City didn't choose to put her on the witness list. The City knew for a long time that this was an issue for them and if they thought it was important to hear from her, they would have done it properly, sir, which was to call her as a witness and we could have cross-examined her. For all those reasons, I believe this letter should not be admitted into evidence... [emphasis added]

[182] After hearing vigorous contrary submissions from Mr. O'Callaghan on behalf of the City, the Panel decided against receiving the Mills letter into evidence, and expressed its ruling as follows:

The Panel is of the view that a letter such as this really is of marginal relevance if any...All of the panel members have numerous examples in their own experience of where passionate views are possessed by members of the public or otherwise ...and they can seek participant status and, of course, they can make written submissions...[to be] ...considered by the Tribunal...[The Panel] would say... we are not here to debate the value of public art...The Panel is not prepared to declare

Ms. Bogdanowicz as partial or partisan here. We understand the policy positions that particularly City witnesses acquire during the course of their employment can be very passionately felt and held and we would underline the need to exercise some caution in a circumstance where testimony is being offered to the Panel...So the Panel has decided that it will decline to receive this letter or any testimony about it in evidence in these proceedings. [emphasis added]

[183] Unfortunately, as has been pointed out above, this was just one of several examples of a regrettable tenor that too often permeated the evidence provided by many City witnesses in this proceeding. The additional relevance here of the passages described above is that the evidence of Ms. Macdonald and Ms. McAlpine is tainted by their decision to include an assertion related to the Mill's letter about the PDL Bridge – even though they did not apparently seek that evidence.

[184] The Tribunal must reaffirm that it has not found that there was conduct in this proceeding which reached a level that would justify the disqualification of any City witness or that there has been a breach of any witness's duty owed to the LPAT. However, as already noted on several occasions in this Decision, over the course of several weeks of testimony during the City's case commencing in January 2021, the pattern of conduct demonstrated by the City's witnesses during cross-examination negatively influenced the Panel's view of their evidence. It also contributed in part to the determination that, on balance, after taking into account the overall demeanour of the City's witnesses and the CRAFT witnesses, and the totality of their written evidence and oral testimony, the Tribunal found the written statements and testimony of CRAFT's witnesses to be more thoroughly detailed, analytical, objective, less argumentative and ultimately more useful to the Panel – and simply more reliable on all major points of disagreement with the City's experts on the material issues relating to the Panel's consideration of the CRAFT OPA. In the Tribunal's view, this is something every professional witness who intends to testify in a LPAT hearing ought to carefully consider. In fact, this is reflected in the Acknowledgement of Expert's Duty that all witnesses must execute.

[185] As a final note, the Tribunal finds it necessary to at least briefly deal with a number of pervasive themes set out in the final written and oral arguments of the City's lawyers:

1. The density of 4.2 FSI set out in the CRAFT OPA at section 10.1. The City's counsel argued that:

The loose nature of the OPA gives CRAFT absolute discretion"...[and]..."This permissiveness in the OPA gives CRAFT alone the discretion to locate and how to mass all of the buildings on the site and provides for no guidance or restrictions on how all of the density is to be deployed... given the looseness and lack of direction regarding tower size, height and location, in the proposed OPA, CRAFT has the completed (sic) discretion to build the density in any manner it chooses...

Counsel for the City went on to contend:

If the OPA is approved by the Tribunal in its current form, with the density of 3500 residential units and 140 km<sup>2</sup> of retail/commercial space included then the Tribunal is giving CRAFT the discretion to decide where to put the towers" and still further stated: "Because of this requirement by CRAFT for all of the density to be identified and provided for in the OPA, the OPA before the Tribunal provides CRAFT alone with the discretion to determine how and where the density will be deployed.

2. CRAFT's counsel points out that the density of 4.2 FSI set out in the CRAFT OPA is far less than is permitted under the OPAs for neighbouring sites: e.g. less than half of what was approved at The Well and less than a third of what was approved for 400 Front Street West, both across the street from the CRAFT Site. He also noted that the CRAFT OPA proposes a range of 2,500 to 3,500 dwelling units which is almost identical to the total number of units approved for both of The Well and 400 Front Street West together - although the CRAFT Site is approximately 50% larger than those two sites combined. Moreover, the Tribunal notes that the City's own witnesses – in addition to Mr. Goldberg – agree that the 4.2 FSI density is a cap, not a mandatory allocation. For example, Ms. Bogdanowicz, when asked on cross-examination "It is a maximum, which

means anything below is allowed, nothing above is allowed” answered “Yes, that’s correct” although she later insisted that developers always demand the maximum density allowed in the OPA.

3. The cross-examination on the meaning and effect of having 4.2 FSI density in the CRAFT OPA referred to in paragraph [185] 2. above turned into yet another adversarial struggle as the City’s witness refused at one point to answer a simple permissible question for reasons that seemed to arise from her desire to keep common cause with the “no modifications” position demonstrated by all other City witnesses. This was again another example of witness conduct that the Tribunal found unhelpful and, at times, a little exhausting. Again, to reduce its length, editing was required:

A. I mean, we're recommending that it [the CRAFT OPA] be refused.

Q. I really don't want you to use the word "we", because on the record, I have no idea who that is. I'm assuming that all the words that come out of your mouth are your opinion...

A. I am recommending refusal of the OPA for a number of reasons, and one of them is it because it contains a number, a density number.

Q. Okay, you have to answer this question, otherwise I'm going to continue to ask it, and eventually, I will ask for the Tribunal member’s assistance, and he will choose whether to ask it of you or not. And heaven help you if you don't answer his question directly. So, I'm going to ask again. Would you be happier if the 4.2 maximum [FSI] was removed from this document?

A. I'm afraid that I can't answer that question, because that's modification... Am I missing something? I mean, you're asking me to make a modification, and we've been clear to you that we're not here to make modifications. Am I missing something, Mr. Kagan?

MR. KAGAN: I think I now have to ask Mr. Chairman for assistance. Mr. Chairman, I can continue to ask this question and battle with this witness if necessary, but I don't want to waste your time, and I'm wondering if you can direct her to answer the question with a yes-or-no answer, and then explain.

THE CHAIR: Ms. Bogdanowicz, your concern about making a recommendation is understood, but this question is different, and you ought not to interpret it as being an admission that you're making a modification. It's a factual question as to your opinion as to whether it would be an improvement if the density number is removed from the OPA. I think it's a relevant question, and you should answer just that question.

WITNESS: Okay, thank you, Mr. Chair. And in that case, if it's considered not to be a modification, in that case, yes, I think the OPA would be better if it did not contain a density number. And I think that my testimony is clear that that is a major issue of ours. If the OPA contains a density number and doesn't contain urban design detail, then that's an issue.

4. In any event, the Tribunal agrees with CRAFT's counsel that the presence of a density number in the CRAFT OPA does not give CRAFT "carte blanche" to then propose and build whatever assortment of buildings it wants, wherever it wants to locate them on the CRAFT Site. There is still a zoning by-law stage and a site plan approval stage as well as building permits to be submitted for approval by the City. Many policies of the City's OP, including various guidelines, will be applicable, along with the relevant provisions of the PA, the PPS 2020 and the Growth Plan – and of course, principles of good land use planning must be evident throughout those stages of the development process. None of these are exempted by the CRAFT OPA.

#### **4. CONCLUSIONS: DECISION AND ORDER OF THE TRIBUNAL**

[186] The Tribunal is of the view that the CRAFT OPA became the focal point for an unusual approach taken by the City with respect to development over the Rail Corridor. This was typified by how the City's legal team put forward their case in both the WS's and Reply WS's and during the examination-in-chief of the City witnesses. Moreover, it is the Panel's opinion that the direct evidence of the City's witnesses was repeatedly and successfully challenged on cross-examination on almost all substantive points.



[187] While the Tribunal has referred to – and in some cases quoted from - many of the arguments raised by the legal teams for the City and CRAFT, it has not yet referred to the positions taken by the GCA in final submissions. Mr. Allen, the representative for the GCA, and his constituents live in the area around the Rail Corridor and in many ways will be more directly and personally affected by its development than perhaps any other Toronto residents. Notably then, the GCA supports the CRAFT OPA.

[188] Mr. Allen, as was the case during the hearing, was both eloquent and amusing in his final written arguments for the GCA. As only he could, he managed to include quotes from: the Holy Roman Emperor Frederick I, William Shakespeare, Karl Marx, Vladimir Lenin, Stéphane Mallarmé, Margaret Wolfe Hungerford, Jesus Christ (quoted in Matthew 7:12), The Canadian Urban Institute and The Honourable Mr. Justice David Corbett in a recent Ontario judicial decision. Some of his observations, however, mirrored those reached by the Panel as expressed in this Decision.

[189] In an especially relevant passage in his final argument for the GCA, Mr. Allen stated:

The 167 pages of the Goldberg witness statement for CRAFT and the 392 paragraphs (91 pages) of the Macdonald/McAlpine joint witness statement for the City hardly share a word of agreement – about how the various policy and by-law requirements apply to the rail corridor proposal(s), or about the adherence by the CRAFT proposal to general principles of good planning. Another way to look at this is to notice that the City's Issues List (dated April 30, 2019) enumerated 218 contentious issues.

[190] He also included some excerpts from testimony of the City's senior planning witness, Ms. Macdonald that echo the themes concerning the City's stubborn approach to the CRAFT OPA described above in Part 3 by the Tribunal:

...We didn't feel it was appropriate to submit modifications because each modification would have a series of repercussions or a domino effect...It was not the City's job to hire its own consultant team to redesign the CRAFT application to address all of the City's concerns and then to come back with a competing plan saying, "Here's a plan that we have developed with a separate consultant team which now demonstrates how the City's issues can be met". I do not believe that that is the job of the City...

[191] Mr. Allen attended almost every day of the LPAT hearing to listen to the testimony of the City's and CRAFT's witnesses - and (without the assistance of counsel) cross-examined several witnesses. In his view:

The City and its witnesses did not, anywhere in the public record, list the aspects of the CRAFT proposal that were admirable and that they agreed with. In the opinion of the City planning witnesses it was not their job – indeed not their professional responsibility – to mention any worthy aspect of the CRAFT proposal. If there was something they agreed with, they said, they simply didn't mention it. They came to bury the CRAFT proposal, not to praise it. [emphasis added]

[192] There are many possible ways to describe and characterize how the City responded to and dealt with the CRAFT OPA from its inception and throughout this case. The Tribunal also recalls and accepts the views expressed by Mr. Goldberg in his lengthy testimony. As noted, Mr. Goldberg is the author of the most current CRAFT OPA and a professional planner with deep experience in dealing with Downtown Toronto development applications for more than three decades – including many of the developments that have been built or are now being constructed in the areas directly adjacent or very near to the CRAFT Site. Mr. Goldberg gave frank and candid evidence that relates to some of the themes mentioned by the Tribunal in its Introduction in Part 1 above. Near the end of his direct examination on November 24, 2020, he stated:

This is an OPA that sets this OPA application as but the first step in the process. And like The Well or OPA 395, or possibly even a number of other applications within the railway lands central and west secondary plans, there remains many subsequent implementing steps should this OPA be approved to address the many details that have been raised in the context of this hearing. All City OPA issues are addressed now, in my opinion. The others, the details that others have expressed to you that are capable of being addressed later, will be or are capable of being addressed at the right time. [emphasis added]

[193] Mr. Goldberg went on to remark:

If Rail Deck Park didn't exist, would we have gone through a normal planning process, would we have had a preliminary report instead of a refusal report, would we have gone through maybe a few years of collaboration before we got to the point with the City in agreeing to how this development site would, in fact, be developed, how the policy framework for the development would be established? But in the

presence of this alternative universe, the City takes a very extreme position of moving very quickly to a refusal report which basically forces an appeal of that private application... And in the face of attempts to discuss with the City, there was no take-up of that discussion. So where does this extreme position that the City is taking, and that's my characterization, this extreme position that the City is taking on this appeal moving summarily to a refusal report, raising issues that relate to other authorities having jurisdiction, such as the rail companies, such as the school boards, raising prematurity issues relating the issues that may be even OPA 395 didn't even address at the OPA stage, issues that The Well didn't even address at the OPA stage, raising the need for public parkland, but not being terribly helpful to this tribunal of not even identifying where that parkland could potentially be, and then writing very extensive witness statements criticizing the OPA, but not providing any suggestions on how the OPA is to be approved. And I say that because apparently the City is treating this as a development site, but I don't think it really is. That's my own professional opinion. So with all that said, I have reviewed this application, members of the panel, in what I will call a conventional planning analysis. Now, this site is anything but conventional, there's no doubt about that, and that's why the future development area policies are structured the way they are, but there's no doubt. Since 1994, there is an anticipation of a real possibility that an amendment to the Official Plan could take place which shows a mix of uses, and possibly a new neighbourhood being established overtop the rail corridor while maintaining the active rail corridor beneath it. There's a range of studies that have to be provided, there is an extensive range of expertise that needs to come to the table. The City actually stated pursuant to the future development policies what study requirements were required, and that application had been deemed complete. We provided an Official Plan amendment, then we provided an Amended Official Plan amendment. And the Amended Official Plan amendment on March 23rd was quite remarkably different than the original one. In my opinion, it sets out the future for this future development area. It sets out the framework for how development of this development site can responsibly, and in the public interest, unfold. In my opinion, all the detail that has been thrown at this application [by the City] through the witness statements is as if there is zero recognition of the framework that had been set up, not only in the Railway Lands West and Central Secondary Plan that is remaining the governing documents of this piece of turf, but also in the new plan which implementation section is almost a mirror image of OPA 395. [emphasis added]

[194] Mr. Goldberg then summed up his opinion supporting the CRAFT OPA as follows:

...this is an application to ask for this site to be designated mixed-use area. As a development site, that is the only logical land use designation in the downtown that should be applied...The framework [in the OPA]...is comprehensive, it sets out steps, additional study steps, and additional guideline documents to be prepared, and bylaws to be prepared. And things have to be done before those things get approved. Those things in full do not need to be done to apply a mixed-use area designation on this piece of land...I conclude that this is a very good application. It's an application, as the Official Plan says, for next generation. It's a long-term

plan. It repatriates what is basically a pit within the full arterial to arterial block right now in the urban fabric and reurbanizes it by providing connections, by providing land uses, by animating a street which today doesn't even have a side walk on it and turns it into a vibrant city street, and provides for an abundance of open space, well beyond what the parkland dedication requirement would be if that's all that was provided. In my opinion...this represents good planning. It is in the public interest to approve this Official Plan, and it is appropriate to bring closure to this process. That too is in the public interest because all the levels of inquiry that the City want, or expressing through their witness statement will be done. I think it's a red herring to say that this Official Plan should not be done because of all those levels of detail that have been thrown at us.  
[emphasis added]

[195] The Tribunal agrees with and entirely accepts the opinions and conclusions of Mr. Goldberg as stated in Part 3 and as reproduced above in paragraphs [193] and [194]. The Panel also agrees with the general sentiments expressed by the GCA in paragraphs [189] to [191].

## **DECISION AND ORDER OF THE TRIBUNAL**

[196] Pursuant to the Applicable OPA Tests described in Part 2 above, the Tribunal is satisfied, based on the evidence, discussions, findings and reasons described above in Part 1, Part 2 and Part 3 above of this Decision, as follows:

1. Based on the Tribunal's express acceptance of the totality of the evidence provided by the expert witnesses of CRAFT, as described in Part 3 above, the CRAFT OPA properly and appropriately addresses all relevant matters of provincial interest as set out in section 2 of the *Planning Act*, R.S.O 1990, c. P13, and conforms with all relevant matters of policy as required under Section 3 of that Act.;
2. The CRAFT OPA conforms with all relevant matters of policy contained in the provisions of the Provincial Policy Statement (2020), based on the Tribunal's express acceptance of the totality of the evidence provided by the expert witnesses of CRAFT, as discussed in Part 3 above;

3. The CRAFT OPA conforms with all relevant aspects set out in the provisions of the Growth Plan for the Greater Golden Horseshoe (2019), based on the Tribunal's express acceptance of the totality of the evidence provided by the expert witnesses of CRAFT, as referenced in Part 3 above;
4. Based on the Tribunal's express acceptance of the totality of the evidence provided by the expert witnesses of CRAFT, as set out in Part 3 above, the CRAFT OPA conforms with all relevant and applicable provisions of the City of Toronto Official Plan, including all applicable provisions of the Railway Lands West Secondary Plan and of the Railway Lands Central Secondary Plan, and including all other applicable policies, guidelines and design guidelines duly promulgated under that Official Plan;
5. The CRAFT OPA represents and respects good planning principles; sets out a land use designation of Mixed-Use Areas that is appropriate for the CRAFT Site and proposes a development that is feasible from the perspective of (i) transportation and transit matters; (ii) water, stormwater and sewage servicing; (iii) structural engineering and construction; (iv) architecture, urban design and landscape architecture; and (v) land use planning, community services and amenities, based upon the Tribunal's express acceptance of the totality of the evidence provided by the expert witnesses of CRAFT, as summarized in Part 3 above; and
6. In reaching this Decision, the Tribunal has given careful and due regard for the decision of the City of Toronto Council on January 31 and February 1, 2018 to deny the CRAFT OPA.

[197] Mr. Allen, for the GCA, requested the Tribunal to consider a "compromise" along the following lines:

By approving some version of the CRAFT proposal now before it, and saying that both visions are “legal,” – and desirable in their respective ways – the Tribunal could open the door to an amalgamated vision. The Tribunal would in essence be urging both proponents to move through an open door...Instead of declaring a winner in the contest, the Tribunal could leave the outcome and its management in the hands of others where in our opinion it ideally belongs....In addition to serving planning and urban design ends, the CRAFT OPA amendment with respect to parking allows a fundamental, and in our view altogether desirable, redesign of the decking structure...What previously had seemed the main intractable disagreements between CRAFT and the City have now melted into air. If in addition to reconsidering the configuration of the decking structure the Tribunal were to impose a Phasing requirement that would reduce the risk and increase the benefits for both the main Parties, the major sticking points between them seem within an inch of being resolved.

[198] Although the Tribunal does have broad powers to amend the CRAFT OPA, it declines to do so here. An OPA is not intended to provide more than policy guidance and much detailed work and analysis will be required on the part of the City and CRAFT as they proceed (and hopefully collaborate) through the next steps of the development process to address the array of issues that will arise in respect of this significant development on a challenging and unique site now designated Mixed-Use. This Tribunal is not as well-situated as is CRAFT and the City to cooperatively consider the range of possible solutions to address all relevant issues, nor is it able to somehow prescribe in an OPA a fail-safe formula or mechanism to solve all problems that could arise. The zoning by-law amendment, site plan approval and building permit processes together comprise the better venue to deal with those. While the Tribunal hopes that the City and CRAFT will resolve any issues to their mutual satisfaction and advantage, both Parties certainly will continue to have access to the Tribunal’s procedures in the event that this does not occur.

## **ORDERS**

[199] Based on the evidence, discussions, findings and reasons described above in Part 1, Part 2, Part 3 above of this Decision, and summarized in paragraph [196], and after due consideration for all of the arguments set forth in the opening statements and

final written and oral submissions of counsel for the Parties, the Tribunal Orders as follows:

1. The appeals of the Applicants and Appellants CRAFT Acquisitions Corporation and P.I.T.S. Developments Inc. are allowed; and
2. The application by the Applicants/Appellants for an amendment of the City of Toronto Official Plan in accordance with the form and content set out in Addendum A attached hereto is hereby granted.

[200] In the event that the Parties experience any difficulties in implementing the Orders made above with respect to the OPA application of CRAFT, they may contact the Tribunal for assistance.

*“William R. Middleton”*

WILLIAM R. MIDDLETON  
MEMBER

*“T. Prevedel”*

T. PREVEDEL  
MEMBER

*“C. Tucci”*

C. TUCCI  
MEMBER

If there is an attachment referred to in this document,  
please visit [www.olt.gov.on.ca](http://www.olt.gov.on.ca) to view the attachment in PDF format.

**Local Planning Appeal Tribunal**

A constituent tribunal of Ontario Land Tribunals

Website: Telephone: 416-212-6349 Toll Free: 1-866-448-2248

## **ADDENDUM A**

**Draft February 26, 2021**

**CITY OF TORONTO**

**Bill No. ~**

**BY-LAW No. ~ -20~**

**To adopt an amendment to the Official Plan**

**for the City of Toronto**

**with respect to the lands bounded by Front Street West, Bathurst Street, Northern Linear Park, Blue Jays Way and the Rail Corridor (municipally known in the year 2020, as Utility Corridors and the Future Development Area of the Railway Lands West Secondary Plan and Utility Corridor “A” of the Railway Lands Central Secondary Plan).**

WHEREAS authority is given to Council under the *Planning Act*, R.S.O. 1990, c.P. 13, as amended, to pass this By-law;

WHEREAS Council of the City of Toronto has provided adequate information to the public and has held at least one public meeting in accordance with the *Planning Act*;

The Council of the City of Toronto HEREBY ENACTS as follows:

1, The attached Amendment No. ~~~ to the Official Plan is hereby adopted pursuant to the *Planning Act*, as amended.

ENACTED AND PASSED this ~ day of ~, A.D. 20 ~.

JOHN TORY

Mayor

ULLI S. WATKISS

City Clerk

(Corporate Seal)



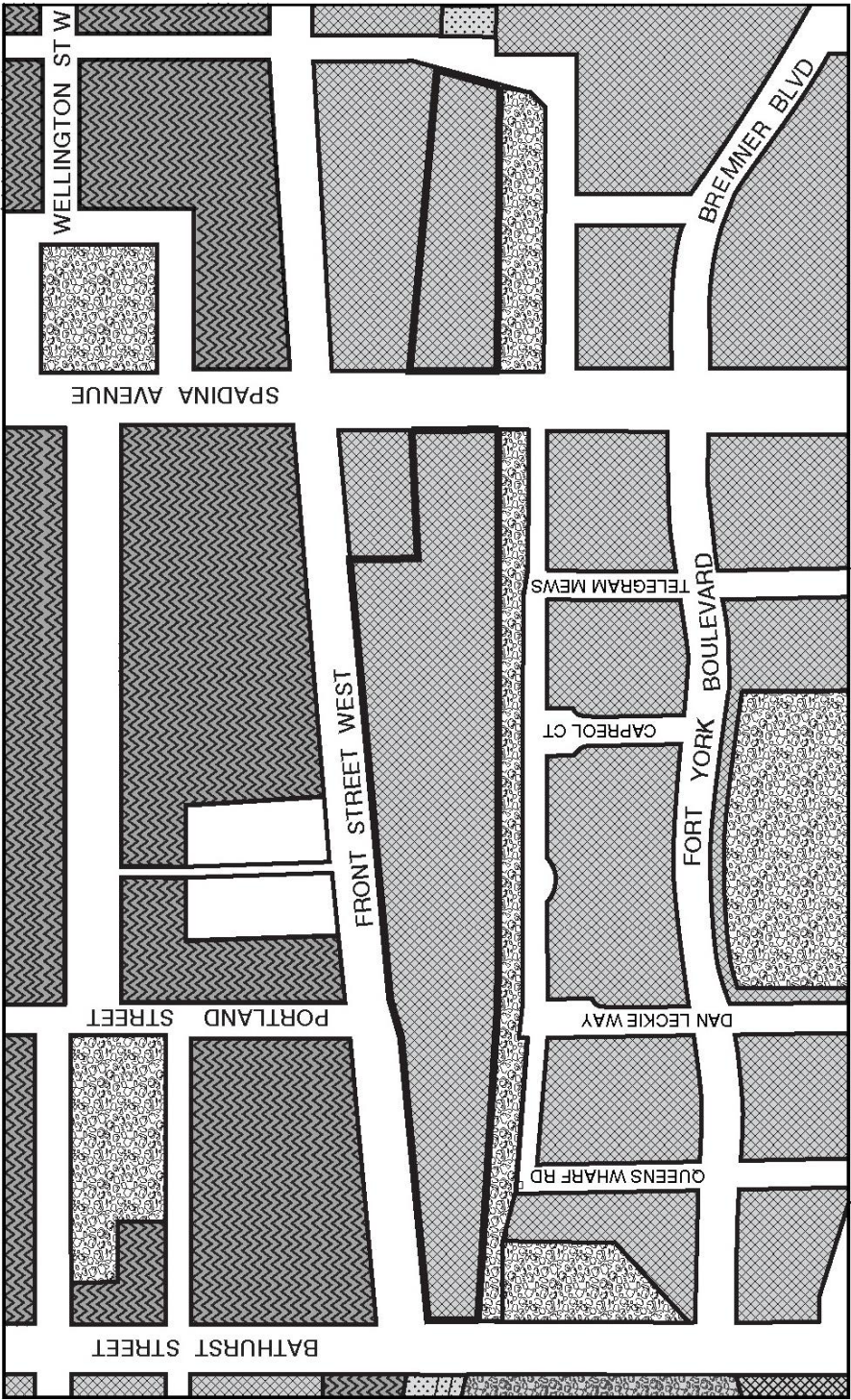
**AMENDMENT NO. ~~~ TO THE OFFICIAL PLAN****LANDS MUNICIPALLY KNOWN IN THE YEAR 2020 AS**

**Utility Corridors and the Future Development Area of the Railway Lands West Secondary Plan and Utility Corridor “A” of the Railway Lands Central Secondary Plan.**

The Official Plan of the City of Toronto is amended as follows:

1. Map 18, Land Use Plan, is amended by redesignating the lands south of Front Street West between Bathurst Street and Blue Jays Way from ‘Utility Corridor Areas’ to ‘*Mixed Use Areas*’, as shown on Schedule 1, attached;
2. Map 18, Land Use Plan, is further amended by adding the following public roads, as shown on Schedule 1, attached:
  - a. Fort York Boulevard;
  - b. Queens Warf Road;
  - c. Dan Leckie Way; and
  - d. Brunel Court.
3. Section 17 - Railway Lands East Secondary Plan, Section 18 - Railway Lands Central Secondary Plan, and Section 19 - Railway Lands West Secondary Plan is amended in accordance with Schedule 3 to this By-law, to reflect the vision and major objectives of Site and Area Specific Policy XX, and to amend relevant policies to ensure coordinated and cohesive development across the Railway Lands.

Schedule 1

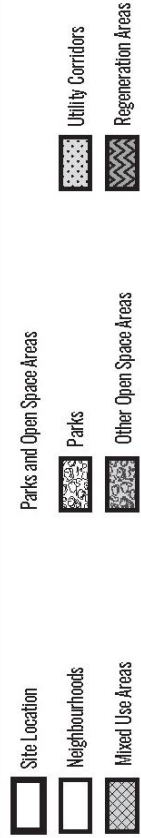


City Planning  
Official Plan Amendment #

Revisions to Land Use Map 18

Lands Bounded by Front Street West, Bathurst Street, Northern Linear Park,  
Blue Jays Way and the Rail Corridor

File # 17 164359 STE 20 02

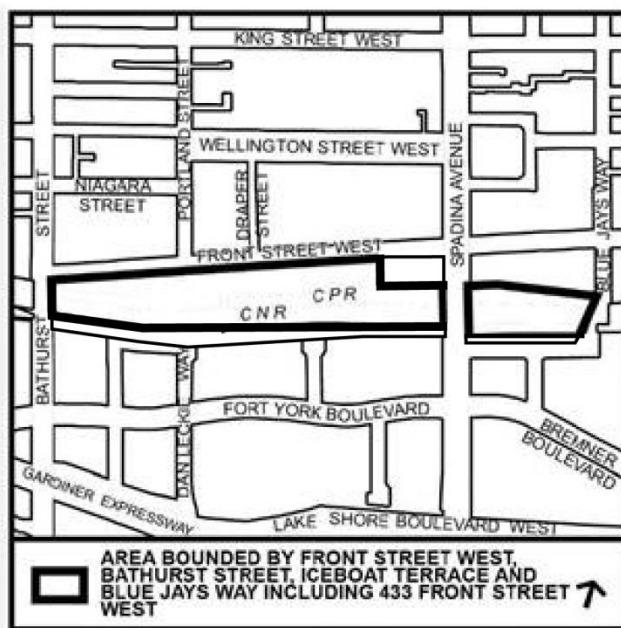


Not to Scale  
July 2020

## Schedule 2

1. Section 18 – Railway Lands Central Secondary Plan is amended by adding immediately following Section 12, a new Section 13 – Site and Area Specific Policy XX, and Section 19 – Railway Lands West Secondary Plan is amended by adding immediately following Section 13, a new Section 14 – Site and Area Specific Policy XX. SASP XX is as follows:

### **“XX LANDS LOCATED WITHIN THE RAIL CORRIDOR FROM BATHURST STREET TO BLUE JAYS WAY AND FROM FRONT STREET WEST TO NORTHERN LINEAR PARK**



## INTRODUCTION

1.1 The Railway Lands Central and West Secondary Plans, in force since 1994, have from the beginning envisioned and encouraged the overbuilding or “decking” of the *rail corridor* between Bathurst Street and Blue Jays Way for Future Development. To that end, both the Secondary Plans contain policies that require plan amendments be made detailing the nature of proposed development, specifically within those segments of the *rail corridor* identified as a “Future Development Area”, and supported by a range of studies and analyses demonstrating technical feasibility appropriate for the Official Plan stage, that such development is consistent with the land use and design objectives of

each Secondary Plan, including that development will not adversely impact safe and efficient railway operations.

1.2 The existing Secondary Plans require that any application to amend the Secondary Plan to permit development in the *rail corridor* and “Future Development Area” will consider, among other things, a range of uses, including residential, commercial, institutional, industrial uses, parks and opens space uses. Policies of the Secondary Plans direct that the development will be implemented according to the Implementation policies set out in Section 11 of each Secondary Plan, which set out steps that need to be taken at each planning stage before development commences, including undertaking comprehensive study of a wide range of topic areas aimed at ensuring that the objectives of the Official Plan and the Secondary Plans are sufficiently addressed.

1.3 Since amalgamation and the incorporation of the existing Railway Lands West and Central Secondary Plans into the City of Toronto Official Plan, the Province of Ontario has approved three Provincial Policy Statements (PPS) (2005, 2014 and 2020) and three Growth Plans (2006, 2017 and 2019). This Official Plan Amendment implements the policy direction of the current PPS (2020) and Growth Plan (2019). This includes, among other things, making the most efficient use of these valuable downtown lands within a Provincial Urban Growth Centre, optimizing the land and infrastructure, including the existing and planned public transit serving the area, which includes the planned Go Station, at the southwest corner of Front Street West and Spadina Avenue (*Spadina-Front GO RER Station*), and creating complete communities.

1.4 Also since amalgamation, the City, and in particular, the downtown area surrounding the site, has considerably evolved and continues to evolve into a high density area of tall mixed use residential and non-residential buildings, containing residential units, entertainment and tourist facilities, dining establishments, employment uses, and open spaces in the form of public parkland and private areas. This is reflected in part, by developments such as The Well, City Place, generally the extensive development in the King-Spadina Secondary Plan Area, the Mirvish-Gehry redevelopment and Fort York neighbourhood. Complementary to this new development surrounding the site, this amendment plans to remove the existing and significant urban barrier caused by the expanse of the existing *rail corridor*, by enabling the decking of the *rail corridor*, and by facilitating the comprehensive reurbanization and reintegration of this large site into the urban fabric of this evolving and maturing area of the downtown.

1.5 This amendment amends the site to the ‘*Mixed Use Areas*’ land use designation, a first implementation step toward enabling the reurbanization and reintegration of this large site into the downtown. It is planned to include a range of mixed use buildings and spaces containing residential, employment/non-residential, retail and services, community facilities, and considerable opportunity for parkland and open space providing respite, active recreational opportunities, and connections and linkages to the adjacent neighbourhoods and open space networks. The proposed range of residential and non-residential uses, combined with the significant amount of on-site open space linked to

adjacent areas, advances the place-making objectives of the Official Plan, and supports the Growth Plan objective of creating complete communities.

## **INTERPRETATION**

2.1 This Site and Area Specific Policy (SASP) should be read in conjunction with the Railway Lands Central Secondary Plan and the Railway Lands West Secondary Plan to understand the comprehensive and integrative intent as a policy framework for the amendment lands.

2.2 In the case of a conflict between this SASP and the policies in any of the Railway Lands Secondary Plans or the City of Toronto Official Plan, the policies of this SASP will prevail.

2.3 The boundaries of this SASP are shown on Schedule “1” attached are approximate. Where the general intent of this SASP is maintained, minor adjustments to such boundaries will not require amendment to this SASP, the Railway Lands Central Secondary Plan or the Railway Lands West Secondary Plan.

## **VISION AND MAJOR OBJECTIVES**

3.1 This SASP enables the removal of a significant physical barrier in the existing urban fabric created by the wide expanse and large land area of the *rail corridor*. The development will create universally accessible linkages and visual connection from surrounding neighbourhoods, including connecting the area south of Front Street West to the neighbourhoods south of the *rail corridor* in City Place.

3.2 That part of the SASP along Front Street West and Spadina Avenue will transform these streets into significant urban streets, comprised of inviting and well landscaped sidewalks and public realm, bordered by retail store fronts at grade, and entry points into the development and open spaces, which entrances will be designed to be inviting and universally accessible.

3.3 The building(s), streetscape, public realm, and entrance locations to the development along all sides of the site will be designed to complement the existing and planned context along all streets.

3.4 The buildings along the frontage of the east side of Spadina Avenue will be restricted to non-residential uses only..

3.5 Parking for the combination of uses may be located above and/or beneath the surface of the *decking structure*, provided that any parking above the surface of the *decking structure* will be enclosed and such that vehicles will not visible from the public realm, enabling the surface of the *decking structure* to be optimized with non-residential and mixed residential/non-residential buildings and large contiguous areas of open space and public realm. Transit supportive parking rates will be established in the zoning by-law to reflect the downtown location with employment, shopping, entertainment, dining facilities, and rapid transit in very close proximity. The location of the site will intrinsically

promote the use of public transit and active transportation options. This combined with the lower parking rates supports the downtown and '*Mixed Use Areas*' policy direction of the Official Plan of reducing automobile dependency.

3.6 The development includes the opportunity for significant open space in the form of City parkland, Publicly Accessible Private Open Spaces (POPS), and other private open space areas, accessed by a combination of paths, pedestrian ramps, stairways, escalators and elevators. These open space areas will be universally accessible. The significant area devoted to open space opportunities will enable future programming for multiple functions, provides pedestrian and visual linkages through the site to adjacent neighbourhoods, and contributes to connecting this part of the City with the City's network of open space beyond the site.

3.7 Consistent with this direction, the policies of this SASP implement the planning vision and policy direction for those segments of the *rail corridor* designated "Future Development Area" within the Railway Lands West and Central Secondary Plans, having completed the required land use, conceptual design and technical studies, demonstrating that the decking of the *rail corridor* to facilitate mixed-use development and open space is appropriate and technically feasible.

## **PARKS, OPEN SPACE, AND PUBLICLY ACCESSIBLE PRIVATE OPEN SPACE (POPS)**

4.1 Development applications in "*Mixed Use Areas*" will identify opportunities to provide a linked system of parks, open spaces, and POPS, or a combination thereof. This linked open space system is to be designed to improve and expand equitable access to quality public spaces for recreation, passive use, and active transportation for workers, residents, and visitors and contribute to this area being planned as a complete community.

4.2 Public parks are permitted by the *Mixed Use Areas* designation and may be acquired through parkland dedication under the Planning Act, other Planning Act tools, land exchanges, purchase, and any other available mechanism.

4.3 A substantial portion of the total site area will be maintained as POPS and/or parkland. Subject to appropriate arrangements and agreements with the City, these lands will be open to the public and easements will be granted to the City at appropriate locations to ensure the POPS are open to the public.

4.4 Provide for a minimum of 0.30 hectares (0.74 acres) of public parkland east of Spadina Avenue and a minimum of 1.28 hectares (3.16 acres) of public parkland west of Spadina Avenue in the "*Mixed Use Areas*" if all of Northern Linear Park is effectively removed to permit decking.



## **PUBLIC REALM**

5.1 High-quality east-west and north-south publicly accessible connections will be provided, connecting Bathurst Street and Spadina Avenue with Blue Jays Way and Front Street West with Ice Boat Terrace and Blue Jays Way.

5.2 A well-designed, high quality public realm will be provided along all public street frontages including Front Street West, Spadina Avenue, Ice Boat Terrace and Blue Jays Way.

## **HOUSING**

6.1 At least 40 per cent of the total number of dwelling units will be provided as two bedroom units or greater, of which, a minimum of 10 per cent shall be three bedroom units in order to provide housing suitable for families with children.

6.2 A mix of residential tenure and units sizes is encouraged, including rental and ownership housing.

6.3 At least 20 per cent of the total number of dwelling units will be developed as affordable purpose-built rental housing units.

## **RANGE OF RETAIL UNIT SIZES**

7.1 A range of retail unit sizes are encouraged, with consideration for smaller retail units at-grade adjacent the open space areas and street frontages to create an urban main street retail experience.

## **NON-RESIDENTIAL COMPONENT**

8.1 Non-residential buildings, shall be located fronting on the east side of Spadina Avenue.

## **SHADOWS**

9.1 Development of new buildings shall be designed to adequately limit new shadows on Clarence Square Park and Victoria Memorial Square from March 21<sup>st</sup> to September 21<sup>st</sup> from 10:18 am – 4:18 pm.

## **DENSITY**

10.1 The maximum total density of these lands shall be 4.2 FSI, and a range of residential units may be 2,500 – 3,500.

## **TALL BUILDINGS**

11.1 Zoning By-law standards and Design Guidelines shall be developed to address built form matters such as size of tower floorplates, stepback and setbacks that consider the unique size of the site and area context.

11.2 Due to the unique size of the site and area context, mixed use residential and non-residential building(s) to the east and west of Spadina Avenue, are permitted to have tower floorplates greater than the maximum recommended under the City's Tall Building Design Guidelines, provided that towers floorplates which exceed 750 square metres meet or exceed the minimum of 30 metre distance between towers. This will contribute to enhanced light, views and privacy between larger tower floorplates.

## **URBAN DESIGN GUIDELINES**

12.1 Urban Design Guidelines will be developed to the satisfaction of the Chief Planner and Executive Director, City Planning Division, and adopted by City Council in order to guide the design of the buildings and open space elements of the project. Urban Design Guidelines will guide development to implement the Official Plan and this SASP and assist staff in evaluating applications for Zoning By-law Amendment and Site Plan Approval. The Urban Design Guidelines shall include the following elements and reflect the following matters:

- a) A Public Realm Master Plan for the site to implement the Vision and Major Objectives of this SASP, including the identification of all public and private open spaces, how the pedestrian network connects to and complements the public realm around the site, and how a coordinated, cohesive and connected public open space system is ensured.
- b) Designs and materials should enhance sustainability.
- c) Phasing, including plans for interim treatments where required.
- d) A lighting plan which will complement the design and enhance security.
- e) A signage strategy.
- f) Consider input provided by the City's Design Review Panel.

## **TRANSPORTATION**

13.1 Comprehensive decking and development of the site will be planned and designed to encourage walking, cycling, transit use and car sharing as a means to reduce the use of private automobiles. Through Zoning By-law Amendment and Site Plan Control applications, robust Traffic Demand Management measures will be proposed and implemented.

13.2 Bicycle parking facilities will be provided on site to encourage bicycle use in the area, and the number of bicycle facilities required at grade level shall adhere to the Tier 1 Toronto Green Standard requirements.



13.3 Auto share facilities and built-in charging stations for electric vehicles are encouraged on site to further reduce auto demands to the development and to encourage a more sustainable source of energy.

13.4 Where feasible, transit stops and/or signage providing direction to the nearest transit stop shall be provided on-site.

13.5 The underground portions of non-residential buildings with frontage on Spadina Avenue will be designed to include knock-out panels to facilitate potential connections to the future *Spadina-Front GO RER Station*. Owners are also encouraged to connect these buildings to the PATH system, where feasible.

13.6 Vehicular parking and loading may be located above and/or beneath the surface of the *decking structure*, provided that any parking above the surface of the *decking structure* will be enclosed such that parked vehicles will not be visible from the public realm, and is encouraged to be shared between residential and non-residential uses on the site.

13.7 The *rail corridor* will continue to function as a corridor with rail uses located below the *decking structure* including active rail lines and uses associated with the rail operations such as train storage, and train maintenance. The continued, effective, safe, and efficient provision of inter-regional passenger rail and freight rail services will not, in any way, be compromised by the existence of the *decking structure* and the development of the site.

13.8 As part of subsequent implementation processes and the development of all or part of the site, the continued effective, safe, and efficient provision of inter-regional passenger rail and freight rail services will be ensured and supported through technical studies identified in the Implementation Section of this SASP.

13.9 Development adjacent to or above the *rail corridor* will respect its physical configurations and its current and future operation, including approaches, access, track electrification, easements, and emergency access during and after development of the site.

## **ENVIRONMENT**

14.1 The comprehensive decking of the *rail corridor* and the development of the site represents an opportunity to expand and enhance the public realm and open space networks in the City. This Section contains policy direction to achieve the Vision and Major Objectives of this SASP. The design, development, and maintenance of the site, will support environment stewardship, connectivity and sustainability, through:

a) Including, where appropriate, a range of active recreational areas and passive areas within the open space system;

- b) Provide connected planted areas that potentially support wildlife habitat;
- c) Ensuring adequate soil volumes to support health and mature landscaping and tree canopies;
- d) Reducing the urban heat island effect and increasing carbon capture through a diversity of planting and landscape design treatment;
- e) Planting a range of native species to support biodiversity and reduce the need for intensive maintenance; and
- f) Incorporating innovative approaches to irrigation, ventilation, and stormwater management systems.

## **SERVICING AND INFRASTRUCTURE**

15.1 Development of the site will be supported by necessary improvements and/or modifications to existing municipal infrastructure. This will be secured as part of the Zoning By-law Amendment and Site Plan Control applications.

15.2 Development of the *decking structure* and associated community amenities within the site will incorporate stormwater management on site and have regard for, the objectives of the City's Wet Weather Flow Management Guidelines, as may be amended.

## **COMMUNITY BENEFITS**

16.1 To the extent permitted by the Planning Act or other applicable legislation, community benefits will be secured in the implementing planning instruments, such as but not limited to Zoning By-law(s). Community benefits may include on-site Community Services and Facilities such as a licensed day care facility; improvements to public right of ways bordering the site beyond streetscape improvements which are typically delivered through the Site Plan Control process; contributions to affordable housing; contributions to public art; and other matter consistent with the Official Plan. Public Art provided on site will contribute to the character of the neighbourhood by enhancing the quality of public spaces that are publicly accessible and visible. In prominent locations, the art themes should express community heritage, including that formed by the Indigenous peoples and the rail operations.

## **IMPLEMENTATION**

17.1 The development of the site will be planned comprehensively, but it is recognized that construction and development is expected to be phased and occur incrementally. The timing and phasing of necessary infrastructure and other improvements and works will depend on a number of factors, including the nature and scale of municipal infrastructure ultimately proposed as part of the development of the site.

17.2 A phasing strategy will be prepared that considers at least the following:

- a) Existing rail infrastructure and functions;
- b) Coordination with ongoing and future rail planning initiatives;
- c) Rail safety mitigation measures;
- d) Preparatory work related to reroute utilities and other heavy civil and structural works;
- e) *Decking structure* construction including major mechanical and electrical systems;
- f) Development of the site on and within the *decking structure*; and
- g) Construction of urban design, planning, and transportation improvements as identified by various studies.

17.3 Construction of the site will generally include a number of preparatory works in and around the *rail corridor* to prepare the project for civil and structural works, *decking structure* construction, and further development of the site. Future timing of development will be coordinated with other related projects, where possible, such as track electrification, the *Spadina-Front GO RER Station*, among other infrastructure projects, requirements, or studies.

17.4 An acquisition and/or leasing strategy will be prepared by the City in conjunction with the applicant(s)/owners of development, to outline the goals, objectives and a framework, among other matters, for acquiring and/or leasing open space areas and potentially other indoor space, that align with the objectives of this SASP.

17.5 In order to ensure orderly and coordinated development of the site, the owners/applicants will ensure that the necessary requirements and studies are completed and approved by Council and any other applicable approval authority, before permitting the construction of the *decking structure* or the development of the site, including the following:

- a) A detailed Public Realm Master Plan as describe in this SASP will be prepared, which will include specific technical, development, and design details, and will inform the development of the site.
- b) Comprehensive studies that detail how the following environmental and technical matters and considerations will be satisfactorily addressed and how requirements will be secured, including:
  - i) The noise, odour, and vibration impact of the railway to ensure compatibility with rail operations, including mitigation and attenuation measures by, among other things, the provisions of buffers, including acoustical structures and landscaping features adjacent to noise, odour, vibration sources as appropriate for the development of the site, including the open space areas.

- ii) Satisfactory air quality and climatic condition, including wind conditions, including a consideration of potential impact of snow and ice on rail service;
- iii) Minimize impact on existing soil and ground water conditions as a result of the *decking structure* and the development above it, including if required, soil remediation or disposal plans for contaminated soil and remediation measures for any noxious substances;
- iv) Servicing and stormwater management studies which confirm the sufficiency of municipal infrastructure, including sewer, water, stormwater, as well as capacity for managing snow and ice accumulation;
- v) Minimizing, to the extent possible, risk of injury or damage from accidents on the *rail corridor*;
- vi) Ensuring that the practices and procedures followed during construction, development, operation and maintenance of the *decking structure* and the site development are environmentally sound;
- vii) Energy efficiency, conservation, waste reduction, and recycling as development of the site proceeds.
- viii) A *rail corridor* study, in conjunction with the appropriate authorities, which demonstrates that:
  - Existing and future capacity and safety of rail operations in the *rail corridor* will not be impaired;
  - The effective, safe and efficient provision of rail transportation services of the *rail corridor* and Union Station will not be compromised; and
  - The flexibility for future expansion of rail operations, including the implementation of the *Spadina-Front GO RER station*, and modifications and improvements to the track and signal system will not be reduced or impacted.
- ix) An emergency management plan to outline how the City and new building and facility owners and tenants will respond to and mitigate the impact of a possible emergency within the *rail corridor* in coordination with rail operators;
- x) A transportation monitoring program and a traffic management mitigation plan (TMMP) to address traffic infiltration issues and other traffic impacts in the neighbourhoods immediately surrounding the site. The TMMP may include strategies to support transit integration and active transportation, and accommodate potential vehicular lay-bys, drop off areas and parking zones, without negatively impacting the existing transportation network, among other matters; and

- xi) A construction management plan (including a construction mitigation strategy addressing impact on adjacent buildings, to be implemented during the course of construction.

### **Schedule 3**

#### **AMENDMENTS TO RAILWAY LANDS CENTRAL SECONDARY PLAN**

1. Chapter 6, Section 18, Railway Land Central Secondary Plan is amended by:

##### **Amendments to Maps**

That Map 18-3 of the Railway Lands Central Secondary Plan be amended as shown on attached Attachment 1, by redesignating *Utility Corridor* “A” to *Mixed Use Areas* “J”.

That Map 18-6 of the Railway Lands Central Secondary Plan be amended as shown on Attachment 2, extending the “Significant Street Edge” along Spadina Avenue, and by creating a new “Significant City Waterfront Views and Vistas” symbol.

2. Chapter 6, Section 18, Railway Lands Central Secondary Plan is further amended as follows:

#### **1. INTERPRETATION**

Policy 1.2 be deleted and replaced with:

“1.2 The boundaries of the Railway Lands Central and the areas designated *Mixed Use Areas* “A”, “B”, “C”, “D”, “E”, “F”, “G”, “H”, “I” and “J”, *Utility Corridors*, and *Parks and Open Space Areas* are as shown on Map 18-3 and are approximate. Where the general intent of this Secondary Plan is maintained, minor adjustments to such boundaries will not require amendment to this Plan.”

Policy 1.3 be deleted and replaced with:

“1.3 This Secondary Plan is comprised of Sections 1 through 13 and Maps 18-1 through 18-6.”

Policy 1.4 be added as follows:

“1.4 The Railway Lands Central Secondary Plan should be read in conjunction with Section 13 - SASP XX. Where provisions of the Railway Lands Central Secondary Plan conflict with the provisions of SASP XX, the provisions of SASP XX shall prevail.”

#### **2. MAJOR OBJECTIVES FOR THE RAILWAY LANDS CENTRAL**

Policy 2.6 be added as follows:

“2.6 Policies in Section 10.6 of the Railway Lands Central Secondary Plan previously identified an area as Future Development Area/ *Utility Corridor* ‘A’. These policies encouraged future decking over the rail corridor. The purpose of this designation, according to Policy 10.6 of the Secondary Plan, is to provide for a comprehensive study or studies to evaluate various land uses and decking considerations to be included with future applications to amend this Plan. The decking creates the platform over which all forms of urban development (residential, commercial, office, institutional, public parks, and open space) occur. Section 13 - SASP XX amends these former policies in Section 10.6 of this Plan by providing area specific policies, based on the comprehensive studies filed in support of the Official Plan Amendment for this SASP area.”

Policy 2.7 be added as follows:

“2.7 Development on the *decking structure* over the *rail corridor* in *Mixed Use Area* “J” will be designed in accordance with the policies of Section 13 - SASP XX.

### **3. STRUCTURE, FORM AND PHYSICAL AMENITY**

Policy 3.1 (c) be amended by deleting the word “and” at the end of the policy, and replacing it at the end of policy 3.1 (d), and that policy 3.1 (e) be added as follows:

“3.1 (e) a *decking structure* to be created over the existing and continuing active *rail corridor*. ”

Policy 3.6 be amended by adding Policy 3.6(a), following Policy 3.6:

“a) All parking provided in association with development in *Mixed Use Areas* “J” on the *decking structure*, may be located above and/or below the surface of the *decking structure*, provided that any parking above the surface of the *decking structure* will be enclosed such that parked vehicles will not be visible from the public realm, and will be located in a manner which minimizes its impact on streets, public parks, open spaces, pedestrian walkways and other land uses. Surface commercial parking lots will not be permitted and other surface parking will be minimized.”

### **4. HOUSING GOALS**

Policy 4.4 be added as follows:

“4.4 Housing in the *Mixed Use Areas* “J” will be provided in accordance with Section 13 – SASP XX.

### **5. SCHOOLS AND COMMUNITY SERVICES AND FACILITIES**

No amendments proposed.

### **6. PARKS, OPEN SPACE, AND PEDESTRIAN SYSTEMS**

Policy 6.1 is amended by adding the following sentence:

“6.1 ...The linked system of parks and publicly accessible open space for the SASP XX area will be determined in accordance with the policies of SASP XX.

## **7. HERITAGE AND PUBLIC ART**

No amendments proposed.

## **8. TRANSPORTATION AND CIRCULATION**

Policy 8.2.5 (c) be amended by adding the following:

“8.2.5 (c) ..., including a new east-west pedestrian connection between lands in *Mixed Use Areas “J”* and lands in the Railway Lands West Secondary Plan Area.”

Policy 8.4.1 (a) be deleted and replaced with:

“8.4.1(a) Regional Metrolinx commuter services will continue to be incorporated in the *rail corridor*, and a new GO station has been identified by Metrolinx as the *Spadina-Front GO RER Station* in *Mixed Use Areas “A” of the Railway Lands Central Secondary Plan*, in the vicinity of the Front Street West and Spadina Road intersection.”

The title of Policy 8.5 be deleted and replaced with:

“8.5 Railway Uses in the *Utility Corridors* and *Mixed Uses Areas “J”*”

Policy 8.5.1 be deleted and replaced with:

“8.5.1 The *rail corridor* should remain in its present location and will continue to operate below the *decking structure* in *Mixed Use Areas “J”*. Union Station will continue to function as a major regional transportation terminal, and all rail facilities, including the High Line freight bypass, should continue to operate within the width of the *rail corridor* and below the *decking structure* in *Mixed Use Areas “J”*.”

Policy 8.5.3 be deleted and replaced with:

“8.5.3 Development adjacent to and on the *decking structure* as identified on Map 18-3 will respect the physical configuration of the *rail corridor* and its current and future operation, including minimum clearance height, approaches, access, easements and emergency access both during and subsequent to development and construction. Development on the *decking structure* in *Mixed Use Areas “J”* shall be subject to the policies of Section 13 - SASP XX.”

## **9. ENVIRONMENT**

Policy 9.2 be deleted and replaced with:

“9.2 The Environmental Report referred to in Section 9.1 will be prepared by the proponents in consultation with the City, the Local Board of Health, and the Ministry of the Environment and Climate Change. In the case of *Mixed Use Areas “A”, “B” and “J”*, the proponent will also consult with Metrolinx, CN Railway Company, or their successors

and assigns. The safeguards and measures set out in the Environmental Report will be secured through an Environmental Agreement submitted pursuant to Section 11.1(c) or 11.2 of this Secondary Plan.

For the purposes of this Secondary Plan, an Environmental Agreement means an agreement containing provisions sufficient to ensure that the safeguards and measures set out in the Environmental Report are adequately secured and in addition, will specify that the landowner will provide appropriate warning clauses to prospective purchasers and lessees of each dwelling unit in *Mixed Use Areas* “A”, “B” and “J” regarding possible noise, vibration and/or air quality impacts associated with existing and future freight and passenger rail and regional rail and public transit uses in the *rail corridor*, *Utility Corridors*, or below the *decking structure* in *Mixed Use Areas* “J”.

Policies 9.1, 9.3 and 9.4 be amended as follows:

Replace “Ministry of the Environment and Energy” with “Ministry of the Environment and Climate Change”.

Policy 9.4 is further amended as follows:

Replace “GO Transit and CN Railway Company” with “Metrolinx and CN Railway Company”.

## **10. LAND USE DISTRICTS AND DENSITY**

Policy 10.1 be deleted and replaced with:

“10.1 The Railway Lands Central will be developed with a wide range of uses including commercial, residential, institutional, cultural, recreational, public parks, open space, retail and an urban stadium and multi-purpose facility. The area south of and fronting onto Front Street West from John Street to Spadina Avenue is an extension of the commercial, institutional and industrial area to the north of Front Street West. The area around the Stadium is a mixed use area with primarily commercial, retail, hotel, and stadium related uses. The east side of Spadina Avenue is a predominantly commercial/residential street to be developed at relatively high densities. In *Mixed Use Areas* “J”, the frontage along the east side of Spadina Avenue will be limited to non-residential building(s) with at grade retail uses, and the lands to the east of this building may be used for residential and mixed residential/commercial buildings, parks and open space. Parking is permitted below the surface of the *decking structure*.

Notwithstanding the foregoing, *Mixed Use Areas* “A”, “B” and “J” will be regarded as an extension of the *Mixed Use Areas* “D” and “G”, and residential will be regarded as an appropriate use therein.

It is the City’s objective that the intersection of Spadina Avenue and Bremner Boulevard become a focus for the Railway Lands Central, and that its development provide for the integration of proposed transit lines with high standards of urban design and pedestrian amenity.”



Delete Policy 10.4.2 (c).

Delete Policy 10.4.3 in its entirety.

Policy 10.5 be amended by deleting the last sentence, which currently reads as follows: “By-laws may be passed permitting only transportation and related ancillary uses in *Utility Corridor ‘A’* portion of the Rail Corridor.”

The title of Policy 10.6 be deleted and replaced with:

“10.6 *Mixed Use Areas “J”*”

Policy 10.6 be deleted and replaced with:

“10.6 Comprehensive decking of the *rail corridor* between Spadina Avenue and Blue Jays Way in the Railway Lands Central is encouraged, in accordance with Section 13 – SASP XX. The *decking structure* may be phased provided the comprehensive decking within the Railway Lands Central and the Railway Lands West Secondary Plans is not compromised.

To assist in achieving Council’s objectives in *Mixed Use Areas “J”* with respect to the comprehensive decking of the *rail corridor*, the *decking structure* will cover the *rail corridor*, between Spadina Avenue and Blue Jays Way.”

Policy 10.6.1 be deleted and replaced with:

“10.6.1 *Mixed Use Areas “J”* is permitted to be used for residential, commercial, retail uses, parks and open space. Parking within the *decking structure* in *Mixed Use Areas “J”* is permitted.

Policy 10.6.2 is deleted.

Policy 10.6.3 is deleted and replaced with:

“10.6.3 The *decking structure* and development in *Mixed Use Areas “J”* will be implemented in accordance with the Section 13 - SASP XX.”

## **11. IMPLEMENTATION**

No amendments proposed.

## **12. DEFINITIONS**

Policy 12.4 be added as follows:

“12.4 The *decking structure* means the structure developed over the *rail corridor* to support development of the site including all the necessary engineering and structure elements that may or may not extend below the grade level of the *rail corridor*.”

Policy 12.5 be added as follows:

“12.5 *Rail corridor* means the area comprised of the Union Station Rail Corridor (URSC) and the Bathurst North Yard, generally bounded by Front Street West to the north, and the Southern limit of the URSC to the south.”

Policy 12.5 be added as follows:

“12.6 *Spadina-Front GO RER* means the Metrolinx GO Regional Express Rail station serving the Barrie GO Corridor, planned for Spadina Avenue and Front Street West.”

## **AMENDMENTS TO RAILWAY LANDS WEST SECONDARY PLAN**

1. Chapter 6, Section 19, Railway Land West Secondary Plan be amended by:

### **Amendments to Maps**

That Map 19-2 of the Railway Lands West Secondary Plan be amended as shown on Attachment 3, by removing the Pedestrian Rail Corridor Bridge symbol.

That Map 19-3 of the Railway Lands West Secondary Plan be amended as shown on Attachment 4, by redesignating *Utility Corridors* to *Mixed Use Areas* “K”.

That Map 19-4 of the Railway Lands West Secondary Plan be amended as shown on Attachment 5, by removing the Pedestrian Corridor Bridge symbol, as shown on Attachment 10 and by adding the following street names:

Queens Wharf Road;

Capreol Court; and

Telegram Mews.

That Map 19-5 of the Railway Lands West Secondary Plan be amended as shown on Attachment 6, by replacing *Future Development Area* with SASP XX, and by adding the following street names:

Queens Wharf Road;

Capreol Court; and

Telegram Mews.

That the following policies in Section 19 be amended:

### **1. INTERPRETATION**

Policy 1.2 be deleted and replaced with:

“1.2 The boundaries of the Railway Lands West and the areas designated *Mixed Use Areas* “A”, “B”, “C”, “D”, “E”, “F”, “G”, “H”, “I”, “J”, and “K”, and *Parks and Open Space Areas* are shown on Map 19-3 and are approximate. Where the general intent of this

Secondary Plan is maintained, minor adjustments to such boundaries will not require amendment to this Secondary Plan.”

## **2. MAJOR OBJECTIVES FOR THE RAILWAY LANDS WEST**

Policy 2.6 be added:

“2.6 Policies in Section 10.3.2 of the Railway Lands West Secondary Plan previously identified an area as Future Development Area. These policies encouraged future decking over the rail corridor. The purpose of this designation, according to Policy 10.3.2 of the Secondary Plan, is to provide for a comprehensive study or studies to evaluate various land uses and decking considerations to be included with future applications to amend this Plan. The decking creates the platform over which all forms of urban development (residential, commercial, office, institutional, public parkland, and open space) occur. Section 14 - SASP XX amends these former policies of Section 10.3.2 of this Plan by providing area specific policies based on the comprehensive studies filed in support of the Official Plan Amendment for this SASP area.”

Policy 2.7 be added:

“2.7 Development on the *decking structure* over the *rail corridor* in *Mixed Use Areas “K”* will be designed in accordance with the policies of Section 14 - SASP XX.

## **3. STRUCTURE, FORM AND PHYSICAL AMENITY**

Policy 3.1 (c) be amended by deleting the word “and” at the end of the policy and replacing it at the end of policy 3.1 (d), and that policy 3.1 (e) be added:

“3.1 (e) commercial, office, institutional, residential, public park and open space uses on the *decking structure* over the existing and continuing active *rail corridor* between Bathurst Street and Spadina Avenue.”

Policy 3.3 (b) be deleted and replaced with:

“3.3 (b) Where the street pattern will not extend through the new development on the *decking structure* in *Mixed Use Area “K”*, the sidewalks are directly linked to pedestrian connections established in the development, including the parks and open space system over the *rail corridor*, and that these pedestrian connections are designed as extensions of the public sidewalks;”

Policy 3.6 be amended by adding Policy 3.6(a), following Policy 3.6:

“a) All parking and/or loading provided in association with development on the *decking structure* in *Mixed Use Areas “K”* may be located above and/or below the surface of the *decking structure*, provided that any parking above the *decking structure* will be enclosed such that parked vehicles will not be visible from the public realm and vehicular access to this parking and/or loading will be designed in a manner which minimizes its impact on streets, public parks, open spaces, pedestrian walkways and other land uses. Surface commercial parking lots will not be permitted.”

#### **4. HOUSING GOALS**

Policy 4.6 be added as follows:

“4.6 *Within Mixed Use Areas “K”* housing will be implemented in accordance with Section 14 – SASP XX.”

#### **5. SCHOOLS AND COMMUNITY SERVICES AND FACILITIES**

Policy 5.12 be added as follows:

“5.12 New development on the *decking structure* in *Mixed Use Areas “K”* will provide an appropriately sized and located licensed day care centre.”

#### **6. PARKS, OPEN SPACE, AND PEDESTRIAN SYSTEMS**

Policy 6.1 be amended by adding Policies 6.1(a) following Policy 6.1, as follows:

“a) The linked system of parks and publicly accessible open space in *Mixed Use Areas “K”*, will be determined in accordance with the policies of Section 14 - SASP XX.”

Policy 6.7 (a) be added as the last sentence of Policy 6.7:

“In *Mixed Use Areas “K”*, the parks, open space and pedestrian systems will be determined in accordance with the policies of Section 14 - SASP XX.”

#### **7. HERITAGE AND PUBLIC ART**

Policy 7.6 be added:

“7.6 The provision of Public Art in *Mixed Use Areas “K”* will be subject to the policies of Section 14 - SASP XX. The existing pedestrian rail corridor bridge, known as Puente de Luz, which is identified as public art, may be removed, relocated and reinstalled, subject to the approval of the City. All other existing public art that may be affected by the construction of the *decking structure* and/or the new development in *Mixed Use Areas “K”*, shall be removed, relocated and reinstalled within the Railway Lands West Secondary Plan area, subject to the approval of the City.”

#### **8. TRANSPORTATION AND CIRCULATION**

Policy 8.2.5 be deleted and replaced with:

“8.2.5 Dan Leckie Way will be extended for vehicle and pedestrian use through the Railway Lands West, as shown on Map 19-2, by intersecting fully with Lake Shore Boulevard West and terminating at a potential entrance of a new parking facility north of Ice Boat Terrace in *Mixed Use Areas “K”*. Additional potential vehicle parking facility and/or loading entrances north of Ice Boat Terrace will be provided opposite the terminus of Telegram Mews and Capreol Court, as shown on Map 19-4.”

Policy 8.2.7 be added:

“8.2.7 A new vehicle servicing entrance for rail yard service purposes will be permitted in *Mixed Use Areas “K”* from Front Street West, between the intersections of Bathurst Street and Portland Street.”

Policy 8.3.1 be deleted and replaced with:

“8.3.1 The City will secure appropriate connections and pedestrian links as part of the development of *Mixed Use Areas “K”*, in accordance with Section 14 - SASP XX.

Policy 8.4.1 (a) be deleted and replaced with:

“8.4.1(a) Regional Metrolinx commuter services will continue to be incorporated in the *rail corridor*, and a new GO station has been identified by Metrolinx as the *Spadina-Front GO RER Station* in *Mixed Use Areas “A” of the Railway Lands Central Secondary Plan*, in the vicinity of the Front Street West and Spadina Road intersection.”

Policy 8.5 title be deleted and replaced with:

“8.5 Railway Uses in the *Mixed Uses Areas “K”*”

Policy 8.5.1 be deleted and replaced with:

“8.5.1 The *rail corridor* is intended to remain in its present location and will continue to operate below the *decking structure* in *Mixed Use Areas “K”*. Union Station will continue to function as a major regional transportation terminal, and all rail facilities, including the High Line freight by-pass, should continue to operate within the width of the *rail corridor* and/or below the *decking structure* in *Mixed Use Areas “K”*.”

Policy 8.5.3 to be deleted and replaced with:

“8.5.3 Development adjacent to the *rail corridor* and on the *decking structure* in *Mixed Use Areas “K”* will respect the physical configuration of the *rail corridor* and its current and future operation, including minimum clearance height, approaches, access, easements and emergency access both during and subsequent to development and construction. The construction of the *decking structure* and development in *Mixed Use Areas “K”* shall be in accordance with the policies of Section 14 - SASP XX. ”

## **9. ENVIRONMENT**

Policy 9.2 be deleted and replaced with:

“9.2 The Environmental Report referred to in Section 9.1 will be prepared by the proponents in consultation with the City, the Local Board of Health, and the Ministry of the Environment and Climate Change. In *Mixed Use Areas “K”*, the proponent will also consult with Metrolinx and CN Railway Company or their successors and assigns. The safeguards and measures set out in the Environmental Report will be secured through an Environmental Agreement submitted pursuant to Section 11.6 of this Secondary Plan.

For the purposes of this Secondary Plan, an Environmental Agreement means an agreement containing provisions sufficient to ensure that the safeguards and measures set out in the Environmental Report are adequately secured and in addition, will specify that the owner will provide appropriate warning clauses to prospective purchasers and lessees of each dwelling unit within 300 metres of the *rail corridor* in the Secondary Plan area, including *Mixed Use Areas “K”*, regarding possible noise, vibration and/or air quality impacts associated with existing and future freight and passenger rail and regional rail and public transit uses in the *rail corridor*.”

Policies 9.1, 9.3 and 9.4 are amended as follows:

Replace “Ministry of the Environment and Energy” with “Ministry of the Environment and Climate Change”.

## **10. LAND USE DISTRICTS AND DENSITY**

Policy 10.1 be deleted and replaced with:

“10.1 The Railway Lands West will be developed with a wide range of uses including commercial, retail, residential, institutional, cultural, recreational, parks, open spaces, and retail. The area fronting on Spadina Avenue is a predominantly commercial/residential area to be developed at relatively high densities. The area west of the Spadina Avenue blocks, and south of the *rail corridor* to Bathurst Street is a medium density residential area with parks.

*Mixed Use Areas “K”* shall be implemented in accordance with Section 14 - SASP XX.

The intersection of Spadina Avenue and Fort York Boulevard will become a focus for the Railway Lands West, and its development will provide for the integration of proposed transit lines with high standards of urban design and pedestrian amenity.”

Policy 10.3 be deleted in its entirety and replace with:

“10.3 Precinct ‘6’

Comprehensive decking of the *rail corridor* in *Mixed Use Areas “K”*, between Spadina Avenue and Bathurst Street is necessary to enable the land uses permitted by this Secondary Plan to be implemented. The *decking structure* may be phased and will be part of a comprehensive decking project involving that part of the Railway Lands West and the Railway Lands Central Secondary Plans, in accordance with Section 14 - SASP XX.”

The title of Policy 10.3.1 and policy 10.3.1 be deleted in its entirety and replaced with:

“10.3.1 *Mixed Use Areas “K”*

The construction of the *decking structure*, and development in, *Mixed Use Areas “K”*, shall be in accordance with the policies of Section 14 – SASP XX.”

Policy 10.3.2 be deleted in its entirety.

## **11. DEVELOPMENT REQUIREMENTS AND STRATEGY**

No amendments proposed.

## **12. IMPLEMENTATION**

No amendments proposed.

## **13. DEFINITIONS**

Policy 13.11 is added as follows:

“13.11 The *decking structure* means the structure developed over the *rail corridor* to support development of the site including all the necessary engineering and structure elements that may or may not extend below the grade level of the *rail corridor*.”

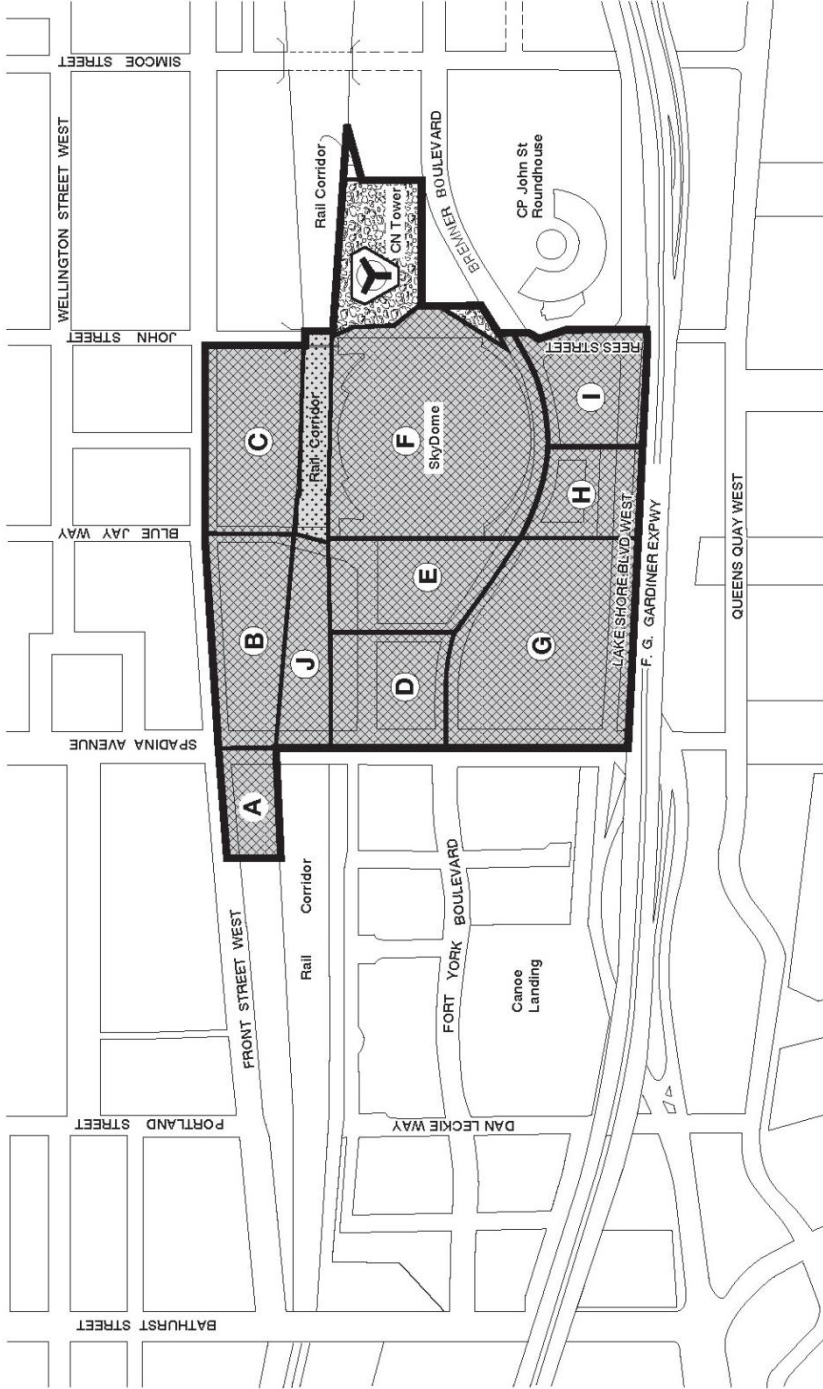
Policy 13.12 is added as follows:

“13.12 *Rail corridor* means the area comprised of the Union Station Rail Corridor (URSC) and the Bathurst North Yard, generally bounded by Front Street West to the north, and the Southern limit of the URSC to the south.”

Policy 13.13 is added as follows:

13.13 *Spadina-Front GO RER* means the Metrolinx GO Regional Express Rail station serving the Barrie GO Corridor, planned for Spadina Avenue and Front Street West.

# Attachment 1



City Planning

## Official Plan Amendment Attachment 1

Revisions to Map 18-3 Land Use Plan of the Railway Lands Central Secondary Plan

Lands Bounded by Front Street West, Bathurst Street, Northern Linear Park,  
Blue Jays Way and the Rail Corridor

Secondary Plan Boundary

Mixed Use Areas

Utility Corridors

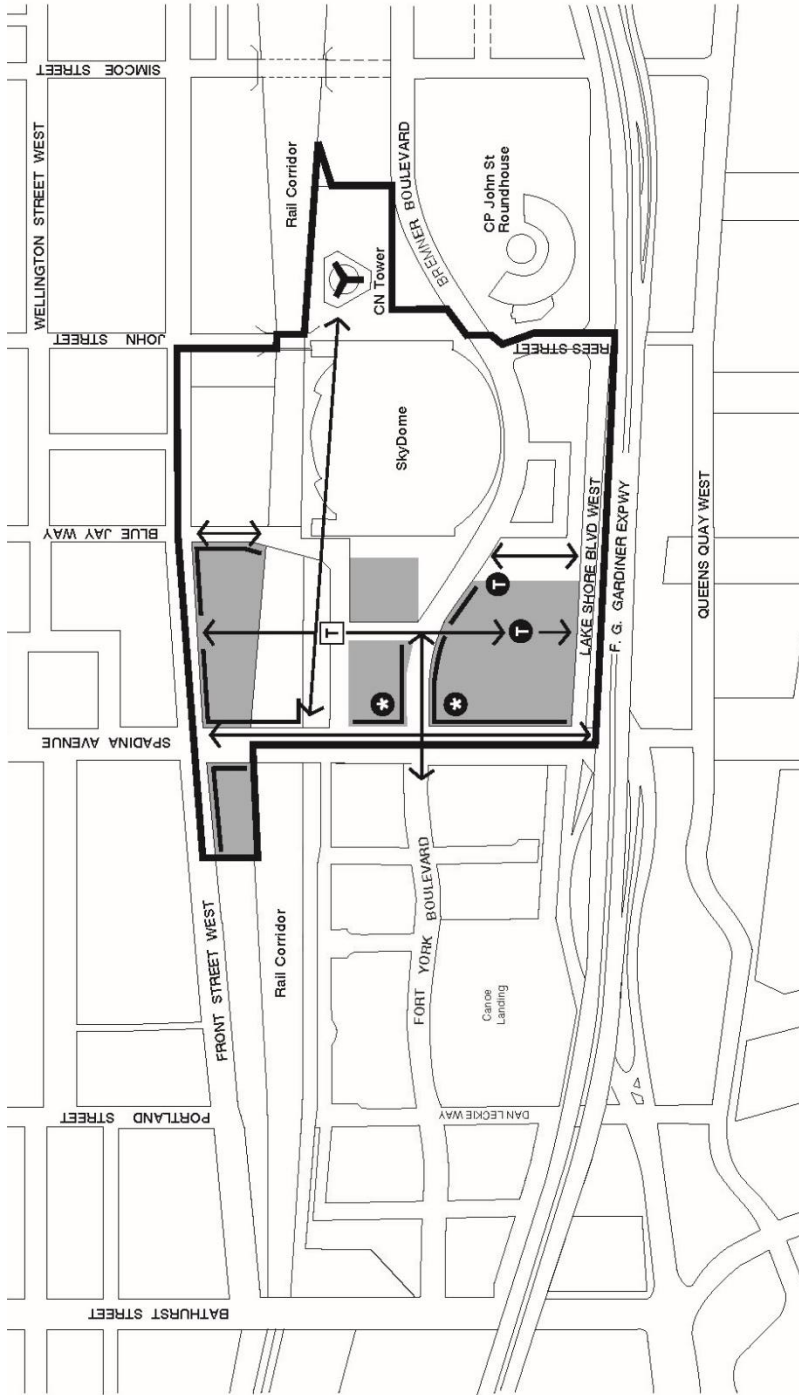
Parks and Open Space Areas



Not to Scale  
July 2020



## Attachment 2



City Planning

## Official Plan Amendment Attachment 2

Revisions to Map 18-6 Urban Structure Plan of the Railway Lands Central Secondary Plan

Lands Bounded by Front Street West, Bathurst Street, Northern Linear Park,  
Blue Jays Way and the Rail Corridor

Secondary Plan Boundary

Significant Intersection

Existing View Terminus

Potential View Terminus

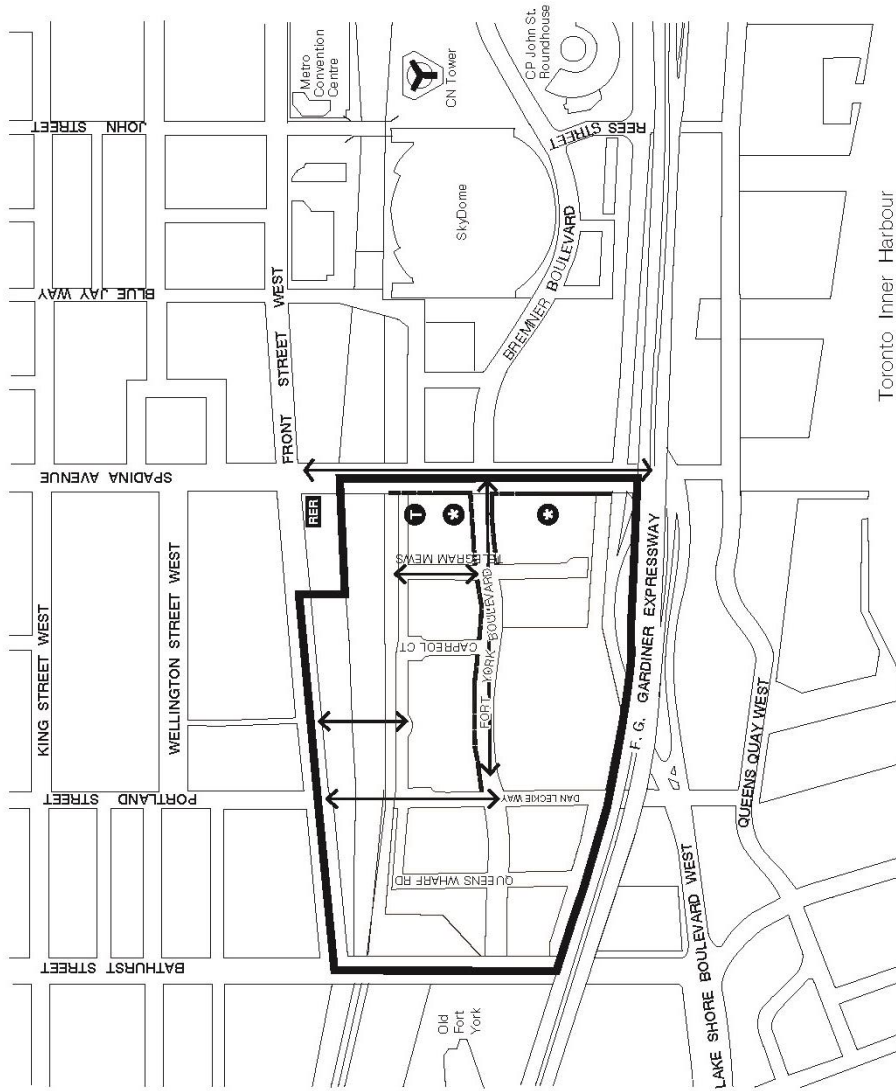
Significant Street Edge

Significant City Waterfront Views and Vistas

Special Policy Lands

Not to Scale  
July 2020

Attachment 3

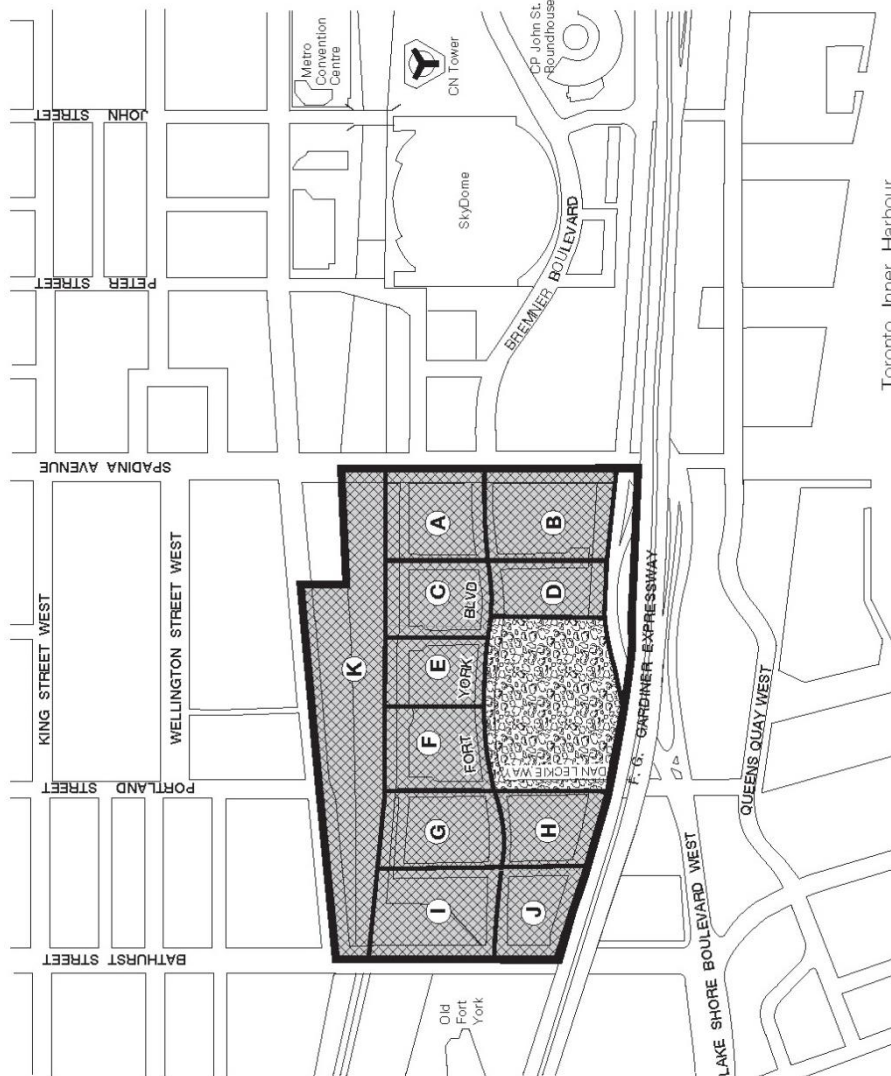


**Toronto** City Planning  
**Official Plan Amendment Attachment 3**  
 Revisions to Map 19-2 Urban Structure Plan of the Railway Lands West Secondary Plan

- Secondary Plan Boundary
- ↔ Significant City and Waterfront Views and Vistas
- ⌈ Significant Street Edge
- \* Significant Intersection
- T Potential View Terminus
- RRR Future Spadina-Front RRR Station

↑  
 Not to Scale  
 July 2020

# Attachment 4



## Official Plan Amendment Attachment 4

Revisions to Map 19-3 Land Use Plan of the Railway Lands West Secondary Plan

Secondary Plan Boundary

Mixed Use Areas

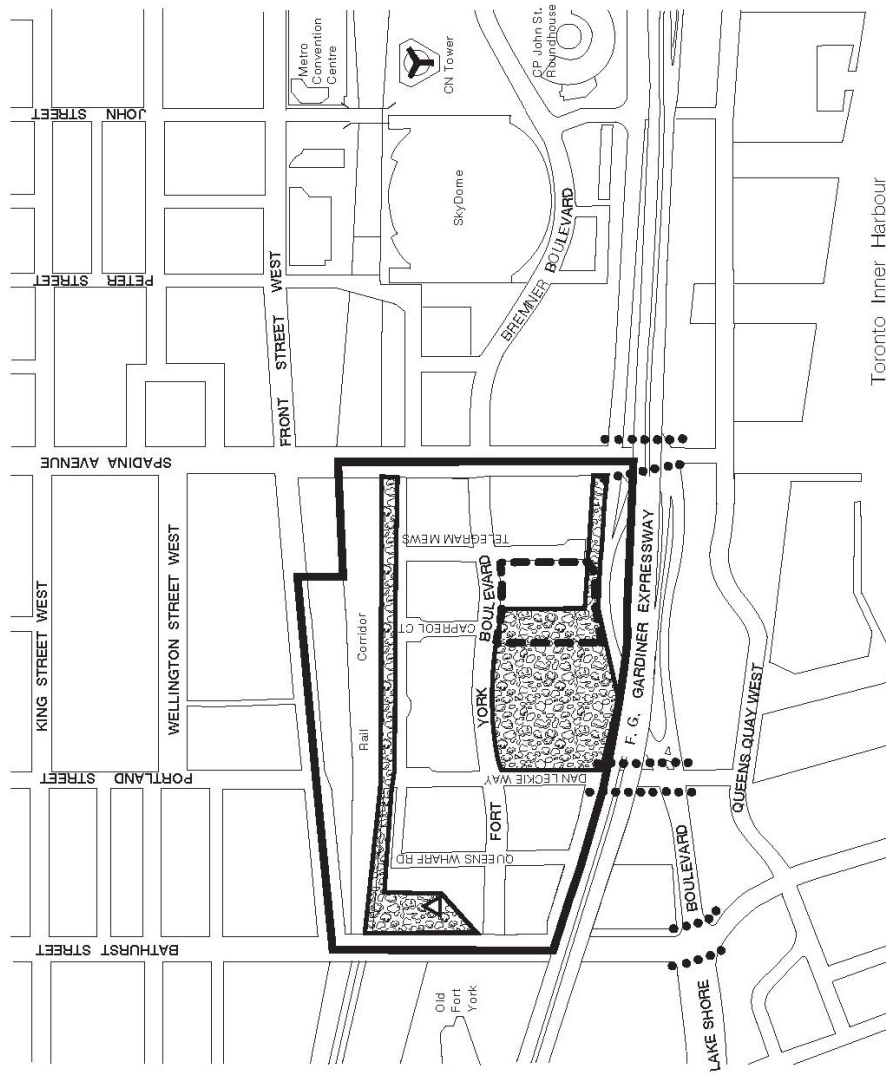
Parks and Open Space Areas

Lands Bounded by Front Street West, Bathurst Street, Northern Linear Park,  
Blue Jays Way and the Rail Corridor



Not to Scale  
July 2020

## Attachment 5



City Planning

## Official Plan Amendment Attachment 5

Revisions to Map 19-4 Parks and Open Space Plan of the Railway Lands West Secondary Plan

Lands Bounded by Front Street West, Bathurst Street, Northern Linear Park,  
Blue Jays Way and the Rail Corridor

— Secondary Plan Boundary

▨ Lands to be Leased or Conveyed to the City for Parks Purposes

-- General Location for Community Centre and Schools

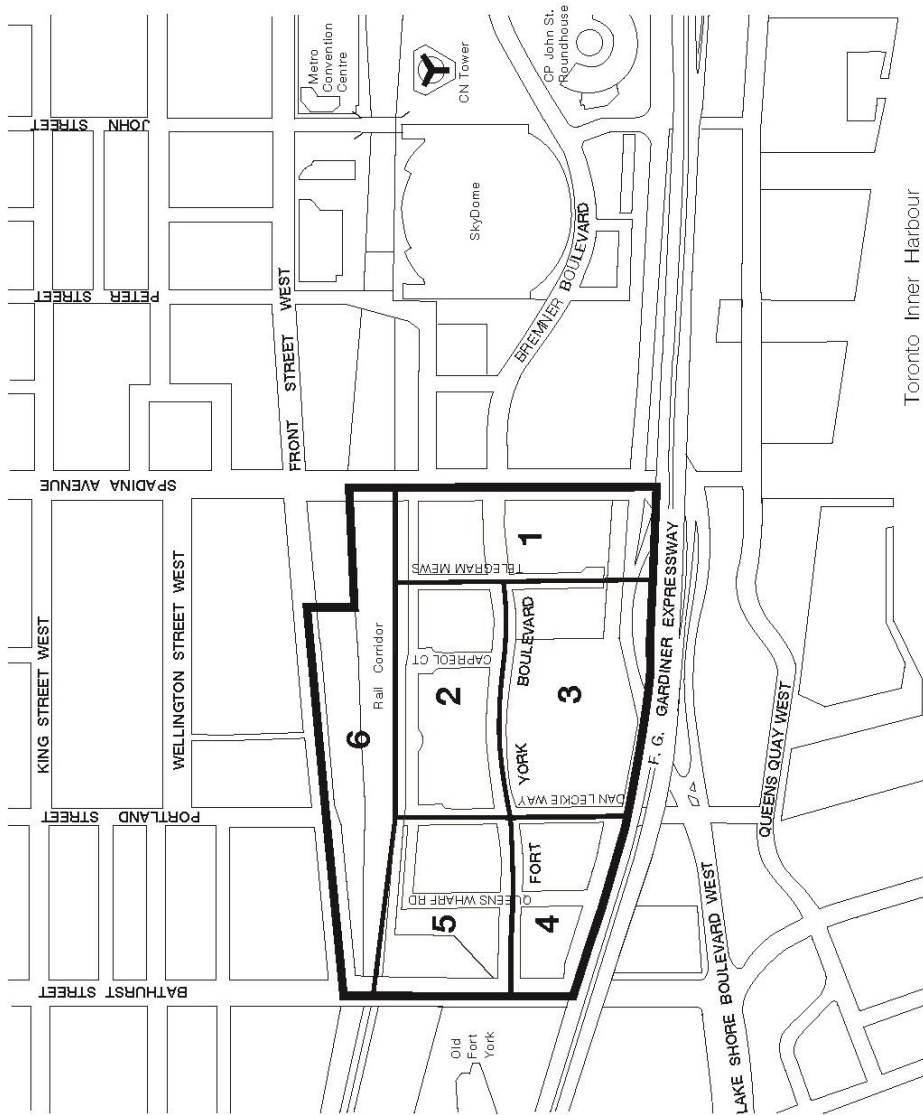
••• Improved At-Grade Pedestrian Routes

△ Proposed Garrison Creek Interpretive Area



Not to Scale  
July 2020

## Attachment 6



City Planning

## Official Plan Amendment Attachment 6

Revisions to Map 19-5 Precincts Plan of the Railway Lands West Secondary Plan

Lands Bounded by Front Street West, Bathurst Street, Northern Linear Park,  
Blue Jays Way and the Rail Corridor

Secondary Plan Boundary

Precinct Areas

1



Not to Scale  
July 2020

## **ADDENDUM B**

**[SAFDIE / PWP CONCEPT PLAN EXCERPTS = separate PDF]**

**ADDENDUM C**  
**INDEX TO JOINT DOCUMENT BOOK OF THE PARTIES**

PL180211

## **LOCAL PLANNING APPEAL TRIBUNAL**

**Tribunal d'appel de l'aménagement local**

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

|                               |   |
|-------------------------------|---|
| Applicant and Appellant:      | CRAFT Acquisitions Corporation and<br>P.I.T.S. Developments Inc.  |
| Subject:                      | Request to amend the City of Toronto<br>Official Plan, Railway Lands West<br>and Central Secondary Plans – Neglect<br>or Refusal of request by the City of<br>Toronto |
| Existing Designation:         | Utility Corridors and Parks on Map 18<br>– Land Use Plan  |
| Proposed Designated:          | Site Specific (To be determined)  |
| Purpose:                      | To permit a large-scale mixed-use<br>development with a major park and<br>open space component over the<br>railway corridor   |
| Property Address/Description: | Railway Lands between Bathurst<br>Street and Blue Jays Way  |
| Municipality:                 | City of Toronto   |
| Approval Authority File No.:  | 17 164359 STE 20 OZ   |
| OMB Case No.:                 | PL180211  |
| OMB File No.:                 | PL180211  |
| OMB Case Name:                | CRAFT Acquisitions Corporation v.<br>Toronto (City)   |

# Joint Document Book

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Representative for Grange Community  
Association Inc. (“Grange”)

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| 148.       | 495-517 Wellington Street West and 510-532 Front Street West:<br><br>A) Final Staff Report (June 14, 2018)<br>B) Zoning By-law Amendment (592-2019)<br>C) Zoning By-law Amendment (593-2019)  | 11,226      |
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| 150.       | 2161 Lakeshore Boulevard West Traffic Impact Study (August 2014)  | 11,368      |
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| 174. | Metrolinx Volume 2 – Spadina-Front GO Station Design and Technical Studies, Appendix I [Transportation Brief] (November August 2018) | 13,969 |
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| 192.       | Greater Golden Horseshoe Area Conservation Authorities Erosion and Sedimentation Control Guidelines for Urban Construction (December 2006) | 17,652      |
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## ADDENDUM D

### EXHIBIT LIST [PL180211]

| <u>No.</u> | <u>Description</u>   | <u>Filed By</u> | <u>Date</u>    |
|------------|--|-----------------|----------------|
|            | <b>FOR THE HEARING COMMENCING<br/>(November 2, 2020) – Phases II and III</b>   |                 |                |
| <b>1.</b>  | <p>Joint Document Book</p> <ul style="list-style-type: none"> <li>a) Volume 1- Legislation, Policy Documents, Plans &amp; By-Laws</li> <li>b) Volume 2- Guidelines &amp; Standards</li> <li>c) Volume 3- Strategies &amp; Studies (Part I)</li> <li>d) Volume 4- Strategies &amp; Studies (Part II)</li> <li>e) Volume 5- 2017 Application Material-<br/><b>Not printed</b></li> <li>f) Volume 6- 2020 Application Material<br/>(For witnesses being called in chief)</li> <li>g) Volume 7- 2020 Application Material<br/>(For witnesses <u>not</u> being called in chief)-<br/><b>Not Printed</b></li> <li>h) Volume 8- Staff Reports, City &amp; Agent Comments</li> <li>i) Volume 9- Rail Deck Park OPA 395</li> <li>j) Volume 10- Other Developments (Part I)</li> <li>k) Volume 11- Other Developments (Part II)</li> <li>l) Volume 12- LPAT Materials</li> <li>m) Volume 13- Transportation Reports, Plans &amp; Guidelines</li> <li>n) Volume 14- Servicing Manuals, Standards, Plans, &amp; Guidelines (Part I)</li> <li>o) Volume 15- Servicing Manuals, Standards, Plans, &amp; Guidelines (Part II)</li> <li>p) Volume 16- Miscellaneous</li> </ul> | CRAFT &<br>CITY | Nov. 2<br>2020 |

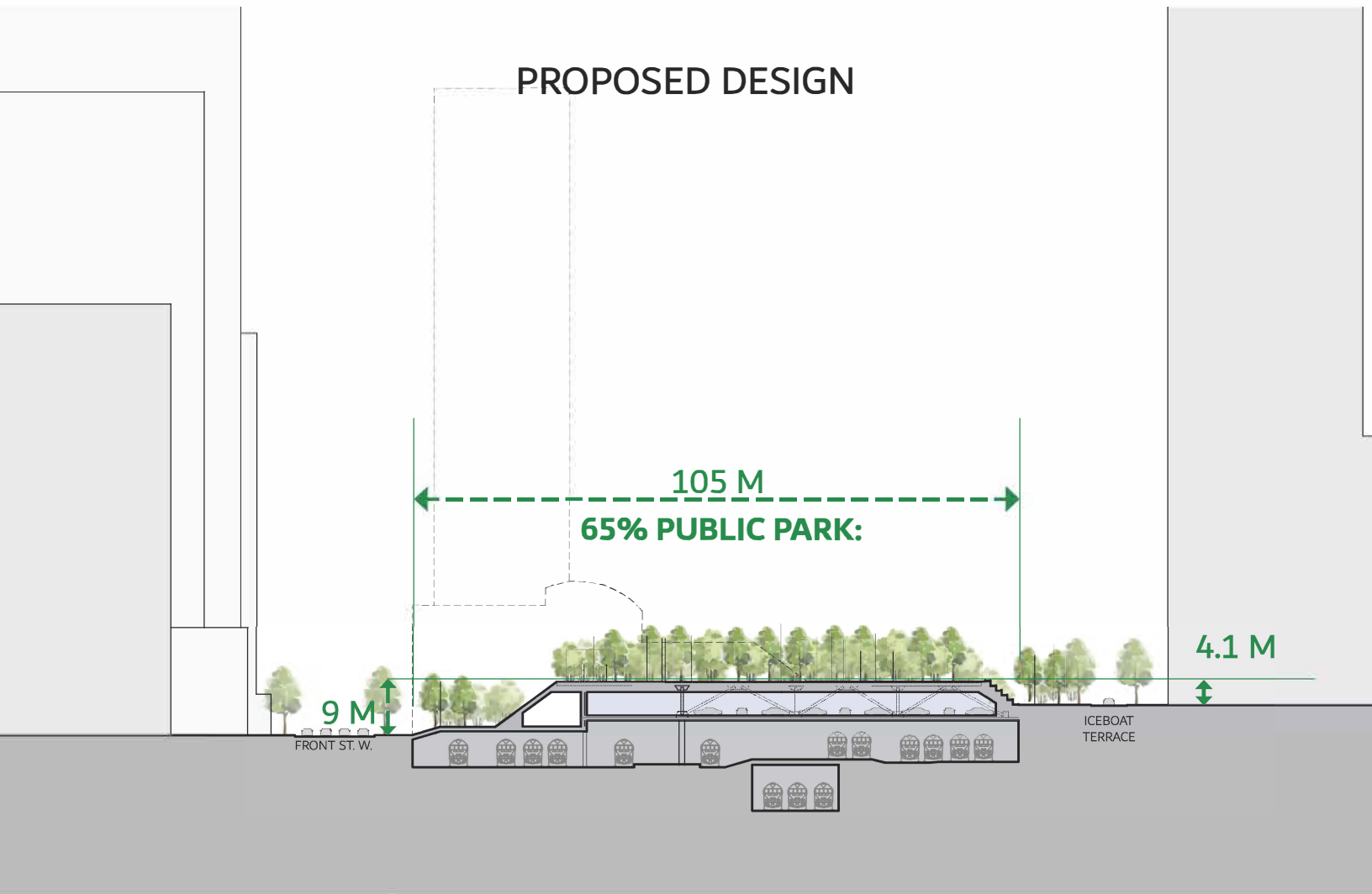
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| 3.  | CRAFT Visual Evidence  | CRAFT | Nov. 2<br>2020   |
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| 11. | City Submissions on Motion Re: City's Evidence   | CITY  | Jan. 19<br>2021  |
| 12. | John Gladki CV   | CITY  | Jan. 25<br>2021  |
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| 16. | Toronto Municipal Code<br><b>Password for Bake #2: P2Up1T\$A</b>   | CRAFT | Jan. 27,<br>2021 |
| 17. | Toronto By-Law #1985-0612 (Railway Lands)<br><b>Password for Bake #3: w*plS&amp;E1</b>                   | CRAFT | Jan. 27,<br>2021 |

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| 25. | Toronto Star article (October 4, 2007) Quoting John Mende<br><b>Password for Mende #2: KVe67!k4</b>                                      | CRAFT | Feb. 1 2021   |
| 26. | "The car is no longer king!" prepared by John Mende 2008<br><b>Password for Mende #3: YnVT??89</b>                                       | CRAFT | Feb. 1 2021   |
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| 29. | Planning Partnership Website<br><b>Password for Leinster #1: pHeCr-z1</b>  | CRAFT | Feb. 5 2021   |

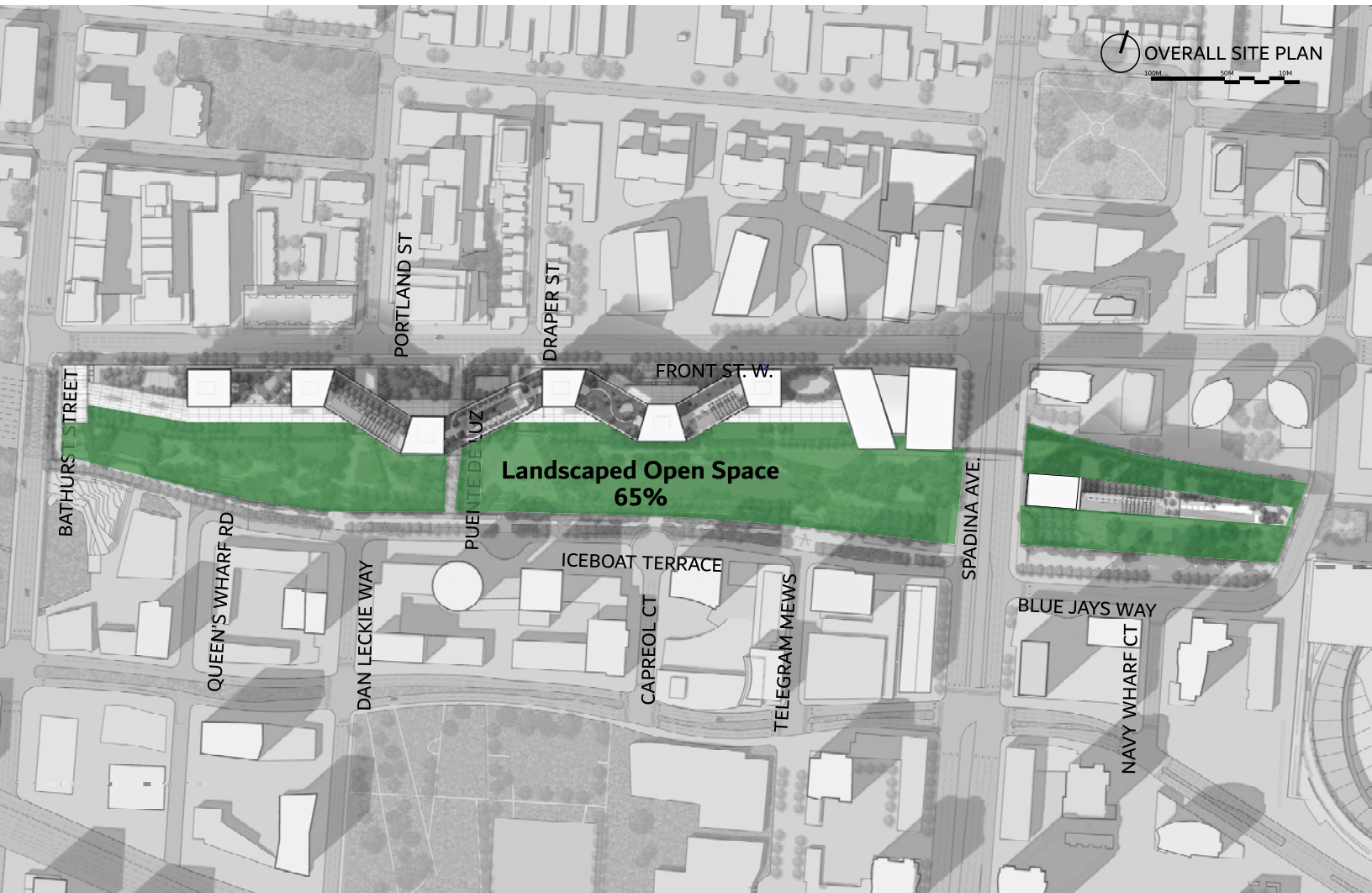
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| 31. | The Guardian Article "Horror on the Hudson"<br>(April 9 2019)<br><b>Password for Bagley and Bogdanowicz 2: 8?tBs!6F</b>  | CRAFT | Feb. 5,<br>2021 |
| 32. | Images of Mouth of the Creek Park<br><b>Password for Bagley and Bogdanowicz 7:<br/>+?tBe675</b>  | CRAFT | Feb. 8,<br>2021 |
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| 36. | Photo of Canada Malting Plant<br><b>Password for Bagley and Bogdanowicz 9:<br/>H@n7F?4f</b>  | CRAFT | Feb. 8,<br>2021 |
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| 41. | Email exchange between John Krpan and David Moyle (November 2020)<br><br><b>Password for Moyle #3: 8Ft2?6JG</b>  | CRAFT | Feb. 9, 2021  |
| 42. | Toronto Waterfront Sanitary Servicing Master Plan 2017 Update Report<br><br><b>Password for Moyle #1: M8?3g6eT</b>   | CRAFT | Feb. 9, 2021  |
| 43. | Email from Heather Oliver cc'd to Susan McAlpine and Lynda MacDonald (August 4 <sup>th</sup> 2017)<br><br><b>Password for McAlpine and MacDonald #3: Plb6l-\$C</b> | CRAFT | Feb. 11, 2021 |
| 44. | Email from Heather Oliver to Susan McAlpine and Lynda MacDonald (September 11, 2017)<br><br><b>Password McAlpine and MacDonald #4: qup3ab+B</b>                    | CRAFT | Feb. 11, 2021 |
| 45. | Email from Heather Oliver cc'd to Susan McAlpine (July 28, 2017)<br><br><b>Password McAlpine and MacDonald #6: S4u\$opHL</b>                                       | CRAFT | Feb. 11, 2021 |
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## ADDENDUM B











PARK FROM ICEBOAT TERRACE





OVERALL SITE PLAN













# **LOCAL PLANNING APPEAL TRIBUNAL**

## **Tribunal d'appel de l'aménagement local**

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

|                                 |   |
|---------------------------------|---|
| Applicant and Appellant:        | CRAFT Acquisitions Corporation and P.I.T.S. Developments Inc.   |
| Subject:                        | Request to amend the City of Toronto Official Plan, Railway Lands West and Central Secondary Plans –Neglect or Refusal of request by the City of Toronto                                      |
| Existing Land Use Designations: | Utility Corridors, Parks and Mixed-Use Areas on Map 18-Land Use Plan (Comment: The application proposes to amend the RWL Central and West Secondary Plans Land Use Maps not Map 18)           |
| Proposed Land Use Designations: | Site Specific (To be determined) (Comments: The application proposes to change the land use designations in the RWL Central and West Secondary Plans to Mixed Use Areas and Open Space Areas) |
| Purpose:                        | To permit a large-scale mixed-use development with residential, office, retail, and open space uses over the railway corridor   |
| Property Address/Description:   | Railway Lands Between Bathurst Street and Blue Jays Way   |
| Municipality:                   | City of Toronto   |
| Municipality File No.:          | 17 164359 STE 20 OZ   |
| LPAT Case No.:                  | PL180211  |
| LPAT File No.:                  | PL180211  |
| LPAT Case Name:                 | CRAFT Acquisitions Corporation v. Toronto (City)  |

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## **Joint Document Book**

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Representative for Grange Community  
Association Inc. (“**Grange**”)

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| 193.       | City of Toronto Infoworks CS Basement Flooding Model Studies Guideline, version 1.02 (October 2014)  | 17,797      |
| 194.       | Water supply for Public Fire Protection (1999)   | 17,938      |
| 195.       | Toronto Municipal Code Chapter 681, Sewers   | 17,962      |
| 196.       | F-5-5 Determination of Treatment Requirements for Municipal & Private Revision (June 2019)   | 18,020      |

| VOLUME 16          |  |        |
|--------------------|--|--------|
| MISCELLANEOUS      |  |        |
| TAB                | DOCUMENT DESCRIPTION   | PAGE   |
| 197.               | ULI Urban Open Space Awards Finalist: Salesforce Park, San Francisco, California (August 17, 2020)   | 18,028 |
| 198.               | City of Toronto Retail Design Manual (December 2019)   | 18,033 |
| 199.               | City of Toronto Development Guide Terms of Reference: Pedestrian Level Wind Study  | 18,089 |
| 200.               | Toronto Green Standard Version 3 (2018)  | 18,093 |
| 201.               | CPTED, Toronto Police Brochure   | 18,100 |
| HERITAGE DOCUMENTS |  |        |
| 202.               | Victoria Square Historical Listing   | 18,102 |
| 203.               | King-Spadina Heritage Conservation District Plan (June 2017)   | 18,104 |
| 204.               | Union Station Heritage Conservation District Plan (2006)   | 18,291 |
| 205.               | Waterfront Culture and Heritage:<br><br>A) Plan (2001) [Adopted by City Council December 4-6, 2001]<br>B) Staff Report (September 28, 2001) [Adopted by City Council December 4-6, 2001] | 18,365 |
| 206.               | Draper Street Heritage Conservation District:<br><br>A) Study (1998)<br>B) Designation By-law 26-1999 [Adopted by City Council February 4, 1999]   | 18,440 |
| 207.               | Fort York Heritage Conservation District:<br><br>A) Fort York Heritage Conservation District Study (1984)<br>B) HCD By-law 420-85<br>C) Expansion By-law 541-2004                        | 18,506 |

|      |  |        |
|------|--|--------|
|      | D) Fort York Commemorative Integrity Statement (March 2004)  |        |
| 208. | 25 Clarence Square:<br><br>A) Designation By-law 713-2017<br>B) Statement of Significance  | 18,570 |
| 209. | 5 Eireann Quay – Canada Malting Complex Designation By-law 32-2011   | 18,579 |
| 210. | 495-517 Wellington Street West Designation<br><br>A) By-law 758-1979 [Passed by City Council September 17, 1979]<br>B) Amendment to By-law 758-1979: By-law 14-2019 [Adopted by City Council July 23-30, 2018] | 18,584 |

## ADDENDUM D

### EXHIBIT LIST [PL180211]

| <u>No.</u> | <u>Description</u>   | <u>Filed By</u> | <u>Date</u> |
|------------|--|-----------------|-------------|
|            | <b>FOR THE HEARING COMMENCING (November 2, 2020)</b>   |                 |             |
|            |  |                 |             |
| <b>1.</b>  | Joint Document Book <ul style="list-style-type: none"><li>a) Volume 1- Legislation, Policy Documents, Plans &amp; By-Laws</li><li>b) Volume 2- Guidelines &amp; Standards</li><li>c) Volume 3- Strategies &amp; Studies (Part I)</li><li>d) Volume 4- Strategies &amp; Studies (Part II)</li><li>e) Volume 5- 2017 Application Material- <b>Not printed</b></li><li>f) Volume 6- 2020 Application Material (For witnesses being called in chief)</li><li>g) Volume 7- 2020 Application Material (For witnesses <u>not</u> being called in chief)- <b>Not Printed</b></li><li>h) Volume 8- Staff Reports, City &amp; Agent Comments</li><li>i) Volume 9- Rail Deck Park OPA 395</li><li>j) Volume 10- Other Developments (Part I)</li><li>k) Volume 11- Other Developments (Part II)</li><li>l) Volume 12- LPAT Materials</li><li>m) Volume 13- Transportation Reports, Plans &amp; Guidelines</li><li>n) Volume 14- Servicing Manuals, Standards, Plans, &amp; Guidelines (Part I)</li><li>o) Volume 15- Servicing Manuals, Standards, Plans, &amp; Guidelines (Part II)</li></ul> | CRAFT & CITY    | Nov. 2 2020 |

|     |  |  |       |               |
|-----|--|--|-------|---------------|
|     | p) Volume 16- Miscellaneous  |  |       |               |
| 2.  | Compendium of CRAFT/ P.I.T.S Witness and Reply Witness Statements  |  | CRAFT | Nov. 2 2020   |
| 3.  | CRAFT Visual Evidence  |  | CRAFT | Nov. 2 2020   |
| 4.  | CRAFT Scale Model  |  | CRAFT | Nov. 2 2020   |
| 5.  | City Visual Evidence   |  | CITY  | Nov. 2 2020   |
| 6.  | Compendium of City Witness and Reply Witness Statements  |  | CITY  | Nov. 2 2020   |
| 7.  | Sweeney VE (November 9 2020) Shadow Study Angle Comparison   |  | CRAFT | Nov. 9 2020   |
| 8.  | Transportation Diagrams (Fig 2-15; 5-6; 7-8)   |  | CRAFT | Nov. 13 2020  |
| 9.  | OPA with Modifications   |  | CRAFT | Nov. 24 2020  |
| 10. | Craft Submissions on Motion Re: City's Evidence  |  | CRAFT | Jan. 19 2021  |
| 11. | City Submissions on Motion Re: City's Evidence   |  | CITY  | Jan. 19 2021  |
| 12. | John Gladki CV   |  | CITY  | Jan. 25 2021  |
| 13. | Map 18 to City's OP  |  | CITY  | Jan. 25 2021  |
| 14. | By-law 189-2005, Regent Park OPA   |  | CITY  | Jan. 25, 2021 |
| 15. | Gladki chart of updated population and employment forecasts for the three Railway Plans Secondary Plans. |  | CITY  | Jan. 26, 2021 |
| 16. | Toronto Municipal Code<br><b>Password for Bake #2: P2Up1T\$A</b>   |  | CRAFT | Jan. 27, 2021 |
| 17. | Toronto By-Law #1985-0612 (Railway Lands)<br><b>Password for Bake #3: w*plS&amp;E1</b>                   |  | CRAFT | Jan. 27, 2021 |

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|-----|--|-------|---------------|
| 18. | Email from McAlpine to Bake et al Friday July 28 2017<br><b>Password for Bake #4: H2=Isa#7</b>   | CRAFT | Jan. 27, 2021 |
| 19. | Various images of City's Rail Deck Park<br><b>Password for Bake #5: +-sPuVu5</b>   | CRAFT | Jan. 27, 2021 |
| 20. | Toronto Star Article RE: Elevated Parks (July 7, 2019)<br><b>Password for Bake #6: ??hLz93R</b>  | CRAFT | Jan. 27, 2021 |
| 21. | Toronto OPA 476 (Don Mills and Sheppard)<br><b>Password for Bake #0: Huy??xTG</b>  | CRAFT | Jan. 27, 2021 |
| 22. | Andrea Bake comment (June 23, 2020) on May 2020 CRAFT OPA  | CRAFT | Jan. 28, 2021 |
| 23. | McMillan response to Safdie contention regarding lowering of the decking structure by 1m   | CITY  | Jan. 29 2021  |
| 24. | Mende Transportation Impact Study (June 4, 2020)<br><b>Password for Mende #1: B?rL+RE5</b>   | CRAFT | Feb. 1 2021   |
| 25. | Toronto Star article (October 4, 2007) Quoting John Mende<br><b>Password for Mende #2: KVe67!k4</b>                                      | CRAFT | Feb. 1 2021   |
| 26. | "The car is no longer king!" prepared by John Mende 2008<br><b>Password for Mende #3: YnVT??89</b>                                       | CRAFT | Feb. 1 2021   |
| 27. | Transportation Impact Study (7887 Weston Road, Vaughan) Prepared by John Mende (December 2019)<br><b>Password for Mende #4: +nA42Bb+</b> | CRAFT | Feb. 2 2021   |
| 28. | Curriculum Vitae Of David Leinster   | CITY  | Feb. 2 2021   |

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|-----|---|-------|--------------|
| 29. | Planning Partnership Website<br><b>Password for Leinster #1: pHeCr-z1</b>   | CRAFT | Feb. 5 2021  |
| 30. | Oxford Open Space Zoning- By Law<br><b>Password for Leinster #2: @egoM79+</b>   | CRAFT | Feb. 5, 2021 |
| 31. | The Guardian Article "Horror on the Hudson" (April 9 2019)<br><b>Password for Bagley and Bogdanowicz 2: 8?tBs!6F</b>      | CRAFT | Feb. 5, 2021 |
| 32. | Images of Mouth of the Creek Park<br><b>Password for Bagley and Bogdanowicz 7: +?tBe675</b>                               | CRAFT | Feb. 8, 2021 |
| 33. | Images of 81 Bay St. Sky Park<br><b>Password for Bagley and Bogdanowicz 8: JiX4?s79</b>                                   | CRAFT | Feb. 8, 2021 |
| 34. | (a) City's Witness List served August 4 <sup>th</sup> 2020<br>(b) City's Witness List served August 10 <sup>th</sup> 2020 | CRAFT | Feb. 8, 2021 |
| 35. | Devine Park Letter to LPAT Parties July 23 <sup>rd</sup> 2020   | CRAFT | Feb. 8, 2021 |
| 36. | Photo of Canada Malting Plant<br><b>Password for Bagley and Bogdanowicz 9: H@n7F?4f</b>                                   | CRAFT | Feb. 8, 2021 |
| 37. | Curriculum Vitae Of David Moyle   | CRAFT | Feb. 9, 2021 |
| 38. | Water Service Schematic for Park Amenities (January 2020)<br><b>Password for Moyle #4: 7@MoFV?4</b>                       | CRAFT | Feb. 9, 2021 |
| 39. | Oden Detech Email Exchange with David Moyle (September 16, 2020)<br><b>Password for Moyle #8: ?K59GetV</b>                | CRAFT | Feb. 9, 2021 |

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|-----|--|-------|---------------|
| 40. | Globe and Mail Article "New Toronto Blue Jays Stadium likely to win political support, create more public space" (November 27, 2020)<br><b>Password for Moyle #2: CeUn55@B</b> | CRAFT | Feb. 9, 2021  |
| 41. | Email exchange between John Krpan and David Moyle (November 2020)<br><b>Password for Moyle #3: 8Ft2?6JG</b>  | CRAFT | Feb. 9, 2021  |
| 42. | Toronto Waterfront Sanitary Servicing Master Plan 2017 Update Report<br><b>Password for Moyle #1: M8?3g6eT</b>   | CRAFT | Feb. 9, 2021  |
| 43. | Email from Heather Oliver cc'd to Susan McAlpine and Lynda MacDonald (August 4 <sup>th</sup> 2017)<br><b>Password for McAlpine and MacDonald #3: Plb6l-\$C</b>                 | CRAFT | Feb. 11, 2021 |
| 44. | Email from Heather Oliver to Susan McAlpine and Lynda MacDonald (September 11, 2017)<br><b>Password McAlpine and MacDonald #4: qup3ab+B</b>                                    | CRAFT | Feb. 11, 2021 |
| 45. | Email from Heather Oliver cc'd to Susan McAlpine (July 28, 2017)<br><b>Password McAlpine and MacDonald #6: S4u\$opHL</b>   | CRAFT | Feb. 11, 2021 |