

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



18-112-LPAT-02 Attachment 1

18-114-LPAT-02 Attachment 2

18-114-LPAT-03 Attachment 3

**ISSUE DATE:** April 21, 2020

**CASE NO(S):** PL180548

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

Appellant:	Brown Wharf Development Corp. et al
Appellant:	Fengate Hamilton Lands GP Inc. et al
Subject:	Proposed Official Plan Amendment No. OPA 102
Municipality:	City of Hamilton
LPAT Case No.:	PL180548
LPAT File No.:	PL180548
LPAT Case Name:	Brown Wharf Dev. Corp et al v. Hamilton (City)

**PROCEEDING COMMENCED UNDER** subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	Brown Wharf Development Corp. et al
Appellant:	Fengate Hamilton Lands GP Inc. et al
Subject:	By-law No. BL 18-114
Municipality:	City of Hamilton
LPAT Case No.:	PL180548
LPAT File No.:	PL180549

**Heard:** December 9, 2019 by telephone conference call

**APPEARANCES:****Parties****Counsel**

Fengate Hamilton Lands GP Inc. and LPF Hamilton Lands LP

P. Harrington

City of Hamilton

P. MacDonald

Brown Wharf Development Corp. and Southwest Crossings Limited

R. Minster

**MEMORANDUM OF ORAL DECISION DELIVERED BY SUSAN de AVELLAR SCHILLER ON DECEMBER 9, 2019 AND ORDER OF THE TRIBUNAL****BACKGROUND**

[1] The City of Hamilton (“City”) adopted Official Plan Amendment 102 (“OPA 102”) and Zoning By-law No. 18-114 (“ZBLA”). OPA 102 is the Downtown Secondary Plan and the ZBLA is an amendment to Zoning By-law No. 05-200. Appeals were filed in these matters by various interests. These matters have been the subject of earlier decisions by panels of the Tribunal, differently constituted. The remaining appeals in these matters are entirely site-specific.

[2] The remaining appeals are those of Fengate Hamilton Lands GP Inc. and LPF Hamilton Lands LP (together “Fengate”) and Brown Wharf Development Corp. and Southwest Crossings Limited (together “Brown Wharf”).

[3] This appearance dealt with a settlement between Fengate and the City and set certain directions regarding next steps in dealing with the appeal of Brown Wharf.

[4] The Tribunal was advised that Brown Wharf was in discussions and negotiations with the City to narrow issues in dispute and determine if a settlement might be reached. To provide time for those discussions while moving matters along, Brown Wharf and the City agreed to provide the Tribunal with periodic status updates.

Subsequent to this appearance, the Tribunal has been advised that those discussions continue. Brown Wharf and the City have agreed to continue to keep the Tribunal apprised of the status of those discussions.

## **THE FENGATE SETTLEMENT**

[5] The settlement between Fengate and the City is site-specific to the Fengate lands. On this basis, Brown Wharf advised the Tribunal that it had no objection to the Fengate settlement.

[6] The Tribunal had before it the affidavit of Alissa Mahood in support of the settlement between the City and Fengate. Ms. Mahood is a full Member of the Canadian Institute of Planners and a Registered Professional Planner in the Province of Ontario. She executed the Tribunal's Acknowledgement of Expert's Duty form. The Tribunal was satisfied that Ms. Mahood was qualified to provide the Tribunal with independent expert opinion evidence in land use planning matters.

[7] The Tribunal took in Ms. Mahood's affidavit as Exhibit 1 in this appearance. Her evidence was unchallenged in these proceedings.

[8] The Fengate lands are located at 44 Hughson Street South, 75 James Street South and 9 Jackson Street East. They are within the OPA 102 area in Downtown Hamilton and within the area of the ZBLA. In summary, there were two issues identified by Fengate in its appeals: the policy prohibition on new net shadows on Prince's Square and the height restrictions proposed for the Fengate lands in both OPA 102 and the ZBLA.

[9] The settlement modifies OPA 102 and further amends the ZBLA. Taken together, the changes result in modified maximum building heights and a modified building base façade height that would apply to the Fengate lands. These modifications demonstrate that a 30-storey (94.2 metre) building could be developed along James Street South frontage without resulting in any new net shadow on Prince's Square and while meeting

the requirements of the Downtown Secondary Plan.

[10] The Fengate site is within a major transit station area and within proximity to a priority transit corridor. The site is within an area that has been identified as the focus for growth and intensification with the highest densities within the City.

[11] The changes represent appropriate regard for the matters of Provincial interest, as set out in s. 2 of the *Planning Act*. The Tribunal has had regard for s. 2.1 of the *Planning Act* in that this matter now comes to the Tribunal on consent as a settlement between Fengate and the City.

[12] The Tribunal finds that the proposed site-specific modification to OPA 102 and the proposed site-specific amendment to the ZBLA are consistent with the Provincial Policy Statement 2014 ("PPS 2014") and conform to the Growth Plan for the Greater Golden Horseshoe, 2019. The Tribunal notes that the Provincial Policy Statement 2020 ("PPS 2020") comes into effect on May 1, 2020. The Tribunal reviewed Ms. Mahood's analysis in support of her professional opinion that the settlement is consistent with the PPS 2014 and finds that the same reasons would apply to the PPS 2020. As such, the Tribunal finds that the proposed settlement is also consistent with the PPS 2020.

[13] The Tribunal finds that the proposed modification to OPA 102 conforms to the policy regime of the applicable official plan.

[14] The Tribunal finds that the proposed amendments to the ZBLA conform to the applicable official plan, as modified.

## **ORDER**

[15] The appeals by Fengate Hamilton Lands GP Inc. and LPF Hamilton Lands LP are allowed in part.

[16] The Maximum Building Heights for a portion of the Fengate lands are modified

from High-rise 1 to High-rise 2 on Map B.6.1-2 of Official Plan Amendment 102, as shown on Exhibit B to Exhibit 1 and as found at Attachment 1 to this Decision.

[17] The Maximum Building Height for a portion of the Fengate land is further amended from 71 metres to 94.2 metres on Figure 1 of Schedule “F”- Special Figures of Zoning By-law No. 05-200, as amended by Zoning By-law No. 18-114, as shown on Exhibit C to Exhibit 1 and found at Attachment 2 to this Decision.

[18] The Building Base Façade Height for the Hughson Street frontage of the Fengate lands is further amended from 7.5 metres to 11.0 metres on Figure 15 of Schedule “F”- Special Figures of Zoning By-law No. 05-200, as amended by Zoning By-law No. 18-114, as shown on Exhibit D to Exhibit 1 and found at Attachment 3 to this Decision.

*“Susan de Avellar Schiller”*

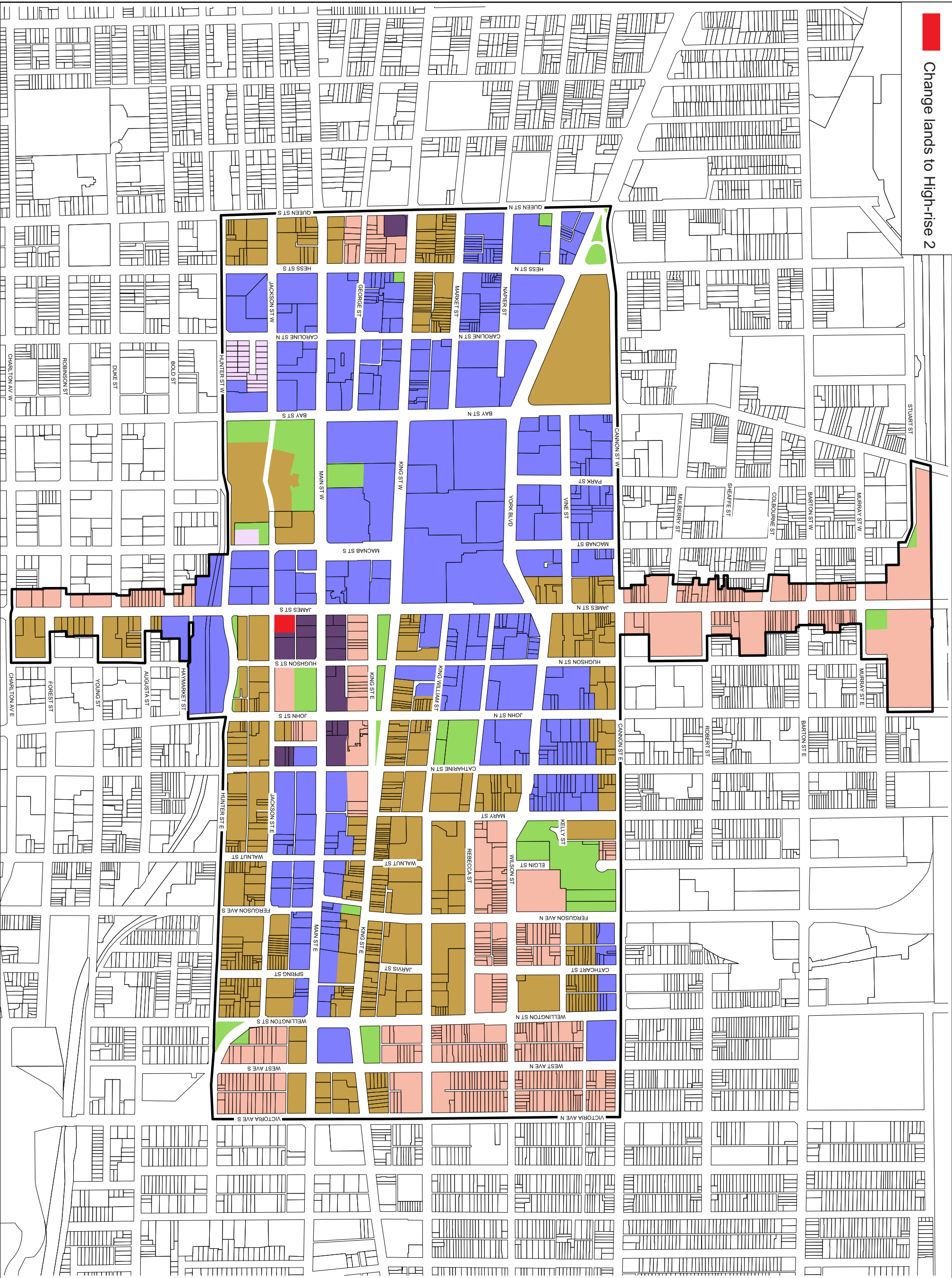
SUSAN de AVELLAR SCHILLER  
VICE-CHAIR

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

**Local Planning Appeal Tribunal**

A constituent tribunal of Tribunals Ontario, Environment and Land Division  
Website: [www.elto.gov.on.ca](http://www.elto.gov.on.ca) Telephone: 416-212-6349 Toll Free: 1-866-448-2248

Change lands to High-rise 2



**NOTE:** Maximum Building Heights within the Downtown shall be no greater than the height of the top of the Escarpment in accordance with Policy B.6.1.4.9.

**NOTE:** This Map is implemented through specific zoning provisions and Figure 1, Schedule F - Special Figures of Zoning By-law 05-200

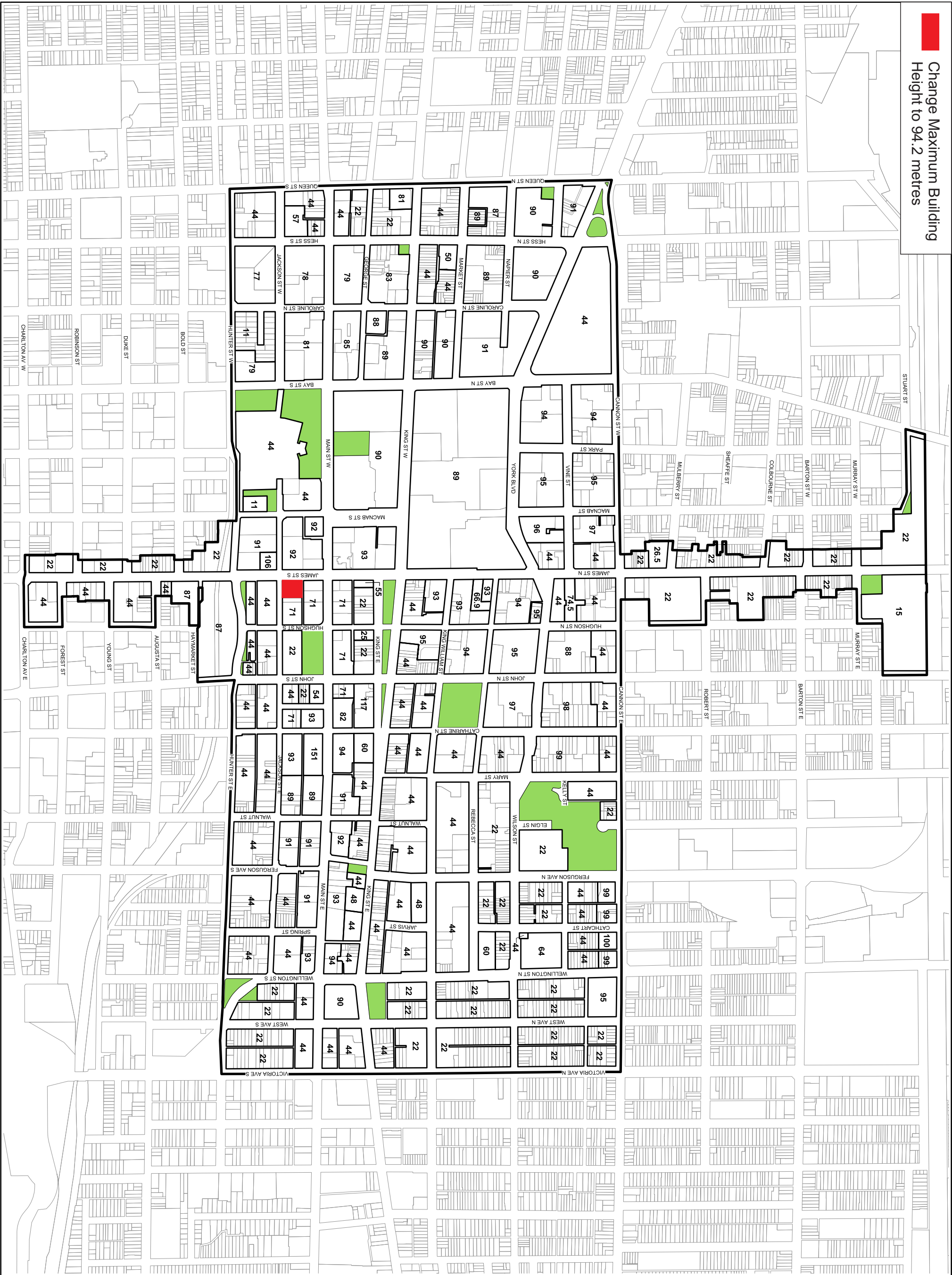
Legend

- Low-rise 1
- Low-rise 2
- Mid-rise
- High-rise 1
- High-rise 2
- Parks/Open Space
- Secondary Plan Boundary

Urban Hamilton Official Plan  
Downtown Hamilton  
Secondary Plan  
Maximum Building Heights  
Map B.6.1-2




 Change Maximum Building Height to 94.2 metres



**NOTE: Building Heights are represented by the number illustrated on the map. All Building Heights are in metres.**

**Legend**

# Maximum Building Heights in metres

 Parks/Open Space

..... Planning Boundary

**Schedule F - Figure 1**

**Zoning By-law No. 05-200**


**Maximum Building Heights**

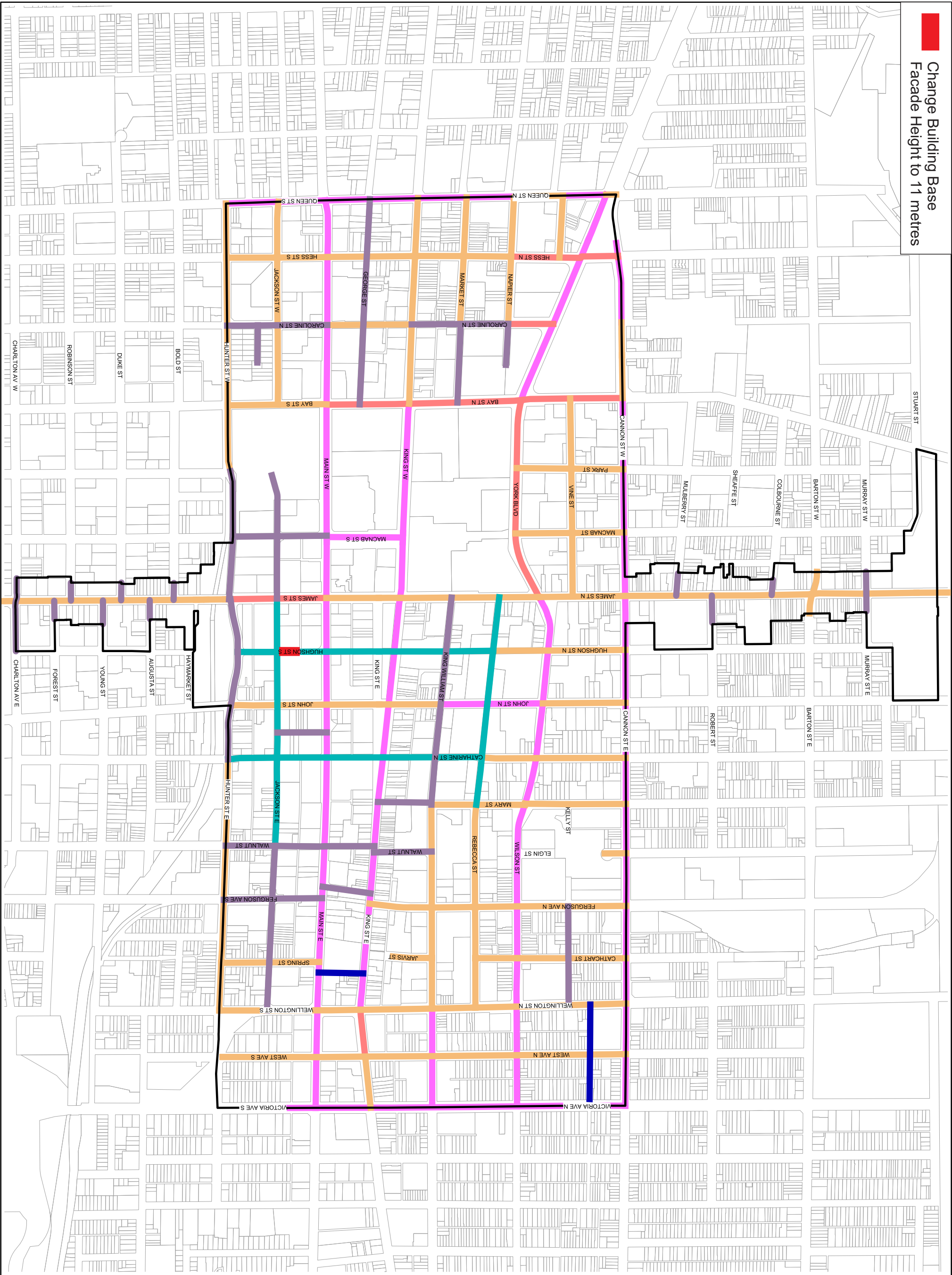
Not To Scale

Date: August 2019

PLANNING & ECONOMIC DEVELOPMENT DEPARTMENT

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**Figure 15:  
Building Base Façade Height**

