

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: September 26, 2023

CASE NO(S).: OLT-22-004156

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

Applicant and Appellant: 2691823 Ontario Inc.
Subject: Request to amend the Official Plan – Failure to adopt the requested amendment
Purpose: To permit a six-storey residential apartment building with commercial uses at grade.
Property Address: 442, 450, 454, and 462 Wilson Street East
Municipality: City of Hamilton
Municipal File No.: UHOPA-21-023/ZAC-21-049
OLT Case No.: OLT-22-004156
OLT Lead Case No.: OLT-22-004156
OLT Case Number: 2691823 Ontario Inc. v. Hamilton (City)

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

Applicant and Appellant: 2691823 Ontario Inc.
Subject: Application to amend Zoning By-law - Refusal or neglect to make a decision
Purpose: To permit a six-storey residential apartment building with commercial uses at grade.
Property Address: 442, 450, 454, and 462 Wilson Street East.
Municipality: City of Hamilton

Municipal File No.: UHOPA-21-023/ZAC-21-049
OLT Case No.: OLT-22-004157
OLT Lead Case No.: OLT-22-004156

Heard: September 18, 2023 by video hearing

APPEARANCES:

Parties

Counsel

2691823 Ontario Inc.

Ira T. Kagan
Sarah R. Kagan

City of Hamilton

Peter Krysiak

Niagara Escarpment Commission

Baiqing Luo
Ken Hare

**MEMORANDUM OF ORAL DECISION DELIVERED BY BITA M. RAJAEI ON
SEPTEMBER 18, 2023 AND ORDER OF THE TRIBUNAL**

[Link to Final Order](#)

INTRODUCTION

[1] 2691823 Ontario Inc. (“Applicant”) appealed the refusal by the Council of the City of Hamilton (“City”) of an Official Plan Amendment (“OPA”) and Zoning By-law Amendment (“ZBA”) sought for lands known municipally as 442, 450, 454, and 462 Wilson Street E in the City (“Subject Site”).

[2] A Case Management Conference (“CMC”) took place on October 20, 2022, wherein it was confirmed that adequate Notice had been provided on this matter and no further Notice would be required. The Affidavit of Service was made Exhibit 1 at the CMC and remained Exhibit 1 at this Hearing. The Tribunal granted Party Status to James and Nancy MacLeod and to the Niagara Escarpment Commission (“NEC”).

Additionally, the Tribunal granted Participant Status to Klaus Detmar, Ancaster Village Heritage Community (“AVHC”), Daniel and Rita Faulkner (“the Faulkners”), and Richard Parascandalo.

[3] On August 8, 2023, James and Nancy MacLeod withdrew their status as a Party.

[4] The Applicant and the City reached a settlement with respect to this matter. The Applicant and the NEC also reached a settlement. As such, this Hearing took place to allow the Tribunal to consider and approve the settlement if warranted. The Parties jointly requested that the Tribunal approve the OPA and ZBA as revised by the settlement agreement.

[5] In support of the settlement, the Tribunal received the following materials, which were made Exhibits at the Hearing:

- a. EXHIBIT 2: An Affidavit sworn by Brenda R. Khes, Land Use Planner, on September 12, 2023, containing her written testimony in support of the settlement and a draft of the instruments before the Tribunal;
- b. EXHIBIT 3: Minutes of Settlement as between the Applicant and the City, dated July 19, 2023; and
- c. EXHIBIT 4: Minutes of Settlement as between the Applicant and the NEC, dated July 10, 2023.

[6] Additionally, the Tribunal received updated statements from the following Participants, containing comments on the settlement reached between the Parties:

- a. Statements from the AVHC, dated September 7 and 15, 2023; and
- b. Statements from the Faulkners, dated September 11 and 15, 2023.

PROPOSAL, OPA, AND ZBA

[7] The purpose of the OPA and ZBA is to allow for the development of a 4 to 7 storey mixed-use building, including commercial uses; or alternatively, a retirement home (“Proposal”). Regardless of which use is built, the built form of the development is reflected in the same proposed ZBA. The total gross floor area (“GFA”) of the Proposal is approximately 11,000 square metres (“m²”) and includes: a minimum of 450 m² of commercial GFA, 158 residential units ranging from one to three-bedroom units, and 121 below grade parking spaces to serve the residents and visitors. In addition, the Proposal includes the retention of two existing (listed but not registered) heritage buildings facing Wilson Street East.

[8] The OPA is required to amend the Urban Hamilton Official Plan (“UHOP”) to create a new Site-Specific Policy within the Ancaster Wilson Street Secondary Plan (“AWSSP”) to permit residential uses on the ground floor facing a Pedestrian Focus Street and to specify additional urban design requirements to facilitate the development of a mixed-use, multiple dwelling. The planner who testified at the Hearing, Ms. Brenda Khes, explained that in November 2022, UHOP Amendment No. 167 (“OPA 167”) was modified and approved by the Minister of Municipal Affairs. That approval provided for additional height on the Subject Site, conditional on meeting certain criteria. City Staff have since confirmed that a Site-Specific OPA is no longer required to address height or density but that one is required to permit residential uses on the ground floor of a mixed-use building.

[9] The ZBA is required to amend the City of Hamilton Zoning By-law No. 05-200 (“City’s ZBL”) by changing the zoning on the Subject Site from the Mixed Use Medium Density – Pedestrian focus (C5a, 570) Zone to the Mixed Use Medium Density – Pedestrian Focus (C5a, 861, H155) Zone. The ZBA would permit a Retirement Home, as well as site specific modifications to address maximum height, minimum setbacks,

minimum commercial GFA, and setbacks and façade glazing to address the design of the building achieved through the settlement.

[10] As outlined in Exhibit 4, and detailed at the Hearing, specific provisions have been included in the proposed OPA and ZBA to ensure that the NEC's concerns were appropriately addressed and to address views from and to the Niagara Escarpment. The proposed OPA specifically states that "uplighting shall not be permitted" and that "new development shall incorporate darker colours on the facades of upper storeys". In addition, the proposed ZBA requires that the building be setback from Rousseaux Street pursuant to the Proposal by including specific minimum setback regulations from the hypotenuse of the daylight triangle as well as the front lot line.

HEARING

[11] In support of the settlement reached between the Parties, the Applicant called one witness and provided the *Curriculum Vitae* and signed Acknowledgement of Expert Duty form for Brenda R. Khes. Ms. Khes was qualified, without objection, to provide expert opinion evidence in the field of Land Use Planning.

[12] The planning documents affecting this matter include: s. 2 of the *Planning Act* ("the Act"); the Provincial Policy Statement, 2020 ("PPS"); A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2020, as amended ("Growth Plan"); the Niagara Escarpment Plan ("NEP"); and the UHOP, including OPA 167 and the AWSSP.

[13] Ms. Khes testified that the proposed OPA and ZBA are appropriate from a land use planning perspective. They, as well as the Proposal, have regard to matters of provincial interest, are consistent with the PPS, and conform to the Growth Plan and the NEP.

[14] With respect to conformity with the UHOP, Ms. Khes explained that the proposed OPA before the Tribunal is in keeping with the in-force and applicable policies of the

UHOP, with the exception of permitted residential use and/or a retirement home use on the ground floor, for which an amendment is being sought. In support of this opinion, Ms. Khes referred to numerous specific policies. She testified that pedestrian focus streets are intended to cater to pedestrians by creating a comfortable, active, and visually stimulating walking environment. Retail and service commercial uses are considered more active uses than residential or office uses since they serve to activate public spaces along the street with pedestrian movement in and out of the commercial businesses. In this case, commercial uses will be provided at grade, including the reuse / conversion of two existing heritage buildings for commercial purposes, as well as at grade commercial uses within the new built form along the Wilson Street frontage. In addition, a private/public open space (“POPS”) is proposed along Wilson Street, which will further encourage pedestrian interaction along the street.

[15] Ms. Khes further testified that the proposed OPA is in keeping with the policies of the UHOP related to mixed use development, housing, urban design, cultural heritage, archaeology, health and public safety, climate change, noise and vibration, energy and environmental design, road network, complete streets, traffic management and parking and loading. The Proposal is suitably located along two arterial roads with access to existing local public transit and opportunities for active transportation options, and will further support the financial viability and sustainability of these facilities. Finally, the proposed seven-storey height of the building conforms with the criteria established through OPA 167 with respect to shadows, and progressive stepping from adjacent land uses and the street. Overall, the Proposal will provide additional dwelling units and commercial development along a City-designated Pedestrian Focus street.

[16] Ms. Khes explained that the OPA conforms to the policies of the AWSSP, citing numerous policies such as Policy E.2.3.3.2 to E.2.3.3.11, and is therefore appropriate for the Subject Site. She specified that this conformity was achieved in a number of ways, such as by:

- a. ensuring compatibility of the proposed height with adjacent land uses by minimizing shadow and other nuisance effects. Impacts to adjacent land uses will be minimized through the provision of transition in built form and height, landscape buffers, distance separations, and fencing;
- b. providing for a transition and gradation in height to adjacent and existing residential development by the placement of the tallest portion of the building closer to the front of the Subject Site (Rousseaux Street) and decreasing the building height outward to the south (3-storeys portion) at the south end of the Subject Site along Wilson Street, and by retaining two, one-and-half storey listed heritage buildings along Wilson Street;
- c. providing for a building height, massing, scale and arrangement that is designed to appropriately mitigate privacy and overlook concerns to both the existing buildings in the area and to the intention of the Community Node and gateway policies to provide for transit and pedestrian-focused corridor with transit supportive densities;
- d. contributing further to a contemporary architectural style that will complement the existing character of the area, which is currently comprised of buildings from a range of historical periods and architectural styles;
- e. providing soft and hard landscaping throughout the Subject Site, which provides a buffer between adjacent residential uses;
- f. encouraging increased day and night activity along Wilson Streets through the proposed additional residential density, new commercial uses at grade, and the provision of the POPS area; and,
- g. focusing intensification at the intersection of a major and minor arterial road.

[17] With respect to the ZBA, Ms. Khes opined that the requested modifications to the Mixed Use – Medium Density – Pedestrian Focus (C5A) Zone of the ZBL would conform to the policies of the UHOP and AWSSP, as proposed to be amended through the OPA.

[18] Ms. Khes provided a very detailed and thorough analysis regarding the OPA and the ZBA, citing numerous documents and policies, to support her conclusion that the proposed instruments met the legislative test and warrant approval. She opined that the Proposal is attractive and will not have unacceptable adverse impacts on the surrounding neighbourhood. Moreover, refinements to the building design through the Site Plan Control application process will further integrate the building into the neighbourhood. Ms. Khes concluded that the approval of the OPA and ZBA, as revised by the settlement, constitutes good planning and is in the public interest.

PARTICIPANT STATEMENTS

[19] Four Participant statements were filed with the Tribunal including Statements from: Richard Parascandalo; the AVHC; Klaas Detmar who lives directly east of the Subject Site; and the Faulkners who live directly south of the Subject Site. Moreover, AVHC and the Faulkners provided additional statements as indicated at paragraph [6] of this Decision.

[20] As the Applicant's Counsel pointed out, the final version of these instruments, which was the version before the Tribunal, was last modified in May 2023, and, as outlined in the Procedural Order, Participant statements were due on August 4, 2023. As such, no new information arose to warrant the submission of additional comments from AVHC or the Faulkners. Regardless, these additional submissions were accepted and reviewed by the Tribunal, and Ms. Khes address all Participant concerns in her written and oral testimony in great detail.

[21] Ms. Khes divided the concerns of the Participants into the following themes: building height and shadow impacts; village core streetscape and heritage preservation; traffic / access / Maywood neighbourhood; parking and deliveries; servicing; setbacks; and ground floor windows. Providing a significant amount of detail, Ms. Khes explained how the OPA, ZBA, and Proposal have been designed and planned in a way to appropriately respond to and address the issues raised in the Participant statements.

FINDINGS

[22] The Tribunal accepts the uncontested evidence of Ms. Khes, and finds that the requested OPA and ZBA: have due regard for matters of Provincial interest in s. 2 of the Act; are consistent with the PPS; conform with the Growth Plan; conform with the NEP; and conform with the UHOP and the AWSSP. Moreover, the Tribunal finds that the ZBA is a suitable amendment within the policies and provisions of the ZBL. In summary, the Tribunal finds that the OPA and ZBA represents good planning in the public interest.

ORDER

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

- a. The Applicant's Official Plan Amendment appeal, pursuant to subsection 22(7) of the *Planning Act*, is allowed in part and the Urban Hamilton Official Plan of the City of Hamilton is hereby amended as set out in Schedule A to this Order.
- b. The Applicant's Zoning By-law Amendment appeal, pursuant to subsection 34(11) of the *Planning Act*, is allowed in part and the City of Hamilton's Zoning By-law No. 05-200 is hereby amended as set out in Schedule B to this Order. The Tribunal authorizes the municipal clerk of the City of Hamilton to assign a number to this By-law for record keeping purposes.

[24] The Tribunal may be spoken to concerning issues arising from the implementation of this Order.

“Bita M. Rajae”

BITA M. RAJAE
MEMBER

Ontario Land Tribunal

Website: www.olt.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

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

SCHEDULE A

Schedule "1"

DRAFT Urban Hamilton Official Plan Amendment No. X

The following text, together with Appendix "A" – Volume 2: Map B.2.8-1 – Ancaster Wilson Street Secondary Plan – Land Use Plan attached hereto, constitutes Official Plan Amendment No. "X" to the Urban Hamilton Official Plan.

1.0 Purpose and Effect:

The purpose and effect of this Amendment is to create a new Site Specific Policy within the Ancaster Wilson Street Secondary Plan to permit residential uses on the ground floor facing a Pedestrian Focus Street and to specify additional urban design requirements, to facilitate the development of a mixed-use, multiple dwelling ..

2.0 Location:

The lands affected by this Amendment are known municipally as 442, 450, 454 and 462 Wilson Street East within the former Town of Ancaster.

3.0 Basis:

The basis for permitting this Amendment is:

- The proposed development supports the policies of the Urban Hamilton Official Plan and the Ancaster Wilson Street Secondary Plan, as it contributes to a mix and range of housing forms and the efficient use of urban lands;
- The proposed development represents a compatible built form that integrates with the surrounding area in terms of use, scale and character, minimizing the effects of shadow and overlook, and allowing for the retention of two heritage buildings;
- The proposed development implements the Residential Intensification policies of the Urban Hamilton Official Plan by providing residential uses within a Community Node, along a minor arterial road, and in proximity to existing public transit and active transportation network ; and,
- The proposed Amendment is consistent with the Provincial Policy Statement, 2020 and conforms to the Growth Plan for the Greater Golden Horseshoe, 2019,

as amended.

4.0 **Actual Changes:**

4.1 **Volume 2 – Secondary Plans**

Text

4.1.1 Chapter B – Ancaster Secondary Plans – Section B.2.8 – Ancaster Wilson Street Secondary Plan

- a. That Volume 2: Chapter B.2.0 – Ancaster Secondary Plans, Section B.2.8 – Ancaster Wilson Street Secondary Plan be amended by adding a new Site Specific Policy Area, as follows:

“Site Specific Policy – Area X

B.2.8.16.X For lands identified as Site Specific Policy – Area “X” on Map B.2.8-1 Ancaster Wilson Street Secondary Plan – Land Use Plan, designated *Mixed Use – Medium Density*, identified as *pedestrian focus streets*, and known municipally as 442, 450, 454 and 462 Wilson Street East, the following policies shall apply:

- a) Notwithstanding Policy E.4.3.4 d) of Volume 1, residential uses shall be permitted on the ground floor in a building facing a *pedestrian focus street*, where ground floor commercial uses are also provided.
- b) In addition to Policy B.2.8.12.1 of Volume 2, new development shall incorporate darker colours on the facades above the ground floor, and uplighting shall not be permitted, to mitigate and/or minimize impacts to views from and to the Niagara Escarpment.

Maps

4.1.2 Map

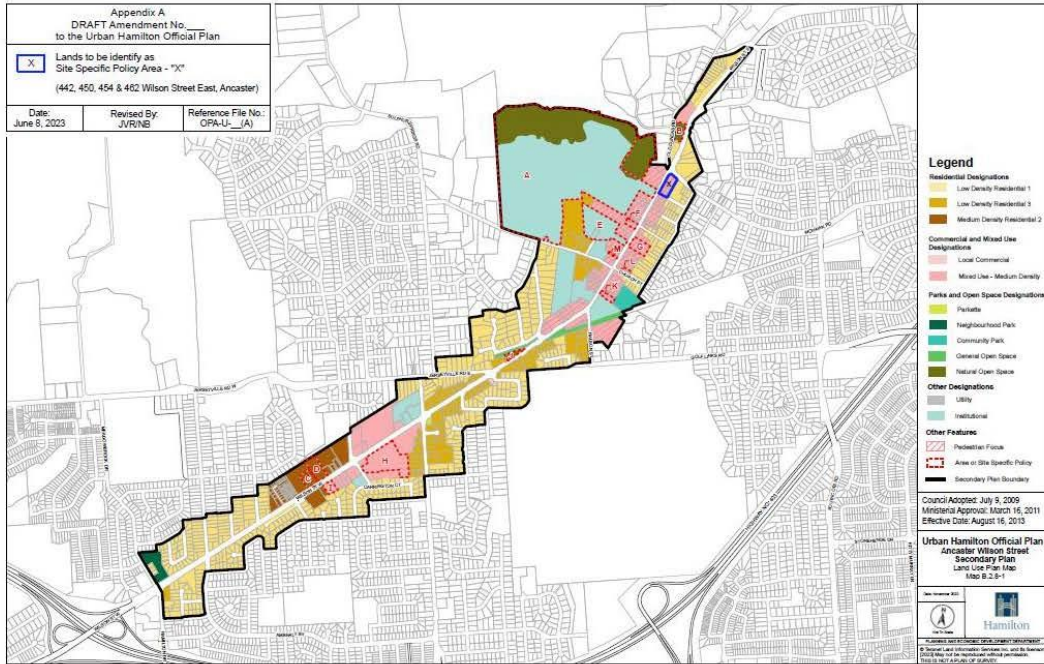
- a. That Volume 2: Map B.2.8-1 Ancaster Wilson Street Secondary Plan – Land Use Plan be amended by identifying the subject lands as being subject to Site Specific Policy – Area “X” as shown on Appendix “A” attached to this Amendment.

5.0 Implementation:

An implementing Zoning By-Law Amendment and Site Plan will give effect to the intended uses on the subject lands.

This Official Plan Amendment is Schedule "1" to By-law No. _____ passed on the ___th day of ___, 2023.

OLT Case No. OLT-22-004156



SCHEDULE B

CITY OF HAMILTON

BY-LAW NO. [REDACTED]

**To Amend Zoning By-law No. 05-200
Respecting Lands 442, 450, 454 and 462 Wilson Street East**

WHEREAS the Ontario Land Tribunal, in its Decision/Order for Case No. OLT-22-004156 dated the • day of •, 2023, approved the amendment to Zoning By-law No. 05-200 (Hamilton), as herein provided.

AND WHEREAS this By-law is in conformity with the Urban Hamilton Official Plan upon approval of Official Plan Amendment No. [REDACTED];

NOW THEREFORE the Ontario Land Tribunal enacts as follows:

1. That Map No. 1124 and 1175 of Schedule “A” – Zoning Maps of Zoning By-law No. 05-200, is amended by changing the zoning from the Mixed Use Medium Density – Pedestrian focus (C5a, 570) Zone to the Mixed Use Medium Density – Pedestrian Focus (C5a, 861, H155) Zone, to the land comprised of 442, 450, 454 and 462 Wilson Street East, the extent and boundaries of which are shown on Schedule “A” of this By-law.
2. That Schedule “C”: Special Exceptions, Exception 570, be amended by deleting the words “442, 450, 454 and 462 Wilson Street East” from the list of Property Addresses.
3. That Schedule “C” - Special Exceptions of Zoning By-law No. 05-200, is amended by adding the following new special exception:

“861. Within the lands zoned Mixed Use Medium Density – Pedestrian Focus (C5a, 861, H155) Zone, identified on Map No. 1124 and 1175 of Schedule “A” and described as 442, 450, 454 and 462 Wilson Street East, the following special provisions shall also apply:



- a) In addition to the uses permitted in Subsection 10.5a.1, a Retirement Home shall also be permitted.
- b) Notwithstanding Subsection 10.5a.3 a) i), b), d), h) ix), h) x) the following special provisions shall apply:
 - i) Minimum building setback from Rousseaux Street
 - a) 4.0 metres;
 - b) Notwithstanding a) above, 0 metres adjacent to the northwest corner of the Hypotenuse of the Daylight Triangle; and,

- c) Notwithstanding a) above, 8.6 metres adjacent to the northeast corner of the Hypotenuse of the Daylight Triangle.
- ii) Minimum Rear Yard
 - a) 3.0 metres for all new development.
 - b) Notwithstanding ii) a) above, 1.0 metre shall be required to the existing building at 442 Wilson Street.
- iv) Maximum Building Height
 - a) 11 metres;
 - b) Notwithstanding a) above, 15 metres (237 metres above sea level) for the area shown as Block 1 on Figure 33 of Schedule "F" – Special Figures.
 - c) Notwithstanding a) above, 22 metres (244.00 metres above sea level) for the area shown as Block 2 on Figure 33 of Schedule "F" – Special Figures.
- v) Minimum Commercial Gross Floor Area
 - 450 square metres
- vi) Built Form for New Development
 - Minimum 39% percent of the area of the ground floor façade shall be composed of doors and windows.

4. That Schedule "D" – Holding Provisions of By-law No 05-200, be amended by adding the following Holding Provision:
- "H155. Notwithstanding Section 10.5a of this By-law, within lands zoned Mixed Use Medium Density – Pedestrian Focus (C5a, 861) Zone, identified on Maps 1124 and 1175 of Schedule "A" – Zoning Maps, and described as 441, 450, 454 and 462 Wilson Street East, no development shall be permitted until such time as the following has been satisfied:
1. The Owner submits and receives approval of a revised Functional Servicing Report (FSR) to demonstrate that the stormwater management, sanitary flow and water supply (Water Hydraulic Analysis report (WHAR)) resulting from this development has adequate capacity in the existing municipal infrastructure system in accordance with City standards to accommodate the development of the lands described as 442, 450, 454 and 462 Wilson Street East, to the satisfaction of City's Director of Development Engineering, as a condition of site plan approval;
 2. Should it be determined that upgrades are required to the infrastructure to support the development of lands described as 442, 450, 454 and 462 Wilson Street East, according to the FSR and WHAR accepted by the City's Director of Development Engineering, the Owner shall make satisfactory arrangements with the City's Growth Management Division and enter into and register on title of the lands, an external works agreement with the City for the design and construction of any required improvements to the municipal infrastructure at the Owner's share of the cost, as a condition of Site Plan approval; and,
 3. That the Owner shall submit a revised Tree Protection Plan (TPP) to the satisfaction of the Director of Heritage and Urban Design.
5. That Schedule F: Special Figures of By-law 05-200 is hereby amended by adding Figure 33 Maximum Building Heights for 442, 450, 454 and 462 Wilson Street East.
6. That this By-law No. 23-XX-OLT shall be deemed to come into force on the day it was approved by the Ontario Land Tribunal or such other date as is in accordance with the Planning Act.

PASSED this ____ day of _____, 2023



<p>This is Schedule "A" to By-law No. 23- Passed the day of 2023</p>		<p>OLT Case No. OLT-22-004156</p>	
<p>Schedule "A"</p> <p>Map forming Part of By-law No. 23-_____</p> <p>to Amend By-law No. 05-200 Maps 1124 & 1175</p>		<p>Subject Property</p> <p>442, 450, 454 & 462 Wilson Street East</p> <p> Change in Zoning from Mixed Use Medium Density – Pedestrian Focus (C5a, 570) Zone to the Mixed Use Medium Density – Pedestrian Focus (C5a, 861, H155) Zone</p>	
<p>Scale: N.T.S</p>	<p>File Name/Number: ZAC-21-049 & UHOPA-21-023</p>		
<p>Date: June 8, 2023</p>	<p>Planner/Technician: JV/AL</p>		
<p>PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT</p>			





Special Figure 33: Maximum Building Heights for 442, 450, 454 and 462 Wilson Street East

Date:
September 1, 2023

Legend

442, 450, 454 and 462 Wilson Street East

-  Block 1 - Maximum Building Height 15m (237.00 masl)
-  Block 2 - Maximum Building Height 22m (244.00 masl)

