

Frequently asked planning questions:

1. Are municipal official plans and zoning strictly legally binding? **No, they are intended to be guiding documents and therefore can be amended as new considerations arise.**
2. Is the city planning department required to consider an official plan/zoning bylaw amendment by a property owner? **Yes.**
3. Is the planning department required to recommend approval of the zoning change to council? **No, but they are required to consider whether the proposed change conforms with the city and higher-level planning official plans and other relevant planning legislation.**
4. Is City Council required to approve a zoning change? **No.**
5. Does the city presently have any affordable housing requirements? **No**
6. Is the City of Kitchener, and the Region as a whole, meeting their intensification targets? **Yes, both have not only met but exceeded their intensification targets.**

What planning regulations/legislation are relevant for the proposed development at 134/152 Shanley?

Policy	Current	Definite in Future	Maybe in Future	Never
Major Transit Station Area	N	Y		
Intensification targets	Y		Y	
Revised LPAT	Y		Y	
Cultural Heritage Landscape	N		Y	
“Build to right”	Y	Y		
PARTs planning area	N			
Stable residential neighbourhood	Y		Y	
Inclusionary zoning	N		Y	
Additional residential units	Y			

What are the key take-home points?

1. The properties at 134/152 Shanley are not now in an MTSA, so LPAT (now OLT) appeals are possible.
2. If the City does not issue a decision within 120 days of the original application date (April 30th, 2021, the developer can and may appeal to LPAT/OLT.
3. If Council or LPAT approves rezoning of 134 Shanley to medium rise mixed use, the developer can build “to right” to the full height and mass of that zoning.
4. Once the new, expanded MTSA boundaries are passed ([interactive map](#)), intensification projects in most of our neighbourhood cannot be appealed to LPAT in most circumstances.
5. Although recognition as a cultural heritage landscape might provide some protection, our neighbourhood has not been recognized at this time in the Kitchener Official Plan update.
6. Designation as a Protected Major Transit Station Area may have the potential to create additional protections, but we are unsure.

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Major Transit Station Area

Definition: “Major Transit Station Areas are **lands typically located within a 600 to 800 metre radius of a rapid transit station**. Following the completion of the Rapid Transit Environmental Assessment, the Region will designate these station areas conceptually on Map 3a through a future amendment to this Plan. Major Transit Station Areas will be planned and developed to achieve: (a) **increased densities** that support and ensure the viability of existing and planned rapid transit service levels; and (b) a **mix of residential, office, institutional and commercial development**, wherever appropriate.”

Reference: Region of Waterloo. (2010). *Regional Official Plan, Chapter 2 – Shaping Waterloo Region’s Urban Communities.* https://www.regionofwaterloo.ca/en/resources/Regional-Official-Plan/Chapter_2_Consolidated_New_ROP_2015-access.pdf

Proposed Boundaries:

- The [interactive map](#) demonstrates the proposed MTSA boundaries will include the 134/152 Shanley development in future. Note these proposed boundaries have been recently moved inward to include a large portion of our neighbourhood.
- Chapter 2 of the Region’s Official Plan states, “Virtually all of the region’s future growth will occur within the Urban Area and Township Urban Area designations, with a substantial portion of this **growth directed to the existing Built-Up Area of the region through reurbanization**. Focal points for reurbanization include Urban Growth Centres, Township Urban Growth Centres, Major Transit Station Areas, Reurbanization Corridors and Major Local Nodes. These focal points will make better use of existing urbanized land and infrastructure and reduce development pressure on farmlands and sensitive natural areas.” (Chapter 2, Page 12). ”

References: Region of Waterloo. (n.d.). *Proposed Boundaries Around ION Rapid Transit Station Areas.* EngageWR. <https://www.engagewr.ca/regional-official-plan/maps/proposed-boundaries-around-ion-rapid-transit-station-areas#>

Region of Waterloo. (2010). *Regional Official Plan, Chapter 2 – Shaping Waterloo Region’s Urban Communities.* https://www.regionofwaterloo.ca/en/resources/Regional-Official-Plan/Chapter_2_Consolidated_New_ROP_2015-access.pdf

Implications:

- As discussed in the 2010 Region of Waterloo Official Plan, and often cited by developers and Council, these reurbanization strategies are hoped increase density and redirect growth towards the existing built-up area where infrastructure, including access to transit, already exists
- MTSAs are in principle designed to create and support “transit-oriented development” (TOD)
 - o The TOD should in principle deter the use of private cars and encouraging a mix between transit use and active transportation, in particular reducing the need

for surface parking. The assumption is the residents can walk or take transit to work.

- However, this narrative implicitly assumes that the areas should and will be developed to medium to high density, with little consideration given to the existing built form and its function, and its potential to intensify in its present form. This leads to the questions: ***“What are the Region’s targets for intensification? How much new infill development is needed to meet them?***

Intensification Targets

- The Provincial Policy Statement (PPS) for Ontario requires local planning authorities to work towards creating housing options including intensified options that support existing or planned transit related infrastructure
 - o PPS 1.1.1.e. “promoting the integration of land use planning, growth management, **transit-supportive development**, **intensification** and **infrastructure** planning to achieve cost-effective development patterns, **optimization of transit investments**, and standards to minimize land consumption and servicing costs”
 - o PPS 1.1.3.5. “Planning authorities shall **establish and implement minimum targets for intensification and redevelopment within built-up areas**, based on local conditions. However, where provincial targets are established through provincial plans, the **provincial target shall represent the minimum target for affected areas**”
 - o PPS 1.2.4.d. “where major transit corridors exist or are to be developed, identify **density targets for areas adjacent or in proximity to these corridors and stations, including minimum targets** that should be met before expansion of the boundaries of *settlement areas* is permitted”

Reference: Government of Ontario. (2020). *Provincial Policy Statement*.

<https://files.ontario.ca/mmah-provincial-policy-statement-2020-accessible-final-en-2020-02-14.pdf>

Provincial Targets:

- The province has set density targets for MTSAs as such:
 - o When basic transit services are available – 50 jobs and people/hectare
 - o **When dedicated rapid transit services are available – 160 jobs and people/hectare**
 - o When a subway based service is available – 200 jobs and people/hectare

Reference: Government of Ontario. (2020, July 10). *Build compact and efficient communities*.

<https://www.ontario.ca/document/performance-indicators-growth-plan-greater-golden-horseshoe-2006/build-compact-and-efficient-communities#section-2>

Region of Waterloo’s Targets:

- Official Plan Chapter 2 – Reurbanization target:

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- 2.C.2. "Area Municipalities will establish policies in their official plans and other supporting documents to ensure that by 2015 and each year thereafter a **minimum of 45 per cent of all new residential development** occurring annually within the region as a whole will be **constructed within the Built-Up Area.**"

Reference: Region of Waterloo. (2010). *Regional Official Plan, Chapter 2 – Shaping Waterloo Region's Urban Communities.* https://www.regionofwaterloo.ca/en/resources/Regional-Official-Plan/Chapter_2_Consolidated_New_ROP_2015-access.pdf

Region's Current Status:

- The Region has achieved both its own reurbanization (intensification) target of ensuring at least 45% of development occurs within the built-up area and the provincial target of 40%
- For several years the Region exceeded this target – having 50% of its new residential units being constructed within the built-up area

Reference: Region of Waterloo. (n.d.). *Growth Management.*

<https://www.regionofwaterloo.ca/en/doing-business/growth-management.aspx>

Implications:

- The general interpretation is that region must achieve a density of 160 people and jobs per hectare as a minimum requirement within our MTSA
- However this statement in the Region's Official Plan review seems to contradict that statement "Given that the Region of Waterloo is not a priority transit corridor, there is no minimum density target for the transit station area in the Region of Waterloo. As such, the Region of Waterloo will need to consider a density target that is appropriate for these SGAs based on the local context, including consideration of other SGAs, for example Urban Growth Centres (UGCs), and the alignment of transit investment with growth." (Page 8)
- We are not currently sure of the current or projected (based on approved projects) density of the Central Station MTSA based on the current proposed boundaries.

Reference: Region of Waterloo – Regional Official Plan Review Dillon Consulting Limited | Watson & Associates Long-Term Population and Housing Growth Analysis (Accessed June 15th 2021).

Revised LPAT (Local Planning Appeals Tribunal)

- Note that provisions have changed since the BB3 LPAT appeal:
 - **If the City does not issue a decision on a proposal within 120 days for an official plan amendment and 90 days for a zoning by-law amendment, the applicant can appeal to LPAT.** Kitchener developers are now doing this on a regular basis
 - Grounds for appeal beyond non-conformance with a higher-level plan
 - LPAT support centre has been dismantled

- Since 2018, LPAT appeals for intensification projects within MTSAs have been very limited. We were unable to successfully catalog when appeal are possible. We are labeling the circumstances “Almost Never”.
 - o In typical MTSAs, appeals are restricted outside of specific exceptions
 - o In this case, only appeals that comment upon the maximum building height and its ability to fulfil the density requirements for the MTSA are heard.
- Bill 108 revised LPAT to include a new designation-- a “Protected MTSA”. We are still trying to sort through these details. However, we believe that appeal rights are further restricted in a PMTSA, to “Virtually never”.
 - o A municipality can identify a PMTSA and enforce this through an Official Plan Amendment in order to further restrict the development height, density, or permitted use.
 - o Unlike typically MTSAs, appeals cannot be made against required Official Plan policies or against aspects of the zoning by-law in a PMTSA.
 - o PMTSA status is required to introduce inclusionary zoning.

References: Urban Strategies Inc. (2020, November 5). *The Latest on Inclusionary Zoning*. <https://www.urbanstrategies.com/news/the-latest-on-inclusionary-zoning/>

Baker, A., Blanchard, E., Gosnell, S. L., Morley, P., Higgs, C., Schromm, G., Patterson, P. J., & Shipowick, A. (2017, June 1). *Bill 139 – The proposed End of the Ontario Municipal Board*. <https://www.blg.com/en/insights/2017/06/bill-139-the-proposed-end-of-the-ontario-municipal-board>

Implications:

- For the 134/152 Shanley development, LPAT appeal should be possible, since the properties are not now in an MTSA.
- No MTSAs in the region are classified as protected, meaning municipal decisions regarding development in the MTSAs can be appealed given the one exception
 - o If the maximum building height permitted by the municipality does not allow for development to achieve the density requirement, an appeal may be permitted.
- If the MTSA boundaries proposed by the Region are passed, mid or high rise development could take place anywhere in our neighbourhood if approved by Planning and Council, and neighbours would have virtually no legal recourse.
- Under the PMTSA designation, the municipality could require developers to employ inclusionary zoning (requiring the provision of affordable units that meet standards outlined in a specific policy on inclusionary zoning). It is important to note that Kitchener does not yet have an inclusionary zoning policy, and therefore it cannot require developers to allocate for affordable units (for more detail on this, see the section on Inclusionary Zoning).
- Further, it seems that if the City declared our area a PMTSA, it might allow the City to protect parts of our neighbourhood from higher-rise or stylistically incompatible development, especially if the City moved forward with cultural heritage landscape

designation, as recommended by a City report. Which leads to our next question: “What is cultural heritage landscape designation?”

Cultural Heritage Landscape (CHL)

Definition:

- The PPS defines CHLs as, “a geographical area that may have been modified by human activity and is identified as having cultural heritage value or interest by a community, including an Aboriginal community. The area may involve features such as structures, spaces, archaeological sites or natural elements that are valued together for their interrelationship, meaning or association.”
- CHLs can be designated as a single (individual property) or as a collection of properties.
- There are two pathways to cultural heritage neighbourhood designation:
 - o Properties can be grouped together when designated in order to create a Heritage Conservation District, providing strong protection to the cultural heritage landscape. When designated this way, the municipality has the ability to deny permitting applications to demolish, develop, or alter the properties involved. This is a strong tool for the municipality to control development and future land use, as shown on some land use planning maps. **Note this designation has never been considered or proposed for our neighbourhood.**
 - o Individual and grouped properties can also be identified by the municipality as having significant value or interest to the cultural heritage of the community. When inventoried by the municipality these properties can be recognized as cultural heritage landscapes in two ways:
 - Listing the property on their Municipal Heritage Register.
 - Recognizing the CHL in its Official Plan.

Reference: City of Kitchener. (2014). *Cultural Heritage Landscapes*.

https://www.kitchener.ca/en/resourcesGeneral/Documents/DSD_PLAN_CHL_Study_Report.pdf

CHLs in Kitchener:

- The CHLs identified for Kitchener (residential, parks/natural, transportation corridors and streetscapes, institutional landscapes, commercial/industrial landscapes, agriculture landscapes, large lot residential landscapes, cemeteries, and Grand River Valley landscapes) are identified in the [2014 report](#) (pages 11-13)
- The Mt Hope Neighbourhood is identified as a residential CHL and is shown in [Appendix 4](#) (Map code L-NBR-12)
- **While the City's report identified the Mt Hope-Breithaupt neighborhood as a cultural heritage landscape, along with 12 other neighbourhood, it is not identifying our neighbourhood as part of its Official Plan update. It IS identifying all other recommended neighbourhood. No substantive explanation has been offered as to why.**

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References: City of Kitchener. (2014). *Cultural Heritage Landscapes*.

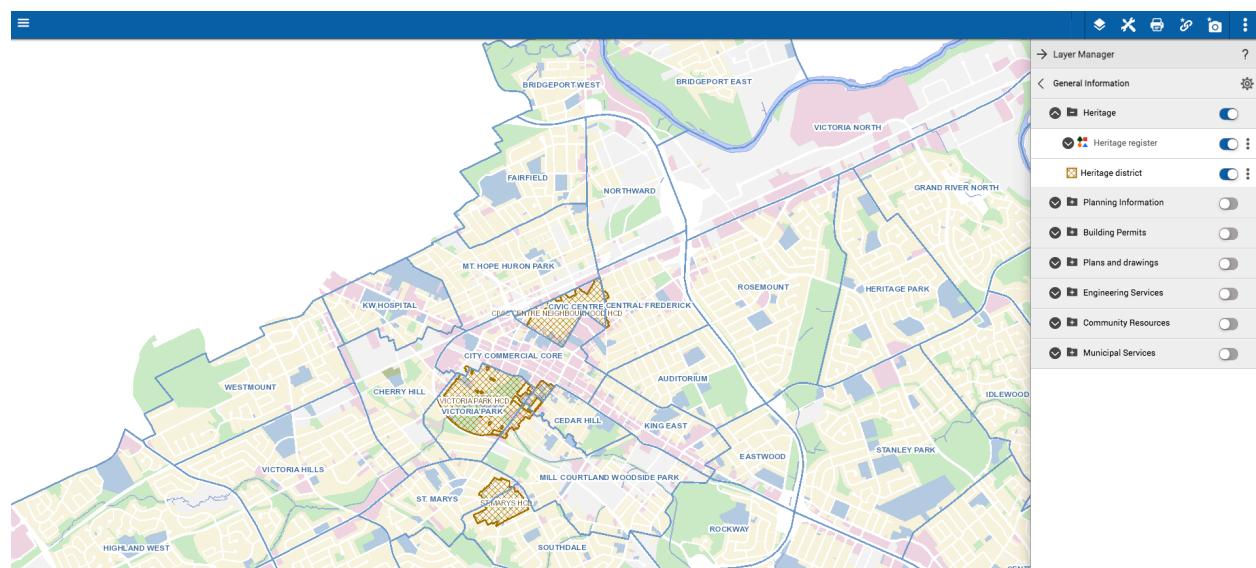
https://www.kitchener.ca/en/resourcesGeneral/Documents/DSD_PLAN_CHL_Study_Report.pdf

City of Kitchener. (2014). *Cultural Heritage Landscapes, Appendices 1-5*.

https://www.kitchener.ca/en/resourcesGeneral/Documents/DSD_PLAN_CHL_Study_Appendices_1-5.pdf

City of Kitchener Land Use:

Although the Mt. Hope Neighbourhood has been identified by the City of Kitchener as a CHL, it is not represented as such on the city's land use maps.



Reference: City of Kitchener. (n.d.). *City of Kitchener OnPoint*.

<https://maps.kitchener.ca/OnPointExternal/RMap/Default.aspx#>

Implications:

- The City of Kitchener has several policies related to CHLs existing within the Official Plan that aim to identify and conserve these properties or districts.
- They are mandated by the Province to conserve cultural heritage resources.
- Existing policy on CHLs can increase the level of protection a site may receive against development, however this does not mean that a development cannot occur on a CHL site.
- The city has recently approved both demolition of homes with heritage value and non-conforming developments in heritage districts, which in principle have stronger protections than the cultural heritage landscape designations. So it is not clear that formal recognition would change the City's decisions, which seem to contradict provincial guidelines.

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Build “to right”

Once a parcel is rezoned, this means that the owner of a parcel can build a building that conforms to the current floor space ratio, setbacks, and height. The site plan is irrelevant. So, for any proposed development, think of the FSR this way: If the parcel were covered with Legos to its edges, how high would the pile of Legos be? Then use the setbacks to figure out how far away from the parcel’s edge the Legos would be. Finally, the height is the highest your Lego creation can go. Actual developments often differ from proposed site plans, especially if a parcel is sold after re-zoning. This is what occurred with Midtown Lofts.

PARTS Planning

PARTS planning-was a visioning exercise that created recommended plans for the Kitchener station areas. 134 and 152 Shanley were not included in that process, as at the time they were not considered to be part of an MTSA.

Reference: City of Kitchener. (2016, April 13). *Parts Central Plan*.

https://www.kitchener.ca/en/resourcesGeneral/Documents/DSD_PLAN_PARTS_Central_Plan.pdf

Stable Residential Neighbourhoods

As currently discussed in the 2010 Region of Waterloo Official Plan:

- “Most of the Built-Up Area consists of established residential neighbourhoods where the majority of buildings are not expected to change significantly in use or form during the planning horizon of this Plan. These neighbourhoods vary in age and style and contribute to the region’s vitality and quality of life. Any future development within or adjacent to these neighbourhoods will need to respect the existing physical character of the area.” (Chapter 2, Page 12).

Current zoning map: City of Kitchener. (2021, June 12). *Kitchener Street Index with General Zoning*.

https://app2.kitchener.ca/appdocs/GISImages/GIS_Web_External/Standard_Maps/Street_Zone_Index.pdf

Reference: Region of Waterloo. (2010). *Regional Official Plan, Chapter 2 – Shaping Waterloo Region’s Urban Communities*. https://www.regionofwaterloo.ca/en/resources/Regional-Official-Plan/Chapter_2_Consolidated_New_ROP_2015-access.pdf

Implications:

- Any development that occurs within these neighbourhoods should in principle take existing characteristics of the neighbourhood into consideration when designing the building, landscaping features, and how the site fits into the broader community.
- In practice this has not occurred.

Inclusionary Zoning

Definition: “Inclusionary zoning refers to policies, by-laws and programs that require development proposals with residential units to include affordable housing units and provide for those units to be maintained as affordable over a period of time. This approach combines housing policy and land-use planning approvals to require private-market development to include below market-rate rental and/or ownership housing.”

In the context of Ontario, this tool aims to create a higher supply of affordable housing in areas that have become heavily transit-oriented in order to offset the economic impact that transit development/improvement can have on housing-related costs in a community. As such, the regulations within the Planning Act that allow for inclusionary zoning also include restrictions for this tool that are relevant for 134/152 Shanley (discussed in the Implications section directly below).

References: Ministry of Municipal Affairs and Housing. (2016, May). *Inclusionary Zoning Consultation Discussion Guide*. <http://www.mah.gov.on.ca/AssetFactory.aspx?did=14977>

Urban Strategies Inc. (2020, November 5). *The Latest on Inclusionary Zoning*. <https://www.urbanstrategies.com/news/the-latest-on-inclusionary-zoning/>

<http://www.mah.gov.on.ca/AssetFactory.aspx?did=6131>

<https://mcmillan.ca/insights/impending-implementation-of-ontarios-inclusionary-zoning-regime-in-toronto-and-the-gta/>

Kitchener Context:

- This type of zoning establishes a minimum threshold of affordable housing in any new development. Kitchener does not now have any affordable housing requirements, although they are under development. They are not likely to be passed in the very near future (i.e. the timeline relevant for 134/152 Shanley).

Implications:

- Without any inclusionary zoning plans or policies in place, the City of Kitchener cannot require developers to include affordable housing provisions into the development
- Municipalities must include additional policies within an updated Official Plan to outline requirements for developers in terms of inclusionary zoning (i.e. how large a development must be to face this requirement, how pricing is determined for affordable units, etc.)
- Inclusionary zoning is limited in its use when a municipality has not been directly ordered by the Minister to employ this tool. Unless directly ordered, municipalities can only use inclusionary zoning within PMTSAs or areas designated as a Development Permit System (DPS) area. (A development permit system is a tool for municipalities to streamline development approvals.) Alongside these requirements, inclusionary zoning

can only be used in developments that will have 10+ residential units and where the developer in question is for-profit (non-profit providers are exempt).

- If the community is not currently under a PMTSA designation, it is unlikely that inclusionary zoning can be enforced as an obligation of the developer.

Additional Residential Units

This new zoning rule, just passed by Council, allows home owners to construct an additional dwelling unit up to a minimum of ½ the square footage of the main home or 860 square feet, if the property meets other criteria. (see section 5.22. of the link below for more information).

New Zoning By-Law: City of Kitchener. (2021, April 26). Zoning By-law 85-1.

<https://app2.kitchener.ca/appdocs/Zonebylaw/PublishedCurrentText/Sections/Section%205%20-%20General%20Regulations.pdf>

Implications:

- This new by-law provides another means to increase the housing units, and therefore people, within stable residential neighbourhoods.
- Such additional intensification will contribute to meeting the density targets in the MTSA.
- If the tri-plexing prohibition were lifted for 134 Shanley, the current house could be converted into 3 apartment units, with an additional 2-bedroom unit at the back.
- However, brownfield remediation requirements may limit what can be done with the property.