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

**ISSUE DATE:** February 08, 2019 **CASE NO(S).:** PL130885

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

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| Appellant: | 1026046 Ontario Limited |
| Subject: | Proposed Official Plan Amendment No. 197 |
| Municipality: | City of Toronto |
| OMB Case No.: | PL130885 |
| OMB File No.: | PL130885 |
| OMB Case Name: | Shoreline Towers Incorporated v. Toronto (City) |

**Heard:** August 14 to 15, 2018 in Toronto, Ontario

**APPEARANCES:**

| **Parties** | **Counsel/Representative*** |
|---|---|
| Shoreline Towers Inc. | P. Morley |
| City of Toronto | L. Forder |
| Lakeshore Planning Council Corp. | Peggy Moulder* |
| Mimico Lakeshore Network Inc. | Martin Gerwin* |
| **Participants** | |
| South Beach Investments Limited | P. Bakos |
| Vinen Atlantic S.A. | R. Kanter |

**DECISION DELIVERED BY M.C. DENHEZ AND ORDER OF THE BOARD**

## 1. INTRODUCTION

[1] This decision stems from a hearing requested by the City of Toronto (the “City”) to give effect to a high-visibility Official Plan Amendment (“OPA”) on the lakefront. The term "status hearing" was sometimes used (e.g. in the Notice of Hearing) because the City asked that it be convened to address its document, "*Framework of Amendments – Status Outline*". It was nonetheless common ground that this proceeding, along with its topics and outcome, would go beyond mere "status". This proceeding is referred to herein as "the two-day hearing".

[2] This two-day hearing was the follow-up to a decision by the then Ontario Municipal Board (the “Board”), now continued under the name Local Planning Appeal Tribunal (the “Tribunal”). That Board’s decision was issued on August 30, 2016 (the “August decision”), in “Phase II” of a dispute which began in 2013, over the City’s Official Plan Amendment No. 197 (“OPA 197”).

[3] OPA 197 foresees prominent redevelopment involving about 25 substantial new buildings, in a total “Study Area” called “Mimico-by-the-Lake”. This Study Area faces fully 1.2 kilometres of showcase urban waterfront, along a southward bend in Lake Ontario (where the shore runs north-south). This overall Study Area is divided into seven “Precincts”, named Precincts “A” through “G”. Each is modestly-sized: Precinct “B”, for example, comprises only three properties.

[4] Appeals to the OPA were filed concerning many issues, notably roads, building dimensions and form, parkland, and the format of the OPA itself. One community group with party status, Mimico Lakeshore Network Inc. (“MLNI”), generally supported OPA 197; another, Lakeshore Planning Council Corp. (“LPCC”), objected that proposed buildings were too big, and parkland too small. One owner, Shoreline Towers Inc.

("Shoreline"), at 2313 and 2323 Lake Shore Boulevard West ("Shoreline property") in Precinct B, argued the diametric opposite.

[5] The lengthy hearing on the merits focused on overall planning policy (the "Phase II hearing"). At the request of the City, the Board withheld its order, specifically to allow further opportunity for the City and parties to negotiate and fine-tune various aspects of OPA 197. The Board outlined the policy framework for proposed OPA modifications, at length. The Board gave the parties four months, but then the City requested more time. Ultimately, almost two years elapsed, with talks among the parties off and on.

[6] The City returned with modifications to OPA 197. It made a point of announcing:

- that it would apply the Board's policy framework to the three properties in Precinct B,

- but to none of the neighbouring properties governed by OPA 197. Any attempt to extend those policies to neighbouring properties would be met by a City jurisdictional challenge.

[7] For example, a lakefront road – which the Board had labeled inappropriate for parking – would be hourglass-shaped. The City announced it would retain parking, *except* for the few metres that it crossed the three properties, where it would narrow significantly. Similarly, modifications were inserted to promote architectural excellence and vistas – on Shoreline's property, but nowhere else.

[8] At this two-day hearing, the City called on the Tribunal to approve outstanding parts of OPA 197, notably those which had undergone recent modifications.

[9] Shoreline and MLNI expressed no major objections. LPCC did, notably in an effort to rewrite some of OPA 197's effects on properties surrounding Precinct B.

[10] The Tribunal has carefully reviewed the evidence and considered the eloquent arguments of counsel and representatives. However, this two-day hearing is not a retrial; its purpose is not to reopen the findings of the Phase II hearing.

[11] On review of procedural arrangements issued (elsewhere at the Board) *prior* to the Phase II hearing at this Panel, this Panel of the Tribunal is compelled to acknowledge the City's argument:

- that, within the narrow confines of Precinct B, OPA 197 meets the terms of the legislation and the August decision, if nowhere else; and

- that the procedure governing the Phase II decision had not anticipated orders binding on the neighbouring properties, but only on Precinct B.

[12] The Tribunal also issues a pragmatic caution, however. When properties are in a similar position to each other, the application of overtly differing policies, without visible policy justification, is an open invitation to a proliferation of future planning litigation.

[13] The Tribunal therefore advances “suggestions” encouraging the City to improve policy consistency in four themed areas, namely the lakefront road, built form and vistas, calculation of ratios for parkland and jobs, and collective action.

[14] The Tribunal approves the outstanding portions of OPA 197. The details and reasons are outlined below.

## 2. BACKGROUND AND SCOPE

[15] Six Pre-Hearing Conferences (“PHCs”) and a Procedural Order divided OPA 197’s appeal process into “Phases”. In an early “Phase I”, before a different Board Panel, that Panel’s decision and order (March 31, 2015) modified parts of OPA 197 and approved others.

[16] LPCC took exception to the process and outcome of Phase I, with correspondence saying the matter was railroaded. The undersigned current Panel (for "Phase II") has no comment; however, although there was correspondence, LPCC did not avail itself of the proper legislated procedures to challenge that decision.

[17] As for "Phase II", one PHC (October 21, 2015, again before a different Panel) directed that the current "Phase II" (for the appeal by Shoreline) would focus geographically on a list of issues for Precinct B, where Shoreline was located.

[18] Precinct B contains three properties: Shoreline's, one building owned by South Beach Investments Ltd. ("South Beach"), and Kilcooley Garden Co-op.

[19] The parties to Phase II were the City, Shoreline, MLNI and LPCC. Exceptionally, and on unanimous consent, two other corporate participants were heard (and given limited rights of examination etc.), namely South Beach and Vinen Atlantic S.A. ("Vinen"), owners of abutting apartment buildings (south and north of Shoreline's property respectively), each represented by counsel. Vinen is actually in Precinct A.

## 3. THE PHASE II HEARING

[20] The Procedural Order' s bulleted list of OPA provisions under appeal (in Phase II) was two pages long, with 21 main issues. The Phase II hearing went four weeks, with over 200 pages of Witness Statements and three cubic feet of documents.

[21] The Board ultimately rearranged those 21 main issues into 11 topics, which (for purposes of this two-day hearing) the Tribunal further distills into four main themes. They were the lakefront street; the visual quality of built form (including architectural objectives and vistas, separation distances, and the numerical specifications thereof); the congruence between projections (for population, parks and jobs); and collective action (among owners/developers, including the topic of paper burden).

[22] The lakefront street was the largest single issue. The City had proposed a crescent, connected at the north to Lake Shore Boulevard in Precinct A, crossing the three properties in Precinct B, and rejoining Lake Shore Boulevard in Precinct “C”. Shoreline said this road would do little for traffic, that it should be turned down, and that its proposed right-of-way in Precinct B should have one or more buildings there instead.

[23] Evidence and debate on that question lasted days. If Shoreline's contentions had been upheld, and the road canceled across Precinct B, this would have destroyed the connectivity of any lakefront road, and overturned the City's road plan not only for Precinct B, but also for Precincts A and C.

[24] In reply, the City pointed to provisions in its Official Plan (“OP”) which generically supported roads not only for traffic purposes, but vistas.

[25] This leads the Tribunal to make one observation about the tenor of the debate generally. Notwithstanding the wording of the Procedural Order, the parties did not approach any of these issues as a localized question confined to supposed idiosyncrasies of the three properties in Precinct B. On the contrary, arguments pro and con were eloquently based on first principles, in apparent agreement with Shoreline’s uncontradicted assertion that the outcome here:

- would affect not only roads in other precincts (which was obvious),

- but would otherwise have “precedential impact” throughout the Study Area on other topics as well.

[26] Indeed, on the key topic of streets, one participant requested consent to introduce expert evidence – not just on Precinct B, but neighbouring Precinct A. The other parties agreed, including the City, with no challenge to its relevance.

[27] Similarly, debates over architecture and the intrinsic nature of OPs and their specificity contained no suggestion that those propositions of principle were confined to Precinct B. The Board ultimately agreed with the City that the latter *can* use an OP (not just a zoning by-law) to outline building specifications with mathematical precision. Whether it *should* was a different question, because this could limit the ability to insert architectural flourishes and creative shapes, undermining the City's own objective of promoting a "built form" worthy of this showcase location, and instead fill it with banal "boxes". On that question of vistas and built form, counsel for the City acknowledged that OPA 197 had not mentioned the quality or distinctiveness of views *toward* the new waterfront development, but "perhaps it should".

[28] Parenthetically, after the Phase II hearing, the City agreed with area residents that Council might take advice from its Design Review Panel. Later, at the two-day hearing, the City called the latter body "robust", even if purely advisory.

[29] Another question at the Phase II hearing was whether there was "congruence" between the anticipated scale of development and the scale of acquisition for public lands. LPCC alleged that OPA 197's predictions for development would exacerbate an already disproportionately low ratio of parkland to population; Shoreline argued essentially the opposite, i.e. that the allocation of public lands was so expansive that it left little room for the very development that was supposed to finance it.

[30] Ultimately, at the two-day hearing, the City's planner Ms. Thom testified that the City had met its obligations in that regard. As for the actual calculations, she said compliance with parkland objectives at Precinct B:

- should not be viewed in isolation from other precincts,

- but in tandem with them.

Early in the OPA process, a firm named Urban Strategies had indeed done a tentative estimate indicating a rough overall fit between projections for development and those for public lands – in the Study Area as a whole. Exact calculation (of e.g. parkland dedications resulting from projects, and acquisitions under section 37 of the *Planning Act* – the "Act") would not be feasible until actual projects came forward. The entire process, Ms. Thom testified, was completely in accordance with standard City practice.

[31] LPCC had similarly questioned compliance with the planning objective of "complete communities", saying OPA 197 had not foreseen enough employment space for a proper mix of jobs and residents. Ultimately, at the two-day hearing, Ms. Thom replied that, in Precinct G across the street, there was a Mixed-Use designation which would likely lead to jobs in eventual commercial premises. She repeated that compliance within Precinct B:

- should not be viewed in isolation from other precincts,

- but in tandem with them: planning for jobs is done on a much broader geographic basis.

## 4. THE AUGUST DECISION AND FOLLOW-UP DISCUSSIONS

[32] At the Phase II hearing, the City and other parties advised the Board that further adjustments to OPA 197 were still expected.

[33] The City therefore asked the Board to "allow the appeals in part", and withhold its Order while the City attended to various modifications to the OPA. Both Shoreline and LPCC also asked that further substantive work be invested in the OPA. The unanimous view appeared to be that aspects of OPA 197 were still a work in progress – no surprise, given the scale and visibility of the overall enterprise.

[34] The Board agreed to the City's request. It responded with a 93-page interim decision (the “August decision”), outlining 25 “underlying principles” (par. 389) on which such modifications should be based. It prefaced them as follows:

> The modifications to OPA 197 should proceed within a policy framework…
>
> The Board agrees that ultimate redevelopment of the Study Area is in the City's interest, and the public interest. It would be appropriate, in principle, for the parties to make one further attempt at identifying a solution that is more consistent with the thrust of the planning documents…
>
> In addition to the modifications “on consent”, the Board finds that OPA 197 should be further modified (or remain unchanged, as the case may be) to reflect the items set out below…

[35] For the lakefront road, the Board agreed with City arguments that vistas to the lake would be assisted by a waterfront street, consistent with the OP. By exactly the same reasoning, however, the Board found that those same vistas should not then be obstructed by a row of parked cars:

> If the City's main purpose was visual, and there was no urgent demand for parking, then a string of cars would be counterproductive – unless one presupposed that no scenic vista was complete without a line of parked cars. The Board was not persuaded. The Board therefore agrees… that a parking lane is inappropriate.

[36] On the recent precedent of a parkfront road elsewhere approved by the City, the Board found in favour of a right-of-way of 11.0 metres and a paved width of 6.6 metres (21.7 ft., no parking lane), instead of the City’s originally suggested 13.5 metre right-of-way and paved width of 8 metres (26.2 ft., to include a parking lane).

[37] The August decision also outlined “underlying principles” for the other themes in a modified OPA, with the following comment:

> The current decision is part of a larger picture. This Phase II hearing may have only limited *direct* effect on what was expeditiously approved in the Phase I decision (March 31, 2015), by the then Board Member who presided; but indirect effects are another matter. Though the Board was told that this appeal – and Phase II generally – pertained “only to Precinct B”, removal of the waterfront street would have unavoidable impacts on the City's vision for connectivity (and hence deployment) at least in Precincts A and C. Furthermore, many arguments

> in this hearing – notably on methodology, numerical specificity, and lotting – might apply generically to the Study Area as a whole. The parties – including the City – certainly appeared to debate them on that basis.
>
> Indeed, much of the evidence involved issues extending far beyond the Study Area, to the very underpinnings of Ontario's planning system.

[38] The Board allotted four months for the OPA modification process. The Board added: "The Board expects the parties… to use their best efforts to proceed by consensus wherever possible."

[39] In due course, the City requested more time. Then, on February 28, 2017, the City circulated a "*Framework of Amendments – Status Outline*".

[40] That document proposed limiting the geographic scope of modifications to Precinct B. The City added that it was making progress in discussions with Shoreline and MLNI, but not LPCC.

[41] Indeed, LPCC objected almost immediately to City attempts to exclude application to other precincts. It repeatedly questioned the good faith of the City's approach, notably its discussions with LPCC. LPCC also circulated page after page of calculations, arguing that parkland was still being shortchanged.

[42] In reply, the Board periodically continued to encourage discussions in search of more consensus. However, almost two years elapsed. The City said it was because there was "no further movement… while the Parties awaited a response from the Board".

[43] For its part, LPCC continued to circulate objections, periodically up to the eve of this two-day hearing. Aside from its general objection to the City's site-specific approach, those objections were in three broad categories:

- In some instances, LPCC repeated its view (debated at length in the Phase II hearing) that OPA 197's treatment of topics like height and density

contravened governing documents, such as the City's OP, the Provincial Policy Statement ("PPS"), and the Growth Plan for the Greater Golden Horseshoe.

- In others, LPCC sought to reintroduce topics such as transportation and rentals, on which very little had been said during the Phase II hearing.

- In yet others, LPCC argued that the City's modifications did not comply with the terms of the August decision.

[44] Parenthetically, LPCC also supplemented its materials with documentation, which was more historical in nature, such as the mid-20th century background of water lots, fill, and what later became Open Space designations.

[45] LPCC wrote that the City was using "loopholes to defeat and circumvent Official Plan requirements." LPCC's Ms. Moulder added that, in this proceeding, "other people are not fair or honest or abide by the law." She concluded: "This whole thing has to start again".

[46] LPCC and the City filed materials with the Board/Tribunal over three inches thick.

[47] For its part, the City said its intent, in calling for this two-day hearing, was to "reach some clarity" on the "direction on implementing the (August) decision". As it predicted, most other parties (aside from LPCC) expressed general agreement with the City's direction, subject to various adjustments. Ultimately, the City called on the Tribunal:

1. To approve "the general and site-specific amendments to OPA 197", as reproduced at "Exhibit A", which was presented to the two-day hearing;

2. To order that “the remainder of OPA 197” will come into full force and effect, subject to other site-specific appeals in Phase III; and

3. To apply “all modifications to OPA 197 previously approved in the Phase I Decision… to the Shoreline Site… subject to site specific policies.”

## 5. PROCEDURE

[48] Toward the start of this two-day hearing, the Tribunal said it would not entertain re-argument of topics, which had already been canvassed – or should have been canvassed – during the Phase II hearing. This was not a retrial. The Tribunal would, however, entertain arguments about compliance with the August decision.

[49] Later, Mr. Bakos, counsel for the participant South Beach, sought to revisit building height, which had been addressed at length in the August decision. This attempt elicited objections from the City and Shoreline; it was at least unseemly, they said, to attempt to reopen those decided questions, at this late date, fully five years after the appeals were launched (not to mention that South Beach was not even a party). Their consent to Mr. Bakos’ very role in these proceedings, Shoreline and the City added, did not extend to revisiting matters disposed of in the August decision.

[50] The Tribunal agreed with them. It also reminded Mr. Bakos that South Beach was a non-party. Over yet more objections, Mr. Bakos responded with an impromptu request for party status on behalf of South Beach.

[51] The legal framework for adding parties has long attracted attention. At one point, it was said that one criterion was that the request "should be timely": *Barrie (City) Zoning By-law 85-95, Re* (1987), 20 O.M.B.R. 95 at 96 (O.M.B.). In *Lafarge Canada Inc. v. 1341665 Ontario Ltd.,* 2004 CarswellOnt 1507, the Divisional Court added that claiming a "private interest in the outcome", by itself, was essentially meaningless: why else would anyone apply for anything? “A private interest in the outcome of the

proceeding … alone is not determinative.” Later, in 2007, under the *Planning and Conservation Land Statute Law Amendment Act,* a major prerequisite was that the applicant had made oral or written submissions preceding adoption of the appealed enactment. Alternatively, said that Act, party status in an Official Plan dispute could be granted if the Board/Tribunal found "reasonable grounds": section 17(44.2).

[52] In the present case, however, there was no suggestion whatever that Mr. Bakos’ request for party status was "timely"; nor had South Beach made oral or written submissions before OPA 197's adoption; so the only remaining question was whether there were other sufficient "reasonable grounds" for this request without notice.

[53] If there were, they were not outlined to this Tribunal. Though it has been said that there are six "obvious factors” to demonstrating "reasonable grounds" – *Oakville (Town), Re,* 2010 Carswell Ont. 7078 (O.M.B.) – there was no clear exposition of any of them. There were vague allusions to the public interest and to South Beach’s interest, but little more.

[54] The objections (from both the City and Shoreline) centered on timeliness and procedural fairness. South Beach had had years to assert a claim to party status – including the two years since it began its extensive (and exceptional) participation in this proceeding: on consent, the Board/ Tribunal had already permitted the participant South Beach to cross-examine and make submissions. The Tribunal was not now persuaded of "reasonable grounds" for any further change of status at this late stage.

## 6. THE CITY’S MODIFICATIONS

[55] After two years of efforts at consensus on substantive modifications to OPA 197, the outcome was not what the Tribunal expected.

[56] The City focus on Precinct B had been anticipated. Its extent was not. Though the August decision had proposed that the City proceed within an outlined “policy

framework” (and the City had expressed no disagreement), the City said it now refused to apply any of those policies elsewhere than where it absolutely had to.

[57] First, the City's proposed waterfront street would be shaped like an hourglass:

- Immediately north of Precinct B (in Precinct A), the road would have three lanes, specifically, to include parking;
- when it crossed the few metres of Precinct B, it would narrow to two lanes (per the August decision), and exclude parking;

- on crossing into Precinct C, it would promptly return to three lanes, with parking.

[58] A similar approach was adopted on the topic of built form and vistas:

- The City's modifications would now allow “architectural elements” (measuring up to 5 m), to mitigate concerns about buildings looking “boxy”;

- the City added that “development in this prominent waterfront quotation should be remarkable and have exemplary architecture”; furthermore, “development will protect and enhance views of the lake, from the lake and along the waterfront.”;

- but the City took pains to specify that it contemplated such accommodations for architecture and vistas *only* on Shoreline’s property.

[59] There was no testimony suggesting that this novel road arrangement, or the bifurcated arrangements for architecture, were based on any policy objective. When asked why the City adopted that approach, the reply was that, since Phase II applied only to small portions of the Study Area, the City replied that any supposition that the

underlying principles might have broader generic application would face a jurisdictional challenge by the City. The need for OPA modifications

- should not be viewed in tandem with the other precincts,

- but rather in isolation from them.

In any event, regardless of policy findings in the August decision, any modification beyond Precinct B was superfluous: the City had already attained what it wanted for those other areas in Phase I, where OPA 197 was now in full force and effect. “The Phase I Decision/Order issued March 31, 2015 is final.” For those other precincts, there was therefore no need to pay any attention to any of the August decision’s policy findings.

[60] Parenthetically, the City never fully explained why it earlier consented to expert testimony and submissions presented by the participant Vinen -- from Precinct A -- if the City considered potential application to Precinct A irrelevant.

## 7. ANALYSIS

[61] The August decision chronicled the evolution of the “*Planning Act”*. When introduced in the 1940s, no definition of “planning” was included. That remains the case. In accordance with normal interpretive practice, this Panel often resorted to dictionary definitions, such as the *Concise Oxford Dictionary’s* “to arrange beforehand”. Any “arrangement”, however, is only as good as its guiding criteria.

[62] Originally, there were essentially none. At the time, according to the Court of Appeal, any notion “that an application must comply with (predetermined criteria) before the Board will allow the application is clearly wrong and the Board, if it so fettered its discretion, would be in error" -- *Hopedale Developments Ltd. v. Oakville (Town),* (1965) 1 O.R. 259, 47 D.L.R. (2$^{nd}$) 482. That situation underwent a 180$^{o}$ reversal over time: by

2005, the process was subject to predetermined enforceable criteria. “Planning” would no longer be a mere synonym for “regulation”: in closer alignment with the dictionary definition, its pivotal components would be arranged beforehand. Indeed, in the words of the PPS (supported by section 1.1 of the Act), the system would now be "policy-led".

[63] In the current case, however,

- The Tribunal heard no attempt at a “policy” or “planning” justification for this road arrangement – or any other bifurcated modification.

- There was no evidence of analysis of the August decision’s “underlying principles”, e.g. to explain why Shoreline’s buildings, in this showcase location, should encounter provisions for “exemplary” architecture and vistas – but no one else’s buildings.

- If the reason was to avert the tedium and time lag involved in reopening any of OPA 197 for other precincts, the City did not say so. In retrospect, the lapse of time (almost two years) would have been ample for that purpose, if it had been the City's intention.

[64] Instead, the Tribunal was told there was nothing the Tribunal could do about it. Jurisdictionally, that might be true, given the earlier Procedural Order. Pragmatically, however, the Tribunal is compelled to issue a caution.

[65] This Tribunal, like all judicial and quasi-judicial institutions, has a residual responsibility to discourage the proliferation of a multiplicity of legal proceedings. That is an immediate cause for concern, for one elementary reason.

[66] Ontarians expect equal treatment before the law – without deviation, unless there is some visible policy reason to differentiate among them. This is equally true of owners, developers, and community groups. The Tribunal heard eloquent argument that

"differentiation" and "inconsistency" of approach – as with owners and residents in abutting precincts – would be a guaranteed way of generating more disputes in future, notably litigation before planning tribunals:

- if certain planning fundamentals have been recognized in Precinct B for some properties,

- then it is almost impossible to conceive how those same fundamentals could be ignored in future litigation for surrounding properties.

[67] The Tribunal therefore has pragmatic comments for the City, for potentially wider application, which the Tribunal labels "suggestions" later in this decision.

[68] Turning to the strict confines of Precinct B, the central question in this two-day hearing is whether the City's revised Framework of Amendments (Exhibit "A") complies with the Act, such that the Tribunal may issue the approvals requested by the City. The August decision had found that:

- many of the provisions were largely uncontested,

- though certain matters were flagged for further consideration, within the policy framework specified (the 25 "underlying principles").

[69] As mentioned, the latter centered on four themes – the lakefront street; built form; projections for population, parks and jobs; and collective action.

[70] That identification was not to suggest the entire OPA needed reconsideration. The Tribunal cannot accept LPCC's call for "this whole thing" to "start again". It is not just a matter of procedural jurisdiction; substantively, the August decision acknowledged various portions of OPA 197. The Tribunal heard nothing at this two-day hearing which would justify – either substantively or procedurally – a complete reboot.

[71] That leaves the outstanding items, starting with the road. The Tribunal is compelled to agree that the City's OPA modifications do comply verbatim with the wording of the August decision – within Precinct B, if nowhere else.

[72] The next theme was built form and vistas, for which the City did insert provisions, plus the broader reference to the Design Review Panel. Again, the Tribunal is compelled to agree that the City's OPA modifications do comply with the wording of the August decision – within Shoreline's property, if no one else's.

[73] There was then the question of congruence between projections for development and parkland. An alleged disconnect had been central to the critique of OPA 197 by both Shoreline and LPCC (though from opposite directions). It was nonetheless undisputed that the proportion of parkland to population was already below average, and that the topic deserved every attention.

[74] The Tribunal notes two arguments from the City's expert at this two-day hearing: first, that it is not normal City practice to calculate the fit (between those projections) on a site-by-site or precinct-by-precinct basis, but rather on a broader geographic basis; second, that preliminary studies (by a consulting firm) had indeed pointed to a fit (at least on a broad basis), and that such, calculations were normal City practice.

[75] That was the extent of the City's reply to LPCC's calculations. There was no systematic attempt to address – let alone rebut – most of those arguments. However, if LPCC had intended to rely on its calculations to block final approval of OPA 197, it should have used the two-day hearing to explain *why*. Instead, LPCC itself treated those materials akin to other supplemental documentation: they were barely referenced.

[76] The Tribunal, however, does issue another caution. If the City's own calculation, comparing development projections with parkland projections, were indeed as robust and prominent in the City's overall planning process as suggested, it is unclear why that

evidence (such as it was) came forward only *now*, at this two-day hearing, not at the earlier hearing on the merits. Perhaps a more transparent and persuasive calculation would have averted the Phase II hearing, or at least shortened it. It is in the City's practical self-interest to improve the prominence of that quintessential planning exercise. In the meantime, however, the Tribunal was not shown how LPCC's parkland projections constituted sufficient ground for this Tribunal to withhold approval of the relevant portions of OPA 197.

[77] The next theme was the congruence of development projections with objectives for "complete communities", notably the ratio of residential space to employment space. While acknowledging that such calculations are indeed done usually on a broader geographic basis, the Tribunal offers largely the same suggestions to the City on that subject as in the paragraphs above, on increasing the prominence of that planning exercise. Again, however, the Tribunal finds no sufficient grounds to withhold approval.

[78] Finally, on the question of collective action by owners and developers, along with paper burden, the City did make adjustments to the wording applicable exclusively to Shoreline. The City's planner Ms. Thom acknowledged that those OPA modifications would not likely dispel the concerns of neighbours like Vinen. However, the Tribunal was not told that this was fatal to the OPA. Again, the Tribunal finds no sufficient basis to withhold approval. The Tribunal does, however, note the importance of the question, as well as LPCC's suggestion that the City consider the approach used at neighbouring Humber Bay Shores – where the public sector commitment to investing in parkland was a recognized incentive for owners and developers.

## 8. CONCLUSION

[79] Counsel for the City said she had "no objection" to the Tribunal making further policy suggestions for the Study Area as a whole, not confined to Precinct B, as long as it was clearly understood that they were recommendations only, and in no way infringed on Council's jurisdiction.

[80] The Tribunal does so:

- The Tribunal encourages the City to consider the appropriateness of 11.0 m and 6.6 m, for the lakeside street's right-of-way and travelled portion respectively, in Precincts A and C, instead of an hourglass-shaped right-of-way and road;

- On the model of the provisions for Shoreline, the Tribunal encourages the City to consider architectural provisions for buildings in neighbouring precincts, along with provisions for vistas to and from the proposed redevelopment;

- The Tribunal encourages the City to consider a more prominent role for planners and other City officials, in assessing the "fit" between residential development projections on one hand, and (i) parkland projections and (ii) employment space on the other.

- The Tribunal encourages the City to consider a more prominent role to stimulate joint action by owners/developers and mitigate paper burden.

[81] Otherwise, the Tribunal finds no other grounds to intervene. The Tribunal orders:

1. The general and site-specific amendments to OPA 197 are approved, as presented in this two-day hearing as "Exhibit A".

2. The remainder of OPA 197 will come into full force and effect, subject to site-specific appeals in Phase III.

3. All modifications to OPA 197 previously approved in the Phase I Decision of the Ontario Municipal Board (as it then was), dated March 31, 2015, and as identified in the Unofficial Consolidation of OPA 197 (Exhibit 19) are

approved, as being applicable to the Shoreline Site (2313 and 2323 Lake Shore Boulevard West) subject to site-specific policies.

*"M.C. Denhez"*

M.C. DENHEZ
MEMBER

If there is an attachment referred to in this document,
please visit www.elto.gov.on.ca to view the attachment in PDF format.