

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: June 07, 2021

CASE NO(S): PL190356

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

Applicant and Appellant:	Tribute (Bloor Street West) Limited
Subject:	Application amend Zoning By-law No. 438-86 - Refusal of Application by the City of Toronto
Existing Zoning:	CR T3.0 C2.0 R2.5 in By law No. 438-86; and CR 3.0 (c2.0; r2.5) SS2 (x2482) in By-law No. 569-2013
Proposed Zoning:	Site Specific (To be determined)
Purpose:	To permit a 29-storey mixed use building
Property Address/Description:	210 Bloor Street West
Municipality:	City of Toronto
Municipality File No.:	18 254623 STE 20 OZ
LPAT Case No.:	PL190356
LPAT File No.:	PL190356
LPAT Case Name:	Tribute (Bloor Street West) Limited v. Toronto (City)

Heard: February 1 - 12, 2021 by video hearing

APPEARANCES:

Parties

Counsel*/Representative

Tribute (Bloor Street West) Limited	David Bronskill*
City of Toronto	Kasia Czajkowski* and Gabe Szobel*
208 Bloor Street West Inc.	Cynthia MacDougall* and Belinda Schubert*
East Annex Condominium Association	Sarah Turney* and Anna Lu*

Annex Residents' Corporation

Henry Wiercinski

DECISION DELIVERED BY DAVID BROWN AND INTERIM ORDER OF THE TRIBUNAL

[1] Tribute (Bloor Street West) Limited ("Tribute") appealed the decision of the City of Toronto (the "City") which refused an application to amend the Zoning By-law to permit the redevelopment of the lands at 210 Bloor Street West (the "Subject Lands") with a mixed-use building.

[2] Tribute is proposing a redevelopment the Subject Lands with a 29 storey building having a height of 107 metres ("m") (114.2 m including the mechanical penthouse) comprised of commercial space on the ground floor, 42 residential units above the ground floor, and below grade parking accessed from a shared laneway and right-of-way to the rear of the Subject Lands (the "Proposed Development").

[3] The Tribunal heard evidence and received witness statements filed by the Parties from their Land Use Planners, Urban Designers and Traffic Planners in support and opposition of the Proposed Development. A neighbouring resident also testified in opposition to the Proposed Development.

[4] The Tribunal endorsed a Procedural Order for the hearing which included an Issues List created in respect of the Appeal.

[5] In consideration of the testimony and the evidence, the objections expressed by the area residents, and having considered the Provincial Policy Statement, 2020 ("PPS"), A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2020 ("Growth Plan"), and the City of Toronto Official Plan ("OP"), the Tribunal allows the Appeal in part and subject to conditions for the reasons set out as follows.

SITE CONTEXT

[6] The Subject Lands are located mid block on the north side of Bloor Street West

between Avenue Road and Bedford Road. The Subject Lands is one of the smaller parcels along this block with a frontage of 12.77 m, a depth of 61.37 m, and an area of 783.06 square metres ("m²"). The Subject Lands are currently occupied with a two storey building that is occupied by Remenyi House of Music which sells and services pianos and provides other music related services. Access to the rear of the Subject Lands is provided by way of an easement over a private laneway located east of the Subject Lands accessing Bloor Street West between 200 and 206 Bloor Street West and then across the rear of the properties at 206 and 208 Bloor Street West over a parcel of land owned by the City.

[7] To the west of the Subject Lands is the Intercontinental Hotel at 220 Bloor Street West (the "Intercontinental") which is located on lands owned by the City and which are subject to a long term lease agreement. To the west of the Intercontinental is 1 Bedford Road which is situated at the corner of Bloor Street West and Bedford Road and is occupied with 32 storey mixed use condominium building ("1 Bedford").

[8] To the east of the Subject Lands is 208 Bloor Street West occupied with a nine (9) storey office building ("208 Bloor") and east of 208 Bloor is 206 Bloor Street West occupied by a 19 storey residential condominium ("Museum House"). Both 208 Bloor and Museum House are accessed from the shared driveway off Bloor Street West along the easterly side of the Museum House property. 208 Bloor has an easement from the shared driveway across the City owned lands at the rear of the Museum House. On the east side of the shared driveway is 200 Bloor Street West, a 32 storey residential condominium (the "Exhibit"), that is also accessed over the shared driveway. Further east is 192 Bloor Street, a two storey structure, then 180 Bloor Street West being a 15 storey office building ("180 Bloor") and the Park Hyatt Hotel at the corner of Avenue Road and Bloor Street West (the "Park Hyatt").

[9] Directly north of the Subject Lands are lands owned by the City. Abutting the Subject Lands is a driveway which is provided by way of an easement from Prince Arthur Avenue to the rear of the Intercontinental. Beyond the Intercontinental service

driveway is a public parking lot operated by the Toronto Parking Authority (the “TPA Lot”). The TPA Lot extends from Bedford Road at the west end to the rear of the Park Hyatt property at the east end with access from Bedford Road and Prince Arthur Avenue to the north. The TPA Lot separates the Subject Lands from the properties that front on the south side of Prince Arthur Avenue. The TPA Lot is located over the Toronto Transit Commission (“TTC”) Subway Line 1. The low-rise development along Prince Arthur Avenue forms part of the East Annex Heritage District.

[10] Opposite the Subject Lands, on the south side of Bloor Street West, is the Royal Ontario Museum and the University of Toronto Campus including The Royal Conservatory of Music, the northern terminus of Philosopher’s Walk, and the Varsity Centre Stadium.

THE PROPOSED DEVELOPMENT

[11] The Proposed Development is detailed in the architectural drawings prepared by Core Architects Inc. with revisions dates of December 18, 2020, January 4, 2021, and January 12, 2021, provided at Tabs 28, 29 and 30, respectively, of the Joint Document Book filed with the Tribunal as Exhibit No.1.

[12] Tribute describes the Proposed Development as a unique, architecturally ambitious, 29 storey luxury mixed-used infill building at a height of 107.6 m (114.2 m including the mechanical penthouse).

[13] The Proposed Development provides 92.4 m² of commercial space at grade facing Bloor Street West and 42 residential units located on the floors above. The proposed residential units are all two-bedroom units and range in size from 217.37 m² to 460.44 m². Each residential unit has a least one private amenity area balcony that has been architecturally integrated into the building.

[14] There is one residential unit provided on the second floor and two residential units on each floor from the third floor to the sixteenth floor. The seventeenth floor

through to the twenty-ninth floor will each contain a single residential unit. A common indoor amenity area of 206.42 m² is proposed on the second floor overlooking Bloor Street West. The amenity area will service the residents of the proposed building. Areas of Green Roof are proposed for the roof above the twenty-ninth floor.

[15] Vehicular access for servicing and parking is located at the rear of the proposed building by way of the existing access easement to Bloor Street West. All parking is proposed in an underground parking structure that will provide 81 parking spaces with access provided by two car lifts. A valet service is proposed to manage parking and the vehicle staging area accommodates two vehicles. A Type 'C' loading space is proposed.

[16] The proposed building will provide a building face setback from Bloor Street West at grade of 2.1 m. The balconies are set the street line from the third floor to the 16th floor with a building face setback at 3.65 m. The building step backs at the 17th floor providing a setback of 3.0 m to the balcony projection and 6.2 m to the building face. The building then steps back further at the 23rd floor with a setback of 8.95 m to the building face and 5.3 m to the balconies. The rear building setback is 2.4 m at grade, 1.9 m at the second floor to the balcony projection. At the 17th floor the building steps back to a setback of 9.5 m to the 22nd floor. The 23rd through 29th floors are cantilevered providing a rear setback of 7.6 m. The side yard setbacks on both sides are 0.0 m.

THE PARTIES

[17] Tribute filed an application to Amend the Zoning By-law with the City on November 9, 2018 (the "Application"). City Planning prepared a Staff Report recommending a refusal of the Application dated May 3, 2019 setting out that the reasons for refusal (the "Staff Report"). City Council at it meeting on June 18, 2019 refused the application. Tribute appealed the City Council decision to the Tribunal on July 22, 2019.

[18] Tribute contends that the Proposed Development represents appropriate intensification on a site that has excellent transit access and is within the Downtown and Central Waterfront area which is designated for growth and contemplates significant intensification. The Subject Lands are designated Mixed Use, are situated on a High Street which provides for Canyon Form Tall Buildings and when considered in the context of the block, is appropriate.

[19] The City Council refused the Application in accordance with the recommendations contained in the Staff Report. The Staff Report concluded that the Proposed Development represents an overdevelopment of the small and narrow property resulting in a significant density of 20.25 times the lot area. The City's position is that the Proposed Development does not provide appropriate setbacks to the tower portion of the tall building and does not comply with the City's Official Plan in respect to tall building setbacks and separations distances and does not provide an appropriate transition at the rear of sides of the proposed building. The City contends that the Proposed Development is not consistent with the Provincial Policy Statement and the Growth Plan for the Greater Golden Horseshoe.

[20] 208 Bloor Street West Ltd. owns the abutting lands to the east of the Subject Lands and have negotiated a settlement with Tribute in respect to the Proposed Development. 208 Bloor Street West Ltd. attended the hearing and advised they do not oppose the application and would not be calling any witnesses in respect of the proceedings.

[21] East Annex Condominium Association ("EACA") represents condominium developments located at 1 Bedford Road, 200 Bloor Street West, 206 Bloor Street West and 55 Prince Arthur Drive. EACA opposes the Proposed Development in its current form indicating that it is a notable departure from the character of the area. The EACA concerns are that the increased utilization of the access to the Subject Lands will impact the Museum House and the Exhibit properties. EACA contends that the Proposed Development is an overdevelopment of a small site and will negatively impact the area

which will in turn impact its existing residents.

[22] The Annex Residents' Corporation ("ARC") represents residents within the Annex area. ARC opposes the Proposed Development noting that with the diminishing number of sites in the area available for redevelopment proposals are becoming more aggressive. The Proposed Development will be the tallest building on the block and the ARC take the position that the proposal is out of scale and not in character with the surrounding area. They share the position taken by the City and EACA.

THE WITNESSES

[23] The Tribunal qualified Michael Hannay as an Expert in Urban Design matters and Land Use Planning, Louis Tinker, a Land Use Planner and Steve Krossey, a Traffic Planner on behalf of Tribute.

[24] Mr. Hannay has 30 years of experience, is a Registered Professional Planner ("RPP"), is a full member of the Canadian Institute of Planners ("CIP"), the Ontario Professional Planners Institute ("OPPI"), and the Royal Architectural Institute. Mr. Tinker has 20 years of experience, is a RPP, and is a member of the CIP and the OPPI. Mr. Krossey is a Professional Engineer with over 20 years of experience in transportation planning and traffic engineering studies and is a member of the Institute of Transportation Engineers ("ITE").

[25] The Tribunal qualified Kevin Lee as an Expert in Urban Design matters and Barry Brooks a Land Use Planner, on behalf of the City.

[26] Mr. Lee has been an Urban Designer with the City since 2019 and prior to that was in the employ of the City as a Design Technologist for five years. Mr. Lee received a Bachelor of Architectural Science from Ryerson University in 2014. Mr. Brooks is a Senior Planner with the City with over 30 years of experience, is a RPP, and is a member of the CIP and the OPPI.

[27] The Tribunal qualified Diana Birchall as an Expert in Urban Design matters and Land Use planning and Terry Wallace as an Expert in Transportation Planning on behalf of EACA.

[28] Ms. Birchall has over 30 years of experience, is a RPP, and a full member of the CIP and OPPI. Ms. Birchall's experience includes being employed with the City as a Manager in the Urban Design section for three years and with the City of Vaughan as the Director of Planning Policy and Urban Design for nine years prior. Mr. Wallace is a Professional Engineer with over 30 years of experience in transportation planning and traffic operations and is a member of the ITE.

[29] Sol Wassermuhl, a resident of Museum House, testified as a representative of EACA. Mr. Wassermuhl is an Architect however he did not seek to be qualified as an expert.

THE EVIDENCE

The Planning Act

[30] Section 2 of the *Planning Act* (the "Act") requires that the Tribunal, in carrying out their responsibilities under the Act, shall have regard to, among other matters, matters of provincial interest as delineated in s. 2. The Tribunal was directed to specifically the following subsections:

- (e) the supply, efficient use and conservation of energy and water;
- (f) the adequate provision and efficient use of communication, transportation, sewage and water services
and waste management systems;
- (g) the minimization of waste;
- (h) the orderly development of safe and healthy communities;
(h.1) the accessibility for persons with disabilities to all facilities, services and matters to which this Act applies;
- (i) the adequate provision and distribution of educational, health, social, cultural and recreational facilities;
- (j) the adequate provision of a full range of housing, including affordable housing;
- (k) the adequate provision of employment opportunities;
- (l) the protection of the financial and economic well-being of the Province and its municipalities;

- (p) the appropriate location of growth and development;
- (q) the promotion of development that is designed to be sustainable, to support public transit and to be oriented to pedestrians;
- (r) the promotion of built form that,
- (i) is well-designed,
 - (ii) encourages a sense of place, and
 - (iii) provides for public spaces that are of high quality, safe, accessible, attractive and vibrant;

[31] The City submitted that the Proposed Development does not represent appropriate development at the scale proposed and does not represent orderly development as it will negatively impact on adjacent lands. The EACA contends that the Proposed Development does not represent a built form that encourages a sense of place.

[32] Tribute submitted that the Proposed Development is a compact development that makes efficient use of infrastructure, introduces housing which complements the range of housing in the City, is sustainable and supports existing and planned transit. The built form frames the street with a well designed public realm.

Provincial Policy Statement, 2020

[33] The PPS provides direction in respect to implementation of the policies contained therein and the Tribunal was directed to Policy 4.2 which provides that the PPS shall be read in its entirety and all relevant policies are to be applied to each situation. Policy 4.6 which provides that the official plan is the most important vehicle for the implementation of the PPS.

[34] Mr. Tinker reviewed the PPS in detail. The Tribunal notes the following sections referred to and addressed by Mr. Tinker:

1.1.1 Healthy, liveable and safe communities are sustained by:

- a) promoting efficient development which sustains the financial well being of the Province and the Municipality over the long term;

b) accommodating an appropriate affordable and market-based range and mix of residential types, employment, institutional, recreation, park and open space, and other uses to meet long-term needs;

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;

f) improving accessibility for persons with disabilities and older persons by addressing land use barriers which restrict their full participation in society;

g) ensuring that necessary *infrastructure* and *public service facilities* are or will be available to meet current and projected needs;

i) preparing for the regional and local impacts of a changing climate.

[35] Mr. Tinker submitted that the Proposed Development represents an efficient development that integrates growth management and is transit supportive development that result in an intensification that achieves an optimization of transit investments.

1.1.3.1 *Settlement Areas* shall be the focus of growth and development.

1.1.3.2 Land use patterns within *settlement areas* shall be based on densities and a mix of land uses which:

- a) efficiently use land and resources;
- b) are appropriate for, and efficiently use, the *infrastructure* and *public service facilities* which are planned or available, and avoid the need for their unjustified and/or uneconomical expansion;
- c) minimize negative impacts to air quality and climate change, and promote energy efficiency;
- d) prepare for the impacts of a changing climate;
- e) support active transportation;
- f) are *transit-supportive*, where transit is planned, exists or may be developed; and
- g) are freight-supportive.

1.1.3.3 Planning authorities shall identify appropriate locations and promote opportunities for *transit-supportive* development, accommodating a significant supply and range of *housing options* through *intensification* and *redevelopment* where this can be accommodated taking into account existing building stock or areas, including *brownfield*

sites, and the availability of suitable existing or planned *infrastructure* and *public service facilities* required to accommodate projected needs.

- 1.1.3.4 Appropriate development standards should be promoted which facilitate *intensification*, *redevelopment* and compact form, while avoiding or mitigating risks to public health and safety.

[36] Mr. Tinker in reviewing Policy 1.1.3 submitted that the City is a focus of growth and development, the Proposed Development efficiently uses the Subject Lands, supports active transportation and is transit supportive. Mr. Tinker advised that the City has identified the Subject Lands and the surrounding area for intensification.

- 1.4.3 Planning authorities shall provide for an appropriate range and mix of *housing options* and densities to meet projected market-based and affordable housing needs of current and future residents of the *regional market area* by:

- c) directing the development of new housing towards locations where appropriate levels of *infrastructure* and *public service facilities* are or will be available to support current and projected needs;
- d) promoting densities for new housing which efficiently use land, resources, *infrastructure* and *public service facilities*, and support the use of *active transportation* and transit in areas where it exists or is to be developed;
- e) requiring *transit-supportive* development and prioritizing *intensification*, including potential air rights development, in proximity to transit, including corridors and stations; and
- f) establishing development standards for *residential intensification*, *redevelopment* and new residential development which minimize the cost of housing and facilitate compact form, while maintaining appropriate levels of public health and safety.

[37] Mr. Tinker submitted that the proposed residential condominium is market oriented and will complement range of housing available in the area.

1.6.7.4 A land use pattern, density and mix of uses should be promoted that minimize the length and number of vehicle trips and support current and future use of transit and *active transportation*.

[38] Mr. Tinker testified that the Proposed Development achieves the objective of this policy within the area surrounding the Subject Lands.

- 1.7.1 Long-term economic prosperity should be supported by:
- a) encouraging residential uses to respond to dynamic market-based needs and provide necessary housing supply and range of *housing options* for a diverse workforce;
 - b) optimizing the long-term availability and use of land, resources, *infrastructure* and *public service facilities*;
 - c) maintaining and, where possible, enhancing the vitality and viability of downtowns and mainstreets;
 - d) encouraging a sense of place, by promoting well-designed built form and cultural planning and by conserving features that help define character, including *built heritage resources* and *cultural heritage landscapes*;
 - e) encouraging a sense of place, by promoting well-designed built form and cultural planning, and by conserving features that help define character, including *built heritage resources* and *cultural heritage landscapes*; ...

[39] Mr. Tinker opined that the Proposed Development optimizes the use of the Subject Lands and enhances the vitality of the downtown.

[40] Mr. Tinker in response to questions from the City, opined that the PPS directs that the most efficient use of land should be pursued where the PPS states that efficient development patterns optimize the use of land, resources and public investment in infrastructure and public service facilities. He contends that a reduction in the height of the proposed building without any rationale would be contrary to the direction of the PPS. A lesser height would not optimize the use of the Subject Lands. Mr. Tinker agreed that tall buildings require other policy consideration however; a 29 storey building at 107 m in height represents the optimal use of the Subject Lands within the current policy context. Mr. Tinker applied a similar rationale to the proposed density and concluded that the proposed ratio of the building area to the land area is an appropriate optimization of the Subject Lands.

[41] Mr. Brooks opined that the site is too small to accommodate the Development Proposal and does not represent a well designed built form as required by the City Official Plan (the "OP").

[42] In response to questions during cross-examination, Mr. Brooks agreed that in consideration of s. 4.6 of the PPS, conformity with the OP is not a test for consistency

with the PPS. Mr. Brooks conceded that an increase in units would better optimize the transit investment and a smaller building would be inconsistent with the direction provided in the PPS. Mr. Brooks concluded that the Proposed Development is consistent with the PPS.

[43] Ms. Birchall testified that she adopts the evidence of Mr. Brooks in respect of the PPS.

A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2020

[44] Mr. Tinker reviewed the Growth Plan policies under s. 2.2.1 Managing Growth and s. 2.2.2 Delineated Built-up Areas and submitted the Proposed Development is located in a Strategic Growth Area and is in close proximity to higher order transit being the TTC Subway. He opined the Proposed Development supports the achievement of a complete community by: promoting a mix and access to community uses, complementing the Annex area accommodating people at all stages of life, provide compact built form and vibrant public realm, and a new development that will mitigate the impacts of a changing climate. Mr. Tinker continued, submitting that the Proposed Development represents intensification in a delineated built-up area which includes other tall buildings and furthers the intensification objectives of the Growth Plan.

[45] In consideration of s. 2.2.4 Transit Corridors and Station Areas, Mr. Tinker opined that the Proposed Development supports transit use and achieving the minimum growth targets. The Subject Lands are located in an area that is defined as a Major Transit Station Area ("MTSA") which support providing alternative development standards.

[46] The Tribunal was directed to consider policies 2.2.6.1 and 2.2.6.3 under 2.2.6 Housing and policy 4.2.10.1 Climate Change and Mr. Tinker submitted the Proposed Development supports housing choice with a diverse range and mix of housing options and densities which can be implemented through the proposed Zoning By-law.

[47] Mr. Tinker confirmed during cross-examination that the Subject Lands have not been identified by the City as a MTSA however; the Subject Lands have the characteristics set out in the Growth Plan to be deemed a MTSA. City Council is currently undertaking a review of which include identifying MTSA's and initial staff documents have identified the area subway stations as appropriate for designation as MTSA's.

[48] Mr. Brooks in his testimony opined that the Proposed Development is of a character, scale and massing that fails to conform to the Growth Plan and the policies of the OP.

[49] During cross-examination, Mr. Brooks confirmed that conformity with the Growth Plan is not dependant on conformity with the OP. In response to questions, Mr. Brooks conceded that the Proposed Development conforms to the Managing Growth policies and conforms to the definition of compact development. Mr. Brooks concluded that the Proposed Development conforms with the Growth Plan.

[50] The submissions of Ms. Birchall included her adopting the evidence of Mr. Brooks in respect of the Growth Plan.

City of Toronto Official Plan

[51] The OP designates the subject site as Mixed Use Areas and locates it within the Downtown and Central Waterfront area, as shown on Map 2, the Urban Structure map of the OP.

[52] In Chapter 2 of the OP titled Shaping the City, it sets out that the Downtown area offers opportunities for substantial employment and residential growth, but that this growth is not anticipated to be uniform, as stated in s. 2.2.1. It is expected that the physical setting of many areas will remain unchanged and that policies and design guidelines specific to districts of historic or distinct character will be implemented to ensure new development fits into the context of existing built form, streets, setbacks,

heights and relationship to landmark buildings as stated in s. 2.2.1.6. The City has approved such guidelines, including the Tall Building Design Guidelines (“TBDG”) and the Downtown Tall Buildings: Vision and Supplementary Design Guidelines (“DTBG”).

[53] Further, the OP sets out that a full range of housing opportunities will be encouraged through residential intensification in the Mixed Use Areas and Regeneration Areas of the Downtown area as set out in s. 2.2.1.4. In targeted growth areas, planning for new development will be undertaken in the context of reducing auto dependency and transportation demands and impacts of such developments as required in s. 2.4.4.

[54] Policy 3.1.2 in the OP addresses Built Form policies. Policy 3.1.2.1 states:

- 3.1.2.1 New development will be located and organized to fit with its existing and/or planned context. It will frame and support adjacent streets. Parks and open spaces to improve the safety, pedestrian interest and casual views to these spaces from the development by:
- a) generally locating buildings parallel to the street or along the edge of a park or open space with a consistent front yard setback;
 - b) locating main building entrances so that they are clearly visible and directly accessible from the public sidewalk;
 - c) providing ground floor uses that have views into and, where possible access to, adjacent streets, parks and open spaces;
 - d) preserving existing mature trees wherever possible and incorporating them into landscaping designs.

[55] Tribute submits that the Proposed Development is a mid-block property that has direct access to the street and maintains the front yard setback of adjacent properties within the block.

[56] The City’s position is the Proposed Development does not fit within the existing context. Under cross-examination Mr. Lee conceded that the Proposed Development conforms to the policy tests enumerated within the Built Form Policies contained in Policy 3.1.2.1.

[57] Mr. Hannay reviewed Policy 3.1.2.2 and opined that the Proposed Development is the exact type of development envisioned by this Policy as the vehicle access and service areas are located at the rear of the Subject Lands accessed by shared

laneways, utilizing an existing access on Bloor Street West, parking provided underground, and providing a building face at the public sidewalk.

[58] Policy 3.1.2.3 states:

3.1.2.3 New development will be massed and its exterior façade will be designed to fit harmoniously into its existing and/or planned street context, and will limit its impact on neighbouring streets, parks, open spaces and properties by:

- a) massing new buildings to frame adjacent streets and open spaces in a way that respects the existing and/or planned street proportion;
- b) incorporating exterior design elements, their form, scale, proportion, pattern and materials, and their sustainable design, to influence the character, scale and appearance of the development;
- c) creating appropriate transitions in scale to neighbouring existing and/or planned buildings for the purpose of achieving the objectives of this Plan;
- d) providing for adequate light and privacy;
- e) adequately limiting and resulting shadowing of, and uncomfortable wind conditions on, neighbouring streets, properties and open spaces, having regard for varied nature of such areas; and
- f) minimizing and additional shadowing and uncomfortable wind conditions on neighbouring parks as necessary to preserve their utility.

[59] In consideration of Policy 3.1.2.3, Mr. Hannay submitted that the Proposed Development: frames the streets respecting the street proportion with the canyon wall, integrates the balconies into the architectural design, creates an appropriate transition to neighbouring buildings for the purpose of achieving the objectives of the OP within the context of the block, and adequately limits shadowing and uncomfortable wind conditions. Mr. Hannay opined that the separation of the Proposed Development, at over 20 m across the TPA Lot, to the rear of the properties on the south side of Prince Arthur Avenue provides an appropriate setback and transition.

[60] Mr. Lee opined that the Proposed Development does not provide for transition in scale towards the rear of the site. He submitted that the base building, at a height of 16 storeys, does not represent the scale and massing of the existing neighbouring buildings at eight (8) storeys resulting in an impact on the abutting properties and the

properties north of the Subject Lands.

[61] Ms. Birchall echoed the issue of lack of transition at the rear of the site to the lands to the north. She opined the Proposed Development creates negative impacts in respect to light, privacy and shadow on the neighbouring properties. The block has the same planned context and the other developments along the block provide a transition to the north. Ms. Birchall opined that the depth of the proposed floor plates of the base section of the proposed building will impact on light and the window placement on the east elevation will impact privacy.

[62] Mr. Hannay in reviewing Policies 3.1.2.4, 3.1.2.5 and 3.1.2.6 opined that the Proposed Development conforms to these Policies as the new development will: define the street edge, include improvements to the boulevard across the frontage of the Subject Lands, and will provide indoor and outdoor amenity space for the residents.

[63] Policy 3.1.3 of the OP titled Built Form – Tall Buildings includes introductory commentary stating tall buildings currently exist in many parts of the City, in the Downtown, at some subway stops, and in clusters around the City. These individual buildings and groups of buildings can be seen rising above the City. Tall buildings are desirable in the right places but they don't belong everywhere. When appropriately located and designed, tall buildings can support and draw attention to the city structure, visually reinforcing our civic centres and other areas of civic importance. In the context of Toronto's relatively flat topography, tall buildings help define the City's image. Tall buildings are generally limited to parts of the Downtown.

[64] Policy 3.1.3 of the OP states:

3.1.3 Tall buildings come with larger civic responsibilities and obligations than other buildings. To ensure that tall buildings fit within their existing and/or planned context and limit local impacts, the following additional built form principles will be applied to the location and design of tall buildings:

1. Tall buildings should be designed to consist of three parts, carefully

integrated into a single whole:

- a) base building - provide definition and support at an appropriate scale for adjacent streets, parks and open spaces, integrate with adjacent buildings, minimize the impact of parking and servicing uses;
- b) middle (shaft] - design the floor plate size and shape with appropriate dimensions for the site, locate and orient it on the site and in relationship to the base building and adjacent buildings in a manner that satisfies the provisions of this Section; and
- c) top – design the top of tall buildings to contribute to the skyline character and integrate roof top mechanical systems into the design.

2. Tall building proposals will address key urban design considerations, including:

- a) meeting the built form principles of this Plan;
- b) demonstrating how the proposed building and site design will contribute to and reinforce the overall City structure;
- c) demonstrating how the proposed building and site design relate to the existing and/or planned context;
- d) account the relationship of the site to topography and other tall buildings;
- e) providing high quality, comfortable and usable publicly accessible open space areas; and
- f) meeting the other goals and objectives of this Plan

[65] Mr. Hannay testified that the Proposed Development is a Canyon Form typology of Tall Building with a height envisioned by the OP which reinforces the overall City structure.

[66] The Tribunal considered visual exhibits from Tribute (Exhibit No. 4), the City (Exhibit No. 8), and EACA (Tab 34, Exhibit No. 1).

[67] Mr. Hannay reviewed Exhibit No. 4 and proffered that the Proposed Development

relates to the other buildings within the block as demonstrated on pages 15 and 21 through 29 of Exhibit No. 4.

[68] Mr. Lee opined that Tall Buildings are desirable in the right place and the Proposed Development does not comply with this direction. It is Mr. Lee's contention that the Proposed Development results in an unacceptable loss of the sky view. The Tribunal was directed to Exhibit No. 8 which included modelling to demonstrate the impact of the proposed building on the sky view from Bloor Street West and Prince Arthur Avenue vantage points. Exhibit No. 8 also included oblique aerial modelling perspectives to demonstrate the anticipated impact.

[69] Chapter 4 of the OP includes policies for the Land Use Designations. The Subject Lands are designated Mixed Use Areas. Section 4.5 includes the policies for the Mixed Use Areas designated lands. The introductory commentary in s. 4.5 states, "Not all *Mixed Use Areas* will experience the same scale of intensity of development. The highest buildings and greatest intensity will typically occur *Downtown*."

[70] Development proposals in Mixed Use Areas are evaluated against the criteria set out in s. 4.5.2, which states:

4.5.2 In *Mixed Use Areas* development will:

- a) create a balance of high quality commercial, residential, institutional and open space uses that reduces automobile dependency and meets the needs of the local community;
- b) provide new jobs and homes for Toronto's growing population on underutilized lands in the *Downtown and Central Waterfront, Centres, Avenues* and other lands designated *Mixed Use Areas*, creating and sustaining well paid, stable, safe and fulfilling employment opportunities for all Torontonians;
- c) locate and mass new buildings to provide a transition between areas of different development intensity and scale, as necessary, to achieve the objectives of this Plan, through means such as providing appropriate setbacks and or a stepping down of heights, particularly towards lower scale *Neighbourhoods*;

- d) locate and mass new buildings so as to adequately limit shadow impacts on adjacent *Neighbourhoods*, particularly during the spring and fall equinoxes;
- e) locate and mass new buildings to frame the edges of streets and parks with good proportion and maintain sunlight and comfortable wind conditions for pedestrians on adjacent streets, parks and open spaces;
- f) provide an attractive, comfortable and safe pedestrian environment;
- g) have access to schools, parks, community services, libraries and childcare;
- h) take advantage of nearby transit services;
- i) provide good site access and circulation and an adequate supply of parking for residents and visitors;
- j) locate and screen service areas, ramps and garbage storage to minimize the impact on adjacent streets and residences;
- k) provide indoor and outdoor recreation space for building residents in every significant multi-unit residential development;
- l) provide opportunities for energy conservation, peak demand reduction, resilience to power disruptions and small local integrated energy solutions that incorporate renewables, district energy, combined heat and power or energy storage; an
- m) provide opportunities for green infrastructure including tree planting, stormwater management systems and green roofs.

[71] Reviewing Policy 4.5.2 c), Mr. Hannay submitted that the policy addresses the transition between areas of different development intensity and scale and specifically identifies the *Neighbourhoods* land use designation contained with the OP identified with italics and a capital “N”. The closest *Neighbourhoods* area is located along Lowther Avenue to the north of the Subject Lands and is separated from the Subject Lands by the TPA Lot and the properties along both sides of Prince Arthur Avenue. Further, it was noted that the Mixed Use Areas designation extends from Bloor Street West to Prince Arthur Avenue and from Bedford Road to Avenue Road. The Mixed Use Areas designation includes the lands on the north side of Prince Arthur Avenue with the exception of the apartment building located at 20 Prince Arthur Avenue which is

designated Apartment Neighbourhoods. Mr. Hannay opined that the policies do not require a transition between sites within Mixed Use Areas designated lands but between different development intensities and scales. The separation and intervening uses between the Subject Lands and the properties on Prince Arthur Avenue achieves the intent of the policy.

[72] Policy 4.5.2 d) requires that development adequately limits shadow impacts on adjacent Neighbourhoods, in response to which Tribute contends that there are no Neighbourhoods designated lands adjacent to the Subject Lands. The closest lands with a Neighbourhoods designation are well separated to the north of the Subject Lands and as a result there is no shadow impact created by the Proposed Development.

[73] Reviewing Policy 4.5.2 e), Tribute submits that the Proposed Development frames the street edge along Bloor Street West and forms part of the Canyon Wall. A wind study was submitted to the City which concluded there was no pedestrian level wind impact as a result of the Proposed Development.

[74] Mr. Hannay opined that the Proposed Development will create an attractive, comfortable and safe pedestrian environment that is in close proximity to transit services, has good site access, provides sufficient parking for residents and includes a service area located at the rear of the site. The Proposed Development provides a common indoor amenity area for all residents and each unit will have a private outdoor amenity area.

[75] The City submitted that Policy 4.5.2.c) does not exclusively require that transition be only between Neighbourhoods and the Proposed Development, but between the lower scale and less intense development such as the development along Prince Arthur Avenue.

[76] The Tribunal was directed to Chapter 5 of the OP which addresses implementation of the OP. Section 5.3.2.1 sets out that in order to implement the long term vision and principles of the Official Plan, implementation plans, strategies, and

guidelines are needed to support the Plan's objectives over time. Section 5.6 provides guidance to understand the comprehensive and integrative intent of the OP as a policy framework and should be read as a whole.

Site and Area Specific Policy No. 334

[77] The Subject Lands are subject to Site and Area Specific Policy No. 334 (“SASP 334”) which applies to the “Bloor Corridor” between Avenue Road and Bathurst Street. It was introduced by Official Plan Amendment No. 98 (“OPA 98”) and is a result of the Bloor Corridor Visioning Study. The Subject Lands are identified as being within the “Institutional Precinct”. The Built Form criteria set out in Section c) states:

“New development will generally provide for a transition in height, density and scale from higher building forms in the east to a low-rise, main street character in the west, with nodes of development concentrated at key intersections adjacent to transit hubs.”

[78] Subsection i) states that development in the Institutional Precinct will:

- contribute toward the creation of a consistent street wall with active at-grade uses;
- fill gaps in the streetscape;
- provide visual cohesion through the use of massing and architectural elements including ground floor heights, podium heights, cornice lines and materials;
- contribute to a cohesive and pedestrian-oriented public realm; and
- respond to key views and locations, avoiding encroachment into the viewshed of significant buildings. In particular, no building will interrupt or rise above the silhouette of the Ontario Legislature building at Queen’s Park, when viewed from University Avenue, subject to a view corridor analysis completed to the satisfaction of the City.

[79] Mr. Tinker opined that the Proposed Development will fill a gap in the streetscape with the creation of a consistent street wall including active at-grade uses. The viewshed of the Ontario Legislature building was addressed through a corridor analysis which was acceptable to the City and formed part of the Agreed Statement of Facts in respect to Planning issues (“ASF-P”) endorsed by the Application, the City, and EACA and filed as Exhibit No.5.

[80] The City during cross examination agreed that the Proposed Development complies with the policies of SASP 334.

Site and Area Specific Policy No. 398

[81] The Subject Lands are subject to Site and Area Specific Policy No. 398 (“SASP 398”), which applies to the lands to the north of the Ontario Legislative Assembly Building. SASP 398 provides that no structure shall be permitted to be erected that can be seen above any part of the silhouette of the Ontario Legislative Assembly Building when viewed from certain identified locations. Modelling was completed and the Parties are in agreement that the Proposed Development conforms with SASP 398 and will not impact the silhouette of the Ontario Legislative Assembly Building. The agreement was documented in the ASF-P (Exhibit No. 5).

Official Plan Amendment No. 352

[82] City Council adopted Official Plan Amendment No. 352 (“OPA 352”) and associated Zoning By-law Amendments Nos. 1106-2016 and 1107-2016 on November 9, 2016. OPA 352 introduced Site and Area Specific Policy No. 517 (“SASP 517”) applying to the Downtown area. OPA 352 is currently the subject of an appeal before the Tribunal and is the Parties acknowledged and agreed that it was not in effect at the time of the hearing. The Parties acknowledged that OPA 352 and the associated Zoning By-laws do not apply to the Proposed Development. It was agreed that OPA 352 is informative however; it is not a determinative policy in the context of this appeal.

[83] The purpose of OPA 352 is to provide direction for tall building development in the Downtown area with respect to setbacks from the building face of the tower to adjacent lot lines and provide appropriate separation distances between towers. These directions are intended to ensure that individual tall buildings on a site and the cumulative effect of multiple tall buildings within a block contribute to building strong healthy communities by fitting in with the existing and/or planned context.

[84] Mr. Lee testified that OPA 352 requires setbacks from the tower to property lines and towers on the same or adjacent sites. He opined that the Proposed Development provides no side yard setbacks and is not consistent with the Council direction. The purpose of OPA 352, among other matters, is to protect adjacent properties from exporting setbacks from another property and to direct where tall buildings are to be built.

[85] Ms. Birchall testified that in consideration of the Proposed Development and the policy direction of OPA 352, the proposed building does not fit on the subject property as it can not provide any separation from adjacent properties. She opined that the intent of OPA 352 in addition to the City's submission is to protect development potential of other sites, protect sky views and provide access to natural light.

[86] During cross-examination, Mr. Lee was presented with a copy of an attachment to a Council report which included modifications to the proposed OPA 352 made public on December 3, 2020. Mr. Lee confirmed that the modifications sets out that purpose of the tower setback is to achieve appropriate separation distances between towers. Further, that appropriate tower separation will seek to ensure that individual tall buildings on a site and the cumulative effect of multiple tall buildings within a block will fit in with the existing and/or planner context. Mr. Lee further confirmed that the modifications included contemplation of relief from zoning tower setback standards through rezoning or minor variance.

[87] Ms. Birchall, during cross-examination, agreed that OPA 352 does not include any numerical standards and that OPA 352 directs consideration to be given to the entire block in addition to the specific sites.

Official Plan Amendment No. 406

[88] City Council adopted Official Plan Amendment No. 406 ("OPA 406") in May 2018. OPA 406 introduced a new secondary plan for the Downtown (the "Downtown Plan"). The Downtown Plan was amended and approved by the Ministry of Municipal Affairs

and Housing on June 5, 2019.

[89] Policy 1.9 of the Downtown Plan states:

“This Plan does not apply to applications for official plan amendment, zoning by-law amendment, draft plan of subdivision or condominium approval, site plan approval, consent or minor variance which were complete prior to the approval of this Plan and which are not withdrawn. In-force site-specific official plan and/or zoning by-law amendments shall be deemed to conform with this Plan”.

[90] The Parties concurred that the Downtown Plan does not apply to the Proposed Development as the application was submitted prior to the Downtown Plan being adopted and approved. Again, the Parties agreed that the Downtown Plan is informative but not determinative in the context of the appeal.

[91] The maps included in the Downtown Plan identify the Subject Lands as being located: within a Mixed Use Areas 2; within close proximity to the St. George Rapid Transit Station; on a Priority Retail Street; on a Great Street; on a Priority Cycling Route; and on a Cultural Route.

[92] Policy 4.1 of the Downtown Plan states:

“Growth is encouraged within the *Downtown*, in particular on lands designated *Mixed Use Areas 1*, *Mixed Use Areas 2*, *Mixed Use Areas 3*, *Regeneration Areas* and *Institutional Areas*. The highest density of development within the *Downtown* shall be directed to *Mixed Use Areas* in close proximity to existing or planned transit stations.”

[93] The s. 6 policies for the Mixed Use Areas 2 designation provides for building typologies that respond to their site context with a scale and massing that will be compatible with a diverse range of uses. The Section also includes policies pertaining to Rapid Transit Stations proximity stating that, “These areas will be planned to accommodate higher density development to optimize the return on investment and increase efficiency and viability of existing and planned transit service levels” and “The highest density development with the *Downtown* shall be directed to *Mixed Use Areas* in close proximity to existing and planned rapid transit stations”.

[94] Section 9 policies apply to Built Form. Mr. Tinker reviewed the policies in detail and opined that, while the policies do not apply, he has had regard for the policies and the Proposed Development complies with the objectives of the policies. He proffered that the base building relates to the street, there is a substantial separation to the lower scale neighbourhood to the north, and the shadow impact is adequately limited. He noted that the transition policies are focussed on the streetscape.

[95] Ms. Birchall similarly reviewed the policies in s. 9 and opined that the base building does not appropriately transition to the heritage conservation district to the north of the Subject Lands. Further, she opined that the Proposed Development does not limit shadow impact or uncomfortable wind impact on neighbouring properties.

[96] Ms. Birchall conceded during cross-examination that the policies that address shadow and wind impacts relate to sidewalks, parks and open spaces and not neighbouring properties.

Bloor Corridor Urban Design Guidelines (2009)

[97] The Bloor Corridor Urban Design Guidelines (the “BCUD Guidelines”) were approved by Council in December 2009, in conjunction with the adoption of OPA 98 which introduced SASP 334. The goal of the BCUD Guidelines is to improve the quality of the physical environment in the Bloor Corridor and to ensure that those elements, which contribute to the special character of the diverse parts of the area, are retained and enhanced.

[98] Section 3 of the BCUD Guidelines sets out development principles. Section 3.3 (Built Form) states that density will be directed to transit nodes and that buildings along Bloor Street should provide a transition in height and built form along the corridor and to adjacent residential neighbourhoods. Section 3.4 (Public Realm) indicates that the street should provide active at-grade uses that are safe, accessible, and interconnected, and that surface parking areas should be redeveloped, while meeting parking demands through other creative solutions.

[99] Mr. Hannay reviewed s. 5 of the BCUD Guidelines and proffered that the Proposed Development provides: an interface with the sidewalk protected from the elements, parking below grade and servicing at the rear of the site, a street wall that is well designed with a scale maintains and reinforces the Canyon typology form, defined base, middle and top building elements, and a building height transition which conforms to Figure 15. A Shadow Study was completed in compliance with the City criteria which demonstrates no adverse impacts result from the Proposed Development.

[100] Ms. Birchall testified that the Proposed Development will result in the tallest building on the block. It was proffered that the Museum House is an example of a Canyon Form typology that can be reasonably built on a smaller lot and she concluded that the proposed building, in contrast, overwhelms the block. Ms. Birchall submitted that the depth of the base building is comparable to a slab form of building creating the maximum impact on the neighbouring properties in terms of privacy and sky view.

[101] In respect to shadow impact, Ms. Birchall opined that the Proposed Development will result in an unacceptable additional shadow impact over the outdoor amenity spaces at 1 Bedford, the Exhibit and Museum House. The shadow created will also impact the properties along Prince Arthur Avenue and will set a precedent for future development.

City-Wide Tall Building Design Guidelines and Downtown Tall Buildings: Vision and Supplementary Design Guidelines

[102] The Introduction of the TBDG states that the guidelines were created to assist with the implementation of the OP policy and provide specific design direction for tall buildings in Toronto. City Council adopted the city-wide TBDG in 2013, which: updated and replaced the Design Criteria for the Review of Tall Building Proposals (2006), integrated the DTBG, and built upon the previous studies and guidelines to establish a new, unified set of performance measures for the evaluation of all tall building development applications across the City. The TBDG specifically notes that the guidelines are intended to provide a degree of certainty and clarity of common

interpretation, however, as guidelines, they should be afforded some flexibility in application, particularly when looked at cumulatively.

[103] The Tables and Maps contained s. 5 of the DTBG identifies the north side of Bloor Street West between Avenue Road and Bedford Street as: a High Street on Map 1 - High Streets Map, permitting a height range of 62 m to 107 m (20 storeys to 35 storeys) on Map 2- Downtown Vision Height Map, having a Canyon Form typology on Map 3 - High Streets Typologies Map, a Priority Retail Street on Map 4 – Priority Retail Streets Map, and on Table Five – Canyon Form Base Building Heights – Street Segments establishes the base building height at 62 m (20 storeys).

[104] Section 2.1 of the DTBG states that the Canyon Form is characterized by high street walls with buildings that have been built to cover the full width of their sites. Along Canyon Form street segments, the base height of any new tall building should be built to the height of the existing street wall line, 62 m (20 storeys) in this instance as identified in Table Five referred to above. Section 2.1 further states, “Above this street wall canyon height, the tower should be set back in accordance with city-wide TBDG requirement 3.1.1 *Base Building Scale and Height* and 3.2.2 *Tower Placement*.” This requirement is reiterated in Supplementary Design Guideline No. 5, Base Building Height and Scale of the DTBG and includes further direction noting that s. 3.1.1.b of the TBDG does not apply. It is further noted in the Rationale provided in Supplementary Design Guideline No. 5 that, “These typologies accommodate architectural creativity and are not intended to restrict tall buildings from achieving their highest architectural design standard. Supplementary Design Guideline No. 5 is specifically intended to clarify the relationship between city-wide TBDG s. 3.1.1b and Supplementary Design Guideline No. 5.

[105] Guideline 1.4 of the TBDG and the DTBG Supplementary Design Guideline No. 2 address Sunlight and Sky View. Section 1.4 states:

“Locate and design tall buildings to protect access to sunlight and sky view within the surrounding context of streets, parks, public and private open space, and other shadow sensitive areas.

- a) Evaluate alternative placement and massing concepts for individual tall building sites at the scale of the block to secure the greatest amount of sunlight and sky view in the surrounding context. Consider the following:
- limit the scale and height of the base building to appropriately frame the public realm, while maintaining access to at least 5 hours of sunlight on the opposite side of the street at the equinoxes (see also 3.1.1 Base Building Scale and Height);
 - provide slender, point towers with generous separation distances, and limit or vary the height of towers, to retain sky view between buildings and reduce the size of shadows and length of time they are cast on a particular area (see also 3.2 Middle (Tower)). Consider the cumulative effect of multiple towers on resulting shadowing.
- b. Through a Sun/Shadow Study, demonstrate how the proposed tall building protects access to sunlight and seeks to minimize any additional shadowing of parks and natural areas, such as ravines.
- A Natural Heritage Impact Study may be required to evaluate sun/shadow impacts on natural areas.
- c. Through a Sun/Shadow Study, demonstrate how the proposed tall building protects access to sunlight and seeks to adequately limit shadowing of neighbouring streets, properties, and open space, including shadow sensitive areas such as schoolyards, play fields, and cemeteries.
- d. Additional shadow and sky view protection may be required for a particular street, park, open space, natural area, heritage property, Heritage Conservation District, or other shadow sensitive area on a site-specific basis.

[106] The Supplementary Design Guideline #2 further clarifies stating:

“Locate and design tall buildings to not cast new net shadows on:

- b. All other parks located within and adjacent to the Downtown Tall Buildings: Vision and Supplementary Design Guideline boundary area, between 12 Noon and 2:00 PM on September 21st.

[107] Mr. Hannay testified that Tribute filed a Shadow Study with the City in support of the proposal which demonstrates that there is no shadow impact on Taddle Creek Park located at the south west corner of Lowther Avenue and Bedford Road, the closest City park, between 12:00 Noon and 2:00 PM on September 21st. Mr. Hannay proffered that the Proposed Development provides adequate access to sunlight and sky views in the

surrounding context of streets and properties.

[108] Mr. Lee testified that Proposed Development includes a tower above the Canyon Form building base resulting in an unacceptable loss of sunlight and sky view. During cross-examination, Mr. Lee confirmed that the City did not raise any concerns with the shadow study completed and filed in support of the Proposed Development.

[109] Ms. Birchall reviewed the Shadow Study submitted by Tribute and opined that the results of the study show an unacceptable shadow impact on the amenity areas of 1 Bedford and the Exhibit. A reduction in the depth of the base building floor plate depth would reduce the impact of the Proposed Development on 1 Bedford and the Exhibit. Ms. Birchall during cross-examination confirmed that she accepted the evidence of Mr. Brooks on behalf of the City and his evidence was that the shadow study submitted by Tribute adequately limited the shadow impact on the surrounding properties including 1 Bedford and the Exhibit.

[110] Mr. Hannay testified that the Proposed Development will: frame the street edge and provide a canyon typology building base, provide an entrance that relates to the street, provide a service area at the rear of the site, and provide generous balconies as private outdoor amenity space. He opined that the Proposed Development implements to the intent of the guidelines set out in s. 2 of the TBDG.

[111] Guideline 3.1.1 of the TBDG is titled Base Building Scale and Height and states:

“Design the base building to fit harmoniously within the existing context of neighbouring buildings at the street and to respect the scale and proportion of adjacent streets, parks, and public or private open space.”

[112] Mr. Hannay testified that the base building is a canyon form typology with a street wall height of 59.7 m (16 storeys). The base will match the existing streetwall height established to the west of the Subject Lands and fit harmoniously within the block.

[113] Mr. Hannay submitted a ground floor height of 5.5 m is proposed and together

with the proposed road widening, the setback of the front wall at grade and the commercial space the Proposed Development will promote a safe and animated pedestrian connection contributing to the active use of the public realm. Mr. Hannay proffered that the building elevations have been designed to be visually engaging while being compatible with the surrounding built context. The Proposed Development includes generous sized balconies that are architecturally integrated into the massing of the proposed building. The high ceiling of the ground floor will result in an appropriately visible retail and ground floor lobby from the street.

[114] Mr. Hannay opined that the intent of the guidelines in s. 3.1 of the TBDG are met by the Proposed Development.

[115] Mr. Lee testified that the Proposed Development does not provide a transition from the base building to the lower scale development along Prince Arthur Avenue as required in Policy 3.1.1.d. He submitted that a reduction in the base building floor plate depth above the established eight (8) storey scale along the rear of the other properties within the block fronting on Bloor Street West would provide an appropriate transition.

[116] Guideline 3.2.1 of the TBDG is titled Floor Plate Size and Shape and states:

“Limit the tower floor plate to 750 square metres or less per floor, including all built area within the building, but excluding balconies.

a. Organize, locate, and articulate the tower floor plate to:

- minimize shadow impacts and negative wind conditions on surrounding streets, parks, open space, and properties;
- minimize loss of sky view from the public realm;
- allow for the passage of natural light into interior spaces (e.g. shallow rather than deep floor plans);
- create architectural interest and visually diminish the overall scale of the building mass; and present an elegant profile for

the skyline.

- b. Provide greater tower separation, setbacks, and stepbacks proportionate to increases in tower floor plate size or height to mitigate resultant wind, shadow, and sky view impacts (see 1.4 Sunlight and Sky View and 3.2.3 Separation Distances).”

[117] Mr. Hannay advised that the floor plate size, excluding balconies, is less than 750 m². He proffered that the slender form of the proposed building, the location, and the orientation contribute to the low level of shadow impact on the surrounding streets, parks, open spaces, and properties. He continued that the Proposed Development has been the subject of a wind impact study and it was concluded that it will not create adverse seasonal wind conditions in the pedestrian environment.

[118] Mr. Hannay opined that the slim form of the proposed building as well as its location and orientation minimizes any loss of sky view from the public realm.

[119] The proposed building with its elongated floor plates has been designed to maximize the penetration of natural light into its residential units by increasing the height of the ceilings of each floor and the extensive use of vision glass on its north and south elevation. Mr. Hannay opined that the proposed building, with its ambitious architectural form, will provide visual interest and provide an elegant form on the skyline.

[120] Guideline 3.2.2 of the TBDG addresses tower placement stating:

“Place towers away from streets, parks, open space, and neighbouring properties to reduce visual and physical impacts of the tower and allow the base building to be the primary defining element of the site and adjacent public realm.

- a. Coordinate tower placement with other towers on the same block and adjacent blocks to maximize access to sunlight and sky view for surrounding streets, parks, open space, and properties (see 1.4 Sunlight and Sky View and 3.2.3 Separation Distances).
- b. Step back the tower, including balconies, 3 metres or greater from the face of the base building, along all street, park, and open space frontages

(including publicly accessible or private shared open space and rooftop amenity within the site).”

[121] Mr. Hannay submitted that the TBDG provides recommendations and illustrations that are representative of a Tower-Base Form building typology and these guidelines provide no specific direction regarding Canyon Form buildings. The guideline requires a step back of a minimum of 3.0 m from the face of building base. The front elevation of the proposed building has been designed to step back 3.0 m from the building face of the base above the 16th floor fronting on to Bloor Street West, as required by this guideline.

[122] Mr. Lee testified that the Proposed Development does not achieve the policy objectives of the Policy as the proposed tower does not provide sufficient setbacks or maximize access to sunlight or sky views.

[123] Guideline 3.2.3 addresses Separation Distances:

“Setback tall building towers 12.5 metres or greater from the side and rear property lines or centre line of an abutting lane.
Provide separation distances on the same site of 25 metres or greater, measured from the exterior wall of the buildings, excluding balconies.
On small sites, apply the recommended tower setbacks and step backs to determine the resultant floor plate size and feasibility of the site dimensions to accommodate a tall building.”

[124] Mr. Hannay reiterated that the TBDG recommendations and illustrations are representative of a Tower-Base Form building typology, with no specific guidelines or direction regarding Canyon Form buildings appropriately located on a Canyon Form High Street. Mr. Hannay reviewed the separation distance currently existing between the existing tall buildings along the block. Mr. Hannay proffered that given the design, orientation, and location of the proposed building, the absence of side yard setbacks in this context will not produce negative impacts on Sky View, Privacy, or Daylighting.

[125] Mr. Hannay reviewed a conceptual Block Plan provided at page 22 and page 23 of Exhibit No. 4 that demonstrates a potential development concept of new and existing buildings along the block. Mr. Hannay opined that the approval of the Proposed

Development will not preclude the development of other Canyon Form buildings on the block or additional towers.

[126] Mr. Lee testified that the Proposed Development does not provide the 12.5 m setbacks required by the policy. In reviewing the policies addressing small sites, Mr. Lee concluded the language requires that the feasibility of tall building should be considered on a small site. The Rationale contained with Policy 3.2.2 for small sites identified what Mr. Lee described as the critical aspect of the policy, being to minimize impact. The limited size of the site does not allow the separation distances to be achieved and thus impacting the other properties within the block. The cumulative effect of replicating the proposal on properties along the block results in an unacceptable result. The massing of the proposal will impact the public realm and reduce access to sky view and sunlight.

[127] Guideline 3.2.5 of the TBDG states:

“Design balconies to maximize usability, comfort, and building mass, public realm, and natural environment.”

[128] Mr. Hannay testified that the Proposed Development includes generously sized balconies that are enclosed on their sides and are architecturally integrated into the massing of the proposed building addressing the guideline.

[129] Guideline 3.3 of the TBDG addresses the Tower Top stating:

“Design the top of tall buildings to make an appropriate contribution to the quality and character of the city skyline.
Balance the uses of decorative lighting with energy efficient objectives, the protection of migrating birds, and the management of artificial sky glow.”

[130] Mr. Hannay submitted that the mechanical penthouse has been architecturally integrated into the design and massing of the proposed building.

[131] Mr. Hannay concluded by opining the Proposed Development is generally in

keeping with the direction provided in the guidelines and maintains the intent of the guidelines. He submitted that the guidelines set general conditions and when considered in a specific context, the results are the Proposed Development.

[132] Mr. Wassermuhl testified that the Proposed Development will establish an inappropriate precedent that does not fit harmoniously within the context of the block. He advised that he agrees with the positions of the City and the evidence of Ms. Birchall. Mr. Wassermuhl reviewed the visual evidence exhibits and submitted that the impact of the height and massing of the proposed tower providing no side yard setbacks will impact properties on both sides of the Subject Lands. He submitted that the outdoor amenity space is precious and should be protected.

[133] Mr. Wassermuhl reviewed the access and loading space proposed and submitted that the arrangement will be problematic and impact on the shared laneway with delivery vehicles impeding access to the other properties when they are unable to access the Subject Lands. He concluded that the Subject Lands are too small to accommodate the Proposed Development and will not fit into the context of the block.

TRANSPORTATION ISSUES

[134] The City and Tribute endorsed an Agreed Statement of Facts in respect to Transportation Issues ("ASF-T") which set out that the proposed parking supply is not in dispute, there are no concerns in respect of the operation of the north/south laneway where it intersects Bloor Street West, and that a Type C loading space can be considered on sites where it is not practical or possible to fit a Type G loading space. The ASF-T was filed as Exhibit No. 11 and the City did not present any traffic planning evidence in respect of the Appeal.

[135] The Tribunal was presented a Traffic Plan (Exhibit No. 12) that identified the driveway locations of the subject and adjacent lands. It was explained that the access to the Subject Lands is provided over a shared north/south driveway accessing Bloor Street West located between Museum House and the Exhibit (shaded in yellow on

Exhibit No. 12). This shared driveway is also the access for Museum House, the Exhibit, 208 Bloor and the Subject Lands. Access from the shared driveway to the Subject Lands is over an easement across lands owned by the City and located at the northerly end of the shared driveway (shaded in green on Exhibit No. 12).

[136] The portion of the driveway access over the City owned lands has a width between 4.6 m and 4.7 m. The width of the laneway is an issue identified by EACA in respect to the ability for the driveway to accommodate two-way traffic. Mr. Krossey testified that he undertook a study to confirm that the 4.6 m laneway can accommodate two-way traffic and noted that it is not uncommon in the City. Mr. Krossey submitted that the driveway and site can accommodate anticipated low day to day traffic volumes. It was noted that there is the ability for the City to address concerns by permitting a widening of the easement or alternatively a reconfiguration of the access based on conceptual plans that were considered at the time of the Exhibit development.

[137] A Vehicle Manoeuvring Diagram (Exhibit No. 13) was submitted detailing how access to the Type C loading space is achieved. He advised that garbage collection will be conducted with a private company that will utilize smaller vehicles to service the site. Mr. Krossey also addressed access to the valet serviced underground parking vehicle lifts.

[138] In response to questions from Ms. Turney, Mr. Krossey acknowledged that the access arrangement is unusual however; it is the existing access to the Subject Lands and any access to the rear of the property is facilitated over the right-of-way driveway. He reiterated two-way traffic is possible and restrictive width of the driveway will require drivers to take care when accessing the site.

[139] Mr. Wallace, on behalf of EACA, testified that the access driveway with the width of 4.7 m is too narrow to accommodate the anticipated traffic and this will create an impact on the shared driveway servicing the Exhibit and Museum House. There is potential to improve the issue with the cooperation of the City in the form of widening the existing easement. Mr. Wallace referenced photographs of the Porte Cochere at

Museum House and expressed concern, in comparison to the Proposed Development, that there are an insufficient number of storage/staging spaces proposed for vehicles waiting to access the underground parking garage. In respect to the proposed loading space, Mr. Wallace submitted that the site will not be able to accommodate a moving truck or a typical courier delivery truck which will in turn impact on the Exhibit and Museum House with congestion on the north-south driveway. Mr. Wallace opined that reducing the size of the development will allow for additional vehicle storage/staging for the parking garage, allow for larger vehicles to access to the rear of the Subject Lands, and widening the easement will improve access to the site. Mr. Wallace concluded that the Proposed Development is fundamentally flawed resulting in an inefficient and unsafe access, parking, and loading condition.

[140] Mr. Wallace confirmed under cross-examination that Museum House has one car lift to access the parking area whereas the Proposed Development is proposing two car lifts and there is no designated loading space for Museum House. Further, he confirmed that the Exhibit and Museum House currently are serviced by private waste collection and service vehicles and moving trucks utilize the shared laneway to access those properties.

[141] In respect to the vehicle storage for access to the parking garage, Mr. Wallace conceded that area could accommodate more than two vehicles however; it would impact access to the car lifts.

ANALYSIS AND FINDINGS

[142] In considering an appeal of an application for a Zoning By-law Amendment, the Tribunal shall be satisfied that:

- The proposed Zoning By-law Amendment has regard for matters of provincial interest as set out in s. 2 of the Act;
- The proposed Zoning By-law Amendment is consistent with the

Provincial Policy Statement, 2020;

- The proposed Zoning By-law Amendment conforms to, or is not in conflict with, A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2019, as amended by Amendment 1;
- The proposed Zoning By-law Amendment conforms with the Official Plan, and in consideration of the above statutory requirements, represents good planning.

[143] In consideration of the materials filed and the evidence and testimony provided, the Tribunal summarizes the issue at the root of the Appeal to be whether the Subject Property, in the context of the policy framework applicable and in effect, is too small to support the Proposed Development? Put a different way, is the Proposed Development an overdevelopment of the Subject Lands? Through the course of the hearing this issue was addressed in three parts: the impacts of the Canyon Form typology of the building base, the impacts of the middle tower section, and the transportation issues related to access to the Subject Lands and the functionality of the vehicle service area at the rear of the Proposed Development.

[144] The Tribunal will address the transportation planning issue first. The Tribunal, in consideration of the submissions, prefers the evidence of the Tribute expert. The Tribunal notes the City concurred with the Agreed Statement of Facts (Exhibit No. 11) and did not tender any traffic or transportation evidence. It was agreed by Messrs. Krossey and Wallace that the City has the ability to rework the access easements over their lands at the rear of Museum House, 208 Bloor and over the TPA Lot lands which currently are used to access the Intercontinental site to effect a more functional access arrangement in the rear of these five immediately affected properties. The Tribunal was presented with evidence that the City has contemplated a reworking of the easements encumbering their lands in a staff report from 2010 found at Tab 33 of Exhibit No.1. The Tribunal finds that, notwithstanding the number of parking spaces provided

exceeds the requirement of City's Zoning By-law, the number residential units contemplated and the number of trips to be generated based on the Tribute Traffic Planners evidence can be accommodated by the driveway configuration.

[145] The Tribunal notes that it is in the best interest of the future residents of the Proposed Development to ensure that the access, parking and loading arrangement functions well and this can, in large part, be achieved through on-site management services including the valet service. The access easements and shared driveway configuration is a longstanding arrangement which will function adequately as proffered Mr. Krossey and there are opportunities available, with the cooperation of the City, to improve upon the access arrangement.

[146] The issue of the impacts of the proposed building are addressed as follows.

[147] There is no dispute that the Subject Property is one of the smaller lots within the block however; that fact alone does not prohibit the development of a tall building. There are many policy considerations to be contemplated, most, if not all, of which were presented to the Tribunal and when considered in their totality, the Tribunal finds that the Proposed Development is appropriate and implements the goals and objectives of the PPS, the Growth Plan, and the OP.

[148] In consideration of the PPS, the Tribunal heard testimony from each of the Land Use Planners that the Proposed Development and the proposed ZBA is consistent with the PPS. The Parties initially proffered contradictory positions however; during the course of the hearing the City agreed that the Proposed Development is consistent with the PPS and this position was adopted by the EACA Planner.

[149] The PPS directs that the long term economic prosperity should be supported with the optimization of use of land. The Tribunal accepts the opinion of Mr. Tinker and finds the Proposed Development represents new residential development that minimizes the cost of housing and facilitates compact form, while maintaining appropriate levels of health and safety. The Proposed Development represents an optimization of the

Subject Lands within the policy framework that applies.

[150] In consideration of the Growth Plan, the Tribunal considered the evidence and testimony of each of the Land Use Planners. As with the PPS, the Parties initially proffered contradictory positions however; after cross-examination, the City conceded that the Proposed Development conforms to the Growth Plan. The EACA Planner adopted the position of the City in respect of the Growth Plan.

[151] The Tribunal accepts the evidence of Mr. Tinker in respect to the Growth Plan and finds that proposed ZBA to facilitate the Proposed Development conforms to the Growth Plan.

[152] EACA contends that the Proposed Development is not an optimization but a maximization of the development potential of the Subject Lands resulting in an overdevelopment of the Subject Lands. The Tribute experts proffered the interpretation of optimizing the use of land incorporates other considerations such as setbacks, step backs, sky view, and shadowing. Where these considerations are addressed, Tribute's position is that a development such as the Proposed Development is an example of intensification that optimizes the use of the land.

[153] The Tribunal in consideration of the directions in the provincial policy respecting optimization notes that the PPS states that the long-term economic prosperity should be supported by optimizing the long-term availability and use of land, resources, infrastructure and public service facilities and maintaining and, where possible, enhancing the vitality and viability of downtowns and mainstreets. The Growth Plan states that its emphasis on optimizing the use of the existing urban land supply represents an intensification first approach to development and city-building, one which focuses on making better use of our existing infrastructure and public service facilities, and less on continuously expanding the urban area. The Tribunal interprets the Subject Lands as falling within the context of this direction.

[154] The Tribunal in reviewing the PPS notes that the PPS sets out that efficient

development patterns optimize the use of land, resources and public investment in infrastructure and public service facilities. The PPS continues that these land use patterns promote transportation choices that increase the use of active transportation and transit before other modes of travel. These land use patterns support the financial well-being of the Province and municipalities over the long term, and minimize the undesirable effects of development. Strong, liveable and healthy communities promote and enhance human health and social well-being, are economically and environmentally sound, and are resilient to climate change. The PPS further states that it is in the interest of all communities to use land and resources wisely, to promote efficient development patterns, protect resources, promote green spaces, ensure effective use of infrastructure and public service facilities and minimize unnecessary public expenditures. The PPS further sets out that planning authorities shall identify appropriate locations and promote opportunities for transit-supportive development, accommodating a significant supply and range of housing options through intensification and redevelopment where this can be accommodated taking into account existing building stock or areas, and the availability of suitable existing or planned infrastructure and public service facilities required to accommodate projected needs.

[155] The Growth Plan states that now is the time to build on the progress that has been made towards the achievement of complete communities that are compact, transit-supportive, and make effective use of investments in infrastructure and public service facilities. The Growth Plan directs us to prioritize intensification and higher densities in strategic growth areas to make efficient use of land and infrastructure and support transit viability. The Growth Plan states that better use of land and infrastructure can be made by directing growth to settlement areas and prioritizing intensification, with a focus on Strategic Growth Areas, including Urban Growth Centres and Major Transit Station Areas ("MTSA"). The Growth Plan states that larger urban centres need to grow at transit-supportive densities, with walkable street configurations. Compact built form and intensification efforts go together with more effective transit and active transportation networks and are fundamental to where and how we grow.

[156] The Tribunal notes that the Subject Lands have been identified by the City as an appropriate location for intensification and while they have not yet been identified as being located within a MTSA there was no disagreement amongst the Parties that the Subject Lands meet the criteria and are being considered by the City to be designated as an MTSA. The Tribunal finds that Proposed Development is an infill redevelopment that represents intensification. The Tribunal prefers the evidence of Tribute that the Proposed Development is a compact, transit supportive development that makes effective use of infrastructure and is supportive of a complete community. The Tribunal finds that the Proposed Development represents a transit supportive density. The Tribunal finds that the Proposed Development appropriately addresses the matters of setbacks, step backs, sky view, and shadowing as proffered by Tribute and represents an optimization of the Subject Lands and in consideration of the direction of the Growth Plan to prioritize intensification. The City and EACA positions are focused on the numeric values of the OP and the supporting guidelines and the Tribunal prefers the evidence of the Tribute experts that took a broader interpretation with a focus on the intent of the policies of the OP, the Growth Plan and the PPS in a comprehensive manner.

[157] The witnesses all agreed that the OP is the most important vehicle for implementing the provincial plans and policies as set out in s. 4.6 of the PPS. The OP locates the Subject Lands in the Downtown area of the City which is designated for growth.

[158] The tall building Canyon Form typology provides for a base that maintains the street wall. The street wall is established to the east of the Subject Lands by the Park Hyatt, 180 Bloor and the Exhibit and is confirmed in the DTBG. The Tribunal notes that the base building height proposed for the Proposed Development on the street wall was not at issue amongst the Parties.

[159] The Parties differ on the transition of the base building at the rear of the Subject Property. The City and EACA contend that the height of the building base to the rear of

Subject Lands is established at a height of eight (8) storeys by the other buildings within the block. The Proposed Development, with a base building height of 16 storeys, in the opinion of the EACA and the City, will not fit the established character and will impact the other properties within the block in respect to shadow, privacy and sky views. It was recommended that the rear of the base building of the Proposed Development be reduced in height to match the existing built form and provide a transition to the Prince Arthur Avenue properties. Tribute's position is that the separation provided by the TPA Lot to the lands on Prince Arthur Avenue is a sufficient setback to create an effective transition from the Proposed Development and the lower density development located along Prince Arthur Avenue.

[160] The Tribunal prefers the evidence of the Tribute planners and finds that the separation distance provided by the TPA Lands provides a sufficient transition to the Prince Arthur Avenue lands. The Tribunal, in consideration of the transition of the base building towards the north, contemplated that future development opportunities exist for the neighbouring properties within the block and there is currently no restriction on the maximum heights of the rear podium sections of any proposed buildings.. The adjacent properties, 208 Bloor and the Intercontinental have not objected to the Proposed Development. The Tribunal recognizes that the Intercontinental Hotel operator is not the owner of the property on which they are situated however; the long term lease agreement with the City has the effect of providing them with a status comparable to an owner as they may choose to redevelop the site to optimize their investment in the lands.

[161] The Tribunal has considered the concern proffered by the EACA that the potential redevelopment of the TPA Lot will be negatively impacted by the Proposed Development. The Tribunal finds that the factors impacting the potential for redeveloping the TPA Lot are already present in the context of the existing developments abutting the TPA Lot. The podium structures of 1 Bedford, the Intercontinental, the Exhibit about the TPA Lot along the southern boundary and the Prince Arthur Avenue developments about the TPA Lot along the northern boundary.

The introduction of the Proposed Development at 16 storeys will not change the existing factors impacting the redevelopment potential of the TPA Lot.

[162] EACA and the City relied on a number of visual exhibits included in Exhibit No.1 and Exhibit No. 8 to support their testimony, however; during the course of the cross-examination of the EACA planner and the City's urban design witness, there were a number of questions raised that caused concern for the Tribunal. The Tribunal was advised that the City's visual exhibits were prepared by City staff at the direction of the EACA planner and finalized after the City's urban designer had filed his witness statement. The visual exhibits filed by EACA were prepared by Mr. Wassermuhl's firm at his direction. There was notable confusion as to what the Tribunal was expected to ultimately conclude when considering the visual exhibits. The witnesses were unable to confirm specific aspects of the exhibits such as the vantage point of certain images and the how they arrived at their conclusions based on the exhibits when the exhibits were not finalized. The Tribunal was left to draw its own conclusions and rely on the Tribute exhibits in consideration of the evidence around the various visual exhibits.

[163] In respect to the shadow impact concerns arising from the height of the base building at the rear of the Proposed Development, the Tribunal considered the shadow study completed by Tribute and the conclusions that incremental shadow impact was acceptable. Ms. Birchall testified that the proposed building base will result in a loss of view from the lower floors of the Museum House residences facing north.

[164] The Tribunal prefers the evidence of Mr. Hannay and his conclusion that the shadow impact is acceptable in the Downtown. Tribute filed a shadow impact study as required in support of the Proposed Development which was deemed satisfactory by the City.

[165] In consideration of the middle tower section of the Proposed Development, the Tribunal, in review of the OP, the TBDG, and the DTBG documents acknowledges that the illustrations and references are directed to a tower-base form building typology. The Tribunal also notes that the guidelines for a Canyon Form building typology addresses

the base building form only and the middle tower section guidelines are the same for both the Tower-Base and Canyon Form typologies. The guidelines provide no distinction between the typologies and no direction regarding Canyon Form buildings appropriately located on a Canyon Form High Street.

[166] The Downtown Building Typologies identified in the DTBG describes Tower-Base form as towers set atop pedestrian scaled base buildings. When referencing the Canyon Form, the DTBG references the high street wall of the base covering the full width of the lot. Above the street wall canyon height, the guideline states the tower should be set back in accordance with the guidelines 3.1.1 and 3.2.2 of the TBDG.

[167] The tower of the Proposed Development provides no side yard setback. The front setback or step back at the canyon wall height of 3.0 m to the balcony edge was not identified as an issue with the City or the EACA. The rear setback of the tower was not specifically raised as an issue. Both the City and the EACA identified the side yard setback as a concern. In applying the tower setbacks as identified in the TBDG of 12.5 m from the side property lines, the physical limitations of the narrow lot prevent the placement of a tower on the Subject Lands.

[168] The Tribunal heard considerable testimony in respect to guideline 3.2.3 of the TBDG and specifically the Small Sites section which states:

The construction of tall buildings on sites that are too small to accommodate the minimum tower setbacks and stepbacks results in negative impacts on the quality of the public realm, neighbouring properties, the living and working conditions for building occupants, and the overall liveability of the City.

If tall buildings are constructed too close together negative impacts may include:

- excessive shadowing of surrounding streets, parks, open space, and properties;
- diminished sky views for pedestrians;
- heightened street level wind effects;
- loss of privacy for residents;
- and limited interior daylighting.

As noted, when towers are constructed too close to property lines, development of one site may restrict adjacent sites from developing in a similar manner.

Small sites also have greater difficulty in providing required amounts of underground parking as minimum lot depths are necessary to achieve setbacks and to allow for typical below-grade parking layouts, including ramps and access. Street level façades and pedestrian activities are compromised when above-grade parking garages are introduced on sites with inadequate conditions for below-grade parking to exist.

Appropriate minimum dimensions for a proposed tall building site may be determined by applying the recommended minimum tower setbacks and stepbacks and evaluating the resultant floor plate size. If it is not feasible to construct a tower on a site after applying these setbacks and stepbacks, the site may be too small for a tall building. In some cases, it may be possible to assemble several smaller properties to allow tall building development to proceed, but in other cases, the small site may only be able to accommodate a lower-scale building form, such as a mid-rise building.

[169] The Tribunal heard evidence that the boulevard in front of the Subject Lands will be widened which will enhance the public realm. The Tribunal acknowledges the neighbouring property owner of 208 Bloor attended and does not oppose the Proposed Development and the Intercontinental operators are not opposing the Proposed Development. The Tribunal was not presented evidence to suggest that the Proposed Development will create any negative impacts for the living or working conditions for building occupants or the overall liveability of the City.

[170] The Tribunal considered the potential impacts of a tall building on a small site that could arise from the Proposed Development being: excessive shadowing of surrounding streets, parks, open space, and properties; diminished sky views for pedestrians; heightened street level wind effects; loss of privacy for residents; or limited interior daylighting. The evidence is that the Proposed Development will not generate excessive shadowing on streets, parks, open space or neighbouring properties. The Tribunal accepts the evidence of Tribute that the shadow impacts are appropriate in a Downtown context. The Tribunal considered the different exhibits filed in respect to the impact of sky view that the Proposed Development would create. The Tribunal prefers the evidence of Tribute which described the impact as how a person at the street level would perceive the Proposed Development when they view the sky in a panoramic

context. The exhibits represent a specific, static view plane and do not capture the impact when a person would pan from side to side. The Tribunal is satisfied that the sky view impact of the introduction of the Proposed Development is appropriate and does not represent a negative impact. The Parties agree that the Canyon Form base along Bloor Street is appropriate. The Tribunal finds that the impact of the tower, above the base, does not represent a diminished sky view. The limited number of residential units, either one or two per floor, and the high ceilings proposed will allow maximum light into the units and the balcony configuration will eliminate any privacy concerns.

[171] The Tribunal was advised that the Proposed Development provides underground parking in excess of the minimum requirements of the City Zoning By-law.

[172] In consideration of the final paragraph of the guidelines addressing Small Sites, the Tribunal finds that the guideline identifies a number of recommendations which 'may' result in a site being considered too small to accommodate a tall building. These recommendations are not definitive. The Tribunal was provided the opinion that the inability to provide side yard setbacks to the tower is the primary reason that the site can not accommodate the Proposed Development and therefore does not comply with the OP.

[173] The Tribunal considered the introductory preamble of the guidelines which states guideline requirements are not intended to be applied or interpreted independently of each other. Rather, each guideline works together with the other design guideline requirements to determine whether a tall building application has successfully met the overall intent of the TBDG and DTBG measures and requirements.

[174] Tribute contends that the proportions of the proposed tower design is a direct result of the Subject Lands dimensions and the application of the Canyon Form building typology provided for along the block containing the Subject Lands. The Guidelines intent is to implement the OP and provide evaluations tools. There is to be some degree of flexibility in their interpretation and application.

[175] The Tribunal accepts that OPA 352 is instructive as to emerging policy direction of the City. The City contends that these updated setbacks protect important planning principles such as providing access to sky views, light, and privacy, enhancing a development site's ability to provide high-quality public realm improvements, and protecting the development potential of adjacent sites. Mr. Tinker's submission is that the Proposed Development generally conforms to the policies contained in OPA 352. The Tribunal prefers the position and interpretation of Tribute.

[176] Similar to OPA 352, the Tribunal accepts that OPA 406 is instructive as to emerging policy direction of the City. OPA 406 specifically includes a provision at Policy 1.9 that states the Plan does not apply to applications for zoning by-law amendment which were complete prior to the approval of the Plan and site specific zoning by-law amendments shall be deemed to conform to this Plan. Notwithstanding that OPA 406 might be instructive as to emerging policy, the policy specifically sets out that the policies would not apply to the Proposed Development and should the ZBA be approved, it will be deemed to comply. The Tribunal considered the evidence tendered in respect to OPA 406 and notes that OPA 406 states, "As the intensity of development on small infill sites increases and buildings get taller, detailed land use policies for Mixed Use Area will ensure that development occurs in a manner that fits with the existing and planned context." The Tribunal's consideration of the submissions of Tribute addresses the manner in which the Proposed Development fits within the existing and planned context.

[177] The Tribunal, in consideration of s. 2 of the Act, prefers the evidence of Tribute and finds that the Proposed Development represents the orderly development of a safe and healthy community and is an appropriate location for growth and development.

[178] In consideration of s. 2.1 of the Act, the Tribunal acknowledges the City's decision refusing the ZBA. The Tribunal notes that the staff report recommendation to refuse the application was based on an analysis by City staff at that time. The Tribunal has considered evidence that in some parts is contrary to the evidence that was

considered by the City Council in the staff report and has arrived a different decision as a result.

[179] Section 3.5 of the Act requires that a decision of the Tribunal, in respect of the exercise of any authority that affects a planning matter, shall be consistent with the policy statements that are in effect on the date of the decision and shall conform with, or not conflict with, the provincial plans that are in effect on that date.

[180] The Tribunal considered and accepts the evidence and testimony of each of the Land Use Planners which is that the Proposed Development and the ZBA is consistent with the PPS and conforms to the Growth Plan. The PPS and the Growth Plan encourage and challenge the City to optimize the use of land.

[181] In consideration of the PPS, the Tribunal finds that the proposed ZBA provides for an infill development that: supports a safe and healthy community, represents an efficient use of land and optimizes the use of infrastructure, has access to transit in a walkable neighbourhood, applies to lands identified for intensification, provides market oriented housing that compliments the available range of housing types, and optimizes the use of land enhancing the vitality of the downtown. The Tribunal finds that the proposed ZBA is consistent with the PPS.

[182] In consideration of the Growth Plan, the Tribunal finds that the Subject Lands are located in a Strategic Growth area near a subway and the proposed ZBA will support achieving a complete community providing a diverse range of housing options to accommodate people at all stages of life, a compact built form, supports transit use and supports alternative development standards within a MTSA. The Tribunal finds that the proposed ZBA conforms with the Growth Plan.

[183] The Tribunal notes that the OP states that in Growth Areas like the Downtown, the planned context anticipates change.

[184] The Subject Lands are designated Mixed Use Areas in the OP and are located in

the Downtown and Central Waterfront Area. The Tribunal, in consideration of the Mixed Use Areas policies, prefers the evidence of the Tribute Land Use Planner and Urban Design expert which sets out that the Proposed Development: provides an appropriate transition to the lands along Prince Arthur Avenue, adequately limits shadow impacts on the nearest Neighbourhood area, frames the street edge, maintains sunlight and comfortable wind conditions for pedestrians, provides a comfortable and safe pedestrian environment, takes advantage of nearby transit services, locates service areas to minimize impact, and provides recreation space for building residents. The Tribunal, in consideration of the Built Form Policies contained in Chapter Three of the OP, accepts the evidence of the Tribute experts and finds that the Proposed Development: proposes a main entrance directly accessible to the public sidewalk, provides vehicle access and servicing within the building, provides underground parking, provides an exterior facade that fits harmoniously within the existing and planned context of the block. The Proposed Development will respect the street proportion, create an appropriate transition to neighbouring buildings for the purpose of achieving the objectives of the OP, provides adequate light and privacy, adequately limits shadowing and uncomfortable wind conditions. The Tribunal finds that the Proposed Development conforms to the Built Form - Tall Buildings Policies in Section 3.1.3 as the proposed building has three parts: a canyon form base building which complements the adjacent buildings, a middle with appropriate dimensions for a canyon form typology, and a top that integrates the roof top mechanical.

[185] In respect to the BCUD Guidelines, the Tribunal prefers the opinions proffered by the Tribute Urban Design expert that the Proposed Development appropriately implements the BCUD Guidelines with a development that: introduces a higher density near transit, has a height that appropriately transitions in the context of the corridor from the highest heights to the east towards Yonge Street and the reduces as you proceed westerly along the corridor, provides a street wall that maintains the Canyon Form typology, and creates no adverse shadow impact. The Tribunal finds that the Proposed Development provides a uniquely bold architectural and sculptural form that fits well within the eclectic built form architectural environment of both the immediate context

and the larger geographical context that encompasses the corridor along Bloor Street West towards Yonge Street.

[186] The Tribunal considered contrary evidence in respect to the conformity of the proposal with the TBDG and the DTBG. The Tribunal was advised that the Subject Lands are located on a High Street which permits a maximum height of 107m or 35 storeys. The DTBG identify the block as permitting a Canyon Form building typology with a canyon wall height of 62m or 20 storeys. The Parties did not dispute that the Proposed Development has a height of 107 m and a canyon wall height of 59 m. The Parties agreed that the Proposed Development does not create any impact on the View Shed of the Ontario Legislature Buildings.

[187] The Parties differed on the impact of the Proposed Development on Sky View, and the Sunlight and Shadowing impact. In respect to Shadowing, the City did not raise objection to the shadow impact resulting from the Proposed Development. Ms. Birchall, during her testimony, was unable to determine the impact of the shadow study details and concluded that any impact on the outdoor amenity areas of 1 Bedford or the Exhibit would be unacceptable. The DTBG are specific to City parks in terms of the criteria related to a shadow study. The evidence of Mr. Hannay is that the shadow impact is acceptable and in the context of a downtown setting on a street designated for Tall Buildings shadows are to be expected. In respect to Sky View, the City and EACA proffered that the Proposed Development would create a negative impact on Sky View and result in an unacceptable loss of sunlight. Tribute proffered that Sky View can not be captured in a two-dimensional static context as portrayed in the visual exhibit of the City but should be contemplated in a panoramic context. Mr. Hannay submitted that a person standing on the street will turn their head from side to side and in this circumstance will have ample access to sky views and sunlight. The Tribunal prefers the interpretation and evidence of Tribute.

[188] The TBDG provide direction in respect to tower placement. The Tribunal heard considerable evidence in respect to Guidelines 3.2.2 and 3.2.3 which addresses Tall

Building Tower Placement and Separation. The City and EACA gave considerable weight on the numeric values set out in the policies and concluded that the Proposed Development does not comply with the guideline and therefore the tower of the proposed building can not be accommodated on the Subject Lands. Tribute submitted that the Tribunal should take a more comprehensive approach to the guidelines in considering all the guidelines and the intent of the guidelines. Tribute submitted a conceptual block plan which demonstrated how future development could occur within the block between Avenue Road and Bedford Road. Tribute proffered that the Proposed Development would not prevent further development within the block in a form envisioned by the OP and the TBDG and DTBG. The Tribunal prefers the evidence of Tribute and finds that the Proposed Development is generally in keeping with the intent of the guidelines. The Tribunal notes that the Guidelines were created to assist with the implementation of the OP policy and provide specific direction for tall buildings. The Guidelines are not OP policy. In that regard, the Tribunal relies on the Guidelines to provide further context of the intent of the policies described in the OP.

[189] The consideration of mirroring the Proposed Development on the other properties within the block does not result in a practical or realistic result. The Tribunal notes that the planned context of the block is a Canyon Form typology. The future potential towers will require careful and ambitious consideration on the part of the City and the future applicants to optimize the use of the land while also addressing other matters such as sky view, shadowing, and impact on the public realm. The City has created a policy context that will allow for significant intensification within this block and while that may not be easy to envision, the Tribunal finds that the Proposed Development is an appropriate example of optimizing the subject lands in the planned context of the block.

[190] The Tribunal finds that the Proposed Development is an ambitious and practical approach to develop the Subject Lands having taken into consideration the policies and directions provided in the PPS, the Growth Plan, and the OP appropriately captures the intent of the direction of the applicable policy framework of these documents.

[191] The Tribunal is satisfied that the ZBA represents good planning.

INTERIM ORDER

[192] **THE TRIBUNAL ORDERS** the appeal is allowed, in part, and the Amendment to the City of Toronto Zoning By-law No. 569-2020 is approved in principle subject to following conditions being satisfied:

1. The Tribunal will withhold issuance of its Final Order until it has received and approved the final form, acceptable to the City Solicitor as confirmed in writing, of the Zoning By-law Amendment.
2. The Tribunal shall be in receipt of a confirmation in writing from the Director, Community Planning, Toronto and East York District and the City Solicitor that the following conditions have been met:
 - a. the Owner has provided an updated Functional Servicing and Stormwater Management Report, including confirmation of water, sanitary and storm water capacity, to the satisfaction of the Chief Engineer and Executive Director, Engineering and Construction Services;
 - b. the Owner has provided an updated Hydrogeological Report and supporting documents addressing any on-site groundwater to the satisfaction of the General Manager, Toronto Water;
 - c. the Owner designs and provides financial securities for any upgrades or required improvements to the existing municipal infrastructure identified in the accepted Functional Servicing Report and the accepted Hydrogeological Report to support the development, all to the satisfaction of the Chief Engineer and Executive Director, Engineering and Construction Services and the General Manager, Toronto Water, should it be determined that improvements or upgrades are required to the

infrastructure to support this development; and

- d. the Owner has entered into a Section 37 Agreement or any successor thereto, to the satisfaction of the Chief Planner and Executive Director, City Planning, and the City Solicitor, and this agreement has been registered on title to the subject property to the satisfaction of the City Solicitor.

[193] **THE TRIBUNAL ORDERS** that in the event that the above conditions have not been fulfilled on or before **Friday, December 31, 2021**, the Parties shall provide the Tribunal with written update on the progress of the fulfillment of the conditions by the same date.

"David Brown"

DAVID BROWN
MEMBER

Ontario Land Tribunal

Website: 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.