Ontario Land Tribunal
Tribunal ontarien de l'aménagement du territoire

ISSUE DATE: September 05, 2023 **CASE NO(S).:** OLT-21-001593

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

Appellant:	Centreville Homes
Appellant:	Dana Saccoccio
Subject:	Proposed Official Plan Amendment No. 40
Municipality:	City of Pickering
OLT Case No.:	OLT-21-001593
OLT Lead Case No:	OLT-21-001593
OLT Case Name:	Centreville Homes (Pickering) Inc./Saccoccio v. Pickering (City)

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

Appellant:	Centreville Homes
Appellant:.	Dana Saccoccio
Subject:	By-law No. 7871/21. 7872/21 & 2511
Municipality:	City of Pickering
OLT Case No.:	OLT-21-001594, OLT-21-001595 & OLT-21-001596
OLT Lead Case No.:	OLT-21-001593
OLT Case Name:	Centreville Homes (Pickering) Inc./Saccoccio v. Pickering (City)

Heard: July 17 to 21 and 26, 2023 by video hearing

APPEARANCES:

Parties	**Counsel**
Dana Saccoccio ("Appellant")	Gina Brannan
City of Pickering ("City")	Mark Joblin Alexandra Whyte

DECISION DELIVERED BY JEAN-PIERRE BLAIS AND ORDER OF THE TRIBUNAL

Link to Order

INTRODUCTION

[1] The matter before the Tribunal is a series of appeals by the Appellant pursuant to subsections 17(24) and 34(19) of the *Planning Act,* RSO 1990, c. P. 13, as amended ("Act").

[2] First, an appeal of Amendment 40 of the City's Official Plan ("OP") adopted pursuant to By-law No. 7871/21 on September 27, 2021 ("OPA 40"). The stated purpose of OPA 40 is to amend the OP to add new policies that require that a new development that is within an Established Neighbourhood Precinct ("Precinct"), complements and is compatible with the existing character of the neighbourhood, and to establish definitions for "infill dwelling" and "replacement dwelling".

[3] Second, a series of appeals of Zoning By-law Amendments ("ZBAs"), adopted by the City on September 27, 2021, namely By-law No. 7872/21, 7873/21, and 7874/21. These ZBAs seek to implement the City's OP, including OPA 40. They are essentially similar in effect, but they amend different parent Zoning By-laws to implement new standards in different Precinct overlay zones. The ZBAs can be summarized as follows:

Appealed By-law	Parent Zoning By-law Amended	Neighbourhoods
7872/21	By-law 2511	Rosebank West Shore (part) Bay Ridges (part)
7873/21	By-law 2520	West Shore (part) Bay Ridges (part)
7874/21	By-law 3036	Rougemont Woodlands Dunbarton Highbush Liverpool

[4] Third, a series of appeals of Zoning By-law Amendments ("Height ZBAs") adopted by the City on January 24, 2022, namely By-law No.7900/22, 7901/22, and 7902/22. These Height ZBAs further amend the parent Zoning By-laws to reduce the maximum dwelling height provisions from 10 metres to 9 metres within the various Precincts. The Height ZBAs can be summarized as follows:

Appealed By-law	Parent Zoning By-law Amended	Neighbourhoods
7900/22	By-law 2511, as amended by ZBA 7872/21	Rosebank West Shore (part) Bay Ridges (part)
7901/22	By-law 2520, as amended by ZBA 7873/21	West Shore (part) Bay Ridges (part)
7902/22	By-law 3036, as amended by ZBA 7874/21	Rougemont Woodlands Dunbarton Highbush Liverpool

[5] OPA 40, the ZBAs and the Height ZBAs may be collectively referred to hereafter as the "Instruments".

[6] Pursuant to a Tribunal Case Management Conference decision delivered on July 11, 2022, the appeals had originally been set down for a 10-day hearing on the merits. In the end, the matter was heard over six days.

[7] The Tribunal notes that associated appeals by Centreville Homes (Pickering) Inc. were withdrawn on May 30, 2022.

[8] No other person sought Party or Participant status.

[9] These appeals are not with respect to a specific development proposal.

POSITION OF PARTIES

[10] The Appellant made many arguments in support of her position that the appeal of Instruments should be allowed. In particular, the Appellant argues that: (1) OPA 40 offends s. 16 of the Act; (2) that the Revised Urban Design Guidelines for Infill and Infill Replacement Housing in Established Neighbourhood Precincts, adopted by City Council resolution on September 27, 2021 ("Guidelines") and the Urban Design Guidelines Checklist ("Checklist"), which is Appendix A of the Guidelines, have been incorporated by reference into OPA 40 and offend s. 16 of the Act; (3) the boundaries of the Precincts are inappropriate; (4) the Instruments do not have regard to matters of provincial interest in s. 2 of the Act; (5) the Instruments are not consistent with Provincial Policy Statement 2020 ("PPS 2020") pursuant to s. 3(5)(a) of the Act; (6) the Instruments do not conform to the Growth Plan for the Greater Golden Horseshoe 2020 ("Growth Plan") pursuant to s. 3(5)(b) of the Act; (7) the Instruments do not conform to the Region of Durham Official Plan ("Regional OP") pursuant to s. 24(1) of the Act; and (8) the ZBAs and Height ZBAs are an inappropriate "downzoning" and prevent the construction of dwellings that have a "reasonable design". For the Appellant, large homes are not a luxury. More dwelling space is required to accommodate post-COVID societal changes, to address the impact of housing cost on younger generations and to facilitate multi-generational housing arrangements.

[11] The City argues that the appeals should be dismissed in their entirety and that the Tribunal should approve OPA 40 pursuant to s. 17(50) of the Act. In particular, the City argues that (1) little or no weight or reliance should be given to the evidence of the

Appellant's expert witnesses, and that the Tribunal should prefer the evidence of the City's expert witnesses; (2) the public engagement process that informed the adoption of the Instruments was extensive and more than sufficient; (3) OPA 40 did not include improperly prescriptive requirements; (4) the Guidelines and Checklist are not incorporated into OPA 40, are non operative and are not before the Tribunal on appeal; (5) the Precinct boundaries and the Performance Standards in the ZBAs and the Height ZBAs are appropriate; and (6) the Instruments meet all the legislative tests with respect to matters of provincial interest, PPS 2020, the Growth Plan, the Regional Plan and the OP.

EVIDENCE AND ANALYSIS

[12] The Tribunal heard evidence from five witnesses. Mr. Deepak Bhatt, retained by the Appellant, was qualified on consent as an expert in land use planning. Mr. Paul Weppler, a partner with the architectural firm Saccoccio Weppler Architects Inc., was qualified as an expert in architecture on behalf of the Appellant. Mr. Lamont Wiltshire, CEO and Co-founder of The Wiltshire Group, a custom home builder in the City, testified on behalf of the Appellant as a lay witness. Ms. Catherine Jay and Mr. David Riley, both Principals with SGL Planning and Design Inc. ("SGL"), testified on behalf of the City. Ms. Jay was qualified on consent as an expert in urban design and landscape architecture, and Mr. Riley was qualified on consent as an expert in land use planning.

[13] The independence of Mr. Weppler as an expert witness was the subject of discussion at the hearing. The evidence revealed that Mr. Weppler was the spouse and the business associate of the Appellant, and that they jointly had an interest in three properties in the Established Neighbourhood Precincts: (1) their primary residence purchased in 1985, (2) a rental property that they had no intention to redevelop in the next five years, and (3) a vacant lot which they did intend to develop. Mr. Joblin, co-counsel for the City, stated that he had "a small amount of concern" with respect to Mr. Weppler's duty as an expert to remain independent and impartial. However, he did

acknowledge that Mr. Weppler had expertise in architecture and design. Mr. Weppler testified under oath, particularly given his professional duty as an architect, that his evidence before the Tribunal would not be different if he did not have a business and familial relationship with the Appellant, and if he did not have an interest in the three above-noted properties. On balance, the Tribunal qualified Mr. Weppler, while cautioning him as to his overriding duty of impartiality to the Tribunal and indicating that it was open to the Tribunal to give less weight to his evidence if the circumstances so required. Moreover, the Tribunal directed those portions of his Witness Statement other than paragraphs 4.1 to 4.13 to be struck from the record. Thus, his written and oral evidence focused primarily on technical aspects with respect to a series of drawings that illustrated, in his view, the negative impact of the City's new policies and standards on a landowner's ability to design and develop their lands. He did not testify as an expert in land use planning.

Background to Adoption of the Instruments

[14] The genesis of the Instruments can be traced back almost seven years.

[15] In 2018, the City retained SGL, pursuant to a request for proposals, to conduct the Infill and Replacement Housing in Established Neighbourhoods Study ("SGL Study"). This initiative was in response to concerns raised by residents in focus group meetings about infill and replacement development and their impact on the character of existing neighbourhoods, as well as a Council resolution No. 236/16 adopted on November 21, 2016. A City staff report of September 5, 2017, included among other things a review of the best or the common practices of other municipalities in addressing the compatibility of new development with the character of established neighbourhoods including from the Towns of Halton Hills and Oakville, and the Cities of Vaughan, Brampton, Mississauga, Burlington, Ottawa, Kitchener, and Markham.

[16] The 2017 staff report noted that there has been a considerable amount of infill and replacement housing within certain neighbourhoods of the City, and that sometimes

“these homes are two or three times larger than existing homes in the neighbourhood” and that “the builder or owner often maximizes the existing zoning permissions to build houses that are larger and have smaller setbacks to the property line than what primarily exists in the neighbourhood”. The 2021 staff report noted that many of the new homes “created impacts in terms of privacy, shadow, and overlook for neighbouring homes, and altered the streetscape”.

[17] The purpose of the SGL Study was to make recommendations for an appropriate policy framework, regulations, and other tools for the City to manage new development within the City’s Established Neighbourhoods in a manner that is compatible with elements of neighbourhood character and existing development.

[18] Mr. Riley explained that established neighbourhoods within the City can be identified based on several characteristics that are common to mature residential neighbourhoods. These characteristics include features such as large lots with large building setbacks, mature landscaping, and larger separation distances between dwellings (as compared to newer residential neighbourhoods). Established neighbourhoods tend to have more modest homes with larger yards compared to newer residential neighbourhoods. He also explained that there has been a trend of building larger houses on smaller lots. This trend is not only seen in newer neighbourhoods but also in established neighbourhoods, and can lead, in his view, to instances of incompatible development.

[19] The SGL Study was conducted in three phases.

[20] Phase 1 examined the qualities, characteristics, and key issues that were of concern to residents of established neighbourhoods, and the Existing Conditions and Preliminary Observations Report was prepared as part of this phase. The report highlighted that some of the defining elements of character within established neighbourhoods generally included the height and overall scale of dwellings, roof pitch, the elevation of the first floor, separation distance between houses, front yard setback,

landscaped open space, as well as the size and configuration of the driveway and the garage/carport.

[21] A Planning Options Report was prepared in Phase 2. The Planning Options Report identified gaps and opportunities for the OP, zoning by-law regulations and guidelines for addressing compatibility issues between construction of infill and replacement dwellings and the existing built form in established neighbourhoods.

[22] A Final Report was prepared in Phase 3, outlining recommendations based on the information and feedback received from the first two phases of the SGL Study. The SGL Study concluded with recommended OP policies, recommended changes to the City's Zoning By-laws, and the creation of Urban Design Guidelines for Infill & Replacement Housing in Established Neighbourhood Precincts.

[23] Throughout the SGL Study process, engagement with the public and stakeholders helped the City and the SGL team understand the elements of neighbourhood character, to receive feedback on options, and to ultimately inform the development of recommendations that led to the creation of the Instruments. Engagement events notably took place through the duration of the SGL Study as follows:

i. Phase 1 Public Open House and Workshop (March 5, 2019);

ii. Phase 1 Planning and Development Committee Meeting (April 1, 2019);

iii. Phase 2 Infill survey;

iv. Phase 2 Public Open House and Workshop (October 29, 2019);

v. Phase 2 Planning and Development Committee Meeting (January 13, 2020);

vi. Phase 3 Virtual Orientation (online presentation);

vii. Phase 3 Virtual Public Open House (August 11, 2020); and

viii. Phase 3 Planning and Development Committee Meeting (September 14, 2020).

[24] The SGL Study was concluded in September 2020 with the City's adoption of the Phase 3 recommendations.

[25] Following the completion of the SGL Study, the City built upon the recommendations. City staff prepared numerous recommendations and the City eventually adopted, on September 27, 2021, OPA 40, the ZBAs and the Guidelines (including the Checklist). These documents incorporated the recommendations from the Study, with some changes.

[26] On October 25, 2021, Council reconsidered its decision of September 27, 2021, and directed staff to initiate amendments to reduce the maximum dwelling height provision from 10 to nine metres within the Precincts. The City approved these Height ZBAs on January 24, 2022. The 9-metre standard is in line with the original SGL Study recommendations.

[27] Prior to the adoption of OPA 40, the City already had OP policies and guidelines with respect to protecting and enhancing the character of established neighbourhoods. Chapters 9 and 14 of the OP provided strategies for addressing community design and policies for specific detailed design considerations. OPA 40 built on those pre-existing policies and strategies.

[28] The amended Policy 3.9 would, with the implementation of OPA 40, state as follows with new text shown as underlined text:

City Council […]

(c) in establishing performance standards, restrictions and provisions for Urban Residential Areas, shall have particular regard to the following:

(i) protecting and enhancing the character of established neighbourhoods, considering such matters as building height, massing and scale, yard setback, lot coverage, access to sunlight, overlook and privacy, parking provisions and traffic implications;

(ii) acknowledge that certain areas within the City may be more susceptible to the construction of Infill and Replacement Dwellings and may identify these areas as Established Neighbourhood Precincts on the Neighbourhood Maps in Chapter 12 – Urban Neighbourhoods, and establish zoning provisions to appropriately address matters such as building height, massing and scale, privacy, overlook and shadowing as they relate to the impact of the construction of Infill and Replacement Dwellings on the character of the streetscape and the existing neighbourhood;

[…]

(f) when considering applications for the development of Infill or Replacement Dwellings within an Established Neighbourhood Precinct, as identified on Maps 11, 12, 13, 15, 16, 17, 20 and 22 of this Plan, shall require that such development complements and is compatible with the character of the Established Neighbourhood Precinct with respect to:

(i) minimizing the impacts associated with building height, massing and scale, privacy, overlook and shadowing on neighbouring properties, and promoting development of a compatible scale as observed from neighbouring properties and the street;

(ii) reinforcing the established pattern of existing side yard setbacks and separation distances between dwellings as observed from the street;

(iii) reinforcing the established pattern of existing lot widths and lot coverage in the Established Neighbourhood Precinct;

(iv) reinforcing the established pattern of front yard setbacks on the street;

(v) promoting garages to be located flush with or behind the front main walls of dwellings, such that they do not dominate the façade of the dwelling;

(vi) maximizing the front yard landscaping to the greatest extent possible;

(vii) encouraging the preservation of existing mature trees to the greatest extent possible; and

(viii) being consistent with the intent of the Urban Design Guidelines for Infill & Replacement Housing in Established Neighbourhood Precincts, which will prevail in the event of a conflict with any Development Guideline within the Compendium Document.

Performance Standards of ZBAs and Height ZBAs

[29] The ZBAs create an overlay of zoning standards for Precincts within eight Established neighbourhoods, namely Rosebank, West Shore, Bay Ridges, Rougemont, Woodlands, Dunbarton, Highbush and Liverpool. The Precincts are defined by detailed maps attached to the ZBAs and Height ZBAs. The ZBAs include performance standards with respect to lot coverage, maximum dwelling depth, minimum front yard setback, maximum front yard set back, front entrance maximum elevation, maximum driveway width and minimum interior garage size which can be summarized as follows:

Subject	**Previous Performance Standard**	**ZBA Performance Standard**
Lot Coverage	33%	22% for lot equal or greater than 1000 square metres 33% for lots less than 1000 square metres 25% in the Liverpool Precinct
Maximum Dwelling Depth	none	17 metres for lots with a depth equal or less than 40 metres

		20 metres for lots with a depth of greater than 40 metres
Minimum Front Yard Setback	7.5 metres	Equal to the shortest existing setback to adjacent dwellings on the immediately abutting lots
Maximum Front Yard Setback	none	Average of existing setbacks to adjacent dwellings on the immediately abutting lots on the same side of the street plus one metre (applied to 80% of the dwelling width)
Front Entrance Maximum Elevation	none	1.2 metres above the average grade, measured along the front wall of the dwelling to the top of the platform immediately outside the front entrance
Maximum Driveway Width	none	6.0 metres Where the garage entrance is wider than 6.0 metres, the maximum driveway width shall be no greater than the width of the entrance of the garage/carport
Minimum Interior Garage Size	none	Each space shall have a minimum width of 3.0 metres and a minimum depth of 6.0 metres

[30] Similarly, the Height ZBAs create a new performance standard for the maximum height of dwellings within the Precinct overlay zones. As noted above, upon reconsideration the City reduced the maximum dwelling height from 10 metres to nine metres. The following is a summary:

Neighbourhoods	Previous Performance Standards	Maximum Height after September 2021 ZBAs	Maximum Height in January 2022 per Height ZBAs
Rosebank West Shore (part) Bay Ridges (part)	9 metres	10 metres	9 metres
West Shore (part) Bay Ridges (part)	10.5 metres	10 metres	9 metres
Rougemont Woodlands Dunbarton Highbush Liverpool	18 metres	10 metres	9 metres

[31] The above Tables are a summary of the essence of the ZBAs and the Height ZBAs. The various by-laws provide more details on matters related to their coming into force, transition provisions and how to measure the various performance standards on a given lot.

[32] The performance standards set out in the parent Zoning By-laws, largely adopted in the 1960s, continued to apply for as-of-right development but for the coming into force of the Instruments.

DOES OPA 40 OFFEND S. 16 OF THE ACT?

[33] The Appellant takes the position that OPA 40 offends s. 16 of the Act, particularly the added Policy 3(f) quoted above at paragraph [28]. Subsection 16(1) sets out the required content of an official plan and states:

> 16(1) An official plan shall contain,
>
> (a) goals, objectives and policies established primarily to manage and direct physical change and the effects on the social, economic, built and natural environment of the municipality or part of it, or an area that is without municipal organization;
>
> (a.1) such policies and measures as are practicable to ensure the adequate provision of affordable housing;

> (b) a description of the measures and procedures for informing and obtaining the views of the public in respect of,
> (i) proposed amendments to the official plan or proposed revisions of the plan,
> (ii) proposed zoning by-laws,
> (iii) proposed plans of subdivision, and
> (iv) proposed consents under section 53; and
>
> (c) such other matters as may be prescribed. [Emphasis added]

[34] By contrast, subsection 16(2) sets out permitted content and states:

> 16 (2) An official plan may contain,
>
> (a) a description of the measures and procedures proposed to attain the objectives of the plan;
>
> (b) a description of the measures and procedures for informing and obtaining the views of the public in respect of planning matters not mentioned in clause (1) (b); and
>
> (c) such other matters as may be prescribed. [Emphasis added]

[35] Counsel for the Appellant relies on a legal article, caselaw cited therein, and other caselaw, in support of the proposition that official plans are intended to be broad and flexible policy statements, and are not intended to rigidly prescribe performance standards, prohibit certain kinds of uses or otherwise attempt to specifically regulate use of building form.[1]

[36] Moreover, Counsel for the Appellant argues, based on implied exclusion rule of statutory interpretation, that s. 34 of the Act, which gives municipal councils the power to adopt zoning by-law, means – by implication – that official plans may not be

---

[1] Michael Polowin and Graydon Ebert, "Official, But Illegal: Are Official Plans Being Used in a Manner that is a "Bridge to Far?"", [2011] 5 DMPL (2d), Issue 8; *Goldlist Properties Inc. v. Toronto (City)*, 2003 CanLII 50084 (ON CA); *McDonalds Restaurants of Canada et al. v. Town of Oakville* PL 100058, Sept 2, 2010 (O.M.B.); *City of Ottawa v. 267 O'Connor Limited et al.,* 2016 ONSC 565 (Div. Ct.)

regulatory or prescriptive. The Tribunal notes that the implied exclusion rule has been statutorily removed by the Legislator pursuant to s. 16(8) of the Act when considering the interplay of various subsections within s. 16. However, Counsel for the Applicant bases her argument on the interplay with s. 34 of the Act.

[37] Mr. Joblin, Co-counsel for the City, argues that the legal article should not be relied upon, that it is not a source of law, the authors overstate the restrictions in the caselaw, and that “lots of official plans” in Ontario contain restrictions. With respect to the implied exclusion rule, he argued that there was no caselaw submitted by Counsel for the Appellant concerning the application of that rule of statutory interpretation to s. 16 of the Act, and that the application proposed by Counsel for the Appellant is not supported by the language of the Act.

[38] The Tribunal does not find merit in the Appellant’s arguments based on the facts of this case. Clearly, as had been held by the Ontario Court of Appeal in the *Goldlist Properties* case and now codified at s. 8(2) of the *Ontario Land Tribunal Act*, S.O. 2021, c. 4, the Tribunal has authority to make determinations on questions of law and fact with respect to matters within its jurisdiction. For instance, in the exercise of that jurisdiction, the Tribunal may decide whether an official plan is appropriately an official plan pursuant to s. 16 of the Act.

[39] Moreover, it is generally understood in land use planning matters that official plans set broad policy or strategic directions and that zoning by-laws set out more specific regulatory performance standards. However, nothing in the cases put forward by the Appellant supports for the proposition that an official plan cannot, in certain appropriate circumstances, be prescriptive. As noted by Mr. Joblin, Co-counsel for the City, the case of *City of Ottawa v. 267 O’Connor Limited*, stands for the proposition that an official plan may prescribe standards for good land use planning purposes. In that

case, the height limits of buildings prescribed in an official plan, expressed in storeys or in metres, was held to be appropriate.[2]

[40] In the matter before the Tribunal, OPA 40 maintains some pre-existing policies and modifies others. The Tribunal finds that OPA 40 does not contain prescriptive language. Expressions such as “complement”, “is compatible”, “minimizes the impact”, “promoting development of a compatible scale”, “reinforcing”, “promoting”, “maximizing”,” encouraging”, and “being consistent with” are not prescriptive. No numerical standard can be found in OPA 40. Mr. Bhatt admitted on cross-examination that due to the absence of a numerical standard in the OPA, a developer would not require an official plan amendment if they required relief for a given development proposal.

[41] The Tribunal agrees with Mr. Joblin, Co-counsel for the City, that if the language of OPA 40 had been incorporated in a zoning by-law, that language would likely have been successfully challenged for vagueness. Even Mr. Bhatt, on cross-examination, admitted that the language found at romanette i to viii of Policy 3(f) that would be added by OPA 40 (see paragraph [28] above), is not articulated in the type of prescriptive language normally found in zoning by-laws. The use of “shall” in Policies 3(c) and 3(f) of the amendments proposed to be added by OPA 40 is directed to City Council with respect to its future actions. It is not directed to landowners and developers. In addition, Policy 3(c) of the amendment proposed by OPA 40 clearly illustrates that City Council did not intend OPA 40 itself to establish “performance standards, restrictions and provisions” as these would be established in a subsequent step, presumably in a zoning by-law, having “particular regard” to listed policy directions. The factual record shows that City Council, immediately after adopting OPA 40, separately adopted the ZBAs,

---

[2] *City of Ottawa v. 267 O’Connor Limited et al.,* paragraphs 20 and 21.

which contain detailed, prescriptive, and numerical standards that give operational life to the vision and broad policy directions contained in the amended OP.

[42] The Tribunal also notes and agrees with the professional evidence of Mr. Riley that the language in OPA 40 complies with the Act, including s. 16(2)(a). He opined that the proposed policies of OPA 40 represent measures and procedures to attain the objective of maintaining the character of stable residential neighbourhoods, and are no different in breadth than some of the existing policies of the City's OP. In his opinion, the Act certainly allows for such policies to be included within official plans.

[43] During final argument, Counsel for the Appellant referred, for the first time, to s. 16(3) of the Act. The *More Homes Built Faster Act, 2022*, S.O. 2022, c. 21 (Bill 23) replaces the previous s. 16(3) and provides that no official plans may contain any policies that has the effect of prohibiting additional residential units in circumstances prescribed in s. 16(3)(a), (b) and (c) of the Act. When asked by the Tribunal whether anything in OPA 40 offended the new s. 16(3) of the Act, Counsel for the Applicant argued that OPA 40 offends s. 16(3) because it prevents what s. 16(3) intends to protect.

[44] The position of the Appellant with respect to the new s. 16(3) of the Act is entirely without merit. This argument was only raised in closing argument, was only raised obliquely, required the Tribunal to seek clarification and was unsupported by any specific evidence provided at the hearing. There is no specific development proposal before the Tribunal dealing with additional residential units. OPA 40 makes no explicit reference to additional residential units. No implicit line can be drawn between OPA 40, even a dotted or circuitous line, and an alleged prohibition or restrictions on additional residential units contrary to s. 16(3) of the Act.

[45] Accordingly, the Tribunal concludes that OPA 40 rises above the level of detailed regulation and establishes broad principles to govern land use planning in Precincts. And, alternatively, even if OPA 40 is prescriptive, it does so to achieve good land use

planning purposes. As such, the Tribunal finds that OPA 40 uses appropriate official plan articulations, does not include improperly prescriptive requirements, and does not offend s. 16 of the Act.

ARE THE GUIDELINES AND CHECKLIST APPROPRIATE?

[46] The Appellant takes the position that the Guidelines and the appended Checklist are incorporated by reference into OPA 40 [3], are prescriptive and offend s. 16 of the Act. Counsel for the Appellant argues that the Guidelines are not merely guidelines despite their name because of the prescriptive language used, which is incorporated into OPA 40 by the operation of Policy 3(f)(viii) of OPA 40. She argues that it was a "pretty fulsome document", "looks like more than guidelines" and a Committee of Adjustment would start its analysis of a minor variation application, under s. 45(1) of the Act, with the Guidelines. Mr. Bhatt also testified that the Guidelines and Checklist added a "fifth test" to the four-part test prescribed in s. 45(1) of the Act.

[47] Mr. Joblin, Co-counsel for the City, argues that the Guidelines as non-statutory documents are not appealable and are not before the Tribunal in that respect.

[48] Mr. Bhatt testified that the City inappropriately incorporated the Guidelines into the minor variance application process. He opined that if the City wanted the Guidelines and the Checklist to be an additional mandatory criterion, then the City should have done so "through the process identified by the Planning Act Sec. 45(1.01) and 45(1.03) (*sic*)".

[49] Ms. Jay testified that the Guidelines are non-statutory documents and cannot be appealed. The Guidelines, along with other guidelines, are contained in the non-

---

[3] *R. v. St. Lawrence Cement Inc.* (2002) 60 O.R. (3d) 712 (Ont. C.A.)

operative section of the OP compendium. She opined that design guidelines are typically a series of design statements and images, which can be specific or general, that explain the expectation of design elements and qualities that inform the design of a dwelling. She explained that non-statutory guidelines existed previously under the OP. Indeed, she testified that these Guidelines are typical of guidelines adopted by other municipalities. In her professional opinion, they are simple, straightforward, flexible, not prescriptive, do not dictate a particular architectural style and constitute good planning. She opined that the Guidelines are not a "requirement" that must be met. They are referred to in the context of development applications (such as a minor variation application), and do not apply to an as-of-right building permit application. For her, Guidelines "are important tools that provide detailed design direction to implement a municipality's vision for the community, or a neighbourhood, as directed by the policies in an official plan and the performance standards in a zoning by-law." She also explained how the very structure of the Checklist illustrates their non-prescriptive flexibility, allowing them to reflect site-specific conditions. The third column of the Checklist presents an opportunity to provide a rationale if a proposal does not align with one of the 12 guidelines.

[50] The Tribunal is not persuaded by the arguments of the Appellant and prefers the evidence of Ms. Jay. On a plain reading of romanette 3(f)(viii) of OPA 40, the Guidelines and the appended Checklist are not incorporated by reference into the OPA. They are merely being referred to, *i.e*., the OPA states that development of infill and replacement dwellings must complement and be compatible with the character of Established Neighbourhood Precincts "with respect to […] being consistent with the intent of the [Guidelines]". The factual record establishes that they were concurrently adopted with the OPA 40 and the ZBAs, by resolution, and not through a by-law process. Guidelines and checklists such as these Guidelines and Checklist are commonly used in land use planning matters and are non-statutory. They are not adopted following the process codified in the Act for the adoption of official plans or by-laws. Pursuant to s. 2.1 of the Act, if an approval authority or even the Tribunal decides on a planning matter then

regard shall be had to guidelines. However, in such a case, the level of scrutiny is not one of consistency or conformity.

[51] The Guidelines and Checklist are not an evaluation tool for a building permit application. In such a case, the building is being developed as-of-right, *i.e.,* the building meets the performance standards of the applicable zoning by-law.

[52] The purpose of the Checklist is to summarize the intentions of the Guidelines and is intended to be used as a quick review tool for landowners, designers or planning consultants preparing minor variance applications, as well as City planning staff, and members of the City's Committee of Adjustments. The Checklist cannot be read in isolation. It must be read and used in conjunction with the Guidelines and the Guidelines must themselves be read and used in conjunction with the OP and the relevant zoning by-laws.

[53] The Tribunal is not currently seized with any minor variance application, nor any specific development proposal. This is a more comprehensive set of appeals of the Instruments. One can anticipate that minor variance applications are likely if the Instruments come into force in the aftermath of these appeals, and those applications ought to be considered under the four-part test of s. 45(1) of the Act. There may be future theoretical instances where the planning staff, the Committee of Adjustment or City Council may apply those Guidelines inappropriately as if they were zoning by-law performance standards. Currently, this is pure speculation and conjecture by the Appellant. Such apprehension of potential inappropriate and inflexible application of the Guidelines does not elevate them to Instruments under appeal, nor does it taint the Instruments by ricochet for the purpose of the matter currently before the Tribunal.

[54] The adoption of the Guidelines is not only appropriate and a best practice (as Ms. Jay testified), but also a requirement for the City's OP pursuant to Policy 8.3.10(c) of Regional OP which states that the City "shall ensure the inclusion of […] urban design guidelines and solutions".

[55] Then Associate Chair S. Wilson Lee of the Ontario Municipal Board correctly describes the status of Guidelines in land use planning matters at paragraph 29 of *Sentinel (Broadway) Holdings Inc. v. City of Toronto*, 2014 CarswellOnt 8511 when he writes:

> The Design Criteria for Tall Buildings & the Tall Building Design Guidelines (2006 & 2013 versions) have some important features that no designer ought to ignore or dismiss. Nonetheless, even if one were to apply the Official Plan Policy, under s. 5.3.2.8, guidelines are not part of the Plan unless the Plan has been specifically amended to incorporate them. They simply are not the same as the enshrined Official Plan policies. They have not been tested by the vigour of the evaluation process pursuant to the Planning Act. As such, they do not enjoy the same legal status of the effective Official Plan or zoning by-law. A punctilious insistence on the requirements of the guidelines without a thoughtful and responsive evaluation, in the Board's view, may have results less than felicitous. Nonetheless, designers and decision makers such as Council or the Board should have regard for the Guidelines by evaluating their intents and in their applicability, attribute the requisite weight to inform one's opinion. It should be treated as a tool; not a millstone. [Emphasis added]

[56] Guidelines and Checklist are the kind of procedures that “may” be described in an official plan pursuant to s. 16(2). The policies of the OPA that relate to the Guidelines are permitted under the Act.

[57] Based on the above, the Tribunal finds that the Guidelines (and the appended Checklist) are not specifically incorporated by reference into OPA 40, are non-statutory documents, are not under appeal before the Tribunal, and form part of the usual hierarchy of land use planning documents used by municipalities.

ARE PRECINCT BOUNDARIES APPROPRIATE?

[58] Mr. Bhatt testified extensively on how the City delineated the boundaries of the various Precincts. In his view, the Precincts do not align with the neighbourhoods’ traditional geographic boundaries and have been selectively drawn to exclude newer development that had occurred within the geographic area of each of the broader neighbourhoods. For him, drawing selective boundaries has created an incorrect

representation of the predominant physical characters of the area. He testified that the different treatment of properties within the Precinct and outside the Precinct was a “double standard”, “inappropriate” and “not equitable”.

[59] Mr. Riley explained Boundaries for the Precincts were determined based on several characteristics, primarily the following:

- Areas within established neighbourhoods with original dwellings constructed primarily prior to the 1980’s;
- Areas within established neighbourhoods where many instances of infill and replacement housing has been observed;
- Areas within established neighbourhoods where the footprint of homes relative to the size of their lot results in a lower lot coverage than observed elsewhere within the neighbourhood; and
- Areas within established neighbourhoods where lots are generally larger than other parts of the neighbourhood.

[60] Mr. Riley further explained that the proposed boundaries were presented to the public during the SGL Study and refined as appropriate to reflect areas where ongoing change related to infill and replacement housing is anticipated to be observed. There was no need, in his view, to include areas where infill and replacement had already occurred. In his professional opinion, the precinct boundaries were appropriate to achieve the policy objectives of the OPA.

[61] For the Tribunal, the flaw in Mr. Bhatt’s evidence is that the City was not intending to set new policy for the Established Neighbourhoods as a whole. The City’s intent was to delineate an overlay within those larger Established Neighbourhoods. The Precincts are a geographic subset of the larger Established Neighbourhoods. They have been purposefully drawn to achieve a policy objective defined in OPA 40, following a fulsome consultation process. It is irrelevant whether Mr. Bhatt would have personally

drawn them differently. As an independent expert, Mr. Bhatt should instead have helped the Tribunal understand why the delineation of the Precincts through the Instruments was inappropriate under land use planning policies or principles. None were cited. It is common sense that overlay geographic areas properly adopted through amended official plans or amended zoning by-laws will result in different policy and performance standards for landowners inside and outside an overlay area. Different treatment solely does not amount to bad land use planning.

[62] The Tribunal is particularly concerned with Mr. Bhatt's role as an expert in these proceedings. Despite his signed acknowledgment of his duty to provide opinion evidence that is "fair, objective and non-partisan", Mr. Bhatt refused on cross-examination to acknowledge that his expert duty to the Tribunal prevailed over all other obligations he felt he had as an advocate of the community. He refused to acknowledge that he was not participating to be a "voice of the people" that does not support the Instruments. This significantly taints the witness's expert testimony and undermines his credibility.

[63] Based on the above, the Tribunal is not persuaded that the Precinct boundaries are in any way inappropriate. The evidence of Mr. Riley is to be preferred.

IS THERE INAPPROPRIATE DOWNZONING?

[64] The Appellant advances that the ZBAs and the Height ZBAs were an inappropriate downzoning. Counsel for the Appellant relies on cases [4] to support the principle that when land is "downzoned", thereby taking away private rights, the

---

[4] *Maniplex Investments Ltd. v. Ottawa* (2002) PL001092 (OMB); *Hearn Group v. Town of Essex* (2002) PL001187 (OMB); *Trilea Centres Inc. v. Regional Municipality of Ottawa-Carleton* (1994) 31 O.M.B.R. 10 (OMB).

municipality must clearly demonstrate that it is in the public interest to do so and that the public interest clearly outweighs the private interest being adversely affected. The public interest, it is submitted by Counsel for the Appellant, is what is really for public good, and not simply what the public as represented by even a large, well-organized, and vocal segment of the community may want. She also argued that the actions of the City in this case was about “appeasing residents” who disliked so-called “monster homes”, and that the Instruments “took away” what landowners could do under the parent zoning by-laws adopted in the 1960s. Mr. Bhatt testified that so-called NIMBYism, an acronym for “not in my back yard”, was at the root of residents’ concerns and the actions of the City. On cross-examination he took the position that the new performance standards with respect to lot coverage, maximum dwelling depth, maximum and minimum front yard setback, the maximum elevation of the front door, and the maximum driveway width were all downzonings because they imposed design restrictions. The interior garage size standard was not, in his view, a downzoning.

[65] Mr. Joblin, Co-counsel for the City, argues that “downzoning” is not a defined term and there is doubt whether the Instruments amounted to a downzoning. In any event, he argues that municipalities have the power to downzone but the burden is on the municipality attempting to do so to satisfy the Tribunal that the effect of downzoning will result in greater benefit to the public at large than the harm or injury to the owner of the property.[5] He argues that if hypothetically there was a downzoning, the Appellant has not shown landowners in the Precincts suffered any particular damage or loss, the City presented sufficient evidence and justification for the application of revised

---

[5] *Re City of Toronto Restricted Area By-Laws 234-75 and 300-75*, 1977 CarswellOnt 1333, paragraph 13; *Holy Cross Greek Orthodox Church v. Scarborough* (1991) 7 M.P.L.R. (2d) 142 (OMB); *Ottawa Restricted Area By-law 158-80* (1981), 13 O.M.B.R. 86 (OMB); *Rizmi Holdings Limited v. Vaughan* (*City*) 2001 CarswellOnt 813 (Div.Ct.)

performance standards, and the revised performance standards provide a significant public benefit.

[66] The Tribunal agrees with the position of the City. The thorough, detailed and clearly articulated evidence of Ms. Jay and Mr. Riley explained the genesis and evolution of the City's action. Consideration of the issue of infill and replacement dwellings in the Precincts was considered over many years, was supported by studies by City staff and outside consultants and was the subject-matter of robust public consultation. Mr. Riley testified that the Height ZBAs sought to address adverse impacts associated with privacy, overlook and shadowing when a taller dwelling is being built next to a shorter existing dwelling.

[67] City Council articulated the public interest vision it intended to achieve in the preambular language of OPA 40. This makes the *Maniplex Investment* case clearly distinguishable. In that case, City Council not only ignored planning staff recommendations but provided no land use planning rationale for their decisions. There is no evidence that Instruments under consideration in these appeals were considered lightly or undertaken in bad faith or for wrong reasons. As Mr. Riley testified, the Instruments seek to encourage a "balance" between encouraging and promoting re-investment through new development and re-development, on the one hand, and enhancing the character of a Precinct, on the other hand. To this end, the City has not removed formerly permitted uses and has not reduced permitted density. Numerous performance standards have not changed particularly with respect to minimum lot frontage, minimum lot area, minimum ground floor area, and minimum side yard distances. Depending on lot sizes, the maximum lot coverage remained unchanged for many lots in the Precincts. Similarly, a significant area of the Precincts was already subject to a nine-metre building height under the parent zoning by-laws.

[68] It is important to note that the City's public interest vision for the Precincts, as explained by Mr. Riley, is not to "preserve" their character, but rather seeks to

"enhance" that character. It is not a static vision of future development which is frozen in time.

[69] Whilst the Appellant's lay witness, Mr. Wiltshire, testified about what, in his experience, people wanted to build, the Appellant has failed to persuade the Tribunal that landowners have or are likely to suffer a particular damage or harm. The mere inability to build a dwelling in the manner that would have been permitted under the *ex-ante* zoning performance standards is insufficient, in and of itself, to establish particular damage or harm across the entire geographic area of the Precincts or with respect to any given parcel of land. To hold otherwise would amount to say that any rezoning in Ontario that is more restrictive would amount to an inappropriate downzoning. Persuasive evidence of particular harm or damage is also required.

[70] The Tribunal notes that s. 2(n) of the Act requires the Tribunal, in carrying out its responsibilities under the Act, to have regard to the resolution of planning conflicts involving public and private interests. Clearly private interests are not an absolute in planning matters. As explained further below, the Tribunal has concluded that the Instruments are in line with the public interest and public policy articulated at s. 2 of the Act, as well as in the PPS 2020, the Growth Plan, the Regional OP, and the OP.

ARE REASONABLE DESIGNS BEING PREVENTED?

[71] The Appellant argues that the Instruments prevent the construction of dwellings with a "reasonable design". Counsel for the Appellant submits that *Bahardoust v. Toronto* [6] stands for the principle that there should be the ability to build as-of-right a dwelling of a reasonable design, without the need to seek minor variances. For her, the lot coverage standard and the building depth standard work together to prevent

[6] PL130592, (OLT, by a panel differently constituted), paragraphs 71 and 137.

reasonably sized dwellings. In her thesis, larger size dwellings are desirable to address post-COVID realities and alleged market demand for multi-generational homes. Mr. Joblin, Co-counsel for the City, disagreed and noted that the visual evidence demonstrates that a reasonably sized building may be built as-of-right once the Instruments come into force.

[72] The Tribunal notes that Counsel for the Appellant conflates “reasonable design” and “reasonable size”. Moreover, the *Bahardoust* case is extremely fact specific as it concerned multiple appeals of a comprehensive zoning by-law following the consolidation of the several municipalities that became known as the City of Toronto. It only obliquely refers to an alleged “reasonable size/design principle” advanced by Counsel for the Appellant. Moreover, Vice-Chairs Colbourne and Burton wrote, at paragraphs 115 and 137:

> 71. The City’s systematic and comprehensive approach to its building permit and minor variance study supports the City’s finding that less extreme increases in the standards are more appropriate. As-of-right structures must meet the OP directions and cannot be beyond their guidance. Less extreme increases than desired by the [Joint Appellants] may well result in more variances, but neighbourhood conformity will be better assured.
>
> […]
>
> 137. However, the Tribunal accepts in general the more modest increases and alterations as set out in the City’s evidence. Its variance study supports these, even if new designs potentially require additional variances. The examples of larger properties are too few in number and geography to support those proposed by the [Joint Appellants]. There should not be as-of-right permission to construct much larger homes in most areas.
> [Emphasis added]

[73] Clearly the case cannot support the proposal advanced by the Appellant. The Panel in that case did not envisage an as-of-right permission to construct larger homes, and if a landowner or developer wished to do so, the Panel contemplated that a successful minor variance application might be required.

[74] The Appellant’s evidence with respect to societal changes that drive the alleged demand for larger dwellings was not extensive and was not in the form of expert

evidence. Mr. Wiltshire testified that, in his lay experience, there was market demand for larger homes that maximize the buildable square footage of a lot. Some of his clients desired multiple home offices on the ground floor, higher ceiling heights, in-law suites, and loft spaces. Some of his clients also wanted more space for basement units to accommodate young adult children who cannot afford their own home ownership or to offset the carrying costs of home ownership through rental of that basement space.

[75] Post-Covid realities, the emerging strategies to address the cost of dwellings for Ontarians and the desire to build multi-generational dwellings may very well be occurring in society. However, the Tribunal need not decide on the existence of or the pervasiveness of these broader societal issues. The evidence, especially the extensive visual evidence presented by the experts of both Parties, illustrates to the Tribunal that reasonably large dwellings could still be constructed, subject to certain design constraints, within the Precincts, once the Instruments come into force and even in the absence of a minor variance application. The City's illustrations were of building envelops and did not purport to suggest rectilinear box designs. Nevertheless, these illustrations showed as-of-right dwellings that would still be of a reasonable size with gross floor area over two storeys, depending on lot size, of over 400 square metres, excluding basement floor area but including garages (approximately 40 square metres for a double garage). In one example, in the Liverpool Precinct, provided by Mr. Riley, and subject to cross-examination, a dwelling could be built as-of-right with a gross floor area of over 650 square metres (including garages), *i.e*., over 7000 square feet of gross floor area. Mr. Weppler explained that there would be a reduction of 10 to 12% of the actual liveable area compared to the maximum floor envelope. However, the Tribunal finds that such a dwelling would be more than reasonable in size.

[76] Mr. Riley testified that, once the Instruments are in force, homeowners could still build considerably larger dwellings than the historic dwellings in the Precincts. The Tribunal finds the same. Moreover, the Tribunal accepts Ms. Jay's evidence that nothing

in the Instruments and the Guidelines prevents eclectic designs along the streetscapes in the Precincts as has been historically the case.

[77] Based on the above, the Tribunal agrees with the compelling evidence of Mr. Riley and finds that reasonably sized dwellings may still be built in the Precincts as-of-right after the coming into force of the Instruments. In certain circumstances, site-specific minor variance applications may be required to seek relief from either previous or new performance standards. That is a result of preferred design choices made by landowners, who will have to evaluate the land use planning risks (such as potential refusals, appeals and delays) and the costs associated with such choices. Minor variance applications are an illustration of the land use planning scheme in action.

DO INSTRUMENTS MEET THE LEGISLATIVE TESTS?

[78] In order to be successful in her appeals, in whole or in part, the Appellant must persuade the Tribunal that: (1) the Instruments do not have regard to matters of provincial interest at s. 2 of the Act; (2) the Instruments are not consistent with PPS 2020 pursuant to s. 3(5)(a) of the Act; (3) the Instruments do not conform to the Growth Plan pursuant to s. 3(5)(b) of the Act; or (4) the ZBAs and the Height ZBAs do not conform to the Regional OP and the OP pursuant to s. 24(1) of the Act.

Matters of Provincial Interests

[79] Mr. Bhatt and Mr. Riley, through an agreed Statement of Fact, were of the view that the Instruments had regard to s. 2(b) of the Act (protection of agricultural resources). Mr. Bhatt advanced confusing testimony that the Instruments restrict or prohibit intensification, control micro level architectural design, work against public/private interests and discriminate against similar properties within the same zone. By contrast, Mr. Riley testified that in his opinion the Instruments had regard to the relevant subsections of s. 2 of the Act, including s. 2(f), (h), (j), (n), (p), and (q) of the Act.

[80] The Tribunal prefers the clear, precise, and succinct evidence of Mr. Riley. The lands within the relevant precincts are in the City's urban areas and clearly have access to existing municipal services, as well to transportation and communications infrastructure. The Instruments do not have a negative effect on the orderly development of safe and healthy communities. Mr. Bhatt provided little or no evidence that the Instruments did not support public transit or were not oriented to pedestrians. With respect to sustainability, the policies and standards in the Instruments seek to preserve the open space characteristics of established neighbourhoods, to maintain and encourage new vegetation and soft landscaping, and to preserve mature vegetation where possible. The Instruments also aim to ensure compatible development within the Precincts on matters of built form and landscape characteristics. There is no evidence that an adequate provision of a full range of housing, including affordable housing, will not be available in the City. Theoretically some forms of dwelling could not be built within the Precincts. However, the Established Neighbourhoods where the Precincts are located already represented the lowest density areas in the City's overall hierarchy of densities. The Instruments must be considered in the context of the existing OP which provides, when read as a whole, a full range of housing throughout the City, and outlines policies that support a diverse range of residential densities, including high density residential uses, in various designated areas of the City.

[81] With respect to resolution of planning conflicts involving public and private interests, the Tribunal accepts Mr. Riley's evidence that the SGL Study process, as well as the City's process, attempted to resolve compatibility issues associated with development of infill and replacement dwellings identified by certain private landowners. The possibility for infill and replacement development is maintained under the Instruments. However, the Instruments seek to strike an appropriate balance. The Appellant might not agree how that balance was eventually articulated in the Instruments, but the Tribunal is persuaded that the robust process followed by the City is clear evidence that regard was had to resolving planning conflicts between private and public interests.

[82] The Tribunal prefers Mr. Riley's evidence and finds that the Instruments have regard to matters of provincial interest in s. 2 of the Act.

PPS 2020

[83] Mr. Bhatt testified that OPA 40, the ZBAs and the Height ZBAs were inconsistent with PPS 2020. In his view, the Instruments restricted, amongst other things, certain types of infill development and did not promote efficient development and land use patterns, targeted single detached homes, did not promote intensification, and did not target healthy community development. Mr. Bhatt's Witness Statement was mostly a reiteration of the PPS 2020, with very little application of the policies to the case at hand. His oral evidence was not more helpful.

[84] Mr. Riley succinctly testified that the Instruments are consistent with the PPS 2020. He testified that the Instruments do not introduce any public health and safety concerns, and are transit supportive as they do not change in any way where transit-supported high-density residential development are targeted under the OP. He opined that the Instruments maintained all permitted housing types and forms currently in the OP and the various zoning by-laws and did not change the City's established hierarchy of residential areas where intensification is targeted. Consistent with his opinion with respect to matters of provincial interest, he was of the view that the Instruments support the efficient use of existing municipal services and are in line with policies to address climate change. He also testified that the Instruments are appropriate development standards which facilitate intensification, redevelopment, and compact form.

[85] The Tribunal prefers Mr. Riley's evidence and finds that the Instruments are consistent with the PPS.

Growth Plan

[86] Mr. Bhatt testified that OPA 40, the ZBAs and the Height ZBAs did not conform to the Growth Plan. Again Mr. Bhatt's Witness Statement was mostly a reiteration of the Growth Plan, with very little application of the policies to the case at hand. His oral evidence was not more illuminating.

[87] Mr. Riley testified that the Instruments did conform to the Growth Plan, particularly Policies 2.2.1 and 2.2.6 which relate to the creation of complete communities, accommodating forecast growth through minimum intensification and density targets, and considering a range and mix of housing options to diversify the overall housing stock across the City.

[88] The Tribunal prefers Mr. Riley's evidence and finds that the Instruments conform with the Growth Plan. The City's OP permits a range of housing options across many different residential and mixed-use areas. Mr. Riley testified that there is a hierarchy of residential areas within the City. Most of the intensification and compact built form is directed to high-density residential areas and mixed-use areas. These are considered the City's strategic growth areas. By contrast, low-rise and low-density residential development is permitted in Established Neighbourhoods, but such development would accommodate only limited intensification within the City's overall hierarchy of areas for residential intensification. The highest densities of development in the City are located along transit corridors. This aligns with the goal of transit-supported development. He opined that infill is a low form of intensification and replacement dwellings do not constitute intensification.

[89] Based on the above, the Tribunal finds that the Instruments conform to the Growth Plan.

Regional OP

[90] Mr. Bhatt testified that the Instruments did not conform with the Regional OP. Again Mr. Bhatt's Witness Statement was mostly a reiteration of the Regional OP, with very little application of the policies to the case at hand.

[91] Counsel for the Appellant, in her closing arguments, did not rely on Mr. Bhatt's perplexing evidence in his Witness Statement that the Guidelines and the Checklist are somehow doing indirect site plan control for residential development in a manner that "is clearly a noncompliance [*sic*]" to the Regional OP.

[92] By contrast, Mr. Riley testified that the Instruments did conform with the Regional OP, including the relevant Policies 1, 4 and 8 of the Regional OP. He noted that the Phase 1 of the SGL Study explained the policy impact of the Regional OP. He opined that the Regional OP contained no specific direction with respect to infill and replacement development. He also testified that the Regional OP directs the City to have an intensification strategy and envisages higher density along transit corridors and in centres. In his opinion, nothing in the Instruments changed the existing consistency of the City's OP with the Regional OP. The precincts are considered living areas under the Regional OP and not intensification areas.

[93] The Tribunal prefers Mr. Riley's evidence and finds that the Instruments conform with the Regional OP.

City OP

[94] During final arguments, in answer to the Tribunal's question, Counsel for the Appellant admitted that the ZBAs and the Height ZBAs could have been adopted under the City's OP even in the absence of OPA 40, and that these ZBAs conform to the City's OP, subject to her "downzoning argument" which the Tribunal dealt with above.

[95] Based on this, and given Mr. Riley's evidence, the Tribunal finds that the ZBAs and the Height ZBAs conform with the City's OP.

CONCLUSION

[96] In summary, based on the foregoing, the Tribunal finds that: (1) the public engagement process was extensive, well attended, was not rushed, informed recommendations at various stages and was considerably more robust than what was statutorily required; (2) the content of OPA 40 is appropriate, is not unduly prescriptive and does not offend s. 16 of the Act; (3) the Guidelines and the Checklist are not incorporated by reference into OPA 40, are not an operative component of OPA 40, and are not on appeal before the Tribunal; (4) the Established Neighbourhood Boundaries and the Performance Standards in the ZBAs and the Height ZBAs are appropriate and strike a proper balance between the significant public benefit and an alleged apprehended damage to or loss by land owners; (5) the Instruments do not amount to inappropriate "downzoning" nor do they prevent the construction of dwellings that have a "reasonable size/design"; (6) the ZBAs and the Height ZBAs simply adjust the performance standards to better implement the existing OP policies and the additional policy guidance in OPA 40 regarding development applications in Precincts; (7) the Instruments meet all the legislative tests with respect to matters of provincial interest, PPS 2020, the Growth Plan, the Regional OP and the City's OP; and (8) the Instruments constitute good land use planning.

[97] OPA 40 is not regulating specific land uses or imposing specific performance standards. Rather OPA 40, and the OP which it amends, are broad policy documents for long-term planning. The detailed performance standards to implement those policies are appropriately found in the ZBAs and the Height ZBAs. There is no doubt from the evidence of the Appellant that the various Instruments under appeal affect the details of a development that a landowner within the various Precincts could have undertaken as-of-right previously based on the parent zoning by-laws of the 1960s. However, the

Instruments do not change the permitted land use, namely residential dwellings. The Instruments do not have an impact on “what” can be built within the Precincts, but merely the “how” dwellings are to be built. Finally, the evidence clearly demonstrates that large dwellings, even in the absence of a minor variance application, can be constructed in the Precincts within the building envelope circumscribed and defined by the performance standards in the ZBAs and the Height ZBAs. This can be done while maintaining the character of the various Precincts, which is an appropriate public policy benefit.

ORDER

[98] **THE TRIBUNAL ORDERS** that the appeal of the Official Plan Amendment 40 of the City of Pickering is dismissed, and the Official Plan Amendment 40 is approved.

[99] **THE TRIBUNAL ORDERS** that the appeals against By-laws No. 7872/21, 7873/21, 7874/21, 7900/22, 7901/22, and 7902/22 of the City of Pickering are dismissed.

“Jean-Pierre Blais”

JEAN-PIERRE BLAIS
MEMBER