

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: November 04, 2021

CASE NO(S): PL200388

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

Applicant and Appellant: Pickering Harbour Company Ltd.
Subject: Request to amend the Official Plan - Refusal of request by City of Pickering
Existing Designation: Marina Areas
Proposed Designated: Mixed Use Areas - Community Node
Purpose: To permit two (2) fifteen (15) storey mixed-use buildings
Property Address/Description: 591 Liverpool Road
Municipality: City of Pickering
Approval Authority File No.: OPA 19-001/P
LPAT Case No.: PL200388
LPAT File No.: PL200388
LPAT Case Name: Pickering Harbour Company Ltd. v. Pickering (City)

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

Applicant and Appellant: Pickering Harbour Company Ltd.
Subject: Application amend Zoning By-law No. 2520 - Refusal of Application by City of Pickering
Existing Zoning: Waterfront – "(H) 03B-2"
Proposed Zoning: Community Node – "CN"
Purpose: To permit
Property Address/Description: 591 Liverpool Road
Municipality: City of Pickering
Municipality File No.: A 05/19
LPAT Case No.: PL200388
LPAT File No.: PL200389

Heard: October 25, 2021 by video hearing

APPEARANCES:

Parties**Counsel**

Pickering Harbour Company Ltd.	Jane Pepino and Matthew Helfand
City of Pickering	Quinto Annibale and Mark Joblin
Regional Municipality of Durham	Robert Woon
Toronto and Region Conservation Authority	Barbara Montgomery
2388116 Ontario Inc.	Mark Flowers

DECISION DELIVERED BY M.A. SILLS ON OCTOBER 25, 2021 AND ORDER AND PROCEDURAL ORDER OF THE TRIBUNAL

[1] This was the second Case Management Conference (“CMC”) in the matter of appeals by Pickering Harbour Company Ltd. (“PHC”) from the refusal of the Council of the City of Pickering (“City”) to adopt amendments to the Official Plan and Zoning By-law No. 2520 for the lands municipally known as 591 Liverpool Road (the “PHC Lands”).

[2] Ms. Pepino confirmed that following the first CMC a re-submission package was submitted to the municipality on June 29, 2021 and is currently being reviewed by municipal staff and officials. The new submission package was forwarded to the Tribunal in advance of this CMC and has been circulated to all parties and the individuals granted Participant status at the first CMC. Based on the significant public expression of interest in the development of the PHC Lands, Mr. Annibale confirmed he will direct municipal staff to post the re-submission materials on the City’s website.

[3] The chart following provides a summary comparison of the revisions that have been made to the overall development proposal. Design graphics for the revised proposal can be viewed on the City’s website.

PROVISION	March 2020 Proposal	June 2021 Proposal
Gross Floor Area – Residential	43,988 sq.m	20,670 sq.m
Gross Floor Area – Commercial	1,400 sq.m	250 sq.m
Gross Floor Area – Other	3,452 sq.m	N/A
Number of Residential Units	377	201
Residential Density	340 units/net ha	179 units/net ha
Floor Space Index (FSI)	4.34	1.87
Number of Storeys and Building Height	Two (2) 15-storeys apartment building	One (1) 6-storey and one (1) 12-storey apartment building Four (4) 4-storey townhouse/live-work buildings
Unit Types	377 apartments	153 apartments 17 townhouse units within the apartments 22 townhouses 9 live-work units 201 Units Total

[4] The Tribunal has not received any further Status Requests Forms since the first CMC and no further requests for party or Participant status will be considered.

[5] The parties have worked collaboratively in the preparation of a Draft Procedural Order, which has been reviewed and is now approved by the Tribunal and appended to this Decision. The Procedural Order comes into force and effect on the date of issue of this Decision.

[6] Participants are encouraged to familiarize themselves with the procedural processes and requirements outlined in the Procedural Order. In particular, Participants are referred to Rule 14.

[7] On consent of all parties, the Tribunal has scheduled a nine (9)-day video hearing beginning on **Monday, November 7, 2022 at 10 a.m.** If an in-person hearing is proposed on a consent basis, that request can be directed to the Case Coordinator having carriage of this file. The Tribunal will determine the appropriate method of hearing based upon the circumstances at the time of the request, the information provided by the parties and the Tribunal's resources.

[8] Parties and participants are asked to log into the video hearing at least **15**

minutes before the start of the event to test their video and audio connections:

<https://global.gotomeeting.com/join/202448781>

Access code: 202-448-781

[9] Parties and participants are asked to access and set up the application well in advance of the event to avoid unnecessary delay. The desktop application can be downloaded at [GoToMeeting](#) or a web application is available:

<https://app.gotomeeting.com/home.html>

[10] Persons who experience technical difficulties accessing the GoToMeeting application or who only wish to listen to the event can connect to the event by calling into an audio-only telephone line: **(647) 497-9373** or **Toll Free 1-888-299-1889**. The access code is **202-448-781**.

[11] Individuals are directed to connect to the event on the assigned date at the correct time. It is the responsibility of the persons participating in the hearing by video to ensure that they are properly connected to the event at the correct time. Questions prior to the hearing event may be directed to the Tribunal's Case Coordinator having carriage of this case.

[12] There will be no further notice.

[13] This Member is not seized but will continue to be available for case management purposes, should any issues arise

“M.A. Sills”

M.A. SILLS
VICE-CHAIR

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 (“Tribunal”). Any reference to the preceding tribunals or the former Ontario Municipal Board is deemed to be a reference to the Tribunal.



Ontario Land Tribunal

655 Bay Street, Suite 1500, Toronto, ON M5G 1E5
Tel: 416-212-6349 | 1-866-448-2248
Web Site: olt.gov.on.ca

ATTACHMENT 1

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ISSUE DATE:

CASE NO(S).: PL200388

A

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

Applicant(s)/Appellant(s): Pickering Harbour Company Ltd.
Subject: Request to amend the Official Plan – Refusal of request by City of Pickering

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Existing Designation: Marina Areas
Proposed Designation: Mixed Use Areas – Community Node
Purpose: To permit one (1) 6-storey and one (1) 12-storey apartment building and four (4) 4-storey townhouse/live-work buildings

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Property Address/Description: 591 Liverpool Road
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PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

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Subject: Application amend Zoning By-law No. 2520 – Refusal of Application by City of Pickering

Existing Zoning: Waterfront – “(H) 03B-2”
Proposed Zoning: Community Node – “CN”
Purpose: To permit one (1) 6-storey and one (1) 12-storey apartment building and four (4) 4-storey townhouse/live-work buildings

Property Address/Description: 591 Liverpool Road
Municipality: City of Pickering
Municipal File No.: A 05/19
OLT Case No.: PL200388
OLT File No.: PL200389

OLT Case Name: Pickering Harbour Company Ltd. v. Pickering (City)

PROCEDURAL ORDER

1. The Tribunal may vary or add to the directions in this procedural order at any time, by an oral ruling, or by another written Order, either on the parties' request or its own motion.

Organization of the Hearing

2. The video hearing, or in person if permitted by the Tribunal, will begin on **November 7, 2022** at **10 a.m.**
3. The parties' initial estimate for the length of the hearing is **9 days**. The parties are expected to cooperate to reduce the length of the hearing by eliminating redundant evidence and attempting to reach settlements on issues where possible.
4. The parties and participants identified at the case management conference are set out in **Attachment 2**.
5. The issues are set out in the Issues List attached as **Attachment 3**. There will be no changes to this list unless the Tribunal permits, and a party who asks for changes may have costs awarded against it.
6. The order of evidence shall be as set out in **Attachment 4** to this Order. The Tribunal may limit the amount of time allocated for opening statements, evidence in chief (including the qualification of witnesses), cross-examination, evidence in reply and final argument. The length of written argument, if any, may be limited either on consent or by Order of the Tribunal.
7. Any person intending to participate in the hearing should provide a mailing address, email address and a telephone number to the Tribunal as soon as possible – ideally before the case management conference. Any person who will be retaining a representative should advise the other parties and the Tribunal of the representative's name, address, email address and the phone number as soon as possible.
8. Any person who intends to participate in the hearing, including parties, counsel and witnesses, is expected to review the Tribunal's Video Hearing Guide, available on the Tribunal's website (<https://olt.gov.on.ca/tribunals/lpat/>).

Requirements Before the Hearing

9. A party who intends to call witnesses, whether by summons or not, shall provide to the Tribunal and the other parties a list of the witnesses and the order in which they will be called. This list must be delivered on or before **August 2, 2022**. A party who intends to call an expert witness must include a copy of the witness' Curriculum Vitae and identify the area of expertise in which the witness is prepared to be qualified.

10. Expert witnesses in the same field shall have a meeting on or before **August 29, 2022** to try to resolve or reduce the issues for the hearing. The experts must prepare a list of agreed facts and issues and provide this list to all of the parties on or before **September 9, 2022**.
11. An expert witness shall prepare an expert witness statement, which shall list any reports prepared by the expert, or any other reports or documents to be relied on at the hearing. Copies must be provided as in **paragraph 13**. Instead of a witness statement, the expert may file his or her entire report if it contains the required information. If this is not done, the Tribunal may refuse to hear the expert's testimony.
12. Expert witnesses who are under summons but not paid to produce a report do not have to file an expert witness statement; but the party calling them must file a brief outline of the expert's evidence as in **paragraph 13**. A party who intends to call a witness who is not an expert must file a brief outline of the witness' evidence, as in **paragraph 13**.
13. On or before **September 23, 2022** the parties shall provide copies of their witness and expert witness statements to the case coordinator and the other parties in accordance with **paragraph 23**.
14. On or before **September 23, 2022** a participant shall provide copies of their written participant statement to the case coordinator and the other parties in accordance with **paragraph 23**. A participant cannot present oral submissions at the hearing on the content of their written statement, unless ordered by the Tribunal.
15. Parties may provide to all other parties and file with the Clerk a written reply to any written evidence on or before **October 18, 2022** in accordance with **paragraph 23**.
16. On or before **October 28, 2022** the parties shall provide copies of their visual evidence to the case coordinator and all of the other parties. If a model will be used, all parties must have a reasonable opportunity to view it before the hearing.
17. The parties shall cooperate to prepare a joint document book which shall be shared with the case coordinator on or before **October 28, 2022**.
18. Any documents which may be used by a party in cross examination of an opposing party's witness shall be password protected and only be accessible to the Tribunal and the other parties if it is introduced as evidence at the hearing.
19. A person wishing to change written evidence, including witness statements, must make a written motion to the Tribunal. See Rule 10 of the Tribunal's Rules with respect to Motions, which requires that the moving party provide copies of the motion to all other parties 15 days before the Tribunal hears the motion.
20. A party who provides written evidence of a witness to the other parties must have the witness attend the hearing to give oral evidence, unless the party notifies the Tribunal at least 7 days before the hearing that the written evidence is not part of their record.

21. The parties shall prepare and file a [hearing plan](#) with the Tribunal on or before **October 24, 2022** with a proposed schedule for the hearing that identifies, as a minimum, the parties participating in the hearing, the preliminary matters (if any to be addressed), the anticipated order of evidence, the date each witness is expected to attend, the anticipated length of time for evidence to be presented by each witness in chief, cross-examination and re-examination (if any) and the expected length of time for final submissions. The parties are expected to ensure that the hearing proceeds in an efficient manner and in accordance with the hearing plan. The Tribunal may, at its discretion, change or alter the hearing plan at any time in the course of the hearing.
22. If the applicant intends to seek approval of a revised proposal at the hearing, the applicant shall provide copies of the revised proposal, including all revised plans, drawings, proposed instruments, updated supporting documents and reports, to the other parties on or before **July 11, 2022**. The applicant acknowledges that any revisions to the proposal after that date without the consent of the parties may be grounds for the Tribunal to adjourn the hearing.
23. All filing shall be electronic, unless otherwise directed by the Tribunal. Electronic copies may be filed by email, an electronic file sharing service for documents that exceed 10MB in size, or as otherwise directed by the Tribunal. The delivery of documents by email shall be governed by the *Rule 7*.
24. No adjournments or delays will be granted before or during the hearing except for serious hardship or illness. The Tribunal's Rule 17 applies to such requests.

**This Member is [not] seized.
So orders the Tribunal.**

BEFORE:

Name of Member:

Date:

TRIBUNAL REGISTRAR

Attachment 1
Summary of Dates

DATE	EVENT
July 11, 2022 (74 days before Witness Statement Date)	Last date to provide copies of revised proposal, including all revised plans and drawings (if any)
August 2, 2022 (97 days prior to hearing)	Exchange of witness lists (names, disciplines and order to be called)
August 29, 2022 (70 days prior to hearing)	Experts meeting prior to this date
September 9, 2022 (59 days prior hearing)	Agreed Statement of Facts to be filed
September 23, 2022 (45 days prior to hearing)	Exchange of Witness Statements, summoned witness outlines, Expert Reports and Participant Statements
October 18, 2022 (20 days prior to hearing)	Exchange of Reply Witness Statements (if any)
October 24, 2022 (14 days prior to hearing)	Hearing Plan filed with the Tribunal
October 28, 2022 (10 days prior to hearing)	Exchange of visual evidence (if any)
October 28, 2022 (10 days prior to hearing)	Finalize Joint Document Book
November 7, 2022	Hearing commences

Attachment 2
List of Parties and Participants

Parties:

Pickering Harbour Company Ltd.
Aird & Berlis LLP

N. Jane Pepino

Email: jpepino@airdberlis.com

Matthew Helfand

Email: mhelfand@airdberlis.com

City of Pickering

Loopstra Nixon LLP

Quinto M. Annibale

Email: qannibale@loonix.com

J. Mark Joblin

Email: mjoblin@loonix.com

2388116 Ontario Inc.

Davies Howe LLP

Mark Flowers

Email: markf@davieshowe.com

Toronto and Region Conservation Authority

Barbara Montgomery

Email: Barbara.montgomery@trca.ca

Regional Municipality of Durham

Robert Woon

Email: Robert.Woon@durham.ca

Participants:

Glen Brown

Email: browngle@gmail.com

Praetorian Capital Inc.

c/o Jordan Gatto

Email: sales@greenmobile.com

Joan Gatto

Email: countrygirl.jg@gmail.com

Adrian Patrascu

Email: patrascu_a@rogers.com

Yvonne Polonsky

Email: jellybean1082.yp@gmail.com

Jeff O'Donnell

Email: acpjeff@rogers.com

David Steele

Email: dj.steele@sympatico.ca

Pickering Naturalists

c/o Dan Shire

Email: sdshire@gmail.com

Nina Dhir

Email: ninadhir@gmail.com

Elizabeth Iwata

Email: liwata@sympatico.ca

Kris Nelson

Email: kristhecook@hotmail.com

Ontario Power Generation

c/o Ray Davies

Email: ray.davies@opg.com

Al Norrie

Email: anorrie01@gmail.com

Phillip Perrin

Email: janeandphil@rogers.com

Attachment 3
Issues List

NOTE: The identification of an issue on the Issues List does not constitute an acknowledgement by the OLT or any party that such issue, or the manner in which the issue is expressed, is either appropriate or relevant to the determination of the OLT at the hearing. The extent to which these issues are appropriate or relevant to the determination of the OLT at the hearing will be a matter of evidence and argument at the hearing. The identification of an issue on this list by a party indicates that party's intent to lead evidence or argue that the issue is relevant to the proceeding, for the purpose of fairly identifying to the other parties the case they need to meet and shall not be construed as the OLT having jurisdiction over such matters in each circumstance. Accordingly, no party shall advance an issue not identified on the Issues List without leave of the OLT.

City of Pickering and Region of Durham

1. Does the proposed development have appropriate regard for matters of Provincial Interest as set out in Section 2 of the Planning Act, including but not limited to subsections (h), (o), (p) and (r)?
2. Is the proposed development consistent with the Provincial Policy Statement, 2020, including but not limited to Sections 1.1.1(c), 1.1.3.2, 1.1.3.3, 1.1.3.4, 1.2.6.1, 1.2.6.2, and 4.6?
3. Does the proposed development conform to the Growth Plan for the Greater Golden Horseshoe, 2019, as amended, including but not limited to Sections 2.2.2.3, 2.2.5.8 and 5.2.5.5?
4. Does the proposed development conform to the policies of the Durham Region Official Plan, including but not limited to Sections 2.1.5, 7.1.2, 8.2.1, 8.3.10, 8A.2.12, 8A.2.13, 8A.2.14, 8B.2.4, and 10C.1?
5. Does the proposed development conform to the policies of the City of Pickering Official Plan, including but not limited to Sections 3.2, 3.9, 6.5, 9.1, 9.2, 9.3, 10.17, 12.2, 12.5, 14.2(a), and 14.5(a) and (b), and 14.6 to 14.10 (inclusive)?
6. Does the proposal conform to the City's intensification strategy as set out in the City's Official Plan?
7. Does the proposed development appropriately address the Liverpool Road Waterfront Node Development Guidelines?
8. Is the proposed building height, massing and scale of development in keeping with the character of the established Liverpool Road Waterfront Node neighbourhood?

9. Is the proposal of an appropriate scale and intensity for the neighbourhood? Does the intensity, massing and scale of the proposal reinforce and enhance the nautical theme as detailed in the Liverpool Road Waterfront Node Development Guidelines?
10. Does the development establish and reinforce a human scale of development across the entire site?
11. Are the proposed buildings designed to reinforce and complement the nautical village character?
12. Does the proposed development ensure the preservation and enhancement of views and vistas towards Frenchman's Bay, Hydro Marsh and Lake Ontario?
13. Does the proposed development provide appropriate public access to the waterfront?
14. Does the proposed development provide the opportunity for commercial uses along Liverpool Road?
15. Is the application premature due to the Pickering Nuclear Generating Station exclusion zone?
16. Is additional study required to justify the conclusions of the Traffic Impact Study? Would the proposed development create adverse traffic impacts?
17. What road improvements, if any, would be appropriate or required in respect of traffic conditions or future traffic conditions?
18. What conditions, if any, would be appropriate or required in respect of Traffic Demand Management measures?

Toronto and Region Conservation Area

1. Is the proposed development consistent with Section 3.1 of the Provincial Policy Statement, 2020?
2. Does the proposed development conform to the applicable policies of the Durham Region Official Plan being Section 2, Environment, and Schedule E, Natural Hazard Study and/or Coastal Engineering Study?
3. Does the proposed development conform to the applicable policies of the City of Pickering Official Plan being Chapter 2, The Planning Framework, and Chapter 10, Resource Management?

4. Does the proposed building cantilever design adequately allow for building maintenance without impacting open space lands to be conveyed to public ownership?
5. Has the applicant identified the location of the shoreline hazard through an appropriate Shoreline Hazard Study?
6. Has the applicant demonstrated through an appropriate Shoreline Hazard Study that shoreline erosion hazard matters can be appropriately addressed and mitigated including addressing the potential for the beach spit to erode over the long term?

2388116 Ontario Inc.

1. Has the proposal properly accounted for the potential redevelopment of the lands at 1280, 1284-1288 Wharf Street and 607 Annland Street, Pickering?
2. Would the proposed development, if approved, adversely affect the redevelopment potential at 1280, 1284-1288 Wharf Street and 607 Annland Street, Pickering?

Attachment 4
Order of Evidence

1. Pickering Harbour Company Ltd.
2. City of Pickering
3. Regional Municipality of Durham
4. Toronto and Region Conservation Authority
5. 2388116 Ontario Inc.
6. Pickering Harbour Company Ltd., in reply

Attachment 5

Meaning of terms used in the Procedural Order

A **party** is an individual or corporation permitted by the Tribunal to participate fully in the hearing by receiving copies of written evidence, presenting witnesses, cross-examining the witnesses of the other parties, and making submissions on all of the evidence. An **unincorporated group** cannot be a party and it must appoint one person to speak for it, and that person must accept the other responsibilities of a party as set out in the Order. Parties do not have to be represented by a lawyer and may have an agent speak for them. The agent must have written authorisation from the party.

NOTE that a person who wishes to become a party before or at the hearing, and who did not request this at the case management conference (CMC), must ask the Tribunal to permit this.

A **participant** is an individual or corporation, whether represented by a lawyer or not, who may make a written submission to the Tribunal. A participant cannot make an oral submission to the Tribunal or present oral evidence (testify in-person) at the hearing (only a party may do so). Section 17 of the Ontario Land Tribunal Act states that a person who is not a party to a proceeding may only make a submission to the Tribunal in writing. The Tribunal may direct a participant to attend a hearing to answer questions from the Tribunal on the content of their written submission, should that be found necessary by the Tribunal. A participant may also be asked questions by the parties should the Tribunal direct a participant to attend a hearing to answer questions on the content of their written submission.

A participant must be identified and be accorded participant status by the Tribunal at the CMC. A participant will not receive notice of conference calls on procedural issues that may be scheduled prior to the hearing, nor receive notice of mediation. A participant cannot ask for costs, or review of a decision, as a participant does not have the rights of a party to make such requests of the Tribunal.

Written evidence includes all written material, reports, studies, documents, letters and witness statements which a party or participant intends to present as evidence at the hearing. These must have pages numbered consecutively throughout the entire document, even if there are tabs or dividers in the material.

Visual evidence includes photographs, maps, videos, models, and overlays which a party or participant intends to present as evidence at the hearing.

A **witness statement** is a short written outline of the person's background, experience and interest in the matter; a list of the issues which he or she will discuss ; and a list of reports or materials that the witness will rely on at the hearing.

An **expert witness statement** should include his or her (1) name and address, (2) qualifications, (3) a list of the issues he or she will address, (4) the witness' opinions on those issues and the complete reasons supporting their opinions and conclusions and (5) a list of reports or materials that the witness will rely on at the hearing. An expert witness statement must be accompanied by an acknowledgement of expert's duty.

A **participant statement** is a short written outline of the person's or group's background, experience and interest in the matter; a statement of the participant's position on the appeal; a list of the issues which the participant wishes to address and the submissions of the participant on those issues; and a list of reports or materials, if any, which the participant wishes to refer to in their statement.

Additional Information

A **summons** may compel the appearance of a person before the Tribunal who has not agreed to appear as a witness. A party must ask a Tribunal Member or the senior staff of the Tribunal to issue a summons through a request. (See [Rule 13](#) on the summons procedure.) The request should indicate how the witness' evidence is relevant to the hearing. If the Tribunal is not satisfied from the information provided in the request that the evidence is relevant, necessary or admissible, the party requesting the summons may provide a further request with more detail or bring a motion in accordance with the Rules.

The order of examination of witnesses is usually direct examination, cross-examination and re-examination in the following way:

- direct examination by the party presenting the witness;
- direct examination by any party of similar interest, in the manner determined by the Tribunal;
- cross-examination by parties of opposite interest;
- re-examination by the party presenting the witness; or
- another order of examination mutually agreed among the parties or directed by the Tribunal.