



REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

5, 7, & 9 Dale Avenue – Official Plan and Zoning By-law Amendment Applications & Demolition of Three Heritage Properties in the South Rosedale Heritage Conservation District – Request for Direction Regarding LPAT Hearing

Date: December 12, 2018

To: City Council

From: City Solicitor

Wards: Ward 11 - University-Rosedale

REASON FOR CONFIDENTIAL INFORMATION

This report is about litigation or potential litigation that affects the City or one of its agencies or corporations.

This report contains advice or communications that are subject to solicitor-client privilege.

SUMMARY

Dale Inc. & Dale II Inc. (the "Applicant") is the owner of the properties municipally known as 5, 7, and 9 Dale Avenue (the "Subject Property"). The Subject Property is located within the South Rosedale Heritage Conservation District (the "SRHCD"). The Applicant applied for official plan and zoning by-law amendments in order to facilitate a proposed redevelopment of the Subject Property. The application proposes the demolition of the three existing single detached house on the Subject Property. These houses are identified as Category "C" rated buildings of contextual significance under the SRHCD. As a result, the Applicant has also applied for permission to demolish the three existing buildings. The applications propose a redevelopment of the site with a 4 storey residential building containing a total of 26 dwelling units (the "Applications"). The proposal contains a 57 parking spaces, 27 bicycle parking spaces, and a density of 1.8 times the area of the lot.

The Applicant appealed the Applications to the Ontario Municipal Board (the "OMB") (now known as the Local Planning Appeal Tribunal) (the "LPAT") due to City Council's failure to make a decision. The appeal is known as LPAT Case No. PL171267. A nine day hearing of this appeal is scheduled to be heard by the LPAT on March 11 to 15 and 19 to 22, 2019. Two prehearings for this matter were previously held before the LPAT

on May 30, 2018 and September 6, 2018. A third prehearing for this matter is schedule on December 18, 2018.

At its meeting on July 23, 2018, City Council considered Item TE34.44 and TE34.45 and instructed the City Solicitor and City Planning to undertake consultation with the parties and participants to the LPAT appeal and to report back to the December 13, 2018 meeting of City Council on this matter. Pursuant to those instructions, the City Solicitor, in consultation with City Planning and Heritage Preservation Services, is bring this report to City Council to provide an update regarding the consultation that has occurred and for the purpose of requesting instructions for the upcoming LPAT prehearing and hearing. Accordingly, this matter is urgent.

City Planning and Heritage Preservation Services have been involved in the preparation of this report.

RECOMMENDATIONS

The City Solicitor recommends that:

1. City Council adopt the recommendations contained in the Confidential Attachment 1 to this report.
2. City Council authorize the public release of the confidential recommendations contained in the Confidential Attachment 1 to this report if adopted by City Council.
3. City Council direct that all other information contained in Confidential Attachment 1 and Appendix "A", to Confidential Attachment 1, is to remain confidential at the discretion of the City Solicitor, as it contains advice that is subject to solicitor-client privilege.

FINANCIAL IMPACT

Adopting this report will have no financial impact beyond what has already been approved in the current year's budget.

DECISION HISTORY

On October 13, 2016, Toronto and East York Community Council considered and adopted the recommendations in Item TE19.36 pertaining to a Preliminary Planning Report from City Planning dated September 15, 2016 regarding the proposed development (the "Preliminary Planning Report"). For more information, see the Community Council's decision and the Preliminary Report at the following link:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.TE19.36>

On February 8, 2018, Toronto Preservation Board considered and adopted the recommendations in Item PB31.2 pertaining to a report from City Planning Heritage

Preservation Services ("HPS") dated January 30, 2018 regarding the proposed demolition of the Subject Properties (the "January Heritage Report"). For more information, see the Toronto Preservation Board's decision and the January Heritage Report at the following link:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.PB31.2>

On February 21, 2018, Toronto and East York Community Council Item TE30.15 pertaining to the January Heritage Report and the recommendations of the Toronto Preservation Board regarding Item PB31.2 referenced above. Community Council referred Item30.15 back to City Planning and HPS for further review and to report back to Toronto Preservation Board and Community Council. For more information, see the Community Council's decision at the following link:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.TE30.15>

On June 20, 2018, Toronto Preservation Board considered and adopted with amendments the recommendations in Item PB35.3 pertaining to a report from HPS dated June 13, 2018 regarding the proposed demolition of the Subject Properties (the "June Heritage Report"). For more information, see the Toronto Preservation Board's decision and the June Heritage Report at the following link:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.PB35.3>

At its meeting on July 23 to 30, 2018, City Council considered Item TE34.44 pertaining to a Request for Directions Report from City Planning dated June 13, 2018 regarding the appeal of the proposed Applications to the LPAT (the "Request for Direction Report"). Community Council had forwarded the Request for Direction Report to City Council without recommendations, and had instructed City Planning to provide a supplementary report directly to City Council with recommendations based on deputations on the item heard at Community Council. As a result, City Council also considered a supplementary report from City Planning dated July 25, 2018 as part of this Item TE34.44 (the "Supplementary Planning Report"). The Supplementary Planning Report explained additional revisions that had been made to the proposal and recommended City Council support a settlement based on those changes. City Council received the Supplementary Planning Report and instructed the City Solicitor to request mediation and hold consultation with the parties and participants to the LPAT appeal and for the City Solicitor and City Planning to report back on this matter at the December 13, 2018 hearing of City Council. For more information, see City Council's decision and the Request for Direction Report and Supplementary Planning Report at the following link:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.TE34.44>

At its meeting on July 23 to 30, 2018, City Council also considered the related Item TE34.45 pertaining to the June Heritage Report. Community Council had forwarded the June Heritage Report to City Council without recommendations, and had instructed HPS to provide a supplementary report directly to City Council with recommendations based on deputations on the item heard at Community Council. As a result, City

Council also considered a supplementary report from HPS dated July 25, 2018 as part of this Item TE34.45 (the "Supplementary Heritage Report"). The Supplementary Heritage Report explained additional revisions that had been made to the proposal and recommended City Council support the demolition of the existing buildings on the Subject Property based on those changes. City Council received the Supplementary Heritage Report and instructed the City Solicitor to request mediation and hold consultation with the parties and participants to the LPAT appeal and for the City Solicitor and HPS to report back on this matter at the December 13, 2018 hearing of City Council. For more information, see City Council's decision and the Request for Direction Report and Supplementary Heritage Report at the following link: <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.TE34.45>

COMMENTS

CITY SOLICITOR COMMENTS

The City Solicitor requires further instructions. This report is about litigation before the LPAT and contains advice or communications that are subject to solicitor-client privilege. Confidential Attachment 1 to this report contains confidential information and should be considered by Council in camera.

CITY PLANNING COMMENTS

City Planning has provided the following comments regarding the Applications:

Planning Summary

The Applicant submitted with prejudice revised plans (the "Revised Proposal") dated July 20, 2018 which sufficiently:

- (1) Conserves the streetscape heritage character of the site and its immediate context;
- (2) Improves the Applications' contribution to the SRHCD's park-like setting by removing a substantial amount of the previously proposed front yard hardscaping (including removal of proposed front yard patios) and increasing the west side yard setback to retain a generous amount of soft landscaping;
- (3) Conserves the visual permeability of views from Dale Avenue to the adjacent ravine, and creates a stronger distinction between the east and west halves of the building by removing balcony projections within the 3.6-metre gap between the two wings, decreasing the depth of the 1-storey portion connecting the two wings, and making the north and south walls fully transparent; and
- (4) Conserves significant individual heritage attributes of 7 Dale Avenue that are not currently protected under the HCD Plan and Part V designation by retaining and restoring the "Tea House" which sits to the rear of the property on the top of the ravine bank, restoring planting beds and original garden walls, and maintaining as much of the

rear yard Dunington-Grubb and Stenesson landscaping features as possible, in consultation with the Toronto and Region Conservation Authority (TRCA).

In the context of the Revised Proposal, staff recommend that City Council support the revised proposal and not designate the property at 7 Dale Avenue under Part IV of the Ontario Heritage Act. Additionally, as a condition of approval under Section 42 of the Ontario Heritage Act, staff will work with the applicant on a long term maintenance and conservation strategy for the conservation cultural heritage landscape.

Planning Comments

On August 5, 2016 Official Plan and Zoning By-law Amendment applications were made to demolish three detached dwellings and replace them with a 4-storey, 26-unit, apartment building. The subject site, comprised of three properties (5, 7 and 9 Dale Avenue), is designated Neighbourhoods, is located partially in a ravine, and is located in the SRHCD.

The SRHCD designation By-law (115-2003) was the result of the SRHCD Study (2002) undertaken by ERA Architects. The Study contains a rating system by which all properties within the HCD are categorized based on their actual or potential national or provincial significance (Category A), their city-wide significance (Category B), and their contribution to the heritage character and context of the neighbourhood (Category C), as well as unrated buildings that do not meet the other categories. The Study categorizes all three of the properties on the subject site in the "C" category.

The SRHCD Study allows for the possible demolition of "C" category buildings (Section 5.3.4. B). The guideline states "Demolition of buildings in the "C" category is generally considered appropriate only if the proposed replacement building, as shown in the issued building permit, is equally able or more able to contribute to the heritage character of the district and is acceptable under these guidelines and the zoning by-law."

On November 10, 2017 the applicant appealed the applications to the Local Planning Appeal Tribunal (LPAT), citing Council's failure to make a decision on the application within the prescribed timelines of the Planning Act.

On January 19, 2018 a nomination was submitted to Heritage Preservation Services (HPS) requesting that 7 Dale Avenue be considered for individual designation under Part IV of the Ontario Heritage Act.

Two pre-hearings were held on May 23, 2018 and September 6, 2018. A third pre-hearing is scheduled for December 18, 2018 and a hearing is scheduled for March 11-22, 2019.

On July 4, 2018 Toronto and East York Community Council considered a staff report from Heritage Preservation Services (HPS), City Planning (item TE34.45) that opposed the demolition of the buildings at 5, 7 and 9 Dale Avenue, because the replacement building provided insufficient visual permeability across the site as a whole and, in the opinion of staff, had an adverse visual impact on the overall landscape setting when

viewed from the street. Additionally, staff evaluated the property at 7 Dale Avenue as requested and concluded that it meets the provincial criteria prescribed for determining individual cultural heritage value. In carefully weighing their recommendation within the context of the application, HPS recommended that 7 Dale Avenue be moved from the C category to the B category property within the SRHCD Guidelines and did not recommend designation under Part IV.

Community Planning in a separate Request for Direction Report (item TE34.44) found the proposal to be acceptable with respect to conformity with the Neighbourhoods policies in the Official Plan, and TRCA and Ravine and Natural Features Protection (RNFP) staff were satisfied with the proposed restoration and conveyance of ravine lands. However, on the basis that the proposal did not comply with the heritage policies of the City's Official Plan and was not consistent with the PPS and does not conform with the Growth Plan with respect to matters of heritage conservation, staff could not support the applications without additional revisions being undertaken.

Toronto and East York Community Council forwarded the two reports to City Council without recommendation and requested the Chief Planner and Executive Director, City Planning to report directly to City Council with any recommendations based on the deputations and further discussions with the applicant. As requested, City Planning met with the applicant where the applicant presented revised plans to address concerns raised in the staff reports.

The applicant responded with the Revised Proposal that incorporates the following revisions:

- Retaining and restoring heritage attributes associated with the original Dunington-Grubb and Stenesson landscape, including the "tea house", planting beds and garden walls, and as much of the historic landscape and landscaping features as possible in the rear yard of 7 Dale Avenue, to be used as a common outdoor amenity space, subject to the approval of TRCA and RNFP staff. Planning staff have begun positive discussions with the TRCA regarding these modifications;
- Retaining as much of the existing historic landscape and landscaping features at the front of the property as possible, such as the front yard boundary wall-planter, iron railings and gates;
- Extending the front yard planters in a form that does not replicate but responds sympathetically to the existing planters;
- Removing front yard outdoor patios and two pedestrian walkways to increase the amount of soft yard landscaping;
- Landscaping the new front and rear yards in a form that is sympathetic to the design principles of the existing landscaping;
- Reusing existing paving materials for the front entrance walkway, the emergency walkway from the west half of the building, and rear terraces;

- Increasing the west side yard setback for the front portion of the building to a minimum of 2.5 metres to allow sufficient space for 6 inch caliper, 25 foot tall beech trees to be planted along the west side wall;
- Continuing the west side yard beech trees into the front yard to further screen the building from the public realm;
- Removing balcony encroachments into the 3.6-metre gap between the two halves of the building to increase visual permeability into the ravine; and
- Decreasing the depth of the 1-storey portion of the building connecting the two halves of the building and making the north and south wall connection fully transparent to further enhance the separation of the wings and provide views to the ravine.

The Revised Proposal responds to the concerns raised by HPS and satisfies the SRHCD guidelines regarding the demolition of the three Category "C" buildings by conserving the significant Dunington-Grubb and Stenesson cultural heritage landscape and modifying the building to increase the amount of soft landscaping on the site and views through the two wings of the building. The SRHCD currently provides no protection for the designed landscape, which is a rare intact example of the work of Dunington-Grubb and Stenesson in a residential context.

In the context of the Revised Proposal, staff recommended that City Council support the revised proposal and not designate the property at 7 Dale Avenue under Part IV of the Ontario Heritage Act.

At its July 23-27, 2018 meeting, City Council received the reports and instructed the City Solicitor to consult with the parties and participants to the LPAT appeal regarding the revised proposal and requested the City Solicitor and Chief Planner and Executive Director, City Planning to report to the December 13, 2018 City Council meeting.

As requested, City Legal and City Planning staff consulted with the parties and participants to the LPAT appeal on the Revised Proposal. The Revised Proposal has not changed. City Planning continues to support the Revised Proposal which has regard for the matters of provincial interest under the Planning Act, is consistent with the PPS and does conform with the Growth Plan with respect to matters of heritage conservation.

Recommendations have been slightly modified from the July 25, 2018 Supplementary Report to include additional input from Heritage Preservation Services and Urban Forestry, Tree Protection and Plan Review, including conditions related to the approval of the application under Section 42 of the Ontario Heritage Act.

Planning Conclusion

The Revised Proposal has been reviewed against the policies of the *Planning Act*, PPS (2014), the Growth Plan (2017), the Toronto Official Plan and the South Rosedale Heritage Conservation District Guidelines. Staff are of the opinion that the proposal has regard for matters of provincial interest in section 2 of the *Planning Act*, is consistent with the PPS, and conforms with the Growth Plan with respect to heritage matters.

Further, the proposal is in keeping with the intent of the Official Plan, particularly as it relates to Heritage policies, and meets the South Rosedale Heritage Conservation District guidelines.

The Revised Proposal will also allow the City to secure the conservation and restoration of a rare, intact heritage landscape designed by the renowned landscape design firm Dunington-Grubb and Stenesson that would not be otherwise protected.

In the context of a settlement, City Planning staff recommends that Council direct City staff to continue discussions with the applicant, and authorize the City Solicitor, in consultation with the Chief Planner and Executive Director, City Planning, to support the Revised Proposal at the LPAT. Staff are also recommending that a review of the current property ratings found within the North and South Rosedale Heritage Conservation District Guidelines be reviewed to ensure that all properties are rated appropriately.

CONTACT

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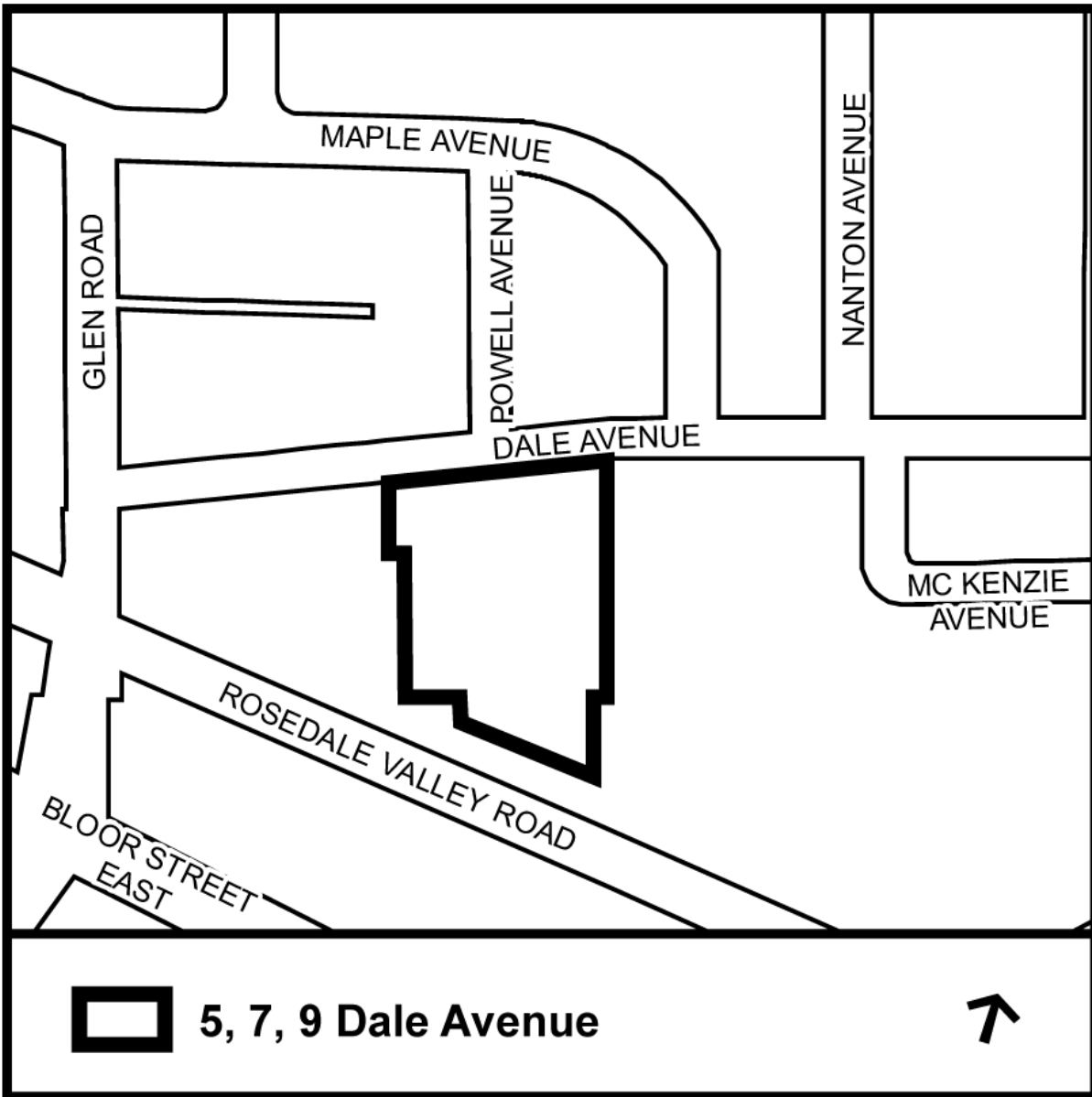
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Wendy Walberg
City Solicitor

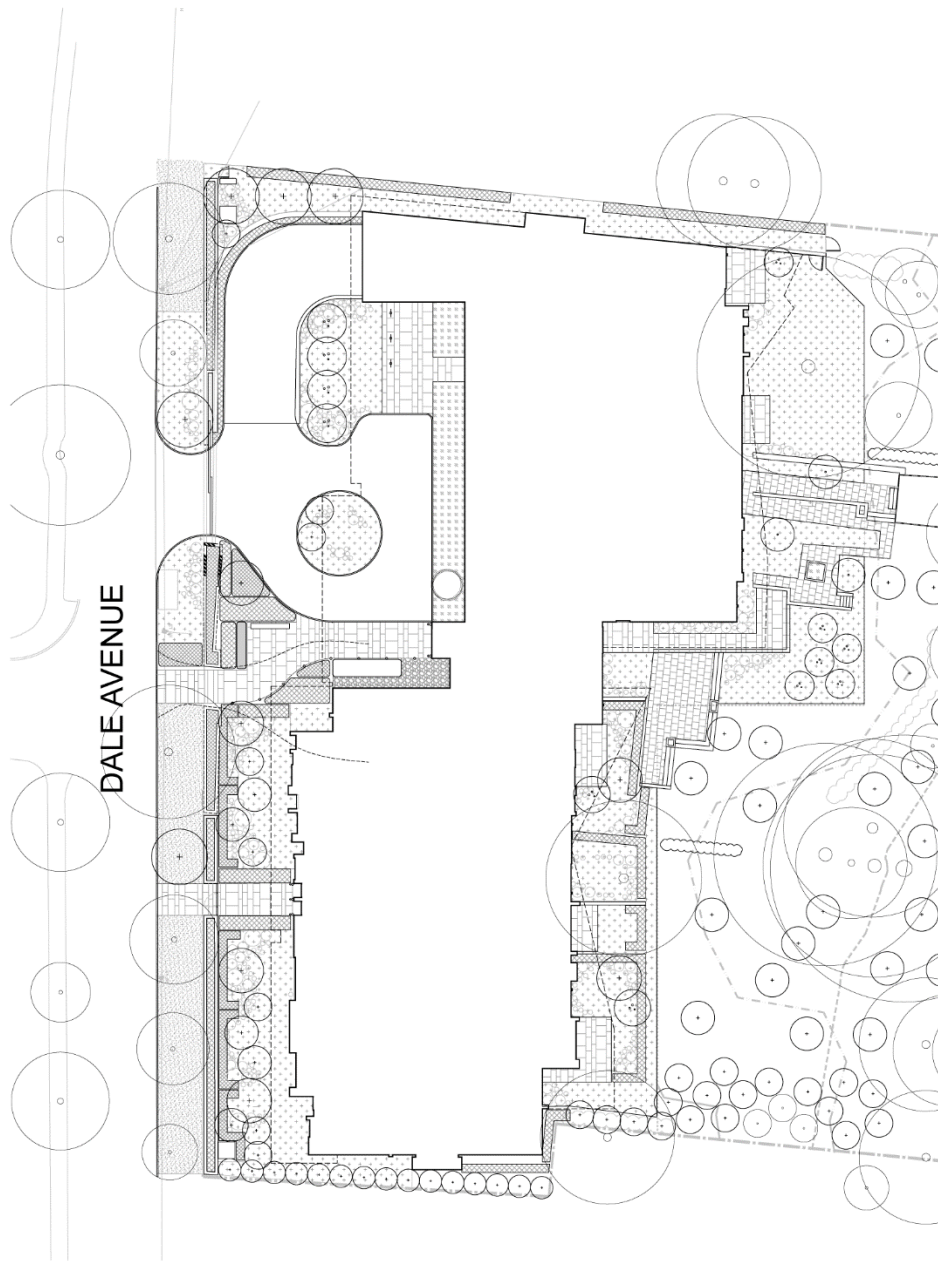
ATTACHMENTS

1. Public Attachment 1 - Location Map
2. Public Attachment 2 - Revised Proposal - Site Plan with Modifications Highlighted
3. Public Attachment 3 - Revised Proposal - Site Plan
4. Public Attachment 4 - Revised Proposal - North Elevation
5. Public Attachment 5 - Revised Proposal - West Elevation
6. Confidential Attachment 1 - Confidential Recommendations and Confidential Information
7. Confidential Appendix "A" to Confidential Attachment 1, - Confidential Communication

Public Attachment 1: Location Map



Public Attachment 3: Revised Proposal - Site Plan



5, 7 & 9 Dale Avenue

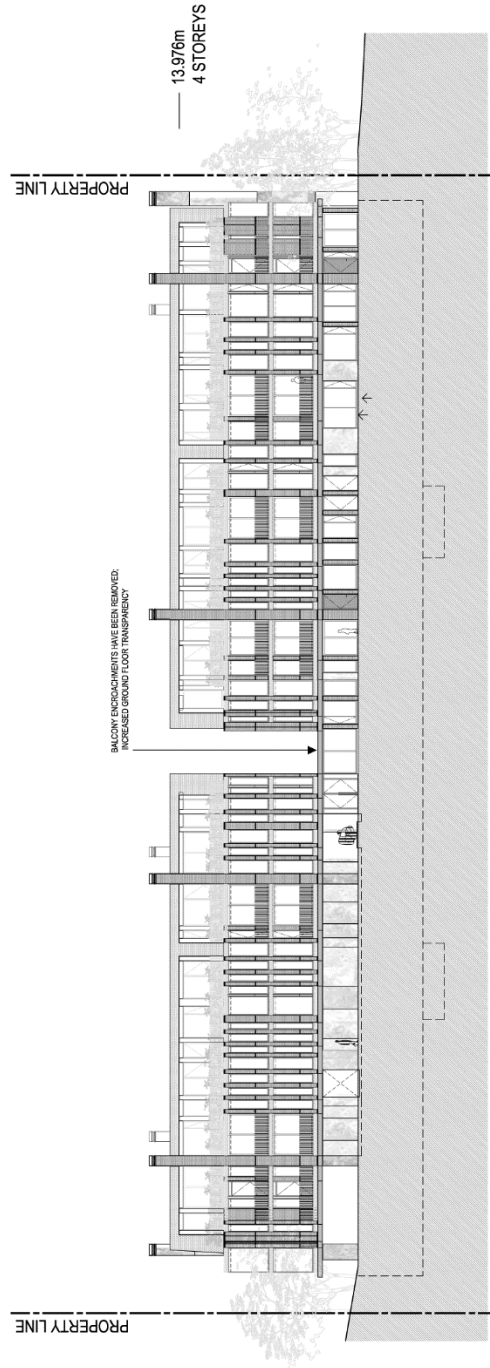
Revised Proposal - Site Plan

Applicant's Submitted Drawing

Not to Scale
07/24/2018

File # 16 202229 STE 27 0Z

Public Attachment 4: Revised Proposal - North Elevation



5, 7 & 9 Dale Avenue

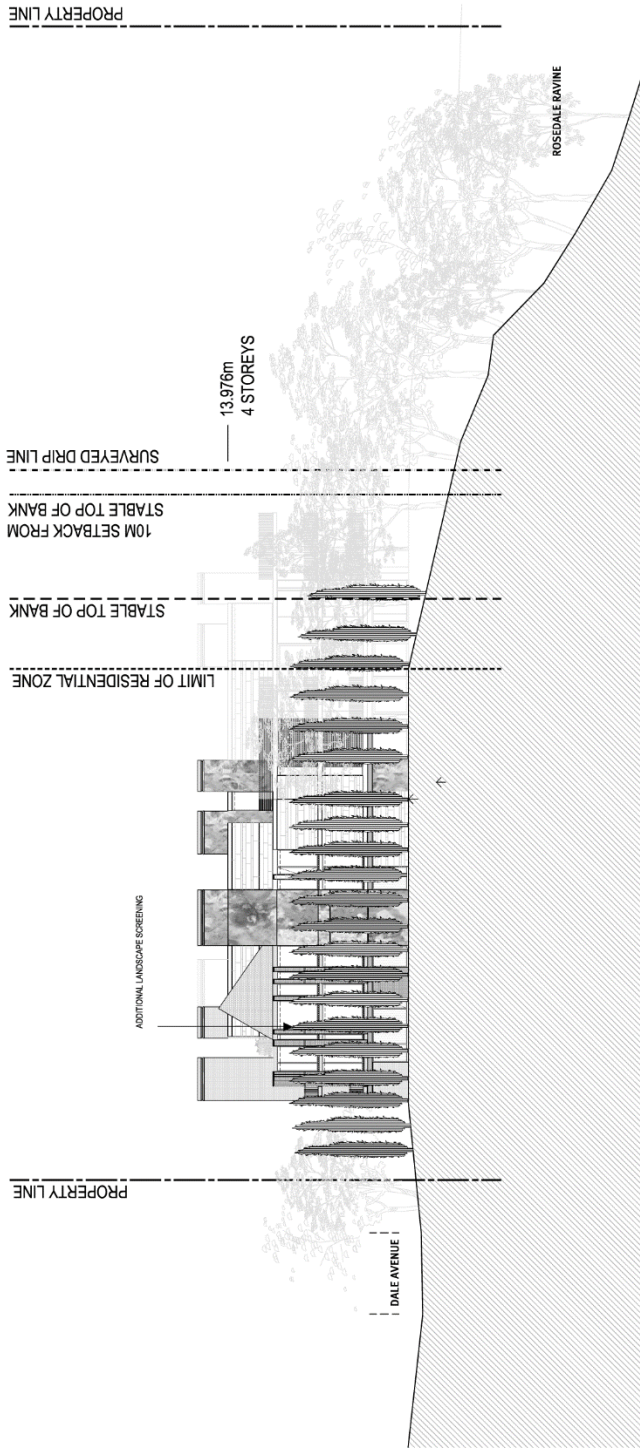
Revised Proposal - North Elevation

Applicant's Submitted Drawing

Not to Scale
07/24/2018

File # 16 202229 STE 27 0Z

Public Attachment 5: Revised Proposal - West Elevation



5, 7 & 9 Dale Avenue

Revised Proposal - West Elevation

Applicant's Submitted Drawing

Not to Scale
07/24/2018

File # 16 202229 STE 27 02