



REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

35, 41-63, 65 and 95 High Park Avenue and 66 and 102-116 Pacific Avenue - Request for Directions Regarding LPAT Hearing

Date: September 25, 2019

To: City Council

From: City Solicitor

Wards: Ward 4 - Parkdale-High Park

REASON FOR CONFIDENTIAL INFORMATION

This report contains advice or communications that are subject to solicitor-client privilege. This report contains information regarding potential litigation.

SUMMARY

On December 28, 2016, the City received an application to amend the Official Plan and Zoning By-law for 35, 41-63, 65 and 95 High Park Avenue and 66 and 102-116 Pacific Avenue to facilitate an infill development for these properties consisting of the retention of four existing rental buildings, except for five dwelling units, the demolition of two blocks of existing townhouses containing 20 units, and the construction of four new rental buildings with 1,031 dwelling units at proposed building heights of 39, 34, 29 and 8 storeys. An application for Rental Housing Demolition was also submitted, and remains under review by City staff.

The applicant appealed City Council's neglect or failure to make a decision on its application for Zoning By-law Amendment (the "**Appeal**") to the Local Planning Appeal Tribunal (the "**LPAT**") on August 29, 2017.

In a report to City Council dated June 29, 2018, City Planning recommended opposition to the Appeal at the LPAT (the "**Request for Directions**"). City Planning concluded in the Request for Directions that the proposal was inconsistent with the Provincial Policy Statement, 2014, conflicted with the Growth Plan for the Greater Golden Horseshoe (2017), did not conform to the Official Plan or Site and Area Specific Policy 551, for a number of reasons including that the proposed development did not have regard for its context and did not respect and reinforce the existing physical character of buildings, streetscapes and open space patterns of the neighbourhood. In staff's opinion, the proposal represented overdevelopment of the site, did not represent good planning and was not in the public interest.

City Council adopted the recommendations in the Request for Directions to oppose the Appeal.

On September 19, 2019, the applicant submitted a revised development proposal for 35, 41-63, 65 and 95 High Park Avenue and 66 and 102-116 Pacific Avenue (the "**Revised Proposal**"). The Revised Proposal consists of changes to the site plan and built form, unit count and mix, reduction in the proposed retail component, revisions to the landscape plans, inclusion of on-site parkland dedication, and reduction in the number of below-grade levels in the underground parking structure. The Revised Proposal will form the basis of the applicant's appeal to the LPAT, and will be the proposal for which the applicant seeks Zoning By-law amendment approval.

The purpose of this report is to request further instructions for the LPAT hearing that is scheduled to commence January 27, 2020.

City Planning has 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 is to remain confidential at the discretion of the City Solicitor, as it contains advice which 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

There have been two developments approved within the High Park Apartment Neighbourhood Area in the last 10 years, in addition to the subject application, currently under review.

In 2009, 20 Gothic Avenue was developed with an 8 storey building having 175 units and having a site density of 4.21 times the area of the lot.

In 2013, an application was submitted for 51-77 Quebec Avenue and 40-66 High Park Avenue. The application was revised from its original submission and approved by the Ontario Municipal Board. The approval resulted in demolition of two existing townhouse blocks and the addition of two new 25 storey buildings, having combined 528 new units and encompassing 39,300 square metres of gross floor area. This development's overall density is 4.28 FSI. This development has Site Plan Approval (File No. 115443 WET 13 SA) and is currently under construction.

The City Council decision can be viewed through the following link:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.CC55.12>

The corresponding staff report can be viewed at:

<http://www.toronto.ca/legdocs/mmis/2014/cc/bdrq/backgroundfile-72950.pdf>

A Zoning By-law Amendment application was submitted for the lands municipally known as 111 Pacific Avenue, 255 Glenlake Avenue and 66 Oakmount Road (File No. 16 269597 WET 13 OZ), in December 2016, which proposes an infill development of 768 purpose built rental dwelling units in two blocks of 3-storey townhouses, one 33-storey apartment building with a 3-storey base and another apartment building of 29 storeys with an 8-storey base. City Council considered this application at its meeting of July 23, 2018.

The City Council decision can be viewed through the following link:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.EY32.16>

The corresponding staff report can be viewed at:

<https://www.toronto.ca/legdocs/mmis/2018/ey/bgrd/backgroundfile-118082.pdf>

An application was submitted for the lands municipally known as 299 Glenlake Avenue (File No. 18 172305 WET 13 OZ), on June 5, 2017, which proposes an 11-storey apartment building containing 120 units on the lands municipally known as. The application is under review.

The Preliminary Report can be viewed at:

<https://www.toronto.ca/legdocs/mmis/2019/te/bgrd/backgroundfile-130447.pdf>

A pre-application meeting for the subject site was held on December 14, 2016. The application was submitted to the City and deemed complete on December 29, 2016.

On April 4, 2017, Etobicoke York Community Council adopted a Preliminary Report on the Official Plan Amendment, Zoning By-law Amendment and Rental Housing Demolition applications for this site. The report provided background information on the application and recommended:

- That a community consultation meeting be held and that notice be given according to the regulations of the *Planning Act*;

- That staff be directed to undertake an area-based character study for the Apartment Neighbourhoods designated lands located north of Bloor Street West, west of Keele Street, south of Glenlake Avenue and east of Gothic Avenue with the anticipation that the study would result in a Site and Area Specific Policy (SASP) that would identify existing area characteristics, and provide guidance on appropriate infill opportunities and constraints. The study was not to include any lands fronting Bloor Street West or any lands included in the Bloor West Village Avenue Study; and
- That staff be directed to report to Etobicoke York Community Council on the findings of the area-based character study and anticipated SASP no later than the second quarter of 2018, but prior to, or concurrent with, any Recommendation Report on any site-specific applications associated with individual development proposals in the study area.

The Preliminary report can be viewed at:

<https://www.toronto.ca/legdocs/mmis/2017/ey/bgrd/backgroundfile-102029.pdf>

On June 26, 27 and 28, 2017 City Council adopted Official Plan Amendment 419 which includes SASP 551 based on the High Park Apartment Neighbourhood Area Character Study. The report provided an overview of the study process and findings as well as the Official Plan Amendment for this study area and can be found at this link:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.EY31.4>

Official Plan Amendment 419 and SASP 551 were appealed to the LPAT, in accordance with the Planning Act, as amended by Bill 139.

City Council adopted a report on the High Park Apartment Neighbourhood Urban Design Guidelines at its meeting in July, 2018. These Guidelines are intended to implement the policy direction expressed in OPA 419 and provide appropriate built form and public space guidance while being respectful of the integrity of the surrounding context. The intent of the Guidelines is to provide clarity through more detailed direction on the desired outcomes for the design of streets, parks, open space, buildings, landscaping and vegetation in the High Park Apartment Neighbourhood and assist in the evaluation of all new and current development proposals falling within its boundaries.

The City Council decision can be viewed through the following link:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.EY32.4>

The adopted Guidelines can be viewed at:

<https://www.toronto.ca/legdocs/mmis/2018/ey/bgrd/backgroundfile-118163.pdf>

City Council adopted the recommendations of the Request for Directions for the subject site at its meeting on July 23, 2018, as described above in the Summary of this report.

The City Council decision can be viewed through the following link:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.EY32.16>

The corresponding staff report can be viewed at:

<https://www.toronto.ca/legdocs/mmis/2018/ey/bgrd/backgroundfile-118082.pdf>

On January 2, 2019, the LPAT decided that "[there is no] basis for [the applicant's] appeals to be determined in accordance with OPA 419 and SASP 551. If, however, OPA 419 and SASP 551 are in force at the time the Tribunal hears [the applicant's] appeals, the parties may, consistent with prior Board decisions, make submissions as to how OPA 419 and SASP 551 may be relevant, but not determinative."

The LPAT's decision is available at the following link:

<https://www.canlii.org/en/on/onlpat/doc/2019/2019canlii298/2019canlii298.html?resultIndex=1>

COMMENTS

The Official Plan designates the subject lands as Apartment Neighbourhoods, which are considered to be physically stable areas and generally not intended for significant growth. The Official Plan directs that compatible infill development may be permitted subject to certain criteria but intensification of land adjacent to Neighbourhoods will be carefully controlled and any development within Apartment Neighbourhoods will respect and reinforce the existing physical character of buildings, streetscapes and open space patterns in the Apartment Neighbourhoods area.

Staff was of the opinion that the original proposal did not have regard for its context and did not respect and reinforce the existing physical character of buildings, streetscapes and open space patterns of the neighbourhood as required by the policy framework of the City's Official Plan, and as such staff was of the opinion that the proposal as submitted was not supportable and represented overdevelopment of the site.

On September 19, 2019, the landowner submitted the Revised Proposal, consisting of a letter, along with two memoranda and revised drawings and plans, which are attached to this report as **Appendix "A" and Appendix "B"**, and illustrate a revised development concept for the subject property.

The Revised Proposal sets out a number of changes from the original application, which are summarized below.

The original proposal provided a total of 1995 units (964 retained, 1031 proposed) and a proposed gross floor area of 81,474 square metres of new construction. The Revised Proposal includes 1760 units (968 retained and 792 proposed) and a proposed gross floor area of 59,905 square metres of new construction. In the Revised Proposal, four fewer units will be demolished. The floor space index has decreased from 5.18 to 4.44. The original proposal contained 4.5 percent 3-bedroom units; whereas the revised proposal contains no 3-bedroom units.

The large retail component in Building A has been removed, with a small retail space proposed instead. As a result, no Official Plan Amendment is required, and the applicant has advised that this part of the application and appeal will be withdrawn.

Approximately 727 square metres of parkland dedication is now proposed on the southern part of the site, immediately adjacent to the existing green space and the new City park at 21 High Park Avenue. This parkland dedication comprises 5% of the net development area, as calculated by the applicant.

The landscape plans have also changed, to retain more existing landscape, as a result of the reduction in new gross construction area. The number of trees to be removed has decreased, as has the amount of hardscape, in favour of softscape.

The below-grade parking levels beneath Tower A have been reduced from five to four. The previously shown central underground bike parking area has been relocated and redistributed across the site, above and below grade. The underground parking structure now extends to the property lines, and provides fewer vehicular parking spaces than the original proposal, as well as fewer loading spaces.

Common indoor amenity space has increased to almost 2 square metres for new and existing dwelling units, while the per unit size of common outdoor amenity space has remained consistent at 2 square metres for both existing and new units.

The following table highlights the revisions made to the proposal since the original submission in December 2016:

Category	Original Submission December, 2016	Revised Submission September, 2019
Site Area	29,208 m ²	29,233 m ²
Total GFA	151,300 m ²	129,731 m ²
Existing GFA (retained)	69,826 m ²	69,826 m ²
New GFA	81,474 m ²	59,905 m ²
Retail GFA (part of New GFA)	1,795 m ²	345.8 m ²
Floor Space Index	5.18	4.44
Landscaped Total	19,673 m ²	19,873 m ²
Landscaped Soft	7,030 m ²	11,648 m ²
Landscaped Hard	12,643 m ²	8,225 m ²
Parkland Dedication	None	727 m ² (5% of the development area, as measured by applicant)
Total Number of Units:	1995	1760
Existing (to be retained)	964	968
Existing (to be demolished)	24	20
New units	1031	792

Unit Mix		
Bachelor	66 (6.4%)	7 (0.9%)
1 Bedroom (1 Bedroom + Den)	465 (45.1%)	475 (60.0%)
2 Bedroom (2 Bedroom + Den)	453 (43.9%)	302 (38.1%)
3 Bedroom +	47 (4.6%)	0 (0.0%)
Townhouse	0 (0.0%)	8 (1.0%)
Amenity Space		
Indoor Amenity Space	2,400 m ² (1.2m ² /unit new + existing)	3,504 m ² (1.99m ² /unit new + existing)
Outdoor Amenity Space	4,000 m ² (2.01m ² /unit new + existing)	3,520 m ² (2.00m ² /unit new + existing)
Trees to be Removed	143	130
Vehicular Parking Spaces	1,444	1,147
Underground Parking Levels	5 (2 existing)	4 (2 existing)
Bicycle Parking Spaces	1,217	1,054
Loading Spaces	Total = 12 1 type 'G'; 2 informal type 'B' 9 type 'B'	Total = 7 1 type 'G' 6 other informal loading spaces
Category	Original Submission December, 2016	Revised Submission September, 2019
Building A	Tall	Tall
Height: Excluding Mechanical Including Mechanical Base Building Height	117.5 m (39 storeys) 126.05 m 17.05 m (4 storey; 1st storey was double height at 7 m)	102.4 m (35 storeys) 108.4 m 16.55 m (5 storey)
Tower Floor plate	810 m ²	750 m ²
Tower Separation Distance from Building A	25.0 m to 35 High Park Ave 27.0 m to 66 Pacific Ave 58.0 m to 65 High Park Ave	34.5 m to 35 High Park Ave 33.6 m to 66 Pacific Ave 47.5 m to 65 High Park Ave
Base Separation Distance from Building A	20 m* to 35 High Park Ave 0 m to 66 Pacific Ave 6 m to 65 High Park Ave	25.8 m to 35 High Park Ave 30.6 m to 66 Pacific Ave 15.0 m to 65 High Park Ave
Street Property Line Setback	5 m	5 m
Unencumbered Soils Street Property Line Setback	0 m	0 m

Category	Original Submission December, 2016	Revised Submission September, 2019
Building B	Tall	Mid-Rise
Height: Excluding Mechanical	83.65 m (29 storeys)	33.2 m (11 storeys)
Including Mechanical	92.15 m	39.2 m
Base Building Height	9.2 m (3 storeys)	9.7 m (3 storeys)
Tower Floor plate	750 m ²	817 m ²
Tower Separation Distance from Building B	23.0 m to 65 High Park Ave 25.0 m to Building C 18.0 m to 95 High Park Ave	25.0 m to 65 High Park Ave 25.0 m to Building C 20.0 m to 95 High Park Ave
Base Separation Distance from Building B	18.5 m to 65 High Park Ave 25.0 m to Building C 17.0 m* to 95 High Park Ave	16.3 m to 65 High Park Ave 25.0 m to Building C 20.0 m to 95 High Park Ave
Street Property Line Setback	5 m	5 m
Unencumbered Soils Street Property Line Setback	5 m	5 m

Category	Original Submission December, 2016	Revised Submission September, 2019
Building C	Tall	Tall
Height: Excluding Mechanical	97.9 m (34 storeys)	87 m (30 storeys)
Including Mechanical	107.5 m	93 m
Base Building Height	9.2 m (3 Storeys)	9.7 m (3 storey)
Floor Plate	750 m ²	750 m ²
Tower Separation Distance from Building C	27.0 m to 65 High Park Ave 25.0 to Building B 30.0 m to 299 Glenlake Ave	27.0 m to 65 High Park Ave 25.0 to Building B 27.0 m to 299 Glenlake Ave
Base Separation Distance from Building C	18.5 m to 65 High Park Ave 25 m to Building B 30.0 m to 299 Glenlake Ave	22.0 m to 65 High Park Ave 25.0 m to Building B 27.0 m to 299 Glenlake Ave
Property Line Setback	5 m to Street Property Line 12 m* to north Property Line (299 Glenlake)	3 m to Street Property Line 9.27 m to north Property Line (299 Glenlake)
Unencumbered Soils Street Property Line Setback	0 m	0 m

Category	Original Submission December, 2016	Revised Submission September, 2019
Building D	Mid-Rise	Mid-rise
Height (excluding mechanical)	23.5 m (8 storeys)	15.45 m (5 storeys)
Floor Plate	664 m ²	559 m ²

Separation Distances	15.0 m to 66 Pacific Ave 30.0 m to 35 High Park Ave 2.7 m* to City's new park (21 High Park)	15.0 m to 66 Pacific Ave 15.0 m to 35 High Park Ave 5.5 m to proposed Parkland Dedication
Street Property Line Setback	5 m	6 m
Unencumbered Soils Street Property Line Setback	5 m	6 m

All numbers with an asterisk * denote approximate or estimated values

Housing Issues

A Housing Issues Report was submitted with the original application which proposed to demolish and replace 25 existing rental dwelling units. According to the rent rolls provided by the applicant at the time of application, 4 of the 25 existing rental dwelling units had mid-range rents. The remaining 21 had high-end rents. As part of the Revised Proposal, the number of existing rental dwelling units to be demolished would be reduced to 20 units, all of which had high-end rents at the time of application. All other existing rental dwellings units would be retained.

Section 3.2.1 of the Official Plan includes policies that encourage the provision of a full range of housing, in terms of form, tenure and affordability, and the protection of rental housing units.

Policy 3.2.1.5 states that, significant new development on sites containing six or more rental units, where existing rental units will be kept in the new development will secure as rental housing, the existing rental housing units which have affordable rents and mid-range rents and may secure any needed improvements and renovations to the existing rental housing, in accordance with and subject to Section 5.1.1 of this plan, without pass-through of such costs in rents to tenants.

Natural Heritage Protection

Section 3.4, Natural Environment, of the Official Plan includes policies that protect the natural environment, and emphasize that the City's natural heritage system is significant and requires long term protection. The Official Plan requires that all development in or near the natural heritage system be evaluated to assess the development's impact on the natural heritage system and identify measures to mitigate negative impacts on and/or improve the natural heritage system.

Tree Preservation

The Official Plan policy 3.4.1d) directs that public and private city building activities and changes to the environment, including public works, will be environmentally friendly, based on enhancing and preserving the urban forest by providing suitable growing environments for trees, increasing tree canopy coverage and diversity, especially of long-lived native and large shade trees and regulating the injury and destruction of trees. Further, in order to preserve and protect trees on City and private property, the City enacted tree by-laws to attempt to retain as much crown cover as possible,

particularly where development is concerned. Retention and appropriate protection of existing trees are to be considered when developing sites, and wherever possible, buildings and driveways are to be diverted around trees.

Required Studies and Plans

The current proposal submitted to the City did not include the below list of studies and reports which are required to fully assess the re-zoning proposal. Staff has been advised by the applicant that the applicant intends to submit these on September 30, 2019. At the time of preparing this report to City Council none of these documents, studies and technical reports had yet been received.

Required Revised studies/reports/documents:

- Revised Functional Servicing Report
- Revised Natural Heritage Impact Study
- Revised Community Services and Facilities Study
- Extended Sun/Shadow Study
- Preliminary Wind Study
- Traffic Impact Study
- Hydrogeological report
- Agreement pursuant to Section 37 of the *Planning Act*

CONCLUSION

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 advice and should be considered by Council in camera.

CONTACT

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SIGNATURE

Wendy Walberg
City Solicitor

ATTACHMENTS

Appendix "A" to Public Report - Correspondence from Devine Park LLP dated September 18, 2019, attaching memorandum dated September 16, 2019 from Zeidler Architecture Inc. and memorandum dated September 17, 2019 from PMA Landscape Architects.

Appendix "B" to Public Report - Revised Architectural Plans and Landscape Drawings on file with the City Clerk for the purpose of the October 2 and 3, 2019 City Council meeting.

Confidential Attachment 1 - Confidential Recommendations and Confidential Information.