



REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

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

Date: December 11, 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.

The purpose of this report is to request further instructions for the Local Planning Appeal Tribunal hearing that is scheduled to commence on January 27, 2020.

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 (the "**Original Application**").

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.

The applicant revised the Original Application on September 19, 2019 (the "**Revised Proposal**"). The applicant further revised its proposal on December 4, 2019 (the "**Further Revised Proposal**").

The purpose of this report is to request further instructions for the LPAT hearing that is scheduled to commence January 27, 2020. The City Solicitor requires direction on this matter in litigation.

RECOMMENDATIONS

The City Solicitor recommends that:

1. City Council adopt the recommendations contained in the Confidential Attachment 1 to the Report (December 11, 2019) from the City Solicitor.
2. City Council authorize the public release of the confidential recommendations 1-4 and 6-12 in Confidential Attachment 1, from the City Solicitor, if adopted by City Council.
3. City Council authorize the public release of confidential recommendation 5 only at the discretion of the City Solicitor, if adopted by City Council.
4. City Council direct that all other information contained in Confidential Attachment 1 to the Report (December 11, 2019) from the City Solicitor is to remain confidential at the discretion of the City Solicitor, as it contains advice and information, which is subject to solicitor-client privilege.

FINANCIAL IMPACT

There is no financial impact arising from the adoption of the Confidential Recommendations beyond what has already been approved in the current year's budget.

DECISION HISTORY

Decision History Regarding Previous Development Applications in the High Park Apartment Neighbourhood Area

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/bdrg/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 those lands. The application is under review.

The Preliminary Report can be viewed at:

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

Decision History Regarding the Subject Site

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>

In a report to City Council dated June 29, 2018, City Planning recommended opposition to the Appeal at the LPAT (the "**Request for Direction**").

By this time, staff had undertaken the area-based character study described above, and arising from that study had developed an Official Plan Amendment (OPA 419), a Site and Area Specific Policy (SASP 551). OPA 419 and SASP 551 were adopted by Council on June 26, 27 and 28, 2017, and both instruments are described in greater detail below.

City Planning concluded in the Request for Direction 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 Direction to oppose the Appeal.

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 September 19, 2019, the applicant submitted the Revised Proposal. In a report to City Council dated September 25, 2019, the City Solicitor recommended continued opposition to the Revised Proposal and also that City staff be authorized to engage in discussions with the applicant to address the issues outlined in that report. City Council adopted the recommendations of that report.

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

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.CC10.11>

The corresponding staff report can be viewed at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.CC10.11>

Decision History Regarding Official Plan Amendment 419, SASP 551 and the High Park Apartment Neighbourhood Urban Design Guidelines.

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/bqrd/backgroundfile-118163.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 Original Application sought 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 Revised Proposal consisted of changes from the Original Proposal 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 Further Revised Proposal differs from the Revised Proposal in seven primary ways.

Building A - High-Rise

Separation distances to Tower A were previously 33.6 metres from the 66 Pacific Avenue building and 34.5 metres from the 35 High Park Avenue building. Tower A has been shifted north-west to increase separation distances between Tower A and both 66 Pacific Avenue and 35 High Park Avenue to 35.0 metres.

The southern part of the podium has been shortened and the podium setback from Tower A to 35 High Park Avenue has increased from 25.8 metres to 26.0 metres.

A portion of the tower floorplate has been shifted 1.0 metre to the west, in order to achieve a more slender mass and to reduce shadow impact on the site and existing buildings on the site.

The overall height has been increased from 35 to 36 storeys, or from 102.4 metres to 105.25 metres.

Building B - Mid-Rise

Separation distances were previously 20.0 metres from the 95 High Park Avenue building and 25.0 metres from the 65 High Park Avenue building respectively. The building has been enlarged toward the south and the separation distances are now 20.0 metres from 95 High Park Avenue and 22.0 metres from 65 High Park Avenue.

The 4th and 5th storeys of the building have been enlarged toward the south and the separation distance of those two storeys from 65 High Park Avenue is now 19.0 metres.

The east edge of the building has been shortened toward the west. The 25.0 metre separation distance to Tower C has been maintained.

The podium setback to 65 High Park Avenue has been reduced from 16.3 to 16.0 metres.

An articulation zone has been provided, where a portion of the building up to 12 metres in height may project a maximum of 3 metres into the required minimum building separation distances between Building B and Building C, and between Building B and 95 High Park Avenue, for podium articulation or if required to mitigate pedestrian-level wind impacts.

Building C - High-Rise

Tower C has been shifted to the south and has been enlarged toward the west.

Separation distances to Tower C were previously 27.0 metres from the 299 Glenlake Avenue building and 27.0 metres from the 65 High Park Avenue building. The separation distances are now 31.1 metres from 299 Glenlake Avenue, 28.0 metres from 65 High Park Avenue and 6.0 metres from the east property line.

The massing of a south-east portion of the tower with no frontage on 65 High Park Avenue has been increased, and its setback distance from 65 High Park Avenue is now 25.0 metres.

The setback of the 3-storey podium has been increased from 3.0 metres to 6.0 metres from the Pacific Avenue property line, and from 22.0 to 25.0 metres from 65 High Park Avenue.

The distance of the tower from the north property line has been increased from 9.0 metres to 12.5 metres.

Building D - Low Rise

The four-storey low rise building has been removed and is no longer part of the application.

Landscaping and Open Areas

Approximately 1,105 square metres of parkland dedication area have been added, for a total of approximately 1,832 square metres proposed on the southern part of the site immediately adjacent to the existing green space.

The new gross construction area is reduced by 2,448 square metres from the previous submission resulting in an increased retention of existing landscape, and greater areas of new landscaping.

Under the Further Revised Proposal, 125 trees are proposed to be removed, as opposed to 143 trees under the Original Application. The applicant proposes to plant 193 new trees, 100 of which will be unencumbered trees to create canopy that will endure through future re-waterproofing of the proposed underground garage.

Under the Further Revised Proposal there are 4,379 square metres fewer of hardscape and 4,579 square metres more of softscape, as compared to the Original Proposal.

Units and Gross Floor Area

The Revised Proposal had a total of 1,760 units (968 retained and 792 proposed) and a proposed gross floor area of 59,905 square metres of new construction, while the Further Revised Proposal includes a total of 1,732 units (968 retained and 764 proposed) and a proposed gross floor area of 58,260 square metres of new construction.

Statistical Comparison

The following tables provide a statistical illustration of the evolution of the Original Application, through the Revised Proposal, to the Further Revised Proposal:

Category	Original Submission – December, 2016	Revised Submission - September, 2019	Settlement Offer – December 2019
Site Area	29,208 square metre	29,233 square metres (unreduced by parkland dedication)	29,233 square metres (unreduced by parkland dedication)
Total Number of Units	1995	1760	1732
Existing (to be retained)	964	968	968
Existing (to be demolished)	24	20	20
New units	1031	792	764
Total GFA	151,300 square metres	129,731 square metres	128,109 square metres
Existing GFA (retained)	69,826 square metres	69,826 square metres	69,826 square metres
New GFA	81,474 square metres	59,905 square metres	58,283 square metres
Retail GFA (part of New GFA)	1,795 square metres	345.8 square metres	345.8 square metres
Floor Space Index	5.18	4.44	4.38
Landscaped Total	19,673 square metres	19,873 square metres	19,873 square metres
Landscaped Soft	7,030 square metres	11,648 square metres	11,609 square metres
Landscaped Hard	12,643 square metres	8,225 square metres	8,264 square metres
Parkland Dedication	None	Offering 727 square metres - 5 percent	Offering 1,832 square metres - 15 percent
Unit Mix			
Bachelor	66 (6.4 percent)	7 (0.9 percent)	1 (0.15 percent)
1 Bedroom (1 Bedroom + Den)	465 (45.1 percent)	475 (60.0 percent)	455 (59.6 percent)
2 Bedroom (2 Bedroom + Den) + townhouse	453 (43.9 percent)	302 (38.1 percent)	226 + 2 = 228 (29.8 percent)
3 Bedroom + townhouse	47 (4.6 percent)	0 (0.0 percent)	76 + 4 = 80 (10.5 percent)

Townhouse	0 (0.0 percent)	8 (1.0 percent)	2 (2-bedroom) 4 (3-bedroom)
Amenity Space			
Indoor Amenity Space	2,400 square metres (1.2 square metres /unit new + existing)	3,504 square metres (1.99 square metres /unit new + existing)	3,202 square metres (2.1 square metres /unit new + existing)
Outdoor Amenity Space	4,000 square metres (2.01 square metres /unit new + existing)	3,520 square metres (2.00 square metres /unit new + existing)	3,464 square metres (2.00 square metres /unit new + existing)
Trees to be Removed	143	130	125
Vehicular Parking Spaces	1444	1147	1154
Underground Parking Levels	5 (2 existing)	4 (2 existing)	4 (2 existing)
Bicycle Parking Spaces	1217	1054	1066
Loading Spaces	1 type 'G'; 2 informal type 'B' & 9 type 'B' = 12 total	1 type 'G' and 6 informal = 7 total	1 type 'G' and 6 informal

Building A	Tall	Tall	Tall
Height (excluding mechanical)	117.5 metres (39 storeys)	102.4 metres (35 storeys)	105.25 metres (36 storeys)
Height with Mechanical	126.05 metres	108.4 metres	~ 111.25 metres
Base Building Height	17.05 metres (4 storey; 1st storey was double height at 7 metres)	16.5 metres (5 storey)	16.55 metres (5 storey)
Tower Floor plate	810 square metres	750 square metres	750.65 square metres
Tower Separation Distance from Building A	25 metres to 35 High Park 27 metres to 66 Pacific 58 metres to 65 High Park	34.5 metres to 35 High Park 33.6 metres to 66 Pacific 47.5 metres to 65 High Park	35 metres to 35 High Park 35 metres to 66 Pacific 45 metres to 65 High Park
Base Separation Distance from Building A	20 metres 35 High Park 0 metres to 66 Pacific 6 metres to 65 High Park	25.8 metres to 35 High Park 30.6 metres to 66 Pacific 15 metres to 65 High Park	26 metres to 35 High Park 31 metres to 66 Pacific 15 metres to 65 High Park
Street Property Line Setback	5 metres	5 metres	6 metres

Unencumbered Soils Property Line Setback	0 metres	0 metres	0.3 metres
--	----------	----------	------------

Building B	Tall	Mid-Rise	Mid- Rise
Height (excluding mechanical)	83.65 metres (29 storeys)	33.2 metres (11 storeys)	33.2 metres (11 storeys)
Height with Mechanical	92.15 metres	39.2 metres	39.2 metres
Base Building Height	9.2 metres (3 storeys)	9.7 metres (3 storeys)	9.7 metres (3 storeys) and 15.75 metres (5 storeys)
Tower Floor plate	750 square metres	817 square metres	739 square metres
Tower Separation Distance from Building B	23 metres to 65 High Park 25 metres to Building C 18 metres to 95 High Park	25 metres to 65 High Park 25 metres to Building C 20 metres to 95 High Park	22 metres to 65 High Park 25 metres to Building C 20 metres to 95 High Park
Base Separation Distance from Building B	18.5 metres to 65 High Park ~ 25 metres to Building C ~ 17 metres to 95 High Park	16.3 metres to 65 High Park ~ 23 metres to Building C ~ 19 metres to 95 High Park	16 metres to 65 High Park 20 metres to Building C 17 metres to 95 High Park
Street Property Line Setback	5 metres	5 metres	6 metres
Unencumbered Soils Property Line Setback	Approximately 4 metres	Approximately 4 metres	6 metres

Building C	Tall	Tall	Tall
Height (excluding mechanical)	97.9 metres (34 storeys)	87 metres (30 storeys)	87 metres (30 storeys)
Height with Mechanical	107.5 metres	93 metres	93 metres
Base Building Height	9.2 metres (3 storeys)	9.7 metres (3 storey)	9.7 metres (3 storey)
Floor Plate	750 square metres	750 square metres	749.65 square metres

Tower Separation Distance from Building C	27 metres to 65 High Park 25 metres to Building C 30 metres to 299 Glenlake	27 metres to 65 High Park 25 metres to Building C 27 metres to 299 Glenlake	28 metres to 65 High Park 25 metres to Building C 31.1 metres to 299 Glenlake
Base Separation Distance from Building C	18.5 metres to 65 High Park 25 metres to Building B 30 metres to 299 Glenlake	22 metres to 65 High Park ~ 23 metres to Building B ~ 26 metres to 299 Glenlake	25 metres to 65 High Park 20 metres to Building B 27.6 metres to 299 Glenlake
Tower Setback from 299 Glenlake Property Line	12.27 metres	9.27 metres	12.5 metres
Street Property Line Setback	5 metres	3 metres	6 metres
Unencumbered Soils Property Line Setback	0 metres	0 metres	1.5 metres

Building D	Mid-Rise	Low Mid-rise	Removed (land now part of parkland dedication)
Height (excluding mechanical)	23.5 metres (8 storeys)	15.45 metres (5 storeys)	-----
Floor Plate	664 square metres	559 square metres	-----
Separation Distances	15 metres to 66 Pacific 30 metres to 35 High Park Estimated 2.7 metres to City's new park	15 metres to 66 Pacific 15 metres to 35 High Park Estimated 9.9 metres to City's new park (4.5 metres to the limit of the proposed parkland dedication limit)	-----
Property Line Setback	5 metres	6 metres	-----
Unencumbered Soils Property Line Setback	5 metres	6 metres	-----

Section 37 Contribution

The increased gross floor area for the Further Revised Proposal, accounting for demolition of 3,030 square metres of existing townhouse development, is 55,230 square metres. On this basis, the applicant has offered \$2,300,000.00 for Section 37 benefits, to be allocated in the following order of priority: (1) park improvements, within the parkland dedication lands for the proposed development; (2) privately-owned publicly-accessible space (POPS) to be located on-site; and (3) streetscape improvements for the streets abutting the development site; and (4) public art.

Conclusion

The Further 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.

CONTACT

Laura K. Bisset, Solicitor, Planning & Administrative Tribunal Law; Tel: (416) 392-8782; Fax: (416) 397-5624; Email: Laura.Bisset@toronto.ca

SIGNATURE

Wendy Walberg
City Solicitor

ATTACHMENTS

Appendix "A" to Public Report - Correspondence from Devine Park LLP dated December 4, 2019 re: Submission of "With Prejudice" Revised Development Proposal, without enclosures.

Appendix "B" to Public Report - Correspondence from Devine Park LLP dated December 4, 2019 re: With Prejudice Offer for Community Benefits.

Appendix "C" to Public Report - Revised Architectural Plans and Landscape Drawings on file with the City Clerk for the purpose of the December 17 and 18, 2019 City Council meeting.

Confidential Attachment 1 - Confidential Recommendations and Confidential Information.