

Authority: Ontario Municipal Board Decision/Order issued April 18, 2016 and Local Planning Appeal Tribunal Order issued October 19, 2018 in Tribunal File PL140898

## **CITY OF TORONTO**

### **BY-LAW 1347-2018(LPAT)**

**To amend former City of Toronto Zoning By-law 438-86, as amended, respecting the lands municipally known in the year 2018 as 33 Holly Street, 44 Dunfield Avenue and 86-88 Soudan Avenue.**

Whereas the owner of the lands shown on Map 1 attached applied for a zoning by-law amendment for the development of the lands shown on Map 1 attached and appealed that application to the Local Planning Appeal Tribunal; and

Whereas pursuant to Section 37 of the Planning Act, R.S.O 1990, c. P.13, as amended, the council of a Municipality, and the Local Planning Appeal Tribunal on appeal, may, in a by-law passed under Section 34 of the Planning Act, authorize increases in the height or density of development beyond that otherwise permitted by the by-law, that will be permitted in return for the provision of such facilities, services or matters as are set out in the by-law; and

Whereas Subsection 37(3) of the Planning Act provides that where an owner of lands elects to provide facilities, services or matters in return for an increase in height or density of development, the municipality may require the owner to enter into one or more agreements with the municipality dealing with such facilities, services or matters; and

Whereas pursuant to Section 39 of the Planning Act, the Council of a Municipality may, in a By-law passed under Section 34 of the Planning Act, authorize the temporary use of land, buildings, or structures for any purpose set out therein that is otherwise prohibited by the By-law; and

Whereas the owner has elected to provide the facilities, services and matters as are hereinafter set forth; and

Whereas the increase in the height and density of development permitted hereunder, beyond that otherwise permitted on the aforesaid lands by By-law 438-86 of the former City of Toronto is to be permitted in return for the provision of the facilities, services and matters set out in this By-law and to be secured by one or more agreements between the owner and the City of Toronto (hereinafter referred to as the "City"); and

Whereas the Council of the City has determined to support the coming into force of this By-law amending Zoning By-law 438-86, as amended, of the former City of Toronto as agreed to at its meeting of February 3, 2016, Item CC12.9; and

Whereas the Ontario Municipal Board Decision/Order issued April 18, 2016 and Local Planning Appeal Tribunal Order issued October 19, 2018, determined to amend the former City of Toronto Zoning By-law 438-86, as amended, with respect to lands known municipally as 33 Holly Street, 44 Dunfield Avenue and 86-88 Soudan Avenue;

Pursuant to the Ontario Municipal Board Decision/Order issued April 18, 2016 and Local Planning Appeal Tribunal Order issued October 19, 2018, By-law 438-86 of the City of Toronto, as amended, is further amended as follows:

1. Except as otherwise provided herein, the provisions of By-law 438-86, shall continue to apply to the *lot*.
2. Pursuant to Section 37 of the Planning Act, the *heights* and density of development permitted by this By-law on the *lot* are permitted subject to compliance with the conditions set out in this By-law and in return for the provision by the *owner* of the *lot* of the facilities, services and matters set out in Appendix 1 of this By-law, the provisions of which shall be secured by one or more agreements pursuant to Section 37(3) of the Planning Act that are in a form and registered on title to the *lot*, to the satisfaction of the City Solicitor.
3. Upon execution and registration of an agreement between the *City* and the *owner* of the *lot* on title to the *lot* pursuant to Section 37 of the Planning Act, securing the provision of the facilities, services and matters set out in Appendix 1, the *lot* is subject to the provisions of this By-law, and in the event the said agreement(s) requires the provision of a facility, service or matter as a precondition to the issuance of a *building permit*, such building may not be erected or used until the *owner* of the *lot* has satisfied the said requirement.
4. Wherever in this By-law a provision is stated to be conditional upon the execution and registration of an agreement(s) entered into with the *City* pursuant to Section 37 of the Planning Act, then once such agreement(s) has been executed and registered, such conditional provisions shall continue to be effective notwithstanding any subsequent release or discharge of all or any part of such agreement.
5. None of the provisions of Section 2(1) with respect to the definition of '*grade*', '*height*', '*lot*', '*storey*', Sections 4(2)(a), 4(4)(b), 4(10)(a), 4(12), 4(13), 4(16), 4(17), 6(1)(a), 6(1)(f), 6(3) PART I 1, 6(3) PART II , and 12(2) 119 of Zoning By-law 438-86, as amended, being "A By-law to regulate the use of land and the erection, use, bulk, height, spacing of and other matters relating to buildings and structures and to prohibit certain uses of lands and the erection and use of certain buildings and structures in various areas of the City of Toronto", shall apply to prevent the erection and use of *apartment buildings* and *accessory* uses, thereto on the *lot* provided that:
  - a. for the purposes of this By-law, the *lot* is comprised of at least those lands delineated by heavy lines on Map 1, attached to and forming part of this By-law;
  - b. the aggregate of the *residential gross floor area* of all *existing buildings* and structures and all new buildings and structures erected or used on the *lot* shall not exceed 66,500 square metres;
  - c. no portion of any building or structure erected on the *lot* shall have a *height* in metres or storeys greater than the *height* limits respectively specified by the numbers following the symbol HT and ST on Map 2 attached to and forming part of this By-law;
  - d. despite (c) above, the following elements of a building may exceed the maximum permitted building *heights*:

- i. 1.5 metres for parapets, guard rails, railings and stairs, window washing equipment, architectural features, elements of a green roof;
  - ii. 6 metres for stair enclosure related for the below-*grade parking garage*, dividers, trellises, screens, and architectural roof canopies on both *existing buildings* and new buildings;
  - iii. Pipes, vents chimneys and lightning rods from the mechanical penthouse may extend 2.1 metres beyond the permitted height of the mechanical penthouse;
  - iv. 11 metres for architectural entrance canopies below the third storey on both the existing and new buildings; and
  - v. The portion of the building identified as having a maximum *height* of 1.2 metres (HT 1.2 metres) on Map 2 of this By-law must only be used for a green roof;
- e. no portion of any building or structure erected on the *lot* after the date of this By-law and used above finished ground level on the *lot* is located otherwise than wholly within the areas delineated by heavy lines shown on Map 2, with the exception of the following elements of a building, which may extend into a required building setback line, shown on Map 2, as follows:
- i. 2.0 metres for light fixtures, ornamental elements, patios, decks, terraces, planters, ventilation shafts, stairs, stair enclosures, wheelchair ramps, awnings and cornices;
  - ii. 5 metres for canopies;
  - iii. Below-ground *parking garage*, ramps and associated structures; and
  - iv. No closer to the *lot* line than 1.2 metres for exterior enclosed stairwells for below-ground *parking garage*;
- f. for each of Building A and Building B shown on Map 2, the building roof area shall not exceed 715 square metres and the total area of the mechanical penthouse for each of Building A and Building B shall not cover more than 63 percent of the area of the building roof,
- g. *residential amenity space* is provided and maintained on the *lot* for use by all residents of the *lot*, at least in accordance with the following:
- i. A minimum of 1.7 square metres of indoor *residential amenity space* per each new *dwelling unit* erected on the *lot* after the date of this By-law and a minimum of 2.4 square metres of outdoor *residential amenity space* per each new *dwelling unit* erected on the *lot* after the date of this By-law, of which:

- A. a minimum of 518 square metres indoor *residential amenity space* and 661 square metres outdoor *residential amenity space*, portions of which are contiguous, are provided respectively in or adjacent to Building A and/or Building C shown on Map 2; and
- B. a minimum of 395 square metres indoor *residential amenity space* and 707 square metres outdoor *residential amenity space*, portions of which are contiguous, are provided respectively in or adjacent to Building B and/or Building D shown on Map 2; and

for clarity, all residents of the *existing buildings* shall have the use and enjoyment of all of the *residential amenity space* required in paragraphs (g)(i) A and (g)(i) B. above;

- h. the minimum required number of *parking spaces* provided and maintained on the *lot* to serve the residents of the *lot* and their visitors shall be in accordance with the following:
  - i. A total of 118 *parking spaces*, inclusive of 32 required visitors *parking spaces*, located in a below *grade parking garage*, for the use of residents of *dwelling units* in the *existing buildings*;
 

notwithstanding the requirement that parking for the *existing buildings* be provided on the *lot*, all resident *parking spaces* may be temporarily provided off-site during the construction period of the development permitted by this By-law, provided such off-site parking period does not exceed a period of three years from the date of By-law;
  - ii. For new buildings erected on the *lot* after the date of this By-law:
    - A. a minimum of 0.35 *parking spaces* per *dwelling unit* for the use of residents of *dwelling units* in such buildings; and
    - B. a minimum of 0.1 *parking spaces* per *dwelling unit* for visitors;
  - iii. With all such *parking spaces* to be located in a below *grade parking garage*; and all visitor *parking spaces* may be made available to the general public and a charge may be imposed for their use;
- i. a maximum of 10 percent of the required *parking spaces* may be *small-car parking space*;
- j. *bicycle parking spaces* shall be provided and maintained on the *lot* for the use of all residents of the *lot* in accordance with the following:
  - i. A minimum of 0.9 *bicycle parking spaces – occupant* per each new *dwelling unit* erected on the *lot* after the date of this By-law;
  - ii. A minimum of 0.1 *bicycle parking spaces – visitor* per each new *dwelling unit* erected on the *lot* after the date of this By-law; and

- ii. Notwithstanding the definition of *bicycle parking space – visitor* in Section 2(1) of Zoning By-law 438-86, as amended, a *bicycle parking space* for visitors may be provided within a secured room; and
  - k. one covered *loading space – type G* shall be provided and maintained on the *lot* for the use of all buildings on the *lot*.
6. None of the provisions of By-law 438-86 shall apply to prevent a temporary *sales office* on the *lot*, with the exception of Sections 2, 3 and 4 above and the requirements in Sections 7, 8, 9, 10, 11, 12, 13 and 14 of Appendix 1 of this By-law, for a period of time not to exceed three years from the date of this By-law.
7. For the purposes of this By-law, all italicized words and expressions have the same meaning as defined in By-law 438-86, as amended, with the exception of the following which shall have the meanings set out herein:
- a. "*above-grade permit*" means the first *building permit* issued respecting all or any part of the *lot* that permits the erection of any new *above grade* portion of a building and for clarity does not include a *building permit* issued for shoring and excavation or to construct all or part of a building foundation on the *lot* or for any usual renovations to *existing buildings* which are unrelated to the permissions in this By-law;
  - b. "*building permit*" means a permit issued under the Building Code Act, 1992, S.O. 1992, c. 23 as amended or re-enacted from time to time, including a permit for excavation or shoring and including a conditional permit, but it does not include any permit issued to construct a temporary *sales office* or a portion thereof or for repairs and maintenance of the *existing buildings*;
  - c. "*Chief Planner*" means the City's Chief Planner and Executive Director, City Planning;
  - d. "*existing buildings*" means the existing rental *apartment buildings* located on the *lot* on the date of this By-law, comprising Building C and Building D shown on Map 2, and respectively municipally known in 2017 as 33 Holly Street and 44 Dunfield Avenue;
  - e. "*General Manager*" means the City's General Manager, Parks, Forestry and Recreation;
  - f. "*grade*" means 159.95 metres Canadian Geodetic Datum;
  - g. "*height*" means the vertical distance between *grade* and the highest point of the building or structure;
  - h. "*lot*" means the parcel of land outlined by heavy lines on Map 1;
  - i. "*residential gross floor area*" means the sum total area of each floor level of a *building*, above and below the ground, measured from the exterior of the main wall of each floor level, and reduced by the area of the *building* used for: parking,

loading and *bicycle parking* below-ground; required *loading spaces* at the ground level and required *bicycle parking spaces* at or above-ground; storage rooms, washrooms, electrical, utility, mechanical and ventilation rooms in the basement; shower and change facilities required by this By-law for required *bicycle parking spaces*; indoor *residential amenity space* required by this By-law; elevator shafts; garbage shafts; mechanical penthouse; and exit stairwells in the *building*;

- j. "*sales office*" means a building, structure, facility or trailer on the *lot* used for the initial sale of *dwelling units* to be erected on the *lot* pursuant to this By-law;
  - k. "*small-car parking space*" means a clear area that:
    - i. Has minimum dimensions of 5.0 metres in length by 2.3 metres in, width, provided that such minimum width must be increased by 0.3 metres for each side of the *parking space* that is obstructed. The side of a *parking space* is obstructed if any part of a fixed object such as a wall, column, bollard, fence or pipe is situated:
      - A. within 0.3 metres of the side of the *parking space*, measured at right angles, and
      - B. more than 1.0 metre from the front or rear of the *parking space*;
    - ii. Is accessed by a drive aisle that has a minimum width of 6.0 metres; and
    - iii. Is readily accessible at all times for the parking and removal of a motor vehicle without the necessity of moving another vehicle; and
  - l. "*storey*" means a level of a building, located between any floor and the floor, ceiling or roof immediately above it, provided the floor of such level is located above finished ground level.
- 8.** Despite any existing or future severance, partition or division of the *lot*, including any stratified severance, the provisions of this By-law shall apply to the whole *lot* as if no severance, partition or division had occurred.
- 9.** Within the *lot*, no person shall use any land or erect or use any building or structure, save and except for *existing buildings*, unless the following municipal services are provided to the *lot* line and following provisions are complied with:
- a. all new public roads have been constructed to a minimum of base curb and base asphalt and are connected to an existing public highway; and
  - b. all water mains and sanitary sewers, and appropriate appurtenances, have been installed and are operational.

## Appendix 1 Section 37 Provisions

The facilities, services and matters set out below are required to be provided by the *owner* of the *lot* at its expense to the City in accordance with this By-law and as further specified in one or more agreements pursuant to Section 37(3) of the Planning Act (the "*Section 37 Agreement*"), in a form satisfactory to the City with conditions providing for indexing escalation of both the financial contributions and letters of credit, development charges, indemnity, insurance, GST, HST, termination and unwinding, and registration and priority of the *Section 37 Agreement*, as follows, all to the satisfaction of the Chief Planner and Executive Director, City Planning Division:

1. Prior to the issuance of the first *above-grade permit* for all or any part of the *lot*, the *owner* of the *lot* shall convey to the City for park purposes, the lands identified as "G PARKLAND DEDICATION 1606m<sup>2</sup> Min." on Map 2 of this By-law, being one parcel of contiguous land together comprised of not less than 970 square metres of on-site parkland dedication pursuant to section 42 of the Planning Act together with not less than an additional 636.0 square metres of additional land, at nominal cost, free and clear, above and below *grade*, of all physical obstructions and easements, encumbrances and encroachments, including surface and subsurface easements, unless otherwise approved by the *General Manager* and the City Solicitor, and all in an environmental condition satisfactory to the *General Manager* consistent with City standards, and all to base park condition, all to the satisfaction of the *General Manager* and the City Solicitor.
2. The *owner* of the *lot* shall design, construct and complete the installation of above-base park improvements on the lands required to be conveyed to the City in Section 1 of this Appendix 1, to a value of ONE MILLION EIGHT HUNDRED THOUSAND DOLLARS (\$1,800,000.00) inclusive of a 20 percent contingency (the "Above Base Park Improvement Value") with such amount to be subject to upwards indexing and with the final details to be determined by the *General Manager*, in consultation with the *owner*, the local Councillor and the community. In the event the *owner* of the *lot* is able to install the above-base park improvements to the satisfaction of the *General Manager* at a cost of less than ONE MILLION EIGHT HUNDRED THOUSAND DOLLARS (\$1,800,000.00) as upwardly indexed, the *owner* shall be entitled to retain the difference between such sum and such lesser amount as determined to the satisfaction of the *General Manager*.

In addition to the Above Base Park Improvement Value, the *owner* of the *lot* shall be responsible to pay for all costs associated with designing the park, including public consultation, design review process, the preparation of all drawings required for the design and construction of the park and construction management of the park by a consulting landscape architecture firm retained by the *owner*, including ensuring that the work is overseen by a qualified landscape architect.

3. The *owner* of the *lot* shall complete the above-base park improvements required in Section 2 of this Appendix 1 of this By-law to the satisfaction of the *General Manager* prior to the earlier of: the date that is three (3) years from the date of the issuance of the first *above-grade permit* for all or any part of the *lot*, prior to any residential use of any buildings erected on the *lot* after the date of this By-law, and prior to the registration of any condominium on any part of the *lot*, subject to any extension of such date by the *General Manager* to accommodate seasonal matters and subject to the owner of the lands

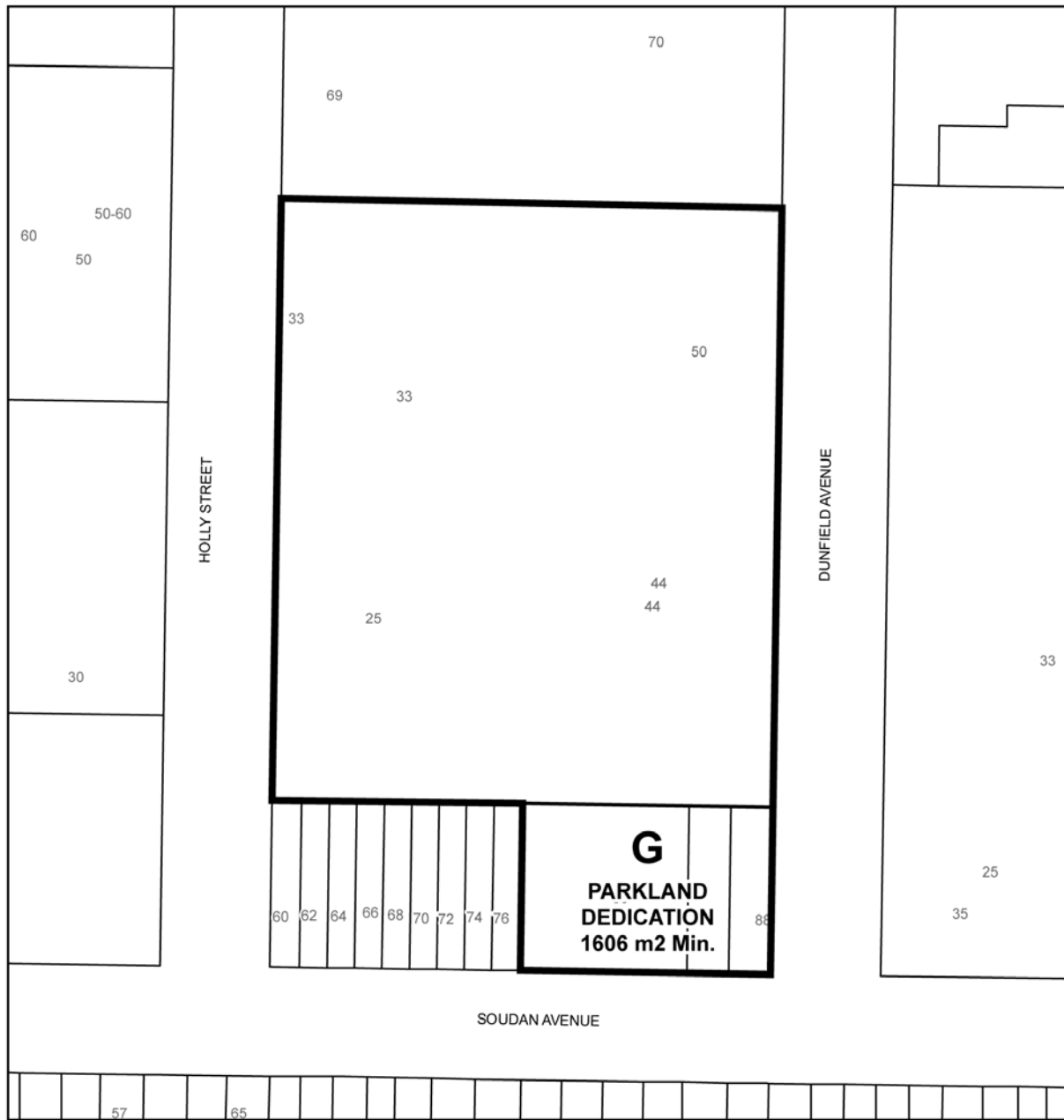
securing any outstanding improvements by letter of credit satisfactory to the *General Manager*.

4. Prior to the issuance of the first *above-grade permit* for all or any part of the *lot*, the *owner* of the *lot* shall provide a letter of credit to the City in the amount of ONE MILLION EIGHT HUNDRED THOUSAND DOLLARS (\$1,800,000.00), including provision for upwards indexing, in a form and from a bank satisfactory to the *General Manager*, to secure the completion of the above-base park improvements required in Section 2 of this Appendix 1 to the satisfaction of the *General Manager*.
5. The value of the above-base park improvements required to be completed in Section 2 of this Appendix 1 and the letter of credit amount required in Section 4 of this Appendix 1 shall be increased by upwards indexing in accordance with the Statistics Canada Residential Building Construction Price Index for the Toronto Census Metropolitan Area, reported by Statistics Canada in the Building Construction Price Indexes Publication 327-0058, or its successor, calculated from April 18, 2016 to the date of the completion of the installation of such above-base park improvements.
6. Prior to the issuance of the first *above-grade permit* for all or any part of the *lot* and prior to the registration of any site plan agreement with the City pursuant to section 114 of the City of Toronto Act, 2006, and/or section 41 of the Planning Act, the *owner* of the *lot* shall convey to the City at nominal cost a public pedestrian and bicycle easement for use by the general public, having a minimum width of 2.4 metres, together with necessary rights of support, such easement to be abutting the parkland required to be conveyed to the City in Section 1 of this Appendix 1, and linking the Holly Street public sidewalk to the Dunfield Avenue public sidewalk in order to create a mid-block connection contiguous to the lands to be conveyed to the City for park purposes pursuant to Section 1 of this Appendix 1, all to the satisfaction of the *Chief Planner* and the City Solicitor, including requirements for the *owner* to maintain and to insure and indemnify the City.
7. The *owner* of the *lot* shall maintain all of the 324 rental *dwelling units* located within the *existing buildings* on the date of this By-law (the "*existing rental units*") and all of the associated spaces located within the *existing buildings* on the date of this By-law (the "*associated spaces*"), as rental tenure, for a minimum period of at least 20 years from the date this By-law comes into force and effect. None of the *existing rental units* or *associated spaces* shall be registered as condominium or any other form of ownership such as life lease or co-ownerships which provide a right to exclusive possession of a unit, and no application for conversion for non-rental housing purposes, or application to demolish all or any part of the *existing rental units* or *associated spaces* shall be made during such 20 year period.
8. Tenants of such *existing buildings* will share the use of all of the indoor and outdoor *residential amenity spaces* required by this By-law at no additional cost to such tenants, and the *bicycle parking spaces* and the visitor *parking spaces* required by this By-law, and shall have equal access to the use of such spaces, on the same basis as all other residents of the *lot*.
9. The *owner* of the *lot* shall make improvements to the *lot* and the *existing buildings* to benefit residents of the *existing buildings*, to the satisfaction of the *Chief Planner*, including but not limited to, in the *existing buildings*: replacing all carpeting and lighting in hallway areas on every floor commencing on the 2nd floor and above, to be followed

- by repairing and repainting of hallway walls and ceilings, improvements to each of the existing laundry facilities including installation of new and more modern washing machines and dryers, best efforts to repair the existing storage lockers, no required forfeiture of storage lockers by tenants legally occupying such lockers, and the costs of any and all such improvements as well as the costs of the development shall not be passed on in any form, including increases to the rents, to tenants of the *existing buildings*.
10. Prior to the issuance of any *building permit* for all or any part of the *lot*, the *owner* of the *lot* shall provide an assistance plan for tenants of the *existing buildings* and thereafter implement such plan, including but not limited to: rent abatement measures for all tenants of the *existing buildings*, an increased increment of abatement based on the proximity of *dwelling units* within the *existing buildings* to active construction, additional increased abatement for tenants with special needs, early termination by tenants of leases together with a moving allowance, an offer of a discount on the purchase of new condominium units to be erected on the *lot* prior to their release for sale to the general public and the ability to forgo rent compensation in return for a unit renovation with no application for an above guideline rent increase to be passed on in any form including increases to the rents, to tenants of the *existing buildings*, all in accordance with a more detailed Tenant Relocation and Assistance Plan to be included in the agreement or agreements required in Section 14 of this Appendix 1, and all to the satisfaction of the *Chief Planner*.
  11. Prior to the issuance of any *building permit* for the demolition of the buildings known municipally in 2015 as 86 Soudan Avenue and 88 Soudan Avenue, the *owner* of the *lot* shall provide for tenant relocation assistance to the tenants of the buildings known municipally in 2015 as 86 Soudan Avenue and 88 Soudan Avenue affected by the demolition of such buildings, including at least extended notice and additional financial assistance, to the satisfaction of the *Chief Planner*.
  12. The *owner* of the *lot* shall provide a Construction Mitigation Plan and Tenant Communication Strategy satisfactory to the *Chief Planner*, including but not limited to the provision of at least two (2) respite rooms on the *lot* at all times, the provision of noise cancelling headphones, ensuring there will be no major interruption of water, heat or electricity services for tenants of the *existing buildings*, ensuring tenants leasing *parking spaces* as part of their leases have continuous access to parking on or in the nearby vicinity of the *lot*, and continuous access to laundry facilities in at least one of the *existing buildings* on the *lot* at all times, shortened construction hours with no construction commencing before 7:00 a.m. on weekdays and no more than two Saturdays per month, frequent cleaning for construction related dust and debris and posting written notices and disseminating information regularly and providing a 24 hour contact for construction relation complaints and inquiries, all in accordance with a more detailed Construction Mitigation Plan and Tenant Communication Strategy to be included in the agreement or agreements required in Section 14 of this Appendix 1, and thereafter shall implement such plan and strategy, all to the satisfaction of the *Chief Planner*.
  13. Prior to the issuance of the first *building permit* for all or any part of the *lot* the *owner* of the *lot* shall submit a construction management plan satisfactory to the *Chief Planner*, the General Manager, Transportation Services, and the Chief Building Official, in consultation with the Ward Councillor (the "*Construction Management Plan*") and

thereafter shall implement the plan during the course of construction. The *Construction Management Plan* will include, but not be limited to, details regarding size and location of construction staging areas, dates of significant concrete pouring activities, measures to ensure safety lighting does not negatively impact tenants on the *lot* or other adjacent residences, construction vehicle parking locations, refuse storage, site security, site supervisor contact information and any other matters deemed necessary.

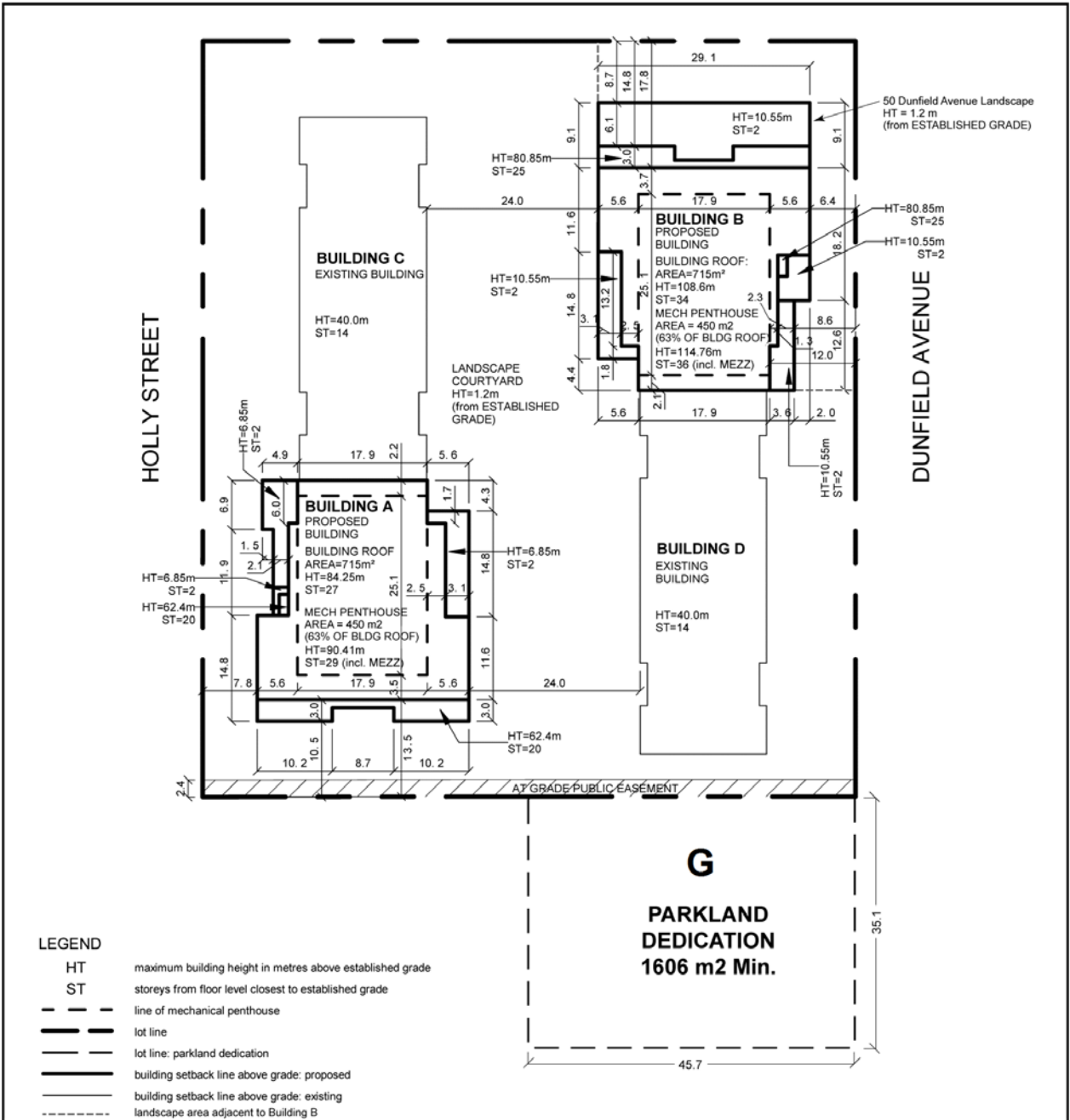
14. The *owner* of the *lot* shall enter into and register on title to the *lot*, one or more agreements with the City pursuant to section 37 of the Planning Act, to the satisfaction of the City Solicitor in consultation with the *Chief Planner* and *General Manager*, to assist with securing the facilities, services and matters set forth in this Appendix 1.



 **TORONTO**  
Map 1

**33 Holly Street, 44 Dunfield Avenue  
and 86 & 88 Soudan Avenue**

File # 13 211324 STE 22 OZ



33 Holly Street, 44 Dunfield Avenue  
and 86 & 88 Soudan Avenue

File # 13 211324 STE 22 0Z

