

Authority: Ontario Land Tribunal Decision
issued on August 4, 2020 and Order issued on
September 28, 2021, in File PL180213

CITY OF TORONTO

BY-LAW 889-2021(OLT)

To amend former City of Toronto Zoning By-law 438-86, as amended, with respect to the lands municipally known in the year 2020 as 265 Balliol Street.

Whereas the Ontario Land Tribunal pursuant to its Order issued on September 28, 2021 in File PL180213 upon hearing an appeal under Section 34(11) of the Planning Act R.S.O. 1990, c. P.13, as amended deems it advisable to amend By-law 438-86, as amended, for the City of Toronto with respect to lands municipally known as 265 Balliol Street; and

Whereas the Official Plan for the City of Toronto contains provisions relating to the authorization of increases in height and density of development; and

Whereas pursuant to Section 37 of the Planning Act, a by-law under Section 34 of the Planning Act, may authorize increases in the height and density of development beyond those otherwise permitted by the by-law and 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 land elects to provide facilities, services and matters in return for an increase in the height or density of development, the municipality may require the owner to enter into one or more agreements with the municipality dealing with the facilities, services and matters; and

Whereas the owner of the aforesaid lands has elected to provide the facilities, services and matters hereinafter set out; and

Whereas the increase in height and density permitted beyond that otherwise permitted on the aforesaid lands by By-law 438-86 as amended, is permitted in return for the provision of the facilities, services and matters set out in this By-law which is secured by one or more agreements between the owner of the land and the City of Toronto;

By-law 438-86, as amended, of the City of Toronto is further amended by the Ontario Land Tribunal as follows:

1. None of the provisions of Sections 2(1) of By-law 438-86 with respect to the definitions of *grade*, *height*, *bicycle parking space-occupant*, *bicycle parking space- visitor*, *lot*, *non-residential gross floor area* and *residential gross floor area*, and Sections 4(2), 4(4)(b), (c) and (i), 4(6), 4(12), 4(13), 4(17), 6(1), 6(2), 6(3) Part I, 6(3) Part II, and 6(3) Part III of By-law 438-86, as amended, and none of the provisions of Section 4 of By-law 22290, shall apply to prevent the erection and use of an *apartment building* consisting of the *Existing Building* and the *Building Addition*, including uses *accessory* thereto on the *lot*, provided that:

- (a) the *gross floor area* of the *Building Addition* shall not exceed 20,000.0 square metres, of which a maximum of 200.0 square metres may be used for non-residential uses;
- (b) the *gross floor area* of the *Existing Building* shall not exceed the *gross floor area* existing therein as of December 1, 2020, plus 150.0 square metres to accommodate additional amenity space, laundry areas and utility rooms;
- (c) In addition to the permitted uses listed in Section 6(1) of By-law 438-86, the following non-residential uses are permitted in an *apartment building* on the *lot*:
 - (i) *Private art gallery, personal grooming establishment, tailoring shop, dry cleaner's distribution station, laundry shop, establishment providing services related to the grooming of domestic animals, retail store, restaurant, take-out restaurant, bicycle repair shop and wellness centre, subject to the following:*
 - a. There may be one or more uses in a non-residential unit containing such uses;
 - b. Such uses are only permitted within the ground floor of the *Building Addition*; and
 - c. *Accessory* uses, including a *patio*, are permitted in connection with permitted non-residential uses;
 - (ii) *Car-share*;
- (d) The permitted maximum *height* of the *Existing Building* is the height of such building as it existed on the *lot* on December 1, 2020, subject to the following permitted projections to a maximum of 5.0 metres above the permitted maximum height:
 - (i) Equipment used for the functional operation of the building, such as electrical, utility, mechanical and ventilation equipment, except that skylights may only exceed the height by 1.0 metres;
 - (ii) Structures or parts of the building used for the functional operation of the building, such as enclosed stairwells, roof access, maintenance equipment storage, elevator shafts, chimneys, vents and water supply facilities; and
 - (iii) Structures that enclose, screen or cover the elements listed in (i) and (ii) above;
- (e) no portion of the *Building Addition* erected or used on the *lot* above the level of the finished ground shall exceed the *height* limits in metres as specified by the numbers following the symbol "H" as shown on attached Map 2, with the exception of the following:
 - (i) Structures, elements and enclosures permitted by regulation (f) below;

- (ii) Parapets, structures used for maintenance, safety, noise or wind protection purposes, elements of a green roof, window washing equipment and chimneys, vents, stacks and their associated enclosures may exceed the permitted building *height* by a maximum of 6.5 metres;
 - (iii) Structures on any roof used for outdoor *residential amenity space* or open air recreation may exceed the permitted building *height* by a maximum of 3.0 metres; and
 - (iv) Roof top mechanical equipment, including structures that enclose or screen such equipment may exceed the permitted building *height* by a maximum of 5.5 metres;
- (f) no portion of any building erected above finished ground level on the *lot*, shall be located other than wholly within the areas delineated by heavy lines on Map 2, with the exception of the following permitted projections:
- (i) Lighting fixtures, railings, cornices, sills, eaves, canopies, awnings, privacy screens, planters, stairs, enclosed stairs, ramps to underground parking areas and associated structures, fencing, bollards, safety railings, trellises, guards, guardrails, retaining walls, wheelchair ramps, bicycle parking facilities, ornamental or architectural features, landscape features;
 - (ii) balconies to maximum horizontal projection of 2.0 metres beyond the heavy lines; and
 - (iii) Structures, elements and enclosures permitted by regulation (e) above;
- (g) *dwelling units* provided in the *Building Addition* shall comply with the following:
- (i) A minimum of 40 percent of the total number of *dwelling units* in the *Building Addition* shall contain two or more *bedrooms*; and
 - (ii) A minimum of 10 percent of the total number of *dwelling units* in the *Building Addition* shall contain three or more *bedrooms*, which *dwelling units* may also be used to determine compliance with (i) above;
- (h) a minimum of 38 percent of the area of the *lot* shall be provided as *landscaped open space*, of which a minimum of 50 percent of the required *landscaped open space* shall be provided as *soft landscaping*;
- (i) a minimum of 4.0 square metres of *residential amenity space* shall be provided per *dwelling unit* in the *Building Addition*, of which:
- (i) a minimum of 2.0 square metres of indoor *residential amenity space* per *dwelling unit* shall be provided as indoor *residential amenity space*; and
 - (ii) a minimum of 40.0 square metres of outdoor *residential amenity space* shall be provided in a location that adjoins or is directly accessible from indoor *residential amenity space*;

- (j) *Bicycle parking spaces* shall be provided and maintained on the *lot* in accordance with the following:
- (i) A minimum of 96 *bicycle parking spaces* plus:
 - a. A minimum of 0.9 long-term *bicycle parking spaces* per *dwelling unit* in the *Building Addition*; and
 - b. A minimum of 0.1 short-term *bicycle parking spaces* per *dwelling unit* in the *Building Addition*;
 - (ii) A *bicycle parking space* on the *lot* may be located in a *bicycle stacker*; and
 - (iii) A *bicycle parking spaces* existing on the *lot* as of December 1, 2020, is deemed to comply with the requirements of this By-law and may be used to determined compliance with (i) above;
- (k) The terms "long-term" *bicycle parking spaces* and "short-term" *bicycle parking spaces* have the following meaning:
- (i) "long-term" *bicycle parking spaces* are for use by the occupants or tenants of a building; and
 - (ii) "short-term" *bicycle parking spaces* are for use by the visitors to a building;
- (l) *Parking spaces* shall be provided on the *lot* in accordance with the following:
- (i) A minimum of 0.40 *parking spaces* per one *bedroom dwelling unit*;
 - (ii) A minimum of 0.4 *parking spaces* per two *bedroom dwelling unit*;
 - (iii) A minimum of 0.4 *parking spaces* for a *dwelling unit* containing three or more *bedrooms*;
 - (iv) A minimum of 0.1 *parking spaces* per *dwelling unit* for the use of visitors;
 - (v) No *parking spaces* are required for non-residential uses; and
 - (vi) The *parking spaces* required by (i), (ii) and (iii) above may be reduced by four *parking spaces* for each *car-share parking space* provided, up to a maximum of four *car-share parking spaces*;
- (m) For the purpose of this By-law, if the number of required *parking spaces* calculated in accordance with any of (I)(i), (ii), (iii) or (iv) above results in a number with a fraction, the number is rounded down to the nearest whole number;
- (n) The requirements of Section 4(17) of By-law 438-86, as amended, with respect to the minimum dimensions of *parking spaces* shall apply, with the exception that:

- (i) up to a maximum of 15 percent of the total number of *parking spaces* provided on the *lot* may have the following minimum dimensions, notwithstanding that such *parking spaces* are obstructed on one or two sides in accordance with Section 4(17)(e) of By-law 438-86, as amended:
 - a. Length – 5.6 metres;
 - b. Width – 2.6 metres; and
 - c. Height – 2.0 metres;

provided that the total number of *parking spaces* which are obstructed on two sides and provided with minimum dimensions in accordance with (i) above, is no more than 5 percent of the total number of provided *parking spaces*;

- (o) Notwithstanding any provision of this By-law or By-law 438-86, as amended, to the contrary, *parking spaces*, drive aisles, driveways, passageways and ramps existing on the *lot* in the year 2020 may be maintained, are deemed to comply with the requirements of By-law 438-86, as amended, and may be used for the purpose of determining compliance with (l) and (n) above;
 - (p) one (1) *loading space- Type G* and one (1) *loading space- Type C* shall be provided and maintained on the *lot*; and
 - (q) notwithstanding any provision of this By-law or By-law 438-86, as amended, the *Existing Building* may be occupied by residents during construction of the *Building Addition* without the provision of required *parking spaces*, *loading spaces*, *bicycle parking spaces* and *landscaped open space*.
2. Notwithstanding the definitions provided in Section 2(1) of By-law 438-86, as amended, for the purposes of this By-law the following definitions will apply to the *lot* unless indicated otherwise in this By-law. Where italicized terms referred to in this By-law are not defined in this By-law, the definitions provided in Section 2(1) of By-law 438-86, will apply:
- (a) "*Building Addition*" means the portion of a building or structure above or below finished ground level, other than the *Existing Building*, the above finished ground portion of which is labeled as "Building Addition" on Map 2 to this By-law;
 - (b) "*bicycle parking space*" means an area used for storing bicycles, having the following minimum dimensions:
 - (i) Where the bicycles are to be parked on a horizontal surface, has a minimum length of 1.8 metres, a minimum width of 0.6 metres and a minimum vertical dimension of at least 1.9 metres;
 - (ii) Where the bicycles are to be parked in a vertical position, has a minimum vertical clearance from the wall of 1.2 metres, a minimum width of

0.6 metres and minimum length or vertical dimension of at least 1.9 metres; and

- (iii) Where the bicycles are to be parked in a *bicycle stacker*, has a minimum vertical clearance of 1.2 metres for each *bicycle parking space*;
- (c) "*bicycle stacker*" means a device where by a *bicycle parking space* is positioned above or below another *bicycle parking space* and is accessed by means of an elevating device;
- (d) "*Car-share*" means the practice whereby a number of people share the use of one or more cars that are owned and operated by a profit or non-profit car sharing organization;
- (e) "*Car-share parking space*" means a *parking space* exclusively reserved and signed for a car used only for *car-share* purposes and such *car-share parking spaces* are made available to at least the occupants of the building for short term rental, including hourly rental;
- (f) "*Existing Building*" means the existing *apartment building* labelled as "Existing Building" on Map 2 to this By-law and any existing *accessory* structures on the *lot*, including portions below finished ground level, all as existing on the *lot* as of December 1, 2020, subject to additions, internal modifications or alterations in accordance with the provision of this By-law;
- (g) "*grade*" means 149.67 metres above Canadian Geodetic Datum;
- (h) "*gross floor area*" means the sum of the total area of each floor level of a building or structure, above and below the ground, measured from the exterior of the main wall of each floor level, and reduced by the area in the building used for:
 - (i) parking, loading and bicycle parking below *grade*;
 - (ii) required loading spaces and required *bicycle parking spaces* at or above *grade*;
 - (iii) storage rooms, washrooms, electrical, utility, mechanical and ventilation rooms below *grade*;
 - (iv) shower and change facilities required by this By-law for required *bicycle parking spaces*;
 - (v) indoor *residential amenity space* required by this By-law;
 - (vi) elevator shafts;
 - (vii) garbage shafts;
 - (viii) mechanical penthouse; and

- (ix) exit stairwells in the building;
 - (i) "*height*" means the vertical distance between *grade* and the highest point of a building on the *lot*, except for those elements prescribed by this By-law;
 - (j) "*lot*" means the lands delineated by a heavy black line on Map 1 attached hereto; and
 - (k) "*wellness centre*" means a premises providing services for therapeutic and wellness purposes, but does not include a clinic or *massage establishment*.
3. Despite any existing or future severance, partition or division of the *lot*, the provisions of this By-law and By-law 438-86, as amended, shall apply to the whole of the *lot* as if no severance, partition or division occurred.
4. Within the *lot*, no person shall use any land or erect or use any building or structure unless the following municipal services are provided to the *lot* line and the 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.
5. Section 37 Provisions
- (a) Pursuant to Section 37 of the Planning Act, and subject to compliance with this By-law, the increase in height and density of the development is permitted beyond that otherwise permitted on the lands shown on Map 1 attached hereto and forming part of this By-law in return for the provision by the owner, at the owner's expense of the facilities, services and matters set out in Appendix 1 of this By-law which are 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 lands, to the satisfaction of the City Solicitor;
 - (b) Where Appendix 1 of this By-law requires the owner to provide certain facilities, services or matters prior to the issuance of a building permit, the issuance of such permit shall be dependent on satisfaction of the same; and
 - (c) The owner shall not use, or permit the use of, a **building** or **structure** erected with an increase in height and density pursuant to this By-law unless all provisions of Appendix 1 are satisfied.

Appendix 1

Section 37 Provisions

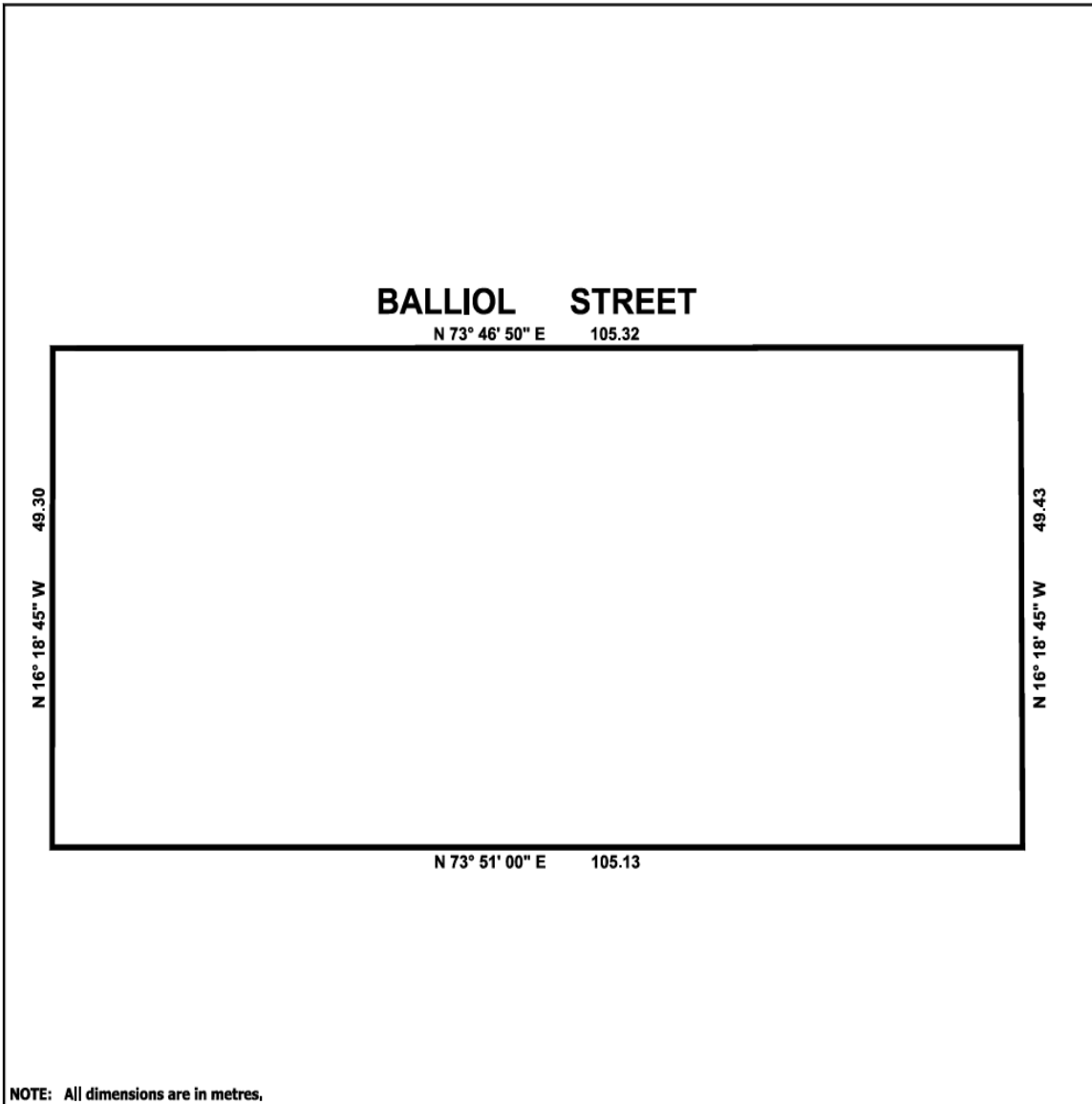
The facilities, services and matters set out below are required to be provided by the owner of the lot at their expense to the City in accordance with one or more agreements pursuant to Section 37(3) of the Planning Act, in a form satisfactory to the City with conditions providing for indexing escalation of both the financial contributions and letters of credit, development charges, indemnity, insurance, GST, HST, termination and unwinding, and registration and priority of agreement:

1. Prior to the first above-grade building permit for the *Building Addition*, the owner of the lands will make a cash contribution in the amount of one million dollars (\$1,000,000) to be allocated to the Davisville Aquatic Centre, provided that in the event the cash contribution has not been used for the intended purpose set out above, within three (3) years of this By-law coming into full force and effect, the cash contribution may be redirected for another purpose, at the discretion of the Chief Planner and Executive Director, City Planning, in consultation with the Ward Councillor, provided that the purpose is identified in the Official Plan and will benefit the community in the vicinity of the lands;
2. A minimum of 40 percent of dwelling units in the *Building Addition* shall have two or more bedrooms, and a minimum of 10 percent of the dwelling units in the *Building Addition* shall have three bedrooms or more;
3. The owner shall provide affordable rental dwelling units, for a period of fifteen years (15), as follows:
 - (a) if the *Building Addition* contains 233 or fewer rental dwelling units:
 - (i) 23 dwelling units in the *Building Addition* if the *Building Addition* contains 233 or fewer rental dwelling units, comprised of 11 one-bedroom dwelling units; 2 one-bedroom-plus-den dwelling units; 8 two-bedroom dwelling units; and 2 three-bedroom dwelling units;
 - (b) if the *Building Addition* contains 234 or more rental dwelling units:
 - (i) 10 percent of rental dwelling units in the *Building Addition*, of which:
 - a. 60 percent or less are one-bedroom units and the minimum average unit size for such units shall be in accordance with average unit size for all one-bedroom and one-bedroom-plus-den units in the *Building Addition* where the calculation of average size for one bedroom and one bedroom plus dens will be done separately;
 - b. 30 percent or more are two-bedroom units and the minimum average unit size for such units shall be in accordance with average unit size for all two-bedroom units and two-bedroom plus dens in the *Building Addition* where the calculation of average size for two

bedroom units and two-bedroom units plus dens will be done separately; and

- c. 10 percent or more are three-bedroom units and the minimum average unit size for such units shall be in accordance with average unit size for all three-bedroom or larger units in the *Building Addition*;
4. The owner will provide a publicly accessible pedestrian walkway (the "Pedestrian Clearway"), to be secured by means of a surface pedestrian public easement having a minimum width of 2.1 metres, unless otherwise satisfactory to the Chief Planner and Executive Director, City Planning, in the location as generally shown on Map 2 of this By-law, with the exact location and timing of registration of the easement and construction of the walkway to be determined as part of and through the Site Plan Approval Process;
5. The owner agrees to cause the provision of a pedestrian walkway in addition to the Pedestrian Clearway, which pedestrian walkway shall connect the Pedestrian Clearway to Pailton Crescent via a route across the lands municipally known in the year 2020 as 221 Balliol Street, having a minimum width of 2.1 metres, unless otherwise determined in the Site Plan Approval process, in accordance with the Section 37 Agreement between the owner and the City, where the exact location and timing for the provision of the pedestrian walkway will be determined as part of and through the Site Plan Approval process;
6. The following matters are also recommended to be secured in the Section 37 Agreement as a legal convenience to support development;
 - (a) The owner shall continue to provide and maintain the 202 rental dwelling units in the *Existing Building*, as rental housing for a minimum period of 20 years commencing from the date that this By-law comes into full force and effect and shall not apply to demolish or convert such rental dwelling units from residential rental use during such 20-year period, all to the satisfaction of the Chief Planner and Executive Director, City Planning;
 - (b) The owner shall provide the following improvements to the *Existing Building* and *Building Addition* for the benefit of the tenants in the *Existing Building* and the *Building Addition*, the cost of which shall not be passed on to tenants of the *Existing Building*:
 - (i) For the tenants of the *Existing Building* and the *Building Addition*:
 - a. A new indoor amenity lounge on the ground floor of the *Existing Building* with a minimum gross floor area of 50 square metres;
 - b. A new laundry room on the ground floor of the *Existing Building* which shall replace the laundry room on the basement level, a portion of which shall be located adjacent to an exterior wall to provide views to the outdoor amenity area on the lot;

- c. A new storage area provided in the area of the basement in the *Existing Building* vacated by the laundry room;
 - d. A new indoor amenity space in the *Building Addition* having a minimum area of 500 square metres;
 - e. An outdoor pet relief area; and
 - f. Two new outdoor patio areas in proximity to the *Existing Building*;
- (ii) For the tenants of the *Existing Building*:
- a. 48 new bicycle parking spaces for the use of tenants of the *Existing Building* in addition to the existing 48 bicycle parking spaces, for a total of 98 bicycle parking spaces for tenants of the *Existing Building*;
- (c) For tenants of the existing seven (7) rental townhouse dwelling units to be demolished, the owner shall develop a Tenant Relocation and Assistance Plan with assistance and financial compensation provisions that extend beyond those provided under the Residential Tenancies Act, 2006 or equivalent provincial legislation, based on the City's usual considerations and requirements as of the date of this Offer, all to the satisfaction of the Chief Planner and Executive Director, City Planning;
- (d) Prior to the issuance of the first below-grade building permit for the *Building Addition*, the owner shall develop a Tenant Communication Plan for the proposed *Building Addition* to the satisfaction of the Chief Planner and Executive Director, City Planning;
- (e) Prior to the issuance of the first below grade building permit, the owner shall develop a construction mitigation plan and tenant communications plan, all to the satisfaction of the Chief Planner and Executive Director, City Planning; and
- (f) Prior to the issuance of the first above grade building permit for the *Building Addition*, the owner shall make a cash-in-lieu of parkland dedication payment to the City in accordance with Section 42 of the Planning Act and the City's parkland dedication By-law, as amended (as reflected in Chapter 415 of the City's Municipal Code), as they exist as of January 21, 2020, calculated based on the market value of the non-residential gross floor area and residential gross floor area for the *Building Addition* and subject to the provisions of this By-law, which contribution shall satisfy all current and future parkland dedication requirements in respect of the *Building Addition* permitted by the provisions of this By-law, in accordance with the Planning Act, or otherwise.



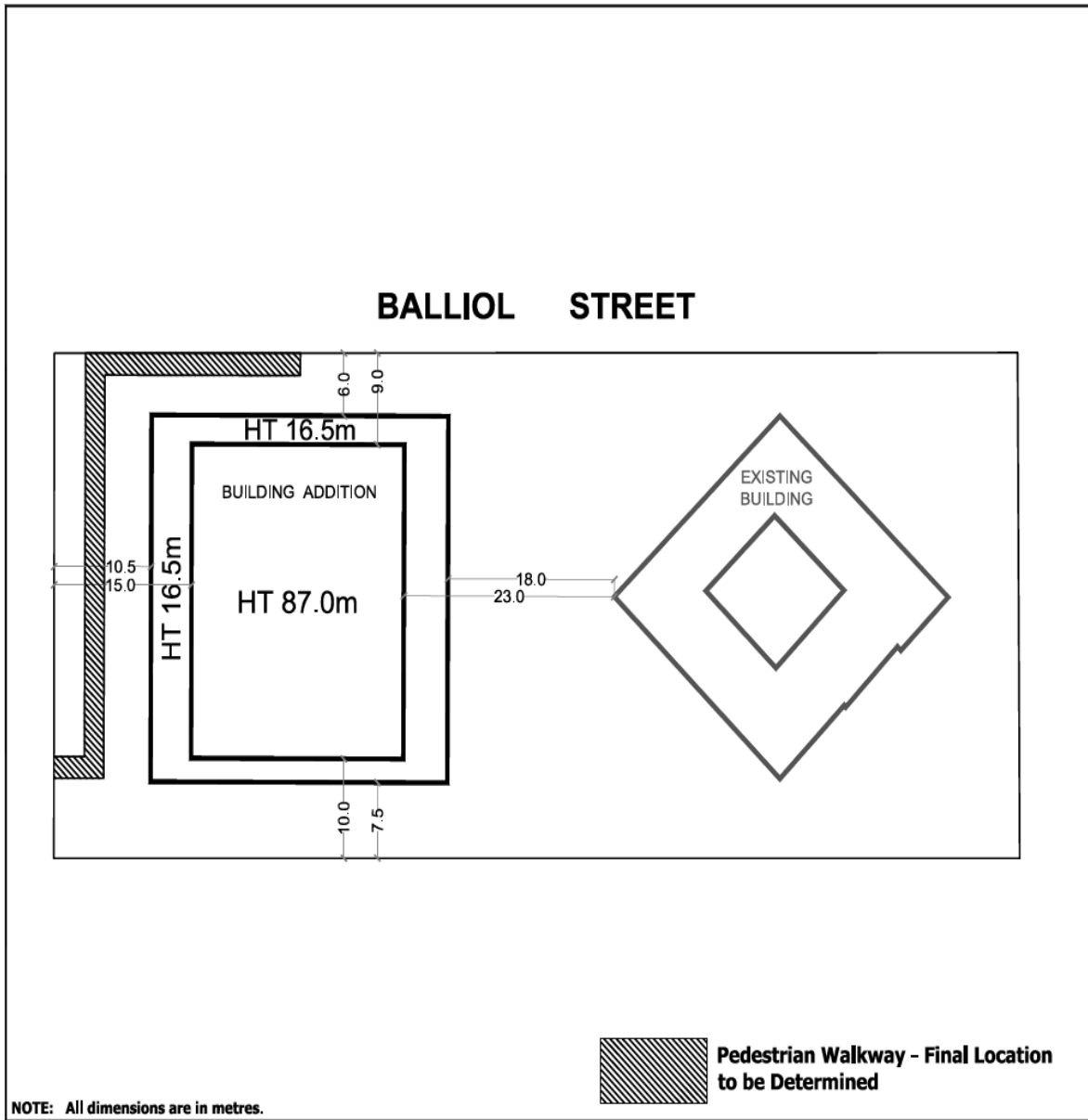
265 Balliol Street, Toronto

Map 1

File 17 223999 STE 22 02



Not to Scale



265 Balliol Street, Toronto

Map 2

File 17 223999 STE 22 02



Not to Scale