

Authority: Ontario Land Tribunal Decision/Order issued on August 16, 2022 (effective August 12, 2022) in File OLT-22-004018 (formerly PL170954)

CITY OF TORONTO

BY-LAW 228-2023(OLT)

To amend former City of Toronto Zoning By-law 438-86, as amended, with respect to the lands municipally known in 2021 as 35, 41-63, 65 and 95 High Park Avenue, and 66 and 102-116 Pacific Avenue.

Whereas the Ontario Land Tribunal pursuant to its Order issued on August 16, 2022 (effective August 12, 2022) in relation to Tribunal Case OLT-22-004018 and Legacy Case PL170954, determined to amend By-law 438-86, as amended, with respect to the lands municipally known in 2021 as 35, 41-63, 65 and 95 High Park Avenue, and 66 and 102-116 Pacific Avenue; and

Whereas pursuant to Section 36 of the Planning Act, as amended, a by-law passed under Section 34 of the Planning Act, may use a holding symbol "(h)" in conjunction with any use designation to specify the use that lands, buildings or structures may be put once council removes the holding symbol "(h)" by amendment to the by-law; and

Whereas the Official Plan for the City of Toronto contains provisions relating to the use of the holding symbol "(h)"; and

Whereas the Ontario Land Tribunal has the authority pursuant to Section 34 of the Planning Act R.S.O. 1990, c. P.13, as amended, to pass this by-law; and

Whereas the Official Plan for the City of Toronto contains provisions relating to the authorization of increases in height and/or 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/or 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 and/or density of development, the Ontario Land Tribunal on appeal, 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;

The Ontario Land Tribunal enacts:

1. Pursuant to Section 37 of the Planning Act, the *heights* and density of development permitted in this By-law on the lands shown on Map 1 of this By-law are permitted subject to compliance with conditions set out in this By-law, and in return for the provision by the *owner* of the *lot* of the following facilities, services and matters set out in Appendix 1 hereof, the provision of which shall be secured by one or more agreements with the City pursuant to Section 37(3) of the Planning Act.
2. Upon execution and registration of an agreement or agreements with the *owner* of the *lot* pursuant to Section 37 of the Planning Act securing the provision of the facilities, services and matters set out in Appendix 1 hereof, the *lot* is subject to the provision of this By-law, provided that 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, the *owner* may not erect or use such building until the *owner* has satisfied the said requirements.
3. Except as otherwise provided, the provisions of this By-law shall apply to the *lot* outlined by heavy lines on Map 1 attached.
4. District Map 47J-313 contained in Appendix "A" of By-law 438-86, being "A By-law to regulate the use of land and the erection, use, bulk, *height*, spaces 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" as amended, is further amended by adding an "(h)" to zone label for the *lot* delineated by heavy black on Map 1 attached to and forming part of this By-law.
5. None of the provisions of By-law 188-71, 20623 and 22754 or 438-86 shall apply to prevent the erection or use of an *apartment building*, *retail* and service uses listed in Section 8(1)(f)(b)(iv) of By-law 438-86, and car-share parking spaces on the *lot* and uses accessory to the foregoing uses on the *lot* municipally known as 35, 41-63, 65 and 95 High Park Avenue, and 66 and 102-116 Pacific Avenue in the year 2021, provided that:
 - (a) The *lot* comprises the lands delineated by heavy lines on Map 1 attached to and forming part of this By-law;
 - (b) Notwithstanding any provision of this By-law or By-law 438-86, as amended, to the contrary, any buildings, structures and uses, including the *Existing Buildings* existing at the time of the passing of this By-law are permitted;
 - (c) No portion of any building or structure erected or used above *grade* shall exceed the *height* limits above *grade* in metres specified by the numbers following the symbol "H" as shown on Map 2 attached hereto;
 - (d) Notwithstanding 2(c) above, the following equipment and structures on the roof of a building may exceed the permitted maximum *height* for that building:
 - (i) equipment used for the functional operation of the building including electrical, utility, mechanical and ventilation equipment, enclosed

- stairwells, roof access, maintenance equipment storage, and elevator shafts, , by a maximum of 6.5 metres;
- (ii) structures that enclose, screen or cover the equipment, structures and parts of a building listed in 5(d)(i) above, inclusive of a mechanical penthouse, by a maximum of 6.5 metres;
 - (iii) architectural features, parapets, and elements and structures associated with a green roof, by a maximum of 2.0 metres;
 - (iv) building maintenance units and window washing equipment, by a maximum of 6.5 metres;
 - (v) planters, landscaping features, guard rails, and divider screens on a balcony and/or terrace, by a maximum of 3.0 metres;
 - (vi) trellises, pergolas, and unenclosed structures providing safety or wind protection to rooftop amenity space, by a maximum of 4.0 metres;
 - (vii) terraces, which may project over the full area of the roof of the floor below; and
 - (viii) chimneys, flues, venting and ancillary mechanical or electrical elements, architectural features, parapets, elements and structures associated with a green roof, building maintenance units and window washing equipment, by a maximum of 3.0 metres above the elements listed in 5(d)(i) and 5(d)(ii) above.
- (e) Notwithstanding 5(c) and 5(d) above, no portion of *Building A*, *Building B* or *Building C* may penetrate a 45 degree angular plane projected over the *lot* measured from the *lot* lines identified as "Angular Plane Location" on Map 3 and:
- (i) the angular plane for *Building A* must be measured at the Canadian Geodetic Datum elevation of 113.5 metres;
 - (ii) the angular plane for *Building B* must be measured at the Canadian Geodetic Datum elevation of 114.1 metres;
 - (iii) the angular plane for *Building C* must be measured at the Canadian Geodetic Datum elevation of 114.0 metres; and
 - (iv) projections and encroachments otherwise permitted by this exception must not penetrate the 45 degree angular plane.
6. For the purposes of this By-law, every other word or expression which is italicized herein shall have the same meaning as each word or expression as defined in the aforesaid By-law 438-86, as amended, with the exception of the following:

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- (a) *Building A, Building B and Building C* mean the buildings or portions of a building on the *lot* shown as *Building A, Building B and Building C*, respectively, on Map 2;
 - (b) *Existing Buildings* means the existing apartment buildings municipally known as 35 and 95 High Park Avenue, and 66 Pacific Avenue in the year 2021, shown on Map 2, and accessory structures, including an underground *parking garage* and garage entry ramp as located on the *lot* at the time of the passing of this By-law;
 - (c) *Grade* means:
 - (i) 113.5 metres Canadian Geodetic Datum for *Building A*;
 - (ii) 114.1 metres Canadian Geodetic Datum for *Building B*; and
 - (iii) 114.0 metres Canadian Geodetic Datum for *Building C*;
 - (d) *Height* means the vertical distance between *grade* and the highest point of the building or structure, subject to permitted projections;
 - (e) *Lot* means the lands outlined by heavy lines on Schedule A.
7. Despite any existing or future severance, partition, or division of the *lot*, the provisions of this By-law shall apply to the whole *lot* as if no severance, partition or division occurred.
8. Within the lands shown on Map 1 attached to this By-law, 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.
9. Holding Provisions
- (a) The lands zoned with the "(h)" symbol delineated by heavy lines in Map 2 attached to this by-law must not be used for any purpose other than those uses and buildings existing on the land as of the date of the passing of this By-law until the "(h)" symbol has been removed. The (h) symbol shall be removed upon the satisfaction of the following conditions:
 - (i) Submit to the Chief Engineer and Executive Director of Engineering and Construction Services for review and acceptance, a Functional Servicing Report to determine the storm water runoff, sanitary flow and water supply demand resulting from this development and whether there is

adequate capacity in the existing municipal infrastructure to accommodate the proposed development.

- (ii) Make satisfactory arrangements with Engineering and Construction Services and enter into the appropriate agreement with the City for the design and construction of any improvements to the municipal infrastructure, should it be determined that upgrades are required to the infrastructure to support this development, according to the accepted Functional Servicing Report accepted by the Chief Engineer and Executive Director of Engineering and Construction Services.

10. Section 37 Provisions

- (a) Pursuant to Section 37 of the Planning Act, the *heights* and density of development permitted by this By-law on the lands shown on Map 1 of this By-law are permitted subject to compliance with conditions set out in this By-law, and in return for the provision by the owner of the lands shown on Map 1 of this By-law, the facilities, services and matters set out in Appendix 1 hereof, the provision of which shall be secured by one or more agreements with the City pursuant to Section 37(3) of the Planning Act.
- (b) Where Appendix 1 of this By-law requires the owner to provide certain facilities, services or matters prior to the issuance of an above grade building permit, the issuance of such permit shall be dependent on satisfaction of same.
- (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 and an agreement pursuant to Section 37(3) of the Planning Act is registered on title to the lands to the satisfaction of the City Solicitor.

Pursuant to Ontario Land Tribunal Decision/Order issued on August 16, 2022 (effective August 12, 2022) in File OLT-22-004018 (formerly PL170954).

Appendix 1
Section 37 Provisions

Prior to the issuance of any Building Permit, the owner shall enter into an agreement or agreements to the satisfaction of the City Solicitor pursuant to Section 37 of the Planning Act as it read on the day before Section 1 of Schedule 17 to the COVID-19 Economic Recovery Act, 2020 came into force to secure the facilities, services or matters set out below.

1. Prior to issuance of the first above-grade building permit, the owner shall make cash contributions to the City (the "Cash Contributions") to be allocated as follows:
 - a. \$800,000 for capital facilities for non-profit daycare purposes in the vicinity of the lot, to be allocated at the discretion of the Chief Planner and Executive Director, City Planning, in consultation with the Ward Councillor;
 - b. \$400,000 for parks in the vicinity of the lot, including High Park, to be allocated at the City's discretion and in accordance with standard City protocols; and
 - c. \$400,000 for streetscape improvements within the High Park Apartment Neighbourhood Area.
2. The Cash Contributions set out in Clause 1 shall be indexed upwardly in accordance with the Statistics Canada Non-Residential Construction Price Index for the Toronto Census Metropolitan Area, reported quarterly by Statistics Canada in Building Construction Price Indexes Table: 18-10-0135-01, or its successor, calculated from the date of final approval by the Ontario Land Tribunal of this By-law to the date of payment of each Cash Contribution by the owner to the City.
3. In the event that any of the Cash Contributions in Clause 1 have not been used for the intended purpose within three (3) years of the By-law coming into full force and effect, each Cash Contributions may be redirected for another purpose(s), 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.
4. The owner shall undertake enhanced above-base streetscape improvements within the City right-of-way adjacent to the lot, with a value of no less than \$100,000 and no greater than \$200,000, to the satisfaction of the Chief Planner and Executive Director, City Planning.
5. The owner shall provide and maintain Public Art with a value of \$600,000 on the lot, to the satisfaction of the Chief Planner and Executive Director, City Planning.
6. The owner shall construct (or cause the construction of), provide, and maintain on the Lands, at least thirty-seven (37) New Affordable Rental Units, at 100 percent AMR for a minimum of twenty (20) year affordability period, on such terms and conditions as specified in the Section 37 Agreement. The units shall be distributed throughout the lot,

with 18 units located in newly constructed buildings and 19 units located in existing buildings.

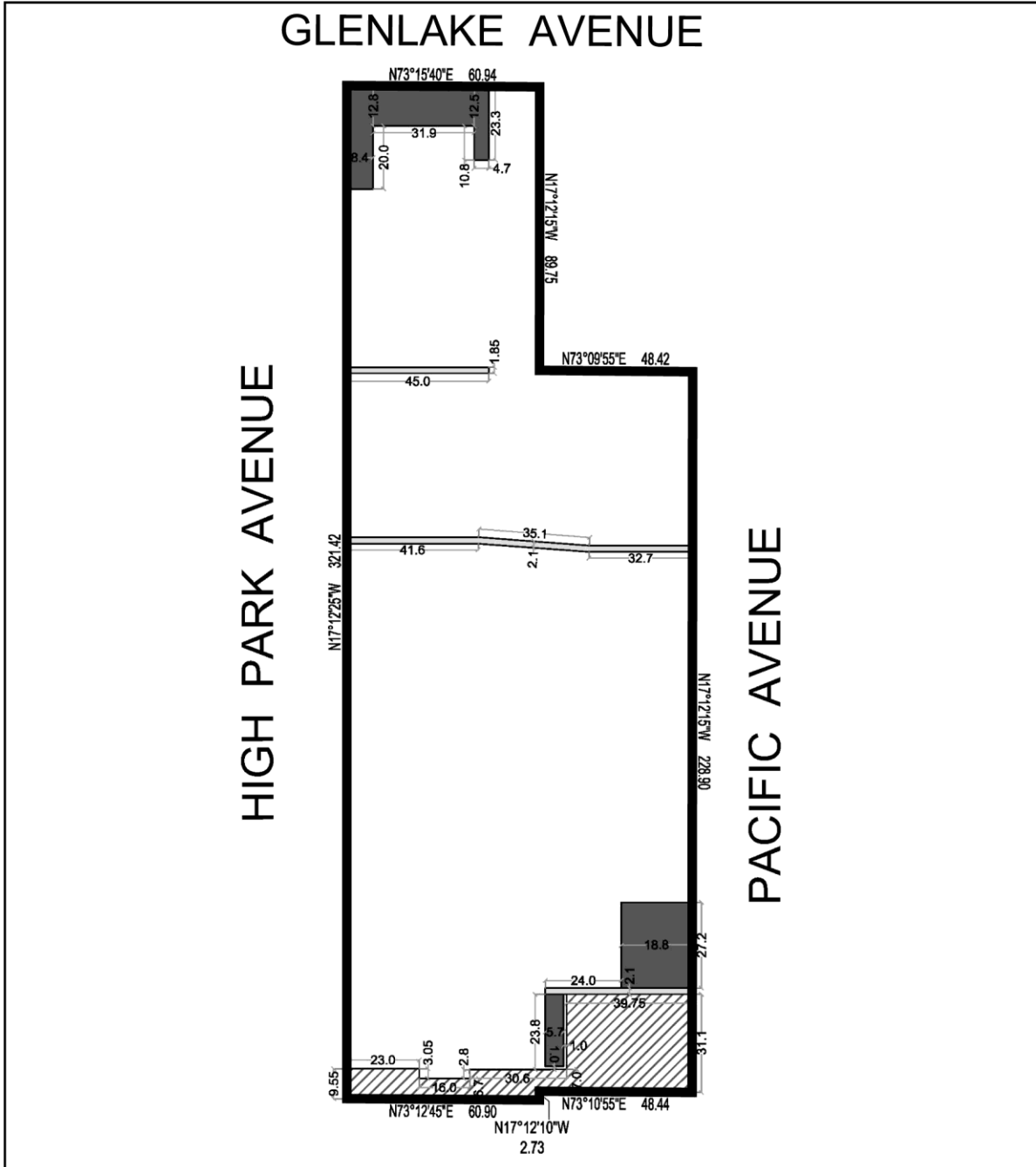
7. The following are also recommended to be secured in the Section 37 Agreement as a legal convenience to support development:
 - a. The rental tenure of the 968 existing units at 35, 65 and 95 High Park Avenue and 66 Pacific Avenue, retained on the site, will be secured as rental dwelling units for 20 years without an application for demolition or conversion to condominium;
 - b. A Tenant Relocation and Assistance Plan shall be provided to all Eligible Tenants, to the satisfaction of the Chief Planner and Executive Director, City Planning;
 - c. Needed improvements to the existing rental apartment site, without pass-through costs to existing tenants, and access to new indoor and outdoor amenities for all on-site residents;
 - d. A construction mitigation strategy and a communication plan to reduce impacts on remaining tenants;
 - e. The requirements of the Toronto District School Board and Toronto Catholic District School Board regarding warning clauses and signage with respect to school accommodation issues;
 - f. The requirements of the Toronto Transit Commission, including moving the existing TTC stop on High Park Avenue at Glenlake Avenue, accommodating the TTC bus's accessibility ramps; provision of revised plans with setback requirements; warning clauses and other requirements as noted in the TTC comments along with identified payments, if necessary;
 - g. A 2.1 metre sidewalk along each frontage abutting the site, subject to preservation of existing mature trees where feasible, to be secured through the Site Plan Control process;
 - h. Mid-block pedestrian connection(s) as generally shown in Public Appendix "B" to the satisfaction of the Chief Planner and Executive Director, City Planning. Prior to the issuance of Site Plan Approval, the Owner shall convey to the City, for nominal consideration, any required easements along the surface of the lands, to the satisfaction of the City Solicitor, which shall constitute the mid-block connections. The Owner shall own, operate, maintain and repair the pedestrian connections and install and maintain signage, at its own expense, stating that members of the public shall be entitled to use the pedestrian connections at all times of the day and night, 365 days of the year; and the specific location, configuration and design of the pedestrian connections shall be determined in the context of a site plan approval pursuant to Section 114 of the City of Toronto Act, 2006, and secured in a Site Plan Agreement with the City;

- i. The construction and maintenance of the development in accordance with the Tier 1 performance measures of the Toronto Green Standard, as adopted by City Council at its meeting held on October 26 and 27, 2009 through the adoption of Item PG32.3 of the Planning and Growth Management Committee, and as updated by Toronto City Council at its meeting held on December 5, 6 and 7, 2017 through the adoption of Item PG23.9 of the Planning and Growth Management Committee, and as may be further amended by Council from time to time;
- j. Above base improvements for the parkland dedication and a development charge credit against the Parks and Recreation component of the development charges for the design and construction by the Owner of above base park improvements to the satisfaction of the General Manager, Parks, Forestry and Recreation. The development charge credit shall be in an amount that is the lesser of the cost to the Owner of designing and constructing the above base park improvements, as approved by the General Manager, Parks, Forestry and Recreation, and the Parks and Recreation component of development charges payable for the development in accordance with the City's Development Charges By-law, as may be amended from time to time;
- k. The owner shall provide privately owned publicly accessible open spaces (POPS), to the satisfaction of the Chief Planner and Executive Director, City Planning:
 - (i) in front of 95 High Park Avenue and the area in front of 66 Pacific Avenue both as identified on the landscape plan; and
 - (ii) for the Dog Off Leash Areas next to the new park, adjoining the site to the south; and adjacent to the proposed POPS in front of 95 High Park Avenue fronting Glenlake Ave, including,

prior to the issuance of Site Plan Approval, the Owner shall convey to the City, for nominal consideration, easements along the surface of the lands, to the satisfaction of the City Solicitor, which shall constitute the POPS. The Owner shall own, operate, maintain and repair the POPS and install and maintain signage, at its own expense, stating that members of the public shall be entitled to use the POPS at all times of the day and night, 365 days of the year; and the specific location, configuration and design of the POPS shall be determined in the context of a site plan approval pursuant to Section 114 of the City of Toronto Act, 2006, and secured in a Site Plan Agreement with the City.
- l. On-site dog relief areas with proper disposal facilities for existing and new residents and/or a dog relief station within each building; and
- m. Any measures and recommendations identified in any updated/revised Pedestrian Level Wind Study, Toronto Green Standards Checklist, Housing Issues Report, Natural Heritage Impact Study, Landscape Plans, Soil Volume Plans, Arborist Report and Tree Protection Plan, to be implemented through the Site Plan Control

process to the satisfaction of the Chief Planner and Executive Director, City Planning.




Map 1



 **TORONTO**
 Map 1

35, 41-63, 65 & 95 High Park Ave
 and 66 & 102-116 Pacific Ave

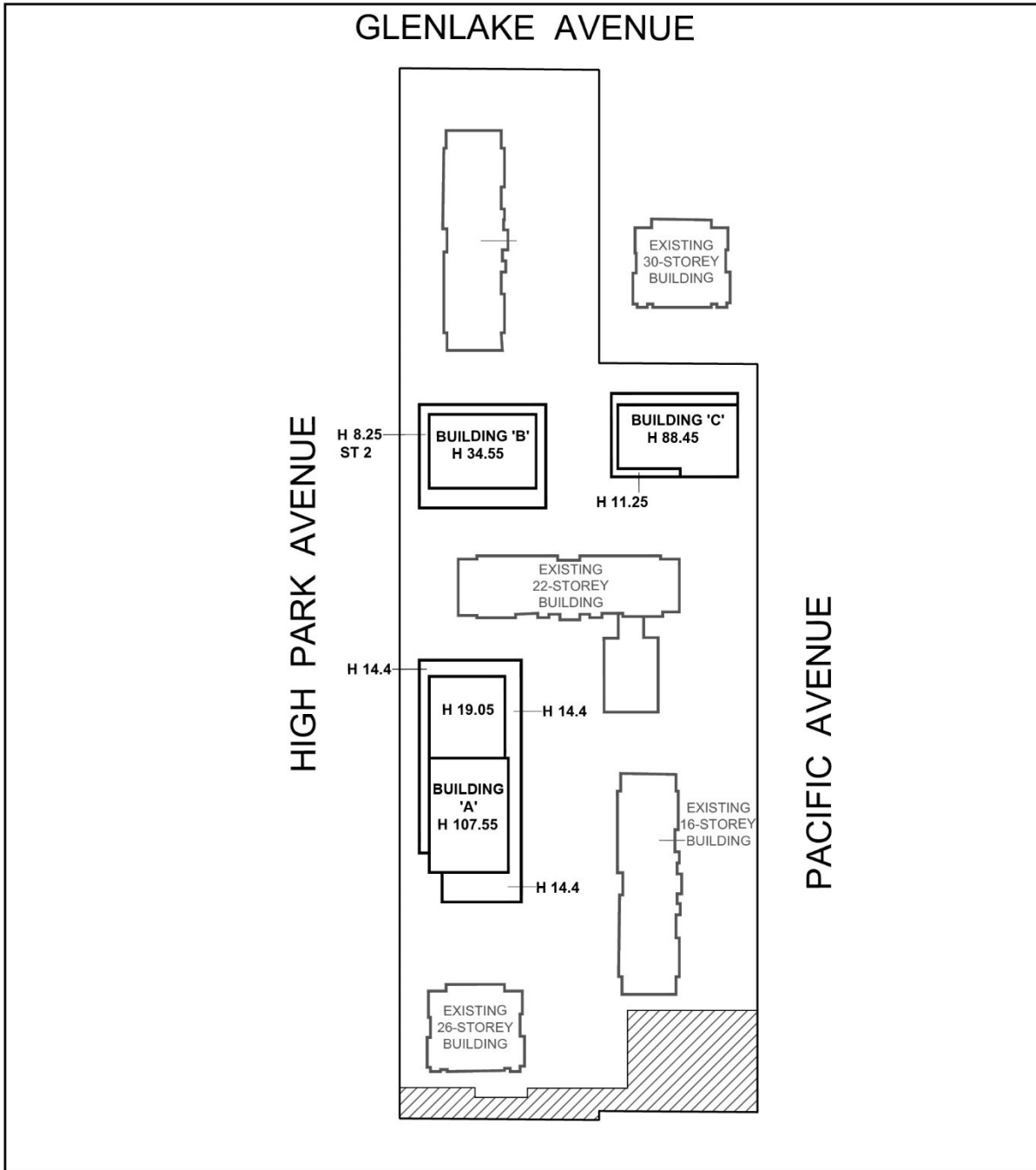
File # 16 271 597 WET 09 02

-  Future pedestrian easements
-  Privately Owned Publicly Accessible Space
-  Parkland dedication to the City

NOTE: All dimensions are in metres.


 Former City of Toronto By-law 438-86
 Not to Scale
 08/11/2022


Map 2




Map 2

35, 41-63, 65 & 95 High Park Avenue
and 66 & 102-116 Pacific Avenue

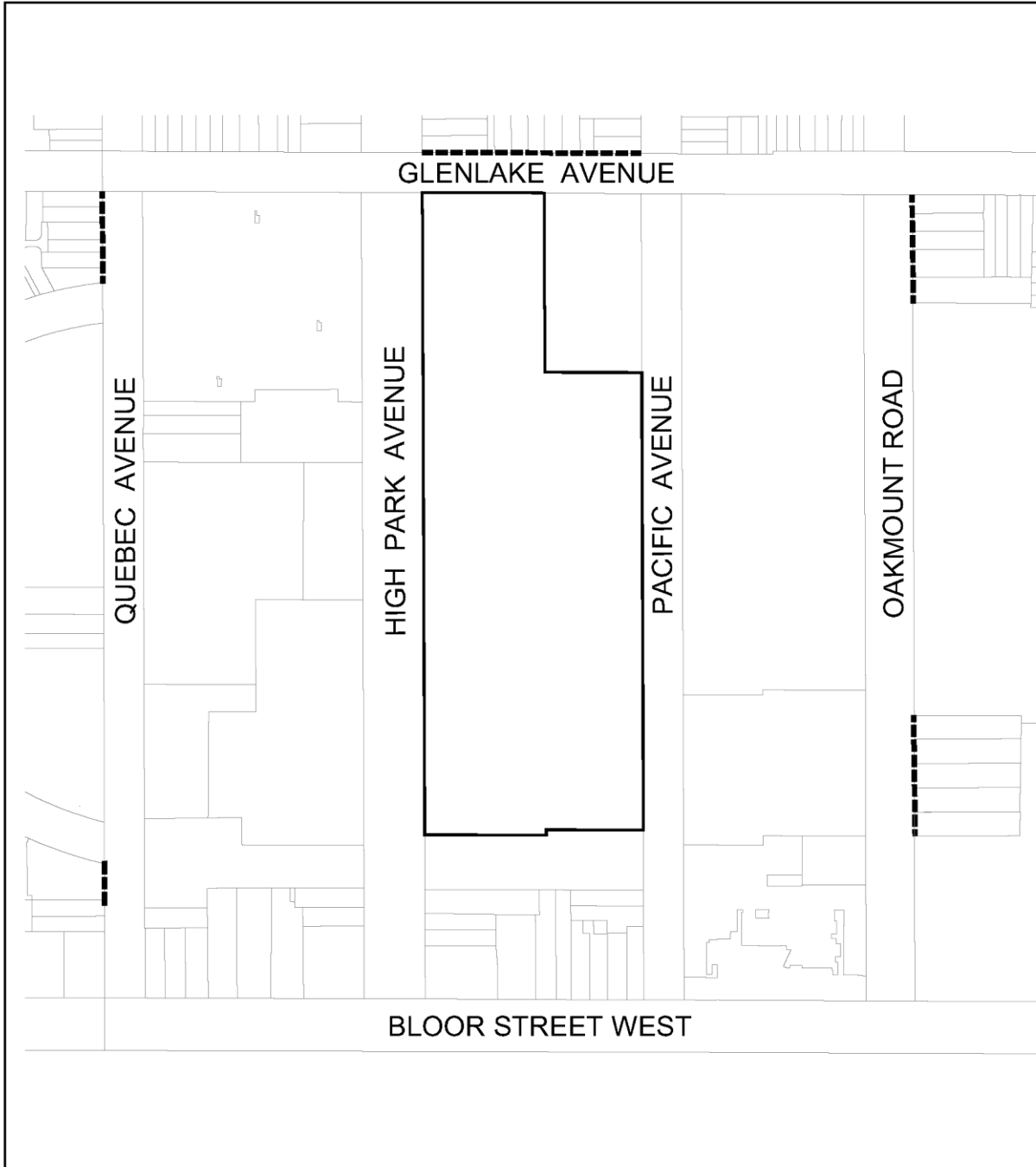
File # 16 271 597 WET 09 02

 Parkland dedication to the City

NOTE: All dimensions are in metres.


Former City of Toronto By-law 438-86
Not to Scale
06/29/2022

Map 3



 **TORONTO**
Map 3

**35, 41-63, 65 & 95 High Park Avenue
and 66 & 102-116 Pacific Avenue**

File # 16 271 597 WET 09 02



Location of Angular Plane Projection
-Refer to Section 4(H)



City of Toronto By-law 438-86
Not to Scale
08/02/2022