

Authority: Ontario Land Tribunal Decision/Order issued on July 21, 2022 and August 12, 2022 (effective date August 5, 2022) in File OLT-22-003921 (formerly PL160692)

CITY OF TORONTO

BY-LAW 684-2023(OLT)

To amend Zoning By-law 569-2013, as amended, with respect to the lands municipally known in the year 2021 as 2 and 10 Audley Street and 29, 31, 59 and 71 Portland Street.

Whereas the Ontario Land Tribunal in its Decision/Order issued on July 21, 2022 and August 12, 2022 (effective date August 5, 2022) in File OLT-22-003921 (formerly PL160692) in hearing an appeal under Section 34(11) of the Planning Act, R.S.O. 1990, c. P.13, as amended, ordered the amendment of By-law 569-2013, as amended, with respect to the lands municipally known in the year 2021 as 2 and 10 Audley Street and 29, 31, 59 and 71 Portland 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 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 matter 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, a 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 569-2013, 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 569-2013, as amended, of the City of Toronto is further amended by the Ontario Land Tribunal as follows:

1. This By-law applies to the lands delineated by heavy black lines on Diagram 1 attached to this By-law.
2. The words highlighted in bold type in this By-law have the meaning provided in Zoning By-law 569-2013, Chapter 800 Definitions, with the exception of the following:

- i. **Day Nursery** means **premises** providing temporary care or guidance for more than five children, for a continuous period not exceeding twenty-four hours and is regulated, if applicable, under the Child Care and Early Years Act, 2014, S.O. 2014, c. 11, Sched. 1. A recreational program operated by or for the City is not a **day nursery** [By-law: 1429-2017].
3. Zoning By-law 569-2013, as amended, is further amended by amending the Zoning By-law Map in Section 990.10, respecting the lands outlined in heavy lines to: CRE (x59), O and UT shown on Diagram 3 attached to this By-law.
4. Zoning By-law 569-2013, as amended, is further amended by adding Exception 59 to Article 900.12.10 so that it reads:

(x59) Exception CRE 59:

The lands, or a portion thereof as noted below, are subject to the following Site Specific Provisions, Prevailing By-laws and Prevailing Sections:

Site Specific Provisions:

- (A) On 2 and 10 Audley Street and 29, 31, 59 and 71 Portland Street, as shown on Diagram 1 of By-law 684-2023(OLT), if the requirements of Section 6 and Section A of By-law 684-2023(OLT) are complied with, **buildings** or **structures** may be constructed in compliance with Regulations (B) to (S) below;
- (B) Despite Regulation 50.5.40.10(1), the height of the **building** or **structure** is measured as the vertical distance between the Canadian Geodetic Datum elevation of 95.40 metres and the highest point of the **building** or **structure**;
- (C) Despite Regulation 50.10.20, **Public Parking** is a permitted use, if located entirely below ground;
- (D) Despite Regulation 50.10.40.10(1), the permitted maximum height of a **building** or **structure** is the number, in metres, following the letters "HT" as shown on Diagram 3 of By-law 684-2023(OLT);
- i. For the purposes of this exception, the permitted maximum **height** of a **building** or **structure** is inclusive of the mechanical penthouse;
- (E) Despite Regulation 50.10.40.10(4), the permitted maximum number of **storeys** of a **building** or **structure** is the number following the letters "ST" as shown on Diagram 3 of By-law 684-2023(OLT);
- i. For the purposes of this exception, a mezzanine and mechanical penthouse do not constitute a **storey**;

- (F) Despite Regulations 50.5.40.10(3), (4), (5) and (6) and (D) above, the following elements of a **building** or **structure** may project above the permitted maximum **building** heights as shown on Diagram 3 of By-law 684-2023(OLT):
- i. fences, raised planters, landscape features, light fixtures, seating, bollards, trellises and guardrails associated with an outdoor amenity space by a maximum height of 3.0 metres;
 - ii. a railing or railings, balcony dividers, fences, or privacy gates and skylights located at each of the roof levels of the **building** by a maximum of 1.8 metres;
 - iii. a parapet, including roof drainage, thermal insulation and roof ballast, at each of the roof levels of the **building** by a maximum of 1.5 metres;
 - iv. elements associated with a **green roof** by a maximum of 0.5 metres;
 - v. elements or **structures** used for outside or open air recreation, safety, acoustic or wind protection purposes by a maximum of 3.0 metres;
 - vi. stairs, stair enclosures, stair towers, access corridors to stairs and elevator overruns by a maximum of 4.0 metres;
 - vii. spires, ornamental, decorative, art or architectural elements, and features, located above the height of each of the roof levels by a maximum of 7.0 metres; and
 - viii. window washing equipment, lightning rods and exhaust flues located above the mechanical penthouse roof level by a maximum of 3.0 metres;
- (G) The permitted maximum **gross floor area** of all **buildings** and **structures** on the lot is 71,700 square metres, of which:
- i. the permitted maximum **gross floor area** for residential uses is 68,550 square metres; and
 - ii. the required minimum **gross floor area** for non-residential uses is 3,067 square metres, of which 800 square metres is the minimum required **gross floor area** for a **day nursery** and 1,503 square metres is the minimum **gross floor area** for office;
- (H) In addition to the elements which reduce **gross floor area** listed in Regulation 50.5.40.40(3), the following element also reduces the **gross floor area** of a **building**:
- i. elevator overruns;

- (I) Despite Regulations 50.10.40.70(1) and (3) the required minimum **building setbacks** are as shown on Diagram 3 of By-law 684-2023(OLT);
- (J) Despite Sections 50.5.40.60 and 50.10.40.60, and (I) above, the following **building** elements may encroach into the required minimum **building setbacks** as shown on Diagram 3 of By-law 684-2023(OLT);
- i. eaves, bulkheads, cornices, window sills, doors, columns, landscape and public art features, light fixtures, balustrades, guardrails, bollards, awnings, arcades, raised planters, patios, retaining walls, fences, vents, trellises, parapets, architectural frames, screens, wind mitigation screens and features, landscape features and seating areas, patios, terraces, damper equipment, and window washing equipment by a maximum of 1.2 metres;
 - ii. wheelchair and covered ramps, stairs and stair enclosures, vestibules, awnings, canopies, underground parking ramp and associated structures by a maximum of 3.0 metres;
 - iii. balconies and bay windows to a maximum of 2.0 metres;
 - iv. structures used for outside or open air recreation, safety or wind protection, to a maximum of 2.6 metres; and
 - v. ornamental, decorative or architectural elements by a maximum of 3.1 metres;
- (K) The permitted maximum **gross floor area** of the tower floor plate as measured from the exterior of the **main wall** on each **storey**, for the 9th **storey** to the 24th **storey** inclusive, is 838 square metres for Tower A, excluding balconies, and for the 9th **storey** to 20th **storey** inclusive, is 812 square metres for Tower B, excluding balconies, as shown on Diagram 3 of By-law 684-2023(OLT);
- (L) Despite Regulation 50.10.40.50, **amenity space** must be provided at a minimum rate of 1.5 square metres of indoor **amenity space** per **dwelling unit** provided that the minimum combined indoor and outdoor **amenity space** per **dwelling unit** is 4.0 metres;
- (M) Despite Regulation 200.5.10.1(1) and Table 200.5.10, the required number of **parking spaces** provided and maintained on the **lot** are not to be less than the number calculated in accordance with the following minimum ratios (fractions to be rounded down to the closest whole number), and must be located in the underground parking structure:
- i. a minimum of 0.34 **parking spaces** per **dwelling unit** is required to be provided for use by residents;
 - ii. a minimum of 0.09 **parking spaces** per **dwelling unit** is required to be provided for use by residential visitors;

- iii. a minimum of 1.0 **parking spaces** per 100 square metres of non-residential **gross floor area** is required to be provided; and
 - iv. any **parking spaces** required in (M) ii. and iii. above may be provided and shared within a **public parking** use, with or without a fee;
- (N) Despite Regulation 200.5.10(1) and Table 200.5.10.1, the total number of resident **parking spaces** provided pursuant to the above-noted ratio in (M) i., **parking spaces** for residents on the **lot** may be reduced at a rate of 4 parking spaces for each car-share **parking space**, provided the maximum permitted reduction is calculated using the following formula: $4 \times (\text{total number of dwelling units} \div 60)$, rounded down to the nearest whole number;
- i. "car-share" means the practice whereby a number of people share the use of one or more motor vehicles that are owned by a profit or non-profit car-sharing organization and such car-share motor vehicles are made available to at least the occupants of the building or short term rental, including hourly rental;
 - ii. "car-share **parking space**" means a **parking space** exclusively reserved and used only for car-share purposes whereby the vehicle is accessible to at least the occupants of the buildings;
- (O) Despite Regulation 200.5.10.1(12) and (M) i. above, the total minimum number of **parking spaces** required for residents on the **lot** may be reduced at a rate of 1 **parking space** for every 5 bicycle parking spaces provided in excess of the minimum number of bicycle parking spaces required, if the reduction of **parking spaces** is not greater than 20 percent of the total minimum **parking spaces** required;
- (P) Despite Article 220.5.10, one Type "G" **loading space** and one Type "C" **loading space** are required to be provided and maintained on the **lot**;
- (Q) Despite Regulation 230.5.1.10(4), the minimum horizontal dimension for **bicycle parking spaces** in a vertical position or in a bicycle stacker is 0.45 metres;
- (R) Despite Regulation 230.5.1.10(9), "long term" **bicycle parking spaces** may be located outdoors or indoors, on the ground level, below grade or above grade;
- (S) Despite Regulation 230.5.10.1, the number of **bicycle parking spaces** provided and maintained on the **lot** must in accordance with the following minimum rates:
- i. 0.68 "long-term" **bicycle parking spaces** per **dwelling unit** are required to be provided on the **lot**;
 - ii. 0.07 "short-term" **bicycle parking spaces** per **dwelling unit** are required to be provided on the **lot**;

- iii. 3 "short term" **bicycle parking spaces** plus 0.15 **bicycle parking spaces** for each 100 square metres of **interior floor area** used for commercial and office uses are required to be provided on the **lot**;
- iv. 0.13 "long term" **bicycle parking spaces** per 100 square metres of **interior floor area** used for commercial and office uses are required to be provided on the **lot**;
- v. 3 "short term" **bicycle parking spaces** plus 0.25 **bicycle parking spaces** for each 100 square metres of **interior floor area** used for retail uses are required to be provided on the lot; and
- vi. 0.13 "long term" **bicycle parking spaces** per 100 square metres of **interior floor area** used for retail uses are required to be provided on the **lot**.

Prevailing By-laws and Prevailing Sections: None Apply

- 5. Despite any future severance, partition, or division on the lands, the provisions of this By-law apply as if no severance, partition or division occurred;
- 6. 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 Diagram 1, attached to 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 Schedule A attached to 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 Schedule A 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 Schedule A are satisfied.

Ontario Land Tribunal Decision/Order issued on July 21, 2022 and August 12, 2022 (effective date August 5, 2022) in File OLT-22-003921 (formerly PL160692).

SCHEDULE A**Section 37 Provisions**

The facilities, services and matters set out below are required to be provided to the City at the owner's expense in return for the increase in height and density of the proposed development on the lands shown as CRE (x59) on Diagram 2 of this By-law, and secured in an agreement or agreements pursuant to Section 37(1) of the Planning Act, whereby the owner agrees as follows:

1. The owner is required to enter into an agreement with the City pursuant to Section 37 of the Planning Act, to secure the provision of the said facilities, services and matters, in a form satisfactory to the City with conditions providing for indexed escalation of financial contributions, no credit for development charges unless otherwise specified, indemnity, insurance, GST/HST, termination and unwinding, and registration and priority of agreement.
2. The community benefits that shall be secured in the Section 37 Agreement are as follows:
 - a. Registration of a restriction(s) pursuant to section 118 of the Land Titles Act on Parts 7, 8, 11, 12 and 13 of the RPlan 66R-30185 to the satisfaction of the City Solicitor, prohibiting the sale or charge of these Lands without consent of the City, with such consent not be unreasonably withheld and which, for greater certainty, shall not be withheld to facilitate financing of the lands and developments thereon;
 - b. Conveyance to the City of parkland comprising Part 7 of the RPlan 66R-30185 for nominal consideration at the earlier of: (i) first residential occupancy; and (ii) registration of a plan of condominium on the lot;
 - c. the provision of an offsite parkland dedication comprised of Parts 15 and 19 of RPlan 66R-30597 in order to further the City's goal of achieving a large centrally located public park on Block D of the Mimico Judson Secondary Plan, which conveyance shall occur prior to the earlier of first residential occupancy or registration of a plan of condominium on the Block D3 lands, as identified in the Site and Area Specific Policies adopted under OPA 331;
 - d. Conveyance to the City of an extension to Newcastle Street comprising Parts 8, 11, 12, and 13 of the RPlan 66R-30185 for nominal consideration at the earlier of: (i) first residential occupancy; and (ii) registration of a plan of condominium on the lot;
 - e. the provision of an at-grade easement to the City to create a privately owned publicly accessible open space ("**POPS**") over a minimum of 208m² immediately north of the public park on the **lot**, to the satisfaction of the Chief Planner; and
 - f. the provision of a minimum of 25 percent two or more bedroom units, which shall include a minimum of 10 percent three bedroom units, and which may be

provided on the lot and/or the lands municipally known as 1 Audley Street and 8 Newcastle Street.

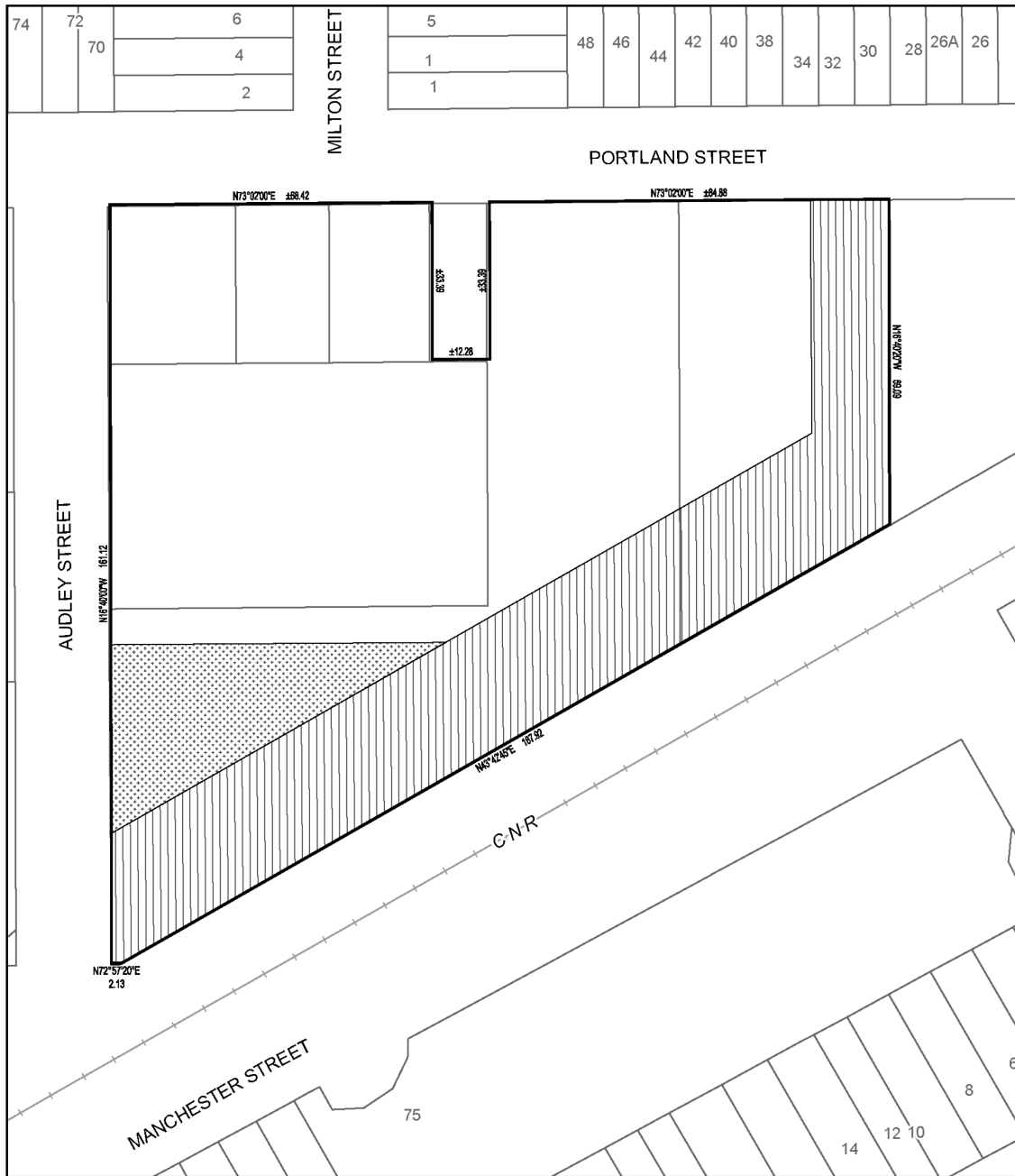
3. The agreement or agreements entered into under Section 37(3) of the Planning Act shall recognize that:
 - a. the conveyance of parkland comprised of Part 7 of RPlan 66R-30185 together with Parts 15 and 19 of RPlan 66R-30597 will, once conveyed, fully satisfy the parkland dedication requirements under Section 42 of the Planning Act and the City's by-law for determining parkland dedication (contained in Chapter 415 of the Municipal Code) as may be amended, revised or superseded from time to time, for the development of the lot; and
 - b. a building permit for a building(s) or structure(s) on the lands shall not be withheld for purposes of parkland dedication provided that the owner has registered restrictions pursuant to section 118 of the Land Titles Act over the lands identified as "Parkland" in Section 3.a above, and that the owner has secured the conveyance of said lands in the Section 37 Agreement prior to the earlier of first residential occupancy and registration of a plan of condominium for the respective developments.
4. The other matters secured in the Section 37 Agreement as a legal convenience to support the development are as follows:
 - a. arrangements shall be made satisfactory to the City Solicitor to secure the owner's proportionate contribution to upgrades to existing municipal infrastructure as may be required and as confirmed by a joint functional servicing report and a joint traffic impact study submitted in support of the developments contemplated under the Site and Area Specific Policy for Block D and Block E of the Mimico Judson Secondary Plan (OPA 331), to the satisfaction of the Executive Director, Engineering and Construction Services; and
 - b. The provision of 5 percent of the new dwelling units on the lot as affordable housing units in accordance with the City's Home Ownership Assistance Program Development Charges Deferral Program (the "**HOAP**") whereby:
 - i. the City agrees to defer all development charges payable with respect to dwelling units sold under the HOAP and the owner transfers the benefit of the deferred development charges, together with the obligation to repay, to eligible purchasers of eligible units, as set out in the City's standard HOAP development charges deferral agreement;
 - ii. the owner will, on behalf of the City, enter into loan agreements with the eligible purchasers and ensure that a second mortgage, in favour of the City, to secure the repayment of the deferred development charges, is registered on closing of the purchase agreement; and

- iii. if at the time of issuance of an above grade building permit, changes in the Bank of Canada Interest Rate, combined with the household income threshold established by the City for eligibility for purchasers, has impacted the ability of eligible purchasers to purchase eligible units in the project, and if the City hasn't altered the eligibility requirements in response in order that eligible units remain affordable for eligible purchasers, the owner will have the option of paying the Development Charges for said units and may sell the units at market value to purchasers whose household incomes exceed the eligibility threshold limits established by the City. Similarly, if the Bank of Canada Interest Rate has changed prior to closing and eligible purchasers are no longer able to complete the transaction, then the owner will have the option of paying the deferred Development Charges, with indexing, at that time and may then sell the units at market value to purchasers whose household incomes exceed the eligibility threshold limits established by the City.
 - iv. where affordable housing dwelling units are provided on the lands municipally known in 2021 as 1 Audley Street and 8 Newcastle Street (the "**Block D Lands**") in excess of five (5) percent of the units to be developed on the Block D Lands, the number of affordable housing dwelling units required under (b) above shall be reduced by the total number of affordable housing units on the Block D Lands in excess of five percent of total units to be constructed on that property, contingent on the owner satisfying the Executive Director, Housing Secretariat that (i) the Block D Lands owner has entered into purchase agreements with eligible purchasers of affordable housing dwelling units in accordance with the terms of the HOAP Delivery Agreement for that property and (ii) the Block D development will be completed prior to or concurrently with the development on the lot.
- c. Provisions to secure measures relating to environmental noise, required to ensure land use compatibility with nearby employment uses, including but not limited to:
- i. prescribing a process upon which Metrolinx will be provided with site plan application and building permit application materials from the owner and reasonable opportunities to comment on such applications to the City, which comments the City shall have regard to when determining whether to grant site plan approval and building permits;
 - ii. prescribing a process pursuant to which noise impacts will be mitigated for outdoor amenity areas located on all of the lands subject to this by-law in accordance with the document titled "Noise Evaluation Method and Selection of Exterior Envelope Sound Isolation for Blocks D and E" being Exhibit 28 in OLT Case PL160692 on file with the Chief Planner;
 - iii. prescribing a process for calculating upgraded facades for sensitive uses on all of the lands subject to this by-law in the document titled "Noise Evaluation Method and Selection of Exterior Envelope Sound Isolation for

Blocks D and E" being Exhibit 28 in OLT Case PL160692 on file with the Chief Planner;

- d. Prior to Site Plan Approval, the following are required:
 - i. warning clauses will be registered on title to all of the lands subject to this by-law advising of the Class 4 area designation and proximity of the Willowbrook Rail Maintenance Facility and Mimico GO Station to the proposed development; and
 - ii. an environmental easement for noise will be granted by the owner in favour of Metrolinx.



Diagram 1



TORONTO
 Diagram 1

**2 & 10 Audley Street,
 29, 31, 59 & 71 Portland Street**

File # 16 168925 WET 06 0Z

-  Lands to be Conveyed for Public Parkland
-  Lands to be Conveyed for Public Road


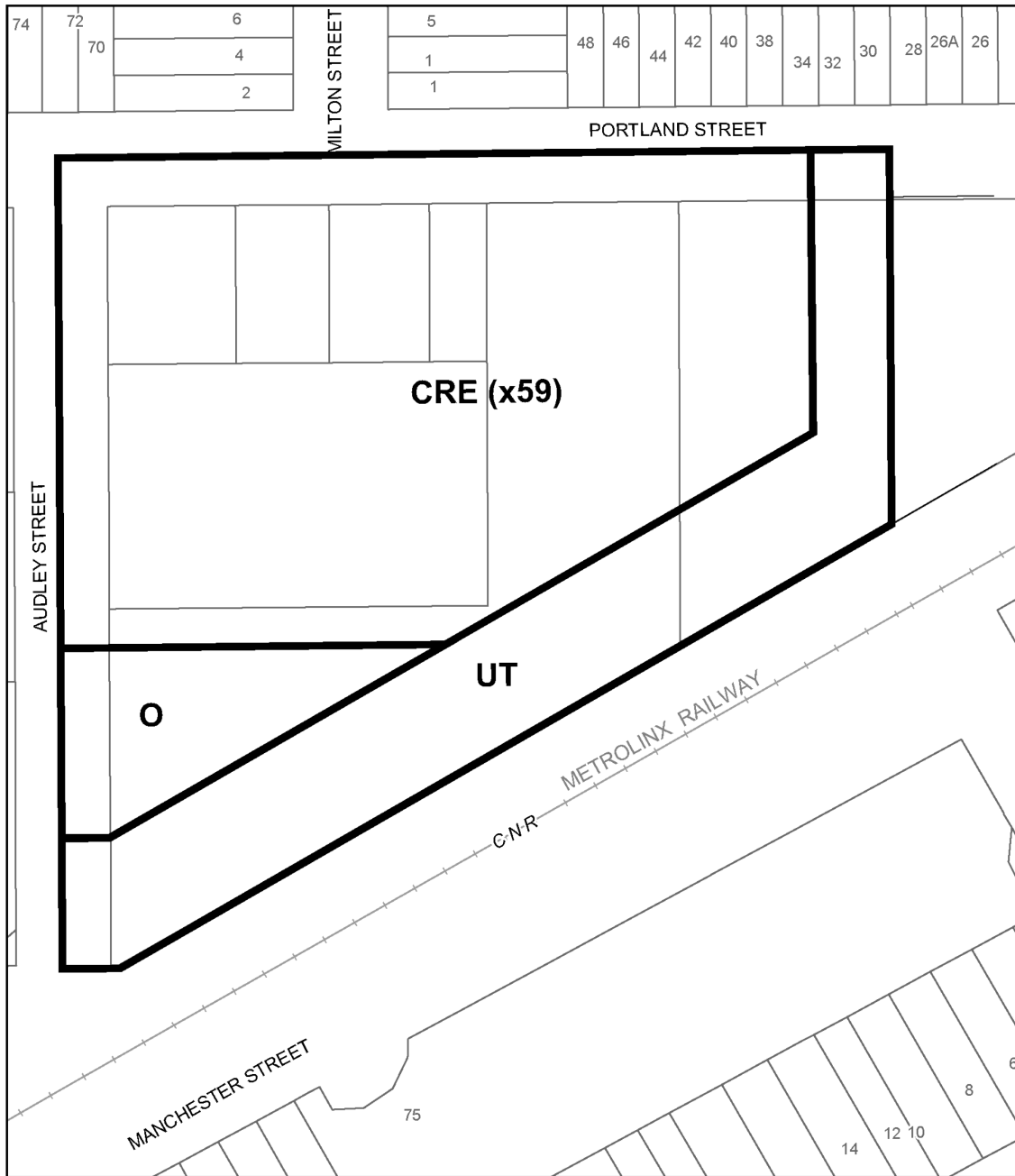

 City of Toronto By-law 569-2013
 Not to Scale
 07/29/2022

Diagram 2

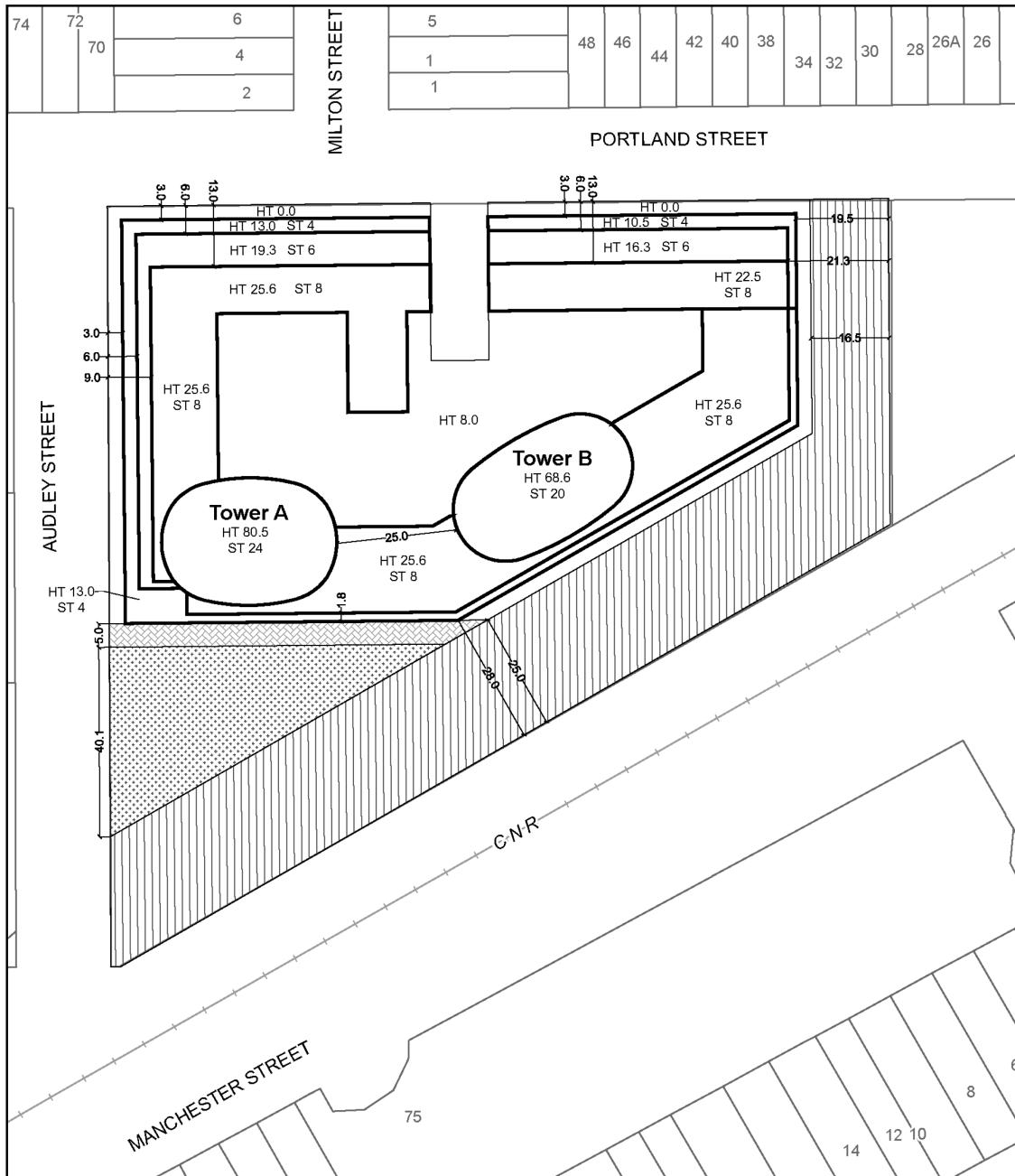


 **TORONTO**
Diagram 2

**2 & 10 Audley Street,
29, 31, 59 & 71 Portland Street**

File # 16 168925 WET 06 OZ




Diagram 3




TORONTO
 Diagram 3

2 & 10 Audley Street,
 29, 31, 59 & 71 Portland Street

File # 16 168925 WET 06 OZ

-  Lands to be Conveyed for Public Parkland
-  Lands to be Conveyed for Public Road
-  Privately Owned Publicly Accessible Space (POPS)


 City of Toronto By-law 569-2013
 Not to Scale
 07/29/2022