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**Attachments:** CORRA DPS Discussion Paper - WILSON-DENNY - Feb 6 2014.pdf

February 12, 2014

Planning and Growth Management Committee

PG29.5 Draft Official Plan Policies for Implementing a Development Permit System (DPS)

Please find attached CORRA's initial response to agenda item PG29.5 of PGMC's December 4th, 2013 meeting. Please ensure this submission is part of the public record for this agenda item. Should City Planning Staff engage in any stakeholder discussions on the DPS, CORRA is requesting to be part of those discussions.

CORRA would appreciate receiving Notice of this agenda item's return to Planning and Growth Management Committee. Please forward any Notices or communications to Confederation of Resident and Ratepayer Associations in Toronto (CORRA) at corratoronto@gmail.com.

Thank you,

CORRA's Executive Team

# **CONFEDERATION OF RESIDENT AND RATEPAYER ASSOCIATIONS IN TORONTO (CORRA)**

## **A DISCUSSION PAPER:**

### **What is the Development Permit System? And Should Toronto Aim to Implement this System?**

Written by: Jessica Wilson, Vice Chair  
January 5, 2014

Updated: February 6, 2014

Edited by: William Roberts, Chair  
Eileen Denny, Vice Chair

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## **CORRA: What is the Development Permit System (DPS), and should Toronto aim to implement this system?**

### **Definitions and References**

Third parties: any party other than the developer or applicant; third parties may include residents, their associations, local councillors, other persons and private or public entities who may have an interest in or may be impacted by a development decision.

Planning and Growth Management Committee (PGMC): a standing committee of Council that vets planning and land use issues for Council consideration. PGMC comprises the following Council members:

- Councillor Peter Milczyn (Chair)
- Councillor Josh Colle
- Councillor John Fillion
- Councillor Francis Nunziata
- Councillor Karen Stintz
- Councillor Adam Vaughan

Section 37 benefits: benefits received from the developer in exchange for additional height and/or density in a development proposal under Section 37 of the Planning Act.

### **References:**

1. The Planning and Growth Management Committee (PGMC) agenda item PG29.5, "Draft Official Plan Policies for Implementing a Development Permit System" (with revised recommendations), and accompanying Staff Report;<sup>1</sup>
2. 'The Development Permit System (DPS)', presentation by Planning Director Joe D'Abramo at the December 4, 2013 Planning and Growth Management Committee (PGMC) meeting;<sup>2</sup>
3. Remarks (including tweets) by Chief Planner Jennifer Keesmaat in the course of the PGMC meeting;
4. Planning Act Ontario Regulation 608/06, 'Development Permits';<sup>3</sup>
5. 'Development Permit Systems', Ontario Ministry and Municipal Affairs and Housing (OMMAH), including 'Development Permit System Info Sheet' and 'Key Benefits of the Development Permit System'.<sup>4</sup>

<sup>1</sup> <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.PG29.5>

<sup>2</sup> <http://www.toronto.ca/legdocs/mmis/2013/pg/bgrd/backgroundfile-64558.pdf>

<sup>3</sup> [http://www.e-laws.gov.on.ca/html/regs/english/elaws\\_regs\\_060608\\_e.htm](http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_060608_e.htm)

<sup>4</sup> <http://www.mah.gov.on.ca/page4755.aspx>;

<http://www.mah.gov.on.ca/Page4845.aspx>;

<http://www.mah.gov.on.ca/Page4820.aspx>.

## **1. Introduction and Overview**

### **1.1 Introduction**

This is a discussion paper on the topic of the Development Permit System (DPS), intended for distribution to members of the Confederation of Resident and Ratepayer Associations in Toronto (CORRA) and to other interested parties.

Although City Planning has not yet held public consultation meetings regarding the DPS, currently available information about the DPS provides a sufficient basis for an initial assessment of its merits.

The importance of assessing the DPS can hardly be overstated. At the December 4, 2013 Planning and Growth Management Committee (PGMC) meeting, Chief Planner Keesmaat stated that implementing the DPS would be "a fundamental shift" in Toronto's planning process.

Moreover, the explicit intention in the Staff Report is that all of Toronto be subject to a DPS: "The policy establishes that the entire City is subject to a development permit system but that it will be implemented on an area by area basis." (p. 7)

### **1.2 Overview of the Development Permit System (DPS)**

"The development permit system is a process for development approval that replaces zoning by-laws, Committee of Adjustment approvals for minor variances and Site Plan approval, by combining these procedures, as well as Section 37 agreements into one." (Staff Report p.1).<sup>5</sup>

The key stated benefits of the DPS are:<sup>6</sup>

1. To replace site-by-site planning with "vision-based neighbourhood scale" planning.<sup>7</sup>
2. To encourage a planning process that is transparent and consistent.<sup>8</sup>
3. To provide a streamlined development approval process and allow flexible development standards.<sup>9</sup>

The key features are as follows:

- A DPS is a development approval process associated with a single DPS by-law applied to a given area (Chief Planner Keesmaat uses the term "neighbourhood scale", a phrase not clearly defined), the implementation of which replaces the present minor variance, zoning and site plan processes.
- The anticipated form of DPS by-laws is a "variations plus criteria" approach, where development proposals are assessed against a range of minimum-maximum parameters in combination with performance standards.<sup>10</sup>

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For example, in the presentation delivered by Planning Director D'Abramo, he described a "Tall Building DPS by-law" allowing for heights to vary between 12 and 30 storeys, with a performance standard requirement that the allowable height for a given site must satisfy at least 5 hours of sunlight on one of the facing sidewalks.<sup>11</sup>

- The "maximum standards" in DPS by-laws (as well as heights or other parameters allowed by the performance standards applied to a given site) can be exceeded in exchange for facilities or other goods associated with Section 37-style benefits.<sup>12</sup>
- A DPS for a given area is advertised as being the result of consultation with community members, developers and other stakeholders, and is supposed to reflect a "vision" for development in the area, including specification of Section 37-style benefit targets.

However, the required community consultation for an area identified for a DPS consists of only two meetings: an "open house" where the public can ask questions about the DPS process, and a "public meeting" where the public can provide feedback or seek changes to the proposed DPS by-law before approval from Council.<sup>13</sup>

- Once a DPS by-law is adopted:
  1. All previous zoning by-laws for the area are repealed.<sup>14</sup>
  2. Council may delegate the decision-making of development permit applications to a committee appointed by council or an employee of the municipality, by name or position. The Staff Report and draft Official Plan Policies anticipates that the decision making may be delegated to the Chief Planner.<sup>15</sup>
  3. Council (or a "delegate" of City Council) is expected to return a decision on a proposal within 45 days (by comparison with the 120 or 180 days presently allowed).<sup>16</sup>
  4. No community consultation about any individual development applications is required, for a period of at least 5 years.<sup>17</sup>
  5. Third parties (e.g., residents, community associations) lose their right to appeal application decisions to the OMB.<sup>18</sup>
  6. The developer retains their right to appeal to the OMB, either if the City fails to return a decision within 45 days, or if the developer disagrees with the decision.<sup>19</sup>

### **1.3 Executive Summary: Assessment of Development Permit System (DPS)**

In assessing whether Toronto should aim to implement the DPS, the following criteria are used:

Toronto should aim to implement the DPS if and only if this is (1) necessary, (2) desirable, and (3) feasible with respect to available City resources in terms of both funds and staff.

Sections 2–4 consider whether the DPS satisfies these criteria. A summary of results follows.

## **CORRA: What is the Development Permit System (DPS), and should Toronto aim to implement this system?**

### Is the DPS necessary? No.

- Secondary Plans and Area-specific policies, implemented via area-specific zoning by-laws, are capable of achieving the first two stated benefits of the DPS by replacing site-by-site planning with area-based planning that is transparent and consistent.
- The third stated benefit – of streamlining the development approval process – is of clear benefit to developers and proponents, but of unclear benefit to community members and other stakeholders, as discussed under the next heading.

### Is the DPS desirable? No.

- The DPS implements a 'top-down', mechanical approach to area planning.
- DPS by-laws automatically "up-zone" any area to which they apply by subsuming the minor variance decision-making process,
- The DPS is promoted as highly consultative, but in fact only two public meetings are required prior to adoption of DPS by-laws for an entire "neighbourhood scale" area.<sup>20</sup>
- Once DPS by-laws are adopted no further community consultation or notice of any development applications within the DPS area is required for at least 5 years.<sup>21</sup>
- Once DPS by-laws are adopted, only the developers/proponents retain their rights to appeal a decision or failure to make a decision under a DPS by-law to the OMB.<sup>22</sup>
- It remains reasonable, however, to expect that community members and other third parties will want to be consulted about or to oppose/appeal some specific applications of the anticipated 'variations and performance standard-style' DPS by-laws.<sup>23</sup>
- The DPS will divert resources away from Secondary Plans and Area Studies (which, given the previous problems, many communities will prefer) to DPS studies.<sup>24</sup>

### Is the DPS feasible? No.

- The concern with removing third party consultation and rights might be partly addressed by requiring that DPS by-laws be extremely fine-grained and context sensitive, along lines of by-laws resulting from Heritage Conservation District (HCD) Studies.
- But HCD-style studies are extraordinarily expensive and time-consuming, requiring resources far beyond those that Planning has available.

These results – that the DPS is not necessary, not desirable and not feasible – indicate that implementing the DPS is not advisable.

At a minimum, the evident concerns raised here show that detailed and wide-ranging public discussion should occur on whether, and not just how, Toronto should implement the DPS.

## **CORRA: What is the Development Permit System (DPS), and should Toronto aim to implement this system?**

### **2. Is the Development Permit System (DPS) Necessary?**

Proponents of the DPS name three key benefits by way of justification. Here we consider whether the DPS is necessary to achieve those benefits.

#### **2.1 Is the DPS necessary to replace site-by-site planning with "vision-based neighbourhood scale" planning? No.**

The first stated benefit reflects the concern that site-specific planning mechanisms fail to address "the cumulative impact of development" at the neighbourhood scale (Staff report, p. 3); to address this, the DPS is intended to "Promote strategic, integrated, and long-term planning for the subject area" (Draft OP Policies, p. 11).

As Chief Planner Keesmaat tweeted during the Dec 4 PGMC meeting: "Overview of the Development Permit System at PGM right now, This is about shifting from site by site planning to neighbourhood planning "; "Would be helpful for me to hear back from people: what's preferred – site-by-site planning or vision-based neighbourhood planning?". Unsurprisingly, most people prefer "vision-based neighbourhood planning".

But there already exist planning mechanisms capable of addressing cumulative impact and of implementing "vision-based neighbourhood planning"; namely, Secondary Plans and Area-specific policies, supported by associated zoning by-laws, and where applicable, Heritage Conservation District (HCD) designations.

The Staff Report acknowledges the mechanism of Secondary Plans and Area-specific policies, but maintains that this mechanism fails to address the concern about cumulative impact, since "these secondary plans are still implemented by way of rezoning applications" (p. 4).

But the concern about cumulative impact would remain only if the only way to implement Secondary Plans and Area-specific policies was by way of site-specific rezoning applications; but of course, that's not the case. On the contrary, Secondary Plans and Area-specific policies are typically implemented by way of *area-specific* zoning by-law amendments, which may be as detailed or context-sensitive as is deemed fit.

Since Secondary Plans and Area-specific policies, implemented via area-specific zoning by-law amendments, provide an existing mechanism for addressing "strategic, integrated and long-term planning" sensitive to "the cumulative impact of development" and in line with "vision-based neighbourhood planning", the DPS is not needed for these purposes.

#### **2.2 Is the DPS necessary to encourage planning that is transparent and consistent?**

The second stated benefit is the need for a planning process to "provide certainty, transparency, and accountability for the land use vision for a particular area" (Draft OP Policies, p. 11). As Chief Planner Keesmaat tweeted during the Dec 4 PGMC meeting, "I believe the



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Development Permit System is a planning tool that could transform how we plan in Toronto. It would add clarity + consistency".

The occasional lack of clarity and consistency in planning outcomes is, however, mainly a symptom of site-by-site planning processes (coupled with periodic failures on the part of city staff to enforce the clear directions of zoning by-laws and the Official Plan). Secondary Plans and Area-specific policies, when implemented with appropriately fine-grained area-specific zoning by-laws, can achieve the goals of transparency and consistency, as any number of districts operating under low-rise or low-scale Official Plan amendments demonstrates.

Moreover, given the anticipated "variations and performance-standard style" form of DPS by-laws, the DPS would arguably decrease "clarity and consistency" in planning outcomes. Residents and others cannot be expected to be able to predict exactly what heights and other parameters will be allowed on a given site by the technical performance standards, or to predict how these parameters may be exceeded by Section-37-style tradeoffs. Coupled with removal of consultation and rights of appeal, these points strongly suggest that implementation of a DPS by-law would decrease, not increase, clarity and consistency.

Since Secondary Plans and Area-specific policies, implemented via area-specific zoning by-law amendments, provide an existing mechanism for processing development applications in a genuinely transparent and consistent way, and moreover in a way that does not restrict crucial rights to notice, consultation and appeal, the DPS is not needed for these purposes.

### **2.3 Is the DPS necessary to provide a streamlined development approval process and allow for flexible development standards?**

The third stated benefit is a need for "a more effective and efficient means of development approval in the City" capable of "securing certainty of outcome as well as specified community facilities" (Staff Report p. 1).

It might well be that the DPS would "promote development", "streamline approvals", "provide for faster approval timelines", "provide for a broader range of conditions of approval not available through other planning tools", "allow decisions... to be delegated to a municipal employee", and "incorporate flexible development standards".<sup>25</sup>

But these advantages are of clear benefit only to developers. Moreover (as discussed in Section 3 under the topic of 'desirability') they come at the cost of an appropriately nuanced and consultative process which preserves third party rights to appeal a planning decision.

**Summing up: the Development Permit System is not necessary to achieve the goals which are clearly beneficial to residents/ratepayers and others in general, as opposed to just developers. As such, there is no present case that the DPS is necessary.**

**CORRA: What is the Development Permit System (DPS), and should Toronto aim to implement this system?**

**3. Is the Development Permit System (DPS), as characterized by Planning Staff, Desirable?**

There are four undesirable impacts of the DPS.

**3.1 Concern: 'Top-down', non-consultative, mechanical approach to planning**

The DPS violates accepted planning principles according to which planning decisions should be (1) appropriately consultative, and (2) sensitive to site-specific as well as area-wide nuance.

Though the DPS is promoted as enhancing 'community involvement', as already noted, only two statutory public meetings are required prior to adoption of a DPS by-law for a given area. This is at or below the typical statutory requirement for a single site-specific development application, much less for an area DPS by-law for a highly diverse built-form context.

Besides these statutory meetings, the only recourse for community members who oppose the proposed DPS by-law is to engage in a costly appeal to the OMB. Hence the very process of implementing the DPS in a given area imposes a potentially heavy burden on the community.

Once the DPS by-law is adopted for a given area, no further public consultation occurs; all site-specific implementation of the DPS by-law is left to planners and developers, and no site-specific planning decisions can be appealed except by the developer/proponent, for a period of at least 5 years. Only in exceptional cases, as illustrated by Heritage Conservation Districts, is such a top-down approach to neighbourhood-scale planning warranted. We elaborate on reasons not to remove rights of public consultation and third-party appeal in Section 3.3.

Moreover, as characterized by Planning Staff (and as is reflected in only 45 days being allowed for processing), the DPS reduces site-specific planning decisions to a mechanical process of determining whether a given proposal satisfies certain technical performance standards – a job a computer program could do.

Once DPS by-laws are in place, both the public and planners are rendered irrelevant.

**3.2. Concern: Built-in 'up-zoning' of areas under a Development Permit System (DPS)**

A DPS by-law subsumes and replaces the minor variance process, as follows: "In recognition of the range of variations possible under the development permit system, the Committee of Adjustment powers to approve minor variances would not be applicable in an area governed by a development permit by-law." (Staff Report, p. 5)

What this means is that (unless the DPS by-laws for a given area reduce the zoning parameters – an unlikely prospect) the DPS by-law for an area will go beyond the parameters of existing zoning to incorporate, at a minimum, whatever additions to these standards might be considered "minor". This amounts to an incremental built-in "up-zoning" of areas under a DPS by-law.

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### **3.3. Concern: Removal of third party consultation and right to appeal**

Once an area DPS by-law is established:

- Community consultation will no longer be required for development applications, and
- Third parties will no longer have the right to appeal development decisions under the DPS by-law.

These important facts are not highlighted in the planning documents on the DPS:

- In the Staff Report, for example, we do not learn until p. 7 that "Once a development permit by-law is in force, the permits issued under that by-law cannot be appealed by a third party. The applicant has a right to appeal to the OMB for failure to approve within the specified time limit of 45 days."
- The Staff Report suggests here that the *only* way a developer can appeal is if the decision is delayed; as above, this is incorrect: a developer may appeal any decision on a development permit.<sup>26</sup>

Removing for a period of at least 5 years (according to the Staff Report) any requirement that the affected community be consulted about specific development proposals, and allowing the right of appeal to developers, but not to residents or other interested parties that will have to live with the results of a given development permit decision, is unjust and highly problematic.

Even if residents and other stakeholders agree with the broad outlines of DPS by-laws for a given area upfront (which they may not), it is to be expected that they will periodically oppose specific implementations of the area DPS by-law:

- To start, the DPS aims to implement a 'variations plus criteria' approach; hence the standards of a DPS by-law will typically be very flexible, specifying a range of heights or other measures which will be run through various technical performance standards in assessing whether a given proposal is acceptable.<sup>27</sup>
- Residents and others cannot be expected to anticipate precisely how variations in standards (which may require detailed shadow studies, etc.) will apply to a specific site; hence they may well want to be consulted about and/or oppose the implementation of specific standards under the DPS by-law.
- We already have evidence from the case of 'Avenues' subject to the performance standards in the *Avenues and Mid-Rise Building Study* that a "variations plus criteria" approach to planning is a source of both uncertainty and dissatisfaction for residents and others.
- In addition, the DPS "maximums" (as well as heights or other parameters allowed by the performance standards applied to a given site) can be exceeded in exchange for facilities or other goods associated with Section 37-style benefits.<sup>28</sup> Here again it is reasonable to expect that residents and others will want to be consulted about and/or potentially oppose a DPS-based decision.

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**Because the impacts of applications of criteria and performance standards for a given area, as well as the impacts of potential Section-37-style tradeoffs, may not be immediately recognized, it is to be expected that third parties will want to appeal some specific DPS-based decisions. Removing the rights to be consulted about applications and to appeal decisions made under a DPS by-law would predictably be a recipe for citizen unrest.**

### **3.4. Concern: Diversion of Resources from Secondary Plans and Area Studies to DPS studies**

In response to concerns about the removal of third party right of appeal, Chief Planner Keesmaat suggested that whether the DPS would be applied to a given area would be up to stakeholders (note: typically the use of the word "stakeholders" by city planners does not include residents) in the area.

Chief Planner Keesmaat's response seems to contradict the stated intention in the Staff Report that all of Toronto be subject to a DPS: "The policy establishes that the entire City is subject to a development permit system but that it will be implemented on an area by area basis" (p. 7).

In any case, given the already identified undesirable aspects of DPS – the top-down, non-consultative approach, automatic up-zoning and the removal of third party rights of consultation and appeal – it might be reasonable to expect that communities would frequently prefer to stick with Secondary Plans and Area Studies and keep their rights to consultation and appeal rather than give developers a streamlined approval process.

The concern remains, however, that resources needed for implementing Secondary Plans and Area Studies will be diverted to communities implementing the DPS.

- For example, will the increased number of planners requested under the 2014 City budget be allocated to complete the existing backlog of Secondary Plans and Area Studies, or will the increased staff allow new or existing planners to be diverted to future DPS studies, leaving already requested area studies unfinished?

**Because the DPS implements a top-down, non-consultative, mechanical approach to planning; because the DPS results in built-in up-zoning; because the DPS, once adopted, problematically removes third party consultation and rights to appeal; and because implementation of the DPS will divert resources from Secondary Plans and Area Studies: the DPS is not desirable.**

## **4. Partial redress to the removal of third-party appeal renders the DPS unfeasible.**

One response to concerns about the DPS removing third party rights to appeal would be to reconceive the proper form of the DPS by-law, so that every individual building in a given area is treated in a context-sensitive fashion, rather than in terms of an algorithmic building envelope outcome, driven by whatever performance standards are in place.

This concept of the DPS by-law is similar to the standards developed for a Heritage Conservation District (HCD) Study. At the December 4 PGMC meeting, both Chief Planner Keesmaat and

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Planning Director D'Abramo encouraged thinking of an area DPS by-law this way (notwithstanding the prescribed "variations and performance standards" described in the Staff Report and Planning Director D'Abramo's presentation), by likening the DPS for an area to a Heritage Conservation District Study.

Even if a DPS by-law was highly specific and context-sensitive, it might still be reasonable to expect that third parties could have substantive reasons to oppose a decision made under a highly-specific DPS by-law, especially given the potential for Section-37-style trade-offs.

The more immediate concern, however, is that an HCD-style building-by-building specification model for DPS by-laws renders implementation of the DPS, area-by-area, unfeasible, from both a cost and staff resource perspective.

HCD studies are enormously costly. For example, the HCD studies currently in progress for St. Lawrence Market and King-Spadina area are costing \$1,000,000 each. The City, in general, does not have funds for these studies; they must be paid for by either Section 37 benefits, allocated development charges, or private fundraising. HCD studies are also enormously time-consuming: staff members are expected to be able to handle only three of these at a time, each taking two years or more to complete.

The proponent of the DPS now faces a dilemma. DPS by-laws will either be coarse-grained and performance standards-based, along lines of a 'variations plus criteria' approach; or they will be extremely fine-grained and context-sensitive, along lines of the by-laws generated by an HCD study.

If the overall approach to DPS by-laws is coarse-grained, the burdens placed on the residents and other interested third parties initially to contend with and perhaps appeal a problematic DPS by-law and then later to lose all rights to appeal any specific development application, is extraordinarily unjust and a recipe for citizen unrest.

If the overall approach to DPS by-laws is fine-grained, implementation of the DPS will be a completely unfeasible draw on city financial and staff resources.

A more cost-effective approach to nuanced area based planning, which retains third party rights to consultation and appeal, is available under the currently existing regime of Secondary Plans and Area-specific policies (backed by area-specific zoning by-laws). These existing resources should be supported, implemented, and defended by city planning staff.

### **5. The failure to appropriately consult the public prior to advancing Agenda Item PG29.5, the recommendations of which appear to presuppose that the DPS will be implemented in Toronto.**

This section will highlight the extent to which both the original and revised recommendations of PG29.5 depart from what the public has a right to expect so far as appropriate consultation about the planning process in Toronto is concerned.

**CORRA: What is the Development Permit System (DPS), and should Toronto aim to implement this system?**

**5.1 The original recommendations of PG29.5**

The original 3 recommendations of PG29.5, preserved in the Staff Report (p. 2), are as follows:

The Chief Planner and Executive Director, City Planning Division recommends that:

1. The Chief Planner and Executive Director, City Planning Division consult with the public and key stakeholders on the matter of implementing a development permit system based on the draft Official Plan policies appended in Attachment 1 to this report from the Chief Planner and Executive Director, City Planning.
2. The Chief Planner and Executive Director, City Planning Division conduct an open house and community consultation meeting to obtain comments and feedback with respect to the draft Official Plan policies that implement the development permit system.
3. The Chief Planner and Executive Director, City Planning Division submit a Final Recommendations Report with a proposed Official Plan amendment, that includes policies for implementing a development permit system, to a Statutory Public Meeting of the Planning and Growth Management Committee in the first quarter of 2014.

**5.2 The amended (and passed) recommendations of PG29.5**

The original recommendations of PG29.5 were amended (and the amended recommendations adopted) at the Dec 4 PGMC meeting. The amendments were as follows:

***Motion to Amend Item moved by Councillor John Filion (Carried)***

1. That Recommendation 2 be replaced with the following:  
"That the Chief Planner and Executive Director, City Planning conduct a community consultation process which would obtain comments and feedback with respect to the draft Official Plan policies that may implement a development permit system. The community consultation process would include:
  - a. Meetings with clusters of resident associations and condo boards, in consultation with members of Council.
  - b. A combined open house and public meeting format consultation to be held in each planning district.
2. That Recommendation 3 be deleted and replaced with:  
"The Chief Planner and Executive Director, City Planning report back on April 10, 2014 on the outcome of the community consultation exercise."

***Motion to Amend Item (Additional) moved by Councillor Adam Vaughan (Carried)***

That the Chief Planner and Executive Director, City Planning bring forward terms of a pilot project in the King Spadina Planning District as part of any consultation on an implementation process as part of any final report.

***Motion to Adopt Item as Amended moved by Councillor John Filion (Carried)***

## **CORRA: What is the Development Permit System (DPS), and should Toronto aim to implement this system?**

### **5.3 Concerns about the original and amended recommendations of PG29.5**

Again, no publicly announced consultation about the DPS has yet taken place; by Chief Planner Keesmaat's own admission, few in Toronto will have heard of the DPS, much less know what the DPS is.

Even so, as Councillor Filion (member of PGMC) noted, the original recommendation 3 presupposes that the DPS will be implemented ("3. The Chief Planner and Executive Director, City Planning Division submit a Final Recommendations Report with a proposed Official Plan amendment, that includes policies for implementing a development permit system"). And the Summary of the Staff Report states, "The draft Official Plan policies appended to this report ... would authorize the implementation of a development permit system in the City of Toronto."

As Councillor Filion also noted, the presupposition of original recommendation 3 that the DPS will be implemented stands in tension with the ostensible point of original recommendations 1 and 2 of consulting with the public "on the matter of implementing the DPS" (original recommendation 1) via "an open house and community consultation meeting to gain feedback on the draft OP principles for implementing the system" (original recommendation 2). We can say more: closer examination of the original recommendation (2) indicates that it also appears to presuppose that the DPS will be implemented: the question to be placed before the public is not whether, but how, the DPS should be implemented.

As above, the amended and adopted motion replaces the reference to a single "open house and community consultation meeting" with a more inclusive process of public consultation, and replaces the original recommendation (3) for the Chief Planner to submit a final report with a proposed Official Plan Amendment for implementing the DPS, with a recommendation for the Chief Planner to report back on the results of these consultations.

Still, that the Staff Report and associated original recommendation (3) treated the implementation of the DPS as a fait accompli, and the amended recommendation (2) continues to imply this, in spite of the fact that no public consultation has yet occurred on whether Toronto should aim to implement the DPS, is nothing short of shocking.

Similarly shocking was the original recommendation (2), deeming a single open house and community consultation meeting to be sufficient unto gaining feedback from the public about this seismic initiative.

Indeed, PG29.5 highlights the immediate and seriously pressing need for PG29.13 – "Improving the Community Planning Process Through Public Engagement".

Learn more, have questions answered, provide feedback – email CORRA, the Confederation of Resident and Ratepayer Associations in Toronto at [corratoronto@gmail.com](mailto:corratoronto@gmail.com).

In preparing this DPS Discussion Paper, CORRA is looking after the long term interests of residents/ratepayers and their associations by raising awareness and offering an independent critique on planning matters in Toronto.

## **CORRA: What is the Development Permit System (DPS), and should Toronto aim to implement this system?**

### **About the Author:**

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### **About CORRA:**

CORRA, the Confederation of Resident and Ratepayers Associations in Toronto, is an apolitical non-profit volunteer organization representing resident and ratepayer associations in Toronto.

CORRA focuses on planning issues as they affect residential neighbourhoods at the municipal and provincial levels that include the planning decision-making processes and the legislation that govern land use.

CORRA is also incorporated, supported by a constitution and member-associations. As a result of its structure CORRA is recognized by the Ontario Municipal Board to have standing in land use decisions it may be involved in.

CORRA aims to help member associations by coordinating and offering mutual support to

- Promote better urban life
- Promote fair and beneficial legislation
- Act as a clearing house for information on proposed development issues that may have city-wide impact
- Foster communication among member-associations
- Pass on knowledge and experiences to further our common objectives
- Represent member associations from time to time before Council, Standing Committees, and other legislative bodies

### **CORRA's Executive Team:**

William Roberts, Chair  
Patrick Smyth, Secretary-Treasurer  
Eileen Denny, Vice Chair  
Hans Looije, Vice Chair  
Jessica Wilson, Vice Chair  
Brian Maguire, Past Chair

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## **CORRA: What is the Development Permit System (DPS), and should Toronto aim to implement this system?**

### **End Notes:**

<sup>1</sup> <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.PG29.5>

<sup>2</sup> <http://www.toronto.ca/legdocs/mmis/2013/pg/bgrd/backgroundfile-64558.pdf>

<sup>3</sup> [http://www.e-laws.gov.on.ca/html/regs/english/elaws\\_regs\\_060608\\_e.htm](http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_060608_e.htm)

<sup>4</sup> <http://www.mah.gov.on.ca/page4755.aspx>; <http://www.mah.gov.on.ca/Page4845.aspx>;  
<http://www.mah.gov.on.ca/Page4820.aspx>

<sup>5</sup> "The DPS combines zoning, site plan, and minor variance into one application and approval process. It promotes development by providing for faster timelines, eliminating potential duplication, incorporating flexibility for uses and development standards, and providing a 'one-stop' planning service." (From OMMAH, 'Development Permit System InfoSheet')

<sup>6</sup> See also the "goal" of the DPS: Chief Planner Keesmaat's draft Official Plan Amendment Policy 1 ("Goals"; Staff Report, p. 12); and the OMMAH, 'Key Benefits of the Development Permit System', which include Streamlining, Flexibility, Enhanced Environmental Protections, Building Strong Community, Community Involvement'.

<sup>7</sup> "The most significant feature of the development permit system is that it considers planning and development on a neighbourhood scale" (Staff Report, p. 6); "This approach allows for a policy-led process that: Promotes strategic, integrated and long-term planning for the subject area" (Staff Report, p. 11); "The DPS helps strengthen a community's vision for its future by contributing to strategic, integrated and long term planning" (OMMAH, 'Development Permit System InfoSheet'). "Neighbourhood scale" is not defined but is a city planning staff phrase used to identify the subject area for a DPS.

<sup>8</sup> "The DPS [provides] certainty, transparency and accountability for the land use vision for a particular area" (Staff Report, p. 11); "The DPS [provides] certainty, transparency, and accountability on the form of future development for an area" (OMMAH, 'Development Permit System InfoSheet').

<sup>9</sup> From the OMMAH, Development Permit System InfoSheet: "The DPS... promotes development by providing for faster timelines, eliminating potential duplication, incorporating flexibility for uses and development standards, and providing a "one-stop" planning service."

<sup>10</sup> "A development permit by-law shall [...] set out a list of minimum and maximum standards for development" O. Reg. 608/06, s. 4 (2) (c).

<sup>11</sup> As the example illustrates, the general approach of the DPS is similar to that currently typically operative on designated Avenues (listed on Map 2 of Toronto's Official Plan), where an Avenue study (or its equivalent) is first used to determine a range of acceptable mid-rise heights, with individual development proposals then supposed to be assessed against performance standards in the Avenues and Mid-rise Building Study. As per a slide in Planning Director D'Abramo's presentation, "A DPS employs performance standards".

<sup>12</sup> "A development permit by-law shall [...] set out a list of minimum and maximum standards for development." O. Reg. 608/06 s. 4 (2) (c). "A development permit by-law may [...] set out a range of possible variations from the standards referred to in clause (2) (c) that may be authorized in connection with the issuing of a development permit" O. Reg. 608/06, s. 4 (3) (f). "Some examples of conditions that may be outlined [...] a condition that requires the provision of specified facilities, services and matters in exchange for a specified height or density of development, which may be within the ranges set out under clause (2) (c) or outside those ranges as set under clause (3) (f)" O. Reg. 608/06 s. 4 (5) (5).

## **CORRA: What is the Development Permit System (DPS), and should Toronto aim to implement this system?**

<sup>13</sup> "When developing or amending DPS official plan policies and/or development permit by-law municipalities must hold a mandatory public open house which allows the public an opportunity to review and ask questions about the information and material. A public meeting is also required to give the public an opportunity to make their views known before council makes a decision." OMMAH. "Key Benefits of the Development Permit System".

<sup>14</sup> "On the day the development permit by-law comes into force, all by-laws passed under section 34 of the Act are deemed to be repealed with respect to the area covered by the development permit by-law" O. Reg. 608/06, s. 9 (3).

<sup>15</sup> See O. Reg. 608/06 s. 15. City planning staff perspective on the delegation of authority is that, "The development permit system is similar to Site Plan Approval in that there are no third party appeals. Consequently, the Policy follows the approach taken with Site Plan whereby the issuance of development permits may be delegated to the Chief Planner." (Staff Report, p. 10)

<sup>16</sup> "If the council fails to make a decision [...] within 45 days after the date [the application is complete], the applicant may appeal to the Municipal Board against the failure to make a decision" (O. Reg. 608/06, s. 12 (1)).

<sup>17</sup> "Amendments to the development standards in a development permit by-law area may be considered by Council only after 5 years following the initial approval of the by-law" (Staff Report, p. 16).

<sup>18</sup> "The development permit system is similar to Site Plan Approval in that there are no third party appeals" (Staff Report, p. 10); "[A]n appeal to the Municipal Board against a decision on a development permit application may be made only by the owner of the land to which the application relates" (O. Reg. 608/06, s. 7 (c)).

<sup>19</sup> "If council fails to make a decision ... within 45 days after the date [the application is complete], the applicant may appeal to the Municipal Board against the failure to make a decision", O. Reg. 608/06, s. 12 (1); "[A]n appeal to the Municipal Board against a decision on a development permit application may be made only by the owner of the land to which the application relates", O. Reg. 608/06, s. 7 (c); "The applicant may appeal any decision" made by Council or its delegate, O. Reg. 608/06 s. 12 (2).

<sup>20</sup> "When developing or amending DPS official plan policies and/or development permit by-law municipalities must hold a mandatory public open house which allows the public an opportunity to review and ask questions about the information and material. A public meeting is also required to give the public an opportunity to make their views known before council makes a decision." OMMAH. "Key Benefits of the Development Permit System".

<sup>21</sup> From the staff presentation at the December PGMC meeting, "Amendments to a Development Permit By-law" states: "No amendments for the first 5 years".

<sup>22</sup> "If council fails to make a decision ... within 45 days after the date [the application is complete], the applicant may appeal to the Municipal Board against the failure to make a decision", O. Reg. 608/06, s. 12 (1); "[A]n appeal to the Municipal Board against a decision on a development permit application may be made only by the owner of the land to which the application relates", O. Reg. 608/06, s. 7 (c); "The applicant may appeal any decision" made by Council or its delegate, O. Reg. 608/06 s. 12 (2).

<sup>23</sup> The similarity to the current "mid-rise performance standard-based" assessment of proposals on designated Avenues is instructive: residents and other stakeholders are often unhappy with features of proposals that the "standards" deem acceptable

**CORRA: What is the Development Permit System (DPS), and should Toronto aim to implement this system?**

<sup>24</sup> Another potentially undesirable aspect concerns how differential treatment of various land-use designations in the Official Plan is supposed to correspond to the characterization of DPS by-laws as applying to the "neighbourhood scale". In particular: would the Official Plan protections of areas designated "*Neighbourhood*" be guaranteed to remain intact under DPS by-laws?

<sup>25</sup> All these advantages come from the first page of the OMMAH Development Permit Systems InfoSheet.

<sup>26</sup> "If council fails to make a decision ... within 45 days after the date [the application is complete], the applicant may appeal to the Municipal Board against the failure to make a decision", O. Reg. 608/06, s. 12 (1); "[A]n appeal to the Municipal Board against a decision on a development permit application may be made only by the owner of the land to which the application relates", O. Reg. 608/06, s. 7 (c); "The applicant may appeal any decision" made by Council or its delegate, O. Reg. 608/06 s. 12 (2).

<sup>27</sup> See also the Staff Report, which says: "A development permit by-law can include a range of variations to the development standards. For example, there may be a range of possible variations for typical development standards such as setbacks, density, and height, but the approval of plans within the range would be subject to meeting specific development criteria. This ensures that the impacts of a proposed development on adjacent properties will be considered in the final design" (p. 5).

<sup>28</sup> "A development permit by-law shall [...] set out a list of minimum and maximum standards for development." O. Reg. 608/06 s. 4 (2) (c). "A development permit by-law may [...] set out a range of possible variations from the standards referred to in clause (2) (c) that may be authorized in connection with the issuing of a development permit" O. Reg. 608/06, s. 4 (3) (f). "Some examples of conditions that may be outlined [...] a condition that requires the provision of specified facilities, services and matters in exchange for a specified height or density of development, which may be within the ranges set out under clause (2) (c) or outside those ranges as set under clause (3) (f)" O. Reg. 608/06 s. 4 (5) (5).