

THE DEVELOPMENT PERMIT SYSTEM (DPS): OVERVIEW AND NINE CONCERNS¹
CORRA, Confederation of Resident and Ratepayer Associations in Toronto
April 8, 2014

The Development Permit System (DPS) is a fast-track (45-day) area-based development approval process, combining the minor variance, zoning amendment, and site plan approval processes, that City Planning is considering for implementation in Toronto. Key features of the DPS are as follows:

1. There is a front-end process of consultation advertised as identifying the community "vision" for the area, and which is also foreseen as identifying needed (Section 37-style) community benefits.
2. City Planning proposes a DPS by-law specifying minimum and maximum standards (e.g., heights) and associated criteria; the standards also contain triggers for community benefits. So, for example, a DPS by-law for a mid-rise area might specify a maximum height of 11 storeys, a criterion limiting shadow impact, and a "trigger" for community benefits that kicks in above 6 storeys.
3. For 20 days, anyone disagreeing with the by-law may appeal to the Ontario Municipal Board (OMB); as a consequence the DPS by-law may be revised.
4. Once the DPS by-law is adopted, all existing zoning is repealed, and all applications for building permits are henceforth processed under the by-law.
5. The maximum standards in a DPS by-law are "hard and fast": for individual applications, they cannot be exceeded by an OMB decision. The only way to go beyond the standards is to appeal the entire DPS by-law, which is a fairly onerous process.
6. Once the DPS by-law is adopted, there is no requirement for public consultation about any application, and residents and other 3rd parties do not have the right to appeal permit application decisions, while developers do have this right.

That a DPS specifies "hard and fast" maximum standards sounds attractive. But there are serious concerns with the DPS---including, besides the loss of public rights of consultation and appeal of application decisions, the risk of significant "up-zoning"---that the public and their elected representatives should be aware of, and which City Planning has not addressed in any substantive fashion. **In what follows we highlight nine of the most serious of these concerns.**

In considering these concerns, it is important to keep in mind that the DPS is not the only area-based planning alternative to site-by-site planning. **Toronto currently has existing proactive, vision-based area-based planning processes, which when properly implemented**---most importantly, via area-specific Official Plan Amendments, implemented using area-based zoning amendments---**also effectively result in "hard-and-fast" maximum standards** that, since written into the Official Plan, can only be exceeded by an Official Plan Amendment---also a comparatively onerous process.

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1. THE DPS IS ALMOST ENTIRELY UNTESTED IN ONTARIO; TOP TORONTO PLANNING EXPERTS DISAGREE ABOUT EVEN BASIC QUESTIONS OF IMPLEMENTATION.

The DPS has been tested in Ontario only in very limited fashion, in rural areas (e.g., Lake of Bays) in order to protect shoreline vegetation and control cottage development, small towns (Carleton Place, Gananoque) in order to control infill development, and in small portions of downtown Hamilton and downtown Brampton (the latter is not a full implementation---it doesn't set out design standards, for example). City staff have yet to demonstrate that the DPS makes sense as applied to a large, built-up, highly contextual city like Toronto.

Indeed, **topmost Toronto planning experts disagree about the answers to even basic questions about how to implement the DPS**---for example, whether the DPS should be piloted in high- or rather low-growth areas. Michael Mizzi, who until 2013 had spent more than 7 years as effective head of Planning in downtown Toronto, said last December that he would not pilot the DPS in a high-growth area: **"I don't think it's something you want to pilot in an area undergoing great change,"** he says. "Possibly in a heritage conservation district ... somewhere where it's a little more known what the built form is."² **This is the opposite of what current Toronto City Planning officials are proposing.** In particular, the amended recommendations to PG29.5 propose piloting the DPS in the high-growth King-Spadina planning district---a suggestion that Chief Planner Keesmaat spoke favorably of on The Agenda.

Such discrepancies in expert opinion are evidence of lack of evidence supporting the implementation of the DPS in Toronto.

2. VANCOUVER'S DEVELOPMENT PERMIT SYSTEM HAS LED TO UNSATISFACTORY RESULTS AND HUGE CITIZEN UNREST.

Toronto City Planning staff sometimes point to Vancouver, which has a "development permit system" also involving a front-end process of consultation followed by rezoning, as providing a test case of successful implementation of a DPS in an urban environment. But if anything, **the evidence from Vancouver points the other way.**

In the last months there has been a huge wave of citizen unrest about what is widely seen as a "disaster" of a planning process. There have been large protests at City Hall;³ and late last year, neighbourhood associations covering almost the entire City of

²See

<http://www.ottawacitizen.com/business/City+mulls+streamlined+development+approval+process/9316100/story.html>

³ See <http://www.cbc.ca/news/canada/british-columbia/city-delays-rezoning-plans-in-vancouver-neighbourhoods-1.1871813>

Vancouver recently banded together to form the Coalition of Vancouver Neighbourhoods, in response to “outrage” expressed by “virtually every neighbourhood in Vancouver” subject to their version of the Development Permit System, whereby “faux “engagement” circuses” are followed by rezoning greatly departing from what communities in fact called for. From the October 24, 2013 CVN press release:⁴

Virtually every neighbourhood in Vancouver has suffered through **the disaster that is development and “community engagement” under the present planning process**. [...] the outrage expressed by the affected communities has been the same. [...] The disenfranchisement of neighbourhoods must end. The Coalition will not accept with equanimity any more **faux “engagement” circuses in which “consultation” produces nothing but disappointment and damaged communities**. Communities demand genuine involvement and the right of local residents to have the highest level of influence over the future of their own communities.

Toronto City Councillors would do well to carefully consider the significant likelihood of unsatisfactory outcomes of “consultation” processes, and associated citizen unrest, attending the implementation of the DPS in Toronto.

Indeed, in Toronto we have already seen similar cases where extensive front-end consultation resulted in Planning decisions highly antithetical to the explicitly stated “vision” of the affected community. **A recent local case in point is the Mimico Secondary Plan**, currently being appealed by residents and ratepayers. After 5 years of community meetings, charettes and visioning studies, during which the community repeatedly communicated its “vision” as involving preservation of Open Space designation in the Official Plan for private lands, and low-mid-rise built form (8 storey maximum), the community was given a plan which redesignated half the Open Space private open space as Mixed Use, and involved multiple 25 storey buildings. In the end it was the developers' and planners' vision, not the community's, that prevailed.

3. AN ADOPTED DPS BY-LAW REMOVES PUBLIC RIGHTS TO CONSULTATION AND TO 3RD-PARTY APPEAL OF PERMIT DECISIONS, BUT RETAINS APPEAL RIGHTS FOR APPLICANTS.

After a DPS bylaw is passed, then **no public consultation** about any applications is required, and **residents and other 3rd parties CANNOT while developers CAN appeal** DPS-based permit decisions. Effectively, the DPS process turns **non-as-of-right** asks (including minor variance, zoning amendment, and Section-37-style tradeoffs) into **as-of-right** asks (so long as specified criteria and conditions are met). Then it

⁴ See <http://cityhallwatch.wordpress.com/2013/10/24/coalition-of-vancouver-neighbourhoods-cvn-media-release/>

removes public rights of consultation and appeal on grounds that all DPS-based applications are “as-of-right”.

The removal of public rights of consultation and appeal is **unfair**, and will likely **incline decisions** in favor of developers.

Residents and others may well want to be consulted about or appeal application decisions. By way of illustration, consider the following example DPS by-law (offered by Joseph D’Abramo, Director, Zoning and Environmental Planning, at the downtown DPS open house), where the maximum is 11 storeys; up to 3 storeys no community benefits are required, and for heights between 4 and 11 storeys, community benefits are required proportional to height. Here are two case studies wherein, due to the unfair appeal regime, the community will not have a voice:

Case I: A developer applies for a 9 storey condo. Planning approves the 9 storey proposal. The community has good reason to think the criteria should only allow 7 storeys (perhaps the developer’s shadow study is flawed, as we know has happened), but **can’t appeal to the OMB to make their case** for 7 storeys because the DPS has removed their right to appeal.

Case II: A developer applies for an 11 storey condo on a site. Planning approves the 11 storey proposal in trade for a community benefit. The community doesn’t think the benefit is worth it, but **can’t appeal to the OMB to make their case**.

There are other reasons why the public may want to be consulted about an application, or appeal an application decision; see #4, #5, and #6 below.

4. “PERFORMANCE-BASED” DPS BY-LAWS ARE UNPREDICTABLE, AND INAPPROPRIATE FOR TORONTO’S MATURE NEIGHBOURHOODS.

To allow 45-day processing, DPS by-laws are based in algorithmic “performance standards” (e.g., allowing 5 hours of sunlight on a facing sidewalk). Such by-laws are necessarily **insensitive to context**, and so are **inappropriate for Toronto’s mature, idiosyncratic neighbourhood-scale areas**. Moreover, there is a concern that they will ***increase* uncertainty**, since prior to an application’s coming in, **residents can’t predict what exactly will be allowed on a specific site**.⁵

The insensitivity to context and uncertainty associated with DPS by-laws is rendered more problematic by the fact that (as per concern #3) community members **need not be consulted** about any applications and residents and other 3rd parties **will not**

⁵ In a neighbourhood in Ottawa under a pilot plan similar to a DPS, residents were upset when the criteria turned out to allow 9 storeys on a site residents thought could only go to 6.

have the right to appeal any DPS-based permit decisions. Here again, the DPS process is thus likely to result in foreseeable citizen anxiety and unrest.

5. A DPS “RESETS” ZONING IN AN AREA, LIKELY RESULTING IN SIGNIFICANT UPZONING.

DPS by-laws are advertised as encoding a community “vision” resulting from extensive consultation; but **building owners and developers who may desire “upzoning” for financial reasons will also be consulted.** Moreover, **since DPS by-laws subsume minor variances, zoning amendments, and S37-style trade-offs, it is likely that DPS areas will get significantly “up-zoned”, regardless of what residents and other local members of the community “envision”.**

Here again it is worth remembering **the lesson of Mimico**, where 5 years of consultation with the local community resulted in a Secondary Plan whose parameters drastically departed from what the community had “envisioned” (e.g., a 25-storey rather than an 8 storey maximum).

Even if Planning produces a DPS by-law that both the community at large and Council endorse, **developers with deep pockets and investments in the area will likely appeal the by-law to the OMB, in which case it may be the OMB, and not the operative “vision”, that determines the content of the DPS by-law.**

6. THE PARAMETERS OF THE FRONT-END PROCESS OF CONSULTATION ARE UNDER-SPECIFIED, AND IN ANY CASE BURDENSOME.

City Planning has described the front-end process of consultation as being intensive, with workshops, charettes, and the like; but in point of fact **the requirements for front-end consultation consist in only a single open house and a single public meeting**, and the proposed Official Plan Policies for implementing the DPS in Toronto do not contain language ensuring that consultation will go beyond this minimum.

Whether short or long, given post-DPS removal of public rights, **the front-end process imposes a burden on community members** to “act now or suffer the consequences”. But many members will be neither able nor inclined to participate in “visioning” exercises, nor have **the money to engage in costly appeals of proposed DPS by-laws with which they disagree** (as Mimico residents are now having to do). There is also the concern that people will have little appreciation at the “front-end” stage of future impacts that might result from revising the zoning for the entire area.

As such, **the front-end process cannot warrantably justify the subsequent removal of public rights of consultation and appeal.** Note also that **there are existing proactive, vision-based area planning tools** (e.g., area-specific Official Plan

Amendments and associated area-specific zoning amendments) not involving such risk of significant up-zoning and subsequent loss of rights.

7. A DPS DELEGATES FINAL APPROVAL AUTHORITY AWAY FROM PUBLIC REPRESENTATIVES TO UNELECTED PLANNING STAFF OR OTHERS.

Due to the 45-day timeline, approvals are expected to be delegated to the Chief Planner or other unelected persons or committees. **This takes out of the picture both Council and residents**—those advancing the view of those who actually live in the area. **Approvals become an undemocratic, internal matter between developers and planning staff.**

8. DPS STUDIES, ADVERTISED AS BEING HIGHLY INTENSIVE, MAY REMOVE RESOURCES FROM EXISTING OR NEEDED AREA STUDIES NOT ASSOCIATED WITH A DPS STUDY.

DPS studies are presented as being highly intensive, on order of a Heritage Conservation District (HCD) Study---which for a neighbourhood-scale area may cost on order of 1 million dollars. The Proposed Official Plan Policies state that there will be “no financial impact” of implementing the DPS in Toronto. Will Planning staff and resources be diverted from existing or needed non-DPS Area Studies, to DPS studies?

9. EVEN PUTTING ASIDE THE PREVIOUS CONCERNS, ONLY 2-4 DPS STUDIES CAN BE DONE PER YEAR – THAT’S A DROP IN THE BUCKET.

We need hard-and-fast planning standards for all of Toronto. The DPS will barely put a dent in this problem. We need a better solution.