



**STAFF REPORT
ACTION REQUIRED**

6 Lloyd Avenue and 195, 181, 179, 177, 175, 171, 169, 167, 165, 163 and 161 Mulock Avenue - Official Plan Amendment – Supplementary Report #2

Date:	May 5, 2015
To:	City Council
From:	Chief Planner and Executive Director, City Planning
Wards:	Ward 11 – York South-Weston
Reference Number:	P:\2015\Cluster B\PLN\City Council\CC15067 13 278533 WET 11 OZ

SUMMARY

At its meeting on March 31, 2015, City Council deferred consideration of Item EY4.3 related to 6 Lloyd Avenue and 195, 181, 179, 177, 175, 171, 169, 167, 165, 163 and 161 Mulock Avenue until the May 5 and 6, 2015 City Council meeting. Since the deferral of this item, the City has received new information on the rail safety considerations and air quality and odour issues with respect to the proposed development.

This Supplementary Report outlines new information received on the subject application since the March 31, 2015 meeting of City Council and recommends that Council recommend the application be revised to conform with its December 18, 2013 approval with respect to building heights and setbacks.

RECOMMENDATIONS

The City Planning Division recommends that City Council choose one of the following options:

1. City Council delete the recommendations of Etobicoke York Community Council and request that the application be revised to conform with Council's approved Site and Area Specific Policy 447 as approved by Council at its meeting of December 18, 2013 with respect to building heights and setbacks.

OR

2. City Council approve the recommendations of Etobicoke York Community Council subject to amending Recommendation 1 to add the following additional policies to the applicant's proposed Site and Area Specific Policy 487 to address land use compatibility issues:
- a. All residential uses shall be set back from all property lines adjacent to the rail corridor at a distance satisfactory to the applicable rail authorities and the Chief Planner and Executive Director, City Planning Division.
 - b. No residential uses or assembly uses (i.e. daycare centres, schools, places of worship, etc.) will be permitted on the ground level of any buildings within 30 m of the rail corridor, as measured from the property line.
 - c. Prior to the issuance of any above grade building permit, the owner must provide a Consulting Engineer's certification to the satisfaction of the Chief Planner and Executive Director, City Planning Division, that any proposed crash wall and noise wall mitigation measures required by the applicable rail authorities have been designed and constructed in accordance with the approval of these authorities, and all measures are to be incorporated into the plans and drawings submitted for site plan approval and any site plan agreement which shall include maintenance requirements, pursuant to s114 of the *City of Toronto Act*, 2006, as amended, and s41 of the *Planning Act*, as amended and as applicable.
 - d. Any required noise wall shall be constructed to a minimum of 5.0 m in height or a height acceptable to the applicable rail authorities and constructed on the subject property for the entire length of the site adjacent to the rail corridor.
 - e. Mitigation measures are to be incorporated into the design of residential buildings to mitigate air quality, odour and noise impacts, in accordance with the mitigation measures outlined in the BCX Environmental Consulting Report dated April 29, 2015 and all applicable Ministry of the Environment and Climate Change standards, regulations and guidelines.
 - f. The following criteria shall be fulfilled prior to approval of a Zoning By-law Amendment to permit a development having residential uses above a 16.5 m height to ensure an appropriate living environment for future occupants:
 - i. Submission of an Odour and Air Quality Assessment to the City, with a copy to the Employment Land User. The Development Proponent will confirm to the City that the Employment Land User has been provided with a copy of the Odour and Air Quality Assessment. The Employment Land User will have 45 days after receipt of the Odour and Air Quality Assessment to provide its comments to the City.
 - ii. The submission of an Engineering Feasibility Study to the satisfaction of the City, with a copy to the Employment Land User. The Development Proponent will confirm to the City that the

Employment Land User has been provided with a copy of the Engineering Feasibility Study. The Employment Land User will have 45 days after receipt of the Engineering Feasibility Study to provide its comments to the City.

- iii. The submission of a Written Mitigation Statement to the satisfaction of the City, with a copy to the Employment Land User. The Development Proponent will confirm to the City that the Employment Land User has been provided with a copy of the Written Mitigation Statement. The Employment Land User will have 45 days after receipt of the Written Mitigation Statement to provide its comments to the City.
- iv. Completion of an Odour and Air Quality Peer Review, which has as its conclusion that the peer reviewer concurs with the methodology, findings and recommendations regarding mitigation of the Odour and Air Quality Assessment, Engineering Feasibility Study and Written Mitigation Statement, with due consideration given to any comments that the Employment Land User or its solicitor has provided regarding the items above (e.g. i, ii, and iii).
- v. Off-site mitigation will be secured via written confirmation, to be received in a timely manner and shall not be unreasonably withheld, signed and stamped as applicable, to the satisfaction of the Chief Planner and Executive Director, City Planning, from the Employment Land User's solicitor that arrangements to achieve the recommendations, if any, contained in the Odour and Air Quality Assessment, Engineering Feasibility Study, Written Mitigation Statement and Odour and Air Quality Peer Review, including financial and implementation arrangements between the Employment Land User and the Development Proponent, have been made to ensure completion of the mitigation measures prior to residential occupancy.
- vi. Submission of a Site Plan Control application for the Development Proposal accompanied by a Mitigation Certification, a copy of which shall be provided to the Employment Land User.
- g. For purposes of this policy, the following terms and definitions shall form part of the Official Plan Amendment:
 - i. "Employment Land User" means the employer engaged in an Employment Land Use on nearby or adjacent Employment Lands.
 - ii. "Engineering Feasibility Study" means an engineering study that is completed by a qualified consulting engineer, who has worked in consultation with and is acceptable to the Employment Land User, at the Development Proponent's expense, which includes in its terms of reference:

- a. A review of the Odour and Air Quality Assessment report and the mitigation measures recommended in the report; and
 - b. An assessment of the technical feasibility and cost of implementing the off-site mitigation measures recommended by the Odour and Air Quality Assessment report to mitigate adverse air quality impacts in relation to the Development Proposal.
- iii. "Mitigation Certification" means a document completed by a qualified architect and/or qualified consulting engineer, that stamps and certifies that any required on-site mitigation measures on the Development Lands identified by the Air Quality and Odour Assessment and Odour and Air Quality Peer Review are expressly described and detailed in the Site Plan submission drawings, Notice of Approval Conditions or Site Plan Agreement, as applicable.
- iv. "Odour and Air Quality Assessment" is an odour and air quality study prepared by a qualified consulting engineer at the Development Proponent's expense that:
- a. Includes a stack height and air pollution control optimization study to assess the adverse air quality impacts including odour impacts to Ontario Ministry of the Environment and Climate Change standards as applicable (e.g. the Summary of Standards and Guidelines to Support Ontario Regulation 419: Air Pollution - Local Air Quality February 2008 PIBS # 6569e and Jurisdictional Screening Level (JSL) List - A Screening Tool for Ontario Regulation 419: Air Pollution - Local Air Quality February 2008 PIBS # 6547e Version 1) from the Employment Land Use in relation to the Development Proposal at a requested height increase beyond what the existing zoning for the Development Lands permits.
 - b. Recommends, first and foremost as necessary, off-site mitigation measures on the Employment Lands and the Employment Land Use, such as stack height adjustments and the provision of other discharge control measures, and/or if required, any on-site advisory clauses and mitigation measures that will not appreciably lessen a reasonable living experience within the Development Proposal (i.e. on-site mitigation measures may include restricting outdoor amenity spaces or balconies, the location and size of operable windows or air intakes above a height of 16.5 m), to meet a standard of one odour unit (1 OU) using the Methodology for Modeling Assessments of Contaminants with 10 Minute Average Standards and Guidelines under O. Reg. 419/05 included in Standards Development Branch Technical Bulletin April 2008, as amended or replaced from time to time.

- v. "Odour and Air Quality Peer Review" means a third party peer review and report of the Odour and Air Quality Assessment, Engineering Feasibility Study and Written Mitigation Statement. This is to be completed by a qualified consulting engineer at the expense of the Development Proponent for and under the direction of the City.
- vi. "Written Mitigation Statement" means a statement prepared by a qualified consulting engineer outlining the intended height of the Development Proposal, the intended off-site mitigation measures to be installed and maintained on the Employment Lands and the Employment Land Use to address any potential adverse impact on the proposed residential uses, and the associated cost of implementing such mitigation, all based on the accepted Engineering Feasibility Study.

AND

- 3. The applicant be required to provide an updated air quality and odour assessment study, based on the most current, publicly available information in relation to NRT's atmospheric emissions that is signed and stamped by a professional engineer and reflects the development proposal submitted, as a condition of submission of a complete Zoning By-law Amendment application.

Financial Impact

The recommendations of this report will have no financial impact.

DECISION HISTORY

At its meeting on March 31, 2015, City Council deferred consideration of Item EY4.3 related to 6 Lloyd Avenue and 195, 181, 179, 177, 175, 171, 169, 167, 165, 163 and 161 Mulock Avenue until the May 5 and 6, 2015 City Council meeting.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.EY4.3>

COMMENTS

City staff have received new information on two issues since the March 31, 2015 meeting of City Council:

- 1. Rail Safety
- 2. Air Quality and Odour Impacts

Rail Safety

Official Plan Amendment 231 and Site and Area Specific Policy 447 (SASP 447), adopted by City Council on December 18, 2013, require that residential buildings on the subject site be set back a minimum of 30 m from the adjacent rail corridor to minimize

adverse impacts. Although these amendments are not yet in force, they are consistent with the Railway Association of Canada / Federation of Canadian Municipalities *Guidelines for New Development in Proximity to Railway Operations*.

Through the subject application, the applicant is proposing an 18 m building setback from the rail corridor, as measured from the centreline of the corridor, combined with a structural crash wall intended to prevent a derailed train from penetrating the development. The applicant's rail safety consultant had assumed in their design that Metrolinx would be constructing a noise barrier on Metrolinx property. On April 2, 2015, the applicant submitted to City staff an engineering report for the crash wall and a letter from Metrolinx staff indicating initial support for the proposal.

On April 10, 2015, Planning staff met with Metrolinx staff to discuss the proposed rail safety measures. Metrolinx staff indicated that the proposed building setback of 18 m from the property line would be acceptable in conjunction with the proposed crash wall, subject to the owner eliminating the proposed dwelling units on the ground floor of any building within the 30 m setback, as measured from the shared property line adjacent to the rail corridor. Metrolinx staff also indicated that in addition to residential uses, assembly uses such as daycares, schools, or places of worship should not be permitted on the ground floor of any building within the 30 m setback to minimize loss of life in the case of a train derailment.

Further, Metrolinx staff confirmed that Metrolinx would not be constructing a noise barrier along the rail corridor adjacent to 6 Lloyd Avenue. As such, the applicant would be responsible for constructing the barrier on the subject property as per the recommendations set out in the applicant's Noise and Vibration Impact Study prepared by J.E. Coulter Associates Limited, dated August 5, 2014.

Should City Council approve the subject application, it is recommended that any approval require the elimination of residential and assembly uses on the ground floor of any building within 30 m of the rail line and that the owner be required to incorporate all appropriate safety measures in any future site plan applications. It is also recommended that any proposed mitigation measures shall be acceptable to the applicable rail authority and result in an appropriate living environment.

Air Quality and Odour Impacts

On April 23, 2015, the applicant submitted a revised Preliminary Odour Assessment report prepared by RWDI, dated April 23, 2015. The City retained BCX Environmental Consulting to conduct a peer review of this report. The peer review report indicated a number of concerns with the applicant's Preliminary Odour Assessment report which are outlined below.

Building Heights

Official Plan Amendment 231 and SASP 447, adopted by City Council on December 18, 2013, allow residential uses on the northern two-thirds of the subject site to a maximum building height of 16.5 m, subject to a Holding ("H") symbol. These limits were established due to concerns that the plume from NRT could impact buildings on the site greater than 16.5 m in height.

The subject proposal illustrates three buildings containing residential uses, all proposed to be 42.9 m in height. The peer review report indicated that the height of the proposed residential buildings would make them significantly more susceptible to odour impacts than buildings at lower heights. At heights above 29 m for Building A, 26 m for Building B and 20 m for Building C, the odour impacts could be up to 35% higher on average than those at the existing low-rise residences on Mulock Avenue. Since actual site-specific odour emission data was not used as part of the applicants odour assessment (RWDI report), the peer review report notes that a difference of 35% becomes significant when the actual odour concentrations are high.

St. Clair Avenue Study Appeal

NRT appealed the policies of Official Plan Amendment No. 84 for the portion of St. Clair Avenue West, west of Blackthorn Avenue to Old Weston Road, in the vicinity of NRT. The Amendment provided for taller residential buildings above 16 m along this segment of St. Clair Avenue West. Planning staff have been working with NRT representatives and its odour consultant (ORTECH) to arrive at a settlement of the appeal. Staff have recommended to Etobicoke York Community Council a policy framework that establishes criteria to be satisfied prior to recommending a Zoning By-law Amendment to permit developments containing residential uses above a height limit of 16.5 m. The policy approach is reasonable and practical to resolve potential land use conflicts between future residential development and NRT as it relates to potential odour impacts. The criteria that has been recommended by City Planning to arrive at a settlement of OPA 84 is also recommended to be included as policy recommendations to address land use compatibility issues should City Council approve this application.

Mitigation Measures

To mitigate the potential odour impacts, the peer review report recommends the following minimum mitigation measures:

1. No rooftop terraces on any buildings;
2. No openable windows or balconies on the east and south facades of Building A above 29 m, of Building B above 26 m and of Building C above 20 m;
3. Central air conditioning with odour filtration in all buildings;
4. Pressurization of the building to minimize infiltration of outside air in all buildings; and

5. Warning clause on the agreement of purchase and sale of all residential and commercial units.

The recommended mitigation measures are similar to those proposed in the 2005 applications for the subject site which the Ontario Municipal Board concluded would "not produce a liveable environment for its future inhabitants who would be forced to keep their windows closed in order for building air conditioning and carbon filtration systems to work."

Gaps in the Applicant's Report and Currency of Data

The peer review report indicated that the applicant's report only addressed odour and did not address or comment on other air contaminants. The proposed development has the potential to impact NRT's compliance status for air contaminants other than odour at all building heights. The peer review report recommended that "this potential issue be addressed at this stage of the planning process to ensure that NRT's Ministry of the Environment and Climate Change compliance status is not compromised as a result of the proposed development."

Further, the City engaged in extensive negotiations with National Rubber Technologies (NRT) and the applicant attempting to negotiate a confidentiality agreement which would permit RWDI to obtain and use historical and up-to-date data on emissions from NRT's operations. Due to timing issues, an agreement was unable to be reached. As a result, RWDI's report used limited publicly available data. RWDI stated that "Gaps in the information are addressed through conservative assumptions." However, the peer review report indicated the RWDI report used "overly simplified assumptions" and that further study should be completed prior to the approval of this application.

Conclusion

Staff are of the opinion that the scale of proposed residential uses on this site are not compatible with existing development in the area. The height of the proposed buildings is of particular concern, given the risk of significantly increased odour impacts at heights above 20 m. The recommended mitigation measures do not create an appropriate living environment and have been previously rejected by the Ontario Municipal Board. Moreover, the City has yet to receive an acceptable analysis of air quality impacts. As such, staff are recommending that Council recommend the application be revised to conform with Council's approved Site and Area Specific Policy 447 with respect to building heights and setbacks.

However, should City Council approve the subject application in its current form, it is recommended that Council require that as a condition of a complete Zoning By-law Amendment application, the applicant provide an updated air quality study, based on the most current, publicly available information in relation to NRT's atmospheric emissions that is signed and stamped by a professional engineer and reflects the development proposal submitted as part of the application.

In addition, a setback to the rail corridor is required to meet safety standards associated with residential uses in proximity to a rail corridor. The applicable rail authorities have advised that the standard 30 m setback requirement may be reduced on the site if additional safety mitigation measures are provided such as a crash wall and the elimination of residential and assembly uses on the ground floor of any building within the 30 m setback. Due to these issues, staff are recommending that a number of additional polices be added to the applicant's proposed Site and Area Specific Policy should City Council approve this application in its current form.

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SIGNATURE

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