



**STAFF REPORT  
ACTION REQUIRED  
with Confidential Attachment**

**328 – 358 Dupont Street - OMB Hearing**

<b>Date:</b>	November 1, 2016
<b>To:</b>	City Council
<b>From:</b>	City Solicitor
<b>Wards:</b>	Ward 20 - Trinity-Spadina
<b>Reason for Confidential Information:</b>	This report is about litigation that affects the City and contains advice or communications that are subject to solicitor-client privilege.
<b>Reference Number:</b>	2010 184959 STE 20 OZ; 2015 110684 STE 20 OZ

**SUMMARY**

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In 2010, an application was filed to amend the Official Plan to redesignate the site from *Employment Areas* to *Mixed Use Areas*. The application contemplated three mixed use buildings with heights of 29-storeys, 8-storeys and 16-storeys. This application was refused by Council in 2011. A rezoning application was subsequently submitted for the site. No decision was rendered by Council in relation to that application. Both site specific applications were appealed.

Further, through the municipal comprehensive review process, Council approved the redesignation of lands on the north side of Dupont Street, south of the rail corridor, from Ossington Avenue to Kendal Avenue from *Employment Areas* to *Regeneration Areas*. The western portion of this site is situated within the eastern-most portion of this study area. A planning study was conducted for the area and ultimately OPA 271 (SASP 212) was adopted that, among other things,

- retained the northern 30 metres of these lands as *Employment Areas* while the remaining southern portion of the lands was redesignated to *Mixed Use Areas*;
- permitted a height limit of 8-storeys within the *Mixed Use Areas*; and

- required a 30 metre setback between sensitive uses and the rail lot line and the provision of an earthen berm within this setback area, for the purpose of ensuring safety.

Zoning By-law 1011-2014 was enacted in tandem with OPA 271. Nine appeals were filed with respect to these instruments. While various settlements have been reached with respect to these instruments, the appeal remains outstanding with respect to this site. The applicant has also filed a site specific appeal of OPA 231.

The consolidated hearing of the above noted appeals before the OMB has been adjourned *sine die*.

The City Solicitor requires further directions.

## **RECOMMENDATIONS**

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### **The City Solicitor recommends that:**

1. Council adopt the confidential instructions to staff in Attachment 1.
2. Council authorize the public release of the recommendations in Attachment 1 if adopted with the remainder of Attachment 1 and all other Attachments to remain confidential at the discretion of the City Solicitor.

### **Financial Impact**

The recommendations in this report have no financial impact.

## **DECISION HISTORY**

At its meeting of June 14, 2011, City Council considered a report from the Chief Planner and adopted staff's recommendations to refuse the application for an Official Plan Amendment and, should the decision be appealed, to direct the City Solicitor to support Council's refusal at the Ontario Municipal Board. The decision can be accessed at this link:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2011.PG5.1>

At its meeting of December 16, 17 and 18, 2013, City Council considered a report from the Chief Planner and adopted OPA 231. OPA 231, as adopted, contemplates that a Site and Area Specific Plan will be enacted for the Dupont Study Area. The decision can be accessed at this link:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.PG28.2>

In January 2014, the City submitted OPA 231 to the Minister of Municipal Affairs and Housing for approval. On July 9, 2014, the Minister of Municipal Affairs and Housing

issued a decision approving most of OPA 231. The Minister's decision was appealed by several parties to the OMB and proceedings in that matter underway. The Minister's decision can be accessed at this link:

<http://www1.toronto.ca/City%20of%20Toronto/City%20Planning/SIPA/Files/pdf/O/ministers%20decision%20on%20opa%20231.pdf>

At its meeting of August 25, 2014, City Council adopted the recommendations in the Dupont Study Regeneration Area Final Report and Official Plan Amendment 271 as well as Zoning By-law Amendment 1011-2014. That decision can be found at this link:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.PG35.6>

## **ISSUE BACKGROUND**

In a decision issued June 2, 2015, the OMB allowed a motion to consolidate the appeals of OPA 271, Zoning By-law 1011-2014 and OPA 231 into one proceeding. The City has settled eight of nine appeals of these planning instruments. This appeal (that relates to the subject property as well as the property immediately to the west at 374 Dupont Street) remains outstanding.

The City has also received a site specific Official Plan Amendment and a rezoning application for the subject property. Both of these applications have been appealed to the Ontario Municipal Board. An OMB hearing was set to commence respecting these applications and the outstanding appeal of the area planning instruments in May, 2016, but was adjourned.

## **COMMENTS**

The City Solicitor has been provided with additional without prejudice correspondence from the applicant's solicitor and requires further direction.

## **CONTACT**

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## **SIGNATURE**

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Brian Haley, Interim City Solicitor

## **ATTACHMENTS**

- Attachment No. 1: Confidential Information
- Attachment No. 2: Confidential Without Prejudice Letter and attachments from David Bronskill, dated September 15, 2016.
- Attachment No. 3: Confidential Without Prejudice Email from David Bronskill, dated November 1, 2016.