ossington community association
working for the ossington strip–dundas bend neighbourhood and business districts
ossingtoncommunity.ca

December 4, 2017

Dear Mayor Tory and Members of City Council:

I write as President of the Ossington Community Association (OCA), under the direction of the OCA Executive Board, in reference to PG24.12, a request for direction in re Official Plan Amendment 258 (Official Plan Policies to Implement a Development Permit System).

As you know, the OMB ruled on November 2, 2017 that the ongoing appeals to OPA 258 should be adjourned until the City has enacted a Community Planning Permit By-law (Development Permit By-law) **illustrating the implementation of and testing this 'fundamental change' in Toronto's planning policy**. As the Board member says:

> [13] The Board [maintains that] because the City's adoption of a new Development Permit System is on a city-wide basis under OPA 258, it will represent such a fundamental change to planning and development in the largest urban area of the Province, "it is imperative to get it right". Once implemented all existing zoning by-laws and related variances in the City will have been effectively repealed and replaced, and with them, the land use regulation system that has been in place for over 60 years.

As such, we write to respectfully request that **Council refuse or defer any request on the part of the City to appeal the OMB ruling to Divisional Court**.

The DPS OPA squeaked through Council on the force of Jennifer Keesmaat's blatant misrepresentation of the DPS as forbidding site-specific appeals of approved DPS by-laws—which it didn't. **OPA 258 should never have been passed in the first place.**

As detailed in the attached white paper ('The DPS from a Community Perspective'), the DPS is a risky, untested, rights-removing (remember: applicants but not third parties can appeal decisions), upzoning procedure—**a procedure that, after a single statutorily required public meeting and one open house, henceforth cuts out both the public and Council in what is effectively the death of democratic participation in planning our communities**. In light of this, the renaming of the DPS as the 'Community Planning Permit System' is nothing short of Orwellian.

It is also worth noting that the forthcoming changes to the Planning Act and to OMB give existing planning tools (e.g., Area-specific OPAs, Secondary Plans) the strength that was supposed to accrue to the DPS, **without** removing Council and public participation in the planning process. Also importantly, these forthcoming changes render the DPS OPA yet more problematic, since they **entail the removal of any mechanism for testing and adjusting OPA 258, for a full five years**.

Please act to block City Legal's attempt to push through, to the detriment of you and your constituents, this **undemocratic and untested 'fundamental change' to the planning process**.

Sincerely yours,

Jessica Wilson
President, Ossington Community Association
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THE DEVELOPMENT PERMIT SYSTEM (DPS) FROM THE COMMUNITY PERSPECTIVE[1]
CORRA, Confederation of Resident and Ratepayer Associations in Toronto
June 16, 2014

Here we provide an overview, from the community perspective, of the DPS process as anticipated to unfold in Toronto, followed by sections presenting the main stated advantages (with commentary) and main concerns with this process.

1. OVERVIEW OF THE DPS PROCESS

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 advancing for implementation in Toronto.

Key features of the DPS as it would be implemented in Toronto are as follows:

1. **Passage of an Official Plan Amendment (OPA) containing Policies for implementing a Development Permit System in Toronto.** This document is the topic of the June 9 open house and June 19 statutory public meeting. After these meetings, the Official Plan Amendment will go to Council (in the 'ResetTO' literature the anticipated date is July 8-9). If passed as currently presented, all of Toronto would be a proposed DPS area, though in practice only selected areas would undergo the process, at least to start.

2. **Selection of specific areas to receive a DPS by-law, which will replace existing zoning.** City Planning presents the DPS as applying to "neighbourhood-scale" areas; this terminology is not defined, but some areas discussed as possible pilot areas are the King-Spadina Planning District and portions of Eglinton Avenue and vicinity. Planning has stated that only areas wanting a DPS by-law will get one; at present the mechanism for selection and drawing of boundaries is unclear.

3. **For each selected area, a front-end process of consultation.** This is advertised as identifying the community "vision" for the area, including identifying needed community benefits.

4. **After consultation, City Planning proposes a DPS by-law.** This specifies minimum and maximum standards (e.g., heights) and associated criteria (e.g., acceptable shadow impact); the standards also contain triggers for community benefits. For example, a DPS by-law for a mid-rise area might specify a max height of 11 storeys, a criterion limiting shadow impact, and a "trigger" for community benefits that kicks in above 6 storeys.

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5. **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**.

6. **Once the DPS by-law is adopted, all existing zoning is repealed**. All applications for building permits are henceforth processed under the DPS by-law, with a 45-day time-line (after which applicants can appeal to the OMB).

7. **Once the DPS by-law is adopted, all permit applications are processed like "as of right" applications: no public consultation is required, and 3rd parties do not have the right to appeal application decisions; developers do have this right.**

2. STATED ADVANTAGES OF THE DPS

The following are what the province and/or City Planning present as the primary advantages of the DPS; commentary follows in the form of notes.

1. **Replaces site-by-site planning with "vision-based neighbourhood scale" planning.**

   NOTE 1: This feature is of potential benefit to communities: in practice (though not law), there is extensive front-end consultation with the community about the desired course of future development and needed community benefits, prior to formulation of a DPS by-law.

   NOTE 2: Toronto currently has existing vision-based area-planning alternatives to site-by-site planning (Secondary Plans, area-specific OPAs such as those had by Kensington and Ossington) not subject to any of the concerns highlighted below.

   NOTE 3: DPS by-laws will typically involve "upzoning", since DPS by-laws replace the minor variance and zoning amendment processes.

   NOTE 4: The final form of a DPS by-law may depart considerably from the community "vision". In particular, there is a risk of significant unappealable upzoning associated with developer appeals of a DPS by-law; see Concern 1.

2. **Encourages a planning process that is transparent and consistent**.

   NOTE 1: This feature is of potential benefit to both communities and applicants: DPS by-laws set out specific standards (height, etc.) and criteria (acceptable shadow impact, etc.), and conditions (pertaining to, e.g., community benefits) that are supposed to be met for applications to be approved, so that everyone more or less knows what to expect.

NOTE 2: The caveat "more or less" in the last sentence of NOTE 1 reflects that the criteria-based form of DPS by-laws introduces an element of uncertainty not found in present zoning by-laws; see Concern 4.

NOTE 3: The caveat "supposed to be met" in the last sentence of NOTE 1 reflects that the Provincial DPS Regulation O. Reg. 608/06 does not prevent applicants from appealing to amend a DPS by-law on a site-specific basis.[2] In this respect the DPS and existing area-based planning mechanisms are on a par. This leads, however, to a possible distinctive advantage of Toronto's DPS.

3. **POSSIBLE ADVANTAGE: It is difficult to amend a DPS by-law on a site-specific basis**.

NOTE 1: The Draft Official Plan Policies for Implementing a DPS in Toronto contain requirements intended to make it difficult to apply to amend a DPS by-law on a site-specific basis, by requiring that such applications include area studies, an area-based planning rationale, and a strategy for consultation along lines of what would be required for an application to amend the entire by-law.

NOTE 2: This feature is primarily of benefit to communities, and the requirements are somewhat harder to satisfy than those associated with site-specific applications to amend Secondary Plans or other existing area-planning by-laws. Not by much, though: site-specific applications to amend Secondary Plans and other area-specific Official Plan Amendments must also include area (e.g. transportation) studies, an area-based planning rationale, and consultation.

NOTE 3: Since this feature is not part of the Ontario DPS Regulation, there is a risk that it will be appealed by developers and removed from the final version of Toronto's DPS Official Plan Policies. This would remove the primary advantage for communities of going with the DPS instead of alternative area-based policies.

NOTE 4: Even if the feature does survive a legal challenge, developers may be able to satisfy the requirements without overmuch difficulty. Illustrative cases-in-point are the typically highly superficial "Avenue Segment Studies" and area-based planning rationales submitted by applicants wanting to build on Avenues in the absence of a City-led Avenue Study.

4. **Provides a streamlined development approval process and allows flexible development standards**.

NOTE 1: This feature is primarily of benefit to applicants. The streamlined approval process reflects (a) that multiple processes are combined into one; (b) the timeline on permit applications is greatly reduced, from 180 days to 45 days;

[2] For example, the Lake-of-Bays DPS allows applicants to appeal to amend the DPS by-law on a site-specific basis.

(c) no public consultation is required, and (d) application approvals are not subject to 3rd party appeals. The development standards are "flexible", reflecting that what is allowed on a site is a function of satisfaction of criteria and conditions, as opposed to hard-and-fast numbers as in the case of present zoning by-laws.

NOTE 2: Streamlining the development approval process and shifting to flexible development standards may be a disadvantage to communities, in having several potentially problematic consequences (see Concerns 2, 3, and 4).

3. CONCERNS WITH THE DPS

The main concerns with the DPS are as follows:

1. **Risk of "upzoning" significantly departing from what members of the community envision**.

   There are two main areas of risk. First, there is no guarantee that Planning will return a DPS by-law encoding the community "vision". For example, if the community vision is for a 10 storey max, Planning might return with a DPS by-law with a 15-storey max.[3] Second, developers with deep pockets and investments in the area may appeal the by-law to the OMB. Importantly, the OMB can change the content of the by-law. For example, the OMB might agree with a developer that the DPS by-law should have a 20-storey max. And once the OMB rules, the new standards replace existing zoning, with no right of 3rd party appeal.

2. **An adopted DPS by-law removes public rights to consultation and to 3rd party appeal, but retains appeal rights for applicants**.

   A DPS by-law turns non-as-of-right asks (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 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 will likely incline decisions in favor of developers. Moreover, residents and other 3rd parties may want to be consulted

[3] Vancouver has a "development permit system" similar in respect of involving a front-end process of consultation followed by rezoning, and there has been great citizen unrest due to large gaps between what a given community wants and what it gets. See http://www.cbc.ca/news/canada/british-columbia/city-delays-rezoning-plans-in-vancouver-neighbourhoods-1.1871813 and http://cityhallwatch.wordpress.com/2013/10/24/coalition-of-vancouver-neighbourhoods-cvn-media-release/.

about or to appeal decisions on applications.[4]

3. **A DPS allows delegation of final approval authority away from public representatives to 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. Such delegation takes out of picture both Councillors and residents—advocates for those who actually live in the area. Complex applications may be directed to Council, as in Lake-of-Bays; but given the 45-day timeline, these applications may be appealed to OMB on grounds of neglect, again by-passing local input. Even given extensive front-end consultation, the community may want to be involved in helping plan their neighbourhood on an on-going basis.

4. **"Criteria/Performance-based" DPS by-laws can be problematic.**

   To allow 45-day processing, DPS by-laws are based in algorithmic criteria or "performance standards" (e.g., requiring 5 hours of sunlight on a facing sidewalk). Such by-laws are insensitive to context, and may not be appropriate for Toronto's mature, idiosyncratic areas. Many have found, for example, that the criteria in the Avenues and Mid-rise Building Study allow buildings that are overly intrusive with respect to shadow, overlook, etc. There is also a concern that performance-based standards will increase uncertainty, since before an application and associated studies come in, residents can't predict what exactly the criteria will allow on a specific site.

5. **The law doesn't guarantee that there will be extensive front-end consultation.**

   City Planning has described the process of consultation as being intensive, but the legal 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.

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[4] Here are 2 case studies where community members might want to appeal a DPS decision:
Case I: A developer applies for a 9 storey condo. Planning approves the proposal. The community has good reason to think the criteria should only allow 8 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.**
Case II: A developer applies for an 11 storey condo. 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**.

6. **DPS studies are highly resource intensive.**

   DPS studies are presented as 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. This gives rise to two potential problems:

   - Given risk factors/removal of rights, not every community will want the DPS. Will planning staff and resources be diverted from existing or needed non-DPS Area Studies, to DPS studies?

   - In the case of mid-rise intensification on TO Avenues, lack of resources for Avenue Studies led to a "general guidelines" approach, via the Avenues and Mid-rise Building Study. Will community visions input into custom-fit DPS by-laws similarly give way to general DPS guidelines for different kinds of areas?