



## REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

# Dundas Street West and Roncesvalles Avenue Built Form Study - Official Plan Amendment 421 and 421 Roncesvalles Avenue Zoning By-law Amendment Application - Request for Directions

Date: July 8, 2019

To: City Council

From: City Solicitor

Wards: Ward 4 - Parkdale-High Park

### **REASON FOR CONFIDENTIAL INFORMATION**

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This report contains advice or communications that are subject to solicitor-client privilege. This report contains information regarding potential litigation.

### **SUMMARY**

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Propeller Developments Inc., the owner of 421 Roncesvalles Avenue ("**Propeller**"), appealed Council's failure to enact the requested Zoning By-law Amendment (the "**Appeal**") to the Local Planning Appeal Tribunal (the "**LPAT**") and Propeller has consolidated its Appeal with Council's refusal to issue a demolition permit for the building on the Subject Property. The LPAT has scheduled a two-week hearing for these appeals commencing on January 13, 2020.

Propeller also appealed Official Plan Amendment 421 ("**OPA 421**"), the Dundas Street West and Roncesvalles Avenue Built Form Study Official Plan Amendment. The LPAT has not scheduled a hearing date for Propeller's appeal of OPA 421, and the parties have not at this time informed the LPAT that they are ready to proceed.

On May 8, 2019, Propeller's lawyer provided the City Solicitor with a "with prejudice" settlement offer, Public Attachment 1 and 2 to this Report.

The City Solicitor requires further instructions with respect to these appeals.

## RECOMMENDATIONS

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The City Solicitor recommends that:

1. City Council adopt the recommendations contained in the Confidential Attachment 1 to the Report (July 8, 2019) from the City Solicitor.
2. City Council authorize the public release of the confidential recommendations in Confidential Attachment 1 and Confidential Appendix "A" to the Report (July 8, 2019) from the City Solicitor, if adopted by City Council.
3. City Council direct that all other information contained in Confidential Attachment 1 to the Report (July 8, 2019) from the City Solicitor is to remain confidential at the discretion of the City Solicitor, as it contains advice and information, which is subject to solicitor-client privilege.

## FINANCIAL IMPACT

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There is no financial impact arising from the adoption of the Confidential Recommendations beyond what has already been approved in the current year's budget.

## DECISION HISTORY

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### **Dundas Street West and Roncesvalles Avenue Built Form Study - Official Plan Amendment**

At its meeting on November 3 and 4, 2015, City Council requested that City Planning initiate a study of Roncesvalles Avenue between Queen Street West and Boustead Avenue (but exclude the east side of the street between Mario Street and Marmaduke Street) and of Dundas Street West between Boustead Avenue and Sorauren Avenue, in consultation with the Ward Councillor and the local community. The mandate was to conduct a review of the existing policy framework of the area and consider developing additional urban design and built form guidelines, including an assessment of heritage resources, to be used to inform the review of current and future development proposals, and to develop an understanding of what defines the character of the street.

The City Council decision is available at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.TE11.78>

The Study Area included properties that front onto Roncesvalles Avenue between Queen Street West and Boustead Avenue which are designated *Mixed Use Areas*, but excluded the west side of Roncesvalles Avenue between Marion Street and Marmaduke Street, as these properties are designated *Neighbourhoods* in the Official Plan. A previous land use study was conducted of the west side of Roncesvalles Avenue which resulted in a set of performance standards to permit some limited non-residential uses within the *Neighbourhoods* designation.

The City Council Decision related to the previous land use study is available at:  
<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.TE29.2>

As the lands which were subject to the previous land use study continued to be designated *Neighbourhoods* and contained mainly houseform buildings, quite unlike the Study Area which was designated *Mixed Use Areas* and dominated by two and three-storey mixed-use buildings, the west side of the street between Marion Street and Marmaduke Street was not included in the Study Area.

At its meeting on July 23, 24, 25, 26, 27 and 30, 2018, City Council adopted the Official Plan Amendment for the lands fronting Roncesvalles Avenue between Queen Street West and Boustead Avenue (excluding the west side of the street between Harvard Avenue and Marmaduke Street), Dundas Street West between Boustead Avenue and Souauren Avenue and Ritchie Avenue between Roncesvalles Avenue and Dundas Street West, substantially in accordance with the draft Official Plan Amendment 421. City Council simultaneously adopted the Dundas-Roncesvalles Urban Design Guidelines, June 2018. City Council directed the City Solicitor and appropriate City Staff to attend and support the recommended Official Plan Amendment should the Official Plan Amendment be appealed to the LPAT.

The City Council Decision is available at:  
<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.TE34.9>

By-law 1208-2018 adopting Official Plan Amendment No. 421 is available at:  
<https://www.toronto.ca/legdocs/bylaws/2018/law1208.pdf>

## **421 Roncesvalles Avenue - Zoning By-law Amendment Application**

On December 15, 2016, Propeller filed a Zoning By-law Amendment Application for a seven (7) storey office building.

A pre-application consultation meeting was held with the applicant on April 7, 2016 to discuss complete application submission requirements. A pre-application community consultation meeting was held on July 17, 2016. At the time, the proposal was for an eight-storey office building designed primarily of glass. While the community was generally supportive of the proposed office use and retention of the existing building, there were a number of concerns related to height, building mass, relationship with the existing heritage building and materiality. The December 15, 2016 application eliminated one storey from the project presented during the pre-application stage and significantly reduced the amount of glass cladding.

On August 9, 2017, Propeller appealed the City's failure to make a decision with respect to its Application for a Zoning By-law Amendment.

At its meeting on January 31 and February 1, 2018, City Council adopted the recommendations of the Acting Director, Community Planning, Toronto and East York without amendment and without debate and directed that the City Solicitor and City

staff, as appropriate, attend at the Ontario Municipal Board, now continued as the LPAT, to oppose the Zoning By-law Amendment application; and authorized the City Solicitor and City Planning Division staff to continue discussions with the applicant on a revised proposal which addressed the issues set out in the report of the Acting Director, Community Planning, Toronto and East York, including:

- a. reducing the proposed height and massing to avoid overdevelopment of the site and to limit the negative impacts on adjacent properties;
- b. improving the interface between the proposed building and the existing heritage building on the site;
- c. improving consistency with the Council-approved addendum to the Avenues and Mid-Rise Buildings (April 20, 2016); and
- d. determining the appropriate amount of on-site vehicular parking required to accommodate the proposed development.

Council further directed that in the event that the Ontario Municipal Board, now continued as the LPAT, allowed the appeal in whole or in part, the City Solicitor was to request that any Order(s) on the Zoning By-law Amendment be withheld pending satisfaction of a number of conditions.

The City Council decision is available at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.TE29.17>

## **Heritage Conservation-Related Matters**

On January 31, 2017, City Council approved an intention to designate the property at 421 Roncesvalles Avenue under Part IV, Section 29 of the *Ontario Heritage Act*. The property was subsequently designated by By-laws No. 716-2017, enacted by City Council on August 23, 2017. The property is designated under all three categories of cultural heritage value: design, associative and contextual. Propeller did not appeal the designation by-law.

On December 16, 2016, Propeller applied for alterations to a designated heritage property to implement the 7-storey commercial and office building proposal on the Subject Property. It was proposed that the building would incorporate and alter the two-storey designated heritage building by retaining the existing building including its interiors as part of the development. The conservation strategy provided for rehabilitation of both street-facing facades. The east elevation would be altered for integration with the new construction. An addition was proposed to be constructed over the existing designated building. Staff recommended refusal of the proposal in part because the massing of the new addition atop the designated heritage building, with insufficient step backs along the two primary elevations, would irrevocably alter its character-defining scale, form, massing and flat roof. The new addition was not visually compatible with the heritage property and clearly subsumed and subordinated the designated heritage property as seen from the public realm.

On January 31 and February 1, 2018, City Council refused the application to alter the structure designated under Part IV of the *Ontario Heritage Act* for 421 Roncesvalles Avenue, in accordance with Section 33 of the *Ontario Heritage Act*.

City Council's decision is available here:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.TE29.11>

On February 10, 2018, the City sent Propeller a Notice of Receipt for the application to demolish a designated property, which application proposed removal of the entire heritage property at 421 Roncesvalles Avenue. The reason for the demolition request was "to construct a new development on the subject site." Staff's opinion was that the demolition of the heritage property would remove all vestiges of the site's cultural heritage value or integrity; that demolition was contrary to the intent of the Provincial Policy Statement, the Official Plan and the Standards and Guidelines for the Conservation of Historic Places in Canada; and that because the property is a significant built heritage resource, it should be conserved.

At its meeting on April 24, 25, 26 and 27, 2018, City Council adopted staff's recommendations without amendment, and refused to issue a demolition permit for the heritage property at 421 Roncesvalles Avenue, in accordance with section 34 of the *Ontario Heritage Act*. City Council directed that if Propeller appealed City Council's decision to refuse the issuance of the demolition permit under section 34 of the *Ontario Heritage Act*, the City Solicitor and necessary City staff be authorized to attend the LPAT hearing in opposition to the appeal.

City Council's decision is available here:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.TE31.17>

## COMMENTS

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### 421 Roncesvalles Avenue Zoning By-law Amendment Application

On December 15, 2016, Propeller, the owner of the property municipally known as 421 Roncesvalles Avenue (the "**Subject Property**") made a complete application for a Zoning By-law Amendment for the Subject Property which would permit the development of a 7-storey office and commercial building, and would incorporate the existing two-storey heritage Dominion Bank branch building on site. The development proposal had a height of 26.1 metres (30 metres including mechanical penthouse). No vehicular parking spaces were to be provided and a total of 38 bicycle parking spaces were proposed.

On May 8, 2019, following a LPAT - sponsored mediation and discussions between Propeller and City staff, Propeller's lawyer made a with prejudice settlement offer to the City wherein Propeller revised its re-zoning application and made a new alteration request under Section 33 of the *Ontario Heritage Act*, which is generally described in the Heritage Alteration Report from the Senior Manager, Heritage Preservation

Services, Urban Design, City Planning, dated May 29, 2019, City Council Item TE7.24, to which this Report is a companion (the "**Revised Heritage Alteration**").

The revised Zoning by-law Amendment Application plans and drawings, which form part of the "with prejudice" settlement offer, prepared by Superkul Architects dated May 7, 2019 (the "**Revised Plans**") are generally summarized below:

- The overall height of the development has been reduced to five-storeys or 22 meters (26.5 metres including the mechanical penthouse);
- Along the King Street West elevation, the new development is stepped back 3.5 metres from the heritage façade below;
- Along the Howard Park Avenue elevation, the new development is stepped back 1 metre from the heritage building below, and is located on the property line beyond the heritage building;
- The walls fronting Roncesvalles Avenue, Howard Park Avenue and the south wall of the heritage building will be retained in situ;
- The existing rear, east wall of the heritage building does not have any identified heritage value; however, a one-metre reveal of the east wall is proposed to enhance the heritage conservation of the redevelopment;
- In order to improve the public realm along Howard Park Avenue, the short-term bicycle parking spaces have been moved to the rear of the site. The ground floor will be pulled back approximately two metres from the rear property line to accommodate these spaces;
- Existing office and retail uses are proposed to continue on the site, with additional ground floor retail space added to the east along Howard Park Avenue; and
- The designated Dominion Bank branch building will be conserved.

The Revised Heritage Alteration is based on the Revised Plans, and proposes to retain substantial portions of the existing two-storey Dominion Bank branch building. A new masonry base to the east (rear) of the existing building is proposed, and three additional stories are to be built atop the existing structure and extended base. The proposed development will be a total of five storeys, plus the mechanical penthouse. The upper addition is proposed to be of a contemporary glazing material. The new base to the east of the existing structure is proposed to be built with complementary brick masonry and glazing components, with an angled portion along the north elevation. The Revised Plans indicate that the upper addition is stepped back a minimum of 3.5 metres from Roncesvalles Avenue and a minimum of 1 metre from Howard Park Avenue at the third level.

### **Dundas Street West and Roncesvalles Avenue Built Form Study - Official Plan Amendment**

At its meeting on July 23, 24, 25, 26, 27 and 30, 2018, Council enacted By-law 1208-2018 to adopt OPA 421 with respect to lands fronting on Dundas Street West between Boustead Avenue and Sorauren Avenue, lands on the west side between the north side of Marion Street and the south side of Marmaduke Street, and Ritchie Avenue between Roncesvalles Avenue and Dundas Street West municipally known in the year 2018 as 2226-1970 Dundas Street West, north side, 2201-1995 Dundas Street West, south side;

5-479 Roncesvalles Avenue, east side; 382-484 Roncesvalles Avenue, west side; 14-66 Roncesvalles Avenue, west side; 12-20 Ritchie Avenue, north side; and 7-25 Ritchie Avenue, south side.

On August 20, 2018, Propeller appealed parts of OPA 421 on a plan area-wide basis. On September 25, 2018, following a preliminary screening, the LPAT determined that the appeal was valid, and advised the City and Propeller that it would be scheduling a case management conference.

On October 10, 2018, Propeller and the City jointly requested that the LPAT conduct mediation with respect to Propeller's appeal, along with its appeal of Council's failure to enact the requested Zoning By-law Amendment, to which request the LPAT acceded. The effect of the parties' joint request for mediation was to suspend the timelines for the hearing of Propeller's appeal pursuant to Ontario Regulation 102/18. The parties were advised by LPAT to inform LPAT when they were ready to proceed.

On October 10, 2018, Propeller also informed the LPAT that it had geographically scoped its appeal to its property located at 421 Roncesvalles Avenue. This scoping was communicated by the LPAT to the City Clerk on October 15, 2018, which allowed OPA 421 to come into effect as part of the City's Official Plan for the geographic extent of the amendment, except as it relates to 421 Roncesvalles Avenue, in accordance with subsections 17(30) and 17(30.1) of the *Planning Act*.

## **CONTACT**

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## **SIGNATURE**

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Wendy Walberg  
City Solicitor

## **ATTACHMENTS**

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Confidential Attachment 1 - Report from City Solicitor  
Confidential Appendix "A" - Confidential Information

Report for Action with Confidential Attachment - Dundas Street West and Roncesvalles Avenue Built Form Study- Official Plan Amendment 421 and 421 Roncesvalles Avenue Zoning By-law Amendment Application - Request for Directions

Public Attachment 1 - Letter from Ritchie, Ketcheson, Hart & Biggart LLP dated May 8, 2019 regarding 421 Roncesvalles Avenue

Public Attachment 2 - Zoning by-law Amendment Plans and Drawings dated May 7, 2019 prepared by Superkul Architects on file with the City Clerk for the purpose of the July 16 and 17 meeting of City Council