

6 Dawes Road - Zoning By-law Amendment Application - Request for Direction Regarding LPAT Hearing

Date: April 29, 2021

To: City Council

From: City Solicitor

Wards: Ward 19 - Beaches-East York

REASON FOR CONFIDENTIAL INFORMATION

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

SUMMARY

This application proposes to amend the Zoning By-law for the property at 6 Dawes Road (the "**Site**") to permit four towers atop two base buildings separated by a publicly-accessible open space. The application includes residential and self-storage uses. The tower heights are 46, 44, 37 and 19 storeys. Together, a total of 1,467 units are proposed with a total gross floor area of 97,465 square metres.

On March 23, 2021, the Applicant appealed the application to the Local Planning Appeal Tribunal (the "**LPAT**") due to Council's failure to make a decision on the application within the timeframe prescribed by the Planning Act. A Case Management Conference ("**CMC**") has been scheduled for May 14, 2021.

The purpose of this report is to request further instructions for the LPAT proceedings.

City Planning has been involved in the preparation of this report.

RECOMMENDATIONS

The City Solicitor recommends that:

1. City Council adopt the recommendations contained in the Confidential Attachment 1 to this report.

2. City Council authorize the public release of the confidential recommendations contained in Confidential Attachment 1, if adopted by City Council.
3. City Council direct that all other information contained in Confidential Attachment 1 is to remain confidential at the discretion of the City Solicitor, as it contains advice which is subject to solicitor-client privilege.

FINANCIAL IMPACT

Adopting this report will have no financial impact beyond what has already been approved in the current year's budget.

DECISION HISTORY

A Preliminary Report on the application was adopted by Toronto and East York Community Council on February 5, 2020 requesting staff to hold a community consultation meeting. The feedback from the community consultation meeting is summarized in the Comments section of this Report. The preliminary report can be found at the following link:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.TE13.24>

On December 17, 2019, City Council adopted Official Plan Amendment 478 (OPA 478) as the result of the Main Street Planning Study. OPA 478 allows for intensification, including tall buildings, within the study area through the achievement of a new road network, new parks and open spaces, and new and improved community services and facilities. The final report and OPA 478 can be found at the following link:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.TE11.4>

COMMENTS

This report has been prepared in consultation with staff from City Planning including Community Planning and Urban Design Staff, and other Divisional Staff.

The Proposal

The application proposes to amend the Zoning By-law for the property at 6 Dawes Road to permit four towers atop two base buildings separated by a publicly-accessible open space. The towers on the western base building, closer to Main Street, are 44-storeys (150 metres, including mechanical penthouse) and 46 storeys (156 metres, including mechanical penthouse). The towers on the eastern base building, closer to Dawes Road, are 37 storeys (126 metres, including mechanical penthouse) and 19 storeys (72 metres, including mechanical penthouse). Together, a total of 1,467 units are proposed: 122 (8 percent) studio units; 905 one-bedroom units (62 percent), 294 two-bedroom units (20 percent) and 146 three-bedroom units (10 percent). The proposal has a total gross floor area (GFA) of 97,465 square metres (91,928 square metres of residential GFA, 5,537 square metres of non-residential space). In addition to residential

units, the proposal also includes space for self-storage. The floor space index (FSI) of the proposed development is 8.14 times the area of the subject site.

The proposal includes above-grade parking for portions of floors 1 to 5 where highly sensitive uses such as residential would not be permitted due to the proposal's adjacency with the rail corridor to the south. A total of 351 vehicular parking spaces are proposed (303 residential parking spaces; 44 visitor parking spaces; and 4 car share spaces). A total of 1,469 bicycle parking spaces are proposed (1,321 spaces for residents and 148 spaces for visitors).

In terms of amenity space, a total of 3,510 square metres of indoor amenity space is proposed and a total of 2,351 square metres of outdoor amenity space.

Detailed project information is found on the City's Application Information Centre at: <https://www.toronto.ca/city-government/planning-development/application-informationcentre/>

See Attachment 4 of this report for a three dimensional representation of the project in context, and Attachments 5 and 6 for the site plan and elevations.

Reasons for Application

The Zoning By-law Amendment application proposes to amend the former City of Toronto Zoning By-law 438-86 to vary performance standards including building height, density, setbacks, and parking, amongst other areas of non-compliance.

Application Background

The following reports and studies were submitted in support of the application:

- Survey
- Architectural Plans
- Landscape Plans
- Tree Preservation Plan
- Draft Zoning By-laws (438-86 and 569-2013)
- Planning Rationale
- Shadow Study
- Wind Study
- Public Consultation Strategy Report
- Arborist Report
- Energy Efficiency Report
- Toronto Green Standard Checklist and Statistics
- Geotechnical Studies
- Servicing Report
- Stormwater Management Report
- Transportation Impact Study
- Environmental Impact Assessments
- Noise Impact Study
- Rail Safety Report

Agency Circulation Outcomes

The application, including the applicable reports noted above, has been circulated to all appropriate agencies and City Divisions. Responses received have been used to assist in evaluating the application.

Policy Considerations

Planning Act

Section 2 of the Planning Act sets out matters of provincial interest which City Council shall have regard to in carrying out its responsibilities, including: the orderly development of safe and healthy communities; the adequate provision of employment opportunities; the conservation of features of significant architectural, cultural, historical, archaeological or scientific interest; the appropriate location of growth and development; the adequate provision and distribution of educational, health, social, cultural and recreational facilities; the resolution of planning conflicts involving public and private interests; and the promotion of a built form that is well designed, encourages a sense of place, and provides for public spaces that are of high quality, safe, accessible, attractive and vibrant.

Provincial Land-Use Policies: Provincial Policy Statement and Provincial Plans

Provincial Policy Statements and geographically specific Provincial Plans, along with municipal Official Plans, provide a policy framework for planning and development in the Province. This framework is implemented through a range of land use controls such as zoning by-laws, plans of subdivision and site plans.

The Provincial Policy Statement (2020)

The Provincial Policy Statement (2020) (the "PPS") provides policy direction province-wide on land use planning and development to promote strong communities, a strong economy, and a clean and healthy environment. It includes policies on key issues that affect communities, such as:

- the efficient use and management of land and infrastructure;
- ensuring the sufficient provision of housing to meet changing needs including affordable housing;
- ensuring opportunities for job creation;
- ensuring the appropriate transportation, water, sewer and other infrastructure is available to accommodate current and future needs; and
- protecting people, property and community resources by directing development away from natural or human-made hazards.

The provincial policy-led planning system recognizes and addresses the complex inter-relationships among environmental, economic and social factors in land use planning. The PPS supports a comprehensive, integrated and long-term approach to planning, and recognizes linkages among policy areas.

The PPS is issued under Section 3 of the [Planning Act](#) and all decisions of Council in respect of the exercise of any authority that affects a planning matter shall be consistent with the PPS. Comments, submissions or advice affecting a planning matter that are provided by Council shall also be consistent with the PPS.

The PPS recognizes and acknowledges the Official Plan as an important document for implementing the policies within the PPS. Policy 4.6 of the PPS states that, "The official plan is the most important vehicle for implementation of this Provincial Policy Statement. Comprehensive, integrated and long-term planning is best achieved through official plans."

Provincial Plans

Provincial Plans are intended to be read in their entirety and relevant policies are to be applied to each situation. The policies of the Plans represent minimum standards. Council may go beyond these minimum standards to address matters of local importance, unless doing so would conflict with any policies of the Plans.

All decisions of Council in respect of the exercise of any authority that affects a planning matter shall be consistent with the PPS and shall conform with Provincial Plans. All comments, submissions or advice affecting a planning matter that are provided by Council shall also be consistent with the PPS and conform with Provincial Plans.

A Place to Grow: Growth Plan for the Greater Golden Horseshoe (2020)

A Place to Grow: Growth Plan for the Greater Golden Horseshoe (2020) came into effect on August 28, 2020. This was an amendment to the Growth Plan for the Greater Golden Horseshoe, 2019. The Growth Plan (2020) continues to provide a strategic framework for managing growth and environmental protection in the Greater Golden Horseshoe region, of which the City forms an integral part. The Growth Plan (2020), establishes policies that require implementation through a Municipal Comprehensive Review (MCR), which is a requirement pursuant to Section 26 of the Planning Act.

Policies not expressly linked to a MCR can be applied as part of the review process for development applications, in advance of the next MCR. These policies include:

- Directing municipalities to make more efficient use of land, resources and infrastructure to reduce sprawl, contribute to environmental sustainability and provide for a more compact built form and a vibrant public realm;
- Directing municipalities to engage in an integrated approach to infrastructure planning and investment optimization as part of the land use planning process;
- Achieving complete communities with access to a diverse range of housing options, protected employment zones, public service facilities, recreation and green space, and better connected transit to where people live and work;
- Retaining viable lands designated as employment areas and ensuring redevelopment of lands outside of employment areas retain space for jobs to be accommodated on site;

- Minimizing the negative impacts of climate change by undertaking stormwater management planning that assesses the impacts of extreme weather events and incorporates green infrastructure; and
- Recognizing the importance of watershed planning for the protection of the quality and quantity of water and hydrologic features and areas.

The Growth Plan (2020), builds upon the policy foundation provided by the PPS and provides more specific land use planning policies to address issues facing the GGH region. The policies of the Growth Plan (2020), take precedence over the policies of the PPS to the extent of any conflict, except where the relevant legislation provides otherwise. In accordance with Section 3 of the Planning Act all decisions of Council in respect of the exercise of any authority that affects a planning matter shall conform with the Growth Plan (2020). Comments, submissions or advice affecting a planning matter that are provided by Council shall also conform with the Growth Plan (2020).

Planning for Major Transit Station Areas

The Growth Plan (2020) contains policies pertaining to population and employment densities that should be planned for in major transit station areas (MTSAs) along priority transit corridors or subway lines. MTSAs are generally defined as the area within an approximately 500 to 800 metre radius of a transit station, representing about a 10-minute walk. The Growth Plan (2020) requires that, at the time of the next municipal comprehensive review (MCR), the City update its Official Plan to delineate MTSA boundaries and demonstrate how the MTSAs plan for the prescribed densities.

Toronto Official Plan

The City of Toronto Official Plan contains a number of policies that apply to the proposed development. The Official Plan is intended to be read and interpreted as a comprehensive whole. The City of Toronto Official Plan can be found here:

<https://www.toronto.ca/city-government/planning-development/officialplanguidelines/official-plan/>.

Chapter 3 - Building a Successful City

Chapter 3 of the Official Plan contains policies that guide growth by integrating social, economic and environmental perspectives in decision making to create an attractive Toronto with a strong economy and complete communities. The policies focus on the built environment, the human environment, the natural environment, economic health and new neighbourhoods. All applications for development are to be evaluated against the policies and criteria in the Chapter to ensure the best possible development choices are made.

Section 3.1.1 - The Public Realm

The Public Realm policies in the Official Plan (3.1.1) speak to the design and function of Toronto's streets, parks, sidewalks, and other open spaces that residents and visitors use to get around the city and connect with each other. Streets, sidewalks, and other open spaces should be designed to be safe, accessible, enjoyable, connected, and related appropriately to adjacent and nearby buildings.

Section 3.1.2 Built Form

The built form policies in the Official Plan require new development to be located and organized to fit harmoniously into its existing and/or planned context, and limit its impact on neighbouring streets, parks, open spaces and properties by:

- Massing new buildings to frame adjacent streets and open spaces in a way that respects the existing and/or planned street proportion;
- Incorporating exterior design elements, their form, scale, proportion, pattern and materials, and their sustainable design, to influence the character, scale and appearance of the development;
- Creating appropriate transitions in scale to neighbouring existing and/or planned buildings for the purpose of achieving the objectives of this Plan;
- Providing for adequate light and privacy; and
- Adequately limiting any resulting shadowing of, and uncomfortable wind conditions on, neighbouring streets, properties and open spaces.

Section 3.1.3 Built Form – Tall Buildings

To ensure that tall buildings fit within their existing and/or planned context and limit local impacts, additional built form principles are applied to the location and design of tall buildings, including:

- Demonstrating how the proposed building and site design will contribute to and reinforce the overall City structure;
- Demonstrating how the proposed building and site design relate to the existing and/or planned context;
- Taking into account the relationship of the site to topography and other tall buildings; and
- Providing high quality, comfortable and usable publicly accessible open space areas.

Chapter 4 - Land Use Designations

Section 4.5 Mixed Use Areas

The site is designated *Mixed Use Areas*. The *Mixed Use Areas* designation permits a broad range of commercial, residential and institutional uses, in single or mixed use buildings, as well as parks and open spaces. *Mixed Use Areas* will absorb most of the anticipated increase in retail, office and service employment in the coming decades and provide much of the new housing.

Development proposals in *Mixed Use Areas* are evaluated to ensure they:

- Provide a transition between areas of different development intensity and scale through means such as providing appropriate setbacks and/or stepping down of height, particularly toward lower scale *Neighbourhoods*;
- Locate and mass buildings so as to adequately limit shadow impacts on adjacent *Neighbourhoods*, particularly during the spring and fall equinoxes;
- Locate and mass new buildings to frame the edges of streets and parks with good proportion and maintain sunlight and comfortable wind conditions for pedestrians on adjacent streets, parks and open spaces;
- Provide an attractive and safe pedestrian environment;
- Have access to schools, parks, community centres, libraries and childcare;
- Take advantage of nearby transit services;
- Locate and screen service areas, ramps and garbage storage to minimize the impact on adjacent streets and residences; and
- Provide indoor and outdoor recreation space for building residents.

Chapter 5 - Implementation: Making Things Happen

Section 5.1.1 - Height and/or Density Incentives

Policy 5.1.1 of the Official Plan allows for an increase in height and/or density in return for the provision of community benefits for a proposed development, in accordance with Section 37 of the Planning Act. The proposed density meets the Official Plan's threshold for Section 37 considerations.

Official Plan Amendment 479 and 480 – Public Realm and Built Form Official Plan Policies

On September 21, 2020, the Ministry of Municipal Affairs and Housing issued Notices of Decision approving OPA 479 and OPA 480. OPA 479 (Public Realm) and OPA 480 (Built Form) were adopted as part of the Five-Year Official Plan Review. The OPAs replace Sections 3.1.1, 3.1.2 and 3.1.3 of the Official Plan with new and revised policies for the public realm, built form and built form types, which respond to Council's direction to amend the urban design policies of the Official Plan.

The Official Plan Amendment can be found here:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.PH11.4>

Main Street Planning Study (Official Plan Amendment 478)

On November 7, 2017, City Council requested that the City Planning Division undertake further study of development potential within proximity of the Main Street subway station and the Danforth GO station. The study area encompasses properties designated as *Mixed Use Areas* along Danforth Avenue, generally within 500 metres of Main Street subway station, Main Street, Dawes Road, and the intersection of Gerrard Street East and Main Street.

The Main Street Planning Study (the "**Study**") was a multi-disciplinary review of the character, built form, public realm, community services and facilities, and heritage and historic character of the study area. The study also looked at where tall buildings could be accommodated and how those tall buildings could relate to the midrise planned context of Danforth Avenue. The results of the Main Street Planning Study showed that the lots south of Danforth Avenue, east of Main Street, and north of the rail corridor, could support taller buildings as this area is characterized by larger lots and these new developments would be within walking distance of higher order public transit. However, the Main Street Planning Study also concluded that in order to unlock the potential for intensification and growth within this area, a new public road network, new public parks, and new community services and facilities would need to be provided.

The intensification and growth anticipated through the Main Street Planning Study supports provincial and municipal policy objectives of intensification, of both jobs and people, in areas well served by surface transit and rapid transit stations. Official Plan Policy 2.2.1(a) states the Plan will create a better urban environment, a competitive local economy and a more socially cohesive and equitable city through the integration and coordination of transportation planning and land use planning. This is achieved by attracting more people and jobs to targeted growth areas in the City that are supported by good and affordable transit services and other infrastructure.

At its meeting on December 17 and 18, 2019, City Council adopted Official Plan Amendment 478 (OPA 478). OPA 478 was appealed to the Local Planning Appeal Tribunal by the Applicant, among other appellants.

The final report for the Main Street Planning Study can be found here:
<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.TE34.91>

Zoning

The subject site is zoned I1 D1 (Industrial) under Zoning By-law 438-86, which permits a maximum density of 1 times the area of the lot and a maximum height of 12 metres. This zoning category permits a range of non-residential uses, including community services, retail and service shops, workshops and studios, offices, automobile related uses, warehousing and other light industrial uses.

City-wide Zoning By-law 569-2013 does not currently apply to this site. This is due to the fact that the uses permitted under Zoning By-law 438-86 are industrial, which do not align with the Official Plan's *Mixed Use Area* designation of the site. Should the application be approved, the property will be brought into 569-2013 by way of a site-specific zoning by-law.

Design Guidelines

Policy 5.2.5.6 of the Growth Plan indicates supporting documents, such as design guidelines, will direct the development of a high quality public realm and compact built form in achieving the minimum intensification and density targets of the Plan. Official Plan Policy 5.3.2.1 states that guidelines will be adopted to advance the vision, objectives and policies of the Plan. Urban design guidelines are intended to provide a more detailed framework for built form and public realm improvements. The following design guidelines that have been adopted by City Council apply to the proposed development:

- City-Wide Tall Building Design Guidelines
- Growing Up Guidelines
- Pet-friendly Guidelines
- Design Guidelines for Privately Owned Publicly-Accessible Space (POPS)

Site Plan Control

The application is subject to Site Plan Control. A Site Plan Control application has not been submitted.

Community Consultation Meeting

A community consultation meeting was held on February 16, 2021 and was attended by approximately 120 members of the community. Specific comments related to the proposed development included:

- The proposed towers are too tall and do not fit the context of the neighbourhood;
- Concerns raised regarding impacts to light, view and privacy, and uncomfortable wind conditions;
- Concerns raised regarding capacity of soft and hard infrastructure to support this level of intensification;
- The proposed privately-owned publicly accessible space (POPS) is not large enough and is not programmable, and generally, more public parks and green space are needed in this area;
- Affordable housing should be considered for this proposal;
- The proposed storage facility does not provide employment opportunities and should be replaced with "maker" spaces or other non-residential uses that generate employment; and
- Concerns raised regarding traffic congestion as well as the impact to public transit such as TTC and Metrolinx.

The City Solicitor requires further instructions. This report is about litigation before the LPAT and contains advice or communications that are subject to solicitor-client and litigation privilege. Attachment 1 to this report contains confidential advice and should be considered by Council in camera.

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SIGNATURE

Wendy Walberg
City Solicitor

ATTACHMENTS

Attachment 1 to Public Report: Location Map
Attachment 2 to Public Report: Official Plan Land Use Designation
Attachment 3 to Public Report: Zoning By-law
Attachment 4 to Public Report: 3D Models of Proposal in Context
Attachment 5 to Public Report: Site Plan
Attachment 6 to Public Report: East Elevation
Attachment 7 to Public Report: North Elevation
Attachment 8 to Public Report: South Elevation
Attachment 9 to Public Report: West Elevation
Attachment 10 to Public Report: Application Data Sheet

Appendix "A" to Public Report - Correspondence from Bousfields Inc., dated January 11, 2021

Appendix "B" to Public Report - Architectural Plans on file with the City Clerk for the purpose of the May 5 and 6, 2021 City Council meeting

Confidential Attachment 1 - Confidential Recommendations and Confidential Information