

900 Dufferin Street - Official Plan Amendment and Zoning By-law Amendment Application - Request for Directions Report

Date: July 7, 2021

To: City Council

From: City Solicitor

Wards: Ward 9 - Davenport

REASON FOR CONFIDENTIAL INFORMATION

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

The purpose of this report is to request further instructions for a potential Ontario Land Tribunal hearing that is currently scheduled to commence on October 18, 2021 for three weeks.

SUMMARY

The purpose of this report is to request further instructions for the potential Ontario Land Tribunal (the "**OLT**") hearing that is currently scheduled to commence on October 18, 2021, for three weeks. The applicant has appealed the proposed official plan amendment and rezoning of 900 Dufferin Street to the OLT due to Council's failure to make a decision on the application within the time prescribed by the Planning Act (the "**Appeal**").

On July 28, 2020, City Council directed the City Solicitor, along with appropriate staff, to oppose the Appeal.

The appealed application was revised in March of 2021 and it proposes to amend the City's Official Plan, the former City of Toronto Zoning By-law 438-86 and City-wide Zoning by-law 569-2013 to permit new development on what is being identified as two new development blocks ("East Block" and "West Block"), (the "**Revised Proposal**"). The proposed East Block in the Revised Proposal includes one 23-storey tower on an

9-storey podium with retail at-grade. The West Block consists of two towers (35 and 39 storeys) on a base building which ranges from 2 to 5 storeys in height. An expansion of the Dufferin Mall is planned for the West Block, where the internal corridor of the mall will extend northward within two new floors of retail. The West Block will also include a new entrance to the mall.

A total of 1,180 residential units are proposed for the "West Block" and "East Block", all of which are proposed as rental in tenure. The total new gross floor area proposed in the revised application is 102,612 square metres. A private street continues to be proposed in between the West Block and the East Block. A public park pursuant to Section 42 of the Planning Act with a minimum size of 2,079 square metres is identified. A total of 770 parking spaces (342 residential and 429 commercial) will be provided within three levels of underground parking, which extends beneath the entire site, with the exception of the proposed public park.

RECOMMENDATIONS

The City Solicitor recommends that:

1. City Council adopt the recommendations contained in the Confidential Attachment 1 to the Report (July 7, 2021) 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 7, 2021) from the City Solicitor at the discretion of 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 7, 2021) 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

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

A Preliminary Report on the combined Official Plan and Zoning By-law Amendment application was adopted by Toronto and East York Community Council on January 8, 2020, authorizing staff to conduct a community consultation meeting. The link to the preliminary report can be found here:

<https://www.toronto.ca/legdocs/mmis/2020/te/bgrd/backgroundfile-141191.pdf>

Pre-Application Consultation

A pre-application meeting with the applicant was held on March 28, 2019 to identify key issues with the proposal and complete application submission requirements. City staff requested that the applicant bring forward a comprehensive redevelopment plan that addresses the long-term potential of the entire mall site. Staff also raised concerns about the proposed heights, compatibility and transition to the surrounding existing and planned context, proposed park location, public roads and active transportation network, loading areas, improvements to the public realm and landscaping.

On July 8, 2019, the Official Plan Amendment and Zoning By-law Amendments applications were submitted to the City and were deemed complete.

On February 7, 2020, the applicant appealed the Official Plan Amendment and Zoning By-law Amendment Application to the Local Planning Appeal Tribunal (now the Ontario Land Tribunal) for the City's failure to make a decision on the application within the required timeframe.

A Request for Directions Report (dated June 25, 2020) from the Director, Community Planning, Toronto and East York District was considered by City Council at its meeting of July 28 and 29, 2020. City Council directed the City Solicitor and Planning staff to attend at the OLT and oppose the Official Plan Amendment and Zoning By-law Amendment Application. The report can be found at the following link:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.TE16.8>

The Tribunal has held one case management conferences on September 6, 2020 and a further scheduled on June 28, 2021. A 15-day hearing is scheduled to commence on October 18, 2021.

COMMENTS

In late March 2021, the owner submitted a revised application, along with updated reports, plans and drawings illustrating a revised development concept for the subject property (the “**Revised Proposal**”). The property is located at 900 Dufferin Street (the “**Development Site**”).

The Revised Proposal

The applicant proposes to amend the Official Plan and Zoning By-law to permit new development on what is being identified as two new development blocks (East Block and West Block). The proposed East Block in the revised March 2021 application includes one 23-storey tower on an 9-storey podium with retail at-grade. The West Block consists of two towers (35 and 39 storeys) on a base building which ranges from 2 to 5 storeys in height. An expansion of the Dufferin Mall is planned for the West

Block, where the internal corridor of the mall will extend northward within two new floors of retail. The West Block will also include a new entrance to the mall.

A total of 1,180 residential units are proposed for the "West Block" and "East Block", all of which are proposed as rental in tenure. The total new gross floor area proposed in the revised application is 102,612 square metres.

There is a new private street in between The West Block and the East Block, which connects to Croatia Street. The north-south segment of the private street jogs slightly to accommodate the existing footprint of the mall. Beyond the zoning boundaries, the private street curves east at the south end of the site to align with a signalized driveway entrance off Dufferin Street. Designed with rolled curbs, bollards and planters to distinguish pedestrian zones, the private street is proposed to be a semi-shared space between pedestrians and vehicles.

The application includes an on-site parkland dedication of 2,079 square metres. The proposed public park is located south of the East Block development along Dufferin Street.

A total of 770 parking spaces (342 residential and 429 commercial) will be provided within three levels of underground parking, which extends beneath the entire site, with the exception of the proposed public park. The proposed below-grade parking will be connected to the mall's existing underground parking to the south. An entrance to the underground parking garage for both residential and commercial parking is provided off Croatia Street at the northwest corner of the West Block. It is the understanding of City staff that the applicant desires a below-grade connection to the development site to the north (1141 Bloor Street West and 980 Dufferin Street) at the P1 level of the parking garage. Any below grade pedestrian connection would require authorization and approval from the City, at no cost to the City, as Croatia Street bisects the development site to the north and this site.

A total of 1,241 bicycle parking spaces are proposed on the development site.

Two centralized loading areas are proposed in the application, one in each development block. The West Block loading area (consisting of 3 Type B and 2 Type A loading spaces) consolidates a portion of the existing commercial loading which takes place along the service lane on the west side of the mall. The East Block loading area (consisting of 1 Type G and 1 Type B loading space) is located within a passenger pick-up and drop-off area, with a servicing lane which allows vehicles to exit onto Croatia Street.

The key changes between the March 2021 and Original 2019 application are summarized as follows:

- Elimination of the 14-storey tower on the north portion of the East Block;
- Increase of the podium height on the East Block from 8 storeys (29.94 metres) to 9 storeys (36 metres);

- The top of the 23-storey tower on the East Block includes additional articulation, with a 4.5 metre step back above 20th floor;
- The location of the 35 and 39 storey towers on the West Block have been switched, with the taller tower located on the west side of the block;
- The West Block tower setbacks from the north property line along Croatia street have been increased to 10.6 metres and 16.3 metres (from 4.6 metres and 13.6 metres, respectively);
- The 5-storey portion of the West Block podium, which was originally located only along Croatia Street, has been expanded south along the proposed private street;
- A residential pick-up and drop-off area has been added to the West Block along Croatia Street, which introduces two additional curb cuts;
- Removal of the West Block underground garage access along the west side of the proposed private road. This ramp has been consolidated with the garage entrance located at the northwest corner of the West Block directly opposite Pauline Avenue to the north;
- The built form of the West Block has been shifted east to have been proposed to protect for an 18.5 metre future public right-of-way along the west edge of the site, as an extension of Pauline Avenue. The alignment of the future public street extension does not align with Pauline Avenue on the north side of Croatia Street.
- Increase of the on-site parkland dedication from 1,561 square metres to 2,079 square metres;
- A 5 metre setback has been provided between the East Block and the new public park. The step back above the 6th floor on the East Block podium has also been extended along the south frontage of the building to interface the park; and
- The East Block has been further setback from Dufferin Street to accommodate a 6 metre sidewalk zone, measured from building face to curb; and
- The total amount of indoor and outdoor amenity space has been reduced. Outdoor amenity has been reduced from 2,972 square metres to 2,360 square metres (2.6 square metres/unit to 2.0 square metres/unit) and indoor amenity has been reduced from 2,506 square metres to 2,360 square metres (2.2 square metres/unit to 2.0 square metres/unit).

The table below provides a comparison of key statistics between the original and revised applications:

Category	Original Application (July 2019)			Revised Application (March 2021)		
	East Block	West Block	Total for Site	East Block	West Block	Total for Site
Proposed Residential GFA	32,901 square metres	56,798 square metres	89,985 square metres	29,624.8 square metres	61,187 square metres	88,801.9 square metres

	Original Application (July 2019)			Revised Application (March 2021)		
Category	East Block	West Block	Total for Site	East Block	West Block	Total for Site
Proposed Non-Residential GFA	2,142 square metres	9,497 square metres	12,736 square metres	2,150 square metres	10,960 square metres	13,810 square metres
Total GFA	35,043 square metres	66,295 square metres	102,721 square metres			102,611.9 square metres
Floor Space Index (FSI)*	-	-	6.58	-	-	6.54
Number of storeys (metered height, incl. mechanical)	14 storeys (54.9 metres) 23 storeys (82.4 metres)	39 storeys (131.4 metres) 35 storeys (119.1 metres)	-	23 storeys (86.8 metres)	39 storeys (133.4 metres) 35 storeys (121.1 metres)	-
Total Residential Units**	413	722	1,135	373	807	1,180
Studio	45	72	117	-	-	118
1 Bedroom	165	287	452	-	-	472
2 Bedroom	169	292	461	-	-	472
3 Bedroom	34	71	105	-	-	118

*The site area for the FSI calculation is 15,612 square metres, which includes only the north portion of the mall site that is subject to this application.

**Dashes indicate that statistics on the breakdown of unit types between development blocks was not provided in the revised application.

There appears to be an error in the statistics information on the project data sheet provided by the applicant where the total gross floor area does not equal the proposed residential and non-residential uses proposed. Clarification will be sought from the applicant on this matter. Therefore, the gross floor area, based on the calculation of the

breakdown of GFA per use would be approximately 103,921.80 square metres, rather than 102,611.9 square metres. The site proposed density would also increase if the higher number is the GFA proposed.

Detailed project information may be found on the City's Application Information Centre at: <http://app.toronto.ca/AIC/index.do?folderRsn=FaDhXd6XNIBjz1AHtkDp8Q%3D%3D>

The revised plans may be found on the City's Application Information Centre.

APPLICATION BACKGROUND

Reasons for Application

An amendment to former City of Toronto Zoning By-law 438-86 and City of Toronto Zoning By-law 569-2013 is required to delineate the location of the development blocks, road and Public Park. The zoning by-law amendment will also create performance standards to facilitate the development, including, but not limited to: maximum permitted height, density, setbacks and parking.

The applicant has requested an amendment to the Official Plan to address what has been described by the Applicant as "implementation issues" that may arise with the development. The draft Official Plan Amendment submitted with the application proposes a site and area specific policy for the lands which permits a new neighbourhood, consisting of two development blocks, tall buildings, a private street and a public park.

Agency Circulation Outcomes

The application together with the applicable reports noted above have been circulated to all appropriate agencies and City Divisions for the resubmission. Responses received have been used to assist in evaluating the application by City Planning. This Report has been prepared in consultation with City Planning, Parks, Forestry and Recreation, Transportation Planning and Transportation Services, Strategic Initiatives and Policy Analysis, and Engineering and Construction Services.

POLICY CONSIDERATIONS

Provincial Policy Statement and Provincial Plans

The Request for Directions Report dated June 25, 2020 from the Director, Community Planning, Toronto and East York District, as adopted by City Council, contains the identification of the relevant policy considerations under the Provincial Policy Statement (2020) and the Growth Plan for the Greater Golden Horseshoe (2019). Since Council's adoption of the above-noted report, A Place to Grow: Growth Plan for the Greater Golden Horseshoe (2020) (the "Growth Plan (2020)") came into effect on August 28, 2020. For ease of reference, the provincial policies relevant to this proposal have been summarized below.

Provincial plans are intended to be read in their entirety, and relevant policies are to be applied to each situation. The policies of the provincial 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 to 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 to provincial plans.

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 and wise use and management of land and infrastructure over the long term in order to minimize impacts on air, water, and other resources;
- Protection of the natural and built environment;
- Building strong, sustainable, and resilient communities that enhance health and social well-being by ensuring opportunities exist locally for employment;
- Identify appropriate locations and promote opportunities for transit supportive development, accommodating a significant supply and range of housing options, including affordable housing, through intensification and redevelopment where it can be accommodated;
- Residential development promoting a mix of housing, recreation, parks and open space, and transportation choices that increase the use of active transportation and transit; and
- Encouraging a sense of place in communities, by promoting well-designed built form, and by conserving features that help define local character.

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."

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

A Place to Grow: Growth Plan for the Greater Golden Horseshoe (2020) (the "Growth Plan") 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, 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 storm water 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 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 requires that, at the time of the next MCR, the City update its Official Plan to delineate MTSA boundaries and demonstrate how the MTSAs plan for the prescribed densities.

The Growth Plan builds upon the policy foundation provided by the PPS and provides more specific land use planning policies to address issues facing the Greater Golden Horseshoe region. The policies of the Growth Plan 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 to

the Growth Plan. Comments, submissions or advice affecting a planning matter that are provided by Council shall also conform to the Growth Plan.

City of Toronto Official Plan

The City of Toronto Official Plan remains unchanged from the policies identified in the June 25, 2020, Request for Directions Report, and are summarized below.

The Official Plan provides policies and a strategy for managing future growth within the City. The Official Plan directs growth towards the *Downtown, Centres, Avenues and Employment Areas*. The Dufferin Mall site is not located in one of the City's identified growth areas on Map 2 of the Official Plan.

The Official Plan designates the subject site as *Mixed Use Areas* on Map 18 - Land Use Plan (see Attachment 3). *Mixed Use Areas* anticipate a broad array of residential uses, offices, retail services, institutions, entertainment, recreation and cultural activities, and parks and open spaces. Consistent with Policy 4.5.2 of the Official Plan, new development in mixed use areas will:

- create a balance of uses that reduce automobile dependency and meet the needs of the local community;
- be massed in a way that provides a transition between areas of different development intensity and scale;
- be located in a manner that frames the edges of streets and parks;
- provide an attractive, comfortable and safe pedestrian environment; and
- Take advantage of nearby transit services.

Healthy Neighbourhoods

The Healthy Neighbourhoods policies of the Official Plan (Section 2.3.1) require new development within *Mixed Use Areas* to provide a gradual transition of scale and density. This may be achieved through maintaining adequate light and privacy and the stepping down of buildings towards stable areas of the city including the neighbourhoods and parks located to the north, east and west of the site.

Public Realm

The public realm policies in section 3.1.1 of the Official Plan place emphasis on the importance of good design in creating a great city. The Official Plan promotes new development that enhances the quality of the public realm including, streets, sidewalks, parks, public spaces and the buildings that frame and define these spaces.

Built Form

Section 3.1.2 of the Official Plan, ensures that new development is located and organized to fit within the existing and/or planned context of the neighbourhood. New development is to be massed and designed to fit harmoniously into its existing and

planned context, including framing adjacent streets and creating appropriate transitions in height and scale.

The Official Plan also provides specific direction on the built form of tall buildings. Policy 3.1.3.2 provides that tall buildings will address key urban design considerations, including: meeting the general built form principles of the Official Plan; reinforcing the overall City structure; addressing the relationship to the existing and planned context; addressing the relationship to topography and other tall buildings; the provision of quality, comfortable and usable publicly accessible open space areas; and meeting other goals and objectives of the Official Plan.

Due to the larger civic responsibility and obligations associated with tall buildings, the built form policies of Section 3.1.3 provide additional direction on how they fit into the existing and planned context and how they are designed. Policy 2 requires that tall building proposals address key urban design considerations that include: demonstrating how the proposal will contribute to and reinforce the overall City structure; 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.

Housing

Policy 3.2.1.9 of the Official Plan requires that the development of large sites (sites greater than 5 hectares) where an increase in height and/or density is sought, in accordance with Policy 5.1.1 of the Official Plan, that “the first priority community benefit will be the provision of 20 per cent of the additional residential units as affordable housing”.

Community Services and Facilities

The Official Plan requires the effective and co-ordinated planning, involvement of all human services sectors, and investment in comprehensive social infrastructure. Policy 3.2.6 requires community services strategies and implementation mechanisms for all new neighbourhoods and mixed use sites generally larger than 5 hectares in order to inform the range of facilities needed to support development.

Transportation

Policies 2.4.3 and 2.4.4 of the Official Plan states that planning for new development will be undertaken in the context of reducing auto dependency and creating a multi-modal approach to address the transportation demands and impacts of new development. The Official Plan also requires subway stations and underground light rail transit stations to be integrated into new multi-storey developments where feasible.

Parks and Open Spaces

The City's parks, open spaces and natural areas are an integral part of our quality of life and social well-being. For sites greater than 5 hectares in area, Policy 3.2.3.5 requires the dedication of land for parks up to 20 per cent of the land area (as determined based

on local parkland needs and based on the alternative Parkland Dedication By-law No. 1020-2010). In addition, for sites greater than one hectare, dedication of land for parks purposes is preferred over payment of cash-in-lieu of an on-site parkland dedication.

New Neighbourhoods

The Official Plan requires a comprehensive planning framework for areas to be developed as a new neighbourhood. New neighbourhoods will be carefully integrated into the surrounding fabric of the city. Policy 3.3.1 identifies the elements that should be considered when developing a comprehensive planning framework and includes identifying the pattern of streets, development blocks, open spaces, the mix and location of land uses, a strategy to provide community services, and a strategy for the provision of affordable housing.

Section 37

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 proposal meets the Official Plan's threshold for Section 37 considerations, as it has a gross floor area in excess of 10,000 square metres. Accordingly, this development proposal would be subject to the Section 37 policies of the Official Plan should City Council approve the application.

All other relevant Official Plan policies will be considered in the evaluation of this development proposal. The policies of the Official Plan are intended to be read as a comprehensive whole.

The Plan can be found here:

http://www.toronto.ca/planning/official_plan/introduction.htm

Official Plan Amendments 479 and 480: Built Form, Public Realm Policies

On December 17, 2019, City Council adopted Official Plan Amendment No. 479 regarding public realm ("OPA 479") and Official Plan Amendment No. 480 regarding built form ("OPA 480") to Section 3.1.1, Public Realm, Section 3.1.2, Built Form and Section 3.1.3, Built Form - Tall Buildings, of the Official Plan as part of the Five Year Review of the Official Plan pursuant to Section 26 of the Planning Act. The Minister of Municipal Affairs and Housing approved OPA 479 and 480 on September 11, 2020.

Consistent with Provincial policy direction, the City's Official Plan has been updated to protect provincial interests. OPA 479 and OPA 480 strengthen the existing public realm and built form policies and provide greater clarity through new policies that describe the public realm, built form and built form types. The policies reflect the continuous evolution of the application of urban design principles to achieve critical city-building objectives, defining the roles and relationships of the public realm and new development to ensure that buildings and their surrounding public spaces work together to achieve a high standard of design and help create a high quality of life for people of all ages and abilities.

The Official Plan continues to recognize that the public realm is the fundamental organizing element of the city and its neighbourhoods and plays an important role in supporting population and employment growth, health, liveability, social equity and overall quality of life. Each element of the public realm has its own roles and responsibilities. When designed together, these elements form a well-connected, walkable, attractive, safe, functional and accessible network which supports communities at a range of scales and characters. The policies continue to emphasize the importance of promoting a connected grid-like street network that promotes complete communities, supporting active transportation and transit use that provides a high quality of life, among other matters.

The Official Plan continues to recognize the importance of the integration and interface between the public realm and how development fits within its existing and planned context. Principles such as site organization, fit into the existing and planned context, building massing, transition and scale, good street proportion and encouraging a mix of building types continue to be reflected and emphasized through the OPA 479 and OPA 480.

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SIGNATURE

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ATTACHMENTS

Confidential Attachment 1 - Confidential Information
Confidential Appendix "A" - Confidential Information