



MILLER THOMSON
AVOCATS | LAWYERS

MILLER THOMSON LLP
SCOTIA PLAZA
40 KING STREET WEST, SUITE 5800
P.O. BOX 1011
TORONTO, ON M5H 3S1
CANADA

T 416.595.8500
F 416.595.8695

MILLERTHOMSON.COM

April 30, 2021

Sent via E-mail
(Marilyn.Toft@Toronto.ca)

David Tang
Direct Line: 416.597.6047
dtang@millerthomson.com

File No. 0129728.0023

Mayor Tory and Members of City Council
City of Toronto
New City Hall
100 Queen Street West
12th Floor, West Tower
Toronto, ON M5H 2N2

Attention: Ms. Marilyn Toft, City Clerk -
Secretariat

Dear Mayor Tory and Members of Council:

Re: Name of Client: 2569144 Ontario Inc.
Address: Unit 2B, 323 Queen St. E. (the "Property")
Comments on Draft King-Parliament Secondary Plan and Zoning By-law –
Final Report, Secondary Plan and Zoning By-law Amendments
Council Meeting May 5, 2021 - Item TE24.11

We are the solicitors for 2569144 Ontario Inc., the owner of a co-operative interest in the above-noted property, which is located within the boundaries of the proposed King-Parliament Secondary Plan (the "**Secondary Plan**") and more specifically, in the Queen Street Policy Area.

We are writing on behalf of our client to further comment to the comments provided in November 2020 (please see attached November 27, 2020 letter) with respect to the October 2020 draft of the Secondary Plan and set out its concerns with respect to the March draft of the King-Parliament Secondary Plan which City Planning staff have recommended for adoption by City Council and to provide comments and concerns with respect to the draft Zoning By-law.

DRAFT SECONDARY PLAN (OPA 525)

Our client's comments and concerns to the Secondary Plan set out in the attached November 27, 2020 letter continue to apply to the March 2021 draft of the Secondary Plan except as otherwise set out in this letter and we would simply reiterate those comments.

Heritage Conservation District Plans

We wish to thank the City for considering our comments about the inappropriateness of the Secondary Plan incorporating by reference non-statutory Heritage Conservation District Plans and the amendment to Policy 1.2 to remove references to Heritage Conservation District Plans altogether.

Unfortunately, Policy 3.4.5 continues to incorporate by reference Heritage Conservation District Plans into the Secondary Plan. Our client's view is that the reference to Heritage Conservation District Plans should be deleted from this policy.

Even worse, the modifications to Policy 1.5, which now requires the zoning by-law to "conform to" Heritage Conservation District Plans go much further, inappropriately applying the standard allocated to Official Plan policies, for which the *Planning Act* provides very robust and specific process rights and landowner appeals applicable at a site specific level to Heritage Conservation District Plans. Our client's view is that the reference to Heritage Conservation District Plans should be wholly deleted from this policy.

Cultural Spaces

While Policy 2.2 continues to require an inflexible numeric standard twenty-five percent (25%) of the total gross floor area for non-residential uses, the addition of policies encouraging the King-Parliament Area to represent a *culture centre* is appropriate provided those policies continue to reference *cultural spaces* inclusively and do not make them mandatory uses for any site within the King-Parliament Area.

Listed but not Designated Properties

The absolute and strict requirement in Policy 7.2.3 that the required setback "align with" rather than "reflect" existing Heritage Register (i.e. listed, not designated) properties on or adjacent to the site is unduly restrictive. Not only does this policy remove any ability to sensitively design appropriate relationships based upon the character of both the listed property and the proposed property, it ignores the fact that the *Ontario Heritage Act* does not grant these properties with protected status until they are designated. This policy is inconsistent with that Act.

Policy 4.2 also inappropriately applies to all listed properties, rather than just designated properties. Furthermore, it introduces two new concepts: conservation of scale and character of those listed properties. The *Ontario Heritage Act* and its regulations make it clear that if designated, conservation on that property is to relate to its specific heritage attributes, not the scale or character of that property, which may bear no relationship to the heritage attributes or even be completely inconsistent.

Street Walls

The deletion of policy 7.2.4 is an unfortunate and inappropriate modification to the Secondary Plan. That policy should be restored, as it recognizes the appropriate urban design principle that the street wall should at least have some potential for not only recognizing site specific relationships and situations but that variety is desirable, to prevent a single monolithic street wall across the entirety of the Queen Street Policy Area.

Policy 7.4.1 now requires the establishment of a consistent street wall height, which is overly restrictive, ignores local streetscape and site specific characteristics and is generally not conducive to good urban design. "Compatibility" rather than "consistency" is a better policy goal with respect to street wall heights and the stepping back of taller buildings for the Secondary Plan to require.



Elevating Zoning Standards to Official Plan Policy

Policy 3.4.3 was replaced by Policy 3.5.3, which provides some context to the policy by referencing its applicability only to tall buildings, but continues to incorporate by reference the “required performance standards established by the zoning by-law”. An Official Plan should provide direction on a policy basis for the specific standards to be implemented by a zoning by-law, not the other way around.

DRAFT ZONING BY-LAW

We would request that Council defer consideration and adoption of the Zoning By-law to allow for a more in-depth consideration of its impact as it was only released approximately one and a half weeks before it was considered by Community Council.

Our client has significant concerns with the proposed performance standards, including street wall heights, setbacks and stepbacks, the by-law’s over-riding of the long accepted approach found in Regulation 40.5.40.10 (4) for building heights, which allows certain equipment and structure on a roof, subject to the limitations found in Regulation 40.5.10(5) (which include both a maximum coverage limit of 30% and further height limit) and the requirement for a minimum 5.0 metre setback of any new addition or new building on a lot containing a conserved heritage building from the original building setback of the conserved heritage building.

Zoning By-law 569-2013’s approach of allowing limited equipment and screens or functional structures on top of a roof is well established. It reflects decades of experience and an appropriate balance between ensuring roofs are not overcrowded and flexibility to accommodate necessary functional components of a building. The elimination of the application of Regulation 40.5.40.10(4) consequently Regulation 40.5.10(5) as well, will force uniformity into the design of all of the buildings in the Secondary Plan Area. All buildings will be designed as flat roof buildings with no variation in their profile to allow maximization of the zoning permissions. Sculpting of the tops of buildings to minimize the impacts of a completely rectilinear building will be discouraged.

Mandating a large, across-the-board, 5.0 metre additional setback from the original building setback of a conserved heritage building ignores that this may not be appropriate or needed in every case. It fails to recognize that the heritage value and heritage attributes of a heritage building may not be enhanced or need to be protected by an additional 5.0 metre setback. The standard cannot be applied easily to smaller or shallow sites and may sterilize such sites from any redevelopment. In any event, the standard is not required because the provisions of the *Ontario Heritage Act* already allow the City significant discretion with respect to approving the alteration of designated heritage buildings. That Section 33 of that Act enables the City to not consent to a design and an inappropriate or inadequate setback for the new building elements and allows appropriate site specific consideration of how specific design enable the continued prominence of the heritage building. Setbacks are merely one potential tool and should not be used to the exclusion of tools such as the use of contrasting materials, architectural style and features and other elements that may make a 5 metre additional setback either unnecessary or undesirable.



SUMMARY

It is therefore our client's request that the Secondary Plan and the Zoning By-law be further modified after due consideration of our client's comments and concerns contained in both this letter and the attached November 27, 2020.

Please accept this letter as a written submission from our client with respect to the Secondary Plan required by Subsection 17(24)1 and as a written submission from our client with respect to the draft Zoning By-law required by Subsection 34(19)2 of the *Planning Act*. R.S.O. 1990 c.P.13, as amended.

Please provide us with notice of all matters concerning the Secondary Plan and the Zoning By-law and notice of any decision to adopt or enact either the Secondary Plan or the Zoning By-law in accordance with subsections 34(18) and 17(23) of the *Planning Act* so our client may exercise its appeal rights as required.

Thank you for your consideration.

Yours very truly,

MILLER THOMSON LLP

Per:



David Tang
Partner
DT/ac

Encl.





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David Tang
Direct Line: 416.597.6047
dtang@millerthomson.com

November 27, 2020

Delivered Via Email to:
Marilyn.Toft@toronto.ca

City Council
City of Toronto
New City Hall
100 Queen Street West
12th Floor, West Tower
TORONTO, Ontario
M5H 2N2

Attention: Ms. Marilyn Toft, City Clerk -
Secretariat

Dear Mayor Tory and Members of Council:

Re: Name of Client: 2569144 Ontario Inc.
Address: Unit 2B, 323 Queen St. E. (the "Property")
Comments on Draft King-Parliament Secondary Plan – October 2020

We are the solicitors for 2569144 Ontario Inc., the owner of a co-operative interest in the above-noted property, which is located within the boundaries of the proposed King-Parliament Secondary Plan (the "**Secondary Plan**") and more specifically, in the Queen Street Policy Area. We are writing on behalf of our client to provide its comments and concerns with respect to the King-Parliament Secondary Plan and to ask that it not be adopted in its current form.

Our client's concerns with the draft Secondary Plan include the following:

1. Policies 1.2, 1.5 and 3.4.5

These policies incorporate by reference non-statutory documents and directives, namely Heritage Conservation District Plans, and in some cases their built-form directives. That is, in principle inappropriate, given those are not capable of being fully considered in an appeal of the Secondary Plan or even to be clarified as part of the current process. Furthermore, it is unclear whether these policies only incorporate the policies and directives contained in a Heritage Conservation Plan that is in force as of the date of the adoption of the Secondary Plan, or purport to incorporate Heritage Conversation District Plans or amendments that come into force at a later date, in what may be a drastically different planning environment. The policies also give primacy to Heritage Conservation Plans and it is not always appropriate for heritage considerations to trump all other considerations.

2. Policy 2.2

This Policy requires development to provide the greater of either existing non-residential gross floor area or twenty-five percent (25%) of the new development's total gross floor area as non-residential uses. While the objective of encouraging a diverse mix of residential and non-residential uses in the Secondary Planning Area is generally appropriate, the imposition of a single and inflexible numeric standard to every development site, regardless of size, context, location and design, is not the best means of achieving this goal. A more flexible approach is needed. Some sites may be too small to reasonably contain that specific mix of non-residential and residential uses. A mix of single use buildings can similarly achieve an appropriate mix of residential and non-residential uses within a block or even several blocks. This Policy may preclude sensitive infill redevelopment, particularly if that infill is incremental as other policies in the Secondary Plan require. Instead, it requires every building to largely be the same in design and scope, creating a uniformity that is immiscible to the overall intent for diverse built forms and uses. The Policy would encourage every building in the King-Parliament area to effectively be the same in scope and to be much the same. The Policy also appears to be inconsistent with the Downtown Secondary Plan and its treatment of minimum non-residential gross floor areas.

3. Policy 3.4.3

This Policy circularly incorporates future performance standards established in the implementing Zoning By-law as an Official Plan Policy. The approach is inappropriate and contrary to the *Planning Act's* principle that the Official Plan is to provide broad or high level "goals, objectives and policies" while zoning by-laws regulate using performance standards. The Secondary Plan should provide broad goals and objectives that inform the establishment of those performance standards only. The scheme of the *Planning Act* that zoning by-laws conform to the Official Plan would be up-ended if the subsequent implementing zoning by-law's standards are elevated to the same level as other goals, objectives and policies in the Secondary Plan and must be conformed to despite other goals, objectives or policies requiring a different approach. It is unclear how this provision could be considered when dealing with a zoning by-law amendment, and even more problematically, when assessing the four tests on a minor variance application.

4. Policies 5.1, 5.2, 5.8 and 5.9.

Policy 5.1 references "enhanced laneways" as being part of the "enhanced network" or "pedestrian network" that "will be achieved over time through development". That is purportedly shown on Map 15-5, which does not explicitly identify "enhanced laneways" but does identify laneways graphically. It is not clear whether the lanes shown as existing within the block bounded by Queen Street to the north, Berkeley Street to the west, Parliament Street to the east and Richmond Street to the south are such enhanced laneways, which are to be secured or achieved over time. In our client's view, they should not be, as pedestrian traffic should be encouraged to remain on Queen Street West to retain its vibrancy and main street character. That



should be made clear so that it is clear policies 5.2, 5.8 and 5.9 do not apply to lands within this block.

5. Policy 5.4.2 and 5.6.1 and Mid-Block Connections

The current proposed mapping for mid-block connections does not identify and possible connections in the block within which the Property is located. In event that changes, we wish to provide the following comments. Firstly, it is our client's view that pedestrian activity should be encouraged to remain on Queen Street East rather than be diverted to a mid-block connection. There should be no mid-block connections established in the block bounded by Queen Street to the north, Berkeley Street to the west, Parliament Street to the east and Richmond Street to the south. There are already laneways within this block that serve some of the functions such a connection would provide, even aside from the point that pedestrian activity should be concentrated on Queen Street.

Policy 5.4.2 requires mid-block connections to be "spacious", which is an undefined term in the Secondary Plan. The word "spacious" is in our client's view, ambiguous, imprecise and not a helpful measure of what the Secondary Plan attempts to achieve. Policy 5.4.2 already establishes the criteria for assessing the appropriateness of such a mid-block connection in its references to factors such as clear sight lines and good pedestrian lighting. Those are adequate and better at defining how the mid-block connections should function than the use of the word "spacious". In addition, the specific environment surrounding that connection needs to be considered when determining whether or not the connection should be "spacious", even if there is clarity on what that constitutes, apart from accommodating the other criteria set out in the policy.

This Mid-Block Connection Policy 5.6.1 specifies a minimum new exterior mid-block connection of width of 4.0 meters. A fixed 4.0 meter standard is inappropriate and unduly restrictive, and particularly in the absence of the specific proposal for the redevelopment of adjacent lands is premature and inflexible. The design of those buildings, the proximity of other open spaces, the set-backs established, adjacent built form, the manner in which pedestrian traffic is directed and the configuration of the lanes in this block need to be considered together in determining the precise configuration (and need) for any mid-block connection.

6. Policy 5.6, Policy 7.2, and Policy 7.3.

While appropriate setbacks are desirable, the explicit prohibition of any projections such as cantilevers or balconies, into those setbacks is unduly restrictive and does not allow for an appropriate consideration of whether any such projections have a negative impact on the objectives, such as improved streetscaping or animation.

7. Policy 7.1

This Policy's requirement that redevelopment within the Queen Street Policy Area occur "incrementally" is ambiguous and potentially inappropriate. There is a real possibility that properties will be consolidated for redevelopment and those can be well planned and designed and even maintain a diversity of uses, forms and



expressions. If some form of diversity is the intent of this policy, then that is better expressed in that fashion. Not only is incremental redevelopment not the only way diversity can be established, there is a risk that it will in fact lead to the opposite, which is the inability to comprehensively plan for diversity on a multi-property/block basis. Comprehensive redevelopment is more likely to lead to better relationships between the buildings than individual owners separate applications for their own properties, made with little care for the entire character of the block. The Policy will tend to discourage the mixed-use nature of existing building stock, which is characteristic of the Queen Street Policy Area, in particular, at this time.

8. Policy 7.4

These policies are overly prescriptive and restrictive with respect to architectural details, such as the size and expanse of specific elements and use of the materials, and ground floor heights. These Policies prevent appropriate new architectural approaches in new development that may constitute good urban design and actually augment, while remaining compatible with, the historic retail main street character of the area.

9. A number of these Policies, in particular the built form policies, negate or even conflict with approaches the City and the Local Planning Appeal Tribunal have found to be good planning and have approved recently in the area, including those represented in the Official Plan Amendment and Zoning By-law Amendment for the QP Residential GP Inc. development in the next block to the east (351-373 Queen Street East, 161-167 Parliament Street and 82-94 Power Street). That redevelopment proposal for almost all of the block bounded by Parliament Street, Queen Street East and Power Street, was approved by the Local Planning Appeal Tribunal just last week.

10. Public Benefits

The Secondary Plan contains various policies that contemplate acquiring, securing or otherwise obtaining public or community benefits through “development review” and otherwise. Amongst the benefits referenced are contributions to parks, the public realm, community services and facilities, public laneways and pedestrian and cyclist connections. The Policies specifically talk about those being required and secured, but do not provide details on how the need is to be assessed or determined. In light of the most recent amendments to section 37 of the *Planning Act*, how contributions are to be valued and calculated in accordance with those community benefit charges provisions would be ideally established in the Secondary Plan. We would encourage the City take the time to consider integrating appropriate policies for public benefits in the new regime into the Secondary Plan prior to its adoption.

These comments are preliminary and do not represent all of the concerns that our client or indeed a future owner of the Property may have with respect to the draft Secondary Plan. Our client reserves on its own behalf and on behalf of any future owner the right to raise additional concerns and issues with the Secondary Plan at a later date. We anticipate that it will only be when a specific redevelopment is being considered that the whole scope of the Secondary Plan Policies can be assessed.



Request

We therefore ask that Council defer final consideration of the draft Secondary Plan and instruct staff to address the concerns raised in this letter and other correspondence from other landowners within the Secondary Plan area. We would be pleased to discuss our client's concerns with the City staff. Our client believes that a modified Secondary Plan that addresses its concerns is possible and is what Council should adopt.

Please accept this letter as a written submission from our client with respect to the Secondary Plan required by Subsection 17(24)1 of the *Planning Act*. R.S.O. 1990 c.P.13, as amended.

In addition, please provide us with notice of all future public meetings concerning the Secondary Plan and notice of any dealings with the Secondary Plan, including notice of its adoption.

Yours very truly,
MILLER THOMSON LLP



David Tang
DT/lk

