



**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](http://MILLERTHOMSON.COM)

May 4, 2021

**David Tang**  
Direct Line: 416.595.8695  
dtang@millerthomson.com

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

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

Attention: Attention: Ms. Marilyn Toft, City  
Clerk- Secretariat

Dear Mayor Tory and Members of Council:

**Re: Name of Client: Parl Estates Limited**  
**Address: 101 Parliament Street and 25 Power Street**  
**Comments on Draft King-Parliament and Zoning By-law Amendments :**  
**Council Meeting, May 5, 2021- Item TE24.11**

We are the solicitors for Parl Estates Limited, the owner of 101 Parliament Street and 25 Power Street (the “**Property**”), which are located within the boundaries of the proposed King-Parliament Secondary Plan (the “**Secondary Plan**”) and more specifically, both the Old Town Policy Area and the Corktown Policy Area.

We are writing on behalf of our client to provide its written comments and concerns with respect to the draft Secondary Plan and the accompanying draft Zoning By-law Amendment (the “**ZBA**”) and to ask that City Council defer adoption and passage of them in their current form so our client’s concerns and comments can be considered. These planning instruments are scheduled for consideration at your May 5, 2021 meeting.

Our client’s concerns with the proposed instruments include the following:

## 1. Built Form Policies and Standards

The Secondary Plan contains numerous policies designed to impose uniformity in the built form, design, heights, massing, setbacks, stepbacks, streetwall, overall relationship to adjoining properties and existing buildings. An example are those found in Policies 9.3 to 9.5 which potentially applies to the Property due to an ambiguity in Policy 9.2 when it simply refers to “King Street East”, unlike Policy 9.6 which clearly only applies to properties with **frontage** on King Street East. If they are not to apply, clarity would alleviate our client’s concerns with those specific policies. Policy 8.2.2 mandates “noticeable and discernable” built form transitions, which is potentially too ambiguous but could form the basis for appropriate clarifications. Taken individually and together, these policies prevent appropriate consideration of site specific conditions and quash creativity and good urban design and architectural expression.

In general terms, the policies for the Old Town Policy Area are more appropriate than those in the Corktown Policy Area.

Policy 9.1 potentially requires that development occur primarily through infill and adaptive reuse, when a more comprehensive approach may be appropriate for the Property. Either a site-specific exception or clarification that this policy is descriptive only, rather than prescriptive would resolve our client’s concerns.

The ZBA establishes too low a height limit for the Property, establishes performance standards that are inappropriate for the Property, including those related to streetwall heights, setbacks and stepbacks. Of particular concern in the ZBA’s over-riding of the long accepted approach found in Zoning By-law 569-2013’s 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. It has real potential for causing all buildings in the area to 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. Loss of the option to sensitively treat the roof of any new building on the Property is a significant problem with the ZBA.

## 2. Elevating Zoning Standards to Official Plan Policy



The Secondary Plan policy 3.5.3 fails to provide appropriate policy direction to zoning by-laws. Rather, it circularly incorporates “required performance standards established by the zoning by-law” and confuses the role of an Official Plan with that of a zoning by-law. This policy would elevate overly specific numeric limits into the Secondary Plan, all while avoiding the level of scrutiny and public process that an amendment to a Secondary Plan would normally receive in the event the zoning by-law is amended again in the future. This elevation of a simple by-law standard to the Official Plan is not consistent with the Planning Act’s principle that an Official Plan should provide “goals, objectives and policies

### **3. Replacement of Non-Residential GFA**

The Secondary Plan’s Policy 2.2 applies to the Mixed Use Area 2 in the Downtown Plan, requiring replacement of non-residential GFA to the greater of 25% of the total GFA of the development or the existing non-residential GFA. It is unclear due to the scale of the Mixed Use Area 2 mapping in the Downtown Plan whether any portion of the Property is subject to this policy. If it is not, clarification would resolve our client’s concern with this policy, which is overly restrictive and inflexible, in particular the numeric 25% requirement.

### **4. Public Realm**

The Secondary Plan contains policies respecting the public realm reference “development review” and suggest that contributions (whether pursuant to section 37 or 42 of the Act) will be guided by what are now non-statutory documents. The policies should not rely upon such plans.

### **5. Heritage Conservation District Plans**

Policies 1.5 and 3.5.5 of the Secondary Plan inappropriately incorporate by reference non-statutory planning documents, including Heritage Conservation District Plans, as documents that would prevail over other conditions, even in the case of Policy 1.5 requiring zoning by-laws to “conform to” those plans. That standard is not appropriate for non-statutory planning documents, particularly in situations where they can be amended at any time and without the same process and substantive appeal rights which apply to Official Plan Amendments, for which that standard was designed. It is our client’s view that any reference to non-statutory documents, including Heritage District Plans, should be removed from these policies.

### **6. Treatment of Heritage Registry Properties**

The Secondary Plan’s Policy 4.2 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.



The ZBA's mandating of 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.

The concerns, specific policies and provisions mentioned in this letter are not intended to be exhaustive and our client reserves its rights to raise additional concerns at a later date and on any appeals.

### **Request**

We therefore ask that Council defer final consideration of the draft Secondary Plan and ZBA 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 and ZBA 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 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 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:

A handwritten signature in blue ink, appearing to be 'David Tang', written in a cursive style.

David Tang

/

