

## **15-17 Elm Street – Zoning By-law Amendment Application – Appeal Report**

Date: January 8, 2024

To: Toronto and East York Community Council

From: Director, Community Planning, Toronto and East York District

Ward: 11 - University-Rosedale

**Planning Application Number:** 22 202864 STE 11 OZ

**Related Application Number:** 22 202863 STE 11 SA

### **SUMMARY**

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On September 13, 2022, a Zoning By-law Amendment application was submitted to permit a 30-storey (99 metres, including mechanical penthouse) mixed-use building. On April 19, 2023, a revised proposal for the 30-storey mixed-use building was submitted, containing 216 dwelling units and 303 square metres of non-residential gross floor area. The existing heritage building at 15 Elm Street is proposed to be demolished.

On September 25, 2023, the applicant appealed the Zoning By-law Amendment application to the Ontario Land Tribunal (OLT) due to Council not making a decision within the time frame in the Planning Act. The applicant has also appealed the heritage designation of 15 Elm Street to the OLT.

This report recommends that the City Solicitor and appropriate City staff attend the OLT hearing to oppose the application in its current form and continue discussions with the applicant to resolve outstanding issues.

### **RECOMMENDATIONS**

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The Director, Community Planning, Toronto and East York District recommends that:

1. City Council direct the City Solicitor and appropriate City staff to attend the Ontario Land Tribunal in opposition to the current application regarding the Zoning By-law Amendment appeal for the lands at 15-17 Elm Street and to continue discussions with the applicant in an attempt to resolve outstanding issues.
2. In the event that the Ontario Land Tribunal allows the appeal in whole or in part, City Council authorize the City Solicitor to request that the issuance of any final Orders be withheld until such time as the City Solicitor advises that:

a. the final form and content of the draft Zoning By-law Amendment are to the satisfaction of the City Solicitor and the Chief Planner and Executive Director, City Planning; and

b. the owner has at its sole cost and expense:

i. submitted a revised Functional Servicing Report, Stormwater Management Report, and Hydrogeological Review, including the Foundation Drainage Report ("Engineering Reports"), to the satisfaction of the Chief Engineer and Executive Director, Engineering and Construction Services, in consultation with the General Manager, Toronto Water;

ii. secured the design and provision of financial securities for any upgrades or required improvements to the existing municipal infrastructure identified in the accepted Engineering Reports, to support the development, all to the satisfaction of the Chief Engineer and Executive Director, Engineering and Construction Services and the General Manager, Toronto Water, should it be determined that improvements or upgrades are required to support the development; and

iii. ensured the implementation of the accepted Engineering Reports does not require changes to the proposed amending By-laws or any such required changes have been made to the proposed amending By-laws, to the satisfaction of the Chief Planner and Executive Director, City Planning, and the City Solicitor, including the use of a Holding ("H") By-law symbol regarding any new infrastructure or upgrades to existing municipal servicing infrastructure as may be required.

3. City Council authorizes the City Solicitor and City staff to take any necessary steps to implement City Council's decision.

## **FINANCIAL IMPACT**

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The City Planning Division confirms that there are no financial implications resulting from the recommendations included in this report in the current budget year or in future years.

## **DECISION HISTORY**

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At its meeting of May 10-12, 2023 City Council stated its intention to designate the property at 15 Elm Street under Part IV, Section 29 of the Ontario Heritage Act. Council's decision is available here:

<https://secure.toronto.ca/council/agenda-item.do?item=2023.PH3.11>

The owner submitted a Notice of Objection (dated May 19, 2023) to the Notice of Intention to Designate the property at 15 Elm Street under Part IV, Section 29 of the

Ontario Heritage Act. At its meeting of July 19-20, 2023 City Council considered the objection to the Notice of Intention to Designate and affirmed its decision to state its intention to designate the property at 15 Elm Street. Council's decision is available here: <https://secure.toronto.ca/council/agenda-item.do?item=2023.CC8.32>

On July 20, 2023 City Council passed Designation By-law 742-2023 under Part IV of the Ontario Heritage Act. A copy of the Designation By-law can be found here: <https://www.toronto.ca/legdocs/bylaws/2023/law0742.pdf>

The applicant appealed the Designation By-law 742-2023 on August 16, 2023 to the Ontario Land Tribunal, which has been assigned OLT Case No. OLT-23-000881.

The applicant appealed to the Ontario Land Tribunal the lack of decision by the City on the Zoning By-law Amendment application for the development on September 25, 2023, which has assigned OLT Case No. OLT-23-000964.

The Ontario Land Tribunal will hold a case management conference on January 24, 2024 for the appeals of Designation By-law 742-2023 and Zoning By-law Amendment.

## THE SITE

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**Description:** The site is rectangular in shape and has an area of 793 square metres, with a frontage of approximately 25 metres on Elm Street and a depth of approximately 32 metres.

**Existing Uses:** A 2-storey house-form building (15 Elm Street) and a 1-storey commercial building (17 Elm Street).

**Heritage:** The property at 15 Elm Street was designated under Part IV, Section 29 of the Ontario Heritage Act through Designation By-law 742-2023 (under appeal) and contains a 2-storey house-form building completed by 1868. The site is adjacent to designated heritage properties at 14 and 18 Elm Street.

## THE APPLICATION

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**Description:** A 30-storey (99 metres, including mechanical penthouse) mixed-use building. The existing heritage designated building at 15 Elm Street is proposed to be demolished.

**Density:** 17.46 times the area of the lot.

**Dwelling Units:** 216 dwelling units, consisting of 135 one-bedroom (62%), 58 two-bedroom (27%), and 23 three-bedroom (11%) units.

**Access, Parking, and Loading:** A total of 23 resident parking spaces are proposed within a two-level underground garage. One Type 'G' loading space is proposed.

Vehicular access to the site is proposed along Harry Barberian Lane, which will be widened by an additional 3.0 metres in the north-south portion of the lane, and by 0.56 metres in the east-west portion of the lane. A total of 203 bicycle parking spaces are provided.

**Additional Information:** See Attachments 2 to 4, 7 to 10, and 11 of this report for a three-dimensional representation of the project in context, a site plan of the proposal, elevations, and the Application Data Sheet, respectively. Detailed project information including all plans and reports submitted as part of the application can be found on the City's Application Information Centre at: <http://www.toronto.ca/17ElmSt>.

**Reason for the Application:** The Zoning By-law Amendment is required to amend Zoning By-law 569-2013 to provide relief from various performance standards, including floor space index, building height, and building setbacks. Additional amendments to the Zoning By-law may be identified as part of the appeal process.

**Site Plan Control:** A Site Plan Control application (File Number 22 202863 STE 11 SA) was submitted on September 13, 2022. The application has been referred to the OLT. Under the Municipal Code, Site Plan approval and instructing the City Solicitor on appeal is delegated to the Chief Planner or their designate.

## **POLICY CONSIDERATIONS**

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**Provincial Land-Use Policies:** All decisions of Council in respect of the exercise of any authority that affects planning and cultural heritage matters shall be consistent with the Provincial Policy Statement (PPS), and shall conform to provincial plans.

**Official Plan:** The site is located on lands within the Downtown and Central Waterfront area and is designated Mixed Use Areas in the Official Plan. See Attachment 5 of this report for the Official Plan Land Use Map. The site is also subject to the Official Plan heritage policies.

**Downtown Plan:** The site is designated Mixed Use Areas 2 – Intermediate in the Downtown Plan. The site is also subject to the Downtown Plan heritage policies.

**Tall Building Setback Area Specific Policy (SASP) 517:** SASP 517 contains performance standards for tall building setbacks and separation distances in the Downtown Secondary Plan Area.

**Airport Zoning Regulation - Helicopter Flight Path - By-law 1432-2017:** The site is subject to the Airport Zoning Regulation for the Hospital for Sick Children. Development on this site is required to be below and outside the Obstacle Limitation Surface, Eastern Approach/Take-off Surface and Arrival/Departure Path identified in By-law 1432-2017 to preserve a flight path for air ambulance and medical transport helicopters accessing these hospitals.

**Zoning:** The site is zoned Commercial Residential CR 6.0 (c2.0; r6.0) SS1 (x2318). This zoning category permits a wide array of commercial, residential, and institutional uses. See Attachment 6 of this report for the existing Zoning By-law Map.

## **Design Guidelines**

The following design guidelines have been used in the evaluation of this application:

- Tall Building Design Guidelines;
- Downtown Tall Building Design Guidelines; and
- Growing Up Guidelines: Planning for Children in New Vertical Communities.

The City's Design Guidelines can be found here:

<https://www.toronto.ca/citygovernment/planning-development/official-plan-guidelines/design-guidelines/>

## **Toronto Green Standard**

The Toronto Green Standard is a set of performance measures for green development. Applications for Zoning By-law Amendments, Draft Plans of Subdivision, and Site Plan Control are required to meet and demonstrate compliance with Tier 1 of the Toronto Green Standard. The TGS can be found here: <https://www.toronto.ca/city-government/planningdevelopment/official-plan-guidelines/toronto-green-standard/>

## **COMMUNITY CONSULTATION**

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A virtual Community Consultation Meeting was hosted by City staff on February 16, 2023. Approximately 25 people participated, as well as the Ward Councillor and the applicant. At the meeting, City staff and the applicant's consultants provided presentations on the site and surrounding area, the existing planning framework, and the proposed development. Following the presentations, City staff led a question and answer format meeting.

Issues raised at the meeting and through written comments and phone calls include:

- Support for retaining the existing heritage building at 15 Elm Street;
- Impacts to privacy and access to sunlight for residents of the existing building to the south;
- Potential for snow and ice accumulation on balconies and impact to safety of the public realm;
- Construction timing, dust, and noise; and
- Safety impacts for helicopters accessing the Hospital for Sick Children.

## COMMENTS

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### Provincial Framework

Staff's review of this application has had regard for the relevant matters of provincial interest set out in the Planning Act. Staff have reviewed the current proposal for consistency with the Provincial Policy Statement (PPS) and conformity with the Growth Plan. Staff find that the proposal is generally consistent with the PPS policies and conform with Growth Plan policies relating to the achievement of complete communities, optimizing the use of land and infrastructure, and supporting a mix of housing units. However, the proposal is not consistent with the provincial policies regarding the conservation of significant heritage resources.

### Land Use

The site is designated Mixed Use Areas in the Official Plan and Mixed Use Areas 2 - Intermediate in the Downtown Secondary Plan. The proposed residential and non-residential uses are acceptable and conform to the applicable policies of the Official Plan and Downtown Secondary Plan.

### The Building

The proposed massing, tower separation, and setbacks do not conform to the Official Plan or the Downtown Secondary Plan, and do not meet the intent of the Tall Building Design Guidelines and Downtown Tall Building Design Guidelines.

The proposed development consists of a 30-storey building on a site with an area of 793 square metres. The application has not demonstrated, to the City's satisfaction, that a 30-storey tower can be accommodated on this site.

The applicant has not adequately demonstrated that the proposed tower is compatible with the existing and planned context and can provide appropriate tower separation distances from neighbouring properties. The proposed east setback to the existing centreline of the north-south portion of Harry Barberian Lane is approximately 3.2 metres, which negatively impacts the redevelopment potential of neighbouring properties east of Harry Barberian Lane and does not accommodate appropriate future tower separation.

The south setback from the centreline of the east-west portion of Harry Barberian Lane is approximately 7 metres, which results in an insufficient tower separation distance from the existing building at 20 Edward Street (30 storeys).

The proposed 0-metre tower setback to the west impacts the redevelopment opportunities of the neighbouring property.

In addition, the proposed building does not appropriately define the streetwall at a pedestrian scale or respond to the existing context on Elm Street, which consists of a 2- to 3-storey streetwall.

Policy 4.8.4 of the Official Plan and Policy 9.29 of the Downtown Plan state that buildings will be sited and massed to protect the continued use of flight paths to hospital heliports. The site is located within the helicopter flight path of the Hospital for Sick Children. The applicant has not demonstrated that the proposed building will protect the continued use of the flight path for air ambulance and medical transport helicopters accessing the hospital.

## **Heritage**

The property at 15 Elm Street contains a 2-storey house-form building completed by 1868. The Georgian Revival style property represents a rare surviving example of a Confederation-era house-form building and is part of a broader collection of 19th century dwellings along Elm Street that were adapted at street level in the early-20th century to accommodate commercial storefronts. The property was designated under Part IV, Section 29 of the Ontario Heritage Act. The reasons for designation and full list of heritage attributes can be found in Designation By-law 742-2023, currently under appeal. The site is adjacent to designated heritage properties at 14 and 18 Elm Street.

The application proposes to demolish the designated heritage building. The proposed demolition is not consistent with and does not conform to provincial policy and the City's Official Plan, which requires that significant cultural heritage resources be conserved.

The Growth Plan indicates cultural heritage resources will be conserved to foster a sense of place and benefit communities, particularly in strategic growth areas.

The PPS directs that significant built heritage resources and significant cultural heritage landscapes shall be conserved. The PPS directs that planning authorities shall not permit development and site alteration on adjacent lands to protected heritage properties except where the proposed development and site alteration has been evaluated and it has been demonstrated that the heritage attributes of the protected heritage property will be conserved.

Section 3.1.6 of the Official Plan addresses the identification and evaluation of properties of cultural heritage value or interest. It also provides for conservation of heritage resources and includes policies that state that a Heritage Impact Assessment will evaluate the impact of a proposed alteration to a property on the Heritage Register, and/or adjacent to a property on the Heritage Register, to the satisfaction of the City.

Given the proposed application would result in the demolition of a designated heritage building, and would result in the total loss of a significant cultural heritage resource, it does not conserve the cultural heritage value of the building at 15 Elm Street, is not consistent with the Provincial Policy Statement, does not conform to the Growth Plan, and does not conform to the City's Official Plan, which requires cultural heritage resources to be conserved.

## **Tree Preservation**

The application is subject to the provisions of the City of Toronto Municipal Code, Chapter 813, Trees, Articles II (Trees on City Streets) and III (Private Tree Protection), commonly referred to as the 'Street Tree By-law' and the 'Private Tree By-law'.

The applicant submitted an Arborist Report and Tree Preservation Plan in support of the application indicating that 3 regulated City-owned trees would be removed and 1 regulated City-owned tree would be injured. The Arborist Report proposes cash-in-lieu payments instead of providing replacement trees. Urban Forestry staff are seeking preservation or replacement of the existing trees.

## **Wind**

The wind impacts resulting from the proposal are unacceptable and do not meet the policies of the Official Plan and the intent of the Tall Building Design Guidelines.

A Pedestrian Level Wind Study, prepared by SLR Consulting (Canada) Ltd., dated August 31, 2022, and an addendum letter dated April 12, 2023, state that the wind safety criterion is exceeded at one on-site location, and wind conditions on-site (including most entrances and amenity spaces) are generally windier than desired for the intended use, and wind control measures are recommended. The analysis did not assess wind conditions for the proposed rooftop outdoor amenity space.

## **Unit Mix**

A total of 216 residential units are proposed, consisting of 135 one-bedroom (62%), 58 two-bedroom (27%), and 23 three-bedroom (11%) units.

The unit mix meets the policy direction of the Official Plan to provide a full range of housing and meets the unit mix requirements of the Downtown Plan to provide a minimum of 15% two-bedroom units and 10% three-bedroom units. The application will need to meet the Downtown Plan requirements for an additional 15% of units that can be converted into two or three-bedroom units within new developments.

## **Amenity Space**

Zoning By-law 569-2013 requires a combined amenity space of 4.0 square metres per dwelling unit. The application is proposing 2.5 square meters per unit of indoor amenity space, and 0.5 square meters per unit of outdoor amenity space. The proposed total amenity space does not meet the requirements of Zoning By-law 569-2013.

## **Servicing**

Engineering and Construction Services staff have reviewed the Functional Servicing and Stormwater Management Report and associated plans and require further revisions to the reports and drawings.

In the event the Ontario Land Tribunal allows the Zoning By-law Amendment appeal in whole or in part, the final Order should be withheld pending the provision of a



satisfactory set of engineering reports that provide confirmation of water, sanitary, and stormwater capacity from the Chief Engineer and Executive Director, Engineering and Construction Services, including implementation of any required upgrades which may be secured through the use of holding provisions.

## **Further Issues**

City Planning continues to receive additional information regarding this application as the result of ongoing review by City commenting divisions, materials submitted in support of the proposal, and through deputations made by members of the public to Community Council. Planning staff may also be required to evaluate supplementary or revised plans and supporting materials submitted by the applicant after the date of this report. As a result, City Planning staff may continue to identify further issues or supplement the reasons provided in this report.

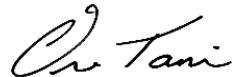
## **CONTACT**

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Tel. No. 416-392-8479  
E-mail: [Christy.Chow@toronto.ca](mailto:Christy.Chow@toronto.ca)

## **SIGNATURE**

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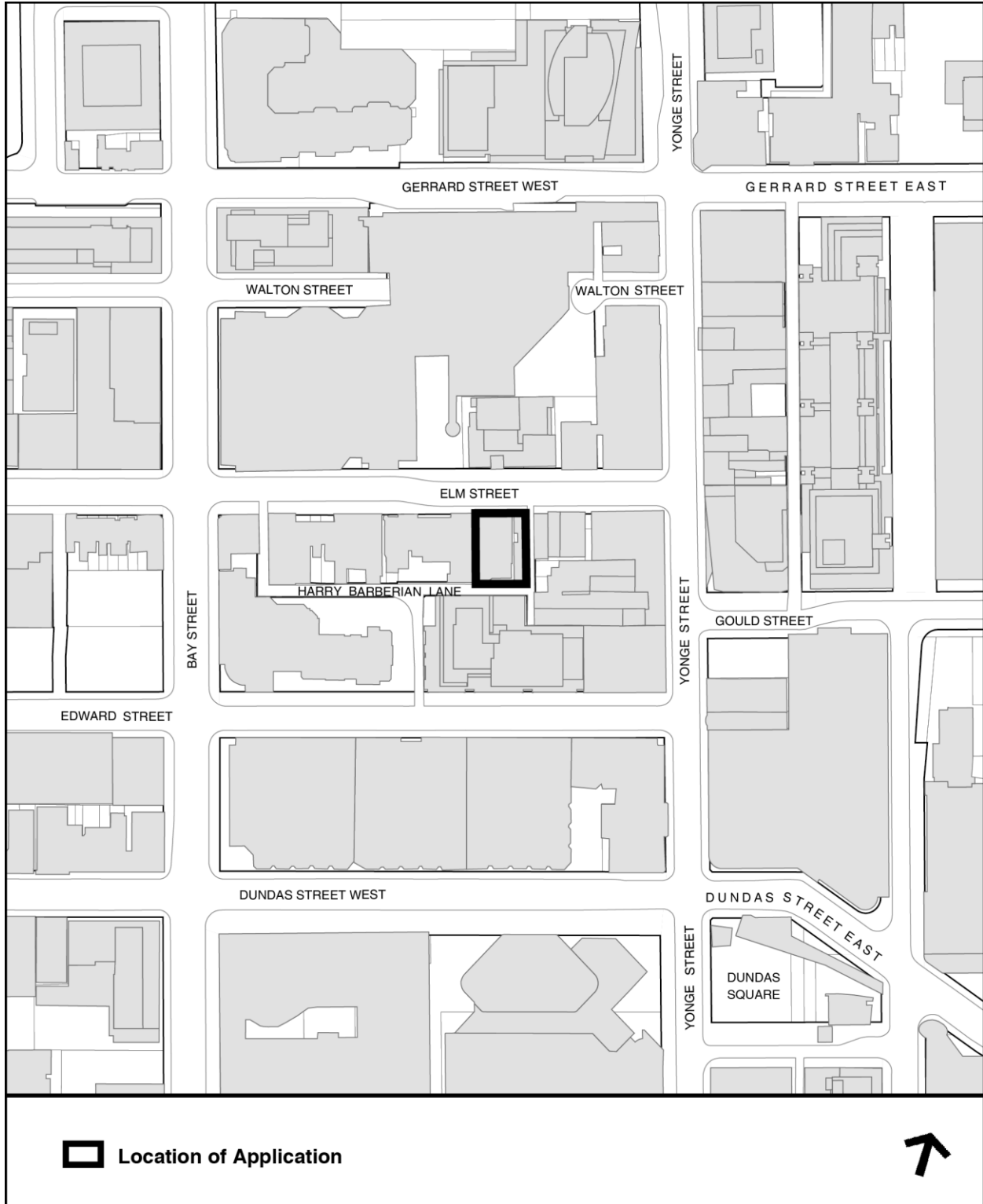
Oren Tamir  
Director, Community Planning  
Toronto and East York District

## **ATTACHMENTS**

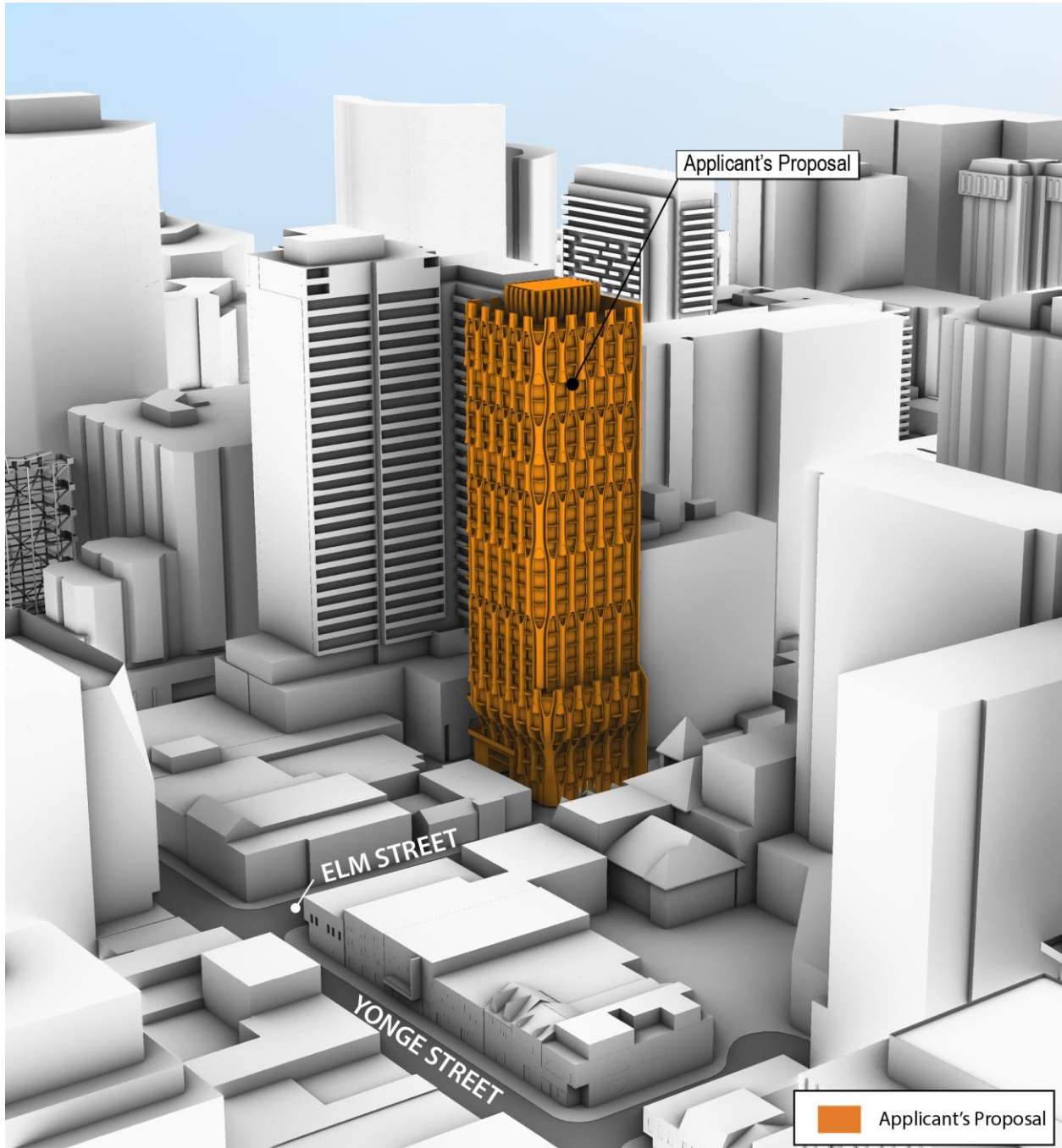
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Attachment 1: Location Map  
Attachment 2: 3D Model of Proposal in Context - Looking Southwest  
Attachment 3: 3D Model of Proposal in Context - Looking Northeast  
Attachment 4: Site Plan  
Attachment 5: Official Plan Map  
Attachment 6: Zoning By-law Map  
Attachment 7: Elevation - North  
Attachment 8: Elevation - West  
Attachment 9: Elevation - South  
Attachment 10: Elevation - East  
Attachment 11: Application Data Sheet

Attachment 1: Location Map



Attachment 2: 3D Model of Proposal in Context - Looking Southwest

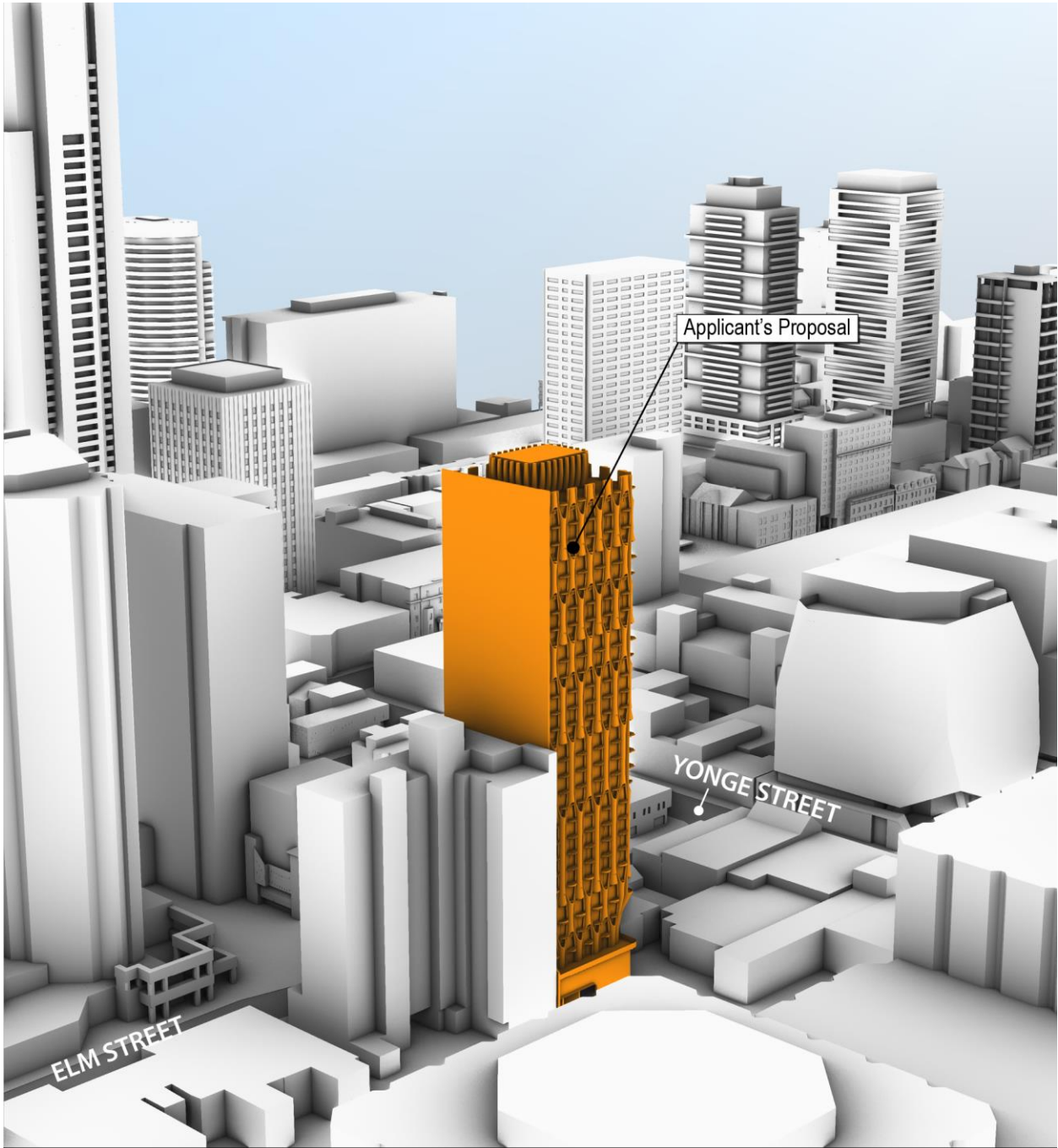


View of Applicant's Proposal Looking Southwest



12/06/2023

Attachment 3: 3D Model of Proposal in Context - Looking Northeast

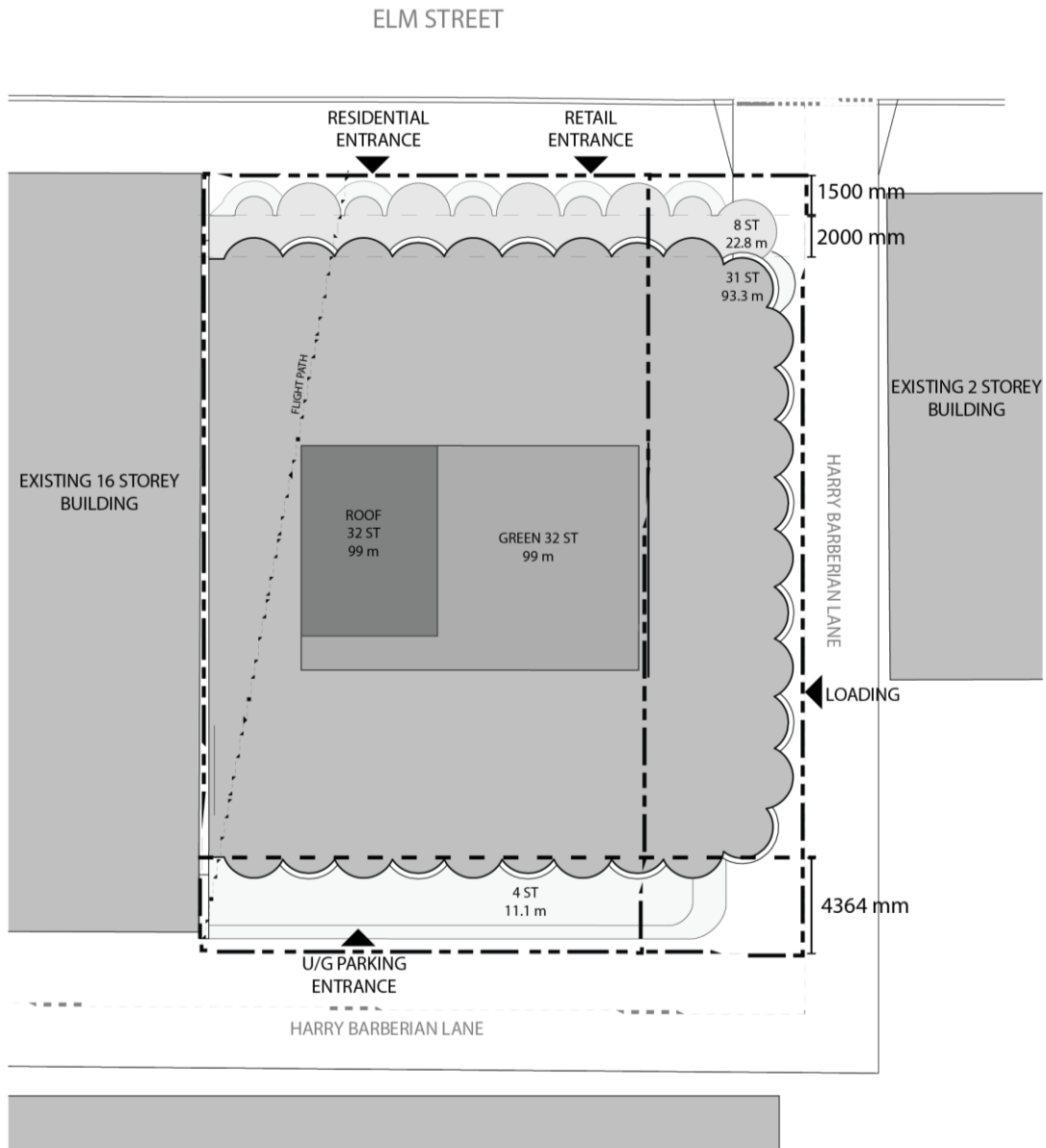


View of Applicant's Proposal Looking Northeast



12/06/2023

Attachment 4: Site Plan



Site Plan



Attachment 5: Official Plan Map



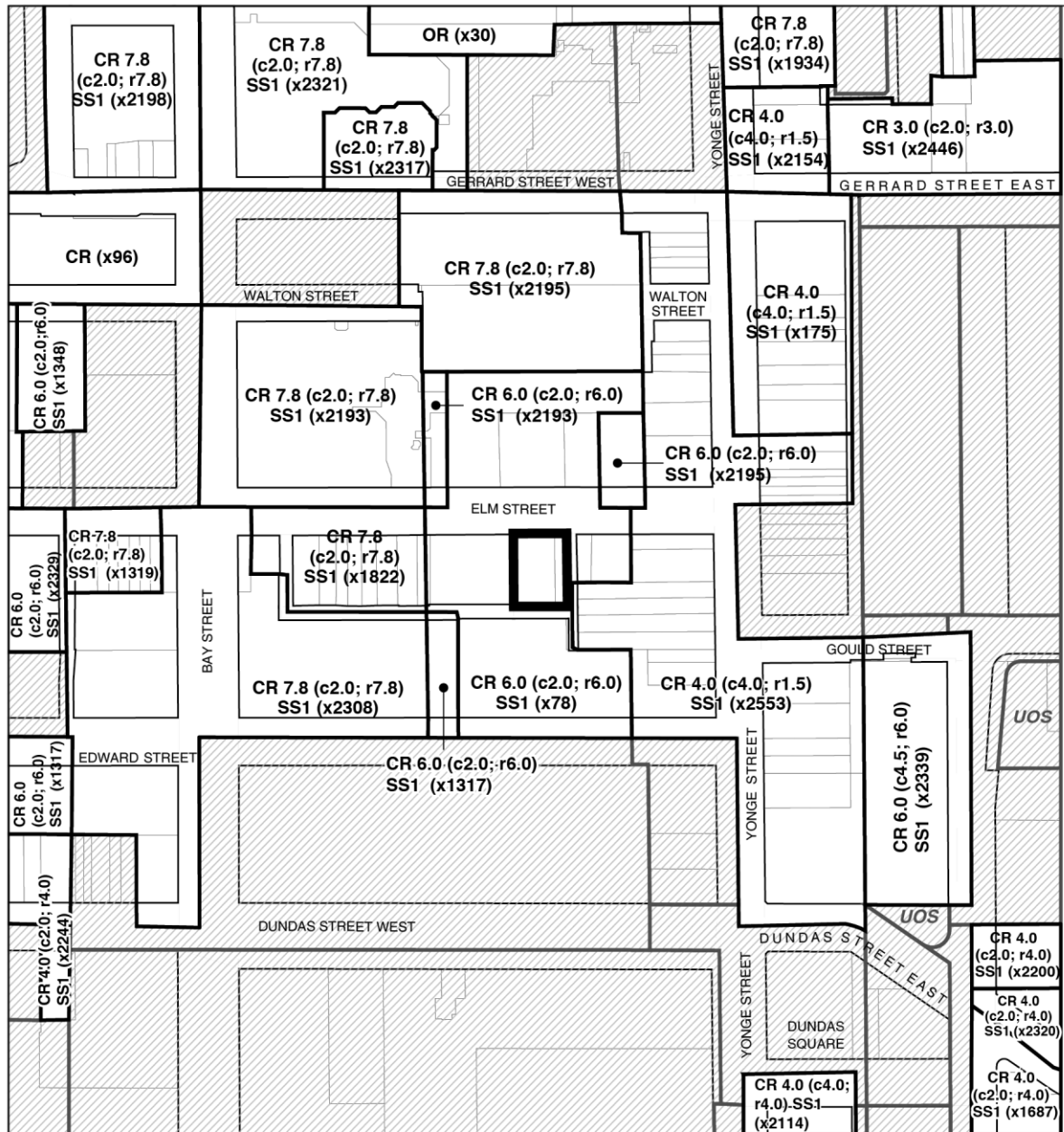
Official Plan Land Use Map #18

15-17 Elm Street  
File # 22 202864 STE 11 OZ



↑  
Not to Scale  
Extracted: 12/06/2023

# Attachment 6: Zoning By-law Map



## Zoning By-law 569-2013

15-17 Elm Street

File # 22 202864 STE 11 0Z

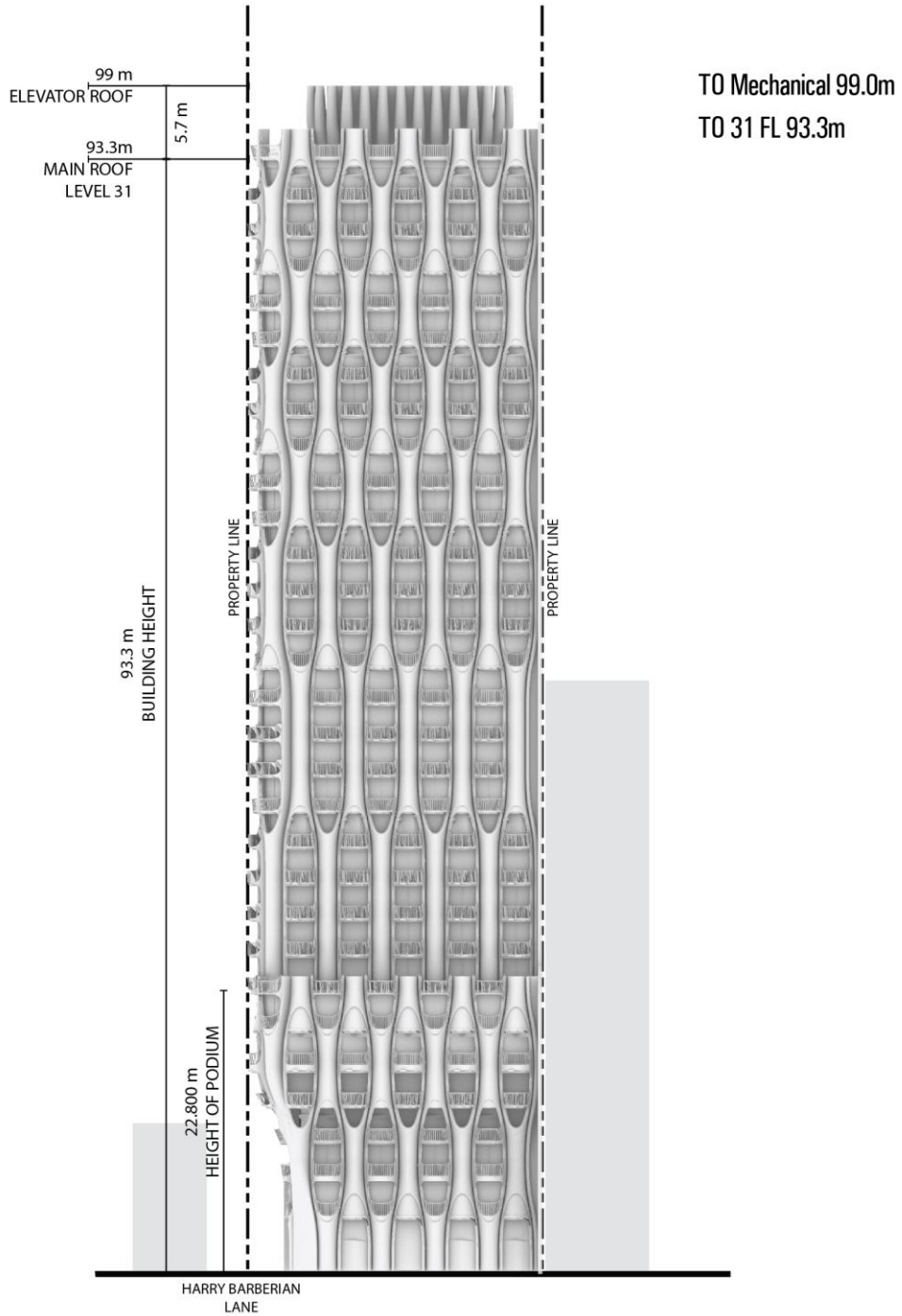
-  Location of Application
- CR** Commercial Residential
- OR** Open Space Recreation

-  See Former City of Toronto By-law No. 438-86
- Q** Mixed-Use District
- UOS** Parks District
- CR** Mixed-Use District



Not to Scale  
Extracted: 12/06/2023

Attachment 7: Elevation - North

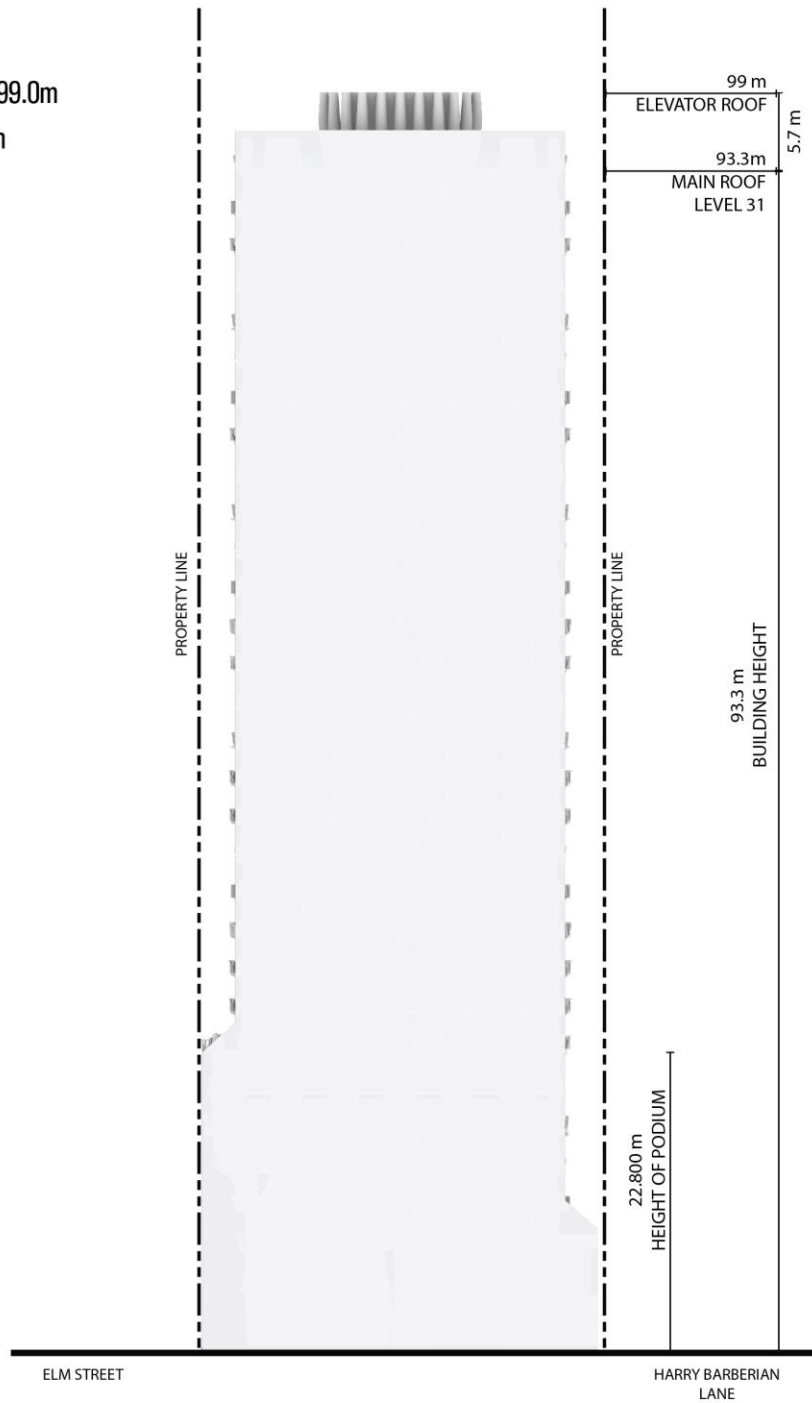


North Elevation



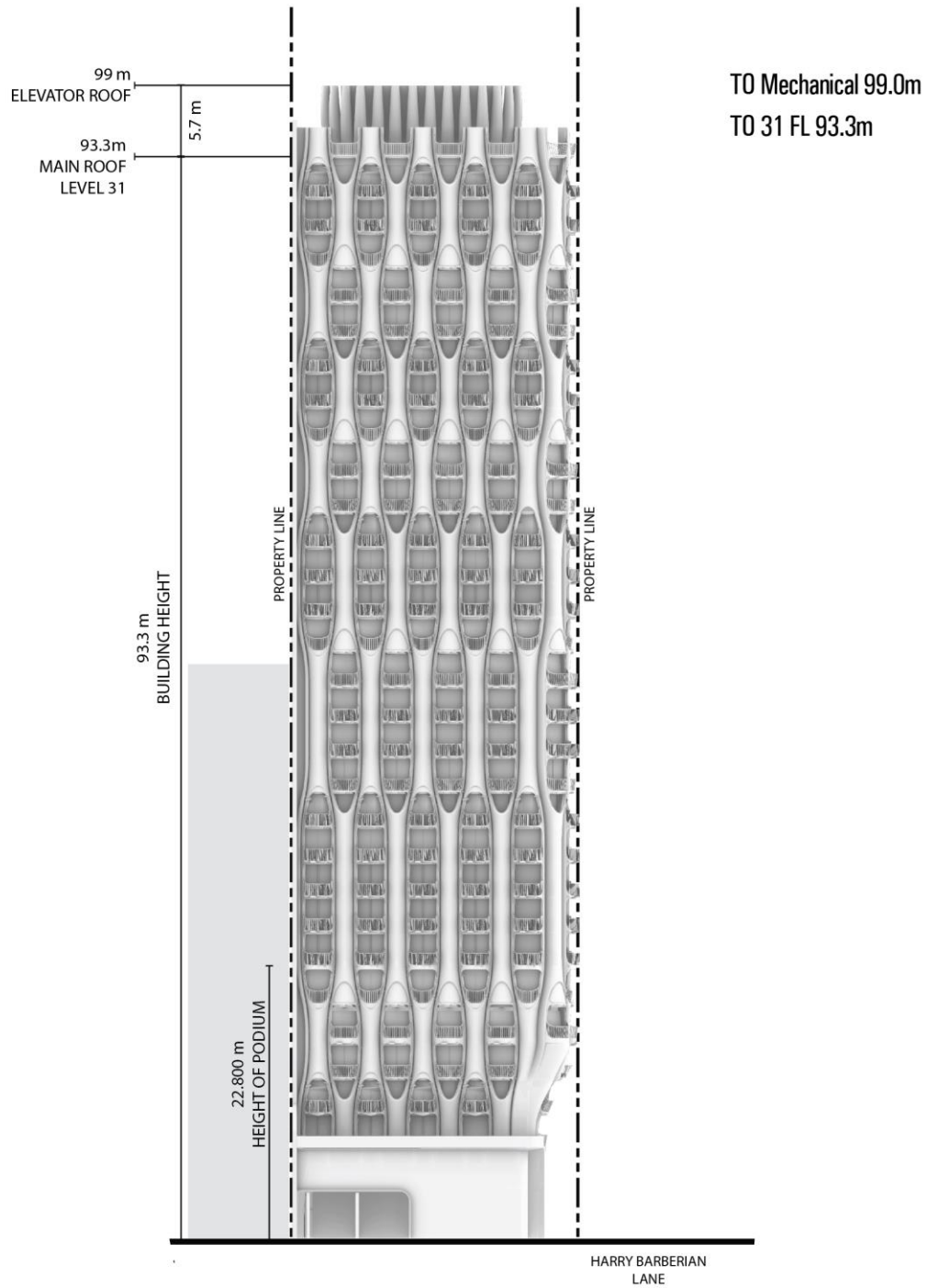
Attachment 8: Elevation - West

TO Mechanical 99.0m  
TO 31 FL 93.3m



West Elevation

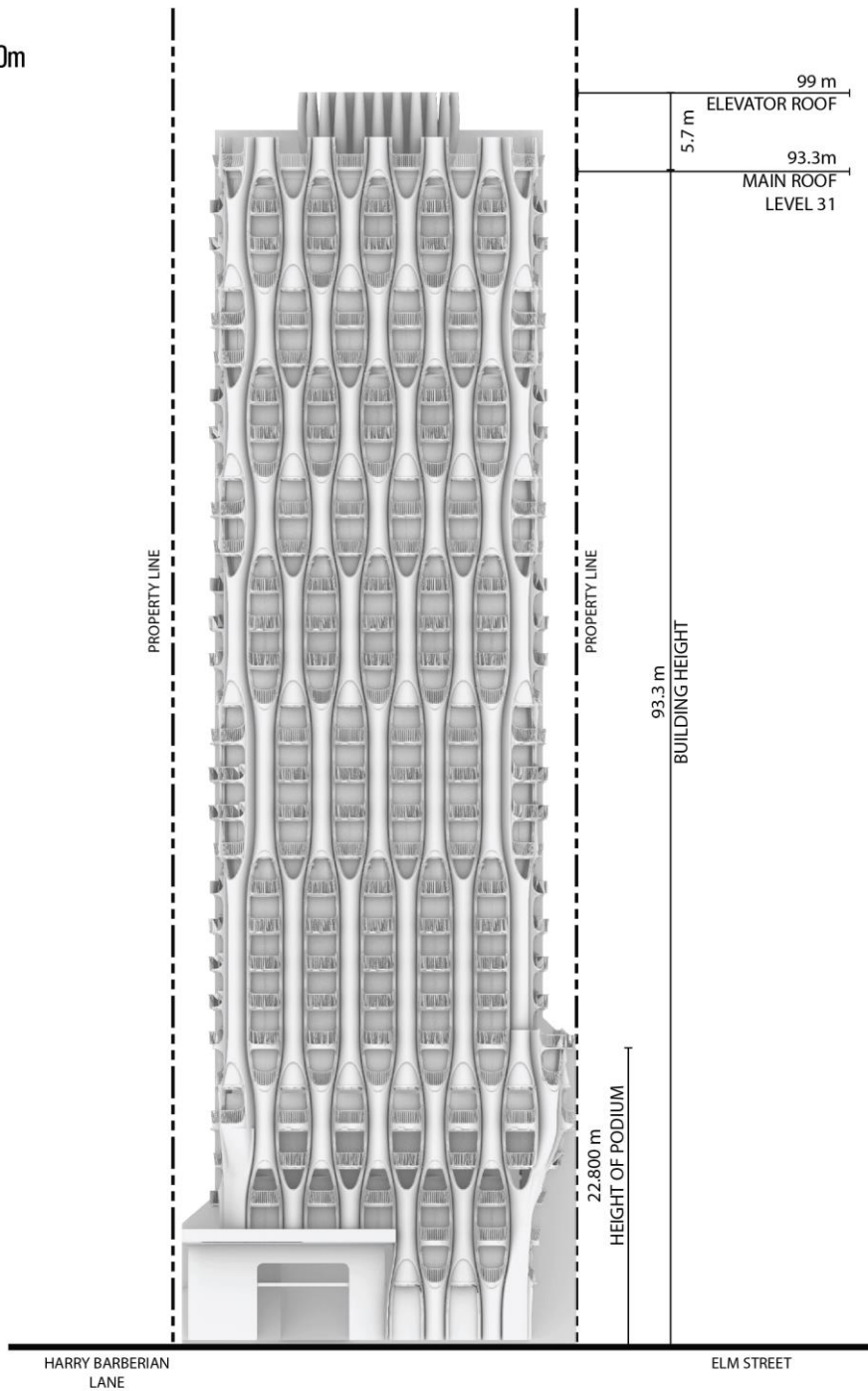
Attachment 9: Elevation - South



South Elevation

Attachment 10: Elevation - East

TO Mechanical 99.0m  
TO 31 FL 93.3m



East Elevation

## Attachment 11: Application Data Sheet

**Municipal Address:** 15-17 Elm Street      **Date Received:** September 13, 2022

**Application Number:** 22 202864 STE 11 OZ

**Application Type:** Rezoning

**Project Description:** A 30-storey mixed use building.

<b>Applicant</b>	<b>Agent</b>	<b>Architect</b>	<b>Owner</b>
17 Elm GP Inc	Lyle Levine	Partisans	Annette & David Cooper; Fraternal Order Of Eagles

### EXISTING PLANNING CONTROLS

Official Plan Designation: Mixed Use Areas      Site Specific Provision: Downtown Plan

Zoning: CR 6.0 (c2.0; r6.0) SS1 (x2318)      Heritage Designation: Designation By-law 742-2023

Height Limit (m): 46      Site Plan Control Area: Y

### PROJECT INFORMATION

Site Area (sq m): 793      Frontage (m): 25      Depth (m): 32

<b>Building Data</b>	<b>Existing</b>	<b>Retained</b>	<b>Proposed</b>	<b>Total</b>
Ground Floor Area (sq m):	390		542	<b>542</b>
Residential GFA (sq m):			13,541	<b>13,541</b>
Non-Residential GFA (sq m):	584		303	<b>303</b>
<b>Total GFA (sq m):</b>	<b>584</b>		<b>13,844</b>	<b>13,844</b>
Height - Storeys:	2		30	<b>30</b>
Height - Metres:			93	<b>93</b>

Lot Coverage Ratio (%): 68.35      Floor Space Index: 17.46

<b>Floor Area Breakdown</b>	<b>Above Grade (sq m)</b>	<b>Below Grade (sq m)</b>
Residential GFA:	13,529	12
Retail GFA:	42	261
Office GFA:		
Industrial GFA:		

Institutional/Other GFA:

<b>Residential Units by Tenure</b>	<b>Existing</b>	<b>Retained</b>	<b>Proposed</b>	<b>Total</b>
Rental:	1			
Freehold:				
Condominium:			216	<b>216</b>
Other:				
<b>Total Units:</b>	<b>1</b>		<b>216</b>	<b>216</b>

**Total Residential Units by Size**

	<b>Rooms</b>	<b>Bachelor</b>	<b>1 Bedroom</b>	<b>2 Bedroom</b>	<b>3+ Bedroom</b>
Retained:					
Proposed:			135	58	23
<b>Total Units:</b>			<b>135</b>	<b>58</b>	<b>23</b>

**Parking and Loading**

Parking Spaces: 23      Bicycle Parking Spaces: 203      Loading Docks: 1

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