

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: October 09, 2024

CASE NO(S).:

OLT-23-000761

PROCEEDING COMMENCED UNDER subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant/Appellant:	65 Agnes Inc.
Subject:	Request to amend the Official Plan – Failure to adopt the requested amendment
Description:	
Reference Number:	OZ/OPA 22-017 W7
Property Address:	65 - 71 Agnes Street
Municipality/UT:	Mississauga/Peel
OLT Case No.:	OLT-23-000761
OLT Lead Case No.:	OLT-23-000761
OLT Case Name:	65 Agnes Inc. v Mississauga (City)

PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Subject:	Application to amend the Zoning By-law – Refusal or neglect to make a decision
Description:	
Reference Number:	OZ/OPA 22-017 W7
Property Address:	65 - 71 Agnes Street
Municipality/UT:	Mississauga/Peel
OLT Case No.:	OLT-23-000762
OLT Lead Case No.:	OLT-23-000761

Heard: May 31, 2024 by Video Hearing

APPEARANCES:**Parties****Counsel**

65 Agnes Inc. (“Appellant”)

J. Cole

M. Foderick (*in absentia*)

City of Mississauga (“City”)

J. Manser

DECISION DELIVERED BY A. SAUVE AND INTERIM ORDER OF THE TRIBUNAL

[Link to Order](#)**INTRODUCTION**

[1] This Settlement Hearing results from a successful Tribunal led mediation between the Parties. The appeals regard the failure of the City to make decisions with respect to the Appellant’s applications for an Official Plan Amendment (“OPA”) and a Zoning By-law Amendment (“ZBA”) within the respective prescribed statutory timelines to permit the proposed development of a 29-storey apartment building on the lands municipally known as 65-71 Agnes Street, in the City of Mississauga (“Property”).

[2] The Property is a rectangular-shaped parcel and is approximately 0.36 hectares in area, situated at the northwest corner of Agnes Street and Cook Street, located within proximity to the Hurontario Street and Dundas Street East/West intersection. The Property currently comprises four residential lots, presently occupied by two detached dwellings (east half), and two vacant lots (west half). The Property is located within the Downtown Cooksville Character Area and is designated Residential High Density within the City’s Official Plan.

[3] The development proposal includes a total gross floor area (“GFA”) of 25,658 square metres, comprised entirely of residential space. The proposed density is approximately 7.11 floor space index (“FSI”). A total of 405 dwelling units are proposed, which includes a total of 137 (33.8%) larger units of two bedrooms or greater.

[4] A total of 1,621 square metres of amenity space is proposed, including 810 square metres of indoor amenity space and 811 square metres of outdoor amenity space. This results in a rate of 2 square metres of indoor space and 2 square metres of outdoor space per unit. Indoor amenity space is proposed on the ground floor and on Level 5, and outdoor amenity space is proposed on the roof of Level 4.

[5] A total of 284 vehicle parking spaces are proposed, comprised of 243 residential parking spaces and 41 visitor parking spaces. Parking spaces are proposed to be located within two levels of below ground parking and four levels of above ground parking. A total of 264 bicycle parking spaces are proposed, comprised of 243 long-term spaces (Class A) and 21 short-term spaces (Class B).

[6] The application proposes to amend the City's Official Plan and the City's Zoning By-law No. 0225-2007.

[7] An OPA is required to permit the proposed height of 29 storeys and the proposed density of 7.11 FSI. The proposed OPA would implement these amendments through the introduction of a new Special Site policy within the Downtown Cooksville Character Area, applying to the Property.

[8] The Property is zoned "D-1" (Development, Exception 1) under Zoning By-law 0225-2007. The "D-1" zone is an interim zoning category that recognizes vacant or underutilized lands not yet developed and permits legally existing uses on a lot until such time that the lands are to be rezoned. In this regard, there are no existing development permissions other than those which permit the existing detached dwellings on the Property, or any future enlargement to those dwellings.

[9] A ZBA is required in order to re-zone the Property into an appropriate zoning category and establish the required development standards, including permissions for permitted height, density, and setbacks, amongst others. In this regard, the proposed ZBA would rezone the Property from "D-1" (Development, Exception 1) to "RA5-XX" (Residential Apartment Five – Exception XX).

[10] The Parties are asking the Tribunal for an Interim Order to grant the appeals, in part, and to withhold a Final Order to allow for the following conditions to be met:

- a. The final form and content of the draft ZBA and OPA are to the satisfaction of the City;
- b. Updates are submitted to the City with respect to the following technical studies:
 - (i) Functional Servicing Report;
 - (ii) Traffic Impact Study;
 - (iii) Wind Study;
 - (iv) Noise and Vibration Impact Study;
 - (v) Stormwater Management Study;
 - (vi) Letter of Reliance for the Phase 1 and Phase 2 Environmental Site Assessment Reports;
 - (vii) Decommissioning letter from a Qualified Person for wells and stormwater sewers; and
- c. The form of Minutes of Settlement (Exhibit 3) is executed.

EVIDENCE AND ANALYSIS

[11] The following were made Exhibits at the Settlement Hearing:

- a. Affidavit of Service (marked as Exhibit at previous Hearing);

- b. Affidavit of David Huynh; and
- c. Form of Minutes of Settlement.

[12] David Huynh (“Huynh”) was the only witness offered by the Parties for this Settlement Hearing. The Tribunal found that Huynh was able to provide expert opinion evidence in the field of Land Use Planning.

[13] Huynh provided evidence to the Tribunal that the Property is located within approximately 400 metres of the existing Cooksville GO Station and within 230 to 500 metres of the Dundas Station and Cooksville GO light rail transit (“LRT”) Station along the under-construction Hazel McCallion LRT Line. Huynh also testified that planning work is also underway to accommodate a future bus rapid transit (“BRT”) line along Dundas Street, and as a result, the Property will be located in proximity to three higher order transit lines, including two interchange stations (i.e., Cooksville GO-LRT and Dundas LRT-BRT), which is planned to become one of the most transit accessible locations in the City of Mississauga.

[14] Huynh opined that the proposed settlement would result in the redevelopment of a vastly underutilized parcel of land in favour of a new residential building, which will contribute to the provision of new housing options in the community, as well as an attractive, safe, and comfortable environment that encourages walking, strengthens local retailing, and further promotes the use of transit and active transportation.

[15] Further, Huynh testified that, from a land use perspective, the Property is located within an Intensification Area given its location within the Downtown, a Major Transit Station Area (HLRT-6), and along an Intensification Corridor. The policies of the City’s Official Plan direct that most of the City’s growth will occur in Intensification Areas, and more specifically, that the Downtown is where the greatest densities, tallest buildings, and greatest mix of uses are anticipated.

[16] Huynh also opined that the Property conforms with the objectives of the Downtown Cooksville Character Area and the Residential High-Density designation in the City's Official Plan, both of which anticipate residential development on the Property in the form of a tall building. Further, Huynh opined that while an OPA is required to permit the proposed height and density, the proposed settlement satisfies the policies of the City's Official Plan in that it would provide for a building that would provide appropriate transition in height that respects the surrounding context; enhances the condition of the site; ensures the City Structure hierarchy is maintained; and does not require other amendments to other policies of the City's Official Plan.

[17] It was the opinion of Huynh that the proposed intensification is appropriate, and that the proposed settlement has been designed to be in keeping with the City's Official Plan's public realm and built form policies, as well as having appropriate regard to the City's urban design guidelines.

[18] Huynh also opined that the proposed settlement is an appropriate and desirable use in land use planning, and urban design terms, and should be approved in principle, subject to the matters found in paragraph [10] above being addressed to the satisfaction of the City prior to the issuance of a Final Order by the Tribunal.

[19] Huynh also opined that the proposed settlement would facilitate a development that is consistent with the Provincial Policy Statement, 2020 ("PPS"), conforms to the A Place to Grow: Growth Plan for the Greater Golden Horseshoe ("Growth Plan") and City Official Plan, has appropriate regard for the matters of provincial interest set out in section 2 of the *Planning Act* and applicable urban design guidelines, represents good planning, and is in the public interest.

DISPOSITION

[20] The Tribunal accepts the uncontroverted evidence of David Huynh and finds that the proposed settlement is consistent with the PPS, conforms to the Growth Plan and City Official Plan, has appropriate regard for the matters of provincial interest set out in

section 2 of the *Planning Act* and applicable urban design guidelines, represents good planning, and is in the public interest.

INTERIM ORDER

[21] **THE TRIBUNAL ORDERS THAT** the appeals are allowed, in part, on an interim basis, contingent upon confirmation, satisfaction, or receipt of those pre-requisite matters identified in paragraph [22] below, and is hereby approved in principle.

[22] The Tribunal will withhold the issuance of its Final Order contingent upon confirmation of the City Solicitor, of the following pre-requisite matters:

- a. The Tribunal has received, and approved, the Zoning By-law Amendment and Official Plan Amendment submitted in a final form, confirmed to be satisfactory to the City Solicitor;
- b. The Tribunal is advised that updates are submitted to the City of Mississauga with respect to the following technical studies:
 - (i) Functional Servicing Report;
 - (ii) Traffic Impact Study;
 - (iii) Wind Study;
 - (iv) Noise and Vibration Impact Study;
 - (v) Stormwater Management Study;
 - (vi) Letter of Reliance for the Phase 1 and Phase 2 Environmental Site Assessment Reports; and

- (vii) Decommissioning letter from a Qualified Person for wells and stormwater sewers; and
- c. The Form of Minutes of Settlement in Exhibit 3, as found in Attachment 1 of this Decision, is executed.

[23] If the Parties do not submit the final drafts of the Zoning By-law Amendment and Official Plan Amendment, and provide confirmation that all other contingent pre-requisites to the issuance of the Final Order set out in paragraph [22] above have been satisfied, and do not request the issuance of the Final Order within 90 days of the issuance of this Decision, the Appellant and the City shall provide a written status report to the Tribunal as to the timing of the expected confirmation and submission of the final form of the draft Zoning By-law Amendment and Official Plan Amendment, and issuance of the Final Order by the Tribunal.

[24] The Tribunal may, as necessary, arrange the further attendance of the Parties by telephone conference call to determine the additional timelines and deadline for the submission of the final form of the instrument(s), the satisfaction of the contingent pre-requisites, and the issuance of the Final Order.

“A. Sauve”

A. SAUVE
MEMBER

Ontario Land Tribunal

Website: www.olt.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal (“Tribunal”). Any reference to the preceding tribunals or the former Ontario Municipal Board is deemed to be a reference to the Tribunal.

ATTACHMENT 1

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MINUTES OF SETTLEMENT

DATED THIS 15th DAY OF JULY, 2024

BETWEEN:

1000006256 ONTARIO INC. by its general partner, 65 AGNES INC. ("Owner")

OF THE FIRST PART

– and –

THE CORPORATION OF THE CITY OF MISSISSAUGA ("City")

OF THE SECOND PART

WHEREAS:

- A. The Owner is the owner of the lands municipally known in the year 2023 as 65-71 Agnes Street in the City of Mississauga (the "City") and more particularly described in Schedule "A" attached hereto (the "Property");
- B. On August 16, 2022, the Owner submitted an application for an official plan amendment and zoning by-law amendment for the Property under File No. OZ/OPA 22-017 W7 to amend the City's Official Plan and Zoning By-law No. 0225-2007 (the "Applications") to permit the development of a 29-storey residential building and two-storey townhouse units incorporated within the building's podium at grade;
- C. On July 24, 2023, the Owner appealed the Applications to the Ontario Land Tribunal ("OLT"), pursuant to subsections 22(7.0.2) and 34(11) of the *Planning Act* on the basis of Council's failure or neglect to make a decision on the Applications within the statutory time periods which proceedings are contained in OLT Case No. OLT-23-000761 (the "Appeal");
- D. On April 17, 2024, City Council endorsed a settlement of the Appeal (the "Endorsed Settlement"); and
- E. In furtherance of the Endorsed Settlement, the Owner and the City have agreed to enter into these Minutes of Settlement, on the following terms and conditions.

NOW, THEREFORE, in consideration of the mutual terms, conditions and covenants herein contained and the sum of \$2.00 paid by each of the Parties to the other, the receipt and sufficiency of which are hereby acknowledged by each of the Parties, the Parties agree as follows:

1. The Parties confirm that the foregoing recitals are true and correct.
 - (a) The following schedules form part of this Agreement:
 - (i) Schedule "A" – Legal Description of the Property
 - (ii) Schedule "B" – Architectural drawings prepared by Sweeny & Co. dated May 15, 2024

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- (b) For the purposes of this Agreement, the term:
- (i) **"Agreement"** means these Minutes of Settlement entered into between the Owner and the City;
 - (ii) **"Amendment"** means the proposed zoning by-law amendment to permit the Applications on the Property;
 - (iii) **"Appeal"** has the meaning set out in Recital C;
 - (iv) **"Approval" or "Approvals"** means the approval of the Applications before the Ontario Land Tribunal (OLT);
 - (v) **"City"** means the City of Mississauga;
 - (vi) **"Council"** means the Council of the City;
 - (vii) **"Endorsed Settlement"** has the meaning set out in Recital D;
 - (viii) **"Failure of the Applications"** means a Final Disposition that does not approve the Amendment and accordingly does not provide for the Amendment to come into force. For clarity, a Final Disposition which amends the Amendment and approves it, as amended, does not constitute a Failure of the Applications;
 - (ix) **"Final Disposition"** means a decision and order of the OLT or a court, as the case may be, with respect to the Amendment, with all applicable appeal or review periods having lapsed with no appeals, applications for review or applications to court having been launched or with any such appeals, applications for review or applications to court having been finally determined by an order of the OLT or by a court, as the case may be, which finally disposes of the matter. For the purposes of the foregoing, the time period for the lapsing of an appeal or application shall be deemed to be 60 days after the date of issuance of the OLT's final order;
 - (x) **"OLT"** means the Ontario Land Tribunal and includes any successor tribunal;
 - (xi) **"Parties"** means the Owner and the City, and **"Party"** means either one of them as the context requires, including the successors and assigns of each;
 - (xii) **"Planning Act"** means the *Planning Act*, R.S.O. 1990, c. P.13, as amended, superseded or replaced from time to time;
 - (xiii) **"Sight Triangle"** has the meaning set out in Section 3(b) of this Agreement; and
 - (xiv) **"Site Plan Approval"** means approval by the City of plans and drawings pursuant to section 41 of the *Planning Act*, as amended, superseded or replaced from time to time.

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Settlement Terms

2. The City agrees to support, at the OLT, the Applications as amended by the Endorsed Settlement and as shown in Schedule "B" including the following attributes without limitation:
 - (a) a 29-storey residential building with a 6-storey podium;
 - (b) a maximum tower floor plate size of 895m²;
 - (c) a combined amenity area rate of 4.0 square metres per unit;
 - (d) minimum at-grade setbacks of 3.0 metres along Agnes Street, 4.5 metres along Cook Street, 3.0 metres from the north lot line and 3.0 metres from the west lot line; and
 - (e) minimum below grade setbacks of 3.0 metres along Agnes Street, 3.0 metres along Cook Street, and 0.0 metres from all other property lines below grade.
3. The Owner acknowledges and agrees that any shoring or lagging that is necessary to support the underground parking structure, including but limited to any vertical elements and lateral bracing elements such as tiebacks, struts, braces and rakers, will be located within the identified setbacks in Sections 2(d) and 2(e). Should there be any encroachments on any neighbouring landowner's property, the Owner acknowledges and agrees that it shall enter into an encroachment agreement with the respective landowner and will provide a copy of such agreement to the City.
4. Subject to the Approval, the Parties hereby acknowledge, covenant, and agree that the following matters constitute conditions of Site Plan Approval that will be addressed as, and included as, conditions in a site plan agreement for the Applications process:
 - (a) Any mitigation features, design changes/upgrades, infrastructure improvements, warning clauses and/or technical upgrades necessary as determined through the City's review of updates to the Functional Servicing Report, the Traffic Impact Study, the Wind Study, the Noise and Vibration Impact Study and the Stormwater Management Study (each of which updated reports and studies must be to the satisfaction of the City) to be provided to the City as a condition of the issuance of the OLT's final order with respect to the Appeal;
 - (b) The conveyance to the City, in fee simple, a 7.5 metre sight triangle (the "**Sight Triangle**") at the corner of Agnes Street and Cook Street as illustrated in drawing AZ100, prepared by Sweeny and Co., dated March 6, 2024, to be conveyed as a condition of Site Plan Approval;
 - (c) The design of the exterior cladding of the above-grade parking garage on the Property to the satisfaction of the City; and
 - (d) The particulars of streetscape improvements, such as and including the implementation of the required boulevard treatment, including any required utility relocations, along Agnes Street and Cook Street to the satisfaction of the City and

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in accordance with the City's Site Plan Approval powers under Section 41 of the Planning Act.

5. The Owner understands and accepts that the necessary work outlined in Section 3 shall be binding upon the Owner, their heirs, assigns, and successors in title and will be completed as conditions of Site Plan Approval for the Applications.
6. The Owner agrees to withdraw its appeal under OLT Case Number OLT-22-004502, being its appeal to the City-initiated Official Plan Amendment 145, Downtown Fairview, Cooksville and Hospital Character Area.

Representations and Warranties

7. The Owner represents and warrants to the City that: (i) the Owner is the owner of the Property; (ii) the Owner is duly existing under the laws of Canada and has the necessary authority, power and capacity to enter into this Agreement and to complete the transactions contemplated by this Agreement in the manner contemplated by this Agreement; and (iii) the documents and transactions contemplated herein have been duly and validly authorized by all requisite corporate and other proceedings.

Miscellaneous

8. The Parties agree to negotiate in good faith in respect of all dealings between and amongst one another for the purpose of implementing and giving legal effect to this Agreement.
9. This Agreement shall be construed and enforced in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein and shall be treated in all respects as an Ontario contract.
10. The Parties agree that they are contractually bound by this Agreement and that this Agreement is immediately enforceable by civil action, including injunction, should a Party be in breach of this Agreement.
11. Each Party shall promptly do, make, execute or deliver or cause to be done, made, executed or delivered all such further acts, documents and things as any other Party may reasonably require from time to time for the purpose of giving full legal force and effect to the terms of this Agreement and shall take all such steps as may be reasonably within its power to implement to the full extent of such terms.

The Parties agree that this Agreement shall be registered as a restriction on title to the Property, and this Agreement shall be binding and enure to the benefit of the Parties, their heirs, assigns, and successors in title. The Owner agrees to procure and cause to be executed and registered such discharges, postponements, and subordination agreements as may be required by the City in order to provide for the priority of registration of these Minutes of Settlement on title to the Property including, without limitation, any easements or other interests in land that could conflict with the Owner's obligations under Minutes of Settlement. These Minutes of Settlement may only be deleted from title to the Property with the written consent of the City and upon the execution and registration of a site plan agreement as a condition of Site Plan Approval for the Property.

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12. Nothing in this Agreement is intended or shall be construed as in any way affecting the rights of the Parties with respect to matters not addressed herein. Any amendment to or waiver of any provision of this Agreement must be in writing and signed by the Parties.

Termination

13. This Agreement shall terminate on the earlier of:
- (a) The day the Site Plan Agreement is registered on title to the Property; and
 - (b) The Failure of the Applications.
14. Any notice required by this Agreement shall be sent by registered mail, facsimile, or email to:
- (a) 65 Agnes Inc.:

McCarthy Tétrault LLP
Suite 5300
TD Bank Tower
Box 48, 66 Wellington Street West
Toronto ON M5K 1E6

Email: mfoderick@mccarthy.ca
Attn: Michael Foderick, Partner
 - (b) City of Mississauga:

City Manager's Department, Legal Services Division
300 City Centre Drive
Mississauga, ON L5B 3C1

Email: kathryn.pfaff@mississauga.ca,
Attn: Katie Pfaff, Legal Counsel
15. The headings in this Agreement are inserted for convenience of reference only and shall not constitute a part hereof and are not to be considered in the interpretation hereof. In this Agreement, unidentified section references (each a "section" or "sections") are to the sections or subsections of this Agreement, as the context requires. In this Agreement, words importing the singular include the plural and *vice versa*; words importing the masculine gender include the feminine and *vice versa*; and words importing persons include firms or corporations and *vice versa*.
16. This Agreement may be executed in several counterparts of the same form and content, delivered by way of electronically transmitted copies or manually executed paper copies, and such counterparts as so executed shall together form one original of this Agreement, and such counterparts shall be read together and construed as if all the signing parties hereto had executed one copy of this Agreement. In addition, this Agreement may be executed electronically with electronic signature defined as a hand signature mark on a document that is then digitally captured, embedding an image of a signature into the

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signature blocks of the document ("Electronic Signature"), and for purposes of this Agreement and all matters related herein, the Electronic Signature shall have the same legal effect as though this Agreement contained original signatures.

IN WITNESS WHEREOF, the Parties have executed this Agreement, and hereby confirm that they have the authority to bind the Parties and to execute this Agreement:

1000006256 ONTARIO INC.

Per:  DocuSigned by:
AAC1E96DA8C5448
Name: Rod Bell
Title: Authorized Signing Officer

I have authority to bind the corporation

65 AGNES INC.

Per:  DocuSigned by:
AAC1E96DA8C5448
Name: Rod Bell
Title: Authorized Signing Officer

I have authority to bind the corporation

**THE CORPORATION OF THE CITY OF
MISSISSAUGA**

Per:  Signed by:
89F6C239BD1648F
Name: Kathryn Pfaff
Title: Legal Counsel

I have authority to bind the corporation

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SCHEDULE "A"
LEGAL DESCRIPTION OF THE PROPERTY

13151-0055 (LT)

PT LT 45, WHS, "PL TOR-12", TORONTO, AS IN TT112825; MISSISSAUGA. "AMENDED 1999/05/27, LAND REGISTRAR #17".

13151-0056 (LT)

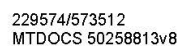
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13151-0057 (LT)

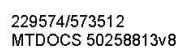
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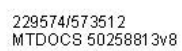
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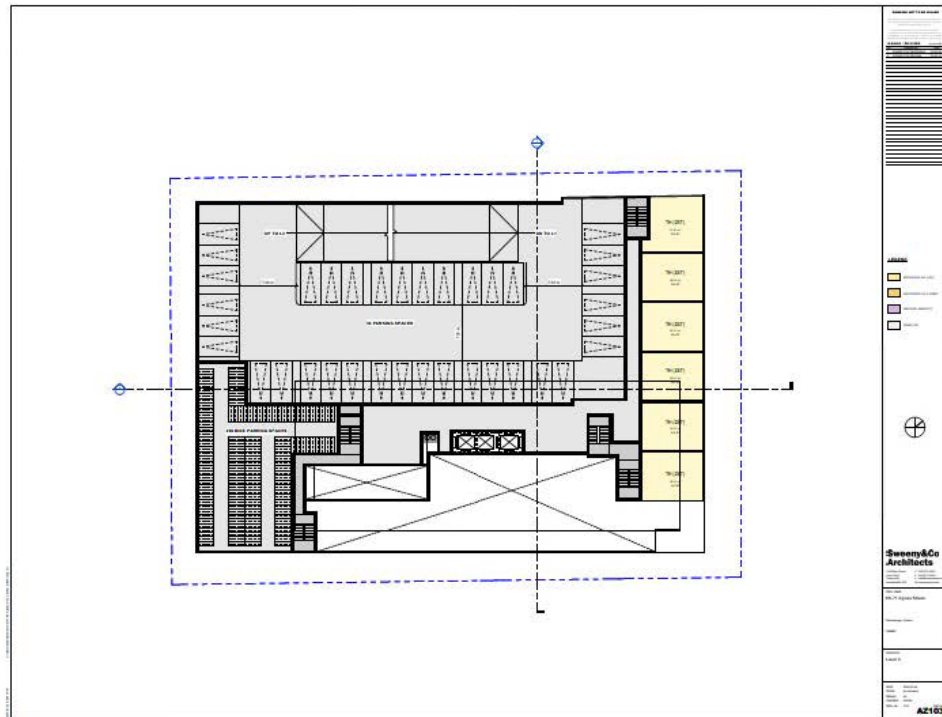


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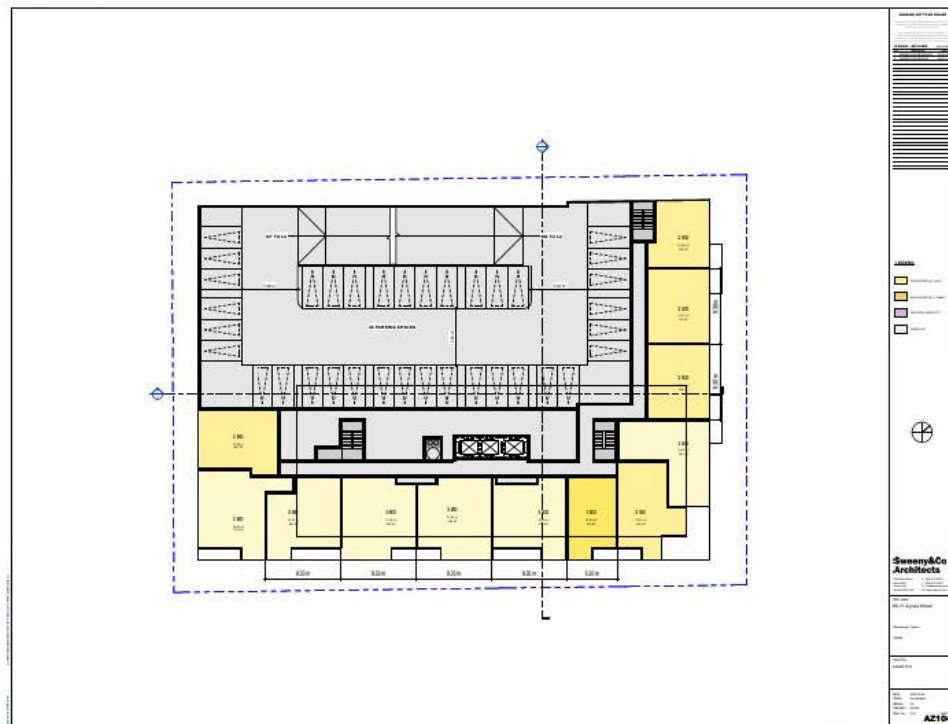
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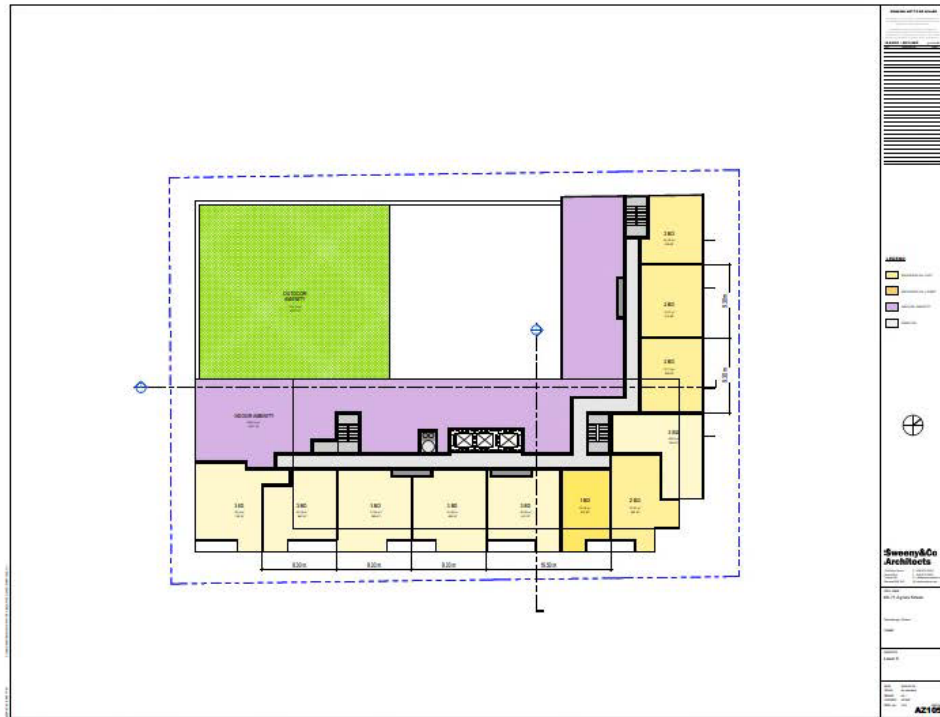
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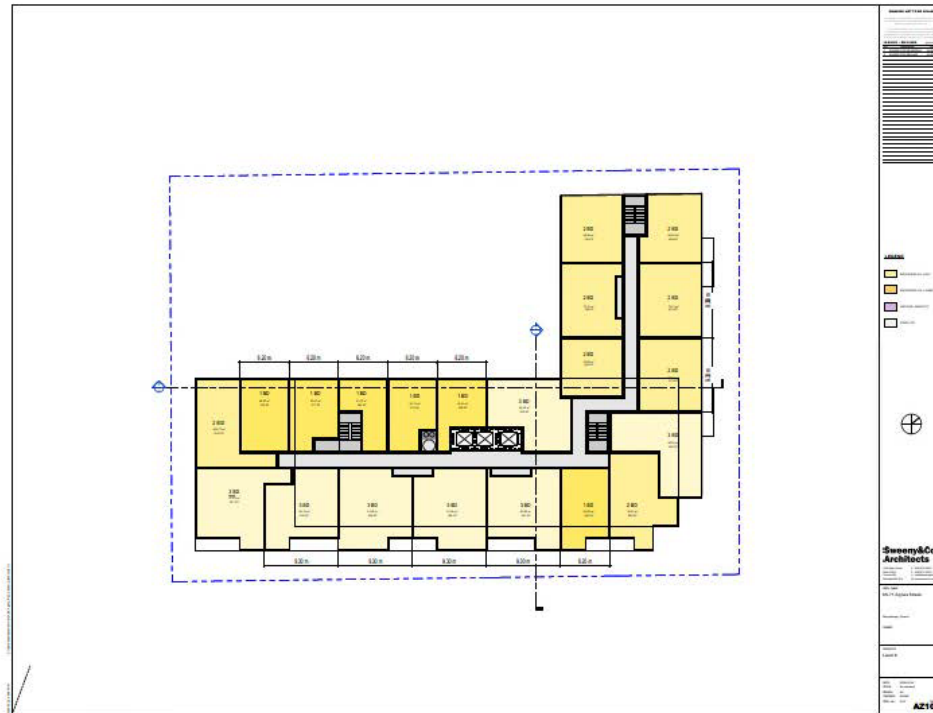
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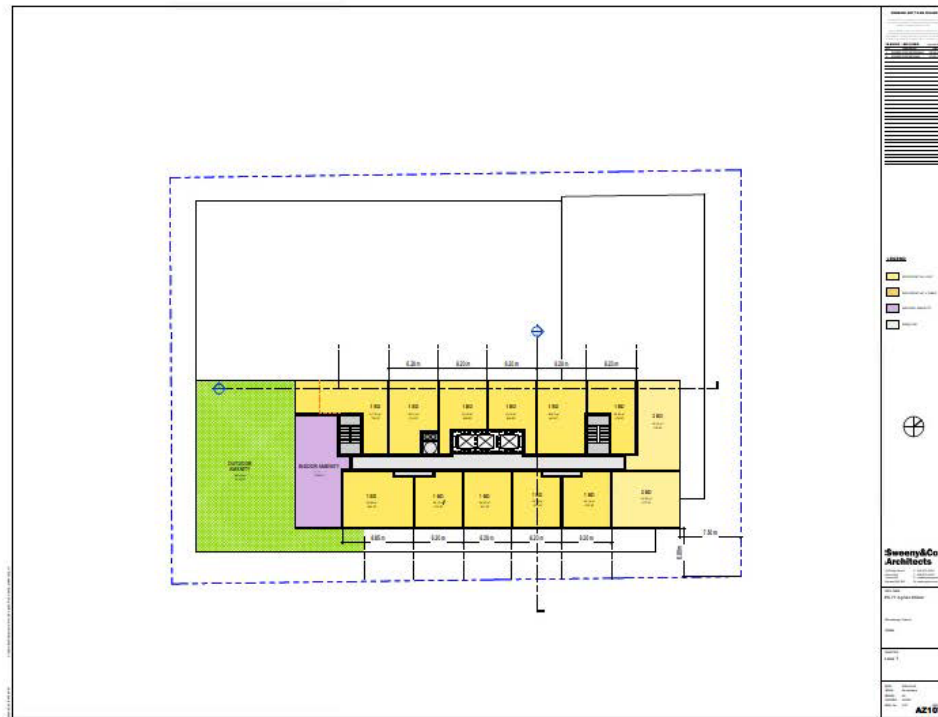
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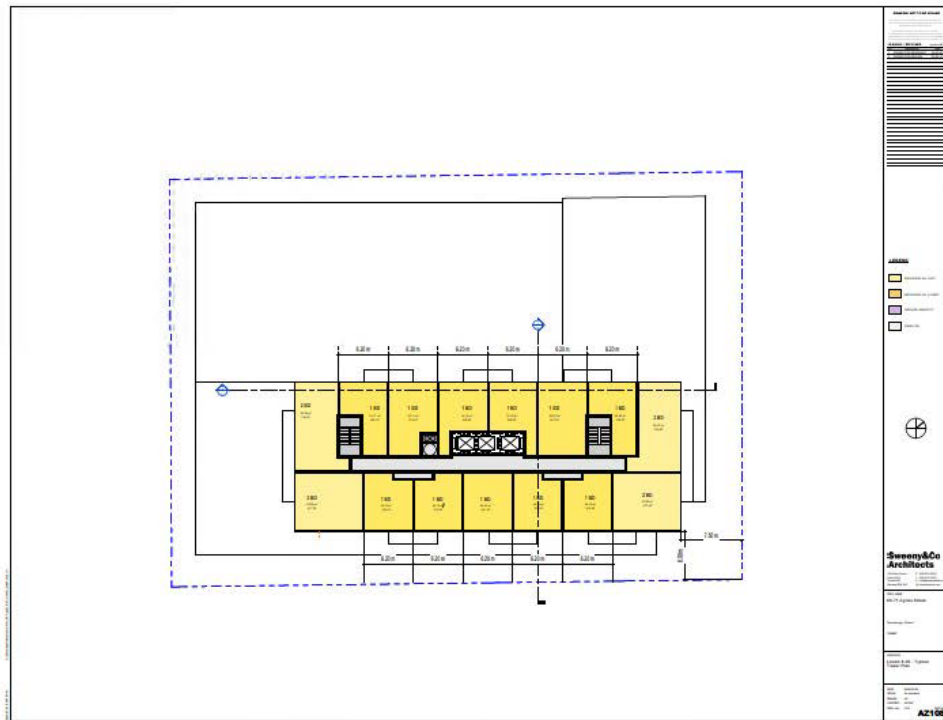
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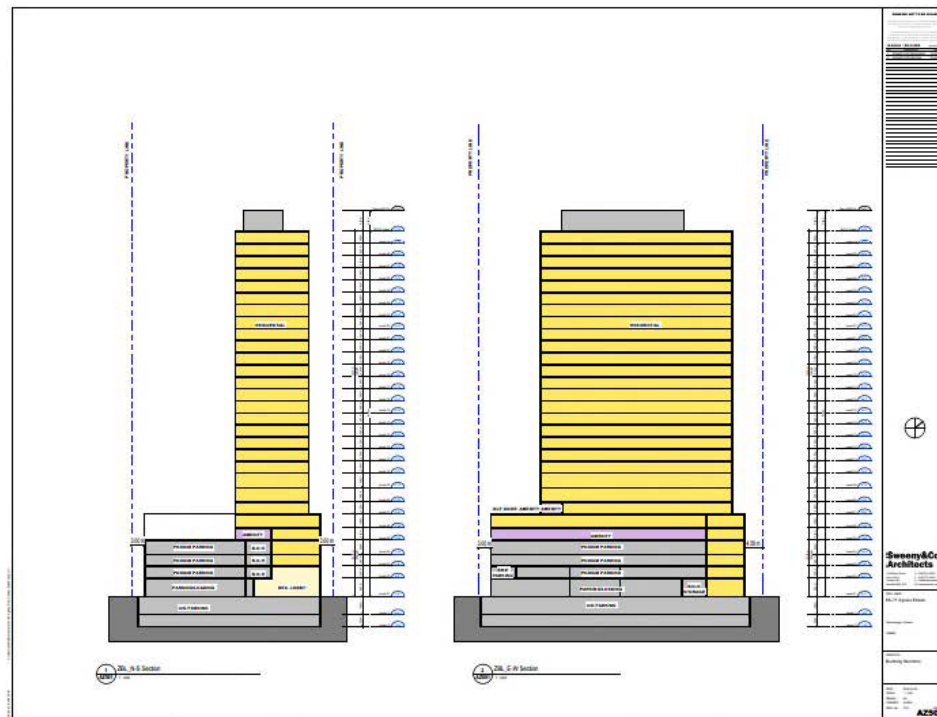
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