Ontario Land Tribunal
Tribunal ontarien de l'aménagement du territoire

ISSUE DATE: October 10, 2025 **CASE NO(S).:** OLT-23-001278

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

Applicant and Appellant:	Don Valley Trail Park Holdings Inc.
Subject:	Request to amend the Official Plan – Failure to adopt the requested amendment
Description:	To permit construction of a 4-tower high-rise residential development and green space
Reference Number:	23 118421 NNY 16 OZ
Property Address:	155 St. Dennis Drive
Municipality/UT:	Toronto/Toronto
OLT Case No.:	OLT-23-001278
OLT Lead Case No.:	OLT-23-001278
OLT Case Name:	Don Valley Trail Park Holdings Inc. v. Toronto (City)

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

Applicant and Appellant:	Don Valley Trail Park Holdings Inc.
Subject:	Application to amend the Zoning By-law – Refusal or neglect to make a decision
Description:	To permit construction of a 4-tower high-rise residential development and green space
Reference Number:	23 118421 NNY 16 OZ
Property Address:	155 St. Dennis Drive
Municipality/UT:	Toronto/Toronto
OLT Case No.:	OLT-23-001279
OLT Lead Case No.:	OLT-23-001278

PROCEEDING COMMENCED UNDER subsection 114(15) of the *City of Toronto Act*, 2006, S.O. 2006, c. 11, Sched. A

Applicant and Appellant:	Don Valley Trail Park Holdings Inc.
Subject:	Site Plan
Description:	To permit construction of a 4-tower high-rise residential development and green space
Reference Number:	23 118484 NNY 16 SA
Property Address:	155 St. Dennis Drive
Municipality/UT:	Toronto/Toronto
OLT Case No.:	OLT-23-001280
OLT Lead Case No.:	OLT-23-001278

Heard: March 31, April 1-2, 8-17, 22-30, May 1-2, and June 11, 2025 by Video Hearing

APPEARANCES:

Parties	**Counsel**
Don Valley Trails Park Holdings ("Applicant")	Eileen Costello David Nelligan Meaghan Barrett
City of Toronto ("City")	Matthew Longo Jessica Amey
Toronto and Region Conservation Authority ("TRCA")	Tim Duncan Matthew Rutledge
ABC Residents Association ("ABC")	Andrew Biggart Kacie Layton

DECISION DELIVERED BY JEAN-PIERRE BLAIS AND ORDER OF THE TRIBUNAL

Link to Interim Order

INTRODUCTION

[1] The Applicant seeks to redevelop a property known municipally as 155 St. Dennis Drive in the City ("Subject Property") to construct four slender high-rise towers, ranging from 42 to 56 storeys, with approximately 2170 units of various sizes, on .77 hectares (5% of the Subject Property) ("Development Site"). The remaining 16 hectares of the Subject Property (95% of the Subject Property) would be restored, naturalized, and transferred to public ownership in perpetuity as public open space ("Public Open Space"). These two aspects are integrated components to the development proposal (together "Proposed Development").

[2] The four towers, respectively of 42-, 52-, 56- and 49-storeys, would be linked by a base podium building. Approximately 4% of the residential units would be configured as studios, 66% as one-bedroom units, 20% as two-bedroom units, and 10% as three-bedroom units. The base building includes approximately 4,500 square metres of indoor amenity space, located on the second and third storeys, as well as 4,200 square metres of outdoor amenity space located primarily on the terrace of the roof of the base building with extensive views of the new Public Open Space.

[3] The Applicant proposes that 5% of the total residential gross floor area (about 100 units) would be designated as affordable units. In addition, a 325 square metre cultural space, to be owned and operated by the Six Nations of the Grand River, would be provided in the podium.

[4] The Proposed Development aims to transform the existing privately-owned nine-hole Flemington Golf Club.

[5] A significant component of the Proposed Development is the Applicant's commitment to fund the creation of an Eco-Cultural Restoration Plan. This would be in addition to the typically expected Environmental Restoration Framework and the Ravine Stewardship Plan. The intent is for the Eco-Cultural Restoration Plan to be co-developed by the City, the TRCA, the Six Nations of the Grand River and members of the public. The Plan could support integration of cultural practices into the ecological restoration, as well as celebrating and sharing Indigenous culture.

[6] Currently, the primary pedestrian and vehicular access to the Subject Property is from St. Dennis Drive through an unsignalized driveway onto the surface parking adjacent to the golf course's clubhouse. The Development Proposal includes upgrades to the public realm, including a new signalized intersection, and a multi-use trail which would enhance pedestrian and cycling connectivity to public transit.

[7] The Development Site would be on a near-level non-alluvial paleo terrace below the ultimate top of the Don Valley. The paleo terrace has been in place for thousands of years.

[8] To implement the contemplated transformation of the Subject Property, the Applicant filed in February 2023, an Official Plan Amendment ("OPA"), a Zoning By-law Amendment ("ZBA") and a Site Plan Application ("SPA") (together the "Applications"). The OPA proposes to re-designate the Subject Property from *Parks – Open Space Areas* to *Apartment Neighbourhoods and Natural Areas (Map 20).* The ZBA proposes to rezone the Subject Property from *Open Space – Golf Course (OG)* to *Residential Apartment Commercial and Open Space* under the City's Zoning By-law No. 569-2013.

[9] The City eventually deemed the Applications complete on August 1, 2023, having deemed them incomplete on April 6, 2023, and on July 6, 2023.

[10] On August 17, 2022, the Applicants appealed the Applications pursuant to sections 22(7) and 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13 ("Act"), and section

114(15) of the *City of Toronto Act, 2006*, S.O. 2006, c. 11, due to the City's refusal of the Applications.

[11] The Planning Report of September 27, 2023, which was prepared by City staff, recommended refusing the Applications ("Refusal Report"). City Council adopted the Refusal Report on November 8, 2023.

[12] The evidence for these Appeals was heard over 20 days, with final oral arguments being presented orally on June 11, 2025. Final oral arguments were based on final written arguments filed by the Parties and reply written arguments filed by the Applicant.

SUBJECT PROPERTY AND SURROUNDINGS

[13] The Subject Property is an irregularly shaped parcel of land on the south side of St. Dennis Drive. The Subject Property includes the East Don River and its floodplain, and valleylands associated with that river.

[14] The Development Site is located south of Eglington Avenue, east of the Don Valley Parkway and within a 300-metre radius of the Wynford stop of the soon-to-be operational Eglington Crosstown Light Rail Transit ("LRT") line.

[15] The lands are currently occupied by the Flemington Park Golf Course, which may be played by any member of the public on payment of green fees. There is no authorized public access to the golf course except for paying golfers. Due to the golf course, most of the Subject Property is anthropogenic (*i.e.,* human caused) with manicured fairways and greens, scattered bunker sands, a surface car parking lot and golf-related buildings. Vehicular access to the golf course is by St. Dennis Drive via a private driveway.

[16] The surrounding area is experiencing rapid growth in the form of dense, tall buildings. The Flemington Park Neighbourhood and the Wynford/Concorde Neighbourhood have an evolving context. This dramatic change is due in part to the development of the Eglington LRT, and the development of the future Ontario Line subway transit route. Fifteen new high-rise development projects have been approved or are under construction in the area. These developments range from nine to 65 storeys.

POSITION OF PARTIES

[17] The Applicant submits that the Proposed Development is located on lands appropriate for growth, provides much needed housing (including affordable housing), is a transit-oriented intensification, leverages public infrastructure, unlocks 40 acres of new Public Open Space, restores and rehabilitates significant natural areas to provide a net ecological benefit, advances eco-cultural restoration and Indigenous reconciliation, and is safe from any erosion or flooding hazards. The Applicant further contends that the Applications include architectural and landscape design elements that respond to the unique context of the Subject Property, creating a vibrant development which will be a gateway to the Don Valley for City residents, including by perfecting the City's and the TRCA's accessible trail system.

[18] The Applicant contends that the Applications have regard for matters of provincial interest under the Act, are consistent with the Provincial Planning Statement, 2024 ("PPS 2024"), conform to the City's Official Plan ("City's OP"), have regard to relevant guidelines including the City's design guidelines and the TRCA's Living City Policies ("LCP"), constitute good planning and are in the public interest.

[19] The Development Proposal is ambitious and would require an iterative collaboration with both the City and the TRCA, which has not so far been forthcoming. Indeed, the Applicant contends that the City and the TRCA summarily and prematurely refused the proposal based on policy positions unsupported by site-specific factual and

scientific evidence. To resolve the impasse, the Applicant calls on the Tribunal to allow the Appeals and approve the Applications in principle, on a contingent basis, and to provide further direction to respond to the evidence. This includes interim approval of the SPA. For the Applicant, Tribunal direction is required to resolve this planning dispute involving public and private interests pursuant to section 2(n) of the Act.

[20] The ABC supports the position of the Applicant and maintains that the Appeals should be allowed. The ABC argues that approval of the Applications is in the public interest and in the public good. It submits that the proposal will bring the following benefits to the public: (a) the construction of much needed residential units; (b) the construction of high quality urban development; (c) the provision of affordable units; (d) increased tax revenues for the City; (e) the efficient use of existing and planned infrastructure, including transit infrastructure; (f) the dedication of a large public open space accessible to all residents of the City at no cost; (g) the re-naturalization of part of the Don Valley; and (h) additional steps towards reconciliation with Indigenous Peoples.

[21] In support of its position, the ABC retained the expertise of a seasoned land use planner and actively participated in all stages of the Hearing. It advocates that the proposed development would benefit the members of the public at large who use and rely on the City's nature and public realm system, including the City's parks, trails, wetland, and tree canopy. Moreover, it is critical of the position of the City and the TRCA, which the ABC qualified as unreasonable, bureaucratic, based on overly strict interpretation of policies and tainted by fear mongering. For the ABC, the Proposed Development is safe and aligns with the applicable planning policies.

[22] With respect to the Open Public Space, the ABC submits that it is an unprecedented positive benefit akin to the transfer of High Park to the City in 1873 by John Howard and his wife, Jemina Meikle Howard.

[23] The City submits that the Tribunal should refuse the Appeals. The City argues that the location of the Proposed Development within the Don Valley raises two groups

of concerns. First, from a policy perspective, it contends that the Development Site is a location where intensification should be “directed away from” and subject to the most stringent tests to permit any form of development. For the City, it is not an appropriate location for a high-density residential development. Second, from a practical perspective, the City submits that the location impacts pedestrian and vehicular access, and will isolate the site from public transit.

[24] The TRCA also submits that the Tribunal should refuse the Appeals. It contends that Policy 5.1 of the PPS 2024 is a prohibition. As the development fails being consistent with Policy 5.1, an analysis of Policy 5.2 of the PPS 2024 is unnecessary. However, if a proposed development is held to be consistent with Policy 5.1 of the PPS 2024, it must still be established that the Proposed Development is consistent with Policy 5.2 of the PPS 2024. The TRCA maintains that it is not so consistent. The TRCA argues that all confined valley systems, even if the slope is stable, are erosion hazards. For the TRCA, the valley wall cannot be segmented into component slopes.

POSITION OF PARTICIPANTS

[25] Irene Miao-Glass and Corrine Evanoff were made Participants in this proceeding. They raised the following relevant land use planning concerns: traffic, flooding and environmental impact.

[26] These issues are addressed appropriately by the Applicant as discussed further below.

EVIDENCE

[27] The Tribunal heard and considered the evidence of the following individuals:

a. Melanie Hare, a Partner with Urban Strategies Inc., who was retained by the Applicant and was qualified by the Tribunal to provide expert opinion evidence in land use planning;

b. Craig Lametti, a Partner with Urban Strategies Inc., who was retained by the Applicant and qualified the Tribunal to provide expert opinion evidence in urban design including the interpretation and application of policies respecting these matters;

c. Marc Hallé, the Co-president and Senior Landscape Architect with CCxA, who was retained by the Applicant and was qualified by the Tribunal to provide expert opinion evidence in landscape architecture;

d. Brian Henshaw, CEO and Senior Ecologist with Beacon Environmental Limited, who was retained by the Applicant and was qualified by the Tribunal to provide expert opinion evidence in ecology and natural heritage, including the interpretation and application of natural heritage policy;

e. James Roche, a member of the architectural firm called DTAH, who was retained by the Applicant and was qualified by the Tribunal to provide expert opinion evidence in landscape architecture;

f. Terence Radford, owner of and architect with Trophic Design Studio, who was retained by the Applicant and was qualified by the Tribunal to provide expert opinion evidence in landscape architecture;

g. Phil Monture, a member of the Six Nations of the Grand River, who testified as a factual witness;

h. Margaret Briegmann, Principal at BA Consulting Group Ltd., who was retained by the Applicant and was qualified by the Tribunal to provide expert opinion evidence in transportation engineering and planning;

i. Robin McKillop, a Partner with Palmer/SLR Consulting, who was retained by the Applicant and was qualified by the Tribunal to provide expert opinion evidence in geomorphology, including fluvial geomorphology;

j. Mike Diez de Aux, an associate with Geotechnical Engineer Inc., who was retained by the Applicant and was qualified by the Tribunal to provide expert opinion evidence in geotechnical engineering and hydrogeology;

k. Steve Schaefer, a Partner with SCS Consulting Group, who was retained by the Applicant and was qualified by the Tribunal to provide expert opinion evidence in civil engineering;

l. Ronnald Palmer, Senior Advisor with The Planning Partnership, who was retained by the ABC and was qualified by the Tribunal to provide expert opinion evidence in land use planning;

m. Austin Spademan, a member of the ABC, who testified as a factual witness;

n. Donald Ford, a Senior Manager of Hydrogeology at the TRCA, who was qualified by the Tribunal to provide expert opinion evidence in earth science, including landform and hydrogeology matters;

o. Ali Shirazi, a Senior Manager of Geotechnical Engineering at the TRCA, who was qualified by the Tribunal to provide expert opinion evidence in geotechnical engineering;

p. Steven Heuchert, an Associate Director, Development Planning and Permits at the TRCA, who was qualified by the Tribunal to provide expert opinion evidence in land use and environmental planning;

q. Sarah Mainguy, a Senior Ecologist with North-South Environmental Inc., who was retained by the TRCA and was qualified by the Tribunal to provide expert opinion evidence in ecology;

r. Paul O'Brien, Divisional Commander for the South and West Division of the City's Fire Services, who was qualified by the Tribunal to provide expert opinion evidence in fire and emergency response;

s. Jeff Thompson, a Senior Planner with the City, who was qualified by the Tribunal to provide expert opinion evidence in land use planning, specifically environmental planning policy;

t. Homayoun Harirforoush, Supervisor of Development Planning and Review, Transportation Sector, with the City, who was qualified by the Tribunal to provide expert opinion evidence in the field of transportation;

u. Dawn Hamilton, Program Manager for Urban Design with the City who was qualified by the Tribunal to provide expert opinion evidence in urban design; and,

v. Marian Prejel, a Senior Planner in the City's Development Review Division, who was qualified by the Tribunal to provide expert opinion evidence in land use planning.

[28] The individuals qualified to provide expert opinion evidence adopted their Written Witness Statements and Reply Witness Statements, with such added minor corrections as required and noted during their oral evidence.

[29] Dr. Hanquing Hu had been scheduled to testify orally at the hearing with respect to his wind study report but was unable to do so due to emergency surgery. No other Party was scheduled to call a qualified wind expert, and Dr. Wu's wind study was properly part of the record before the Tribunal. It was part of the Applicant's original submission, and was part of the package which was deemed complete by the City.

[30] The Tribunal also considers the following Agreed Statement of Facts ("ASoF"):

a. An ASoF signed by the land use planning experts signed on September 30, 2024;

b. An ASoF signed by the urban design experts signed on September 26, 2024;

c. An ASoF signed by the ecology experts signed on September 17, 2024;

d. An ASoF signed by the hydrogeology experts signed on September 30, 2024; and,

e. An ASoF signed by the geotechnical engineering experts signed on October 1, 2024.

[31] In addition, on May 12, 2025, at the request of the Parties, the Member visited the site of the Proposed Development and the surrounding area using a site visit route provided by the Parties.

ISSUES

[32] The central issues in these Appeals are as follows:

a. Is the Subject Property an Appropriate Location for Growth and Intensification?

b. Does the Proposed Development fail to Achieve the Goal of Complete Communities?

c. Is the Current Designation of the Subject Property as Being Part of the City's Green Space System Bar the Proposed Development?

d. Does the Proposed Development align with the Natural Heritage Policies?

e. Is the Development Site Safe from Hazards?

f. Does the Development Site include a Non-Conforming Alteration?

g. Does the Proposed Development have Regard to the Living City Policies?

h. What Impact, if any, does the City's Refusal of the Applications have on the Exercise of the Tribunal's Jurisdiction?

i. Would Approval result in an Unacceptable Precedent?

j. What is the appropriate disposition of these Appeals?

ANALYSIS

[33] In the consideration of these Appeals, the Tribunal must be persuaded, in this *de novo* consideration of the Applications, that the proposed development and the proposed instruments: (a) have regard to matters of provincial interests pursuant to section 2 of the Act; (b) are consistent with the PPS 2024 pursuant to section 3(5)(a) of

the Act; (c) conform, with respect to the ZBA, to the City's OP pursuant to section 24(1) of the Act; (d) have regard to the relevant and applicable guidelines (such as the City's urban design guidelines and the TRCA's LCP); and, (e) have regard to the decision of City Council, as well as the information and material considered by City Council, pursuant to section 2.1(1) of the Act.

[34] On the matter of conformity with the City's OP, the Tribunal must read the City's OP as a whole and must give it broad liberal interpretation with a view of furthering its policy objectives.[1] The statutory tests of "having regard", "consistent with" and "conform to" are on a continuum with differing levels of adherence. Conformity to the City's OP commands the highest level of adherence.[2] The Applicant has the burden to satisfy the Tribunal that the statutory tests have been met on a balance of probabilities.

[35] The City and the TRCA argue that the Applicants have not met the statutory test to support allowing the Appeals. The Applicant disagrees. The Parties' submissions are considered *seriatim* below.

A. Is the Subject Property an Appropriate Location for Growth and Intensification?

[36] The City submits that the Subject Property is not an appropriate location for significant growth and to permit the development in the proposed location would not be consistent with the PPS 2024 and would not conform to the City's OP. The City states that the PPS 2024 mandates the City to strategically identify areas for future growth and

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1 *Bele Himmel Investments Ltd. V. Mississauga (City),* (1982) 13 O.M.B.R. 17 (Div Ct.), paragraph 22.

2 *1455136 Ontario Ltd. V. Waterloo (Region),* 2023 CanLII 50968 (ON LT), paragraph 23 to 25.

submits that the Subject Property has not been so designated because it is not in a Strategic Growth Area ("SGA"), is not in a Major Transit Station Area ("MTSA"), is not in an area identified for growth on the Urban Structure Map (Map 2) and is not designated as an area of land use where growth is to be directed or anticipated (Map 20).

[37] The Applicant argues that Policies 2.3.1.1 and 2.4 of the PPS 2024 provides that growth should be focused in SGAs and MTSAs. Similarly, it submits that Policy 2.2.2 of the City's OP directs growth to Centres, Avenues, Employment areas and the Downtown, but the City's OP does not restrict growth outside those areas.

[38] The ABC submits, based on the evidence of Mr. Palmer, a similar position to the Applicant.

[39] The Tribunal agrees with the Applicant and the ABC and finds that the Subject Property is an appropriate place for intensification and growth. Not being within an SGA or within an MTSA does not disqualify the site from consideration as a site for growth and intensification. The Policies do not restrict growth to only SGAs and MTSAs, nor does it limit growth outside of them.

[40] Despite the assertion by the City that the Subject Property is isolated, it is close to other high-rise developments. The Proposed Development is in a well-established settlement area, generally surrounded by *Apartment Neighbourhoods* and *Mixed-Use Areas*, which contain apartment towers and higher densities. The Subject Property fronts on an existing public street and support intensification close to two new higher transit lines. The Subject Property is within 440 metres from the Wynford LRT station[3]

[3] The distance would be 630 metres if an individual chooses to use the access ramp to Eglington Avenue for accessibility reason or to walk with a cart or baby stroller.

and approximately one kilometre from the future Flemington Park Station on the Ontario Line.

[41] The Tribunal prefers the evidence of Ms. Hare, Mr. Palmer and Mr. Lametti, over the evidence of Ms. Prejel, and finds that the site represents an appropriate location for intensification while leveraging and making efficient use of the existing transit investments.

[42] In addition, the Tribunal finds that the Applications have regard to sections 2(l) and 2(p) of the Act, are consistent with Policies 2.2.1, 2.3.1.1, 2.3.1.2 and 2.4.1.1 of the PPS 2024 and are in conformity with Policies 2.1.1 and 2.2.2 of the City's OP. The Applications will contribute to lessening dependency on automobile transportation and provide a mix of housing, including affordable housing, close to public transit.

[43] An MTSA is proposed for the area around the Wyndford Station, but, at the time of the Hearing, it has not yet received ministerial approval. Consequently, the Subject Property, at the time of the Hearing, is neither inside nor outside of a yet-to-be approved MTSA. In any event, its status in this regard is not relevant to these Appeals as nothing in the PPS 2024 or the City's OP prevent intensification outside an MTSA.

B. Does the Proposed Development fail to Achieve the Goal of Complete Communities?

[44] The City submits that the purpose of concentrating growth is to achieve complete communities, as defined in the PPS 2024. The City argues that the Development Site is isolated, not a pedestrian-oriented environment, and therefore cannot achieve the objective of supporting complete communities. It also submits that it does not represent good planning. It underscores that the uphill walking distance to the Wynford LRT station and to grocery stores and other retail services will be a challenge to pedestrians, especially to individuals with mobility constraints, and those with children and strollers.

[45] For the City, the Proposed Development does not have regard to sections 2(q) (the promotion of development that is designed to be sustainable, to support public transit and to be oriented to pedestrians); and 2(r)(iii) (provides for public spaces that are of high quality, safe, accessible, attractive and vibrant) of the Act, is not consistent with Policy 3.9.1(a) (healthy and active communities) of the PPS 2024, and is not in conformity with Policies 2.4.6, 2.4.15, 3.1.1, 3.1.3, 3.1.4 and 4.2 of the City's OP that relate to transportation, public realm and built form.

[46] The Tribunal agrees with the Applicant and finds that the City's objection mostly stems from the City's own failure to meaningfully engage with the Applicant on the SPA.

[47] St. Dennis Drive, built in the 1950s, serves the immediate area, including the high-density residential developments. The commuting public has access to two regularly running TTC bus routes along this portion of St. Dennis Drive and will also have access to higher order transit. The Proposed Development will have very little parking for residents. Accordingly, the Proposed Development is transit oriented. As discussed further below, ride-share, pedestrian and cycling access will be considered in a future phase of this proceeding, in the context of the SPA.

C. Is the Current Designation of the Subject Property as Being Part of the City's Green Space System Bar the Proposed Development?

[48] The City submits that the Subject Property is not an appropriate place for residential development because it is currently part of the City's Green Space System. Section 2.3.2 of the City's OP contains the policies for the City's Green Space System, of which the Subject Property is a part. As the entirety of the Subject Property is part of the Green Space System, the City argues that the OPA inappropriately removes portions of these lands from the Green Space System through the redesignation of Development Site to *Apartment Neighbourhoods*.

[49] Moreover, the City is critical that the OPA does not contain an amendment to remove the lands from Map 2 of the City's OP, which sets out the City's Green Space System. For the City, the OPA is wholly inconsistent with the structure of the City's OP.

[50] The Applicant submits that the City – and particularly the City's witness Ms. Prejel – ignores that the OPA contemplates an amendment to these very policies and, by consequence, the associated mapping. For the Applicants, when amendments are made within the Green Space System, they are to be "consistent" with the remainder of the City's OP. For the Applicant, in this instance, the redesignation of the Development Site is consistent with the applicable policies found in the *Apartment Neighbourhoods* designation.

[51] The Tribunal disagrees with the position of the City and finds that nothing in the City's OP prohibits the redesignation of a portion of lands forming part of the Green Space System when lands designated as Parks and Open Space areas are privately owned, and the City or a public agency does not wish to purchase those lands.

[52] The underlying land use designation of the Subject Property in the City's OP are *Natural Areas and Parks and Open Space Areas - Other*. These areas are shown on Map 20 of the City's OP. Pursuant to Policy 4.3.5 of the City's OP, *Other Open Spaces Areas* (shown on Maps 13-23), "will be used primarily for golf courses, cemeteries and open spaces associated with utilities and other specialized uses and facilities [emphasis added]". Policy 4.3.2 specifies that development is "generally" prohibited within *Parks and Open Space Areas*, however, some exceptions are provided for. These include development for recreation and cultural facilities, conservation projects, cemetery facilities, public transit and essential public works, all subject to appropriate assessment.

[53] Significantly, Policy 4.3.7 of the City's OP also explicitly addresses another exception to the policy which "generally" prohibits development in *Parks and Open Space Areas*, namely where the proposed development is on lands under private

ownership. Pursuant to that Policy, if an application is made to develop such lands, and the City or a public agency does not wish to purchase them, the application will be considered based on its “consistency with” the policies of the City’s OP. Although the City and the TRCA are open to accepting, upon certain conditions, a land dedication of the portion of the proposed Public Open Space, this does not amount to a purchase as no purchase price is contemplated. Ms. Prejel, the City’s land use planning expert, admits on cross examination that the transfer does not amount to an acquisition. Thus, for the tribunal, if the redesignation otherwise aligns with other applicable policies in the City’s OP, a redesignation is not prohibited.

[54] Ms. Prejel’s opinion is that “conformity” in Policy 4.3.5 of the City’s OP must also be tested against the policies in the City’s OP for the Green Space System. The Tribunal finds her position not to be logical and contrary to the plain language of Policy 4.3.5 of the City’s OP. Her approach amounts to rendering Policy 4.3.5 meaningless, because conformity with the Green Space System could never be demonstrated as the purpose of the OPA is to remove the Development Site from the Green Space System.

[55] Moreover, the Tribunal finds that the Applications contribute to ensuring that a significant portion of the Subject Property will be protected and improved, which conforms to Policy 2.3.2 of the City’s OP. Under the OPA, the vast majority of the Subject Property (95%), will be designated *Natural Areas*, which will form part of the Parks and Open Areas land use designation, which in turn will form part of the Green Space System.

[56] Accordingly, the Tribunal concludes that the current designation of the Subject Property as being part of the Green Space System is not a bar to a partial redesignation of the Development Site as *Apartment Neighbourhoods* based on the City’s policies with respect to its Green Space System in the City’s OP. Moreover, the Tribunal finds that no amendments to Maps 2 and 20 are required in the OPA.

D. Does the Proposed Development align with the Natural Heritage Policies?

[57] Section 2(a) of the Act provides that the protection of ecological systems, including natural areas, features and functions, is a matter of provincial interest and that the Tribunal should have regard to that matter.

[58] Policy 4.1.1 of PPS 2024 provides that natural features and areas shall be protected in the long term. Policy 4.1.5 of the PPS 2024 provides that development and site alteration shall not be permitted in significant valleylands, unless it has been demonstrated that there will be no negative impacts on the natural features or their ecological functions. The Don River Valley is a natural heritage feature, which in turn, contains natural features and ecological functions.

[59] With respect to the City's OP, the City has mapped the Natural Heritage System within its jurisdiction. The Subject Property is within the City's Natural Heritage System and is illustrated on Map 9, a non-statutory map. Map 9 attempts to reflect field work and natural heritage studies. Policy 3.4.11 of the City's OP provides that development is "generally" not permitted in the natural heritage system illustrated on Map 9. Where the underlying land use designation provides for development in or near the natural heritage system, the development will minimize adverse impacts and, where possible, restore and enhance the natural heritage system.

[60] The City submits that the Proposed Development will have a net negative impact/adverse impact on the natural heritage features and functions of the Subject Property and thus does not have regard to section 2(a) of the Act, is inconsistent with the PPS 2024, and is not in conformity with the City's OP. In particular, the City argues that the proposed mitigation measures will not balance the expected negative impacts. For the City, the Proposed Development will narrow and fragment the natural heritage system and would introduce the inevitable consequences associated with constant human presence.

[61] The City relies on Ms. Mainguy's professional opinion that the restoration areas is insufficient and ineffective to mitigate the negative impacts associated with four residential towers (including many new residents and visitors through the day and night), amenities, urban surfaces, noise, artificial lighting and pets. Ms. Mainguy prefers the *status quo* provided by the golf course because it offers an ecological function. For her, it plays a unique role in maintaining diversity within a highly urbanized environment. She underscores that golf courses tend to be broad, free of vehicle traffic, relatively secluded, not accessed at night and in the winter, frequented by few people, have no barriers and have natural habitats that can act as stepping stones for wildlife. Ms. Mainguy also raises concerns about the impact of the Development Site which will create a pinch point at the northern end of the Subject Property for the movement of wildlife by reducing the passable corridor from 75 metres to 30 metres. She also opines that the off-site forested area on the northside of St. Dennis Drive will negatively be impacted by shadowing and isolation. For her, natural areas should be maintained, enhanced and connected.

[62] The Applicant disagrees based on the evidence of Mr. Henshaw and underscores the riparian planting on 30 meters on either side of the Don River and the protection of existing significant woodlots. The Applicant also notes that the TRCA has indicated that it would accept the conveyancing of the Public Open Space subject to conditions.

[63] Similarly, Mr. Palmer, who was retained by the ABC, opines in his evidence that Policy 4.1.2 of the PPS 2024 requires that diversity and connectivity of natural features should not only be maintained, but they are also to be "restored or, where possible, improved". For him, the decommissioning of the golf course and the planned re-naturalization of 95% of the Subject Property is consistent with that Policy.

[64] Having considered the evidence, including the expert opinion and scientific evidence of Mr. Henshaw and the opinion evidence of Ms. Mainguy, as well as Mr.

Henshaw's updated Natural Heritage Impact Study ("NHIS") and Ms. Mainguy's peer review, the Tribunal finds that the Proposed Development will not have a net negative impact or an adverse impact, both with respect to the Subject Property and the natural heritage system as a whole. The Tribunal finds that the Development Proposal will protect the significant natural features and functions on the Subject Property; will, after mitigation, not result in negative impacts on the natural heritage features and functions within the Subject Property and adjacent lands; and will provide many benefits to the ecosystem of the Don River Valley.

[65] The Subject Property is within a significant valley which is ecologically important and contributes to the natural heritage system. The Don River Valley contains natural features and ecological functions. However, the determination of a negative impact/adverse impact on natural heritage features and functions is to be applied after mitigation is considered. This is a matter of consensus amongst the expert witnesses that testified on this issue. The Tribunal concludes, for the following reasons, that impacts from the Proposed Development have been sufficiently mitigated.

[66] First, the Tribunal accepts that this portion of the Don River Valley is within a dense urban matrix and the natural systems within it are already functionally constrained because of that context. The current natural features and functions are disturbed by such things as traffic on St. Dennis Drive, the Don Valley Parkway, the Eglington Avenue bridge, and the Go Transit rail line, which are all in proximity to the Subject Property. This is simply not a pristine natural heritage site, geographically isolated from urban residents and urban life. The Tribunal accepts the evidence of Mr. Palmer who was retained by the ABC. He opined that the Subject Property is highly manicured and a disturbed landscape. He noted that riparian cover and canopy has largely been removed on each side of the Don River Valley.

[67] Second, much of the Subject Property has been altered and the Development Site has been *significantly* altered through anthropomorphic activities including the construction and maintenance of a manicured golf course, buildings, a car park, paths,

water channels and bridges. The paleo terrace and the immediately adjacent areas have limited natural heritage features. Ms. Mainguy agrees on cross-examination that there may be areas of lesser ecological function across the entire given area.

[68] Third, the NHIS appropriately creates an inventory of the existing natural heritage conditions on the site and on adjacent lands. Contrary to the contention of the City, Mr. Henshaw did examine the negative impact on the natural heritage system as a whole, and not just on the Subject Property. He did consider the broader impacts on system corridors and on woodland habitats. He also considered the interconnections between habitats. He did so according to both the terms of reference provided by the City and the accepted practices for such studies. Mr. Henshaw properly focused his study on the natural features and the ecological functions given the language of the PPS 2024. In particular, he considered the corridor function for movement of seeds, insects and animals. Mr. Henshaw appropriately surveyed the current natural system, and its features and function, considered the impact of the Proposed Development, and then assessed whether mitigation offset these impacts. He did so informed by the Natural Heritage Reference Manual.

[69] Fourth, the Proposed Development will protect and enhance the natural features. The development will improve key ecological attributes, such as diversity and connectivity. The proposed ecological restoration is particularly noteworthy in this regard, including the decommissioning of the golf course, the restoration of landforms through a cut and fill exercise, significant riparian planting, the creation of a 30-metre ecological buffer along the Don River and its tributaries, and the protection of existing significant woodlots. As a result, wildlife and fish habitats will be enhanced. Ms. Mainguy admitted on cross-examination that improvements to the ecological function of the Don River and its tributaries would occur. With proper stewardship, this too will improve and enhance the natural heritage system.

[70] As the Applicant underscores, Mr. Henshaw advises that the ecological integrity of the Subject Property may be further improved through a ravine stewardship plan, and

the proposed Eco-Cultural Restoration Plan to be funded by the Applicant and implemented through a stakeholder process led by a public authority who will assume ownership of the Public Open Space. The TRCA indicates it will accept the conveyancing of the Public Open Space, subject to conditions.

[71] Overall, the Tribunal prefers the evidence of Mr. Henshaw over the evidence of Ms. Mainguy. His evidence is cogent and is not successfully challenged or undermined on cross-examination. Negative human interaction with the natural area may at times create undesirable impacts by those who might abuse the natural environment due to their access to a new natural area. However, natural areas cannot reasonably be treated as a living museum to be kept in a virtual vault without any human interaction. This would defeat the goal of preserving and enhancing such areas in an urban setting.[4]

[72] While the existing golf course currently provides positive impacts on the natural heritage system, the Tribunal finds that the Applicant has met the evidentiary burden of establishing that the Proposed Development will not have a net negative impact on that system once mitigation measures are considered. The mitigation measures presented to the Tribunal balance the expected negative impacts. Those measures are sufficient. The Tribunal notes that the broader eco-cultural restoration framework that is to be developed in the future can be designed to further mitigate those impacts, including through boardwalks to channel pet and human movement and by signage. It can also ensure the long-term stewardship of the mitigation initiatives, a concern raised by Ms. Mainguy.

[73] The evidence of Mr. Thompson, the City's witness on environmental land use planning policy, was of very little assistance to the Tribunal. He admitted on cross examination that he did no peer review of Mr. Henshaw's studies, and relied entirely on

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4 See Policy 2.3.2.1(a) of the City's OP.

Ms. Mainguy's work. Moreover, he lacked basic understanding of the Applicant's proposal which did not yet include development in the Public Open Space other than restoration. In addition, the Tribunal considers his answers on cross examination to be evasive and unhelpful.

[74] Based on the above, the Tribunal finds that the Applications have regard to section 2(a) of the Act, are consistent with Policies 4.1 of the PPS 2024 and conform to Policy 3.4.11 of the City's OP.

E. Is the Development Site Safe from Hazards?

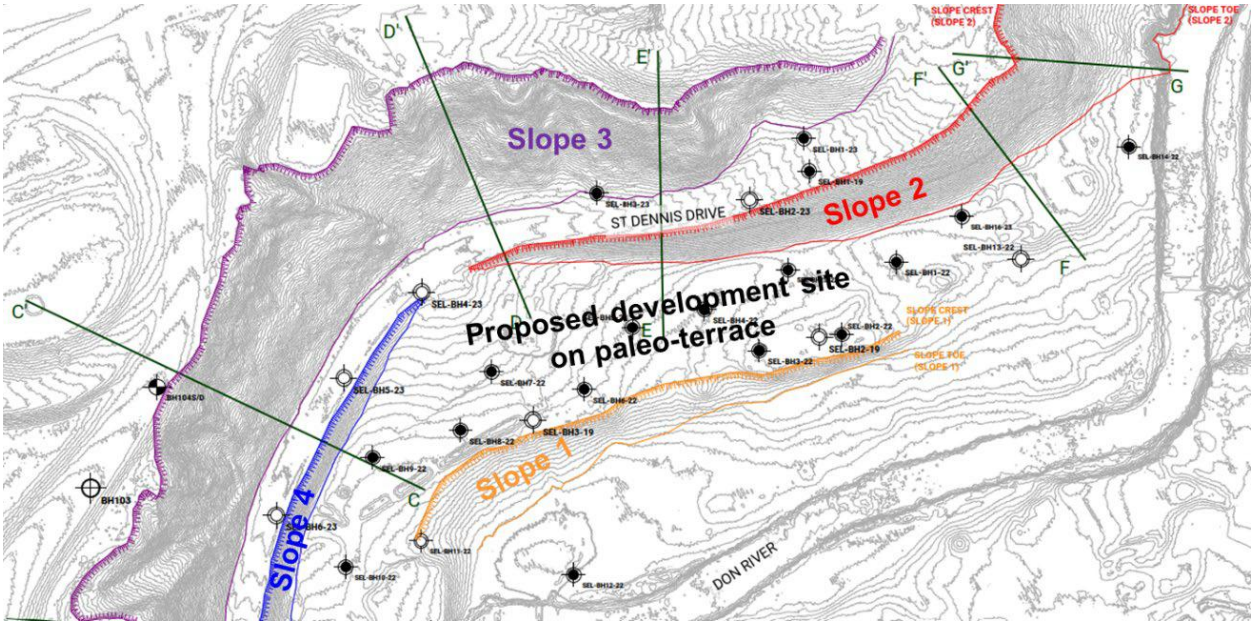
[75] The City and the TRCA contend that the Proposed Development cannot be authorized as the Development Site would be in an unsafe area due to natural hazards. They argue that there is a prohibition in the PPS 2024 on development within hazardous lands. For them, the entirety of the Development Site falls within the definition of "hazardous lands" in the PPS 2024, because those lands are impacted by an "erosion hazard". Specifically, they submit that the Development Site is part of the valley wall within a confined valley system and is thus within the erosion hazard limit. They emphasize the last portion of the PPS 2024's definition of "hazardous lands" which provides, along rivers and streams, that erosion lands include lands to the furthest landward limit of the flooding or the erosion hazard. They rely on the opinion evidence of Messrs. Huechert and Thompson to criticize Ms. Hare's opinion on interpretation of the PPS and qualify her views as being unreasonable. Dr. Shirazi, an expert witness called by the TRCA, relies considerably on the *Technical Guide, River and Stream Systems: Erosion Hazard Limits* ("EHG") and the LCP. He uses those guidelines to set the location of the hazardous land and the erosion hazard limits, which is then used by the TRCA and the City to conclude that no development may occur in those areas.

[76] The City and the TRCA also argue, pursuant to Policies 3.4 of the City's OP, that the entire valley wall is to be treated as a hazard and that no development can occur between the top-of-bank of the Don Valley and the toe-of-slope thereof. They submit

that there is mandatory physical separation required between natural hazards and new development, namely a minimum 10 metre setback from the top-of-bank, the toe-of-slope, other locations where slope instability or other physical conditions present a significant risk to life and property.

[77] By contrast, the Applicant submits that there is no general prohibition in the PPS 2024 on development in areas of natural hazards. Based on the evidence of Messrs. Shaefer, McKillop and Diez De Aux, it also submits that the portion of the Subject Property where the Development Site is proposed, is not exposed to current or potential hazards, and thus is an appropriate location for development.

[78] Figure 1, at paragraph 20 of Mr. McKillop's Witness Statement, visually situates the various slopes. This is an annotated excerpt from Grounded Engineering (2024) showing the Development Site in relation to the Don River and its valley land topography. It illustrates the position of the Development Site on a paleo terrace with a scarp along its southern edge (slope 1) and the slopes below St. Dennis Drive (slopes 2 and 4) and the main valley wall (slope 3 above):



[79] The Tribunal notes that the Development Site is outside of the 10-meter setback from the regulatory flood line and is not subject to any flooding hazard. The hazard considered relates to erosion.

Objection to the Evidence of Mr. McKillop

[80] In the TRCA's Written Closing Submissions, Mr. Duncan, Counsel for the TRCA, invites the Tribunal to give no weight to the opinion evidence of Mr. McKillop with respect to the establishment of erosion hazard limits beyond the effect of riverine erosion on the toe erosion allowance on the four following grounds: (a) he is not an expert in slope-related erosion hazards; (b) his approach is at odds with the applicable provincial guidance; (c) other experts identified specific problems with his assumptions; and, (d) his alleged baseless attack on the independence of other experts calls into question his understanding of his own obligation not to act as an advocate.

[81] At no point did Mr. Duncan seek to exclude any of Mr. McKillop's evidence, which Mr. Duncan had the opportunity to fully cross-examine.

[82] After questioning from the Member, pursuant to section18(1)(a)(ii) of the *Ontario Land Tribunal Act*, S.O. 2021, c. 4, which Mr. Duncan incorrectly qualified as "cross examination", the Tribunal qualified Mr. McKillop as an expert to provide opinion evidence in geomorphology, including fluvial geomorphology. Thus, his qualification is not limited to the sub-sector of fluvial geomorphology. Both these disciplines work hand in glove. The Tribunal is not persuaded by the arguments of Mr. Duncan, for the following reasons: (a) Mr. McKillop field of expertise in geomorphology includes expertise in slope-related erosion hazards; (b) nothing requires an expert to slavishly apply provincial guidance without applying their own professional judgment; (c) disagreements between experts does not render their evidence suspect by that fact alone; and, (d) the Tribunal did not witness "baseless attacks" nor evidence that he had engaged in advocacy. The Tribunal notes that Mr. McKillop signed and reaffirmed his expert's duty.

[83] Mr. McKillop is qualified to provide opinion evidence on how landforms are made, how they evolve over time, on slope processes including erosion, and how the presence of slopes fit into the hazard delineation process. It was further appropriate for him to rely on the numerical modelling and slope stability prepared by Mr. Diez De Aux in his geotechnical analysis.

No General Prohibition in PPS

[84] In his witness statement in support of the City's position, Mr. Heuchert states that the PPS 2024 prohibits all new development within hazardous lands. Under cross-examination, he concedes, however, that new development may be permissible within hazardous lands. Indeed, Mr. Heuchert admits on cross examination by Mr. Nelligan that his evidence that the PPS 2024 provides for an outright prohibition[5] was "too strong" and actually gives an example where a large development – that he attempts to distinguish - could be allowed, *i.e.* in the Hoggs Hollow neighbourhood. Essentially, he admits that that the Policy requires an evidence-based risk analysis. Under cross examination by Mr. Biggart, Mr. Heuchert unconvincingly tried to walk back his admission and asserted that the Tribunal had no discretion.

[85] Ms. Hare testifies through out the proceeding that there are non-hazardous components of "hazardous lands" that may accommodate development and remain consistent with the PPS 2024. Mr. Palmer agrees with her opinion.

[86] The Tribunal finds, based on the plain reading of the relevant policies, that the matters of provincial interest in the Act, the PPS 2024 and the City's OP do not create

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[5] He writes at paragraph 7.4.3 of his Witness Statement that "the PPS prohibits new development within *hazardous lands*."

an absolute prohibition on development in areas of natural hazard. The prohibition requires the additional finding that there is an unacceptable risk due to those hazards. To use an analogy, under the relevant policies of the PPS 2024, development in hazardous lands is subject to an amber “caution” light, and not a red “stop” light. The Tribunal’s conclusion is based on the following content of the PPS 2024.

[87] First, Policy 5.1.1 of the PPS 2024 provides that development shall be directed away from areas of natural hazards “where there is an unacceptable risk” to public health or safety or of property damage, and not create new aggravated hazards.[6] Clearly this is not an absolute prohibition.

[88] Second, Policy 5.2.2 of the PPS 2024 provides that development shall “generally” be directed to areas outside of hazardous lands adjacent to river or streams which are impacted by flooding hazards or erosion hazards. In addition, hazardous lands in the PPS 2024 are defined as property or lands “that could be unsafe for development” due to naturally occurring processes. The underscored language is inconsistent with a general prohibition. It is consistent, however, with potential policy permission subject to important caveats.

[89] Third, at Policy 5.2.1, the PPS 2024 directs planning authorities to identify hazardous lands and hazardous sites, in collaboration with conservation authorities, and manage development in these areas, in accordance with provincial guidance. Again, development would not have to be “managed” if it was prohibited.

[90] Fourth, the same approach is true at Policy 5.2.8 of the PPS 2024 where the Province has recognized and enshrined in its Policies that there are “non-hazardous” components of hazardous lands. Messrs. Thompson and Heuchert testified that the

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6 Policy 5.1.1 of the PPS 2024 does not use defined term hazardous lands.

intent of Policy 5.2.8 of the PPS 2024 only applies to very limited situations. The City wrote in its Final Written Submissions that their evidence:

> […] was that this policy test is, in their extensive experience, intended to apply in situations where minor development or redevelopment is being considered, such as additions, replacement and non-habitable buildings and structures, within low-risk portions of hazardous lands where existing urbanization pre-dating the current policy framework is present, and where risk can be mitigated. It is not intended to permit new high-density residential development within Hazardous Lands.[7]

[91] The Tribunal is struck how much implied policy these two witnesses propose to add, without evidentiary support other than their "extensive experience", to the clear language of Policy 5.2.8 of the PPS 2024. For the Tribunal, these witnesses are actually proposing a wholesale redrafting of Policy 5.2.8 of the PPS.

[92] While this may have historically been how the TRCA has applied this Policy, the proposed narrow interpretation is contrary to the plain language of the Policy which contemplates that development may be permitted in those portions of hazardous lands where the risks are minor or could be mitigated. The risk analysis is, of course, different for a limited development proposal for an uninhabited building as opposed to a high-density residential development. However, a proposal for a high-density residential is not automatically prohibited without further analysis. The Tribunal rejects the opinion of Mr. Thompson in this regard.

[93] Of note, neither Mr. Heuchert nor Mr. Thompson were able to advance a principled definition of "minor development" consistent with their position. This is not surprising, as the qualifier "minor" at Policy 5.2.8 refers to the "effects and risk to public safety" and not to the nature of the development.

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7 Paragraph 112.

[94] For the Tribunal, Policy 5.2.8 of the PPS 2024 illustrates that when the Province wants to prohibit development somewhere, it does so clearly and unambiguously, as it has done at Policies 5.2.8 (a), (b) and (c) of the PPS 2024.

[95] Finally, the Tribunal's preferred interpretation is supported by Policy 5.2.6 of the PPS 2024 which prohibits certain types of development in hazardous lands, namely where the use is institutional use, uses for essential emergency services and uses related to hazardous substances. That Policy would be redundant if development was otherwise prohibited in areas of natural or human hazards.

No General Prohibition in City's OP

[96] A similar interpretation applies for the City's OP. The light is amber, not red. The Tribunal disagrees with the City and the TRCA that the City's OP clearly prohibits development between the top-of-bank and the toe-of-bank of the Don Valley. Policies 3.4.8 to 3.4.10 of the City's OP, which prescribes certain constraints, does not explicitly stipulate an outright prohibition for development in hazard lands.[8]

[97] The sidebar on page 3-45 of the City OP states that that the relevant policies are designed to implement the provincial policy directions with respect to hazard lands, which, as noted above, does not establish a general prohibition on development in hazardous lands. However, that sidebar incorrectly states that the provincial policy direction seeks "prohibiting development in hazard lands". By contrast, the sidebar on page 3-46 correctly states that provincial policy "generally" directs development to areas outside of hazard lands. In any event, the Policies of the City's OP are contained in the shaded text. Unshaded text and sidebars within Chapters One to Five are provided to

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[8] The City's OP uses the term "hazard land" rather than "hazardous lands" in the PPS 2024.

give context and background assist in understanding the intent of the policies. They are not the City OP Policy.[9]

[98] Mr. Heuchert asserts that the intent of the Policy is to ensure that no new development takes place within confined valley corridors across the City. For the Tribunal, if an expert witness must evoke the intent of a Policy, it is an implicit admission that the Policy is clear and does not, on a plain reading, support their opinion. However, the Tribunal finds that the City's OP speaks for itself, and the Policies in the shaded text do not prohibit development in hazard land. If the City intended to prohibit development in all hazard lands it would have used clear restrictive language such as "no development is permitted", as it does elsewhere in the City's OP.[10] It is wiser for the Tribunal to be guided by plain and ordinary language rather than a perceived intent advanced by Mr. Heuchert.

[99] Policy 3.4.10 of the City's OP, which relates to the use of lands below the top-of-bank for the purposes of calculating density or to satisfy parkland dedication, does not provide any insight on the issue of whether the City's OP has a general prohibition on development with hazard lands. That Policy targets an unrelated set of purposes, and it would be unreasonable to imply that it thereby results in a general prohibition. Ms. Prejel misconstrues Policy 3.4.10 of the City's OP as a prohibition of development below the top-of-bank. Her opinion on this point is disregarded by the Tribunal.

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9 Policy 5.6(3) of the City's OP.

10 For example, Policy 3.4.5 of the City's OP.

Not all Hazardous Lands are Hazardous

[100] Although it may appear to be rhetorically counter-intuitive, the plain language of the relevant provincial and municipal policies, as well as the applicable definitions, provide that development may occur in hazardous lands/hazard lands under certain circumstances. Simply put, not all hazardous lands are actually hazardous for development. There are non-hazardous components of lands that are otherwise labelled “hazardous”, and development may occur on those components if the risk is acceptable. Ms. Hare in her oral evidence refers to the Applicant’s visual evidence D-20 which illustrates this in relation to the Development Site/paleo terrace and St. Dennis Drive, both of which she qualifies as “non-hazardous lands”. She also illustrates that the erosion access allowances discussed further below are also located either on the non-“hazardous lands” or on the tablelands. The Tribunal finds her evidence compelling.

[101] The true test is whether there is unacceptable risk based on factual, technical and scientific analysis. This is the analytical approach taken by two Tribunal Vice-Chairs in previous Decisions.[11] Contrary to the position of the City and the TRCA, the above interpretation is neither strained nor unreasonable.

[102] Accordingly, the grammatical and ordinary meaning of the PPS and of the City’s OP results in neither the PPS 2024 nor the City’s OP creating a broad prohibition on development below the top-of-bank of the entire Don River Valley. There is no interpretive uncertainty.

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[11] *Ross v. Prince Edward (County),* 2021 CanLII 17387 (ON LPAT), paragraph 27; *Williams v. Rideau Valley Conservation Authority*, 2022 CanLII 5476 (ON LT) paragraphs 29-33; *Acchione v. Caledon (Township)*, 2022 CanLII 42283 paragraphs 75 to 80.

[103] The “basic rule” is not that generally development should not occur on, or on top of valley walls, as argued by the TRCA.[12] The Tribunal rejects the position of the TRCA, and the evidence of Dr. Shirazi, that locating hazardous lands is determinative of the matter. Even if the Tribunal accepts that the entirety of the Development Site is on hazardous lands as defined by the PPS 2024 (with the technical implementation support of the EHG), there must be an analysis of the degree of risk.

[104] The Tribunal agrees with the Applicant that the correct analysis in this regard must proceed in a three-step inquiry. First, one must determine if there are hazards. Second, one must assess the risk to public health or safety or to property. Third, one must determine if the risk is acceptable.

Presence of Erosion Hazard?

[105] The PPS 2024 defines an erosion hazard as the loss of land, due to human or natural processes, that poses a threat to life and property. Under the PPS 2024, the limit of the erosion hazard is determined using considerations that include the 100-year erosion rate, an allowance for slope stability and an erosion access allowance.

[106] Mr. Diez De Aux’s evidence as a geotechnical expert for the Applicant, including his Slope Stability and Erosion Report, concludes that the existing slopes, *i.e.* Slopes 1, 2, 3, and 4, evaluated both together and individually, are stable. Development is not at risk of slope instability or erosion concerns if it is appropriately set back from the identified long term stable lines. His analysis was not successfully challenged by the City and the TRCA, including with respect to the borehole locations, the modelling inputs and assumptions or the resulting locations of his concluded long term stable

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[12] TRCA’s Written Closing Submissions, paragraph 19.

positions. The Tribunal finds that Mr. Dies De Aux's analysis, based on a methodology that analyzes multiple slope positions, is appropriate.

Weight to be Given to EHG

[107] The City and the TRCA arguments, including their argument that a slope may not be segmented, relies excessively and inappropriately on the EHG. The TRCA correctly pointed out that the Applicant's expert witnesses agreed that the EHG is the authoritative provincial guidance. However, that document is a mere guideline, is 23 years old and is undergoing review. No amount of rhetoric from the TRCA can elevate the EHG to anything more than a guideline.

[108] Guidelines are tools to implement policy; they are not a tool to create or interpret a PPS policy. To do so, would elevate their status to either a policy statement adopted by a Minister or Ministers (with the approval of the Lieutenant Governor in Council) pursuant to section 3 of the Act, or to an OP policy adopted by a municipal Council pursuant to sections 16 and 17 of the Act. Such guidelines, whilst being important, are generally created by or under the direction of public servants in Ministries, often with the assistance of non-governmental consultants. Moreover, they are not subject to procedural requirements and appeal rights prescribed in the Act. They are of an entirely different nature, are of a lesser status and are subject to a "have regard" standard of review.

[109] The use of the word "shall" at Policy 5.2.1 of PPS 2024, directing planning authorities to identify hazardous lands and management in these areas, "in accordance with provincial guidance", does not elevate the EHG and make it subject to a "consistent with" standard of review applicable to the PPS 2024. The TRCA admitted that provincial

guidance is not to be equated or understood as provincial policy.[13] Nevertheless, the TRCA incorrectly attempts to argue inconsistency with Policy 5.2.1 of the PPS 2024 if the provincial guidance was contradicted or ignored. The Tribunal does not agree that this is the appropriate approach to be taken.

[110] In addition, the EHG is necessarily a simplification of all the different types of river and stream systems throughout Ontario, including diverse geomorphologies of valleylands. The generalized guidelines cannot reasonably capture all possible potential erosion hazard scenarios. The absence of a given scenario does not indicate a conclusion of inconsistency with the PPS (or non-conformity with the City's OP). Indeed, other conservation authorities have adopted interpretation of confined valleys that do not fall within the four corners of figures and diagrams of the EHG by acknowledging the possible presence of near-level paleo terraces withing a broader valley system below the top-of-bank.[14]

[111] Similarly, the TRCA also attempts to persuade the Tribunal that not allowing development is the best way to manage risk. It relies again on EHG to do so. The Tribunal finds that the TRCA's submission is without merit. It relies excessively on an EHG, which is subject to the standard of tribunal review of "have regard". In addition, the TRCA's proposed interpretation is in contradiction to the clear language of the PPS 2024 and the City' OP, as noted above, that does not establish an *a priori* prohibition of all development within hazardous lands. The TRCA's use of the word "imperative" in relation to the EHG, at paragraph 18 of its Written Closing Submissions, is particularly

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[13] TRCA's Written Closing Submission, paragraph 52.

[14] The examples raised by Mr. McKillop include the Nottawasaga Valley Conservation Authority, the Grand River Conservation Authority and the Grey Sauble Conservation Authority.

revealing of the TRCA's misdirected reliance on the EHG in determining the outcome of these Appeals.

[112] It is also worth recalling what the EHG purports to be and not be:

> This guide serves in an advisory role and is not intended to introduce changes from the Policy Statement.[15] […] This document describes, in general terms, an important component of watershed management; it presents the hydraulic work as well as soil and slope stability analyses needed to conduct riverine erosion studies to determine appropriate management strategies. It is not intended to be a list of mandatory instructions on technical methodologies to be rigidly applied in all circumstances. Instead, the Guide serves to assist technical staff experienced in natural hazards management to select the most appropriate methods and flexible implementation measures in the identification of riverine erosion lands. The Guide cannot replace good engineering, scientific and environmental judgement in adopting the most appropriate procedures required when undertaking and adopting a local or water-shed-based erosion and slope stability related study program. [Emphasis added]

[113] In the Tribunal's view, the evidence of Dr. Shirazi was marked by an inflexible application of the EHG as if it was a binding regulatory instrument, especially with respect to Figures 88, 95a and 95b. The same may be said on his reliance on guideline 7.4.3.3 of the LCP which is almost identical to the EHG. For instance, for illustrative purposes, at paragraph 8.5 of his Witness Statement, Dr. Shirazi states that the Proposed Development "does not comply" with the LCP and the EHG. Similarly, at paragraph 8.7 of his Witness Statement, he states that the proposed sidewalk and connections "do not meet" the EHG, and at paragraph 9 he asserts that the long-established provincial and TRCA hazard guidelines" are not being applied correctly. Likewise, at paragraph 2.9 of his Reply Witness Statement, he states that the Proposed Development "is not consistent with" the EHG. This flawed approach makes his

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[15] The EHG was published when the 1996 Provincial Policy Statement was in place, and when the Act required the Tribunal to "have regard" to that Statement.

opinions less compelling than the science-based and site-specific evidence of Messrs. Shaefer, McKillop and Diez De Aux.

[114] The expert witnesses who testified on behalf of the Applicant neither ignored nor contradicted the EHG. They had regard to the EHG, pointing out that those guidelines are dated, incomplete and presented oversimplifications in some instances. To “have regard” is the correct legislative test; not conformity or consistency. It would be imprudent for the Tribunal to assume that the EHG contains no ambiguities or omissions. Such ambiguities and omissions are properly complemented by the professional judgment in the fields of engineering, science or the environment.

Segmentation of a Confined Valley

[115] The Tribunal disagrees with the position of the City and the TRCA that all confined valley systems are within a non-developable erosion hazard even if the scientific evidence establishes that the slopes are stable, both individually and collectively. Guided by the technical and scientific evidence of the expert witnesses, the Applicant submits that the lands on the paleo terrace and its immediate surrounding area, where the Development Site is located, are stable and are not affected by erosion hazards that otherwise define the broader valley up to the top-of-bank. For them, these lands are safe for development.

[116] The Applicant’s approach to examine individual slopes within the valley to determine slope stability and identify areas that are not subject to slope instability does not *a priori* result in a conclusion of inconsistency with the PPS 2024 (or non-conformity with the City’s OP) merely because that this approach is not reflected in the EHG. Ultimately, what frames the Tribunal’s jurisdiction is the PPS 2024 and the City’s OP, neither one of which prescribes a specific methodology to assess risk. Informed by expert evidence, under the PPS and the City’s OP, the Tribunal must ask itself whether a hazard exists, whether it poses a threat to life and property, and, if it does, whether the risk is acceptable.

[117] The Tribunal concludes that nothing in the PPS 2024 nor the City's OP prevents, as a general approach, development below the top-of-bank of a confined valley where the technical and scientific evidence supports the conclusion that the slope or slopes close to a Development Site are stable. Since there is no general prohibition on development within hazardous lands, it is reasonable and appropriate to assess the risks for Slopes 1, 2, 3 and 4 as it relates to the Development Site, both individually and collectively.

Assessment of Risk

[118] The evidence of Messrs. Shaefer, McKillop and Diez De Aux, as well as Mr. Diez De Aux's Slope Stability and Erosion Report, is that the Development Site is stable and not subject to any natural or man-made erosion hazards. For them, the Development Site is not at risk of slope instability or erosion as it is outside of the long-term stable crest of Slope 1 (*i.e.,* the scarp defining the southern edge of the paleo terrace), and the long-term stable toes of Slopes 2 and 4, and is well set back from the long-term stable toe of Slope 3 on the far side of St. Dennis Drive. Moreover, they opine that that the Proposed Development would not create new hazards or aggravate an existing one. The Tribunal accepts their evidence. There are no human or natural processes present that result in the loss of land that, in turn, could pose a threat to life and property. Figure 4 (scenario 2), at paragraph 44 of Mr. McKillop's Witness Statement, is compelling and illustrates that the stable paleo terrace can be seem as analogous to a tableland.

[119] The City and the TRCA have not presented analysis or factual evidence that successfully challenges the position advanced by the Applicant's expert witnesses. They rely almost entirely on an interpretation of the Policies of the PPS 2024 and the City's OP, which they advocate is a general prohibition of development in hazardous lands, an interpretation that is rejected by the Tribunal.

[120] The City and the TRCA attempt to argue that where natural hazards are concerned, the prevention of risk is paramount to protect public health and safety. The TRCA submits that the province's "preferred approach" is prevention, but its argument is explicitly based on the EHG and not the PPS 2024.[16] While the Tribunal must be keenly aware to risks to the public, it is unreasonable to seek a "no risk" outcome. Some level of risk is permissible and acceptable provided it is not undue. The Policies of the PPS with respect to natural hazards do not contemplate a "zero risk" approach. The light is yellow, not red. The City and the TRCA presented no evidence that the Development Site is unsafe for development, including evidence of any identified hazard, or that development would aggravate those hazards. By contrast, the Applicant presented compelling evidence to the contrary.

[121] The Applicant has mitigated risks, by locating the Development Site beyond the Regional Flood Line with a 10-metre buffer, proposing construction on a paleo terrace that is resistant to erosion and modelling slope lines to a factor of 1.5, as required by the TRCA policy.

Directionality

[122] Policy 3.4.8 of the City's OP provides that development will be set back from certain locations by at least 10 metres (or more if warranted by the severity of existing or potential natural hazards). These locations include the top-of-bank of valleys, ravines and bluffs and the toe-of slope of valleys, ravines and bluffs.

[123] The Applicant argues that the Proposed Development conforms to that Policy. The evidence confirms that the Development Site is 70 metres from the top-of -bank and 15 metres from the toe-of-slope. The Applicant submits, based in part on the

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16 TRCA's Written Closing Submissions, paragraphs 56 and 56.

evidence of Ms. Hare, that Policy 3.4.8 of the City's OP does not specify directionality, *i.e.* the 10 metres (or more) can be considered either below or above the top-of-bank or the toe-of-slope.

[124] The TRCA and the City suggest that directionality is implied within the language of Policy 3.4.8 of the City's OP. Ms. Hare opined that Policy 3.4.8 of the City's OP does not specify whether the setback is above or below top-of-bank, but rather sets a distance from this line which can be taken in either direction.

[125] The plain reading of the shaded Policies is to ensure development is located a safe distance away from areas that pose a significant risk to life and property. This includes the top of bank and the toe-of-slope of valleys. This reading of the City's OP is consistent with the PPS 2024. It is the PPS 2024 which is at the apex of the policy-driven planning system in Ontario. It is incorrect to assert that the City's interpretation of the PPS restricts the otherwise plain language of PPS 2024.

[126] The City submits that this interpretation "defies common sense".[17] For the City, Policy 3.4.8 of the City's OP is meant to create a buffer between the development and natural hazards, not to situate a development within natural hazards. Moreover, it submits that the hazard is not the top-of-bank or the toe-of-slope but the slope itself.

[127] The question of directionality, which requires an interpretation of the City's OP, is largely a question of law. The Tribunal has therefore put very little weight to the opinion evidence of the experts on this point.[18] Instead, the Tribunal approaches the issue

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17 City's Written Submissions, paragraph 123.

18 *Toronto (City) v. Romlek Enterprises*, 2009 CanLII 27819 (Div. Ct.), paragraph 34.

based on its findings of the appropriate legal interpretation of Policy 3.4.8 of the City's OP, assisted by the arguments of the Parties.

[128] The Tribunal agrees with the City that Policy 3.4.8 of the City's OP is meant to create a buffer between a development and a natural hazard. However, nothing in that Policy leads to the conclusion that a development must be 10 metres (or more) above the top-of bank and 10 meters (or more) below the toe-of-slope. First, the City did not use the words "above" and "below" in its OP, merely using the neutral word "from". Based on a purposeful interpretation, the Tribunal finds that Policy 3.4.8 of the City's OP is to keep a safe distance between potential hazard from the Proposed Development. The language of the Policy explicitly calls on a greater separation distance if warranted by the severity of existing or potential natural hazards. This clearly embeds in Policy 3.4.8 of the City's OP a central consideration of risk assessment. Whilst in many instances the separation distance will be 10 metres (or more) above the toe-of-bank or 10 metres (or more) below the toe-of-slope, the Policy does not mandate that directionality in all cases. In this case, where the Development Site is on a near-level paleo terrace, the separation distance may be calculated below the top-of-slope and above the toe-of-slope.

[129] The City's interpretation amounts to a total prohibition on development within a valley wall regardless of a risk-based analysis. As noted above, the Tribunal finds that neither the PPS 2024 nor the City's OP have created such a general prohibition, and instead mandate risk-based analysis informed by scientific and engineering evidence.

[130] Accordingly, the Tribunal finds that the Applicant has demonstrated conformity with Policy 3.4.8 of the City's OP.

Does the Development Proposal provide Safe Access and Egress?

[131] Policy 5.2.3(c) of the PPS 2024 provides that where development is permitted, because the risk is minor or can be mitigated, one must be able to demonstrate that

vehicles and people have a way of safely entering and exiting the area during times of flooding, erosion or other emergencies.

[132] The TRCA argues that the Development Site would be rendered inaccessible to people and vehicles during times of erosion hazards. The City relies on the evidence advanced by the TRCA.

[133] St. Dennis Drive, a two-lane collector road, is currently used to access the Subject Property. The access to the Development Site is by a driveway which is on a relatively flat area, between slopes 2 and 4, and does not pass through the long-term stable crest of either slope. It is a road used by emergency services, and there is no credible evidence that the road construction was deficient and is unstable, as Dr. Shirazi speculated in the absence of any factual basis to do so. On cross-examination, Dr. Shirazi admitted that he did not signal to anyone this alleged speculative risk, including to the Toronto Transit Commission. Similarly, Commander O'Brien stated on cross examination that he was not aware on any prohibition of the City's fire services using of St. Dennis Drive.

[134] The evidence of Mr. Diez de Aux, considered in concert with the evidence of Ms. Briegmann, supports the conclusion that safe access and egress to the Development Site can be provided from St. Dennis Drive in the "very unlikely event" that the unanticipated slope erosion occurs, on all slopes simultaneously and completely. Mr. Diez De Aux opines that two full lanes of traffic will remain open on St. Dennis Drive, as the travelled portion of the road remains completely outside the long-term stable crest and toe of slope 2 and 3, respectively. For him, the travelled portion of the road would be unaffected by potential slope instability and erosion. The driveway is not at risk of slope instability or erosion. On cross-examination, Dr. Shirazi admitted that an existing road can be part of the required erosion access allowance, that a development proponent need not remove vegetation and other physical obstructions from the erosion access allowance, and that the site would only be inaccessible if St. Dennis Drive was concurrently blocked from both a northerly and southerly approach.

[135] The Tribunal finds that the six-metre-wide erosion access allowance suggested at page 49 of the EHG has been provided from the stable top-of-slope, and this allowance may be used during times of erosion hazards for vehicles and people to have a way of safely entering and exiting the area.

[136] The evidence of Commander O'Brien with respect to the appropriate fire route is more properly relevant to the SPA. However, the Tribunal notes that the access to the Development Site appears to comply with the fire route provisions of the *Ontario Building Code*. Moreover, Commander O'Brien admitted on cross examination that in the highly unlikely scenario of a simultaneous erosion event on all slopes, tower trucks, aerial trucks and other vehicles could be deployed and staged on St. Dennis Drive, and that if a "pinch point" occurred, road blockage protocols would be implemented.

Tribunal Conclusion with Respect to Natural Hazards

[137] With respect to the matter of natural hazards, the Tribunal concludes that the Proposed Development has regard to matters of provincial interest in sections 2(a), 2(h), 2(o), 2(p), and 2(s) of the Act; is consistent with Policies 5.1 and 5.2 of the PPS 2024; conforms to Policies 3.4.1(e), 3.4.8, 3.4.9 and 3.4.10 of City's OP; and has regard to the EHG. Noting that the Applicant contends that Policy 5.2.8 of the PPS 2024 is not applicable, the Tribunal nevertheless finds that the Proposed Development is consistent with this Policy if it applies.

[138] The Tribunal underscores that the evidence of Dr. Shirazi and Mr. Heuchert was based largely on their interpretation of policies and guidelines, and criticism of the work conducted by the Applicant's expert witnesses. However, unlike the evidence advanced by Messrs. Shaefer, McKillop and Diez De Aux, Dr. Shirazi and Mr. Heuchert provided very little if any, fact-based engineering, field work or scientific evidence prepared by them or under their direction, particularly with respect to slope stability.

F. Does the Development Site include a Non-Conforming Alteration?

[139] Policy 3.4.9 of the City's OP prohibits the alteration of the existing slope of a valley for the "purpose of accommodating" a development. Based on the evidence of Mr. Henshaw, the City and the TRCA, argue that the Proposed Development is not consistent with the Policy, as there will be alteration of the paleo terrace and the slope. The impugned alterations are the cut and fill on the Development Site (slope 1), the works to accommodate stairs and a multi-use trail on the south side of St. Dennis Drive in front of the Development Site (slope 2) and a retaining wall to the west, along St. Dennis Drive.

[140] The Applicant submits that Policy 3.4.9 of the City's OP is not applicable because the proposed "cut and fill" is not for the purpose of accommodating the development, is not required and is merely to make the Proposed Development more efficient. Moreover, the retaining wall is merely hypothetical at this stage, and is not actually proposed by the Applicant. Part of these works are to regularize the Regional Flood Line.

[141] Mr. Palmer opined that the cut and fill are minor, are within the active golf course lands, are undertaken to remove historic man-made grade changes, will result in an improved stormwater conveyance, and will restore the paleo terrace's morphology.

[142] The Tribunal prefers the evidence of Mr. McKillop and his Fluvial Geomorphological Assessment to the effect that the cut and fill are "minor". The Proposed Development does not fail to conform to Policy 3.4.9 of the City's OP. Mr. Thompson's contrary opinion is less reliable, as it is based on his view that the City's OP policy seeks generally to prevent development within valleys and ravines, a position the Tribunal has rejected. Having reviewed Visual D-18 cited by the City, the Tribunal finds that the City and the TRCA provided no evidence that the cut and fill were for the purpose of accommodating development. It is not in dispute that a cut and fill is proposed by the Applicant, but there is no evidence that they are required for the

Proposed Development to occur. Mr. McKillop's evidence is clear that the paleo-terrace will remain as a recognisable paleo-terrace within the Don River valley. The excavation will not remove that feature.

G. Does the Proposed Development have Regard to the Living City Policies?

[143] With respect to the TRCA's own LCP, the TRCA's entire written submission is to state, for similar reasons identified in the TRCA's submissions with respect to the PPS 2024 and the City's OP, that the Proposed Development "does not have due regard for sections 7.3.1, 7.3.1.3(b), 7.3.1.3 (g), 7.4.4.1, 7.4.3.3 and 7.4.4.1 of the LCP".[19]

[144] Thus, the Tribunal may also succinctly state that it reviewed those sections, as well as sections 8.4.4 and 8.4.5, with the assistance of the various expert witnesses who considered them. Based on that review, including the review of Mr. Henshaw's NHIS, the Tribunal finds that the Proposed Development has regard to the LCP, which contains non-statutory policies.

H. What Impact, if any, does the City's Refusal of the Applications have on the Exercise of the Tribunal's Jurisdiction?

[145] The Act requires the Tribunal to have regard to the decision of a municipal Council that relates to the same matter, as well as to any information and matter that the municipal council considered in making its decision.

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[19] TRCA's Written Closing Submissions, paragraph 119.

[146] The City submits that the Tribunal must scrutinize and carefully consider City Council's refusal of the Applications.[20] It adds that Council's decision was based on all the material that made the Applications complete, as well as a recommendation from City staff recommending denial of the Applications. For the City, one of the specified purposes of the Act is to recognize the decision-making authority and accountability of municipal Councils in planning matters.[21]

[147] Although it did not do so explicitly, the Tribunal considers that the City was submitting implicitly that the Tribunal's jurisdiction was fettered or otherwise limited by City Council's decision to refuse the Applications.

[148] The Tribunal agrees with the City, but only to a certain degree. The Tribunal has indeed had regard to the decision of Council and the material before Council. However, City Council's decision to refuse the Applications is not determinative of the outcome of these Appeals. To suggest otherwise, would render moot all appeals flowing from a municipal Council's decision to refuse an application. The Ontario legislature has stipulated quite the contrary by providing a right of appeal to an applicant who has not persuaded a municipal Council on a planning matter.

[149] Moreover, the Tribunal agrees with the Applicant that the Tribunal retains the jurisdiction to render a decision on the evidence before it during this *de novo* proceeding, especially when the Tribunal can clearly conclude, as it does in this case, that City Council's decision was hastily arrived at and was based on a record significantly less fulsome than the extensive evidence before the Tribunal. Ms. Prejel,

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20 *Ottawa (City) v. Minto Communities Inc.,* 2009 CanLII 65802, paragraph 32.

21 Section 1(f) of the Act.

the City's land use planning witness, admits on cross examination that the Tribunal evidentiary record was considerably more fulsome than the record before City Council.

[150] The Tribunal notes that the City staff took seven months to deem the Applications complete, but only one month to prepare an unfavourable recommendation for City Council. At no point prior to the preparation of the Refusal Report did City staff provide the Applicant, or members of its extensive consultant team, substantive and meaningful comments. The Refusal Report was finalized and presented to Council without input from the City's urban design team or from its transportation services team. It was not informed by the natural heritage peer review subsequently prepared by Ms. Mainguy (February 2024) or the opinions of Commander O'Brien on emergency response on the Subject Property (December 2024). The Report also failed to provide City Council with any summary of the numerous reports submitted by the Applicant. Accordingly, although the Tribunal has regard to the decision of City Council and the material and information before it, the Tribunal finds that very little deference should be accorded to Council's decision in this case.

I. Would Approval result in an Unacceptable Precedent?

[151] Both the City and the TRCA are concerned that approval of these Applications would create an unacceptable precedent with negative repercussions for the entire Don Valley system.

[152] The Tribunal finds that such concerns are unfounded. First, it is established law that decisions of administrative bodies, such as the Tribunal, do not create legal precedent. Moreover, any future proposed development within the Don Valley will be decided on site-specific evidence, considering the applicable policy environment in effect at the time. In addition, the Proposed Development is unique in many respects including the presence of a paleo terrace, the existing access to a public road, a proposed partnership with Indigenous communities, a conveyancing of a significant area of Public Open Space, and proximity to higher-order transit.

[153] The Tribunal also notes the evidence of Mr. McKillop, which the Tribunal accepts, that the Proposed Development is not a precedent for construction “on” a valley wall because a paleo terrace is an ancient remnant of a river floor dating back thousands of years before the predecessor of the Don River abandoned this course. Thus, such terraces are not within a valley wall, as the wall and the floor are physically distinct. The Tribunal also notes his evidence that the Wyndford condominiums, located further below on St. Dennis Drive, have also been constructed on one or more similar paleo terraces.

J. IMPLEMENTATION AND CONTENT OF THE ORDER

Site Plan

[154] The Applicant has submitted that the Tribunal should approve the Site Plan in principle. The Applicant argues that the Tribunal has the clear jurisdiction to approve the site plan in principle and that it ought to do so in this instance. It underscores that the City deemed the SPA complete and had determined that it had been prepared in accordance with the City’s relevant Terms of Reference.

[155] The City admits that the Tribunal has heard sufficient evidence to render a decision with respect to the OPA and the ZBA. However, it submits that the SPA has not been supported by complete plans or appropriate conditions. For the City, a proper SPA should contain drawings that secure specific implementation of a development, subject to conditions that may be deemed appropriate.

[156] The City also maintains that the Tribunal does not have jurisdiction to approve a signalized intersection at the driveway of the proposed development, and that such an authority rests solely with the City.[22]

[157] Furthermore, the City argues that the proposed development has the potential of imposing additional maintenance or construction costs on the City, and that these have not been studied or provided for. The City submits that predecessors of the Tribunal have found that municipalities are best suited to assess ongoing maintenance or the desirability of ongoing benefits to the community.[23]

[158] The Tribunal finds that it would have jurisdiction to grant interim approval to the SPA and could exercise its jurisdiction in that way. The Tribunal also notes that it could give concurrent directions, with respect to certain aspects of the intersection as a matter necessarily incidental to these Appeals, as a land use matter.[24]

[159] However, the Tribunal agrees that it is preliminary to approve the SPA even on an interim basis. The Tribunal underscores, however, that it does not make any determination with respect to the SPA. The SPA appeal is neither allowed nor dismissed. Rather, it adjourned *sine die*. This will allow the Parties to have a discussion with respect to the SPA, which should have occurred prior to this Hearing. **The Tribunal directs that the Parties inform the Tribunal of the status of their discussion with**

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[22] *Diamond Corp. v. Toronto (City),* 2019 CarswellOnt 1297, paragraph 130; *IOTP Development Inc. v. Toronto (City)*, 2019 CarswellOnt 12453, paragraph 28

[23] *Spaleta v. West Grey (Municipality),* 2020 CanLII 14788 (ON LPAT). paragraphs 28-29; *Walker Agregates Inc. (Re)*, [2012] OERTD No. 29, paragraph 104.

[24] *Infiniti Development Group v. Burlington (City),* OLT-22-004445, July 24, 2025, paragraphs 12 to 14.

respect to the SPA by no later than Tuesday, March 31, 2026. Based on those discussions and Parties' status report, the Tribunal will establish the next steps. The Member remains seized of the SPA appeal.

[160] Nevertheless, given section 2(n) of the Act and section 12(2) of the *Ontario Land Tribunal Act*, 2021, S.O. 2021, c. 4, the Tribunal directs that the Parties engage in positive and concerted efforts to resolve outstanding issues that are central to the SPA, particularly:

a. Pedestrian, bicycle and other vehicular infrastructure that may need to be built to ensure more efficient access to the site, including the implementation of a multi-use trail, through easements on the public right of way;

b. The financial responsibility with respect to the construction and maintenance of pedestrian, bicycle and other vehicular access to the site, including any liability issues;

c. Particulars about the process of rehabilitation of the Proposed Development, including details on the process for the Eco-Cultural Restoration Plan;

d. Mitigation measures with respect to wind conditions;

e. Vegetation planting, marcescent planting and other mitigation measures to address potentially uncomfortable wind conditions, while giving due consideration to sight lines along St. Dennis Drive;

f. Details of the proposed signalized intersection for access to the site from St. Dennis Drive;

g. Details on the use of the driveway and internal roads on the fire route for the Proposed Development; and,

h. Details of the site's pick up and drop off operation (noting the Applicant's position that such spaces are neither required nor regulated under the City's current zoning by-law).

[161] When considering the SPA, the Tribunal expects the City to acknowledge the reality of this site-specific context when considering what makes a public realm attractive and appropriate. St. Dennis Drive is not a typical retail main street, but a scenic roadway that provides access to residential apartments and a new LRT. The 40-acre Public Open Space cannot be ignored. The Tribunal fully expects the Development Site will be animated, at all times of the day, especially due to the number of residents in the Proposed Development and the number of visitors to the Open Public Space and the new cultural space. The Tribunal also expects the City to appropriately embrace its role in making the public realm even more conducive to transit-oriented communities, given the significant investments in the cross-town Eglington LRT. It is hoped that the City will focus on the opportunities presented by this Proposed Development to improve the existing conditions for cyclists and pedestrians. Indeed, Ms. Hamilton admits on cross examination that her urban design assessment of the public realm was limited to just St. Dennis Drive, thus failing to consider the Public Open Space. The public realm includes all public and private spaces to which the public has access.

[162] Similarly, given the evidence of Ms. Briegmann and Mr. Harirforoush, the Tribunal would be very surprised and disappointed if an agreement cannot be achieved with respect to the required intersection at the driveway entrance. Mr. Harirforoush, the City's transportation witness, admits on cross examination that there were opportunities to improve mobility - as recommended by Ms. Briegmann - subject to further detailed work. He also candidly states that it is standard to have adjustments on the public right of way concurrent with a proposed development, subject to standard arrangements.

[163] Ms. Hamilton admitted on cross examination that issues relating to maintenance, access and security for the multiuse trails are regularly secured through an SPA.

[164] It is indeed disappointing that the City and the TRCA have failed to move beyond their threshold issues concerning the appropriateness and safety of the Development Site, despite this Member's clear and unequivocal ruling at the Case Management Conference on March 6, 2024, that these Appeals would not be considered in two phases.[25] They could have pleaded their position in the alternative, *i.e.* arguing that the Development Site is not appropriate and safe, and provided in the alternative input on various other matters if they were unsuccessful on their threshold issues. The City's and the TRCA's strategy in this Hearing not only has not been more efficient, but it has also resulted in avoidable duplication of evidence and pleadings when the SPA Appeal is further considered. It is clear from the cross-examination evidence of Ms. Hamilton and Ms. Prejel that City officials admit to deliberately not engaging with the Applicant and its experts due to the threshold question.

Conditions for Implementation

[165] The Parties reached a consensus on the Conditions to be attached to the Interim Order. The Tribunal uses the language preferred by the City with respect to wind conditions, it being understood that the relevant wind issues must be related to the Proposed Development

CONCLUSION

[166] The Tribunal finds that the Proposed Development, the OPA and the ZBA; (a) have regard to matters of provincial interest set out in section 2 of the Act; (b) are

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[25] Memorandum of Oral Decision of a CMC issued on April 3, 2024, paragraphs 12 to 14.

consistent with the PPS 2024; (c) conform to the City's OP; (d) have regard to relevant guidelines including the City's design guidelines and the TRCA's LCP; (e) represent good land use planning; and (f) are in the public interest.

[167] The Proposed Development will be transit-oriented and will have an active frontage to contribute to the public realm considering its unique location. It will contribute significantly to increasing available housing, including diverse unit sizes and affordable units. The buildings, with their excellent architectural design, will have ground floor uses and entrances that will allow views from and into the public spaces in front of the buildings. This design has the potential of being a significant, signature gateway for members of the public to access the new Public Open Space and the existing trail system through the valleylands. Its massing is consistent with the Subject Property's proximity to transit and is consistent with the form and density that is occurring in this area. The transformation of a 16-hectares privately owned golf course into a new Public Open Space is a very significant component of the Proposed Development and will contribute to the quality of life of residents, as well residents in nearby neighbourhoods and the Toronto as a whole. It will become a City-wide asset. Engagement and co-operation with Indigenous communities is also in the public interest and is consistent with Policy 6.2.2 of the PPS 2024. In short, the Proposed Development offers a vast array of public and community benefits, while appropriately addressing the natural heritage and erosion hazard risks.

[168] The land use planning evidence of M. Hare and Mr. Palmer is compelling and not successfully challenged on cross-examination.

INTERIM ORDER

[169] **THE TRIBUNAL ORDERS** that:

a. The appeals with respect to Official Plan Amendment ("OPA") and the Zoning By-law Amendment ("ZBA") are allowed in part on an interim basis,

contingent upon confirmation, satisfaction and receipt of the pre-requisite matter identified in paragraph d below;

b. The OPA set out in **Attachment A** to this Interim Order is approved in principle;

c. The ZBA set out in **Attachment B** to this Interim Order is approved in principle;

d. The Tribunal shall withhold its Final Order contingent upon final approval by the Tribunal and receipt of the following:

1. In respect of the OPA, that the final form and content is to the satisfaction of the City Solicitor and the Chief Planner and Executive Director, City Planning;

2. In respect of the ZBA, that:

i. the final form and content of the proposed Zoning By-law is to the satisfaction of the City Solicitor and the Chief Planner and Executive Director, City Planning;
ii. the Owner has at its sole cost and expense:

a. provided a revised Traffic Impact Study, including acceptable Transportation Demand Measures (TDM), to the satisfaction of the Chief Engineer and Executive Director, Engineering and Construction Services, the General Manager, Transportation Services, and the Chief Planner and Executive Director, City Planning Division;

b. submitted a Functional Servicing Report and Stormwater Management Report, 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;
c. 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, according to the accepted Engineering Reports;
d. addressed all uncomfortable and unsafe wind conditions on the Site and adjacent public realm.

2. completed all the revisions to plans and studies to the satisfaction of the City Divisions, and satisfied all pre-approval conditions contained within the Notice of Approval for the Site Plan Control application; and

3. conveyed to the City or TRCA a conveyance of lands having a minimum size of approximately 16 hectares, on such terms as agreed upon by City or TRCA, as the case may be, and the Owner, and appropriately secured.

e. If the Parties do not submit the final drafts of the OPA and ZBA, and do not request the issuance of the Final Order, by **Tuesday, March 31, 2026**, the Parties shall provide a written status report to the Tribunal by that date, as to the timing of the expected confirmation and submission of the final form of the draft OPA and ZBA and issuance of the Final Order by the Tribunal.

[170] The Member is seized for the purposes of reviewing and approving the final draft OPA and ZBA and the issuance of the Final Order with respect thereto.

[171] The Appeal of the Site Plan Application ("SPA") is adjourned *sine die*.

[172] The Member remains seized of the Appeal of the SPA.

[173] Should any issues arise in finalizing the OPA and ZBA for final approval or with respect to the SPA, the Tribunal may be spoken to.

"*Jean-Pierre Blais*"

JEAN-PIERRE BLAIS
VICE CHAIR

ATTACHMENT A

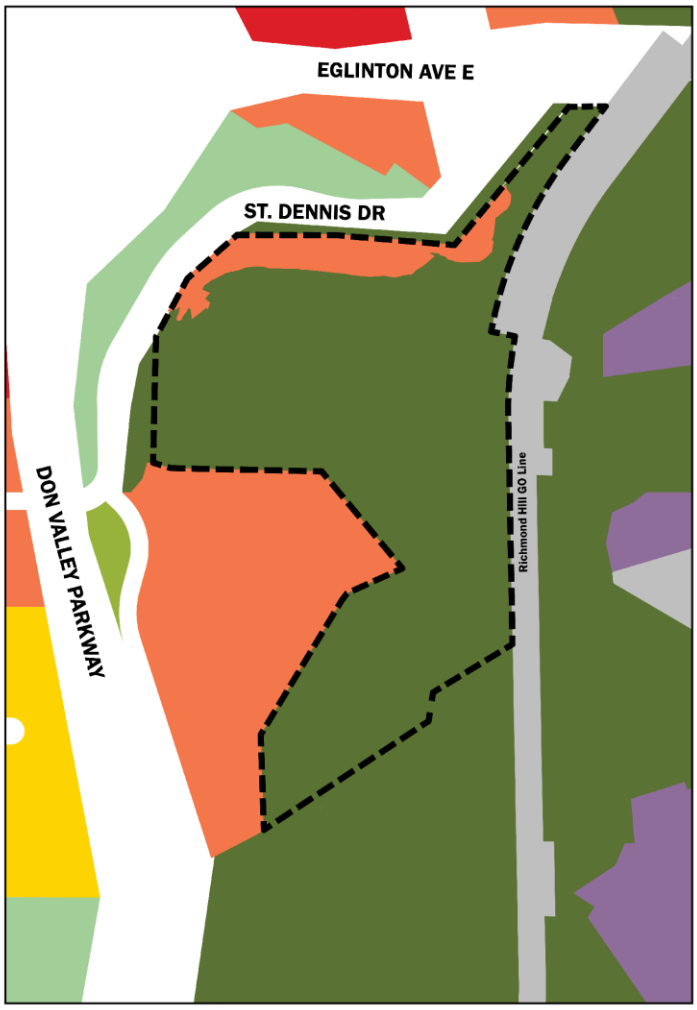
AMENDMENT NO. ~~~ TO THE OFFICIAL PLAN
LANDS MUNICIPALLY KNOWN IN THE YEAR 2022 AS
155 ST. DENNIS DRIVE

The following text and maps constitute Amendment XX to the City of Toronto Official Plan.

The Official Plan of the City of Toronto is amended as follows:

1. Map 20, Land Use Plan is hereby amended by redesignating the lands known as 155 St. Dennis Drive from Natural Areas and Other Open Space Areas (Including Golf Courses, Cemeteries, Public Utilities) to Apartment Neighbourhoods and Natural Areas, in accordance with Schedule A, attached hereto.

Schedule A



TORONTO City Planning

Official Plan Amendment # XX
Schedule A

155 St. Dennis Drive

Revisions to Map 20, Land Use Plan to Redesignate lands from Natural Areas and Other Open Spaces Areas to Apartment Neighbourhoods and Natural Areas

Location of Application
Apartment Neighbourhoods
Mixed Use Areas
Natural Areas
Parks
Other Open Space Areas
Neighbourhoods
Core Employment Areas
Utility Corridors

Not to Scale

ATTACHMENT B

To amend Zoning By-law 569-2013, as amended, with respect to lands municipally known in the year 2021 as 155 St. Dennis Drive.

By-law 569-2013 is amended as follows:

1. The lands subject to this By-law are outlined by heavy black lines on Diagram 1 attached
to this By-law.

2. The words highlighted in bold type in this By-law have the meaning provided in Zoning
By-law 569-2013, Chapter 800 Definitions.

3. Zoning By-law 569-2013, as amended, is further amended by amending the zone label on
the Zoning By-law Map in Section 990.10 respecting the lands subject to this By-law from
a zone label of OG to a zone label of RAC (x<*>), ON**(x<*>)** as shown on Diagram 2 attached to this By-law.

4. Zoning By-law 569-2013, as amended, is further amended by adding the lands subject to
this By-law to the Lot Coverage Overlay Map in Section 995.30.1, and applying no value.

5. Zoning By-law 569-2013, as amended, is further amended by adding Article 900.8.10 Exception
Number (<*>) so that it reads:

(<*>**) Exception RAC** <*>

The lands, or a portion thereof as noted below, are subject to the following Site Specific Provisions:

Site Specific Provisions:

(A) On 155 St. Dennis Drive, if the requirements of By-law [insert by-law number] are complied with, a **building** or **structure** may be constructed, used or enlarged in compliance with Regulations (B) to (<*>) below;

(B) For the purpose of this By-law [insert by-law number], **established grade** is the Canadian Geodetic Elevation of 105 metres for **Phase 1** and 102.8 metres for **Phase 2** as shown on Diagram 3 of By-law law [insert by-law number];

(C) Despite Regulation 15.5.40.10(1) and 15.20.40.10(1) and (2), the permitted maximum height of a **building** or **structure** is the number in metres following the letters "HT" as shown on Diagrams 4, 5 and 6 of By-law [insert by-law number];

(D) Despite Regulation 15.40.10(2) to (5) and (C) above, the following equipment and **structures** may project above the maximum height shown Diagrams 4, 5 and 6 of By-law [insert by-law number]:

(i) parapets, trellises, window washing equipment, guardrails, safety railings, stairs, stair enclosures, vents, stacks, fences, wind or privacy screens, landscape elements (including green roofs), skylights, flues, access roof hatch, chimneys, structures on the roof used for outside or open-air recreation, ramp enclosures, heating, cooling or ventilating equipment or a fence, wall or structure enclosing such elements which may project above the height limits to a maximum of 3.5 metres;
(ii) pool, pool enclosures and pool mechanical equipment may project above the height limits to a maximum of 5 metres;
(iii) fence may project above a retaining wall to a maximum of 2 metres;
(iv) An elevated pedestrian walkway and associated elements may project above the height limits to a maximum of 10 metres;
(v) building maintenance unit, including window washing equipment may extend a maximum of 4 metres above the height limits above the mechanical penthouse; and
(vi) mechanical penthouses, elevator overruns and associated enclosures, which may project above the height limits to a maximum of 8.0 metres;

(E) Despite Regulation 15.20.40.40(2), the maximum **gross floor area** of all **buildings** and **structures** on the **lot** is 140,000 square metres, of which a minimum of 325 square metres **non-residential gross floor area** must be provided in Building 4 in Phase 2**;**

(F) Despite Clause 15.20.40.70, the required minimum **building setbacks,** in metres, for **Phase 1** and **Phase 2** are shown on Diagrams 4, 5 and 6 of By-law [insert by-law number];

(G) Despite Regulations 15.5.40.50(2), 15.5.40.60(1) and (3) and (F) above, the following
elements may encroach into a required minimum **building setback** as follows:

(i) exterior stairways, cornices, canopies, waste storage and loading space enclosures,
wheelchair ramps, balconies, lighting fixtures, awnings, ornamental elements, eaves, windowsills, window washing equipment, balustrades, terraces, decorative architectural features, bay windows, retaining walls, pilasters and sills, and porches and decks, either excavated or unexcavated, to a maximum of 2.5 metres; and

(ii) elevated pedestrian walkway and associated elements;

(H) Despite Regulation 15.5.50.10(1), **landscaping** must be provided on the **lot** as follows:

(i) a minimum of 1,600 square metres on **Phase 1** at full buildout; and
(ii) a minimum of 825 square metres on **Phase 2** at full buildout;

(I) Regulation 15.5.100.1(2) does not apply;

(J) Despite Regulation 15.20.40.50(1), **amenity space** shall be provided on the **lot** at the following rates:

(i) a minimum of 1.9 square metres of indoor **amenity space** for each **dwelling unit at** full buildout**;**
(ii) a minimum of 1.9 square metres of outdoor **amenity space** for each **dwelling**
unit at full buildout**;**
(iii) no more than 25% of the outdoor component may be a **green roof**; and
(iv) amenity space may by shared between the Building 1 and Building 2 in Phase 1 and Building 3 and Building 4 in Phase 2;

(K) Despite 15.20.40.80, if a residential **building** has **main walls** where a line projected outward at a right angle from one of the **main walls** intercepts another **main wall** of the same **building**, the required minimum above-ground separation distance between
those **main walls** for any portion of the **building** with a height greater than 11 metres and related to an inset balcony, is 1.6 metres;

(L) Despite Regulation 200.5.10.1(1) and Table 200.5.10.1, **parking spaces** for nonresidential
uses and car share **parking spaces** must be provided on the lot as follows:

(i) no **parking spaces** are required for non-residential use;
(ii) a minimum of 7 car share **parking spaces** at full buildout; and
(iii) the minimum parking requirements noted in (L)(i)and (ii) above, may be provided on **Phases 1 or 2**.

(M) Despite Regulations 200.15.10.5 and 200.15.10.10, calculation of the number of required accessible parking spaces shall be based on the total number of **parking spaces** provided.

(N) Despite Regulation 200.5.1.10(2), a maximum of 10 percent **parking** spaces on the **lot** that are obstructed on one side only may have a minimum width of 2.6 metres;

(O) Regulation 200.15.1(4) with respect to the location of accessible **parking spaces**

does not apply;

(P) Despite Regulation 220.5.10.1(2), a minimum of one Type "G" and one Type “C” **loading space** shall be provided on **Phase** 1 and one Type "G" **loading space** shall be provided on **Phase 2** at full buildout;

(Q) Despite Regulation 230.5.1.10(4), the minimum width of a **stacked bicycle parking space** is 0.37 metres;

(R) Despite Regulation 230.5.1.10(9), **bicycle parking spaces** may be located on the first or second level above grade and any parking level below grade;

(S) Despite Regulation 230.20.1.20(2), a short-term **bicycle parking space** may be provided further than 30 metres from the pedestrian entrance to any **building;**

(T) For the purpose of this by-law, the maximum average **tower floor plate** size for each tower is as follows:

(i) 775 square metres for Tower 1;
(ii) 755 square metres for Tower 2;
(iii) 760 square metres for Tower 3; and
(iv) 755 square metres for Tower 4;

(U) The minimum tower separation distance from the **main wall** of one building to the **main wall** of another building on the same horizontal level is 25 metres as shown on Diagrams 4, 5 and 6;

(V) Dwelling units must be provided as follows:

(i) a minimum of 10 percent of the total number of dwelling units on the lot must contain a minimum of three bedrooms;
(ii) a minimum of 20 percent of the total number of dwellings units on the lot must contain a minimum of two or three bedrooms; and
(iii) in the event that the calculation of the number of required dwelling units with two or three bedrooms results in a number with a fraction, the number shall be rounded down to the nearest whole number.
(iv) a minimum of 5 percent of the total residential gross floor area on the lot must be developed as affordable residential units.

(W) For the purpose of this exception, the following definitions apply:

(i) “**affordable residential unit”** means a residential unit that meets the criteria set out (1) and (2) below:

(1) A residential unit intended for use as a rented residential premises shall be considered to be an affordable residential unit if it meets the

following criteria: the rent is no greater than 80 per cent of the **average market rent**; the tenant is dealing at arm's length with the landlord.
(2) a residential unit not intended for use as a rented residential premises shall be considered to be an affordable residential unit if it meets the following criteria: the price of the residential unit is no greater than 80 per cent of the **average purchase price** and the residential unit is sold to a person who is dealing at arm's length with the seller.

(ii) **average market rent** applicable to a residential unit is the average market rent for the year in which the residential unit is occupied by a tenant, as identified in the bulletin entitled the "Affordable Residential Units for the Purposes of the Development Charges Act, 1997 Bulletin", as it is amended from time to time, that is published by the Minister of Municipal Affairs and Housing on a website of the Government of Ontario.
(iii) **average purchase price** applicable to a residential unit is the average purchase
price for the year in which the residential unit is sold, as identified in the bulletin entitled the "Affordable Residential Units for the Purposes of the Development Charges Act, 1997 Bulletin", as it is amended from time to time, that is published by the Minister of Municipal Affairs and Housing on a website of the Government of Ontario.
(iv) "**Tower Floor Plate**" means the total built area within a tall **building** tower above the base **building**, measured from the exterior of the main walls at each level.
(v) "**Phase 1**" shall mean the area identified as **Phase 1** on Diagram 3 and may include a portion of the **building** and **structure** located below the tower portion Phase 2.
(vi) "**Phase 2**" shall mean the area identified as **Phase 2** on Diagram 3.

(<*>) Exception ON (x)

The lands, or a portion thereof as noted below, are subject to the following Site Specific Provisions:

Site Specific Provisions:
(A) **Park, Agricultural uses,** market gardening and **education** and **assembly** uses are permitted in addition to the ON permitted uses, without any conditions.

6. Despite any severance, partition or division of the lands, the provisions of this By-law shall as if no severance, partition or division occurred.

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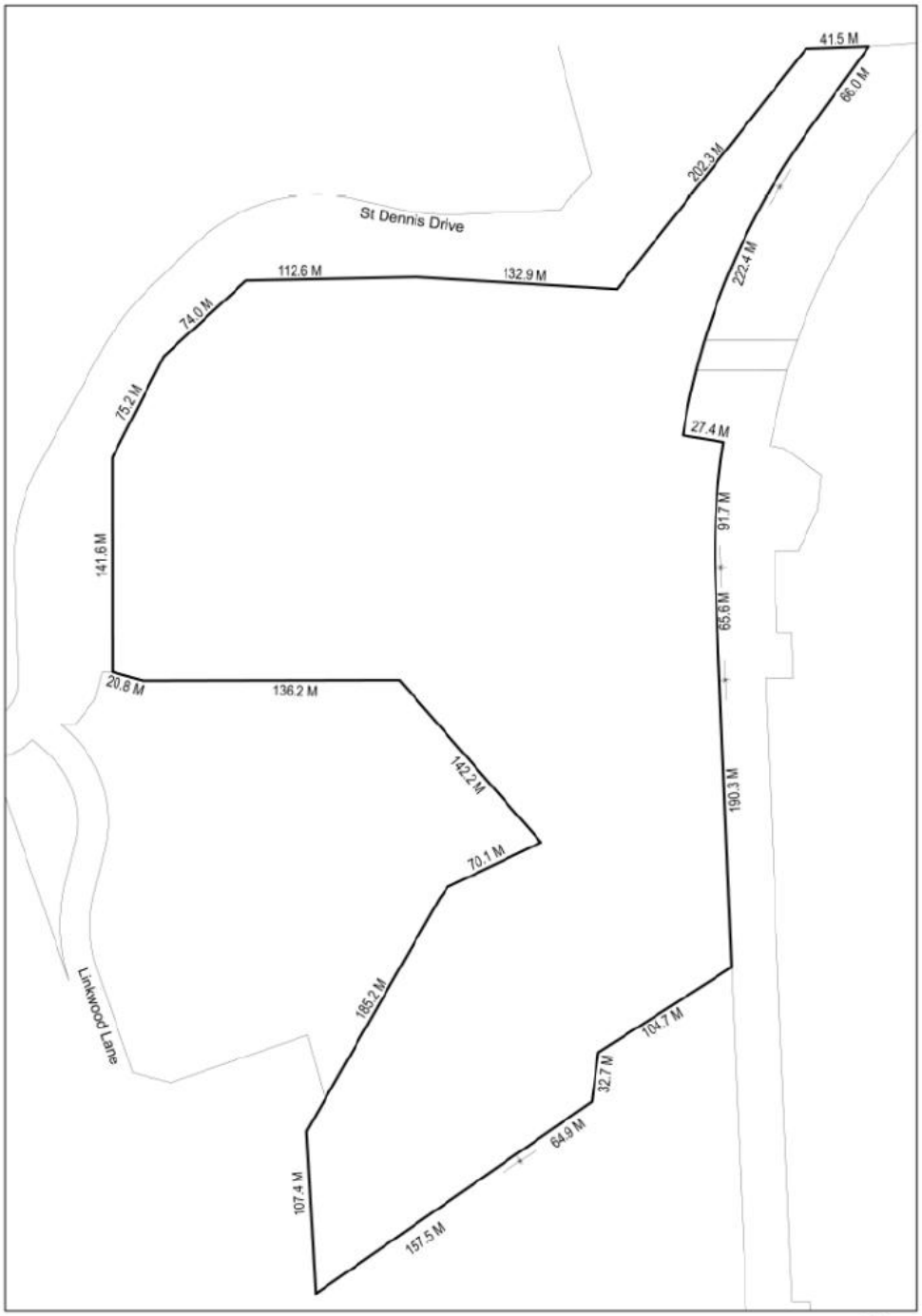
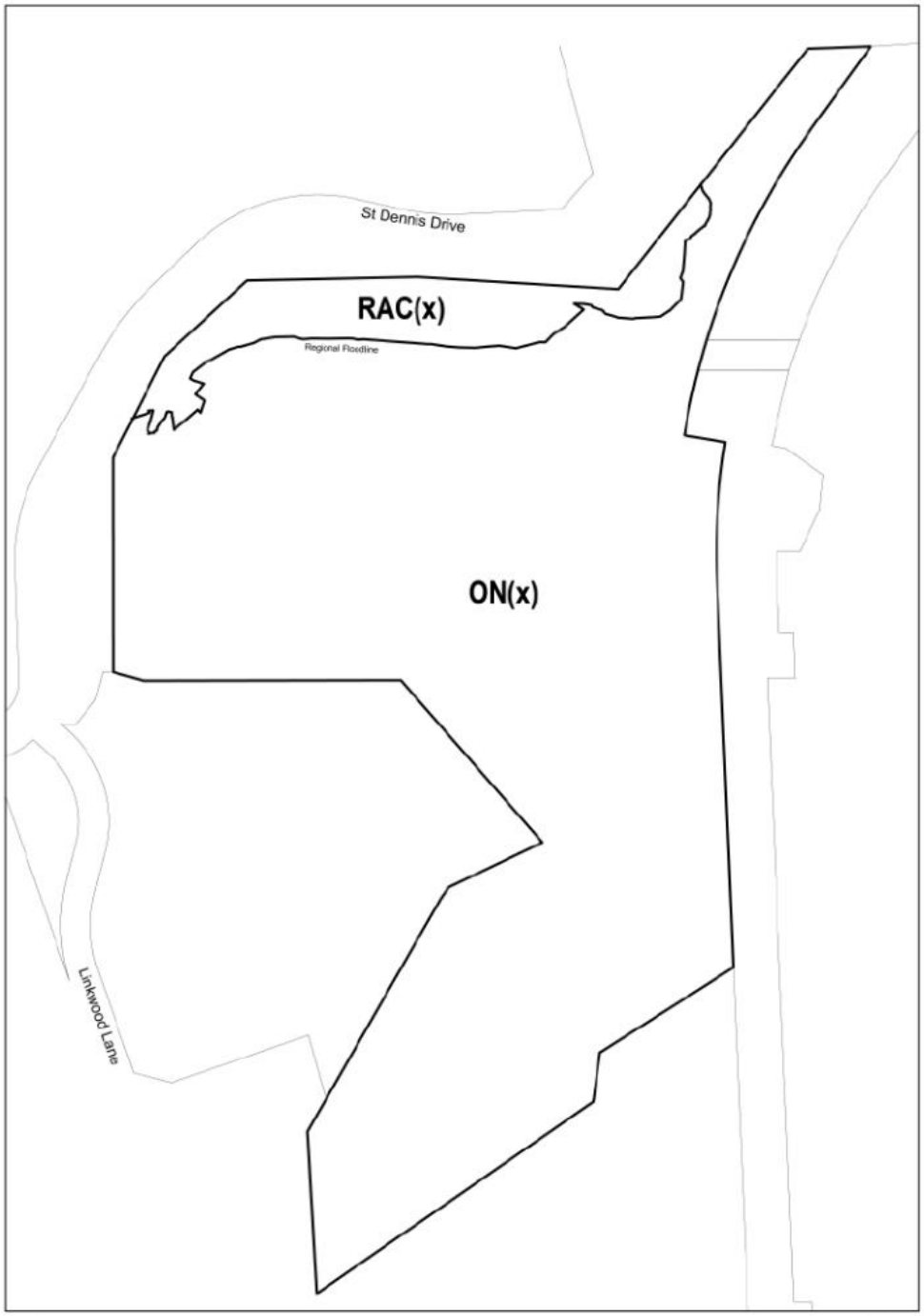


DRAFT City of Toronto By-law XXXX-2023



TORONTO

DIAGRAM 2

City of Toronto By-Law XXX-XXXX
Not to Scale

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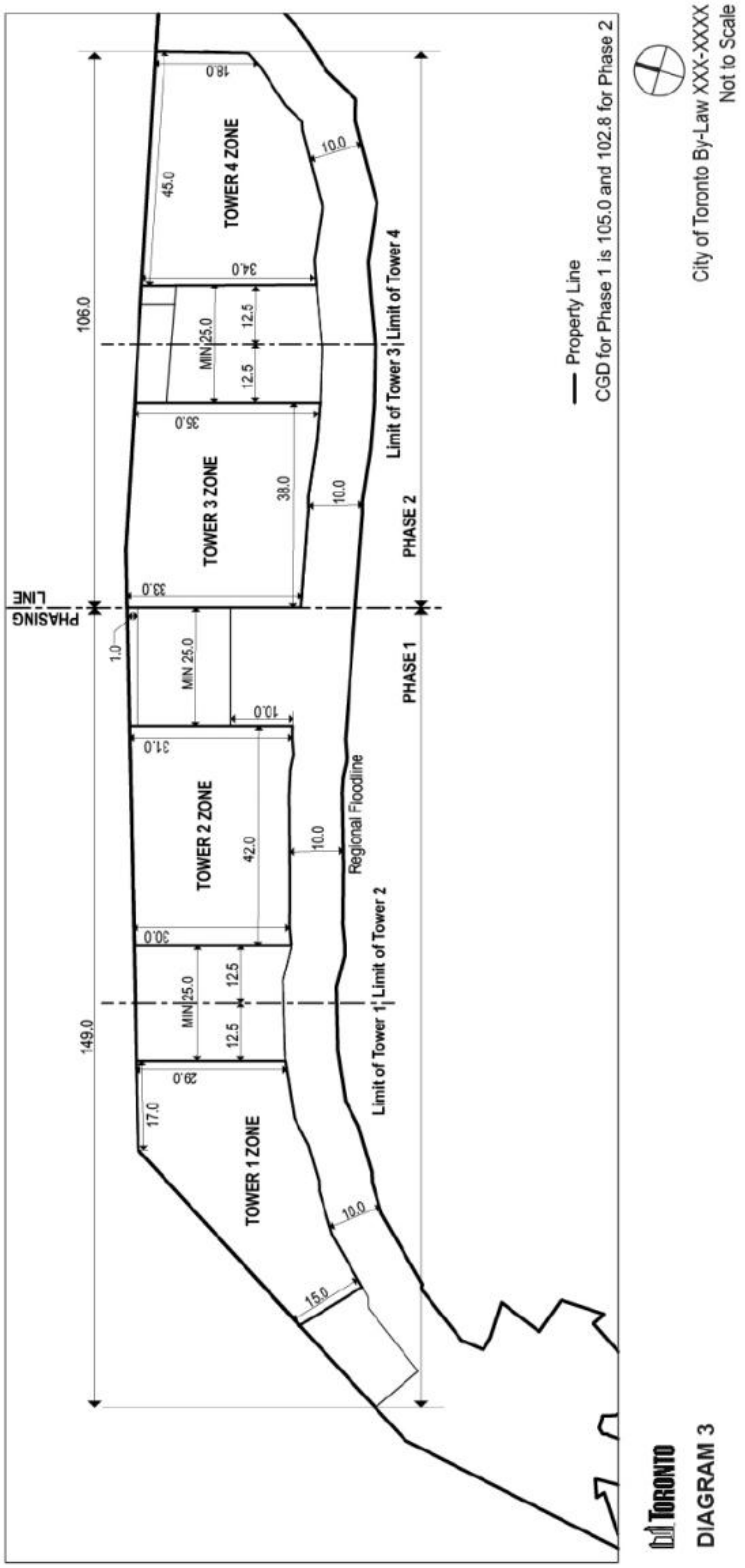

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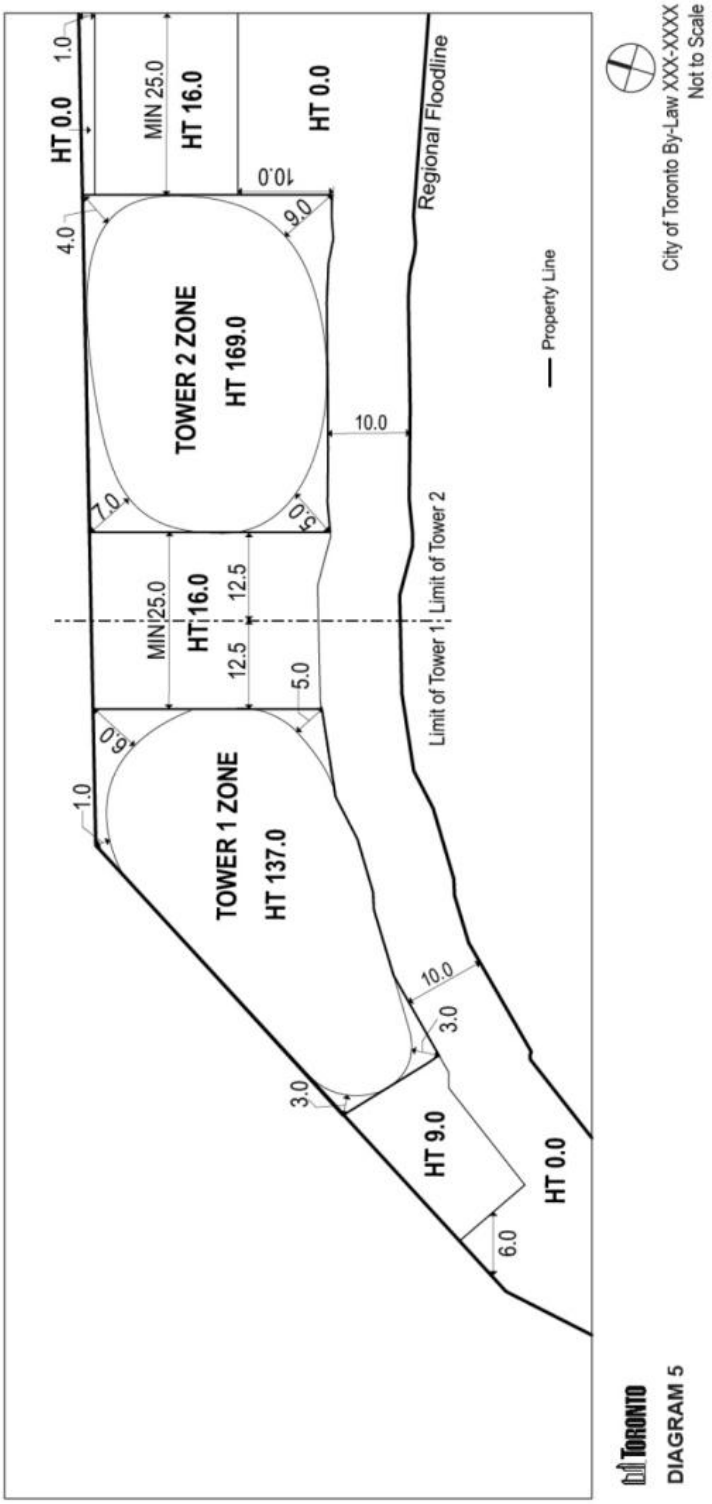

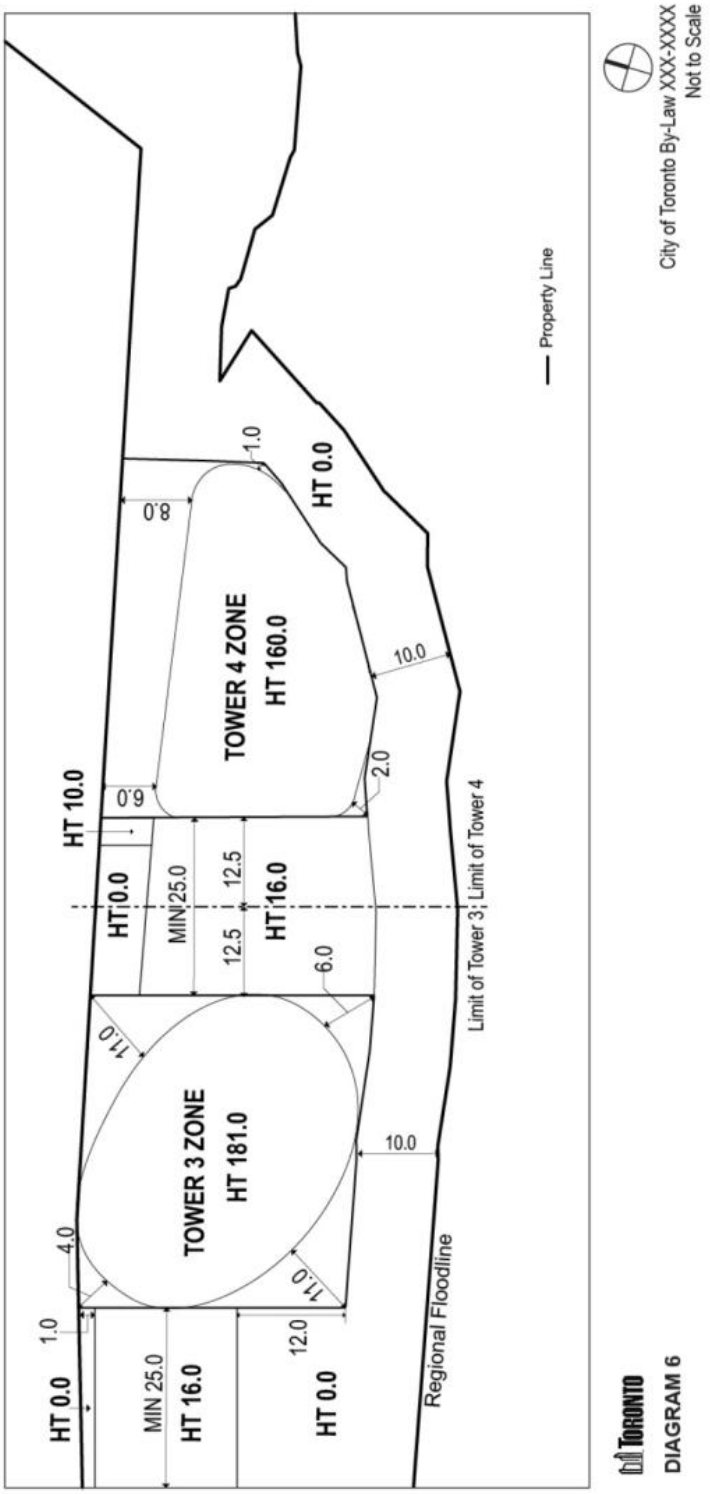
City of Toronto By-Law XXX-XXXX
Not to Scale
Property Line
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TOWER 4 ZONE
HT 160.0
HT 10.0
HT 0.0
MIN 25.0
HT 16.0
TOWER 3 ZONE
HT 181.0
HT 0.0
MIN 25.0
HT 16.0
HT 0.0
Limit of Tower 3
Limit of Tower 4
Regional Floodline
TORONTO
DIAGRAM 6